

(Decision No. C94-350)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE PROPOSED RULES)
PROVIDING FOR RELAXED REGULATORY) DOCKET NO. 93R-687T
TREATMENT OF OPERATOR SERVICE)
PROVIDERS, AMENDMENTS TO)
4 CCR 723-18.)

ORDER ADOPTING RULES

- - - - -
Mailed Date: April 1, 1994
Adopted Date: March 31, 1994
- - - - -

STATEMENT, FINDINGS AND CONCLUSIONS

BY THE COMMISSION:

1. In Decision No. R94-200, dated March 7, 1994, and Appendix A attached thereto, Administrative Law Judge Ken F. Kirkpatrick ("ALJ") recommended certain modifications to the Rules Regulating Operator Services For Telecommunications Service Providers and Telephone Utilities, 4 CCR 723-18 ("Rules"). On March 18, 1994, the Commission issued Decision No. C94-330, staying the ALJ's Recommended Decision to allow for Commission review of the recommended rules, along with any exceptions to the Decision. No exceptions to the ALJ's Order have been received by the Commission. In this Decision and Order, the Commission will adopt the ALJ's recommendation.

2. The modifications to the Rules are designed to lessen the burden on jurisdictional providers of non-optional operator services, while allowing the Commission to regulate these services and providers in a manner which serves the public interest. The Rules will streamline the process of certification, and will grant certain waivers of other Commission rules for providers of non-optional operator services. In fact, some of the waivers set forth in the Rules have been routinely granted to non-optional service providers seeking a Certificate of Public Convenience and Necessity ("CPCN"). Thus, it is our intent to reduce the cost of regulatory compliance for providers seeking a CPCN.

3. The Rules also provide new flexibility to providers of non-optional operator services. These entities have been "fully" regulated with respect to tariff requirements. These Rules require filing of an initial tariff setting forth maximum rates. However, below this maximum or "ceiling" rate, the provider will provide to the Commission a price list which states all currently-effective rates. The provider is free to change rates on 14 days' notice to the Commission if the rates are above a properly calculated floor and below the published maximum rates in the initial tariffs. Tariffed rates may be at or below the market ceiling rate, as determined by the Commission.¹ No explicit, case-specific

¹ The market maximum rates will be set by this Commission at a level for the dominant provider for those services. In most instances, the maximum rates will be set equal to those of the maximum rates charged by American Telephone and Telegraph of the Mountain States, Inc. ("AT&T"), or U S WEST Communications, Inc., ("USWC").

Commission approval of rates contained in the price list is required.

4. This price flexibility is consistent with the regulatory scheme under which private line services, certain toll services, and certain Centron-line services are regulated. This arrangement is in the public interest since it allows enhanced pricing flexibility while maintaining for consumers the ability to address grievances at this Commission. This scheme also allows providers wide latitude to engage in innovative practices with regard to pricing, investment, and service design. Thus, our regulation of these services is consistent with the legislative intent expressed in § 40-15-101.

THEREFORE THE COMMISSION ORDERS THAT:

1. The Rules attached to this Decision as the Appendix are adopted as the RULES REGULATING OPERATOR SERVICES FOR TELECOMMUNICATIONS SERVICE PROVIDERS AND TELEPHONE UTILITIES.

2. The Rules in the Appendix shall be effective 20 days after publication by the Secretary of State.

3. The 20-day period within which to file applications for rehearing, reargument, or reconsideration, pursuant to § 40-6-114(1), C.R.S., begins on the first day following the mailing of this decision.

This Decision is effective on its Mailed Date.

ADOPTED IN SPECIAL OPEN MEETING March 31, 1994.

