

P-999/CI-91-22 ORDER AFTER RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner

In the Matter of a Commission
Investigation into the Use of
"Store and Forward" Technology
in Telephone Equipment Operated
in Minnesota

ISSUE DATE: July 19, 1993
DOCKET NO. P-999/CI-91-22
ORDER AFTER RECONSIDERATION

PROCEDURAL HISTORY

On July 9, 1992, the Commission issued its ORDER SETTING REGULATORY REQUIREMENTS FOR STORE AND FORWARD AND INMATE-ONLY SERVICE PROVIDERS in the above-captioned docket. In that Order, the Commission set requirements for providers of pay telephone service who use store and forward technology.

On July 29, 1992, the Residential Utilities Division of the Office of Attorney General (RUD-OAG) filed a petition for reconsideration of the Commission's July 9, 1992 Order. The RUD-OAG specifically asked that the Commission take the following action upon reconsideration of the Order:

1. Require refunds of unauthorized charges originating from inmate-only telephones;
2. Lower the rate cap established for the operator service portion of rates for local and long distance calls originating from inmate-only telephones; and
3. Apply all alternative operator services (AOS) requirements to the provision of inmate-only service providers, except to the extent that the protections are inconsistent with the protections listed at p. 13 of the July 9, 1992 Order;

The Minnesota Independent Payphone Association (MIPA) filed comments on August 7, 1992; Kantel Communications, Inc. (Kantel), an inmate facility service provider, filed comments on August 11, 1992. The Department of Public Service (the Department) notified the Commission that it did not intend to file written comments in this proceeding.

The matter came before the Commission on June 29, 1993.

FINDINGS AND CONCLUSIONS

I. Store and Forward Technology

Store and forward technology allows a new generation of telephones equipped with certain computer chips to store billing information. A customer can use such a telephone to charge the cost of a call to a credit card, without the use of a "live" operator or a local exchange's or interexchange carrier's automated calling card system. Some telephones equipped with store and forward technology also enable a customer to place a collect call without the assistance of a live operator.

II. Reopening of the July 9, 1992 Order

In its July 29, 1992 petition, the RUD-OAG requested that the Commission reopen the July 9, 1992 Order to consider adopting the recommendations listed above. MIPA and Kantel opposed any reopening or reconsideration of the Order.

The RUD-OAG filed its petition within the time limits imposed by Minn. Rules, part 7830.4100, so its request for reconsideration is properly before the Commission. The issues raised by the RUD-OAG are of sufficient importance to merit further Commission consideration. In addition, Commission Staff has identified a matter arising out of this proceeding which could most efficiently be addressed at this time: the issue of active acceptance of store and forward collect calls. The Commission will revisit the July 9, 1992 Order to consider the issues raised by the RUD-OAG and Commission Staff.

III. Refunds of Unauthorized Charges from Inmate-only Providers

A. The July 9, 1992 Order

The Commission addressed the issue of refunds at p. 9 of the July 9, 1992 Order:

The RUD-OAG cited several consumer complaints of overbilling for store and forward service. It is unclear if any store and forward provider charged over the prevailing rate of the dominant carrier. There is no reference to where, how, or when any overbilling by a store and forward provider occurred. Since there are no clear allegations of overbilling, the Commission will not take up the question of refunding at this time.

B. The RUD-OAG Petition

In the RUD-OAG's petition for reconsideration, the agency restated the arguments for refunds it had raised before the Commission's initial meeting on store and forward requirements.

The RUD-OAG argued that certain inmate-only providers have charged unauthorized rates to recipients of collect calls from inmate facilities. According to the RUD-OAG, the errant providers never sought or obtained authority to provide operator services such as placing collect calls. Although the maximum rate for local calls placed through customer-owned coin-operated telephone (COCOT) facilities is \$0.25, some store and forward inmate providers applied higher charges. Some of these providers also charged long distance rates in excess of AT&T's, without authority to do so.

The RUD-OAG asked the Commission to require refunds from all providers of inmate-only store and forward service who exceeded authorized charges.

