

ITEM NO.

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: December 3, 2001**

REGULAR CONSENT EFFECTIVE DATE _____

DATE: November 19, 2001

TO: Commissioners Hemmingway, Beyer and Smith

FROM: Administrative Law Judge Allan J. Arlow

SUBJECT: AR 424 Request to adopt rules to make housekeeping revisions to the Oregon Administrative Rules Chapter 860 Division 033 for Telephone Assistance Programs. The changes would revise the Division Rules to reflect changes in federal law and bring the state into compliance with respect to the calculation of benefits and customer eligibility requirements.

ADMINISTRATIVE LAW JUDGE RECOMMENDATION:

I recommend that Oregon Administrative Rule (OAR) 860-033-0035(1)(a) should be amended by changing the method for calculating federal baseline lifeline support in determining benefits under the Oregon Telephone Assistance Plan (OTAP) and that a new subparagraph (c) be added to reflect the new federal eligibility requirements of participating low-income residential users who reside on federally-recognized tribal lands.

I also recommend that OAR 860-033-0050(4) should be amended to clarify that the Link Up America program provides a *reduction* of the tariffed line connection charge and to add language indicating the eligibility of low-income residents on federally recognized tribal lands are entitled to additional reductions in accordance with the federally set guidelines. These changes should be simultaneously implemented on January 1, 2002.

DISCUSSION:

By its order, FCC 00-193 released May 31, 2000, at paragraph 76, the FCC eliminated certain residential and single-line business charges and increased the related Subscriber Line Charge caps. The change was made in order to provide for proper recovery of the portion of common line costs that had been allocated to the interstate jurisdiction through charges imposed on telephone subscribers. Since OAR 860-033-0035 calculates OTAP benefits in relation to the carrier common line charge, a modification of our rules was necessary to reflect these changes.

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By its order, FCC 00-208, released June 8, 2001, the FCC created a fourth tier of federal Lifeline support to reduce the price of basic local phone service for income eligible customers on tribal lands. The calculation of the assistance program benefits is set forth in paragraph 42 and footnote 117 of that FCC order and describes the interplay between this federal tier four assistance program, state assistance programs and tier three federal matching funds. Both OAR 860-033-0035 and 860-033-0050 require new language to reflect the new federal eligibility standards and benefits for tribal lands residents.

PROPOSED COMMISSION MOTION:

I recommend adoption of permanent rules amending OAR 860-033-0035 and OAR 860-033-0050. For the reasons explained in the draft order, the amended and new rules bring the State of Oregon into compliance with these federal programs and provide additional assistance to low-income residents on federally-recognized tribal lands.

ORDER NO.

ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 424

In the Matter of a Rulemaking Proceeding)
to Amend OAR 860-033-0035 and 860-)
033-0050 in Order to Comply with Revised)
Federal Regulations)

ORDER

DISPOSITION: AMENDED RULES ADOPTED AS MODIFIED

At its August 7, 2001, Public Meeting, the Public Utility Commission of Oregon (Commission) granted Staff's request to open a rulemaking docket to amend the Commission's Rules to reflect actions taken by the Federal Communications Commission (FCC) in its Reports and Orders FCC 00-193 and FCC 00-208 in FCC Docket No. 96-45.

As a result of the issuance of FCC 00-193, Verizon Northwest Inc., Qwest Corporation, Sprint/United Telephone Company of the Northwest, Inc. and CenturyTel of Oregon, Inc. have been allowed to change their maximum Tier 1 monthly federal reduction from \$3.50 to \$4.35. It is therefore necessary to amend OAR 860-033-0035 to reflect this change.

By the issuance of FCC 00-208, the FCC expanded lifeline provisions for residents living on federally recognized tribal lands. OAR 860-033-0050 requires a clarifying amendment with respect to the maximum reduction for Link-Up America consumers and to include eligible residents living on tribal lands.