(SEAL)



ATTEST: A TRUE COPY

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

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CHRISTINE E. M. ALVAREZ

VINCENT MAJKOWSKI

Commissioners

CHAIRMAN ROBERT E. TEMMER RESIGNED
EFFECTIVE MARCH 1, 1994

4 CCR 723-18
(Affected Portions)

RULES REGULATING OPERATOR SERVICES FOR TELECOMMUNICATIONS
SERVICE PROVIDERS AND TELEPHONE UTILITIES

BASIS, PURPOSE, AND STATUTORY AUTHORITY

The basis for these rules is to identify nonoptional operator services which are subject to the Commission's jurisdiction. Under § 40-15-401(1)(j), C.R.S., operator services are declared to be exempt from Commission jurisdiction. However, the definition of operator services found at § 40-15-102(20), C.R.S., states that only certain operator services are exempt from Commission jurisdiction and provides as follows:

- (20) "Operator services" means optional services provided by operators to customers which offer individualized and select call processing." (Emphasis supplied.)

Only optional operator services are deregulated. Nonoptional operator services which do not offer individualized and select call processing remain regulated. Thus, the purpose of these rules is to establish regulatory treatment for nonoptional operator services and operator service providers that provide nonoptional operator services. The statutory authority for the Commission's rulemaking authority is found at § 40-2-108, C.R.S.

THE BASIS FOR THIS AMENDMENT TO THESE RULES IS A NEED FOR A MORE FLEXIBLE REGULATORY TREATMENT FOR PROVIDERS OF NONOPTIONAL OPERATOR SERVICES. THE PURPOSE OF THIS AMENDMENT IS TO PROVIDE A FORM OF RELAXED REGULATORY TREATMENT TO ALL PROVIDERS OF NONOPTIONAL OPERATOR SERVICES. THE STATUTORY AUTHORITY FOR THIS AMENDMENT IS FOUND AT § 40-15-302, C.R.S.

RULE 1 - APPLICABILITY

These rules apply to all public utilities and providers of telecommunications service which are regulated under Title 40, Article 15, Parts 2 and 3, C.R.S. Any provider of local exchange services that also furnishes nonoptional operator services by contracting with a regulated interexchange carrier and that concurs in the tariffed rates, terms, and conditions of that regulated interexchange carrier shall be exempt from these rules.

RULE 2 - DEFINITIONS

For the purposes of these rules only, unless context otherwise requires:

- 2.1 Access Code means a sequence of numbers that, when dialed, connects the caller to the provider of operator services associated with that sequence.
- 2.2 Aggregator means any person, that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises for telephone calls using a provider of operator services.
- 2.3 Call Splashing means the transfer of a telephone call from one provider of operator services to another provider of operator services in such a manner that the subsequent provider is unable or unwilling to determine the location of the origination of the call and, because of such inability or unwillingness, is prevented from billing the call on the basis of such location.
- 2.4 Commission means the Colorado Public Utilities Commission.
- 2.5 Consumer means a person initiating any intrastate telephone call using nonoptional operator services.
- 2.6 Debit card - A method of paying for operator handled calls wherein the customer pays for the services prior to making any calls. As the customer makes operator handled calls using this card, that customer's charges are deducted from the value of the card until the value of the card is exhausted.
- 2.7 Interexchange carrier means any regulated provider of colorado intrastate public switched network services not included in basic local exchange service, and which are priced based upon usage.
- 2.8 Local calling area means the commission-approved local calling area for an exchange or wire center.
- 2.9 A local call is any call originating and terminating within the same local calling area.
- 2.10 Operator service provider means any provider of nonoptional operator services as defined in Rule 3, or any other person determined by the Commission to be providing nonoptional operator services.
- 2.11 Person means any individual, firm, partnership, corporation, company, association, joint stock association, and other legal entity.
- 2.12 Presubscribed provider of operator services means the provider of operator services to which the consumer is connected when the consumer places a call using a provider of operator services without dialing an access code.

- 2.13 Public Utility is defined in § 40-1-103, C.R.S. and for purposes of these rules includes providers of telecommunications services which are regulated under Title 40, Article 15, Parts 2 and 3, C.R.S.

