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Kansas Corporation Commission
/S/ David J. Heinemann

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: John Wine, Chair
Susan M. Seltsam
Cynthia L. Claus

In the Matter of the Application of the Kansas Payphone Association Requesting the Commission Investigate and Revise the Dockets Concerning the Resale of Local Telephone Service by Independent Payphone Operators.	)	Docket No. 97-KAPT-102-GIT

ORDER

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being duly advised in the premises, the Commission finds as follows:

1. On October 4, 1988, the Commission issued an order concerning connection of Customer Owned Pay Telephones (COPT) establishing 15 guidelines and 12 policies for COPT owners. (Docket No. 141,975-U)

2. On September 24, 1993, the Commission issued an order in Docket No. 170,802-U which outlined rules regulating Operator Service Providers (OSP). An OSP is defined in that order as "a person which provides or offers to provide operator assisted telephone calls." Operator assisted telephone calls are those in which a live or automated telephone operator assists a caller to complete, or attempt to complete, the call or the call is not billed directly to the calling number, whether or not there is intervention by an operator. (Docket No. 170,802-U Appendix A, I. Definitions, Sections C and D)

3. Some provisions of the OSP order superseded some portions of the COPT order, although this was not explicitly stated in the OSP order. Since the issuance of the OSP order, some confusion has existed as to whether OSPs had to comply with the non-superseded provisions of the COPT order and the exact differences between COPTs and OSPs.

4. On February 8, 1996, the Telecommunications Act of 1996 (Federal Act) became law. Section 276 of the Federal Act deals with the provisioning of payphones. Subsequently, the FCC opened its payphone investigation in CC Docket No. 96-128 and CC Docket No. 91-35.

5. On September 20, 1996, the FCC issued its order in those dockets in FCC 96-388. On November 8, 1997, the FCC issued its order on reconsideration in FCC 96-439.

6. On May 30, 1997, the Commission opened this docket upon the application of the Kansas Payphone Association (KPA) for the purpose of determining the impact of the Federal Act and prior Commission payphone orders on the resale of local telephone service by independent payphone operators.

7. The Order requested comments on several Staff proposals regarding COPTs and OSPs. Comments were filed by AmeriTel Pay Phones, Inc. (AmeriTel), Sprint Communications Company, L.P. (Sprint), AT&T Communications of the Southwest (AT&T), the State Independent Alliance (SIA), Independent Telecommunications Group (Columbus), Southwestern Bell Telephone Company (SWBT) and the KPA.

8. On June 3, 1997, CURB requested, and was granted, leave to intervene. CURB filed no comments.

9. In this order, the Commission eliminates the 15 guidelines and 12 policies for COPTs as set forth in Docket 141,975-U and replaces them with simplified rules and regulations for the

operation of payphones in light of the Federal Act and the FCC orders. The Commission believes the FCC guidelines and requirements have improved such that the KCC may defer to the FCC in many instances .

JURISDICTION

10. The Federal Communications Commission provides state commissions oversight of pay telephone operations by virtue of its May 6, 1985 order in FCC Docket No 85-222. In that order, the FCC held that states have full discretion to set safety and economic standards in the provision of intrastate, customer-owned, coin operated telephone services. Previously, the Kansas Commission had issued a December 11, 1984 order in Docket No. 141,975-U allowing connection of coin pay telephones not only for the purpose of placing interstate calls, but also for the purpose of placing intrastate calls. The Commission has jurisdiction to address issues relating to payphone service as set out in this order. Section 276 of the Federal Act preempts significant aspects of payphone regulation. Specifically Section 276(c) provides: "To the extent that any state requirements are inconsistent with the (Federal) Commission's regulations, the (Federal) Commission's regulations on such matters shall preempt state requirements."

DEFINITIONS

11. Previously, pay telephone instruments have been referred to as customer-owned coin operated pay telephones or COPTs. (Docket No.141, 975-U)

12. In FCC 96-388, the FCC adopts the following definition of payphone. A payphone is ". ..any telephone made available to the public on a fee-per-call basis, independent of any commercial transaction, for the purpose of making telephone calls, whether the telephone is coin-operated or is activated either by calling collect or using a calling card." The definition excludes

phones in hotel rooms, dormitory rooms, or hospital rooms. (CC Docket No. 96-439, Order on Reconsideration, ¶ 65)

13. In FCC 96-388, those individuals or companies providing payphone equipment to the public are called Payphone Service Providers (PSP). This PSP category will include: Customer Owned Pay Telephones; Privately Owned Pay Telephones; Inmate Phone Service; and payphone services offered by incumbent local exchange carriers. (FCC 96-388 ¶ 66)

14. For the purposes of this order and all future proceedings, the Commission adopts both the definition of payphone used by the FCC as well as the definition of Payphone Service Provider. The term COPT is replaced with the term “payphone”.

15. Listed below are the issues on which the Commission solicited comments. The issues are divided into two categories; uncontested issues and contested issues.

UNCONTESTED ISSUES

16. The following nine issues were initially set forth as Staff recommendations. These nine issues were either not contested or were expressly supported by commenters. Staff recommends these nine uncontested issues be adopted by the Commission.

1. Payphone Height and Other Physical Considerations

17. Staff initially recommended COPT guideline 4 be eliminated and replaced with the following language: “All payphones must meet current FCC and Americans with Disabilities Act (ADA) guidelines.” COPT guideline 4 sets forth specific height requirements and requires hearing aid compatibility. Staff recommends this guideline be eliminated because the FCC and the ADA both adequately address these requirements. State requirements are duplicative.

18. The Commission finds and concludes COPT guideline 4 has been superseded by FCC provisions including ADA protections [WT Docket No. 96-198, FCC 98-55, NPRM for the Implementation of $255 of the Telecommunications Act of 1996, Access to Telecommunications Services, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities]. COPT guideline 4 is no longer operative and shall be replaced with the following language: "All payphones must meet current FCC and ADA guidelines."

2. Local Call Charge

19. Staff initially recommended that COPT guideline 5 should be eliminated. COPT guideline 5 requires COPTs to charge no more than a Local Exchange Carrier (LEC) for a local call. Staff proposes this guideline be eliminated as it poses a possible barrier to competition which is prohibited. (47 U.S.C. 253) In addition, state and federal legislation deregulated the prices charged by all telecommunication public utilities, except LECs certificated prior to January 1, 1996.

20. The Commission finds and concludes that Staffs recommendation is reasonable. COPT guideline 5 is eliminated as a potential barrier to competition. In addition, state and federal legislation deregulated the prices charged by all telecommunications public utilities, except LECs certificated prior to January 1, 1996 and, as such, these rate requirements are no longer permitted.

3. Payphone Surcharges

21. Staff initially recommended that all references forbidding COPT and OSP surcharges be eliminated. References to these surcharges appear in COPT guidelines 7 and 12 and in the OSP order Docket No. 170,802-U. K.S.A. 66-2005(v) preludes rate regulation of PSPs and, as such, Staff recommends COPT guidelines 7 and 12 conflict and should be eliminated.

22. The Commission finds and concludes that all references forbidding COPT and OSP surcharges are no longer operative as they have been preempted by the passage of Section 276 of the Federal Act and K.S.A. 66-2005(v).

