

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the )  
Commission's Own Motion to Assess )  
and Revise the Regulation of )  
Telecommunications Utilities )

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R. 05-04-005  
(Filed April 7, 2005)

**OPENING BRIEF OF  
CALIFORNIA PAYPHONE ASSOCIATION**

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In accordance with Rule 75 of the Commission's Rules of Practice and Procedure and with the Rulings of the Assigned Commissioner, Commission President Peevey, and Administrative Law Judge Reed, issued December 16, 2005, and January 18, 2006, California Payphone Association ("CPA") hereby respectfully submits its opening brief on the issues presented in Phase I of this proceeding.

The scope of CPA's participation in this proceeding and of this brief is narrowly focused. CPA shares the perspective of the Division of Ratepayer Advocates ("DRA")<sup>1</sup> and other parties that the current extent of effective competition for basic local exchange telecommunications services is limited and that this fact justifies maintaining regulatory control over upward pricing of those services for the foreseeable future. With respect to pay telephone services, CPA respectfully urges the Commission to reach the following conclusions:

- o Local exchange services for connecting pay telephones to the Public Switched Network and for local calling from payphones share the characteristics of other services proposed for continued price regulation as basic services.

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<sup>1</sup> During the pendency of this proceeding, the Office of Ratepayer Advocates ("ORA") became the Division of Ratepayer Advocates ("DRA"). In this brief, CPA will refer to pleadings and testimony originally submitted by ORA as those of DRA.

- The incumbent local exchange carriers' rates for pay telephone lines and local usage should be subject to the same extent of regulatory supervision as their rates for primary Residence lines and simple Business service.

A. Local Exchange Service for Connecting Pay Telephones to the Public Switched Network and for Local Calling From Payphones Shares the Characteristics of Other Services Proposed for Continued Regulation as Basic Services.

In the Order instituting this proceeding, the Commission posited and requested comments on one possible uniform regulatory framework, in which there would be “[n]o price regulation except for basic local exchange services provided by the large and medium-sized ILECs to residential and business customers.” OIR 05-04-005, issued April 14, 2005, at A-2. Through the comment and workshop processes, parties responded with proposals incorporating a range of definitions of “basic local exchange services.” For example:

- DRA proposes to include recurring and non-recurring charges for primary residential lines, business lines, and PBX trunks, including local usage, ZUM, EAS, and some vertical features.
- SBC would include only recurring charges for primary residential lines, including local usage, ZUM and EAS.
- Verizon would include recurring and non-recurring charges for primary residential and single business lines, but not local usage or ZUM.
- The Department of Defense and Other Federal Executive Agencies (“DOD”) propose to include all services that are within DRA’s definition, plus additional residence lines, public telephone lines, and some additional vertical features.
- TURN also would include all services covered by DRA’s definition, plus bundles of residence and small business service and “essential” vertical services.

- o Citizens' and Surewest's proposals are like SBC's, but would include non-recurring charges.
- o Cox, CCTA, and Time Warner all would include flat-rate residential and single business lines, and all features supported by the Universal Service Fund.

Comparison of URF Proposals, submitted October 19, 2005 by Counsel for DRA, at 1.

Of all the parties offering definitions of "basic local service," only DOD recognized the importance of public telephone service and included that service within the proposed definition. *See also*, Opening Comments of DOD, May 31, 2005, at 13. This was not because other parties necessarily disagreed with DOD's assessment, but appears to have been due simply to the status of public telephone service as a rather passé step-child of regulation that tends to be overlooked.

DOD witness Richard Lee confirmed DOD's recommendation that public telephone service should be included among the "basic local services" subject to continued rate regulation. He clarified that DOD's inclusion of "public telephone service" is meant to refer to the access line service that the local exchange carrier offers to connect a pay telephone to the network. Tr. 559:10-24 (Lee/DOD).<sup>2</sup> Noting that he considers "a loop to be a loop, whether it's for residence, business, payphones," Mr. Lee saw it appropriate to have the same degree of price regulation apply to a payphone access line as to an ordinary single line business service, with the caveat that there may be differences in cost and price for the two services. Tr. 559:25-560:12 (Lee/DOD).

No other party appeared to contest this analysis. Dr. Robert Harris, testifying on behalf of SBC California, agreed that in terms of functionality, customer-owned pay telephone

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<sup>2</sup> In the tariffs of California's ILECs, that service is designated as Customer Owned Pay Telephone ("COPT") service. *See, e.g.*, Pacific Bell Tel. Co. Schedule Cal. P.U.C. No. A5, §5.5.3.

("COPT") service is "basically the same service as ordinary 1MB business line service "plus a few codes added in the network . . . to identify the line as a pay telephone line." Tr. 471:8-16 (Harris/SBC).