RULE 3 - NONOPTIONAL OPERATOR SERVICES

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

- 3.1.1 Calls made at coin-operated or coinless telephones, both public and semipublic, which require operator intervention or a synthesized message to advise the party of coins to be deposited or when the time has expired.
- 3.1.2 Calls made from telephone exchanges which do not allow for direct dialing, also described as Dial Station-to-Station calls, which require operator intervention to complete what would, otherwise be a direct-dialed call.
- 3.1.3 Calls made by inmates at penal institutions or other correctional facilities who are not permitted to use coins when placing calls at coin operated or coinless telephones or who are required to use an operator's services to complete a call because of the rules or regulations of said institutions or facilities.
- 3.1.4 Calls made by individuals who identify themselves as disabled to the extent that they are functionally unable to complete a call (for example, unable to use rotary dial or Touch-Tone pad) without operator assistance. These calls include those made with telecommunications devices for the deaf.
- 3.1.5 Operator-assisted call reconnection for disconnection or poor transmission, and operator-handled credit requests.
- 3.1.6 Directory assistance, including calls to 1-411 or 1-555-1212.
- 3.1.7 Emergency services, including calls made to operators by customers seeking emergency assistance from authorized emergency agencies.
- 3.1.8 Credit card calls, also known as calling-card, travel card, or debit card, station-to-station calls. This includes credit card, calling-card, or debit card calls made via 800 service, 950, or 10XXX access.

- 3.1.9 Collect local or long distance calls.
 - 3.1.10 Local or long distance third party billing calls.
 - 3.1.11 Person-to-person calls.
 - 3.1.12 Operator services provided to customers where the use of an operator is required in order to obtain a particular service or in order to complete a call in order to complete a call and where no individualized or select call processing is provided.
- 3.2 Nonoptional operator services include the provision of those services through the use of synthesized voices rather than through a live operator.
- 3.3 Nonoptional operator services provided by or through hotels, motels, or other lodging-type entities which resell intrastate toll and wide area telephone services (WATS) to their lodging patrons, nonoptional operator services provide by or through any other entities which resell to the general public long distance telephone services by using the tariff services and facilities of regulated telephone utilities collectively known as "resellers", or nonoptional operator services provided by or through any customer-owned or leased pay telephone terminal equipment which resells local exchange and toll service by using the tariff services and facilities of regulated telephone utilities known as COCOTs (Customer Owned Coin Operated Telephones) are regulated by the Commission.

RULE 4 - OPTIONAL OPERATOR SERVICES

- 4.1 Optional operator services provided by operators to customers which offer individualized and select call processing include, but are not limited to:
- 4.1.1 Foreign language operator services.
 - 4.1.2 Operator services provided for conference calling.
 - 4.1.3 Operator services provided for voice messaging or the taking of messages.
 - 4.1.4 Operator services provided for electronic mailing.
- 4.2 Persons who provide optional operator services and who provide the nonoptional operator services described in Rules 3.1.4 through 3.1.7 at no additional cost to the user in order to support the public switched network, and incidental to the primary business of providing optional operator services, shall not be considered nonoptional operator service providers subject to the Commission's jurisdiction.

RULE 5 - MANNER OF REGULATION

5.1 Nonoptional operator services, the associated rates, and the provider of nonoptional operator services are regulated by the Commission.

5.2 Persons who provide nonoptional operator services shall ~~obtain a certificate~~ PROVIDE INFORMATION TO THE COMMISSION in accordance with § 40-15-302(2), C.R.S., and RULE 3.1 OF the Rules Regulating Emerging Competitive Telecommunications Service found at 4 CCR 723-24. AFTER A DETERMINATION OF COMPLETENESS, THE COMMISSION SHALL ISSUE A LETTER OF REGISTRATION GRANTING OPERATIONAL AUTHORITY FOR THE COMPANY, UPON APPROVAL OF ITS TARIFF. Telecommunications service providers or telephone utilities which already have certificates or the authority to provide nonoptional operator services shall continue to have the authority ~~without having to obtain a new certificate.~~

5.3 Persons who provide nonoptional operator services SHALL BE GRANTED SPECIFIC REGULATORY TREATMENT AS FOLLOWS:

5.3.1 CUSTOMER NOTICE AS REQUIRED IN RULE 41(e) OF THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE (4 CCR 723-1) SHALL BE WAIVED, I.E., NO SPECIFIC CUSTOMER NOTICE OF PROPOSED RATE CHANGES SHALL BE REQUIRED.