4. Rates

23. Staff recommended that since both the payphone operations of LECs and PSPs are rate deregulated pursuant to Section 276 of the Federal Act and K.S.A. 66-2005(v), and the OSP tariff filing requirements are applicable to the payphone operations of LECs, it is logical that OSP tariff filing requirements should also apply to PSPs. OSP rate tariff filings are effective upon filing and other tariffs are effective seven days after filing. This change will allow price changes to take effect immediately upon filing, which is a necessity in a competitive environment.

24. The Commission finds and concludes that Staff's recommendation is reasonable. The rate tariff filing requirements applicable to OSPs shall apply to PSPs. OSP rate tariffs for PSPs shall be effective upon filing and other PSP tariffs shall be effective seven days after filing.

5. COPT Credit Card and Other OSP Provisions

25. Staff recommended the elimination of COPT guidelines 7 (limits charges for credit card calls, collect calls and third-party billed calls to Commission authorized rates), 11 (outlines the Commission's authorized rates), and 12 (requires credit card calls to be billed at Commission authorized rates) and all other references in the COPT guidelines to any requirements of Commission authorized rates for those calls. Credit card calls, collect calls and third-party billed calls are operator assisted calls which are handled by OSPs. Therefore, these provisions would have been only applicable to OSPs. K.S.A. 66-2005(v) provides OSP rates are deregulated. The Commission no longer authorizes OSP rates. OSP rates are merely filed.

26. The Commission finds and concludes that COPT guidelines 7, 11 and 12 are no longer operative as K.S.A. 66-2005(v) has deregulated OSP rates. To the extent that any remaining references remain in the COPT guidelines referring to Commission authorized rates for these types of calls, they are eliminated.

6. Quarter-Only Phones

27. Staff recommended that COPT guideline 14 be eliminated. COPT guideline 14 requires payphones to accept nickels, dimes and quarters and to bill in 5 cent 'increments. Staff argues that deregulation mandates the elimination of this guideline so that market forces can set the standards.

28. The Commission finds and concludes that COPT guideline 14 should be eliminated. For the industry to become truly competitive, market forces should be allowed to set these standards.

7. Posting of Notice

29. Staff recommended that OSP rules regarding the posting of notice should be applicable to COPTs (PSPs) because they utilize an OSP as the underlying carrier and have control over the payphone.

30. OSP posting requirements are set forth in Docket No 170-802-U (Appendix A, Section 9, Posting of Notice at p. 6).

31. The Commission finds and concludes that the OSP posting rules set forth in Docket 170,802-U will be applicable to PSPs to ensure consumers have access to relevant information such as rate information or toll free numbers for complaints or questions regarding a payphone's OSP.

8. Non-Applicable References

32. Staff initially recommended that all references to intraLATA and interLATA rates as well as to rate caps should be eliminated. Because prices have been deregulated by Section 276 of the Federal Act and K.S.A. 66-2005(v), references to rate caps are no longer proper.

33. The Commission finds and concludes that all references to intraLATA and interLATA rates as well as to rate caps are no longer operative as they pertain to PSP operations because rates are deregulated by both the Federal Act and K.S.A. 66-2005(v).

9. Cellular Payphones, Information Services Payphones and Public FAX

34. Staff initially suggested that these services are outside the jurisdiction of this Commission and as such no additional rules or regulations were appropriate. Comments were solicited from parties who disagreed with Staffs interpretation. No parties filed comments objecting with Staffs interpretation.

35. The Commission finds and concludes that cellular payphones, information services payphones and public FAX are services outside the jurisdiction of the Commission.

CONTESTED ISSUES

36. The Commission requested comment on the following issues. Many of the parties disagreed with the Staff recommendations. Each Section sets forth the initial Staff recommendation, comments of the parties, Staffs amended recommendation, if any, and the Commission's conclusion.

A. Combining IXCs and OSPs

37. Staff originally recommended the Commission combine its interexchange carrier (IXC) and operator services provider (OSP) categories into IXCs as a regulatory streamlining move. After the combination, there would be no OSPs, only IXCs with payphone operations and IXCs

without payphone operations. The current certification process for both is almost identical and Staff saw no reason for two separate classifications.

38. Sprint opposed Staffs recommendation because it would make SWBT an interexchange carrier before it had completed its Section 271 checklist process. Sprint recommended Staffs recommendation be reconsidered after SWBT completes its Section 27 1 checklist procedure.

39. SWBT argued that there are differences between IXCs and OSPs and implied that the differences are large enough to retain separate classifications. It noted that it is not an IXC, even though it provides long distance service. SWBT does agree that the certification process for both OSPs and IXCs should be similar. SWBT also noted that the State Act requires a demonstration of financial viability. SWBT further argued that incumbent LECs providing payphone services not be required to obtain any additional certification based on changes adopted in this docket.

40. KPA did not object to Staffs proposal.

41. After evaluating these comments, Staff recommends the KCC retain its separate regulatory treatment of OSPs and IXCs.

42. The Commission finds that Staffs revised recommendation, in light of comments received, is appropriate. Sufficient reasons still exist to require separate regulatory treatment of PSPs, OSPs and IXCs, although such treatment is not mandated by either the FCC or state statute.

B. Distinguishing COPTs from OSPs

Certificate or Register COPTs

43. Staff originally recommended the Commission retain its distinction between COPTs (PSPs) and OSPs. Currently, COPTs (PSPs) are not certificated and OSPs are certificated. A COPT (PSP) owner cannot complete operator service calls and makes money from two sources: (1) coins

dropped in the instrument for local calls, and (2) commissions from an OSP for all operator service calls the OSP completes. An OSP typically arranges for underlying service from an interexchange carrier, but sets rates and bills for its own calls; whether local or long distance.

44. Sprint agreed that a distinction between COPTs (PSPs) and OSPs exists. It also supports grandfathering of ILECs as OSPs. Sprint supported registering of COPTs (PSPs) in the same manner as Internet service providers.

45. AT&T recommended the Commission utilize the terminology utilized in the federal payphone orders. AT&T argues the FCC refers to all providers of payphone services as payphone service providers (PSPs) and makes no distinction between COPTs and OSPs.

46. SIA stated ILECs should be able to offer payphone service as PSPs (COPTs), rather than an OSP. SIA recommended ILEC payphone operations not be required to register as PSPs because they are already operating and known. As an alternative, SIA proposed that ILEC PSPs notify the Commission when they exit the payphone market.

47. Columbus recommended that they be grandfathered in to the extent it is necessary for ILECs to receive OSP certificates. Columbus recommended that COPTs be registered and that the specific location of every payphone be required. This will help to accurately identify the payphone provider when a complaint arises.

48. SWBT agreed that the Commission's current COPT practice has not led to any problems. However, it noted that the Section 6(u)(sic) of the State Act [K.S.A. 1997 Supp. 66-2005(v)] requires that all telecommunications carriers obtain a certificate of convenience. SWBT argues certification is necessary for tracking contributions to the Kansas Universal Service Fund.

49. KPA drew distinctions between PSPs and OSPs, which were the same as Staffs distinctions between COPTs (PSPs) and OSPs. KPA recommended PSPs should be registered with the Commission.

