

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: December 18, 2001**

REGULAR \_\_\_\_\_ CONSENT  X  EFFECTIVE DATE \_\_\_\_\_ NA \_\_\_\_\_

**DATE:** December 7, 2001

**TO:** Phil Nyegaard

**FROM:** Terry Lambeth through Cynthia Van Landuyt, Dave Booth, Ed Busch, Rebecca Hathhorn, Jerry Murray, and Bonnie Tatom

**SUBJECT:** AR 436: Open a rulemaking docket to consider housekeeping changes to the Commission's safety and territory allocation rules for utilities and telecommunications cooperatives

**STAFF RECOMMENDATION:**

The Commission should make housekeeping revisions to Oregon Administrative Rule (OAR) Chapter 860 to (a) update the definitions and terms used in Divisions 025 and 034 to conform to terms used in other rules and divisions; (b) add OARs 860-025-0050 and 860-034-0495 as cross-references to OAR 860-032-0220; and (c) make miscellaneous grammar and other housekeeping corrections. The scope of this rulemaking should be limited to housekeeping revisions only.

Staff's proposed revisions in Attachment A are not intended to change the meanings or applications of any rules, so they should not be controversial.

**DISCUSSION:**

Many Commission rules were originally written with only the utilities in mind. Over time, statutes have been changed, deleted, and added. Consequently, some current rules are based on statutes that apply to more entities than utilities, including gas pipeline operators, consumer-owned utilities,<sup>1</sup> utility customers, electricity service suppliers,<sup>2</sup>

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<sup>1</sup> ORS 757.270(2) defines a **consumer-owned utility** as people's utility district, a municipal utility, or an electric cooperative.

<sup>2</sup> OAR 860-038-0005(20) defines an **electricity service supplier** as "a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer."

competitive providers,<sup>3</sup> large telecommunications utilities,<sup>4</sup> and small telecommunications utilities.<sup>5</sup> With the many types of operators currently in Oregon, the rules should be made clearer and easier to use and maintain.

Early in 2001, staff proposed numerous housekeeping changes, such as more clearly differentiating between the various entities, adding cross-references to other divisions, correcting grammar, and reorganizing some rules to make related rules easier to find. The Commission adopted staff's revisions in Order 01-248 (docket AR 397), Order 01-488 (dockets AR 398, AR 400, and AR 410), Order 01-428 (docket AR 399), Order 01-839 (docket AR 401), Order 01-296 (docket AR 402), Order 01-486 (docket AR 406), and Order 01-297 (docket AR 409). Those housekeeping amendments did not change the intent or application of the rules.

Staff's proposed housekeeping changes, as shown in Attachment A, could have been included in dockets AR 398, AR 400, or AR 401, but staff set them aside for further review, as explained below.

**Regulations to Prevent Duplication of Facilities and to Allocate Territory.** On December 26, 2000, I sent the telecommunications providers a copy of staff's draft proposals before opening housekeeping dockets AR 398 and AR 400. Among other changes, staff's proposals would have replaced "utility" with "small telecommunications utility" in Division 034 and "telecommunications utility" with "large telecommunications utility" throughout Divisions 021 through 027. Staff's proposals also would have added OARs 860-025-0050 and 860-034-0495 as cross-references to OAR 860-032-0220. Verizon Northwest, Inc., responded to staff's proposal for Division 025.

First, Verizon stated that the statutory citation excluded telecommunications utilities because ORS 758.400 only applies to electric utilities. Staff found that ORS 758.400 through 758.475 also apply to gas utilities under ORS 758.400(3), and the equivalent statutes for telecommunications utilities and cooperatives are ORS 759.500 through 759.595. Apparently, when the telecommunications statutes were separated from the public utility statutes, the rules in Division 025 were not updated to cite the revised statute numbers for telecommunications utilities. The rules in Division 034 had been corrected for small telecommunications utilities, however.

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<sup>3</sup> OAR 860-032-0001(1) defines a **competitive provider** as "a competitive telecommunications provider as defined in ORS 759.005(2)(a), who provides services authorized pursuant to ORS 759.020," such as a competitive local exchange carrier or interexchange carrier.

<sup>4</sup> OAR 860-023-0001 defines a **large telecommunications utility** as "any telecommunications utility, as defined in ORS 759.005, that is not partially exempt from regulation under ORS 759.040."

<sup>5</sup> OAR 860-034-0010(3) defines a **small telecommunications utility** as "a telecommunications utility partially exempt from regulation under ORS 759.040. "

Second, Verizon argued the territory allocation rules in Division 025 should not apply to telecommunications utilities. Because of this issue, I set the proposed revisions to Division 025 aside so the changes to rules in other divisions could be made without a hearing. I also set aside the corresponding rules for small telecommunications utilities and cooperatives (OARs 860-034-0440 through 860-034-0495) and the proposed new rules, OARs 860-025-0050 and 860-034-0495. Soon thereafter in docket AR 395, Verizon argued that Division 025 should not apply to telecommunications utilities.

As part of Docket AR 395, Dave Booth addressed the territory allocation rules for telecommunications utilities in a staff memo presented at the Commission's Public Meeting on August 7, 2001. See Attachment B. Mr. Booth recommended, "the Commission not initiate rulemaking to revise OAR 860-025-0000 through OAR 860-025-0027." The Commission agreed with staff in Order 01-728, Ordering Paragraph 2:

As recommended in Appendix J [Mr. Booth's memo], OARs 860-025-0000 through 860-025-0027, 860-032-0001(11), 860-032-0020, 860-032-0023, 860-032-0035, 860-032-0040, 860-032-0080, and 860-032-0200 shall not be revised.

Staff believes Order 01-728 means the Commission will not consider revising the contents of OARs 860-025-0000 through 860-025-0027 until the Legislature changes the territory allocation statutes. Order 01-728 does not appear to prohibit housekeeping changes to Division 025. Therefore, staff proposes to complete the housekeeping goals of dockets AR 398 and AR 400 by making the following changes for the territory allocation rules:

- a) Add references to ORS Chapter 759 in OARs 860-025-0001, 860-025-0010, 860-025-0020, 860-025-0025, and 860-025-0027 for large telecommunications utilities.
- b) Modify OARs 860-025-0000, 860-025-0001, 860-025-0010, 860-025-0020, 860-025-0025, 860-025-0027, 860-034-0400, 860-034-0440, 860-034-0450, 860-034-0460, 860-034-0470, 860-034-0480, and 860-034-0490 to:
  - 1) Revise the terms and definitions to be consistent with OAR 860-022-0070, OAR 860-023-0080, and those adopted in dockets AR 398 and AR 400. For example, replace utility with electric utility, gas utility, and large telecommunications utility, as appropriate;
  - 2) Make the language in Division 025 more consistent with the equivalent rules in Division 034; and
  - 3) Make miscellaneous grammar and other housekeeping revisions.

- c) Add OARs 860-025-0050 and 860-034-0495 for telecommunications utilities as cross-references to OAR 860-032-0220, which addresses the application for service from a telecommunications utility by an unserved person. Telecommunications utilities might not ordinarily refer to Division 032 for new service applications, because most of their rules are in Divisions 025 and 034. OAR 860-032-0220 does not apply to telecommunications cooperatives.

Staff's proposed revisions in Attachment A are not intended to change the meanings or applications of any rules, so they should not be controversial. Therefore, staff believes a hearing will not be needed. Staff also believes the proposed housekeeping revisions in Attachment A do not meet the criteria in ORS 183.335(7) and, therefore, require full notice with the Secretary of State under ORS 183.335 – Notice; Content; Public Comment; Temporary Rule Adoption, Amendment or Suspension; Substantial Compliance Required.<sup>6</sup>

**Maintenance Rule, OAR 860-023-0005.** Staff excluded this rule from housekeeping docket AR 401 to consider whether to also propose some substantive changes. Staff has concluded that it will not propose substantive changes at this time. Staff believes OAR 860-023-0005 should be revised to more clearly identify who must keep records, as follows:

. . . ~~Such record shall be kept~~ **Each energy utility and large telecommunications utility shall keep such records** of the conditions found as the utility considers necessary to properly maintain its system, unless in special cases the Commission specifies a more complete record.