Timothy McCallion, testifying for Verizon California Inc., confirmed that the functionalities of a COPT line, used to connect pay telephones to the public switched network, are similar to those of single line business (1MB) service. Tr. 566:9-19 (McCallion/Verizon). In the context of Verizon's proposal to maintain rate caps temporarily on single line business service, as a "redundant safeguard to facilitate the path towards complete relaxation of retail pricing control," Mr. McCallion agreed that the same logic could apply to justify temporarily maintaining rate caps on COPT service "to ease the transition toward full rate deregulation in the case of pay telephone service." Tr. 566:24-567:16 (McCallion/Verizon); *see also*, Exhibit 35 (McCallion/Verizon), at 12-13.

**B. ILEC Rates for COPT Lines and Local Usage Should Be Subject to the Same Extent of Regulatory Supervision as the Rates for Primary Residence Lines and Simple Business Service.**

The evidence of record in this proceeding about the limited effectiveness of competition with the ILECs' local exchange services for pay telephones and the relevance of pay telephone services to the Commission's Universal Service goals support maintaining the same extent of regulatory supervision over the ILECs' COPT access line and local usage services as parties have proposed for "basic" residence and business services. This is true for reasons of geography and economics.

1. There is unlikely to be substantial facilities-based competition to provide local exchange service to most payphone locations.

The evidentiary record and the testimony of diverse witnesses substantiate the importance of geographical factors in assessing the prospects for effective facilities-based

competition with the ILECs' local exchange services. These factors are particularly relevant to the assessment of competitive options to the ILECs' COPT services.

In the executive summary of its opening comments in this proceeding, DRA offered an important comment on geographical considerations relevant to the appropriate application of this Commission's regulatory authority:

ORA acknowledges that economic regulation exists in part to serve as a substitute for workable competition and less of it may be required where competition actually flourishes. An important corollary of this principle states that the degree of regulation imposed on any service provider in a particular geographic area should reflect the extent to which competition constrains that provider's ability to impose unreasonable prices, terms and conditions on consumers absent regulatory restraint.

DRA Opening Comments, May 31, 2005, Executive Summary, at ii.

In summarizing key facts and findings in DRA's prior comments, DRA witness Terry Murray testified that the Commission "needs to consider geographic and demographic sub-markets within California in determining when and how to relax regulation because the intensity of existing competition and the Respondents' incentive to invest in competitive facilities varies widely across the state." Exhibit 56 (Murray/DRA), at 4; *see also*, Tr. 855:5-13 (Murray/DRA).

Witness Murray confirmed the statement in DRA's reply comments that competition is likely to develop more slowly in rural communities, the small business market, and low-income and minority neighborhoods. She agreed, as well, that these are the sorts of locations where pay telephone service is likely to be of continuing importance, noting that "public pay telephone service is especially heavily used in low-income and minority neighborhoods, in particular, and it can also be important in rural areas." Tr. 856:13-25 (Murray/DRA).

SBC witness Harris testified that an important factor in assessing the prospects for competitors to serve small businesses is the proximity of such small businesses to a larger

business customer that is a target for a competitor's investment in "overbuilding" the ILEC's network. Tr. 253:13-260:8, 471:27-472:11 (Harris/SBC). Dr. Harris acknowledged that a gasoline station – or a corner market or liquor store in a low-income community – would not be a likely target of such an overbuild investment, unless it happened to be located along the line being constructed. Tr. 472:12-19 (Harris/SBC).

Richard Lee, testifying on behalf of DOD, confirmed DOD's position that local service competition at this time does not provide an effective restraint on prices in the mass market. Exhibit 32 (Lee/DOD), at 7. After noting the broad support for continuing limited price protection for residential and small business customers, Mr. Lee focused on the situation of small business customers:

Indeed, small business customers may benefit from even less competition than residential customers. With the demise of unbundled Network Element – Platform ("UNE-P") availability, it appears that the most effective competition for [ILEC] mass market customers will come from cable companies. These companies are able to offer local service telephony as part of an attractive package including television and/or high-speed internet access. Small businesses that do not need either television or high-speed internet access are unlikely to find the service packages offered by cable companies attractive.

*Id.* at 8; *see also*, Exhibit 56 (Murray/DRA), at 5 (cable telephony "may not be marketed to all types of customers"). Mr. Lee explained that most businesses do not have or need cable service, and so would not avail themselves of cable telephony. He testified that the same would be true of the typical pay telephone installation. Tr. 560:13-561:20 (Lee/DOD).

