

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT**

PUBLIC MEETING DATE: April 14, 2015

REGULAR _____ **CONSENT** X **EFFECTIVE DATE** _____ Upon Approval

DATE: April 3, 2015

TO: Public Utility Commission

FROM: Jim Stanage 

THROUGH: Jason Eisdorfer, Bryan Conway, and Bruce Hellebuyck 

SUBJECT: MT ANGEL TELEPHONE CO.: (Docket No. UX 34) Petition to exempt Voice Mail Service from regulation.

STAFF RECOMMENDATION:

Staff recommends that a waiver be granted of the petition requirement in OAR 860-032-0025(4)(e) and that the Mt. Angel Telephone Company (Mt. Angel) petition to exempt its Voice Mail Service from regulation be granted, subject to one condition described below.

DISCUSSION:

Mt. Angel filed a petition March 18, 2015, to exempt its Voice Mail Service from regulation under ORS 759.052. Pursuant to ORS 759.058, the Commission has 60 days from the filing date to either determine the appropriateness of the filing or determine that further investigation is necessary. Therefore, Commission has until May 17, 2015, to take action to grant this petition or find that further investigation is necessary.

Mt. Angel is regulated, generally, under ORS 759.040, and therefore, is allowed to make changes to its tariff upon notice to the Commission because the statute effectively suspends the effect of ORS 759.180 through 759.190, except for rate increases. Under OAR 860-034-0310, if a rate increase is proposed, then a small telecommunications utility regulated under ORS 759.040 must notify its affected customers, with a copy to the Commission, at least 45 days before the proposed effective date of the increase. In addition, customers may petition the Commission to impose the authority granted by ORS 759.180 through 759.190, to suspend and investigate, provided that the petition is made by at least 10 percent of the access line subscribers or 500 (whichever is the

lesser), on or before 10 days prior to the proposed effective date of a rate increase. Consequently, Mt. Angel could decrease current rates at any time, but could not raise rates without first notifying affected customers and the Commission, and possibly, completing a rate proceeding. Granting Mt. Angel's petition to exempt voice mail service would allow the company to make changes in pricing without following the regulatory processes set forth in OAR 860-034-0310.

The Commission has previously granted the petitions of the four large Oregon telecommunications utilities to exempt their voice mail services from regulation as described in the following table.

Company	Order No.	Docket	Date Entered
United Telephone Company of the Northwest	94-1556	UX 15	October 14, 1994
GTE Northwest Incorporated (now Frontier)	96-257	UX 17	October 4, 1996
U S West Communications Inc. (now Qwest)	98-018	UX 18	January 7, 1998
CenturyTel of Oregon	11-420	UX 32	October 24, 2011

Standard for Granting Service Exemptions

Under ORS 759.052(2) and OAR 860-0032-0025(1), the Commission shall exempt a telecommunications service from regulation, upon petition by a telecommunications utility, "if the Commission finds that price and service competition exist."

In making a finding that price and service competition exist, the Commission shall consider:

- a) The extent to which services are available from alternative providers in the relevant market.
- b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions.
- c) Existing economic or regulatory barriers to entry.
- d) Any other factors deemed relevant by the Commission.

In support of a petition to exempt a service from regulation, the telecommunications utility must provide the information and documentation listed in OAR 860-0032-0025(4). Of relevance here is the requirement in OAR 860-0032-0025(4)(e), that the petition include:

The telecommunications utility's revenues from and costs of providing the service, the long-range incremental cost of the service, the cost allocation to regulated and unregulated activities for future rate-making treatment, and supporting documentation.

Descriptions of the Services Proposed for Exemption

Voice mail service is a central office based service which provides customers with the capability to receive, send, store, and retrieve voice messages over the telephone network. Voice mail answers incoming calls placed to the customer's telephone line, when the called number is busy and/or if the called number does not answer. The service will greet incoming callers with a personal or a company-provided greeting. It then receives and saves the caller's messages for review by the customer. Customers can retrieve messages left for them from any touchtone telephone. Mt. Angel's current monthly rates range from \$4.95 to \$19.95 per line.

Staff Analysis

Under ORS 759.052 and OAR 860-032-0025(3), prior to making a finding that price and service competition exist, the Commission is required to consider three factors: (1) the extent to which services are available from alternate providers in the relevant market; (2) the extent to which the services of alternate providers are functionally equivalent or substitutable at comparable rates, terms and conditions; and (3) the extent to which there are existing economic or regulatory barriers to entry. Staff finds that on consideration of these three factors and other relevant factors identified by staff below, price and service competition exist for voice mail service in the Mt. Angel service territory.

