

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF OREGON**

AR 493

In the Matter of the Rulemaking to Amend)
OAR 860-023-0000, 860-023-0001 and 860-) **AT&T's INITIAL COMMENTS**
023-0054, Retail Telecommunications Service)
Standards)

AT&T Communications of the Pacific Northwest, Inc. and TCG Oregon
(collectively "AT&T") hereby submit these initial comments in the above-captioned
rulemaking.

INTRODUCTION

While one statute informs the Commission that it must create a standard for
intrastate toll service, another statute also informs the Commission that it has the
authority to forebear from regulation or even exempt service where competition exists.
In the case of intrastate toll service and any standards associated therewith, the
Commission should be mindful of two essential issues: (a) intrastate toll service, in large
measure, is not treated separate and apart from other telecommunications services for
purposes of ordering, provisioning, repair, maintenance and customer service; and
(b) intrastate toll service is offered in competitive environment by many different
carriers. As a consequence, service standards that apply to other telecommunications
services also capture intrastate toll service quality and, more importantly, customers are
amply protected from poor service by the ability to move their service to other carriers
with higher quality. In short, AT&T recommends that the Commission exercise its
authority and not attempt to create special intrastate toll service quality standards for the
reasons cited above and discussed more fully below.

COMMENT

I. STANDARDS DEVELOPMENT & LACK OF NECESSITY FOR THE PARTICULAR STANDARD

The Statement of Need and Fiscal Impact for this docket acknowledges that ORS 759.020(6) provides the direction for the Commission's rules related to intrastate toll service. ORS 759.020(6) states:

(6) Any provider of intrastate toll service must inform customers of the service level furnished by that provider, according to rules of the commission. The commission, by rule, shall determine the level of intrastate toll service that is standard. Any provider of intrastate toll service must identify the service level the provider plans to furnish in an annual report to the commission. The commission shall revoke the certification of any provider that does not consistently furnish the service level identified in the provider's annual report.

This statute does not clearly state that carriers must provide the Commission's standard service level, albeit, that may be the inference drawn. Nor does the statute provide the Commission with any jurisdiction over interstate toll service. It does say, however, that the carrier must meet the service level described in its annual report, not necessarily the Commission's standard.¹

Moving away from the curious statutory mandate, the proposed service standards assume that carriers segregate inter and intra state toll traffic such that trunk blocking, for example, can be measured insofar as it relates only to intrastate toll service.² In general, this is not the case in AT&T's network and AT&T is unaware of any other carriers segregating toll traffic in the way Staff contemplates by its proposed rules. AT&T is also not aware that the blocking of intrastate toll calls has generated even a single customer complaint in the State.

¹ AT&T appreciates the difficulty Staff must have encountered in interpreting this provision as it is ambiguous in precisely what standard is necessary.

² OAR 860-023-0054(3).

To regulate the intrastate toll traffic in the way proposed would essentially require carriers to obtain special trunks to carry only intrastate toll service, otherwise Staff's proposed rules end up, *de facto*, regulating interstate toll traffic too. Clearly, creating a special trunking arrangement just to carry intrastate toll service so as to measure it alone would be an enormously inefficient use of trunking resources and increase toll calling costs dramatically. This is not likely what Staff contemplates either (even though it is the practical effect of the proposal).

While the Commission is directed to set a standard, that standard by no means must be so broad as to sweep in interstate toll traffic. Nonetheless, if a blocking standard must be set, there is little the Staff can propose without sweeping more broadly than is--jurisdictionally--within the Commission's purview. That said, however, AT&T recommends that the Staff merely point to the appropriately relevant standards already established in docket AR 492, which could provide both a measure for local and intrastate toll service (*e.g.*, call answer time, etc.), as sufficient to protect service quality associated with intrastate toll and local service.

In addition to making the Commission's standards mandatory, and thereby apparently overriding the carrier's standards described in the annual report, the proposed rules also propose a remedy where the carrier fails to meet the Commission's standard. This proposal, in itself, appears contrary to the statutory mandate that the Commission "shall revoke the certification of any provider that does not consistently furnish the service level identified in the provider's annual report." The statute makes no mention of additional penalties that the Commission may invoke if the carrier fails to meet the Commission's standard, but rather it appears to limit the Commission's ability to invoke

any remedies to those situations in which the carrier has “consistently” failed to meet the carrier’s reported standards. It, thus, appears from the statute that the Commission’s standard for intrastate toll service is a guide to carriers rather than a mandate.

II. LACK OF NECESSITY FOR STANDARD IN A COMPETITIVE MARKET

The Commission’s authority to institute new service quality rules derives from a statute related to carriers obtaining certificates to offer intrastate toll service. The statute states in pertinent part:

759.020 Certificate of authority required; application; procedure; criteria; intrastate toll service level. (1) No person, corporation, company, association of individuals or their lessees, trustees, or receivers shall provide intrastate telecommunications service on a for-hire basis without a certificate of authority issued by the Public Utility Commission under this section. ...

Of particular importance, this statute also instructs, as follows:

(5) The commission may classify a successful applicant for a certificate as a telecommunications utility or as a competitive telecommunications services provider. If the commission finds that a successful applicant for a certificate has demonstrated that services it offers are subject to competition or that its customers or those proposed to become customers have reasonably available alternatives, the commission shall classify the applicant as a competitive telecommunications services provider. ... The commission may attach reasonable conditions to such classification and may amend or revoke any such order as provided in ORS 756.568.

Finally, the statutory authority under which the Commission operates also instructs the Commission that it may:

exempt in whole or in part from regulation those telecommunications services for which the commission finds that price or service competition exists, or that such services can be demonstrated by the petitioner or the commission to be subject to competition, or that the public interest no longer requires full regulation thereof.³

³ ORS 759.030(2).

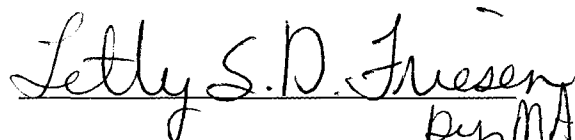
With respect to intrastate toll providers, the Commission has already determined that AT&T is a competitive provider, hence providing a service for which competition exists. Rather than insist that AT&T and other similarly situated carriers re-establish that the service is indeed competitive as proposed in rule 860-023-0054(9)(b), the Commission should simply determine that no separate standard is necessary in the context of intrastate toll traffic (and if customer complaint volumes do not back up the need to create such a standard), the Commission can easily determine that the public interest no longer requires retail regulation of this service, or alternatively, it certainly does not require any retail regulation beyond that found in the rules discussed in Docket AR 492.

CONCLUSION

For the foregoing reasons, AT&T recommends that the Commission not adopt the rules proposed in AR 493 as, not only unnecessary, but also impossible to implement as proposed (*e.g.*, segregating intrastate toll traffic from other traffic for purposes of reporting blocking, etc.).

Respectfully submitted this 21st day of April 2005.

**AT&T COMMUNICATIONS OF THE
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by MA with permission

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CERTIFICATE OF SERVICE

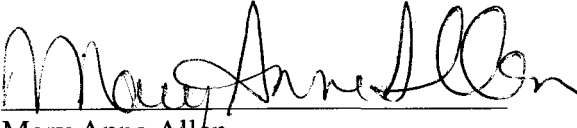
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