

ITEM NO. RM1

PUBLIC UTILITY COMMISSION OF OREGON
AHD REPORT
PUBLIC MEETING DATE: September 26, 2017

REGULAR CONSENT EFFECTIVE DATE _____ N/A _____

DATE: August 31, 2017

TO: Public Utility Commission

FROM: Diane Davis *ddd*

THROUGH: Michael Grant *MG*

SUBJECT: OREGON PUBLIC UTILITY COMMISSION ADMINISTRATIVE HEARINGS DIVISION: (Docket No. AR 611) Adopts Revisions and New Rules in Division 100, Oregon Universal Service Fund Rules.

AHD RECOMMENDATION:

Adopt the proposed permanent rule additions and changes in the attached draft order.

DISCUSSION:

This rulemaking provides additional definitions and general provisions to the Division 100 rules that provide the framework for definitions, processes, and procedures regarding the Oregon Universal Service Fund (OUSF).

No comments were received from the public in response to the Notice of Proposed Rulemaking filed with the Secretary of State on July 12, 2017.

PROPOSED COMMISSION MOTION:

Adopt permanent Division 100 rule additions and changes as set forth in Appendix A of the attached draft order.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 611

In the Matter of Rules Regarding Oregon
Universal Service Fund Process and
Procedures.

ORDER

DISPOSITION: NEW RULES AND RULE CHANGES ADOPTED

I. INTRODUCTION

We opened this rulemaking to establish in rule the amount a telecommunications provider must pay into the Oregon Universal Service Fund (OUSF), to continue Commission authorization for OUSF contributors to recover the OUSF charge from customers, set forth the criteria for the Commission to designate a provider as eligible to receive varying levels of support from the OUSF and for specific distributions from the OUSF.

II. BACKGROUND

Staff held informal discussions with and received informal comment from stakeholders to gather input to frame its proposed rules. On July 12, 2017, we filed a Notice of Proposed Rulemaking and Statement of Need and Fiscal Impact for this rulemaking with the Secretary of State, and we provided notice to all interested persons on the service lists established under OAR 860-001-0030(1)(b) and to legislators specified in ORS 183.335(1)(d). Notice of the rulemaking was published in the August 2017 *Oregon Bulletin*, establishing a comment due date of August 22, 2017. No comments were received in response to the Notice.

These proposed rules are the second step in establishing Division 100 rules to provide a comprehensive framework for definitions, processes, and procedures with regards to the OUSF. The proposed rule changes provide additional definitions and general provisions, introduce rules which address the distribution and identification worksheets as well as support eligibility and portability, and establish the amount a telecommunications provider must pay into the OUSF. Because this amount is consistent with statutory limitations and Commission orders, the contribution obligations of telecommunication providers do not increase under the proposed rules.

The proposed rules continue our authorization for OUSF contributors to recover the Oregon universal service charge from Oregon customers. The proposed rules also set forth criteria for us to designate a provider as eligible to receive varying levels of support from the OUSF, and for

specific distributions from the fund. These criteria are substantially similar to our prior orders and require distributions to be used for investment, construction, operation, maintenance, and repair to ensure that basic telephone service is available at reasonable and affordable rates in areas designated by the Commission for support. A provider seeking to receive support from the OUSF will be required to expend resources to prepare and submit certain reports and worksheets to the OUSF Administrator and, upon request, to the Commission. Under the proposed rules, a contributor to the Fund is not eligible for a distribution from the Fund when it has an outstanding fee assessment until the terms of the order are satisfied, or in any month in which the provider's Certificate of Authority has been cancelled.

We adopt the rules additions and changes as proposed.

III. ORDER

IT IS ORDERED that:

1. The Division 100 rule additions and modifications are adopted as set forth in Appendix A to this order.
2. The rules become effective upon filing with the Secretary of State.

Made, entered, and effective _____.

Lisa Hardie
Chair

Stephen M. Bloom
Commissioner

Megan W. Decker
Commissioner

A person may petition the Public Utility Commission of Oregon for the amendment or repeal of a rule under ORS 183.390. A person may petition the Oregon Court of Appeals to determine the validity of a rule under ORS 183.400.