**Water Utility Rules.** Division 036 for water utilities was developed from Divisions 021 through 028. As a result, the language is often the same. Therefore, the above housekeeping revisions should also be made to the water rules for consistency, as follows:

- a) In OAR 860-036-0305(2) and (4), more clearly identify who must keep records. For example, section (4) should be revised as follows: "Each water utility shall inspect, exercise, and maintain valves and hydrants as necessary to ensure they are operable. ~~A~~ **The water utility shall keep a** record ~~shall be kept~~ of all inspections, maintenance, repairs, and exercises of all valves and hydrants."

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<sup>6</sup> Under ORS 183.335(7) as revised by 2001 House Bill 2665 and effective January 1, 2002, OPUC "may amend a rule without prior notice or hearing if the amendment is solely for the purpose of: (a) Changing the name of an agency by reason of a name change prescribed by law; (b) Correcting spelling; (c) Correcting grammatical mistakes in a manner that does not alter the scope, application or meaning of the rule; or (d) Correcting statutory references."

- b) In OARs 860-036-0305, 860-036-0900, 860-036-0905, 860-036-0925, and 860-036-0930, use language that is consistent with similar rules in other divisions. For example, OAR 860-036-0900(1)(d) should be revised as follows: "Water utility' **shall** means any water system that meets the definition of a public utility in ORS 758.300."

**PROPOSED COMMISSION MOTION:**

1. Docket AR 436 be opened to consider the following housekeeping changes:
  - a. Revise OARs 860-023-0005, 860-025-0000, 860-025-0001, 860-025-0010, 860-025-0020, 860-025-0025, 860-025-0027, 860-034-0400, 860-034-0440, 860-034-0450, 860-034-0460, 860-034-0470, 860-034-0480, 860-034-0490 to use the same terms and definitions as other Commission rules and make miscellaneous housekeeping corrections;
  - b. Add OARs 860-025-0050 and 860-034-0495 as cross-references to OAR 860-032-0220, consistent with changes adopted in Order 01-839; and
  - c. Make miscellaneous corrections in OARs 860-036-0305, 860-036-0900, 860-036-0905, 860-036-0925, and 860-036-0930;
2. No changes to the meanings of any rules be considered in docket AR 436.

Attachments

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**860-023-0005**

**Maintenance of Plant and Equipment by Energy Utilities and Large Telecommunications Utilities**

Each energy and large telecommunications utility shall have and maintain its entire plant and system in such condition that it will furnish safe, adequate, and reasonably continuous service. Each energy and large telecommunications utility shall inspect its plant distribution system and facilities in such manner and with such frequency as may be needed to ensure a reasonably complete knowledge about their condition and adequacy at all times. ~~Such record shall be kept~~ **Each energy utility and large telecommunications utility shall keep such records** of the conditions found as the utility considers necessary to properly maintain its system, unless in special cases the Commission specifies a more complete record.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stat. Implemented: ORS 757.020 & 759.035

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169); PUC 16-2001, f. & cert. ef. 6-21-01 (Order No. 01-488)

**860-025-0000**

**Exemptions Applicability of Division 025**

The rules contained in this Division ~~do not~~ apply to: **electric utilities, gas utilities, and large telecommunications utilities, as defined in OAR 860-025-0001.**

~~—(1) Telecommunications utilities partially exempt from regulation under ORS 759.040 (see Division 034 requirements).~~

~~—(2) Unincorporated associations and cooperative corporations that only provide telecommunications services (see Division 034 requirements).~~

~~—(3) Water utilities (see Division 036 requirements).~~

~~—(4) Water/wastewater utilities (see Division 037 requirements).~~

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 759.030, 759.040 & ~~759.045~~ **759.500 through 759.595**

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 14-1997, f. & ef. 11-20-97 (Order No. 97-442); PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468); PUC 14-2000, f. & ef. 8-23-00 (Order No. 00-458)

**860-025-0001**

**Definitions for Territory Allocated to Electric Utilities, Gas Utilities, and Large Telecommunications Utilities**

For purposes of this Division, except when a different scope is explicitly stated:

(1) ~~“Energy~~**Electric** utility” means a public utility as defined in ORS 757.005 ~~except a water utility that supplies electricity;~~

**(2) “Gas utility” means a public utility as defined in ORS 757.005 that supplies natural gas.**

~~(23) “Large T~~**telecommunications utility” has the meaning means any telecommunications utility** as defined in ORS 759.005, ~~unless it that~~ is **not** partially exempt from regulation under ORS 759.040; ~~and.~~

~~(34) “Utility” means all energy and telecommunications utilities, as defined in sections (1) and (2) of this rule. “Utility service” means utility service as defined for electric and gas utilities in ORS 758.400(3) and telecommunications utility service as defined in ORS 759.500(3).~~

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, **757.005, 758.400, &** 759.005 **& 759.500**

Hist.: PUC 2-1996, f. & ef. 4-18-96 (Order No. 96-102); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169)

**860-025-0010**

**Applications for Approval of Contracts to Avoid or Eliminate Duplicate Utility Service for Electric Utilities, Gas Utilities, and Large Telecommunications Utilities**

~~Applications~~**An application** for a Commission order under ORS 758.410 **or 759.510** shall contain the following:

(1) A copy of the contract.

(2) A map or maps, drawn to appropriate scale, showing the general location and boundaries of the applicant's service area.

(3) A map or maps, drawn to appropriate scale, showing the location of customers who are being served by either or both of the parties, or who could be economically served by the then existing facilities of either party, or by reasonable and economic extensions thereto, who are covered by the contract.

(4) A description by county, section lines, river, highway, road, street, or metes and bounds, where applicable and necessary, designating the boundaries of the territory to be served by each party to the contract. Such legal description of boundary lines may be drawn and described:

(a) To eliminate minor irregularities in the boundary of each party when to do so will

include within each party's territory only that unserved area which may be economically served by the then existing facilities of the respective parties or by reasonable and economic extensions thereto; and

(b) In the case of persons providing telecommunications utility service who entered into exchange boundary agreements before May 31, 1961, to define mutually exclusive exchange service areas, the area affected by such agreement may be described by reference to the exchange area map in that agreement. However, the applicant shall not be relieved by such reference from showing that it can economically serve the unserved areas within the exchange area map with its existing facilities or by a reasonable and economic extension thereto.

(5) A description of the equipment and facilities of each party, which are the subject of sale, exchange, transfer, or lease pursuant to the contract and the consideration to be paid therefore.

(6) Facts showing that the contract will eliminate or avoid unnecessary duplicating facilities, and will promote the efficient and economic use and development and the safety of operation of the utility service systems of the parties to the contract, while providing adequate and reasonable service to all territories and customers affected thereby.

Stat. Auth.: ORS Ch. 183, 756, ~~&~~ 758 & 759

Stats. Implemented: ORS 758.400 through 758.475 & 759.500 through 759.595

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 2-1993, f. & ef. 1-8-93 (Order Nos. 92-1793 & 93-035); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169)

### **860-025-0020**

#### **Applications for Allocation of Exclusively Served Territory for Electric Utilities, Gas Utilities, and Large Telecommunications Utilities**

~~Applications~~ An application under ORS 758.435 for an order of the Commission to allocate territory to a person providing exclusive ~~electric, gas, or telecommunications~~ utility service in a territory shall contain the following information:

(1) A map or maps, drawn to appropriate scale, showing the general location and boundaries of the applicant's service area.

(2) A map or maps, drawn to appropriate scale, showing the location of applicant's customers and facilities in the vicinity of the boundaries of the territory applied for in sufficient detail to enable the Commission to determine the boundaries of that territory served exclusively by applicant.

(3) A description by county, section lines, river, highway, road, street, or metes and bounds, where applicable and necessary, of the boundaries of applicant's exclusive

service area. Such map and legal description of boundary lines may be drawn and described ~~so as~~ to eliminate minor irregularities in the boundary.

(4) Facts showing that applicant is lawfully and in good faith providing exclusive **electric, gas, or telecommunications** utility service within the area described in the application and that no other person is providing a similar utility service within such territory.

