

DEPARTMENT OF BUDGET AND FINANCE

Adoption of Chapter 6-79

Hawaii Administrative Rules

August 29, 1997

SUMMARY

Chapter 6-79, Hawaii Administrative Rules, entitled "Aggregator and Operator Service", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

CHAPTER 79

AGGREGATOR AND OPERATOR SERVICE

Subchapter 1 General Provisions

'6-79-1 Purpose of rules

'6-79-2 Scope of rules

'6-79-3 Application of additional sources

'6-79-4 Compliance with and enforcement of
chapter 6-79

'6-79-5 Definitions

'6-79-6 Severability clause

"6-79-7 to 11 (Reserved)

Subchapter 2 Registration of Aggregators and Certification of Operator Service Providers

'6-79-12 Registration of aggregators

'6-79-13 Certification of operator service
providers

'6-79-14 Terms and conditions of certification

"6-79-15 to 20 (Reserved)

Subchapter 3 Aggregator - Standards

'6-79-21 Customer information provided by the
aggregator

'6-79-22 Call blocking prohibited

'6-79-23 Operator service from an authorized
provider

"6-79-24 to 27 (Reserved)

'6-79-1

Subchapter 4 Operator Service - Standards

'6-79-28 Operator service standards - general

'6-79-29 Customer information provided by the
operator service provider

'6-79-30 Public dissemination of customer information
by the operator service provider

'6-79-31 Routing and handling of emergency
telephone calls

'6-79-32 Aggregator compliance

"6-79-33 to 37 (Reserved)

Subchapter 5 Rates and Charges

'6-79-38 Rates and charges at the approved tariff
rate

'6-79-39 Restrictions on charges

'6-79-40 No charge for certain access

"6-79-41 to 45 (Reserved)

SUBCHAPTER 1

GENERAL PROVISIONS

'6-79-1 Purpose and scope of rules. The purpose and scope of this chapter is to prescribe procedures and standards governing aggregator and operator service.
[Eff] (Auth: HRS "269 6, 269 16.8) (Imp: HRS "269-6, 269-16.8, 269-16.9)

'6-79-2 Application of additional sources. This chapter:

(1) Shall be read in context with any applicable:

(A) Federal law and regulation; and

'6-79-4

(B) State law and commission order and rule, including chapter 269, HRS, and chapters 6-61, 6-80, and

6-81; and

(2) Supersedes any conflicting commission order or rule that may be in effect on the effective date of this chapter. [Eff _____] (Auth: HRS "269 6, 269 16.8) (Imp: HRS "269-6, 269-16.8, 269-16.9)

'6-79-3 Compliance with and enforcement of chapter 6-79. (a) Every aggregator and operator service provider shall comply with this chapter and the applicable sources referenced in '6-79-2(1).

(b) Chapter 269, HRS, and any other applicable State law and commission rule and order apply to the enforcement of this chapter. [Eff _____] (Auth: HRS "269 6, 269 16.8) (Imp: HRS "269-6, 269 16.8, 269-16.9)

'6-79-4 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Access code" means a sequence of numbers that, when dialed, connects the caller to the provider of operator service associated with that sequence.

"Aggregator" means the same as in '269-16.8, HRS.

"Call" means a customer's telecommunications message attempted.

"Call splashing" means the transfer of a telephone call from one provider of operator services to another such provider in such a manner that the subsequent provider is unable or unwilling to determine the location of the origination of the call and, because of such inability or unwillingness, is prevented from billing the call on the basis of such location.

'6-79-4

"Certificate of authority" or "COA" means the certificate issued pursuant to chapter 6-80, subchapter 2.

"Certificate of public convenience and necessity" or "CPCN" means the certificate issued pursuant to '269 7.5, HRS.

"Certificate of registration" or "COR" means the certificate issued pursuant to chapter 6-80, subchapter 2.

"Commission" means the public utilities commission of the State.

"Customer" means any person who uses any telephone made available by an aggregator for purposes of aggregating calls and providing operator-assisted calls through access to an operator service provider.

"HRS" means the Hawaii Revised Statutes.

"Incumbent telecommunications carrier" or "incumbent carrier" means the

telecommunications carrier referred to in '269-7.5(c), HRS.