5.3.2 RULE 25(c) OF THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE (4 CCR 723-1) RELATING TO THE MAINTENANCE OF ACCOUNTING INFORMATION IN ACCORDANCE WITH UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED BY THE FEDERAL COMMUNICATIONS COMMISSION SHALL BE WAIVED FOR ALL PROVIDERS THAT DO NOT MAINTAIN THEIR BOOKS OF ACCOUNT IN ACCORDANCE WITH THE UNIFORM SYSTEM OF ACCOUNTS AND THAT MAINTAIN THEIR BOOKS OF ACCOUNT ACCORDING TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

5.3.3 RULE 3 OF THE COMMISSION'S RULES REGULATING TELECOMMUNICATIONS SERVICE PROVIDERS AND TELEPHONE UTILITIES (4 CCR 723-2) PERTAINING TO THE REQUIREMENT THAT ALL RECORDS BE KEPT WITHIN THE STATE SHALL BE WAIVED. HOWEVER, SUCH RECORDS MUST BE MADE AVAILABLE TO THE COMMISSION OR ITS AUTHORIZED REPRESENTATIVE AT ANY TIME UPON REQUEST AND AT THE UTILITY'S EXPENSE.

5.3.4 THE COMMISSION'S COST ALLOCATION RULES (4 CCR 723-27) SHALL BE WAIVED FOR OPERATOR SERVICE PROVIDERS WHOSE PRIMARY TELECOMMUNICATIONS BUSINESS IS THE PROVISION OF OPERATOR SERVICES AND/OR LONG DISTANCE SERVICES.

5.3.5 EACH PROVIDER'S TARIFFS SHALL CONTAIN THE MAXIMUM RATES OF THE PROVIDER. ADDITIONALLY, A PRICE LIST SHALL BE FILED WITH THE COMMISSION REPRESENTING THE CURRENT RATES OF THE PROVIDER. PRICE LIST CHANGES THAT RESULT IN RATES THAT ARE LESS THE PROVIDER'S MAXIMUM TARIFF RATES SHALL BE ALLOWED TO BECOME EFFECTIVE UPON FOURTEEN DAYS NOTICE TO THE COMMISSION. IF THE COMMISSION DETERMINES THAT SUCH PROPOSED RATES MAY NOT BE JUST AND REASONABLE, EITHER BY ITS OWN ANALYSIS OR UPON PROTEST OF ANOTHER PARTY, IT MAY SUSPEND THE PROPOSED CHANGES USING STANDARD COMMISSION PRACTICES.

5.3.6 A PROVIDER may seek a specific form of relaxed regulation or deregulation of nonoptional operator services in accordance with the Rules Regulating Emerging Competitive Telecommunications Service FOUND AT 4 CCR 723-24.

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

5.4.1 All rates, terms, and conditions shall be stated in tariffs on file with the Commission unless, under Rule 5.3, the provider has been granted a specific form of relaxed regulation and is no longer required by the Commission to maintain tariffs or the Commission has deregulated a specific nonoptional operator service.

5.4.2 Operator service tariff rates for regulated interexchange carriers must be just and reasonable as determined using applicable commission rules and/or any specific regulatory treatment granted such interexchange carrier by this commission.

5.4.3 Operator service tariff rates filed by providers who are not regulated interexchange carriers, wherein the rates to be charged by the provider are at or below the highest rates for any regulated interexchange carrier for equivalent operator assisted services authorized by the commission, may be allowed, in the commission's discretion, to become effective by operation of law following the 30 day statutory period.

5.4.4 Operator service tariff rates filed by providers who are not regulated interexchange carriers, wherein the rates to be charged by the provider are above the highest rates for any regulated interexchange carrier for equivalent operator assisted services authorized by the commission, may be allowed, in the commission's discretion, to become effective by operation of law where such

provider supplies a complete and satisfactory justification for all such rates according to the commission's rules of practice and procedure and other applicable commission rules.

