

Decision No. R02-95

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
ADOPTING RULES**

Mailed Date: January 31, 2002

I. STATEMENT

A. This rulemaking proceeding was initiated by the Commission in Decision No. C00-584, mailed on June 23, 2000. By this decision, the Commission gave notice of proposed rulemaking concerning proposed amendments to the Rules Regulating Telecommunications Service Providers and Telephone Utilities, 4 *Code of Colorado Regulations* ("CCR") 723-2, and to the Rules Regulating Operator Services for Telecommunications Service Providers and Telephone Utilities, 4 CCR 723-18.

B. The Commission in its Order and Notice, stated that the changes proposed by the rules were needed to implement the provisions of SB 00-012 enacted into law by the Colorado General Assembly.

C. The Commission stated in its decision that it proposed to adopt benchmark maximum operator services rates as part of the rulemaking.

D. The hearing of the proposed rules was held as scheduled on October 12, 2000. After the hearing, Recommended Decision No. R00-1300 (November 22, 2000) was issued with the recommendation that the amendments to the rules be adopted, including benchmark rates for the operator services providers.

E. Exceptions to the recommended decision were filed by the Colorado Payphone Association, ("CPA"), AT&T Communications of the Mountain States, Inc. ("AT&T"); Qwest Corporation ("Qwest"); One Call Communications, Inc. ("OneCall"); and WorldCom, Inc. ("WorldCom").

F. The Commission issued Decision No. C01-223, mailed on March 16, 2001, ruling on exceptions. The Commission mostly denied the exceptions, however, it granted an opportunity for interested parties to provide additional information, particularly the submission of cost studies and other cost information concerning appropriate statewide benchmark rates for regulated operator services. In order to accomplish this, the Commission issued a Supplemental Notice of Proposed Rulemaking, Decision No. C01-240, mailed on March 16, 2001. The Commission scheduled a hearing on the second rulemaking for May 14, 2001.

G. Staff of the Colorado Public Utilities Commission ("Staff") filed a Motion to Vacate the Hearing Date. The request was granted and the hearing was postponed until July 31, 2001.

H. By Decision No. C01-557, mailed on May 24, 2001, the Commission issued a Second Supplemental Notice of Proposed Rulemaking in order to give interested parties notice of the new hearing date scheduled for July 31, 2001.

I. After several requests to postpone the hearing filed by Staff and the Office of Consumer Counsel ("OCC"), the hearing was held on November 27, 2001 regarding the proposed rules contained in the Second Supplemental Notice of Rulemaking.

J. At the hearing, appearances were entered on behalf of Qwest, CPA, OneCall, WorldCom, Staff of the Colorado Public Utilities Commission ("Staff") and The Colorado Office of Consumer Counsel ("OCC").

K. Testimony was received from witnesses on behalf of Qwest, OCC, and Staff. CPA, OneCall and WorldCom elected not to present witness, but rather requested the Commission to consider comments previously filed. Exhibit Nos. 1 through 10 were marked for identification and admitted into evidence. Pursuant to § 40-6-109, C.R.S., the record of this proceeding and a written recommended decision are transmitted to the Commission.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Qwest presented a total service long run incremental cost study relating to operator services. The study was prepared in 2001. The cost study was presented by Qwest witness Teresa K. Million in her written direct testimony (Hearings Exhibit Nos. 1 and 10), and orally at the hearing. The operator service cost study includes costs for station-to-station; person-to-person; busy line verify; busy line interrupt; 0 plus calling card; alternate automated billed system-billed; alternate automated billed system-collect; connect to DA; and distributed coin telephone system. The cost study does not include usage rates, operator assistance, or pay telephone charge.

B. Qwest witness, Paul R. McDaniel believes that Qwest's operator services cost study provides a "rough guide" (Direct Testimony of Paul R. McDaniel, Exhibit No. 2, page 3) for the Commission to establish appropriate benchmark rates for operator services. Mr. McDaniel believes that the benchmark rates should be set based on costs of single service providers. Since Qwest is a multi-service provider, the cost study presented by Ms. Million does not reflect the cost structure of single service providers.

C. Qwest proposes benchmark rates that it believes approximates the stand-alone cost of operator services for

single service providers. Qwest recommends that the Commission adopt its proposed benchmark rates as indicated in hearings Exhibit No. 2, exhibit to P.R. McDaniel's direct testimony. The benchmark rates proposed by Qwest are:

Calling Card Station Rates

Automated (Mechanized)	\$2.00
Operator Assisted	\$4.00
Operator Dialed	\$4.00

Operator (Assisted)

Station-to-Station	\$4.00
Collect	\$4.00
Billed to Third Party	\$4.00
Person-to-Person	\$8.00

Busy Line

Verification	\$4.00
Interrupt	\$7.00

Prison Inmate Operator Station

<u>Collect</u>	\$4.00
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D. Mr. McDaniel testified that the rate ceiling or benchmark should be established by the Commission (as mandated by § 40-15-302(5), C.R.S.), that is sufficiently flexible to accommodate both large multiple service providers and small single service providers.

