DOCKET FILE COPY ORIGINAL

State of North Carolina
Utilities Commission

Post Office Box 29510
Raleigh, N. C. 27626-0510

COMMISSIONERS
JO ANNE SANFORD, Chair
ALLYSON K. DUNCAN
RALPH A. HUNT

COMMISSIONERS
JUDY HUNT
WILLIAM R. PITTMAN
J. RICHARD CONDER
ROBERT V. OWENS, JR.

September 8, 1998

Honorable Magalie Roman Salas
Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: The North Carolina Utilities Commission's Order Regarding Public Interest Payphones filed in consideration of the Federal Communications Commission's September 20, 1996 Report and Order "In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996", CC Docket No. 96-128, CC Docket No. 91-35 11 FCC Rcd 20541

Dear Secretary Salas:

With respect to the above subject matter, enclosed is a copy of the North Carolina Utilities Commission's Order Regarding Public Interest Payphones (PIPs) issued in response to our obligation under paragraph 285 of the FCC's Order.

The North Carolina Utilities Commission solicited comments, reply comments, and proposed orders from interested parties during its investigation into whether North Carolina has adequately provided for PIPs in a manner consistent with the FCC's Report and Order.

As the enclosed Order details, the North Carolina Utilities Commission concluded after its review that a PIP program is not necessary at this point in time in North Carolina.

I hope this information proves useful; please contact Bridget Szczech of our staff at (919) 715-4006 if you need additional information.

Very truly yours,

Jo Anne Sanford

Jo Anne Sanford, Chair

RECEIVED
SEP 14

cc: Sheryl Todd of the Common Carrier Bureau
Geneva Thigpen

430 North Salisbury Street • Raleigh, North Carolina 27603
Telephone No: (919) 733-4249
Facsimile No: (919) 733-7300

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

OFFICIAL COPY

DOCKET NO. P-100, SUB 84a

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter Of		
Amendments to Regulations	)	ORDER REGARDING PUBLIC
Applicable to Payphone Service	)	INTEREST PAYPHONES

BY THE COMMISSION: On January 30, 1998, the Commission issued an Order Outlining Issues in Docket No. P-100, Sub 133g concerning universal service stating, among other points, that the issue of public interest payphones (PIPs) would be addressed by the Commission in Docket No. P-100, Sub 84a.

By Order dated February 18, 1998, the Chair established the timetable for comments (April 2, 1998), reply comments (April 16, 1998), and proposed orders (April 30, 1998) to be filed in the docket for the parties to address whether PIPs are necessary in North Carolina. The Order also stated that if the Commission finds after those filings that PIPs are necessary, then a subsequent round of comments and reply comments would be sought as to the appropriate terms and conditions for PIPs.

BACKGROUND

Section 276(b)(2) of the Telecommunications Act of 1996 (the Act or TA96) instructed the Federal Communications Commission (FCC) to determine whether "public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would not otherwise be a payphone" should be maintained.

The FCC addressed the issue of PIPs in its September 20, 1996, Order in CC Docket No. 96-128 (Payphone Order), especially Paragraphs 264 through 286. The FCC in its Order at Paragraph 285 directed each state to evaluate whether it needs to take any measures to ensure the existence of PIPs. If a PIP program is found to be necessary by a state, the FCC left it to the discretion of the individual states as to how to fund a PIP program so long as the funding mechanism fully and equitably distributes the cost of such a program and does not involve the use of subsidies prohibited by Section 276(b)(1)(B) of the Act (Paragraph 285). States have until September 20, 1998, to determine the need for PIPs and to adopt an appropriate funding mechanism.

Paragraph 282 of the FCC's Payphone Order outlines the definition of PIPs adopted by the FCC, as follows:

"a payphone which (1) fulfills a public policy objective in

RECEIVED
SEP 14

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."

INITIAL COMMENTS

Initial comments were filed on April 2, 1998 by ALLTEL Carolina, Inc. (ALLTEL), AT&T Communications of the Southern States, Inc. (AT&T), BellSouth Telecommunications, Inc. (BellSouth), Carolina Telephone and Telegraph Company (Carolina) and Central Telephone Company (Central), GTE South Incorporated (GTE), Lexcom Telephone Company (LEXCOM), the North Carolina Payphone Association (NCPA), and the Public Staff.

ALLTEL - ALLTEL maintained in its initial comments that the marketplace should first be allowed to work in North Carolina before any determination is made as to the need for PIPs. ALLTEL also recommended that the Commission fund any PIP program through the state universal service fund. ALLTEL commented that there is currently no perceived need for the designation of public interest payphones.

AT&T - AT&T recommended in its initial comments that the Commission request that industry members identify those payphones which they believe meet the requirements for PIPs. AT&T suggested that the Commission follow the FCC's lead in suggesting a narrowly tailored definition of the public interest to determine what payphones, if any, are deserving of PIP status.

BELLSOUTH - BellSouth concluded in its initial comments that a PIP program may not be needed in North Carolina because there is currently a small base of PIPs, and the competitive market seems to be providing needed telephones. However, BellSouth suggested that if the Commission decides to initiate a PIP program, the funding should come from either all payphone service providers, the location provider, or some apportionment of responsibility among all payphone service providers.

CAROLINA/CENTRAL - Carolina/Central stated in their initial comments that the Companies are not aware of any public need for payphone service that is not currently being met within their respective service territories. Carolina/Central believe that the proliferation of public payphones at various types of locations throughout the State, together with other factors such as continuing growth of cellular phone service, ensures that telephone service to meet the needs of the public will continue to be readily available in the future.

