

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO THE NEED FOR PUBLIC) CASE NO.
INTEREST PAYPHONES IN KENTUCKY) 2003-00492

O R D E R

The Commission, on its own motion, established this case to investigate the need for public interest payphones in Kentucky. All interested persons who could be identified by the Commission were given notice of this proceeding.

Public interest payphones were addressed in 1999 by this Commission in Administrative Case No. 361.¹ In that proceeding, the Commission determined that there was no need to establish programs to support payphone deployment, based on the ongoing incumbent local exchange carrier (“ILEC”) obligations pursuant to 807 KAR 5:061, Section 11.² The Commission stated that “it is vitally interested in ensuring that adequate numbers of public interest payphones are available throughout Kentucky.”³ However, it deferred any action regarding the insufficiency of payphone deployment in

¹ Administrative Case No. 361, Deregulation of Local Exchange Companies’ Payphone Service, Order entered January 5, 1999.

² Id. at 5.

³ Id. at 6.

Kentucky and the need for public interest payphones until such time as an interested party demonstrated that payphone providers no longer meet the public's need.⁴

In 2003, the Commission granted the request of BellSouth Public Communications, Inc., a payphone provider, to withdraw from the Kentucky market.⁵ However, the Commission denied the request of BellSouth Telecommunications, Inc. ("BellSouth") for a deviation from the regulatory requirement that it provide at least one payphone per telephone exchange. The Commission held that BellSouth should be required to ensure that at least one payphone is available in each exchange, either by contracting with a third party or by affirming that a competitive payphone provider currently provides service in that exchange, pending the outcome in this docket.⁶

Several parties in BellSouth's case, including Metro Human Needs Alliance ("MHNA"), requested that the Commission open a docket to determine the need for public interest payphones in Kentucky and, if a need is established, adopt a funding mechanism for these payphones. Thus, this proceeding was initiated. Each ILEC was required to provide a statement regarding its current compliance with 807 KAR 5:061, Section 11, entitled "Public Telephone Service." This regulation states:

In each exchange, the telephone utility shall supply at least one (1) public coin-activated telephone that will be available on a twenty-four (24) hour basis. This public telephone shall be located in a prominent location in the exchange and shall be lighted at night. The utility may establish additional

⁴ Id.

⁵ Case No. 2003-00261, Petition of BellSouth Public Communications, Inc. For Withdrawal From Provision of Payphone Service in Kentucky and Motion of BellSouth Telecommunications, Inc. for Deviation from 807 KAR 5:061, Section 11, Order entered December 23, 2003.

⁶ Id. at 4.

public telephone service at other locations. The commission may direct additional public telephone service upon finding that public convenience would be served.

ILECs have now filed this information.

According to information filed in the record, some ILECs are in compliance with the regulation and others are not. Those that are not have formally requested a waiver of, or deviation from, the regulation. Most ILECs commented that the regulation should be eliminated, that there is sufficient competition in the payphone industry to encourage deployment of payphones, and that there is no need for a public interest payphone program. Many ILECs commented that there are sufficient alternatives to payphone service, such as wireless and pre-paid service, and other programs, such as lifeline assistance. These, they argue, have reduced the need for a public interest program. South Central Rural Telephone Cooperative Corporation, Inc. ("South Central Rural") suggested that, instead of a public interest payphone program, each ILEC provide one concession line to a payphone provider in any exchange where there is no payphone service. Thereby, according to South Central Rural, the goal of the regulation to have at least one payphone in each exchange would be satisfied.

The MHNA, the Kentucky Regional Cable Commission, the Kentucky Payphone Association, and the Kentucky League of Cities have commented on the need for public interest payphones in Kentucky. Their proposals include information from programs in other jurisdictions. The Kentucky Regional Cable Commission, the city of Winchester, and the Kentucky League of Cities support keeping the regulation in place and establishing a public interest program similar to that in Indiana or California. The Kentucky League of Cities and MHNA both point to the declining number of payphones

in Kentucky and in the nation, which they say supports the need for a public interest payphone program. The Kentucky Payphone Association supports establishing incentives to lower rates, which in turn will enable payphone service providers to enter the market. If lower rates do not adequately address the situation, then the Commission should determine if a public interest payphone program should be established, according to the Kentucky Payphone Association.

The Commission finds that 807 KAR 5:061, Section 11, does not continue to serve the needs of the public and ensure that payphones are available in a manner that addresses the public need. In the wake of competitive payphone service and the increasing availability of cell phone service, the Commission finds that it is no longer necessary to maintain this requirement statewide. Any need for a payphone in a specific exchange is more appropriately dealt with on a case-by-case basis. Therefore, pursuant to KRS 278.512, telecommunications utilities are exempted from compliance with this particular regulation.⁷

The comments of the League of Cities and MHNA indicate that payphone service is needed and is lacking in certain specific areas; however, these entities were not able, in the course of this proceeding, to identify the locales. To address these concerns, the Commission has reviewed the Public Interest Payphone Program established by the Indiana Utility Regulatory Commission (“IURC”) on September 18, 1998. The program allows for a business to file an application with the IURC to request that a payphone be

⁷ In Case No. 2003-00261, BellSouth was granted a waiver of 807 KAR 5:061, Section 11, to the extent that if no alternative payphone provider was serving an exchange, then BellSouth had to contract with a carrier to provide service in that exchange. Given the Commission’s determination herein, BellSouth is no longer required to maintain any payphones in its service area.

placed at its location. A governmental agency must sponsor the request. If the Commission staff determines that a payphone should be placed in the location, they will contact payphone service providers in the area to place a payphone. If no payphone is placed in 90 days, then the Commission will take steps to formally fund a public interest payphone at that location.

