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KURT ADAMS
CHAIRMAN

STATE OF MAINE
PUBLIC UTILITIES COMMISSION
242 STATE STREET
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AUGUSTA, MAINE
04333-0018

SHARON M. REISHUS
VENDEAN V. VAFIADES
COMMISSIONERS

February 5, 2007

Honorable Philip L. Bartlett II, Senate Chair
Honorable Lawrence Bliss, House Chair
Joint Standing Committee on Utilities and Energy
115 State House Station
August, Maine 04333

Re: Report on Public-Interest Pay Phones

Dear Senator Bartlett and Representative Bliss:

In 2005, legislation was enacted requiring the Commission to establish by rule "a process for reviewing and approving requests for public-interest pay phones" and authorizing the Commission to require annual contributions up to \$50,000 to the state universal service fund to provide funding for public-interest pay phones. Subsection 7508(4) requires the Commission to file an annual report with the Utilities and Energy Committee detailing Commission activities relating to § 7508.

Enclosed is the above-mentioned report.

We look forward to working with you and your Committee during the upcoming session. If you have any questions or comments regarding the attached report, please contact us.

Sincerely,

Kurt Adams, Chairman
Maine Public Utilities Commission

Sharon M. Reishus, Commissioner
Maine Public Utilities Commission

Vendean V. Vafiades, Commissioner
Maine Public Utilities Commission

Attachments

cc: Utilities and Energy Committee
Lucia Nixon, Legislative Analyst



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**2007 Annual Report by the Public Utilities Commission
To the Utilities and Energy Committee
Regarding Public-Interest Pay Phones
Pursuant 35-A M.R.S.A. § 7508**

I. BACKGROUND

In 2005, the Maine Legislature enacted legislation, codified at 35-A M.R.S.A. §§ 7104(6) and 7508, requiring the Commission to establish by rule “a process for reviewing and approving requests for public-interest pay phones” and authorizing the Commission to require annual contributions of up to \$50,000 to the state universal service fund, to provide the funding for Public-Interest Pay (PIP) phones. Section 7508 sets forth two general criteria for the establishment of the PIP phones:

1. A proposed PIP phone must fulfill a public welfare, health or safety policy objective, and
2. A traditional pay phone would not otherwise remain or be placed at a proposed PIP phone location by the operation of the competitive marketplace.

Subsection 7508(4) requires the Commission to file an annual report with the Utilities and Energy Committee detailing the Commission’s activities relating to § 7508. Specifically, the report must include the number of petitions for PIP phones the Commission has received, the number of PIP phones the Commission has approved and the amount of available funds expended.

The purpose of this report is to respond to the requirements in § 7508.

II. COMMISSION ACTIVITY

On September 13, 2005, the Commission opened an inquiry in order to solicit suggestions from interested persons regarding the formulation of a rule governing PIP phones. On January 9, 2006, we issued a proposed PIP rule and Notice of Rulemaking (Docket No. 2006-771). A public hearing took place on February 9, 2006. On May 3, 2006, the Commission reached its decisions regarding the terms of the PIP program and issued its final rule and Order Approving Rule. The PIP rule is Chapter 252 of the Commission’s Rules.

The PIP rule establishes procedures in the following areas:

- Type of telephone and calling capabilities. A PIP may be located inside or outside, must have a distinctive identifying sign, must be coinless, must be capable of making direct dialed local, n11, and 800-style calls at no charge to the caller, and must be capable of making other calls using commonly available methods such as prepaid cards, credit cards or as a collect call.

- Local exchange carrier responsibilities. The local exchange carrier (LEC) must provide an access line at an approved Public Access Line Rate that is a fixed, per-month rate.
- PIP Provider responsibilities. A PIP provider, selected by the Commission, shall install, maintain and service all PIPs, shall pay the LEC bill, and shall be compensated from the Maine Universal Service Fund.
- Application process. The Commission shall accept applications at least annually, following certain timeframes and procedures described in the rule.
- Selection. The Commission may consider six criteria delineated in the rule, or any others it considers appropriate, when considering which PIP applications to approve. A PIP may not be installed if another publicly available phone is located within 1,000 feet of the PIP's location unless the Commission explicitly determines that an additional phone is needed.

The order and rule are attached to this report.

III. PETITIONS AND SELECTION

During July and August of 2006, the Commission solicited and accepted applications for PIP phones. We sent a solicitation to all municipalities in Maine, state agencies dealing with issues that might prompt the need for a public phone, all incumbent local exchange carriers in Maine, and all persons who participated in our earlier Inquiry. We posted information on our web page and ensured that members of the press were aware of the solicitation. Our goal was to make relevant members of the public aware of the program without unduly advantaging any particular entity. A significant level of press coverage during the development of the program undoubtedly aided in making the public aware of the program.

We received 55 applications. The vast majority were from municipalities requesting a PIP at a municipal building such as a town hall or fire station or at a public area such as a boat landing or a recreational building. In some cases, we received applications for more than one PIP from a single municipality.

In September, the Commission deliberated and determined that each application should be placed in one of three categories: Tier 1 (accepted with highest priority), Tier 2 (accepted with lower priority, subject to availability of funds), or Tier 3 (rejected).¹ In November, the Commission reconsidered three applications and made minor revisions to the three tiers. The final grouping is composed of 33 applications in Tier 1, 10 applications in Tier 2, and 11 applications in Tier 3. Tier 3 applications consisted almost exclusively of locations that were within 1,000 feet of an existing publicly available phone. Tier 2 applications consisted of applications from towns that submitted two applications and locations that were privately owned. When ranking two applications

¹ One application was withdrawn.

from one municipality, the Commission generally ranked municipal buildings over recreational facilities.

