

Decision No. C99-189

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 99A-003T

IN THE MATTER OF THE APPLICATION OF INTERACTIVE COMMUNICATION
SYSTEMS, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY AS A PART 3 SERVICE PROVIDER.

**ORDER GRANTING A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY
TO PROVIDE EMERGING COMPETITIVE
(PART 3) TELECOMMUNICATIONS SERVICES AND
RELAXED REGULATORY TREATMENT**

Mailed Date: February 19, 1999

Adopted Date: February 17, 1999

I. BY THE COMMISSION

A. Statement and Findings of Fact

1. On January 5, 1999, Interactive Communication Systems, Inc. ("ICS"), filed an application for a Certificate of Public Convenience and Necessity ("CPCN") to provide certain Emerging Competitive Telecommunications Services, on a facilities basis throughout the entire State of Colorado, specifically private line, advanced features, premium services, interLATA toll services, and intraLATA toll services.

2. With the application for certification, ICS also requested relaxed regulation with regard to offering private line service, as previously granted by the Commission to other companies offering private line. ICS also requested relaxed regulatory treatment of its other regulated services.

3. On January 11, 1999, the Commission issued a Notice of Application Filed and Notice of Hearing providing notice to all interested parties that this application had been filed. Interventions were due on or before February 10, 1999.

4. On February 10, 1999, U S WEST Communications, Inc. ("USWC"), pursuant to Rule 64(a) of 4 *Code of Colorado Regulations* ("CCR") 723-1, filed its Entry of Appearance and Notice of Intervention in this application. No other party petitioned to intervene.

5. On January 22, 1999, ICS filed an amended application. This filing deleted the request to offer switched access service authority. The filing also requested detailed specific relaxed regulatory treatment requested for its Part 3 services.

B. Discussion

1. Pursuant to § 40-6-109(5), C.R.S., the Commission finds that this matter may be considered without a hearing.

2. With respect to the authority to provide private line services, ICS is reminded that § 40-15-102(22), C.R.S., defines private line service as "any point-to-point or point-to-multipoint service dedicated to the exclusive use of an end-user for the transmission of any telecommunications services."

3. Consistent with terms and conditions established in previous Commission decisions, ICS will be required to participate in the Colorado High Cost Fund, the Telecommunications Relay Services for the Disabled Telephone Users Program, the

Emergency Telephone Access Act Program ("Low Income Fund"), and other financial support mechanisms that may be created in the future by the Commission to implement §§ 40-15-502(4) and (5), C.R.S. ICS is informed that prior to providing local exchange telecommunications services or emerging competitive (Part 3) telecommunications services it must: (1) have on file with the Commission effective tariffs or price lists for its services; and (2) comply with all statutory and regulatory requirements applicable to telecommunications providers subject to the jurisdiction of the Commission.

4. Additionally, in accordance with Rule 25(c) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, ICS will be required to maintain its books of accounts and records using Generally Accepted Accounting Principles.

5. Granting ICS a CPCN to provide emerging competitive telecommunications services is consistent with the legislative statements of policy contained in §§ 40-15-101, 40-15-501, and 40-15-502, C.R.S.

6. Beginning in 1987, the Commission has granted to providers specific forms of relaxed regulation for services regulated under §§ 40-15-301 and 305(2), C.R.S. Of particular interest are the firm-specific and service-specific forms of relaxed regulation for private line service.

7. Prior Commission decisions granting relaxed regulations have set forth certain principles which are relevant to the instant matter. Specifically:

- a. Rate-base, rate-of-return, entry-exit regulation is not the sole factor for consideration by the Commission in setting rates, terms, and conditions of service;
- b. The service need not be provided pursuant to a traditional tariff, e.g., service may be provided under a price list,¹ or may be provided without either a tariff or price list. In the absence of a waiver or variance, cost support shall be provided for any tariff, price list, or change thereto. For services provided without either a tariff or price list, cost support for the floor price must be provided prior to the provision of service. Unless the Commission suspends a tariff or price list, the tariff or price list shall become effective according to its terms. An initial price list may be submitted on 14 days written notice to the Commission. A change to an existing price list also may be filed on 14 days written notice to the Commission. A change in a floor price for non-price listed services also may be made on 14 days written notice to the Commission.
- c. All services relevant to this proceeding shall be provided subject to a price floor without regard to whether the service is provided according to

