

## BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF )  
 PUBLIC COMMUNICATIONS SERVICES, INC. FOR )  
 A CERTIFICATE OF REGISTRATION TO PROVIDE )  
 NON-FACILITIES BASED RESOLD INTRASTATE )  
 INTEREXCHANGE TELECOMMUNICATIONS )  
 SERVICES AND INMATE OPERATOR SERVICES )  
 WITHIN THE STATE OF NEW MEXICO ) CASE NO. 3113

**FINAL ORDER ON PCS'S APPLICATION AND NOTICE OF  
 INVESTIGATION INTO THE RATES AND CHARGES OF  
 INSTITUTIONAL OPERATOR SERVICE PROVIDERS**

THIS MATTER comes before the New Mexico Public Regulation Commission ("Commission") upon the Recommended Decision of the Hearing Examiner issued on February 21, 2000. The Commission, having considered the Recommended Decision, and the record in this case, and otherwise being fully informed of the premises, adopts the following as its Order.

**Statement of the Case**

We accept and adopt the Hearing Examiner's Statement of the Case through the time of issuance of the Recommended Decision on February 21, 2000. The Recommended Decision filed by the Hearing Examiner is attached hereto as Exhibit 1.

**Discussion**

While the evidence that Public Communications Services, Inc.'s ("PCS") Application to provide inmate operator services ("Application") complies with the requirements enumerated in 17 NMAC 13.4.11 is not in dispute, the Commission has several concerns with PCS's Application.<sup>1</sup> The Consumer Relations Division has

<sup>1</sup> PCS applied for a Certificate of Registration to provide non-facilities based resold intrastate interexchange telecommunications services as well as inmate operator services. The discussion and concerns raised in this Order only apply to PCS's Application to provide inmate operator services.

received numerous complaints against PCS and other institutional operator service providers ("OSP"), several of which allege that the rates charged are unreasonable and excessive, as well as complaints about the inability of users of inmate payphone systems to use a calling card or otherwise select the carrier of their choice. We also note PCS's prior failure to comply with certain rules governing payphone service providers ("PSP") as explained in the Recommended Decision,<sup>2</sup> and with public comment made at the hearing in opposition to PCS's Application.

To address our concern with PCS's prior failure to comply with certain Commission rules, with this Order we adopt the Hearing Examiner's recommendation that PCS's Certificate of Operating Authority should be conditioned on future compliance with applicable law and rules and regulations.

With regard to complaints that users of inmate telephone services are unable to receive telephone service from the provider of their choice, we acknowledge that our existing rules for PSPs and OSPs exempt institutional telephone service providers from open access requirements, such as providing access to operator assistance, imposed upon other payphone service and operator service providers. *See* SCC Rule No. 94-01-TC, *Rules Concerning Payphone Providers*, § 4[a], SCC Rule No. 94-02-TC, *Rules Concerning Operator Service Providers*, § 4[b]. However, those exemptions merely left those matters to be determined by operators of corrections facilities and telecommunications providers through private contract.

Most notably, the Commission is not finally convinced that PCS's proposed rates for institutional operator services are ultimately reasonable. Pursuant to the New Mexico Telecommunications Act's pro-competitive regulatory scheme, and in order to facilitate

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<sup>2</sup> See pages 4-5. PCS did not dispute the Hearing Examiner's finding.

an orderly transition from a regulated telecommunications industry to a competitive market environment,<sup>3</sup> the rates contained in tariffs filed by non-dominant carriers for competitive services have not received the degree of scrutiny or comprehensive review that rates contained in tariffs of incumbent local exchange carriers holding dominant-carrier status and residual monopoly power have received. For the most part, rates for competitive services offered by non-dominant carriers have been established by the competitive market. However, in this situation where a customer does not appear to have a choice of alternative providers, closer scrutiny of the rates is necessary and warranted.

Thus, to address our concerns with the proposed rates, the Commission will establish a separate docket and commence an investigation into the reasonableness of the rates and charges of PCS and other institutional OSPs operating in the state. PCS and other institutional OSPs certified in the state will be required to provide documentation such as cost of service data or other appropriate ratemaking methodologies justifying the reasonableness of their current rates.

Despite our reservations, PCS should be granted a Certificate of Operating Authority and their proposed institutional operator services rates should be approved on an interim basis pending the outcome of the investigation. The interim rates are subject to amendment and refund in the event the Commission finds as a result of our investigation that the rates charged by PCS for institutional operator services are unreasonable.

The Commission believes that on balance, approving PCS's Application and the rates proposed therein before concluding our investigation is reasonable and in the public interest at this time. See Mountain States Tel. v. SCC, 90 N.M. 325, 336 (1977)

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<sup>3</sup> NMSA 1978, § 63-9A-1 *et seq.* (1985).

