STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-420

April 16, 2004

MAINE PUBLIC UTILITIES COMMISSION
Regarding the Provision of Payphone
Service in Maine

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

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## I. SUMMARY

In this Order, we decline to initiate a public interest payphone program.

## II. BACKGROUND

On August 21, 2002, the Office of the Public Advocate (OPA) submitted a petition asking that the Maine Public Utilities Commission (PUC) open an investigation, or an inquiry, into Verizon's practices and policies with respect to public payphones. The OPA is concerned that Verizon intends to remove public payphones it deems uneconomic or to maintain them only if the relevant governmental agency agrees to pay higher monthly rates (i.e., for a semi-public payphone).

The OPA stated that it had received a number of complaints regarding the availability of public payphones in general and Verizon's new policies in particular. Subsequent to the OPA's filing, we also received a number of comments and requests, and one petition regarding the location of public payphones. Residents of Cliff Island submitted a petition requesting a PUC investigation into Verizon's payphone policies regarding the location of a payphone near the Cliff Island Association Hall. Residents of Pulpit Harbor (North Haven Island) also requested assistance regarding the location of a payphone on the Pulpit Harbor dock.

The OPA petition recommended that the PUC consider a new rule that would require at least one public payphone in the downtown area of every municipality of 500 or more people and require a minimum standard of one public payphone for an established number of square miles of inhabited area.

The Federal Communications Commission (FCC) and this Commission have previously examined public interest payphones (PIP) in response to Section 276(b)(2) of the Telecommunications Act of 1996 (TelAct) which required the FCC to determine whether "public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would not otherwise be a payphone,"

should be maintained. [1] The FCC directed each state to evaluate whether it must take any measures to ensure the existence of PIPs. The FCC left the funding of a PIP program to the discretion of the individual states so long as the funding mechanism fully and equitably distributed the cost of such a program and did not involve the use of subsidies prohibited by Section 276(b)(1)(B) of the TelAct.

The FCC adopted the following definition for a PIP: "a payphone which (1) fulfills a public policy objective in health, safety, or public welfare, (2) is not provided for a location provided with an existing payphone contract, and (3) would not otherwise exist as a result of the operation of the competitive marketplace."

In 1998, the PUC conducted an inquiry in Docket Number 98-356. In an Order issued May 21, 1998, we declined to initiate a public interest payphone program. We stated in the Order that if in the future evidence was presented to indicate a need, this issue would be addressed.

On January 17, 2003, we issued a Procedural Order in Docket Number 2002-495 – the Public Advocate's petition to initiate an investigation regarding conversion and removal of public payphones – asking payphone providers and interested persons questions regarding numbers of installed payphones, proposed definition of PIP locations, and PIP funding mechanisms. We received a number of responses.

On June 17, 2003, we opened this Inquiry to gather information regarding the need for public interest payphones (PIPs) in Maine. At the same time, we also declined to act on the Public Advocate's request to investigate Verizon's payphone policies or recent practices with regard to payphone removal, closing Docket No. 2002-495. We received further comments and responses from Verizon, TAM, OPA, Town of Vinalhaven, Virginia Travers, Family Violence Project, Vacationland Bowling Center, the City of Augusta, the South Portland Public Library, and Janet Christrup of Steuben.

## III. SUMMARY OF COMMENTS

In the Inquiry, we asked commenters to indicate the evidence, including any quantitative evidence, for or against the proposition that subsidized PIPs are necessary in Maine. In particular, if lack of demand for pay phone calling has led to the removal of payphones by LECs and independent operators, we asked for input on the justification for subsidization. We asked what indicators might be used to determine the geographic location of PIPs (e.g., need for access to emergency services on roadways, availability of cellular service in the area in question, personal income data and payphone locations by census block, etc).

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[1] The FCC addressed the issue of PIPs in its September 20, 1996, Order in CC Docket No. 96-128 (Payphone Order), particularly in paragraphs 264 through 286.

Specific comments described where a PIP should be located – isolated areas with limited cell phone access (docks on islands, rural roads, etc.), and for which particular constituencies they should be available – elderly or children in libraries or recreational areas, homeless persons, victims of family violence.

Eleven residents of Cliff Island stated that the public payphone outside the Cliff Island Association hall should be reinstalled because it was the only payphone on the island "as a matter of safety and the public convenience." Cliff Island is a small island in Casco Bay with approximately 70 year-round residents and an additional 200 to 300 summer residents. Cell phone service is practically non-existent. The residents believe that the semi-public payphone rate is unreasonable ($75 per month, $900 per year from Verizon).