The Commission sent notification letters to all applicants and began the process of hiring a PIP Provider to install the PIPs. Using the State of Maine's hiring procurement procedures, we issued an RFP and subsequently chose Davel Communications, Inc. as the PIP Provider. Davel installs and maintains payphones nationwide, including within Maine. Currently, Davel is preparing to conduct site visits in preparation of installing Maine's PIPs.

The contract between the Commission and Davel will result in Davel installing all Tier 1 and Tier 2 PIPs. Davel will receive \$50,000 per year for its services. The contract lasts for three years, at which time the Commission will issue an RFP to obtain (or retain) a PIP Provider.

IV. PROGRAM MONITORING

As the PIP program progresses, the Commission will monitor such topics as speed of installation, problems encountered by the PIP Provider or the entity at which the PIP is located. It is unlikely that we can monitor the number of calls made from the PIP, because that information is not recorded. However, we will attempt to gain some knowledge of the uses made of the PIPs.

V. ISSUES FOR THE LEGISLATURE TO CONSIDER

We will draw the Committee's attention to three issues. First, the full \$50,000 allocation will be dedicated to the PIPs selected in 2006 for three years. Unless PIPs are removed – an event that we do not anticipate occurring frequently – there will be no funds for installation of future PIPs. We could have avoided this problem by limiting the annual spending to less than \$50,000; the result might have been that fewer PIP applications would be accepted. However, the PIPs we accepted were worthy applications and we saw no reason to refuse them in order to save funds for future years.

Second, the statutory requirement that PIPs not be placed in locations where a public phone would otherwise exist creates a "Catch-22" in some instances. We received applications from municipalities that had already funded a public phone but that asserted that the cost was economically burdensome for the town. We rejected those applications. Thus, some towns were disadvantaged by the fact that they had "scraped up money" for a phone that might have been more important to that town and more economically burdensome than was true of phones that we did accept. We see no obvious solution to this problem.

Third, we would have found it exceedingly difficult to choose among applications if there had been more applications than could be funded (and that were not within 1,000 feet of an existing publicly available phone). During the 2006 selection process,

we attempted to prioritize applications in a more granular fashion, and found that we are ill-suited to prioritize the severity of applicants' needs. Should more funds become available and a significant number of new applications be filed, this could become a serious problem to the effectiveness of the PIP program. We suggest that a social service agency more familiar with social needs be given the responsibility to choose among the applications.

Summary of Public Interest Payphone Applications Received July - August 2006
Approvals and Priorities Revised November 13, 2006
Docket No. 2006-558

TIER 1 PIPs -- remote, public locations, safety

	City	PIP Location	Rationale	Inside vs Outside	Incoming Calls	24 hrs a day
1	Bangor	Bangor Dept of Health & Welfare	Existing payphone across street, but not at obvious location (in University bldg).	Inside	No	No
2	Berwick	Town Hall Building	Remote. Obvious public location.	Outside-covered	Yes	Yes
3	Cliff Island	Post Office/Community Center	Safety. Remote. Obvious public location.	Outside	Yes	Yes
4	Columbia Falls	Post Office	Remote. Obvious public location.	Outside	Yes	Yes
5	Dover-Foxcroft	Police Department	Obvious public location	Outside-covered	Yes	Yes
6	Freeport	Library	Existing payphone .17 mi away, but not at obvious location (Haraseeket Inn)	Inside	No	No
7	Fryeburg	Rte 302 Rescue Building	Busy travel area. Obvious public location.	Outside	Yes	Yes
8	Greenville	Police Department	Obvious public location	Outside-covered	No	Yes
9	Glenburn	Town Office	Remote. Obvious public location.	Outside-covered	Yes	Yes
10	Hermon	Recreation Facility/Info. Bldg.	Remote. Obvious public location.	Outside	Yes	Yes
11	Islesford	Little Cranberry Island	Safety. Remote	Outside-covered	Yes	Yes
12	Islesford	Great Cranberry Isle	Safety. Remote	Outside-covered	Yes	Yes
13	Jay	Police Department	Obvious public location	Outside-covered	Yes	Yes
14	Kittery	Kittery Police Department	Busy travel area. Obvious public location.	Yes	Yes	Yes
15	Lamoine	Lamoine Consol. School	Remote. Obvious public location.	Outside		Yes
16	Lyman	Fire Station	Remote. Obvious public location.	Outside	Yes	Yes
17	Machiasport	Town Office	Remote. Obvious public location.	Outside	Yes	Yes
18	Madawaska	Fire Station	Obvious public location	Outside-covered	Yes	Yes
19	Meddybemps	Palmer's Store	Remote. Obvious public location.	Outside	Yes	Yes
20	Mt. Vernon	Fire Station	Remote. Obvious public location.	Outside	No	Yes
21	Northfield	Town Hall Building	Remote. Obvious public location.	Outside-covered	No	Yes
22	Raymond	Town Office	Obvious public location.	Outside	Yes	Yes
23	Rumford	Information booth	Obvious public location	Outside	Yes	Yes
24	Searsmont	Fraternity Village General Store	Remote. Obvious public location.	Outside-covered	Yes	Yes
25	Sidney	Town Office	Remote. Obvious public location.	Outside	Yes	Yes
26	South Berwick	Town Hall Building	Obvious public location (note: payphone in Community Ctr .35 mi away, but malfunctions)	Inside	Yes	Yes
27	Springvale	Nasson Community Center	Remote. Obvious public location.	Inside	No	No
28	St. Agatha	Town Office	Remote. Obvious public location.	Outside-covered	No	Yes
29	Stetson	Town Office	Remote. Obvious public location.	Outside	Yes	Yes
30	Stockton Springs	Sandy Point Beach	Safety. Recreation; chosen over alternate application	Outside	No	Yes
31	Weston	Turnout	Remote. Obvious public location.	Outside	Yes	Yes
32	Winn	General Store	Remote. Obvious public location.	Outside-covered	No	Yes
33	Wynonah	Rt. 171 near School	Remote. Obvious public location.	Outside	Yes	Yes