(discussing the implied authority of regulatory commissions to fix interim rates to avoid hardship when a delay in setting permanent rates may otherwise occur). As noted in the Recommended Decision, PCS has been operating as a payphone service provider ("PSP") in the state and has already installed its equipment in corrections facilities throughout New Mexico. A representative from the New Mexico Department of Corrections ("DOC") has testified that time is of the essence for certifying PCS as an operator service provider because PCS was holding some of the billings until the rates were clarified and there were budgetary considerations that affected the DOC. (Tr., 84.) In order to avoid any hardship or uncertainty that further delay may cause, the Commission will approve PCS's Application subject to the conditions set forth in this Order, which we believe adequately safeguard the public interest.

We further wish to emphasize that an approval of the Application is not an approval of the commission rate contained in any private contract between the DOC and PCS, nor the terms and conditions under which PCS installs, maintains and operates its payphone systems in corrections facilities. As explained in the Recommended Decision, Mr. Jennings, a representative from PCS, testified that PCS currently provides payphones in New Mexico which are located in two private correctional facilities, and pursuant to a contract with the State of New Mexico DOC, in another seven locations. Tr. 29.<sup>4</sup> Mr. Jennings further testified that PCS procured this contract in July through an RFP with the DOS for inmate telephone service, medical telephone service, and commentary service, and was awarded the contract sometime in August. Tr., 40. Mr. Jennings also testified that part of the cost components of providing operator services included commissions

paid by PCS under the private contract to the correctional institution to offset the internal costs of supporting the equipment. Tr., 51. At the time of executing the contract, PCS did not request that the Commission review or otherwise approve the contract with the DOC.<sup>5</sup> To our knowledge, we have received no requests to review or otherwise approve any other contracts between institutional OSPs or PSPs and corrections institutions or any commissions provided therein.

In conclusion, the investigation that the Commission commences with this order into the rates and charges of institutional OSPs shall be on a going-forward basis. To the extent that any private contracts for prison telephone services between telecommunications service providers and state or private prison operators may have resulted in improper charges to recipients of inmate phone calls, this matter is properly addressed by the courts due to the prohibition on retroactive rate-making. See generally, In the Matter of a Commission Investigation Into the 1997 Earnings of U S WEST Communications, Inc. In New Mexico, Docket No. 25,378, (N.M. March 11, 1999); Mountain States, Tel. v. State Corporation Commission, 90 :N.M. 325, 341 (1977).

#### THE COMMISSION FINDS AND CONCLUDES:

1. The foregoing statements, discussion and analysis are hereby adopted as Findings and Conclusions of the Commission.

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<sup>4</sup> Before obtaining a certificate of authority to provide institutional operator services, PCS was subcontracting the operator services with Evercom Systems, a certified Operator Service Provider in New Mexico. (cite)

<sup>5</sup> However, Evercom submitted a Verified Petition pursuant to § 63-9A-9 with a copy of the contract between PCS and the DOC attached in December, 1999. The Commission denied the Verified Petition because it failed to set forth the information prescribed, noting that "[t]he portions of the Price Agreement (Exhibit A) dealing with compensation, see eg. pages 1 and 27, do not contain the rates, terms and conditions under which the Evercom is providing the institutional operator services called for under a component of the Price Agreement."

2. Except where expressly stated otherwise or where inconsistent with this Order, the Statement of the Case, Discussion, and all recommended findings and conclusions contained in the Recommended Decision of the Hearing Examiner are well-taken and should be adopted.

3. Paragraph E of the Findings and Conclusions of the Recommended Decision is not adopted.

4. Except where expressly stated otherwise or where inconsistent with this Order, the Statement of the Case, Discussion, and all recommended findings and conclusions contained in the Recommended Decision, attached hereto as Exhibit 1, are incorporated by reference as if fully set forth herein, and are ADOPTED, APPROVED, and ACCEPTED as Findings and Conclusions of the Commission.

5. The Commission has jurisdiction over the parties and the subject matter of this case pursuant to N.M. Const. Article XI, Section 2, NMSA 1978 Section 8-8-4 (1998) and NMSA 1978 Section 63-7-1.1 (1998).

6. The Commission has the authority to conduct investigations as necessary to carry out its responsibilities and to determine any matter of public convenience and necessity with respect to matters subject to its regulatory authority as provided by law. See NMSA 1978, § 63-7-1.1, § 63-9A-6 and § 8-8-4.

7. The Commission has the authority to fix and regulate all charges and rates of telephone companies within the state, see § 63-7-1.1(A)(1), and to change, amend and rescind rates. See § 63-7-1.1 (A)(5).

