

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6012

Generic Investigation into the Transition from)
Regulation to Competition for Public Telephone)
Services in Vermont)

Order Entered: 12/28/99

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I. INTRODUCTION

A. Summary of Decision

In this Decision, I make recommendations to the Public Service Board ("Board") regarding a number of contested issues related to the transition from regulation to competition for public telephone services in Vermont. I also recommend that the Board accept the Stipulation and Agreement between the Vermont Department of Public Service ("DPS") and the parties. My recommendations on contested issues and the matters settled in the Stipulation and Agreement are summarized as follows:

Access to Persons with Disabilities: I recommend that the federal access standards of the Americans with Disabilities Act ("ADA") regarding payphone location, installation, and equipment should be incorporated into the Board's rules; and payphone providers should be required to furnish disability access information to location owners.

Annual Placement of Directories: I recommend that all payphone providers should be required to furnish a copy of the local telephone directory to each of its locations annually.

Incoming Calls: I recommend the following requirements regarding incoming calls: all payphones must accept incoming calls, including those grandfathered as a result of Docket No. 5566. All payphones must use two-way tariffed access lines. A waiver of the incoming call requirement could be available if a location owner certifies in writing that he/she would not allow a payphone on the premises if it accepted incoming calls, or if a law enforcement agency asked for a waiver for a specific public safety purpose. Any waivers granted by the Board should be for a five-year period and subject to renewal. Waivers provided at the request of law enforcement should be granted with the durations determined on a case by case basis, but not for more than five years. An application for renewal should be permitted two months before the waiver's termination date. Upon being granted a waiver, the payphone provider or location owner requesting the waiver should be required to conspicuously post "no incoming calls" on the instrument. The payphone's telephone number should not be posted on the phone. Upon being granted a waiver, the access line should receive a line block for Caller I.D. and *69 return calling. The line blocks should remain in effect only for the duration of the waiver period. The line blocks prevent the use of the *69 call return and Caller I.D., but do not block incoming calls

dialed by the Public Safety Answering Point ("PSAP") operator, who has the payphone telephone number.

Accounting for Over Deposits/Crediting Additional Time: I do not recommend any additional requirements related to payphone over-deposits at this time. However, for customers who do make over-deposits, payphone providers must continue to have a refund procedure for anyone who wants to request a refund, and they must clearly post notices on their phones as to how customers can obtain such refunds.

Posting:

Payphone Address or Location: I recommend that all payphone providers should be required to post the address or location of the payphone on the payphone instrument.

Accessing Provider of Choice: I recommend that instructions as to how consumers may access their provider of choice should no longer be a requirement; but, instead, payphone customers should be alerted that they have the right to use a carrier other than the one to which the payphone is presubscribed. Bell Atlantic's current notice to this effect should become the industry standard.

Minimum Duration for Local Calls: I recommend that 5 minutes should be set as the default minimum duration, but Payphone Service Providers ("PSPs") should be allowed to use a different time period so long as that time period is clearly posted on the payphone instrument.

Refunds: I recommend that all payphone providers must list on the payphone a telephone number consumers can call to obtain a refund. If the providers do not have a live operator to take such a call at all times, providers must have an automated answering service to take the necessary information from the consumer.

Service Quality: I recommend that the current requirement that payphone providers must repair impaired payphones within 24 hours of a report or discovery of the impairment should be maintained.

Stipulation and Agreement: I recommend that the Board adopt the following requirements as outlined in the Stipulation:

1. The Board should eliminate the requirement that payphone providers subscribe to measured business service where available. The Board should replace that requirement with the following: "Payphones may not be attached to residential lines."
2. The Board should eliminate the requirement that payphone providers offer the same or better quality of service as existing local exchange carrier coin phone service.
3. The Board should retain as is the requirement that coin phones accept nickels, dimes, and quarters and be able to refund coins for uncompleted calls.
4. The Board should retain as is the requirement that services provided with no charge cannot require a coin deposit.
5. The Board should eliminate the requirement that payphone providers must allow access to all intra- and interstate toll providers, and should replace such requirement with the following: "Payphone providers may not block access to any toll provider. However, this requirement shall not prevent subscription to outgoing international call blocking services offered by local exchange companies."
6. The Board currently requires the following information, among other information, to be posted on payphones: (1) the phone number of the provider; (2) full and clear instructions on the use of the phone; (3) the name of the phone's owner; (4) how to report complaints and obtain refunds; (5) the address and telephone number of the Department's Consumer Affairs and Public Information Division ("CAPI") and a statement that CAPI should be contacted if a user's complaint remains unresolved; (6) a statement that privacy cannot be ensured if the phone is connected to a line with an extension. The Board should modify this posting requirement (a) to clarify that the privacy warning be posted only on payphones connected to a line with an extension, (b) by substituting CAPI's address and telephone number with its toll-free number only, and (c) by requiring, on payphones that do not accept incoming calls, a statement notifying the user that the phone will not accept incoming calls.
7. The Board should retain as is the requirement that payphone providers must post information on dialing emergency services, a toll free number for rate information, and a toll free or collect number for reporting troubles and getting refunds.
8. The Board should eliminate the prohibition on charging users for directory assistance.

9. The Board's requirement permitting the installation of coinless phones, so long as doing so will not lower or limit the availability of coin operated phones, should be modified as follows: "Payphone providers may install coinless phones so long as doing so will not unreasonably lower or limit the availability of coin operated phones."

10. The Board should eliminate the requirement that rates for touch-tone payphones be identical to the rates charged for rotary payphones.

11. The Board should eliminate the requirement that all payphones charge \$0.10 for local calls.

12. The Board should cease requiring Bell Atlantic-Vermont to provide the Board with prior notice of payphone removals.

13. The Board should cease requiring applicants for a certificate of public good ("CPG") to disclose all potential payphone locations in their CPG applications.

14. The Board should prohibit providers from installing payphones without both numbers and letters on their keypads.

B. Procedural History

On October 17, 1997, the Board opened this docket to examine issues related to the transition from regulation to competition for public telephone services in Vermont. Specifically, this investigation included the following:

(1) the review of payphone prices to ensure that competitive markets have developed and, if necessary, the development of a petition to the FCC seeking authority to regulate payphone rates;

(2) the review of the need for public interest payphones and, if needed, the development of recommendations for financing and locating public interest payphones; and

(3) the review of other issues related to the transition to competitive payphones in Vermont, such as standard terms and conditions of service for all providers of payphones, including customer-owned, coin-operated telephones ("COCOTS") and customer-owned, pay telephones ("COPTS").

In January of 1998, workshops were held with the parties which defined the issues and determined general areas of agreement and disagreement. The parties also agreed to establish a payphone market monitoring program to assess the need for a public interest payphone program

and to track payphone prices to ensure that a competitive market exists in Vermont. Finally, the parties agreed to work on other transitional issues and provide a settlement agreement to the Hearing Officer on as many of these issues as possible.

After the parties filed data regarding the existing payphone market, a public interest payphone-specific workshop was held on August 26, 1998. From the information provided in these filings and at the workshop, the Hearing Officer concluded, and the Board confirmed in an Order dated September 22, 1998, that there was no need for a public interest payphone program at this time. In the decision, the Board agreed with the conclusion of the parties and the Hearing Officer that the payphone market should be allowed to develop for an additional period. The Board also required the parties to file periodic reports so that it can be determined if unmet payphone needs are being satisfied by the market.

The DPS and the other parties had earlier filed a stipulation on August 3, 1998, that outlined agreements among the parties on a number of issues related to the transition to competitive payphones. Evidence was taken on the issues that were not resolved by the stipulation at a technical hearing on December 11, 1998.

Based on the substantial evidence in the record and the testimony presented at the hearing, I hereby report the following findings to the Board in accordance with 30 V.S.A. Section 8.

II. FINDINGS OF FACT

1. Payphones are an important aspect of community infrastructure, playing a role in Vermont's economy, public safety and general welfare. Frankel 10/20/98 pf. at 2; tr. 12/11/98 at 53 (Allen). The public has come to rely on the availability of payphones just as it relies on other public services like transportation and law enforcement. Frankel 10/20/98 pf. at 2.

2. Although competition has been introduced to the provision of public phones, most payphones remain monopolies at their individual locations. Instances in which a single location has multiple payphones provided by multiple companies are rare in Vermont. Generally, when consumers need to use a public phone, they are not in a position to comparison shop. This fact

mitigates usual market pressures in a fully competitive environment which tend to drive prices down and service quality up.² Id.

Access to Persons with Disabilities

3. According to DPS research, it is likely the payphones in Vermont do not currently provide full access for persons with disabilities. Frankel 8/24/98 pf. at 3-4.

4. For example, the ADA requires that at least one telecommunications device for the deaf ("TTY or TDD") be provided where four or more phones are provided at a location and one is an interior phone.³ TTYs may be provided in compliance with the ADA in two ways. First, TTYs can be part of the payphone instrument. The TTY device generally fits in a drawer underneath the payphone. Second, in places like hotels, TTYs can be kept in a secure location so long as consumers have access to it 24 hours a day. Those devices cost approximately \$200-\$600. Frankel 8/24/98 pf. at 4; tr. 12/11/98 at 15-16 (Frankel).

5. The ADA requirements concerning access to payphones by persons with disabilities are quite broad. They encompass requirements for the number of phones with particular accessibility features, mounting requirements, signage, and circumstances under which volume controls and telecommunications devices for the deaf (TTY or TDD) are mandated. Frankel 8/24/98 pf. at 2.

6. Vermont Telephone Company ("VTel") has installed three banks of four or more phones, but only one bank provides a TTY. VTel and New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont ("Bell Atlantic") reported that the provision of TTYs is up to the location owner. Bell Atlantic reports that it will supply a TTY if requested by the location owner. Frankel 8/24/98 pf. at 4.

7. Ms. Peg Franzen of the Vermont Center for Independent Living reported in the Board's January 16, 1998, workshop in this docket that "there is only one [TTY] telephone in a rest area

2. Despite the FCC's findings that a competitive payphone market exists, the evidence here casts doubt on that conclusion. Competitors exist, although Bell Atlantic continues to provide the vast majority of payphones. But the primary competition relates to the vendor providing a payphone at a particular location, not the prices charged to retail customers. Since competition has commenced, prices for the initial block of time have increased from 10 cents to 35 cents.

