

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: May 7, 2002**

**REGULAR** \_\_\_\_\_ **CONSENT**  X  **EFFECTIVE DATE** \_\_\_\_\_

**DATE:** April 22, 2002

**TO:** Roy Hemmingway, Chair  
Joan Smith, Commissioner  
Lee Beyer, Commissioner

**THROUGH:** Rick Willis, Executive Director  
Terry Lambeth, Rules Project Leader

**FROM:** Vicki McLean, Administrator  
Central Services Division

Cynthia VanLanduyt, Program Manager  
Telecommunications Division

**SUBJECT:** AR 439: Initiate a rulemaking to consider Oregon Administrative Rules for Collection of Oregon Universal Service Fund Contributions.

**STAFF RECOMMENDATION:**

Staff recommends opening AR 439 to adopt rules defining processes for collection, payment and record retention of Oregon Universal Service funds owing from telecommunications companies. The rules provide for filing and payment requirements, impose penalties and interest for failure to file the OUS contribution report or pay the contribution amount, and establish requirements for audits, hearings, and record-keeping.

**DISCUSSION:**

The Commission is responsible for all aspects of the Oregon Universal Service Fund. On occasion, a telecommunications carrier does not file its contribution report "Form OUS 2" as required, does not file it timely, or does not remit amounts due to the Commission payable to the fund. Oregon Administrative Rules must be filed to ensure that procedures are established for all aspects of collection, fee assessment, and record keeping. Without these procedures, the Commission cannot effectively collect amounts owed.

The draft rules provide details for filing timely reports, handling of overpayments and underpayments of OUSF contributions. They also identify late filing fees, late payment fees, and interest; and provide PUC a uthority to recover the cost of collection from the delinquent carrier.

When a carrier does not file a report, these rules provide that the Commission may make a proposed contribution amount based upon any information available to it. The Commission may also audit the carrier and propose assessments. The process for hearings on proposed assessments, limits on time to commence audits and requirements for record keeping are also outlined in the rules.

The draft rules to be considered in docket AR 439 are:

- OAR 860-032-0610 – General Provisions
- OAR 860-032-0620 – Quarterly OUS Report: Filing and Payment
- OAR 860-032-0630 – Estimated Report
- OAR 860-032-0640 – Commission Audit and Proposed Assessment
- OAR 860-032-0650 – Notice and Hearing on Proposed Orders and Assessments
- OAR 860-032-0660 – OUS Record-Keeping Requirements

**PROPOSED COMMISSION MOTION:**

Docket AR 439 be opened to consider adopting rules for the filing of OUSF contribution reports, collecting amounts due, auditing, and retaining of records.

**860-032-0610**

**General Provisions for Processing Universal Service Fund Contribution Reports, Payments, Reassessments and Collections**

**(1) For the purpose of OARs 860-032-0610 through 860-032-0660, each calendar year has four quarters as follows: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.**

**(2) For the purpose of OARs 860-032-0610 through 860-032-0660, the quarterly revenue worksheet identified as "OPUC OUS 2" shall be known as the "contribution report."**

**(3) A telecommunications provider may pay any amounts due to the Public Utility Commission (Commission) by electronic transfer.**

**(4) The Commission may add all costs incurred in collecting a past-due "Oregon universal service" (OUS) contribution amount. In the event the Commission refers the debt to the Department of Revenue or to a collection agency, the Commission may add to the debt the anticipated amount necessary to generate a net return to the Commission of the amount of the debt.**

**(5) The Commission shall impose a charge of \$25 for each payment returned for non-sufficient funds.**

**(6) In addition to any other penalty, obligation or remedy provided by law, the Commission may suspend or cancel the telecommunications provider's certificate of authority to provide telecommunications service in Oregon for its failure to file its contribution report or its failure to pay its contribution amount in full.**

**(7) Except as otherwise provided by law, if after an audit or review the Commission determines that the telecommunications provider has overpaid its OUS contribution amount, the Commission shall provide the telecommunications provider a credit in that amount against sums subsequently due from the telecommunications provider.**

**(8) In computing any period of time prescribed or allowed by these rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the time period shall be included, unless it is a Saturday or legal holiday, including Sunday, in which event the time period runs until the end of the next day which is not a Saturday or a legal holiday. Legal holidays are those identified in ORS 187.010 and 187.020.**

**Stat. Auth.: ORS 183, 192, 756 & 759**

**Stats. Implemented: ORS 756.040, 759.015 & 759.425**

**Hist.: NEW**

**860-032-0620**

**Quarterly Oregon Universal Service Report: Filing And Payment**

**(1) For the purpose of the Oregon Universal Service (OUS) fund, a telecommunications provider shall file its contribution report with the OUS Administrator. The contribution report is due on or before the 10th day of the second month after the close of each three-month quarter (i.e. approximately 40 days after the end of each three-month quarter). A telecommunications provider shall send its contribution report so that it is received in the OUS Administrator's offices no later than 5 p.m. on the date it is due.**

**(2) A telecommunications provider shall file the contribution report for each quarter with no exceptions, including when the contribution amount shown on the report is \$0.00.**

**(3) The amount shown on the contribution report is due and payable by the telecommunications provider on or before the 28th day of the second month after the close of each three-month quarter. Payment shall be made to the Commission. A telecommunications provider shall send payment (electronically or by mail) so that it is received in the Commission's offices by no later than 5 p.m. on the date it is due.**

