

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: May 22, 2001**

REGULAR AGENDA X **CONSENT AGENDA** **EFFECTIVE DATE**

DATE: May 15, 2001

TO: Phil Nyegaard through Dave Booth

FROM: Celeste Hari

SUBJECT: Docket AR 415, Rulemaking to Provide Procedures for Transfer of a Certificate of Authority to Provide Telecommunications Service in Oregon

SUMMARY RECOMMENDATION:

The Commission should open a rulemaking proceeding, with hearing, for the purpose of adopting procedures allowing telecommunications providers to transfer certificates of authority to provide telecommunications in Oregon. The rulemaking would be docket AR 415.

DISCUSSION:

On February 8, 2000, the Commission issued Order No. 00-068 in docket AR 365. That order provided several rule changes in OAR 860, Division 032, regarding telecommunications service and telecommunications service providers. Among the changes in the rules was a sentence in OAR 860-0032-0005(4) regarding transferring certificates of authority. The rule states: "Certificates of authority may not be transferred or assigned without the prior consent of the Commission." There currently are no rules for transferring certificates of authority. This rulemaking will establish procedural rules for a transfer process.

Attached are staff's proposed rules addressing the transfer of certificates of authority, as well as a draft transfer application form.

The proposed rule includes changes proposed in Docket AR 398 and are noted in italics. These changes are minor and housekeeping in nature. OAR 860-032-0001 includes a change in the title and the renumbering of OAR 860-032-0210. The change in 860-032-0060 is a title change only. No objections to these proposals were received, and staff expects them to be adopted in June, 2001.

Staff's proposal for transfer rules is based upon existing requirements for obtaining a certificate of authority, including notification and opportunity for protest under ORS 759.020(2). Staff's transfer rules differ from the existing process by requiring both parties to a transaction to file a joint application. Having both the transferor and the transferee complete a joint application ensures that both parties to a merger or acquisition concur with the specifics of the transfer.

Staff's proposed transfer rules do not describe every detail of the transfer process. It may be helpful to understand how staff envisions the application and approval process will work under the rule. As shown at the top of page 1 of the attached draft application form, staff intends to permit applicants to request in advance of actually completing their transaction a future effective date for the transfer. Staff will proceed with the application, including notification, and then hold the order until the effective date requested. An order granting the application will proceed on or about the requested effective date unless the applicants withdraw the application or extend the date. Staff plans to process transfer applications on an expedited basis, without going through a proposed order and exceptions process. This will eliminate 36 days from the cycle (21 days to issue the proposed order and 15 days for exceptions). These internal procedures will speed up the issuance of transferred certificates.

In addition to language dealing with the transfer procedure, Staff included a definition of affiliated interest within the proposed rule. The definition that has previously been used relates to utilities and not competitive providers. The new definition is similar to that found in ORS 759.010, but the revised version specifically leaves out the words "utility" and "utilities." These words are changed to "telecommunications provider" and "telecommunications providers." The interpretation of affiliated interest concerning competitive providers has caused confusion in the past. The revised definition is intended to clearly represent the Commission's intent when referring to affiliated interest and competitive providers.

To assist in drafting its proposed transfer rule, Staff sent a letter to all parties in AR 365 requesting informal comments regarding a transfer process. Two parties responded to the request, Mark Trincherro representing the Western States Competitive Coalition,¹ and Lisa Rackner representing WorldCom, Inc. Staff carefully considered these comments when drafting the rule. However, there are some fundamental differences of opinion on some issues, including the necessity of applying for a transfer, the necessity of notice, and how notice is served. Because of these issues, Staff's proposed rules regarding the transfer process for certificates of authority may be controversial. Therefore, staff plans to begin with a workshop in docket AR 415, followed by comments, and then a hearing. The workshop is scheduled for July 23, 2001, and the hearing is scheduled for September 24, 2001. The rule may change as a result of these collaborations. Staff is planning to have the Statement of Need and Fiscal Impact for the proposed rule published in the Secretary of State's July publication.

STAFF RECOMMENDATIONS:

The Commission should open a rulemaking, with hearing, to determine a process for transferring certificates of authority. The rulemaking would be docketed as AR 415.

¹ The Coalition consists of Advanced TelCom Group, Inc., Electric Lightwave, Inc., Interga Telecom, and Nextlink Communications, Inc.