

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE INVESTIGATION )  
AND ADOPTION OF RULES TO GOVERN )  
PAYPHONE SERVICES WITHIN THE STATE OF ) PSC REGULATION DOCKET  
DELAWARE (OPENED OCTOBER 9, 1984; ) NO. 12  
REOPENED JUNE 17, 1997; AND REOPENED )  
OCTOBER 2, 2001) )

ORDER NO. 5868

This 29th day of January, 2002, the Commission determines and Orders the following:

1. By this Order, the Commission proposes several revisions and amendments to its 1997 "Regulations Governing Payphone Service Providers in Delaware," See Findings, Opinion & Order No. 4651 (Nov. 18, 1997).<sup>[1]</sup> The proposed changes focus on two areas. First, one revision codifies a prior decision by the Commission to allow payphone service providers (and now operator services providers) to orally disclose to the payphone consumer the price for obtaining directory assistance from the payphone's directory assistance provider. This oral disclosure option may be used in lieu of posting such price on, or near, the payphone instrument. Second, other amendments expand the scope of the Payphone Regulations to encompass operator services and Operator Services Providers ("OSPs") and require such OSPs to afford the payphone consumer the opportunity to obtain a real-time oral rate quote for a non-coin intrastate call made utilizing the assistance of the OSP. The goal of these OSP amendments is to have OSPs observe the same regulations in the context of interstate calls made from payphones that now govern such OSPs in their handling of interstate calls made from the same payphones. In addition to the above two areas, two new provisions will require payphone service providers to have procedures in place to make prompt refunds to consumers and to also promptly replace, or repair, damaged or inoperable payphones. Fourth, another revision makes minor changes to two other provisions to reflect recent changes in the federal regime for certifying "terminal equipment" (such as payphone) that can be connected to the public-switched network. Finally, the proposed revisions make changes in style, grammar, and format to several

other sections of the present Payphone Regulations and delete one now-lapsed "transition" provision.

## **I. BACKGROUND**

2. Until the 1980s, payphones and payphone service to the public was the almost exclusive domain of the local exchange carrier ("LEC"). That changed when, in the early 1980s, computer technology led to "smart payphones" and the Federal Communications Commission ("FCC") allowed such "instrument-controlled" payphones to be interconnected with the LEC's telephone network. This resulted in the emergence of independent payphone providers ("IPP's") who began competing with the LEC (which generally used central office controlled, payphone instruments) for placing payphones in the best remunerative locations.

3. In light of this change, this Commission adopted its COCOT Rules to govern IPPs providing payphone service to the public in Delaware.<sup>[2]</sup> These COCOT Rules applied only to the services provided by IPPs and required separate registration of each new network-attached payphone. At the same time, the Commission continued to exercise regulatory control over the payphone services offered by the LEC as part of its general supervision of that utility.

4. In 1996, Congress directed the FCC to craft, and implement, rules which would bring regulatory and competitive parity to the payphone services offered by the IPPs and the LECs. See 47 U.S.C. § 276. As part of its implementing rules, the FCC "deregulated" the coin charge for local calls and directory assistance ("DA") from a payphone (whether IPP or LEC-owned), finding that such charges should be determined by the payphone service provider, acting in response to competitive market forces and released from rate regulation by state utility commissions.<sup>[3]</sup>

5. In response to these new federal directives, the Commission transformed its COCOT Rules into the Payphone Regulations. These new regulations not only adopted the deregulation of coin charges for local calls, but also applied uniform certification and operational rules to all payphone providers and their services, whether the provider be an IPP, the incumbent LEC, or some other telecommunications carrier.

## **II. THE PROPOSED AMENDMENTS**

6. The Staff has now proposed several revisions and amendments to the 1997 Payphone Regulations. As noted above, in the main, the proposed changes: (a) allow the price for directory assistance provided by the payphone to be disclosed orally to the payphone consumer, in lieu of posting such price on the payphone and (b) impose a requirement that payphone consumers be afforded the opportunity to obtain a real-time oral quote for the total cost of an intrastate call made utilizing an OSP, prior to the completion of such call.

A. Disclosure of Directory Assistance Charges  
by Payphone Service Provider

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7. Under section 4(f)(9) of the current Payphone Regulations, the payphone service provider ("PSP") must post, on or near the payphone, the charge for obtaining directory assistance from the payphone service provider. <sup>[4]</sup> In PSC Order No. 5444 (May 23, 2000), the Commission granted Verizon Delaware Inc. ("Verizon") a waiver from this posting requirement. In that Order, the Commission granted Verizon the option to provide such DA price information orally to the payphone consumer as part of the call made to obtain directory assistance. By now revising sections 4(f) (9) and 6(b) of the new Regulations, the Commission proposes to extend this option to all payphone providers, thus allowing the payphone service provider to disclose its DA charge either by a written posting or by an oral disclosure (with the opportunity to terminate) made prior to providing such requested information.

B. Disclosure of Rates for Intrastate Calls  
Completed by Operator Services Provider

8. Typically, in providing its payphone service, a PSP contracts with a presubscribed operator service provider ("OSP") to provide operator-assisted from the payphone. Unless the payphone consumer "dials around" to use another carrier or OSP, this presubscribed OSP provides assistance to the payphone caller in completing collect, calling card, credit card, or third-party billing calls. The charges for these operated-assisted calls are set by the presubscribed OSP. In many instances, the OSP provides a bundled service to the PSP, offering not only the operator services but also acting as the long distance carrier for the payphone. For this right to be the "O+" carrier, the OSP often provides a share of the long distance proceeds garnished from the payphone to the service provider. When the PSP is itself a local exchange or

other telecommunications carrier, the PSP often provides its own operator services to its payphones, with the charges for such operator-assisted calls set by the underlying carrier.