(5) Such additional information as needed for a full understanding of the situation.

Stat. Auth.: ORS Ch. 183, 756, ~~&~~ 758 **& 759**

Stats. Implemented: ORS 758.400 through 758.475 **& 759.500 through 759.595**

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 2-1993, f. & ef. 1-8-93 (Order Nos. 92-1793 & 93-035); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169)

#### **860-025-0025**

#### **Applications for Allocation of Exclusively Served Territory and Adjacent Unserved Territory for Electric Utilities, Gas Utilities, and Large Telecommunications Utilities**

~~Applications~~ **An application** under ORS 758.435, for an order of the Commission to allocate territory to a person providing exclusive ~~electric, gas, or telecommunications~~ utility service in a territory and adjacent unserved territory shall contain the following information:

(1) The information required under OAR 860-025-0020.

(2) ~~Map~~ **A map or maps** similar to that required by OAR 860-025-0020(2) and description comparable to that required by OAR 860-025-0020(3), showing and describing the boundary of the adjacent unserved territory covered by the application.

(3) The names and addresses of all persons providing similar utility service in proximity to the unserved area applied for who may have an interest in or be affected by an approval or disapproval of the application.

(4) Facts showing that it is more economical and feasible to serve the adjacent unserved territory by an extension of the applicant's existing facilities than by an extension of the facilities of another person, including but not limited to the following:

(a) ~~Map~~ **A map or maps**, drawn to appropriate scale, showing location and capability of equipment, plant, or facilities including the capability, location, and route of proposed facilities, if any, which relate to the applicant's ability to extend utility service into the adjacent unserved area.

(b) Copies of such franchises or permits as the appropriate public authorities may require for extending service into the adjacent unserved area, or a statement that they will be filed at the hearing or a statement that no such authority is required by said

public authorities.

(c) The kind or nature and extent of the need or demand, or reasonable anticipated need or demand, for utility service within the unserved area.

(d) The estimated construction, operating and related costs of and revenues from providing the proposed utility service within the unserved area.

(5) Such additional information as needed ~~to enable~~ for a full understanding of the situation.

Stat. Auth.: ORS Ch. 183, 756, ~~& 758~~ & 759

Stats. Implemented: ORS 758.400 through 758.475 & 759.500 through 759.595

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 2-1993, f. & ef. 1-8-93 (Order Nos. 92-1793 & 93-035); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169)

#### **860-025-0027**

#### **Application to Transfer Rights to Allocated Territory for Electric Utilities, Gas Utilities, and Large Telecommunications Utilities**

(1) ~~Applications~~ An application under ORS 758.460 for an order of the Commission to approve the transfer of rights acquired by an allocation of territory shall ~~comply with OAR 860-025-0005(2) and (3) and shall~~ contain the following information:

(a) A statement of the purposes for the transfer, the supporting reasons therefore, and a detailed explanation thereof justifying why the transfer will not be contrary to public interest.

(b) Copies of all written evidence and a statement of all oral understandings ~~compromising~~ comprising the agreement between the transferor and transferee covering the transfer of the territory described in the application and sought to be transferred.

(c) A map or maps, drawn to appropriate scale, showing the general location and boundaries of the allocated territory sought to be transferred and the transferor's and transferee's adjacent service areas.

(d) A map or maps, drawn to appropriate scale, showing:

(A) The number and, as practicable, the location of customers and equipment or facilities of the transferor with a detailed description of such equipment or facilities within the territory sought to be transferred; and

(B) The location of equipment or facilities of the transferor and transferee, with a detailed description of the same, which are in the territory immediately adjacent to that sought to be transferred and which are or will be interconnected therewith.

(e) A legal description, comparable to that required in OAR 860-025-0020(3), of the

boundaries of the territory sought to be transferred.

(f) A legal description, comparable to that required in OAR 860-025-0020(3), of the resulting boundaries of the remaining allocated portion of the parcel of the transferor's territory where the territory sought to be transferred is only part of a parcel of transferor's allocated territory and a similar description of the resulting boundaries of the transferee's allocated territory where the territory sought to be transferred will be contiguous to a parcel of transferee's allocated territory.

(g) Copies of such franchises or permits, as the appropriate public authorities may require, authorizing the transferee to serve in the territory sought to be transferred, or evidence of the approval of the appropriate public authorities of the transfer to the transferee of the transferor's franchise or permit to serve the territory sought to be transferred.

(2) Applications under ORS 758.460 by an electric or utility for a Commission order approving the transfer of rights acquired by an allocation of territory, which would otherwise be subject to ORS 757.480 ~~or ORS 759.375~~, shall comply with OAR 860-027-0025.

**(3) Applications under ORS 759.560 by a large telecommunications utility for a Commission order approving the transfer of rights acquired by an allocation of territory, which would otherwise be subject to ORS 759.375, shall comply with OAR 860-027-0025.**

Stat. Auth.: ORS Ch. 183, 756, ~~&~~ 758 **& 759**

Stats. Implemented: ORS 758.400 through 758.475 **& 759.500 through 759.595**

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 2-1993, f. & ef. 1-8-93 (Order Nos. 92-1793 & 93-035); PUC 12-1997, f. & ef. 10-30-97 (Order No. 97-413); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169)

### **860-025-0050**

#### **Application by an Unserved Person for Service from a Large Telecommunications Utility**

**An application under ORS 759.590 for an order of the Commission directing another telecommunications utility to provide local exchange service to an unserved person shall comply with OAR 860-032-0220.**

**Stat. Auth.: ORS Ch. 183, 756 & 759**

**Stats. Implemented: ORS 756.040, 759.580, 759.585, 759.590 & 759.595**

**Hist.: NEW**

**860-034-0400**

**Maps and Records of Small Telecommunications Utilities and Telecommunications Cooperatives**

(1) Each **small telecommunications** utility and telecommunications cooperative shall keep on file current maps and records of the entire plant showing size, location, character, and date of installation of major plant items.

(2) Upon request, each **small telecommunications** utility and telecommunications cooperative shall file with the Commission an adequate description or maps to define the territory served. All maps and records, which the Commission may require the **small telecommunications** utility or telecommunications cooperative to file, shall be in a form satisfactory to the Commission.

Stat. Auth.: ORS Ch. 183, 756, 758 & 759

Stats. Implemented: ORS 756.040, 758.215 & 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468)

**860-034-0440**

**Applicability and Formal Requirements for Small Telecommunications Utilities and Telecommunications Cooperatives**

(1) The rules contained in this division are auxiliary to and supplemental to the rules contained in divisions 011 through 014 of this chapter, Practice and Procedure, and all applications or petitions for approval of contracts or amendments thereto, allocations of territory, assignment or transfer of rights acquired pursuant to an allocation of territory, and all other pleadings filed with the Commission pursuant to ORS 759.500 to 759.595 inclusive, shall be governed by the rules in divisions 011 through 014 of this chapter, Practice and Procedure, except as provided in sections (2) and (3) of this rule.

(2) All applications and petitions shall contain the full and correct name and business address of the applicant or petitioner.

(3) An original and three conformed ~~copied~~ **copies** of all applications and petitions shall be filed with the Commission.

Stat. Auth.: ORS Ch. 183, 756, & 759

Stats. Implemented: ORS 759.045 & 759.500 through 759.675

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185)

**860-034-0450**

**Applications for Approval of Contracts to Avoid or Eliminate Duplicate Utility Service for Small Telecommunications Utilities and Telecommunications Cooperatives**

For purposes of this rule, "utility service" means telecommunications utility service as defined in ORS 759.500(3). ~~Applications~~ An application under ORS 759.500 through ORS 759.595 for an order of the Commission approving a contract authorized thereunder shall contain in addition to the contract, if not contained therein, the following information:

(1) A map or maps, to appropriate scale, showing the general location and boundaries of the respective applicant's service areas.

(2) A map or maps, to appropriate scale, showing the location of customers who are being served by either or both of the parties, or who could be economically served by the then existing facilities of either party, or by reasonable and economic extensions thereto, who are covered by the contract.