3. The ADA requirements for payphones can be found at 36 C.F.R. § 1191, App. A (1998). See sections 4.1.3(17) and 4.30.7 through 4.31 of the Appendix.

in the State of Vermont. . . . Not one pay TTY at any of the hospitals. There's no pay TTY at the airport." Her statement suggests that current ADA requirements do not provide meaningful access in Vermont and that some proportion of currently installed payphones are not in compliance with ADA requirements. Frankel 8/24/98 pf. at 4.

8. It is not clear whether the apparent lack of compliance with the disability access requirements results from the rules not providing the disabled with meaningful access to payphones, or because the rules are not enforced against location owners who do not comply. Nevertheless, the lack of payphones that provide meaningful access to people with disabilities is a problem. In some circumstances the problem can be a crisis for individual people. For example, it could be critical for a deaf person to make a call from a hospital. If that hospital does not have a TTY, that person cannot make a call. Tr. 12/11/98 at 18-21 (Frankel).

9. In its February 21, 1986 Order in Docket 4946, the Board required payphone providers to "conform to its [the FCC's] requirements for hearing aid compatibility and access for the disabled." In Docket 5566, the Board repeated these requirements (Order of 1/6/95 at 9). Frankel 8/24/98 pf. at 2.

10. The terms used in Dockets 5566 and 4946, which reference hearing aid compatibility and access for persons with disabilities rather than specifying ADA compliance, may be construed to cover all ADA requirements. However, specific reference to the ADA removes any possibility of ambiguity. Frankel 8/24/98 pf. at 2.

11. Other state and federal laws regarding access by persons with disabilities may apply to payphones. For example, the FCC recently issued a Notice of Proposed Rulemaking on implementation of Section 255 of the Telecommunications Act, requiring that manufacturers and service providers ensure that their telecommunications equipment and services are accessible to those with disabilities, to the extent that it is readily achievable to do so (47 U.S.C. § 255). Likewise, specific FCC rules require payphones to be hearing aid compatible [47 C.F.R. §§ 68.112(a), 68.112(b)(4)]. To the extent that these rules, and any other applicable state and federal law or regulation, may impact payphone providers, the Board's rules should be broad enough to encompass these requirements now and in the future. Frankel 8/24/98 pf. at 3.

12. Bell Atlantic provides to location owners a comprehensive guide to ADA compliance. This guide covers all aspects of the ADA, including physical accessibility, TTY requirements, and signage. Provision of such a guide is an excellent means of informing location owners of their obligations to ensure that lack of knowledge is not a reason for non-compliance. This practice is not burdensome and should be required of all providers. Frankel 8/24/98 pf. at 4-5; exh. DPS-DF-1; tr. 12/11/98 at 9, 17 (Frankel).

13. IMR Capital Corporation d/b/a IMR Telecom ("IMR Telecom") discusses disability access requirements with location owners, but does not provide location owners with any written materials. Tr. 12/11/98 at 181 (Niden).

Discussion: Disability Access

It appears from the evidence that Vermont payphones do not currently provide full access for persons with disabilities. It is unclear, however, whether that problem results from a lack of enforcement of rules regarding disability access or whether the access rules themselves are insufficient to meet the needs of Vermont's disabled community. The evidence also demonstrates that this problem stems, at least in part, from payphone installations that do not comply with federal mandates. Regardless of the cause, the Board's current policy is not sufficient to ensure that state law affords sufficient access because it does not clearly refer to the ADA. Instead, the policy only makes reference to the FCC's requirements for hearing aid compatibility and access for the disabled. Docket No. 5566, Order of 1/6/95 at 9.

This issue can best be resolved by incorporating the federal access standards of the ADA with respect to payphone location, installation, and equipment into the Board's payphone rules, and by requiring payphone providers to furnish disability access information to location owners. By incorporating these federal access requirements into the rules, these ADA obligations can be more easily enforced. Also, ensuring that location owners have the requisite information about disability access requirements will help promote compliance with those requirements which should, in turn, translate into more meaningful access to pay telephones for Vermonters and others with disabilities.

These requirements will not be overly burdensome to payphone providers because Bell Atlantic and IMR Telecom already furnish information relating to the ADA requirements to

location owners. Bell Atlantic's method of communicating that information is superior to IMR's because it consists of providing written materials to which location owners may refer. Therefore, this procedure should become the standard that all PSPs should be required to follow.

Annual Placement of Directories

14. Currently, the Board does not require payphone providers to furnish directories at each pay station. This result was an outcome of Docket No. 5566, where the Board ruled that the mandatory provision and replacement of directories was not necessary because the cost of such a requirement outweighed the benefit to the public, due mostly to problems with vandalism. This Board decision was made, however, in the context of the Board's earlier requirement that payphone providers offer directory assistance free-of-charge. Allen 8/24/98 pf. at 2-3; Dockets 4946 and 5566.

15. Companies now may charge for directory assistance, thereby substantially increasing the benefit of directories to consumers if companies do actually charge for this service. Allen 8/24/98 pf. at 3.

16. Bell Atlantic, Vermont's largest payphone provider, does not currently charge for directory assistance. There is no guarantee, however, that the company will continue to provide this service free-of-charge to payphone users because federal law prohibits states from mandating free directory assistance. Allen 8/24/98 pf. at 4; Sheperd pf. at 4.

17. New England Public Communications Council's ("NEPCC's") members generally charge for directory assistance. Tr. 12/11/98 at 175 (Niden).

18. Vermont's economy relies heavily on tourism. Directories at payphones give people unfamiliar with the region a great deal of critical information; i.e. lodging, restaurants, the location of the closest garage or auto repair center, location of nearest hospital and other community information. For calls made from pay stations that charge for directory assistance, directories will allow payphone users to avoid additional charges when trying to locate services. Allen 8/24/98 pf. at 3-4; Allen 10/20/98 pf. at 1.

19. While directory assistance can provide a number if the designation is known to the caller, it cannot replicate the myriad of services the telephone directory offers. Allen 8/24/98 pf. at 3-4.

20. Although other information sources are available to tourists, for example highway welcome centers and informational kiosks, those sources may not be available 24 hours a day, may not have a payphone nearby, and may not have the great range of information available from a telephone directory. Tr. 12/11/98 at 43 (Allen).

21. Low income Vermonters, especially those without home telephones, have been hard hit by payphone rate increases. Placement of directories will alleviate the potential burden of paying for directory assistance. Allen 8/24/98 pf. at 4.

22. At least some payphone users prefer to use payphones that have directories. Tr. 12/11/98 at 212 (Sheperd).

23. Annual placement of directories, rather than an available directory at all times, would relieve companies from the burden of constant replacement and give the consumer an opportunity to find a directory when they needed one, at least some of the time. Allen 8/24/98 pf. at 3.

24. A requirement to place a phone book at each payphone station at least annually, or more often if the location owner requests it, is feasible. Most payphone service providers visit their pay stations regularly. An annual requirement relieves PSPs from any undue burden or cost created by constant replacement. Allen 8/24/98 pf. at 4-5; Exh. DPS-SA-1.

25. Each local exchange company already provides a local phone book for each telephone line. A payphone, as a telephone access line, should be treated no differently in this regard. Allen 8/24/98 pf. at 4-5.

26. Alaska, Florida, New Hampshire, North Carolina, Virginia, and Washington all require at least annual placement of directories at pay stations. Additionally, Maine requires either free directory assistance or a current directory available at all times. Bell Atlantic provides service in Maine and New Hampshire and seems to have no difficulty in meeting the requirements in those states. Allen 8/24/98 pf. at 5; tr. 12/11/98 at 209 (Sheperd).

27. According to the cost information provided by Bell Atlantic in this proceeding, the cost for annual placement of directories is not significant. The bulk of the costs relate to initial

installation of the hardware. Once the hardware is installed, the costs companies would incur to place a directory annually is minimal, or at least significantly less than the costs to furnish the hardware and the directory. Allen 10/20/98 pf. at 1; tr. 12/11/98 at 216-17 (Sheperd).

28. The record contains no evidence on the costs other payphone providers incur to furnish directories at their payphones.

29. Bell Atlantic does not know, without performing a special study, how many of its pay stations currently have a directory or are currently equipped to hold a directory. Exh. DPS-Cross-2; exh. DPS-Cross-3; tr. 12/11/98 at 212-14 (Sheperd).

30. It is possible that most of Bell Atlantic's payphones already have a directory and that its payphones are already equipped to hold one. Tr. 12/11/98 at 214-15 (Sheperd).

31. The wear and tear and risk of vandalism to directories is not a sufficient reason to reject a policy with significant public benefits. All payphones and the equipment accompanying them are subject to wear and tear and vandalism. Allen 10/20/98 pf. at 2.

32. Bell Atlantic opposes the Department's recommendation on the grounds that it "could" lead to increased costs which providers may pass on to consumers, "could" interfere with the incentive to provide free local directory assistance calling, "could" decrease the availability of payphones, and "could" upset competition in the payphone market. Sheperd pf. at 4.

33. Bell Atlantic operates in New Hampshire and is required by that state to provide a directory to each of its payphones annually. According to Bell Atlantic, that requirement has not impeded the widespread deployment of payphones in New Hampshire, and the company's witness was not aware of any plans to remove payphones due to the requirement. Tr. 12/11/98 at 207-09 (Sheperd).

34. Bell Atlantic disagrees with the Department's proposal on directories in part because the company believes the costs due to vandalism of directories are too high and customers would be irritated and inconvenienced if the directories the company supplied were damaged. Sheperd pf. at 5; tr. 12/11/98 at 263 (Sheperd).

35. When deciding whether to place a payphone at a particular location, Bell Atlantic does not take into consideration the likelihood of vandalism unless there is past history demonstrating that the payphone will not survive in that location. Tr. 12/11/98 at 265 (Sheperd).

36. Bell Atlantic does not know what percentage of damage to its payphones, directories at payphones, or postings on those phones are due to vandalism or other non-weather related conditions. Tr. 12/11/98 at 264 (Sheperd).

