

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: December 1, 2015

REGULAR \_\_\_\_\_ CONSENT X EFFECTIVE DATE \_\_\_\_\_ Upon Approval \_\_\_\_\_

DATE: November 19, 2015

TO: Public Utility Commission

FROM: Stephanie Yamada *SY*

THROUGH: Jason Eisdorfer, Bryan Conway, and Bruce Hellebuyck *JH*

SUBJECT: CITIZENS TELECOMMUNICATIONS COMPANY OF OREGON:  
(Docket No. UM 1749) Petition for statute exemptions pursuant to  
ORS 759.040.

**STAFF RECOMMENDATION:**

The Commission should grant the petition by Citizens Telecommunications Company of Oregon (Citizens) for exemption from certain statutes pursuant to ORS 759.040(4), subject to the following conditions:

1. Citizens shall be subject to the price caps specified in Frontier Communications Northwest Inc.'s (Frontier) current price plan on the terms outlined below.
2. Citizens shall be exempt from the relevant statutes until Frontier's current price plan expires.
3. Citizens is not exempt from ORS 759.375 or ORS 759.380.

**ISSUE:**

Whether the Commission should grant the petition filed by Citizens pursuant to ORS 759.040(4) seeking a Commission order exempting the company from the following statutes:

- (a) ORS 759.180 to 759.190 (Rate Regulation and Procedures);
- (b) ORS 759.375 to 759.393 (Transactions of Utilities); and
- (c) ORS 759.300 to 759.360 (Issuance of Securities).

**RULE:**

Pursuant to ORS 759.040(1), (2), and (3), small telecommunications utilities (i.e., those serving fewer than 50,000 access lines in Oregon), as well as affiliated groups of telecommunications utilities collectively serving fewer than 50,000 access lines in Oregon, are not subject to the three sets of statutes listed in the ISSUE section above. Throughout this document, this status is referred to as “small company treatment.” Companies receiving small company treatment are regulated less strictly than companies that operate under traditional rate-of-return regulation.

A small telecommunications utility that is part of an affiliated group of telecommunications utilities which collectively serves 50,000 or more access lines in Oregon does not qualify for small company treatment under ORS 759.040(1), (2) or (3). However, pursuant to ORS 759.040(4), a small telecommunications utility that is affiliated or under common control with another public utility providing service in Oregon may petition the Commission for the same exemptions provided to small telecommunications utilities under small company treatment. In that instance, ORS 759.040(4) provides that the Commission by order may exempt the small telecommunications utility from the above-referenced statutes upon a finding that such action is consistent with the public interest.

**ANALYSIS:**

Background

Citizens has operated as an unaffiliated small telecommunications utility in Oregon since its acquisition of Alltel Oregon, Inc. in 1995, and has, therefore, historically received small company regulatory treatment. However, in Order No. 10-067, issued on February 24, 2010, in Docket UM 1431, the Commission approved the transfer of Verizon Northwest Inc. (Verizon) to Citizens’ parent company, Frontier Communications Corporation. At that time, Citizens came under common control with another utility serving more than 50,000 access lines in Oregon, and therefore ceased to qualify for small company treatment pursuant to ORS 759.040. However, this change in Citizens’ regulatory status was not acknowledged following the acquisition, and Citizens continued to receive small company treatment despite its affiliation with Verizon (which changed its name to Frontier following the merger). Staff first noticed this discrepancy in April of 2015 and began treating Citizens as an affiliated small telecommunications utility in May 2015.

Staff notes that Citizens submitted 30 filings between February of 2010 and May of 2015, most of which were not substantially impacted by Citizens’ small company

treatment pursuant to ORS 759.040. However, four of Citizens' filings during that period represented rate increases. The Commission did not receive sufficient customer petitions to investigate any of these four rate increases following notice to customers nor did the Commission open its own investigation. Staff has considered whether these four rate increases were effective, and after conferring with legal counsel, concluded that they were.

Citizens filed this petition in August 2015, requesting a waiver of the statutes listed in ORS 759.040(4).

#### Public Interest Compliance

Pursuant to ORS 759.040(4), the Commission may exempt an affiliated small telecommunications utility from the statutes listed in ORS 759.040(4) upon a finding that such action is consistent with the public interest. In its review, Staff considered the following factors:

1. Customer protection from rate increases;
2. The regulatory burden on small companies; and
3. Treatment of similarly-situated companies.

