

STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners:

Sam Cotten, Chairman
Alyce A. Hanley
Dwight D. Ornquist
Tim Cook
James M. Posey

In the Matter of the Consideration)
of the Impact of Rules of the) R-97-3
Federal Communications Commission)
on the Regulations at 3 AAC 53.800 -) ORDER NO. 1
3 AAC 53.899 Governing the)
Provision of Privately Owned Pay)
Telephone Service)
_____)

**ORDER ISSUING NOTICE OF INQUIRY; ESTABLISHING SCHEDULE
FOR COMMENT; AND AFFIRMING GRANT OF TEMPORARY OPERATING
AUTHORITY TO LOCAL EXCHANGE CARRIERS**

BY THE COMMISSION:

By Order R-93-9(6), dated July 19, 1996, the Commission adopted regulations governing the operation of privately owned pay telephones.¹ Those regulations were adopted as 3 AAC 53.800 - 3 AAC 53.899 and became effective on September 20, 1996. In its order of adoption, the Commission stated that, while adopting the regulations, it was aware that there was a potential conflict between its rules and proposed federal rules. Among those possible conflicts was the Commission requirement at 3 AAC 53.810(c) that a local exchange carrier (LEC) could provide private pay

¹For the purposes of this Order, "pay telephone" equals "payphone."

telephone service only through a separate subsidiary while the Federal Communications Commission (FCC) rules were proposing to preempt state's ability to impose structural separation requirements on pay telephone operations of LECs. However, the Commission concluded that any conflicts could be addressed through subsequent rulemaking.

On September 20, 1996, the FCC adopted regulations² governing public and private pay telephones that 1) place new obligations on state commissions and 2) conflict in certain respects with this Commission's recently adopted regulations. By Order R-97-2(1), dated April 15, 1997, the Commission proposed to repeal three provisions of the Commission's pay telephone regulations in order to remove conflicting provisions. Among the provisions proposing to be repealed is the LEC separate-subsidiary requirement in 3 AAC 53.810(c).

The purpose of this proceeding is to determine what other pay telephone issues related to implementation of the Telecommunications Act of 1996 (The Act) need to be addressed by this Commission. Foremost among those issues is the FCC's reclassification of public pay telephones as customer premises equipment, effective April 15, 1997; i.e., LEC public pay telephones become private pay telephones on April 15, 1997, and are subject to this

²Report and Order, FCC 96-388, CC Docket 96-128, Adopted September 1996. See also Order on Reconsideration, FCC 96-439, CC Docket 96-128, Adopted November 8, 1996.

Commission's pay telephone regulations, which require certification, etc.

Effect of Reclassification of Public Pay Telephones

This reclassification poses a dilemma for LECs in view of this Commission's regulation (at 3 AAC 53.810) requiring the need for a certificate of public convenience and necessity (certificate) before providing private pay telephone service vis-à-vis the conflict re LEC separate subsidiaries, discussed *supra*.³

To date only one LEC has applied for a certificate.⁴ Given the time requirements for public notice and adjudication of an application, it is impossible for any LEC to be certificated prior to the April 15, 1997, deadline. Consequently, in order to remain in compliance with Commission rules, LECs would need to either: 1) remove all LEC-owned pay telephones until certification was obtained; or 2) obtain temporary operating authority from the Commission.

The first option is clearly not in the public interest. Even with the entry of new, non-LEC, providers into the pay

³The provisions of 3 AAC 53.810(a) state:

A person may not provide private pay telephone service without obtaining a certificate of public convenience and necessity from the commission.

⁴As discussed *supra*, the Commission notes that its private pay telephone regulations require LECs to provide private pay telephone service only through a separate subsidiary, that this provision is inconsistent with The Act, and that the Commission has proposed to repeal it.

telephone market, the Commission anticipates that the majority of pay telephones will continue to be provided by LECs for some time. Removal of all LEC-provided pay telephones after April 15, 1997, would not be in the public interest because it would result in the removal of the vast majority of all pay telephones. Given those findings, the Commission believes that it is in the best interest of the public for the Commission, on its own motion, to take steps to maintain order in the private pay telephone market and to provide for an orderly transition to a new market structure.

Therefore, as discussed and approved at its Public Meeting of April 9, 1997, the Commission, on its own motion, grants LECs that were providing public telephone service on April 14, 1997, temporary operating authority to provide private pay telephone service. This Order affirms that approval in writing. The grant of temporary operating authority is effective from April 15, 1997, for a six-month period, unless modified by the Commission as a result of public comment on this matter. An LEC that wishes to provide private pay telephone service after October 15, 1997, must apply for a certificate. The Commission encourages LECs to file such applications as soon as possible so that there is sufficient time for notice, review, and action before the October 15, 1997, deadline.