GTE - GTE stated in its initial comments that it is not necessary nor is it in the public interest to establish a PIP program in North Carolina. GTE maintained that it currently has

RECEIVED
SEP 14
FCC MAIL ROOM

twenty payphones in North Carolina that would meet the FCC's definition of a PIP. Additionally, GTE believes that the emergence and development of competition in the payphone marketplace has further expanded the availability of such service to the public.

LEXCOM - LEXCOM stated in its initial comments that it is of the opinion that if payphones are going to be a competitive business, there is no longer a need for government intervention and/or regulation. LEXCOM added that a PIP program would require re-regulation of the recently deregulated payphone industry.

NCPA - The NCPA recommended in its initial comments that the Commission issue an Order determining that the implementation of a program to provide explicit support for PIPs is not necessary at this time in North Carolina.

PUBLIC STAFF - The Public Staff indicated in its initial comments that it does not believe that a PIP program is necessary in North Carolina. The Public Staff maintained that the normal operation of the payphone marketplace has made payphones reasonably available throughout the State. The Public Staff recommended that the Commission conclude that the public interest does not necessitate the establishment of a PIP program in North Carolina.

REPLY COMMENTS

Reply comments were filed on April 16, 1998 by AT&T, the NCPA, and the Public Staff.

AT&T - AT&T stated in its reply comments that the Commission should determine that it is premature to establish a PIP program at this time. AT&T further stated that it is in agreement with the other parties who have stated that it is premature for the Commission to establish a PIP program at this time and that the Commission should defer consideration of funding mechanisms for PIPs until it is determined that a PIP program is needed.

NCPA - The NCPA recommended in its reply comments that the Commission issue an Order determining that it is not necessary to implement a PIP program in North Carolina at this time. The NCPA noted that it limited its reply comments to the question of whether public interest payphones are necessary in this State and that if the Commission determines that there is a demonstrated need to institute a program to support PIPs, the NCPA requests the opportunity to submit comments regarding the administration of such a program.

PUBLIC STAFF - The Public Staff stated in its reply comments that it believes that the payphone marketplace and alternatives to payphone service are already adequate to meet the communications needs of the North Carolina public. The Public Staff also

RECEIVED
SEP 14
FCC MAIL ROOM

pointed out that most of the participants in this docket emphasized in their initial comments that it is likely that the payphone marketplace will continue to expand in response to recent provisions of the FCC's Report and Order, as Payphone Service Providers (PSPs) deploy payphones into many locations that were previously unprofitable, including locations that might qualify for PIPs under the FCC's criteria. The Public Staff concluded that it would be inappropriate for the Commission to intervene in this ongoing process by creating a complex and burdensome PIP program for which there is no apparent need. The Public Staff also recommended that the Commission conclude that the public interest in North Carolina does not necessitate the establishment of a PIP program.

PROPOSED ORDERS

Proposed orders were filed on April 30, 1998 by AT&T and the Public Staff. BellSouth filed its proposed order on May 6, 1998.

AT&T - AT&T recommended in its proposed order that the Commission issue an Order stating that no PIP program be established in North Carolina at this time. AT&T stated that there is no evidence to suggest that the existing supply of payphones is not meeting the needs of the public, that the payphone marketplace is already providing an adequate supply of payphones throughout North Carolina, and that the ongoing deployment of payphones and the growth in cellular service are likely to ensure that the telecommunications needs of the public will continue to be met in the future. Finally, AT&T recommended that the Commission's Order state that the docket be closed.

BELLSOUTH - BellSouth concluded in its proposed order that there is no evidence suggesting that the existing supply of payphones is not meeting the needs of the public. BellSouth also stated that the evolving payphone marketplace will likely ensure that the telecommunications needs of the public will continue to be met in the future. BellSouth concluded that the Commission should find that no PIP program needs to be established in North Carolina at this time.

PUBLIC STAFF - The Public Staff indicated in its proposed order that each party to this docket asserted that the establishment of a PIP program was unnecessary or premature and that this view was even shared by the four local exchange companies (LECs) which believed they were currently operating payphones that met the FCC's PIP criteria. Finally, the Public Staff recommended that the Commission conclude that in response to Part 64.1330(c) of the Code of Federal Regulations, it is not necessary or in the public interest to establish a PIP program in North Carolina.

RECEIVED
SEP 14

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Based on the foregoing and the entire record in this proceeding, the Commission concludes that a PIP program is not necessary in North Carolina at this point in time.

Payphone local coin rates were deregulated by the FCC in 1997. Although competitive private payphone providers have been authorized for a number of years and the number both of providers and of payphones has proliferated, the newly restructured competitive payphone market has only been operational for approximately six months. As noted by several parties, the restructuring and deregulation of the payphone industry will expand the availability of payphone service to the public. Moreover, as commented by several parties, the increased subscription to cellular services lessens the public need for a PIP program.

The Commission notes that no party presented any evidence to suggest that a PIP program is necessary in North Carolina at this time to ensure that the public has adequate and appropriate access to public telephones. The parties unanimously agreed that a PIP program in North Carolina at this time would be premature and inappropriate.

The Commission concludes that at this time a PIP program is not necessary in North Carolina, although the issue of a PIP program may be considered by the Commission in the future if clear evidence of a need for such a program should arise.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of May, 1998.

NORTH CAROLINA UTILITIES COMMISSION

Geneva S. Thigpen

Geneva S. Thigpen, Chief Clerk

bc051198.01

RECEIVED
SEP 14
FCC MAIL ROOM