Staff finds, on review of each factor, that granting the petition is consistent with the public interest, provided that certain conditions are met. Each factor is discussed in detail below.

#### 1. Customer Protection from Rate Increases

In its petition, Citizens states that exemption from the referenced statutes is consistent with the public interest because companies that operate under small company treatment are required to give notice to customers 45 days in advance of rate increases pursuant to ORS 759.040(7). Furthermore, OAR 860-034-0310 gives customers the opportunity to petition the Commission to investigate rate increases. The rule also details specific requirements for customer notifications, and requires companies to include a statement in the notice explaining how customers may petition the Commission to investigate a rate increase.

Staff is concerned that such process may not be sufficient when a small telecommunications utility is affiliated with a larger utility, and therefore may have additional resources to dedicate to regulatory processes than an unaffiliated small utility. It is possible that notices of rate increases may be issued more frequently, increasing the burden on the customers of Citizens to review and submit petitions for investigations.

To address this concern, Staff recommends that Citizens be subject to price caps. Furthermore, in order to simplify the establishment of price caps, Staff recommends that Citizens' price caps be equal to those established in Sections B through P of Frontier's current price plan, which took effect on August 18, 2014, with Order No. 14-290. Staff recommends that the maximum caps established in Section B of Frontier's price plan apply to primary line basic services immediately. In other words, while these Frontier price caps increase gradually over the duration of Frontier's price plan, Staff recommends that the maximum increases be available to Citizens immediately. This will simplify the administration of these caps without diminishing customers' ability to petition the Commission to investigate rate increases.

Finally, because Citizens recently increased basic local service rates in December of 2014, Staff recommends that Citizens' price caps apply to match the term of Frontier's price plan. This will cause the price increases that Citizens made in December of 2014 with Advice No. OR-14-08 to be counted toward Citizens' allowable rate increases pursuant to the price caps established in Frontier's price plan.

The significant applicable price caps are summarized below:

Service	Price Cap	Pre-Plan Rate	Current Rate	Maximum Rate
One-Party Local Service - Residential	\$3.00 increase	\$13.67	\$14.67	\$16.67
One-Party Local Service - Business	\$4.00 increase	\$24.32	\$26.32	\$28.32
Line Connection - Residential	Pre-Plan Rates	\$12.00	\$12.00	\$12.00
Line Connection - Business	Pre-Plan Rates	\$27.75	\$27.75	\$27.75
Extended Area Service (EAS)	Pre-Plan Rates	Varies	Varies	Varies
DS-1 and ISDN-PRI	10% per year	Varies	Varies	Varies
"Other Services"	Greater of 25% or \$0.50 per year	Varies	Varies	Varies

These caps represent upper limits only; any price increases that Citizens makes within these caps will still be subject to the customer notice requirements in ORS 759.040(7) and customers will have the opportunity to petition the Commission for investigation of all rate increases pursuant to OAR 860-034-0310. The definitions specified in the "definitions" section of Frontier's price plan should be used in applying the applicable price caps to Citizens. The application of the price caps from Frontier's price plan to Citizens should not be construed to imply that any other terms or conditions of Frontier's price plan apply to Citizens (e.g., Sections L, N, and O).

## 2. The Regulatory Burden on Small Companies

Citizens states in its petition that exemption from the referenced statutes meets the public interest standard by allowing for a simplified form of regulation under ORS 759.040. Staff agrees. Currently, Citizens is the only telecommunications utility operating in Oregon to which ORS 759.180 to 759.190 apply. Without exemption from ORS 759.180 to 759.190, Citizens would be required to file for a general rate case any time it proposes to change its rates. The Commission has not engaged in a general rate case investigation of a telecommunications utility rate filing since 2001, and Staff does not believe that requiring such action would be consistent with the current regulatory treatment of other telecommunications utilities in Oregon.

While Staff believes that the proposed regulatory treatment for Citizens will reduce the regulatory burden for both the Commission and the Company, the proposed form of regulation will be unique to Citizens, as Citizens' petition represents the first time that an affiliated small telecommunications utility has petitioned under ORS 759.040(4). Furthermore, no other utility receives small company treatment under ORS 759.040 while also being subject to price caps.

