

Decision No. C02-464

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 00R-285T

IN THE MATTER OF PROPOSED AMENDMENTS TO THE RULES REGULATING TELECOMMUNICATIONS SERVICE PROVIDERS AND TELEPHONE UTILITIES, 4 CCR 723-2, AND TO THE RULES REGULATING OPERATOR SERVICES FOR TELECOMMUNICATIONS SERVICE PROVIDERS AND TELEPHONE UTILITIES, 4 CCR 723-18.

DECISION DENYING EXCEPTIONS

Mailed Date: April 25, 2002

Adopted Date: April 10, 2002

I. BY THE COMMISSION:

A. Statement

This matter comes before the Commission for consideration of Joint Exceptions to Decision No. R02-95 (or "Recommended Decision") filed by Qwest Corporation ("Qwest"), WorldCom, Inc., and One Call Communications (collectively "Joint Exceptors"). The Administrative Law Judge ("ALJ"), in Decision No. R02-95, recommends that the Commission adopt the rules appended to the decision. Those proposals amend the Commission's Rules Regulating Operator Services ("Operator Service Rules"), 4 CCR 723-18, by establishing benchmark rates

to be charged by operator service providers in the state.¹ See Appendix A to rules attached to Recommended Decision. The Joint Exceptors, pursuant to the provisions of § 40-6-109(2), C.R.S., filed exceptions to the Recommended Decision. The Colorado Office of Consumer Counsel ("OCC") and Commission Staff filed responses to the Exceptions. Now being duly advised in the matter, we deny the Exceptions and affirm the Recommended Decision in its entirety. The rules recommended by the ALJ are adopted consistent with the discussion below.

B. Discussion

1. This is the second time the Commission has considered Exceptions in this docket to proposed rules establishing benchmark rates for regulated nonoptional operator services. Our first rulings on Exceptions is set forth in Decision No. C01-223 (Mailed Date March 16, 2001) in which we considered the ALJ's initial recommendations to modify the Operator Service Rules. This decision and Decision No. C01-223 set forth our findings and conclusions in this case. The present decision should be read in conjunction with Decision No. C01-223.

¹ As discussed *infra*, While a specific provider may be permitted to charge rates in excess of the benchmarks, that provider would be required to prove the justness and reasonableness of those rates by providing the Commission with a cost study. See Rule 18-5.4.4.

2. The rules to be adopted here are intended to comply with certain legislative directives set forth in Senate Bill 00-012 ("SB-012"). In pertinent part, the provisions of SB-012 are codified in § 40-15-302(5), C.R.S., which provides:

(5) Consistent with the provisions of section 40-15-301(1), rates for nonoptional operator services shall allow the provider of such services the opportunity to earn a just and reasonable return on the associated used and useful investment, including but not limited to equipment costs incurred to originate such services. *Such rates shall be set at or below a single statewide benchmark rate as determined by the commission* that is applicable to all providers, unless the commission approves a higher rate. The statewide benchmark rate shall apply to all nonoptional operator services regardless of whether such services are provided in connection with intraLATA or interLATA telecommunications service.... The commission shall promulgate rules necessary to implement this subsection (5).

(emphasis added)

3. We initiated this docket by issuing a Notice of Proposed Rulemaking on June 23, 2000. See Decision No. C00-584. The ALJ previously recommended adoption of the same benchmark rates now recommended in Decision No. R02-95. See Decision No. R00-1300. While we generally affirmed the ALJ's initial decision in Decision No. C01-223, we noted that the cost information presented in the record at that time was limited. Therefore, we determined that interested persons should be granted "one additional opportunity" to present quantitative information in support of different rate benchmarks. To afford

the parties this additional opportunity, we issued a Supplemental Notice of Proposed Rulemaking, and the ALJ conducted new hearings on these matters. Decision No R02-95 reflects the ALJ's most recent recommendations. As stated above, the ALJ recommends the same benchmark rates we considered in Decision No. C01-223.

C. Joint Exceptions

1. The Joint Exceptions now take issue with the benchmark rates recommended in Decision No. R02-95. The Joint Exceptors request that the Commission reject the benchmark rates recommended by the ALJ, and, instead, adopt one of the two alternative proposals set forth in the Joint Exceptions: either the benchmark rates proposed by Qwest based upon stand-alone costs, or benchmarks equal to the highest existing benchmark rate for specific services.