While taking such action to protect and promote the public interest, the Commission observes that consideration of such action has not previously been noticed to the public. That

notice, and an opportunity to comment, is provided by this Order and accompanying Notice of Inquiry in this proceeding. Any person that objects to this grant of temporary operating authority may file comments with the Commission by May 5, 1997, specifying why the commentor thinks such action is contrary to the public interest. If the Commission receives such protests, it will review this action and issue a subsequent order on this issue amending, revoking, or reaffirming the grant of temporary operating authority, as appropriate under the circumstances.

Notice of Inquiry

1. EXIT AND ENTRY

The provisions of 47 C.F.R. §64.1330(a) require that each state must review and remove any of its regulations applicable to pay telephones and pay telephone service providers that impose market-entry or -exit restrictions. The Commission seeks comment on whether any of its private pay telephone regulations impose entry or exit restrictions that conflict with 47 C.F.R. §64.1330(a).⁵

2. PUBLIC INTEREST TELEPHONES

The provisions of 47 C.F.R. §64.1330(c) state:

Each state must review its rules and policies to determine whether it has provided for public interest payphones consistent with applicable [FCC] guidelines,

⁵The Commission notes that its Staff was informed by FCC Staff that state pay telephone certification is not precluded by FCC rules so long as state requirements are competitively neutral.

evaluate whether [the state] needs to take measures to ensure that such payphones will continue to exist in light of the [FCC's] implementation of Section 276 of [The Act], and administer and fund such programs so that such payphones are supported fairly and equitably. This review must be completed by September 20, 1998.

The Commission seeks comment on:

- a) the extent to which public interest pay telephones will be required;
- b) criteria for determining where and when public interest pay telephones should be installed; and
- c) the establishment, administration and funding of a system for the provision of public interest pay telephones.

3. LOCAL RATE

The Commission currently has authority to set the local rate for a private pay telephone call, currently capped at \$.25 per call. However, unless the FCC is reversed in court, state authority will terminate in October 1997.⁶ At that time "the market will be allowed to set the price for a local coin call" except "for states that are able to demonstrate to the [FCC] that there are market failures within the state that would not allow market-based rates."⁷ Such a showing by the state:

could consist of, for example, a detailed summary of the record of a state proceeding that examines the costs of providing payphone service within that state and the reasons why the public interest is served by having the

⁶One year from the effective date of the FCC's regulations adopted pursuant to FCC 96-388.

⁷FCC 96-388, ¶61.

state set rates within that market. In addition, under our deregulatory, market-based approach, when states have concerns about possible market failures, such as that of payphone locations that charge monopoly rates, they are empowered to act by, for example, mandating that additional PSPs be allowed to provide payphones, or requiring that the PSP secure its contract through a competitive bidding process that ensures the lowest possible rate for callers. . . .⁸

The Commission seeks comment on whether the public interest would be served by continuing its authority over rates for local pay telephone calls;⁹ the FCC's process for demonstration of market failure; and any actions, in addition to those noted by the FCC above, that the Commission can take if market failure does occur.

4. *OTHER ISSUES*

The Commission seeks comment on any other pay telephone issues that commentors believe would be appropriate to address in this Docket.

Format of Filings

The Commission directs commentors to include a summary of their comments with their filings. The Commission also requests that commentors include a diskette with their comments in IBM compatible text (.txt) format or WordPerfect for Windows 6.1 format.

⁸ FCC 96-388, ¶61.

⁹3 AAC 53.820(a) states: "A private pay telephone service provider may not charge more than \$.25 for each local call."

ORDER

THE COMMISSION FURTHER ORDERS:

1. Interested persons may file comments on the issues raised in this Notice of Inquiry and any other issues related to the implementation of the pay telephone provisions of the Telecommunications Act of 1996. Comments must be filed with the Commission by 4 p.m., June 20, 1997.

2. As discussed at its Public Meeting of April 9, 1997, and in the body of this Order, the Commission, on its own motion, grants local exchange carriers providing public telephone service on April 14, 1997, temporary operating authority to provide private pay telephone service. This temporary operating authority is effective from April 15, 1997, for a six-month period, unless modified by the Commission.

3. A person who objects to the grant of temporary operating authority approved orally at the Commission's April 9, 1997, Public Meeting, and affirmed in writing by this Order, may file comments with the Commission by May 5, 1997. Such comments must include a discussion as to why the grant is contrary to the public interest.

DATED AND EFFECTIVE at Anchorage, Alaska, this 15th day of April, 1997.

BY DIRECTION OF THE COMMISSION

(S E A L)