37. Bell Atlantic also based its opposition to the Department's directory recommendation in part on the potential that a location owner may refuse to allow a payphone on his or her property if the payphone provider were required to place a directory at the payphone one time each year. Sheperd pf. at 6; tr. 12/11/98 at 209-10 (Sheperd).

38. Bell Atlantic's witness was also not aware of any location owner who had refused a payphone due to New Hampshire's requirement that payphone providers furnish a directory to each payphone annually. Tr. 12/11/98 at 209 (Sheperd).

Discussion: Annual Placement of Directories

All payphone providers should be required to furnish a copy of the local telephone directory to each of its payphones annually. The public benefits of such a requirement are significant. Directories allow tourists visiting Vermont, or Vermonters traveling in parts of the state unfamiliar to them, to locate accommodations, restaurants, health care services, auto repair locations, and other services. They can be indispensable in certain circumstances, for example when one's car breaks down. Also, low-income Vermonters without home telephones rely on payphones for their telecommunications needs; directories provide information that they cannot get through directory assistance. More importantly, in locations where the payphone provider charges for directory assistance, the lack of a telephone directory is a barrier to low-income Vermonters' access to the telecommunications network.

Local directories are provided to all local exchange service customers due to the unique benefit they provide to telecommunications consumers. The Board determined that the provision of white page directories is part of "basic exchange service" in Vermont. See Investigation into NET's Tariff Filing re: Open Network Architecture, Docket No. 5713, Order of 5/29/96 at 65. Payphones are used for many of the same purposes as home or business telephones. If directories are an essential part of basic exchange service, there is no reason to conclude that they are not an essential part of payphone service.

In Docket No. 5566, the Board and the Department previously considered whether to require directories at payphones. In re Generic Investigation Into the Regulation of Public Telephone and Operator Service Providers in Vermont, Docket No. 5566, Order of 1/6/95, at 23, 46. At that time, payphone users were able to access directory assistance from payphones without charge. Id. at 18. The Board is now preempted from requiring free directory assistance from payphones. In re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, FCC 96-388, ¶ 62 (Sept. 20, 1996). Although directory assistance and directories do not provide identical services, the possibility that users will now pay for directory assistance makes the need for directories at payphones more compelling.

Moreover, the rationale in Docket No. 5566 for allowing payphone providers to furnish directories at their discretion does not withstand close scrutiny. The Hearing Officer and the Board concluded that the benefits of directories were outweighed by the costs. Docket No. 5566, Order of 1/6/95 at 46. A comparison of the evidence in this docket with that presented in Docket No. 5566 demonstrates why the Docket No. 5566 conclusion is no longer justified.

Significantly, there was no specific cost evidence cited in support of that cost/benefit conclusion in Docket No. 5566. Docket No. 5566, Order of 1/6/95 at 23, 46. The costs the parties did identify generally related to replacement and maintenance due to vandalism. Id. In addition, there was no mention in that Order of the benefits directories provide to consumers and the State. Id. In this case, the cost data presented does not demonstrate that placement of directories will create large costs. The evidence establishes that payphone providers do not know what percentage of damage to their payphones or directories at their payphones is due to vandalism. Tr. 12/11/98 at 264 (Sheperd). In fact, weather is more of a concern than is vandalism. Tr. 12/11/98 at 174 (Niden). Bell Atlantic does not consider the risk of vandalism when determining where to locate a payphone unless there is a proven past history that a payphone will not survive in a particular location. Tr. 12/11/98 at 264 (Sheperd). The evidence therefore establishes that vandalism and any associated costs should not be a major factor in determining whether to provide directories at payphones.

At the same time, placement of directories has been shown to provide benefits to consumers as discussed above; these benefits are greater where the PSP chooses to charge for Directory Assistance.

The annual placement of directories at payphones should mitigate any concerns payphone providers may have with respect to the costs of maintaining directories at payphones at all times. This requirement appropriately balances the public's interest in having directories available at all payphones with the providers' concerns about the undocumented high costs of maintaining those directories.

In addition to cost issues, PSPs argue that there is no evidence of widespread concern or complaint about the lack of directories at payphone locations, nor has it been shown that location owners who request placement of directories on their premises have been unable to obtain them. While it may be true that there have been few complaints to the DPS about the lack of directories, it is doubtful that the inconvenience payphone users (particularly tourists) might experience from not having a directory available would rise to the level that would stimulate such a complaint. Therefore, little weight should be given to this evidence when balancing the public's need for information with PSPs concerns about this requirement.

Finally, PSPs argue that if there is a requirement for annual placement of directories, during the ensuing year as directories are defaced, destroyed, or removed, the public will become irritated and inconvenienced and the value of this requirement will be diminished. While there is some merit to the argument that the value of the requirement will decline as the year progresses, this concern is not sufficient to overcome the many benefits to the public from having directories available for a significant portion of the year.

Incoming Calls

39. The Board presently requires all payphones to receive incoming calls unless a payphone provider obtains a waiver of the requirement from the Board. A waiver is available only if law enforcement officials request the waiver in writing for public safety reasons, or the location owner certifies in writing that he/she will not let the phone on the property unless it restricts incoming calls. Payphones which were already blocked from receiving incoming calls at the time of the Order in Docket No. 5566 was issued were grandfathered and are not currently

required to allow incoming calls. Shapiro 8/24/98 pf. at 4; Docket No. 5566, Order of 1/6/95 at 44.

40. Based on the information provided in Docket No. 5566, law enforcement requests for waivers would generally arise to prevent criminal activities, such as gambling or drug dealing, from being performed at payphones. Shapiro 8/24/98 pf. at 5; Docket No. 5566, Order of 1/6/95 at 20.

41. Some location owners prefer that their payphones not generate incoming call volumes. They do not want incoming calls to create queues of people waiting to use the phone, which may negatively impact other customers. Incoming calls may also impede the phone's ability to generate maximum revenue based on outgoing calls. Shapiro 8/24/98 pf. at 5.

42. The public benefits when phones receive incoming calls. In order of importance, these benefits include better access to emergency services by being able to receive call-backs, the ability to receive call-backs in other critical, if not emergency, situations, promoting tourism and, finally, user convenience. A payphone that blocks incoming calls is operating in opposition to the public interest, is less efficient, and provides less service to the public than one which allows two-way calling. Shapiro 8/24/98 pf. at 2.

43. It is important that payphones be able to receive incoming calls for public safety purposes. Emergency calls received from a payphone will be processed by the 911 call taker exactly like a call from a regular phone. Thus, a 911 call from a payphone needs to work exactly as any other call to E-911. The PSAP operator needs to be able to call back the payphone number if necessary, without qualification, because voice contact in an emergency can make the difference between life and death. It is normal procedure for E-911 PSAP operators to re-establish voice contact when necessary, as is the case, for example, when the PSAP operator does not receive the voice portion of the call or the voice communications gets disconnected because a panicked caller hangs up. Shapiro 8/24/98 pf. at 2-3; tr. 12/11/98 at 70, 72-75 (Shapiro); exh. BA-1 (DPS response to BA 1-4).

44. If a payphone blocks incoming calls because it uses one-way service, the E-911 PSAP operator cannot call back the payphone if needed. Tr. 12/11/98 at 79-80 (Shapiro).

45. At the time of the Board's Order in Docket No. 5566, there was no statewide E-911 system in place. Tr. 12/11/98 at 112 (Shapiro).

46. In Docket No. 5713, the Department proposed, and the Hearing Officer adopted, a requirement that all phones have continuing emergency access ("CEA") with call-back capability to ensure access to 911 even when the phone service has been disconnected.⁴ Tr. 12/11/98 at 110-11 (Shapiro).

47. The current waiver rules do not ensure the important goal of providing all of the public with the best public safety possible. Additionally, because waivers are of infinite duration, they are not in the public interest. Law enforcement personnel may have requested an exemption for a particular payphone for legitimate public safety reasons, but that payphone may remain blocked for incoming calls long after those reasons are no longer relevant. A payphone that was grandfathered remains forever unreachable. Likewise, one location provider may request a waiver and then sell the location. The new location owner may not care, but the phone would remain blocked to incoming calls. Shapiro 8/24/98 pf. at 5, 6.

48. The significant health and safety benefits of requiring all payphones, including those grandfathered in Docket No. 5566, to receive incoming calls outweigh any potential costs associated with a waiver process to providers or regulators. A call back to a payphone could make a significant difference in a medical or other emergency. In addition, it is possible that many of the payphones that currently block incoming calls would not be subject to a waiver request if the Board lifted the grandfathering ordered in Docket No. 5566. Tr. 12/11/98 at 136-38 (Shapiro).

49. NEPCC opposes a requirement that all payphones be required to accept incoming calls because incoming call blocking prevents payphones from being used for illegal purposes. NEPCC has no data on the percentage of incoming calls made for the purpose of conducting illegal activity. It likewise has received no complaints from location owners that their payphones are being used for illegal activity. Niden pf. at 6; tr. 12/11/98 at 169-70 (Niden).

4. The Hearing Officer adopted a time limitation on the CEA requirement. The Board rejected that time limitation, however, and now requires CEA indefinitely due to public health and safety reasons. Investigation into New England Tel. & Tel. Co.'s Tariff Filing re: Open Network Architecture, Docket No. 5713, Order of 2/4/99 at 88-96, 121-25.

50. It is possible that people make outgoing calls from payphones for the purpose of engaging in illegal activity. NEPCC does not suggest, however, that the Board eliminate payphones from Vermont to curb possible illicit activity at payphones. Tr. 12/11/98 at 170 (Niden).

51. The fact that, until October 1, 1998, no waiver requests were submitted to the Board on behalf of law enforcement demonstrates that the concern about payphones being used for illicit activity is not well founded. Shapiro 10/20/98 pf. at 2-3.

52. IMR Telecom blocks all incoming calls from its payphones and has never requested a waiver from the Board to do so. Tr. 12/11/98 at 181-82 (Niden); exh. DPS-BS-1.

53. Bell Atlantic blocks incoming calls on its payphones if requested to do so by a location owner. Bell Atlantic's witness did not know what information, if any, Bell Atlantic provides to location owners regarding the Board's current requirement that all payphones accept incoming calls absent a waiver from the Board. Sheperd pf. at 11; tr. 12/11/98 at 234-35, 258 (Sheperd); Shapiro 10/20/98 pf. at 1-2.

