

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

THE RULES GOVERNING THE COLLECTION)
AND DISCLOSURE OF PERSONAL)
INFORMATION OBTAINED BY PUBLIC) DOCKET NO. 92R-099T
UTILITIES, 4 CODE OF COLORADO)
REGULATIONS 723-7, PROPOSED NEW RULE)
5.5, CONCERNING CALL BLOCKING.)

**STATEMENT OF ADOPTION OF NEW RULE 5.5 "BLOCKING," IN THE
PRIVACY RULES, 4 CODE OF COLORADO REGULATIONS 723-7.**

I. Introduction.

The Colorado Public Utilities Commission ("commission") hereby issues the following Statement of Adoption for new Rule 5.5, entitled "blocking," in the Commission's "privacy rules," the Rules Governing The Collection And Disclosure Of Personal Information Obtained By Public Utilities, 4 Code Of Colorado Regulations 723-7. This Statement of Adoption shall provide a legislative history of the rulemaking, and shall provide future guidance as to the proper interpretation of the new rule.

On April 9, 1992, this matter came on for a rulemaking hearing, properly noticed under the State Administrative Procedure Act, to determine whether or not the Colorado PUC should adopt a rule concerning "blocking" of name and number information. In this context, the term "blocking" means showing a "P" code on machines allowing the identification of the name and number of incoming telephone calls, as proposed in U S West Communications, Inc.'s "Caller ID" service¹. On February 10, 1992, the Colorado

¹. The commission approved U S West Communications, Inc.'s Caller ID and Call Trace services at a Special Open Meeting on April 7, 1992. The consolidated docket numbers are: (1) Docket No. 91A-462T, Caller ID and other custom local area signaling services, waiver application of Privacy Rule 5; (2) Docket No. 91S-548T, Caller ID and

Register published the commission's notice of proposed rulemaking. As we stated in the notice of proposed rulemaking, the Rule is intended to avoid possible federal preemption of per-line blocking of the Caller ID service, based on the possibility that the United States Congress will enact, and the President will sign, a law preempting per-line blocking by state public utilities commissions, but "grandfathering" per-line blocking in those states which had passed legislation or rules authorizing blocking prior to the enactment of a federal law. Also, the Federal Communications Commission, which is considering interstate Caller ID, has indicated that it opposes per-line blocking, and may attempt to preempt state public utilities commissions from allowing per line blocking. See

The rulemaking docket originates from a "Petition for Adoption of Temporary Rule and the Commencement of a Rulemaking Proceeding" filed on December 12, 1991 in the Caller ID dockets, Docket No. 91A-462T and Docket No. 91S-548T, by the Colorado Domestic Violence Coalition. The Colorado Domestic Violence Coalition strongly supports the availability of per-line blocking, arguing, among other reasons, that without per-line blocking, "safe houses" for battered women could be placed in danger, and that an abusive spouse could use the Caller ID machine to locate a spouse who went to a friend's house to escape an abusive spouse.

The City and County of Denver, on behalf of its police department and certain health services providers (especially those who provide counseling to adolescents) joined the Colorado Domestic Violence Coalition in supporting the availability of per-line blocking. The Office of Consumer Counsel also strongly supported per-line blocking as a requirement where Caller ID services are provided.

other custom local area signaling services, Advice Letter No. 2211, suspended tariff filing; and, (3) Docket No. 92S-040T, Call Trace custom local area signaling service, Advice Letter No. 2235, suspended tariff filing. The decision approving Caller ID and Call Trace will be Decision No. C92-566 (hereinafter, the three dockets will be referred to collectively as "Caller ID dockets.")

AT&T Communications of the Mountain States, Inc.; MCI Telecommunications Corporation; and U S West Communications, Inc. opposed the Petition for emergency rulemaking on various grounds, including the argument that the statutory requirement for the enactment of a temporary rule in Colorado Revised Statutes § 24-4-103(6) (1988 Repl. Vol.10A) was not met, and that the Rule was unnecessary because the federal legislation was far from passage.