Summary of Public Interest Payphone Applications Received July - August 2006

Approvals and Priorities Revised November 13, 2006

Docket No. 2006-558

TIER 2 PIPs -- recreation areas, owner has more capability and reason to install its own phone, two applications in town, other miscellaneous

	City	PIP Location	Rationale	Inside vs Outside	Incoming Calls	24 hrs a day
1	Columbia Falls	Laundromat	Private entity; another PIP approved at post office	Inside	Yes	No
2	Freeport	Public Safety Building	Existing payphone .25 mi away (unknown bldg); LLBean is .33 mi away	Inside	Yes	Yes
3	Fort Fairfield	Recreational Facility	Town-run facility for thousands of people. Reasonable place for facility to install its own phone.	Either	Yes	Yes
4	Fryeburg	Saco Valley Fire Station	Obvious public location	Outside	Yes	Yes
5	Manchester	Town Office	Drop-off point for kids. Not overly remote. Good cell coverage.	Outside-covered	Yes	Yes
6	Raymond	Tassel Top Park	Another PIP approved at town hall. Recreational.	Outside	No	Yes
7	Raymond	Dept. Inland Fisheries boat haul	Another PIP approved at town hall. Recreational.	Outside	No	Yes
8	Rumford	Hosmer Field	Another PIP approved at info center. Recreational	Outside	Yes	Yes
9	Sidney	Sidney Rec. Ball Field	Another PIP approved at town hall. Recreational.	Outside	Yes	Yes
10	Stockton Springs	Town-owned Cape Docks	2 applications; choose state park - higher safety factor	Outside	No	Yes

Summary of Public Interest Payphone Applications Received July - August 2006
Approvals and Priorities Revised November 13, 2006
Docket No. 2006-558

TIER 3 -- Rejections - recognizable payphone within 1000 feet

	City	PIP Location	Rationale	Inside vs Outside	Incoming Calls	24 hrs a day
1	Bangor	Paul Bunyan Camp-Bathhouse	Private entity. Existing payphone in main building	Outside-covered	No	Yes
2	Bangor	Bangor City Hall	Existing payphone .11 miles away (library). Another PIP approved in Bangor. Municipal facility might easily install its own inexpensive phone.	Inside	No	No
3	Belfast	Belfast Municipal Airport (1 fixed operation is a private entity; airport is public)	Safety. Payphone recently removed; town is currently paying for a payphone (perhaps temporarily).	Outside	Yes	Yes
4	Caratunk	Post Office	Existing town-funded payphone in this location, but difficult to support. Remote. Obvious public location.	Outside-covered	Yes	Yes
5	Cliff Island	Community Center	(Duplicate application)	Outside	Yes	Yes
6	Lincoln	Prince Thomas Park Bathhouse	Town-owned recreation area; existing payphone .01 or .35 mi away; need is primarily at night.	Outside	No	Yes
7	Oakland	Police Station	Existing payphone .07 miles away (Mobil Station)	Outside	No	Yes
8	Richmond	Waterfront Park	Existing payphone across the street.	Outside	Yes	Yes
9	South Berwick	South Berwick Community Ctr. (social services center)	Existing payphone at this location (malfunctions). Another PIP approved at town hall	Inside	Yes	No
10	Vinalhaven	Parking Lot	Existing payphone (town-funded).	Outside	Yes	Yes
11	Windsor	Town Hall Building	Existing payphone across the street (indoors - Hussey's)	Outside-covered	Yes	Yes

May 3, 2006

PUBLIC UTILITIES COMMISSION
Public Interest Payphone Program
(Chapter 252)

ORDER ADOPTING RULE

ADAMS, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this rulemaking, we adopt Chapter 252, the Public Interest Payphone Program, which establishes a process for reviewing and approving requests for Public Interest Payphones (PIPs) as required by 35-A M.R.S.A. § 7104(6) and 35-A M.R.S.A. § 7508. The rule also provides procedures for the selection and compensation of PIP providers.

II. BACKGROUND

In 2005, the Maine Legislature enacted 35-A M.R.S.A. § 7508, requiring the Commission to establish by rule¹ “a process for reviewing and approving requests for public-interest pay phones.”² The statute also authorizes the Commission to require annual contributions, up to \$50,000, to a state universal service fund to provide the means of paying for public interest payphones. *Id.* at § 7104(6).