C. MIPA and Kantel

In their comments, MIPA and Kantel stated that the RUD-OAG had failed to raise any new arguments in its petition. The companies maintained that any customer complaints should be addressed on a case by case basis.

D. Commission Analysis

With the exception of the two complaints cited in the RUD-OAG's brief, the agency has provided no evidence of any widespread or consistent pattern of abuse by inmate facility store and forward providers. Without a clear factual history, the task of finding overcharging providers, tracing their customers, assessing refunds and getting them to the proper parties seems difficult if not impossible.

The Commission also finds that, prior to the July 9 Order, there was genuine confusion regarding the certification necessary to provide store and forward service. There is evidence that some COCOT providers may have believed that payphone authority included store and forward authority. The Commission addressed the store and forward authority issue in the July 9, 1992 Order, stating definitively for the first time that certification beyond payphone authority was necessary to provide store and forward service. The Commission therefore concludes that it would be unreasonable to assess refunds against inmate providers who may have charged store and forward rates in excess of their payphone authority prior to the July 9 Order.

The Commission notes that this finding does not extend to inmate providers who charged rates in excess of their tariffs after the July 9 Order. These providers would have been on notice that store and forward certification is necessary to provide inmate facility service, and that they must charge rates which are consistent with such authority. Neither does the Commission's finding that refunds are unnecessary extend to inmate facility providers who provided service without any payphone authority whatsoever. Such providers, if they exist, would have been on notice that they were acting without Commission authority and were in violation of Minnesota statutes. While the Commission will not at this time initiate a refund process against inmate payphone providers who exceeded their tariffs after July 9, 1992, or inmate facility providers who provided service without payphone authority, the Commission is not saying that refunds in such cases should be precluded. Requests for refunds, if any, can be handled on a case by case basis.

IV. Lowering the Rate Cap

A. The July 9, 1992 Order

The Commission addressed the issue of a rate cap for store and forward providers at p. 9 of the July 9, 1992 Order:

While it is true that there is a \$0.25 message rate limit for a local call from a payphone, it is also true that local exchange companies are tariffed to charge additionally for operator assistance for local calls. As an example, US WEST is authorized to charge \$1.20 for its live station-to-station operator assistance in a local call, and United Telephone Company is authorized to charge \$1.25 for a similar service. The Commission finds that basic fairness requires that store and forward providers also be allowed to charge for their operator assistance. As has been established, the main difference between store and forward service and other types of operator service is the reliance on mechanical rather than live assistance. The Commission does not see a need to open an investigation to establish the proper rate cap for store and forward service. The Commission will limit the rate for local operator services by store and forward providers to the highest rate approved by the Commission for similar calls. This is in addition to the message rate cap, which remains at \$0.25 per call.

B. The RUD-OAG Petition

In the RUD-OAG's petition, the agency stated that the Commission's July 9 Order capped store and forward inmate-only local charges at the live operator charge of US WEST (\$1.20) plus the message charge of \$0.25, to total \$1.45. The RUD-OAG

requested that the cap be lowered to US WEST's rate (\$0.65) for placing calling card calls. The RUD-OAG reasoned that inmate-only services are mechanized, not live. If charged the rate of US WEST's live operator service, recipients of inmate-only collect calls are not getting what they are paying for: the services and protections of a live operator.

C. MIPA and Kantel

MIPA and Kantel argued that inmate-only charges should continue to be capped at the level of local live operator assistance. The companies noted that LECs are virtually guaranteed payment when they place a calling card call, while inmate providers will be billed for placing the call whether or not it is accepted by a third party.

D. Commission Analysis

The Commission finds and clarifies that the intention of the July 9, 1992 Order was to cap the charge for store and forward local operator service at the level approved for the relevant LEC's station-to-station collect calls. The rate would thus be \$1.45 for store and forward providers in US WEST's service territory, and the highest level approved for station-to-station collect calls for the LEC in any other service territory in which the provider is located.