**(4) If the contribution amount is less than \$100, a telecommunications provider may defer payment and accumulate it to the following quarter's contribution. This accumulation may continue interest-free until either the accumulated amount is greater than \$100 or four quarters have passed from the first deferment, whichever comes first.**

**(5) If a telecommunications provider fails to file a contribution report as required by these rules, the commission shall impose a late report fee of \$100. The Commission shall not impose a late report fee until a contribution report is five business days past due.**

**(6) If a telecommunications provider files a contribution report but fails to pay the contribution amount in full on or before the day it is due, the Commission shall add a late payment fee equal to 9 percent of the unpaid amount of the contribution, up to a maximum of \$500. The Commission shall not impose a late payment fee until the required payment is five business days past due.**

**(7) If a telecommunications provider fails to pay the contribution amount in full on or before the day it is due, the Commission shall add interest on the unpaid contribution amount at the rate of 9 percent per annum from the day payment was due until paid.**

**(8) If the amount shown due on a contribution report is not paid on the due date, the Commission may issue a proposed order to set the sum due.**

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 759.015 & 759.425

Hist.: NEW

860-032-0630

Estimated Oregon Universal Service Report

(1) For any quarter for which a telecommunications provider fails to file a contribution report as required by OARs 860-032-0610 and 860-032-0620, the Commission may make a proposed contribution assessment based upon any information available to the Commission.

(2) The proposed assessment shall include a late payment fee equal to 9 percent of the proposed assessment amount, up to a maximum of \$500 for that quarter.

(3) Each proposed assessment shall bear interest on the amount proposed at the rate of 9 percent per annum from the day the contribution amount was originally due.

(4) The Commission's proposed assessment for a non-filed contribution report must be made no later than three (3) years after the contribution report's due date.

(5) Notwithstanding subsection (4) of this rule, if the telecommunications provider did not hold a certificate of authority, the Commission shall have an unlimited time to propose an assessment for the time period represented by the non-filed contribution report. The proposed assessment shall include all late payment fees and interest as specified in this rule.

(6) Prior to the expiration of the period allowed for filing a petition for a hearing, the telecommunications provider may file its contribution report. The Commission shall accept the report and calculate late report fees, late payment fees and interest in accordance with the original due date for that quarter's contribution report and payment, if any, accompanying the report.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 759.015 & 759.425

Hist.: NEW

860-032-0640

Commission Audit of Oregon Universal Service Reports and Proposed Assessment

(1) For any quarter for which a telecommunications provider's contribution report was due, the Commission may audit the telecommunications provider as the Commission deems necessary and practicable.

(2) The Commission's audit must be commenced no later than three years after the quarter's contribution report's due date. After completion of its audit, the Commission may propose to assess an additional contribution amount due from the telecommunications provider.

(3) In the event the telecommunications provider failed to file a contribution report for the quarter, the Commission shall add to the proposed assessment a late payment fee equal to 9 percent of the amount of the proposed assessment, up to a maximum amount of \$500.

(4) Each proposed assessment shall bear interest on the additional amount proposed at the rate of 9 percent per annum from the day the original contribution amount was due.

(5) Notwithstanding subsection (2) of this rule, if the telecommunications provider did not hold a certificate of authority, the Commission shall have an unlimited time to audit the telecommunications provider for universal service charges.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 759.015 & 759.425

Hist.: NEW

#### 860-032-0650

#### Notice and Hearing on Proposed Orders and Oregon Universal Service Fund Assessments

(1) The Commission shall provide written notice of the proposed order or proposed assessment to the telecommunications provider and allow the telecommunications provider an opportunity to request a hearing before the Commission.

(2) Within 30 days after service of the notice of proposed order or proposed assessment, a telecommunications provider may petition the Commission in writing for a hearing. If a petition is not filed within the 30-day period, the Commission shall enter a final order or assessment based upon information in the Commission's files. If a petition is filed within the 30-day period, the Commission shall grant the telecommunications provider a hearing and give the telecommunications provider at least 10 days notice of the time and place of the hearing.

(3) The telecommunications provider must specify in its petition all reasons it disputes the proposed order or the proposed assessment. The Commission shall conduct a hearing on the telecommunications provider's petition under its rules governing hearings and proceedings. Unless the telecommunications provider has filed an amended contribution report, the amount shown on the contribution report shall not be subject to challenge by the telecommunications provider.

(4) A Commission order deciding the petition shall become final after service of the Commission's order upon the petitioning telecommunications provider.

(5) A proposed assessment made by the Commission under these rules is due and payable on the 10th day after the Commission's order becomes final.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 759.015 & 759.425

Hist.: NEW

860-032-0660

Oregon Universal Service Record-Keeping Requirements

(1) A telecommunications provider shall produce for inspection or audit upon request of the Commission or its authorized representative all records supporting its contribution reports. The Commission, or its representative, shall allow the telecommunications provider a reasonable time to produce the records for inspection or audit.

(2) A telecommunications provider must keep all records supporting each contribution report for three years, or until a Commission review or audit is complete, whichever is later.

(3) In addition to any other penalty allowed by law, the Commission may suspend or cancel a telecommunications provider's certificate of authority to provide telecommunications service for its failure to produce for inspection or audit the records required by this rule.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 759.015 & 759.425

Hist.: NEW