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(Decision No. R94-200)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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IN THE MATTER OF PROPOSED RULES PROVIDING FOR RELAXED REGULATORY TREATMENT OF OPERATOR SERVICE PROVIDERS, 4CCR 723-18.	)))))	DOCKET NO. 93R-687T RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE KEN F. KIRKPATRICK

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Mailing Date: March 7, 1994
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STATEMENT

By Decision No. C93-1495, the Commission gave a notice of proposed rulemaking concerning relaxed regulatory treatment of operator service providers, 4CCR 723-18. The proposed rules were filed with the Secretary of State and published in the Colorado Register. A hearing was scheduled for February 9, 1994.

On January 5, 1994, the Office of Consumer Counsel (OCC) entered its appearance in this proceeding.

Comments in advance of the hearing were received on behalf of U.S. Osiris Corporation and Operator Service Company on February 8, 1994, and on behalf of Phonetel Technologies, Inc. on February 4, 1994.

At the assigned place and time the undersigned called the matter for hearing. Two Staff witnesses testified as to the proposed rules. No members of the public commented. The OCC indicated its support for the rule as proposed, including a modification proposed at hearing.

In accordance with § 40-6-109, C.R.S., the undersigned now transmits to the Commission the record in this proceeding along with a written recommended decision.

FINDINGS OF FACT

1. Optional operator services have been deregulated. See § 40-15-401(1)(J), C.R.S. Nonoptional operator services which do not offer individualized and select call processing remain regulated as

a so-called "Part 3" service. The Commission has promulgated rules regulating nonoptional operator services, 4 CCR 723-18. The purpose of this proposed rulemaking is to offer more flexible regulatory treatment of the providers of nonoptional operator services. The Commission is authorized to flexibly regulate these Part 3 services by § 40-15-302, C.R.S.

2. The proposed changes to Rule 5.2 would do away with the former application process for obtaining certificates of public convenience and necessity (CPCN) to offer nonoptional operator services. The current procedure requires a notice and intervention period. Since the Rule has been in existence the Commission has never received a substantive intervention in any application to offer nonoptional operator services. Under the proposed rule the same information would be required for staff review, but it could be processed much more quickly. Instead of a CPCN the Commission would issue a letter of registration granting authority for the company to operate upon approval of its tariff. All commentors support the rule and it should be adopted.

3. Proposed Rule 5.3.1 would do away with the requirement of specific customer notice of proposed rate changes. This is a recognition that the customers of these services, which are generally available through independent pay phones and hotels and motels, are a transient population that are seldom reached by traditional notice procedures. In the past the Commission has routinely granted alternative notice provisions, but only after application. This time-consuming and perhaps inefficient process would be eliminated. All commentors support the proposal and it should be adopted.

4. Proposed Rule 5.3.2 grants a waiver of the requirement that providers maintain accounting information in accordance with the uniform system of accounts prescribed by the Federal Communications Commission and instead allow the providers' books of account to be maintained according to generally accepted accounting principles. The Commission has routinely granted this to all providers in the past. All commentors support this proposed rule and it should be adopted.

5. Proposed Rule 5.3.3 waives the requirement that all records be kept within Colorado. However, those records must be made available to the Commission or its representative at any time upon request and at the utility's expense. Again, this requirement has always been waived for the operator service providers, all commentors support the proposed change, and it should be adopted.

6. Proposed Rule 5.3.4 waives the requirement that operator service providers whose primary telecommunications business is the provision of operator services and/or long distance services need not file a cost allocation manual. This requirement has always

been waived in the past, the commentors support it, and it should be adopted.

7. One commentor suggested that the Commission adopt a de-tariffing provision by which any operator service provider offering maximum rates not to exceed the current maximum rates of AT&T should be permitted to submit a price list containing only the company's maximum and current rates. This would be filed in lieu of a formal tariff. Alternatively, the commentors suggested that an initial tariff be filed, but that future changes may be made as a price list change. Such changes would be effective on 14 days' notice. Staff supports the recommendation, with the caveat that the maximum rates are as defined in Rule 5.4 and that the Commission maintains its power to suspend any price list changes. OCC supports this modification as well, and it should be adopted.

8. In accordance with § 40-6-109,C.R.S., is recommended that the Commission enter the following order:

ORDER

THE COMMISSION ORDERS THAT:

1. The Rules Regulating Operator Services Providers, attached as Appendix A, are adopted.

2. The rules should be effective 20 days after publication by the Secretary of State.

3. An opinion of the Attorney General of State of Colorado shall be sought regarding the constitutionality and legality of the rules found in Appendix A to this Decision.

4. The Commission Director shall file with the office of the Secretary of State, for publication in the Colorado Registrar, a copy of the rules found in Appendix A adopted by this Decision, and when adopted, a copy of the opinion of the Attorney General of the State of Colorado regarding the constitutionality and legality of these rules.

5. The Rules found at Appendix A should be submitted by the Commission Director to the appropriate committee of the Colorado General Assembly, if the General Assembly is in session at the time this order becomes effective, or to the committee on legal services, if the General Assembly is not in session, for the opinion as to whether the adopted rules conform with § 24.4-103,C.R.S.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a. **IF NO EXCEPTIONS ARE FILED WITHIN 20 DAYS AFTER SERVICE OR WITHIN ANY EXTENDED PERIOD OF TIME AUTHORIZED, OR UNLESS THE DECISION IS STAYED BY THE COMMISSION UPON ITS OWN MOTION, THE RECOMMENDED DECISION SHALL BECOME THE DECISION OF THE COMMISSION AND SUBJECT TO THE PROVISIONS OF § 40-6-114, C.R.S.**

b. **IF A PARTY SEEKS TO AMEND, MODIFY, ANNUL, OR REVERSE BASIC FINDINGS OF FACT IN ITS EXCEPTIONS, THAT PARTY MUST REQUEST AND PAY FOR A TRANSCRIPT TO BE FILED, OR THE PARTIES MAY STIPULATE TO PORTIONS OF THE TRANSCRIPT ACCORDING TO THE PROCEDURE STATED IN § 40-6-113, C.R.S. IF NO TRANSCRIPT OR STIPULATION IS FILED, THE COMMISSION IS BOUND BY THE FACTS SET OUT BY THE ADMINISTRATIVE LAW JUDGE AND THE PARTIES CANNOT CHALLENGE THESE FACTS. THIS WILL LIMIT WHAT THE COMMISSION CAN REVIEW IF EXCEPTIONS ARE FILED.**

7. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

KEN F. KIRKPATRICK

Administrative Law Judge

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APPENDIX A

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

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 THAN 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, IT MAY SUSPEND THE PROPOSED CHANGES.

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