

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

Rulemaking on the Commission's Own	)	
Motion to Review the Telecommunications	)	Rulemaking 06-05-028
Public Policy Programs	)	(Filed May 25, 2005)
_____	)	

**INITIAL COMMENTS AND PROPOSALS  
OF CALIFORNIA PAYPHONE ASSOCIATION**

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July 28, 2006

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In accordance with Rule 14.5 of the Commission’s Rules of Practice and Procedure and the Commission’s Order instituting this rulemaking (“OIR”) on May 25, 2006, California Payphone Association (“CPA”) hereby respectfully submits its initial comments and proposals on the issues and points of inquiry set forth in Section V.E of the OIR, specifically relating to the Payphone Service Provider (“PSP”) Enforcement and Public Policy Payphone programs.

A. General Introduction.

The OIR describes the several Telecommunications Public Policy Programs overseen by the Commission and seeks comments on whether the programs are meeting their respective statutory purposes and requirements and on how any identified deficiencies might be remedied. OIR, at 2. Noting that new technologies, such as wireless and Internet-based communications, have expanded the range of telecommunications services, the OIR posits that the statutory goals and specifications for the Public Policy Programs “may require modernization” and inquires whether the programs remain necessary for achieving the fundamental goal of enhancing universal service. *Id.* The OIR seeks ways to streamline program administration and invites proposals for prudent budget reductions or redeployment of funds to better address current needs.

*Id.* at 3. With respect to the PSP Enforcement and Public Policy Payphone programs, this inquiry could not be more timely.

B. Historical Background Regarding the Public Policy Programs for Payphone Services.

In April 1988, the Commission opened an investigation, I.88-04-029, into the operations, practices, and regulation of customer owned pay telephone (“COPT”) service. In August 1988, as a result of a Commission-facilitated workshop among industry and consumer stakeholders facilitated by Commission staff, the Commission Advisory and Compliance Division (“CACD”) reported plans for an enforcement program to ensure that PSPs would comply with tariff requirements limiting charges and imposing other service requirements, with the ultimate sanction being disconnection of local exchange carrier service to non-compliant payphones. Also in August 1988, as a result of another workshop among similar stakeholders, the Division of Ratepayer Advocates (“DRA”) issued a report proposing a new approach for designating payphones at locations justified for public policy but not economic reasons as “Public Policy Payphones” and creating a mechanism to subsidize payphones in such locations.

In June 1990, the Commission concluded its “COPT investigation” by adopting Decision 90-06-018, which approved a broad-ranging settlement of issues relating to payphone services. Among many other topics, the “COPT Settlement” adopted a set of “customer safeguards” (including free access for certain types of calls placed at payphones, specified rate caps for coin and non-coin calls, and signage requirements), adopted the enforcement program recommended by the CACD workshop report, and approved the approach for defining and supporting Public Policy Payphones described in the DRA workshop report. The two workshop reports were attached to the COPT Settlement, which in turn was attached to D.90-06-018. The Commission, however, sent the stakeholders “back to the drawing board,” directing CACD to

hold further workshops to address both payphone enforcement and Public Policy Payphone issues. *See*, D.90-06-018, at 31 (Ordering Paragraph 2). Those workshops led to establishment of stakeholder-managed programs to implement both sets of concerns, with both programs funded through surcharges added to local exchange carrier (“LEC”) monthly charges for COPT lines, paid by PSPs.

