

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

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 unless the context clearly indicates otherwise:

“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 or the failure to execute an authorized change in 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.

Amended by R.2001 d.307, effective September 4, 2001.

See: 33 N.J.R. 1500(a), 33 N.J.R. 3043(a).

In the introductory paragraph, added “unless the context clearly indicates otherwise.”; rewrote “Slamming”.

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 and supplemented, incorporated herein by reference, copies of

which may be obtained upon request from the Secretary of the Board, except that implementation of 47 C.F.R. 64.703(a)(4) shall be effective on October 1, 1999.

2. The telephone company or information provider offering the adult-oriented information-access telephone service shall maintain the hard copy signed subscriber request with proof of age for the duration that access to the service is unblocked.

(b) The initial subscriber request to unblock access at a given location shall be free of charge to the subscriber.

(c) If an LEC elects to charge for subsequent requests to reblock or unblock, the subscriber shall be charged the then prevailing service order charge for adding service to an existing line and the central office work charge for an existing line.

(d) If an IXC elects to charge for subsequent requests to reblock or unblock, the subscriber shall be charged the then prevailing service order charge for adding service to an existing line and the central office work charge for an existing line charged by the LEC providing the subscriber basic telephone service.

(e) In the event that the serving LEC does not have a tariffed service order charge for adding service to an existing line and for central office work for an existing line, the

tariffed charge from the LEC serving the largest number of telephone lines in the State having such a tariffed charge shall be used.

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. PUBLIC PAY TELEPHONE SERVICE

14:10-9.1 Scope

The rules contained in this subchapter shall apply to the provision of public pay telephone service ("PPTS") as defined in N.J.A.C. 14:10-9.2, for any PPTS provider in New Jersey, with the exception of inmate pay telephone service providers in government controlled correctional facilities as set out in N.J.A.C. 14:10-9.7.

14:10-9.2 Definitions

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

- v. Is independently developed by the party;
- vi. Is approved for release by written authorization of the submitting party.

6. If documents and materials designated as proprietary in nature are to be included in any papers filed with the Board, such papers shall be labeled "CONFIDENTIAL—SUBJECT TO ORDER OF THE BOARD" and shall be filed under seal until further order of the Board.

7. The review described in this subsection shall not affect the implementation date of any customer specific pricing contract.

(g) Should the data demonstrate that the LEC is not in compliance with the imputation requirement, upon receipt of notice from the IXCs or Board staff, the LEC shall, within 30 days, either increase the price(s) for its interexchange service to bring the LEC into compliance, or petition the Board for a compliance ruling. In any such proceeding, the LEC shall not argue that this imputation requirement should be changed.

Amended by R.1997 d.440, effective October 20, 1997.
See: 28 N.J.R. 4414(a), 29 N.J.R. 4558(a).
Inserted (f).

SUBCHAPTER 11. TELECOMMUNICATIONS SERVICE PROVIDERS

Authority

N.J.S.A. 48:2-13 and 56:8-88.

Source and Effective Date

R.2000 d.257, effective June 19, 2000.
See: 31 N.J.R. 1574(b), 32 N.J.R. 2249(a).

14:10-11.1 Definitions

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

"Agent" means any person or entity, including, but not limited to, employees, servants or marketers, acting on behalf of a TSP in order to bring about, modify, affect performance of, or terminate mutual obligations between a TSP and the customer.

"Board" means the New Jersey Board of Public Utilities.

"Commission" means the Federal Communications Commission.

"Customer" means any person, authorized to make billing and service decisions regarding a telephone account. A person under the age of 18 does not qualify as a customer.

"Division" means the Division of Consumer Affairs within the New Jersey Department of Law and Public Safety.

"Executing TSP" means any TSP that affects a request that a customer's telecommunications carrier be changed.

Any carrier may be treated as an executing carrier, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations it will consider in violation of this subchapter.

"InterLATA telecommunications service" means telecommunications service which originates in one LATA and terminates in a different LATA.

"IntraLATA telecommunications service" means telecommunications service which originates and terminates within the same LATA.

"Intrastate telecommunications service" means a telecommunications service which remains within the boundaries of New Jersey, regardless of the specific routing of the call.

"Local access and transport area" or "LATA" means a geographic area which marks the boundaries beyond which a Bell Operating Company does not carry telephone calls. See *United States v. Western Electric*, 569 F.Supp. 990 (D.D.C. 1983).