¹ A price list essentially is the same as a tariff with the following exceptions. First, a price list is filed with a "Transmittal Letter" which is identical in form to an Advice Letter. Second, a price list may set a point price or a price interval (price band). A point price, term, or condition in a price list may be changed on 14 days notice to the Commission and does not require Commission approval to become effective. The same process applies to a change in a point price within a pricing interval. However, a change to either the upper or (continued) lower bound of a price interval for the services at issue in this docket may require Commission approval, but can be filed on 14 days notice as any other point price. The substantive difference is that a change to a boundary price may require cost support in accordance with 4 CCR 723-30. Note that this structure differs from the industry-wide form of relaxed regulation available to providers of non-optional operator services pursuant to 4 CCR 723-18-5.3, *Rules Regulating Operator Services for Telecommunications Service Providers and Telephone Utilities*. Pursuant to that rule, an initial tariff filing is required to implement a pricing interval, or to institute a price which exceeds Commission guidelines.

tariff, price list, or otherwise. The floor shall be calculated in accordance with 4 CCR 723-30 that is, at the time of filing the tariff or price list, or 14 days prior to the commencement of service provided outside a tariff or price list;

- d. Burden of proof, the burden of going forward, and the ultimate burden of persuasion are on the provider for any price contained in a tariff, price list, or service provided outside a price list, including but not limited to a customer-specific contract;
- e. Customer-specific contracts are allowed. The provider shall not be required to provide either the contract or cost support for the contract. Within 15 days after the effective date of any customer-specific contract, the provider must provide confidential written notice to the Commission that a customer-specific contract has become effective. Each customer-specific contract must include a provision that the Commission, after investigation, may change or void any contract provision in accordance with law or rule. All such customer-specific contracts must follow the requirement that the same terms, conditions, and prices are offered to similarly situated customers and otherwise are consistent with law and Commission rules. Should the Commission seek to challenge any price, term, or condition of a customer-specific contract, the provider assumes the burden of proof, as described immediately above;
- f. Prices for any voice grade service, whether contained in a tariff, price list, customer-specific contract, or otherwise, are subject to the statewide averaging provisions of § 40-15-109, C.R.S., to the extent applicable;
- g. The Commission, within its authority to regulate these services, may impose any special reporting requirements necessary to further the public interest;
- h. Providers must provide an annual report to the Commission, in accordance with Commission rules.
- i. In the absence of specific waivers or variances, providers are subject to all Commission rules,

including, but not limited to, the Rules delineated here. For many providers of services regulated pursuant to § 40-15-301 through 308, C.R.S., the Commission, at its discretion, may not require submission of a cost-segregation manual and may grant a conditional waiver of Rules 8, 9, and 10 of 4 CCR 723-27. Such waiver may be rescinded by the Commission. For certain services, the Commission may require accounting segregation from other services for revenues, investment, expenses, and other items. Further, the Commission may require separate accounting for unregulated services offered by a provider, and, may require similar accounting segregation for services provided under § 40-15-201 through 208, C.R.S. Any assets, facilities, or labor used jointly to provide any other regulated or unregulated service must be accorded proper accounting treatment so as to allow the Commission to determine Colorado and service-specific costs of the services subject to a specific form of relaxed regulation. Any waiver or variance from filing requirements may be conditioned in any manner within the Commission's authority;

- j. The provider is to maintain its books and records outside Colorado, subject to the provision that the provider either will produce its books and records to the Commission, or will incur costs necessary to allow the Commission access to such materials in the event such materials are located outside Colorado;

8. Services offered by ICS shall be regulated in the same manner enjoyed by similarly situated providers as set forth above. Specifically, rate-base, rate-of-return, shall not be the sole consideration in setting rates. The services subject to this order shall be detariffed; the specific provisions for private line service are discussed in more detail below. Services shall be offered by means of a price list. All ICS services subject to relaxed regulation shall be offered subject to a price

floor, calculated according to 4 CCR 723-30. ICS shall have the burden of proof regarding any price, term, or condition for all services offered under this scheme of relaxed regulation. ICS shall be allowed to enter into customer specific contracts. ICS must advise its customers that the services subject to this order are under Commission jurisdiction and the Commission may alter the terms, conditions, and prices, for good cause shown. ICS's voice-grade services shall be averaged statewide. ICS is subject to Commission audit powers and shall be required to submit special reports at the discretion of the Commission, and shall file an annual report. Failure by ICS to file such reports constitutes grounds for revocation of its relaxed regulation and CPCN. Likewise, violation of any other Commission rules constitutes grounds for revocation of ICS's CPCN. ICS's rates shall be cost-based, and the costs computed are to be based upon Colorado-specific expenses and investment. Should ICS be unable to supply satisfactory cost support information, the Commission may require ICS to use an accounting system, which is capable of providing such information.