In 1995 and 1996, the Commission authorized competition in the provision of local exchange telephone services and the U.S. Congress enacted sweeping changes in the federal Communications Act, including a new §276 specifically addressing payphone services. Pursuant to §276, the Federal Communications Commission (“FCC”) adopted regulations preempting and deregulating the setting of rates for local coin calls, establishing a complex regime requiring carriers to compensate PSPs for “dial-around” non-coin calls, requiring LECs to detariff their own payphone services and eliminate discrimination against competing PSPs, and setting guidelines for the states to administer and fund Public Policy Payphone programs to the extent they determined such programs were needed. *See*, FCC, *Re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket 96-128, Report and Order released September 20, 1996, and Order on Reconsideration, released November 8, 1996. The Commission responded to the FCC’s actions by allowing the LECs to detariff their payphone services and revise their tariffs for COPT service, and also by opening a rulemaking to reevaluate the Public Policy Payphone program and to consider expanding it statewide. That rulemaking, R.98-05-031, resulted in a decision adopting a new set of criteria and procedures for defining Public Policy Payphones, confirming that both that program and the PSP Enforcement Program would be managed by the PSP Enforcement Committee and funded by COPT line surcharges, and outlining plans for a bidding process among PSPs (including the LECs) to assign responsibility for placing and maintaining

Public Policy Payphones on a county-by-county basis. *See, Rulemaking on Statewide Expansion of Public Policy Pay Telephones*, D.98-11-029, issued November 5, 1998.

In 1999, the Legislature adopted SB 669 (Polanco), which added §270 *et seq.* to the Public Utilities Code. By §270(a)(5), this legislation created the Payphone Service Providers Committee Fund in the State Treasury. SB 669 also created the Payphone Service Providers Committee (“PSP Committee”) to advise the Commission on educational and regulatory programs relating to payphones; provided for collecting revenues through rates authorized by the Commission to support these programs, the PSP Committee, and the Commission’s related work; and designated a PSP Committee Fund to hold such revenues. §279(a), (b), (c). Pursuant to this legislation, the Commission replaced the existing management and staff of the PSP Enforcement Committee, which had operated on a quasi-independent, non-civil-service basis, with Commission staff resources, assigned responsibility for PSP enforcement to the Consumer Protection and Safety Division (“CPSD”), and limited the PSP Committee, as SB 669 provided, to a strictly advisory role. By D.01-09-064 and D.02-04-059, the Commission approved a new charter for the PSP Committee, formalizing its advisory role for both PSP enforcement and the Public Policy Payphone program.

Over the past several years, CPSD expanded its capacity to conduct random inspections of payphones for compliance with tariff requirements, while the role of the PSP Committee has been limited mainly to considering a handful of applications for Public Policy Payphone status and reviewing the annual budgets for the two payphone programs. Only two new Public Policy Payphones have been authorized over the past five years and no mechanism has been implemented for actually delivering subsidies to Public Policy Payphone operators. Consequently, that program can best be described as “dormant.” Meanwhile, the PSP enforcement fund has been almost entirely depleted, despite a 150% increase in the monthly per-

line surcharge, from \$0.10 to \$0.25, effective May 18, 2005. *See*, Resolution PSPC-1, adopted April 7, 2005, attached hereto as Exhibit A.

The process that led to the recent increase in the surcharge funding PSP Enforcement from \$0.10 to \$0.25 per line began with a proposal to that effect submitted by CPSD to the PSP Committee in April 2004. The PSP Committee deferred action on CPSD's proposal while committee members representing PSPs and local exchange carriers conveyed to Commission staff their disagreement with any surcharge increase due to the declining economics of the payphone service industry. Concerned about the impending negative balance in program funding, CPSD renewed the surcharge increase proposal in its budget proposal for fiscal year 2005-06, presented for comment in December 2004. Parties representing PSPs filed comments opposing a surcharge increase, recommending re-assessment of the costs and benefits of the PSP Enforcement program or scaling back the program to rely on the Commission's informal and formal complaint processes with investigation of service concerns as they may arise. *See*, Resolution PSPC-1, *supra*, at 5-6.

While agreeing that "the trend of declining numbers of payphones renders problematic the current method of funding," the Commission was concerned about abandoning a program aimed to safeguard consumers without a "public discussion of the issues raised in the proceedings that gave rise to the ordered programs." *Id.* at 8. Accordingly, in Resolution PSP-1, the Commission approved the proposed increase of the PSP Enforcement surcharge from \$0.10 to \$0.25, while urging interested parties to seek changes to the payphone programs needed to avoid a similar outcome in the next budget cycle. *Id.*, at 8, 10.