54. Since the Board's Order in Docket No. 5566, the Board has received only one request for a waiver. VTel made that request on October 1, 1998. Shapiro 10/20/98 pf. at 2-3.

55. As of January 6, 1995, 12% of Bell Atlantic's 4079 payphones in Vermont, or approximately 489 Bell Atlantic payphones did not accept incoming calls. Currently, Bell Atlantic blocks incoming calls on **[text under seal]** of its 3400 payphones in Vermont. Tr. 12/11/98 at 241; exh. DPS-Cross-4.

56. It is clear from this record that Bell Atlantic is violating the Board's Order in Docket No. 5566 because it is blocking incoming calls on more phones than were grand- fathered as a result of that Order and the company has never requested and been granted a waiver of that requirement.

57. The Department proposed a modification to the Board's incoming call rule as follows:

- All payphones must accept incoming calls, including those grand- fathered as a result of Docket No. 5566.
- All payphones must use two-way tariffed access lines.

- A waiver of the incoming call requirement could be available if a location owner certifies in writing that he/she would not allow a payphone on the premises if it accepted incoming calls, or if a law enforcement agency asked for a waiver for a specific public safety purpose.
- Any waivers granted by the Board should be for a one-year period and subject to renewal. Waivers provided at the request of law enforcement should be granted with the durations determined on a case by case basis, but not for more than a year. An application for renewal should be permitted two months before the waiver's termination date.
- Upon being granted a waiver, the payphone provider or location owner requesting the waiver should be required to conspicuously post "no incoming calls" on the instrument. The payphone's telephone number should not be posted on the phone.
- Upon being granted a waiver the access line should receive a line block for Caller I.D. and *69 return calling. The line blocks should remain in effect only for the duration of the waiver period. The line blocks prevent the use of the *69 call return and Caller I.D. but do not block incoming calls dialed by the PSAP operator, who has the payphone telephone number.

Shapiro 8/24/98 pf. at 9; Shapiro 10/20/98 pf. at 2-4; tr. 12/11/98 at 67 (Shapiro); Sheperd pf. at 10, 12.

58. Bell Atlantic indicated that the telephone number of the payphone must be displayed on the payphone so that the company can track trouble reports and requests for refunds. Sheperd pf. at 12.

59. Bell Atlantic and other providers could track repair and refunds of payphones that do not display the telephone number by other means. For example, the payphone's address could be used. For banks of payphones, the phones could be numbered. Tr. 12/11/98 at 143, 146-47 (Shapiro); tr. 12/11/98 at 243 (Sheperd).

60. Bell Atlantic is unaware of any way to block all incoming calls to a payphone except those from an E-911 operator or other emergency provider. Tr. 12/11/98 at 257 (Sheperd).

Discussion: Incoming Calls

The Board currently requires all payphones to receive incoming calls except those grandfathered as a result of Docket No. 5566 and those for which the Board has waived the

requirement upon request of the location owner or public safety officials. With the implementation of Vermont's E-911 system, it is now appropriate to change this policy. E-911 call takers must be able to call back the number from which an emergency call was made. Incoming call blocking makes that important feature of our E-911 system impossible because blocked phones use one-way service. Without two-way calling from blocked payphones, public safety will be seriously compromised by not allowing call takers to recontact the location of the emergency.

Another public welfare and user convenience reason for altering the current policy is to allow tourists, business travelers, and low income people with no home telephones to have available two-way calling. Having two-way calling in most payphones allows these groups to obtain maximum utility and benefit from the public switched network.

As the Board has found in the past, location owners and law enforcement officials have legitimate concerns that can be addressed by maintaining a waiver policy. However, the policy should be modified to ensure that maximum public benefit is received from the telephone system. As the evidence has demonstrated, the current rule on incoming calls, including the waiver requirement, is not being followed by PSPs in many cases. Consequently, I recommend that the Board eliminate all current exemptions of two-way calling (including grandfathered phones) and implement a new exemption procedure largely as recommended by the DPS. The only exception to the DPS proposal that I recommend at this time is to change the waiver period to a five-year period instead of one. Having a requirement that all exempted payphone providers must petition the Board annually for an extension of the waiver would be an excessive burden on payphone providers and the Board, particularly when circumstances are unlikely to change significantly at any one payphone location in only one year. A five-year waiver will reduce the administrative burden, while still allowing reassessments of the circumstances of the waiver from time to time.

NEPCC argued that the Department's proposed waiver process would be burdensome and costly to payphone providers. NEPCC did not, however, provide any cost data to support its position. Likewise, Bell Atlantic claimed that the costs associated with the Department's incoming call proposal would be significant, but it did not quantify those costs.

NEPCC argues that a requirement that payphones accept incoming calls free of charge contravenes federal law.⁵ NEPCC alleges that PSPs are entitled to compensation for calls received at their payphones under the Telecommunications Act of 1996 (the "Act") and the FCC's implementing regulations.⁶ My review of federal law and FCC rulings does not comport with NEPCC's.

Turning first to the Act, Section 276(b)(1)(A) requires the FCC to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, . . ." Interpreting this provision, however, the FCC explicitly concluded that this section was not intended to apply to both incoming and outgoing calls, rejecting arguments similar to those put forth by NEPCC.⁷ More broadly, the FCC concluded that "incoming calls are not within the purview of Section 276."⁸ Therefore, nothing in federal law, including the per-call compensation provisions of Section 276 and FCC Orders implementing it, prohibits the Board from maintaining, with the modifications set out above, the existing Board rule mandating that payphones permit incoming calls.

In summary, the policy on incoming calls at payphones should be modified to require all payphones to be able to physically accept such calls, with this feature only unavailable to the public when the Board has approved a written waiver request.

Accounting for Over-Deposits/Crediting Additional Time

61. As currently configured, payphones cannot provide change to users. Specifically, payphones manufactured for the US payphone industry have only one coin slot. All coins deposited by the user are (1) returned if the call is not completed, or (2) dropped into the coin box when connection is established. The current payphones have no coin separation and buffer

5. See Niden pf. at 6-7.

6. *Id.*

7. In re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Report and Order*, CC Dockets 96-128 and 91-35, FCC 96-388, ¶ 64 (Sept. 20, 1996).

8. *Id.* See also 47 C.F.R. § 64.1300(a) ("Except as provided herein, every carrier to whom a completed call from a payphone is routed shall compensate the payphone service provider for the call at a rate agreed upon by the parties by contract.") (Emphasis added).

mechanism for returning individual nickels or dimes to provide change for overpayments. Shapiro 8/24/98 pf. at 10; exh. DPS-BS-3.

62. Smart phones are phones with onboard intelligence in the form of computer chips that can provide monitoring and control capabilities not otherwise found in the payphone instrument. Leading manufacturers of these phones include Elcotel, Intellicall, and Protel. Shapiro 8/24/98 pf. at 10.

63. Protel's smart phone board allows the phone itself to keep track of the coins deposited. It cannot return particular coins, however, because the phone has no coin separation and buffer mechanism. The phones can also track the duration of each call. It can generate a report back to a computer-based management system that reports information on a per-call basis. Tracking the amount of extra money deposited and never used is not a problem for phones equipped with the Protel smart board. Shapiro 8/24/98 pf. at 10-11.

64. If a payphone user deposits coins totaling more than the cost of the initial deposit amount, smart phones can credit the user with additional time. Shapiro 8/24/98 pf. at 11; exh. DPS-BS-4.

65. VTel and IMR Telecom both credit the payphone user with additional time if the user deposits an amount that exceeds the amount required for the initial deposit. Exh. DPS-BS-4; tr. 12/11/98 at 131-32 (Shapiro); tr. 12/11/98 at 179 (Niden).

66. Smart phones can be configured and programmed to issue reports on a per-call basis, including the amount of coins dropped in the box for any individual call; therefore, smart phones can also account for overpayments. Shapiro 8/24/98 pf. at 11.

67. Approximately 20% of payphones in Vermont are smart phones. Shapiro 8/24/98 pf. at 11; exh. DPS-BS-5.

68. Bell Atlantic's smart phones do not have the capability to track the amount of extra money deposited but not used, nor can they credit the end user with additional time if an excess coin deposit is made. To include these features in smart payphones, Bell Atlantic would have to create payphone operations support and management information systems designed to acquire and compile such information, and it would have to retrofit all of its smart phones with circuit boards

that include this call rating feature. Bell Atlantic would incur significant additional costs to implement these changes. Shepherd pf. at 14-15.

69. If a provider uses dumb phones to provide payphone service, the central office local switch can, in theory, be reprogrammed to extend time on local calls. However, this functionality does not currently exist at any of Bell Atlantic's switches. Consequently, payphone calls would have to be routed to the operator services platform. This would require extensive rearrangements of Bell Atlantic's network and increase the need to expand call-handling capacity and automated coin toll service capacity in its operator services platform. Shepherd pf. at 16.

70. Bell Atlantic does not know, and is not able to measure at this time, how much excess money it receives from over-deposits in the company's payphones. Tr. 12/11/98 at 246 (Sheperd).

71. Bell Atlantic will refund any excess deposit upon request of a payphone user. However, there is nothing on the company's payphones to alert its users of this particular company policy. Tr. 12/11/98 at 250-51 (Sheperd).

Discussion: Accounting for Over-Deposits/Crediting Additional Time

The DPS argued that the Board should require all PSPs to either extend time for over-deposits for the initial call period at a payphone, or track all calls and account for the per-call and total amount of overpayment. According to the DPS, the data on over-deposits should be collected by the Board, and the actual dollars should be held in escrow for a future use to be determined by the Board. The PSP parties opposed these DPS recommendations, mostly because they assert that they lack the capability to either extend time on many payphones or account for over-deposits. Any such requirements would not only be very costly, these parties argue, but also would interfere with their ability to compete in this increasingly competitive market.