The Commission concluded that an "emergency" rule, dispensing with the normal notice and opportunity to be heard provided by the State Administrative Procedure Act, was not necessary. Without expressing an opinion as to the merits of the new proposed Rule 5.5, 4 Code of Colorado Regulations 723-7, the Commission offered the rule proposed at that time by the Colorado Domestic Violence Coalition for comment, and set it for hearing. The original December 1991 version of a blocking rule proposed by the Colorado Domestic Violence Coalition was attached to the notice of proposed rulemaking as alternative "1." The Commission offered an alternative version of the Blocking rule which mandates all telecommunications providers who offer Caller ID to offer blocking as alternative "2." See Appendix 1 to Notice of Proposed Rulemaking. In comments filed on April 2, 1992, the Colorado Office of Consumer Counsel and the Colorado Domestic Violence Coalition (supported by the City and County of Denver), proposed a third blocking alternative, which we shall call alternative "3." See Colorado Office of Consumer Counsel Comments at 4-5; Colorado Domestic Violence Coalition Comments at 1 (both filed April 2, 1992).

The three versions of the blocking rule, discussed at the April 9, 1992 rulemaking hearing, were:

Rule 5.5 Blocking
[alternative 1]

Any public utility offering a Caller ID service approved by the Commission, or offering any comparable service approved by the Commission that identifies to a utility customer the name or telephone number, or both, of the calling party, IS AUTHORIZED TO offer per call blocking or per line blocking, or both, as a service available to customers.

Rule 5.5 Blocking
[alternative 2]

Any public utility offering a Caller ID service approved by the Commission, or offering any comparable service approved by the Commission that identifies to a utility customer the name or telephone number, or both, of the calling party, SHALL offer per call blocking or per line blocking, or both, as a service available to customers.

Rule 5.5 Blocking
[alternative 3]

Any public utility offering a Caller ID service approved by the Commission, or offering any comparable service approved by the Commission that identifies to a utility customer the name or telephone number, or both, of the calling party, SHALL offer per call blocking AND per line blocking, as services available to ALL ITS customers AT NO CHARGE. LAST CALL RETURN OR OTHER COMPARABLE SERVICES WHICH ENABLE A CALLED PARTY TO RETURN A TELEPHONE CALL TO THE CALLING PARTY, SHALL BE OFFERED ONLY WHEN THE CALLING PARTY HAS THE ABILITY TO BLOCK A CALL FROM BEING RETURNED.

II. Discussion.

At the outset of the April 9, 1992 rulemaking hearing, representatives from the Office of Consumer Counsel and the Colorado Domestic Violence Coalition announced that they decided that Rule 5.5 should be consistent with the commission's rulings in Caller ID dockets on April 7, 1992. Accordingly, they dropped the phrase "at no charge" from Alternative "3," given that the commission decided on April 7, 1992 that per-line blocking should be offered for a one time \$8.00 charge per line (or 75 cents per month for 12

months option), after an initial six month, no charge sign-up period. The City and County of Denver supported the modified Alternative "3," as proposed by the Office of Consumer Counsel and the Colorado Domestic Violence Coalition. The commission took administrative notice, during this hearing, of the entire record in the Caller ID and Call Trace dockets.

In reaction to the change of position by the Office of Consumer Counsel and the Colorado Domestic Violence Coalition, the three commissioners indicated that they unanimously supported a redacted version of Alternative "3," containing mandatory per-call and per-line blocking, with a few additional modifications. The commissioners deleted the phrase "approved by the Commission," repeated twice in all three alternatives of Rule 5.5, as unnecessary. The commissioners deleted the phrase "to all its customers" in alternative "3" to preserve future flexibility, should the commission, for example, wish to restrict blocking to residential customers. The commissioners added the phrase "or other telecommunications services provider" to indicate that some enhanced service provider – other than U S West Communications, Inc. and the other Colorado "public utilities" – could offer Caller ID-type services in Colorado. The commission wanted the blocking rule to allow other enhanced service providers to offer Caller ID and the other custom local area signaling services to Colorado consumers, including allowing other enhanced service providers to offer Caller ID to U S West customers, as a competitor to, subcontractor to, or alternative to, U S West.

At the hearing, U S West Communications, Inc. ("U S West") stated that it was the only one of the seven regional Bell operating companies to voluntarily offer per-line blocking. U S West supports per-line blocking (at a charge) as an option for its customers, in order to maximize customer choice. It stated that while it felt that Alternative "1" met the preemption grandfather provision in Senator Kohl's bill pending in Congress, it would not oppose Alternative "3," mandating both per-call and per-line