"Local exchange carrier" means a telecommunications carrier, other than an operator service provider, that provides telecommunications service to the aggregator.

"Operator service" means the same as in '269 16.8, HRS, and includes the completion of calls through a live operator or automated system, whether the calls are paid for through billing, calling card, or credit card or through the person called (collect calls) and includes the completion of person-to-person and third-party calls.

"Operator service provider" or "provider" means a telecommunications carrier that provides operator service or any other person determined by the commission to be providing operator service.

"Person" includes individuals, partnerships, corporations, associations, joint stock companies, public trusts, organized groups of persons, whether incorporated or not, receivers or trustees of the foregoing, municipalities, including cities, counties, or other political subdivisions of the State, or any agency, authority, or instrumentality of the State, or any one or more of the foregoing.

'6-79-11

"Presubscribed operator service provider" means the provider of operator service to which a customer is connected when the customer places a call.

"Rules" mean the Hawaii Administrative Rules.

"State" means the State of Hawaii.

"Tariff" means the documents that describe the service or product offered by a telecommunications carrier and prescribe the terms and conditions and the schedule of rates and charges under which the service or product is offered.

"Telecommunications carrier" means the same as in '269-1, HRS, and includes the incumbent telecommunications carrier.

"Telecommunications relay service" means the same as relay services for the deaf, hearing-impaired, and speech-impaired under '269-16.6, HRS.

"Telecommunications service" means the same as in '269-1, HRS. [Eff]
(Auth: HRS "269 6, 269 16.8) (Imp: HRS "269-1, 269-6, 269 16.8, 269 16.9)

'6-79-5 Severability clause. If any provision of this chapter, or the application of the provision to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and, to this end, the provisions of this chapter are severable. [Eff] (Auth: HRS "269 6, 269 16.8) (Imp: HRS "269-6, 269 16.8, 269-16.9)

"6-79-6 to 11 (Reserved)

'6-79-12

SUBCHAPTER 2

REGISTRATION OF AGGREGATORS AND CERTIFICATION OF OPERATOR SERVICE PROVIDERS

'6-79-12 Registration of aggregators. (a) An aggregator, before initiating or providing aggregator service in the State, must register with the commission on forms prescribed by the commission. To register, the aggregator must identify:

- (1) The customer base to which it intends to initiate or provide aggregator service; and
- (2) The operator service provider it intends to utilize.

(b) Any aggregator already providing aggregator service in the State on the effective date of this chapter must also comply with subsection (a), as soon as practical.

[Eff] (Auth: HRS "269 6, 269 16.8) (Imp: HRS "269-6, 269-16.8, 269 16.9)

'6-79-13 Certification of operator service providers. (a) A telecommunications carrier granted a CPCN, COA, or COR before the effective date of this chapter authorizing the provision of telecommunications service in the State need not apply for an additional COA or COR in order to provide operator service in the State. Any such telecommunications carrier, however, before adding or expanding the nature or scope of its telecommunications services beyond that authorized in its existing CPCN, COA, or COR, to include the provision of operator service, shall file a separate tariff for its new service, unless ordered otherwise by the commission.

(b) Any person, other than the incumbent telecommunications carrier, seeking to offer, initiate, or provide operator service shall apply in

'6-79-21

writing to the commission for a certificate of authority. The application shall comply with the applicable provisions of chapter 6-80, subchapter 2.

(c) Where exempted by federal law from entry regulation by the State, a telecommunications carrier seeking to offer, initiate, or provide operator service shall apply for a certificate of registration with the commission by complying with the applicable provisions of chapter 6-80, subchapter 2.