Because this regulatory treatment is somewhat unusual, Staff recommends that the Commission and the company revisit Citizens' allowed exemption again at a later date. Because Frontier's current price plan must also be revisited upon its expiration, Staff recommends that Citizens' exemptions be granted through the date that Frontier's current price plan expires. This will allow the Commission the opportunity to evaluate the regulatory treatment of both companies together and possibly develop price plans for both companies at the same time, if necessary. The Commission issued its Order No. 14-290 approving Frontier's price plan on August 18, 2014, and the price plan will extend for either three or four years from that date, depending on Frontier's elections pursuant to Section W of its price plan (reproduced below):

The Price Plan will extend for three years, with an option for Frontier to extend the Price Plan by an additional (fourth) year. No later than the end of the second year of the Price Plan, Frontier will notify the Commission of its intent to extend the Plan for a fourth year or petition the Commission seeking 1) a new price plan; 2) modification of the existing Price Plan; or 3) any other form of regulation that may be applicable. If Frontier elects to extend the Price Plan for a fourth year, it will be required to petition the Commission for a new form of regulation no later than the end of the third year of the Price Plan. Should Frontier provide notice that it intends to extend the Price Plan for the fourth year, rates will remain at the negotiated cap(s) for basic residential and business service unless Frontier has not exercised the full dollar amount of the cap(s).

In other words, Citizens' exemptions would expire in August of either 2017 or 2018, depending on the duration of Frontier's price plan. Citizens would then have the opportunity to petition again for small company treatment or for a new form of regulation upon the expiration of any exemptions granted with the present petition. If Citizens takes no action at that time, it will once again be regulated as an affiliated small (i.e., "large") telecommunications utility.

### 3. Treatment of Similarly-Situated Companies

In addition to Citizens, the following small telecommunications utilities do not automatically qualify for small company treatment due to an affiliation with a larger company:

CenturyTel of Oregon, Inc. dba CenturyLink (CTO),  
CenturyTel of Eastern Oregon, Inc. dba CenturyLink (CTEO), and  
United Telephone Company of the Northwest dba CenturyLink (United)

The above companies are currently regulated under a price plan pursuant to ORS 759.255. Although these companies have neither applied nor been granted any statute exemptions pursuant to ORS 759.040, the provisions of their price plan exempt them from all but two of the statutes from which companies under small company treatment are exempt. Specifically, ORS 759.375 and 759.380 still apply to the above companies. ORS 759.375 requires Commission approval prior to the disposal of operative utility property in excess of \$100,000 and ORS 759.380 requires Commission approval for the purchase of utility stocks or bonds in excess of \$10,000. In response to staff's information requests, Citizens stated that "Citizens, as a legal entity, would not enter into any purchase of stock or property on its own volition. Any such types of agreements at the holding company level would also include the legal entity Frontier Communications Northwest Inc. who is still subject to these statutes for Commission review." Because it is not clear how exemption from ORS 759.375 or 759.380 would benefit either the company or its customers, Staff recommends that Citizens not receive exemptions from these two statutes.

In addition to receiving nearly all of the exemptions provided under small company treatment, the above companies are also exempt from a number of additional statutes and rules from which Citizens is not currently requesting exemption. Staff believes that granting Citizens' petition for small company treatment (with the exception of the two statutes discussed above) would temporarily provide Citizens with regulatory treatment consistent with that of similarly-situated companies until the Commission can revisit Citizens' form of regulation at a later date.

**CONCLUSION:**

Staff finds that granting Citizens' petition with the specified conditions is consistent with the public interest because such action 1) gives Citizens some pricing flexibility without requiring a general rate case, 2) provides customers with rate protections through both the price caps proposed by Staff and the ability to petition the Commission to investigate rate increases, and 3) is consistent with the Commission's regulatory treatment of similarly-situated companies in Oregon.

Staff recommends that the Commission grant Citizens' petition, subject to the following conditions and limitations:

1. Citizens shall be subject to the price caps specified in Frontier's current price plan. The applicable price caps shall apply from the effective date of Frontier's price plan (August 18, 2014).
2. Until the expiration of Frontier's current price plan, in August of either 2017 or 2018, Citizens is exempt from ORS 759.180 to ORS 759.190, ORS 759.385 to ORS 759.393, and ORS 759.300 to ORS 759.360.
3. Citizens is not exempt from ORS 759.375 or ORS 759.380.

A copy of this memorandum has been reviewed by Citizens and the Company does not object to the conditions proposed by Staff.

**PROPOSED COMMISSION MOTION:**

Citizens' petition be granted, subject to the conditions and terms recommended by Staff.