50. Staff is of the opinion that the Commission should retain its distinction between COPTs (PSPs) and OSPs. Staff also believes PSPs are not required to be certificated by the Commission. PSPs are not included in the definition of "telecommunications carriers" pursuant to K.S.A. 66-1,187(m) nor are they "telecommunications public utilities" as defined in K.S.A. 66-1,187(n). Payphone instruments are not specifically involved in the "transmission of telephone messages" and as such their owners/operators are not required to be certified by the Commission. K.S.A. 66-2005(v), of the state telecommunications act, requires all telecommunications carriers to obtain a certificate of convenience. However, these provisions refer to the certification requirements of telecommunications carriers which want to provide switched local exchange service: not payphone or other services. Staff also recommends to the Commission that it decline to require PSPs to register with the Commission. As a practical matter, the payphone industry is by its nature transitory. Instruments can be relocated within days and requiring PSPs to constantly re-register their instruments with the Commission would be unduly burdensome.

51. The Commission finds and concludes Staffs recommendation is reasonable. PSPs are not required to be certificated or registered by the Commission. Because the nature of the PSP business does not involve the actual "transmission of telephone messages," the Commission finds it is not included within the definition of either K.S.A. 66-1,187(n) or 66-1,187(m). The Commission further declines to require PSPs to register with the Commission. Registration of payphone instrument sites with the Commission would provide burdensome to the industry and any

consumer protections provided by a registration process are adequately addressed by the posting requirements set forth at Uncontested Issue 7 above.

C. Accessibility to All Certificated Carriers

52. Staff originally recommended that guideline 6 of the Commission's COPT order be eliminated. It requires all COPT payphones be able to access all certificated IXCs. Staff argues it should be eliminated because: (1) the term interexchange carriers would now (possibly) include OSPs; (2) a customer would only be able to access an OSP which has arranged for payphone access in that area; and (3) guarantees against blocking can be found elsewhere.

53. Sprint sees no merit in eliminating guideline 6 of the COPT order because it supports the interexchange carrier definition as it exists today and removing it might lead to the possibility of misinterpretation of COPT guideline 7.

54. SWBT noted that a payphone customer can access its choice of OSP through an access code and only sent-paid calls are limited to OSPs who have arranged for access with a specific payphone service provider.

55. KPA agreed with Staff.

56. After reviewing comments filed in this matter, Staff revises its position and recommends the Commission retain COPT guideline 6. Unrestricted access to a caller's preferred carrier is an essential feature of creating a competitive payphone industry.

57. The Commission finds and concludes Staffs recommendation is reasonable, allowing unrestricted access to a caller's preferred carrier is required in order to foster a competitive payphone industry. Therefore, unblocked access for all access code calls from payphones is required.

D. Dialing Patterns

58. Staff originally recommended payphone providers be required to route emergency 0-calls to operator services provided by the local exchange company. Staff also recommended the current requirement to route all 00 calls to AT&T in non-equal access offices be eliminated.

59. AT&T agreed with Staff.

60. SWBT recommended all PSPs be required to route O-calls to an OSP that provides access to emergency services.

61. KPA stated its members' payphones are incapable of differentiating emergency from non-emergency O-calls. Its members have also found that the OSPs they use have similar or better response to O-emergency calls than the LECs. KPA recommended that, until their payphones have the capability of differentiating between emergency and non-emergency O-calls, the Commission allows these calls to go to the OSP chosen by the PSP.

62. Staff revises its recommendation to require all PSPs route O-calls to its OSP choice, all of which are required to provide emergency services access.

63. The Commission finds Staffs revised recommendation is reasonable. It is in the public interest for PSPs to route O-calls to an OSP providing access to emergency services so those services can be dispatched in a timely manner.

E. Blocking of Certain Numbers

64. The Commission sought comment on whether it should allow PSPs to block certain types of calls. Staff is aware of some reports to the FCC that indicate payphone customers were able to perpetrate fraud on PSPs, OSPs or LECs through various means. Staff suggested that if a PSP was

allowed to block certain calls, this limitation be clearly noted on the pay phone or in a recorded message after the number is dialed.

65. SWBT argued that the FCC allows payphone service providers to block access to certain calls and such language is not necessary. [FCC Report and Order CC Docket No. 90-313 (April 15, 1991)] Since there is no current requirement that this limitation be posted, SWBT opposed the implementation of any additional requirement, absent a showing that the public is harmed.

66. KPA strongly recommended that federal guidelines be followed and that no action be taken at the state level.

67. Staff recommends the Commission concur with FCC guidelines, as set forth in FCC Order 90-313 (April 15, 1991) which permits, but does not require, the blocking of certain numbers.

68. The Commission finds Staffs recommendation is appropriate. The Commission finds PSPs shall follow the guidelines as set forth in the FCC Report and Order CC Docket No. 90-3 13 (April 15, 1991) as they pertain to the blocking of certain numbers.

F. Directory Assistance

69. Staff originally recommended that the Commission's requirement for free Directory Assistance (DA) service from payphones be eliminated and that ILECs be allowed to bill for DA from their payphones.

70. SIA recommended that ILEC payphone operations be allowed, but not required, to pass DA charges on to customers.

71. SWBT argued that DA was deregulated when the FCC deregulated the local coin rate (FCC Order 96-388, ¶ 62 and FCC 96-439, Order on Reconsideration, ¶ 59). As a result, the

Commission must allow PSPs to charge for DA calls and allow the OSP to charge the PSP for DA calls placed from the PSP's payphone.

72. KPA agreed with Staff.

73. Staff agrees with SWBT that rates for DA calls were deregulated by the FCC (Order FCC 96-388 , ¶ 62). This would include both the rates charged by individual PSPs for local and long distance DA and rates charged by local exchange companies to PSPs for the service.

74. The Commission finds and concludes Staffs recommendation is reasonable. DA rates were deregulated by the FCC as set forth above and as such companies are allowed to bill for DA from their payphones should they so desire.

G. Toll-free Number for Comments/Complaints

75. Staff originally recommended that each payphone be required to post a toll-free number for comments or complaints on the instrument.

76. AT&T agreed with Staff as long as the PSP may develop the specific language.

77. KPA recommended the name and address of the PSP be placed on the payphone as required by the FCC. KPA thought a 24-hour toll-free complaint number could be a financial burden on smaller members.

78. Staff believes it is essential that customers can reach a complaint number any time of the day. Staff, therefore, recommends the Commission require PSPs provide their toll-free number that can be reached for comments or complaints 24 hours a day. This number should be posted on the payphone instrument.

79. The Commission finds Staff's recommendation is reasonable. PSPs shall provide their toll-free number that can be reached for comments or complaints. The number shall be available 24 hours per day.

H. Time Limits on Local Calls

80. Staff originally recommended the Commission leave local call time limits to the market. If a time limit is required, Staff recommends the Commission require that the limits be clearly marked on the payphone instrument.

81. Sprint and SWBT agreed with Staffs recommendations.

82. KPA recommended that the Commission consider an additional charge of $.25 for every five minutes after the original ten minutes.

83. In Staff's discussions with the FCC, it appears the FCC is willing to allow the call time limits to be set at the discretion of the PSP considering rates are deregulated, time limits and additional charges for additional time seem to be a logical extension of rate deregulation.