(d) The provisions of chapter 6-80, subchapter 2, govern the issuance or denial of any certificate authorizing operator service. [Eff] (Auth: HRS "269 6, 269 16.8)

(Imp: HRS "269-6, 269 16.8, 269-16.9)

'6-79-14 Terms and conditions of certification. Any certificate issued authorizing operator service and any holder of such certificate are subject to the terms and conditions enumerated in chapter 6-80, subchapter 2, including those relating to suspension and revocation of certificates. [Eff] (Auth: HRS "269-6, 269-16.8) (Imp: HRS "269-6, 269-16.8, 269-16.9)

"6-79-15 to 20 (Reserved)

SUBCHAPTER 3

AGGREGATOR - STANDARDS

'6-79-21 Customer information provided by the aggregator. An aggregator shall post and display in

'6-79-21

writing on or near each telephone instrument owned or controlled by the aggregator, in plain view of the customer, the following information:

- (1) The name, business address, and toll-free business telephone number of the operator service provider;
- (2) The rates, terms, and conditions of all operator-assisted calls or the toll-free business number where such information can be obtained;
- (3) The right of the customer to access, without charge, any other operator service provider of the customer's choice by dialing that provider's access code;
- (4) The right of the customer to access and the manner of accessing the local exchange network; and
- (5) The operator service provider's complaint handling procedures. [Eff]
(Auth: HRS "269 6, 269 16.8) (Imp: HRS "269-6, 269-16.8, 269 16.9)

'6-79-22 Call blocking prohibited. An aggregator shall ensure that any customer may obtain access, without charge, to any operator service provider, long distance carrier, or the local exchange carrier through the aggregator's telephone. [Eff]
(Auth: HRS "269 6, 269 16.8) (Imp: HRS "269-6, 269-16.8, 269-16.9)

'6-79-23 Operator service from an authorized provider. Each aggregator shall obtain operator service only from an operator service provider authorized or certified by the commission to provide operator service in the State, pursuant to chapter 6 79, subchapter 2. [Eff] (Auth: HRS "269 6, 269 16.8) (Imp: HRS "269-6, 269-16.8, 269 16.9)

"6-79-24 to 27 (Reserved)

SUBCHAPTER 4

OPERATOR SERVICE - STANDARDS

'6-79-28 Operator service standards - general. An operator service provider shall:

- (1) Offer or provide operator service on a non discriminatory basis to all customers similarly situated or within a reasonably constituted class, according to its tariff on file with the commission;
- (2) Not unreasonably discriminate between and among customers in providing operator service;
- (3) Not unreasonably discriminate between and among localities in providing operator service;
- (4) On an intrastate basis, comply with all federal laws and regulations relating to operator service; and
- (5) To the extent applicable, comply with the telecommunications standards set forth in chapter 6-80, subchapters 8, 9, and 11. [Eff] (Auth: HRS "269 6, 269 16.8) (Imp: HRS "269-6, 269-16.8, 269 16.9)

'6-79-29 Customer information provided by the operator service provider. (a) An operator service provider shall:

(1) At the beginning of each telephone call and before the customer incurs any charge for the call, identify itself audibly and distinctly to the customer;

6-79-29

(2) Permit the customer to terminate the telephone call at no charge before the call is connected; and

(3) Upon request and at no charge to the customer, immediately disclose to the customer:

(A) The rates, charges, terms, and conditions of the call;

(B) The method by which the rates or charges will be collected;

(C) The means by which the customer may access the various operator service providers and the local exchange carrier; and

(D) The provider's complaint handling procedures.

(b) If the aggregator has not for any reason posted the operator provider's pertinent rates, terms, and conditions or the means of accessing the various operator service providers and the local exchange carrier, as required by '6-79-21, the operator service provider shall offer to provide such information to the customer before call connection.

[Eff] (Auth: HRS "269 6, 269 16.8) (Imp: HRS "269-6, 269 16.8, 269-16.9)

'6-79-30 Public dissemination of customer information by the operator service provider. An operator service provider shall regularly publish written materials that

describe any recent changes in operator service and in the choices available to a customer in that market, and make such materials available at no cost to inquiring customers. [Eff] (Auth: HRS "269 6, 269 16.8) (Imp: HRS "269-6, 269-16.8, 269-16.9)

'6-79-31 Routing and handling of emergency telephone calls. Upon receipt of any emergency

6-79-37

telephone call, an operator service provider shall immediately connect the call, together with the originating telephone number information, to the emergency service serving the reported location of the emergency, if known, and, if not known, to the emergency service serving the location of the originating call. In the case of an operator assisted call, the operator shall stay on the line until the transfer to the emergency service is connected. [Eff] (Auth: HRS "269 6, 269 16.8) (Imp: HRS "269-6, 269-16.8, 269 16.9)

'6-79-32 Aggregator compliance. (a) An operator service provider shall ensure, by contract or tariff, that each aggregator, for which the provider is the presubscribed provider of operator service, complies with "6-79-21 and 6-79-22.