9. In 1990, in response to complaints of excessive charges by presubscribed OSPs, Congress enacted the Telephone Operator Consumer Services Act, now codified as 47 U.S.C. § 226 ("the Act"). The Act, and the FCC's implementing regulations, not only impose a call "branding" obligation on OSPs and specific "posting" duties on aggregators such as PSPs, but they also bar PSPs and other aggregators from blocking the consumer's ability to "dial around" in order to utilize the services of another OSP or long distance carrier. See 47 U.S.C. § 226(b), (c); 47 C.F.R. §§ 64.703(a)(1)-(3) (branding), 64.704 (blocking). In 1998, when it appeared the initial branding and posting duties had not stemmed the flow of complaints about OSP charges, the FCC directed all OSPs to implement procedures that would allow the consumer the opportunity to promptly obtain from the OSP a rate quote for the total cost for an interstate operator-assisted call, prior to the call being completed. See 47 C.F.R. § 64.703(a)(2)-(4).

10. The Act, and the FCC's subsequent implementing regulations (including the obligation for the OSP to provide a real-time, oral rate disclosure) apply only to interstate OSP services and interstate calls. See 47 U.S.C. § 226(a)(2), (4), & (7); 47 C.F.R. § 64.708(b), (d), (g) & (h). In the original Payphone Regulations, this Commission adopted for Delaware payphones many of the posting and "no blocking" requirements imposed by the federal directives.<sup>[5]</sup> The revisions now being proposed continue this goal of uniformity between interstate and intrastate practices by now imposing on OSPs the same obligations - in the context of intrastate services from payphones - that now apply when the same OSP provides interstate operator services from the same payphone. Thus, the revisions add to the definitional section several new definitions to expand the scope and coverage of the Payphone Regulations to include intrastate "operator services" and OSPs.<sup>[6]</sup> More substantively, the proposed new section 6(c) imposes on OSPs the same "branding" and real time disclosure obligation in their handling of intra-Delaware calls as currently apply to interstate calls made from payphones located in Delaware. Similarly, the new section 7 imposes the same

restrictions on OSP practices in conjunction with intrastate calls that now govern OSPs in their interstate call activities. Finally, the proposed revisions to the newly renumbered section 9 allow the Commission to take the same remedial actions against OSPs for their intrastate transgressions as are now authorized in the case of violations by payphone service providers.<sup>[7]</sup>

11. Staff suggests that this uniformity in the regulatory regime and disclosure procedure benefits consumers who probably do not appreciate the intrastate/interstate jurisdictional divide affecting calls from payphones. Moreover, in Staff's view, this convergence in OSP obligations, including the rate-disclosure duty, is now particularly appropriate given that the FCC has recently confirmed that the federal oral rate disclosure obligation applies to interstate, intraLATA calls made using the payphone's presubscribed OSP.<sup>[8]</sup>

#### C. Other Revisions

12. The proposed revisions add two new provisions, (f) and (g) to Section 3. These additions obligate payphones service providers to have in place procedures: (1) to ensure that prompt refunds are made to consumers and (2) to ensure prompt repair or replacement of damaged or inoperable payphones. In addition, in the last few years, the FCC has changed the mechanism for approving the "customer premises" or "terminal" equipment (categories which include payphones) which can be interconnected with the public switched network. In now "privatizing" that approval process, the FCC has abandoned the former FCC "registration" regime in favor of a new peer certification or self-certification process. See 47 C.F.R. §§ 68.1-68.614 (2001). In light of this shift in regimes, the proposed revisions make minor changes to Sections 2(d) and 4(a) of the Payphone Regulations to delete references to the now-abandoned "CPE registration" process. In addition, the proposed changes delete section 2(f) of the present regulations given that the basis for this transitional provision lapsed in 1997. Finally, many other present sections have been rephrased or reworked to improve style and grammar.

13. Pursuant to the authority granted by 26 Del. C. §§ 209(a) and 703(1) & (3), the Commission now proposes for adoption the revised "Regulations Governing Payphone Service Providers and Providers of Operator Services from Payphones" as set forth in

Exhibit B to this Order.

Now therefore, **IT IS ORDERED:**

1. That, pursuant to 26 Del. C. §§ 209 and 703, the Commission proposes to revise and amend its present "Regulations Governing Payphone Service Providers in Delaware" so that such rules shall read as set forth in Exhibit "B" attached to this Order. Pursuant to the procedures set forth in 29 Del. C. §§ 209, 1133, 10115 and 10116, the Commission solicits comments and other materials about such proposed revisions and amendments. The Commission will accept all written suggestions, compilations of data, briefs, or other written materials submitted in a timely fashion. In addition, pursuant to 26 Del. C. § 209(a) the Commission will conduct a public hearing on such proposed revisions and amendments.

2. That the Secretary shall forthwith transmit a copy of this Order accompanied with a copy of the Commission's present "Regulations Governing Payphone Service Providers in Delaware" (Exhibit "A") and a copy of the proposed "Regulations Governing Payphone Service Providers and Providers of Operator Services for Payphones" (Exhibit "B") to the Registrar of Regulations for publication in the next appropriate Register of Regulations. In addition, the Secretary shall also transmit the Notice of Proposed Rulemaking, attached hereto as Exhibit "C," to the Registrar for publication in the next appropriate Register of Regulations.

3. That the Secretary shall cause the Notice of Proposed Rulemaking, attached as Exhibit C, to be published in The News Journal and Delaware State News newspapers on separate dates sometime after March 1, 2002 and before March 10, 2002. In addition, the Secretary shall, during such period, send a copy of such Notice to all persons or entities who have made requests for advance notice copies of this Commission's rulemaking proceedings. Finally, the Secretary shall post a copy of this Order, along with Exhibits A, B, and C, on the Commission's website under an appropriate heading or link sufficient to alert interested persons of the Commission's intent to revise and amend its present rules governing payphone service providers.

