

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, Washington 98512
Fax (360) 587-3852

Richard A. Finnigan
(360) 956-7001
rickfinn@localaccess.com

Candace Shofstall
Legal Assistant
(360) 753-7012
candaces@localaccess.com

September 28, 2012

VIA E-MAIL AND U.S. MAIL

Diane Davis
Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
Salem, OR 97301-2551

Re: AR 566 – Comments of the Oregon Telecommunications
Association

Dear Ms. Davis:

The Oregon Telecommunications Association (OTA) appreciates the opportunity to provide its opening comments on the proposed rules in this matter. By agreement among the parties from the hearing held August 22, 2012, opening comments were originally due September 21, 2012. However, that date has been extended to September 28, 2012.

OTA very much appreciates the extensive effort that the Oregon Public Utility Commission Staff has devoted to this matter. This is an extremely important issue for rural Oregon customers, particularly those served by rural Oregon rate-of-return companies. It is the small company territory that the problem appears to be most severe.

This is a problem that needs to be addressed by the Oregon Commission. Some may argue that the Federal Communications Commission's rules have solved the problem. Some may argue that recent action by ATIS will solve the problem. Some may argue that the combination of FCC and ATIS action is enough. However, these arguments should not be accepted as fact. At best, there has been incremental progress. The problem persists.

A recent example of the problem existing today was described in the comments filed by Monroe Telephone Company. In addition, just two days ago NARUC filed an ex parte with the FCC stating, "But despite the FCC's Order, it is clear the problem persists."¹ The problem continues and does not show any sign of significant abatement.

Just to be clear, the problem is that calls are not terminating to customers that live in many rural Oregon areas. Or, calls are terminating, but the call quality is so poor as to make communication impossible. In many cases, fax transmissions cannot be completed. This has had a substantial impact on small businesses that exist in those area and are struggling to survive. This has had an affect on the ability of people in some areas of rural Oregon to be able to receive messages from their health care providers. This problem has interrupted the social interaction between families and between friends.

As an initial position, OTA was willing to support the Commission Staff's proposed rules.² The draft rules are comprehensive and appear to track the FCC's rules, although are more detailed and broader in scope.

However, to some extent the details of the draft rules may cause some entities that operate in multiple states concern and, perhaps, operating problems and expense. OTA recognizes this issue and has been willing to work with other members of the industry to attempt to develop a compromise proposal that accomplishes the goals of the docket while not unduly imposing additional costs on entities that operate in multiple states.

To this end, OTA believes that a compromise has been reached that will satisfy the goals of the docket, make major steps in addressing call termination problems in Oregon, and, while not ideal for those entities that operate in multiple states, will at least minimize the issues when compared to the draft rules. Adoption of the rule change is critical and entirely appropriate in order to address the call termination issue as it exists in the State of Oregon.

As a result, OTA supports adoption of the following subsection (16) and (17) in lieu of the draft language set out in the proposed rules starting at subsection (16). The language is as follows:

1) A copy of NARUC's ex parte is attached.

2) This position is not joined by OTA members CenturyLink and Frontier.

(16) Except to the extent authorized by law, the certificate holder shall not, directly or indirectly, block, choke, reduce or restrict traffic to another certificate holders' service area in such a manner as to attempt to or to avoid paying terminating access charges. In determining whether to invoke a penalty for violation of this standard, the Commission will consider the frequency with which the violation occur and the corrective action, if any, undertaken by the certificate holder and whether the certificate holder had knowledge of the violation. The Commission will not impose penalties in the event the certificate holder can demonstrate that it did not have knowledge of the violation. An aggrieved party is required to notify the certificate holder of any issues and parties are encouraged to resolve an issues informally before seeking relief under this rule.

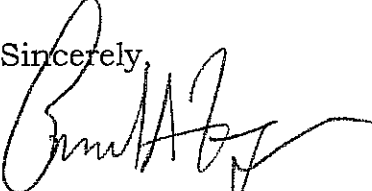
(17) The certificate holder must take reasonable steps to ensure that it does not adopt or perpetuate routing practices that result in lower quality service, related to the termination of calls, to an exchange with higher terminating access rates than like service to an exchange with lower terminating access rates. In determining whether to invoke a penalty for violation of this standard, the Commission will consider the frequency with which the violations occur and the corrective action, if any, undertaken by the certificate holder and whether the certificate holder had knowledge of the violation.

