

Amended by R.1996 d.412, effective September 3, 1996.
See: 28 N.J.R. 2832(a), 28 N.J.R. 4107(a).

14:10-5.10 Standards for monitoring the competitiveness of services

(a) In monitoring the competitiveness of services, the Board may:

1. Use information collected pursuant to N.J.A.C. 14:10-5.9 to conduct an analysis as to whether services are becoming more or less competitive; specifically, monitor the market shares of carriers as measured by number of calls, minutes of use, number of customers and customer complaints;

2. Consider using an economic measure of concentration or any other appropriate economic indicator to measure market share and the competitiveness of individual services; or

3. Consider using a customer survey to solicit information related to the perception of the level of competition by actual telecommunications users.

(b) The Board may reclassify a service that had previously been found to be competitive, if, after notice and hearing, the Board finds:

1. That the market concentration for an individual carrier results in a service no longer being sufficiently competitive;

2. That significant barriers to market entry exist;

3. That there is a lack of significant presence of competitors;

4. That there is a lack of like or substitute services in the relevant geographic area;

5. That a carrier is not providing safe, adequate or proper service; or

6. That the public interest is no longer served by available competition.

Amended by R.1996 d.412, effective September 3, 1996.
See: 28 N.J.R. 2832(a), 28 N.J.R. 4107(a).

Case Notes

Cable television operator not entitled to emergent relief; television pole attachments not located at reference gain. In Matter of Report on Status of Construction by Shore Cable Company, 92 N.J.A.R.2d (BRC) 37.

14:10-5.11 Discontinuance of service offerings

(a) Any carrier providing competitive services may, upon 30 days notice to the Board and its customers, discontinue any competitive service offering.

(b) Service offerings provided solely by a single carrier, may be discontinued, unless the Board notifies the carrier

that it will postpone the discontinuance of the service pending Board review and approval.

SUBCHAPTER 6. REGULATION OF OPERATOR SERVICE PROVIDERS

Authority

N.J.S.A. 48:2-13, 48:2-21.22, 48:2-21.23 and 48:17-24.

Source and Effective Date

R.1997 d.46, effective February 3, 1997.
See: 28 N.J.R. 68(a), 28 N.J.R. 1195(b), 29 N.J.R. 464(a).

Subchapter Historical Note

Subchapter 6, Regulation of Alternative Operator Service (AOS) Providers, was repealed and a new Subchapter 6, Regulation of Operator Providers, was adopted by R.1997 d.46, effective February 3, 1997. See: Source and Effective Date.

14:10-6.1 Scope

The rules contained in this subchapter shall apply to alternate operator service providers, operator service providers, and aggregators, as defined in N.J.A.C. 14:10-6.2, including aggregators whose location offers services equivalent to an operator service provider. In addition to this subchapter, those aggregators who are also public pay telephone service (PPTS) providers are subject to N.J.A.C. 14:10-9.

14:10-6.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

“Aggregator” means a person or entity which, in the ordinary course of its business, makes telephones available to the public or to transient users of its premises, including, but not limited to, hotels, motels, hospitals, or universities, and which provides operator-assisted services through either automated store and forward technology or through an operator service provider.

“Alternate operator service provider” or “AOS” means a non-facilities based telecommunications carrier that is a reseller leasing lines from local exchange carrier(s) and/or interexchange carrier(s) and which, using these leased facilities, provides operator-assisted intrastate services through the use of its own operators, either through live intervention or automated intervention, including automated store and forward technology where the placement or charging of a telephone call is accomplished at an aggregator location.

“Billing agent” means a billing and collection company or billing clearing house which processes an alternate operator service provider’s call data to appear on local exchange company telephone bills, or any other forms of bills, issued

to the consumer that utilized the services of an alternate operator service provider.

“Board” means the Board of Public Utilities.

“Branding” means verbal identification of the OSP prior to connection of the call and implementation of billing.

