

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: February 8, 2005**

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

DATE: January 21, 2005

TO: Public Utility Commission

FROM: Michael Grant, Administrative Law Judge

REVIEWED BY: Terry Lambeth, Rules Project Leader

SUBJECT: AR 486: Amend and adopt rules to allow for the acknowledgment 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 amend existing OAR 860-016-0020 and adopt proposed OAR 860-016-0021 to allow the acknowledgment of promotional offerings consistent with Section 252(e) of the Telecommunications Act of 1996.

DISCUSSION:

The Commission opened this docket to address permanent rule changes following the adoption of temporary rules in Order No. 04-480 (AR 485). Those temporary rules amended an existing rule and adopted another to create a process by which a carrier, in essence, seek preapproval of promotional offerings to other carriers.

The Commission published notice of this rulemaking in the October 2004 Secretary of State's Bulletin. The Commission also sent notice of the rulemaking to a list of persons who have asked to receive copies of such notices. Covad Communication, Eschelon Telecom of Oregon, Inc., Integra Telecom of Oregon, Inc., Oregon Telecom, Inc., PacifiCorp-West Telecomm, Inc., Tel West Communications, LLC, Time Warner Telecom of Oregon, LLC and XO Oregon, Inc. (Joint CLECs) filed comments.

The Joint CLECs agreed for the need for permanent rule changes, but suggested four modifications to the rules adopted in the temporary rulemaking.

I recommend the Commission adopt three of those suggestions, as discussed separately below.

First, the Joint CLECs recommend that a carrier intending to provide a wholesale promotion should provide the Commission and other carriers notice of the offering at least 30 days, rather than the proposed 15 days, prior to the effective date of the promotion. I agree. This additional time will not only provide carriers more time to review and avail themselves to the promotion, but also allow the Commission, in most cases, to complete its review of the promotional offering prior to its effective date.

Second, consistent with extending the notice period, the Joint CLECs' recommend that the deadline for submitting comments on a promotional offering should be extended from 10 to 15 days. I agree. This extension will help ensure that affected parties and the public have adequate time to file comments regarding any given promotional offering.

Third, to address the Joint CLECs' concerns about the usual short duration of promotional offerings and the consequential need for quick action, the proposed rule should require Commission approval—rather than acknowledgement—of the promotional offering, based on a review of the terms and conditions set forth in a form contract that would be submitted as an amendment. As noted above, this review and approval should, in most cases, be completed prior to the effective date of the promotional offering. The rule should also clarify that an amendment, which incorporates the exact terms and conditions of the form contract and is submitted within 10 days of execution by the parties, will be deemed effective upon the later of the Commission approval of the form contract or execution of the amendment by the parties.

I do not recommend the Commission adopt the Joint CLECs' fourth recommendation that notice of a promotional offering be given to all telecommunications carriers on the agency's mailing list. While the Commission should expect the offering carrier to widely publicize these offerings, it should not prescribe formal notice requirements. Moreover, the proposed rule requires the offering carrier to provide a description of the means used to notify other carriers of the offering, and the Commission will include that information in its review of the filing.

A more detailed discussion of the rulemaking and the comments filed by the Joint CLECs is contained in the attached draft order.

PROPOSED COMMISSION MOTION:

Amend and adopt the rules as set forth in Appendix A to the attached order.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 486

In the Matter of a Rulemaking to allow for the)
acknowledgment of promotional offerings that)
would modify the terms of an existing Carrier-) ORDER
to-Carrier Agreement approved under Section)
252(e) of the Telecommunications Act of 1996.)

DISPOSITION: RULES AMENDED AND ADOPTED

Section 252(e) of the Telecommunications Act of 1996 (Act) requires that any interconnection agreement adopted by negotiation or arbitration must 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, the Commission adopted temporary rules in Order No. 04-480 to establish a process by which Qwest and other carriers may seek, in essence, preapproval of promotional offerings. Subsequently, the Commission opened this rulemaking docket to adopt permanent rules on this matter.

The Commission published notice of this rulemaking in the October 2004 Secretary of State’s Bulletin. The Commission also sent notice of the rulemaking to a list of persons who have asked to receive copies of such notices. Covad Communication, Eschelon Telecom of Oregon, Inc., Integra Telecom of Oregon, Inc., Oregon Telecom, Inc.,

PacifiCorp-West Telecomm, Inc., Tel West Communications, LLC, Time Warner Telecom of Oregon, LLC and XO Oregon, Inc. (Joint CLECs) filed comments.

