

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: April 15, 2003**

REGULAR	CONSENT	EFFECTIVE DATE	Upon Filing with the Secretary of State
<u> X </u>	<u> </u>	<u> </u>	<u> </u>
DATE:	April 2, 2003		
TO:	Commissioners Hemmingway, Beyer, and Smith		
FROM:	Kathryn A. Logan, Administrative Law Judge		
REVIEWED BY:	Terry Lambeth, Rules Project Leader		
SUBJECT:	<u>AR 455</u> : Adoption of rules in OAR Chapter 860, Divisions 021, 032 and 034 for collecting PUC fee payments and statements due from telecommunications utilities and competitive providers.		

ADMINISTRATIVE LAW JUDGE RECOMMENDATION:

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

DISCUSSION:

This rulemaking was opened on December 30, 2002, to consider revision and adoption of rules addressing late-filed statements and late payments for telecommunications utilities and competitive providers. Qwest was the only entity that filed comments.

The recommended rules are reorganized and rewritten for clarity purposes, but the intent of the rules remains as initially proposed.

PROPOSED COMMISSION MOTION:

Recommend adoption of the order and rules attached to this report.

Qwest generally supports the proposed rules, but makes a few suggestions for modification. We address Qwest's comments in our discussion below.

Discussion

While we understand Staff's initial suggestion to adopt the same language as in Docket No. AR 439, the reorganized language of the proposed rules in Appendix A makes it easier for others to understand our requirements. This rule clarity is particularly necessary in light of the potential impact upon competitive providers.

The reorganized language also addresses one of Qwest's concerns. Qwest wanted the proposed rule to clearly state that any recovery costs incurred in collecting a past due fee should be paid by the delinquent company only. While this was always our intent, the latest revision of OAR 860-021-0036(2) makes it clear that costs incurred in collecting a debt are to be charged to the delinquent company.

Qwest also wanted assurances that the penalty provisions for past-due fee assessments would not be applied to additional fees due because of a Commission audit or review. Qwest argues that this is the intent of ORS 756.350, which states:

Every person who fails to pay any fees provided for in ORS 756.310 or 756.321 after they are due and payable shall, in addition to such fees, pay a penalty of two percent of such fees for each and every month or fraction thereof that they remain unpaid.

Qwest contends that charging two percent per month for underpayment of fees determined by an audit or review is not appropriate and not justified by the statutory language. According to Qwest, as long as the annual fee is paid and the company has not willfully or intentionally misrepresented its annual fee, then the penalty fee should not be imposed. If such penalty fee is imposed, however, Qwest claims that the penalty fee should also apply to overcollections. Qwest proposes the following language:

If after an audit or review the Commission **or the Company** determines that the large telecommunications utility has overpaid **or underpaid** its annual fee, the Commission shall **include a credit or charge** in that amount against sums subsequently due from the utility. **A Late Payment Penalty (as provided for in ORS 756.350) is not applicable for underpayments made as the result of an audit or review as long as the Company provided payment of the PUC Fee, as reasonably reported at that time, on the required due date.**

ORDER NO. DRAFT

We do not agree with Qwest's interpretation of ORS 756.350. The statute does not attempt to attribute an actionable state of mind to a company; it simply states that two percent per month is due as a penalty for any fees not paid. Qwest's concern is that recent changes in determining the revenue base might cause Staff and the company to reasonably differ as to the appropriate annual fee. We do not foresee such difficulties. Finally, the statute does not provide for a two percent penalty on the Commission for overcollections. We do not adopt Qwest's suggested revision.

ORDER

IT IS ORDERED that:

1. The modifications to Oregon Administrative Rules 860-021-0036, 860-032-0095, and 860-034-0095, as set forth in Appendix A, are adopted.
2. New Oregon Administrative Rules 860-021-0037, 860-032-0097, and 860-034-0097, as set forth in Appendix A, are adopted.
3. The new and modified rules shall be effective upon filing with the Secretary of State.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

A party 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.

860-021-0036

Annual Fees Payable to the Commission by a Large Telecommunications Utility

(1) ~~The Commission shall provide~~ **On** statement forms prescribed by the Commission, **and** each large telecommunications utility shall provide the requested information ~~on the form~~ for the subject year.