“Equal access code” means an access code that allows the public to obtain an equal access connection to the carrier associated with that code, such as 10XXX or 101XXXX, if applicable.

“Incumbent local exchange carrier” or “incumbent LEC” means a telecommunications carrier with a Board authorized tariff in effect prior to February 8, 1996, to provide switched local exchange services in the State of New Jersey.

“IXC” means interexchange carrier.

“Operator-assisted services” means services which assist consumers in the placement or charging of a telephone call, either through live intervention or automated intervention, including automated store and forward technology where the placement or charging of a telephone call is accomplished at an aggregator location.

“Operator service provider” or “OSP” means any telecommunications carrier that provides operator-assisted services, including AOS providers.

“Presubscribed provider of operator services” means the provider of intrastate operator services to which the consumer places a call using a provider of operator services without dialing an access code.

“Rate” means the total charge to a consumer for the completion of a call utilizing operator-assisted service including all surcharges, premises imposed fees and other charges, collected from the consumer.

“Slamming” means an unauthorized change of a consumer’s primary interexchange carrier.

“Splashing” means billing for a call that does not reflect the location of the origination of the call.

“Tariffed facilities-based carrier” means any communications carrier that provides services on a common carrier basis through the use of their own facilities and currently has, or would be required by statute or rule to file, a tariff. This specifically excludes alternative operator service providers as defined in this subchapter.

14:10-6.3 Operator service provider requirements

(a) Operator service providers may complete intrastate operator-assisted calls subject to this subchapter.

(b) Operator service providers and aggregators shall be subject to Board regulation as described in this subchapter. The Board or its staff may investigate the conduct of any OSP or aggregator and take appropriate action as required.

(c) Operator service providers and aggregators are responsible for conformance with all rules as specified in this subchapter. The Board may, after notice and an opportunity to be heard in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, take such action against an OSP and/or aggregator as is necessary to rectify any non-conformance with the rules or to protect the general public interest. The Board’s actions may include the imposition of penalties for violations as described in N.J.A.C. 14:10-6.6, disconnection of intrastate service to individual aggregator locations experiencing persistent violations, as well as the restriction of certain billing and collection activities subject to the Board’s regulation.

(d) Each aggregator connected to an OSP shall place directly on the telephone instrument, in plain view of consumers:

1. The name, address, and toll free number of the provider of operator services;
2. A clear and precise description of the geographic area served by the LEC and the geographic area served by the presubscribed OSP. That is, local operator-assisted calls are carried by the LEC, intrastate operator-assisted toll calls within the area code are carried by one OSP, intrastate operator assisted calls outside the area code are carried by a second OSP;
3. A written disclosure that the rates for all operator-assisted calls are available on request and free of charge, and dialing instructions on how to obtain this information;
4. A written disclosure that consumers have a right to obtain access to the intrastate operator service provider of their choice and may contact their preferred carrier for information on accessing that carrier’s service using that telephone;
5. Dialing instructions which detail the OSP’s dialing procedures;
6. Dialing instructions for access to the LEC operator;
7. The Board’s toll free customer complaint telephone number; and
8. All information required by the Federal Communications Commission at 47 C.F.R. 64.703, as amended or supplemented, incorporated herein by reference, copies of which may be obtained upon request from the Secretary of the Board.

(e) Operator service providers shall inform callers, prior to connecting the call and the implementation of billing, that the presubscribed OSP is handling the operator-assisted call by verbal identification of the OSP. Accordingly, branding is required.

(f) Each provider of operator services shall ensure, by contract, that each aggregator for which such provider is the presubscribed provider of operator services, is in compliance with the requirements of (d) above.

(g) Operator service providers shall provide callers with rate quotes, including any and all surcharges, upon request and without charge.

