

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: February 19, 2002**

REGULAR CONSENT EFFECTIVE DATE _____

DATE: February 4, 2002

TO: Commissioners Hemmingway, Beyer, and Smith

FROM: Lowell Bergen, Administrative Law Judge

SUBJECT: AR 422: Requests permanent adoption of amendments to OARs 860-026-0025 and 860-026-0030 relating to Procedures for Telecommunications Utility Promotions.

ADMINISTRATIVE LAW JUDGE RECOMMENDATION:

Adopt modifications to rules pursuant to HB 3500 and the Triennial Review docket.

DISCUSSION:

HB 3500 requires the Commission to adopt rules governing service promotion rate schedules by telecommunications utilities. Telecommunications utility promotions were included in the Commission's triennial review docket, AR 395. At its August 7, 2001, Public Meeting, the Commission opened a rulemaking to revise Commission rules OAR 860-026-0025 and 860-026-0030 to comply with the legislation. Staff proposed amendments to those two rules and the proposed amendments were attached to the Commission's Notice of Rulemaking.

Qwest and Verizon filed comments to the proposed rule amendments. Qwest questioned Staff's inclusion of all telecommunications utilities, rather than just large telecommunications utilities, in the ambit of the rules. It also questioned Staff's restriction of promotions to no more than 90 consecutive days or a total of 180 days in a twelve-month period. Verizon contended that Staff's inclusion of affiliates in restrictions on telecommunications promotions was redundant because the proposed rule already restricted promotions conducted directly or indirectly.

I presided over a procedural conference on January 8, 2002. The parties stated that they were optimistic that they could agree on language for the rules that would satisfy their interests and the statute. On January 18, 2002, Staff filed a letter stating that the

parties had agreed on language to propose to the Commission. The agreed-upon rules are attached to this Report.

There is no dispute in this docket. Qwest's concerns were resolved by limiting the restrictions contained in OAR 860-026-0025 to large telecommunications utilities and by dropping the 90-consecutive-day limitation. Verizon's concern was resolved by substituting "or in concert with others," for "affiliate" as originally proposed by Staff. The amendments to the rules proposed by the parties are reasonable and meet the requirements of HB 3500.

PROPOSED COMMISSION MOTION:

Recommend adoption of the order and rules attached to this report.

ORDER NO. DRAFT

ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 422

In the Matter of a Proposed)
Rulemaking Opened as a Result of AR)
395 (Triennial Review) (and Required)
by HB 3500) to Amend OARs 860-026-)
0025 and)
860-026-0030 Relating to Procedures)
for Telecommunications Utility)
Promotions.)

ORDER

DISPOSITION: RULES AMENDED

On August 7, 2001, the Commission opened a rulemaking proceeding to revise Oregon Administrative Rules 860-026-0025 and 860-026-0030. The Commission's action was taken as part of Docket No. AR 395, the

Commission's triennial review process. The proposed changes to the rules relate to telecommunications utility promotions.

The Commission filed a Notice of the Proposed Rulemaking with the Secretary of State on September 6, 2001, and subsequently served it on all interested participants. 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 October 2001 Oregon Bulletin.

On October 22, 2001, Verizon Northwest Inc. and Qwest Corporation filed comments about the proposed changes to the rules. On January 8, 2002, Lowell Bergen, an Administrative Law Judge for the Commission, presided over a procedural conference. The participants requested time to attempt to agree on what the rules should say. On January 18, 2002, Staff counsel filed a letter stating that the participants had reached agreement for the two rules at issue. No disputed issues remained and the participants desired no further proceedings in this docket.

At its February 19, 2002, public meeting, the Commission adopted the proposed amendments as set forth in Appendix A.

ORDER

IT IS ORDERED that the modifications to the rules shown on Appendix A to this order are adopted.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

ORDER NO. DRAFT

A party 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.

PROPOSED RULES REVISED: 01-08-02

860-026-0025

Filing of Proposed Promotional Concessions

(1) No An energy ~~or large telecommunications~~ utility or its affiliate shall **not** offer, grant, or vary any promotional concession directly or indirectly, or in concert with others, or by any means whatsoever, unless **the energy utility has filed** a description of such concession ~~has been filed~~ with the Commission. ~~A~~ **The energy utility shall furnish a** copy ~~thereof shall be furnished of the filing~~ to each other **energy** utility providing service in any portion of the service area of the filing utility.

(2) A large telecommunications utility shall not:

(a) Offer, grant, or vary any promotional concession for a regulated service directly or indirectly, or in concert with others, or by any means whatsoever, unless the large telecommunications utility has filed a description of such concession with the Commission; and

(b) Promote any regulated service, directly or indirectly, for more than a total of 180 days in any 12-month period.

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

Stat. Implemented: 756.105

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)

860-026-0030

Notice and Effective Date of Promotional Concessions for Energy Utilities

All filings required **from energy utilities** by OAR 860-026-0025 shall be effective upon 30 days' notice to the Commission, subject to suspension and cancellation by the Commission. However, the Commission may allow changes without requiring the 30 days' notice by entering an order specifying the changes to be made and the time when they shall take effect.

Stat. Auth.: ORS Ch. 183 & 756

Stats. Implemented: ORS 757.007, 757.220 & 759.190

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