

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OR OREGON**

3 AR 566

4 In the Matter of Permanent Rule)
5 Amendments to OAR 860-032-0007 to)
6 Address Call Termination Issues) STAFF COMMENTS
7)

8 The Public Utility Commission of Oregon Staff (“Staff”) submits these comments in
9 response to written comments submitted in this docket by Monroe Telephone Company on
10 September 11, 2012, by Verizon, tw telecom of oregon llc, Level 3 Communications, Sprint
11 Communications Company, Oregon Telecommunications Association (OTA), CenturyLink,
12 Oregon Cable Telecommunications Association (OCTA), Frontier Communications on
13 September 28, 2012, and by AT & T on October 1, 2012.

14 **Background:**

15 In May 2009, the Commission received the first documented complaint from an Oregon
16 consumer regarding a call completion issue. In January 2011, Staff began receiving complaints
17 from rural telecommunications providers regarding call completion complaints from their
18 customers, specifically Monroe Telephone and Helix Telephone. Staff held an informal
19 workshop with industry representatives on June 24, 2011 to discuss call completion issues.
20 Subsequently on July 5, 2011, the Commission formally opens investigation docket UM 1547.

21 After a pre-hearing conference was held to establish a procedural schedule in UM 1547,
22 on April 23, 2012, Staff filed Staff’s Comments, in which Staff recommended initiation of a
23 rulemaking docket. At the end of May 2012, the other parties filed responsive comments. In
24 June 2012, the parties to the investigation docket participated in an informal workshop to discuss
25 draft rules that Staff had formulated and shared with the parties. Several carriers present at the
26 workshop indicated that while they did not support the need for rulemaking, they intended to
develop a consensus proposal for alternate language to Staff’s proposal, working with OTA.

1 On June 26, 2012, the Commission issued Order No. 12-237, directing Staff to initiate
2 rulemaking on an expedited basis to address the issues raised in Docket No. UM 1547. On July
3 6, 2012, this rulemaking docket, AR 566, was opened.

4 On July 20, 2012, the Notice of Proposed Rulemaking was issued to interested parties.
5 On July 31, 2012, the Citizens' Utility Board (CUB) filed opening comments, supporting
6 adoption of the proposed amendments. A public hearing on the proposed rule amendments was
7 held on August 22, 2012. A schedule was set for the proceeding with initial comments due
8 September 21, 2012 and final comments due September 28, 2012. These dates were later
9 extended to September 28, 2012 and October 5, 2012, respectively.

10 On September 20, 2012, a draft of alternate language was first provided to Staff.
11 Additional variations and versions were circulated among the parties in the following week. The
12 parties' initial comments provide a few different proposals for alternate language. Staff
13 participated in a conference call with the parties on October 2, 2012 in which different proposals
14 for alternate language were discussed.

15 Staff appreciates the effort and time that the parties devoted to addressing intrastate call
16 termination issues in Oregon and to proposing various changes to the proposed rule amendments.
17 Rather than respond to each party's comments individually, Staff's comments are organized as
18 follows:

- 19 I. Staff's proposal to revise the proposed rule amendments based on the
20 comments received.
- 21 II. Staff's response to common issues raised by the parties.
- 22 III. Staff's response to alternate language proposed by various parties.

23 **I. Staff's proposal to Revise Proposed Rule Language.**

24 Upon review of the comments filed in this proceeding, Staff believes the proposed
25 amendments would be improved with some revisions taken from or based on the various
26 comments that were filed. Staff supports adoption of the rule amendments with the revisions
discussed below. These revisions are marked on Attachment 1.

1 AT&T's comments note that "the FCC has specific rules that allow carriers to block
2 some calls." AT&T Comments at 4. The proposed amendments added subsection (16) which
3 provides an exception for state or federal law provisions that allow for blocking, choking,
4 reducing or restricting traffic. The proposed amendments did not include a similar exception to
5 the requirement in subsection (17) that a certificate holder take reasonable steps to ensure that it
6 does not adopt or perpetuate routing practices that result in lower quality service. Staff's
7 proposed revisions include this exception. Attachment 1.

8 Verizon commented that the phrase "acting as an agent" in subsection (19) is vague or
9 overbroad. Verizon comments at 16. Staff's proposed revisions delete the phrase "acting as".
10 Attachment 1.

11 OTA's comments indicated that the language in subsections (19) and (20) may be too
12 narrow for the intended purpose. While an underlying carrier may be an agent or employee of
13 the certificate holder, the underlying agent may fill other roles, such as a contractor or a
14 subcontractor. OTA comments at 3; see also Verizon comments at 16. Staff's proposed
15 revisions add the phrase "contractor or subcontractor" to these subsections. Attachment 1.

16 OCTA comments that the reference to the actions of employees in subsections (19) and
17 (20) does not limit the actions of employees or agents to those acting within the scope of their
18 employment. OCTA Comments at 13. An agent is not necessarily an employee. But staff's
19 proposed revisions qualify "employee" with the phrase "acting within the scope of the person's
20 employment" to these subsections. Attachment 1.