On September 6, 2001, the Commission filed a Notice of Proposed Rulemaking with the Secretary of State and, on September 21, 2001, served it on persons interested in such matters. The notice set out the amendments proposed by Commission Staff, and included a Statement of Need, Statutory Authority, Principal Documents Relied Upon, and Fiscal and Economic Impact. The notice was published in the Secretary of State's *Oregon Bulletin* on October 1, 2001. The final date for filing comments was Monday, October 22, 2001. Qwest Corporation was the only party to submit comments.

At its December 3, 2001, Public Meeting, the Commission considered the comments of Qwest Corporation and entered the decisions set out in this order.

DISCUSSION

Staff's Proposed Rulemaking

Staff's proposed rules are modifications to existing standards for two programs providing financial assistance via reduced rates for low-income residential customers seeking telecommunications services: the Oregon Telephone Assistance Program (OTAP) and Link Up America. Rules relating to OTAP are set forth in OAR 860-033-0010 to OAR 860-033-0047. Rules relating to Link Up America are set forth in OAR 860-033-0050.

The proposed amendment to OAR 860-033-035(1) changes the method of calculating the federal baseline lifeline support under subsection (a) which effectively allows Verizon Northwest Inc., Qwest Corporation, Sprint/United Telephone Company of the Northwest, Inc. and CenturyTel of Oregon, Inc. to change their maximum Tier 1 monthly federal reduction, and adds a new subsection (c) to provide for the provision and calculation of OTAP benefits for qualifying low-income individuals living on federally recognized tribal lands.

The proposed amendment to OAR 860-033-0050(4) reflects the changes in the FCC eligibility criteria for participation in Link Up America, and the calculation of benefits related thereto.¹

Comments

Qwest's comments consisted of a single page and stated, in pertinent part, as follows:

"The proposed revision to OAR 860-033-0035(1)(c)(B) includes up to \$31.10 per month in assistance pursuant to FCC Order No. 00-208, ¶42. Qwest believes that number should be \$31.75 because of the change in the Subscriber Line Charge that was effective in July 2001. *See* Advice No. 1872 (eff. July 3, 2001). The proposed rule should be revised accordingly."

The changes in federal rules resulting from the issuance of Orders FCC 00-193 and FCC 00-208 in FCC Docket No. 96-45 require the Commission to amend OAR 860-033-035 and OAR 860-033-0050 as discussed above. We further note that

¹ OAR 860-033-0050(1) provides that "The Commission adopts the Federal Communications Commission (FCC) eligibility criteria for Link Up America."

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Qwest has correctly identified a proper modification to the amendment proposed by staff in order to reflect the recently effective change in the Subscriber Line Charge, and we incorporate that modification to OAR 860-033-0035(1)(c)(B) in our order.

ORDER

IT IS ORDERED that:

1. The rules set out in Appendix A, attached to and made part of this order, are adopted.
2. The rules shall become effective upon filing with the Secretary of State.

Made, entered, and effective _____.

Ron Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

A person may petition the Commission for the amendment or repeal of a rule pursuant to ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule pursuant to ORS 183.400.

860-033-0035

OTAP Benefits

(1) A residential customer qualifying for the OTAP benefit shall pay a reduced monthly rate for an eligible telecommunications carrier's service as established by the Commission. The monthly OTAP benefit shall include:

(a) The federal baseline lifeline support ~~of \$3.50 from the Federal Communications Commission (FCC), including~~ **shall be equal to the telecommunication carriers tariff rate for the federal end user common line charge for primary residential lines and** an additional ~~portion~~ **federal lifeline support** of \$1.75 approved by the FCC in FCC Order No. 97-157, Paragraph 351, and consented to by the states; and

(b) An additional federal lifeline support, in an amount equal to one-half the amount of support provided by the State of Oregon up to a federal maximum of \$1.75, which shall be available to the eligible telecommunications carriers who provide OTAP benefits to qualifying low-income recipients;

(c) For each qualifying low-income individual living on federally recognized tribal lands, provided this support does not bring the basic local rate below \$1.00 per month:

(A) An additional federal lifeline support, in an amount up to \$25.00 per month, shall be available for each eligible resident; and

(B) A total of up to \$31.75 each month, including first and second tier federal support amounts per primary residential connection, shall be available for each eligible resident on basic local residential service, as prescribed in FCC Order No. 00-208, Paragraph 42.