2. According to the Joint Exceptors, there is a fundamental difference of opinion between those supporting the Recommended Decision and those objecting to it. The proponents of the ALJ's proposed rates contend that the operator services benchmark should be the price at which the service is offered to the consumer. Joint Exceptors, on the other hand, contend that the purpose of a benchmark, and thus, the purpose of this rulemaking, is to set benchmarks high enough to permit efficient entry into the operator services market by firms that may not

have the economies of scale and scope enjoyed by large carriers such as Qwest and AT&T. In so doing, the prices for operator services will be set by the market and will gravitate toward prices that result from competitive pressures rather than "regulatory fiat." Such prices will foster and sustain competition and maximize consumer choice while allowing for growth and innovation. Joint Exceptors contend that the intent of SB-012 is to promote competition within the operator services industry. They also maintain that an operator services market exists and is now functioning.

3. The Joint Exceptors argue: Qwest provided a cost basis, a stand-alone cost study, to use as a foundation to support the benchmarks proposed by the Joint Exceptors. In addition, at the request of the Commission as contained in the Supplemental NOPR, Qwest provided a cost study for operator services that reflects the fully allocated costs of a multi-service provider of operator services, based upon Total Service Long Run Incremental Cost ("TSLRIC"). However, Joint Exceptors maintain, because Qwest enjoys significant economies of scope and scale as a multi-product provider and other providers do not, the fully allocated cost study should only be the price floor for operator services.

4. Joint Exceptors claim that a stand-alone cost methodology is appropriate for determining a benchmark. Qwest's

proposed benchmark rates are consistent with stand-alone costing principles. Qwest's study includes an adequate margin above fully allocated costs to recognize that not all providers offer a full range of telecommunications services as does Qwest. Without this margin, the market would not function properly. The Joint Exceptors contend that benchmark prices should be set at the stand-alone cost to encourage entry into the market by new firms. Specifically, the benchmarks must be flexible enough to accommodate different cost structures and market strategies of large and small providers. The influx of firms into the market will benefit consumers whose actions will be driven by appropriate price signals.

5. As for the ALJ's recommended rates, the Joint Exceptors contend that those rates were arbitrarily developed and are not supported by sound economic or regulatory reasoning. Staff and OCC offered no concrete support for the proposed rates. According to Joint Exceptors, those rates will distort prices by forcing them below market clearing levels, with the attendant inefficiencies in the market. The Staff and OCC's logic of setting the floor as the ceiling will discourage innovation, facilities based investment, and incentive to enter the market. The proposed rates result in benchmarks lower than appropriate price floors.

6. In support of their alternative suggestion (*i.e.*, benchmark prices equal to the highest existing rates), the Joint Exceptors assert that those rates have been in effect for many years and have not been challenged. The Commission previously determined that those rates are reasonable. Absent evidence to the contrary, those rates should not be disturbed.

7. The rules recommended by the ALJ (Rule 5.4.4) do allow specific providers to charge rates in excess of the benchmarks by providing the Commission with cost studies justifying such rates. However, the Joint Exceptors contend that Qwest is now the only provider operating in the State of Colorado which files cost studies in accordance with Commission rules. Therefore, this option for charging rates above the benchmarks will not be available to other operator service providers.

D. Findings and Conclusions

1. We reject the Joint Exceptors' arguments for the reasons discussed in the responses by the OCC and Staff. The Joint Exceptors, in essence, argue that the primary purpose of the operator services statutes is to promote competition. This assertion is incorrect. In Decision No. C01-223, we explained that the primary purpose of these statutes, including SB-012, is purportedly to protect the public against abusive pricing practices--practices previously engaged in by the industry when

these services were deregulated--while providing carriers an opportunity to earn a reasonable return. See, pp. 10-11. Therefore, the entire premise of the Joint Exceptions is mistaken.

2. As for the specific benchmark rates suggested by the Joint Exceptors, the OCC and Staff point out that those suggestions were unsupported by credible and verifiable costs of any provider. The OCC and Staff observe that, while Qwest did present a TSLRIC study in response to the Supplemental NOPR, the study was not provided to establish rates. Moreover, if the study had been offered to support rates, it would confirm that the Commission's proposed benchmark rates are within a range of reasonableness.

3. Staff points out that Qwest did not submit a credible stand-alone cost study. Instead, Qwest estimated the cost to provide each non-optional operator service **if provided by a single-service provider**. However, Qwest witness Lehman testified that no known existing provider offers only a single operator service; rather, all known providers are multi-service providers. More importantly, Staff remarks, Qwest did not perform an actual stand-alone cost analysis. Qwest's cost estimates did not include specific investment in facilities, cost of capital, depreciation, maintenance, labor costs, and other expenses associated with the provision of a service that

are necessary elements of an acceptable cost study. Therefore, the OCC and Staff point out, the benchmark rates recommended by the Joint Exceptors do not represent the costs of reasonably efficient providers, but, rather, the costs of hypothetical, inefficient, high-cost providers. Rates based upon such support cannot be termed just and reasonable.