The statute sets forth two general criteria for the establishment of the public interest payphones:

1. A proposed public interest payphone must fulfill a public welfare, health or safety policy objective; and
2. A traditional payphone would not otherwise remain or be placed at a proposed public interest payphone location by the operation of the competitive marketplace.

35-A M.R.S.A. § 7508(1).

¹ The statute provides that the rule is a routine technical rule pursuant to Title 5, Chapter 375 subchapter 2-A.

² The Maine statute hyphenates “public interest” and makes “payphones” two words. Under Commission and Federal practice, “public interest” is not hyphenated and “payphone” is one word.

B. Commission Inquiry

On September 13, 2005, the Commission opened an inquiry (Docket No. 2005-519) to obtain comments to assist in the development of a PIP rule. The Commission sent notice of the inquiry to all parties in Docket No. 2003-420, which involved PIPs, and to other interested persons. Verizon Maine (Verizon), the Telephone Association of Maine (TAM), the Office of the Public Advocate (OPA), Maine Equal Justice Project, the Town of Durham, and Representative Herbert Adams filed written comments. The comments were helpful in developing the rule, although we did not receive responses to our request for information regarding the incremental cost to telephone utilities of implementing a PIP program.

C. Proposed Rule

On January 9, 2006, the Commission opened a rulemaking in this matter. We held a public hearing on February 9, 2006 and received written comments.³

III. DISCUSSION ON THE LEGALITY OF THE OVERALL PIP PROGRAM APPROACH

In the proposed rule, we attempted to set forth a proposed PIP program that would maximize the number of PIPs deployed statewide. We based our proposal on an examination of PIP programs in other states, an investigation into appropriate telephone equipment available in the market, knowledge we had obtained in the course of other Commission proceedings, and comments we received as part of our Inquiry.

In the proposed rule, we placed many of the implementation responsibilities on incumbent local exchange carriers (LECs), and proposed that the incumbent LECs be compensated at their incremental cost for all services provided to the PIP program. It was our intent that an incumbent LEC should be held revenue neutral for activities associated with the program, and that program costs should be minimized. TAM, Verizon, and the OPA voiced several objections to this approach.⁴ In particular,

³ Commenters include the Administrative Assistant of Weston, Andre Benoit, Christopher White of Cranberry Isles, Dan Hill, Eva Douglas of Cliff Island, the Director of Health & Welfare of Bangor, the Director of Health and Welfare of Augusta, the Maine Coalition Against Sexual Assault (MECASA), the Maine Equal Justice Project, the Maine Welfare Directors Association, the Office of the Public Advocate (OPA), Pine Tree Legal Assistance, Inc., Region II Homeless Council, Representative Herb Adams, Sarah Cooke of Cliff Island, the 2nd Selectperson of Washington, the Telephone Association of Maine (TAM), the Town Manager of Bucksport, the Town Manager of Vinalhaven, Verizon, and Womancare.

⁴ Briefly summarized, these commenters asserted that the PIP program, as set forth in the proposed rule, did not select PIP providers in a competitively neutral

concern was expressed that the proposed rule would violate Federal law and FCC regulations concerning the deregulation and detariffing of payphone service.

Without determining the merits of these objections, we believe that the public will be best served through the implementation of a program that will not become mired in legal challenges and that can, therefore, become operational as soon as possible. Accordingly, we have revised the implementation procedures in a way so that avoids those aspects of the program claimed to violate federal law. Specifically, we have revised the process by which PIPs will be purchased, installed, and maintained. These changes will not affect PIP users, they will result in easier procedures for PIP applicants, and they eliminate the objections based on Federal law and FCC regulations.

Under the terms of the final rule, regulated incumbent LECs will not be required to provide or install PIPs. Further, all LECs -- both incumbent and non-incumbent -- will be afforded the same benefits and assigned the same obligations. Specifically, LECs will be compensated at their tariffed rate for any service they provide pursuant to the PIP program. These changes remove the concerns expressed by Verizon, TAM, and the OPA. In fact, the approach taken by the amended rule is similar in many respects to that suggested by Verizon and TAM in their comments.

Under the terms of the final rule, LECs will be required to provide access lines in a manner and at a price consistent with their tariffs. A competitively selected "Pip provider" or providers will obtain, install, and maintain all PIPs and will pay each LEC its tariffed access line rate applicable to PIP service.⁵ The competitively selected PIP provider(s) will be compensated according to the terms of its bid and from the funds dedicated to the PIP program by statute.⁶

manner, did not provide full and fair compensation to the PIP provider, and would be improperly subsidized by customers of the incumbent LECs' regulated services.

⁵ Subsection 4(C) of the final rule requires that the PIP Provider be chosen through the State's purchasing procedures. These procedures establish a competitive bid process for the procurement of service providers. Currently, the State's procedures also allow the procurement of a service provider through a sole source contract, in specified circumstances, for example, if we received no bids and could only obtain services from a sole source. We intend to use the State's competitive bidding process to obtain the PIP Provider, but the sole source procedure compensates for the risk that no bid is submitted.

⁶ Currently, the law allocates \$50,000 per year from the Maine Universal Service Fund. 35-A M.R.S.A. §7104(6).