"Local exchange telecommunications service" means telecommunications service which originates and terminates within a geographic area established and described by a local exchange carrier's tariffs filed with the Board of Public Utilities.

"Primary TSP" means the customer's chosen provider of a telecommunications service for which there are multiple providers. To the extent permitted by statute, rule or Board order, a customer may select a primary TSP for intrastate interLATA, intraLATA toll and local exchange telecommunications services, and may select the same or different TSP for each type of service.

"Slamming" means an unauthorized change of a customer's primary TSP or the failure to execute an authorized change in a customer's primary TSP.

"Soliciting telecommunications service provider" means a telecommunications service provider that seeks, either directly or through an agent, a customer's authorization to terminate said customer's existing primary TSP and subsequently transfer the customer to the soliciting TSP.

"Submitting TSP" means any TSP that:

1. Requests on the behalf of a customer to change the primary TSP; and
2. Seeks to provide retail services to the end user customer.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

“Telecommunications service” means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

“Telecommunications service provider” or “TSP” means any individual, firm, joint venture, partnership, corporation, association, public utility, cooperative association, joint stock association and includes any trustee, receiver, assignee, or representative which is a provider of intrastate telecommunications services, whether interLATA, intraLATA toll or local exchange telecommunications services, to an end-user customer. This term includes resellers, whether switched or switchless, of telecommunications services.

“Unauthorized change” means a change in a customer’s selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this subchapter.

14:10-11.2 Solicitation of customer’s authorization for service termination and transfer

(a) All solicitations by a TSP or its agent for a customer’s authorization to terminate that customer’s existing primary TSP and to subsequently transfer said customer to a new primary TSP shall include a clear and conspicuous statement of the following:

1. That the solicitation seeks the customer’s authorization to switch or change the customer’s TSP from the primary TSP to the soliciting TSP; and
2. The soliciting TSP’s current complete rates, fees, terms and conditions and information needed to assume accurate billing and TSP identification for the particular services proposed.

(b) No reseller of intrastate telecommunications services, or any agent acting on its behalf, shall disclose the identity of the underlying carrier whose telecommunications service is being resold, unless the information is provided in a truthful, non-misleading manner in accordance with this subchapter. The reseller shall identify itself as a reseller, disclose that it is not the current provider and advise the customer that accepting it as his or her carrier will change the customer’s primary TSP.

14:10-11.3 Verification of change orders for telecommunications service providers

(a) No submitting TSP, or any person, firm or corporation acting as an agent or representative on behalf of such submitting TSP, shall submit to an executing TSP, or implement by itself, an order changing a customer’s primary TSP unless and until the order has first been verified in accordance with this subchapter.

(b) Verification of any order changing a customer’s primary TSP shall be in conformance with one of the following procedures as set forth in the Commission’s rules at 47 C.F.R. §§ 64.1150 and 64.1160, as amended or supplemented, which regulations are incorporated herein by reference, copies of which may be obtained upon request from the Secretary of the Board:

1. The submitting TSP has obtained the customer’s written authorization in a form that satisfies the following requirements:

i. A TSP may use a letter of agency to obtain written authorization and/or verification of a customer’s request to change his or her primary TSP selection. A letter of agency that does not conform with this section is invalid for purposes of this subchapter;

ii. The letter of agency shall be a separate (or an easily separable document) containing only the authorizing language described in (b)1v below having the sole purpose of authorizing a TSP to initiate a primary TSP change. The letter of agency shall be signed and dated by the customer who subscribes to the telephone line(s) requesting the primary TSP change;

iii. The letter of agency shall not be combined on the same document with inducements of any kind. For example, it cannot be used in combination with sweepstakes offerings, entries or boxes;

iv. Notwithstanding (b)1ii and iii above, the letter of agency may be combined with check(s) that contain only the required letter of agency language as prescribed in (b)1v below and the necessary information to make the check(s) a negotiable instrument. The letter of agency check(s) shall not contain any promotional language or material. The letter of agency check(s) shall contain, easily readable boldface type on the front of the check(s), a notice that the customer is authorizing a primary TSP change by cashing the check(s). The letter of agency language shall be placed near the signature line on the back of the check;

v. At a minimum, the letter of agency shall be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The customer’s billing name and address and each telephone number to be covered by the primary TSP change order;

(2) The decision to change the primary TSP from the current TSP to the submitting TSP;

(3) That the customer designates (name of submitting TSP) to act as the customer’s agent for the primary TSP change;