

DISCUSSION:

At its Public Meeting on January 8, 2002, the Commission adopted staff's proposal to open rulemaking docket AR 437. Staff's proposal included adopting the October 11, 2001, version of FCC Part 64, Subpart I, Allocation of Costs. Since then, staff has concluded that the cost allocation rules deserve additional review.

In comments filed on February 22, 2002 in docket AR 437, staff recommended moving the rules to a new docket. Qwest Corporation and Oregon Telecommunications Association (OTA) filed comments in support of staff's proposal. At today's Public Meeting, the Commission considered the request from ALJ Crowley to adopt staff's recommendation in docket AR 437.

Staff began reconsidering its proposal to the cost allocation rules after Ms. Lambeth received the following request in docket AR 437 from Brant Wolf at OTA on February 5, 2002:

Additionally, if you look at paragraph 90 in the FCC order dated October 11, 2001, it states that a \$500,000 threshold should be established for transfer of assets and services. Carriers should not be required to perform net book cost/fair market value comparisons for the first \$500,000 of asset transfers. OTA feels that language to this effect should be included in the appropriate place under 860-034-0740, your page 10 & 11.

In reviewing OTA's request, staff concluded that the Commission should consider making additional changes to its current cost allocation rules for telecommunications utilities and cooperatives. For example, should OAR 860-027-0052(3) be revised to exempt large telecommunications utilities that are regulated under ORS 759.255 or ORS 759.410? Should OAR 860-027-0052(3) also be revised to add a threshold for large telecommunications utilities? The 1999 Oregon Legislature granted a threshold to the large telecommunications utilities regarding the need to file an application for Commission approval of affiliated interest transactions. According to ORS 759.385(4), the filing requirement under ORS 759.385 "applies only to transactions in which the telecommunications utility's Oregon intrastate expenditure to the affiliate is more than \$100,000."

OPUC's policies and rules about accounting for costs related to affiliated interest transactions have periodically been contested. Staff believes that changes to affiliated interest cost allocation rules should be given careful consideration, and all parties should be provided with time to fully respond to other parties' comments.

On page 1 of her January 8 Public Meeting report, Ms. Lambeth recommended that the Commission adopt the changes proposed in docket AR 437 "as soon as possible, so the companies can be reasonably consistent with interstate requirements." FCC Errata Order 02-97 allows the companies to implement the changes effective January 1, 2002. Ms. Lambeth also stated that "staff's proposed rules would . . . (c) retain OPUC's current cost allocation rules."

Adding thresholds and exemptions to the cost allocation rules would not "retain OPUC's current cost allocation rules" and are, therefore, outside the intended scope of docket AR 437. Such changes would also have delayed Oregon's implementation of the noncontested changes to the USOA rules. Therefore, staff recommended moving the cost allocation rules from docket AR 437 to a new docket to allow rapid adoption of the noncontested changes to the Uniform System of Accounts rules in docket AR 437.

Opening docket AR 438 would allow parties to fully address cost allocation questions, such as:

1. Should telecommunications utilities not subject to rate of return regulation be allowed to follow FCC rules instead of OPUC rules and policies?
2. Should the cost allocation rules be the same for all incumbent local exchange carriers? If not, what should be the differences or exceptions?
3. What does "intrastate" mean, as used by ORS 759.385? Does it have the same meaning as it has for jurisdictional separations, or does it mean all activity in Oregon?
4. Should telecommunications cooperatives be subject to OPUC's affiliated interest rules? If so, should OPUC establish a threshold for cooperatives?
5. Should OPUC establish thresholds for affiliated interest transactions for all telecommunications utilities, or only for small telecommunications utilities?
6. If OPUC adopts thresholds, should the thresholds be the same for cooperatives as for small telecommunications utilities? How should the thresholds compare to thresholds for large telecommunications utilities?
7. If OPUC adopts thresholds, what would be a reasonable amount for each threshold? Should the thresholds be flat dollar amounts or percentages?

8. If OPUC adopts thresholds, what should be the bases of the thresholds: Assets, revenues, expenses, net income, or some combination? Total Oregon operations or intrastate operations? Annual or monthly data?
9. If OPUC adopts thresholds, should thresholds apply to all transactions for goods, services, and assets?

