

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: October 1, 2002**

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

DATE: September 23, 2002

TO: Commissioners Hemmingway, Smith, and Beyer

FROM: Tom Barkin, Chief Administrative Law Judge

REVIEWED: Terry Lambeth, Rules Project Leader

SUBJECT: AR 434: Further amend the definition of "Exempt Service" and change the requirements for telecommunications providers that abandon or discontinue service in Oregon.

ADMINISTRATIVE LAW JUDGE RECOMMENDATION:

I recommend the Commission republish the proposed rules set forth in Appendix A.

DISCUSSION:

At its May 7, 2002, public meeting, the Commission adopted Staff's recommendation to propose amendments to OAR 860-032-0001, defining the term exempt service and OAR 860-032-0020, specifying the procedures for telecommunications providers to abandon or discontinue service. The notice was published in the Secretary of State's Bulletin on June 1, 2002.

On June 21, 2002, Commission Staff, Qwest Corporation (Qwest), Verizon Northwest Inc. (Verizon), United Telephone Company of the Northwest (dba "Sprint"), and the Oregon Telecommunications Association (OTA) participated in a workshop. Following the workshop, staff revised the proposed rules and sent copies to the participants on July 5, 2002. On or about July 29, 2002, Sprint, Qwest, Verizon, and OTA filed comments. On August 9, 2002, in Salem, Oregon I held a hearing on the rule. Staff suggested additional changes on August 26, 2002.

After reviewing the public comments and hearing presentations, I made a few additional changes to the Staff July 5, and August 26, 2002, revisions. Because the rules being proposed today are significantly different than the May version, I recommend republishing the proposed rules set forth in Appendix A. Because this

AR 434
September 23, 2002
Page 2

matter has already had comments and hearing, the notice of proposed rule making will invite written comments, but will not schedule a hearing.

PROPOSED COMMISSION MOTION:

The proposed rule set forth in Appendix A be resubmitted for public comment. A hearing will only be held upon request, as specified in Oregon law.

AR 434-Public meeting memo-republish proposed rules.doc

860-032-0001

Definitions for Telecommunications

For the purpose of this Division:

~~(151)~~ “Affiliated interest” between telecommunications providers means:

(a) Every corporation and person owning or holding directly or indirectly 5 percent or more of the voting securities of such telecommunications provider;

(b) Every corporation and person in any chain of successive ownership of 5 percent or more of voting securities of such telecommunications provider;

(c) Every corporation 5 percent or more of whose voting securities are owned by any person or corporation owning 5 percent or more of the voting securities of such telecommunications provider or by any person or corporation in any chain of successive ownership of five percent or more of voting securities of such telecommunications provider;

(d) Every person who is an officer or director of such telecommunications provider or of any corporation in any chain of successive ownership of 5 percent or more of voting securities of such telecommunications provider;

(e) Every corporation ~~which~~ that has two or more officers or two or more directors in common with such telecommunications provider;

(f) Every corporation and person, 5 percent or more of which is directly or indirectly owned by a telecommunications provider;

(g) Every corporation or person who or which the Commission determines as a matter of fact, after investigation and hearing, actually is exercising any substantial influence over the policies and actions of such telecommunications provider, even though such influence is not based upon stockholdings, stockholders, directors or officers to the extent specified in this subsection;

(h) Every person or corporation who or which the Commission determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and actions of such telecommunications provider in conjunction with one or more other corporations or persons with whom they are related by ownership or blood or by action in concert that together they are affiliated with such telecommunications provider within the meaning of this section even though no one of them alone is so affiliated.

~~(12)~~ “Competitive Pprovider” means a competitive telecommunications provider as defined in ORS 759.005(2)(a), who provides services authorized pursuant to ORS 759.020.

~~(23)~~ “Cooperative” means a cooperative corporation or association, which provides local exchange telecommunications service within its own exchanges, which is organized under ORS Chapter 62, and which is certified under ORS 759.025(2).

