

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

REGULAR	CONSENT	EFFECTIVE DATE	Upon Filing with the Secretary of State
<u> X </u>	<u> </u>	<u> </u>	<u> </u>
DATE:	February 18, 2003		
TO:	Commissioners Hemmingway, Beyer, and Smith		
FROM:	Michael Grant, Administrative Law Judge		
REVIEWED BY:	Terry Lambeth, Rules Project Leader		
SUBJECT:	<u>AR 442</u> : Adoption of a Rule to Amend OAR 860-032-0002 and OAR 860-032-0005 to Streamline and Clarify Procedures Governing Commission Approval of Applications for Certificates of Authority.		

ADMINISTRATIVE LAW JUDGE RECOMMENDATION:

Adopt the amended rules as set forth in Appendix A in the attached order.

DISCUSSION:

Staff requested this rulemaking docket be initiated to amend rules that govern applications for certificates of authority filed under ORS 759.020. Staff proposed rule changes to: (1) facilitate the electronic filing of applications and related documents; (2) streamline and clarify agency review of the applications; and (3) eliminate the current requirement that Staff issue a proposed order for all applications.

On August 28, 2002, Staff notified the telecommunications rulemaking notice list of the proposed changes. The Secretary of State published notice of the proposed rulemaking on September 1, 2002. Staff scheduled a workshop that was held on September 20, 2002; however, no one attended other than Staff. The Oregon Telecommunications Association (OTA) filed comments.

Staff's proposed changes to OAR 860-032-0002 and 860-032-0005, including those related to the OTA's comments, are summarized in the attached order.

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PROPOSED COMMISSION MOTION:

The Commission to adopt the modified rules as set forth in the attached order.

ORDER NO. DRAFT

ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 442

In the Matter of a Rulemaking to Amend)
OAR 860-032-0002 and OAR 860-032-0005 to)
Streamline and Clarify Procedures Governing) ORDER
Commission Approval of Applications for)
Certificates of Authority.)

DISPOSITION: RULES AMENDED

At its July 23, 2002 Public Meeting, the Public Utility Commission of Oregon (Commission) adopted Staff's recommendation to initiate a rulemaking proceeding to amend rules that govern applications for certificates of authority filed under ORS 759.020. Staff proposed rule changes to: (1) facilitate the electronic filing of applications and related documents; (2) streamline and clarify agency review of the applications; and (3) eliminate the current requirement that Staff issue a proposed order for all applications.

On August 28, 2002, Staff notified the telecommunications rulemaking notice list of the proposed changes. The Secretary of State published notice of the proposed rulemaking on September 1, 2002. Staff scheduled a workshop was held on September 20, 2002; however, no one attended other than Staff. The Oregon Telecommunications Association (OTA) filed comments.

Staff's proposed changes to OAR 860-032-0002 and 860-032-0005 are summarized as follows:

Electronic Filing

With the goal of increasing efficiency while providing the public with easier and faster access to documents and records, the Commission is in the process of implementing an electronic filing (eFiling) project. The project provides for electronic filing and retrieval of documents in agency proceedings. Both rules subject to this rulemaking have been revised to facilitate the electronic filing of documents as part of the Commission's eFiling project.

In OAR 860-032-0002(1), Staff proposes that persons who want to be on the telecommunications mailing list provide an electronic mail address in addition to a regular mail address. This information will allow the Commission to send notices to interested persons by e-mail rather than regular mail. Staff believes that the use of electronic mail will make many of the PUC's communications more efficient than they are today. If an interested person does not have Internet access, the rule allows an exemption to the e-mail requirement. This option addresses a concern raised by the OTA.

Similarly, OAR 860-032-0005(1), has been modified to require all parties to submit electronic copies of all documents, including the application, maps, amendments, and protests. Again, the proposed section contains relief from this requirement if a party does not have Internet access.

Process Issues

The current version of OAR 860-032-0005, which spells out the procedures for reviewing applications for certificates of authority, has been changed many times since its adoption in 1985. Staff's proposed numerous changes to reorganize the existing rule into a more cogent and clear process. Specifically, staff revised Sections (1) and (2), deleted Sections (3) to (13), and replaced them with new Sections (3) to (11). As discussed below, Staff also has made some substantive changes to the rule.

OAR 860-032-0005(1) and (11)

Staff has revised Section (1) to make OAR 860-032-0005 applicable to applications to transfer certificates of authority. Section (11) explains which portions of OAR 860-032-0005 are applicable to applications to transfer.

OAR 860-032-0005(2)

This section also has been revised to apply to applications to transfer certificates of authority. Section (2) also now states that application forms for certificates of authority are available on the agency website. Applicants will need to download the application form, fill it out, and then mail it to Staff. Staff is working toward modifications to the PUC website, so that applicants will be able to fill out the form directly on-line, but that advance is not yet available.

OAR 860-032-0005(5)

Staff modified its original proposal by including more specific requirements for applicants to describe the service they seek to provide, to list certificates previously issued to the applicants or to their affiliates, and for shared telecommunications service applicants to describe fully the user group and location where they plan to provide service. These changes codify Staff's current practice in requiring this information from current applicants.

OAR 860-032-0005(7)

Currently, this section requires Staff to issue a proposed order regarding an application for authority to be a competitive local exchange carrier (CLEC). As revised, the rule eliminates this requirement and, instead, allows Staff the discretion to issue a proposed order. Staff explains that, over the past few years, it has issued hundreds of proposed orders for applications. For over 90 percent of the applications there are no protests and no exceptions to the proposed orders. Consequently, the final orders granting applications for certificates are the same as the proposed orders.

Staff believes the step of issuing proposed orders should be eliminated for most applications for certificates. This new procedure for CLEC applications would be similar to the procedure staff uses for applications to provide interexchange service only. For routine cases, Staff intends to review the application and have the Commission make its decision with a final order. If a party objects to the Commission's decision, it could request reconsideration with the agency or file an appeal. Usually there are no exceptions to proposed orders for CLECs, and elimination of the 'proposed order' step will save approximately three weeks processing time for over ninety percent of the applications. For cases which Staff believes are not routine, Staff would have the option of issuing a proposed order, which would allow an opportunity for parties to file exceptions.

Commission Resolution

At its March 4, 2003 Public Meeting, the Commission found that Staff's proposed changes are reasonable and should be adopted.

ORDER

IT IS ORDERED that:

1. The modifications to Oregon Administrative Rule 860-032-0002 and 860-032-0005, as set forth in Appendix A, are adopted.
2. The amended rules shall become effective upon filing with the Secretary of State.

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.

860-032-0002

Notice and Procedures for a Proceeding Initiated Under Division 032

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

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

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

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

Stats. Implemented: ORS 756.040, 759.020 & 759.025

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

860-032-0005

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

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

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

~~(3) For applicants who request classification as a telecommunications utility, all services proposed to be offered by the applicant shall be deemed essential services. However, applicant may accompany the application with a petition to exempt some services pursuant to OAR 860-032-0025 or to price list some or all services pursuant to OAR 860-032-0035.~~

