

February 5, 1996

DOCKET NO. P-413/M-95-269

ORDER ESTABLISHING CONDITIONS FOR THE PROVISION OF ANONYMOUS CALL
REJECTION, CALL TRACE, AND LAST CALL RETURN

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Tom Burton
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Dee Knaak
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Chair
Commissioner
Commissioner
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Commissioner

In the Matter of the Proposal of Lakedale
Telephone Company to Offer Three
Additional CLASS Services

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PROCEDURAL HISTORY

On March 28, 1995 Lakedale Telephone Company (Lakedale or the Company) filed a proposal to add three services to its line of CLASS services: Anonymous Call Rejection, Last Call Return, and Call Trace.

On June 6, 1995 the Department of Public Service (the Department) filed comments. The Department recommended authorizing all three services, but advocated changes in the Company's proposal. In brief, the Department recommended limiting Anonymous Call Rejection to customers subscribing to specific CLASS services, limiting "fixed" Anonymous Call Rejection to a trial period, and rejecting the Company's proposed pricing of Call Trace.

The Company filed reply comments on July 26, 1995. The Department filed final comments on August 24, 1995.

The matter came before the Commission on October 24, 1995.

FINDINGS AND CONCLUSIONS

I. Anonymous Call Rejection

A. Nature of the Service; the Company's Proposal

Anonymous Call Rejection is a companion service to another CLASS service, Caller ID. Caller ID displays on a small electronic terminal the originating telephone numbers of incoming calls. Depending upon software capabilities, it may also transmit the name of the customer to whom

the originating telephone number is assigned.¹ Anonymous Call Rejection allows Caller ID subscribers to reject calls for which originating information has been blocked. Before they ring, blocked calls are diverted to a recording explaining that the called party is not accepting blocked calls. In the standard form provided by all other companies, Anonymous Call Rejection can be activated and deactivated by the customer, using designated dialing codes.

The Commission considers Anonymous Call Rejection an important tool in maintaining the balance between the privacy rights of called parties and the communication rights of callers. The Commission has therefore required companies offering CLASS services to provide free Anonymous Call Rejection to all Caller ID customers as soon as technically feasible.²

Lakedale's proposal goes further. Lakedale proposes to provide free Anonymous Call Rejection to all Caller ID customers and to offer the service at \$1.00 per month to all other customers, whether or not they subscribe to any CLASS services. The Company claimed that universal availability of Anonymous Call Rejection would promote consumer choice, a goal the Commission has long promoted.

Lakedale also proposes to offer, in addition to standard Anonymous Call Rejection, "fixed" Anonymous Call Rejection, which cannot be deactivated by the customer, only by the Company. The Company claimed the fixed service would protect against accidental deactivation of Anonymous Call Rejection and would advance consumer choice.

Finally, the Company proposes to charge a one-time fee of \$10 each time a customer switches from standard Anonymous Call Rejection to the fixed service, or from the fixed service to the standard service.

B. The Department's Position

The Department opposed offering Anonymous Call Rejection to customers who do not subscribe to Caller ID or Last Call Return, the two CLASS services which disclose originating information on incoming calls. The Department claimed Anonymous Call Rejection could serve no legitimate purpose for subscribers without these services.

The Department had reservations about fixed Anonymous Call Rejection, because its subscribers would lose the ability to accept blocked calls in emergencies. For this reason the Department proposed a short-term trial, with the Company reporting on its customers' experience with the fixed service in May 1996.

¹Lakedale offers two Caller ID services -- Caller ID-Number, which transmits only the originating number, and Caller ID-Name and Number, which transmits both the originating number and the name of the customer to whom the number is assigned.

²In the Matter of a Commission Initiated Investigation into the Provision of Custom Local Area Signaling Services in Minnesota, Docket No. P-999/CI-92-992, ORDER AFTER RECONSIDERATION (December 3, 1993).

The Department also opposed the Company's proposal to charge a \$10 fee for switching from fixed to standard Anonymous Call Rejection, saying the first change should be at no charge. Finally, the Department recommended barring the Company from promoting either fixed or standard Anonymous Call Rejection over the other service in communications with customers.