- 5.4.5 Any provider who is not a regulated interexchange carrier, but whose current commission-approved tariffs are in accordance with rule 5.4.3 At the date of promulgation of this rule, will be allowed to have its current tariffs remain in effect without further filings or proceedings.
- 5.4.6 Any provider who is not a regulated interexchange carrier described in rule 5.4.4 must refile its new, proposed tariff rates within 60 days after promulgation of this rule. The filing must 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, its tariffs will be deemed invalid and it will not be allowed to legally collect revenues for any Colorado intrastate calls. Upon filing of proposed rates under this rule, the current commission-approved rates will be allowed to remain in effect until the commission approves new rates.
- 5.5 Upon request, the commission shall provide the consumer with information regarding these rules. Specifically, the commission will inform consumers of their right to withhold payment for unapproved charges (as determined by the currently effective company tariff) billed to the consumer by providers and, when possible, will direct the billing agent to remove such charges from the consumer's bill.
- 5.6 The commission will keep a complete record of complaints received from consumers regarding the provision of operator services. Any provider found to be in violation of current commission rules, current company tariffs, or colorado statute will be subject to having its authority to provide such services revoked, its certificate of public convenience and necessity suspended, and/or the imposition of fines pursuant to public utility law (§ 40-7-105(1), c.R.S.).
- 5.7 All providers of operator services shall include all relevant portions of rule 6 of these rules within their tariff regulations.
- 5.8 All providers of operator services shall specify rates for local non-optional operator handled calls in their tariffs.
 - 5.8.1 If the technology used by the provider allows for the identification of local calls, rate comparisons as identified in rules 5.4.3 Will be made to

equivalent operator assisted services of the local exchange telephone company.

- 5.8.2 If the technology used by the provider does not allow for the identification of local calls, the operator service provider must obtain a waiver of these rules until such time as local calls can be identified.

RULE 6. REQUIREMENTS FOR OPERATOR SERVICE PROVIDERS

6.1 Each provider of operator services shall:

- 6.1.1 Identify itself, audibly, and distinctly, to the customer at the beginning of each telephone call before the customer incurs any charges and also a second time prior to connecting the call before the customer incurs any charges; and
- 6.1.2 Permit the customer to terminate the call at no charge before the call is connected; and
- 6.1.3 Disclose immediately upon request and without charge to the customer;
- (A) The rates or charges for the customer's intended call;
- (B) The methods by which such rates or charges will be collected; and
- (C) The methods by which complaints concerning rates, charges, or collection practices will be resolved.
- 6.1.4 Not bill for unanswered telephone calls in areas where equal access is available.
- 6.1.5 Not knowingly bill for unanswered telephone calls where equal access is not available.
- 6.1.6 Not engage in call splashing unless the consumer requests to be transferred to another provider of operator services, the consumer is informed prior to incurring any charges that the rates for the call may not reflect the rates from the actual originating location of the call, and the consumer then consents to be transferred.
- 6.1.7 Except as provided in subparagraph 6.1.6, not bill for a call that does not reflect the location of the origination of the call.

- 6.1.8 Ensure by contract or tariff that each aggregator for which the provider is the presubscribed provider of operator services is in compliance with the requirements of Rule 7 and Rule 8.
- 6.1.9 Withhold payment of any compensation to aggregators if the provider reasonably believes that the aggregator is not in compliance with Rule 8.
- 6.2 Upon receipt of any emergency telephone call, a provider of operator services shall immediately connect the call to the appropriate emergency service of the reported location of the emergency, if known, and, if not known, of the originating location of the call.
- 6.3 Providers of operator services shall regularly publish and make available at no cost to inquiring consumers written materials that describe any recent changes in operator services and in the choices available to consumers in that market.
- 6.4 no location or premise surcharges shall be charged by an operator service provider on behalf of an aggregator.
- 6.5 For the purpose of rules 6.1.1 through 6.1.3, the customer is the person who will be billed for the call.
 - 6.5.1 In cases where the operator service utilizes automated, or store-and-forward, equipment, and is technologically incapable of compliance with rules 6.1.1 through 6.1.3 on collect or third number billed calls, those providers must seek a waiver of this rule until such compliance may be accomplished.
 - 6.5.2 Operator services provided using automated, or store-and-forward, equipment must provide the capability for accepting charges on a collect or third number billed call through a positive response by the billed party. No charges will be allowed wherein the customer has not provided a positive response to the equipment.
- 6.6 The provisions of rules 6.1.8, 6.1.9, 6.2, and 6.3 shall not apply to nonoptional operator services as described in rule 3.1.3.