860-100-0005

Definitions for the Oregon Universal Service Fund

For the purpose of this Division:

(1) "Basic telephone service" has the same meaning as provided in OAR 860-032-0190.

~~(12)~~ "Certificate of Authority" means a certificate of authority to provide intrastate telecommunications service on a for-hire basis that may be issued by the Commission under ORS 759.020.

~~(23)~~ "Competitive provider" means a competitive telecommunications provider as defined in ORS 759.005(1), who provides services authorized pursuant to ORS 759.020.

~~(34)~~ "Cooperative" means a cooperative corporation or association, which provides local exchange telecommunications service within its own exchanges, which is organized under ORS Chapter 62, and which is certified under ORS 759.025(2).

(5) "Exchange" has the same meaning as provided in OAR 860-032-0012.

~~(46)~~ "Local exchange service" means local exchange telecommunications service as defined in ORS 759.005(3). Local exchange service includes "shared service."

(7) "Loop facilities" consists of the cables, poles, conduit, microwave, or carrier equipment used by a telecommunication service provider to connect a customer's premise to a central office.

~~(58)~~ "OUSF Board" means the advisory board selected by the Commission to provide advice on the administration of the OUS Fund.

~~(69)~~ "OUS Administrator" means the person selected by the Commission to administer the OUS Fund.

~~(710)~~ "OUS Fund" means the Oregon Universal Service Fund.

~~(811)~~ "Pay telephone" means a telephone instrument, generally placed in public areas, for transient use on a pay-per-call basis. "Pay telephone" instruments may be coin operated, noncoin operated, prepay, postpay, central office controlled, instrument controlled, provided by local exchange carriers, or provided by other persons or entities.

~~(912)~~ "Private telecommunications network" means a system, including the construction, maintenance, or operation of the system, for the provision of a service or any portion of a service, by a person for the exclusive use of that person and not for resale, directly or indirectly. "Private telecommunications network" includes services provided by the State of Oregon pursuant to ORS 190.240 and 283.140.

(13) "Retail telecommunications service" has the same meaning as provided in ORS 759.400.

(14) "Retail telecommunications service gross revenue" means the total amount of sales of intrastate retail telecommunications services sold in Oregon before any deduction or adjustment for uncollectible amounts or a provider's expenses.

~~(105)~~ "Shared service" means shared telecommunications service as defined in ORS 759.005(6) and:

(a) The provision of telecommunications and information management services and equipment:

(A) To a user group comprised of one person or association served by a single telecommunications system;

(B) Located in a single building or in several buildings on contiguous property;

(C) By a commercial shared service provider or by a users' association;

(D) Through privately owned customer premises equipment and associated data processing and information management services; and

(b) Includes connection to local exchange service.

(146) "Telecommunications provider" or "provider" includes competitive providers, cooperatives, and telecommunications utilities.

(127) "Telecommunications service" or "service" means two-way switched access and transport of voice communications, and all services provided in connection with such services, but excludes:

(a) Services provided by radio common carrier;

(b) One-way transmission of television signals;

(c) Surveying;

(d) Private telecommunications networks; and

(e) Customer communications that take place on the customer's side of the network interface.

(138) "Telecommunications utility" means a person who is not a competitive provider and is designated as a telecommunications utility under OAR 860-032-0010.

(19) "UNE loop" means an unbundled network element loop.

(20) "Wire center" has the same meaning as provided in OAR 860-032-0012.

Stat. Auth.: ORS Ch. 183, 192, 756, 759

Stats. Implemented: ORS 756.040, 759.005, 759.020

Hist.: PUC 5-2016, f. & cert. ef. 11-22-16

860-100-0100

General Provisions

(1) For the purpose of ~~this Division~~ these rules, each calendar year has four quarters as follows: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

(2) Except as provided in ORS 759.425(7), each telecommunications provider must pay into the OUS Fund, on a quarterly basis, an amount of the provider's retail telecommunications service gross revenue, as may be established by the Commission. This amount shall not exceed 8.5 percent of the provider's retail telecommunications service gross revenue and shall be otherwise consistent with the amounts established in the Commission's Order No. 16-093, available at: <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=16169>.