C. Commission Action

1. Universally Available Anonymous Call Rejection

The Commission agrees with the Department that Anonymous Call Rejection can serve no useful purpose for customers who do not subscribe to either of the two CLASS services (Caller ID, in either form, and Last Call Return) which disclose originating information on incoming calls. Subscribers without these services have no way of knowing, and presumably do not care to know, the originating numbers of incoming calls. They have no way of knowing, and presumably do not care, whether originating numbers are blocked or unblocked. Allowing these customers to reject all calls for which originating information has been blocked would not further the public policy goals Anonymous Call Rejection is intended to serve.

Those goals, as the Commission explained in its December 3 Order, are as follows:

The Commission authorized the introduction of CLASS services, of which Caller ID is the centerpiece, because it found their benefits outweighed their drawbacks. Their chief benefit is to give people more control over their telephone by providing more information about incoming calls and more options for dealing with them. CLASS services have the potential to become effective personal control/time management tools for telephone subscribers. . . .

ORDER AFTER RECONSIDERATION at 7.

The Commission is convinced that giving the customer control over how or she handles blocked calls, together with the amount of information and range of choices necessary to make that control meaningful, is the soundest public policy.

ORDER AFTER RECONSIDERATION at 8, emphasis added.

Anonymous Call Rejection is part of a package of tools for screening and managing incoming calls. Customers who are not using CLASS services to perform these functions will lack the information necessary to make informed decisions about whether and when to reject blocked calls.

Furthermore, there are strong public policy reasons to discourage indiscriminate rejection of blocked calls. Some consumers use blocking because they object to the loss of privacy implicit in transmitting their telephone number with every call. Others use blocking because they need to prevent the disclosure of their numbers to people who have harassed or abused them. Such privacy and public safety concerns have led the Commission to ensure that all customers have free access to per-call blocking of transmission of their names and numbers and that residential

customers have free access to line blocking of this information as well.³

Balancing the rights of customers who want or need to protect their telephone numbers against the rights of customers who want or need to know who is calling them was a delicate task. The compromise adopted by the Commission -- requiring a range of blocking and unblocking options plus Anonymous Call Rejection -- was intended to maximize the autonomy of all players. It gives an initial advantage to Caller ID customers, who may choose to reject blocked calls, but it also allows blockers to weigh the importance of blocking in each case and unblock on a per-call basis if they so choose.

The Commission struck the balance it did because Caller ID customers have invested the time and resources necessary to make CLASS services an effective call management tool and can make informed decisions on whether or not to accept blocked calls. If informed use of Anonymous Call Rejection dilutes the value of blocking to privacy-conscious customers, that must be viewed as one of the incidental costs of this new technology.⁴

On the other hand, customers who are not using CLASS services to screen and manage incoming calls cannot make informed decisions about whether and when to accept blocked calls. Allowing them to reject blocked calls would dilute the privacy rights of customers who choose blocking without furthering any public policy goal.

2. Anonymous Call Rejection and Last Call Return

Last Call Return allows a called party to return the last incoming call by dialing a designated code. In most applications, and in the form proposed by Lakedale, Last Call Return also gives the called party the originating number of the last call. The service does not work when the last caller has blocked the transmission of his or her name and/or number.

The Department recommended permitting Lakedale to offer Anonymous Call Rejection on a trial basis to customers using Last Call Return and supported the proposed fee of \$1.00 per month. The Commission agrees that a trial, at least, is in order.

The Department stated without challenge that some subscribers use Last Call Return as a scaled-down form of Caller ID. They screen calls by leaving them unanswered, using the originating

³In the Matter of a Commission Initiated Investigation into the Provision of Custom Local Area Signaling Services, Docket No. P-999/CI-92-992, ORDER ESTABLISHING CONDITIONS FOR THE PROVISION OF CUSTOM LOCAL AREA SIGNALING SERVICES (June 17, 1993) and ORDER AFTER RECONSIDERATION (December 3, 1993). Both Orders are incorporated by reference.

