

LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER

(Amends and Supersedes General Order dated February 9, 1998)

Docket No. U-21322, In re: Reconsideration of Regulations and Guidelines for Customer Owned Coin Operated Telephone Service Providers/Alternate Operator Service Providers in Light of Problems that have developed in the Industry and Applicability of the above Regulations and Guidelines to all Public Payphone Providers.

(Decided at the July 16, 1997 Open Session)
(Corrected at November 19, 1997 Open Session)
(Amended at August 18, 1998 Open Session)

This proceeding was initiated in February of 1995 in order to revise and update the regulations and guidelines of the Louisiana Public Service Commission (the "LPSC" or "Commission") concerning payphone and operator services.

Initial comments and lists of issues to be considered in the docket were submitted by the parties from April through June, 1995. The Commission held technical conferences with the parties in late June of 1995, where the issues to be addressed in the docket and proposed regulations were discussed. After the technical conferences, additional rounds of comments were filed by the parties in September and October, 1995.

After reviewing and considering the comments of the parties, and compiling the Commission's previous orders, regulations and guidelines concerning payphone and operator services, on July 1, 1996 the Commission Staff issued for comment, through a notice of proposed rulemaking, an initial draft of proposed regulations entitled Commission Staff Proposed Regulations for Operator and Payphone Services, dated June 26, 1996. Comments and reply comments to these draft proposed regulations were received during July and August, 1996.

On September 20, 1996, the Federal Communications Commission (the "FCC") issued its Report and Order implementing the payphone provisions of the Telecommunications Act of 1996.¹ In its Report and Order, the FCC stated that it had adopted new rules and policies governing the payphone industry that: 1) establish a plan to ensure fair compensation for each completed intrastate and interstate call using a payphone; 2) discontinue intrastate and interstate carrier access charge payphone service elements and payments, and intrastate and interstate payphone subsidies from basic exchange services; 3) prescribe nonstructural safeguards for Bell Operating Company ("BOC") pay phones; 4) permit the BOCs to negotiate with payphone location providers on the interLATA carrier presubscribed to their pay phones; 5) permit all payphone service providers to negotiate with location providers on the intraLATA carrier presubscribed to their pay phones; and 6) adopt guidelines for use by the states in establishing public interest pay phones to be located where there would otherwise not be a payphone.

The FCC also determined that rates for local coin calls should be determined by market forces commencing in October, 1997. The FCC made an exception to the market-based approach 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. Such a detailed showing 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 state set rates within that market.²

¹ Report and Order, *In the matter of implementation of the pay telephone reclassification and compensation provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, CC Docket No. 91-35 (September 20, 1996).

² The LPSC joined an appeal of the FCC Report and Order, which was consolidated before the United States Court of Appeals for the District of Columbia Circuit under case no. 96-

1394, *Illinois Public Telecommunications Association, Inc. v. FCC*, in order to preserve its historical jurisdiction over the local coin rates of payphones. The U.S. Court of Appeals for the District of Columbia issued a ruling July 1, 1997, upholding the FCC's preemption of state regulation of local coin rates of pay phones to become effective in October, 1997. The Regulations as adopted by the Commission July 16, 1997 contain severability and preemption clauses that recognizes all express preemptions. In such a case the Regulations shall be interpreted in a manner which recognizes all such preemptions so long as such preemption remains in effect. *See Section 901 of Regulations.*

Additionally, in its Report and Order, the FCC concluded that each state should, in light of the FCC's Report and Order, examine and modify its regulations applicable to pay phones and payphone services providers, particularly those rules that impose market entry or exit requirements, and others that are not competitively neutral and consistent with the requirements of Section 276 of the Act. The FCC further concluded that the states should remove only those regulations that affect payphone competition; the states remain free at all times to impose regulations, on a competitively neutral basis, to provide consumers with information and price disclosure. The FCC then calls on the states to ensure that access to dialtone, emergency calls, and telecommunications relay service calls for the hearing disabled is available from all pay phones at no charge to the caller.

Accordingly, in February 1997, an additional round of comments were sought from the parties, through a Further Notice of Proposed Rulemaking, based on the FCC Report and Order to determine if the Proposed Regulations were consistent with the provisions of the FCC Report and Order. These comments were received in March, 1997.

After analyzing and considering the comments and reply comments received by the parties in response to the Notice and Further Notice of Proposed Rulemaking, on July 7, 1997, the Commission issued notice of, and served on the parties, Commission Staff Proposed Regulations for Operator and Payphone Services, dated July 1, 1997.

Consideration of adoption of these Proposed Regulations was placed on the agenda of the Commission's July 16, 1997 Open Session. After hearing comment from AT&T, and response by Staff, based on Staff recommendation, on motion of Commissioner Field, seconded by Commissioner Dixon, and unanimously adopted, the Commission voted to adopt the Commission Staff Proposed Regulations for Operator and Payphone Services, dated July 1, 1997. These regulations are attached hereto and made a part hereof. The Regulations as adopted by the Commission have been re-dated to July 16, 1997 to reflect the date of adoption by the Commission.

After issuance of these Regulations, it was brought to the attention of the Commission Staff that an error had been made in the final version of the Regulations in that the Commission voted adopting the Regulations on July 16, 1997 ordered that \$.25 per five minutes would be the rate of the local coin and the operator service calls, not \$.25 for 10 minutes as set forth in the Regulations issued. Accordingly at the Commission's November 19, 1997 Open Session, on motion of Commissioner Sittig, seconded by Commissioner Blossman, and unanimously adopted, the Commission voted to direct the staff to issue a corrected set of regulations that reflect 25 cents for five minutes for the interim period from August to October. These corrected Regulations are attached hereto, and made a part hereof.

At the August 19, 1998 Open Session, the Commission voted favorably on Public Interest Payphones, Docket No. U-23359. Public interest payphones are to be placed at locations that fit the criteria as outlined in General Order dated September 14, 1998. Further, a certain amount of financial support would be necessary for the program. In order to properly implement the program the Commission has altered the fine schedule in this General Order so that the Commission, in its discretion, may order a party found to have violated this General Order to provide a Public Interest Payphone.

IT IS THEREFORE ORDERED THAT:

1. The Regulations for Operator and Payphone Services as attached hereto are hereby adopted.
2. All provisions of the Regulations are hereby ordered by the Commission.
3. All entities subject to the provisions of this order and the Regulations shall forthwith take all actions required by this order and the Regulations.
4. The fine schedule is supplemented to include the requirement that the Commission may order a Public Interest Payphone be provided instead of the paying of a fine.
5. This order shall be effective immediately.

**BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
September 18, 1998**

/S/ DON OWEN
DON OWEN, CHAIRMAN
DISTRICT V

/S/ IRMA MUSE DIXON
IRMA MUSE DIXON, VICE-CHAIRMAN
DISTRICT III

/S/ C. DALE SITTIG
C. DALE SITTIG, COMMISSIONER
DISTRICT IV

/S/ JAMES M. FIELD
JAMES M. FIELD, COMMISSIONER
DISTRICT II

/S/ LAWRENCE C. ST. BLANC
SECRETARY

/S/ JACK "JAY" A. BLOSSMAN, JR.
JACK "JAY" A. BLOSSMAN, JR., COMMISSIONER
DISTRICT I

REGULATIONS ARE UNDER SEPARATE COVER