(3) A contributor to the OUSF may recover the Oregon universal service charge from its customers. A contributor to the OUSF who imposes such a surcharge on customers must do so using the same percentage as required under section (2) of this rule.

(24) For the purpose of this Division OAR 860-100-0100 through 860-100-0150, there are three worksheet forms that a telecommunications provider must complete and file when required to do so under these rules. The forms are available at:

<http://www.puc.state.or.us/ousf/Pages/index.aspx>. Form OPUC OUS 1 is titled "Oregon Universal Service Identification Worksheet" and is referenced in these rules as the "identification worksheet". the quarterly revenue worksheet identified as "Form OPUC OUS 2 is titled "Oregon Universal Service Contribution Worksheet" and is referenced in these rules is known as the "contribution report." Form OPUC OUS 3 is titled "Oregon Universal Service Support Distribution Worksheet" and is referenced in these rules as the "distribution worksheet."

(5) Each report and worksheet that a telecommunications provider is required to file with the OUS Administrator under this Division is considered filed when received by the OUS Administrator.

(36) A telecommunications provider may pay any amounts due to the Public Utility Commission (Commission) by electronic transfer.

(47) The Commission may add all costs incurred in collecting a past-due "Oregon universal service" (OUS) contribution amount. In the event the Commission refers the debt to the Department of Revenue or to a collection agency, the Commission may add to the debt the anticipated amount necessary to generate a net return to the Commission of the amount of the debt.

(58) A telecommunications provider must pay a service fee in accordance with OAR 860-001-0050 for each payment returned for non-sufficient funds.

(69) In addition to any other penalty, obligation or remedy provided by law, the Commission may suspend or cancel the telecommunications provider's certificate of authority to provide telecommunications service in Oregon for its failure to file ~~its contribution~~ **any report or worksheet required under these rules** or **for** its failure to pay its contribution amount in full.

(710) Except as otherwise provided by law, if after an audit or review the Commission determines that the telecommunications provider has overpaid its OUS contribution amount, the Commission will provide the telecommunications provider a credit in that amount against sums subsequently due from the telecommunications provider.

(811) In computing any time prescribed or allowed by these rules, the day of the act or event from which the designated time begins to run may not be included. The last day of the time period must be included, unless it is a Saturday or legal holiday, including Sunday, in which event the period runs until the end of the next day that is not a Saturday or a legal holiday. Legal holidays are those identified in ORS 187.010 and 187.020.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 759.015, 759.425, & OR Laws 2017, ch. 32

Hist.: PUC 23-2002, f. & cert. ef. 12-9-02; PUC 18-2004, f. & cert. ef. 12-30-04; Renumbered from 860-032-0610, PUC 5-2016, f. & cert. ef. 11-22-16

860-100-0105

Identification Worksheet

(1) A telecommunications provider must complete and file an initial identification worksheet with the OUS Administrator within 30 calendar days of notification by the OUS Administrator that the identification worksheet is due.

(2) A telecommunications provider must complete and file a corrected identification worksheet with the OUS Administrator within 30 calendar days of any change to its business name, organization structure, mailing address, contact person or certifying officer.

(3) A telecommunications provider must complete and file an identification worksheet on an annual basis with the OUS Administrator. A provider must file its annual identification worksheet by February 10th each calendar year.

Stat. Auth.: ORS 183, 192, 756 & 759
Stats. Implemented: ORS 756.040, 759.015 & 759.425
Hist.: NEW

860-100-0115

Distribution Worksheet

A telecommunications provider that has been designated as eligible for OUS Fund support must record its number of basic service access lines at the end of the calendar month (referred to as the recording month) on the distribution worksheet by wire center or exchange and must file the completed worksheet with the OUS Administrator no later than 40 days after the end of the recording month, i.e., by the tenth day of the second month following the close of each month.

Stat. Auth.: ORS 183, 192, 756 & 759
Stats. Implemented: ORS 756.040, 759.015 & 759.425
Hist.: NEW

860-100-0125

OUS Fund Support Portability

(1) OUS Fund support is portable, on a per line basis for basic telephone service, from a telecommunications utility to a competitive provider that has been designated by the Commission as eligible for support in the same geographic area.