⁴Of course, the Commission has continuing jurisdiction over how CLASS services are offered in Minnesota and can make any changes the public interest requires. All companies offering CLASS services are required to file annual reports designed to help the Commission evaluate public acceptance of CLASS services and CLASS services' overall performance in serving the public interest.

information provided by Last Call Return to decide whether or not to return them. Customers screening and managing calls in this way clearly can make informed decisions about whether and when to reject blocked calls and could use Anonymous Call Rejection for its intended purposes.

It is not clear, however, how many Last Call Return customers use the service in this way. Those who use it only to avoid missing calls may find Anonymous Call Rejection more confusing than helpful.

To avoid any unforeseen consequences of linking Anonymous Call Rejection with Last Call Return, the Commission will limit this service offering to a trial period. In its annual CLASS report, due May 1, 1996, the Company will report on its experience with offering Anonymous Call Rejection to Last Call Return customers. The Commission will then have baseline information and can decide whether to continue the trial, discontinue the service offering, or make the service offering permanent.

3. “Fixed” Anonymous Call Rejection

As discussed above, customers can activate and deactivate standard Anonymous Call Rejection by dialing designated codes. This allows them to accept blocked calls at some times and reject them at others. Standard Anonymous Call Rejection is always provided in the inactive state; customers must act affirmatively to begin rejecting blocked calls.

The Company proposes to offer, as an alternative to the standard service, “fixed” Anonymous Call Rejection. The fixed service would be provided in its active state and could only be deactivated by the Company. The purpose of the fixed service is to protect against accidental deactivation of Anonymous Call Rejection.

The Department had reservations about the fixed service, because it would make it impossible for customers with the service to accept blocked calls in emergencies. The Department explained, for example, that some hospital telephones have line blocking, and no per-call unblocking capacity, due to equipment limitations. At the same time, the Department believed some customers would rather take the risk of rejecting emergency calls than the risk of accidentally accepting blocked calls. The Department therefore recommended a fixed service trial, with the Company reporting on experience with the service on May 1, 1996.

No doubt it is true that some customers, especially those who have suffered harassment or abuse, would rather risk missing emergency calls than risk inadvertently accepting blocked calls. It makes sense to honor their choice, especially since the harm at issue, missing emergency calls, can be effectively dealt with after the first call by asking the Company to deactivate the fixed service.

To protect against unforeseen consequences, however, the Commission will authorize the fixed service only on a trial basis, requiring the Company to report on experience with the service on May 1, 1996. Standard service will remain the default option; only customers specifically requesting fixed service will receive it. Finally, the Company will not promote one form of the service over the other, but will fully explain both forms to all customers who inquire.

4. Fees for Switching Between Standard and Fixed Anonymous Call Rejection

The Commission agrees with the Department that there should be no fee for a customer's first change from fixed to standard Anonymous Call Rejection during the trial period. Even with the best of customer education programs, some customers will inevitably miss the distinction between fixed and standard Anonymous Call Rejection, and will select the wrong service. The costs associated with these incorrect choices are part of the start-up costs of CLASS services, and are more appropriately assigned to the general body of ratepayers than to individual customers during this transition period.

II. Call Trace

A. Nature of the Service

Call Trace is a promising new technology for combating threatening and harassing telephone calls. The service is activated by dialing a designated code and produces a record of the time, date, and originating number of the last incoming call, whether or not originating information was blocked. The information is stored in telephone company offices for law enforcement officials; it is not released directly to subscribers.

Because Call Trace offers more convenience, more privacy, and greater accuracy than most traditional call tracing technologies, the Commission has required all companies offering CLASS services to offer Call Trace as soon as technically feasible.⁵

B. The Company's Proposal

The Company plans to offer Call Trace to all customers, whether or not they subscribe to CLASS services, as required by the December 3 Order. The Company proposes to provide Call Trace free of charge to users of the service, but to add a two cent monthly surcharge to local rates to cover Call Trace costs. The surcharge would be itemized on the monthly bill as a fee for Call Trace.

C. Parties' Positions

The Department opposed the Company's pricing proposal as inconsistent with Commission precedent, economically inefficient, and lacking sufficient factual support. The Department opposed the Company's proposal to itemize the two cent surcharge on the monthly bill as wasteful and potentially confusing to customers.