At the next meeting of the PSP Committee, in May 2005, CPSD presented a proposed budget for fiscal year 2006-07 that would have required a further increase in the PSP Enforcement surcharge, to \$0.40 or \$0.50 per line. The Committee declined to recommend

approval of that budget to the Commission. In August 2005, Steven Fetzer, Chair of the PSP Committee, wrote on behalf of the Committee to all Commissioners and Executive Director Larson, explaining the Committee's reasons for not recommending a budget, proposing a reduction in scope for the PSP Enforcement program, and suggesting a temporary moratorium and funding change for the Public Policy Payphone program. Letter of Steven R. Fetzer to Commissioner Geoffrey F. Brown, *et al.*, August 10, 2005, attached hereto as Exhibit B. Specifically, the PSP Committee questioned the viability of the payphone programs. The Committee noted that most violations found by PSP Enforcement have been signage-related and have been corrected routinely by payphone operators through regular scheduled maintenance even before notice of the violation has been received. The Committee questioned "whether it is a wise use of resources, i.e. Commission staff's time, and payphone providers' ever-scarcer revenues, to fund a program that does not have a major impact on the industry." *Id.*, at 3.

With respect to the Public Policy Payphone program, the PSP Committee noted that over the past three years of the PSP Committee's work, there had been only 12 applications for placement of Public Policy Payphones, and the Committee had identified only two applications meeting the requirements set by the Commission for such phones. Moreover, no parties willing to install and maintain a Public Policy Payphone at those locations had been identified and no fee structure to support such phones had been established. A temporary moratorium would save program costs that were being wasted on processing applications that produced no useful results. *Id.* The Committee also proposed a change in the funding source. Noting that the Public Policy Program, if warranted, was a benefit to the public generally, not just to PSPs, the Committee urged that the program "rightfully should be funded by the public generally through a line charge applied to all telephone ratepayers." *Id.* at 4.

The most recent PSP Committee report to the Commission, for the quarter ended December 31, 2005, confirms the continuing decline in the number of payphones supporting the payphone programs, the limited scope of current payphone inspection efforts, the inactivity of the Public Policy Payphone program, and the need for a further surcharge increase to support even the limited PSP Enforcement program now in place. *See*, Report of the Payphone Service Providers Committee for the Quarter Ending December 31, 2005, submitted June 29, 2006, and attached hereto as Exhibit C.

Concurrently, the PSP Committee addressed a letter to CPSD, expressing the Committee's support for eliminating both the PSP Enforcement and Public Policy Payphone programs and for disbanding the advisory committee as well. Letter of Steve Fetzer, PSP Committee Chair, to Richard Clark, Director, CPSD, dated June 26, 2006, attached hereto as Exhibit D. Generally in line with its letter of August 2005, the PSP Committee now recommends that the PSP Enforcement program be eliminated entirely or be conducted only through the use of a "hot line" for consumer complaints and without on-site inspections, with funding from the Utilities Reimbursement Account. Noting that only a handful of qualified locations have been identified for Public Policy Payphones, the Committee suggests that the Rural Grant Program, established pursuant to AB 140 (Stats. 2001, c. 903), could be a source of funding for the few uneconomic payphones that may be considered necessary for public welfare reasons. *Id.*

C. Substantial Modifications in or Termination of the PSP Enforcement and Public Policy Payphone Programs Are Urgently Required.

The OIR has identified five areas of inquiry regarding the PSP Enforcement and Public Policy Payphone programs, as follows:

1. What is the current status of these programs? What is the current funding mechanism, and is it sufficient?
2. What is the current and forecasted state of the payphone market?
3. Are these programs achieving their goals?
4. In light of changing telecommunications services and technology, are these programs necessary to achieve universal service objectives?
5. Please provide proposals for modifying the Payphone Programs in light of market and regulatory changes.