84. The Commission finds setting call time limits is the prerogative of the PSP, although the call limits must be consistent with any FCC guidelines. If the PSP sets a time limit it shall clearly post the time limit on the payphone instrument.

I. Enforcement

85. Staff originally recommended that if the Commission decided to certificate PSPs, repeated violations of the Commission's orders would place all of the offender's payphones at risk of disconnection and possibly lead to loss of certification.

86. SWBT agreed with Staffs position, but questioned whether COPT guideline 15 specifies how the LEC obtains its authority to disconnect the service at the Commission's request.

SWBT recommended the disconnection be completed by the LEC only after the Commission orders it to disconnect the PSP.

87. KPA thought Staffs proposal was potentially too severe. It suggested that Staff and industry work together to establish written guidelines.

88. Staff recommends the Commission continue to require PSPs to comply with FCC and KCC guidelines by authority of FCC order in Docket No. 85-222 of May 6, 1985. This order provides authority of the state commissions to set safety and economic standards in the provision of intrastate, customer-owned, coin operated telephone service. Staff suggests to the Commission that failure of a PSP to comply with any of the FCC or KCC guidelines within ten days following receipt of written notice of noncompliance should result in fines and possible order to disconnect service. As Staff has recommended, and the Commission has found, PSPs should not be certificated. The issue concerning revoking a PSP's certificate upon repeat violations is moot. Staff recommends the Commission accomplish disconnection, following repeat violations, by ordering the LEC to disconnect one or more of the offender's payphone locations.

89. The Commission finds and concludes Staff's recommendation is reasonable. PSPs are required to abide by the rules set out by both the FCC and KCC as delegated to state commissions in its order in FCC Docket 85-222. Any PSP failing to comply with the rules set forth in this and all other relevant orders will be subject to fines and possible disconnection of service. The Commission may order a LEC to disconnect service to a PSP after repeat violations.

J. Local Call Usage Charge

90. Staff originally recommended that PSPs not be required to pay the local call usage charge to the LECs, in addition to the Business Access Line (B1) rate for service.

91. SWBT agrees with Staffs recommendation eliminating the restrictions on local call charges. SWBT states that the FCC requires the deregulation of the local rate effective October 7, 1997, although states may act sooner. (FCC Order; Docket CC 96-128) SWBT does recommend that the portion of COPT guideline 5 which addresses adequate posting of local call rate, remain in force in compliance with the FCC mandate to ensure adequacy of rate disclosure (FCC Order at ¶ 16 and ¶ 49).

92. SIA agreed that the charge is not cost-justified. SIA also believes the charge does not conform to the FCC requirement that payphone services be unbundled because, in an exchange without local measured service, the local call usage charge is not a recognized part of providing the necessary services to payphone service providers.

93. Sprint did not support Staffs recommendation. It wanted the opportunity to provide cost studies, if available, to show any differences between payphone lines and business one-party lines that would support a price differential between the two.

94. KPA supported Staffs recommendation.

95. Staff recommends any additional local service call charges be verified and supported by the local exchange company via the New Services Test as set forth in FCC Order 96-388, ¶ 146.

96. The Commission finds and concludes Staffs recommendation regarding verification of the local call usage charge is reasonable. PSPs shall not be required to pay the local call usage charge in addition to the Business Access Line (B 1) rate for service. The Commission further finds that should a LEC wish to provide cost studies to show differences between payphone lines and business one party lines which would support a price differential between the two, it may do so. Such information would be considered by the Commission to support a LEC rate increase.

K. Shared Lines

97. Staff originally recommended the Commission's policies against sharing lines or trunks and against placement of payphones behind a Private Branch Exchange (PBX) be eliminated.

98. AT&T supported Staffs position and recommended it be expanded to allow for provision of payphone traffic over dedicated access arrangements.

99. Sprint does not support the removal of language concerning the sharing of payphone lines behind a PBX. Sprint argues the sharing of payphone lines behind a PBX could contribute to the possibility of fraud and, during busy-hour times, there is a potential for a lack of dial tone.

100. SWBT expressed concerns that a trial of payphones behind a PBX was never done and that it had identified some problems which could arise. Those problems included: (1) inability to ring back caller in an emergency situation if the caller hangs up; (2) without direct inward dialing, callers will be unable to directly complete calls to payphones from stations outside the PBX; (3) transmission losses and noise through the PBX system; and (4) the inability of a PBX to consistently or properly pass a switch hook flash forward to the central office, which would not allow a payphone customer to immediately recall the operator for subsequent calls.

101. KPA agreed with Staff.

102. Staff recommends the Commission continue its policy against the placement of payphones behind a PBX. The public holds a perception that a payphone allows immediate access to emergency services. If all lines in the trunk are in use at the same time, a caller might not be able to access emergency services.

103. The Commission finds payphones may not be placed behind a PBX. Public safety mandates easy access to emergency services. The public perceives that a payphone allows immediate access to these services and the Commission declines to interfere with that perception.

L. Telephone Numbers on Payphones

104. Staff originally recommended the Commission eliminate its current policy requiring the telephone number to be posted on a payphone, as long as the company has its name posted on the phone as well as a toll-free number to call for inquiries and complaints.

105. Sprint disagreed with Staffs recommendation for three reasons: (1) not all payphones are in exchanges which are equipped with E911, so the user may need to provide the originating telephone number; (2) to provide tracking of complaints; and (3) to aid repairmen who are called to a cluster of payphones.

106. KPA agreed with Staff.

107. Staff revises its recommendation to the Commission in light of the comments received from Sprint. If an individual uses a payphone for emergency purposes and needs to supply emergency services with their location, supplying the payphone number would allow emergency services to rapidly determine the caller’s location.

108. The Commission finds and concludes that Staffs revised recommendation is reasonable. A phone number shall be posted on the payphone instrument. It is in the public interest that individuals using a payphone be able to give the payphone number to emergency services to pinpoint a location.

M. Blocking of Incoming Calls

109. Staff originally recommended the Commission allow PSPs to block incoming calls as long as the blocking does not interfere with outgoing call operations.

110. AT&T agreed with Staffs position, but recommended that a notice of incoming call blocking be posted as part of the payphone signage.

111. Columbus has concerns about blocking incoming calls. It argues that a traveler, not familiar with local addresses or landmarks, might only be able to identify their location for Emergency Services by supplying the posted phone number. In addition, possible travel emergencies might make receiving phone calls via the payphone important.

112. Sprint and SWBT agreed with Staff. Sprint thought this issue should be left to market forces. SWBT noted it offers an optional, one-way, originating only access line through its COPT tariffs.

113. KPA agreed with Staff and recommended that payphones post a notice if incoming calls are not allowed.

114. Staff revises its recommendation to add that PSPs post a notice of incoming call blocking as part of the payphone signage.

115. The Commission finds and concludes that Staffs revised recommendation is reasonable. PSPs may block incoming calls, but if they do, they must post notice of the call blocking as part of the payphone signage.

N. MetroPlus

116. MetroPlus is a service provided by SWBT and Sprint/United which allows customers to call into the Kansas City or Wichita metropolitan areas from selected nearby exchanges for a flat

monthly fee. This service is not currently available to payphone owners. The Commission requested comment on whether payphones should be able to utilize this service.

