

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: July 23, 2002**

REGULAR _____ **CONSENT** X **EFFECTIVE DATE** _____ **NA** _____

DATE: July 10, 2002

TO: John Savage

FROM: Tom Harris through Terry Lambeth, Dave Booth and Phil Nyegaard

SUBJECT: AR 442: Open a rulemaking to amend Commission rules OARs 860-032-0002 and 860-032-0005, which specify procedures for filing and processing applications for certificates of authority.

STAFF RECOMMENDATION:

Staff recommends the Commission open a rulemaking to amend administrative rules OAR 860-032-0002 and OAR 860-032-0005, in order to modify Commission requirements for filing and processing applications for certificates of authority.

DISCUSSION:

Staff proposes the Commission start this rulemaking for three reasons. One is that we think the PUC can operate a little more efficiently and should work toward that goal. The proposed rules are a step in that direction. Another is that the current OAR 860-032-0005, which spells out the procedures for reviewing applications for certificates of authority, has been changed many times since it was adopted in 1985. Now the rule is sort of a hodgepodge. Staff has reorganized and rewritten the rule, so that it is easier to read. Third, for applications for certificates of authority to provide local exchange service, the current rule requires staff to issue a proposed order, which we do. After waiting for parties to file exceptions to the proposed order, the Commission issues the final order. Staff believes the use of a proposed order is usually not necessary and in most cases that step can be bypassed.

Staff's proposed changes to OAR 860-032-0002 and 860-032-0005 are attached. In OAR 860-032-0002, staff proposes that persons who want to be on the PUC telecommunications mailing list provide an electronic mail address as well as their regular mail address. Eventually, we think the Commission can send many notices to interested persons by e-mail rather than regular mail. We recognize that it will take time

to develop an e-mail ability, however this proposal is a start. For those who do not use electronic mail, there will remain the regular mail notices.

In OAR 860-032-0005 staff proposes to revise sections (1) and (2), delete sections (3) to (13), and replace them with new sections (3) to (11). Primarily, staff has reorganized and rewritten the current rule; however, there are some substantive changes. In section (2) we now state that application forms for certificates of authority are available on the PUC website. Applicants will need to download the application form, fill it out, and then mail it to us, and, per section (3), send an electronic mail copy. Staff is working toward modifications to the PUC website, so that applicants will be able to fill out the form directly on-line.

In the new section (3) of OAR 860-032-0005, staff proposes to request applicants to e-mail an unsigned copy of the application for a certificate. The requirement is waived for those who file an affidavit (e.g., a letter) stating their inability to send an e-mail copy. Applicants must send a signed copy of the application to the PUC pursuant to section (2).

Sections (4) to (11) are a reorganized and rewritten version of the current rule. These revisions improve the overall readability of the rule. However, there is one substantive change. The current rule, subsection (10)(c), states that staff **shall** issue a proposed order regarding an application for authority to be a competitive local exchange carrier (CLEC). In the revised rule, subsection (7)(g), staff proposes that the Commission state that staff **may** issue a proposed order regarding applications. Over the past few years staff has issued hundreds of proposed orders for applications. For over ninety percent of the applications there are no protests to the applications and no exceptions to the proposed orders. The final orders granting applications for certificates are the same as the proposed orders.

Staff believes the procedural step of issuing proposed orders should be eliminated for most applications for certificates. The proposed new procedure for CLEC applications would be like the procedure we now use for applications to provide interexchange service only. For applications to provide interexchange service only, the Commission does not issue proposed orders. Instead, the staff prepares a final order for signature by the Director of the Utility Program. For most applications for authority to be a CLEC, staff's intent is to prepare final orders granting certificates of authority, which orders would be signed by the Director of the Utility Program. Those final orders would be issued by the Commission as other orders are now issued. Like any Commission order, a party could request reconsideration of a final order granting authority to a CLEC. Since there are usually no exceptions to proposed orders for CLECs, elimination of the

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proposed order step will save fifteen to twenty-five days processing time for over ninety percent of the applications.

For cases which staff believes are not routine, depending on protests, who the applicant is, or what services the applicant intends to provide, and for which no hearing is set by an Administrative Law Judge, staff would issue a proposed order. In those cases there would be an opportunity for parties to file exceptions to the proposed order. For applications for which a hearing is required, which are relatively rare, the ALJ determines the procedure.

Staff expects the proposed rule changes to be relatively non-controversial and that a hearing will not be necessary. Staff's notice through the Secretary of State includes a workshop schedule for September 20, 2002, with written comments due to the Commission by October 18, 2002.