8. Pursuant to 17 NMAC 1.2.25, an investigation into the rates and charges of institutional operator service providers operating in the state should be conducted to

determine whether the rates and charges are reasonable, or excessive when compared to similar services offered to other citizens of this state..

9. Pursuant to its authority under NMSA 1978, § 8-8-14 and 17 NMAC 1.2 et seq., *Utility Division Procedures*, a Hearing Examiner should be appointed to preside over the course of the investigation. The Hearing Examiner should submit a Recommended Decision addressing the reasonableness of the rates to be charged by PCS and currently charged by other institutional operator service providers in the state, and whether amendment to the current rates in the form of rate caps or some other limitation on the rates charged is in the public interest.

10. PCS and other institutional operator service providers certified in the state should be required to provide documentation such as cost of service data or other appropriate ratemaking methodology as determined by the Hearing Examiner and any other information demonstrating the reasonableness of their current rates.

**IT IS THEREFORE ORDERED:**

A. Except where inconsistent or expressly stated otherwise, the Orders found in the Recommended Decision are approved subject to the provisions of this Order.

B. PCS's Application is approved subject to the provisions of this Order.

C. Paragraph 3 of the Recommended Decision should be amended to read:

Within ten (10) days of the issuance date of this order, PCS shall file with the Commission's Records Office, an original and five copies of the version of its tariff that incorporates those changes agreed upon by the Staff and Company prior to the issuance of the Notice of Proposed Agency Action or the evidentiary hearing, and attested to and recommended by the Staff at the hearing in this proceeding. The Company's filing shall be subject to review for compliance with this Order.

D. Staff shall promptly affirm in writing that such Tariff is in compliance with this Order.

E. An investigation is hereby commenced and a separate docket is established concerning whether the rates charged by PCS and other providers of institutional operator services certificated in the state are reasonable, and whether amendments to the current rates in the form of rate caps or some other limitation on the rates charged is necessary. The separate docket shall be entitled *In the Matter of the Investigation Into the Rates and Charges of Institutional Operator Service Providers*, Utility Case No. 3317.

F. The Commission hereby designates and appoints Michael Barlow as Hearing Examiner in Utility Case No. 3317, to preside over the proceedings, to take all action necessary and convenient thereto within the limits of his authority, and to submit a Recommended Decision containing proposed findings of fact and conclusions of law regarding this cause to the Commission. The Hearing Examiner shall schedule a hearing in this matter and may, for good cause shown, modify the procedural dates set out in this Order. The Hearing Examiner shall also cause appropriate notice to be issued.

G. By no later than June 6, 2000, PCS and other certificated institutional operator service providers in the state shall file testimony and cost of service studies or other appropriate ratemaking methodology as determined by the Hearing Examiner, in order to justify the reasonableness of their current rates. The testimony and exhibits may furnish other facts and evidence that provide the Commission with information to assist it in determining what further action would be appropriate and in the public interest.



H. By no later than June 20, 2000, Staff and intervenors shall file their testimony, including any recommendations concerning the reasonableness of the current rates charged within the state for institutional operator services.

I. PCS and other institutional operator service providers may file rebuttal testimony by no later than June 30, 2000.

J. A copy of the Order shall be filed in the above-captioned docket and in Utility Case No. 3317, and mailed to all persons on the attached certificate of service and to institutional operator service providers certificated within the state.

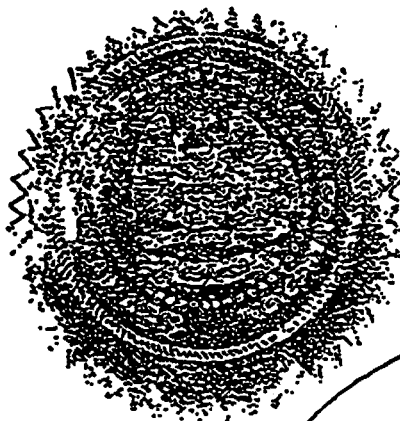
K. If after the outcome of the investigation, the Commission needs to reconsider the interim rates for institutional operator services approved in this Order, a new docket shall be opened for that purpose.

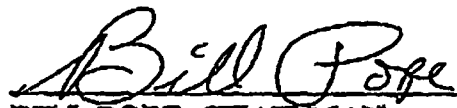
L. This Order is effective immediately.