IV. DISCUSSION OF GENERAL COMMENTS REGARDING THE BENEFITS OF PUBLIC INTEREST PHONES

We received numerous comments supporting the need for publicly available telephones. Many of these comments did not directly address the terms of the proposed rule, but rather cited situations in which a publicly available phone provided a significant safety, health or welfare benefit. Womancare, Augusta Health and Welfare, and MECASA cited victims fleeing abuse as persons who will use public phones as a means of obtaining crisis assistance. Representatives of Bangor, Augusta, Cliff Island, and Pine Tree Legal and a citizen commenter cited persons who need help obtaining transportation. Residents of Cliff Island commented that many homes there do not have telephones, making a public phone the only available phone for both "normal" and emergency calls. The town manager of Bucksport stated that his town has been unable to obtain coinless public telephones for the use of its residents. Vinalhaven and Cliff Island expressed the safety benefits of a phone near remote boat landings. A representative of Weston commented that the public regularly seeks use of the town office phone, and an official from Washington, Maine cited enhanced public safety in isolated towns. Pine Tree Legal discussed the large number of migrant farm workers who are without telephone service needed to call their families. Region II Homeless Council, Maine Welfare Directors Association, an official from the City of Augusta, and a citizen commenter noted that homeless, low-income, and mentally ill individuals and those needing acute medical care often cannot afford a telephone or locate a public payphone in order to obtain support or assistance. An official from the City of Augusta provided extensive information about the effectiveness of one of Augusta's inside public telephones.

These commenters generally did not address the processes by which phones would be purchased, installed, and maintained, or the means for providing and paying for access lines. We believe that these mechanical, financial, and legal matters are of little interest to those representing PIP users, provided that they do not prevent making PIPs readily available. These general comments were, however, helpful in assessing the needs that the PIP program must address.

V. DISCUSSION OF AMENDMENTS ADOPTED IN THE FINAL RULE

We discuss below each amendment to the proposed rule that we adopt. As the final rule has been reorganized for clarity, the subsection numbers may differ from the comparable subsection numbers in the proposed rule. We discuss comments under each section.

A. Rule Number

The proposed rule was inadvertently numbered Chapter 352, placing it within the numbers reserved for electric rules. Obviously this would result in confusion if not corrected. The final rule is numbered Chapter 252, placing it within the numbers reserved for telecommunications rules.

B. Type of Telephone

We have not amended the basic instrument requirements in Subsection 3(A)(1) and 3(A)(2), because they describe phones that are durable.

C. Color and Signs

Rep. Herb Adams commented that all PIPs should be a distinctive color and have uniform signs that will allow members of the public to easily recognize a PIP. We agree and have included this requirement in the final rule, in subsections 3(A)(1) and 3(A)(2).

The proposed rule required that a sign be placed near each PIP indicating that free calls should be limited to five minutes if another person were waiting. Because eliminating toll calling that is free to the PIP user removes one factor that could result in unusually long telephone calls, and because the effectiveness of such a sign was called into question by some commenters, there is less need for this provision and we have removed it from the final rule.

D. Coinless PIPs

In subsection 3(A)(3), we continue to require PIPs to be coinless. Since coinless PIPs cost substantially less than PIPs with a coin collection mechanism, we expect that more PIPs would be funded with the \$50,000 allocated by law if the PIPs are coinless.⁷ While the cost advantage alone warrants coinless phones, a number of commenters suggested situations in which a PIP user may not have coins available. In these situations, a coinless phone will provide a more valuable public service than a phone that requires coins.⁸

⁷ Coin phones are more costly because of the higher cost of the phone itself and because of the cost in time and materials of collecting the coins. This latter cost will be even greater for PIPs located in remote rural areas.

⁸ Rep Herb Adams commented that exact change should not be required in emergencies, Womancare cited victims who are fleeing abuse may have no coins available, and Region II Homeless Council cited homeless individuals as likely to be without coins. A representative of Vinalhaven commented that full coin boxes in a Vinalhaven phone often renders the phone unusable.

E. Local and Emergency Calls

In subsection 3(B)(2), we continue to require that local calls (within the Basic Service Calling Area) be free to PIP users. While it is difficult to separate commenters' opinions regarding coinless phones, free local calling, and general availability, virtually all commenters who represented PIP users appeared to support free local calling. Rep. Herb Adams indicated that the opinions of his colleagues in the Legislature vary regarding the extent of calls that should be free, but that some legislators with whom he has communicated tend to believe that making local calls free would not be unreasonable. All commenters addressing the issue supported allowing free 800-style emergency calls.

Furthermore, because the PIPs will be coinless, requiring that users pay for local calls would require one of the commonly used calling cards or collect calls. This would make the PIP unusable for many whom the PIP is intended to help.

In response to comments by TAM and Verizon that PIP calls should not be free, we note that, although local calls placed from a PIP will appear "free" from the perspective of PIP users, the LEC that carries the call will be compensated according to its tariffed rate from the state universal service fund as authorized by the statute.

Rep. Herb Adams and Pine Tree Legal also commented that, at the request of the applicant, PIPs should be made incapable of receiving incoming calls. These features have been retained in the final rule in subsection 3(B)(3).

F. Instate Toll Calls

In the final rule, we have modified the PIP free calling area so as not to include free calling to the entire state.