PROPOSED COMMISSION MOTION:

Rulemaking Docket AR 442 be opened to amend Commission administrative rules related to filing requirements and procedures for processing applications for certificates of authority, OAR 860-032-0002 and OAR 860-032-0005.

Attachment

arapplpubmtg

860-032-0002

Notice and Procedures for a Proceeding Initiated Under Division 032

(1) All notices initiating a proceeding under this Division, including, but not limited to, applications, petitions, complaints, and other pleadings, shall be served on all telecommunications providers and all persons on the Commission's telecommunications mailing list. Any person wishing to be included on the list shall submit his/her name, **electronic mail address** and **mailing** address to the Public Utility Commission of Oregon, Administrative Hearings Division, 550 Capitol Street NE, Suite 215, Salem, Oregon 97301-2551.

(2) Except as otherwise provided, every proceeding under this Division shall follow the procedures in ORS 756.500 et seq. and the Commission's rules of procedure.

(3) Any person submitting information under the Commission's rules may request that the information be held in confidence pursuant to the public records law, ORS 192.500.

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

Stats. Implemented: ORS 756.040, 759.020 & 759.025

Hist.: PUC 27-1985 (Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 1-1990, f. & cert. ef. 2-6-90 (Order No. 90-96); PUC 10-1998, f. & ef. 4-28-98 (Order No. 98-170); PUC 8-1999, f. & ef. 10-18-99 (Order No. 99-632); PUC 4-2000, f. & ef. 2-9-00 (Order No. 00-068); PUC 9-2001, f. & cert. ef. 3-21-01 (Order No. 01-248)

860-032-0005

Application for New or Amended Certificate of Authority, or to Transfer Authority

(1) No person shall provide intrastate telecommunications service on a for-hire basis, **or transfer a certificate of authority to provide such service**, except as authorized ~~in a certificate of authority from~~ **by** the Commission.

(2) Any person intending to provide intrastate telecommunications service in Oregon, **or to transfer a certificate of authority to provide such service**, shall file an application, on **a forms provided prescribed** by the Commission, ~~for a new or amended certificate of authority to provide service~~. **A copy of the applicable application form is available on the Commission's website.**

~~(3) For applicants who request classification as a telecommunications utility, all services proposed to be offered by the applicant shall be deemed essential services. However, applicant may accompany the application with a~~

~~petition to exempt some services pursuant to OAR 860-032-0025 or to price list some or all services pursuant to OAR 860-032-0035.~~

~~———— (4) An application shall contain:~~

~~———— (a) The name, address, and telephone number of the applicant;~~

~~———— (b) A description of the service the applicant seeks to provide, including designation of such service as local exchange, shared, or interexchange service;~~

~~———— (c) A description of the territory where the service is to be offered. An application to provide local exchange service shall include a description of the local exchange service boundaries or a list of the local exchanges to be served;~~

~~———— (d) The names of affiliated interests of the applicant, as defined in OAR 860-032-0001(15), which are certified to provide or are actually providing telecommunications service in Oregon; and~~

~~———— (e) A request for classification as a telecommunications utility or competitive provider.~~

~~———— (5) If an application, in any material respect, is incomplete, inaccurate, false, or misleading, the Commission shall reject the application.~~

~~———— (6) The Commission shall serve notice of the application as provided in OAR 860-032-0002(1).~~

~~———— (7)(a) Within 20 days of the date of service under section (6) of this rule, any interested person may file a protest to an application. The protest shall set forth the grounds for the protest. Except as provided in section (7)(b) of this rule, failure to protest within the time limit shall be deemed consent to the application. The Commission may require a person filing a protest to show that it is affected by the application or that its appearance and participation will not unreasonably broaden the issues or burden the record;~~

~~———— (b) If the application is to provide local exchange service within the service territory of a telecommunications utility or cooperative, the telecommunications utility or cooperative may protest. Failure of the telecommunications utility or cooperative to protest an application to provide local exchange service, other than shared service, shall not be considered consent to the application. The telecommunications utility or cooperative shall be made a party to the application process upon written request to the Commission and mailing a copy of the request to the applicant;~~

~~———— (c) The applicant shall serve protestants and parties with copies of amendments and additional information submitted during the application process. If an applicant intends to broaden the authority requested during the application process, it shall follow the procedures set forth in sections (2) through (7) of this rule. However, it may narrow its request by serving its amendment on each protestant and party.~~

~~———— (8) The Commission shall review applications for interexchange service or shared service pursuant to ORS 759.020. Applications for local exchange service, other than shared service, shall be reviewed pursuant to ORS 759.020 and ORS 759.050.~~