M. This docket shall close.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 4<sup>th</sup>  
day of April, 2000.


NEW MEXICO PUBLIC REGULATION COMMISSION



  
BILL POPE, CHAIRMAN

  
HERB H. HUGHES, VICE CHAIRMAN

  
JEROME D. BLOCK, COMMISSIONER

  
LYNDA M. LOYEJOY, COMMISSIONER

  
TONY SCHAEFER, COMMISSIONER

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

IN THE MATTER OF THE APPLICATION OF )  
PUBLIC COMMUNICATIONS SERVICES, INC. FOR )  
A CERTIFICATE OF REGISTRATION TO PROVIDE )  
NON-FACILITIES BASED RESOLD INTRASTATE )  
INTEREXCHANGE TELECOMMUNICATIONS )  
SERVICES AND INMATE OPERATOR SERVICES )  
WITHIN THE STATE OF NEW MEXICO )

CASE NO. 3113

**RECOMMENDED DECISION OF THE HEARING EXAMINER**

Elizabeth C. Hurst, Hearing Examiner for this case, submits this Recommended Decision to the New Mexico Public Regulation Commission ("NMPRC" or "Commission") pursuant to 17 NMAC 1.2.32.5.4 and 1.2.39.2. The Hearing Examiner recommends that the Commission adopt the following discussion, findings of fact, conclusions of law and decretal paragraphs in its Final Order in this Case.

**STATEMENT OF THE CASE**

On July 27, 1999, Public Communications Services, Inc. ("PCS") filed an Application for a Certificate of Registration to Provide Non-Facilities Based Resold Intrastate Interexchange Telecommunications Services and Inmate Operator Services in the State of New Mexico.

On December 30, 1999, the Commission issued a Notice of Proposed Agency Action ("NOPAA") and the Commission's Telecommunications Staff ("Staff") served the NOPAA upon all applicants included in the NOPAA and upon the telecommunications mailing list. The NOPAA stated that Staff had reviewed the PCS Application and was recommending that a Certificate of Registration to provide Non-Facilities Based Resold Intrastate Interexchange Telecommunications Services and Inmate Operator Services

**EXHIBIT**

in the State of New Mexico should be issued to PCS. The NOPAA indicated that a public hearing would be held beginning at 9:00 A.M. on January 31, 2000.

The NOPAA was duly published in the Albuquerque Journal on January 8, 2000, as evidenced by the Affidavit of Publication filed January 14, 2000.

On January 6, 2000, the Commission designated Elizabeth C. Hurst as the Hearing Examiner for the NOPAA proceeding.

The Hearing was held on January 31, 2000, and there was one person present to comment in opposition to the request of PCS for authority to provide inmate operator services.

For Staff:

Avelino A. Gutierrez, Esq.

Alicia Bernal, Regulatory Economist, testified for Staff.

J. Ray Martinez, Regulatory Economist, testified for Staff.

Paul Jennings, CEO of PCS, testified as a Staff Witness.

Joe Thergood, Corrections Administrator for the New Mexico Department of Corrections, testified as a Staff Witness.

DISCUSSION

The hearing began with the public comment of Lyle Conley who opposes the request of PCS for authority to provide inmate operator services. Mr. Conley commented that PCS had been operating in New Mexico for two years without obtaining the required certification. Mr. Conley further commented that PCS had violated the Commission requirement of one access line per payphone and that PCS pay phones were not in good repair.

The Hearing Examiner made inquiry as to why there were company witnesses but no company attorney. Mr. Gutierrez informed the Hearing Examiner that some questions had arisen concerning the PCS request to provide Inmate Operator Services. Pursuant to discussions between Staff and PCS, PCS had agreed to attend the NOPAA hearing to provide information to the Commission. Therefore, Paul Jennings, CEO of PCS, and Joe Thergood, Corrections Administrator for the New Mexico Department of Corrections testified as witnesses for Staff.

Mr. Jennings testified that he was aware of the three rules that apply to Payphone Service Providers and Operator Service Providers. Tr. pp. 27-28. Docket No. 91-247-TC, In the Matter of Policies and Rules Concerning Payphone Providers in New Mexico, (Rule 94-01-TC) requires that a Payphone Service Provider register with the Commission. Mr. Jennings testified that he was of the opinion that PCS had registered as a Payphone Service Provider ("PSP"). Tr. p. 28. He further testified that PCS currently provided payphones in New Mexico. Id. These payphones are located in two private correctional facilities, and the remainder are located, pursuant to a contract with the State of New Mexico Department of Corrections, in another seven locations. Tr. p. 29.

Staff witness Martinez testified that he had recently been assigned as the coordinator of payphone service providers and that the position entailed receiving the registrations of payphone service providers. Tr. p. 69. As the records were in disarray, Mr. Martinez could not testify as to whether PCS had registered as a payphone service provider. Id. The Hearing Examiner ordered Mr. Martinez to review the records and to file something in writing as to the registration status of PCS. Tr. p. 70. On February 4,

2000, Staff filed the Affidavit of Jose R. Martinez stating that upon investigation and belief, PCS was not registered as a Payphone Services Provider. Further, Mr. Martinez stated that on February 2, 2000, Technologies Management, Inc., on behalf of PCS, filed the registration documents for PCS to be a Payphone Service Provider.