Each of these issues is addressed below.

1. The Current Status of the Payphone Programs Is Untenable and the Current Funding Mechanism Is Unsustainable.

The most recent quarterly report of the PSP Committee provides a succinct summary of the status of the payphone programs, as follows:

### **PSPE**

The line count for PSPE was 144,988 in December, 2005 down from 170,614 in January, 2005. The number of active payphones continues to decline, dropping more than 15% in 2005, reflecting the continued economic decline in the payphone business. At this time, the program has a total of six (6) inspectors in the field. The inspectors at present are only able to inspect for signage and call routing issues. Currently, they are unable to inspect for correct call-rating, since no call-rating program is in place. During the fourth quarter of 2005, the inspectors completed 4,593 inspections. The staff continues to provide summary reports to the Committee regarding financials, payphone inspections and payphone line count.

### **PPPP**

There have been thirteen applications received, for PPPP status since the program came under CPSD direction [in 2001]. Only two have met the requirements under the program to qualify. Currently, there are no procedures in place to handle the placement of a new PPPP phone after Committee approval or for reimbursement of existing PPPP phones. There were no new applications received during the fourth quarter of 2005.

### **Financial Status**

The last confirmed total fund balance for each of the programs as of December 2005: PSPE \$276,413.30 and PPPP \$630,123.90. The line charge was increased on May 18, 2005 from \$.10 per line to \$.25 per line to fund the FY 05-06 budget. With the proposed budget for FY 06-07, staff has suggested that the charge will need to be increased even more, potentially to \$.40 or \$.50 per line in order to fund the budget.

### **Staff Support**

The Committee continues to find the staff assigned to this Committee to be extremely beneficial to the program. They have done an exceptional job, particularly considering the limited resources that they are given to work with. The Committee has always found staff to be thoroughly prepared and on top of pending issues. They have worked hard to control costs with the limited authority they are given. The Committee would like the Commission to know we appreciate all staff does for these programs and in the way they do it.

PSP Quarterly Report, *supra* (Exhibit C), at 1-2.

As explained in the foregoing discussion of historical background regarding the payphone programs, the effectiveness of these programs has been limited for at least the past several years and the current mechanism for funding them by a surcharge on payphone line charges has become unsustainable. While Commission staff and industry participants have worked hard to implement the programs, the declining economics and diminishing scale of the payphone services industry present serious cause for doubt about the continuing viability of these programs as presently structured.

The PSP Enforcement program initially was envisioned as a simple means for monitoring service quality and enforcing regulatory rules for an industry segment – PSPs and their services – that the Commission chose not to regulate directly as public utilities. *See, Re Pacific Bell*, D.85-11-057 (1985), *mimeo.* at 75-81, 94-98. In fact, in its early years, the PSP Enforcement program was an industry-managed effort conducted under very light supervision by Commission staff. Today, as the Commission considers adopting a Uniform Regulatory Framework for telecommunications utilities that would abandon pricing regulation, accounting

adjustments, and monitoring reports except in a few specific circumstances (*see, Rulemaking to Assess and Revise the Regulation of Telecommunications Utilities*, R. 05-04-005, Proposed Decision of Commissioner Chong, issued July 25, 2006), it is anomalous for the Commission to maintain in place a much more intrusive and costly method of regulatory oversight for payphone services than is applied to the most essential and basic telecommunications services.