Virginia Travers stated that a payphone in Pulpit Harbor (North Haven Island) that was removed was important for the safety of mariners that use the harbor as a safe haven because cell phone service was inadequate. She asked that the PUC recognize that payphones are important for public safety, particularly in coastal or remote areas of Maine and that the Pulpit Harbor payphone be restored.

The Town Manager of the Town of Vinalhaven, Marjorie Stratton, stated that Verizon would remove the public payphone at the Fox Islands Thoroughfare boat landing in Vinalhaven unless the town paid the semi-public payphone rate. Stratton stated that having the payphone was a public safety issue and that municipalities might be interested in cost sharing to keep a payphone in place. She suggested that a definition for PIP could be "a payphone placed in a location where other forms of communication are very limited and public safety is an issue."

Janet Christrup of Steuben stated that she does not have a telephone and that she depends on payphones for routine transactions. She said that a public payphone should be installed at a local store or at the town office in Steuben.

The Director of Health and Welfare for the City of Augusta, Mary Frances Bartlett, said that public payphones are often the only means of communication for people who are homeless. She said that access to public payphones is a health and safety issue for a vulnerable segment of the population.

Claire Dube of the Vacationland Bowling Center in Saco said that a payphone in the facility is necessary for customers, especially those under eighteen and the elderly. Travelers, commuters, and campers from the campground across US Route 1 also use the payphone in the bowling center. Dube believes that the semi-public payphone rate is too high.

Linda Wilcox, Executive Director of the Family Violence Project, stated that victims often use payphones to call the 24-hour crisis line. She strongly urged the PUC to require public interest payphones.

Marian Peterson, Library Director of the South Portland Public Library, stated that library patrons should have access to public payphones. She said that allowing patrons to use the library's business phone was impractical and unworkable for the staff.

The OPA stated that the lack of demand for payphones, and the resulting decline in numbers, is not an indication of lack of need. On the contrary, the OPA argues, inadequate demand may suggest a need for some form of support. The primary consideration should be the need to ensure the availability of payphones in remote locations. The OPA continues to propose PIP location standards that call for a minimum of one payphone in each municipality having over 500 persons and a minimum of one payphone for a given number square miles in inhabited areas.

Verizon's position is that any definition of a PIP location should be consistent with the FCC's prescribed definition of public interest payphones. Verizon also stated that government entities (i.e., local municipalities) could designate and pay for PIPs in the same manner as they locate and provide other public health, safety, and welfare services.

TAM stated that if the Commission initiated a PIP program the standards established by New Hampshire should be used. The definition used by the New Hampshire Public Utilities Commission follows the FCC definition, adding more detail regarding revenue requirements, location, type of phone and distance from other PIP locations (the New Hampshire legislature recently passed a bill that would fund PIPs from abandoned customer deposits). However, TAM does not believe that the Commission should be involved in the regulation of the payphones at all, public interest or otherwise.

We also requested information regarding possible funding mechanisms to support payphones identified as PIPs. Those few states that have a PIP program use a variety of funding mechanisms – surcharges (either on payphone operators or telecommunications providers); special funds; permit or location fees; universal service funds; abandoned customer utility deposits; or requiring payphone operators to place PIP instruments in conjunction with their normal operation. For funding, the OPA supports an industry assessment on Maine's payphone market or by governmental contracts with payphone operators who seek to provide profitable payphones on public property. No one else commented on a possible payment mechanism for public interest payphones.

## IV. DECISION

The question before us is whether Maine should have subsidized payphones. Preliminarily, we note that decisions to impose an assessment on the general population or on some segment thereof to achieve a public purpose are generally made or directed by the Legislature or the governing bodies of municipalities. At least conceptually, we see no reason why this should not be the case for payphones. To the extent that the objective here is to further the public safety through funds which some or

all phone users or providers are required to pay by the State, the issue strikes us as within the Legislature's purview.

A practical reason for viewing this issue as legislative in nature is that the Legislature can consider the public safety concerns in a much larger context. For example, some of those concerns might be better addressed through other means, such as improved street lighting or more frequent police patrols. By contrast, to the extent there is a problem, we are limited to only one solution – namely payphones – and were we to grant the OPA's petition, municipalities and others would almost certainly choose that solution, not necessarily because it is the best but because it is free or discounted.

Although the above considerations might suffice to dispose of the OPA's petition, we recognize that there is a precedent for utility commissions considering the question of subsidized payphones. For that reason, we will proceed to address the substance of the petition.