Mr. Jennings was questioned as to Section 12 of Rule 94-01-TC, which outlines the requirements for institutional payphones. Mr. Jennings testified that the PCS' payphones were: available without coin; in good repair and would be maintained by a local subcontractor; complied with all state, federal, and local laws regarding the accessibility by the hearing impaired or physically disabled persons; provided both local and toll service; contained a separate access line for each payphone; and provided for limiting the duration of calls. Tr. pp. 30-32.

Mr. Jennings was also questioned on Section 10(a) of 94-01-TC, which sets forth, in part, that any payphone provider using payphones with automated technology must itself be certificated by the Commission as an operator services provider ("OSP") before such automated payphones are put into operation. When asked whether PCS was currently in compliance with that section of the rule, Mr. Jennings replied that PCS presently provides service through Evercom, who is a certified OSP in New Mexico. Tr. p.40. He also testified that in the past PCS had subcontracted OSP services through Evercom, and had used ILD as a billing agent. Tr. pp. 43 and 66.

The evidence is clear that PCS was operating as a PSP in New Mexico without having been registered as a PSP in New Mexico. Further, from the evidence presented, it is also clear that PCS has not complied with Section 10(a) of 94-01-TC, in that it had

put payphones with automated technology into operation without being certificated by the Commission as an operator services provider.

Mr. Jennings was questioned as to the rules and policies pertaining to Operator Service Providers found in Docket No. 91-248-TC, Rule No. 94-02-TC. He was asked whether he was aware of Section 14 of Rule 94-02-TC, entitled Responsibilities of Institutional Payphone Operator Service Providers: (a) requires that operator service providers audibly identify themselves to the called parties before the called parties incur any charge ("this identification process is known as branding the call"); (b) requires that the consumer be permitted to terminate the call at no charge prior to the call being connected; (c) requires that a quotation of rates and charges for the call will be made available to that called party, upon request and at no charge; (d) prohibits billing for an unanswered telephone call in areas where equal access is available and not knowingly bill for unanswered telephone calls where equal access is not available; (e) prohibits billing for calls that are not affirmatively accepted by the called party; and (f) requires an information packet (in an easy to read format) describing how telephone calls are made by inmate, and containing specific minimum information that the packet must contain.

Mr. Jennings testified that PCS presently adheres to these requirements and that PCS would continue to adhere to the requirements in the future. Tr. pp. 35-39. He also testified that PCS would provide its own OSP services if the Commission grants them a certificate. Tr. p. 40.

Mr. Jennings testified that PCS had participated in an RFP process with the New Mexico Department of Corrections in July. Tr. p. 42. The proposal was to provide inmate telephone service, medical telephone service, and commentary service. Tr. p.

40. The services would be provided to all seven state owned and operated facilities and would include approximately 350 phones. Tr. p. 41. PCS would then have approximately 450 phones in New Mexico. Id. According to Mr. Jennings, PCS was awarded the contract with the New Mexico Department of Corrections in the August time frame. Tr. p. 42.

Mr. Jennings was questioned as to requirements of 17 NMAC 1.2.13.4, Registration Requirements for Resold Intrastate Long Distance Telecommunications Services and Intrastate Operator Services. He testified that the rate structure for the OSP tariff was based upon the existing U S WEST Communications, Inc. ("U S WEST") tariff. This rate structure was due to the Department of Correction's requirement, in the RFP process, that the rates be based upon the dominant carrier. Tr. p. 45. He further testified that it was his opinion that the PCS rate structure was very competitive. Id.

Mr. Jennings testified that of the first 25% of every dollar billed, the cost components of providing operator services would include: equipment; networking the calls through an interexchange carrier (includes access charges); and call processing costs including a bad debt component. Tr. pp. 46-50. As to the next 75% of every dollar billed, the next cost component would be the commissions paid to the correctional institution. Tr. p. 51. The commissions offset the internal costs to support the equipment, including: monitoring officers and Staff to monitor calls; allocation of space within the facility; and other maintenance requirements to support the physical presence of the equipment. Id. The final cost component would be the payment of G & A, general administrative costs, which include sales costs, back office costs, and customer service costs. Tr. pp. 51-52.



In tariff revision pages filed in December, PCS changed the per minute rate charge for the call to: \$.22 per minute for day calls; and \$.15 per minute for evening and night calls. Tr. p. 56. These per minute rates were based upon U S WEST's per minute rates. Id. The \$1.80 per call station to station collect charge in the original PCS tariff would remain the same. Id. U S WEST has a \$2.41 flat rate for the station to station collect call (no per minute charge). Tr. p. 57. Further, PCS's rates are the same for local and intrastate toll calls. Tr. pp. 57-58.

Alicia Bernal, Utility Economist for Staff, testified that she had reviewed the PCS proposed tariff, as amended, and that she found that the rates were reasonable. Tr. pp. 74-75. Ms. Bernal recommended that the PCS Application to be an Operator Service Provider be approved. Tr. p. 75. Further, she recommended that PCS' Application to provide Non-Facilities Based Resold Intrastate Interexchange Telecommunications Services be approved. Tr. p. 76.

To conclude the hearing, Staff called Joe Thergood, an Administrator with the State of New Mexico Department of Corrections. Mr. Thergood verified that there was an existing contract between PCS and the Department of Corrections. Tr. p. 83. Mr. Thergood testified that time was of the essence in the certification of PCS. Tr. pp. 83-84. PCS was holding some of the billings until the rates were clarified, thus, there were budgetary considerations that effected the Department of Corrections. Tr. p. 84. Mr. Thergood explained that inmate calls were very labor intensive due to the monitoring and investigative functions of the officers. Tr. pp. 84-85. He also testified that PCS had already installed its equipment. Tr. p. 90.

Based on the evidence presented, the Hearing Examiner finds that PCS has met the requirements to provide Non-Facilities Based Resold Intrastate Interexchange Telecommunications Services and Inmate Operator Services in the State of New Mexico pursuant to NMSA 1978, §63-7-1.1, §63-9A-1 et seq. and 17 NMAC 13.4. However, the Hearing Examiner is concerned with the prior failures, (as evidenced by this proceeding), of PCS to comply with Commission Rules. Therefore, the Hearing Examiner believes that the granting of a certificate to provide Inmate Operator Services in the State of New Mexico should be conditional based upon PCS' future compliance with all rules and regulations of the Commission, and the State of New Mexico.

The Hearing Examiner recommends that the Commission **FIND** and **CONCLUDE** that

A. The Statement of the Case, Discussion, and all findings and conclusions contained therein are hereby incorporated by reference as findings and conclusions.

B. The Commission has jurisdiction over the parties and the subject matter of this case.

C. Due and Proper Notice has been provided.

D. PCS' application for a certificate of registration authorizing PCS to provide non-facilities based resold intrastate long-distance telecommunications services in the State of New Mexico complies with NMSA 1978, §63-7-1.1, §63-9A-1 et seq. and 17 NMAC 13.4 and should be granted.

E. PCS' application for a certificate of registration to provide Inmate Operator Services in the State of New Mexico complies with NMSA 1978, §63-7-1.1, §63-9A-1 et

seq. and 17 NMAC 13.4 and should be granted upon the condition that henceforth, PCS complies with all statutory and legal requirements, and Commission Rules.

The Hearing Examiner recommends that the Commission ORDER:

1. A Certificate of Registration shall issue to PCS and this ORDER shall constitute said Certificate authorizing PCS to provide non-facilities based resold intrastate long-distance telecommunications services in the State of New Mexico.

2. A Certificate of Registration shall issue to PCS and this ORDER shall constitute said Certificate authorizing PCS to provide Inmate Operator Services in the State of New Mexico, subject to PCS' compliance with all statutory and legal requirements, and Commission Rules.

3. Within ten (10) days of the issuance date of this order, PCS shall file with the Commission's Records Office, an original and five copies of the final version of its tariff that incorporates those changes agreed upon by the Staff and Company prior to the issuance of the Notice of Proposed Agency Action or the evidentiary hearing, and attested to and recommended by the Staff at the hearing in this proceeding. The Company's filing shall be subject to review for compliance with this Order.

4. Copies of the Order shall be mailed to PCS and Staff.

5. This docket shall close.

ISSUED at Santa Fe, New Mexico this 21<sup>st</sup> day of February, 2000.

NEW MEXICO PUBLIC REGULATION COMMISSION

  
ELIZABETH C. HURST  
Hearing Examiner

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

IN THE MATTER OF THE APPLICATION OF )  
PUBLIC COMMUNICATIONS SERVICES, INC. )  
FOR A CERTIFICATE OF REGISTRATION TO )  
PROVIDE NON-FACILITIES BASED RESOLD )  
INTRASTATE INEREXCHANGE )  
TELECOMMUNICATIONS SERVICES AND )  
INMATE OPERATOR SERVICES WITHIN THE )  
STATE OF NEW MEXICO )

Case No. 3113

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing  
Recommended Decision of the Hearing Examiner, issued February 21, 2000, was  
mailed First Class, postage prepaid, to each of the following persons:

Monique Byrnes, Consultant  
Public Communications Services, Inc.  
c/o Technologies Management, Inc.  
210 North Park Avenue  
Winter Park, FL 32789

Paul Jennings  
PCS  
11859 Wilshire Blvd., Suite 600  
Los Angeles, CA 90025

**and hand-delivered to:**

Avelino Gutierrez, Staff Counsel  
NM Public Regulation Commission  
1120 Paseo de Peralta, PERA Bldg.  
Santa Fe, NM 87501

Gary G. Roybal  
Utility Division  
NM Public Regulation Commission  
224 East Palace Avenue  
Santa Fe, NM 87501

D A T E D this 21st day of February, 2000.

NEW MEXICO PUBLIC REGULATION COMMISSION

  
ELIZABETH SAIZ  
Legal Assistant II

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF )  
PUBLIC COMMUNICATIONS SERVICES, INC. )  
FOR A CERTIFICATE OF REGISTRATION TO )  
PROVIDE NON-FACILITIES BASED RESOLD )  
INTRASTATE INEREXCHANGE )  
TELECOMMUNICATIONS SERVICES AND )  
INMATE OPERATOR SERVICES WITHIN THE )  
STATE OF NEW MEXICO )

Case No. 3113

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order on PCS's Application and Notice of Investigation Into the Rates and Charges of Institutional Operator Service Providers, issued April 4, 2000, was mailed first-class, postage prepaid, to each of the following persons on April 5, 2000:

Monique Bymes, Consultant  
Public Communications Services, Inc.  
c/o Technologies Management, Inc.  
210 North Park Avenue  
Winter Park, FL 32789

Paul Jennings  
PCS  
11859 Wilshire Blvd., Suite 600  
Los Angeles, CA 90025

Conversant Technologies, Inc.  
Attn: Regulatory Affairs  
P. O. Box 865081  
Plano, TX 75075-6615

Evercom Systems, Inc.  
Attn: Regulatory Affairs  
8201 Tristar Drive  
Irving, TX 75063

Global Tel\*Link Corp.  
Attn: Regulatory Affairs  
2609 Cameron St.  
Mobile, AL 36607

Inmate Communications Corp.  
Attn: Regulatory Affairs  
7107 VanJean Avenue  
Van Nys, CA 91405

Intellical Operator Services / dba ILD  
Attn: Regulatory Affairs  
16200 Addison Rd. # 100  
Addison, TX 75001

MCI World Com  
Attn: Regulatory Affairs  
201 Spear St., 9<sup>th</sup> Floor  
San Francisco, CA 94105

Pay-tel Communications, Inc.  
Attn: Regulatory Affairs  
9A Oak Branch Drive  
Greensborough, NC 27407

and hand-delivered to:

Avelino Gutierrez, Staff Counsel  
NM Public Regulation Commission  
1120 Paseo de Peralta, PERA Bldg.  
Santa Fe, NM 87501

Gary G. Roybal  
Utility Division  
NM Public Regulation Commission  
224 East Palace Avenue  
Santa Fe, NM 87501

D A T E D this 5<sup>th</sup> day of April, 2000.

NEW MEXICO PUBLIC REGULATION COMMISSION

  
\_\_\_\_\_  
Cecilia Rios, Paralegal

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE INVESTIGATION INTO )  
THE RATES AND CHARGES OF INSTITUTIONAL )  
OPERATOR SERVICE PROVIDERS. )**

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**CASE NO. 3317****INITIAL PROCEDURAL ORDER**

**THIS MATTER** comes before Michael Barlow, Hearing Examiner in this case, on the Final Order on PSC's Application and Notice of Investigation into the Rates and Charges of Institutional Operator Service Providers ("Final Order") issued by the New Mexico Public Regulation Commission ("Commission") in Utility Case No. 3113 on April 4, 2000. Being duly informed in the premises, the Hearing Examiner **FINDS** and **CONCLUDES** as follows:

1. In its Final Order, the Commission determined that an investigation into the rates and charges of institutional operator service providers operating in the state should be conducted to determine whether the rates and charges are reasonable, or excessive when compared to similar services offered to other citizens of this state.