4. That, pursuant to 26 Del. C. § 502 and 29 Del. C. § 10116, Robert P. Haynes is appointed as the Hearing Examiner to organize, classify, and summarize the materials

submitted by persons in this matter. In addition, Hearing Examiner Haynes shall conduct a public hearing on the proposed revisions and amendments on the date, time, and place set forth in Exhibit C. Hearing Examiner Haynes is specifically authorized to hold additional public hearings, upon notice, if he deems such additional hearings necessary to complete record in this matter. After such hearings, and after the close of the applicable comment period, Hearing Examiner Haynes shall submit a Report to the Commission summarizing the materials and testimony submitted and setting forth his recommendations concerning the proposed revisions and amendments.

5. That, Gary A. Myers, Deputy Attorney General, is directed to represent the Commission and the Staff in this proceeding.

6. That, pursuant to 26 Del. C. §§ 114 and 115, payphone service providers and operator services providers are put on notice that they may be assessed the costs of this rule-making proceeding.

7. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae  
Chair

/s/ Joshua M. Twilley  
Vice Chair

/s/ Joann T. Conaway  
Commissioner

/s/ Donald

J. Puqlisi  
Commissioner

PSC Regulation Docket No. 12, Order No. 5868, Cont'd.

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/s/ Jaymes B. Lester  
Commissioner

ATTEST:

/s/ Connie S. McDowell  
Acting Secretary



**EXHIBIT "A"**

**DELAWARE PUBLIC SERVICE COMMISSION**

**REGULATIONS GOVERNING PAYPHONE SERVICE PROVIDERS IN DELAWARE**

## REGULATIONS GOVERNING PAYPHONE SERVICE PROVIDERS IN DELAWARE

### Section 1: Definitions

(a) “Coin-operated payphone” means a payphone that requires the deposit of coins for calls other than those calls which are:

- (1) billed to another telephone or to a calling card;
- (2) 911 or telephone relay service calls; or
- (3) to toll free numbers, such as 800 or 888 numbers.

(b) “Interexchange carriers” means telephone companies who provide long distance interstate and/or intrastate telephone service.

(c) “Payphone” means any telephone made available to the public on a fee-per-call basis, independent of any other commercial transaction, for the purpose of making telephone calls, whether the telephone is coin-operated or is activated either by calling collect or using a credit or calling card. The term “payphone” includes both instrument-implemented and central-office implemented telephones.

(d) “Payphone service provider” means a person or entity that offers payphone service as defined by Section 276 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). The term includes both independent owners or operators of payphones and telecommunications carriers, including local exchange or interexchange carriers, who provide payphone service.

### Section 2: Certification of Payphone Service Providers

(a) A person or entity providing intrastate payphone service shall be deemed to be a public utility under 26 Del. C. § 102(2) and shall be governed by these regulations.

(b) Except as permitted under paragraph (f) below, no person or entity shall offer payphone service in Delaware until that person or entity has received from the Commission a Certificate of Public Convenience and Necessity (“CPCN”) to provide payphone service. One CPCN is required for each provider. Separate CPCNs are not required for each payphone.

(c) Each applicant seeking a Certificate of Public Convenience and Necessity to provide payphone service shall make application on a form prescribed by the Commission. Each applicant seeking certification to provide payphone service shall supply the following:

- (1) the business name and address of the applicant;
- (2) the name and address of a contact person or persons;
- (3) the telephone and facsimile numbers and the e-mail address, if available, of the contact person;
- (4) a description of the manner in which the applicant will assure service and equipment maintenance for the payphones, including the name, address, and telephone number of the person or entity providing such services if different from the applicant;
- (5) a written statement affirming that the applicant has the required state and local business licenses;
- (6) a written statement affirming that the applicant agrees to comply with all the provisions of these regulations;

- (7) the applicant's signature and the title of the person signing the application; and
- (8) the date of signature of the application.

(d) A person or entity installing or offering for service a payphone shall comply with the provisions of 47 C.F.R Part 68 and any other order, rule, or regulation of the Federal Communications Commission related to telephone service offered from payphones, unless exempted from compliance by the Federal Communications Commission.

(e) If an applicant correctly completes and submits the application, has complied with the requirements of the Federal Communications Commission, and has paid the required application fee, upon execution by the Executive Director or the Chief of Technical Services, the application shall be deemed approved and shall act as a Certificate of Public Convenience and Necessity to provide payphone service within Delaware.

(f) Any person or entity providing payphone service on the effective date of these regulations pursuant to a previously-granted Certificate of Public Convenience and Necessity or pursuant to other legal authority may continue to provide such payphone service. Such person or entity shall, within ninety (90) days of the effective date of these regulations, file with the Commission an application under paragraph (c) of this section and the information required by paragraph (a) of Section 3.

(g) Each certificated payphone service provider shall notify the Commission in writing within ten (10) days following the change of any information required by Sections 2(c)(1) through 2(c)(8).

(h) Each certificated payphone service provider shall provide written notice to the Commission ten (10) days prior to the cessation of all operations as a payphone service provider in Delaware.

(i) The application fee for a Certificate of Public Convenience and Necessity to provide payphone service is one hundred dollars (\$100). Such application fee is waived for persons or entities filing applications under paragraph (f) of this section.

### Section 3: Location Reporting

(a) At the time of the application described in paragraph (c) of Section 2, the applicant shall provide to the Commission in writing the following information for each payphone to be installed and offered in Delaware:

- (1) the make, model, and identification number for the payphone;
- (2) the telephone number for the payphone; and
- (3) the location of the payphone, described in sufficient detail to allow the payphone to be located for purposes of mapping and inspection.