117. Sprint argued that it should be able to provide this plan as offered, as long as it does not discriminate between its own payphone operations and the payphone operations of others. If the Commission determines MetroPlus should be offered to payphone service providers, then Sprint argues it should be able to set the rates, based on usage, and not be tied specifically to the business rate.

118. SWBT is not opposed to the inclusion of payphone service in the MetroPlus service offering as long as SWBT has the necessary software capacity. SWBT noted that payphone class of service was not considered by SWBT in its development and implementation of MetroPlus service.

119. KPA recommended that payphones be able to subscribe to MetroPlus service and that tariffs be changed to reflect that option.

120. Staff recommends the Commission order LECs to allow payphone owners, whose payphones are located in MetroPlus serving areas, the option to choose MetroPlus service at the existing rate. However, a company providing MetroPlus service may request a review of rates if costs warrant such a review.

121. The Commission finds that payphone owners with instruments located in MetroPlus serving areas may choose that service at the existing rate. A company providing MetroPlus service may request a review of rates if costs warrant. The Commission may consider this evidence in determining whether a LEC may increase the charge for MetroPlus service to a PSPs.

0. Demarcation Point

122. The demarcation point is where the telephone company's property and responsibility ends and the customer's property and responsibility begins. Generally, the demarcation point is in a network interface device on the outside of a building or just inside the building into which the customer plugs his or her telephone wire and equipment. A demarcation point is generally within 12 inches of the entry point to the customer's facilities (minimum point of entry).

123. Staff recommended the Commission request comments on point of demarcation/minimum point of entry issues. Staff specifically requested comments on its interpretation of the FCC's demarcation/minimum point of entry guideline. Staff thought that a LEC payphone location which is "fed" from a street box should continue to be "fed" from that street box (grandfathered) even if another payphone provider takes over that payphone location and would normally activate the demarcation point being moved to the minimum point of entry.

124. Sprint thought the federal payphone orders adequately covered the issue.

125. SWBT disagreed with Staffs interpretation of the term "grandfathered" in ¶ 150 and ¶ 151 contained in Order 96-388. SWBT argues the FCC ruling only applies to LEC payphone installations which existed on the effective date of the Payphone Order, September 20, 1996. Changes to existing LEC installations, including removal of SWBT's equipment to allow a competitor's placement of its equipment, voids the grandfather clause the same as it would if a LEC replaced its existing payphone with new payphone equipment. Any significant change in the service removes the grandfathered coverage for the service. SWBT references the FCC Docket 88-57, revised August 13, 1990, and approved in Kansas in KCC Docket No. 127,140-U.

126. KPA thought state requirements were necessary and the Commission should require: (1) that existing telephone wire be left in place for the next service provider; (2) the new demarcation

point should be as close to the termination of the existing wiring as possible; and (3) where new service is being installed, the demarcation should be placed as instructed on the service order and to the address listed on the service order.

127. Paragraph 15 1 of the FCC's September 20, 1996 Payphone Order in Docket 96-128 states the following:

> Consistent with our objective of treating incumbent LECs and independent payphone providers' payphones in a similar manner, we conclude that the demarcation point must be the same as incumbent LECs use for independent payphone providers today. Accordingly, the demarcation for all new LEC payphones must be consistent with the minimum point of entry, demarcation point standards for other wireline services. The Commission has previously allowed equipment reclassified as CPE, resulting in a change in the demarcation point, to remain in the same location because of the costs involved in relocating the equipment. Accordingly, we grandfather the location of all existing LEC payphones in place on the effective date of this order because of the difficulty and cost of moving these payphones to meet our new demarcation point requirements. Similarly, we do not require that network interfaces be placed for existing LEC payphones unless these payphones are substantially refurbished, for example, upgraded from dumb to smart payphones or replaced.

128. After consideration of the comments filed in this docket, Staff revises its initial recommendation to the Commission. Staff originally thought this wording grandfathered LEC payphone locations including the demarcation points. This would allow an independent payphone provider to utilize the same facilities when a LEC payphone location changed to the independent payphone provider. Staff saw this interpretation as not only reasonable but fair.

129. After further consideration, Staff now thinks the intent of this Section centers on the first sentence of this Section - to migrate LEC payphones toward the same treatment as independent payphones. If the entire paragraph is read in that context, then it is clear the grandfathering was not meant to leave LEC payphones and independent payphones in the same kind of competitive position,

but to try to move existing LEC payphone locations to the same standards as currently exist for independent payphone service providers. This is an important distinction. If the FCC's goal was to put LEC payphone companies and independent payphone companies in the same competitive position, current LEC payphones fed from a pedestal should continue to be fed from that pedestal after an independent payphone provider places its equipment at that location. However, if the FCC's goal was to migrate LEC payphones toward the same treatment as independent payphones, then a payphone fed from a pedestal should have its demarcation point moved to the minimum point of entry whenever the service is refurbished or replaced. Staff is concerned that this will lead to some unfairness because the cost of getting a telephone wire to an independent payphone after a demarcation point is moved may make the location unprofitable. This could essentially guarantee the incumbent will always serve those locations. However, Staff is convinced that its new interpretation of ¶ 151 correctly reflects the FCC's intent. Staff recommends the Commission adopt the FCC's position on this issue. The Commission should also note it will address this issue specifically pursuant to a complaint; for example, an allegation that a LEC's existing minimum point of entry/demarcation point standards are not being applied.

130. The Commission finds and concludes the recommendation of Staff is reasonable. The intention of the Commission is to treat LEC payphones the same as independent PSPs. The location of the demarcation point is grandfathered until the payphone is refurbished or replaced. If after a payphone is repoaced or refurbished, the PSP (LEC) must comply with the new demarcation guidelines. The Commission adopts the FCC reasoning set forth in ¶ 151 of FCC Order 96-388.

P. Selective Class of Call Screening

131. Staff originally recommended Selective Class of Call Screening (SCOCS) service be provided with no recurring costs. SCOCS enables a PSP owner to restrict outgoing operator-assisted calls to those charged to a called telephone, a third number or a calling card.

132. Sprint urged the Commission not to require that the service be provided at no cost without allowing LECs adequate opportunity and time to provide cost studies that reflect a non-recurring or recurring cost associated with this service.

133. SWBT is not opposed to eliminating the recurring charge for this service and has already done so in its tariff filing with the FCC.

134. KPA agrees that SCOCS should be provided with no recurring costs and also believes toll billing exception (also known as Billed Number Screening) should be provided with no recurring costs.

135. Staff recommends SCOCS and related service costs be recovered on a one-time basis at the current non-recurring rate. An increase in the non-recurring charge or the establishment of a monthly recurring rate will not be authorized unless the involved company demonstrates validated and well-supported costs as defined by the FCC's New Services Test.

136. The Commission finds and concludes that SCOCS and all related service costs be recovered on a one-time basis at the current non-recurring rate. No increase in the non-recurring charge or the establishment of a monthly recurring rate will be authorized unless the involved company demonstrates validated and well-supported costs as defined by the FCC's New Services Test. (FCC Order 96-388, ¶ 146)

Q. Inmate Payphones

137. Staff originally outlined a situation where a person was being harassed by an inmate and could not stop the calling. Staff offered three options to deal with the problem and requested comments on other options. Staffs three options were to: (1) institute a universal denial to all telephone numbers except those the inmate lists (the institution would have to contact the person to make sure they wanted to be called; (2) allow the call recipient to deny any further calls from the institution when asked if s/he would like to accept the call; and (3) identify the inmate institution completely in the introductory message.