(3) A description by county, section lines, river, highway, road, street, or metes and bounds, where applicable and necessary, designating the boundaries of the territory to be served by each party to the contract. Such legal description of boundary lines may be drawn and described:

(a) To eliminate minor irregularities in the boundary of each party when to do so will include within each party's territory, only that unserved area which may be economically served by the then existing facilities of the respective parties or by reasonable and economic extensions thereto; and

(b) In the case of persons providing utility service who have entered into exchange boundary agreements before May 31, 1961, to define mutually exclusive exchange service areas, the area affected by such agreement may be described by reference to the exchange area map in that agreement. However, the applicant shall not be relieved by such reference from showing that it can economically serve the unserved areas within the exchange area map with its existing facilities or by a reasonable and economic extension thereto.

(4) A description of the equipment and facilities of each party, which are the subject of sale, exchange, transfer, or lease pursuant to the contract and the consideration to be paid therefore.

(5) Facts showing that the contract will eliminate or avoid unnecessary duplicating facilities, and will promote the efficient and economic use and development and the safety of operation of the utility service systems of the parties to the contract, while providing adequate and reasonable service to all territories and customers affected thereby.

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Staff's Proposed Rule Revisions  
December 7, 2001

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045 & 759.500 through 759.595

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188); PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468); PUC 4-2001, f. & ef. 1-24-01 (Order No. 01-117)

### **860-034-0460**

#### **Applications for Approval of Amendments to Contracts to Avoid or Eliminate Duplicate Utility Service for Small Telecommunications Utilities and Telecommunications Cooperatives**

For purposes of this rule, "utility service" means telecommunications utility service as defined in ORS 759.500(3). ~~Applications~~ An application under ORS 759.530 for a Commission order approving an amendment to a contract approved pursuant to ORS 759.510 to ORS 759.520, inclusive, shall contain the amendatory contract and such information required by OAR 860-034-0450 as is pertinent to the Commission in making a decision thereon.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045 & 759.530

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188); PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468)

### **860-034-0470**

#### **Applications for Allocation of Exclusively Served Territory by Small Telecommunications Utilities and Telecommunications Cooperatives**

For purposes of this rule, "utility service" means telecommunications utility service as defined in ORS 759.500(3). ~~Applications~~ An application under ORS 759.535 for an order of the Commission to allocate territory to a person providing exclusive utility service in a territory shall contain the following information:

(1) A map or maps, drawn to appropriate scale, showing the general location and boundaries of the applicant's service area.

(2) A map or maps, drawn to appropriate scale, showing the location of the applicant's customers and facilities in the vicinity of the boundaries of the territory applied for in sufficient detail to enable the Commission to determine the boundaries of that territory served exclusively by applicant.

(3) A description by county, section lines, river, highway, road, street, or metes and bounds, where applicable and necessary, of the boundaries of applicant's exclusive

service area. Such map and legal description of boundary lines may be drawn and described ~~so as~~ to eliminate minor irregularities in the boundary.

(4) Facts showing that applicant is lawfully and in good faith providing exclusive utility service within the area described in the application and that no other person is providing a similar utility service within such territory.

(5) Such additional information as needed for a full understanding of the situation.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045 & 759.535

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188); PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468)

#### **860-034-0480**

#### **Applications for Allocation of ~~Exclusively Served Territory and Adjacent Unserved Territory for Small Telecommunications Utilities and Telecommunications Cooperatives~~**

For purposes of this rule, "utility service" means telecommunications utility service as defined in ORS 759.500(3). ~~Applications~~ **An application** under ORS 759.535, for an order of the Commission to allocate territory to a person providing exclusive utility service in a territory and adjacent unserved territory, shall contain the following information:

(1) ~~Information~~ **The information** required under OAR 860-034-0470.

(2) ~~Map~~ **A map or maps** similar to that required by OAR 860-034-0470(2) and description comparable to that required by OAR 860-034-0470(3), showing and describing the boundary of the adjacent unserved territory covered by the application.

(3) ~~Names~~ **The names** and addresses of all persons providing similar utility service in proximity to the unserved area applied for who may have an interest in or be affected by an approval or disapproval of the application.

(4) Facts showing that it is more economical and feasible to serve the adjacent unserved territory by an extension of the applicant's existing facilities than by an extension of the facilities of another person, including but not limited to the following:

(a) ~~Map~~ **A map or maps, drawn** to appropriate scale, showing location and capability of equipment, plant, or facilities including the capability, location, and route of proposed facilities, if any, which relate to the applicant's ability to extend utility service into the adjacent unserved area.

(b) Copies of such franchises or permits as the appropriate public authorities may require for extending service into the adjacent unserved area, or a statement that they will be filed at the hearing or a statement that no such authority is required by said

public authorities.

(c) The kind or nature and extent of the need or demand, or reasonably anticipated need or demand, for utility service within the unserved area.

(d) The estimated construction, operating, and related costs of and revenues from providing the proposed utility service within the unserved area.

(5) Such additional information as needed ~~to enable~~ for a full understanding of the situation.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045 & 759.535

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188); PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468)

#### **860-034-0490**

#### **Applications to Transfer Rights to Allocated Territory for Small Telecommunications Utilities and Telecommunications Cooperatives**

For purposes of this rule, "utility service" means telecommunications utility service as defined in ORS 759.500(3). ~~Applications~~ An application under ORS 759.560 for an order of the Commission to approve the transfer of rights acquired by an allocation of territory ~~shall comply with OAR 860-034-0440(2) and (3) and~~ shall contain the following information:

(1) A statement of the purposes for the transfer, the supporting reasons therefore and a detailed explanation thereof justifying why the transfer will not be contrary to the public interest.

(2) A copy of all written evidence and a statement of all oral understanding ~~comprising~~ comprising the agreement between the transferor and transferee covering the transfer of the territory described in the application and sought to be transferred.

(3) A map or maps, drawn to appropriate scale, showing the general location and boundaries of the allocated territory sought to be transferred and the transferor's and transferee's adjacent service areas.

(4) A map or maps, drawn to appropriate scale, showing:

(a) The number and, as practicable, the location of customers and equipment or facilities of the transferor with a detailed description of such equipment or facilities within the territory sought to be transferred; and

(b) The location of equipment or facilities of the transferor and transferee, with a detailed description of the same, which are in the territory immediately adjacent to that sought to be transferred and which are or will be interconnected therewith.

(5) A legal description comparable to that required in OAR 860-034-0470(~~34~~) of the boundaries of the territory sought to be transferred.

(6) A legal description comparable to that required in OAR 860-034-0470(~~34~~) of the resulting boundaries of the remaining allocated portion of the parcel of the transferor's territory where the territory sought to be transferred is only part of a parcel of transferor's allocated territory and a similar description of the resulting boundaries of the transferee's allocated territory where the territory sought to be transferred will be contiguous to a parcel of transferee's allocated territory.

(7) ~~Copies of such franchises or permits~~ **A copy of each franchise and permit,** as the appropriate public authorities may require, authorizing the transferee to serve in the territory sought to be transferred, or evidence of the approval of the appropriate public authorities of the transfer to the transferee of the transferor's franchise or permit to serve the territory sought to be transferred.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045 & 759.560

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188); PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468); PUC 4-2001, f. & ef. 1-24-01 (Order No. 01-117)

### **860-034-0495**

#### **Application by an Unserved Person for Service from a Small Telecommunications Utility**

**An application under ORS 759.590 for an order of the Commission directing another telecommunications utility to provide local exchange service to an unserved person shall comply with OAR 860-032-0220.**

**Stat. Auth.: ORS Ch. 183, 756, & 759**

**Stats. Implemented: ORS 756.040, 759.045, 759.580, 759.585, 759.590 & 759.595**

**Hist.: NEW**

### **860-036-0305**

#### **Maintenance of Plant and Equipment**

(1) ~~A Each~~ **Each** water utility shall have and maintain its entire plant and system in such condition that it will furnish safe, adequate, and reasonably continuous service.

(2) ~~A Each~~ **Each** water utility shall inspect its plant distribution system and facilities in such manner and with such frequency as may be needed to ensure a reasonably complete knowledge about their condition and adequacy at all times. ~~Such~~ **The water utility**

**shall keep such** record ~~shall be kept~~ of the conditions found as the utility considers necessary to properly maintain its system, unless in special cases the Commission specifies a more complete record.

(3) Dead end mains or other low flow portions of the distribution system shall be flushed **by the water utility** as needed or at reasonable intervals to eliminate or minimize complaints from customer's or applicants arising from an objectionable condition of water. ~~A~~ **The water utility shall keep a** record ~~shall be kept~~ of all flushings of main lines showing date, place, and duration.

(4) Each water utility shall inspect, exercise, and maintain valves and hydrants as necessary to ensure they are operable. ~~A~~ **The water utility shall keep a** record ~~shall be kept~~ of all inspections, maintenance, repairs, and exercises of all valves and hydrants.

Stat. Auth.: ORS Ch. 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.020

Hist.: PUC 13-1997, f. & ef. 11-12-97 (Order No. 97-434); PUC 15-1998, f. & ef. 8-27-98 (Order No. 98-359)

## **860-036-0900**

### **Service Territory Allocation**

(1) For purposes of service territory allocation OAR 860-036-0900 through OAR 860-036-0930:

(a) "Allocated territory" ~~shall~~ **means** an approved area with boundaries set out in ~~an~~ **a Commission** order granting an application for the allocation of territory;

(b) "Community water supply system" ~~shall~~ **means** a water source and distribution system, whether publicly or privately owned, that serves more than three residences or other users to whom water is provided for public consumption, including but not limited to schools, farm labor camps, industrial establishments, recreational facilities, restaurants, motels, mobile home parks, or group care homes;

(c) "Utility service" ~~shall~~ **means** service provided by a water utility, any equipment, plant, or facility for the distribution of water to users through a connected and interrelated distribution system. "Utility service" does not include service provided through or by the use of any equipment, plant, or facilities solely for the production and sale of water to other water utilities;

(d) "Water utility" ~~shall~~ **means** any water system that meets the definition of a public utility in ORS 758.300.

(2) The requirements of this section apply to all water utilities.

(3) A water utility providing water service shall make application to the Commission,

on forms provided by the Commission, for an order designating the territory it serves adequately and exclusively as its exclusive service territory.

(4) The Commission shall recognize the service territory of a water utility that has an existing franchise as of October 23, 1999, with a municipality as an exclusive service territory. Upon application, any such water utility may request an order from the Commission to designate exclusive service territory in addition to those identified in the franchise agreement, if the water utility is providing adequate and exclusive service to areas outside the areas identified in the franchise agreement.

Stat. Auth.: ORS Ch. 183, 756, 757 & 758

Stats. Implemented: ORS 758.300 through 758.320

Hist.: PUC 9-1999 (Temp), f. 10-22-99 & ef 10-23-99 (Order No. 99-650); PUC 6-2000, f. 4-18-00 & ef. 4-20-00 (Order No. 00-194)

#### **860-036-0905**

##### **Original Application Requirements**

(1) A completed application requesting an exclusive service territory for area the water utility is currently serving shall include the following:

- (a) The water utility's complete name, address, and telephone number;
- (b) The nature of the water utility's business organization, that is, corporation, partnership, limited partnership, sole proprietorship, association, etc.;
- (c) The name(s) and address(es) of all corporate officers, directors, partners, or any other person(s) owning an interest in the water utility;
- (d) A statement showing the financial and technical ability of the applicant to provide service to the current territory;
- (e) A detailed map or maps of the water system showing the existing lines and facilities;
- (f) A detailed map or maps identifying the boundaries of the water utility's current service territory marked with a fine-tipped RED pen. The map must identify the map source and the date of the map in the upper left corner of the map. Appropriate maps may include: a GIS map, city or county map, tax lot map, plat map, or telephone book map. The map must be of sufficient scale and detail to identify the utility's current service territory boundaries and enable correlation with a written description of such territory;
- (g) A complete and accurate written description of the water utility's current service territory. The description may be a legal description or may reference township, range, and section; interstates, state roads, and local streets; rivers, streams, and major bodies of water; and recorded plats or lots, tracts, or other recorded instruments identifying

permanent fixtures references;

(h) Evidence that the water utility owns the land upon which the water utility facilities are located, or a copy of an agreement that provides for the continued use of the land, such as an easement or 99-year lease;

(i) A schedule showing the number of customers currently served, by class and meter size, as well as the number of customers projected to be served when the current service territory is fully occupied; and

(j) The name and address of the nearest municipality, county, any known planning councils, any known governmental authorities having concern with the application, and all known water utilities and community water supply systems in the general area of the current service territory.

(2) The application may also include any adjacent territory that the water utility plans to serve within six months following the date of the application:

(a) If another water utility or community water supply system is not serving such territory; and

(b) If the applicant demonstrates that it is more economical and feasible to serve the area by an extension of the applicant's existing facilities than by an extension of the facilities of another water utility or community water supply system. Application requirements for expanded service territory are contained in OAR 860-036-0915.

(3) In reviewing a completed application submitted under Chapter 695 Sections 2-4, Oregon Laws 1999 for current exclusive service territory, the Commission shall consider the applicant's ability to provide adequate and exclusive service to its existing customers which may include but is not limited to, financial resources, technical ability, customer service history, physical facilities, system capacity, revenue and cost studies, and system compliance with the Oregon Health Division's water rules and regulations.

Stat. Auth.: ORS Ch. 183, 756, 757 & 758

Stats. Implemented: ORS 758.300 through 758.320

Hist.: PUC 9-1999 (Temp), f. 10-22-99 & ef 10-23-99 (Order No. 99-650); PUC 6-2000, f. 4-18-00 & ef. 4-20-00 (Order No. 00-194)

### **860-036-0925**

#### **Transfer of Approved Service Territory**

(1) Except as provided in paragraph (6) of this rule, the rights acquired by an approved service territory may be transferred only with the approval of the Commission after a finding that the assignment or transfer is in the public interest.

(2) Service territory approved by Commission order shall not be altered solely as the result of a change in ownership or form of ownership.

(3) Upon the death of an applicant under an approved service territory, the executor or administrator shall continue operating the water utility for ~~the purpose of~~ transferring such rights for a period not to exceed two years.

(4) Applicants must submit to the Commission an application to transfer an approved service territory. The application shall include:

(a) ~~the~~ **The** application requirements as provided in OAR 860-036-0915;

(b) Evidence demonstrating that the transfer of the service territory is in the public interest.

(5) Notice and procedure of the proposed transfer shall be given as provided in ORS 860-036-0910.

(6) Commission approval is not required if at least 75 percent of the affected customers agree to the proposed transfer.

Stat. Auth.: ORS Ch. 183, 756, 757 & 758

Stats. Implemented: ORS 758.300 through 758.320

Hist.: PUC 9-1999 (Temp), f. 10-22-99 & ef 10-23-99 (Order No. 99-650); PUC 6-2000, f. 4-18-00 & ef. 4-20-00 (Order No. 00-194)

### **860-036-0930**

#### **Exclusive Obligation**

(1) The approved service territory of a water utility shall be exclusive. A water utility or community water supply system shall not provide water utility service within the approved exclusive service territory of another water utility without the express approval of the Commission.

(2) A water utility shall serve only customers within its approved exclusive service territory and shall serve all applicants for service within such territory. The water utility may refuse service only as provided ~~by Commission rule~~ in **OAR** 860-036-0080.

Stat. Auth.: ORS Ch. 183, 756, 757 & 758

Stats. Implemented: ORS 758.300 through 758.320

Hist.: PUC 9-1999 (Temp), f. 10-22-99 & ef 10-23-99 (Order No. 99-650); PUC 6-2000, f. 4-18-00 & ef. 4-20-00 (Order No. 00-194)

**PUBLIC UTILITY COMMISSION OF OREGON  
INTEROFFICE CORRESPONDENCE**

**DATE:** July 9, 2001

**TO:** Phil Nyegaard, Sam Petrillo, and Clark Jackson

**FROM:** Dave Booth

**SUBJECT:** Docket AR 395  
Proposed revisions to OAR 860-025-0000 through 0027, OAR 860-032-0001(11),  
OAR 860-032-0020, OAR 860-032-0023, OAR 860-032-0035, OAR 860-032-0040,  
OAR 860-032-0080, and OAR 860-032-0200.