(2) The OTAP benefit shall be provided for each billing period during which a customer has been determined eligible for assistance. When a customer has been determined eligible for less than an entire billing period, the benefit shall be prorated.

(3) Initial benefits become effective on the date the Commission receives the signed OTAP application (written authorization) from an eligible customer.

(4) Customers removed from OTAP may reapply by telephone when they again meet eligibility criteria. Benefits then become effective on the date the Commission reverifies the customer's eligibility.

Stat. Auth.: ORS Ch. 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 3-1992, f. & ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & ef. 12-17-97 (Order No. 97-489)

860-033-0050

Link-Up America Eligibility

(1) The Commission adopts the Federal Communications Commission (FCC) eligibility criteria for Link-Up America.

(a) Applicants may self-certify to an eligible telecommunications carrier eligibility criteria other than the income criterion. The Commission must verify income eligibility; and

(b) Applicants must be certified by an organization approved by the Commission as meeting the requirements of an established income test for a low-income assistance program offered through the Department of Human Resources.

(c) An applicant or recipient is required to furnish his/her social security number before his/her eligibility in the OTAP can be determined. Failure to do so will result in denial of benefits.

(2) Security deposit requirements will be waived for residential applicants who are eligible for Link-Up America and who satisfy the credit requirements of OAR Chapter 860, Division 021, or if the qualifying low-income consumer voluntarily elects toll blocking from the carrier, where available.

(3) If an applicant does not meet the credit requirements of OAR Chapter 860, Division 021, or has an outstanding bill with the eligible telecommunications carrier, the deposit will not be waived and the applicant will be subject to the conditions and payment arrangements contained in OAR 860, Division 021.

(4) An eligible telecommunications carrier shall offer a 50 percent reduction in its tariffed line connection charge, up to a maximum reduction of \$30, to eligible Link-Up America applicants. This assistance does not cover special features, services, or deposits.

Eligible residents living on federally recognized tribal lands shall receive an additional reduction of up to \$70 to cover 100% of the charges between \$60 and \$130 for a total maximum support amount of \$100 per qualifying low-income subscriber on tribal lands with initial connection or line extension costs of \$130 or more as prescribed in FCC Order No. 00-208, Paragraph 59.

(5) An eligible telecommunications carrier shall offer a deferred schedule for payment of the charges assessed for commencing service, for which the consumer does not pay interest. The interest charges not assessed to the consumer shall be for connection charges of up to \$200 that are deferred for a period not to exceed one year. Charges assessed for commencing service include any charges that the carrier customarily assesses to connect subscribers to the network. These charges do not include any permissible security deposit requirements.

(6) An eligible telecommunications carrier's Link-Up America program shall allow a customer to receive the benefit of the Link-Up America program for a second or subsequent time only for a principal place of residence with an address different from the address at which the Link-Up America assistance was previously provided.

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(7) An eligible telecommunications carrier shall seek reimbursement from the National Exchange Carrier's Association (NECA), an authorized agent of the FCC.

(8) Failure by a customer to make payments as agreed upon with the eligible telecommunications carrier will result in disconnection of service pursuant to OAR Chapter 860, Division 021.

(9) Upon FCC approval of a Commission OTAP and Link-Up America plan, an eligible telecommunications carrier subject to Oregon Law 1987, Chapter 290, shall file appropriate tariffs or price lists with the Commission.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Public Utility Commission.]

Stat. Auth.: ORS Ch. 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 8-1989, f. & cert. ef. 6-8-89 (Order No. 89-724); PUC 3-1992, f. & ef. 2-14-92 (Order No. 92-238); PUC 2-1996, f. & ef. 4-18-96 (Order 96-102); PUC 6-1997, f. & ef. 1-10-97 (Order No. 97-005); PUC 18-1997, f. & ef. 12-17-97 (Order No. 97-489)