4. Staff notes that the Joint Exceptors' pricing proposals would encourage inefficient market entry, contrary to the concept of competition. The Joint Exceptors' recommended rates are tantamount to government-approved price-fixing at levels that would guarantee supracompetitive rents for most market participants. Staff points out that the current non-optional operator services market contains no mechanism that will push prices toward costs. As a result, if the market starts out with high ceiling prices, prices will tend to remain above costs and monopoly profits will be earned. This is the outcome the Legislature intended to prohibit when it re-regulated non-optional services. Because the market is a highly concentrated market of essential services, regrettably, only regulation will result in just and reasonable rates, or so says the legislature.

5. As for the Joint Exceptors' alternative suggestion (*i.e.*, benchmarks at the highest existing rates), Staff and the OCC correctly observe that this alternative was

not offered at hearing, but only on Exceptions. As such, this suggestion is unsupported by any evidence in the record. Indeed, this proposal was not even subject to investigation by other parties to this case (e.g., through discovery, responsive testimony, and cross-examination). The OCC and Staff are correct in stating that the record is devoid of any substantive support for the proposal, including, but not limited to, an explanation as to why the Commission should adopt the highest, instead of the lowest, existing rates. Furthermore, the OCC and Staff point out that the existing benchmarks are unsupported by current cost information. The Commission approved these rates in 1991, based upon then current costs. Those costs have likely decreased. For all these reasons, we reject the suggested alternative rates.

6. We now affirm the ALJ's recommended benchmark rates. The Joint Exceptors argue that these rates are arbitrary and not supported by sound economic and regulatory reasoning. We disagree. These rates are supported by information supplied by the OCC and Staff. In particular, we point out that, in Decision No. C01-223 (pages 9 and 12), we ruled that the information already in the record supported these recommended rates. We issued the Supplemental Notice of Proposed Rulemaking simply to allow the entire industry one additional opportunity to submit cost information. The Joint Exceptors imply that the

ALJ's recommendations are inappropriate for the entire industry, because many providers do not have the same economies of scope and scale as larger providers such as Qwest and AT&T. However, it is noteworthy that these other providers themselves did not appear at hearing and raise these concerns, even after we issued the Supplemental Notice specifically to provide for additional comment of this nature.

7. Finally, we conclude that the provision in the recommended rules which will allow providers to charge rates above the benchmark by filing a cost study justifying such charges is meaningful. Once again, we addressed this issue in Decision No. C01-223 (page 11). There, we commented that any prudent business would conduct cost analysis simply in the ordinary course of business. We, therefore, reject the Joint Exceptors' contention that the option of justifying rates exceeding the benchmarks would be available only to Qwest, and not to other operator service providers.

8. For all these reasons, we affirm the Recommended Decision. The rules appended to Decision No. R02-95 are adopted consistent with the ordering paragraphs below.

II. ORDER

A. The Commission Orders That:

1. The Joint Exceptions to Decision No. R02-95 filed by Qwest Corporation, WorldCom, Inc., and One Call Communications, Inc., are denied.

2. The rules appended to this Decision as Attachment 1 are adopted. This Order adopting the attached rules shall become final 20 days following the mailed date of this Decision in the absence of the filing of any applications for rehearing, reargument, or reconsideration. In the event any application for rehearing, reargument, or reconsideration to this Decision is timely filed, this Order of Adoption shall become final upon a Commission ruling on any such application, in the absence of a further order of the Commission.

3. Within 20 days of final Commission action on the attached Rules, the adopted Rules shall be filed with the Secretary of State for publication in the next issue of *The Colorado Register* along with the opinion of the Attorney General regarding the legality of the Rules.

4. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this Decision.

5. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 10, 2002.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



RAYMOND L. GIFFORD

POLLY PAGE

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "Bruce N. Smith".

Bruce N. Smith
Director

JIM DYER

Commissioners

**THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO**

**RULES REGULATING TELECOMMUNICATIONS SERVICE PROVIDERS
AND TELEPHONE UTILITIES**

4 CODE OF COLORADO REGULATIONS (CCR) 723-2

RULE (4 CCR) 723-2-21. NETWORK CALL COMPLETION REQUIREMENTS.

