

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 DELAWARE) PSC REGULATION
(OPENED OCTOBER 9, 1984; REOPENED JUNE 17,) DOCKET NO. 12
1997; AND REOPENED JANUARY 29, 2002))

ORDER NO. 5965

AND NOW, to-wit, this 4th day of June, 2002, the Commission having received and considered the Findings and Recommendations of the Hearing Examiner, previously designated in the above-captioned matter, which was submitted after a duly publicized evidentiary hearing, and having heard from the Commission Staff, the only participant in this matter, that there are no exceptions to said Findings and Recommendations;

AND WHEREAS, based upon the recommendations of the Hearing Examiner, the Commission has determined that the evidence of record supports approving the amendments to change: (a) Proposed Rules 4(f)(9) and 6(b) which permits all payphone providers to orally disclose the price for obtaining directory assistance from that payphone; (b) Proposed Rule 6 (c) which requires a real-time oral rate quote for a non-coin intrastate call made utilizing the assistance of an OSP; (c) Proposed Rule 3(f) and (g) which requires 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; (d) Proposed Rule 2(d) and 4(a) which reflects an update by the Federal Communications Commission in the certification requirements of payphone equipment that can be connected to the public switched network; (e) changes various Rules for style, grammar, and format; and (f) to delete Rule 2(f), which is no longer needed;

Now, therefore, **IT IS ORDERED:**

1. That the Commission hereby adopts and approves in its entirety the Findings and Recommendations of the Hearing Examiner, which is attached hereto as Exhibit "A."

2. That the Commission adopts the proposed amendments described above, the exact text and citation of which are attached hereto as Exhibit "B."

3. That the Secretary shall transmit this Order, together with the exact text of the *Regulations Governing Payphone Service Providers and Providers of Operator Services for Payphones* to the Registrar of Regulations for publication on July 1, 2002.

4. That the effective date of this Order shall be the later of July 10, 2002, or ten days after the date of publication in the *Register of Regulations* of this Order and the final text of the *Regulations Governing Payphone Service Providers and Providers of Operator Services for Payphones*.

5. 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
Commi ssi oner

Jaymes B. Lester
Commi ssi oner

/s/ Donald J. Puglisi
Commi ssi oner

/

ATTEST:

/s/ Karen J. Nickerson
Secretary

EXHIBIT "A"

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE
STATE OF DELAWARE**

**IN THE MATTER OF THE
INVESTIGATION AND ADOPTION OF
RULES TO GOVERN PAY TELEPHONE
SERVICES WITH THE STATE OF
DELAWARE (OPENED OCTOBER 9, 1984;
REOPENED JUNE 17, 1997; REOPENED
JANUARY 29, 2002)**

))))))

**PSC REGULATION DOCKET
NO. 12**

REPORT OF THE HEARING EXAMINER

DATED: May 29, 2002

**ROBERT P. HAYNES
HEARING EXAMINER**

TABLE OF CONTENTS

PAGE

I. BACKGROUND..... 1

II. SUMMARY OF THE EVIDENCE..... 2

III. DISCUSSION..... 3

IV. RECOMMENDATION 3

Appendix –Proposed Regulations

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE
STATE OF DELAWARE**

**IN THE MATTER OF THE
INVESTIGATION AND ADOPTION OF
RULES TO GOVERN PAY TELEPHONE
SERVICES WITH THE STATE OF
DELAWARE (OPENED OCTOBER 9,
1984; REOPENED JUNE 17, 1997;
REOPENED JANUARY 29, 2001)**

))))))

**PSC REGULATION DOCKET NO.
12**

REPORT OF THE HEARING EXAMINER

Robert P. Haynes, duly appointed Hearing Examiner in this Docket pursuant to 26 Del. C. §502 and 29 Del. C. Ch. 101, by Commission Order No. 5868, dated January 29, 2002, reports to the Commission as follows:

I. BACKGROUND

1. The Commission's Order No. 5868 provides an adequate description of the background of this proceeding. This reopened proceeding was assigned to this Hearing Examiner "to organize, classify, and summarize the materials submitted by persons in this matter." Order No. 5868 at 10. Further, I was to hold a duly noticed public hearing and to submit a Report summarizing the materials submitted and setting forth recommendations concerning the proposed revisions and amendments. Order No. 5868 at 11.

2. Publication of public notice of the proposed amendments and the public hearing on them occurred in the News Journal, the Delaware State News, and the Delaware Register of Regulations. In addition, notice was sent to all persons who had requested notice of the proceeding, and this consisted of the many parties who previously participated in this proceeding. The Commission established a deadline of April 10, 2002 for comments and timely petitions to intervene, but no person filed comments or intervened. A hearing was held April 24, 2002 in the Commission's Dover offices, and no one appeared at the hearing except for Connie S. McDowell, Chief of Technical Services, on behalf of Staff.

3. The record consists of eleven pages of transcripts, including the testimony of Ms. McDowell,. The present and proposed rules were set forth as Exhibits A and B, respectively, attached to Order No. 5868.

II. SUMMARY OF THE EVIDENCE

4. The only evidence is the direct testimony of Connie S. McDowell, who testified on the six areas that are the subject of the proposed amendments. She stated that the first change is to Section 4(f)9 and Section 6(b), and allows for all payphone providers to use oral disclosure of the price for directory assistance, as opposed to the current rules that require the posting of prices at the telephone. She said that Verizon in 2000 obtained a waiver from the Commission of the posting requirement, and that the proposed rule would eliminate the posting requirement for all other pay phone providers.

5. The second change that Ms. McDowell described is to Section 6(c), and it is patterned after the Federal Communications Commission ("FCC") rule whereby an oral rate quote is provided for non-calling interstate calls when an operator service provider is used. Under the proposed rule, the same rate quote procedure, as approved by the FCC, may be used for similar intrastate calls.

6. Ms. McDowell addressed the third change, which is to add proposed Section 3(f) and Section 3(g). These would require pay phone service providers to have procedures in place for making prompt refunds to consumers and to promptly repair or replace damaged or inoperable pay phones.

7. The fourth change she described is to Section 2(d) and Section 4(a) to reflect an update by the FCC in the certification of pay phone equipment that can be connected to the public switch network.

8. The fifth change Ms. McDowell noted is the deletion of Section 2(f) since it no longer applied following the Commission's 1997 amendments that eliminated the certification requirement for each pay phone location.

9. The final changes are for style, grammar, format, and renumbering.

III. DISCUSSION

10. No comments were filed in response to the public notice. Accordingly, there is no need to further discuss the Staff amendments, which were reviewed above. I find that the proposed changes are reasonable and adequately supported by substantial evidence. Therefore, I recommend that the Commission adopt them.

IV. RECOMMENDATION

11. I recommend that the proposed amendments to the Commission's regulations, as set forth

in Exhibit B to Order No. 5868 a copy of which is appended to this report, be adopted.

Respectfully submitted,

/s/ Robert P. Haynes

Robert P. Haynes
Hearing Examiner

Dated: June 5, 2002

E X H I B I T "B"

APPENDIX

**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 in 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 interexchange carrier or provider of operator services by use of an "800," "888," or "950" access toll-free call or by use of a carrier access code; and

(6) 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 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, a 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 interexchange 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 coins, 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 consumer 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 total 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 that 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.

-