In response to these recommendations, the parties presented a significant amount of testimony and evidence about the technical specifications of smart and dumb payphone systems and the abilities or inabilities of each to account for any over-deposits of coins, extend time for calls if there are over-deposits, and provide a change or refund mechanism. The concern about this issue seems to come from the perception that many users of payphones deposit more money

into payphones than necessary to complete calls because they do not have the correct change and either don't bother, or are unable, to obtain correct change at the time of the call. While this situation may be a significant issue to some payphone users who only have quarters to deposit for the usual initial rate of \$.35 for most payphones, no evidence was presented to indicate the extent of the problem. In addition, there was also no evidence presented as to why this over-deposit issue is any more of a concern today than in the recent past when payphone rates were at \$.10 for the initial calling period and customers only had quarters.

Therefore, because of the lack of evidence of a problem and because of the likely significant costs to payphone providers to account for any over-deposits and provide credits as suggested by the DPS, I decline to recommend any additional requirements related to payphone over-deposits at this time. I also note that this situation is the result of voluntary over-deposits by payphone users who do have the option, in most cases, of obtaining the correct change. Nevertheless, for customers who do make over-deposits, payphone providers must continue to have a refund procedure for anyone who wants to request a refund, and they must clearly post notices on their phones as to how customers can obtain such refunds.

Because I believe that improvements in technology have already made it easier than in the past for payphone providers to better account for payphone revenues, call durations, and amounts of deposits per call, the payphone industry should make every effort to better serve its customers by developing the capability to account for over-deposits and provide credits/refunds as necessary. This will mean in practice that all new smart phones should be purchased with the functions required to provide these services to customers in the future, and companies that rely on dumb phones should begin to study and plan to convert their central office switches to better account for payphone traffic. If the industry fails to take these actions in a reasonable time period, and if it becomes apparent that the lack of refunds or credits for over-deposits is a significant problem, the Board may be forced to take further action on this issue in the future.

Posting

Payphone Address or Location

72. The Department recommended that the Board require the address or location of the payphone to be posted on the telephone. Allen 8/24/98 pf. at 7.

73. The Board addressed this issue before in Docket No. 5566. In that docket, several parties testified that it would be inconvenient and expensive to place and maintain address labels. The Board ruled that the costs of providing location labeling would outweigh the benefits. Allen 8/24/98 pf. at 7; Docket No. 5566, Order of 1/6/95 at 46.

74. There was little evidence in Docket No. 5566 to support the Board's conclusion regarding the costs of posting payphone addresses or locations on the phones. No cost analysis was offered or admitted into evidence in Docket 5566. Allen 8/24/98 pf. at 8; Docket No. 5566, Order of 1/6/95 at 22, 46.

75. The provider parties provided little information regarding the costs of updating the information posted on their payphones. They indicated that the information was not available or that the cost of obtaining it was too expensive. Allen 8/24/98 pf. at 8; exh. DPS-SA-3.

76. The Department recommended that placement of address stickers be required annually so as not to place an undue cost burden on PSP providers. Allen 8/24/98 pf. at 8.

77. Bell Atlantic, NEPCC, and VTel indicated that they visit their payphones on a regular basis for collection purposes, and update information posted on their payphones as needed (i.e. when there is a price change). All postings of their payphones had been updated at least once in the last two years, and new instruction and/or information cards could replace outdated information. This information demonstrates that it would not be a hardship for PSPs to post their payphones with address labels. Allen 8/24/98 pf. at 8; exh. DPS-SA-3.

78. There are several reasons that the address/location should be listed on the phone. First, it is an important informational and safety measure for travelers who may use payphones to be able to identify their current location. While this is sometimes obvious, i.e. Northfield General Store, it is not always possible to tell where you are by visual observation, especially at night. Allen 8/24/98 pf. at 8-9. Second, a copy of address labels for a given area would assist whatever local planning group is given the oversight of public interest payphones. Finally, address labels would greatly facilitate payphone repair reporting and complaint monitoring. Allen 8/24/98 pf. at 9.

79. According to the E-911 Board each payphone, with the exception of those in the seven non-participating towns, has been assigned an address. Therefore, lengthy descriptions of a

payphone's location can be avoided. Because each payphone will have an address assigned to it as required by the E-911 Addressing Handbook, the burden on PSPs to determine the address of their payphones is significantly, if not entirely, diminished. Allen 8/24/98 pf. at 9; Allen 10/20/98 pf. at 3.

80. There would be no need to invade the confidential E-911 database to obtain addresses because they will be maintained by the municipality in which the payphone is located. Tr. 12/11/98 at 49-51 (Allen).

81. Florida, Idaho, Nevada, Virginia, and West Virginia all have payphone address posting requirements. Allen 8/24/98 pf. at 9.

82. Bell Atlantic operates in Virginia and West Virginia and seems to have no difficulty in complying with this requirement in those states. Allen 8/24/98 pf. at 9; exh. DPS-SA-6.

83. In Virginia, Bell Atlantic uses a simple label maker to make a label, with a single line address in reasonable size type placed on the lower part of the top placard. Allen 10/20/98 pf. at 2-3; exh. DPS-SA-6.

84. IMR Telecom provides payphone services in Vermont and elsewhere. According to its President, IMR does not know what percentage of the company's payphones in Vermont require repair due to vandalism. Tr. 12/11/98 at 177 (Niden).

85. Address labels could be made using an inexpensive label maker like the one Bell Atlantic uses in Virginia. Companies could equip their technicians with such a device so that vandalized labels could be replaced when the technician visits the payphone to collect coins. That would not be burdensome to payphone providers. Allen 8/24/98 pf. at 9; exh. DPS-SA-6; tr. 12/11/98 at 184-85 (Niden).

86. Since the Department began tracking consumer complaints in 1996, it received no complaints as of the date of hearing regarding the absence of payphone addresses posted on payphones. The absence of consumer complaints does not, however, indicate that consumers do not want address labels or that address labels would not be helpful to payphone users. Tr. 12/11/98 at 38-39, 44 (Allen).

Discussion: Posting Payphone Address/Location

All payphone providers should be required to post the address or location of the payphone on the instrument. There are situations when such information is necessary for the payphone user's safety and convenience. It is not always possible to identify a payphone's location by visual observation of the area surrounding a payphone. That is particularly true at night or when weather conditions make visibility poor. Payphone addresses will also facilitate repair since I have recommended that payphone numbers should be removed from certain phones to facilitate the incoming call recommendation outlined above. The ready availability of addresses or location information will also assist the Department with its compliance monitoring of the payphone business.

These public benefits outweigh the claim by providers that an address posting requirement is costly and burdensome, particularly since the requirement can be satisfied with a very simple and inexpensive address labeling device, the addresses are readily available from the E-911 program, and providers were unable to document any other significant costs or burdens.

Accessing Provider of Choice

87. Currently, PSPs are required to post the identity of all presubscribed local, toll, operator service providers ("OSP") and directory assistance providers. This is a standard consumer protection that allows a consumer to identify the carrier charging them so the consumer can obtain rate information. Deregulation of call price increases the need for this protection. Given the proliferation of local, toll, OSP, and directory assistance providers, it is crucial that consumers be able to identify who is actually providing any given service. Allen 8/24/98 pf. at 5-6.

88. The Board also requires that providers post a statement that tells users they can access their provider of choice along with clear instructions on how to access the provider of choice. This requirement should be modified. Allen 8/24/98 pf. at 6.

89. It is important to alert consumers to the fact that they can access their provider of choice. It is not feasible, however, to require a PSP to list all carriers and the method of access for each carrier. A modified posting that informs consumers that they can access their provider of choice and that to do so they must contact that carrier will appropriately balance the needs of consumers and PSPs. Allen 8/24/98 pf. at 6.

90. Bell Atlantic's payphone posting already conforms to that modified requirement. Its payphone postings state: "You have the right to use your preferred carrier from this phone. Contact them for an access number. Rates are available from your carrier upon request." Allen 8/24/98 pf. at 6; exh. DPS-SA-2.

91. There are no objections in the record to the modified posting requirement the Department proposed.

Discussion: Accessing Provider of Choice

The existing requirement that requires PSPs to post instructions on how consumers may access their provider of choice should be modified. Due to the proliferation of telecommunications carriers, it is overly burdensome to require PSPs to provide instructions as to how their users can access their desired carrier. Instead, PSPs should alert consumers that they have the right to use a carrier other than the one to which the payphone is presubscribed. The existing posting language on Bell Atlantic's payphones appropriately balances the needs of consumers with the limited space available on payphones. This type of notice should be adopted as the industry standard because it is reasonable and the record contains no objections to it.

Minimum Duration for Local Calls

92. Bell Atlantic has by far the most payphones in Vermont and it uses five minutes as the initial duration for a local call (and three minutes for additional deposits). Bell Atlantic's standard is already the de facto standard in the payphone market in Vermont. It is helpful for consumers to know that they will generally get five minutes for their payphone call from their first deposit. Shapiro 8/24/98 pf. at 13-14.

93. The Department has recommended that the Board establish five minutes as the default minimum duration for a local call, and three minutes for each additional nickel. Providers could offer different periods so long as they are clearly posted on the payphone. Allowing providers to vary their durations will not discourage entry into the payphone market and will allow providers to differentiate themselves from other vendors. Shapiro 8/24/98 pf. at 13-14; tr. 12/11/98 at 132 (Shapiro).

94. Any announcements regarding additional deposits should not interfere with the allotted call duration times. In other words the announcement to "please deposit an additional nickel" should always begin after the completion of and not during the standard call durations paid for by the caller. Shapiro 8/24/98 pf. at 14.

Discussion: Minimum Duration of Local Calls

NEPCC and Bell Atlantic argue that the Department's recommendation regarding mandatory posting of information about the minimum duration of a call if it differs from Bell Atlantic's standard is contrary to the FCC prohibition against state regulation of payphone rates. Bell Atlantic also contends that establishing the default durations will interfere with the competitive functioning of the payphone market. However, neither of these parties presented persuasive evidence that the Department's recommendation is contrary to federal law or will impede competition in the payphone market.

Consumers have come to expect that their initial deposit for a local call will buy them five minutes. Payphone providers may choose to allow a longer or shorter duration, but are currently not required to tell their customers what they get for the initial deposit. Therefore, I recommend that five minutes should be set as the default minimum duration, but PSPs should be allowed to use a different time period so long as that time period is clearly posted on the payphone instrument.

