

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

THE PUBLIC TELEPHONE COUNCIL

Petition for Declaratory Ruling
That Bell Operating Company Pay
Telephones are Customer Premises
Equipment for Regulatory Purposes

ORDER

Adopted: December 28, 1988; Released: January 19, 1989

By the Common Carrier Bureau:

1. Before the Bureau is a motion by the Public Telephone Council (PTC) filed on November 14, 1988 for leave to supplement it reply comments of October 11, 1988, together with the supplemental filing. A combined response was filed by Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company (Mountain) on November 23, 1988. For the reasons listed below the motion is granted.

2. On July 18, 1988 the Public Telephone Council filed a petition for declaratory ruling which seeks to exclude all Bell Operating Company pay telephones from the Customer Premises Equipment category under the Commission's policies. Public Notice of the petition was published by the Commission on August 9, 1988. Public Notice DA 88-1200. In accordance with 47 C.F.R. § 1.4, comments were due on September 9, 1988 and reply comments on September 26, 1988.¹ On November 14, 1988 PTC filed its motion for leave to submit a supplemental filing, together with the supplemental filing, and on November 23, 1988 Mountain filed a response to the PTC motion.

3. PTC seeks to inform the Commission of a recent judicial decision in *Modification of Final Judgment, (MFJ)*, in *United States v. AT & T*, 552 F. Supp. 131 (D.D.C. 1982), which it feels supports grant of its petition for declaratory ruling. PTC argues that the Court did not issue the decision until October 14, 1988, three days after the date upon which replies were due in the petition for declaratory ruling. PTC draws the Commission's attention to Section VII (D) of the opinion, pages 43-50, stating that "the Court authorized the premises owner to select the presubscribed interexchange carrier . . . for Bell Operating Company (BOC) public telephones on the owner's premises." PTC Supplemental filing at 1. PTC argues that this holding supports its view that the premises owner is a primary customer. *Id.* PTC claims that the Court's holding underscores its claim that there can be no meaningful distinction between the treatment of hotel room telephones and public telephones. Because the Commission regards hotel room telephones used for transient calling as

Customer Premises Equipment (CPE), PTC argues that BOC public telephones must also be regulated as CPE. *Id.* at 2.

4. Mountain responds that the claim that the court's decision of October 14, 1988 imparts some validity to PTC's petition is erroneous. It argues that despite the court's decision the fact remains that the primary "user" of the BOC-provided payphone is the transient mobile public. Response to Motion at 2. Mountain further states that, should the Commission grant PTC's motion, it should permit other parties to respond to PTC's supplemental filing. Response to Motion at 3.

5. *Discussion.* Section 1.45(c) of the rules states that ". . . additional pleadings may be filed only if specifically requested or authorized by the Commission." 47 C.F.R. § 1.45(c). The petition of PTC has elicited 22 comments and 13 reply comments raising complex issues of law and fact. Several comments cited the then pending *MFJ* case, arguing its relevance to the PTC petition.² The court, however, did not issue its decision in the case until October 14, 1988, three days after the close of the reply comment period. While it is not Commission policy to accept pleadings beyond those authorized by the rules, in light of the repeated reference to the case by parties both supporting and opposing the petition, and the complexity of the issues involved, it is in the public interest to accept PTC's supplemental filing. In order to permit all parties to address the applicability of the court's decision, all parties are granted a period of fifteen days from the release date of this order in which to file a response to the supplemental filing.

6. *Order.* Therefore, IT IS ORDERED, pursuant to the authority delegated in 47 C.F.R. § 0.291, and 47 C.F.R. § 1.45(c), that PTC's motion for leave to submit supplemental filing is granted and its supplemental filing already tendered is accepted. ACCORDINGLY, responses to the supplemental filing of PTC are due within fifteen days of the release date of this order.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

FOOTNOTES

¹ On September 16, 1988 GTE Service Corporation and its affiliated domestic telephone operating companies filed a request for a one week extension of the reply period until September 30, 1988. By Order DA 88-1468, adopted September 20, 1988, released September 22, 1988, the Bureau extended the reply comment period for an additional two weeks, until October 11, 1988.

² See, e.g., Opposition of Ameritech Operating Companies at 3, Reply Comment of the Florida Pay Telephone Association at 4, Opposition of Bell Atlantic at 2 and Comment of the Nynex Telephone Companies at 4, etc.