The Commission chose the station-to-station collect call charge because this LEC service is the closest to the service provided by store and forward facilities. Although LECs usually use live operators, and store and forward providers are automated, the service to the user is essentially the same. Basing the rate on the essential nature of the service is especially appropriate when changing technology is constantly blurring the distinctions between live and automated service. The rate is most appropriately set based on the service the consumer is receiving, not the means by which that service is obtained.

Finally, the Commission clarifies that rates for store and forward long distance operator services will continue to be capped at the rates charged by AT&T for the operator service portion of its long distance service.

V. Application of AOS Requirements to Inmate-only Service

A. The July 9, 1992 Order

In the July 9, 1992 Order, the Commission stated the general principle that alternative operator service (AOS) requirements previously established in Commission Orders will apply to store

and forward service providers.¹ The Commission noted the special circumstances surrounding inmate-only service, however. Citing the existence of these special characteristics and the need for rate protection for recipients of inmate calls, the Commission waived all established AOS requirements for inmate-only service, except for nine specified requirements.

B. The RUD-OAG Petition

The RUD-OAG argued that the Commission's Order had inadvertently exempted inmate-only service providers from the following AOS requirements:

1. Prohibition of disconnection of local telephone service for nonpayment of store and forward service charges;
2. Identification of the service provider's name on the bills sent to end-users (sub-carrier identification);
3. Prohibition of the inclusion of call-aggregators' surcharges or other "charges" on the bill sent to end-users.

C. MIPA

MIPA argued that there was no need to modify or clarify the Commission's application of AOS requirements to inmate-only service providers.

D. Commission Analysis

- i.** Identification of the service providers' name on the bills sent to end-users (sub-carrier identification).

In the July 9, 1992 Order at p. 13, the Commission stated:

At the time of filing their applications for authority, inmate-only service providers must submit samples of bills that meet billing requirements adopted in the Order.

Since the Order generally adopts AOS requirements for store and forward providers, billing requirements for inmate-only providers are those established in the AOS docket, P-999/CI-88-917. One AOS billing requirement is a statement of the name of the service provider on the bill. The Commission did not exempt inmate-only providers from this requirement.

¹ See Commission Orders dated November 19, 1991, March 25, 1992, and May 1, 1992, in Docket No. P-999/CI-88-917, In the Matter of the Applications for Authority to Provide Alternative Operator Services in Minnesota.

Although the Commission has thus previously required that inmate-only providers place their names on the bills they send to end-users, the Commission will here restate and clarify this requirement.

ii. Prohibition of the inclusion of call-aggregators' surcharges or other "charges" on the bill sent to end-users.

At p. 13 of the July 9, 1992 Order, the Commission stated:

Total rates charged by inmate-only service providers for intrastate long distance calls must not exceed AT&T's rates for similar calls.

Rates charged by inmate-only service providers for local calls must not exceed the highest rate approved by the Commission for similar calls.

The Commission thus forbade inmate-only providers from applying rates higher than the applicable tariff, i.e. surcharges, on their bills. The Commission will here restate and clarify that inmate-only providers may not include call-aggregators' surcharges or other charges not approved by the Commission in charges for service provided from an inmate telephone.

iii. Prohibition of disconnection of local telephone service for nonpayment of store and forward service charges

The Commission agrees with the RUD-OAG that the Commission inadvertently failed to include this prohibition in its July 9, 1993 requirements for inmate-only providers.

The Commission has previously established a specific policy against disconnection of local service for failure to pay a bill for operator services. In the Commission's November 19, 1991 ORDER SETTING REGULATORY REQUIREMENTS FOR OPERATOR SERVICE FROM TRANSIENT LOCATIONS the Commission cited the lack of a direct link between operator service and local service, the difficulty of tracing billing problems along the lengthy billing chain, and the essential nature of local service as reasons for its policy against disconnection.

The Commission's prohibition of disconnection is especially appropriate in the case of inmate-only service. Inmate callers and their call recipients have no choice of providers. As the Commission has previously stated in the AOS context, a "captive" end-user requires a higher level of protection than the average customer. The Commission will therefore specifically prohibit disconnection of local telephone service for nonpayment of

inmate-only telephone service.