Responses to our Procedural Order in Docket No. 2002-495 and to the Notice of Inquiry in this docket indicate that the number of public and semi-public payphones has declined substantially since March 1998, when the first inquiry was conducted. Information provided by payphone providers shows that the total number of payphones in Maine in 2003 (public and semi-public) was about 4,500 – down from about 8,200 in March 1998. The number of payphone providers, both LEC (local exchange carrier) and COCOT (customer owned coin-operated telephone) operators, has also declined.[2]

Availability of and subscribership to cellular telephone service have increased significantly, however, and are major reasons cited by payphone providers for the declining profitability of payphones. According to information provided by the Emergency Services Communication Bureau, there are over 515,000 wireless phones in Maine. That number has steadily increased from fewer than 200,000 in 1999.

We believe that another significant reason for the steady decline in payphones is Maine's recent history of high household telephone subscribership or penetration rates. The most recent FCC report shows Maine's telephone subscribership level at 97.3%. [3] The penetration rate among low-income households in Maine was the highest of all states in March 2003, at 96.4%. [4]

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[2] While only two COCOT companies responded to our Procedural Order, decreased numbers of COCOTs are indicated by public access line (PAL) data supplied by Verizon.

[3] Telephone Subscribership in the United States, Wireline Competition Bureau, Federal Communications Commission. Released January 2004.

[4] Telephone Penetration by Income by State, Wireline Competition Bureau, Federal Communications Commission. Released February 2004.

We sought comment on approaches and standards that have been adopted or considered in other states, and the applicability of such approaches in Maine. The information received does not support our adopting a PIP program. While the FCC and other states adopted broad definitions of a PIP – it should fulfill a health, safety, or public welfare function – it is not clear from the comments how to convert those general definitions into concrete decisions regarding the placement of payphones where they will provide the most help.

The OPA's concern is that payphones may provide the sole means of access to emergency services, especially in areas of limited cell phone coverage. That concern does not, by itself, indicate where there is a need for a PIP. The OPA's location standards are arbitrary; some of those locations may in fact be self-supporting. Locations that pay for themselves are being addressed by the market and are not in need of subsidization.

Those locations that are not self-supporting would require a decision from the Commission about need, exact location, and subsidy amount. Again, we find the OPA's standards lacking in any empirical support. In sparsely populated areas, one payphone every X miles (or X square miles) is unlikely to be useful in emergencies unless the emergency occurs nearby. The mere fact that a payphone is removed from a location does not lead to the conclusion that a PIP in needed there. Indeed, it may well reflect the fact that there is little or no demand for payphone service at that location. Some of the commenters express concern about locations, especially on islands, where cell coverage is limited. In such situations, payphone service purchased by the local government or a business may well be cost-effective based on the amount of use. Finally, alternatives for emergency situations, such as wireless instruments possessed by those in need or those who stop to assist, are clearly superior to the declining population of public payphones, as they are not tied to a fixed location.

While we were not provided with evidence for payphone locations that satisfy a "need" by low-income consumers, we are gratified that Maine's Lifeline/Linkup program is so successful. We believe that the Lifeline/Linkup program provides substantial assistance to low-income households and we will review opportunities to increase participation in that program and the level of subsidy.

We will not devise a funding mechanism at this time, as the commenters have not convinced us that a public interest payphone program is presently necessary in Maine. For example, implementing a payphone provider surcharge or assessment on what appears to be a declining industry could result in the loss of additional payphones.

In locations where a payphone could provide a public benefit, we believe local authorities are best able to make that judgment and provide the financial support. In most cases, a PIP would be located on public property within a municipality. The local government officials have the best knowledge regarding the public safety needs of their citizens and constituencies, and can provide the necessary funding from their fiscal

budgets. Municipalities might also require bidders for payphone service at profitable locations (bus stations, civic centers, airports, etc.) to also provide payphones at selected public safety locations. There was no indication by government officials that the modest cost of semi-public payphones would impose an insurmountable financial burden on municipal budgets. Locations within private property are best funded by the property owner.

Finally, we believe that a number of alternatives exist to provide some type of publicly accessible telecommunications device instead of a traditional public payphone. Location owners (public or private) could place extension telephones (i.e., from Centrex or PBX service) in a public location that are toll-blocked, allowing free access to emergency services as well as access to toll calling using toll free numbers and credit cards; private "pay" or "non-pay" telephones could be installed using either a business line or public access line service; and semi-public payphone service continues to be available.

Accordingly, we decline to initiate a public interest payphone program at this time.

Dated at Augusta, Maine, this 16th day of April, 2004.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Diamond
Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.