

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: August 17, 2004**

REGULAR CONSENT EFFECTIVE DATE _____ N/A _____

DATE: July 30, 2004

TO: Commissioners Beyer, Baum, and Savage

FROM: Michael Grant, Administrative Law Judge

REVIEWED BY: Terry Lambeth, Rules Project Leader

SUBJECT: AR 486: Initiate a Rulemaking to allow for the approval of promotional offerings that would modify the terms of an existing Carrier-to-Carrier Agreement approved under Section 252(e) of the Telecommunications Act of 1996.

ADMINISTRATIVE LAW JUDGE RECOMMENDATION:

Pursuant to ORS 756.060, I recommend the Commission open a rulemaking proceeding to amend existing OAR 860-016-0020 and adopt proposed OAR 860-016-0021 to allow the approval of promotional offerings consistent with Section 252(e) of the Telecommunications Act of 1996. This rulemaking proceeding is intended to proceed during the effective dates of temporary rules proposed to be adopted in AR 485.

DISCUSSION:

Section 252(e) of the Telecommunications Act of 1996 (Act) requires that any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval by a State commission. In Oregon, OAR 860-016-0020 governs the review and approval of these agreements. Among other things, that rule provides that the Commission will give notice of such filings and allow interested persons an opportunity to file written comments. This process helps ensure that any filing does not discriminate against other carriers who are not parties to the agreement.

Recently, Qwest Communications (Qwest) has been offering promotional discounts to competitive local exchange carriers (CLEC). These offers, if accepted by a CLEC, modify the terms of an existing interconnection agreement.

Consequently, Qwest and any accepting CLEC must file amendments to existing agreements to incorporate the terms of the promotion.

Due to the nature of these promotions, however, Qwest and accepting CLECs have been unable, at times, to submit such an amendment for approval prior to the expiration of the offering. This is problematic, because an interconnection agreement or amendment thereto has no effect or force until approved by a state Commission. See 47 U.S.C. Sections 252 (a) and (e).

To address this problem, rules are proposed to establish a process by which Qwest and other carriers may seek, in essence, preapproval of promotional offerings. Under the provisions of the temporary rules, a carrier intending to provide a wholesale promotion must provide the Commission notice of the offering at least 15 days prior to the effective date of the promotion. The notice shall include: (1) the language used to describe the promotion; (2) the terms and conditions to be used for the promotional offering; and (3) a description of the means used to notify carriers of the promotion. Following notice and opportunity for public comment, the Commission will acknowledge the promotional offering unless it finds that the offering, if filed as an amendment to an interconnection agreement, would be subject to rejection under existing rules.

The proposed rules are included with this memo as Attachment A.

PROPOSED COMMISSION MOTION:

A rulemaking proceeding be opened to adopt rules to allow for the approval of promotional offerings consistent with Section 252(e) of the Telecommunications Act of 1996.

OAR 860-016-0020

Agreements Arrived at through Negotiation

(1) Upon receiving a request for interconnection, services, or network elements pursuant to Section 251 of the Act, the affected telecommunications carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier.

(2) The negotiating parties may ask a mediator outside the Commission to help them reach agreement. If they request the Commission to mediate, the Commission will use an Administrative Law Judge (ALJ) or a member of the utility Staff to mediate. Only the negotiating parties and the mediator will participate in mediation sessions.

(3) After the parties reach agreement under Section 252(a) of the Act, they shall file an application with the Commission seeking approval of the agreement, or for approval of an amendment to an approved agreement on file with the Commission. The application shall include an original plus ~~three~~**two** copies of the negotiated agreement and a completed Carrier-to-Carrier Agreement Checklist. A copy of the checklist is available on the Commission's Internet website. The parties may also include any other supporting information with their application.

(4) The negotiating parties shall also submit a copy of the negotiated agreement and a copy of the checklist in electronic format compatible with Adobe Acrobat Reader or Rich Text Format. The electronic copy may be an unsigned version of the negotiated agreement. The Commission will provide notice of the application by posting the checklist and the agreement on its Internet website.

(5) **Except as provided in OAR 860-016-0021, t**The public may file written comments within 21 days of the filing date of the application, unless the Commission establishes a different time limit in an individual case.

(6) The Commission will accept or reject the agreement within 90 days, with written findings as to any deficiencies. The grounds for rejection are that the agreement:

(a) Discriminates against a carrier not a party to the agreement; or

(b) Is not consistent with the public interest, convenience, and necessity. Applicable Commission policies will be a factor in public interest, convenience, and necessity determinations.

Stat. Auth.: ORS Ch. 183 & 756

Stats. Implemented: 47 USC 252

Hist.: PUC 8-1998, f. & cert. ef. 4-8-98; PUC 25-2001, f. & cert. ef. 11-5-01;

PUC 6-2002, f. & cert. ef. 2-13-02

OAR 860-016-0021

Wholesale Promotions

(1) A carrier intending to provide a wholesale promotion that would modify the terms of existing carrier-to-carrier agreements must provide the Commission notice of the offering at least 15 days prior to the effective date of the promotion. The notice shall include:

(a) Language used to describe the promotion;

(b) The terms and conditions to be used for the promotional offering; and

(c) A description of the means used to notify carriers of the promotion.

(2) The carrier shall file an original plus two copies of the notice and a completed Carrier-to-Carrier Agreement Checklist. The carrier shall also submit a copy of the notice and checklist in electronic format compatible with Adobe Acrobat Reader or Rich Text Format. The Commission will post the notice and checklist on its Internet website.

(3) The public may file written comments on the promotional offering within 10 days of the filing date of the notice, unless the Commission establishes a different time limit in an individual case.

(4) The Commission will acknowledge the promotional offering unless it finds that the offering, if filed as an amendment to an interconnection agreement, would be subject to rejection under OAR 860-016-0020(6).

(5) If another carrier accepts the promotional offering, the carrier offering the promotion and the accepting carrier shall file any required amendment to an existing carrier-to-carrier agreement for approval pursuant to OAR 860-016-0020. Any such amendment entered into during the identified promotional period and submitted for Commission approval within 10 days of execution will be deemed timely filed.

(6) The Commission will accept or reject an amendment adopting the terms of the promotional offering within 10 days, pursuant to standards set forth in OAR 860-016-0020.

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

Stats. Implemented: 47 USC 252

Hist.: NEW