Staff also recommends housekeeping changes to correct some grammar in OARs 860-027-0052(1) and (3), 860-034-0394(1) and (3), and 860-034-0740(1); to modify the reference in OAR 860-027-0052(3) from FCC Part 32 to OAR 860-027-0050; and to modify the reference in OAR 860-034-0394(3) from Part 32 to OAR 860-034-0393. Attachment A shows the changes that staff proposed on December 28, 2001, in docket AR 437.

PROPOSED COMMISSION MOTION:

Docket AR 438 be opened to update and revise the cost allocation requirements for telecommunications utilities and cooperatives in OARs 860-027-0052, 860-034-0394, and 860-034-0740, as shown in Attachment A of staff's Public Meeting report.

Attachment
ar437 pm.doc

860-027-0052

Allocation of Costs by a Large Telecommunications Utility

(1) As used in this rule:

(a) "Affiliate Transaction" means a transfer of assets, a sale of supplies, or a sale of services between accounts for regulated activities of a large telecommunications utility and accounts for nonregulated activities of a separate entity ~~which that~~ is either an affiliated interest or another company in which the large telecommunications utility owns a controlling interest. The term also means a transfer of assets, a sale of supplies, or a sale of services between accounts for the regulated and nonregulated activities of a single large telecommunications utility;

(b) "Asset" means any tangible or intangible property of a large telecommunications utility or other right, entitlement, business opportunity, or other thing of value to which a large telecommunications utility holds claim;

(c) "Cost" means fully distributed cost, including the large telecommunications utility's authorized rate of return and all overheads;

(d) "Fair Market Value" means the potential sales price that could be obtained by selling an asset in an arm's-length transaction to a nonaffiliated entity, as determined by commonly accepted valuation principles;

(e) "Market Rate" means the lowest price ~~which that~~ is available from nonaffiliated suppliers for comparable services or supplies;

(f) "Net Book Value" means original cost less accumulated depreciation; and

(g) "Nonregulated Service" means a service ~~which that~~ is not a telecommunications service as defined by ORS 759.005(2)(g), or a service ~~which that~~ the Commission has determined to be exempt from regulation.

(2) A large telecommunications utility that provides both regulated and nonregulated intrastate service shall:

(a) Allocate intrastate investments, expenses, and revenues between regulated activities and nonregulated activities according to principles, procedures, and accounting requirements, which the Federal Communications Commission (FCC) adopted December 23, 1986, and amended on reconsideration September 17, 1987, in CC Docket No. 86-111, except as otherwise provided in this rule;

(b) Part 64, Subpart I, Allocation of Costs, adopted by the Federal Communications Commission ~~with revisions to October 1, 1998~~ on October 11, 2001, is hereby adopted and prescribed.

(3) A large telecommunications utility's regulated and nonregulated intrastate activities shall be accounted for in accordance with ~~FCC Part 32 - Uniform Systems of Accounts, but with the following exception:~~ OAR 860-027-0050. For intrastate

purposes, Part 32 rules governing affiliate transactions (Sections 32.27~~(a), (b), (c), and (d)~~) are replaced as follows:

(a) When an asset is transferred to regulated accounts from nonregulated accounts, the transfer shall be recorded in regulated accounts at the lower of net book value or fair market value;

(b) When an asset is transferred from regulated accounts to nonregulated accounts, the transfer shall be recorded in regulated accounts at the tariff or price-listed rate if an appropriate tariff or price list is on file with the Commission. If no tariff or price list is applicable, proceeds from the transfer shall be recorded in regulated accounts at the higher of net book value or fair market value;

(c) When an asset is transferred from a regulated account to a nonregulated account at a fair market value that is greater than net book value, the difference shall be considered a gain to the regulated activity. The large telecommunications utility shall record the gain ~~in a manner which will enable so~~ the Commission ~~to can~~ determine the proper disposition of the gain in a subsequent rate proceeding;

(d) When services or supplies are sold by a regulated activity to a nonregulated activity, sales shall be recorded in regulated revenue accounts at tariffed or price-listed rates if an applicable tariff or price list is on file with the Commission. Tariffed or price-listed rates shall be established whenever possible. If services or supplies are not sold pursuant to a tariff or price list, sales shall be recorded in regulated revenue accounts at the large telecommunications utility's cost; ~~and~~

(e) When services or supplies are sold to a regulated activity by a nonregulated activity, sales shall be recorded in regulated accounts at the nonregulated activity's cost or the market rate, whichever is lower. The nonregulated activity's cost shall be calculated using the large telecommunications utility's most recently authorized rate of return; ~~and~~

(f) Income taxes shall be allocated among the regulated activities of the large telecommunications utility, its nonregulated divisions, and members of an affiliated group. When income taxes are determined on a consolidated basis, the large telecommunications utility shall record income tax expense as if it were determined for the large telecommunications utility separately for all time periods.

