

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

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|----------------|----------------|------------------|-----------------------------|
| REGULAR | CONSENT | EFFECTIVE | Upon Filing with the |
| <u> X </u> | <u> </u> | <u> DATE </u> | <u>Secretary of State</u> |

DATE: March 18, 2003

TO: Commissioners Hemmingway, Beyer, and Smith

FROM: Michael Grant, Administrative Law Judge

REVIEWED BY: Terry Lambeth, Rules Project Leader

SUBJECT: AR 454: Adoption of OAR 860-032-0670 to Establish Procedures for Refunding Oregon Universal Service Surcharges to Pay Telephone Providers.

ADMINISTRATIVE LAW JUDGE RECOMMENDATION:

Recommends adoption of OAR 860-032-0670 which is summarized in the attached proposed order.

DISCUSSION:

House Bill 2659, passed by the 2001 Legislative Assembly, entitles pay telephone providers to seek a refund of Oregon Universal Service (OUS) surcharges imposed for the provision of pay telephone service. The new law, codified in ORS 759.425(8), takes effect on July 1, 2003.

To implement this refund process, Staff proposes the Commission adopt OAR 860-032-0670. This proposed rule sets forth application requirements and procedures for OUS refunds.

The rule incorporates changes to address comments by the Northwest Public Communications Council (NPCC). NPCC supports adoption of the rule as revised. No other person commented on the rulemaking.

PROPOSED COMMISSION MOTION:

Adopt OAR 860-032-0670, as set forth in Appendix A of the attached proposed order.

ORDER NO. DRAFT

ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 454

In the Matter of a Rulemaking to Establish)
Procedures for Refunding Oregon Universal) ORDER
Service Surcharges to Pay Telephone)
Providers.)

DISPOSITION: RULE ADOPTED

On January 14, 2003, the Public Utility Commission of Oregon (Commission) filed a notice to adopt OAR 860-032-0670 with the Oregon Secretary of State. The notice was published in the February 2003 Oregon Bulletin.

On March 12, 2003, Michael Grant, an Administrative Law Judge with the Commission, held a rulemaking hearing in Salem, Oregon. Brooks Harlow, attorney, appeared on behalf of the Northwest Public Communications Council (NPCC); Michael Weirich, Assistant Attorney General, and Celeste Hari, Telecommunications Analyst, appeared on behalf of the Commission Staff (Staff).

OAR 860-032-0670 – Refund of Oregon Universal Service Surcharge

In passing House Bill 2659, the 2001 legislature allowed pay telephone providers to seek a refund of Oregon Universal Service (OUS) surcharges imposed for the provision of pay telephone service. HB 2659, codified in ORS 759.425(8), takes effect on July 1, 2003.

To implement this refund process, Staff proposes the Commission adopt OAR 860-032-0670. This proposed rule requires a pay telephone provider to complete an application for OUS refunds. To expedite the process, the rule does not require the provider to submit bills and receipts as verification of OUS surcharges and payments, but rather an affidavit stating that the information listed on the application is true and accurate. The rule also allows the Commission three years to conduct an audit of the pay telephone provider’s records to determine the veracity of the application.

Staff initially proposed that pay telephone providers apply for the refund annually. Based on comments from NPCC, however, Staff revised the rule to allow providers to apply for the refund on a quarterly basis. Staff made the change because NPCC data shows that payphone ownership is more concentrated than Staff had anticipated. Because a few large providers own most of the pay telephones in Oregon, Staff estimates that annual refunds for these providers might approach \$90,000 per year. Staff states that quarterly filings allow the money to be refunded more quickly to the providers, thus reducing their financial burden.

The proposed rule requires a pay telephone provider to apply for a refund within 180 days after the end of each time period for which a refund is claimed. A provider, however, may seek a waiver of this 180-day deadline for good cause. Staff intends that such a waiver will only occur under limited circumstances and will necessarily be decided on a case-by-case basis.

At the rulemaking hearing, both Staff and the NPCC recommend adoption of the rule as amended. They also agreed that Staff and pay telephone providers would work cooperatively to resolve any dispute that may arise during the refund process, and hoped that there would be little, if any, need for formal dispute resolution through a contested case process.

Commission Resolution

At the April 15, 2003 public meeting, the Commission adopted the recommendation to adopt OAR 860-032-0670, as set forth in Appendix A.

ORDER

IT IS ORDERED that:

1. The Oregon Administrative Rule 860-032-0670, as set forth in Appendix A, is adopted.
2. The rule 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.

860-032-0670

Refund of Oregon Universal Service Surcharge

(1) A Pay Telephone provider may apply for a refund of the Oregon Universal Service (OUS) surcharge imposed on, and paid by, the provider under ORS 759.425(4) for the provision of Pay Telephone service.

(2) An application for a refund of the OUS surcharge under this rule shall be on forms prescribed by the Public Utility Commission.

(a) An application shall contain the applicant's:

(A) Name;

(B) Address;

(C) Telephone number;

(D) Time period for which the application is made;

(E) Name of Pay Telephone provider;

(F) Contact person;

(G) Requested refund;

(H) Number of Pay Telephones located in Oregon;

(I) Signature of responsible party;

(J) Affidavit of charges and payment; and

(K) Mailing address for refund.

(b) The Pay Telephone provider shall be responsible for contacting the Commission to obtain an application form. Forms are available on the Commission's website or by contacting the Commission by telephone.

(3) Applications shall be made on a quarterly basis. Applications must be received by the Commission no later than 180 days after the end of each time period for which a refund is claimed. The quarterly time periods are July 1 through September 30, October 1 through December 31, January 1 through March 31, and April 1 through June 30. The initial period begins July 1, 2003, and ends September 30, 2003.

(a) For good cause shown, the Commission may allow a pay telephone provider to submit its application for refund beyond the 180-day deadline.

(b) Applications for service rendered and payments made prior to July 1, 2003, will not be considered.

(4) A Pay Telephone provider shall produce for inspection or audit upon request of the Commission, or its authorized representative, all records supporting its application for refund. The Commission, or its authorized representative, shall allow the Pay Telephone provider a reasonable time to produce the records for inspection or audit. A Pay Telephone provider must keep all records supporting each refund application for three years, or until a Commission review or audit is complete, whichever is later.

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

Stats. Implemented: ORS 759.425(8)

Hist.: New