(b) If after certification, a payphone service provider installs a payphone at an additional location, relocates an existing payphone to such an extent that its previously filed location description does not allow it to be readily located for inspection purposes, or removes a payphone from an existing location, the payphone service provider shall notify the Commission in writing semi-annually, of all such new installations, relocations and removals. Such written notification shall state:

- (1) the number of additional, relocated, or removed payphones by location;
- (2) the telephone number for the additional, relocated, or removed payphone; and
- (3) the location of the additional, relocated, or removed payphone, described in sufficient detail to allow the payphone to be located for purposes of mapping and inspection.

(c) The Commission may request the information in paragraphs (a) and (b) of this Section to be submitted

in electronic format.

(d) A payphone service provider shall not install or offer a payphone where the installation or maintenance of the payphone would violate any state or local law designed to protect the health, safety, and welfare of citizens.

(e) All data provided in response to this section shall be considered proprietary information and shall not be released by the Commission; provided, however, that the Commission or its Staff may, at its discretion for good cause shown, provide for limited disclosure of necessary information relating to specific payphones in order to respond to customer complaints, law enforcement inquiries, or similar matters in the public interest.

#### Section 4: Payphone Equipment.

(a) All payphones shall be of a type registered with the Federal Communications Commission pursuant to 47 C.F.R. Part 68, unless such payphone has been exempted under an applicable order or ruling of the Federal Communications Commission. All payphones shall be installed in accordance with generally accepted telecommunications industry standards, applicable local codes, and the National Electrical Code and the National Electric Safety Code.

(b) All payphones shall provide, at no charge to the caller and without advance deposit of any coins:

- (1) dial tone;
- (2) access to 911, any other emergency number, and an operator qualified to route emergency calls;
- (3) access to a number for reporting repairs or service for the payphone; and
- (4) telecommunications relay service.

(c) Providers of payphone service shall provide that each payphone shall:

- (1) be equipped with an audible signaling device and receive incoming calls at no charge, except that a payphone service provider may elect to bar the receipt of calls by a payphone if the provider posts notice of such restriction;
- (2) except as provided in (d) and (e) of this Section, provide access to the network by a dial 0 and a dial 1 capability and/or 7-digit or 10-digit dialing;

(3) permit dialing of subscriber "800" or "888" toll-free numbers without the advance deposit of coins, except those numbers that have been blocked in accordance with applicable law or regulations

(4) provide, without the advance deposit of coins, access to the caller's desired interexchange carrier or operator service provider by use of an "800," "888," or "950" access toll-free call or by use of a carrier access code; and

(5) permit calls using calling cards, collect calls, and calls billed to a third party without the advance deposit of coins and be provisioned to prohibit the billing of calling card, collect and third party calls to the payphone number, except, at the option of the payphone service provider;

(d) Payphones provided for inmates shall not be required to comply with Sections 3(b), 4(b), 4(c) or 4(f), including actions thereof.

(e) Coin-less payphones shall not be required to provide dial 1 capability;

(f) Each payphone service provider shall post on or near the payphone, in plain view of callers:

- (1) relevant emergency numbers;
  - (2) the rate, including the initial time increment, if any, for a local coin call;
  - (3) the telephone number of the payphone;
  - (4) the name, address, and toll-free number of the payphone service provider or presubscribed operator service provider;
  - (5) a free phone number for maintenance and repairs;
  - (6) any restrictions in making or receiving calls, and if the payphone does not accept incoming calls, a statement to that effect;
  - (7) the primary intrastate or intraLATA carrier and the primary interstate or interLATA carrier and toll-free telephone numbers to call for the pre-subscribed carriers' rate information, along with a statement that the rates for operator-assisted calls are available upon request;
  - (8) any other information necessary to facilitate calls, refunds or repairs;
  - (9) dialing instructions and the charges, if any, for directory assistance; and
  - (10) a statement that callers have the right to obtain access to the toll carrier of their choice and may contact their preferred carriers for information on how to access that carrier's service by use of the payphone.
- (g) A payphone service provider shall change the posted information required by paragraph (f) of this Section thirty (30) days of any such change.
- (h) All coin-implemented payphones shall be equipped to accept nickels, dimes and quarters and to return the caller in case the call is not answered by the called party.
- (i) All payphones shall be installed and maintained in a manner to assure the privacy of use is not compromised by any type of electrical or acoustical coupling device, extension telephone, or similar instrument.
- (j) All payphones, including outdoor payphones, shall comply with federal and state laws and regulations regarding accessibility by individuals with disabilities and hearing aid compatibility.

Section 5: Local Coin Call Rates

- (a) Payphone service providers need not file tariffs for local coin calling rates. The rate for local coin call for a one location may be determined by the payphone service provider. A payphone service provider may not charge for a coin call or for directory assistance greater than the rate posted on the payphone. A payphone service provider may not charge for an uncompleted call.
- (b) The Commission reserves the right to seek to demonstrate to the FCC that there are market failures within the area that would not allow market-based rates.

Section 6: Reporting.

Each payphone service provider shall comply with the provisions of 26 Del. C. § 115.

Section 7: Violations

- (a) If, after notice and an opportunity to be heard, the Commission determines that good cause exists, it shall issue an order to a payphone service provider :

(1) revoking, suspending or modifying its Certificate of Public Convenience and Necessity;

(2) imposing fines or penalties, or;

(3) requiring reparation to a customer or affected party; or

(4) providing for such other relief as the Commission may reasonably require.

(b) Good cause, pursuant to (a) above, shall include, but is not be limited to, the following actions by a payphone service provider:

(1) violation of these regulations, including the information disclosure requirements;

(2) conducting business in an unfair or deceptive manner; or

(3) actions which result in revocation of its registration by the Federal Communications Commission.

Section 7: Miscellaneous

These regulations shall become effective ten (10) days after publication in the Delaware Register. The effective date shall then be noted on the rules.