RULE 7 - REQUIREMENTS FOR CALL AGGREGATORS

- 7.1 Except as provided in Rule 7.3, each call aggregator shall display plainly on or in close proximity to all telephones available for customer use printed documentation containing:

- 7.1.1 The name, address, and toll-free telephone number of the provider of operator services;
 - 7.1.2 A statement that the rates of the operator service provider will be quoted upon request; and
 - 7.1.3 A written disclosure that informs customers that they have a right to obtain access to the carrier of their choice, and that they may contact their preferred carrier for information on accessing that carrier's service using that telephone.
 - 7.1.4 Specific instructions to obtain rates or charges for operator assisted local calls, including any charges per minute and operator surcharges, if applicable.
- 7.2 An aggregator shall ensure that no charge by the aggregator to the consumer for using an 800, a 950 or a 10XXX access code is greater than the amount the aggregator charges for calls placed using the presubscribed provider of operator services.
- 7.3 The provisions of Rules 7.1 and 7.2 shall not apply to nonoptional operator services as described in rule 3.1.3.

RULE 8 - CALL BLOCKING PROHIBITED

- 8.1 Call blocking occurs when an end-user is prevented from accessing the preferred operator service provider through access codes 800, 950, or, if available, 10XXX.
- 8.2 Except as provided in Rule 8.3:
- 8.2.1 Operator service providers shall neither require nor participate in the blocking of any customer's access to the customer's provider of choice.
 - 8.2.2 Call aggregators shall neither require nor participate in the blocking of any customer's access to the customer's provider of choice.
 - 8.2.3 Owners of pay telephones shall neither require nor participate in the blocking of any customer's access to the customer's provider of choice.
 - 8.2.4 Applicable contracts or tariffs shall be modified so as to effectuate the provisions of Rules 8.2.1 through 8.2.3.
- 8.3 The provisions of Rules 8.2 shall not apply to nonoptional operator services as described in rule 3.1.3.

RULE 9 - ACCESS CODES OF OPERATOR SERVICE PROVIDERS

- 9.1 All providers of operator services, as defined in rule 2.10 shall establish an 800, a 950 or a 10XXX access code.
- 9.2 The provision of Rules 9.1 shall not apply to nonoptional operator services as described in rule 3.1.3.

RULE 10 - ACCESS FROM REGISTERED EQUIPMENT

Requirements that registered equipment allow access to common carriers.

- 10.1 Aggregators who provide payphones must unblock 10XXX access.
- 10.2 Aggregators who use non-payphone equipment must unblock 10XXX access according to the following schedule:
 - 10.2.1 Equipment that can now selectively process 10XXX dialing sequences must unblock upon installation of such equipment.
 - 10.2.2 Equipment that can be modified to selectively process 10XXX dialing sequences for no more than \$15.00 per line must unblock by December 1, 1993.
 - 10.2.3 Installed equipment, manufactured on or after April 17, 1992, must unblock 10XXX access upon installation of such equipment.
 - 10.2.4 All other equipment must unblock 10XXX access no later than April 17, 1997.
- 10.3 The provisions of Rules 10.1 and 10.2 shall not apply to nonoptional operator services as described in rule 3.1.3.

RULE 11 - WAIVERS FROM RULES

The Commission may permit variance from these rules for good cause shown if it finds compliance to be impossible, impracticable, or unreasonable, if not otherwise contrary to law.