

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 523

In the Matter of a Rulemaking to Amend) **Comments of Verizon**
Timeframes for Audits of Fees Due)

Verizon¹ files these comments addressing the proposed amendment in the above referenced docket.² If adopted, the proposed amendment would allow the Commission an “unlimited” amount of time to audit a company’s records and supporting documentation in two instances: (i) if the company operated without a certificate of authority when required to have one and (ii) if the Commission discovers fraud, negligence or misrepresentation by the company or finds that the company misappropriated funds. Verizon opposes granting the Commission an unlimited amount of time to audit a company’s records, and recommends that the Commission reject the proposed amendment.³

¹ These comments are filed on behalf of the regulated entities of Verizon Communications Inc.

² The Notice of Proposed Rulemaking Hearing proposes essentially the same amendment to a series of rules that regulate Electric Companies (OAR 860-021-0033), Gas and Steam Utilities (OAR 860-021-0034); Telecommunications Companies (OAR 860-021-0036, OAR 860-032-0095, OAR 860-032-0640, OAR 860-033-0008 and 860-0034-0095), Water Utilities (OAR 860-036-0095) and Wastewater Utilities (OAR 860-037-0095).

³ Specifically, Verizon opposes adoption of the amendment in the rules applicable to telecommunications service providers (OAR 860-021-0036, OAR 860-032-0095, OAR 860-032-0640, OAR 860-033-0008 and 860-0034-0095).

A. There is no factual basis upon which the proposed amendment can be adopted.

The only support for adoption of the proposed amendment in the Notice of Proposed Rulemaking Hearing Notice (“Notice”) is the conclusory statement that it is necessary to maintain protection of Commission programs and customers. Verizon supports the full collection of fees from all companies that are required to pay them to the Commission. However, the Notice offers no factual basis for its conclusory statement on the necessity of the proposed amendment; to the contrary, no factual basis whatsoever is provided indicating that the current 3 year audit limitation on initiating audits has prevented the Commission from collecting any unpaid fees.⁴ For the reasons discussed below, the proposed amendment will have far reaching and costly implications for telecommunications companies. A draconian step of the proposed nature should not be adopted when there is no factual basis presented on the necessity for its adoption.

B. The proposed amendment would require prudent companies to change retention procedures and will increase their costs.

The proposed amendment will cause compliant companies to change their internal procedures and increase their current costs of compliance. In the section of the Notice entitled “*Fiscal and Economic Impact, including State of Cost of Compliance*” is the incorrect claim that the proposed amendment will only increase costs for non-compliant companies. That is incorrect. Even if Verizon operates in compliance with the applicable laws and rules, it will incur increased costs by having to change its internal procedures. Verizon is currently only obligated to maintain records for limited periods of

⁴ Of course, the current three year audit limit applies only to initiation of an audit. There is no limitation in the existing rules that addresses when an audit must be completed.

time under various state and federal laws and rules. If this amendment is adopted, it is not clear how long Verizon would be required to retain relevant records supporting reports filed with the Commission.

Verizon, however, would likely err on the side of caution given that an audit could be conducted at some unknown time in the future. The result could thus be that Verizon would have to retain relevant records for an unlimited period of time in order to respond to the possibility of an audit alleging fraud, negligence, misrepresentation or misappropriation of funds in order to defend itself. Retention of records is costly. Such costs increase based on volume and the length of retention. These additional unnecessary costs will ultimately be borne by ratepayers without any demonstrated benefit.

C. The proposed amendment is unnecessary.

OAR 860-021-0036, OAR 860-032-0095, OAR 860-032-0640, OAR 860-033-0008 and 860-0034-0095 require that the Commission *begin* an audit no later than three years after the due date of a statement form or other remittance report. The amendment creates an exception to that requirement that is wholly unnecessary as three years is plenty of time to simply commence (not complete) an audit. And provided the audit is commenced on a timely basis, it may continue long past three years, even if fraud, negligence, misrepresentation or misappropriation of funds are discovered outside the three year period.

D. The proposed amendment is too broad.

By including negligence in the exception to the three year time limit, the amendment includes unintentional mistakes made in reports in the same category as fraud, misrepresentations, or misappropriation of funds. If a company makes an

inadvertent mistake in reporting, it could be deemed by the Commission to constitute negligence, triggering the unlimited period of time to begin an audit. Unintentional mistakes should not be treated the same as intentional acts or omissions. For example, companies that are knowingly not paying fees owed would likely not retain records in an effort to eliminate evidence that would demonstrate their intentional efforts to avoid paying or underreporting fees. That would not occur with a compliant company that simply made an inadvertent reporting mistake. Thus, the proposed amendment's equal treatment of negligence and intentional acts (such as fraud, misrepresentation or misappropriation) is inappropriate.

E. Enforcement of the amendment is vague.


The wording of the proposed amendment also leads to more questions about its enforcement than it answers. For example, if the Commission or its Staff "discovers" fraud, negligence, misrepresentation or misappropriation of funds, what process will be used to extend the audit period? Does a mere allegation toll the three year audit limitation? Would the Staff have to bring an action against a company and prove by a preponderance of evidence that a company had committed fraud, negligence, misrepresentation or misappropriation of funds in a filed report? These unanswered questions lead to the conclusion that the implications of the proposed amendment have not been sufficiently considered at this point to warrant adoption.

CONCLUSION

The proposed amendment should not be adopted. There is no demonstrated factual basis on the need for the proposed amendment, and as drafted, it is unnecessary, overly broad, vague and will cause Verizon to modify its retention practices and incur

increased costs. The current requirement that Commission begin an audit no later than three years after the due date of a statement form or other remittance report sufficiently protects the Commission programs and customers.

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