E X H I B I T "B"

DELAWARE PUBLIC SERVICE COMMISSION

REGULATIONS GOVERNING PAYPHONE SERVICE PROVIDERS

AND

PROVIDERS OF OPERATOR SERVICES FOR PAYPHONES

Effective Date:

# REGULATIONS GOVERNING PAYPHONE SERVICE

## PROVIDERS AND PROVIDERS OF OPERATOR SERVICES FOR PAYPHONES

### Section 1: Definitions

(a) "Call splashing" means the transfer of a telecommunications or telephone call from one provider of operator services to another such provider in such a manner that the subsequent provider is unable, or unwilling, to determine the location of the origination of the call and, because of such inability or unwillingness, is prevented from billing the call on the basis of such location.

(b) "Coin-operated payphone" means a payphone that requires the deposit of coins for calls other than those calls which are:

- (1) billed to another telephone or to a credit or calling card;
- (2) "911" or "711" telephone relay service calls; or
- (3) to toll-free numbers, such as 800 or 888 numbers.

(c) "Consumer" or "payphone consumer" means a person initiating any intrastate telephone call or telecommunications call using a payphone. For purposes of section 6(c), the term "consumer" or "payphone consumer" shall include both the person on the initiating end of such call using operator services and:

- (1) in the context of a collect call, the person on the terminating end of the call; and
- (2) in the context of a call to be billed to a third person, the person to be billed if such person is contacted to secure billing approval prior to the completion of the call.

(d) "Interexchange carrier" means a telecommunications carrier which provides intrastate long distance telecommunications service.

(e) "Operator Services" means any intrastate telecommunications service initiated from a payphone that includes as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telecommunications through a method other than:

- (1) automatic completion with billing to the payphone from which the telecommunication originated; or
- (2) completion through an access code used by the consumer, with billing to an account previously established with that other carrier by the consumer.

(f) "Payphone" means any telephone or other telecommunications instrument made available to the public on a fee-per-call basis, independent of any other commercial transaction, for the purpose of making telephone calls or other telecommunication, whether the pay phone instrument is coin-operated or is activated either by calling collect or by using a credit or calling card. The term "payphone" includes both instrument-implemented and central-office implemented payphone instruments.

(g) "Payphone service" means the provision of intrastate telecommunications services as described in 47 U.S.C. § 276.

(h) "Payphone service provider" means a person or entity that offers payphone service as defined by 47 U.S.C. § 276(d). The term includes both independent owners or operators of payphones and telecommunications carriers, including local exchange or interexchange carriers, which provide payphones and payphone service.

(i) "Presubscribed provider of operator services" means the intrastate provider of operator services to which the consumer is connected when the consumer, without dialing an access code or other free number, initiates a call or other telecommunication from a payphone using a provider of operator services.

(j) "Provider of operator services" means any telecommunications service provider, telecommunications carrier, or public utility that provides operator services, or any other person determined by the Commission to be providing operator services.

## **Section 2: Certification of Payphone Service Providers**

(a) Any person or entity providing intrastate payphone service shall be deemed to be a public utility under 26 Del. C. § 102(2) and shall be governed by these regulations.

(b) No person or entity shall offer payphone service in Delaware until that person or entity has received from the Commission a Certificate of Public Convenience and Necessity ("CPCN") to provide payphone service. A single Certificate is required for each provider. A separate Certificate is not required for each payphone.

(c) Each applicant seeking a Certificate of Public Convenience and Necessity to provide payphone service shall make application on a form prescribed by the Commission. Each applicant seeking certification to provide payphone service shall supply the following:

- (1) the business name and address of the applicant;
- (2) the name and address of a contact person or persons;
- (3) the telephone and facsimile numbers and the e-mail address, if available, of the contact person;
- (4) a description of the manner in which the applicant will assure service and equipment maintenance for the payphones, including the name, address, and telephone number of the person or entity providing such services if different from the applicant;
- (5) a written statement affirming that the applicant has the required state and local business licenses;
- (6) a written statement affirming that the applicant agrees to comply with all the provisions of these regulations;
- (7) the applicant's signature and the title of the person signing the application; and
- (8) the date of the signature of the application.

(d) If an applicant accurately completes and submits the application, is in

compliance with the applicable requirements of the Federal Communications Commission, and has paid the required application fee, the application shall, upon execution by the Executive Director or Chief of Technical Services, be deemed approved and shall act as a Certificate of Public Convenience and Necessity to provide payphone service within Delaware.

(e) A person or entity installing a payphone and other related terminal equipment shall ensure that such terminal equipment is of the type that has been approved pursuant to the certification and self-certification process set forth in 47 C.F.R. Part 68, unless such equipment has been excused from compliance by the Federal Communications Commission. A person or entity installing a payphone or other related terminal equipment, and a person or entity providing payphone services, shall comply with all orders, rules, or regulations of the Federal Communications Commission related to telephone service offered from payphones, unless exempted or excused from compliance by the Federal Communications Commission.

(f) Each certificated payphone service provider shall notify the Commission in writing within ten (10) days following the change of any information required by Section 2(c)(1) through 2(c)(8).

(g) Each certificated payphone service provider shall provide written notice to the Commission at least ten (10) days prior to the cessation of all operations as a payphone service provider in Delaware.

(h) The application fee for a Certificate of Public Convenience and Necessity to provide payphone service is one hundred dollars (\$100).

### **Section 3. Location Reporting and Plans for Refunds and Repairs**

(a) At the time of the submission of the application described in paragraph (c) of Section 2, the applicant shall provide to the Commission the following information, in writing, for each payphone to be installed and offered in Delaware:

- (1) the make, model, and identification number for the payphone;
- (2) the telephone number for the payphone; and
- (3) the location of the payphone, described in sufficient detail to allow the payphone to be located for purposes of mapping and inspection. A map of such locations may be provided.