Contrary to the claims of Bell Atlantic and NEPCC, this posting requirement does not constitute regulation of rates. Rather, it serves to inform consumers of the time period that they can expect from their initial payment.⁹

Refunds

95. Currently, payphone providers are required to refund coins deposited for calls that are not completed. Because consumers make calls using other payment methods, e.g., debit cards, third-party billing, credit cards and calling cards, it is necessary to require providers to have an effective refund mechanism for these other payment methods. Allen 8/24/98 pf. at 10.

9. Alternatively, the Board could require all payphones to identify the period of time that consumers get for their initial coin payment. Clearly, such notice does not regulate rates. Instead, the proposal set out above achieves the same result, without requiring such listing on the vast majority of payphones that use the initial time period of five minutes.

96. It is important that consumers not be required to request refunds in writing. The relatively small sums in combination with the necessity of writing a letter and using a 33 cent stamp would be a strong disincentive for claiming legitimate refunds. Allen 8/24/98 pf. at 10.

97. VTel and Bell Atlantic currently have acceptable refund procedures in place. Consumers can call the companies and request a refund via an interactive voice response system in Bell Atlantic's case, or a live operator in the case of VTel. Both companies will credit a consumer's local telephone bill if the consumer has an account with the companies. In the case of consumers who do not have accounts with the companies, Bell Atlantic and VTel will mail a check to the consumer. Allen 8/24/98 pf. at 10; exh. DPS-SA-4.

98. Although Bell Atlantic's refund procedure is adequate, it is not always implemented correctly. Since this docket began, the Department received complaints concerning Bell Atlantic's refund process. Two complainants expressed high frustration levels with the refund process; one complainant was asked to provide a "PIN" number to allow her to gain a refund, and the other complainant was told that because he was not a Bell Atlantic customer he could not be given a refund. The company must improve its actual response to a refund request to be more consistent with the refund process the company has stated it uses. Allen 10/20/98 pf. at 3; exh. DPS-SA-7; exh. DPS-SA-8.

99. IMR Telecom will mail refunds but does not have a live person from whom a refund may be requested as an option. Allen 8/24/98 pf. at 10; exh. DPS-SA-5.

100. The simplest solution for a consumer to notify a provider that he or she requires a refund would be to call a number listed on the payphone; for that number to be answered by a live person who would ask what the payment method was and would then either credit the appropriate amount in the same form as the original payment was made or mail a refund to a designated location. In the absence of a live operator, providers should be permitted to use automated answering services so that consumers can leave the relevant information for the provider in order to get a refund. Allen 8/24/98 pf. at 10; tr. 12/11/98 at 51 (Allen).

Discussion: Refunds

Allowing PSPs to require written requests for refunds is not in the public interest because it deters consumers from seeking refunds in many situations. For example, if a customer seeks a

refund for a \$.35 call, the cost of sending a written request may exceed the amount of the refund. Therefore, all payphone providers must list on the payphone a telephone number consumers can call to obtain a refund. If the providers do not have a live operator to take such a call at all times, providers must have an automated answering service to take the necessary information from the consumer. This proposal is reasonable because it balances the needs of consumers with those of smaller payphone providers.

Service Quality

101. Present Board policy requires payphone providers to repair impaired payphones within 24 hours of discovery or report of the impairment.

Frankel 8/24/98 pf. at 5; Docket 5566, Order of 1/6/95 at 9; Docket 4946, Order of 2/21/86 at 59.

102. Providers did not present evidence to suggest that they have significant difficulty in complying with the 24-hour standard. Data provided under seal during discovery showed that average repair times were well within the existing standards. Frankel 8/24/98 pf. at 5; exh. DPS-DF-2.

103. Failure to maintain a quality of service standard for repair might lead to the neglect of phones in low traffic areas. Such instruments do not provide the same market incentive for providers to ensure their working order. At the same time, it is these remote locations where public safety and convenience needs most demand an available working payphone. Frankel 8/24/98 pf. at 5.

Discussion: Service Quality

The evidence in the record demonstrates that the current requirement that impaired payphones be repaired within 24 hours serves important public welfare goals. There is no evidence in the record that the standard is difficult to meet or burdensome to providers. In fact, no provider presented evidence on this issue or recommended that the Board repeal the current standard. Therefore, I recommend that the current requirement that payphone providers must repair impaired payphones within 24 hours of a report or discovery of the impairment should be maintained.

Stipulation

On August 3, 1998, a Stipulation and Agreement was filed in this docket.¹⁰ The Stipulation was offered and admitted into evidence as Joint-1. The Stipulation addresses many of the payphone requirements the Board adopted in Docket Nos. 4946 and 5566. Specifically, the Stipulation provides the following:

1. The Board should eliminate the requirement that payphone providers subscribe to measured business service where available. See Docket No. 5566, Order of 1/6/95 at 8; Docket No. 4946, Order of 2/21/86 at 58. The Board should replace that requirement with the following: "Payphones may not be attached to residential lines."
2. The Board should eliminate the requirement that payphone providers offer the same or better quality of service as existing local exchange carrier coin phone service. See Docket No. 5566, Order of 1/6/95 at 9; Docket No. 4946, Order of 2/21/86 at 59.
3. The Board should retain as is the requirement that coin phones accept nickels, dimes, and quarters and be able to refund coins for uncompleted calls. See Docket No. 5566, Order of 1/6/95 at 9; Docket No. 4946, Order of 2/21/86 at 59.
4. The Board should retain as is the requirement that services provided with no charge cannot require a coin deposit. See Docket No. 5566, Order of 1/6/95 at 9; Docket No. 4946, Order of 2/21/86 at 59.
5. The Board should eliminate the requirement that payphone providers must allow access to all intra- and interstate toll providers, see Docket No. 5566, Order of 1/6/95 at 9; Docket No. 4946, Order of 2/21/86 at 59, and should replace such requirement with the following: "Payphone

10. The parties to the stipulation were the following: the Department of Public Service; New England Telephone & Telegraph Company d/b/a Bell Atlantic-Vermont; Northfield Telephone Company; STE/NE Acquisition Corp., d/b/a Northland Telephone Company of Vermont; Franklin Telephone Company; Ludlow Telephone Company; Perkinsville Telephone Company; Topsham Telephone Company, Inc.; Waitsfield-Fayston Telephone Company, Inc., d/b/a Waitsfield Telecom and d/b/a Champlain Valley Telecom; Shoreham Telephone Company, Inc; the New England Public Communications Council, Inc.; and Vermont Telephone Company, Inc.

providers may not block access to any toll provider. However, this requirement shall not prevent subscription to outgoing international call blocking services offered by local exchange companies."

6. The Board currently requires the following information, among other information, to be posted on payphones: (1) the phone number of the provider; (2) full and clear instructions on the use of the phone; (3) the name of the phone's owner; (4) how to report complaints and obtain refunds; (5) the address and telephone number of the Department's Consumer Affairs and Public Information Division ("CAPI") and a statement that CAPI should be contacted if a user's complaint remains unresolved; (6) a statement that privacy cannot be ensured if the phone is connected to a line with an extension. See Docket No. 5566, Order of 1/6/95 at 9; Docket No. 4946, Order of 2/21/86 at 60. The Board should modify this posting requirement (a) to clarify that the privacy warning be posted only on payphones connected to a line with an extension, (b) by substituting CAPI's address and telephone number with its toll-free number only, and (c) by requiring, on payphones that do not accept incoming calls, a statement notifying the user that the phone will not accept incoming calls.
7. The Board should retain as is the requirement that payphone providers must post information on dialing emergency services, a toll-free number for rate information, and a toll-free or collect number for reporting troubles and getting refunds. See Docket No. 5566, Order of 1/6/95 at 45.
8. The Board should eliminate the prohibition on charging users for directory assistance. See Docket No. 5566, Order of 1/6/95 at 18; Docket No. 4946, Order of 2/21/86 at 58.
9. The Board's requirement permitting the installation of coinless phones so long as doing so will not lower or limit the availability of coin operated

phones, see Docket No. 5566, Order of 1/6/95 at 35, should be modified as follows: "Payphone providers may install coinless phones so long as doing so will not unreasonably lower or limit the availability of coin operated phones."

10. The Board should eliminate the requirement that rates for touch-tone payphones be identical to the rates charged for rotary payphones. See Docket No. 5566, Order of 1/6/95 at 102.
11. The Board should eliminate the requirement that all payphones charge \$0.10 for local calls. See Docket No. 5566, Order of 1/6/95 at 104.
12. The Board should cease requiring Bell Atlantic-Vermont to provide the Board with prior notice of payphone removals.
13. The Board should cease requiring applicants for a Certificate of Public Good ("CPG") to disclose all potential payphone locations in their CPG applications.
14. The Board should prohibit providers from installing payphones without both numbers and letters on their keypads.

In accordance with paragraph 15 of the Stipulation, the parties recommend, and I concur, that the Stipulation should be adopted in its entirety as a just and reasonable resolution to the issues addressed in the agreement.

To the extent these findings are inconsistent with any proposed findings, such proposed findings are denied.

The proposal for decision has been served on all parties to this proceeding in accordance with 3 V.S.A. Sec. 811.

DATED at Montpelier, Vermont, this 8th day of September, 1999.

s/ Peter B. Meyer

Peter B. Meyer

Hearing Officer

III. BOARD DISCUSSION

We adopt the findings and recommendations of the Hearing Officer, except as noted below.

In filings in response to the Hearing Officer's Proposal for Decision ("PFD"), the parties have made overall comments and objections, and they have asked us to make a number of more specific changes to the PFD. The following is a review of those comments and our decision on each.