(34) “Exempt ~~S~~service” means a telecommunications service ~~that is completely deregulated. All for which all~~ revenues from, costs of, and assets dedicated to providing the service are ~~not under the Commission’s jurisdiction, until and unless the service is reregulated under OAR 860-032-0025(6)~~ excepted from the Commission’s regulatory authority pursuant to ORS 759.030(2) or (3).

(45) “Local ~~E~~exchange ~~S~~service” means local exchange telecommunications service as defined in ORS 759.005(2)(c). Local exchange service includes “shared service.”

(56) “Operator ~~S~~service” means service provided by a telecommunications provider in response to a request for special billing, dialing assistance, or information regarding the use of and charges for its telecommunications services. An operator service may be manual or automatic.

(67) “Pay ~~T~~telephone” means a telephone instrument, generally placed in public areas, for transient use on a pay-per-call basis. “Pay ~~T~~telephone” instruments may be coin operated, noncoin operated, prepay, postpay, central office controlled, instrument controlled, provided by local exchange carriers, or provided by other persons or entities.

(78) “Price-~~L~~isted ~~S~~service” means a product or service whose price and terms are authorized under OAR 860-032-0023, OAR 860-032-0035, ORS 759.030, ORS 759.050, or ORS 759.195, and posted in a price list filed with the Commission. The costs and revenues of a price-listed product or service shall be considered part of the telecommunications utility’s regulated activities.

(89) “Private ~~T~~elecommunications ~~N~~etwork” means a system, including the construction, maintenance, or operation of the system, for the provision of a service or any portion of a service, by a person for the exclusive use of that person and not for resale, directly or indirectly. “Private ~~T~~elecommunications ~~N~~etwork” includes services provided by the State of Oregon pursuant to ORS 190.240 and ORS 283.140.

(910) “Shared ~~S~~service” means shared telecommunications service as defined in ORS 759.005(2)(f) and:

(a) The provision of telecommunications and information management services and equipment:

(A) To a user group comprised of one person or association served by a single telecommunications system;

(B) Located in a single building or in several buildings on contiguous property;

(C) By a commercial shared service provider or by a users’ association; and

(D) Through privately owned customer premises equipment and associated data processing and information management services.

(b) Includes connection to local exchange service.

~~(4011)~~ “Telecommunications **P**provider” or “provider” includes competitive providers, cooperatives, and telecommunications utilities.

~~(4112)~~ “Telecommunications **S**service” or “service” means two-way switched access and transport of voice communications, and all services provided in connection with such services, but excludes:

- (a) Services provided by radio common carrier;
- (b) One-way transmission of television signals;
- (c) Surveying;
- (d) Private telecommunications networks; and
- (e) Customer communications ~~which~~ that take place on the customer’s side of the network interface.

~~(4213)~~ “Telecommunications **U**tility” means a person who is not a competitive provider and is designated as a telecommunications utility under OAR 860-032-0010.

~~(4314)~~ “Toll **S**service” means a telecommunications service between local exchanges carried on the public switched network for which charges are made on a per-unit basis.

~~(4415)~~ “Unserved **P**erson” means a person:

- (a) Who lacks local exchange service;
- (b) Who is applying for residential service or business service with five or fewer lines; and
- (c) Who, for the initiation of such service, would be required to pay line extension charges.

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

Stats. Implemented: ORS 756.040, 759.005 & 759.020

Hist.: PUC 27-1985 (Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 19-1986 (Temp), f. & ef. 12-15-86 (Order No. 86-1253); 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 5-1993, f. & ef. 2-19-93 (Order No. 93-184); PUC 1-1994, f. & ef. 1-5-94 (Order No. 94-040); PUC 10-1998, f. & ef. 4-28-98 (Order No. 98-170); PUC 2-2000, f. & ef. 2-9-00 (Order No. 00-068); PUC 15-2001, f. & cert. ef. 6-21-01 (Order No. 01-488); PUC 26-2001, f. & ef. 11-05-01 (Order No. 01-896)

860-032-0020

~~Notice of Intent to Abandon Service~~

~~(1) A telecommunications utility which intends to discontinue an individual regulated service, including a service for which there are no current customers, shall file a petition with the Commission. The petition shall be filed at least 60~~

~~days before the telecommunications utility intends to abandon the service. Within five days of filing the petition with the Commission, the telecommunications utility shall notify affected customers of the filing and its intent to abandon the service. The telecommunications utility shall demonstrate that the abandonment will not deprive the public of necessary telecommunications services. The telecommunications utility shall reinstate service at the Commission's request to prevent the public from being deprived of necessary services.~~

~~_____ (2) If the Commission does not deny the petition or set it for hearing within 60 days of receiving the petition, it shall be deemed approved.~~

~~_____ (3) A telecommunications utility shall not file a tariff with an individual service deleted from the tariff unless the tariff filing is preceded or accompanied by a petition to abandon the service pursuant to subsection (1) of this rule.~~

~~_____ (4) If a telecommunications utility intends to abandon an individual service for which there are no current customers, the petition required in subsections (1) and (3) of this rule may consist of an explanatory cover letter or advice letter filed with the tariff which reflects the abandonment of the service.~~

Abandonment of Service

_____ (1) For the purpose of this rule:

_____ (a) "Abandon" means to discontinue or cease providing.

_____ (b) "Commission" means the Public Utility Commission of Oregon.

_____ (c) "Exiting provider" means a telecommunications provider, which intends to abandon a telecommunications service.

_____ (d) "Grandfather" means to discontinue or cease offering a service to new customers and to continue offering the service to existing customers.

_____ (e) "Oregon Emergency Management" means the Technology and Operations Section, Oregon Emergency Management, Department of State Police, in Salem, Oregon.

_____ (f) "Receiving provider" means a telecommunications provider which receives or acquires customers for a service being abandoned by an exiting provider. A receiving provider may be a telecommunications utility, a telecommunications cooperative, or a competitive provider.

_____ (g) "Receiving telecommunications utility" means a telecommunications utility which is a receiving provider.

_____ (h) "Receiving competitive provider" means a competitive provider which is a receiving provider.

_____ (i) "Regulated service" means a telecommunications service provided by a telecommunications utility which is not an exempt service as defined in OAR 860-032-0001.

(j) "Starting date" means the day a telecommunications utility may lawfully disconnect service to an exiting provider or the date a telecommunications utility knows that an exiting provider ceases providing service, whichever comes first.

(k) "Sunset date" means the day a telecommunications provider will abandon a grandfathered service being provided to existing customers.

(l) "Through service" has the same meaning as in OAR 860-022-0003.

(2) Except as specified in section (3) of this rule, this rule applies:

(a) When a telecommunications utility or competitive provider abandons any intrastate telecommunications service.

(b) When a telecommunications cooperative abandons any through service.

(3) This rule does not apply:

(a) When a telecommunications utility or cooperative transfers control of its operations, for any or all of its service area in Oregon, to another telecommunications utility or cooperative, under ORS 759.375 to 759.390 or 759.500 to 759.570.

(b) When a telecommunications provider replaces a telecommunications service with a substantially similar service.

(c) When a telecommunications provider disconnects service to an individual customer at the customer's request or for cause, including non-payment.

(4) This rule does not relieve telecommunications providers of any requirements imposed by the Federal Communications Commission (FCC), including FCC anti-slamming rules and 47 CFR §63.71.

(5) Notifications required by this rule shall include the following at a minimum:

(a) Name of the exiting provider.

(b) Address and telephone number where the public, customers, Commission staff, and affected telecommunications providers may contact the exiting provider for information regarding the abandonment.

(c) Description of telecommunications services to be abandoned.

(d) Identification of geographic areas where the services will be abandoned.

(e) Date the service(s) will be abandoned.

(f) If applicable, a statement whether customers of the services(s) to be abandoned will be converted to different service(s) offered by the exiting provider, and if so, what customers must do to be converted to the different service(s).

(g) If applicable, a statement that all customers will be automatically transferred to a specified receiving provider unless they disconnect or obtain service from another provider. The exiting provider must identify the receiving provider to which customers will be transferred.

(h) If the exiting provider intends to transfer customers to a specified receiving competitive provider and the receiving competitive provider will not accept all customers, subsection (5)(h) of this rule applies. The exiting provider must include in the notification a statement that customers may or will lose their service unless they obtain services from a provider of their choice. The exiting provider must provide reasonable means for each customer to determine whether he or she will be accepted by the receiving competitive provider.

(i) If applicable, a statement that service will be abandoned and that customers must obtain the service(s) to be abandoned from another provider.

(j) An explanation of how customers may receive a refund of payments or deposits for service they will not receive because of the abandonment.

(k) The exiting provider shall provide notification to the Commission in a format suitable for posting on the Commission website. The Commission will post such notification within 48 hours of receipt from the exiting carrier.

(6) In addition to other notifications required by this rule, the following notifications are also required at the same time the exiting provider files notice with the Commission. Notifications here required shall include the information required by section (5) of this rule plus the information specified in subsections (6)(a) or (6)(b) of this rule.

(a) An exiting provider that intends to abandon any service which allows access to the 9-1-1 emergency reporting system shall:

(A) Mail notification to Oregon Emergency Management, which notification shall include the number of customers affected by the proposed abandonment of service;

(B) Provide access to its customer records in the Enhanced 9-1-1 database(s), so that other telecommunications providers can update those customer records; and

(C) Send a letter to the appropriate Enhanced 9-1-1 database provider(s), with copies to the incumbent local exchange carrier(s), the Commission and Oregon Emergency Management, authorizing the Enhanced 9-1-1 database provider(s) to allow access by other telecommunications providers to any remaining Enhanced 9-1-1 database records belonging to the exiting provider, after the exiting provider has abandoned the service.

(b) An exiting provider that intends to abandon service so that it will no longer use a central office code or a thousands block of numbers (i.e., an NXX or an NXX-X) shall notify the North American Numbering Plan Administrator and the national administrator of the Local Exchange Routing Guide.

(7) A telecommunications utility that intends to abandon any regulated service, whether throughout its service territory or in limited geographic areas, for which there are current customers, shall:

(a) Petition the Commission for authority to abandon the service. The petition shall be filed at least 60 days before the telecommunications utility intends to abandon the service. If the Commission does not deny the petition or set it for hearing within 60 days after receiving the petition, it shall be deemed approved.

(b) Mail a notification to each affected customer and to each telecommunication provider affected by the proposed abandonment at the same time it files the petition with the Commission. The notification shall include the information required by section (5) of this rule. In addition, the notification shall include a statement that upon request from affected customers or providers the Commission may, but is not required to, deny the petition or set it for hearing.

(c) File with the Commission a copy of the notification at the same time it mails the notification and files the petition. In addition, the telecommunications utility shall inform the Commission of the number of customers and the number of other providers affected by the proposed abandonment.

(d) Demonstrate that the abandonment will not deprive the public of necessary telecommunications services. The telecommunications utility shall reinstate service at the Commission's request to prevent the public from being deprived of necessary services.

(e) Obtain Commission approval before transferring customers to other telecommunications providers. If the telecommunications utility seeks such approval, it shall include in the petition to abandon service a request for approval to automatically transfer customers.

(8) A telecommunications utility may request to abandon a regulated service for which there are no current customers by filing a tariff change that deletes the regulated service along with a cover letter or advice letter that clearly and explicitly discloses which regulated service the telecommunications utility proposes to abandon.

(9) A telecommunications utility that intends to abandon any exempt service, whether throughout its service territory or in limited geographic areas, for which there are current customers, shall comply with the following:

(a) At least 30 days before abandoning the service the telecommunications utility shall mail to each affected customer, and to each telecommunication provider affected by the proposed abandonment, a notification of its intent to abandon the service. The notification shall include information required by section (5) of this rule.

(b) At the time the telecommunication utility mails notification to affected customers, it shall file a copy of the notification with the Commission. In addition, the telecommunications utility shall inform the Commission of the number of customers and the number of other providers affected by the proposed abandonment.

(c) The telecommunications utility may, after complying with subsections (9)(a) and (9)(b) and subject to section (12) of this rule, transfer customers of its exempt service to another telecommunications provider, including an affiliated provider, without requiring affirmative approval from affected customers.

(10) A telecommunications cooperative that intends to abandon any through service, whether throughout its service territory or in limited geographic areas, shall:

(a) Petition the Commission for authority to abandon the service. The petition shall be filed at least 60 days before the telecommunications cooperative intends to abandon the service. If the Commission does not deny the petition or set it for hearing within 60 days after receiving the petition, it shall be deemed approved.

(b) Mail a notification to each affected customer and to each telecommunication provider affected by the proposed abandonment at the same time it files the petition with the Commission. The notification shall include the information required by section (5) of this rule. In addition, the notification shall include a statement that upon request from affected customers or providers the Commission may, but is not required to, deny the petition or set it for hearing.

(c) File with the Commission a copy of the notification at the same time it mails the notification and files the petition. In addition, the telecommunications cooperative shall inform the Commission of the number of customers and the number of other providers affected by the proposed abandonment.

(d) Demonstrate that the abandonment will not deprive customers of necessary telecommunications services. The telecommunications cooperative shall reinstate service at the Commission's request to prevent customers from being deprived of necessary services.

(e) Obtain Commission approval before transferring customers to other telecommunications providers. If the telecommunications cooperative seeks such

approval, it shall include in the petition to abandon service a request for approval to automatically transfer customers.

(11) A competitive provider that intends to abandon any or all services, whether throughout its service territory or in limited geographic areas, for which there are current customers, shall comply with the following:

(a) At least 30 days before abandoning service the competitive provider shall mail to each affected customer, and to each telecommunications provider affected by the proposed abandonment, a notification of its intent to abandon the service(s). The notification shall include information required by section (5) of this rule.

(b) At the time it mails notification to affected customers, the competitive provider shall file a copy of the notification with the Commission. In addition, the competitive provider shall inform the Commission of the number of customers and the number of other providers affected by the proposed abandonment.

(c) The competitive provider may, after complying with subsections (11)(a) and (11)(b) and subject to sections (12) and (13) of this rule, transfer customers to another telecommunications provider, including an affiliated company, without requiring affirmative approval from affected customers.

(12) Notwithstanding OAR 860-021-0009 or OAR 860-034-0030, an exiting provider may transfer customers of an abandoned service to a receiving telecommunications utility without the customers applying to the receiving telecommunications utility for service only under all the conditions listed below. The exiting provider may be an affiliate of the receiving telecommunications utility.

(a) The receiving telecommunications utility must enter into a written agreement with the exiting provider to accept all the exiting provider's customers with service locations within the receiving telecommunications utility's local exchange service area.

(b) The exiting provider must provide at least 30 days notice to its customers that it intends to abandon service, as provided in section (11) of this rule.

(c) The notice must comply with section (5), including subsection (5)(g), of this rule to ensure that:

(A) Customers are notified that they may apply to another telecommunications provider for the service which is being abandoned; and

(B) Customers are notified that if they do not act to obtain service from another telecommunications provider, then the exiting provider will automatically

transfer them to the receiving telecommunications utility for the service, which is being abandoned.

(d) Customers may be automatically transferred to a receiving telecommunications utility only if their service location is within that utility's local exchange service area.

(e) The receiving telecommunications utility shall accept all customers of the exiting provider who are automatically transferred and shall provide to those customers the service being abandoned.

(f) After the transferred customers become customers of the receiving telecommunications utility, they shall be treated equally as similarly situated customers.