The Commission finds, based on the comments in the record, that Kentucky should establish a program similar to that of the IURC. With this program in place, the Commission would be ready and able to address the need for a specific payphone at an identified location that is brought to the attention of the Commission. In the event such a location is identified, carriers would be expected to contribute in some manner to the establishment of this public interest payphone. The Commission supports the idea mentioned herein of South Central Rural in this regard. However, the Commission will not at this time establish a funding mechanism. There has not been a need to establish any funding mechanism to date in Indiana. In cases in which payphones have been requested, the IURC has been able to work informally with payphone providers to place payphones in locations where they are requested. This Commission will likewise attempt to resolve requests for payphones on an informal basis. If one cannot be placed, the Commission may reopen this docket to determine the appropriate funding mechanism.

The Commission believes that the decisions contained herein will improve access to payphones for Kentuckians who reside in underserved areas.

IT IS THEREFORE ORDERED that:

1. As of the date of this Order, telecommunications carriers are exempted, pursuant to KRS 278.512, from compliance with 807 KAR 5:061, Section 11.
2. A Public Interest Payphone Program, as described herein, is hereby established.
3. Any application for a public interest payphone shall be submitted to the Commission on the form contained in Appendix A entitled "Kentucky Public Service Commission Guidelines Regarding Public Interest Payphones and Application for the Establishment of a Public Interest Payphone," which is attached hereto and incorporated herein. The application form is also available on the Commission's Web site at <http://psc.ky.gov/agencies/psc/forms/payphoneapplication.pdf>.

Done at Frankfort, Kentucky, this 23rd day of August, 2004.

By the Commission

ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2003-00492 DATED AUGUST 23, 2004

KENTUCKY PUBLIC SERVICE COMMISSION
GUIDELINES REGARDING PUBLIC INTEREST PAYPHONES
AND
APPLICATION FOR THE ESTABLISHMENT OF A
PUBLIC INTEREST PAYPHONE

Definition of a Public Interest Payphone

A public interest payphone is a payphone located where it is needed in the interest of public health, safety and welfare, but where it is not profitable for a Payphone Service Provider to maintain it. Public interest payphones may only be provided at the request of or sponsorship of government entities or agencies. Basic guidelines of public interest payphones are as follows:

1. A public interest payphone is a payphone that generally does not “break even,” i.e., does not yield sufficient revenue to recover the cost of placement, ongoing maintenance, operation and reasonable contribution and therefore in a competitive marketplace would not normally be placed. It is important to note that unless there is a reasonable return allowed, there will be no incentive to bid on these phones.
2. There are no other coin-operated (pay per use) public phones located at the same location, reasonably accessible to the general public.
3. The public interest payphone is not part of a contract which provides direct monetary benefit to the location provider (i.e., the paying of commissions) from calls generated over that phone.
4. Public interest payphones are not coinless payphones.
5. If a payphone is located indoors, the location provider on whose property the payphone is located agrees to the placement of a prominent sign (outside and inside the facility), consistent with public ordinances, which directs the general public to the payphone location.
6. The general public should have unrestricted access to the public interest payphone. Unrestricted access means that the payphone should be physically and geographically accessible to the general public during the operating hours of the facility. Thus, if the payphone is located inside a building, for example, the general public would be able to enter the building from the street to use the payphone.
7. If a public interest payphone is proposed for property owned by a person or entity that has existing contracts for placement of payphones at other locations, a demonstration should be made as to what efforts were undertaken to require by contract the placement of a payphone at the proposed public interest payphone location.

APPLICATION FOR PUBLIC INTEREST PAYPHONE IN KENTUCKY

Please complete this application for a public interest payphone. If you have questions regarding completion of the application form, please call us at (502) 564-3940. Incomplete application forms will not be processed.

Mail the application form to:

Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

After the application form is received, someone may contact you with further questions. If the application form is denied, you may write a letter to the Kentucky Public Service Commission and request a review of the denial. If the application for a public interest payphone is approved, the Kentucky Public Service Commission will attempt to contact a company to provide that payphone. If no company is willing to provide the public interest payphone, we will contact you.

Applicant's Name/Title:

Business or Organization You Represent: _____

Business or Organization Name and Location for Requested Payphone Service:

Contact Name: _____

Phone: _____

Address: _____

Type of Business: _____

Opening Date (if not open): _____

Describe why a payphone is requested in terms of public health, safety, or welfare.

If indoors, does the property owner agree to the placement of a telephone company sign outside the property directing the general public to the location of the payphone?

Circle: Yes No If No, why not?

Will the payphone be located at a site where those residing in that location cannot individually subscribe to their own telephone service?

Circle: Yes No

If yes, please explain your understanding of the reason phone service is not available to those residing in the area.

Will the payphone be located in an area where no other payphone exists or is reasonably accessible to the general public?

Circle: Yes No

What is the approximate distance to the payphone nearest the proposed location? Also, provide the address of the nearest payphone and the owner's name.

To your knowledge, has there been a payphone at the proposed site before?

Circle: Yes No

If Yes, who was the provider? _____

If Yes, when was the payphone removed? _____

I declare that the foregoing information is true and correct.

Signature

Print Name

Title

Date

Phone number where you may be reached during business hours