OTA requests that the Commission proceed to adopt the proposed rules using subsections (16) and (17) as set forth above. If, on the other hand, the Commission determines to move forward with the proposed rules, there is one minor point in the proposed rules that OTA would like to see addressed.

The suggested modification is to subsection (20). It now reads that a certificate holder is liable for the actions of an underlying carrier "if that underlying carrier is an agent of or employed by the certificate holder and the certificated holder knew of or should have known of the underlying carrier's actions." This may be unintentionally too narrow. Most underlying carriers are contractors. An independent contractor may not necessarily be an agent from a technical legal perspective. Therefore, OTA proposes that the language read "if that underlying carrier is a contractor or subcontractor of, an agent of, or employed by the certificate holder and the certificate holder knew or should have known of the underlying carrier's actions."

Diane Davis
September 28, 2012
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Thank you for the opportunity to submit these opening comments.

Sincerely,

RICHARD A. FINNIGAN

RAF/cs
Enclosures

cc: Service List (via e-mail)

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**CERTIFICATE OF SERVICE
AR 566**

I certify that I have this day sent the attached Comments of the Oregon Telecommunications Association to AR 566 by electronic mail and U.S. mail to the following:

FILING CENTER
PUBLIC UTILITY COMMISSION OF OREGON
550 CAPITOL ST NE STE 215
SALEM, OR 97301-2551
puc.filingcenter@state.or.us

I further certify that I have this day sent the attached Comments of the Oregon Telecommunications Association by electronic mail to the following parties or attorneys of parties:

CHARLES L BEST
1631 NE BROADWAY #538
PORTLAND, OR 97232-1425
chuck@charleslbest.com

MARY RETKA
mary.retka@centurytlink.com

ROBERTA VANDEHEY
STAR ROUTE
FOSSIL OR 97830
robertav2@yahoo.com

AT&T
CYNTHIA MANHEIM
PO BOX 97061
REDMOND, WA 98052
cindy.manheim@att.com

AT&T COMMUNICATIONS OF THE
PACIFIC NORTHWEST
DAVID COLLIER
645 E PLUMB LN
PO BOX 11010
RENO NV 89502
david.collier@att.com

AT&T SERVICES, INC.
SHARON L MULLIN
400 W 15TH ST, STE 930
AUSTIN, TX 78701
slmullin@att.com

CENTURYLINK
RON L TRULLINGER
310 SW PARK AVE, 11TH FL
PORTLAND, OR 97205
ron.trullinger@centurylink.com

CENTURYLINK, INC.
WILLIAM E. HENDRICKS
902 WASCO ST A0412
HOOD RIVER, OR 97031
tre.hendricks@centurylink.com

1 CITIZENS' UTILITY BOARD
OF OREGON
2 OPUC DOCKETS
610 SW BROADWAY, STE 400
3 PORTLAND OR 97205
4 dockets@oregoncub.org

5 CITIZENS' UTILITY BOARD
OF OREGON
6 SOMMER TEMPLET
610 SW BROADWAY, STE 400
7 PORTLAND OR 97205
8 sommer@oregoncub.org

9 DAVIS WRIGHT TREMAINE LLP
MARK TRINCHERO
10 1300 SW FIFTH AVE SUITE 2300
11 PORTLAND OR 97201-5682
marktrinchero@dwt.com

12 FRONTIER COMMUNICATIONS
NORTHWEST INC
13 RENEE WILLER
14 20575 NW VON NEUMANN DR
15 BEAVERTON, OR 97006-6982
renee.willer@ftr.com

16 INTEGRA TELECOM OF OREGON INC
DOUGLAS K DENNEY
17 1201 NE LLOYD BLVD, STE 500
18 PORTLAND OR 97232
dkdenney@integratelecom.com

19 LS NETWORKS
20 ROBIN SMITH
21 921 SW WASHINGTON ST, STE 370
22 PORTLAND OR 97205
rsmith@lsnetworks.net

CITIZENS' UTILITY BOARD
OF OREGON
G. CATRIONA MCCrackEN
610 SW BROADWAY, STE 400
PORTLAND OR 97205
catriona@oregoncub.org

COMCAST BUSINESS
COMMUNICATIONS LLC
DOUG COOLEY
1710 SALEM INDUSTRIAL DRIVE NE
SALEM, OR 97303
doug_cooley@cable.comcast.com

FRONTIER COMMUNICATIONS
PHYLLIS WHITTEN
9620 E STOCKTON BLVD
ELK GROVE CA 95624
phyllis.whitten@ftr.com