(13) When an exiting provider fails to provide to its customers adequate notice that it intends to abandon service, as provided in section (11) of this rule, and when the exiting provider is either reselling finished, regulated, intraexchange services of a telecommunications utility, or the exiting provider is selling combinations of unbundled network elements equivalent to a finished, regulated, intraexchange service furnished by the telecommunications utility, the following conditions apply:

(a) Notwithstanding OAR 860-021-0009 or 860-034-0030, the underlying telecommunications utility may, at its option, continue providing service to the exiting provider's customers, for not more than 45 calendar days from the starting date, without those customers first applying for service from the telecommunications utility. For purposes of section (13) of this rule, those customers shall be defined as potential applicants for service from the telecommunications utility. If the telecommunications utility chooses to continue service to the potential applicants, the following apply:

(A) The telecommunications utility shall apply the same procedures to all potential applicants.

(B) The telecommunications utility shall accept and process applications pursuant to administrative rules in Chapter 860, Division 021 or Chapter 860, Division 034.

(C) If an application is accepted, then telecommunications utility may charge the applicant, who is now a customer of the telecommunications utility, for service provided as of the starting date.

(D) If an application is rejected, then the telecommunications utility shall disconnect the applicant's service.

(E) If a potential applicant does not apply for service by the forty-fifth calendar day from the starting date, then telecommunications utility shall

disconnect service immediately. For good and sufficient reason, the Commission may grant the telecommunications utility an extension of this time period.

(b) If the underlying telecommunications utility chooses to not continue service to customers of the exiting provider, then the telecommunications utility shall disconnect service to the exiting provider as provided by:

(A) The approved interconnection agreement between the exiting provider and the telecommunications utility, or

(B) Applicable requirements in administrative rules, Chapter 860, Division 021 or Chapter 860, Division 034.

(14) If an exiting provider abandons service, with or without adequate notice to its customers, a telecommunications utility or a competitive provider may not have resources or facilities in place sufficient to accept and serve all customers whose service is being abandoned. Upon application from those customers for service, the telecommunications utility shall provide service to them as soon as possible. However, under the circumstances described in section (14) of this rule, the Commission's intent is that a telecommunications utility or competitive provider not be penalized for failing to meet the applicable standards for held orders set forth in OARs 860-023-0055, 860-034-0390, or 860-032-0012. Therefore, in cases where an exiting provider abandons service, the telecommunications provider that intends to provide service may petition the Commission for relief from requirements of applicable Commission rules.

(15) The following apply when a telecommunications utility grandfathers a regulated service or a telecommunications cooperative grandfathers a through service:

(a) Grandfathering a service without a sunset date is not considered abandonment of service.

(b) If a telecommunications utility intends to grandfather a regulated service, without a sunset date, whether throughout its service territory or in limited geographic areas, it shall file a tariff, which designates the service as grandfathered. Normal tariff filing and review requirements applicable to the telecommunications utility and the grandfathered service apply.

(c) When a telecommunications utility intends to grandfather any regulated or exempt service, with a sunset date, whether throughout its service territory or in limited geographic areas, that grandfathering shall be considered abandonment of service subject to this rule.

(d) If a telecommunications cooperative intends to grandfather a through service, without a sunset date, whether throughout its service territory or in limited geographic areas, it shall petition the Commission for authority to

Docket AR 434
Staff Proposal With ALJ Changes
September 23, 2002

grandfather the through service. If the Commission does not deny the petition or set it for hearing within 60 days after receiving the petition, it shall be deemed approved.

(e) When a telecommunications cooperative intends to grandfather a through service, with a sunset date, whether throughout its service territory or in limited geographic areas, then that grandfathering shall be considered abandonment of service subject to this rule.

Stat. Auth.: ORS Ch. 183, 756 & 759
Stats. Implemented: ORS 756.040, 759.020, 759.035 & 759.050
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 10-1998, f. & ef. 4-28-98 (Order No. 98-170); PUC 2-2000, f. & ef. 2-9-00 (Order No. 00-068)