At its February 8, 2005, public meeting, the Commission considered this matter and amended and adopted the rules as set forth in Appendix A.

DISCUSSION

The Joint CLECs agree that the proposed rule changes are required to ensure the carriers do not have a regulatory disincentive to offer wholesale promotions. The Joint CLECs believe that proposed rule changes will promote the availability of promotional offerings and that such offerings will generally benefit customers in the state by increasing opportunities for the competitive provision of telecommunications services in Oregon.

The Joint CLECs seek four changes to the proposed rules. First, the CLECs request that a carrier intending to provide a wholesale promotion provide the Commission and other carriers notice of the offering at least 30 days, rather than the proposed 15 days, prior to the effective date of the promotion. The 30-day notice period is reasonable and should be included in the rules. In addition to providing more time for other carriers to review and avail themselves of the promotion, the extended period will allow the Commission, in most cases, to complete its review of the promotional offering prior to its effective date.

Second, the Joint CLECs request that the rule require notice be given to all telecommunications carriers on the Commission's telecommunications mailing list. The Commission does not adopt this recommendation. While the Commission expects the offering carrier to widely publicize these offerings, we will not prescribe formal notice requirements. The proposed rule requires the offering carrier to provide a description of the means used to notify other carriers of the offering, and the Commission will include that information in its review of the filing.

Third, the Joint CLECs request the deadline for submitting comments on a promotional offering be extended from 10 to 15 days. The Joint CLECs contend this extension is necessary to ensure that affected parties and the public have adequate time to file comments regarding any given promotional offering. The Commission agrees and has incorporated the change in the proposed rules.

Finally, the Joint CLECs believe that the proposed rule should be modified to clarify that, when a carrier accepts a promotional offering, the rates, terms, and conditions of that offering become effective on the later of: (1) execution of the amendment incorporating the promotion; or (2) the effective date of the promotion.

The Commission acknowledges the Joint CLECs' concerns about the usual short duration of promotional offerings and the consequential need for quick action. However, an amendment to a carrier-to-carrier agreement cannot be deemed effective prior to the Commission's review and approval of the amendment's terms and conditions. To address the CLECs' concerns, the Commission modifies the proposed rule in two respects. First, the proposed rule is modified to require Commission approval of the promotional offering, based on a review of the terms and conditions set forth in a form contract that would be submitted as an amendment. As noted above, this review and approval should, in most cases, be completed prior to the effective date of the promotional offering. Second, the rule is modified to make clear that an amendment, which incorporates the exact terms and conditions of the form contract and is submitted within 10 days of execution by the parties, will be deemed effective upon the later of the Commission approval of the form contract or execution of the amendment by the parties.

ORDER

IT IS ORDERED that:

1. To allow the acknowledgment of promotional offerings consistent with Section 252(e) of the Telecommunications Act of 1996, OAR 860-016-0020 is amended and proposed OAR 860-016-0021 is adopted, as set forth in Attachment A.
2. The amended and adopted rules will become 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.

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~~**must** 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~~**must** 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 **must supplement the filing with an exact copy of** ~~shall also submit a copy of~~ the negotiated agreement and ~~a copy of the~~ checklist in electronic form **as required in OAR 860-013-0036** ~~at 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) 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 offer a wholesale promotion that would modify the terms of a Carrier-to-Carrier Agreement must provide the Commission and other telecommunications carriers notice of the promotion at least 30 days prior to the effective date of the promotion. The notice to the Commission must include:

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(a) A copy of a form contract, containing the terms and conditions of the promotional offering that would be submitted as an amendment to an existing Carrier-to-Carrier Agreement; and

(b) A description of the means used to notify other telecommunications carriers of the promotion.

(2) The offering carrier must file with the Commission an original plus two copies of the form contract. With the filing, the offering carrier must include a completed Carrier-to-Carrier Agreement Checklist, a copy of which is available on the Commission's Internet website. The carrier must supplement the filing with an exact copy of the contract and checklist in electronic form as required in OAR 860-013-0036. The Commission will post the notice and checklist on its website.

(3) The public may file written comments on the form contract within 15 days of the filing date of the notice, unless the Commission establishes a different time limit.

(4) The Commission will approve the form contract unless it finds that the contract, 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 offering and accepting carriers must file, within ten days of execution by the parties, an amendment to an existing Carrier-to-Carrier Agreement incorporating the exact terms and conditions of the approved amendment in the form contract. Any such filed amendment will be deemed effective upon the later of the Commission approval of the form contract or execution of the amendment by the parties.

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

Stats. Implemented: 47 USC 252

Hist.: NEW