(2) Each large telecommunications utility shall pay:

(a) pay a **An** annual fee in compliance with OARs 860-011-0020 and 860-011-0023. ~~For payments due on or before April 1, 2000, the annual fee shall be no less than \$10. For payments due on or after April 1, 2001, t~~**The annual fee shall be no less than \$100. The payment must be received by the Commission no later than 5 p.m. on the due date;**

(b) A late statement fee of \$100, if the Commission has not received the utility's statement form on or before 5 p.m. on the fifth business day following the due date;

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350 and OAR 860-032-0008(1);

(d) A service fee of \$25 for each payment returned for non-sufficient funds; and

(e) All costs incurred by the Commission to collect a past-due annual fee from the utility.

(3) For retail intrastate service rendered on or after January 1, 2000, ~~a~~**each** large telecommunications utility must:

(a) Collect the annual fee by charging an equitable amount to each retail customer, using apportionment methods that are consistently applied by the ~~large telecommunications~~ utility throughout Oregon; and

(b) Describe the amount of the apportioned charge upon each retail customer's bill.

(4) If the annual fee charge is embedded in the large telecommunications utility's Commission-approved retail rates, and the utility does not separately charge the customer an additional amount for the apportioned annual fee, then the utility may comply with subsection (3) of this rule by merely describing the apportioned amount of the charge on the retail customer's bill.

(5) For any year in which a large telecommunications utility's statement form was due, the Commission may audit the utility as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three (3) years after the statement form's due date;

(b) If the Commission determines that the utility has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350; and

(c) If the Commission determines that the utility has overpaid its annual fee, the Commission shall, at its discretion, recompense the utility with a refund or a credit against annual fees subsequently due.

~~(5)~~ If the annual fee charge is embedded in the large telecommunications utility's Commission-approved retail rates, and the utility separately charges the customer an additional amount for the apportioned annual fee, then the utility must comply with ORS 756.310(6)(c).

~~(67)~~ Each large telecommunications utility shall:

- (a) Maintain its records in sufficient detail to readily provide gross retail intrastate revenue from Oregon telecommunications services, as defined in OAR 860-032-0080;
- (b) Follow the revenue allocation procedures in OAR 860-032-0090; and
- (c) Make its revenue accounting records available to the Commission upon the Commission's request.

~~(78)~~ If the Commission receives a public record request for the **confidential** information required ~~by in sections (1) and (6) of~~ this rule, the Commission shall assert that, subject to the limitations of the Public Records Law, the materials are trade secrets and, therefore, exempt from disclosure. The material shall be marked "EXEMPT FROM PUBLIC DISCLOSURE AS TRADE SECRETS."

~~(8) Subject to the applicable requirements of the Public Records Law or ORS 759.060, access to this material shall be limited to Commissioners, their Counsel, and Commission employees. The materials shall be segregated and maintained in a locked file.~~

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

Stats. Implemented: ORS 756.310, ~~& 756.320~~ **& 756.350**

Hist.: PUC 13-1999, f. & ef. 12-7-99 (Order 99-734); PUC 16-2001, f. & cert. ef. 6-21-01 (Order No. 01-488)

860-021-0037

Estimated Annual Fees Payable to the Commission

(1) For any year in which a large telecommunications utility fails to file a statement form, the Commission may determine a proposed annual fee based upon any information available to the Commission. The proposed annual fee shall:

(a) Include a penalty fee for failure to pay as required by ORS 756.350;

(b) Include a late statement fee of \$100; and

(c) Be paid no later than three (3) years after the statement form's due date.

(2) The Commission shall provide written notice of the proposed annual fee to the large telecommunications utility.

(3) Within 30 days after service of the notice of proposed annual fee, the large telecommunications utility may file a petition with the Commission for a hearing. In its petition, the utility must specify its reasons for disputing the proposed annual fee. The Commission may conduct a hearing on the petition under its rules governing hearings and proceedings.

(4) If the large telecommunications utility has not filed a petition by the end of the 30-day period, the proposed annual fee is due and payable.

(5) During the 30-day period allowed for filing a petition, the large telecommunications utility may file its statement form and pay the annual fee, penalties, and late statement fee. The Commission shall accept the statement form, fees, and penalties in accordance with the original due date for that year's statement form and payment.