Availability of Voice Mail Service from Alternate Providers

In its petition, the company identifies several alternate providers within its Oregon service territory that offer voice mail/messaging types of services. Answering machines are available for purchase using a number of retail avenues.

Functionally Equivalent Service

The alternatives identified by Mt. Angel in its petition provide functionally equivalent service. An answering machine, the basic voice mail feature on a cell phone, offered at no additional charge, and the voice mail feature provided by cable providers of telephone service are functionally equivalent. Answering machines are available at several area retailers at prices ranging from about approximately \$20 to \$100. The cable provider in the Mt. Angel area also provides voice mail as a feature for \$5.00 per month.

Economic or Regulatory Barriers to Entry

Mt. Angel has not identified any regulatory or economic barriers to entry. Staff believes there may be barriers to entry such as normal startup and operating costs.

Other Factors

There are at least four other factors that may be relevant to Mt. Angel's petition: (1) the potential for the company to establish unreasonable rates; (2) the potential for price discrimination by the company; (3) the prospects for the company's abandonment of some of its service subscribers; and (4) the opportunity for the company to engage in predatory pricing of these services. Staff does not see evidence of the degree of market power that would be necessary in order for Mt. Angel to establish unreasonable rates, conduct price discrimination, abandon service, or eliminate competition through predatory pricing with regard to its voice mail service.

Waiver of OAR 860-032-0025(4)(e)

Mt. Angel did not submit information required under OAR 860-032-0025(4)(e) with its petition, specifically, supporting documentation of the long-range incremental cost (LRIC) of the voice mail service. Staff requests a waiver of OAR 860-032-0025(4)(e) as it applies to this petition. Good cause exists for granting a waiver as compliance would be both unnecessary and unduly burdensome.

Mt. Angel does not have a cost study of its own documenting the LRIC of voice mail service. In such cases, past practice has been to reference the cost study for the same service conducted by U S West Communications Inc. (now Qwest), most recently in Docket No. UM 773. However, in the case of voice messaging service, Qwest's own voice mail service was deregulated in 1998, and therefore, there is no established LRIC for an *existing* service. See Order No. 98-018. Therefore, the most recent LRIC information available is out of date. Staff further notes that, although OAR 860-032-

0025 applies to large and small telecommunications utilities, there are no statutes or other administrative rules that require the rates of small telecommunications utilities to cover the LRIC of their services.

Further, staff believes that producing LRIC documentation is unnecessary in this instance because it is highly improbable that Mt. Angel could successfully conduct a predatory pricing scheme for this service, and therefore, the competitive market for voice mail services in the company's service territory will likely not be affected to the detriment of the company's current customers.

Conclusions

Staff's analysis outlined above has led to the following conclusions:

- 1) Mt. Angel's petition provides information sufficient to show the extent to which services are available from alternate providers in the relevant market and the extent to which the services of alternate providers are functionally equivalent or substitutable at comparable rates, terms and conditions.
- 2) There are no barriers to entry beyond normal startup and operating costs.
- 3) There are extensive opportunities for Mt. Angel's customers to find alternative voice mail providers whose service is functionally equivalent or substitutable at comparable rates, terms and conditions. Although specific market share information was not provided in the petition, it is reasonable to assume from the supporting information provided that there is sufficient evidence of effective competition and that price and service competition exist for voice mail service in Mt. Angel's service territory.
- 4) Staff does not see evidence of the degree of market power that could lead to predatory pricing or other concerns. However, to ensure that Mt. Angel's customers have adequate opportunity to respond to any proposed price increases, staff recommends that the Commission condition its approval of this petition on the requirement that Mt. Angel notify its customers at least one billing cycle prior to implementation of any increase in the rates for Voice Mail Service.

Commission's Decision Alternatives

The Commission has the following decision alternatives:

- 1) Suspend and further investigate Mt. Angel's petition.
- 2) Grant the petition to exempt Voice Mail Service from regulation.

PROPOSED COMMISSION MOTION:

The Commission grant a waiver of OAR 860-032-0025(4)(e) to the extent it requires documentation of the long-range incremental cost of voice mail service and grant Mt. Angel's petition to exempt its Voice Mail Service from regulation, subject to the following condition:

1. That Mt. Angel notify its customers at least one billing cycle prior to implementation of any increase in the rates for Voice Mail Service.