(b) If after certification, a payphone service provider installs a payphone at an additional location, relocates an existing payphone to such an extent that its previously filed location description does not allow it to be readily located for inspection purposes, or removes a payphone from an existing location, the payphone service provider shall, on a semi-annual basis, notify the Commission, in writing, of all such new installations, relocations, and removals. Such written notification shall state:

- (1) The number of additional, relocated, or removed payphones;
- (2) the telephone number for the additional, relocated, or removed payphone; and
- (3) the location of the additional, relocated, or removed payphone, described in sufficient detail to allow the payphone to be located for purposes of mapping and inspection. A map of such locations may be provided.

(c) The Commission may request the information in paragraphs (a) and (b) of this Section be submitted in electronic format.

(d) All data provided in response to this Section shall be considered proprietary information and shall not be released by the Commission. However, the Commission or its Staff may, at its discretion for good cause shown, provide for limited disclosure of necessary information related to specific payphones in order to respond to customer complaints, law enforcement inquiries, or similar matters related to the public interest.

(e) A payphone service provider shall not install or maintain, nor offer service from, a payphone where the installation or continued operation of the payphone would violate any state or local law designed to protect the health, safety, and welfare of citizens.

(f) A payphone service provider shall have established procedures for making refunds to consumers to ensure that such refunds are made promptly after receipt of a valid request.

(g) A payphone service provider shall have established procedures to respond to any notice that a payphone is out of service or in need of repair. A payphone reported, or found to be, out of service or in need of repair shall be returned to full service, repaired, or replaced in a reasonably prompt fashion.

**Section 4: Payphone Equipment**

(a) A payphone, and related terminal equipment, shall not be connected to the public switched network unless the payphone or other terminal equipment is of the type approved under the certification and supplier self-certification provisions of 47 C.F.R. Part 68, or has been exempted from such certification process by an order or ruling of the Federal Communications Commission. All payphones shall be installed in accordance with generally accepted telecommunications industry standards, applicable local codes, the National Electrical Code, and the National Electric Safety Code.

(b) All payphones shall provide, at no charge to the caller and without advance deposit of any coins:

- (1) dial tone;
- (2) access to "911" (or another appropriate emergency number) and access to an operator capable of routing calls to the relevant emergency number or agency;
- (3) access to a no-cost telephone number for reporting the need for repairs or service to the payphone; and
- (4) access to "711" (or other appropriate number) to access the telecommunications relay service center.

(c) All payphones shall:

- (1) be equipped with an audible signaling device and be capable of receiving incoming calls at no charge, except that a payphone service provider may elect to bar the receipt of calls by a payphone if the provider posts notice of such restriction on the payphone;
- (2) except as provided in (d) and (e) of this Section, provide access to the network by a dial 0 and dial 1 capability and/or 7-digit or 10-digit dialing;
- (3) be hearing compatible in a manner complying with the

applicable regulations of the Federal Communications Commission;

- (4) permit dialing of subscriber "800," "888," or other toll-free numbers without the advance deposit of coins, except instances where access to those numbers has been validly blocked in accordance with applicable law or regulations;
- (5) provide, without the advance deposit of coins or other advance charge, access to the caller's desired carrier or provider of operator services by use of an "888," or "950" access toll-free call or by use of a access code; and
- (6) permit calls using calling cards, collect calls, and calls billed to a third party without the advance deposit of and be provisioned to prohibit the billing of calling card, collect, and third party calls to the payphone number, except at the option of the payphone service provider.

(d) Payphones provided for inmates need not comply with Sections 3(b), 4(b), 4(c), 4(f), 6(a), and 6(b) including all subsections thereof.

(e) Coin-less payphones shall not be required to provide dial 1 capability;

(f) Each payphone service provider shall post on or near the payphone, in a manner plainly visible to the payphone consumer:

- (1) a listing of all relevant emergency numbers, with instructions how to call such numbers;
- (2) the rate, including the initial time increment, if any, for a local coin call;
- (3) the telephone number of the payphone;
- (4) the name, address, and toll-free number of the payphone service provider;
- (5) a free phone number to report information about maintenance and repairs to the payphone;
- (6) a description of any restrictions in making or receiving calls and, if the payphone does not accept incoming calls, statement to that effect such as "OUTGOING CALLS ONLY" or "NO INCOMING CALLS;"
- (7) the name, address, and toll-free number of the prescribed provider of operator services or presubscribed carrier for the payphone. If a different provider of operator services or interexchange carrier is presubscribed for intrastate and interstate calls or for intraLATA and interLATA calls, the name, address, and toll-free number of each such provider or carrier shall be listed;
- (8) any other information necessary to facilitate calls, refunds, or repairs;
- (9) instructions for obtaining directory assistance from the directory assistance provider utilized by the payphone service provider and the charge, if any, for obtaining such assistance. Such charge need not be posted if the charge for directory assistance is available under the disclosure

process permitted under Section 6(b);

- (10) a statement that the rates for all operator-assisted calls handled by the presubscribed provider of operator services are available upon request;
- (11) a statement that consumers have the right, by calling the appropriate toll-free number, to obtain access to the intrastate interexchange carrier or operator services provider of their choice and may contact their preferred carrier or provider for information on how to access that carrier's or provider's service from a payphone.

(g) A payphone service provider shall update the information required to be posted under Subsection 4(f) as soon as practicable following any change in the required information, but no later than thirty (30) days following any such change. This requirement may be satisfied by using a temporary sticker, provided that such temporary sticker shall be replaced with a permanent posting during the next regularly scheduled maintenance visit.

(h) All coin-implemented payphones shall be equipped to accept nickels, dimes, and quarters and to return coins to the caller in case the call is not answered by the called party.

(i) All payphones shall be installed and maintained in a manner to assure that the privacy of use is not compromised through any type of electrical or acoustical coupling device, extension telephone, or similar instrument.