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

Stats. Implemented: ORS 756.040, 756.310, 756.320 & 756.350

Hist.: NEW

860-032-0095

Annual Fees Payable to the Commission by a Competitive Provider

(1) ~~The Commission shall provide~~ On statement forms prescribed by the Commission, and each competitive provider shall provide the requested information ~~on the form~~ for the subject year.

(2) Each competitive provider shall pay:

(a) pay a ~~An~~ annual fee in compliance with OARs 860-011-0020 and 860-011-0023. ~~For payments due on or before April 1, 2000, the annual fee shall be no less than \$10. For payments due on or after April 1, 2001, t~~The annual fee shall be no less than \$100. The payment must be received by the Commission no later than 5 p.m. on the due date;

(b) A late statement fee of \$100, if the Commission has not received the competitive provider's statement form on or before 5 p.m. on the fifth business day following the due date;

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350 and OAR 860-032-0008(1);

(d) A service fee of \$25 for each payment returned for non-sufficient funds; and

(e) All costs incurred by the Commission to collect a past-due annual fee from the competitive provider.

(3) For retail intrastate service rendered on or after January 1, 2000, ~~each~~ competitive provider must:

(a) Collect the annual fee by charging an equitable amount to each retail customer, using apportionment methods that are consistently applied by the ~~utility~~competitive provider through Oregon; and

(b) Describe the amount of the apportioned charge upon each retail customer's bill.

(4) Each competitive provider shall:

(a) Maintain its records in sufficient detail to readily provide gross retail intrastate revenue from Oregon telecommunications services, as defined in OAR 860-032-0080;

(b) Follow the revenue allocation procedures in OAR 860-032-0090; and

(c) Make its revenue accounting records available to the Commission upon the Commission's request. A competitive provider must keep all records supporting each statement form for three (3) years, or until a Commission review or audit is complete, whichever is later.

(5) For any year in which a competitive provider's statement form was due, the Commission may audit the competitive provider as the Commission deems necessary and practicable;

(a) The Commission's audit must begin no later than three (3) years after the

statement form's due date. However, if the competitive provider failed to obtain a certificate of authority, an audit may occur at any time;

(b) If the Commission determines that the competitive provider has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350; and

(c) If the Commission determines that the competitive provider has overpaid its annual fee, the Commission shall, at its discretion, recompense the competitive provider with a refund or a credit against annual fees subsequently due.

~~(5)~~ If the Commission receives a public record request for the confidential information required ~~by in sections (1) and (4) of~~ this rule, the Commission shall assert that, subject to the limitations of the Public Records Law, the materials are trade secrets and, therefore, exempt from disclosure. The material shall be marked "EXEMPT FROM PUBLIC DISCLOSURE AS TRADE SECRETS."

~~(6) Subject to the applicable requirements of the Public Records Law or ORS 759.060, access to this material shall be limited to Commissioners, their Counsel, and Commission employees. The materials shall be segregated and maintained in a locked file.~~

(7) A cooperative that is a competitive provider shall pay an annual fee only on the gross retail intrastate revenue from telecommunications services that are provided under the cooperative's ORS 759.020 certificate of authority. A cooperative shall not pay an annual fee on revenue from telecommunications services that are provided under the cooperative's ORS 759.025 certificate of authority.

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

Stats. Implemented: ORS 756.310, & 756.320 & 756.350

Hist.: PUC 13-1999, f. & ef. 12-7-99 (Order 99-734)

860-032-0097

Estimated Annual Fees Payable to the Commission

(1) For any year in which a competitive provider fails to file a statement form, the Commission may determine a proposed annual fee based upon any information available to the Commission. The proposed annual fee shall:

(a) Include a penalty fee for failure to pay as required by ORS 756.350;

(b) Include a late statement fee of \$100; and

(c) Be paid no later than three (3) years after the statement form's due date. However, if the competitive provider failed to obtain a certificate of authority, an audit may occur at any time.

(2) The Commission shall provide written notice of the proposed annual fee to the competitive provider.

(3) Within 30 days after service of the notice of proposed annual fee, the competitive provider may file a petition with the Commission for a hearing. In its petition, the competitive provider must specify its reasons for disputing the proposed annual fee. The

Commission may conduct a hearing on the petition under its rules governing hearings and proceedings.

(4) If the competitive provider has not filed a petition by the end of the 30-day period, the proposed annual fee is due and payable.