The Company responded that the Department misunderstood the difference between precedent and rule and was treating Call Trace pricing precedents as statements of "general applicability and future effect." The Company cautioned that Commission action on such grounds would violate the Administrative Procedure Act as unpromulgated rulemaking. Minn. Stat. §§ 14.02, subd. 4; 14.22, subd. 1. The Company claimed the two cent surcharge had adequate factual

⁵Order of December 3, 1993, cited previously.

basis and argued that providing Call Trace at no charge to the user was better public policy than permitting any charge to the user, however small.

At oral argument the Company offered an alternative proposal of a one-year trial of its Call Trace pricing proposal.

D. Commission Action

1. Summary of Commission Action

The Commission will reject the Company's Call Trace pricing proposal primarily because it is economically inefficient and secondarily because it carries serious potential for the Company to over-recover its costs. To ensure prompt deployment of Call Trace for Lakedale customers, the Commission will establish a price of \$1.00 per activation. This initial price can be re-examined as necessary when actual data on usage, costs, and revenues become available.

2. Economic Efficiency

The Commission agrees with the Department that economic efficiency demands that there be *some* price attached to using Call Trace. Nearly any service will be overused if priced at zero, ultimately misallocating resources by causing unnecessary costs. There is no evidence that Call Trace is an exception to this general rule.

In fact the Company itself, in response to an information request from the Department, stated, "Management believes that demand for CLASS call trace will be highly price elastic when compared with traditional call trace pricing." Information Request No. 2. At oral argument, too, the Company stated it expected the number of calls traced to climb significantly once free Call Trace became available. The Company stated it considered that increase an inevitable and acceptable trade-off for the social value of the service.

The Commission, too, considers Call Trace a highly valuable service -- that is why it has required all companies with CLASS capability to offer it. At the same time, however, the Commission considers economic efficiency a cardinal value and a principal tool for fulfilling its charge to keep rates fair, reasonable, and affordable.

For unregulated businesses, the discipline of the marketplace will act to keep uneconomic pricing, and the additional costs it brings, in check. For regulated businesses, the Commission performs that function. It must view every departure from efficient pricing with deep skepticism, since, in the regulated context, price miscues and cost misallocations tend to perpetuate themselves in rate structures not subject to frequent examination, let alone competitive pressures.⁶

⁶Of course, new legislation opens the local exchange to competition, and the Commission has initiated a rulemaking to set the terms of that competition. Minn. Stat. 1995 Minn. Laws ch. 156. Until competition is a reality, however, the Commission must scrutinize rate proposals as carefully as ever.

For these reasons, the Commission believes Call Trace should carry some price, despite its undisputed social value. That price, of course, must be set at a level to deter frivolous use of the service without compromising public safety.

3. Risk of Over-recovery

As explained above, the Commission would in all likelihood reject zero-priced Call Trace, no matter how closely the monthly surcharge matched the actual cost of providing the service at zero price. In this case, however, lack of factual support for the amount of the surcharge raises additional concerns.

The two cent surcharge is designed to recover the costs of 192 “completed” Call Trace requests per year.⁷ The Company stated it currently processes many fewer than that, but expects demand to increase significantly with the convenience of CLASS technology and the removal of tracing fees. The Company did not state, however, how many completed traces it currently processes.

Furthermore, the process used to reach the 192 estimate was very subjective. The Company’s response to Information Request No. 2 explains that process as follows:

The estimate of completed CLASS call traces was based on the number of inquiries arising under our current call trace rates and procedures. Management believes that demand for CLASS call trace will be highly price elastic when compared with traditional call trace pricing. . . .

At oral argument the Company explained its estimate was based on conversations with Company managers and customer service representatives. Apparently there was no examination of the experience of other companies or any other objective criteria. The absence of information on current tracing experience further complicates and confuses attempts to judge the reasonableness of the Company’s estimate. The Commission can only conclude that the 192 completed trace estimate is unsubstantiated, does not merit serious reliance, and carries serious potential for over-recovery of costs.

