

ITEM NO. 7

PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: October 30, 2003

REGULAR X CONSENT EFFECTIVE DATE Upon Filing with the
Secretary of State

DATE: October 15, 2003

TO: Commissioners Beyer, Savage, and Baum

FROM: Donna Roberson, through Ruth Crowley, Administrative Law Judge

REVIEWED BY: Terry Lambeth, Rules Project Leader

SUBJECT: AR 473: Request to adopt a temporary rule to prescribe a time period for final action in pole attachment complaints.

ADMINISTRATIVE LAW JUDGE RECOMMENDATION:

Adopt the temporary rule to prescribe a time period for final action in pole attachment complaints.

DISCUSSION:

Section 224 of the Telecommunications Act of 1996¹ provides that a State must take final action on a pole attachment complaint within 180 days after the complaint is filed unless rules and regulations of the State prescribe a time period, not exceeding 360 days, for responding to such complaints. Oregon currently has no rules or regulations that prescribe a time period for responding to such complaints.

The Commission has recently received a number of complex pole attachment complaints that will require more than 180 days to complete. For instance, UM 1096 involves a complaint with seven claims for relief involving 1665 separate pole attachments. In order to adequately review this and other complaints, the extended time provided for in the Telecommunications Act is required.

¹ Telecommunications Act of 1996, 47 U.S.C. § 224(c)(3), states:

For purposes of this subsection, a State shall not be considered to regulate the rates, terms, and conditions for pole attachments *** (B) with respect to any individual matter, unless the State takes final action on a complaint regarding such matter – (i) within 180 days after the complaint is filed with the State, or (ii) within the applicable period prescribed for such final action in such rules and regulation of the State, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

The proposed rule, attached, requires the Commission to issue a final order in any pole attachment complaint within 360 days of the filing of such complaint. This rule will allow time for the Commission to sufficiently review the pole attachment complaints while still issuing a final order within the time frame prescribed by the FCC.

At its October 30, 2003, Public Meeting the Commission will consider a Hearings Division recommendation to initiate a permanent rule prescribing a time period for final action in pole attachment complaints. Because there are currently complaints under review that will require more than 180 days to complete, we believe a temporary rule is necessary to ensure compliance with the Telecommunications Act while the permanent rule is under consideration.

PROPOSED COMMISSION MOTION:

Adopt the temporary rule of 860-028-0895, as set forth in Appendix A of the proposed order.

ORDER NO. DRAFT

ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 473

In the Matter of a Temporary Rulemaking)
to Prescribe a Time Period for Final Action) ORDER
in Pole Attachment Complaints.)

DISPOSITION: TEMPORARY RULE ADOPTED

Section 224 of the Telecommunication Act of 1996² provides that a state must take final action on a pole attachment complaint within 180 days after the complaint is filed unless rules and regulations of the state prescribe a time period, not exceeding 360 days, for responding to such complaints. Oregon currently has no rules or regulations that prescribe a time period for responding to such complaints.

The Commission has recently received, and is currently reviewing, a number of complex pole attachment complaints that will require more than 180 days to complete.

The temporary rule, attached as Appendix A, requires the Commission to issue a final order in any pole attachment complaint within 360 days of the filing of such complaint. This rule will allow time for the Commission to sufficiently review the pole attachment complaints while still issuing a final order within the time frame prescribed by the FCC.

Although the Commission is considering a permanent rule on this subject, a temporary rule is advisable to ensure compliance with the Telecommunications Act for the complaints currently under review.

² Telecommunications Act of 1996, 47 U.S.C. § 224(c)(3), provides:

For purposes of this subsection, a State shall not be considered to regulate the rates, terms, and conditions for pole attachments *** (B) with respect to any individual matter, unless the State takes final action on a complaint regarding such matter – (i) within 180 days after the complaint is filed with the State, or (ii) within the applicable period prescribed for such final action in such rules and regulation of the State, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

ORDER NO. DRAFT

At its Public Meeting of October 30, 2003, the Commission considered and adopted the temporary rule as contained in Appendix A.

ORDER

IT IS ORDERED that:

1. The temporary rule attached as Appendix A is adopted.
2. The temporary rule shall be effective upon filing with the Secretary of State.

Made, entered, and effective _____.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
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.

860-028-0895

Time Frame for Final Action by Commission

Upon receipt of a complaint regarding any individual matter under these rules, the Commission shall, within 360 days, issue a final order.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759, 47 USC § 224(c)(3)(B)(ii)

Stats. Implemented: ORS 756.040, ORS 757.270 through 757.290, ORS 759.045, and ORS 759.650 through 759.675

Hist.: New