**SUMMARY RECOMMENDATION:**

Staff recommends the Commission decline to initiate rulemaking in response to proposals from Qwest Corporation and Verizon Northwest, Inc. to revise OAR 860-025-0000 through 0027, OAR 860-032-0001(11), OAR 860-032-0020, OAR 860-032-0023, OAR 860-032-0035, OAR 860-032-0040, OAR 860-032-0080, and OAR 860-032-0200.

**DISCUSSION:**

In November 2000, the Commission opened docket AR 395 to review its administrative rules as required by ORS 183.545. The Commission invited comments regarding the rules. Qwest Corporation (Qwest) filed comments recommending changes to OAR 860-032-0001(11), OAR 860-032-0020, OAR 860-032-0040, and OAR 860-032-0200(6). Verizon Northwest, Inc. (Verizon) filed comments recommending changes to OAR 860-025-0000 through 0027, OAR 860-032-0035, OAR 860-032-0080, and OAR 860-032-0200. Qwest and Verizon proposed changes to other rules as well, but those proposals are not addressed in this memorandum.

In addition, at the June 15, 2001, public meeting, the Commission referred to docket AR 395 a Verizon proposal in docket AR 398. In the latter docket, Verizon recommended the Commission merge OAR 860-032-0023 (renumbered from OAR 860-032-0210) and OAR 860-032-0035. Verizon also proposed in docket AR 398 that the Commission should add a section to the merged rule dealing with price listing for toll services under ORS 759.030(8). The Commission concluded as follows:

[I]t may make sense to consider merging OAR 860-032-0210 with OAR 860-032-0035 or, alternatively, to consider incorporating the price listing requirements associated with ORS 759.030(8) into OAR 860-032-0035. However, both of these options may raise substantive issues relating to toll service price listing that are beyond the scope of the notice in this proceeding. The notice provides that the Commission will consider housekeeping changes only, not make substantive changes in the applicability of the rules under consideration. Accordingly, Verizon's proposal cannot be considered at this time. (Order No. 01-488, page 3.)

This memorandum addresses Verizon's AR 398 proposal in the section dealing with OAR 860-032-0035.

OAR 860-025-0000 through OAR 860-025-0027

These Division 025 rules govern territory allocation for electric and natural gas utilities, as well as telecommunications utilities with 50,000 or more access lines. Comparable rules in Division 034 (OAR 860-034-0440 through OAR 860-034-0490) govern territory allocation for telecommunications utilities with fewer than 50,000 access lines. Territory allocation is established in Oregon law. ORS 758.400 through ORS 758.475 authorize territory allocation for electric and natural gas utilities. ORS 759.500 through ORS 759.595 authorize territory allocation for telecommunications utilities. Territory allocation permits utilities to enter into contracts, in which neighboring utilities agree to limit their utility service to mutually exclusive service territories. The Commission must approve these contracts.

Verizon filed the following comments under the heading "Division 25. Duplication of Facilities and Allocation of Territory"<sup>1</sup>:

This Division should not apply to any telecommunications provider because of Section 253(a) of the Act. That provision says state laws may not limit or prohibit competitive entry. On its face, a provision such as OAR 860-025-0020 (which appears to establish exclusive serving areas) cannot be squared with Section 253(a). Therefore, it is not appropriate to include telecommunications providers under this Division.

Verizon believes the Commission should eliminate telecommunications utilities from territory allocation rules in Division 025 due to an alleged conflict with Section 253(a) of the Act. Staff disagrees with Verizon's position for two reasons.

First, Verizon fails to recognize that the statutes, not the rules, establish territory allocation for telecommunications utilities. Deleting mention of telecommunications utilities from OAR 860-025-0000 through OAR 860-025-0027 would do nothing to remove territory allocation for telecommunications utilities from Oregon law. It would only confuse matters by eliminating Commission procedures for accomplishing territory allocation. The appropriate venue for Verizon to pursue changing Oregon law is the Oregon legislature, not the Commission. Revisions to the administrative rules cannot resolve Verizon's concerns.

Second, despite the territory allocation statutes, Oregon law permits competitive entry. See ORS 759.020, ORS 759.050, and OAR 860-032-0001 through OAR 860-032-0010. The Commission may certify more than one telecommunications provider in a service territory, even though some or all of the territory has been allocated to a particular telecommunications utility. The Commission has certified hundreds of competitive local service providers. Some of these are telecommunications utilities that have request authority to compete in territory allocated to other telecommunications utilities. In fact, Verizon is authorized to compete in territory that is allocated to Qwest, CenturyTel of Oregon, and United Telephone Company of the Northwest. Staff agrees that the territory allocation statutes may be

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<sup>1</sup> In its comments, Verizon refers to Division 025. Division 025 generally deals with territory allocation. However, one rule, OAR 860-025-0030 deals with construction of overhead power lines by electric utilities. Staff assumes that Verizon's comments are limited to OAR 860-025-0000 through OAR 860-025-0027, and exclude OAR 860-025-0030. Verizon's comments do not mention territory allocation rules for small telecommunications utilities in Division 034. Staff assumes that Verizon's comments apply to the relevant Division 034 rules as well.

outdated given ORS 759.020 and ORS 759.050, but these statutes and the Division 025 rules do not, in actual practice, impose a barrier to entry.

Staff recommends the Commission not initiate rulemaking to revise OAR 860-025-0000 through OAR 860-025-0027.

OAR 860-032-0001(11)

This rule defines "telecommunications service." Qwest contends that the definition in the current rule is more expansive than permitted by law. Specifically, Qwest objects to the phrase, "and all services provided in connection with such services." Qwest asserts that the latter phrase goes beyond the scope of telecommunications service as defined in ORS 759.005(2)(g).

Staff disagrees with Qwest's assertion that the rule is more expansive than permitted by law. Qwest's comments ignore another statute, ORS 756.010(8). The latter statute says in relevant part, "except as otherwise specifically provided or unless the context requires otherwise: (8) 'Service' is used in its broadest and most inclusive sense and includes equipment and facilities related to providing the service or the product served." The definition in OAR 860-032-0001(11) is within the scope of the law. It is authorized by ORS 759.005(2)(g) and ORS 756.010(8) in combination.

Staff recommends the Commission not initiate rulemaking to revise OAR 860-032-0001(11). Staff notes that Qwest previously raised the same issue in docket AR 347, the Commission's prior review of administrative rules pursuant to ORS 183.545. In docket AR 347, the Commission agreed with staff's recommendation to not initiate rulemaking in this matter.

OAR 860-032-0020

This rule deals with abandonment of service. It requires telecommunications utilities to petition the Commission for approval if they intend to discontinue a regulated service. The rule also requires that the utilities provide notice to affected customers regarding the utility's intent to abandon the service, and the fact that the utility has a petition pending with the Commission. If the Commission does not deny the petition, or set it for hearing within 60 days, the petition is deemed approved. The Commission recently adopted current language in OAR 860-032-0020 in docket AR 365. See Order No. 00-068, February 8, 2000.

Qwest proposes that the Commission change OAR 860-032-0020 so that the petition and notice requirements apply only when utilities intend to discontinue services that are on the list of essential services in OAR 860-032-0200(5). OAR 860-032-0200(5) lists "essential services" for purposes of ORS 759.195. The latter statute allows telecommunications utilities to petition the Commission for an alternative form of regulation (AFOR). Under an AFOR, the utility gains considerable flexibility in pricing its non-essential services. The Commission continues to fully regulate prices for "essential services." ORS 759.195(6) required the Commission to adopt a rule defining essential services for the purpose of implementing ORS 759.195. Hence, the Commission adopted 860-032-0200, including the list of essential services set forth in 860-032-0200(5).