blocking, assuming it could charge its customers for per-line blocking. (In its Caller ID tariff, U S West proposed to offer per-call blocking without charge.) The Company opposed any mention of Last Call Return in Rule 5.5, on procedural grounds as beyond the scope of the rulemaking notice. It stated that the phrase "or comparable service" did not include Last Call Return because, in its opinion, Caller ID and Last Call Return are not comparable services. Finally, it stated that although U S West intended to offer Caller ID as a tariffed service, it did not waive the argument that Caller ID was a completely deregulated new product or service, exempt from Colorado PUC regulation under Part 4 of the 1987 Colorado Intrastate Telecommunications Services Act, Colorado Revised Statutes §§ 40-15-401 through 40-15-404 (1991 Cum.Supp. Vol.17). On Part 4 deregulation grounds, U S West objected to the deletion of the phrase "approved by the Commission," because the company did not wish to waive its assertion that it could offer Caller ID without Colorado PUC approval. We reserve ruling on whether Caller ID is a basic service.

At the April 9, 1992 hearing, MCI Telecommunications Corporation and AT&T Communications of the Mountain States, Inc., reiterated their positions, as filed in their comments, that they oppose line blocking, on the grounds that it restricts the use and potential benefits of Caller ID technology. Thus, they were the only parties left supporting Alternative "1" of Rule 5.5, which did not mandate per-line blocking as a condition for a company to offer Caller ID, or comparable, service in Colorado. The commission firmly rejected MCI and AT&T's anti-customer choice position, and expressed its unanimous position that neither these companies, nor the commission, should presume to decide for their customers that customers should not be able to purchase per-line blocking.

Finally, the commission decided to delete references to last call return in Rule 5.5.² Last call return will be the subject of a new rulemaking, Docket No. 92R-249T, with a rulemaking hearing on June 19, 1992.

THEREFORE THE COMMISSION ORDERS THAT:

1. The Colorado Public Utilities Commission hereby adopts a new Rule 5.5 Blocking, to its privacy rules, the Rules Governing The Collection And Disclosure Of Personal Information Obtained By Public Utilities, 4 Code Of Colorado Regulations 723-7. The rule requires that a public utility, or other telecommunications service provider, which offer Caller ID or comparable services, offer mandatory per-call and per-line blocking. It is intended to avoid federal preemption by either legislation or by the Federal Communications Commission. The rule is attached as Appendix "1" to this Statement of Adoption.

2. Because this is a rulemaking, this statement of adoption is not subject to rehearing, reargument, or reconsideration under the State Administrative Procedure Act.

3. The new rule will be published by the Colorado Secretary of State in the Colorado Register on May 10, 1992, and become effective twenty days thereafter, or

2. We reject U S West's arguments that last call return can not be dealt with in this rulemaking, as logically incorrect and inconsistent with the technological evidence U S West presented in the hearings before the commission. Last call return, and the current technology which does not allow this custom local area signaling service to be blocked (last call return automatically redials calls sent "private"), is within the notice of proposed rulemaking, and its notice that the commission would consider blocking issues. Further, we believe the commission's intent to prohibit last call return until such time as blocking is available is an "other comparable service which enable[s] a called party to return a telephone call to the calling party," within the meaning of the rule. Last call return is one of the custom local area signaling service, available with the new software and hardware in the Signaling System 7. Nevertheless, in an abundance of caution, the commission will institute a new rulemaking to prohibit last call return, unless it can be designed to prevent the return of "private" (blocked) calls. The new rulemaking will be instituted today, for publication in the May 10, 1992 Colorado Register, with hearings on June 19, 1992.

May 30, 1992. See Colorado Revised Statutes § 24-4-103(5) (1988 Repl. Vol.10A) (rule final agency action for purposes of judicial review on its effective date).

ADOPTED IN OPEN MEETING ON April 29, 1992.

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Bruce N. Smith

Executive Secretary
and Division Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ARNOLD H. COOK

GARY L. NAKARADO

CHRISTINE E. M. ALVAREZ

Commissioners

Dated: April 30, 1992.

Call Blocking Rulemaking

Docket No. 92R-099T

Appendix 1

Adopted date April 29, 1992

Publication date in Colorado Register May 10, 1992

Effective date May 30, 1992

THE RULES GOVERNING THE COLLECTION AND DISCLOSURE
OF PERSONAL INFORMATION OBTAINED BY PUBLIC UTILITIES,
4 CODE OF COLORADO REGULATIONS 723-7.

Rule 5.5 Blocking

Any public utility, or other telecommunications services provider, offering a Caller ID service, or offering any comparable service that identifies to a utility customer the name or telephone number, or both, of the calling party, shall offer per call blocking and per line blocking as services available to customers.