~~———— (9) For all applications:~~

~~———— (a) The Commission may hold a hearing regarding an application upon request of any person or on its own motion;~~

~~———— (b) The Commission may consider protests to an application and may grant or deny an application without hearing. However, if the application is to provide local exchange service, other than shared service, within the service territory of a telecommunications utility, and the telecommunications utility protests, the Commission shall hold a hearing regarding the application; and~~

~~———— (c) If an application is denied in whole or in part, without hearing, the Commission shall set forth in writing the reasons for the denial. Within 30 days of the date of service of the denial, the applicant may, in writing, request a hearing.~~

~~———— (10) For applications for local exchange service, other than shared service, the following apply in addition to provisions of section (8) of this rule:~~

~~———— (a) The Commission may apply the public interest criteria from ORS 759.050(2), or the Commission may determine pursuant to ORS 759.020(3) that the affected telecommunications utility or cooperative is unable to provide service;~~

~~———— (b) Failure by the telecommunications utility or cooperative to provide reasonable and adequate local exchange service shall constitute inability to provide service;~~

~~———— (c) If the Commission processes the application without a hearing, the Commission staff shall issue to the applicant and to affected parties a proposed order which grants or denies the application; and~~

~~———— (d) The applicant or affected parties may file exceptions to the proposed order. Exceptions shall be filed with the Administrative Hearings Division, Commission staff, and all parties to the application proceeding. Commission staff and all parties may reply to exceptions.~~

~~———— (11) A telecommunications provider shall transfer a certificate of authority only with approval of the Commission and subject to the following requirements:~~

~~———— (a) The transferor may transfer some or all of its authority;~~

~~———— (b) Transferee shall be liable for all fees incurred and reports due by the transferor as of the date the transfer is approved;~~

~~———— (c) All relevant conditions and restrictions which attend the authority held by the transferor will apply to the certificate held by the transferee.~~

~~———— (12) An application to transfer authority to provide telecommunications service shall be on forms provided by the Commission.~~

~~———— (13) For applications to transfer authority to provide telecommunications service:~~

~~———— (a) The Commission will serve notice of the application to transfer pursuant to OAR 860-032-0002(1);~~

~~———— (b) Within 20 days of the date of service of notice of the application, any interested person may file a protest to the application. The protest shall set forth the grounds for the protest. The Commission may require a person filing a protest to show how it is affected by the application;~~

~~———— (c) Any interested person may be made a party to the application process upon written request to the Commission and mailing copies of the request to the applicants in accordance with OAR 860-013-0021;~~

~~———— (d) If the application is to provide local exchange service within the service territory of a telecommunications utility or cooperative, the telecommunications utility or cooperative may protest. Failure of the telecommunications utility or cooperative to protest an application to provide local exchange service, other than shared service, shall not be considered consent to the application. The telecommunications utility or cooperative shall be made a party to the application process upon written request to the Commission and mailing a copy of the request to the applicants;~~

~~———— (e) The applicants shall serve protestants and parties with copies of amendments and additional information submitted during the application process;~~

~~———— (f) Applications to transfer authority to provide telecommunications service are subject to section (9) of this rule;~~

~~———— (g) If there are no timely protests, the Commission will review the application and grant or deny the application pursuant to sections (9) and (10) of this rule; and~~

~~———— (h) A party to the application proceeding may request rehearing or reconsideration of the order, which grants or denies the application, pursuant to ORS 756.561.~~

(3) The applicant(s) shall also submit a copy of the application in electronic format compatible with Adobe Acrobat Reader or Rich Text Format. The electronic copy may be an unsigned version of the application. An applicant need not comply with this requirement upon the filing with the Commission a satisfactory affidavit of inability to file an electronic copy.

(4) Applicant(s) must complete all applicable parts of the application. If an application, in any material respect, is incomplete, inaccurate, false, or misleading, the Commission shall reject the application.

(5) An application for a new or amended certificate shall contain:

(a) The name, mailing address, telephone number, and electronic mail address of the applicant;

(b) A description of the service the applicant seeks to provide, including designation of such service as local exchange, shared, or interexchange service;

(c) A description of the territory where the service is to be offered. An application to provide local exchange service shall include a description and map of the local exchange service boundaries or a list of the local exchanges to be served;

(d) The names of affiliated interests of the applicant, as defined in OAR 860-032-0001, which are certified to provide or are actually providing telecommunications service in Oregon; and

(e) A request for classification as a telecommunications utility or competitive provider.