General Comments

Bell Atlantic objects to three specific aspects of the Proposal for Decision, raising evidentiary and policy considerations (which are addressed below) as well as asserting that the requirements conflict with Section 276 of the Act. Bell Atlantic contends that this Section, as implemented by the FCC, "directed states to *remove* regulations that affect competition in the now deregulated payphone market."¹¹ NEPCC echoed Bell Atlantic's arguments from a public policy perspective, suggesting that additional requirements drive up the costs of payphones while "potentially limiting their revenue opportunities."¹²

In examining the text of the federal act and the text of the FCC's regulations, we simply do not find the mandate that Bell Atlantic and NEPCC rely upon. Section 276 of the Act states a general policy of promoting competition among PSPs and promoting the widespread deployment of payphone services; it does not, however, mandate that states remove regulations that affect competition. Similarly, the FCC Orders also do not contain the requirements cited by Bell Atlantic. The FCC directed states to examine and modify its payphone regulations, "removing, in particular, those rules that impose market entry or exit requirements."¹³ The Order goes on to make clear that states retain authority to impose regulations on a competitively neutral basis, "to provide consumers with information and price disclosures."¹⁴ The FCC also made clear that its

11. Bell Atlantic Comments at 1-2 (*italics in original*).

12. NEPCC Comments at 2.

13. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Report and Order*, CC Dockets 96-128 and 91-35, FCC 96-388, ¶ 60 (Sept. 20, 1996).

14. *Id.*

Order did not infringe upon traditional state police powers: "states retain authority to impose certain requirements without competitive effect that are designed to protect the health, safety and welfare of its citizens."¹⁵ We conclude that the proposals put forth by the Hearing Officer are consistent with this reservation of authority.

We are unpersuaded by NEPCC's policy concerns. Although we share the broader concerns evinced by Bell Atlantic and NEPCC that regulations should be minimized, we must continue to evaluate the need for standards to protect consumers and insure adequate information. Our evaluation of such standards entails a balancing of the value to consumers of the standard compared to the potential impact upon both the competitive marketplace and the ultimate costs to consumers. We have conducted such balancing here. We find no evidence in the record that the specific recommendations of the Hearing Officer will have any material impact on costs, affect the ability of payphone owners to earn reasonable returns, or otherwise affect competitive entry. Moreover, we observe that while increased costs may have some effect on the overall profitability of payphones, it is unlikely that this effect is significant or will preclude payphone owners from earning a reasonable return.¹⁶

Annual Placement of Directories

Specifically, the Hearing Officer recommended that all PSPs must annually place directories at all payphones. The DPS supports this provision of the PFD, while Bell Atlantic and NEPCC recommended changes. Specifically, Bell Atlantic suggested that this requirement is not needed because there is a lack of evidence of consumer need for directories at all locations. Also, this requirement would diminish, according to Bell Atlantic, the economic incentive for PSPs to serve low usage locations, and it would interfere with reasonable assessments by location

15. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Order on Reconsideration*, CC Dockets 96-128 and 91-35, FCC 96-439, ¶ 140 (Nov. 8, 1996).

16. Neither Bell Atlantic nor NEPCC presented any quantitative evidence to support this claim. Evidence presented in recent dockets indicates that existing payphone rates will more than fairly compensate payphone providers. Specifically, in Docket 5940, the Hearing Officer concluded, based upon assertions from Bell Atlantic, that a \$.25 coin rate would allow Bell Atlantic to earn a fair return on its payphone investment. Docket 5940, Order of 10/7/97. Nonetheless, upon deregulation, Bell Atlantic set coin rates at \$.35, i.e. 40% in excess of the level it had maintained would allow it to earn fairly. We do not view the current proceeding as a rate review case; however, this history is relevant to assertions that financial constraints preclude otherwise relevant public benefit requirements.

providers about the services that are appropriate for their patrons or customers. Bell Atlantic also argued that the Hearing Officer's suggestion that directories should now be required because PSPs can charge for directory assistance is flawed because (1) the proposed rule would apply universally without regard to whether free directory assistance is available, and (2) the Board's prior decision not to require directories was based on its finding that the alleged benefits were not shown to outweigh the costs of furnishing directories, including vandalism. According to Bell Atlantic, the availability of free directory assistance as a potential alternative to this requirement was not cited as a factor in the Board's prior decision.

NEPCC suggests that the Board already decided this issue in Docket No. 5566 in 1995 and recognized at that time that the benefits did not outweigh the costs. Also, NEPCC argues that the lack of directories has not been identified as a problem by end users, and this requirement will only add to payphone providers' expenses, which will have to be recovered from users in some way.

We agree with Bell Atlantic and NEPCC that there is little evidence that the lack of directories at payphones has caused significant problems for customers, or that there is a vocal public demand for the placement of directories at each payphone location. However, we find this argument unpersuasive because this lack of demonstrated demand for directories has been the result of the continuing availability of free directory assistance at most payphones in Vermont. At the same time, we believe it is essential that consumers retain the ability to get free information concerning telephone numbers when at pay stations. We are very concerned that since PSPs are now able to charge for directory assistance if they so choose, customers may well lose access to this vital cost-free information service in the foreseeable future. Therefore, we will retain the requirement as outlined in the PFD requiring annual placement of directories. We will, however, modify the Hearing Officer's recommendation and waive the requirement for those payphones at which a customer does not incur a charge for access to directory assistance.

Incoming Calls

The Hearing Officer recommended that all payphones in Vermont must accept incoming calls, unless either (i) the location owner certifies that he or she would not allow the payphone if the phone had incoming calling, or (ii) a law enforcement agency requests and (unlike a site

owner) justifies the removal of incoming calling upon public safety grounds. According to the PFD, this right not to receive incoming calls would lapse after five years. In addition, phones with this exemption would have to have a conspicuous notice that incoming calls are not allowed, phone numbers would not be posted on the phones, and the access line would receive a lineblock for Caller I.D. and *69 calling.

The DPS generally supported this recommendation, but suggested that the waiver period should be modified to either the one-year period that it originally recommended, or somewhere between one and five years.

Bell Atlantic suggested that the previous grandfathering of existing one-way payphones as granted by the Board in Docket No. 5566 should not be revoked, nor should the Board require the removal of telephone numbers or the implementation of number blocking for Caller I.D. or *69 on one-way payphones. Since there are legitimate reasons why businesses would not want to have incoming calls on payphones and no consumers have complained about the lack of incoming calling, the Company argues that it would be arbitrary and prejudicial to remove the block on incoming calls on payphones that are already lawfully deployed pursuant to the Board's previous Order. If the Board is to revoke the grandfathered status of these phones, the change should not apply until at least six months from the date of this Order or the termination date of the contract with the location owner. This transition period will prevent disruption of service and allow some time for the Company to make alternative arrangements with location owners.

Bell Atlantic also argues that phone numbers should not be removed from blocked phones and line blocking should not be deployed on these lines because the Company's repair and maintenance complaint system is based on the unique number of the phone and not on its location or address. Removing the numbers will, the Company argues, severely hinder its ability to respond to problems or complaints. Also, numbers of phones should not be withheld from parties who receive calls from one-way payphones because masking the number will prevent customers who subscribe to anonymous call blocking from receiving the call. Also, called parties who receive harassing or other unwanted calls will not be able to use Caller I.D. or *69 to provide the Company or law enforcement with the originating number.

Regarding waivers to these incoming call blocking requirements, the Company suggests that a better method than the application for a waiver every five years would be an annual written certification by the PSP to the Board that identifies those payphones that are one-way at the specific request of the location owner or a public safety agency. This certification could be subject to investigation and verification in cases of consumer complaint or Board-initiated inquiry. The Company argues that this proposal would significantly reduce administrative costs but still provide effective verification and enforcement.

NEPCC suggests that the proposed waiver process sets the Board up for a flood of waiver requests, and it would make the Board arbiters of public safety concerns and assessors of the likelihood that payphones will be removed by location owners if incoming calls must be allowed. This requirement would also be an uncompensated service that would invite a challenge at the FCC, which has previously said that it would not require compensation for incoming calls because providers could block such calls.

We agree with the Hearing Officer that there are now, with the implementation of the E911 system in Vermont, significant public health and safety benefits to be realized by requiring all payphones, including those previously grandfathered, to receive incoming calls.¹⁷ The basic approach proposed by the DPS and recommended by the Hearing Officer will allow, with some minor modifications, call backs by PSAP operators in emergency situations; but it will also satisfy the needs of those location owners who would not otherwise accept a payphone on their premises without blocking of non-emergency incoming calls, as well as allow for waivers of incoming calling for legitimate public safety concerns.

We are concerned about some of the administrative concerns raised by the parties regarding the transition to and the long term maintenance of this incoming call blocking process. Thus, within one year from the date of this order either (i) PSPs shall restore incoming calls on all grandfathered payphones or (ii) each location owner shall apply to the Board and receive approval of a waiver as proposed by the Hearing Officer. One year should be sufficient time to allow PSPs

17. We also conclude that payphones are, like other telephones, two-way by nature. Thus, they benefit the public through the ability to both make and receive calls. This benefit should not be diminished without a strong reason.

to renegotiate contracts with location owners and apply for any necessary continuing waivers for those payphones where there remains a continuing need to block incoming calls.

We also conclude that waivers should lapse after three years, rather than extending for the five years proposed by the Hearing Officer. This interval will insure that waivers are reviewed in a timely manner, without imposing a significant administrative burden on PSPs and the Board.

Bell Atlantic also expressed concerns about the increased difficulty of tracking repair and maintenance problems if there is no telephone number visible to customers on blocked phones. In response, the DPS provided testimony that there are alternative methods of identifying payphones that block incoming calls that do not rely on the telephone number for initial identification (tr. 12/11/98 at 143-145). Because there are these alternatives available, we believe that any inconvenience to the Company is not significant given the public health and safety benefits of having return calls actually possible to blocked payphones.

Bell Atlantic also raised a concern about the proposed requirement that would block *69 (call return) and Caller I.D. for payphones granted waivers so as to prevent payphone telephone numbers from becoming known to users. While we agree that blocking these features may be inconvenient for customers who subscribe to anonymous call blocking of *69 (which would prevent them from receiving calls from blocked one-way payphones), we believe that, again, the overall public benefit of having incoming calls possible from PSAPs to all payphones exceeds the inconvenience or other problems that may result from blocking these features.¹⁸

Finally, we agree with the Hearing Officer that requiring incoming calls absent a waiver approved by the Board does not contravene the per-call compensation provisions of the

18. The evidence presented during hearings identified two means by which incoming calls can be blocked. Historically, paystations that block incoming calls still have a posted phone number, but all calls to the paystation, including those from emergency service providers, are blocked. This raises the public safety concerns identified in this Order. The Department proposed an alternative approach in which the phone remains fully functional and able to receive incoming calls. To prevent incoming calls in this instance, it is necessary to prevent potential users from determining the telephone number. This is achieved by removing the phone number and by disabling call features such as *69 and Caller ID that would convey the telephone number to another person. As the phone remains fully functional, emergency service providers that have access to the telephone number through E-911 can call back as needed. Faced with these two options, the latter clearly provides greater benefits to the public. If Bell Atlantic or another party can propose an alternative that would allow PSAPs to return emergency calls to payphones without retaining left-in two-way calling, we would consider such an option as an alternative to the procedure approved here.