(4) If a large telecommunications utility is subject to ORS 759.100 through ORS 759.115 and provides both regulated and nonregulated intrastate service, the utility shall maintain a current intrastate cost allocation manual on file with the Commission. If the FCC requires the large telecommunications utility to file an interstate cost allocation manual, the utility shall also maintain a current copy of its interstate manual with the Commission.

- (5) An intrastate cost allocation manual shall contain the following:
- (a) A description of each of the large telecommunications utility's nonregulated intrastate activities;
 - (b) A list of all intrastate activities to which the large telecommunications utility now accords incidental accounting treatment, and the justification for treating each as incidental;
 - (c) A chart showing the large telecommunications utility's affiliates;
 - (d) A statement identifying affiliates that engage in or will engage in transactions with the large telecommunications utility for the purpose of providing nonregulated intrastate service and describing the nature, terms, and frequency of such transactions; and
 - (e) A detailed specification of the cost categories to which amounts in each account and subaccount of Part 32 will be assigned, and a detailed specification of the basis on which each cost category will be apportioned between regulated and nonregulated activities.
- (6) Unless specifically allowed by the Commission, a cost allocation manual cannot be used to satisfy any other reporting requirement established by the Commission.
- (7) The initial cost allocation manual filed by a large telecommunications utility pursuant to this rule must be filed with the Commission no less than 90 days before the manual's effective date. The manual shall go into effect unless rejected by the Commission before the manual's effective date.
- (8) When a large telecommunications utility proposes any change to a cost allocation manual previously filed with the Commission, the utility shall file the proposed change with the Commission no less than 45 days before the effective date of the change. The changes shall go into effect unless rejected by the Commission before the effective date of the change.
- (9) After the Commission has issued an order to exempt from regulation a telecommunications service provided by a large telecommunications utility ~~which~~ that is subject to ORS 759.100 through 759.115, the affected utility shall file with the Commission either an initial cost allocation manual or a change to its previously filed manual.
- (10) A large telecommunications utility that is required to file annual independent cost allocation audits with the FCC shall at the same time file copies of the annual audits 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, ~~757~~ & 759

Stats. Implemented: ORS 756.105, 759.120, 759.125 & 759.130

Hist.: PUC 24-1985, f. & ef. 12-12-85 (Order No. 85-1172); PUC 15-1988, f. & cert. ef. 9-7-88 (Order No. 88-954); PUC 8-1995, f. & ef. 8-30-95 (Order No. 95-858); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169); PUC 10-2000, f. & ef. 5-26-00 (Order No. 00-263); PUC 16-2001, f. & cert. ef. 6-21-01 (Order No. 01-488)

860-034-0394

Allocation of Costs by Small Telecommunications Utilities

(1) As used in this rule:

(a) "Affiliate transaction" means a transfer of assets, a sale of supplies, or a sale of services between accounts for regulated activities of a small telecommunications utility and accounts for nonregulated activities of a separate entity ~~which that~~ is either an affiliated interest or another company in which the utility owns a controlling interest. The term also means a transfer of assets, a sale of supplies, or a sale of services between accounts for the regulated and nonregulated activities of a single small telecommunications utility;

(b) "Asset" means any tangible or intangible property of a small telecommunications utility or other right, entitlement, business opportunity, or other thing of value to which a utility holds claim;

(c) "Cost" means fully distributed cost, including the small telecommunications utility's authorized rate of return and all overheads;

(d) "Fair market value" means the potential sales price that could be obtained by selling an asset in an arm's-length transaction to a nonaffiliated entity, as determined by commonly accepted valuation principles;

(e) "Market rate" means the lowest price ~~which that~~ is available from nonaffiliated suppliers for comparable services or supplies;

(f) "Net book value" means original cost less accumulated depreciation; and

(g) "Nonregulated service" means a service ~~which that~~ is not a telecommunications service as defined by ORS 759.005(2)(g), or a service ~~which that~~ the Commission has determined to be exempt from regulation.