In their comments, Verizon, TAM, and some other commenters argued that statewide free calling was neither lawful nor desirable. Rep. Herb Adams, who asserted that none of the legislators on the committee that recommended approval of the legislation intended that PIPs provide free calls to all Maine locations, recommended that the Commission revise this provision of the rule. While representatives of PIP users supported coinless and free calling for emergency and support services purposes, most did not explicitly express a need for statewide toll-free calling.⁹

⁹ Pine Tree Legal noted that, while free in-state calls would be beneficial for migrant farm workers, the greater need is to provide a means by which such workers can place out-of-state calls to their families through the use of prepaid calling cards. Maine Welfare Directors Association and the Augusta Director of Health and Welfare considered free local calling to be sufficient to address health, safety and welfare needs. Others noted that many crisis and emergency numbers are toll-free.

In light of concerns expressed by commenters, the minimal need for statewide free calling among PIP users, and our concern with the cost of providing toll service at no cost to the user (i.e., funding the toll calls through the limited public funds), we have removed this free service from subsection 3(B)(2) in the final rule, which has the added benefit of eliminating the legal objection. We note that PIP users may still make instate toll calls using collect calling or one of the standard cards available for this purpose.

G. Providing and Installing the PIPs

As discussed earlier in this Order, Verizon and TAM objected that the proposed rule's requirement that incumbent LECs (and only incumbent LECs) provide PIPs was not lawful under federal law and FCC regulations. As discussed earlier in this Order, in subsection 4(A)(1), we have replaced this requirement with an approach in which open market bidders would provide and install the PIPs.¹⁰ The provisions in the proposed rule regarding the price that the fund compensates the entity purchasing or installing the phone are no longer relevant and have been removed in the final rule. A PIP provider will be compensated for its costs under the pricing arrangement established through the competitive bidding process.

H. Maintaining the PIPs

The proposed rule required that the PIP applicant maintain the phone that it receives. Commenters provided us no clear guidance regarding the technical ability or the inclination of PIP applicants to undertake this responsibility. Rep. Herb Adams commented that maintenance should be paid for from the allocated program funds.

Consistent with the overall approach to the PIP program that we adopt in the final rule, subsection 4(B)(1) requires a PIP provider to carry out routine maintenance and repair on the PIPs. Thus, the PIP applicant will have no responsibilities in this regard. Maintenance of PIPs will be the contractual responsibility of the PIP provider, whose successful competitive bid will presumably be based, in part, on this obligation.

I. Access Lines

Consistent with the overall approach to the PIP program that we adopt in the final rule, subsection 4(B)(2) requires a PIP provider to arrange with a LEC for the installation of an access line that will carry the calls made from the PIP. Subsection 4(A)(1) requires that the LEC carrying the PIP calls provide an access line, a requirement that places no new responsibility on a LEC.

¹⁰ An incumbent LEC may, at its option, bid to become the PIP provider.

J. PAL Rate

The proposed rule specified that the incumbent LEC carrying the PIP call would be compensated for its out-of-pocket costs. In our Notice of Rulemaking, we noted that the incremental cost of these calls would likely be de minimis. TAM and Verizon commented that such an approach to compensation is inequitable and would violate federal law and FCC regulations prohibiting the subsidization of PIP costs by other ratepayers. In the view of TAM and Verizon, compensation for PIP calls must be made at the appropriate tariffed rate.

Without determining the merits of TAM's and Verizon's objections, we adopt, in subsection 4(B)(2) of the final rule, a compensation mechanism which provides that the LEC that carries the calls made from a particular PIP will be compensated for each local call using a tariffed Public Access Line rate (PAL rate). A LEC can use an existing flat PAL rate or may file a PIP PAL rate. PAL calls are subject to federally mandated requirements, such as compensation for interstate calls, which will be applicable to the calls made under the PIP program established by this rule.

In light of the need for certainty regarding the costs of administering the new PIP program, subsection 4(A)(1) of the final rule requires that all tariffed PAL rates be expressed as a fixed per-month rate without any usage or per-call charges.¹¹ This is necessary because PIP users are not required to pay a usage-sensitive rate for a local call. Without such a price signal there will be no constraint on the length of calls made from PIPs, and, with no such constraint, a usage-sensitive PAL rate could result in unpredictably high bills. This could quickly deplete the PIP compensation fund or provide a high level of risk for PIP providers operating under fixed compensation amounts determined by their bids.

J. Application Form and Time Frame

We received no suggestions to materially change the application form. Consistent with the approach in the final rule, subsection 5(A) has been revised to remove a reference to maintaining the PIP.

In subsection 5(B) of the final rule, we retain the annual application period as the most efficient means of implementing the program and allocating available funds. Nonetheless, subsection 5(D) of the final rule permits PIP applications to be made at any time outside the annual application period, thereby allowing applicants to apply when a new need for a PIP arises. The Commission will approve such additional applications to the extent that funds are available.¹²

¹¹ Many incumbent LECs currently have a tariffed PAL rate priced at 125% of the flat business rate. We will judge each filed PAL rate on its own merits.

¹² In his comments, Rep. Herb Adams supported an annual application period, but asserted that adding a flexible, responsive way to deal with emergency applications

K. PIP Selection

The proposed rule identified seven criteria that the Commission would consider when approving and ranking PIP requests. It also identified 14 types of locations that the Commission would deem to have high ranking. Pine Tree Legal, Rep. Herb Adams, and others advocated more flexibility in considering applications. These commenters also gave examples of specific needy locations that would fall through the cracks if the selection criteria remained as rigid as originally proposed. Further, several commenters cited the importance of providing PIPs in rural areas underserved by cellular or landline phones.

