

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE REQUEST FOR) ORDER CLOSING DOCKET
PUBLIC COMMENTS ON PUBLIC INTEREST)
PAYPHONES) **TC98-109**

At its April 22, 1998, regularly scheduled meeting, the Public Utilities Commission (Commission) voted to open a docket concerning the Federal Communications Commission's (FCC) Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 Report and Order (Report and Order) of September 20, 1996, which required the Commission to establish a policy on public interest payphones by September 20, 1998. The FCC concluded that the primary responsibility for administering and funding of public interest payphone programs should be left to the states. The FCC's definition of a "public interest telephone" is a payphone which (1) fulfills a public policy objective in health, safety, or public welfare, (2) is not provided for a location provider with an existing contract for the provision of a payphone, and (3) would not otherwise exist as a result of the operation of the competitive marketplace. Report and Order, FCC 96-388, ¶ 282. The Commission requested written comments from telecommunications companies and other interested persons and entities on whether the Commission needs to take any measures to ensure that payphones serving important public interests will continue to exist in light of the elimination of subsidies and other competitive provisions established pursuant to Section 276 of the 1996 Act.

Comments were filed by South Dakota Independent Telephone Coalition, Inc. (SDITC), AT&T Communications of the Midwest, Inc. (AT&T), U S WEST Communications, Inc. (U S WEST), Midstate Telephone Company (Midstate), and Gemini Companies, Inc. and Gerlach Enterprises, Inc. (Gemini and Gerlach).

SDITC - SDITC believes that the establishment of a public interest payphone program will be essential to ensure, long term, that payphones which constitute public interest payphones, which are not economically self-supporting, continue to be made available. Recognition must be given to the role payphones serve in providing access to emergency services, especially in the isolated rural areas. If any public interest payphone program is established, an indispensable element to any such program is a funding mechanism. SDITC believes that the goal of ensuring that public interest payphones continue to exist is further cause for increased effort to establish a state universal service fund. A portion of any dollars collected as state universal service support could be distributed for the maintenance of payphones which constitute public interest payphones.

AT&T - AT&T recommended that the Commission request that industry members identify those payphones which they believe meet the requirements for public interest payphones. The Commission should then follow the FCC's lead in suggesting a narrowly tailored definition of the public interest to determine what payphones, if any, are deserving of public interest payphone status. In no event should the Commission establish generic or per capita criteria for public interest payphone designation. Instead, the Commission should determine whether telephone service is necessary at locations within the state in order to meet the requirements of public health, safety, and welfare and whether such locations would not otherwise be served by the normal operation of the market. Should the Commission determine that public interest payphones are necessary, AT&T will address the appropriate terms and conditions for public interest payphones in later filings.

U S WEST - U S WEST stated the popularity and increasing affordability of wireless services has given customers additional options in meeting the need for emergency communications when

health and safety is a concern. U S WEST does not believe that implementing subsidies to fund public interest payphones or oversight is appropriate. To the contrary, such regulation would undermine the goals of Section 276 of the Act. U S WEST submits that the Commission should allow the market to function for a period of time. In the unlikely event that the market should fail, U S WEST then recommends that the Commission implement a funding and oversight process. A market failure would only exist if market options are not available (e.g., semi-public payphone service) or are not viable, and there is a clear and definite public health and safety need which is not being met.

Gemini and Gerlach - Gemini and Gerlach believe that the Commission should take no action and should leave the market place to provide payphones when and where they are needed. If the Commission does conclude that a plan to provide for and fund public interest payphones is necessary then the Commission should adopt a plan that incorporates the criteria used in the California public interest payphone plan to define a public interest payphone, but it should use universal service funds to fund the program.

Midstate - Midstate stated that it currently provides public interest payphones in the communities it serves as does its subsidiary Heartland Communications, Inc. Midstate and Heartland suggested that additional regulation of payphones is not necessary.

The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-31 and the federal Telecommunications Act of 1996. On August 4, 1998, at its regularly scheduled meeting, the Commission found that it need not take any action at this time to set up a funding mechanism for public interest payphones. The Commission found that it would first allow the marketplace to work to meet payphone needs and only upon failure of the marketplace would the Commission consider establishing a funding mechanism for public interest payphones. The Commission would encourage anyone that knows of specific needs for public interest payphones to contact the Commission. If, in the future, evidence is presented to indicate a need, this issue will be addressed at that time. The Commission further voted that the docket be closed. It is therefore

ORDERED that no action will be taken at this time to set up a funding mechanism for public interest payphones. It is further

ORDERED that docket TC98-109 is hereby closed.

Dated at Pierre, South Dakota, this 14th day of August, 1998.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Debra Kaebo</u>
Date:	<u>8/14/98</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner