

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: February 4, 2003**

REGULAR	X	CONSENT	EFFECTIVE	Upon filing with the
	_____		DATE	Secretary of State

DATE: January 24, 2003

TO: Commissioners Hemmingway, Beyer, and Smith

FROM: Tom Barkin, Administrative Law Judge

REVIEWED BY: Terry Lambeth, Rules Project Leader

SUBJECT: AR 434: Adoption of a Rule to Amend OARs 860-032-0001 and 860-032-0020 to Change the Meaning of "Exempt Service" and Change the Requirements for Telecommunications Providers That Abandon or Discontinue Service in Oregon.

ADMINISTRATIVE LAW JUDGE RECOMMENDATION:

I recommend that the Commission adopt the amended rules as set forth in Appendix A in the attached order, and open an investigation to consider the adoption of guidelines for the migration of customers when a carrier exits the market and abandons or discontinues service.

DISCUSSION:

At its May 7, 2002, public meeting, the Commission adopted Staff's recommendation to propose amendments to OARs 860-032-0001 and 860-032-0020, defining the term "exempt service," and specifying the procedures for telecommunications providers to abandon or discontinue service. A major focus of this docket has been to adopt rules that facilitate the migration of customers to a new carrier when the serving carrier exits the market. The notice was published in the Secretary of State's *Oregon Bulletin* on June 1.

On June 21, Commission Staff (Staff), Qwest Corporation (Qwest), Verizon Northwest Inc. (Verizon), United Telephone Company of the Northwest dba Sprint (Sprint), and the Oregon Telecommunications Association (OTA) participated in a workshop. On July 5, Staff submitted revised proposed rules based on the participant's discussion at the workshop. In July, comments were timely filed by Staff, Qwest, Verizon, and Sprint. On August 6, a hearing was held in Salem, Oregon. Staff filed additional suggested changes on August 26.

On November 1, the Commission republished the notice of proposed rulemaking in this docket. The republished proposed rules are based on Staff's July 5 and August 26 revisions. The republished proposed rules also incorporate comments from the participants in the earlier phase of the proceeding. Comments on the republished proposed rules were timely filed by Staff, Verizon, Allegiance Telecom of Oregon, Inc. (Allegiance), and MCI Worldcom Communications, Inc. (MCI).

The attached order reviews the November comments from the participants and adopts the administrative rules attached as set forth in the Appendix to the order. In addition, the order opens an investigation to consider the adoption of guidelines for the migration of customers when a carrier exits the market and abandons or discontinues service.

PROPOSED COMMISSION MOTION:

Adopt the amendments to OARs 860-032-001 and 860-032-0020, as set forth in Appendix A of the attached order, and open an investigation to consider the adoption of guidelines for the migration of customers when a carrier exits the market and abandons or discontinues service.

ORDER NO. DRAFT

ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 434

In the Matter of a Proposed Rulemaking to)
Amend 860-032-0001 and 860-032-0020 to)
Change the Meaning of "Exempt Service") ORDER
and Change the Requirements for)
Telecommunications Providers That)
Abandon or Discontinue Service in)
Oregon.)

DISPOSITION: RULES AMENDED; INVESTIGATION OPENED

At its May 7, 2002, public meeting, the Commission adopted Staff's recommendation to propose amendments to OAR 860-032-0001 and 860-032-0020, defining the term "exempt service," and specifying the procedures for telecommunications providers to abandon or discontinue service. A major focus of this docket has been to adopt rules that facilitate the migration of customers to a new carrier when the serving carrier exits the market. The notice was published in the Secretary of State's *Oregon Bulletin* on June 1, 2002.

On June 21, 2002, Commission Staff (Staff), Qwest Corporation (Qwest), Verizon Northwest Inc. (Verizon), United Telephone Company of the Northwest dba Sprint (Sprint), and the Oregon Telecommunications Association (OTA) participated in a workshop. On July 5, 2002, Staff submitted revised proposed rules based on the participants' discussion at the workshop. In July 2002, comments were timely filed by Staff, Qwest, Verizon, and Sprint. On August 9, 2002, a hearing was held in Salem, Oregon. Staff filed additional suggested changes on August 26, 2002.

On November 1, 2002, the Commission republished the notice of proposed rulemaking in this docket. The republished proposed rules are based on Staff's July 5, 2002 and August 26, 2002 revisions. The republished proposed rules also incorporate comments from the participants in the earlier phase of the proceeding. Comments on the republished proposed rules were timely filed by Staff, Verizon, Allegiance Telecom of Oregon, Inc. (Allegiance), and MCI Worldcom Communications, Inc. (MCI).

After reviewing the November comments from the participants, the Commission adopts the administrative rules attached as Appendix A to this order, and opens an investigation to consider guidelines for migrating customers from carriers abandoning service. At times, this order refers to comments from the earlier phase of the proceeding to provide context for the discussion of comments received in November.

Allegiance's Request for a Hearing

In its comments filed November 21, 2002, Allegiance requested a hearing to allow carriers, in addition to those involved in the initial phase of this docket, to participate in the development of the final rules.¹ Allegiance noted that only Qwest, Verizon, United, and OTA participated in the workshops and earlier hearing.

ORS 183.332(3)(a) requires that we hold an oral hearing upon a timely request from 10 persons or from an association having not less than 10 members. As noted above, only Allegiance is requesting a hearing. Since we have already held one hearing in this docket, no further hearings are required or necessary.

However, as discussed below, we are adopting Verizon's proposal to initiate a collaborative process to consider mass migration guidelines along the lines of the guidelines adopted by the New York Public Service Commission. We conclude that such guidelines could assist carriers in migrating customers when an exiting carrier abandons service. Consequently, in this order, we open an investigation and direct Staff to begin workshops with stakeholders on mass migration guidelines. Allegiance and other interested participants will be able to participate in this investigation.

Definition of Exempt Service, OAR 860-032-0001(4)

Republished Proposed Rule. This provision makes clear that exempting a service from regulation removes economic regulation, but not other regulatory obligations.

Positions of the Participants. At the hearing, Staff stated that its proposed rule was based on a policy of treating telecommunications utility exempt services the same as competitive provider services, to the extent reasonably possible. By exempting a service from regulation, Staff stated that the Commission allows the utility the opportunity to compete with competitive providers in the marketplace for the exempted service.

¹ Allegiance also requested that the Commission determine whether this docket is appropriate for considering its petition for an investigation on migration of customers between competitive providers. Because we have granted Allegiance's petition to initiate such a docket in UM 1068, we will not address that issue here.

However, Staff also stated that its proposal reflects the Commission's historical practice when it exempts telecommunications services from regulation. That is, when a telecommunications utility service is exempted, revenues, costs, profits and assets related to the service are no longer under the Commission's regulatory oversight. The Commission's policy recognizes, however, that those services are still subject to other Commission statutes and rules, including:

- a. PUC reporting requirements for annual reports, which include such data as numbers of lines, customers, or minutes of use (OAR 860-032-0060);
- b. Oregon Universal Service Fund charges (ORS 759.425, which imposes such charges on all telecommunications services sold in Oregon);
- c. The PUC regulatory fee (ORS 756.310);
- d. Service standards rules (ORS 759.450(2) which imposes minimum service quality standards on all telecommunications carriers); and
- e. Abandonment of service obligations (OAR 860-032-0020).

As a result, Staff's proposal reflected an effort to balance competitive neutrality with the telecommunications utilities' continuing statutory obligations as incumbent carriers.

Commission Decision. We adopt the republished proposed rule. The broad delegations of power to the Commission in ORS Chapter 759 support Staff's conclusion that the Legislature left it to us to determine the manner and extent of exempting a service from regulation. See ORS 759.030(1). We agree with Staff's approach, that to the extent reasonably possible and consistent with Oregon's statutory framework, we should treat exempt services provided by telecommunications utilities the same way we treat services provided by competitive providers. Such parity promotes fairness in the market place.

Abandonment of Service-Definitions, OAR 860-032-0020(1)

Republished Proposed Rule. This provision defines terms used in the republished proposed rule.

Positions of the Participants. There were no objections to the proposal.

Commission Decision. The republished proposed rule is adopted.

Abandonment of Service-Applicability, OAR 860-032-0020(2), (3), and (4)

Republished Proposed Rule. These provisions specify the scope of the republished proposed rule. Section (2) applies to telecommunications utilities or competitive providers abandoning any intrastate telecommunications service and

telecommunications cooperatives abandoning any through service. Section (3) provides that the rule does not apply to transfers of service to other providers. Section (4) reminds carriers of the FCC's abandonment of service rules.

Positions of the Participants. There were no objections to Sections (2), (3), and (4).

Commission Decision. The republished proposed rule is adopted.

Abandonment of Service-Contents of Notice, OAR 860-032-0020(5)

Republished Proposed Rule. This provision details the notice requirements when a carrier abandons service. The rule requires basic information such as name, address, and location of the provider, a description of the service and date of proposed abandonment, and how the customers' needs will be addressed.

Section (5) specifies the minimum contents for a telecommunications provider's notice of intent to abandon service. If the receiving carrier, whether telecommunications utility or competitive provider, will accept all transferred customers, the notice in subsection (5)(g) and the procedures in section (12) apply.

Subsection (5)(h) applies only to competitive providers. This provision specifies the notice requirements when a competitive provider is willing to accept only some of the exiting carrier's customers. The republished proposed rule does not contemplate telecommunications utilities' customers. Staff explains that telecommunications utilities must comply with the nondiscrimination provisions of Oregon statutes and the Commission's administrative rules.² Staff points out that telecommunications utilities may terminate customers as provided in the Commission's administrative rules. According to Staff, this provision addresses the unique position telecommunications utilities hold under Oregon law.

Subsection (5)(i) provides the notice provision when the exiting carrier has made no provision for transitioning abandoned customers. In effect, the exiting carrier is informing its customers that they will be without service unless they can find another carrier. Subsection 5(j) requires a statement of how customers will be refunded payments or deposits they made for services not provided. Subsection (5)(k) provides that the Commission will post notice of the abandonment on its website within 48 hours of receiving notice from the exiting carrier.

Positions of the Participants. Verizon is primarily concerned with the lack of information in the required notices. Verizon recommends that different notices be sent to the Commission and to customers. Verizon argues that receiving carriers need the additional information to effectively migrate the customers. It recommends the

² ORS 759.260 *et seq.*, OAR 860-021-0009 *et seq.*, and OAR 860-034-0030 *et seq.*

Commission require the exiting carrier to submit a list of detailed information, followed by less-detailed notice to affected customers. Allegiance agrees that the exiting carriers should be required to provide more detailed information than is required in the republished proposed rule. Both carriers recommend that the Commission adopt guidelines along the lines of the Guidelines adopted by the New York Public Service Commission.

Staff recommends that the Commission modify the republished proposed rule to require notification within two business days rather than 48 hours of receipt from the exiting carrier. The change would accommodate holidays and weekends.

Commission Decision. As discussed below, we open an investigation into the need for Mass Migration Guidelines. The content of the notices should be determined in that proceeding. After the participants have had an opportunity to discuss these matters in detail, they may recommend changes to this section.

The final rule will reflect Staff's recommendation to require publication of notice of abandonment on the agency web page within two business days of receipt from the exiting carrier, rather than publication within 48 hours.

Abandonment of Service-Notification to Emergency Management and Numbering Plan Administrator, OAR 860-032-0020(6)

Republished Proposed Rule. This proposed provision addresses additional notifications necessary to assure that the customer transition includes necessary emergency 9-1-1 and number guide changes. This version of the rule adopts recommendations from Staff and Verizon accessing the E-9-1-1 database.

Positions of the Participants. MCI comments that subsection (6)(b) may be unnecessary because the current practices already satisfy the proposed notice requirement regarding the North American Numbering Plan Administrator (NANPA) and the national administrator for the Local Exchange Routing Guide (LERG). MCI requests clarification that the proposed rule does not impose any additional notice requirements.

Commission Decision. In response to MCI's comment, our rule does not impose any additional notification requirements on carriers, as long as the NANPA is notified and LERG databases are updated.

Abandonment of Service-Notification Procedures, OAR 860-032-0020(7)-(11) and (16)

Republished Proposed Rule. This provision requires different procedures for various categories of carriers exiting from the market. Section (7) specifies that telecommunications utilities abandoning a regulated service with current customers must petition the Commission for authority to abandon, state the number of providers and customers affected, give a 60-day notice prior to the proposed abandonment, mail notice to each affected customer and provider, and include a statement that upon request from affected customers or providers the Commission may deny the petition or set it for hearing. The section provides that if, within 60 days of receipt, the Commission does not deny the petition or set it for hearing, the petition shall be deemed approved.

The petition must state or 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. The utility must also 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.

Section (8) provides that if a telecommunications utility requests to abandon a regulated service for which there are no current customers, it may file a tariff which deletes the regulated service along with a cover letter or advice letter which discloses which regulated service the utility proposes to abandon.

Section (9) provides the procedures for a utility that intends to abandon an exempt service for which there are current customers. The utility must give a 30-day notice by mail to each affected customer and to each affected provider. The exiting utility must also notify the Commission and provide the number of customers and providers affected by the abandonment. The utility may then transfer customers of its exempt service to another provider without obtaining approval from the affected customers.

In section (10), a telecommunications cooperative intending to abandon a through service follows essentially the same procedures as the utility abandoning a regulated service.

In section (11), a competitive provider intending to abandon a service must provide at least a 30-day notice by mail to each customer of its intent to abandon and file a copy with the Commission. The filing shall inform the Commission of the number of customers and providers affected. After complying with the requirements in the rules, the competitive provider may transfer customers to another telecommunications provider without approval of the customers.

Positions of the Participants. Staff sees a relationship between proposed section (7), which specifies a telecommunications utility's obligations when it abandons a regulated service and section (8), which allows a utility to simply file a tariff deleting a service, when there are no customers for the service. Section (7) requires utilities to petition the Commission and give notice of intent to abandon service. Staff indicates that, ideally, when a utility wants to abandon a regulated service for which it has customers, it would file a tariff to grandfather the service without a sunset date. Then, the utility would work with the grandfathered customers to migrate them, over time, to replacement services. Finally, when no grandfathered customers are left, the utility may take advantage of section (8) and file another tariff that deletes the service.

Staff points out that proposed sections (9) and (11) are parallel. Section (9) provides the steps a telecommunications utility must follow to abandon an exempt service for which it has current customers. Section (11) specifies the steps for competitive providers in that category. Staff points out that including identical procedures promotes competitive neutrality.

Staff notes that the petition and notice requirements in section (10) on telecommunications cooperatives abandoning through services are identical to the telecommunications utility requirements. Through services offered by cooperatives are subject to the same regulatory regime as regulated services offered by utilities.³ Staff acknowledges that it is unlikely there will ever be a need for the section.

Verizon recommends that section (7) be changed to include all exiting providers and that sections (9), (10), and (11) be deleted. Verizon would impose petition and notice requirements on all exiting carriers. Staff argues that petitions are not necessary for competitive providers that abandon service under section (11) and utilities that abandon exempt services under section (9). Staff believes that customers in these categories do not require Commission protection. There should be alternatives available for customers assuming the customers get adequate notice that the carrier is abandoning service. Regarding section (9), OTA asserts that the Commission should not impose the abandonment of service requirements on exempt services. OTA questions the necessity of this regulatory requirement.

Verizon recommends adding longer timelines for the notice. It recommends the Commission require the exiting carrier to file a petition with the Commission at least 90 days prior to abandonment. In addition, it argues that exiting carriers should provide customers of regulated services a 60-day notice and customers of unregulated services a 30-day notice. Verizon also recommends competitive providers should provide a 60-day notice prior to abandoning a service.

³ *Beaver Creek Cooperative Telephone Company v. PUC*, 162 Or App 258, rev den 329 Or 479 (1999).

Allegiance joins Verizon in recommending that the Commission require longer notification periods. Allegiance asserts that a 60-day period for telecommunications utilities abandoning regulated service and telecommunications cooperatives abandoning through services is inadequate, especially when a large number of customers may be affected by the abandonment. It levels the same criticism at the 30-day time period for competitive providers abandoning any service and for telecommunications utilities abandoning exempt services. Allegiance asserts that the shortened time periods do not allow customers sufficient time to make a decision about a new carrier. It recommends a 90-day notice period for all abandonments.

Commission Decision. The Commission is concerned that the republished proposed rules do not provide receiving carriers, customers, and the Commission sufficient time or information to effectively migrate customers. Both Allegiance, a competitive provider, and Verizon, a telecommunications utility, recommend extending the notice requirement from 60 days to 90 days. Because these carriers have experienced the difficulties surrounding abandonment of service and migrating existing customers to a new carrier, we adopt the requirement for a 90-day notice prior to abandonment of regulated services by a telecommunications utility or through service by a telecommunications cooperative. Based on Allegiance's comments, we also adopt a 90-day notice period for competitive provider abandonments.

We anticipate that there may be many instances where a 90-day notice is neither necessary nor possible. Consequently, we will adopt a new section (16) that allows any carrier to petition the Commission for a waiver of the timelines or other requirements of these rules.

Abandonment of Service-Transferring Customers, OAR 860-032-0020(12)

Republished Proposed Rule. This provision specifies different requirements when a telecommunications utility accepts all customers or just some of the customers of an exiting provider.

Section (12) provides the procedures that must be followed for the exiting provider to transfer all customers to a telecommunications utility without the customers applying for service. The major requirements are that the exiting provider must notify the customers that they may apply for service from another provider. The notice must also inform customers that if they do not act, they will be automatically transferred to the receiving utility. Also, the receiving utility must accept all customers who are automatically transferred and treat the transferred customers the same way it treats its existing customers.

If an exiting provider is going to abandon service, and the incumbent telecommunications utility does not want to automatically accept all of the exiting provider's customers in its territory, the customers must apply to the utility or to another carrier for service. In that case, the notice requirements of subsection (5)(i) apply.

Positions of the Participants. In its comments on the republished proposed rule, Verizon renewed its recommendation that sections (12) and (13) should apply to all receiving providers, not just receiving utilities. At the hearing, Staff noted that sections (12) and (13) carve out exceptions from the requirements of Divisions 021 and 034. These provisions establish application and nondiscrimination requirements for utilities. Competitive providers are not subject to these obligations under Divisions 021 and 034.

Commission Decision. The Commission adopts the republished proposed rule. This rule will insure customers are treated fairly. We do not believe it is in the public interest to allow a telecommunications utility to use the automatic transfer provisions to pick and choose which customers it wishes to accept from an exiting provider. If the telecommunications utility wants to automatically receive customers, it should accept them all. If the utility wants to pick and choose which customers to accept, customers must go through the application process in accordance with our customer protection rules. We agree with Staff that telecommunications utilities have rights and obligations that are different from those of the competitive providers.

Abandonment of Service-Customer Rights and Obligations, OAR 860-032-0020(1)(j) and (13)

Republished Proposed Rule. Section (13) sets forth the procedures that a receiving provider must follow when the exiting provider is purchasing wholesale finished services or unbundled network element platforms from the receiving provider. The receiving telecommunications utility may serve the customers for up to 45 days without the customer applying for service. If the utility chooses to continue the service, it must process all applications according to the Commission's rules. The utility may charge the new customer for service as of the starting date. The utility shall disconnect service from a customer whose application is rejected or who does not apply for service within 45 days of the starting date. The provision would allow the receiving utility to seek an extension of the 45-day limit on serving transferred customers who do not apply for service.

Subsection (13)(b) of the republished proposed rule provides that if the utility chooses not to continue service to customers of the exiting provider, the utility must disconnect the customers according to the procedures in the interconnection agreement with the exiting provider or the procedures in the Commission's consumer protection rules.

Staff proposes defining the “starting date” as the day the utility can lawfully disconnect service to the exiting provider or the date the utility knows the provider is no longer providing service, whichever comes first.

Positions of the Participants. Verizon recommends that subsection (13)(b) be deleted. It claims that this rule mixes the telecommunications utility's right to disconnect a wholesale service with the telecommunications utility's right to service retail customers.

Commission Decision. The Commission adopts Verizon's recommendation and deletes subsection (13)(b). An additional requirement to follow interconnection agreements is unnecessary. That is already the law. The Commission's rules on consumer protection do not apply to wholesale transactions.

Abandonment of Service-Service Quality Standards and Grandfathering, OAR 860-032-0020(14) and (15)

Republished Proposed Rule. These provisions address the possibility that a telecommunications utility may incidentally violate the service quality rules while it is adding facilities to serve the customers of an exiting provider.

Section (14) provides that if a potential receiving provider does not have resources or facilities in place to serve abandoned customers, the customers may apply to the underlying utility for service. In these circumstances, the republished proposed rule states that it is the Commission's intent not to penalize the receiving provider for failure to meet service quality standards. The republished proposed rule allows the provider to petition for a waiver of the applicable rules.

Section (15) specifies when a proposal to grandfather a service is considered abandonment. The republished proposed rule provides that a grandfathering tariff is only considered abandoned when it has a specific sunset date.

The republished proposed rule specifies that a cooperative may grandfather a through service without a sunset date by petitioning the Commission for authority to take such action. If the Commission does not deny the petition or set the matter for hearing within 60 days of filing, the petition is deemed approved. If the cooperative proposes grandfathering a through service with a sunset date, Staff recommends the filing be considered a proposed abandonment of service.

Positions of the Participants. The Commission received no comments on these provisions.

Commission Decision. The Commission adopts the revised proposed rule. The Commission agrees that waiving service quality rules should be considered on a case-by-case basis. In an earlier phase of the proceeding, Verizon asked for a provision that would allow rate relief if it had to build facilities to serve customers abandoned by another carrier. In our view, such a provision is unnecessary. Oregon law provides procedures for utilities to seek rate changes. There is no reason for special treatment in these rules.

Waiver and Implementation of the Rules, OAR 860-032-0020(16)

As we indicated above, these rules specify numerous timelines and requirements that may not be applicable or appropriate in every situation. To allow maximum flexibility, these rules will include a provision allowing the Commission to entertain a petition from a provider or the Staff to waive any timeline or regulation in this rule. This waiver provision will allow the participants in this proceeding to work with the rule as they develop mass migration guidelines, as discussed below. That experience should be useful in developing guidelines that will facilitate customer migration when a provider is exiting the market.

MASS MIGRATION GUIDELINES

Verizon recommends the Commission adopt Mass Migration Guidelines (Guidelines), similar to those adopted by the New York Public Service Commission (NYPSC). Staff recommends that the Commission only consider these Guidelines if the rules adopted in this proceeding prove to be insufficient in practice.

Staff contacted the NYPSC Staff to determine how well the Guidelines have worked. The NYPSC Staff indicates the Guidelines were developed by the telecommunications industry, rather than the NYPSC. In effect since November 2001, the Guidelines have been used frequently and have worked well. The NYPSC is now considering stricter guidelines.

The NYPSC Staff finds that, when a competitive provider goes out of business, a very common occurrence in New York, the NYPSC Staff becomes heavily involved. The NYPSC Staff is in almost daily contact with the competitive provider, the telecommunications utility, and many competitive provider customers. NYPSC Staff spends a considerable amount of time working with customers who do not attempt to arrange for alternate service. At times, the NYPSC Staff does not get full cooperation from the participants and must insist on compliance with the Guidelines. The larger the competitive provider, the more involved the NYPSC Staff.

Staff recommends the Commission not adopt Verizon's proposed Guidelines for several reasons. First, competitive providers can choose to ignore Guidelines because they are not administrative rules. Second, the Guidelines require a great deal of Staff time. Staff does not believe it could implement the proposed Guidelines with its current level of staffing. Third, the proposed Guidelines impose substantial burdens on competitive providers. Staff believes that competitive providers experiencing economic difficulty will be even less willing to cooperate with the Guidelines than they would be willing to comply with the rules the Staff is proposing. Fourth, the Guidelines are for competitive local exchange providers who are abandoning service. Staff's proposed rules are for all competitive providers, including interexchange carriers who abandon service. Fifth, the Guidelines are not necessary when a competitive provider goes out of business and sells its customer base to another carrier. This seems to

be the most typical arrangement for abandoning service. For example, that is occurring now in the case of ATG/SCS transferring its customers to GE Business Productivity Solutions. Finally, Staff's proposed rules still require that the customers be notified, although the notice requirements are not as extensive as are required in the Guidelines.

Commission Staff recommends that, if the Commission decides to pursue migration guidelines, it should direct Staff to convene another workshop to resolve details of the wording.

Verizon responded to each of Staff's concerns. First, Verizon asserts the Commission does have considerable ability to influence carrier compliance with Mass Migration Guidelines should they be adopted. Guidelines would provide a helpful road map for all parties to follow. For carriers refusing to comply, the Commission could urge voluntary compliance or, in an enforcement proceeding, use the Guideline as a factor when imposing penalties for service quality failure or revoking a certificate of authority. In Verizon's view, the Guidelines would provide considerable leverage for dictating carrier behavior in an abandonment situation.

Second, Verizon believes adoption of the Guidelines would not impose significant new workload on Staff and may, in fact, save Staff time. Because of Oregon's relatively small telecommunications market, Verizon anticipates there will be much less work than larger states have encountered. Further, the Guidelines could save resources by avoiding a large number of customer disconnections that would occur without Commission involvement. Finally, the Commission's responsibility to consumers requires it to act in abandonment situations. The Commission is in the best position to intervene in an objective, neutral manner to insure smooth transitions between carriers.

Third, the Commission should be concerned about the impact of an abandonment on customers, rather than the burden the Guidelines might have on abandoning carriers. Verizon believes that if the Guidelines are properly implemented, compliance will not be a problem.

Fourth, Verizon agrees that the Guidelines could be adjusted to apply to other carriers, including the interexchange carriers. A workshop would be the best forum to refine the Guidelines.

Fifth, Staff underestimates the importance of sharing technical customer information between the exiting carrier and the receiving carrier. The notice required in the proposed rules does not require enough information for a smooth transition.

Allegiance joins Verizon in recommending the Commission adopt mass migration guidelines.

Commission Decision. The Commission agrees with Verizon, a telecommunications utility, and Allegiance, a competitive provider, that we should consider adopting mass migration guidelines. These carriers have considerable experience working in states where the guidelines are useful. Their recommendation carries particular weight because both a telecommunications utility and a competitive provider find guidelines advantageous. As a result, we will open an investigation to consider Mass Migration Guidelines along the lines of the guidelines adopted by the New York Public Service Commission. We also invite the participants in the workshops to recommend changes to these rules as they determine appropriate.

ORDER

IT IS ORDERED that:

1. The modifications to Oregon Administrative Rule 860-032-0001 and 860-032-0020, as set forth in Appendix A, are adopted.
2. The amended rules shall be effective upon filing with the Secretary of State.
3. An investigation shall be opened to consider the adoption of mass migration guidelines.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

A person may petition the Commission for the amendment or repeal of a rule pursuant to ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule pursuant to ORS 183.400.

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 section of this rule;

(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 ~~P~~provider” 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.”

ORDER NO. DRAFT

~~(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.

~~(1011)~~ “Telecommunications ~~P~~provider” or “provider” includes competitive providers, cooperatives, and telecommunications utilities.

~~(112)~~ “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.

~~(1213)~~ “Telecommunications ~~U~~tility” means a person who is not a competitive provider and is designated as a telecommunications utility under OAR 860-032-0010.

~~(1314)~~ “Toll Sservice” means a telecommunications service between local exchanges carried on the public switched network for which charges are made on a per-unit basis.

~~(1415)~~ “Unserved Pperson” 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)

OAR 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 de-priv 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 neces-sary 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 ap-proved.~~

~~———(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 OARs 860-022-0003 and 860-034-0015.
- (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; and
- (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; and
- (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 Code of Federal Regulations, Section 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, 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; and

(k) An electronic document containing the notice in a format suitable for posting on the Commission website. The Commission will post such notification within two business days 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 emergency 9-1-1 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 90 days before the telecommunications utility intends to abandon the service. If the Commission does not deny the petition or set it for hearing within 90 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; and

(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 which deletes the regulated service along with a cover letter or advice letter which 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 90 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; and

(c) The telecommunications utility may, after complying with subsections (9)(a) and (9)(b) of this rule 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 90 days before the telecommunications cooperative intends to abandon the service. If the Commission does not deny the petition or set it for hearing within 90 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; and

(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 90 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; and

(c) The competitive provider may, after complying with subsections (11)(a) and (11)(b) of this rule 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 a 90 day 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; and

(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 this section (13) of this rule, those customers shall be defined as potential applicants for service from the telecommunications utility; and

(b) 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 the 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; and

(E) If a potential applicant does not apply for service within 45 days 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.

(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 this 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, 860-032-0012, or 860-034-0390. 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 provisions 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 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.

(16) For good and sufficient reason, the Commission may grant a petition to waive any time period or requirement in 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)