These comments objected primarily to the 14 location types that, under the proposed rule, receive a presumptively high ranking. On the other hand, the comments supported the flexibility offered by the criteria that we proposed to use in ranking applications. For example, commenters referred to the following criteria as desirable: inability of an applicant to fund its own PIP; the lack of a phone because of locational remoteness; nonexistent cell phone coverage; the predominance of low-income, elderly, or homeless people lacking their own phones; average income in the area generally; the lack of landline phones on islands; proximity of a commercial establishment to individuals in need; and the unwillingness of employers to provide landline phone service. Overall, these commenters pointed to health, safety, and welfare as being the overarching reasons for installing a PIP. The comments did not convince us to add any additional criteria to the final rule. They did, however, provide evidence that there is support for using a broad range of considerations when approving PIP locations.

We have eliminated the priority locations from the final rule. However, we have retained the criteria in subsection 6(A) because they are consistent with the criteria discussed by those who represent PIP users. This will allow us to rank each applicant by the criteria in subsection 6(A).¹³ On balance, this approach is preferable in the early years of the PIP program. As we learn more about the entities that apply for PIPs and the use that is made of them, we may consider introducing more objectivity into the selection criteria if, and when, it would be helpful to do so.

L. Proximity of PIPs to Other Publicly Available Phones

In their comments, Verizon and TAM suggested that there is no need for a PIP where a non-PIP public phone is located nearby. Both pointed to the New Hampshire PIP program, which requires that no PIP be authorized at a location within 750 feet of a public payphone.

and to allow applicants to determine when they would apply would improve the approach. The final rule is more flexible than the proposed rule in this regard.

¹³ TAM objected to the subjective nature of the criteria in general, and also to the merits of specific criteria.

We agree that placing public phones in close proximity to one another would be an inefficient and inappropriate use of the funds that have been made available for the PIP program. While the proposed rule addressed this concern in the ranking criteria section of the rule, the final rule establishes procedures that are more explicit. We have removed proximity from the ranking criteria and added subsection 6(B) to the final rule, which specifies that a PIP will not be approved if another publicly available phone is located within 1000 feet.

In addition, subsection 5(G) states that the Commission will publish on its web page the approved PIP sites and that, if a payphone provider informs us within 20 days of the posting that it has installed a publicly available phone (which may be a payphone that requires coins) within 1000 feet of an approved site, we will not place a PIP in that location. This provision will ensure compliance with the explicit requirement of the statute that “a payphone would not otherwise remain or be placed by the operation of the competitive marketplace.” 35-A M.R.S.A. §7508(1).

In response to Pine Tree Legal’s concern that one payphone may be inadequate to meet the needs of certain locations (such as farm worker camps where many users require access to a public phone at the same time), subsection 6(B) of the final rule allows a PIP to be installed in close proximity to another publicly available phone if the applicant makes a showing that it is necessary to advance the public health, safety, or welfare goals of the program.

Accordingly we

ORDER

1. That the attached rule, Chapter 252 – Public Interest Payphone Program, is hereby adopted;
2. That the Administrative Director shall file the provisionally adopted rule and related materials with the Secretary of State; and
3. That the Administrative Director shall notify the following of this Order:
 - a. All persons who commented in this rulemaking; and
 - b. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking.

65 - INDEPENDENT AGENCIES - REGULATORY

407 - PUBLIC UTILITIES COMMISSION

CHAPTER 252 – Public Interest Payphone Program

SUMMARY: This Chapter defines the Public Interest Payphone program in Maine.

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§ 1 PURPOSE

The purpose of this Chapter is to implement 35-A M.R.S.A. §§7104(6) and 7508 by establishing the criteria the Commission will use to approve requests for Public Interest Payphones. It also defines the requirements that must be met for a telephone to be considered a Public Interest Payphone, the procedures for applicants to request a Public Interest Payphone, and the means by which Public Interest Payphone Providers and local exchange carriers will be compensated for their costs associated with Public Interest Payphones.

§ 2 DEFINITIONS

For the purposes of this Chapter, the following terms have the following meanings:

A. 800-style call. “800-style call” means a telephone call to a toll-free NPA (Numbering Plan Area) code such as 800, 877, and other numbers established as widespread toll-free numbers.

B. n11 call. “n11 call” means a telephone call to a 211, 311, 411, 511, 611, 711, 811, or 911 number or successor numbers used for similar purposes.

C. Applicant. “Applicant” means a person, business, organization, agency, or any other entity that submits an application to obtain a Public Interest Payphone pursuant to this Chapter.

D. Commission. “Commission” means the Maine Public Utilities Commission.

E. LEC. “LEC” means a local exchange carrier.

F. Public Interest Payphone (PIP). “Public Interest Payphone” means a publicly available telephone installed and funded pursuant to authority granted under 35-A M.R.S.A. §§ 7104(6) and 7508.

G. PIP instrument. “PIP instrument” means the apparatus and station equipment associated with a PIP.

H. PIP access line. (PAL) “PIP access line” means the loop, switching and other equipment necessary to provide a connection from the PIP apparatus to the public switched network.

I. PIP Free Calling Area. “PIP Free Calling Area” means wire centers within the Basic Service Calling Area of the exchange where the PIP is located.