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

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

- ~~—— (b) A description of the service the applicant seeks to provide, including designation of such service as local exchange, shared, or interexchange service;~~
- ~~—— (c) A description of the territory where the service is to be offered. An application to provide local exchange service shall include a description of the local exchange service boundaries or a list of the local exchanges to be served;~~
- ~~—— (d) The names of affiliated interests of the applicant, as defined in OAR 860-032-0001(15), which are certified to provide or are actually providing telecommunications service in Oregon; and~~
- ~~—— (e) A request for classification as a telecommunications utility or competitive provider.~~
- ~~—— (5) If an application, in any material respect, is incomplete, inaccurate, false, or misleading, the Commission shall reject the application.~~
- ~~—— (6) The Commission shall serve notice of the application as provided in OAR 860-032-0002(1).~~
- ~~—— (7)(a) Within 20 days of the date of service under section (6) of this rule, any interested person may file a protest to an application. The protest shall set forth the grounds for the protest. Except as provided in section (7)(b) of this rule, failure to protest within the time limit shall be deemed consent to the application. The Commission may require a person filing a protest to show that it is affected by the application or that its appearance and participation will not unreasonably broaden the issues or burden the record;~~
- ~~—— (b) If the application is to provide local exchange service within the service territory of a telecommunications utility or cooperative, the telecommunications utility or cooperative may protest. Failure of the telecommunications utility or cooperative to protest an application to provide local exchange service, other than shared service, shall not be considered consent to the application. The telecommunications utility or cooperative shall be made a party to the application process upon written request to the Commission and mailing a copy of the request to the applicant;~~
- ~~—— (c) The applicant shall serve protestants and parties with copies of amendments and additional information submitted during the application process. If an applicant intends to broaden the authority requested during the application process, it shall follow the procedures set forth in sections (2) through (7) of this rule. However, it may narrow its request by serving its amendment on each protestant and party.~~
- ~~—— (8) The Commission shall review applications for interexchange service or shared service pursuant to ORS 759.020. Applications for local exchange service, other than shared service, shall be reviewed pursuant to ORS 759.020 and ORS 759.050.~~
- ~~—— (9) For all applications:~~
- ~~—— (a) The Commission may hold a hearing regarding an application upon request of any person or on its own motion;~~
- ~~—— (b) The Commission may consider protests to an application and may grant or deny an application without hearing. However, if the application is to provide local exchange service, other than shared service, within the service territory of a~~

~~telecommunications utility, and the telecommunications utility protests, the Commission shall hold a hearing regarding the application; and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~process upon written request to the Commission and mailing a copy of the request to the applicants;~~

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

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

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

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

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

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

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

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

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

(c) A description of the service the applicant seeks to provide, including designation of such service as local exchange, shared, or interexchange service, and a designation of such service as switched or non-switched service, and a description of how applicant will provide such service;

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

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

(f) A list of each certificate of authority to provide service in Oregon, which was granted to applicant or to an affiliated interest, whether such certificate is in effect or canceled; and

(g) In addition to the requirements of subsections (5)(a) through (f) of this rule, an application to provide shared service shall:

(A) Describe the user group to whom service will be provided;

(B) List the street address of the building(s) where service will be provided; and

(C) If service will be provided to a user group located in two or more buildings, the application shall include a clear, precise, legible map, of the area to be served.

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

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

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

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

(7) For all applications:

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

(b) Within 20 days of the date of service of the notice, any person may file a protest to an application. The protest shall set forth the grounds for the protest. The protestant(s) shall also submit a copy of the protest in electronic format compatible with Adobe Acrobat Reader or Rich Text Format. The electronic copy may be an unsigned version of the protest. A protestant need not comply with this requirement upon the filing with the Commission a written statement of inability to file an electronic copy.

(c) The Commission may require a person filing a protest to show that it is affected by the application or that its appearance and participation will not unreasonably broaden the issues or burden the record. Failure of the telecommunications utility or cooperative to protest an application to provide local exchange service, other than shared service, shall not be considered consent to the application.

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

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

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

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

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

(8) For applicants who request classification as a telecommunications utility, all services proposed to be offered by the applicant shall be deemed essential

services. However, applicant may accompany the application with a petition to exempt some services pursuant to OAR 860-032-0025 or to price-list some or all services pursuant to OAR 860-032-0035.

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

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

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

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

(11) Applications to transfer authority to provide telecommunications service are subject to sections (1) through (4) and (6) through (10) of this rule. With Commission approval, a telecommunications provider may transfer a certificate of authority subject to the following requirements:

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

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

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

(d) When the application is granted the transferor will no longer be authorized to provide the telecommunications services that are transferred.

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

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

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