723-2-21.2 Operator Assisted Calls.

723-2-21.2.3 Each provider offering operator assistance to the public shall provide a service that can answer 85 percent of intercept, toll and local assistance calls within 10 seconds.

**THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO**

**RULES REGULATING OPERATOR SERVICES FOR
TELECOMMUNICATIONS SERVICE PROVIDERS AND TELEPHONE UTILITIES**

4 CODE OF COLORADO REGULATIONS (CCR) 723-18

RULE (4 CCR) 723-18-3 NONOPTIONAL OPERATOR SERVICES.

723-18-3.1 Nonoptional operator services include, but are not limited to:

3.1.6 [Repealed]

RULE (4 CCR) 723-18-4. OPTIONAL OPERATOR SERVICES.

723-18-4.1 Optional operator services provided by operators to customers which offer individualized and select call processing include, but are not limited to:

723-18-4.1.6 Directory assistance.

RULE (4 CCR) 723-18-5. MANNER OF REGULATION.

723-18-5.4 Persons who provide nonoptional operator services shall charge just and reasonable rates pursuant to Section 40-3-101, C.R.S.

723-18-5.4.1 All rates, terms, and conditions shall be stated in tariffs on file with the Commission unless, the Commission has deregulated a specific nonoptional operator service. Rates, terms, and conditions for deregulated or

optional operator services shall not be included in tariffs or price lists for nonoptional operator services.

723-18-5.4.2 Operator service tariff rates must be just and reasonable as determined using applicable Commission rules

723-18-5.4.3 In the absence of a specific order by the Commission, operator service tariff rates charged by providers shall not exceed the benchmark maximum operator service rates adopted by the Commission as Appendix A to these Rules.

723-18-5.4.4 Operator service tariff rates filed by providers, wherein the rates to be charged by the provider are above the Commission-determined benchmark rate in Rule 5.4.3 shall be subject to investigation by the Commission in hearings conducted pursuant to the Commission's Rules of Practice and Procedure. A provider proposing rates in excess of the benchmark rates shall be required to prove that such rates are just and reasonable and shall provide cost studies as required by Rules 4 and 5 of the Commission's Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers.

723-18-5.4.5 In the case where the Commission approves rates for a provider that are higher than the benchmark rate, the Commission may require oral disclosure by the provider of the total charges for the call and that such charges are higher than the benchmark rate to the person responsible for payment of the telephone call, if the Commission determines that such disclosure is in the public interest. This disclosure shall be made at no charge to the caller and before the call is connected, allowing the caller to disconnect before incurring any charges.

723-18-5.4.6 If the Commission finds, after notice and opportunity for hearing, that a nonoptional operator service provider has violated an order adopted pursuant to Rule 5.4.5, the Commission may, in addition to such other enforcement powers as may be authorized by statute, order any regulated telecommunications service provider to block access to the nonoptional operator services provider for all intrastate operator-handled calls. A regulated telecommunications provider that blocks the access of a nonoptional operator services provider in compliance with an order of the Commission and incurs attorney fees or costs to defend such action shall be entitled to recover its costs and attorney fees in each such proceeding.

At the end of such proceeding, the regulated telecommunications service provider shall provide an itemized list of these costs and attorney fees to the Commission. The Commission shall enter an order requiring the nonoptional operator services provider to pay these amounts^s to the regulated telecommunications service provider.

723-18-5.4.7 Any provider whose current ~~Commission-approved~~ tariffs are in accordance with Rule 5.4.3 ~~on at~~ the effective date of ~~promulgation of~~ this revised Rule, will be allowed to have its current tariffs remain in effect without further filings or proceedings.

723-18-5.4.8 Any Provider seeking to maintain a current tariff rate higher than the benchmark rate described in Rule 5.4.~~34~~ must refile ~~its~~ that rate as a new, proposed tariff rates within 60 days after the effective date ~~promulgation~~ of this revised rule. The filing must comply with Rule 5.4.4 (cost studies to be provided) and contain sufficient information for the Commission to determine if the provider's rates are just and reasonable. If the provider

fails to meet this 60 day filing requirement, any existing tariffs with rates in excess of those established in Rule 5.4.3 ~~the Commission may, after hearing consider a provider's tariffs to shall~~ be deemed invalid on the sixtieth day following the effective date of these revised rules without further action by the Commission, and ~~it will not be allowed to legally collect any revenues collected pursuant to such tariffs shall be deemed illegally collected for any Colorado intrastate calls.~~ Upon filing of proposed rates under this rule, if done within 60 days of the effective date of these amended rules, the current ~~Commission-approved~~ rates will be allowed to remain in effect, subject to refund pursuant to order of the Commission, until the Commission approves new rates.

