

**PROJECT NO. 24686**

**PETITION OF TEXAS PAYPHONE  
ASSOCIATION, INC. TO AMEND  
PUC SUBSTANTIVE RULE  
§ 26.344(d)(1)(E)**

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**PUBLIC UTILITY COMMISSION  
  
OF TEXAS**

**ORDER**

This Order addresses the Petition by the Texas Payphone Association, Inc. (TPA or Petitioner) filed on September 14, 2001 to amend or eliminate P.U.C. SUBST. R. 26.344(d)(1)(E),<sup>1</sup> which prohibits a pay telephone service provider (PSP) from imposing a time limit on local payphone calls.<sup>2</sup> TPA stated that the petition for rulemaking is necessary to bring the Commission's rules into conformity with the requirements of Section 276 of the Federal Telecommunications Act of 1996 (FTA) and the order of the Federal Communications Commission (FCC) in CC Docket No. 96-128, Order No. 96-388 (FCC Order).

TPA argued that the regulation contained in P.U.C. SUBST. R. 26.344(d)(1)(E), which prohibits a payphone provider from imposing a time limit on local calls, directly restricts the amount of total compensation a payphone provider receives for a local call. TPA opined that such restrictions are in contradiction to Section 276 of the FTA and the FCC's Order. TPA explained that Congress directed the FCC to "ensure that all payphone service providers are fairly compensated for each and every completed intrastate...call using their payphone."<sup>3</sup> Therefore, TPA stated that P.U.C. SUBST. R. 26.344(d)(1)(E) is inconsistent with the FCC's regulations because it places restrictions on the amount of total compensation a payphone provider can receive for a local call.

TPA explained in its petition that the amendment is sought to ensure that the payphone providers retain the prerogative to impose a reasonable and justifiable deterrent against extended usage of their payphone

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<sup>1</sup> P.U.C. SUBST. R. 26.344, Pay Telephone Service Requirements (April 4, 2000).

<sup>2</sup> The Commission also received comments to the TPA Petition from Consumers Union, The Office of Public Utility Counsel, and Verizon Southwest (Verizon).

<sup>3</sup> 47 USC Sec. 276(b)(1)(A).

equipment without adequate compensation. Pursuant to studies conducted by TPA members, an overwhelming majority of local calls are for less than 5 minutes. The studies also found that a small percentage exceeded sixty (60) minutes. TPA argued that these types of situations require reasonable time limits and/or compensation for payphone providers.

The Commission denies the Petition to amend or eliminate P.U.C. SUBST. R. 26.344(d)(1)(E). It is this Commission's responsibility under PURA and the FCC Rules to promulgate rules that not only promote fair competition in the Texas telecommunications market but to also balance commerce against the public interest of Texas telephone customers. One basic customer protection tenet in this telecommunications market is to require telecommunication providers give prior notice to prospective customers regarding the cost associated with the provision of its services. This concept is of significant importance in regard to the usage of pay telephones by Texas customers. The introduction of a time sensitive element to the expressed cost of a payphone local call serves to deprive customers of prior notice of the cost of that call and the right to make an informed decision regarding the use of a payphone for individual telecommunication needs.

This Commission has previously determined that it was not possible for a consumer to know in advance the total cost of a local call, once the element of time sensitivity is introduced. A consumer's right to know in advance the total price of a local call from a pay telephone outweighs a particular pricing methodology.<sup>4</sup>

The Federal Communications Commission (FCC) authorized the introduction of market-based pricing for the setting of local coin call rates in the aforementioned FCC Order. The Commission recognizes that the inclusion of time restraints would introduce time sensitivity; however, time sensitivity is not a necessary attribute of market-based pricing. Moreover, the FCC's Order does not specifically authorize the introduction of a time-sensitive pricing methodology. This Order instructs the states to promulgate rules that foster competition and provide for ease of market entry and exit in the telecommunications landscape. The FCC's order specifically states that "...the states remain free at all times to impose regulations, on a competitively neutral

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<sup>4</sup> Project No. 17265 - *Amendments to Subst. R. §23.54, Relating to Pay Telephone Service to Implement Provisions of FTA 96*, Preamble at page 7 (October 24, 1997).

basis, to provide consumers with information and price disclosure."<sup>5</sup> Under that authority, the Commission believes that consumer foreknowledge of the total price of a local coin call takes precedence over a particular pricing scheme as suggested by the Petitioner.

The Commission finds that the current provision in P.U.C. SUBST. R. 26.344(d)(1)(E) does not interfere with the FCC's expressed desire for market-based pricing nor is it an attempt by the Commission to regulate payphone rates. Payphone providers are free to set their charge for a local coin call consistent with market-based levels. P.U.C. SUBST. R. 26.344(d)(1)(E) does not proscribe such activity by a payphone provider.

The Commission does not agree that Section 276 of the FTA and the FCC's Order preempts P.U.C. SUBST. R. 26.344(d)(1)(E). The Commission views the provisions of Section 276 as prescribing the manner and means by which market entry and exit as well as payphone call compensation is to be accomplished. The Commission is prohibited from enacting rules, which are inconsistent with this section's requirements.<sup>6</sup> However, the Commission finds that P.U.C. SUBST. R. 26.344(d)(1)(E) is not inconsistent with Section 276 or the FCC Order in that it does not create either a barrier to market entry nor is it contrary to local call rate deregulation. As noted by the Commission in Project No.17265, time sensitivity is not a necessary attribute of market-based pricing. Further, this rule cannot be considered a barrier to market entry as "...there is no clear link between the length of a payphone call and the ability of the provider to offer payphone service at a particular location, particularly since the payphone provider can set whatever rate the market will bear for the phone once in place."<sup>7</sup> Thus, the Commission finds that the current Substantive Rule is consistent with the free market and consumer protection goals of Section 276 of the FTA and the FCC Order.

Consequently, the Commission denies TPA's Petition for a rulemaking to amend P.U.C. SUBST. R. 26.344(d)(1)(E). This Substantive Rule section shall remain in force in its present form.

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<sup>5</sup> *FCC Report and Order*, CC Docket 96-128, FCC 96-388 (September 20, 1996) at page 32, paragraph 60.

<sup>6</sup> 47 U.S.C. 276(c)

<sup>7</sup> Project No. 17265 - *Amendments to Subst. R. §23.54, Relating to Pay Telephone Service to Implement Provisions of FTA 96*, Preamble at page 7 (October 24, 1997).

**SIGNED AT AUSTIN, TEXAS on the 12th day of November 2001.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**MAX YZAGUIRRE, CHAIRMAN**

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**BRETT A. PERLMAN, COMMISSIONER**

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**REBECCA KLEIN, COMMISSION**

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