J. PIP Provider. “PIP Provider” means an entity chosen pursuant to Subsection 4(C) to provide PIP service in Maine.

§ 3 PIP REQUIREMENTS

A PIP must conform to the following requirements:

A. Type of Telephone.

1. A PIP instrument located inside a building shall be a standard tone dial telephone (wall or desk type) that is capable of being used to make or receive telephone calls. All inside PIP instruments shall be of a uniform appearance, as determined by the Commission, that renders the PIPs easily distinguishable from other telephones. A standard distinctive sign shall be installed within reasonable proximity of the PIP.

2. A PIP instrument located outside a building shall be a metal enclosed telephone instrument with an armored head set cord that is capable of being used to make or receive telephone calls. All outside PIP instruments shall be of a uniform appearance, as determined by the Commission, that renders the PIPs easily distinguishable from other telephones. A standard distinctive sign shall be installed within reasonable proximity of the PIP.

3. A PIP instrument shall be coinless.

B. Calling Capabilities.

1. A PIP shall be capable of being used to make direct dialed local, n11, and 800-style calls. A PIP shall also be capable of making interexchange calls (with all available interstate interexchange carriers) with the use of a prepaid calling card, credit, and calling card and collect (reverse charge) service.

2. The caller shall not be charged for calls to telephones within the PIP Free Calling Area, n11 calls, and 800-style calls. Any other calls must be made using prepaid calling cards, credit or calling cards, as collect calls, or through other billing methods.

3. A PIP shall be rendered incapable of receiving telephone calls if the applicant makes such a request of the PIP provider and the Commission determines that the request is reasonable.

§ 4 RESPONSIBILITIES

A. Responsibilities of the Local Exchange Carrier

1. The LEC shall provide a PIP Access Line at its tariffed PAL rate applicable to PIP access lines.

2. A PIP Access Line tariff must be a fixed, per-month rate, without any usage or per-call charges.

B. Responsibilities of a PIP Provider

1. PIP Providers shall install, maintain, and service all PIPs in Maine according to the terms of an RFP issued pursuant to Subsection 4(C).

2. A PIP Provider shall arrange for the installation of a PIP access line and shall compensate the LEC at its tariffed rate established pursuant to Subsection 4(2).

C. Selection of the PIP Providers

PIP providers shall be selected through the State's purchasing procedures. If the Commission is unable to obtain the services of a PIP provider or PIP providers at a cost that it deems reasonable, it may contract separately for individual services and it may perform some or all of the services itself.

D. Source of Compensation. Compensation required by this Subsection shall be made from the state universal service fund established pursuant to 35-A M.R.S.A. § 7104(3).

§ 5 APPLICATION PROCEDURES

A. PIP Application Form. The Commission shall establish and make available on its web page a standard PIP application form. The form shall include:

1. Name or names of applicant;
2. Location of the requested PIP;
3. Whether the PIP will be inside or outside;
4. A narrative stating the reasons why a PIP is desirable at the requested location;
5. All information necessary for the Commission to evaluate and rank the application pursuant to Section 6; and
6. Any other information the Commission determines is necessary to administer the PIP program.

B. Annual Application Period. The Commission shall establish an annual application period of one month each year during which applicants may submit to the Commission requests for new PIPs for the following year.

C. Ranking and Approval. No later than two months after the close of the annual application period, the Commission shall approve and rank all submitted applications using the criteria established in Section 6. The applications will be approved in rank order until all of the funding determined by the Commission to be available to fund the program for the year is fully expended.

D. Additional Applications. Applicants may submit to the Commission requests for PIPs at any time outside the annual application period. If the Commission determines that sufficient funds are available, it shall approve such additional applications using the criteria established in Section 6.

E. PIP Installation. The Commission shall notify each applicant of the approval or rejection of the applicant's requested PIP. Each successful applicant shall notify its PIP Provider to arrange installation of the PIP.

F. Discontinuing a PIP. The Commission may, at its own discretion or upon petition of an interested person, order the removal of a PIP.

G. Notice to Public Telephone Providers. The Commission shall post a list of approved PIPs on its website. If any public telephone provider notifies the Commission within 20 days of the posting that it has installed a public telephone within 1,000 feet of a proposed PIP's location, the approved PIP will not be installed at that location.

§ 6 PIP SELECTION

A. Ranking Criteria. The Commission may consider, but shall not be limited by, the following criteria when approving and ranking PIP requests.

1. Public welfare, health and safety considerations;
2. Cost of providing the requested PIP service;
3. Availability of wireless service in the area;
4. Residential telephone service penetration in the area;
5. Average income of the area; and
6. Financial ability of the applicant to provide public telephone Service.

B. Proximity Limitation. A PIP will not be installed if another publicly available telephone is located within 1,000 feet of the PIP's location, unless the Commission determines that the PIP is nonetheless needed pursuant to the criteria in Section 6(A).

§ 7 WAIVER OR EXEMPTION

Upon the request of any person subject to this Chapter or upon its own motion, the Commission may, for good cause, waive any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 35-A. The Commission, the Director of Finance, or the presiding officer assigned to a proceeding related to this Chapter may grant the waiver.

BASIS STATEMENT: The factual and policy basis for this rule is set forth in the Commission's Order Adopting Rule, Docket No. 2005-771 issued on May 3, 2006. Copies of this Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

AUTHORITY: 35-A M.R.S.A. §§ 104, 111, 7104(6) and 7508.

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on **5/10/06**. It was filed with the Secretary of State on **5/11/06** and will be effective on **5/16/06**.