2. The Commission found that it has jurisdiction over the parties and the subject matter of this case.

3. The Commission found that it has the authority to conduct investigations as necessary to carry out its responsibilities and to determine any matter of public convenience and necessity with respect to matters subject to its regulatory authority as provided by law

4. The Commission found that it has the authority to fix and regulate all charges and rates of telephone companies within the state, and to change, amend and rescind rates

5. The Commission appointed the undersigned as Hearing Examiner for this case. The Hearing Examiner was directed to submit a Recommended Decision addressing, a) the reasonableness of the rates to be charged by Public Communications Services, Inc. ("PSC") and those currently charged by other institutional operator service providers in the state, and b) whether amendment to the current rates in the form of rate caps or some other limitation on the rates charged is in the public interest.

6. The Commission ordered PCS and other certificated institutional operator service providers in the state shall file testimony and cost of service studies or other appropriate ratemaking methodology as determined by the Hearing Examiner, in order to justify the reasonableness of their current rates. It was ordered that the testimony and exhibits may furnish other facts and evidence that provide the Commission with information to assist it in determining what further action would be appropriate and in the public interest. The Commission further set deadlines for the filing of Staff and Intervenor testimony and rebuttal testimony and served the Final Order on all certificated institutional operator service providers operating in the state.

7. A procedure should be established for any of the certificated institutional operator service providers to file any requests for authority to employ



any "appropriate ratemaking methodology" other than cost of service studies in the required filings.

8. Other procedural dates and details should be established for this case.

It is ORDERED as follows:

A. On or before May 8, 2000, any certificated institutional operator service provider desiring to employ an appropriate ratemaking methodology other than cost of service studies shall file a motion setting out the methodology proposed to be used and the grounds for requesting authority to employ the methodology. Responses to any such motion shall be filed by no later than May 15, 2000.

B. By no later than June 6, 2000, PCS and other certificated institutional operator service providers in the state shall file testimony and cost of service studies or other appropriate ratemaking methodology as determined by the Hearing Examiner, in order to justify the reasonableness of their current rates. The testimony and exhibits may furnish other facts and evidence that provide the Commission with information to assist it in determining what further action would be appropriate and in the public interest.

C. By no later than June 20, 2000. Staff and intervenors shall file their testimony, including any recommendations concerning the reasonableness of the current rates charged within the state for institutional operator services.

D. Any rebuttal testimony shall be filed by no later than June 30, 2000.

E. The date, time and place of the public hearing in this matter will be established after the submission of the direct and rebuttal testimony unless otherwise ordered.

F. Any person filing pleadings, documents or testimony in this case shall serve a copy on all parties of record and Staff.

G. Any person whose testimony is filed in this case shall attend a hearing to be scheduled later and submit to examination under oath.

H. A Commission Order is not required for agreements between or among any of the participants regarding discovery matters. All other participants shall be notified of such agreements.

I. No motion regarding any discovery dispute shall be considered unless accompanied by a statement that the participants have made a good faith effort to resolve the dispute and were unable to do so.

ISSUED at Santa Fe, New Mexico, this 20<sup>th</sup> day of April, 2000.

NEW MEXICO PUBLIC REGULATION COMMISSION

  
Michael Barlow, Hearing Examiner

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE INVESTIGATION INTO  
THE RATES AND CHARGES OF INSTITUTIONAL  
OPERATOR SERVICE PROVIDERS.**

**CASE NO. 3317**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Procedural Order, issued April 20th, 2000, was mailed first-class, postage prepaid, to each of the following persons:

Monique Byrnes, Consultant  
Public Communications Services, Inc.  
c/o Technologies Management, Inc.  
210 North Park Avenue  
Winter Park, FL 32789

Paul Jennings  
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Los Angeles, CA 90025

Conversant Technologies, Inc.  
Attn: Regulatory Affairs  
P. O. Box 865081  
Plano, TX 75075-6615

Evercom Systems, Inc.  
Attn: Regulatory Affairs  
8201 Tristar Drive  
Irving, TX 75063

Global Tel\*Link Corp.  
Attn: Regulatory Affairs  
2609 Cameron St.  
Mobile, AL 36607

Inmate Communications Corp.  
Attn: Regulatory Affairs  
7107 VanJean Avenue  
Van Nys, CA 91405

Intellical Operator Services / dba ILD  
Attn: Regulatory Affairs  
16200 Addison Rd. # 100  
Addison, TX 75001

MCI World Com  
Attn: Regulatory Affairs  
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Attn: Regulatory Affairs  
9A Oak Branch Drive  
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and hand-delivered to:

Avelino Gutierrez, Staff Counsel  
NM Public Regulation Commission  
1120 Paseo de Peralta, PERA Bldg.  
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Gary G. Roybal  
Utility Division  
NM Public Regulation Commission  
224 East Palace Avenue  
Santa Fe, NM 87501

D A T E D this 20<sup>th</sup> day of April, 2000.

NEW MEXICO PUBLIC REGULATION COMMISSION

  
Michael Barlow, Hearing Examiner