RULE (4 CCR) 723-18-6. REQUIREMENTS FOR OPERATOR SERVICE PROVIDERS.

723-18-6.1 Each provider of operator services shall:

723-18-6.1.1 Identify itself, audibly, and distinctly, to the customer at the beginning of each telephone call before the customer incurs any charges for the call; and

4 CCR 723-18-APPENDIX A

BENCHMARK MAXIMUM OPERATOR SERVICES RATES

<u>No.</u>	<u>Operator Service</u>	<u>Rate</u>
	Usage Rates	
1.	Flat (Message) Rate per call	.11
	Flat (Measured) Rate per minute	
2.	Day	.20
3.	Evening/Night/Weekend	.11
	Calling Card Station Rates	
	Customer Dialed	
4.	Automated (Mechanized)	.30
5.	Operator Assisted	.58
6.	Operator Dialed	1.13
7.	Operator Assistance	.75
	Operator (Assisted)	
8.	Station-to-Station	1.25
9.	Collect	1.85
10.	Billed to Third Party	1.51
11.	Person-to-Person	3.00
	Busy Line	
12.	Verification	1.25
13.	Interrupt	2.00
14.	Prison Inmate Operator Station Collect	1.85
15.	Pay Telephone Charge	.26
	(Facilities based providers only)	

4 CCR 723-18-EXHIBIT 1

NOTES ON ORIGINAL SOURCES OF OPERATOR SERVICES RATES

<u>No.</u>	<u>Operator Service</u>	<u>Note</u>
	Usage Rates	
1.	Flat (Message) Rate per call	1
	Flat (Measured) Rate per minute	
2.	Day	2
3.	Evening/Night/Weekend	2
	Calling Card Station Rates	
	Customer Dialed	
4.	Automated (Mechanized)	3a
5.	Operator Assisted	4
6.	Operator Dialed	3b
7.	Operator Assistance	3c
	Operator (Assisted)	
8.	Station-to-Station	4
9.	Collect	2
10.	Billed to Third Party	4
11.	Person-to-Person	4
	Busy Line	
12.	Verification	4
13.	Interrupt	4
14.	Prison Inmate Operator Station Collect	2
15.	Pay Telephone Charge	2, 5
	(Facilities based providers only)	
16.	Call Completion	6

4 CCR 723-18-EXHIBIT 1-NOTES:

1. US West Communications Exchange and Network Services Tariff, Colorado PUC No. 15, Section 5, Sheet 171.1
2. US West Communications Exchange and Network Services Tariff Colorado PUC No. 15, Section 6, Price List Sheets 1 and 2
3. US West Communications Statement of Generally Available Terms and Conditions; *See Page 3 of this Exhibit.*
 - a. Rate is 18¢
 - b. Rate is 46¢
 - c. Rate is 36¢
4. AT&T Communications of the Mountain States, Inc., Local Exchange Services Tariff Colorado PUC No. 1, Price List, Page 2
5. AT&T Communications of the Mountain States, Inc., Telecommunications Services Terms and Conditions Tariff, Price List, Section 7, Page 1
6. AT&T Communications of the Mountain States, Inc., Consumer Local Services Tariff, Price List, Section 9, Page 1

4 CCR 723-18-EXHIBIT 1-STATEMENT

US WEST COMMUNICATIONS, INC.

STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS

OPERATOR SERVICES RATES

FOR COMPARISON WITH BENCHMARK MAXIMUMS

<u>No.</u>	<u>Operator Service</u>	<u>Rate</u>
	Usage Rates	
1.	Flat (Message) Rate per call	None
	Flat (Measured) Rate per minute	
2.	Day	.00283
3.	Evening/Night/Weekend	.00283
	Calling Card Station Rates	
	Customer Dialed	
4.	Automated (Mechanized)	.18
5.	Operator Assisted	.46
6.	Operator Dialed	.36+.46
7.	Operator Assistance Operator (Assisted)	.36
8.	Station-to-Station	.84
9.	Collect	.36+.84
10.	Billed to Third Party	.36+.84
11.	Person-to-Person	2.05
	Busy Line	
12.	Verification	.72
13.	Interrupt	.87
14.	Prison Inmate Operator Station Collect	.36+.84
15.	Pay Telephone Charge (Facilities based providers only)	None
16.	Call Completion	.085