The Public Policy Payphone program faces stands in an even weaker position than the PSP Enforcement program. The Commission proclaimed a grandiose program in D.98-11-029 for assigning responsibility for placing and maintaining Public Policy Payphones on a county-by-county basis pursuant to a bidding process that amounted to a sort of reverse auction – the lowest bid for subsidy would secure the right to serve all Public Policy Payphone locations in a particular county. But the program never got off the ground. The PSP Committee received only a handful of proposals for locating Public Policy Payphones, no PSPs volunteered to serve, and the Commission never implemented the bidding procedures envisioned by the 1998 decision. As the recent PSP Committee report makes clear, only two qualified locations have been identified in the past five years, and no procedures are in place either for installing Public Policy Payphones or for reimbursing their costs of operation and maintenance. Meanwhile, the fund accumulated during the years when a monthly surcharge of \$0.08 per COPT line was being collected for support of Public Policy Payphones is slowly being frittered away on administrative overhead for a program that accomplishes nothing beyond accounting carefully for the expenditure of its own funds.

The PSP Enforcement fund is virtually exhausted and the continuing shrinkage of the surcharge base (due to the removal in recent years of approximately ten percent (10%) of payphones annually) makes it certain that expenses of the current program will continue to outpace revenues by a substantial margin. The Public Policy Payphone fund is being depleted

more slowly, but only because that program is virtually inactive. In short, financing the regulation and subsidization of payphone services on the backs of payphone service providers has become a vicious cycle, threatening the financial viability not only of the public purpose payphone programs but also that of the PSPs themselves.

2. The Payphone Services Market Is Financially Distressed and Steadily Contracting and It Is Reasonable to Expect That Trend to Continue.

Ever since 1998, when wireless service providers introduced prepaid package pricing plans offering 500, 1000 or 1500 minutes of calling at a fixed monthly rate, the popularity of cellphone service has boomed and payphone services have felt the impact. Technical and legal difficulties of collecting revenues to which PSPs are entitled for non-coin calls placed by the use of prepaid calling card and carrier access codes, have also been an important factor limiting the profitability of payphone businesses. But the primary force that has driven down payphone revenues and profits over the past six to eight years has been the blistering competition from technologically innovative, aggressively priced, and personally convenient cellphone services.

Where a typical payphone once generated \$200 or more in revenue per month, a “good” payphone is now considered to be one that generates \$120 or more. And those are the survivors. Nationwide, the total number of payphones in service, as calculated by the Federal Communications Commission, has declined from 2.12 million in March 1999 to 1.34 million in March 2004, while the number of payphones in California – according to the same FCC data – has declined over the same period from 295,000 to 187,000 stations. FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, August 2001, Table 7.5, attached hereto as Exhibit E; FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, April 2005, Table 8.5, attached hereto as Exhibit F. Thus, over a five-year period, the number of payphones in service nation-wide

declined by 36.6%, while the number of payphones in service in California declined by the identical percentage – 36.6%.

Statistics compiled by CPSD for the PSP Committee tell the same story, and indicate as well that California’s declining trend has continued and may even have accelerated in recent months. Thus, the “Payphone Line Counts” compiled by CPSD as part of the agenda packets for the PSP Committee’s quarterly meetings indicate that the numbers of payphone lines in service that are bearing the PSP Enforcement surcharge have followed the following course over the past three years (classified by serving local exchange carrier):

PAYPHONE LINE COUNTS – 2003 TO 2006

<u>Month</u>	<u>AT&amp;T (SBC)</u>	<u>Verizon</u>	<u>Other LECs</u>	<u>Total</u>
Jan. 2003	136,692	40,887	33,373	210,952
Jan. 2004	103,750	34,592	48,763	187,105
Jan. 2005	77,467	28,743	64,404	170,614
Jan. 2006	56,956	20,471	64,529	141,956
Apr. 2006	50,431	19,403	63,744	133,578

These data for payphone access lines do not equate precisely with the number of payphones operated by the two major incumbent LECs and their competitors in California. However, because AT&T and Verizon provide COPT service today mainly to serve their own payphones, these data indicate that the two major LECs have been rapidly exiting the payphone services business – each reducing the number of payphones it serves in California by roughly 50% over the past three years – while other PSPs have picked up some, but only a small percentage, of the slack.