VI. Active Acceptance of Collect Calls from Inmate Facilities

A. Factual Background

A further issue regarding inmate-only service has come to the attention of the Commission since the July 9, 1992 Order. The store and forward device is technologically unable to distinguish between a "live" human voice accepting the call and the sound of a recorded voice on an answering machine. In some cases, the automated inmate-only operator service device has registered acceptance of a collect call when an answering machine has been reached. Customers have complained that they are being billed for acceptance of calls which they never actually received.

It is possible to program store and forward telephones to require acceptance of a collect call from a "live" human voice, or some other form of affirmative action from the recipient, before charges are incurred. Such a program is known as "active acceptance" or "positive acceptance." Refitting existing telephones for active acceptance would not be without cost, however. MIPA stated that most inmate-only payphones are of a fairly new design, which has the capacity for active acceptance. MIPA stated that refitting the older inmate-only payphone units, which do not have active acceptance capability, would cost approximately \$400-\$500 per unit. MIPA requested that providers be allowed 90 days to upgrade the older inmate-only payphones, if the Commission required total conversion to active acceptance.

MIPA indicated further that most non-inmate payphones are of a design which does not currently accommodate the active acceptance program. Refitting these units would cost approximately \$300-\$350 per payphone. MIPA argued that the amount of complaints regarding these payphones did not warrant conversion of the payphones to active acceptance. Should the Commission require such conversion, MIPA requested that providers be allowed one year in which to complete the process.

B. Commission Analysis

Because of the widespread use of telephone answering machines, the possibility of unintentional overcharging through the store and forward collect call service is very real. The Commission is particularly concerned with the possibility of large phone bills being accrued by recipients of collect calls from inmate facilities. As the Commission stated in its July 9, 1992 Order, "The special need to communicate with inmates, plus the frequency of some prisoners' calls due to time limitations, can make some call recipients especially vulnerable to high phone bills."

Active acceptance is a reasonable means of protecting call recipients from overcharges for store and forward collect calls. It is an appropriate protection for consumers who lack the

benefits of access to a live operator. While store and forward providers will be burdened with the cost of conversion to the active acceptance mode, the Commission believes that this burden is more than balanced by the greater protection for consumers. Allowing the providers 90 days or one year in which to complete the conversion should lessen the economic shock for the providers, and allow them to implement the new technology in the most cost-efficient way possible.

The Commission finds that store and forward providers must convert their payphones to active acceptance capability. Inmate-only providers will be allowed 90 days from the date of this Order in which to complete the conversion. Other store and forward providers will be allowed one year from the date of this Order in which to complete the conversion.

ORDER

1. The RUD-OAG's request to require refunds from inmate-only payphone providers who overcharged for store and forward service prior to the July 9, 1992 Order is denied. Cases of parties providing store and forward service without any payphone authority, or parties providing service in excess of their payphone authority after July 1, 1992 will be decided on a case by case basis.
2. The RUD-OAG's request to lower the rate cap for inmate-only facilities is denied. Local rates will continue to be capped at the relevant LEC's station to station collect call rate, and long distance rates will be capped at the level approved for AT&T.
3. LECs and ILECs are prohibited from disconnecting an end-user's local service for non-payment of inmate-only services.
4. Within 90 days of the date of this Order, all store and forward inmate-only providers shall convert their payphones to require active acceptance for the imposition of charges. Within 10 days of completing the conversion, providers shall submit a filing with the Commission and the Department stating that they have complied with the Commission's requirement.
5. Within one year of the date of this Order, all store and forward non-inmate providers shall convert their payphones to require active acceptance for the imposition of charges. With their next annual filing, providers shall include a statement that they have complied with the Commission's requirement.

6. Within 30 days of the dates filings are required in Paragraphs Four and Five above, the Department shall submit a report indicating whether or not individual providers have complied with the requirements of this Order. The report shall include any recommendations for further action.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

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