(b) An operator service provider shall withhold payment (on a location-by-location basis) of any compensation, including commissions, to an aggregator if such provider reasonably believes that the aggregator is blocking access to another operator service provider, long distance carrier, or the local exchange carrier in violation of '6-79-22. [Eff] (Auth: HRS "269 6, 269 16.8) (Imp: HRS "269-6, 269-16.8, 269-16.9)

"6-79-33 to 37 (Reserved)

6-79-38

SUBCHAPTER 5

RATES AND CHARGES

'6-79-38 Operator service - rates and charges. (a) An operator service provider shall provide its service at the rates and on the terms and conditions specified in its tariffs filed with the commission.

(b) An operator service provider shall file its tariffs and the tariffs shall be processed in compliance with the applicable provisions of:

(1) Commission's orders and rules, including chapter 6-80, subchapter 4; and

(2) The terms and conditions of the provider's CPCN, COA, or COR.

(c) The operator service provider shall be identified on a customer's bill. [Eff]

(Auth: HRS "269 6, 269 16.8) (Imp: HRS "269-6, 269 16.8, 269-16.9)

'6-79-39 Restrictions on charges. An operator service provider shall:

- (1) Not charge for unanswered telephone calls;
- (2) Not charge for any period of time before the call is answered by the called party;
- (3) Upon discovery by the provider or upon the customer's request, promptly refund to the customer any charges assessed for unanswered calls;
- (4) Upon discovery by the provider or upon the customer's request, promptly refund any excess amount paid by the customer as a result of an error in billing caused by charging more than the published rate, incorrectly applying the rate of another class of service, an error in measuring the quantity or volume of service, or any other cause.

6-79-40

- (5) Not engage in call splashing, unless the customer:
 - (A) Requests to be transferred to another operator service provider;
 - (B) Is informed prior to incurring any charges that the rates for the call may not reflect the rates from the actual originating location of the call; and then
 - (C) Consents to be transferred;
- (6) Except as provided in paragraph (5), not charge for a call that does not reflect the rate at the location of the origination of the call; and
- (7) Not assess a customer a location or premises surcharge on behalf of an aggregator. [Eff] (Auth: HRS "269 6, 269 16.8) (Imp: HRS "269-6, 269-16.8, 269 16.9)

'6-79-40 No charge for certain access. (a) An operator service provider shall provide the customer with the following at no charge:

- (1) Dialing instructions for access to the operator or telecommunications carrier of the customer's choice;
- (2) Access to telecommunications relay service via 511 and 711 dialing;
- (3) Access to toll-free numbers;
- (4) Dialing instructions for access to the long distance carrier of the customer's choice;
- (5) Access to the telecommunications carrier's facilities, through which the customer can:
 - (A) Report service trouble or complaints; or
 - (B) Request refunds or general assistance;
- (6) Access to emergency services via 911 dialing;
- (7) Access to repair service; and

6-79-40

(8) Access to directory assistance via 411 dialing.

(b) An aggregator shall ensure that any customer may access, by use of an access code or otherwise, another operator provider of the customer's choice without any charge.

(c) An operator service provider shall ensure, by contract or tariff, that the aggregator for which the provider is the presubscribed operator service provider is in compliance with subsection (b). [Eff] (Auth: HRS "269 6, 269 16.8) (Imp: HRS "269-6,

269-16.8, 269-16.9)

"6-79-41 to 45 (Reserved)

DEPARTMENT OF BUDGET AND FINANCE

Chapter 6-79, Hawaii Administrative Rules, on the Summary Page dated August 29, 1997, was adopted on August 29, 1997, following public hearings held on March 17, 18, 19, 20, and 21, 1997, after public notice was given in the Honolulu Advertiser, Maui News, Hawaii Tribune-Herald, Ltd., West Hawaii Today, and The Garden Island on February 12, 1997.

The adoption of chapter 6-79 shall take effect ten days after filing with the Office of the Lieutenant Governor.

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Filed