(j) All payphones, including payphones located in outdoor locations, shall comply with federal and state laws and regulations regarding accessibility by individuals with disabilities and shall also comply with federal and state regulations related to hearing aid compatibility.

**Section 5: Local Coin Call Rates**

(a) A payphone service provider need not file a tariff for its local coin calling rates. The rate for a local coin call for a payphone location may be determined by the payphone service provider. A payphone service provider may not impose a charge for a local coin call greater than the local coin rate posted on the payphone. A payphone service provider may not charge for an uncompleted local call.

(b) The Commission reserves the right to seek to demonstrate to the Federal Communications Commission that there are market failures within the State so that market-based local call rates should no longer be permitted.

**Section 6. Disclosures of Charges**

(a) Pursuant to Section 4(f)(2), the payphone service provider shall post the charge for a local coin call from such payphone on, or near, the payphone.

(b) The payphone service provider shall disclose the charge for obtaining directory assistance from the provider selected by the payphone service provider by either:

- (1) posting the charge, if any, for such directory assistance on or near the payphone as set forth in Section 4(f)(9); or
- (2) orally disclosing such charge, audibly and distinctly, at no charge to the consumer and without advance deposit of prior to the delivery of the requested directory assistance

information, and with the opportunity for the consumer to terminate the directory assistance request after the disclosure of the charge.

(c) Each provider of operator services offering services to a consumer shall:

- (1) identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the incurs any charge for the call;
- (2) permit the consumer to terminate the telephone call at no charge before the call is connected;
- (3) disclose immediately to the consumer, upon request and at no charge to the consumer:
  - (i) a quotation of its rates or charges for the call;
  - (ii) the methods by which such rates or charges will be collected; and
  - (iii) the methods by which complaints concerning such rates, charges, or collection practices will be resolved; and
- (4) disclose, audibly and distinctly, to the consumer, at no charge and before connecting any intrastate non-access code operator service call, how to obtain the total cost of the call, including any payphone surcharge, or the maximum possible total cost of the call, including any payphone surcharge, before providing further oral advice to the consumer on how to proceed to make the call. The oral disclosure required here shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of operator services, by dialing no more than two digits, or by remaining on the line. As used here, the phrase "total cost" means the variable (duration-based) charges for the call and the per call charges, exclusive of taxes, that the carrier or provider, or its billing agent, may collect from the consumer for the call.

#### **Section 7. Providers of Operator Services**

(a) A provider of operator services shall obtain and maintain a Certificate of Public Convenience and Necessity to Provide Intrastate Services under the Commission's "Rules for the Provision of Telecommunications Services." The provider of operator services shall comply with the applicable requirements in the Commission's "Rules for the Provision of Telecommunications Services."

(b) A telecommunications service provider which has elected to be governed by the Telecommunications Technology Investment Act, 26 Del. C. §§ 703-711, and which provides operator services, shall, in providing such operator services, comply with the Act and the applicable requirements in the Commission's "Rules and Regulations for Implementing the Telecommunications Technology Investment Act."

(c) A provider of operator services shall:

- (1) not bill for unanswered telephone or telecommunication calls;

- (2) not engage in call splashing, unless the consumer requests to be transferred to another provider of operator services, the consumer is informed prior to incurring any charges the rates for the call may not reflect the rates from the actual originating location of the call, and the consumer then consents to be transferred; and
- (3) except as provided in paragraph (c)(2) of this section, not bill for a call that does not reflect the location of the origination of the call.

(d) Upon receipt of any emergency telephone call, a provider of operator services, and any entity providing local operator services for a payphone, shall ensure immediate connection of the call to the appropriate emergency service of the reported location of the emergency, if known, and, if not known, of the originating location of the call.

### **Section 8.        Reporting**

Each payphone service provider shall comply with the provisions of 26 Del. C. § 115.

### **Section 9.        Violations**

(a) If, after notice and an opportunity to be heard, the Commission determines that good cause exists, it may issue an order to a payphone service provider or a provider of operator services:

- (1) revoking, suspending, or modifying its Certificate of Public Convenience and Necessity;
- (2) imposing fines or penalties;
- (3) requiring reparations to a customer or affected party; or
- (4) providing for such other relief as the Commission may reasonably require.

(b) Good cause, pursuant to (a) above, shall include, but is not to be limited to, the following actions by a payphone service provider or a provider of operator services:

- (1) violation of these regulations, including the information disclosure requirements;
- (2) conducting business in an unfair or deceptive manner;
- (3) violations of any law or regulation of the Federal Communications Commission applicable to payphones, payphone service providers, or providers of operator services; or
- (4) actions which result in revocation of its registration by the Federal Communications Commission.

**Section 10.**

**Miscellaneous**

These regulations, and any later amendments, shall become effective ten (10) days after publication in the Delaware Register of Regulations or at such times as the Commission may direct. The effective date of the regulations shall be noted on the cover of the regulations.

**E X H I B I T "C"**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF DELAWARE**

IN THE MATTER OF THE INVESTIGATION )  
AND ADOPTION OF RULES TO GOVERN )  
PAYPHONE SERVICES WITHIN THE STATE OF ) PSC REGULATION DOCKET  
DELAWARE (OPENED OCTOBER 9, 1984; ) NO. 12  
REOPENED JUNE 17, 1997; AND REOPENED )  
OCTOBER 2, 2001) )

**NOTICE OF PROPOSED RULEMAKING REVISING  
RULES GOVERNING PAYPHONE SERVICE  
PROVIDERS AND OPERATOR SERVICES PROVIDERS**

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**TO: PAYPHONE SERVICE PROVIDERS, OPERATOR SERVICES  
PROVIDERS, LOCAL EXCHANGE CARRIERS, AND  
OTHER INTERESTED PERSONS AND ENTITIES**

In 1997, the Public Service Commission ("the Commission") adopted "Regulations Governing Payphone Service Providers in Delaware ("Payphone Rules"). See PSC Order No. 4651 (Nov. 18, 1997). Those Payphone Regulations governed payphone service provided by both independent payphone service providers and other telecommunications carriers. By PSC Order No. 5868 (Jan. 29, 2002), the Commission now proposes to make revisions and amendments to these 1997 Payphone Regulations. The Commission proposes the changes in light of developments in the payphone industry since 1997 and to bring uniformity to the regulation of intrastate and interstate calls made from payphones utilizing the services of an Operator Services Provider.