(2) In support areas that are served by both a telecommunications utility and a competitive provider, distributions from the OUS Fund will be shared in the following manner:

(a) For customer lines served by a competitive provider's own loop facilities, the competitive provider may receive the full OUS Fund support amount per line. The support amount per line is available in a document titled "OUS Support Per ILEC Wire Center" on the Commission's website, available at: <http://www.puc.state.or.us/ousf/Pages/index.aspx>, unless modified by a Commission order posted on the same webpage.

(b) For customer lines served by a competitive provider that resells a telecommunication utility's supported retail service and does not provide service with its own loop facilities, the competitive provider may not receive OUS Fund support.

(c) For customer lines served by UNE loops leased from a telecommunications utility by a competitive provider, the utility and the provider may share the OUS Fund support amount per line. The shared support amount per line with amounts allocated to the telecommunications utility and to the competitive provider is available in a document titled "OUS Support Per ILEC Wire Center" on the Commission's website, available at: <http://www.puc.state.or.us/ousf/Pages/index.aspx>, unless modified by a Commission order posted on the same website.

Stat. Auth.: ORS 183, 192, 756 & 759
Stats. Implemented: ORS 756.040, 759.015 & 759.425
Hist.: NEW

860-100-0150

OUS Record-keeping Requirements

(1) A telecommunications provider shall produce for inspection or audit upon request of the Commission or its authorized representative all records supporting its ~~contribution reports~~ **and worksheets required to be filed with the OUS Administrator**. The Commission, or its representative, shall allow the telecommunications provider a reasonable time to produce the records for inspection or audit.

(2) A telecommunications provider must keep all records supporting each ~~contribution report~~ **and worksheet required to be filed with the OUS Administrator** for three years, or until a Commission review or audit is complete, whichever is later.

(3) In addition to any other penalty allowed by law, the Commission may suspend or cancel a telecommunications provider's certificate of authority to provide telecommunications service for its failure to produce for inspection or audit the records required by this rule.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 759.015 & 759.425

Hist.: PUC 23-2002, f. & cert. ef. 12-9-02; Renumbered from 860-032-0660, PUC 5-2016, f. & cert. ef. 11-22-16

860-100-0200

OUS Fund Support Eligibility

(1) A provider that has been designated by the Commission as eligible to receive support from the OUS Fund in a specific geographic area, may receive a distribution from the OUS Fund, provided that it:

(a) Holds a certificate of authority issued under ORS 759.020;

(b) Offers all supported services included in basic telephone service;

(c) Offers, throughout the provider's designated service area, all supported services included in basic telephone service;

(d) Uses the provider's own facilities, leased UNE facilities, or a combination of its own or leased facilities and resale of another provider's retail services to provide the supported services;

(e) Will use funds distributed from the OUS Fund for investment, construction, operation, maintenance, and repair to ensure that basic telephone service is available at reasonable and affordable rates in areas designated by the Commission for support;

(f) Advertises the supported services included in basic telephone service;

(g) Is certified by the Commission to offer and advertise Oregon Telephone Assistance Program supported services or a Commission-approved alternative plan, along with Tribal Lifeline and Tribal Link Up benefits, in compliance with Oregon Administrative Rules Chapter 860, Division 33;

(h) Has the ability to remain functional during emergencies;

(i) Is committed to and maintains service quality and consumer protection standards as required under OAR 860-023-0055 and OAR 860-034-0390;

(j) Demonstrates that the provision of support is in the public interest; and

(k) Meets all Commission reporting requirements related to OUS Fund contributions and distributions.

(2) To be designated by the Commission as eligible to receive support from the OUS Fund, a competitive provider must petition the Commission for such designation in a specific

geographic area and must demonstrate through its petition that the provider can meet the criteria listed in Section 1(a)-(k) of this rule.

(3) A telecommunications provider shall not be eligible to receive an OUS Fund distribution following the Commission's issuance of an order with an outstanding fee assessment for failing to comply with the conditions of its Certificate of Authority, until the terms of the order are satisfied.

(4) A telecommunications provider shall not be eligible to receive an OUS Fund distribution in any month in which its Certificate of Authority has been cancelled by the Commission.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 759.015 & 759.425

Hist.: NEW