Staff disagrees with the change proposed by Qwest. Staff does not believe that telecommunications utilities should be permitted to discontinue regulated services without notice to customers and without

Commission review. The mere fact that a service is not on the list of essential services in OAR 860-032-0200(5) should not create the presumption that a utility can entirely cease offering the service without regulatory oversight. No matter the degree of rate regulation, the Commission should ensure that customers may seek Commission protection if the utility intends to discontinue a regulated service.

Staff recommends the Commission not initiate rulemaking to revise OAR 860-032-0020.

#### OAR 860-032-0035

This rule establishes procedures and standards that implement price listing under ORS 759.030(6). The statute provides that a telecommunications utility may petition the Commission to price list a product or service that is part of local exchange telecommunications services. To obtain permission to price list, the utility must demonstrate that the product or service is either "subject to competition," or "is not an essential product or service." OAR 860-032-0035(6) establishes criteria the Commission will use to determine whether a service is "not essential." The Commission recently adopted the criteria set forth in OAR 860-032-0035(6) in docket AR 365. See Order No. 00-068, February 8, 2000.

Verizon contends that OAR 860-032-0035(6) establishes criteria that are too inflexible. In particular, Verizon believes that the Commission should eliminate from OAR 860-032-0035(6)(d) the requirement that a service be "not essential for all customer classes." Verizon would like the rule to recognize that "a service that is 'essential' in one locale or for one customer class may be 'not essential' in another area or for another customer class." Apparently, Verizon would like the Commission to interpret ORS 759.030(6) as permitting price listing selectively for specific geographic areas and specific customer classes.

ORS 759.030(6) permits price listing of a "product or service." The Commission has consistently interpreted ORS 759.030(6) to mean that an entire service may be price listed, wherever and to whomever the petitioning utility offers the service within its service territory. Verizon would like the Commission to fundamentally change its interpretation of this statute to permit mixed price listing and full regulation for a service. In Verizon's view, a utility should be able to use ORS 759.030(6) to obtain price listing for a service in a portion of the utility's service territory, while leaving the same service fully rate regulated elsewhere. Similarly, Verizon would have the Commission grant price listing of a service for one class of customers, while leaving the same service fully rate regulated for other customer classes.

Staff believes that the Commission is correctly interpreting ORS 759.030(6). The Commission has consistently treated a petition to price list a product or service under this statute as a petition to price list the entire service. The statute clearly contemplates price listing of an entire service, not Verizon's notion of mixed price listing and full rate regulation for the same service. Staff notes that another statute addresses Verizon's desire for selective geographic price listing. Utilities may gain downward pricing flexibility on an exchange-by-exchange basis under the competitive zone law, ORS 759.050.

In docket AR 398, Verizon recommended that the Commission merge OAR 860-032-0023 (renumbered from OAR 860-032-0210) into OAR 860-032-0035. At the June 15, 2001, public meeting, the Commission referred this proposal by Verizon to docket AR 395. OAR 860-032-0023 sets forth requirements for a petition to price list numerous services as part of an AFOR plan pursuant

to ORS 759.195. In other words, OAR 860-032-0023 deals with bulk price listing of numerous services in the context of an overall alternative regulation scheme. In contrast, OAR 860-032-0035 sets forth requirements for petitions to price list a single local exchange product or service under ORS 759.030(6). Verizon thinks these rules should be merged because both have something to do with price listing. Staff agrees that both rules deal with price listing, but staff does not agree that the rules should be merged. A petition for price listing as part of an AFOR is very different from a petition to price list a single product or service under ORS 759.0030(6). The current rules appropriately set forth distinctive requirements in separate rules for each type of price list petition. The distinction should be maintained.

In docket AR 398, Verizon recommended that the Commission add a new part to OAR 860-032-0035 which would address price listing under ORS 759.030(8). The Commission referred this proposal by Verizon to docket AR 395. OAR 860-032-0035 currently addresses petitions to price-list under ORS 759.030(6). Petitions to price-list under ORS 759.030(8) are not covered by OAR 860-032-0035 or any other rule. ORS 759.030(8) deals with price listing for interexchange services, such as long distance toll. ORS 759.030(6) deals with price listing for local exchange services. ORS 759.030(6) and (8) have different standard for granting price listing. ORS 759.030(6) authorizes the Commission to grant price listing for a local exchange service if a utility demonstrates either that the service is subject to competition, or that it is not essential. ORS 759.030(8) authorizes the Commission to grant price listing for an interexchange service if the utility demonstrates that the service is subject to competition. The "not essential" standard applies only to local exchange services, not interexchange services.

Staff agrees with Verizon that no administrative rule currently sets forth requirements that apply to petitions for price listing of interexchange services under ORS 759.030(8). However, there is no requirement that every provision in the statutes have a rule. In staff's view, the statute is sufficiently clear on its face for a utility to file a petition for price listing under this section of law. Verizon's comments do not explain why it believes a rule is needed to implement ORS 759.030(8). Absent such an explanation, staff concludes that the current rules are adequate.

Staff recommends the Commission not initiate rulemaking to revise OAR 860-032-0035.

#### OAR 860-032-0040

This rule addresses the general topic of subsidies for telecommunications services. The Commission adopted OAR 860-032-0040 in 1985 to implement ORS 759.015 and ORS 759.030(9). ORS 759.015 is a statement by the Oregon legislature, that it is "the goal of the State of Oregon to secure and maintain high quality universal telecommunications service at just and reasonable rates for all classes of customers and to encourage innovation within the industry by a balanced program of regulation and competition." ORS 759.030(9) authorizes the Commission to determine whether a service provided by a telecommunications utility should be subsidized in order to meet legislative goals. If the Commission determines that a subsidy is required, the Commission then must conduct an investigation, and only after hearings determine revenue sources to provide the subsidy as well as the manner of collection and distribution of the fund. OAR 860-032-0040 basically repeats statutory language from ORS 759.015 and ORS 759.030(9).

In its comments, Qwest states:

It is unclear how this rule interacts with requirements for universal service imposed by Section 254 of the federal Telecommunications Act of 1996 (the "Act"). There is only one source for a subsidy to telecommunications service providers – the Universal Service Fund. To the extent this rule is inconsistent with the Act, it should be revised and clarified.

Qwest's comments fail to recognize that if there is a conflict between OAR 860-032-0040 and Section 254 of the Act, the conflict is a matter of statute not rule. OAR 860-032-0040 largely repeats language found in Oregon law. As a result, revisions to the rule cannot resolve Qwest's concerns. Moreover, Staff does not agree that the statutes and the rule necessarily conflict with Section 254 of the Act. OAR 860-032-0040(2) allows any person to petition the Commission to require telecommunications providers in general to subsidize a telecommunications utility's service. The Commission would no doubt consider such a petition in the context of the Act and recent Oregon law creating an Oregon Universal Service (OUS) Fund. See ORS 759.425. The Commission has authority under ORS 759.425 to implement explicit and competitively neutral subsidies for basic telephone service using the Oregon Universal Service (OUS) Fund.

Staff recommends the Commission not initiate rulemaking to revise OAR 860-032-0040. Staff notes that Qwest previously raised the same issue in docket AR 347, the Commission's prior review of administrative rules pursuant to ORS 183.545. In docket AR 347, the Commission agreed with staff's recommendation to not initiate rulemaking in this matter.

#### OAR 860-032-0080

This rule defines "gross retail intrastate revenue" for purposes of the Commission's annual fees payable by telecommunications providers. The rule implements ORS 756.310(6).

Verizon argues that OAR 860-032-0080 should exclude yellow page revenues from the assessment of PUC fees. Staff disagrees. Yellow page revenues have long been assigned to the local jurisdiction and included in the PUC fee assessment base. In its comments in docket AR 395, Verizon has not provided any new reasons as to why the Commission should change the basis of the assessment.

Less than two years ago, in docket AR 362, Qwest Corporation and Verizon presented the same argument to the Commission, and the Commission disagreed with the utilities. According to Order 99-734, pages 4-5:

Commission deems yellow page directories to be an intrastate service. The directories are distributed locally and are used almost exclusively by intrastate retail customers . . .