(h) (Reserved)

(i) Alternate operator service providers may charge, as a maximum rate for intrastate operator-assisted non-local calls at transient locations, which includes all pay telephones, a rate not greater than \$1.00 above the highest applicable operator-assisted rate, including the toll (Message Telecommunication Service) schedule, plus the appropriate operator-assistance and any other surcharge, of a tariffed facilities-based carrier on file with the Board on January 1, 1997. The Board will notify AOS providers of these maximum rates through publication in the New Jersey Register. The applicable maximum rates and any subsequent rate adjustments shall be on file with the Board. The maximum rates shall be reviewed semiannually by the Board beginning July 1, 1997, and adjusted if appropriate.

(j) Alternate operator service providers shall file informational tariffs with the Board, as required by N.J.A.C. 14:10-6.7, for intrastate services. The Board will permit rate changes, other than during its semiannual review process, in response to a rate change request from an AOS provider, if the new rate remains below the maximum rate described in N.J.A.C. 14:10-6.3(i). Such filings shall conform to N.J.A.C. 14:10-5.4 or 5.5, as may be applicable.

(k) Surcharges associated with non-coin telephones that are not part of the actual telephone bill or imposed by an OSP, but are add-on charges imposed by hotels, motels, hospitals, universities and/or other similar transient locations, are not prohibited by these rules, but notice of any surcharge shall be displayed by the aggregator for the users of the affected telephones.

(l) No operator service provider shall submit to a LEC a primary interexchange carrier change order to change long distance carriers until the order has first been confirmed in accordance with the procedures set forth by the Federal Communications Commission, at 47 C.F.R. 64.1100, as amended or supplemented, copies of which may be obtained upon request from the Secretary of the Board. To do otherwise results in slamming, as defined in N.J.A.C. 14:10-6.2, a practice which is hereby prohibited.

(m) Operator service providers shall not bill for calls that are not completed.

(n) (Reserved)

Public Notice: Initiation of Investigation to Determine the Benchmark Costs, Expenses and Rates of Return for Payphone Service Providers.

See: 29 N.J.R. 1414(a).

14:10-6.4 Access to all operator service providers

(a) Free access to all operator service providers, including the LEC operator serving that geographical area, shall be made available from all instruments connected to operator service providers, with the exception of government controlled correctional facilities. Each aggregator, which includes every pay telephone in service, shall ensure that each of its telephones presubscribed to a provider of operator services allows the consumer free use of "10XXX" or 101XXXX, if applicable, and "800" and "950" access code numbers to obtain access to the provider of operator services desired by the consumer. This subsection does not apply to the use of equal access code dialing sequences that result in billing to the originating telephone such as 10XXX-1+ or 101XXXX-1+, if applicable.

(b) Each provider of operator services shall:

1. Ensure, by contract, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of (a) above; and

2. Withhold payment, on a location-by-location basis, of any compensation, including commissions, to aggregators if such provider reasonably believes that the aggregator is blocking access to other operator service providers in violation of (a) above.

(c) No operator service provider shall transfer a call to another OSP unless that transfer is accomplished at, and billed from, the point of origination of the call. To do otherwise results in splashing, as defined in N.J.A.C. 14:10-6.2, which is hereby prohibited. If such a transfer is not technically possible, the OSP shall inform the caller that the call cannot be transferred as requested and that the caller should hang up and attempt to reach another operator service provider through the means provided by that other OSP.

14:10-6.5 "0-" and emergency call handling

(a) All "0-" calls, which are calls originated by dialing "0" and no other digits within four seconds, shall be sent promptly and directly to the incumbent LEC operator serving the geographic area where the instrument is located, unless the presubscribed operator service provider has been granted approval by the Board, as described in (b) through (e) below, to provide such service.

(b) An operator service provider may petition the Board to provide "0-" and emergency call completion. If an individual OSP can certify that it is capable of meeting the technical parameters required by the Board in (c) through (e) below and following a petition to the Board detailing how the service will be provided, it may be granted permission to do so. Operator service providers who have been previously authorized to complete "0-" and emergency calls shall not be required to seek authority as described in this subsection.