138. AmeriTel noted that any of Staffs recommended changes would only affect Kansans receiving calls from Kansas institutions, but not Kansans receiving calls from inmates in other states. AmeriTel recommended customers request Toll Billing Exception (TBE) from their local service provider. This would protect Kansas customers from intrastate or interstate inmate calls. AmeriTel also questioned the technical feasibility of Staffs suggestions and stated they would be administratively burdensome. AmeriTel opposed identifying the institution completely in the introductory message because of the added cost of reprogramming.

139. AT&T stated that, while Staffs suggestions may be technically feasible, the suggestions would be a financial burden. It endorsed Staffs third suggestion. In the alternative, AT&T recommended the inmate institution utilize a block from anywhere in the institution to the harassed person’s telephone number. It stated that all originating calls should be branded with the name of the state, the name of the institution and the name of the inmate in the introductory message.

140. Columbus questioned the feasibility and workability of Staffs first option. Columbus noted that the option of blocking all calls from a particular facility would keep someone from receiving calls from others at that facility (such as an attorney). Columbus favored the third option.

141. Sprint had no specific comments other than to point out any additional cost on LECs should be recoverable.

142. SWBT noted this problem is not specific to inmate institutions. SWBT also had concerns about each of Staffs alternative methods of dealing with the problem of harassing calls from inmates from an unnamed institution. It recommended that the customer either subscribe to TBE, which would block all collect calls to that customer, or contact the institution involved.

143. SWBT recognized that inmate equipment could be programmed to announce the particular facility that is calling the customer, but noted that not every institution chooses to use it. SWBT also recommended that correctional institutions work directly with PSPs and the Commission to develop alternatives to further minimize the nuisance call problem.

144. KPA agrees with Staffs third option. All inmate providers should be required to subscribe to line information data base (LIDB) and the customer should request TBE.

145. Staff argues that there are at least two problems with the TBE solution. First, it would block all collect or third-party calls to the recipient, not just harassing calls from inmates. Second, it assumes that harassed customers will know about TBE and that they can obtain the service from their LEC or that they will contact their LEC about the problem.

146. Staff recommends Inmate Payphones be required to identify the inmate institution in an introductory message.

147. The Commission finds that Inmate Payphones are required to identify the inmate institution in an introductory message.

R. Public Interest Payphones

148. Section 276(b)(2) of the Telecommunications Act instructed the FCC to determine whether "public interest payphones" should be maintained. In its Docket 96-388 (¶ 285/7) Order, the FCC granted broad authority to the states to regulate public interest payphones (PIPs). The FCC Order at ¶ 282 defines a PIP as 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." Staff originally recommended the Commission request comments on the need for public interest payphones, what process should be utilized to designate them and in what manner they should be subsidized.

149. SIA recommended the determination of whether a particular payphone is in the public interest should be the responsibility of the city, county, school, etc. which wants a payphone in a certain location. If it is not financially feasible for the PSP to provide service at that location, then it should be the responsibility of the entity requesting the payphone to subsidize its existence.

150. Columbus believed continued provision for the operation of public interest payphones by ILECs is warranted, appropriate and in the public interest. ILECs should be able to designate public interest payphones and support should be available from the Kansas Universal Service Fund.

151. Sprint supports the ability of LECs to remove unprofitable payphones from its exchanges. If the Commission determines that a problem has arisen where no payphone is available, then some kind of Public Use Telephone Fund should be set up. It could be funded by all payphone providers in the state or by the governing municipality in the specific area.

152. SWBT recommended deferring rulemaking relating to public interest payphones until a sufficient amount of time has elapsed to evaluate the effect of deregulation and competition. If

they should be deemed necessary, SWBT recommended local governmental agencies bear the responsibility for determining whether to place a payphone at a particular location. The costs of such payphones should be borne by the local taxpayers who receive the benefit of the service.

153. . KPA recommended that public interest payphone guidelines be established by Staff, the LECs and KPA. These phones should be supported by the Kansas Universal Service Fund. KPA also recommended the LECs develop vacation schedule line tariffs. A vacation schedule line tariff should increase payphone placement in seasonable locations, such as lakes, by offering a reduced monthly service rate during a portion of the year.

154. Before delegating the responsibility for public interest payphones to the states, the FCC noted that any effort to implement a uniform national program is unlikely to be successful in accounting for differing conditions among the states. Staff thinks the same argument applies to the state and local units of government (cities, counties, school districts, townships, etc.). Staff argues local units of government know best if and where public interest payphones are necessary and how valuable they would be at that location.

155. The FCC noted the funding mechanism needs to: (1) fairly and equitably distribute the costs of such a program and (2) not involve the use of subsidies prohibited by Section 276(b)(l)(B) of the 1996 Telecommunications Act (removes payphone service elements from access charges and removes subsidies from basic exchange and exchange access revenues).

156. As stated previously, the FCC defers to the states to administer and fund public interest payphones. Staff recommends to the Commission that based on the comments received, it does not appear that a Public Interest Payphone program is necessary in Kansas at this time. Staff is not familiar with any complaints lodged with the Commission in this vein. Staff suggests that the

Commission recommend to local units of government that they may designate public service payphones based on community and safety input and to determine how they will subsidize public interest payphones, consistent with FCC requirements. Staff suggests the Commission monitor the issue and may, upon its own discretion and/or upon complaint, review the matter.

157. The Commission finds and concludes that Staffs recommendation is reasonable and is adopted. No evidence has been presented to the Commission which leads the Commission to believe there is a need to establish a Public Interest Payphone program at this time. The Commission recommends that local units of government may designate public interest payphones and determine how they will subsidize them consistent with FCC requirements. The Commission directs Staff to monitor the issue and bring possible problems to the attention of the Commission. This ruling will also serve as the Commission's response to the FCC request for state commissions to provide their determinations as to necessity and funding of PIP programs by September 20, 1998.

S. Barriers to Entry - Exclusivity Clauses

158. Staff originally asked if exclusivity clauses were a barrier to competition and requested comments on other barriers to entry.

159. AT&T stated exclusivity clauses are not a barrier to competition and that the location owner has an interest to balance the needs of the owner with the needs of its customers.

160. Sprint does not see exclusivity clauses as a barrier to competition. Sprint argues the premise owner should be able to get the best deal he or she can get from a payphone provider.

161. SWBT recommended that any regulations the Commission. adopts should be minimal to assure the general public interest is not harmed while promoting competition.

162. KPA requested the Commission serve as an arbitrator on disputes involving the changing of payphone service providers; including whether a site is under contract or not. KPA named as one barrier to competition the claim by some LECs that their payphone contracts are for a location; not with the current owner or tenant (see KCC Docket No.194,281-U, formal complaint against SWBT by Pay Phone Concepts).