In addition, HB 2578 is intended in part to broaden the Commission's funding base to add competitive telecommunications providers to the assessment base and to modify the base accordingly. There is nothing in the legislative history to indicate that the Legislature intended to exclude yellow page revenues . . .

Staff recommends the Commission not initiate rulemaking to revise OAR 860-032-0080.

OAR 860-032-0200

This rule defines "essential services" for purposes of ORS 759.195. As discussed previously in the context of Qwest's proposals for OAR 860-032-0020, ORS 759.195 authorizes the Commission to approve alternative form of regulation (AFOR) plans. Under an AFOR plan, essential local exchange services are provided greater regulatory rate protection than non-essential services. ORS 759.195 specifically directed the Commission to establish a list of essential services by rule. In December 1988 (Order No. 88-1522), the Commission defined essential services and approved a list of such services in OAR 860-032-0200(5). See docket AR 188. In August 1999 (Order No. 99-497, docket AR 353), the Commission removed Public Coin and Semi-Public Coin from the essential services list. The Commission approved deletion of these services because the Federal Communications Commission (FCC) had recently deregulated public telephone services on a national basis.<sup>2</sup>

Qwest now proposes the Commission delete several more services from the list of essential services in OAR 860-032-0200(5): (1) multi-party services (i.e., Residential Multiparty, and Suburban), (2) Directory Listings (White and Yellow Pages), and (3) Directory Assistance. Verizon also recommends that directory assistance be deleted from the list. (4) In addition, Verizon proposes changes to OAR 860-032-0200 that would allow a service to be defined as essential for specific geographic areas and specific customer classes. In other words, Verizon wants the rule modified so that a service can be essential in one portion of a utility's service territory, and non-essential elsewhere. Similarly, Verizon proposes that a service can be essential for some customer and non-essential for other customers. Verizon proposed the same kind of change to OAR 860-032-0035, as discussed above.

Staff disagrees with the proposals by Qwest and Verizon.

(1) With regard to deleting multi-party services, Qwest argues that services of this type should be removed from the list for several reasons: (a) Qwest no longer offers multi-party service; (b) Providers that are eligible for universal service funding must offer single-party service to all customers; and (c) The Commission did not include multi-party service as a basic telephone service in OAR 860-032-0190 (renumbered from OAR 860-032-0260).

In response to the first argument, Staff does not believe it is appropriate to delete multi-party service from the essential services list simply because Qwest no longer offers this type of service. The rule is not for Qwest alone.<sup>3</sup> The essential services list must accommodate all utilities that may file for an AFOR plan under ORS 759.195. At least some of the telecommunications utilities that could file such a plan are currently offering multi-party service in their tariffs. For example, CenturyTel of Oregon,

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<sup>2</sup> In docket AR 353, Qwest raised a concern that OAR 860-032-0200 may require Qwest to offer every service on the essential services list. In Order No. 99-497, the Commission clarified that telecommunications utilities are not required to offer all services on the essential services list.

<sup>3</sup> Indeed, OAR 860-032-0200 does not even apply to Qwest. Qwest has already elected permanent price cap regulation under ORS 759.410, and therefore will not be filing an AFOR plan under ORS 759.195.

Inc. offers Residential Two-Party and Residential Suburban Line Service.<sup>4</sup> Staff believes that multi-party service should remain on the list of essential services as long as any of the utilities that could possibly apply for an AFOR plan are offering this type of service.

In response to the second argument, Staff acknowledges that to be eligible for support from the federal and Oregon universal service funds, a carrier must offer single-party service throughout a designated service area. However, single-party service may be very expensive if mileage or line extension charges apply. Some carriers keep multi-party service available as a less expensive option for consumers in rural areas. The Commission should continue to fully regulate rates for multi-party service in an AFOR plan so long as telecommunications utilities continue to make available this type of service.

In response to the third argument, staff does not believe that the definition of essential services in OAR 860-032-0200 should be linked to the definition of basic telephone service in OAR 860-032-0190. Qwest implies that the lists of essential and basic services should be the same. However, Qwest ignores an important distinction between "basic" and "essential" as these terms are employed in Oregon law. The definition of essential services in OAR 860-032-0200 has but one purpose, and that is to identify which services will remain fully rate-regulated under an AFOR. In contrast, the definition of basic telephone service in OAR 860-032-0190 has two purposes. One is to identify which services will remain fully rate regulation when a telecommunications utility elects price cap regulation under ORS 759.410. Staff concedes that in this regard, the basic and essential classifications are conceptually very similar. However, the basic services definition has another purpose that is quite apart from rate regulation. The Commission's definition of basic telephone service is used to identify which services are eligible for support from the Oregon Universal Service (OUS) Fund. See ORS 759.425. The more extensive the Commission makes the list of basic services, the larger the OUS Fund, and the larger the OUS surcharge.

How the Commission defines basic telephone service impacts both the scope of rate regulation and the size of the OUS Fund. Mindful of both considerations, the Commission arrived at a definition of basic telephone service that is considerably more restrictive than the definition of essential services. See Order No. 00-265, docket AR 368. There is a clear difference between basic telephone service and essential services. This distinction should be maintained in the administrative rules.

(2) With regard to deleting Directory Listings (White and Yellow Pages), Qwest merely states that it believes directory listings are not essential. The company offers no explanation or support. Staff believes that directory listings are as essential today as they were in 1988 when the Commission approved the original rule. A white pages directory listing is still a part of basic local exchange service, just as it was in 1988. A yellow page listing is still a part of basic local exchange service for business customers, just as it was in 1988. Qwest has not presented a convincing argument for changing the Commission's original decision to include directory listings as an essential service.

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<sup>4</sup> See CenturyTel of Oregon, Inc., PUC OR No. 5, First Revised Sheet No. 1.12, Effective November 24, 2000. These services are grandfathered. They are available only to existing customers at their existing locations.

(3) With regard to deleting Directory Assistance, Qwest states<sup>5</sup>:

According to the Commission's prior orders and OAR 860-032-0260(2)(e), directory assistance itself, which is subject to competition, is neither an essential service nor basic telephone service; rather providing "access to" directory assistance is an essential service or basic telephone service. This section should be changed to reflect that "Access to Directory Assistance" is an essential service.

Verizon addresses deletion of Directory Assistance as follows:

Verizon proposes that directory assistance be deleted from the list all together at this time because the service is not essential. Many alternatives exist to obtaining telephone numbers from this local telephone company service, including listings available on the Internet and from alternative vendors.

Contrary to Qwest's claim, the Commission has not issued an order that concludes Directory Assistance is not an essential service. Perhaps Qwest is confusing essential services with basic telephone service. In docket AR 368, the Commission determined that basic telephone service should include "access to directory assistance," but not Directory Assistance itself. See Order No. 00-265. However, basic telephone service is distinct from essential services, as discussed above. The Commission's definition of basic telephone service in OAR 860-032-0190 should not determine what is essential in OAR 860-032-0200. As for alternatives to Directory Assistance, Staff believes that claims of competition by Qwest and Verizon are not well supported, and are insufficient to justify rulemaking in this matter.

Staff recommends the Commission not initiate rulemaking to revise OAR 860-032-0200. Staff notes that Qwest previously proposed in docket AR 347 that multi-party services (i.e., Residential Multiparty and Suburban), Directory Listings (White and Yellow Pages), and (3) Directory Assistance be deleted from the list of essential services. Docket AR 347 was the Commission's prior review of administrative rules pursuant to ORS 183.545. In docket AR 347, the Commission agreed with staff's recommendation not to initiate rulemaking to delete these services from OAR 860-032-0200(5).

**STAFF RECOMMENDATION:**

Staff recommends the Commission conclude that it should not initiate rulemaking in response to proposals from Qwest Corporation and Verizon Northwest, Inc. to revise OAR 860-025-0000 through 0027, OAR 860-032-0001(11), OAR 860-032-0020, OAR 860-032-0035, OAR 860-032-0040, OAR 860-032-0080, and OAR 860-032-0200.

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<sup>5</sup> Qwest refers in its comments to OAR 860-032-0260. This rule was renumbered OAR 860-032-0190 in docket AR 410.