Of greatest importance to the viability of the PSP Enforcement program is the fact that the total number of payphones in service in California has declined from nearly 300,000 in

1999 to less than half that number today – and is continuing to decline at a steady pace. To maintain an enforcement program comparable to the that which has been operating over these years will require significant and continuing surcharge increases. But the withdrawal of payphones has been the direct result of declining revenues, so higher surcharges will certainly accelerate the vicious cycle of payphone removal, diminishing surcharge revenue, and further increase in surcharge rates. The prospect is grim.

3. The Payphone Programs Are Not Achieving Their Goals.

Apart from the forbidding financial situation, it must be recognized that the Commission’s payphone programs have been no more than partially successful in achieving their goals. As they presently operate, the PSP Enforcement program is of limited value, while the Public Policy Payphone program provides no value at all.

As recognized in the PSP Committee’s most recent quarterly report, quoted above, the PSP Enforcement program is able to inspect payphones only for compliance with signage and call routing requirements. Over the several years that the program has been conducted by CPSD staff, the incidence of reported violations has declined to a modest extent. But there is good reason to believe that a less “pro-active” program, relying less on broadly targeted inspections and more on responses to “consumer hot-line” complaints, would be equally or even more successful. Such a “reactive” enforcement program could be conducted on a more economical basis, perhaps in conjunction with the present responsibilities of the Consumer Affairs Branch, and could target enforcement efforts more efficiently and more precisely in response to consumer complaints.

While CPSD staff has been able to achieve limited results with the PSP Enforcement program, the combined efforts of CPSD and the PSP Committee to implement the Public Interest Payphone program have been entirely unsuccessful. As noted in the PSP Committee’s last

quarterly report, only 13 applications for Public Policy Payphone designation have been received over the past five years and only two of the proposed locations have qualified under the Commission's rules. Just as problematically, no mechanism exists for delivering any subsidy support either to those two proposed payphones or to any of the few dozen Public Policy Payphones that the incumbent LECs may continue to operate unprofitably but for public service reasons. Meanwhile, over the past five years, some \$400,000 has been spent just to administer this inactive program.

4. Continuation of the Payphone Programs in Their Present Form Is Counterproductive to Achieving Universal Service Objectives.

The shrinkage of the installed base of payphones, described above, has not been a random or uniform development. Instead, wireless substitution for payphone usage has been more substantial at some locations than at others and so payphones have been removed most frequently from locations where most potential customers have changed their habits from stopping at a payphone to placing a wireless call. As a consequence, the payphones that remain in service tend to be in locations serving persons who are less likely to carry a cellphone and more likely to be at the lower end of the economic spectrum.

From anecdotal evidence consistently reported by news media, academic studies, and its own members, CPA believes there is a significant trend toward preserving a higher percentage of the existing base of payphones in locations where routine users, passersby, and other potential customers are relatively unlikely to own or carry a cellphone or other personal communicator. Payphones are more likely to be retained in poorer neighborhoods in inner cities or rural areas or out-of-the way places where wireless service is unreliable than in more affluent urban or suburban locations. As price constraints on basic telecommunications services are relaxed, the number of residents of neighborhoods and communities at the lower end of the

economic scale who must depend on payphones for access to the public telecommunications network is likely to increase. For all these reasons, the payphones that remain in service in our communities are becoming ever more closely identified as instruments for the advancement of the longstanding goal of Universal Service.

There are several ways to view payphone services in the context of the Commission's Universal Service objectives. One approach is to identify a discrete set of payphones that should be maintained or placed to serve public safety or welfare needs, regardless of whether they can be operated economically, and to provide explicit subsidy support for those facilities. This is the approach taken by the Public Policy Payphone program, but over nearly 20 years of trying the Commission and the payphone industry have been unsuccessful in making it work. A different approach is to recognize that a much greater number of payphones, most of which are being operated economically, serve the Commission's Universal Service objectives, and that retaining as many of those payphones in service as possible should be one of the Commission's policy goals. CPA urges the Commission to follow this new approach.

What this means, then, is that the Commission's Universal Service objectives will best be served by improving the economic prospects for California's entire payphone base. Consistent with the light-handed regulatory approach the Commission is pursuing in the Uniform Regulatory Framework proceeding, the Commission should be seeking to relieve payphone providers of unproductive regulatory burdens – particularly the costs associated with the PSP Enforcement program and the potential costs of an expanded Public Policy Payphone program. The goal of Universal Service will best be served by enhancing the viability of payphone services wherever they are still provided in California, because these truly do provide a lifeline for many residents of California and visitors to our fair state.

5. In Light of Market and Regulatory Changes, CPA Proposes Major Changes in Both Funding and Operation of the Payphone Programs

As explained above, the payphone services industry is an industry in decline, but one that increasingly delivers its services to segments of our population whose access to the public telecommunications network is severely limited. The existing Public Purpose Programs relating to payphone services were designed for an era of prosperity and expansion in those services. Both their funding arrangements and their operational complexity are counterproductive to achievement of the Commission's Universal Service goals. Accordingly, the time is ripe for substantial changes in both the funding and the operation of the Commission's payphone programs.

- a. The PSP Enforcement program should respond to consumer complaints but should continue to require termination of LEC service as its ultimate sanction.

CPA does not dispute the continuing importance of consumer safeguards applicable to payphone services – particularly the requirements that payphones provide access without charge for 911 emergency calls and 711 calls for the deaf and disabled, allow access to toll-free numbers, and provide accurate signage assisting users to place calls and to access ancillary services. However, as the PSP Committee urged the Commission in its letters of August 2005 and June 2006 (Exhibits B and D to these comments), the reduced prominence of payphone services in meeting the public's communications needs and the industry's success in improving its performance in response to competitive pressures justify a new approach to tariff enforcement. Such a new, less burdensome approach is essential in the context of the straitened financial circumstances facing today's payphone services industry.

CPA joins the PSP Committee in recommending that the PSP Enforcement program be modified so as to operate mainly by use of a "hot line" to receive consumer complaints, with a

limited commitment of staff to follow up on identified complaints. This “reactive” approach to regulatory enforcement, consistent with the way the Commission regulates both large and small telecommunications utilities, will target and eliminate abuses while freeing Commission staff to focus on issues more important to California’s telecommunications service customers. It also will relieve PSPs from the burden of continuing increases in the fees they now must pay to support PSP Enforcement program costs.

The ultimate sanction available to Commission staff through the PSP Enforcement program always has been to order the local exchange carrier (“LEC”) to terminate service to an offending PSP for noncompliance with LEC tariff conditions. While the “reactive” enforcement approach recommended above will reduce administrative costs, it need not diminish the effectiveness of the program. In fact, focusing on cases originating with consumer complaints, where the consumer’s complaint is verified and not promptly remedied, should expedite the imposition of sanctions, including the termination of LEC service to the offending PSP. CPA supports the continuing imposition of that sanction in appropriate cases.

- b. The PSP Enforcement program should no longer be funded by a surcharge on COPT line charges, but rather by the PUC Reimbursement Fee.

If the PSP Enforcement program is reformed in the manner proposed by the PSP Committee and elaborated above, the administrative cost associated with PSP Enforcement should be significantly reduced. Because the method of oversight and enforcement for payphone services will become more consistent with the methods of regulation the Commission applies to telecommunications utilities, it will be reasonable – and simpler from an administrative point-of-view – to fund the PSP Enforcement program through the Public Utilities Commission Reimbursement Fee, collected by all utilities from all customers, rather than through a surcharge applied only to the COPT access line.