163. After reviewing industry comments, Staff does not think exclusivity clauses are necessarily a barrier to competition and recommends the Commission address this issue as needed, on a case-by-case basis. Staff also agrees with KPA that interpretation of contracts between payphone service providers and location owners are a matter for the courts; not the Commission.

164. The Commission finds and concludes that exclusivity clauses in contracts between PSPs and location providers are not necessarily barriers to competition, and should be dealt with on a case by case basis. Parties should recognize the Commission will not voluntarily insert itself into contract disputes between two parties unless there is clear Commission jurisdiction.

T. Reintroduction of Regulation

165. In its 96-388 Order (¶ 5 1, ¶ 6 1 ,¶ 72), the FCC made provisions for reintroduction of regulation if a market failure develops. Staff originally recommended the Commission request comments on how to determine whether a market failure exists, how it should correct the market failure, if it had the authority to require two or more providers at such a location, or whether the Commission should take any action.

166. Sprint argued that, before saddling the entire payphone industry with additional regulation, the Commission should first look to the provider of poor service for correction.

167. SWBT believes the Commission should not attempt to determine a course of action until a market failure has occurred.

168. KPA recommends the Commission not reintroduce regulation other than as specified by KPA in answers to previous questions.

169. Staff recommends the Commission follow the FCC guidelines (FCC 96-388 ¶ 51, ¶ 61, ¶ 72) which provide that unless a state can show that there are market failures within the state that would not allow market-based rates, the market will be allowed to set the rate for local calls. When states have concerns about possible market failures, such as that of payphone locations that charge monopoly rates, they are empowered to act, for example, by mandating that additional PSPs be allowed to provide payphones, or requiring that the PSP secure its contract through a competitive bidding process that ensures the lowest possible rate for callers. If market failure persists, that state should recommend the matter to the FCC for possible investigation.

170. The Commission finds and concludes Staffs recommendation is reasonable. FCC rules provide that unless failures occur within the state that would not allow market-based rates, the market will be allowed to set the rate for local calls. States are empowered to act in situations of possible market failure and should those attempts fail, the state can refer the matter to the FCC for further investigation and possible reintroduction of regulation.

U. Unbundling of Payphone Services

171. Staff originally recommended the Commission request comments on whether it needed to order further unbundling or whether it should rely on existing federal procedures which would allow payphone providers to make bonafide requests for unbundled services. (FCC 96-388 ¶ 148).

172. SIA proposed the Commission not require further unbundling of payphone services for Independent Local Exchange Carriers (ILECs). It noted that all necessary services are currently being offered. If unbundling is needed in the future, some type of "bona fide" request process could be utilized.

173. Sprint has not been requested to provide further unbundling and does not know if it is even feasible. Sprint sees no benefit of further unbundling.

174. SWBT noted the FCC did not require LECs to unbundle more features and functions from the basic payphone line than the LEC provides to its own payphone operations or to others. The FCC also reaffirmed the ability of PSPs to request additional unbundled features and functions through the Open Network Architecture (ONA) 120 day service request process. SWBT believes the Commission should decline to order further unbundling of payphone services beyond what is required by the FCC and should, instead, rely on the established procedures for processing bona fide requests.

175. KPA recommends that all LEC payphone tariffs be unbundled to reflect the "new services" test of cost based rates, eliminate subsidized rates and have the LECs use the same costing methodology in formulating their rates.

176. Staff recommends to the Commission it is not necessary to direct LECs to unbundle additional services or elements because additional services are not necessary to provide payphone services. However, the states may impose further payphone service unbundling requirements that are consistent with Section 276 of the Telecommunications Act of 1996 and FCC requirements.

177. The Commission finds and concludes that Staffs recommendation is reasonable. LECs are not required to unbundle additional services or elements as additional services are not

necessary to provide payphone services. The Commission has authority to address this issue as necessary.

V. Competitive Fairness Regulations

178. The Commission requested comment on the necessity of competitive fairness regulations for PSPs.

179. SIA believes no further competitive fairness regulations are needed at this time. If future circumstances warrant further consideration, they should be handled on a case-by-case basis.

180. Sprint sees no need for such regulations. It believes controls are in place to ensure equal treatment to all PSPs.

181. SWBT, noting its Comparably Efficient Interconnection (CEI) plan has been filed with the FCC, thinks that any state rules would only duplicate the FCC's guidelines and SWBT's CEI plan. SWBT noted the flexibility of LEC CEI plans allow different methods for providing comparably efficient services and allows each LEC to individually address its provision of payphone services. SWBT thought a broad approach would not work as well.

182. KPA is concerned that some LECs are using their market power to push small payphone operators out of legally constituted contracts and treat their payphones differently than independent PSPs. KPA recommends the Commission set out guidelines to review LEC actions, including the use of random inspections, both as part of this docket and for the next two to three years.

183. KPA also listed some technical issues as integral to competitive fairness. The first was the need for LECs to provide the three-tone herald, sit-tone or reorder tones when a call is incomplete. This enables a smart payphone to determine that a call was not completed and should

not be charged to the caller. If a non-completed call is announced only with a recording, the smart payphone will think a phone conversation has begun. The caller's coins will not be returned as they should be for a non-completed call.

184. KPA also requested the Commission require that a "flash" or "wink" be received from the LEC after a called party hangs up. If such a signal is not received, a smart payphone will keep the line open long enough for the caller to receive a second dial tone. A call made after the second dial tone could be charged to the payphone and be the responsibility of the payphone provider.

185. It is Staffs understanding that each LEC, under standard industry practices established by BellCore, is required to signal a "flash" or "wink" when the called party hangs up. In addition, it is also Staffs understanding that each LEC is also obligated to provide a sit-tone or three-tone herald when a call is not completed. As such, Staff does not feel it is necessary for the Commission to take up these matters at this time.

186. KPA also recommended that a forum be established to address these issues. Membership would include KPA members, LEC personnel and Staff. The forum would help determine other technical issues that need to be resolved to bring Kansas in line with the federal law and FCC orders. KPA believes such a forum could resolve issues in a more collegial fashion than a formal Commission hearing.

187. After reviewing industry comments, Staff recommends to the Commission no further competitive fairness regulations are needed at this time. Section 276(a)(2) of the Federal Act requires LECs to treat independent PSPs as they treat their own payphone operations. Staff believes that if future circumstances warrant further consideration, they should be handled as they arise.

188. The Commission finds no further competitive fairness regulations are needed at this time. In the event future circumstances require additional consideration, parties are able to bring concerns to the attention of the Commission via the complaint process.

X. Other Issues

189. Staff originally recommended the Commission request comments on any other payphone issues.

190. AT&T recommended that all payphone lines be referred to as PSP access lines. This term would include “dumb” lines, “smart” lines and dedicated access lines. Staff recommends the Commission not address this issue at this point. Currently, payphone access lines are tariffed differently. “Smart” lines are more expensive than “dumb” lines and separate tariffs provide more information to PSPs for business planning purposes. Staff sees this as a valid reason not to combine the tariffs.

191. The Commission finds and concludes Staffs recommendation is reasonable and is accepted. It appears there is a viable business reason for leaving the access line tariffs as they are currently.