Telecommunications Act of 1996 or the FCC's implementing regulations. Therefore, we believe that we have full authority to order PSPs to provide incoming calling on all payphones unless specifically waived by the Board.

Accounting for Over-Deposits/Crediting Additional Time

The DPS recommended that PSPs should give consumers additional time for any excess deposits, or they should account for over-deposits separately so the Board could determine at some future time how consumers should benefit from overpayments. The Hearing Officer did not accept this DPS recommendation because of a lack of evidence that over-deposits are really a problem for payphone users, and because of the difficulty that providers would have in accounting for any such over-deposits.

In response to the PFD, the DPS argued that the proposed decision is a "Catch-22." Since PSPs do not track over-deposits made to their payphones, there is no way to know how significant the problem is. As an alternative to tracking, the DPS suggested that the Board require PSPs to give credits of additional time to customers for any over-deposits, as IMR and VTel currently do. Finally, if the Board does not adopt either recommendation, the DPS suggested that posting should be required on each phone that does not provide additional time that indicates that refunds are available by calling the company at a posted toll-free number.

Bell Atlantic and NEPCC contended in the earlier proceedings that accounting for over-deposits was not technically feasible or reasonable, but they did not comment on the Proposal for Decision's resolution of this issue.

We will not alter the Hearing Officer's proposal on this issue for several reasons. First, as the Hearing Officer indicated, over-deposits are made voluntarily by payphone users who usually have the option of obtaining correct change prior to use of the payphone. Second, the DPS did not present sufficient evidence to convince us that over-deposits represent a problem that requires Board action.¹⁹ Finally, while the benefits of and need for an over-deposit policy is unclear, the record is clear that there would be some costs to Bell Atlantic to modify its systems to obtain data

19. In fact, the DPS did not explain why over-deposits are any more of a problem when the coin rate is 35 cents for the initial period than it was when the rate was 10 cents prior to payphone deregulation.

on over-deposits. Notwithstanding this decision, we can reconsider this question if presented with compelling evidence that over-deposits have become a real problem in the future.

Posting Requirements

The Hearing Officer accepted the DPS proposal to require all PSPs to post the location of payphones on or near the phone to allow travelers to identify their exact location. As recommended, this posting can be accomplished by PSPs very easily by using an inexpensive label maker, and it will not require them to print new information cards for each phone.

Bell Atlantic argues that the posting requirements impede competition because they are not supported by any showing of consumer need in the real world, and they will simply add to other regulations a PSP must satisfy to simply enter the payphone business in Vermont. Also, Bell Atlantic contends that posting will not facilitate repairs or refunds because both are tracked by telephone numbers, rather than addresses. The Company further argues that there is also no factual evidence of a public need for posting because most users already know their location.

NEPCC suggests that this requirement will only further burden payphone operators and add more costs as all payphone cards will have to be modified or changed.

We will not alter the Hearing Officer's recommendation on this issue because we believe that specific information about the location of a payphone can be very useful to users, many of whom may be travelers unaware of their exact locations (Allen pf. at 8-9). Since the addition of the payphone's address can be easily and inexpensively added to the phone by service personnel, as has been required in other Bell Atlantic states such as Virginia and West Virginia, we believe that the benefits of this requirement will significantly exceed the costs to PSPs.

Minimum Duration of Calls

The Hearing Officer accepted the DPS's recommendation that all PSPs must offer five-minute minimum calls for the initial deposit, unless they clearly post another minimum initial period.

Bell Atlantic did not comment on this issue. NEPCC argued that this requirement intrudes into an area that Federal law has preempted -- the price of a local call -- and is, therefore, a form of price regulation that is not permitted.

We strongly disagree: this requirement is not a form of price regulation. By accepting this recommendation, we are in no way setting or determining prices for payphone calls. Payphone providers remain free to set the price of each call, the duration of the initial call period and the price of overtime periods. All this requirement will do is require PSPs to post on their phones information about the PSP's minimum call duration for the initial deposit, if the duration is different than the five-minute norm.

Refunds

The Hearing Officer recommended that PSPs must list (on the phone) a number to call to obtain refunds, with an automated answering service if live operators are not available.

The DPS supported this recommendation with the addition that the refund number should be toll free.

Since neither Bell Atlantic nor NEPCC commented on this issue and since the DPS's suggested change is an essential feature of any such refund system, we will make this change to the Hearing Officer's recommendation.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings, conclusions and recommendations of the Hearing Officer are adopted, except as modified herein.
2. The Stipulation and Agreement of the parties dated June 11, 1998, is hereby approved.
3. All payphone service providers ("PSPs") in Vermont, including both certified telecommunications companies and holders of COCOT certificates, shall comply with the attached *Appendix A, Requirements for Payphone Service Providers As Required by the Public Service Board in Dockets Nos. 4946, 5566, and 6012, dated December 28, 1999.*
4. Appendix A shall be forwarded to all payphone service providers by the Clerk of the Board upon issuance of this order.

DATED at Montpelier, Vermont, this 28th day of December, 1999.

<u>s/ Michael H. Dworkin</u>)	PUBLIC SERVICE
)	
)	
<u>s/ Suzanne D. Rude</u>)	BOARD
)	
)	OF VERMONT
<u>s/ David C. Coen</u>)	

OFFICE OF THE CLERK

Filed: December 28, 1999

Attest: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board of any technical errors, in order that any necessary corrections may be made.

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.

Docket No. 6012
Appendix A
Requirements for Payphone Service Providers
As Required by the Public Service Board in
Dockets No. 4946, 5566, and 6012
December 28, 1999

- (1) Payphones may not be attached to residential lines.
- (2) All installed payphones must have both numbers and letters on their keypads.
- (3) Payphone service providers shall post the address or location of the payphone on the payphone instrument.
- (4) Payphone service providers may not block access to any toll provider. However, this requirement shall not prevent subscription to outgoing international call blocking services offered by local exchange companies.
- (5) Payphone service providers shall place a copy of the local telephone directory at each of its locations annually, unless payphones at a specific location allow free directory assistance calling.
- (6) Payphone providers must have a refund procedure for anyone who wants to request a refund for over-deposits. They shall post clear notices on their phones as to how customers can obtain such refunds.

- (7) Payphone service providers must comply with the federal access standards of the Americans with Disabilities Act ("ADA") regarding payphone location, installation, and equipment, and payphone providers shall furnish disability access information to location owners.
- (8) Payphone customers shall be alerted of their right to use a carrier other than the one to which the payphone is presubscribed. Bell Atlantic-Vermont's 1999 notice to this effect shall be the industry standard and shall be used by all payphone service providers.
- (9) The minimum call duration for initial deposits shall be five minutes at all payphones, unless a different time period is clearly posted on the payphone instrument. A measured call shall be disconnected only after giving the caller sufficient opportunity to extend a call by depositing more coins.
- (10) Payphones which are out of order shall be so posted as soon as feasible after (and in no event more than four work-hours after) the fault is discovered by or reported to the owner or his agent. Payphone service providers must repair impaired payphones within 24 hours of a report or discovery of the impairment.
- (11) All coin payphones shall accept nickels, dimes, and quarters and shall be able to refund coins for uncompleted calls, except that payphone providers may install coinless phones so long as doing so will not unreasonably lower or limit the availability of coin-operated phones at a particular location.
- (12) All payphone service providers must list on each payphone a toll-free telephone number that consumers can call to obtain a refund. If providers do not always have a live operator to take such a call, providers must have an automated answering service to take the necessary information from the consumer and must ensure a timely response to such requests.
- (13) All payphones must provide access to the following without charge and without the requirement for a coin deposit:
 - (i) operator services calls [O- (caller dials only "O" and then waits for operator intervention) or O+ (credit card, collect or third party billing)];
 - (ii) E-911 emergency services calls;
 - (iii) access code calls (1010XXX, "1-800", 950-XXXX carrier access numbers); and
 - (iv) subscriber 800 calls.

(14) All payphones must accept incoming calls by December 1, 2000, and thereafter.²⁰ All payphones must use two-way tariffed access lines. The Public Service Board will grant a waiver of this requirement if a location owner certifies in writing that he/she would not allow a payphone on the premises if it accepts incoming calls, or if a law enforcement agency has asked for a waiver for a specified public safety purpose. Any such waiver shall lapse after three years unless renewed. An application for renewal must be submitted at least two months before the waiver's termination date. If granted a waiver, the payphone provider or location owner requesting the waiver shall post "no incoming calls" in a conspicuous location on the instrument. The payphone's telephone number shall not be posted on the phone. Upon being granted a waiver, the access line shall receive a line block for Caller I.D. and *69 return calling. The line blocks shall remain in effect only for the duration of the waiver period.

(15) In addition to the posting requirements listed above, the following information shall be posted on all payphones:

- (i) the phone number of the provider;
- (ii) full and clear instructions on the use of the phone;
- (iii) the name of the phone's owner;
- (iv) instructions for dialing emergency services;
- (v) a toll free number for rate information;
- (vi) a toll free or collect number for reporting complaints, troubles and obtaining refunds;
- (vii) the toll free telephone number of the Department of Public Service's Consumer Affairs and Public Information Division ("CAPI") and a statement that CAPI should be contacted if a user's complaint remains unresolved;
- (viii) a statement that privacy cannot be ensured if the phone is connected to a line with an extension; and

1. This requirement applies to all payphones (even those temporarily grandfathered in the Docket No. 5566 Order of January 6, 1995, at 44). Future waivers of this requirement must be sought through the procedures set out in this paragraph.

- (ix) a statement notifying the user that the phone will not accept incoming calls if the Board has granted a waiver of the requirement to accept incoming calls.