(5) During the 30-day period allowed for filing a petition, the competitive provider may file its statement form and pay the annual fee, penalties, and late statement fee. The Commission shall accept the statement form, fees, and penalties in accordance with the original due date for that year's statement form and payment.

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

Stats. Implemented: ORS 756.040, 756.310, 756.320 & 756.350

Hist.: NEW

860-034-0095

Annual Fees Payable to the Commission by a Small Telecommunications Utility

(1) ~~The Commission shall provide~~ On statement forms prescribed by the Commission, ~~and~~ each small telecommunications utility shall provide the requested information ~~on the form~~ for the subject year.

(2) Each small telecommunications utility shall pay:

(a) pay a ~~An~~ annual fee in compliance with OARs 860-011-0020 and 860-011-0023. ~~For payments due on or before April 1, 2000, the annual fee shall be no less than \$10. For payments due on or after April 1, 2001, t~~The annual fee shall be no less than \$100. The payment must be received by the Commission no later than 5 p.m. on the due date;

(b) A late statement fee of \$100, if the Commission has not received the utility's statement form on or before 5 p.m. on the fifth business day following the due date;

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350 and OAR 860-032-0008(1);

(d) A service fee of \$25 for each payment returned for non-sufficient funds; and

(e) All costs incurred by the Commission to collect a past-due annual fee from the utility.

(3) For retail intrastate service rendered on or after January 1, 2000, ~~a~~each small telecommunications utility must:

(a) Collect the annual fee by charging an equitable amount to each retail customer, using apportionment methods that are consistently applied by the ~~small telecommunications~~-utility throughout Oregon; and

(b) Describe the amount of the apportioned charge upon each retail customer's bill.

(4) Each small telecommunications utility shall:

(a) Maintain its records in sufficient detail to readily provide gross retail intrastate revenue from Oregon telecommunications services, as defined in OAR 860-032-0080;

(b) Follow the revenue allocation procedures in OAR 860-032-0090; and

(c) Make its revenue accounting records available to the Commission upon the Commission's request.

(5) For any year in which a small telecommunications utility's statement form was due, the Commission may audit the utility as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three (3) years after the statement form's due date;

(b) If the Commission determines that the utility has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350; and

(c) If the Commission determines that the utility has overpaid its annual fee, the Commission shall, at its discretion, recompense the utility with a refund or a credit against annual fees subsequently due.

~~(5)~~ If the Commission receives a public record request for the **confidential** information required ~~by in sections (1) and (4) of~~ this rule, the Commission shall assert that, subject to the limitations of the Public Records Law, the materials are trade secrets and, therefore, exempt from disclosure. The material shall be marked "EXEMPT FROM PUBLIC DISCLOSURE AS TRADE SECRETS."

~~(6) Subject to the applicable requirements of the Public Records Law or ORS 759.060, access to this material shall be limited to Commissioners, their Counsel, and Commission employees. The materials shall be segregated and maintained in a locked file.~~

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

Stats. Implemented: ORS 756.310, & 756.320 **& 756.350**

Hist.: PUC 13-1999, f. & ef. 12-7-99 (Order 99-734); PUC 15-2001, f. & cert. ef. 6-21-01 (Order No. 01-488)

860-034-0097

Estimated Annual Fees Payable to the Commission

(1) For any year in which a small telecommunications utility fails to file a statement form, the Commission may determine a proposed annual fee based upon any information available to the Commission. The proposed annual fee shall:

(a) Include a penalty fee for failure to pay as required by ORS 756.350;

(b) Include a late statement fee of \$100; and

(c) Be paid no later than three (3) years after the statement form's due date.

(2) The Commission shall provide written notice of the proposed annual fee to the small telecommunications utility.

(3) Within 30 days after service of the notice of proposed annual fee, the small telecommunications utility may file a petition with the Commission for a hearing. In its petition, the utility must specify its reasons for disputing the proposed annual fee. The Commission may conduct a hearing on the petition under its rules governing hearings and proceedings.

(4) If the small telecommunications utility does not file a petition within the 30-day period, the proposed annual fee is due and payable.

(5) During the 30-day period allowed for filing a petition, the small telecommunications utility may file its statement form and pay the annual fee, penalties, and late statement fee. The Commission shall accept the statement form, fees, and penalties in accordance with the original due date for that year's statement form and payment.

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

Stats. Implemented: ORS 756.040, 756.310, 756.320 & 756.350

Hist.: NEW