192. SWBT recommended eliminating COPT guideline 3, which required the COPT to enter into a service agreement with the LEC. It noted there was no longer any reason for the site owner to have any direct relationship with the LEC. Staff believes this issue is moot since Staff recommended the Commission eliminate previous payphone guidelines including COPT guideline 3 and adopt FCC guidelines with clarifications.

193. The Commission finds and concludes COPT guideline 3 has been eliminated by previous action in this order and, as such, this point is moot. The PSP is to maintain its relationship with the location provider independently of any service agreement with the LEC.

194. KPA noted the FCC's payphone orders require payphone services to be priced according to the FCC's New Services Test for competitive services. KPA considered the new services test to be the most important issue to be raised in this docket. KPA requested the Commission require all LECs to base all payphone tariffs on incremental costing to meet the FCC's New Services Test.

195. Staff recommends the Commission address this issue after it has completed its cost study docket, KCC Docket No. 97-SCCC-149-GIT. Staff suggests to the Commission it would be much more efficient and accurate to determine costs according to a Commission approved cost study to and utilize those results in a New Services Test review. Both loop cost rates and switching rates will be determined in this docket. Both of those rates will impact the B 1 rate.

196. Some existing LEC payphone services do not appear to comply with the FCC's New Services Test because of the large difference between known approximate costs of service and tariffed rates. Specifically, Staff is referring to the $5.00 charge for SCOCS and the 7-8 cent local message increment which is added to the business single-party flat rate; both were set in KCC Docket No. 141,975-U.

197. In Section P, Selective Class of Call Screening, Staff recommended the Commission order LECs to either: (a) provide the results of its New Services Test for the local call rate additive and recurring costs for Selective Class of Call Screening and Billed Number Screening to the Commission, or (b) agree to withdraw these rate elements from its tariffs. If LECs choose option

(a) they would be required to make the test and its results available to intervening parties pursuant to a non-disclosure agreement.

198. The Commission finds and concludes Staffs recommendation is appropriate and is adopted. LECs must provide the results of their New Services Tests for the local call rate additive and recurring costs for Selective Class of Call Screening and Billed Number Screening to the Commission or agree to withdraw these rate elements from their tariffs. LECs will be required to make the test and results available to intervening parties pursuant to a non-disclosure agreement.

199. The Commission further finds and concludes that Appendix A, as attached to this order, be provided to companies as a summary of the contents of this order. Appendix A is incorporated by reference as if fully set forth herein.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

The Commission concurs with FCC guidelines as set forth in FCC Order 96-388 and, for clarification, adopts the payphone guidelines as described above. It is no longer necessary to have extensive Kansas-specific payphone service provider requirements. FCC guidelines and the payphone guidelines, as described above, supersede the Commission's 15 guidelines and 12 policies concerning the connection of COPTs in the Commission's October 4, 1988 Order in Docket No. 141,975-U. Appendix A provides a summary of the rulings in this order and is incorporated by reference as if fully set forth herein. In addition, incumbent Local Exchange Carriers are directed to review their tariffed rates on file for PSP services and to file with the Commission the appropriately revised rates and supporting cost studies, where necessary, within 30 days of the issuance of the Order in this matter.

The parties have fifteen (15) days, plus three (3) days if service of this Order is by mail, from the date of service of this Order in which to request reconsideration on any matter decided herein.

The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED

Wine, Chr.; Seltsam, Corn.; Claus , Corn.

Dated: OCT 22 1998

ORDER MAILED

OCT 23 1998

Executive Director

DAVID J. HEINEMAN
EXECUTIVE DIRECTOR

SGS

APPENDIX A

PSP GUIDELINES

1. All payphones must meet current FCC and Americans with Disabilities Act (ADA) guidelines.

2. All references forbidding PSP and OSP surcharges are no longer operative as they have been preempted by the passage of the Telecommunications Act of 1996 $276 and K.S.A. 66-2005(v).

3. Rate tariff filings of PSPs and LEC payphone operations are effective upon filing and other tariffs are effective seven days after filing.

4. Posting of notice as required for OSPs in Docket No. 170,802-U is also applicable for PSPs. A PSP shall post, or cause to be posted, notice of certain information on or near each telephone. Such notice shall be posted in a conspicuous manner calculated to advise a person using the telephone of the information contained in the notice. Information in the posted notice shall include: 1) the name of the OSP; 2) a toll-free telephone number the caller may use to contact the OSP or agent for the OSP; 3) a statement informing the caller that rate information will be quoted upon request and the dialing pattern to be used for obtaining such information; and, 4) a statement in compliance with subsection V.F. of the COPT guidelines, if applicable.

5. Unblocked access for all access code calls from payphones is required.

6. The Commission will retain its distinction between OSPs and PSPs and PSPs are not required to be certificated by the Commission.

7. All PSPs are required to route 0- calls to the customer's OSP of choice, all of which are required to provide access to emergency services.

8. PSPs are allowed to block access to certain calls to prevent fraud.

9. PSPs are allowed to bill for Directory Assistance (DA) from their payphones should they so desire.

10. PSPs shall post their toll-free number to receive comments or report complaints on the payphone instruments. The number shall be answered either personally or mechanically 24 hours per day.

11. PSPs may set call time limits although the call limits must be consistent with any FCC

guidelines. If a PSP sets a call time limit, the limit must be posted on the payphone instrument.

12. PSPs are required to abide by the rules set out by both the FCC and KCC as delegated to state Commissions in its order in Docket 85-222. Any PSP failing to comply with the rules set forth in this and all other relevant orders will be subject to fines and possible disconnection of service. The Commission may order a LEC to disconnect service to a PSP after repeat violations.

13. PSPs shall not be required to pay the local usage charge in addition to the business access line (B 1) rate for service.

14. Payphones may not be placed behind a PBX.

15. PSPs are required to post the telephone number of the payphone on the payphone.

16. The Commission will allow call blocking. PSPs electing to provide call blocking must provide notice that a specific payphone cannot receive incoming calls.

17. PSPs with instruments located in MetroPlus serving areas may choose that service at the existing rate. A LEC providing MetroPlus servic to a PSP may request a review of rates if costs warrant.

18. In order to meet the new FCC demarcation point requirements, payphones fed from pedestals shall have their demarcation points moved to the minimum point of entry whenever the service is refurbished or replaced or when a PSP takes over an existing payphone location.

19. Selective Class of Call Screening and all related service costs should be recovered on a one time basis at the current non-recurring rate. No increase in the non-recurring charge or the establishment of a monthly recurring rate will be authorized unless the company demonstrates validated and well-supported costs as defined by the FCC's New Services Test.

20. Inmate Payphones are required to identify the inmate institution in an introductory message.

21. The Commission declines to establish a PIP program at this time. Local units of government may designate public service payphones and determine how they will subsidize them consistent with FCC guidelines. The Commission will monitor the issue.

22. FCC rules provide that unless a state can show market failures within the state that would not allow market-based rates, the market will be allowed to set the rate for local calls. States are empowered to act in situations of possible market failure and should those attempts fail, the state can refer the matter to the FCC for further investigation and possible reintroduction of regulation.

23. LECs are not required to unbundle additional services or elements as additional services are not necessary to provide payphone services.

24. The Commission finds no further competitive fairness regulations are needed at this time. If in the future, circumstances **warrant** further consideration, parties may bring concerns to the Commission via the complaint process.