**Summary of Proposed Changes**

One proposed revision will allow a payphone service provider ("PSP") to disclose the charge for obtaining directory assistance from the payphone provider by either posting such price on the payphone or implementing an oral disclosure system which will provide the price before the requested information is provided. See proposed section 4 (f)(9) & 6(b). Other proposed amendments expand the scope of the Payphone Regulations

to encompass services provided by Operator Services Providers ("OSPs"). These proposed additions require the OSP serving a payphone to grant the payphone consumer an opportunity to obtain an oral real-time quote of the price for a collect, credit card, and third-party billed calls handled by the OSP. See Proposed Section 6(c). In doing so, the proposed revisions will apply to intrastate calls the same price disclosure (and other call routing) obligations that the Federal Communications Commission ("FCC") has imposed on OSPs in their handling of interstate calls from the payphone. See 47 C.F.R. § 64.703. Third, two new obligations are imposed on payphone service providers. Under the revisions, such providers must have in place procedures to ensure prompt refunds to consumers and to promptly repair or replace damaged or inoperable payphones. See Proposed Section 3(f) & (g). Fourth, several revisions are made to the present provisions related to the payphone equipment which can be connected to the public switched network. These changes reflect a change in the regime adopted by the FCC for approving such terminal equipment. See Proposed Sections 2(d) and 4(a). Finally, numerous other provisions have been rewritten to improve style and format.

#### **Solicitation of Materials and Notice of Public Hearing**

You may review a copy of these proposed revisions and amendments to the Payphone Regulations by consulting the March 1, 2002 edition of the Delaware Register of Regulations. You may also find an unofficial copy of PSC Order No. 5868, the existing Payphone Regulations, and the proposed revised Regulations posted on the Commission's website located at "www.state.de.us/delpsc." You may also obtain a written copy of the proposed Regulations and the other relevant documents from the Commission at its Dover office during normal business hours. The address is set out below. The cost of such copies is \$0.25 per page.

The Commission has the authority to adopt such rules under 26 Del. C. §§ 209 and 703.

Pursuant to 29 Del. C. §§ 10115 & 10116, the Commission solicits suggestions, comments, data, briefs, memoranda, and other documents concerning the proposed revisions and amendments to its Payphone Regulations. Twelve copies of such materials should be submitted to the Commission on or before Wednesday, April 10, 2002. The Commission's address is:

Public Service Commission  
Regulation Docket No. 12  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware 19904

In addition, the Commission will conduct a public hearing on the proposed revisions and amendments to the Payphone Regulations, beginning at 9:30 AM on Wednesday, April 24, 2002. Such hearing will be conducted at the Commission's office at the address set out above. If you wish to participate in this proceeding, but will not file comments, you must file a Notice of Intent to Participate. Twelve copies of such notice must be submitted on or before Wednesday, April 10, 2002. Only persons who have filed written materials or such Notice to Participate will be provided individual notice of further proceedings in this matter.

If you are disabled and need assistance to review the documents in this matter or participate in the proceedings, please contact the Commission to discuss such aids or services. You can make such contact in person, by telephone (including TRS or text telephone), by Internet e-mail, or in written correspondence.

You can contact the Commission to discuss this proceeding by calling 1-800-282-8574 (toll-free in Delaware) or (302) 739-3227. Text telephone service is available at (302) 739-4247. You can also send inquiries by Internet e-mail to patstowell@state.de.us.

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[1] In this Order, these 1997 regulations will be referred to as the "Payphone Regulations."

[2] See "Rules and Regulations Governing Service by Customer Owned Coin-Operated Telephones," adopted in PSC Order No. 2662 (July 9, 1985). In this Order, these 1985 regulations will be referred to as the "COCOT Rules."

[3] See In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd. 20541, Order on Recon., 11 FCC Rcd. 20233 (1996), affirmed as to local call coin charge deregulation sub nom., Illinois Public Telecommunications Ass'n v. FCC, 117 F.3d 555 (D.C. Cir. 1997).

[4] The PSP may utilize DA services provided by the LEC or might offer DA utilizing the OSP presubscribed to the payphone.

[5] Compare 47 C.F.R. §§ 64.703(b) and 64.704(b) with Payphone Regulations §§ 4(f)(1)-(4), (7) and 4(c)(3)-(4).

[6] Under this new section, the OSP provisions will apply not just to "independent" OSPs offering services to IPP payphones, but also to operator services provided by a telecommunications carrier either to its own payphones or to payphones owned by IPPs.

[7] In including OSP rules in these revisions, the Commission is not altering any other certification, tariffing, or pricing requirements applicable to OSPs under other statutes and Commission regulations. See, e.g., "Rules for the Provision of Telecommunications Services" (adopted in PSC Order No. 5833 (Nov. 6, 2001)); 26 Del. C. §§ 705(c)(8) & 709.

[8] See In the Matter of Billed Party Preference for InterLATA 0+ Calls, Second Order on Recon., FCC 01-355 (Dec. 12, 2001). This ruling has special significance for Delaware given that its LATA is shared with areas in southeastern Pennsylvania and PSPs may presubscribe operator services on a LATA basis. In such case, the presubscribed OSP would handle both intrastate, as well as interstate, intraLATA calls.