9. In the past, specific forms of relaxed regulation for private line service have taken a general form. Most generally, service is classified as either "high-end" or "low-end". High-end is defined as 24 or more analog circuits over a given path, or a DS1 or higher capacity channel over a given path, both point-to-point and point-to-multipoint. Low-end, therefore, is

defined as 23 or fewer analog circuits over a given path, or a digital signaling rate of less than 1.544 Mbps (anything less than DS1) over a given path, both point-to-point and point-to-multipoint.

10. High-end service private line service is regulated in the same fashion, whether the service is provided InterLATA or IntraLATA. Low-end IntraLATA private line service is regulated in a slightly different manner.

11. ICS's InterLATA and high-end IntraLATA private line service shall be regulated as follows:

- a. A price floor calculated according to 4 CCR 723-30. Cost support for the floor shall be provided prior to the offering of service;
- b. No price ceiling;
- c. Ability to enter into customer-specific contracts as discussed in paragraph 7 above;
- d. No price list is required, but may be offered, at the discretion of ICS. If ICS elects to provide a price list, it shall provide the price list within 60 days of the effective date of this order. If not, ICS shall notify the Commission within 60 days of the effective date of this order and shall provide cost support information for its price floor within 60 days of the effective date of this order;

12. ICS's low-end IntraLATA private line service shall be regulated as follows, and is subject to the provisions described in paragraph 7 above:

- a. A price floor calculated according to 4 CCR 723-30. Cost support for the floor shall be provided prior to the offering of service;

- b. A price ceiling, which the Commission will not impose at the present time although the Commission may reimpose it in the future, at its discretion;
- c. Ability to enter into customer-specific contracts;
- d. A price list. ICS shall provide the price list within 60 days of the effective date of this order. ICS shall provide cost support information for its price floor and its initial prices within 60 days of the effective date of this order;

13. ICS's other Part 3 services, specifically advanced features, premium services, interLATA, and intraLATA toll shall be granted relaxed pricing flexibility as follows:

- a. Price Lists; these will contain the rates, terms and conditions governing its services and products.
- b. Shortened Notice; on or before 14 days prior to the desired effective date for a change in one or more prices contained in the price list, ICS shall file with the Commission, by transmittal letter, a price list that describes each proposed change.
- c. Promotional Offerings; ICS shall file promotional offerings in its price list and submit to the Commission at least 14 days prior to the proposed effective date.

14. The request for waiver from Commission rules requiring ICS to utilize and maintain its books and records in accordance with the Uniform System of Accounts is granted. ICS will be permitted to use Generally Accepted Accounting Principles.

II. ORDER

A. The Commission Orders That:

1. Interactive Communication Systems, Inc.'s application for a Certificate of Public Convenience and Necessity to Provide Emerging Competitive Telecommunications Services is hereby deemed complete.

2. Interactive Communication Systems, Inc., is granted a Certificate of Public Convenience and Necessity to provide the following emerging competitive telecommunications service: private line; advanced features; premium services; interLATA toll; and intraLATA toll services.

3. Interactive Communication Systems, Inc., may not use private line service to connect multiple customers (with the exclusion of special access). See § 40-15-102(22), C.R.S.

4. Switched Access is a part of basic local service which can be provided in Colorado only by a company certified to do so, therefore, Interactive Communication Systems, Inc., is reminded that it must file to obtain the necessary authority before providing switched access service.

5. Interactive Communication Systems, Inc.'s application for a specific form of relaxed regulation, is granted, consistent with the discussion, above.

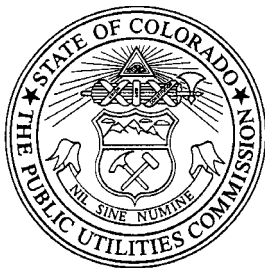
6. Interactive Communication Systems, Inc., is required to file applicable tariffs or price lists to provide emerging competitive telecommunications services within 60 days of the effective date of this Order. If Interactive Communication System, Inc., fails to file tariffs or price lists within

60 days, the authority to provide emerging competitive services shall, without further order of the Commission, be deemed null and void. For good cause shown, and if a proper request is filed within 60 days of the effective date of this Decision and Order, the Commission may grant Interactive Communication Systems, Inc., additional time within which to file tariffs and price lists, if applicable.

7. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING February 17, 1999.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT J. HIX

RAYMOND L. GIFFORD

ATTEST: A TRUE COPY

Bruce N. Smith
Director

Commissioners

COMMISSIONER VINCENT MAJKOWSKI
ABSENT.