Payphone lines are rarely concentrated. Typical pay telephone locations are served by one, two, or at most three COPT lines. If they are located on the premises of a gasoline station, a corner grocery, a neighborhood restaurant, or another small business, there are not likely to be more than one or two 1MB lines serving the same premises. Based on the testimony of the very experienced and highly qualified economists representing a cross-section

of interests – DRA, SBC, and DOD – there appears to be agreement that these typical pay telephone locations are not likely to be sought after or served by the ILECs’ facilities-based competitors. Thus, with the demise of UNE-P, competition from facilities-based local service competitors should not be expected to protect pay telephone service providers from the ILECs’ market power.

2. Payphone service resembles primary residence service in the extent to which it serves essential communications needs.

A primary focus of DRA’s comments and testimony was the market for primary residential lines, which DRA sees as different from and facing less competition than the market for additional line services. *See*, Exhibit 56 (Murray/DRA), at 4. In reply comments, DRA described the primary network access connection as “many customers’ lifeline to the world,” serving as the means for making 911 calls and for communicating in cases of power outages and other emergencies. DRA Reply Comments, September 2, 2005, at 24. DRA witness Murray agreed that these also can be important functions of public telephone service. Tr. 857:3-24 (Murray/DRA).

While pay telephones formerly were an almost ubiquitous fixture of the public space, available on street corners, at public buildings, shops and stores, and in communities large and small, fierce competition from attractively priced wireless services and other market developments have destroyed the economic viability of payphone services in many locations. Dr. Harris, testifying for SBC, confirmed that public telephone service is a declining business, noting that the number of public pay telephones is “dropping quite rapidly.” Tr. 470:4-10 (Harris/SBC). He recognized that substantial increases in monthly line rates for SBC services provided to pay telephones would tend to accelerate that trend – unless the owners could pursue competitive

alternatives such as using a wireless connection for their payphones. Tr. 470:11-17

(Harris/SBC).

The pay telephones that remain in service today tend to be used by persons without the resources to have cell phones in their pockets. The remaining pay telephones in public spaces tend to be located in lower income communities, both urban and rural, and they remain essential resources, as DRA witness Murray testified, for making 911 calls and for communicating in cases of power outages and other emergencies.

3. The need for the Commission to maintain regulatory control over ILEC rates for COPT service is real and immediate.

Dr. Harris recalled that under the “New Regulatory Framework,” COPT service was one of the retail access line services for which SBC’s predecessor, Pacific Bell, had been given pricing flexibility in the mid-1990s to price between a cap set at current rates and a floor based on incremental cost. Tr. 470:18-471:7 (Harris/SBC). Pacific Bell and its successors never have exercised the downward pricing flexibility that the Commission authorized with respect to COPT service.

To the contrary, in May 2005, SBC California filed an advice letter proposing a 60% increase in the monthly rate for COPT service. *See*, SBC California Advice Letter No. 26689, filed May 2, 2005, appended hereto as Attachment A. Telecommunications Division suspended SBC’s Advice Letter in response to protests, but the proposed 60% rate increase (along with a less significant decrease in COPT local usage rates) remains pending before the Commission.

Based on the evidence of record in this proceeding, as recounted above, pay telephones continue to serve as important resources to serve emergency needs and Universal Service goals, but an increased rates for ILEC COPT services will necessarily accelerate the

trend of diminished availability of pay telephones. The record also establishes that it is unlikely that competing facilities-based local service providers will substantially constrain the ILECs' market power over payphone service providers, and the ILEC most dominant in California has only recently demonstrated its intention to exercise that market power if the Commission will so allow. For all these reasons, there is a real and immediate need for the Commission to include COPT access line and local usage services on the short list of basic ILEC services that will remain subject to the Commission's price regulation in years to come.

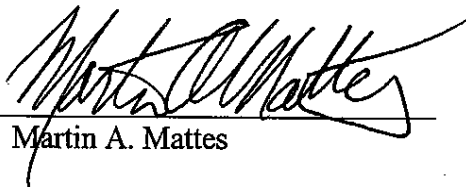
C. Conclusion

As discussed above, the evidence demonstrates that the ILECs' local exchange services for connecting pay telephones to the Public Switched Network and local calling from payphones share the characteristics of other services proposed for continued price regulation as basic services. Therefore, California Payphone Association respectfully urges the Commission to conclude that ILEC rates for COPT lines and local usage should be subject to the same extent of regulatory supervision as their rates for primary Residence lines and simple Business service.

Respectfully submitted,

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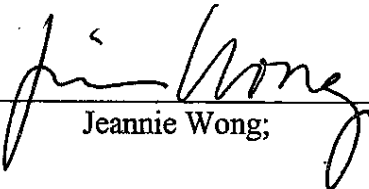
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