(2) A small telecommunications utility that provides both regulated and nonregulated intrastate service shall:

(a) Allocate intrastate investments, expenses, and revenues between regulated activities and nonregulated activities according to principles, procedures, and accounting requirements, which the Federal Communications Commission (FCC) adopted December 23, 1986, and amended on reconsideration September 17, 1987, in CC Docket No. 86-111, except as otherwise provided in this rule;

(b) Part 64, Subpart I, Allocation of Costs, adopted by the Federal Communications Commission ~~with revisions to October 1, 1998~~ on October 11, 2001, is hereby adopted and prescribed.

(3) A small telecommunications utility's regulated and nonregulated intrastate activities shall be accounted for in accordance with ~~FCC Part 32 - Uniform Systems of Accounts, but with the following exception:~~ OAR 860-034-0393. For intrastate purposes, Part 32 rules governing affiliate transactions (Sections 32.27 ~~(a), (b), (c), (d), and (f)~~) are replaced as follows:

(a) When an asset is transferred to regulated accounts from nonregulated accounts, the transfer shall be recorded in regulated accounts at the lower of net book value or fair market value;

(b) When an asset is transferred from regulated accounts to nonregulated accounts, the transfer shall be recorded in regulated accounts at the tariff rate if an appropriate tariff is on file with the Commission. If no tariff is applicable, proceeds from the transfer shall be recorded in regulated accounts at the higher of net book value or fair market value;

(c) When an asset is transferred from a regulated account to a nonregulated account at a fair market value that is greater than net book value, the difference shall be considered a gain to the regulated activity. The small telecommunications utility shall record the gain ~~in a manner which will enable so~~ the Commission to can determine the proper disposition of the gain in a subsequent rate proceeding;

(d) When services or supplies are sold by a regulated activity to a nonregulated activity, sales shall be recorded in regulated revenue accounts at tariffed rates if an applicable tariff is on file with the Commission. Tariffed rates shall be established whenever possible. If services or supplies are not sold pursuant to a tariff, sales shall be recorded in regulated revenue accounts at the small telecommunications utility's cost; ~~and~~

(e) When services or supplies are sold to a regulated activity by a nonregulated activity, sales shall be recorded in regulated accounts at the nonregulated activity's cost or the market rate, whichever is lower. The nonregulated activity's cost shall be calculated using the small telecommunications utility's most recently authorized rate of return; and

(f) Income taxes shall be allocated among the regulated activities of the small telecommunications utility, its nonregulated divisions, and members of an affiliated group. When income taxes are determined on a consolidated basis, the small telecommunications utility shall record income tax expense as if it were determined for the small telecommunications utility separately for all time periods.

(4) If a small telecommunications utility is subject to ORS 759.120 through 759.130 and provides both regulated and nonregulated intrastate service, the utility shall

maintain a current intrastate cost allocation manual on file with the Commission. If the FCC requires the small telecommunications utility to file an interstate cost allocation manual, the utility shall also maintain a current copy of its interstate manual with the Commission.

(5) An intrastate cost allocation manual shall contain the following:

(a) A description of each of the small telecommunications utility's nonregulated intrastate activities;

(b) A list of all intrastate activities to which the small telecommunications utility now accords incidental accounting treatment, and the justification for treating each as incidental;

(c) A chart showing the small telecommunications utility's affiliates;

(d) A statement identifying affiliates that engage in or will engage in transactions with the small telecommunications utility for the purpose of providing nonregulated intrastate service and describing the nature, terms, and frequency of such transactions; and

(e) A detailed specification of the cost categories to which amounts in each account and subaccount of Part 32 will be assigned, and a detailed specification of the basis on which each cost category will be apportioned between regulated and nonregulated activities.

(6) A cost allocation manual cannot be used to satisfy any other reporting requirement established by the Commission.

(7) The initial cost allocation manual filed by a small telecommunications utility pursuant to this rule must be filed with the Commission no less than 90 days before the manual's effective date. The manual shall go into effect unless rejected by the Commission before the manual's effective date.

(8) When a small telecommunications utility proposes any change to a cost allocation manual previously filed with the Commission, the utility shall file the proposed change with the Commission no less than 60 days before the effective date of the change. The changes shall go into effect unless rejected by the Commission before the effective date of the change.