(c) Operator service providers shall be permitted to offer "0-" services only if both free public access to the incumbent LEC operator serving that geographical area and emergency call handling are also provided. Incumbent LEC access must be available and be accomplished by either a direct dialing sequence which must be prominently displayed directly on the telephone instrument or by direct connection to the incumbent LEC operator upon request.

(d) All operator service providers required to petition the Board for "0-" and emergency call completion under (b) above must meet the following technical standards. All operator service providers shall:

1. Operate on a full time basis 24 hours a day, seven days a week;
2. Require by contract that all connecting users provide free access to all other operator service providers upon request, in accordance with N.J.A.C. 14:10-6.4, including the incumbent LEC operator service and, in addition, that all connecting users:
 - i. Are capable of receiving the provider's multifrequency tone for the re-origination of calls to the incumbent LEC operator service; and
 - ii. Instruments be capable of transferring "0-" calls directly to the incumbent LEC at the calling party's request;
3. Ensure that in the event of a network outage or malfunction that all "0-" call traffic is directed to the incumbent LEC for completion;
4. Direct all of its New Jersey customers to program their equipment to route all "0-" traffic to the incumbent LEC in the event of a malfunction;
5. Ensure that all components of its network meet or exceed industry standards for a P.01 grade of service, which is no more than one busy signal in 100 call attempts in the average busiest hour;
6. Assure that 90 percent of calls will be answered in 10 seconds during the average busiest hour and that all calls will be answered within 20 seconds;

7. Make traffic studies and maintain records as required to ensure that sufficient equipment and an adequate operating force are provided at all times to ensure compliance with the performance requirements set forth herein. These studies and records shall be made available to the Board's staff annually for review purposes. Further, the OSP shall submit certified reports annually to the Board's staff showing that grade of service and response time are within the performance limits described in this subchapter;

8. Transfer emergency calls in an average of 20 seconds or less to the appropriate emergency service agency. This time includes initial screening by the operator and a maximum ringdown time of 10 seconds except:

- i. When the emergency service agency takes longer than the time allotted to answer its phone;
- ii. If the caller is incoherent and the operator is, as a result, required to spend additional time with the caller in order to ascertain the nature of the emergency; and
- iii. When the nature of the emergency is such (for example, a suicide attempt) that the operator becomes an integral part of the process, bridges the emergency service agency on the line and assists the agency in its efforts, rather than simply transferring the call.

9. Record all emergency calls in detail immediately after the call is transferred or terminated, as appropriate. Call detail will include but not be limited to originating telephone number and location, the emergency service agency requested or to which the operator transferred the call, the date of the call, the time the call was received, the time the call was connected to the emergency service agency, a brief description, and if known, where an injury is involved and the severity of that injury;

10. Submit a list of its New Jersey customers to the Board's staff on an annual basis. This list shall include, but not be limited to, customer locations and customer phone numbers. The customer list shall be afforded confidential treatment; and

11. Submit reports to the Board's staff annually regarding its emergency call completion as detailed above.

14:10-6.6 Penalty for violations

Any AOS provider which violates the provisions of this subchapter shall be subject to the schedule of fines as described below. The amount of the fine identified shall be assessed for each infraction. Each call completed in violation of these rules, or each day a violation exists, is considered a separate infraction.

Exceed maximum permissible rates N.J.A.C. 14:10-6.3(i)	\$5,000
Violate emergency call procedures N.J.A.C. 14:10-6.5	\$5,000
Slamming N.J.A.C. 14:10-6.3(l)	\$3,000

TELEPHONE**14:10-6.6**

Deny free access to all OSPs N.J.A.C. 14:10-6.4(a)	\$2,500	Splashing or billing for uncompleted calls N.J.A.C. 14:10-6.4(c) and 6.3(m)	\$2,000
Branding, rate quote and reporting requirements N.J.A.C. 14:10-6.3(e), 6.3(g) and 6.7	\$2,000	Any other violation	\$1,000