In addition to simplifying the Commission's own financial accounting, this change will relieve PSPs from a small portion of the current costs of maintaining and operating each of their payphones in California. In many cases, this modest "rate relief" may enable a PSP to retain a payphone in place that might otherwise have to be removed due to unprofitability. In a declining industry, every little bit of rate relief is important.

- c. The Public Policy Payphone Program should be terminated but the Commission should invite requests for placement of Public Policy Payphones under the Rural Grant Program.

For all the reasons discussed above, it should be clear to all concerned that the Public Policy Payphone Program has been unsuccessful and has no prospects for success in its current form. The grand plan that the Commission envisioned in D.98-11-029 was a solution too big for the problem and too complex for an industry heading into decline. The real need for Public Interest Payphones has turned out to be very limited.

The few instances where a subsidized payphone really is needed for the public safety or welfare – and cannot be supported by a local agency of some kind – appear almost exclusively to arise in small, rural communities or locations lacking adequate access to the public telecommunications network. These situations appear to qualify for support within from the Rural Grant Program that the Commission has established pursuant to Public Utilities Code §276.5. While §276.5(a) limits the grant program to "aid in establishment of telecommunications service in areas not currently served by existing local exchange carriers," this phrase need not refer only to an LEC's entire authorized service area. Rather, it is fair to interpret "area not currently served" as including a local community "not currently served" by a public telephone.

Thus, in instances where communities or individuals seek the installation or retention of payphones as Public Policy Payphones, the Commission should encourage the interested

parties to participate in the Rural Grant Program as authorized by §276.5 and as articulated in the Commission’s D.03-09-071, adopted September 18, 2003, in its *Rulemaking on Implementation of Assembly Bill 140 Establishing the Rural Telecommunications Infrastructure Grant Program*, R.03-02-034.

- d. The Commission should seek legislation transferring remaining balances in the payphone program accounts to the PUC Reimbursement Account, terminating the payphone program accounts, and disbanding the PSP Committee.

Public Utilities Code §279 created the PSP Committee in its present form and governs the administration of the “Payphone Service Providers Committee Fund,” which appears to be equivalent to the fund that supports the PSP Enforcement program. In order to ensure that the Commission acts consistently with applicable law, CPA recommends that the Commission promptly seek legislation to transfer remaining balances in both payphone program accounts – *both* the PSP Enforcement program account and the Public Policy Payphone program account *and* the PUC Reimbursement Account – to the PUC Reimbursement Account. The proposed statute also should terminate the payphone program accounts and should disband the PSP Committee.

PSP Enforcement then will become the responsibility of Commission staff, probably apportioned between the Consumer Affairs Branch and CPSD. Public Policy Payphone Programs will be the responsibility of Telecommunications Division, addressed in response to applications under the Rural Telecommunications Infrastructure Grant Program

### C. Conclusion

CPA and its members, comprising many of California’s independent payphone service providers, sincerely appreciate the opportunity the Commission – and particularly Assigned Commissioner Chong and Administrative Law Judge Bushey – have provided for

consideration in this proceeding of the urgent need for reform of the Commission's Public Policy Programs relating to payphone services. As CPA has sought to demonstrate, the payphone services industry faces very serious challenges, but also has an important role to play in the achievement of the Commission's Universal Service goals.

In accord with the views previously conveyed to the Commission by the PSP Committee, CPA urges the Commission to take bold steps in this proceeding to eliminate the significant burdens imposed on payphone service providers by the overly complex and ineffective PSP Enforcement and Public Policy Payphone programs and to chart new approaches for tariff enforcement and for the provision of payphones that may be needed in remote, rural areas. With these bold steps, the Commission will substantially enhance the ability of California's payphone service providers to help serve the cause of Universal Telephone Service.

Respectfully submitted,

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July 28, 2006

## VERIFICATION

I have served as counsel for California Payphone Association since 1986, and I am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 28, 2006, at San Francisco, California.

/S/ MARTIN MATTES

Martin A. Mattes

Attorney for California Payphone Association