(9) After the Commission has issued an order to exempt from regulation a telecommunications service provided by a small telecommunications utility **which that** is subject to ORS 759.120 through 759.130, the affected utility shall file with the Commission either an initial cost allocation manual or a change to its previously filed manual.

(10) A small telecommunications utility that is required to file annual independent cost allocation audits with the FCC shall at the same time file copies of the annual audits with the Commission.

Docket AR 438
Staff's Proposed Rule Revisions
March 12, 2002

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

Stats. Implemented: ORS 756.040 & 759.045

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); Renumbered from 860-034-0520 by PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468); PUC 10-2000, f. & ef. 5-26-00 (Order No. 00-263); PUC 15-2001, f. & cert. ef. 6-21-01 (Order No. 01-488)

860-034-0740

Allocation of Costs by Type 2 Cooperatives

(1) As used in this rule:

(a) "Affiliate transaction" means a transfer of assets, a sale of supplies, or a sale of services between accounts for services for which a joint rate is charged or for through services offered by a Type 2 cooperative and accounts for nonregulated activities of a separate entity ~~which that~~ is either an affiliated interest or another company in which the Type 2 cooperative owns a controlling interest;

(b) "Asset" means any tangible or intangible property of a Type 2 cooperative or other right, entitlement, business opportunity, or other thing of value to which a Type 2 cooperative holds claim;

(c) "Cost" means fully distributed cost, including all overheads and rate of return as defined in section (1)(h) of this rule;

(d) "Fair market value" means the potential sales price that could be obtained by selling an asset in an arm's-length transaction to a nonaffiliated entity, as determined by commonly accepted valuation principles;

(e) "Market rate" means the lowest price ~~which that~~ is available from nonaffiliated suppliers for comparable services or supplies;

(f) "Net book value" means original cost less accumulated depreciation;

(g) "Nonregulated service" means a service ~~which that~~ is neither a through service nor a service for which a joint rate is charged, as defined by OAR 860-034-0015; and

(h) "Rate of return" means the rate or return established by the Commission for the calculation of a rate for a through service or for which a joint rate is charged.

(2) A Type 2 cooperative that provides both regulated and nonregulated intrastate service shall:

(a) Allocate intrastate investments, expenses, and revenues between regulated activities and nonregulated activities according to principles, procedures, and accounting requirements, which the Federal Communications Commission (FCC) adopted December 23, 1986, and amended on reconsideration September 17, 1987, in CC Docket No. 86-111, except as otherwise provided in this rule.

(b) Part 64, Subpart I, Allocation of Costs, adopted by the Federal Communications Commission ~~with revisions to October 1, 1998~~ on October 11, 2001, is hereby adopted and prescribed.

(3) A Type 2 cooperative's regulated and nonregulated intrastate activities shall be accounted for in accordance with OAR 860-034-0730, and Part 32 rules governing affiliate transactions (Section 32.27) are replaced as follows:

(a) When an asset is transferred to regulated accounts from nonregulated accounts, the transfer shall be recorded in regulated accounts at the lower of net book value or fair market value;

(b) When an asset is transferred from regulated accounts to nonregulated accounts, the proceeds from the transfer shall be recorded in regulated accounts at the higher of net book value or fair market value;

(c) When an asset is transferred from a regulated account to a nonregulated account at a fair market value that is greater than net book value, the difference shall be considered a gain to the regulated activity. The Type 2 cooperative shall record the gain in a manner that will enable the Commission to determine the proper disposition of the gain in a subsequent rate proceeding;

(d) When services or supplies are sold by a regulated activity to a nonregulated activity, sales shall be recorded in regulated revenue accounts at the Type 2 cooperative's cost; and

(e) When services or supplies are sold to a regulated activity by a nonregulated activity, sales shall be recorded in regulated accounts at the nonregulated activity's cost or the market rate, whichever is lower. The nonregulated activity's cost shall be calculated using the Type 2 cooperative's most recently authorized rate of return.

(f) Income taxes shall be allocated among the regulated activities of the Type 2 cooperative, its nonregulated divisions, and members of an affiliated group. When income taxes are determined on a consolidated basis, the Type 2 cooperative shall record income tax expense as if it were determined for the Type 2 cooperative separately for all time periods.

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

Stats. Implemented: ORS 756.040, 759.220 & 759.225

Hist.: PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468); PUC 10-2000, f. & ef. 5-26-00 (Order No. 00-263)