INTEGRA TELECOM
GEORGE SCHRECK
1201 NE LLOYD BLVD, STE 500
PORTLAND OR 97232
george.schreck@integratelecom.com

LEVEL 3 COMMUNICATIONS LLC
GREGORY DIAMOND
1505 5TH AVE STE 501
SEATTLE WA 98101
greg.diamond@level3.com

MCDOWELL RACKNER & GIBSON
ADAM LOWNY
419 SW 11TH AVE, STE 400
PORTLAND OR 97205
adam@mcd-law.com

1 MCDOWELL RACKNER & GIBSON
LISA F RACKNER
2 419 SW 11TH AVE, STE 400
PORTLAND OR 97205
3 dockets@mcd-law.com

4 OCTA
5 MICHAEL DEWEY
1249 COMMERCIAL ST SE
6 SALEM OR 97302
mdewey@oregoncable.com
7

8 OREGON TELECOMM ASSN
9 BRANT WOLF
777 13TH ST SE - STE 120
10 SALEM OR 97301-4038
bwolf@ota-telecom.org
11

12 PRIORITYONE TELECOMM
JEFF CREWS
13 PO BOX 1462
LA GRANDE OR 97850
14 jcrews@p1tel.com

15 OREGON PUC
FRED GOODWIN
16 PO BOX 2148
SALEM OR 97308
17 fred.goodwin@state.or.us

18 PUC STAFF--DOJ
19 JASON W JONES
1162 COURT ST NE
20 SALEM OR 97301-4096
jason.w.jones@state.or.us
21

MONROE TELEPHONE CO
JOHN T DILLARD
PO BOX 130
MONROE OR 97456
jtdillard@monroetel.com

OREGON EXCHANGE CARRIER
ASSN
CRAIG PHILLIPS
1104 MAIN ST., #300
VANCOUVER WA 98660
cphillips@oecca.com

PAC-WEST TELECOMM INC
NOVI CAMPBELL
4210 CORONADO AVE
STOCKTON CA 95204
ncampbell@pacwest.com

OREGON PUC
MALIA BROCK
PO BOX 2148
SALEM OR 97308
malia.brock@state.or.us

PUC STAFF - DOJ
JOHANNA RIEMENSCHNEIDER
1162 COURT ST NE
SALEM OR 97301-4796
johanna.riemenschneider@doj.state.or.us

RIO NETWORKS.COM
SCOTT WARREN
PO BOX 1146
ROSEBURG OR 97470
scott.w@rionetworks.com

22
23
24
25
26

1 SCIO MUTUAL TELEPHONE ASSN
THOMAS J BARTH
2 38982 SE 2ND AVE
SCIO OR 97374
3 tbarth@smt-net.com

TDS TELECOM
WESTERN REGION
GAIL LONG
PO BOX 1566
OREGON CITY OR 97045-1566
gail.long@tdstelecom.com

5 TW TELECOM OF OREGON LLC
LYNDALL NIPPS
6 9665 GRANITE RIDGE DR
STE 500
7 SAN DIEGO CA 92123
8 lyndall.nipps@twtelecom.com

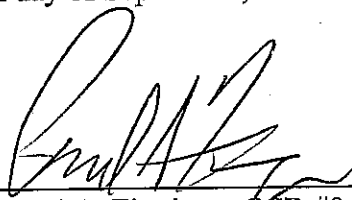
VERIZON
RICHARD B SEVERY
2775 MITCHELL DR, BLDG. 8-2
WALNUT CREEK CA 94598
richard.b.severy@verizon.com

9 VERIZON CALIFORNIA INC
LORRAINE A KOCEN
10 2523 W HILLCREST DR, 2ND FL
NEWBURY PARK CA 91320
11 lorraine.kocen@verizon.com

VERIZON CORPORATE COUNSEL
RUDOLPH M REYES
ASST. GENERAL COUNSEL
201 SPEAR STREET, 7TH FLOOR
SAN FRANCISCO CA 94105
rudy.reyes@verizon.com

13 WILLIAMS, KASTNER & GIBBS PLLC
MARC M. CARLTON
14 888 SW FIFTH AVENUE, SUITE 600
PORTLAND, OR 97204-2025
15 mcarlton@williamskastner.com

16 Dated at Olympia, Washington, this 28th day of September, 2012.

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20
21
22
23
24
25
26

Richard A. Finnigan, OSB #965357
Attorney for the Oregon Telecommunications Association