(6) An application to transfer a certificate of authority shall contain:

(a) The names, mailing addresses, telephone numbers and electronic mail addresses of the transferor and transferee;

(b) A description of the telecommunications services and service area for which authority is to be transferred; and

(c) The names of affiliated interests of the transferee, as defined in OAR 860-032-0001, which are certified to provide or are actually providing telecommunications service in Oregon.

(7) For all applications:

(a) The Commission shall serve notice of the application as provided in OAR 860-032-0002(1).

(b) Within 20 days of the date of service of the notice, any person may file a protest to an application. The protest shall set forth the grounds for the protest. The Commission may require a person filing a protest to show that it is affected by the application or that its appearance and participation will not unreasonably broaden the issues or burden the record.

(c) If the application is to provide local exchange service within the service territory of a telecommunications utility or cooperative, the telecommunications utility or cooperative may protest. Failure of the telecommunications utility or cooperative to protest an application to provide local exchange service, other than shared service, shall not be considered consent to the application.

(d) Any protestant shall be made a party to the application proceeding. Other persons may be made a party upon formal request to the Commission and serving copies of the request to the applicant(s) in accordance with OAR 860-013-0021.

(e) The applicant shall serve other parties with copies of amendments and additional information submitted during the application process. If an applicant intends to broaden the authority requested during the application process, it shall file a new application pursuant to sections (2) to (6) of this rule. However, an applicant may narrow its request by serving its amendment on each party.

(f) The Commission may grant or deny an application without hearing, unless a hearing is required by ORS 759.020(4).

(g) If the Commission processes the application without a hearing, the Commission staff may issue to the parties a proposed order that grants or denies the application. Within 15 days of service of any proposed order, any party may file exceptions. Exceptions shall be filed with the Administrative Hearings Division, Commission staff, and all parties. Within 10 days of service of any exceptions, Commission staff and any party may file a reply. In its reply, Commission staff may modify its proposed order in response to the exceptions filed.

(h) A party to the application proceeding may request rehearing or reconsideration of the order, which grants or denies the application, pursuant to ORS 756.561 and OAR 860-014-0095.

(8) For applicants who request classification as a telecommunications utility, all services proposed to be offered by the applicant shall be deemed essential services. However, applicant may accompany the application with a petition to exempt some services pursuant to OAR 860-032-0025 or to price-list some or all services pursuant to OAR 860-032-0035.

(9) The Commission shall review applications for interexchange service or shared service pursuant to ORS 759.020. Applications for local exchange service, other than shared service, shall be reviewed pursuant to ORS 759.020 and ORS 759.050.

(10) For applications for local exchange service, other than shared service, the following apply in addition to provisions of sections (7) to (9) of this rule:

(a) The Commission may apply the public interest criteria from ORS 759.050(2), or the Commission may determine pursuant to ORS 759.020(3) that the affected telecommunications utility is unable to provide service; and

(b) Failure by the telecommunications utility to provide reasonable and adequate local exchange service shall constitute inability to provide service.

(11) Applications to transfer authority to provide telecommunications service are subject to sections (7) to (10) of this rule. With Commission approval, a telecommunications provider may transfer a certificate of authority subject to the following requirements:

- (a) The transferor may transfer some or all of its authority;**
(b) Transferee shall be liable for all fees incurred and reports due by the transferor as of the date the transfer is approved; and
(c) All relevant conditions and restrictions which attend the authority held by the transferor will apply to the certificate held by the transferee.
(d) Upon granting the application the transferor will no longer be authorized to provide the telecommunications services that are transferred.

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

Stats. Implemented: ORS 756.040, 759.020, 759.025, 759.030, 759.050, 759.225 & 759.690

Hist.: PUC 27-1985 (Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 10-1989 (Temp), f. & cert. ef. 7-10-89 (Order No. 89-847); PUC 1-1990, f. & cert. ef. 2-6-90 (Order No. 90-96); PUC 23-1990, f. & cert. ef. 12-31-90 (Order No. 90-1918); PUC 9-1991, f. & ef. 7-16-91 (Order No. 91-854); PUC 13-1997, f. & cert. ef. 11-12-97 (Order No. 97-434); PUC 2-1998, f. & cert. ef. 2-24-98 (Order No. 98-060); PUC 10-1998, f. & ef. 4-28-98 (Order No. 98-170); PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468); PUC 2-2000, f. & ef. 2-9-00 (Order No. 00-068); PUC 26-2001, f. & ef. 11-05-01 (Order No. 01-896)