E. OCC witness P.B. Schechter presented written (Exhibit No. 5) and oral testimony. He testified that the operator

services benchmark rates proposed in the original Notice of Proposed Rulemaking and the Supplemental Notices of Proposed Rulemaking are the appropriate maximum benchmark rates for operator services. Dr. Schechter stated that the cost study submitted by Qwest indicates that its fully distributed costs are close to the benchmark maximum rates in Staff's proposal. Dr. Schechter does not believe that Qwest's cost study supports its proposed benchmark rates recommended by Mr. McDaniel. The benchmark rates recommended by Qwest are much higher than the benchmark rates proposed in the Commission's Notice of Proposed Rulemaking. (See PBS-1, attached to answer testimony of P.B. Schechter (Exhibit No. 5) for a comparison of the proposals). Dr. Schechter recommends that the Qwest proposed benchmark rates be rejected by the Commission.

F. Carl E. Hunt, who testified for Staff, through his written testimony (Exhibit No. 6) and oral testimony at the hearing, presented Staff's position regarding the appropriate benchmark rates for non optional operator services. Dr. Hunt testified that Qwest's cost study is flawed and that the benchmark rates proposed by Qwest overstates the cost of providing operator services. He believes that establishing benchmark rates based on costs of stand alone providers recommended by Qwest is inappropriate to establish statewide benchmark rates for operator services. Rather He believes that

benchmark rates should be set on the basis of the costs of providing the service by efficient providers.

G. Dr. Hunt testified that he believes that the proposed benchmark rates contained in the Commission's Second Supplemental Notice of Rulemaking, Decision No. C01-557 (attachment) is just and reasonable and would allow the opportunity for efficient providers to enter and remain in the market. These benchmark rates would allow efficient providers an opportunity to earn a reasonable return on investment.

H. Qwest presented witness Dale E. Lehman to refute the testimony of Dr. Hunt and Dr. Schechter. Dr. Lehman criticized the opinions of Drs. Hunt and Schechter stating that the benchmark rates that they recommend for adoption... "would replace the functioning of competition in the operator services market with prices and service provision determined by regulatory fiat" (Affidavit of Dale E. Lehman, Exhibit No. 4, page 2). Dr. Lehman believes that the Staff and OCC recommended benchmark rates would discourage competition in that only the large multi-service providers could offer operator services. Dr. Lehman believes that the benchmark rates recommended by Qwest based on stand alone costs would provide a ceiling that is high enough to allow existing providers to remain in the market and encourage entry of new providers. This would provide for a competitive

marketplace that would ultimately benefit consumers of operator services.

I. It is concluded and recommended that the benchmark rates contained in the Supplemental Notices of Rulemaking, Decision Nos. C01-240 and C01-557, should be adopted. These benchmark rates for non-optional operator services recommended for adoption by Staff and OCC appear to provide rates that would allow efficient providers of these services an opportunity to earn a just and reasonable return on investment. The rates should be established as the statewide benchmark or ceiling for pricing of non-optional operator services. It is found that these benchmark rates are just and reasonable.

J. Under the provisions of § 40-15-302(5), C.R.S., a provider can request the Commission for approval of rates that exceed the benchmark rates by providing a cost study as required by 4 CCR 723-18-5.4.4. The benchmark rates proposed by Qwest are rejected. The evidence establishes that Qwest rates are not supported by Qwest's own cost study.

K. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission adopt the attached rules.

III. ORDER

A. The Commission Orders That:

1. The proposed amendments to the Rules Regulating Telecommunications Service Providers and Telephone Utilities, 4 *Code of Colorado Regulations* 723-2 and the Rules Regulating Operator Services for Telecommunications Service Providers and Telephone Utilities, 4 *Code of Colorado Regulations* 723-18, attached to this Decision and Order are adopted.

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

3. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

4. A copy of the rules adopted by this Decision shall be filed with the Office of the Secretary of State for publication in *The Colorado Register*. The rules shall be submitted to the appropriate committee of reference 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 an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

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.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge

**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	.36
	Operator (Assisted)	
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	None
	(Facilities based providers only)	
16.	Call Completion	.085