By the Company’s own estimates, the two cent surcharge would over-recover Call Trace costs by 9.78%. (Costs are expected to total \$2360; the surcharge is expected to recover \$2616.) Even at these dollar amounts, a 9.78% over-recovery merits some concern. The potential for significantly greater over-recovery, however, cannot be ignored.

For these reasons the Commission concludes the two cent surcharge is not adequately supported in fact and must be rejected.

4. Setting an Initial Price

⁷Completed traces are those in which the customer contacts law enforcement authorities about the traced call, and law enforcement authorities contact the Company for the originating information captured by Call Trace. Completed traces consume significantly more resources than traces in which the customer decides not to follow up by contacting law enforcement.

When Lakedale made its initial CLASS filing, it asked to delay deployment of Call Trace until January 1995, when it would be able to bill for the service on a per-use basis. The Commission granted that request.⁸ Instead of submitting a per-use billing plan, however, the Company filed the two cent surcharge proposal rejected today.

The Commission believes further delay in introducing Call Trace to Lakedale customers would be contrary to the public interest and will therefore require its immediate introduction at a rate of \$1 per activation. This initial price can be re-examined as necessary when actual data on usage, costs, and revenues become available. In the meantime, however, Lakedale customers will have the same protection against threatening and harassing calls as customers in other CLASS-equipped exchanges.

The Commission adopts the \$1 per activation fee because further delay in introducing this service is inappropriate, because it must carry some price, and because the \$1 per activation fee is the pricing pattern most widely used by other Minnesota companies. Significantly, however, it is not the only pricing pattern used by other companies, as the parties' comments seem to suggest. The Commission has approved different Call Trace rates for different companies, depending upon the varying needs of their service areas.

Besides approving Call Trace fees of \$1 per activation, the Commission has approved fees of \$1 per activation, with waiver when law enforcement opens a file,⁹ and fees of \$1 for all traces to the same originating number during a 72-hour period.¹⁰ Since the Commission is setting the initial price in this case, however, it will set the price at the approved fee yielding the largest return to the Company.

The Commission reiterates that it intends to monitor the practical effects of the various Call Trace rate designs approved to date and that it is open to other rate designs yet to be proposed. The rejection of the pricing plan at issue here today should not chill the introduction of other pricing plans. Neither should it obscure the fact that continuing experience with CLASS services may demonstrate the need for new directions in Call Trace rate design.

ORDER

1. Lakedale Telephone Company's proposal to offer Anonymous Call Rejection, Call

⁸In the Matter of the Proposal by Lakedale Telephone Company to Offer CLASS Services, Docket No. P-413/M-93-792, ORDER AUTHORIZING PROVISION OF CLASS SERVICES (April 4, 1994).

⁹U S WEST Communications, Inc., Docket No. P-421/EM-93-1320.

¹⁰Emily Cooperative Telephone Company, Docket No. P-521/M-94-236; Splitrock Cooperative, Inc., Docket No. P-528/EM-93-1285; Interstate Telecommunications Cooperative, Docket No. P-515/M-93-1224.

Trace, and Last Call Return is approved, as modified below.

2. "Fixed" Anonymous Call Rejection shall be offered on a trial basis, with the Company reporting on experience under the trial on May 1, 1996.
3. "Standard" Anonymous Call Rejection shall be the default service provided to customers who do not make a choice between standard and fixed service.
4. The Company shall not promote either standard or fixed Anonymous Call Rejection over the other service in communications with customers.
5. During the trial period, there shall be no fee for changing from fixed to standard Anonymous Call Rejection the first time a customer makes that change.
6. Anonymous Call Rejection in either form shall be available on a permanent basis only to customers subscribing to Caller ID-Name or Caller ID-Name and Number.
7. Anonymous Call Rejection in either form shall be available on a trial basis for a \$1 monthly fee to customers subscribing to Last Call Return. The Company shall report on experience under this trial on May 1, 1996.
8. The Company shall make Call Trace available to all customers forthwith at the price of \$1 per activation.
9. Within 20 days of the date of this Order the Company shall file revised tariff pages consistent with its terms.
10. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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