21 **II. Staff's Responses to Common Issues Raised by the Parties.**

22 **A. The Assertion that Rulemaking is Unnecessary is Incorrect.**

23 Comments filed by several parties contend that the Oregon PUC should refrain from
24 adopting an administrative rule that addresses the completion of intrastate calls in Oregon.
25 These parties advocate a "wait and see" position for the Commission for several reasons:
26

- 1 • The recent actions of Federal Communications Commission (FCC) including
2 issuance of the ICC-USF Reform Order, issuance of the 2012 Declaratory
3 Ruling, and formation of the Rural Call Completion Task Force, should be
4 given an opportunity to have an effect on carriers. CenturyLink Comments at 1;
5 OCTA Comments at 1, 5; Verizon Comments at 3, 8; Sprint/tw telecom/Level 3
6 Comments at 2, 3, 4; AT&T Comments at 2;
- 7 • The ICC phasedown to bill and keep practices will eliminate the incentive to
8 engage in practices that affect call completion. OCTA Comments at 5, Verizon
9 Comments at 6, 8;
- 10 • The FCC's ICC-USF Reform Order prohibits call blocking including VoIP.
11 OCTA Comments at 5; and
- 12 • NECA test results show improvement in call completion to rural areas. OCTA
13 Comments at 6.

14 Staff provided a detailed examination of the reasons why immediate action by the
15 Commission is necessary in the Staff Comments filed in Docket No. UM 1547, the
16 Commission's investigation proceeding that lead to initiation of this rulemaking proceeding. A
17 copy of these Staff Comments is attached hereto as Attachment 2.

18 Since the time that Staff filed its comments in UM 1547, additional reasons for action
19 have become apparent. First, we note that the FCC's 2012 Declaratory Ruling (DA 12-154)
20 reiterates many of the points made in its 2007 Declaratory Ruling (DA 07-2863). The 2007
21 Ruling was issued to clarify that "no carriers, including interexchange carriers, may block,
22 choke, reduce or restrict traffic in any way" (2007 Ruling at para 6). The 2012 Ruling quotes the
23 2007 Ruling and provides that "no carriers, including interexchange carriers, may block, choke,
24 reduce or restrict traffic in any way" (2012 Ruling at para. 9). If the 2007 Ruling had been
25 effective in preventing the problem of rural call completion, the 2012 Ruling would not have
26 been necessary. Staff sees no evidence that the 2012 Ruling will be more effective over the long
term than the 2007 Ruling in addressing this problem, particularly for intrastate purposes.

In the OCTA's Comments, it notes that by July 2012, carriers had reduced by half the
difference between their intrastate terminating access rates and their interstate access rates.

1 However, it is not the difference between a rural LEC's state and interstate terminating access
2 rates that are the cause of the problem; it is the difference between the terminating access rates of
3 rural vs. urban LECs that creates the incentive to fail to complete calls.

4 OCTA also cites to an improvement in call completion rates as documented in NECA's
5 May 2012 call completion test results. What OCTA does not mention is that the call failure rate
6 to rural areas (6.5%) as documented in that NECA test was almost thirteen times higher than the
7 call failure rate into urban areas (0.5%).

8 It is true that the FCC's ICC-USF reform order is intended to eliminate the incentive for
9 carriers to block calls, but the phase-down to bill and keep will not be fully effective for Rate-of-
10 Return carriers for another eight years. Rural carriers and national independent organizations
11 continue to advocate on the rural customers' behalf, even conducting independent tests which
12 demonstrates the problem persists. NARUC recently sent a letter to the FCC, encouraging the
13 FCC to 'drop the hammer' and fine offenders. OTA filed a copy of this letter in this docket on
14 October 2, 2012. At this point, there is no indication whether the FCC will, for the first time,
15 impose civil penalties on a carrier for a call completion violation.

16 More than a year after the FCC Call Completion Workshop, almost a year after the ICC-
17 USF Reform Order, and eight months after the FCC's Declaratory Ruling, the problem of rural
18 call completion in Oregon persists. Oregon customers continue to experience call completion
19 issues. This Commission continues to receive call completion complaints. Oregon carriers
20 continue to receive customer complaints about call completion issues. See Monroe Telephone
21 Comments at 1-2. A "wait-and-see" approach to FCC efforts is not in the public interest.
22 Continued inaction by this Commission is not in the public interest.

23 **B. An Oregon Rule will not Conflict with Federal Law.**

24 Several parties commented that an Oregon rule addressing call completion would conflict
25 with federal law in some way, either by undermining the national regulatory framework (Verizon
26 Comments at 9) or because the state has no authority over interstate traffic (Verizon Comments

1 at 9; AT&T Comments at 2) or because there is no evidence of an Oregon-specific problem (tw
2 telecom/Sprint/Level 3 Comments at 1).

3 Staff crafted its proposed amendments to mirror FCC requirements to the maximum
4 extent possible so as to minimize the potential for any conflicts. Staff does not see any specific
5 conflicts given the wording of the proposed rule amendments. OCTA's concerns about Oregon
6 rules interfering with a carrier's ability to efficiently manage its networks are misplaced.
7 Compliance with federal requirements should result in compliance with Oregon requirements.
8 Staff's proposed rules do not add to federal requirements.

9 Perhaps more importantly, the FCC, including the Rural Call Completion Task Force, is
10 aware of this proceeding. Yet, to date, Staff has not heard any objections from the FCC
11 regarding its proposed rulemaking. Staff recently contacted an FCC staff member, Richard
12 Hovey, Telecommunications Systems Specialist, to inquire about the FCC's position. He
13 indicated he had forwarded this inquiry to other members of the Rural Call Completion Task
14 Force and to staff involved in drafting Declaratory Ruling 12-154, but had heard no suggestion
15 that Oregon should not continue with the rulemaking process. He further offered his personal
16 opinion that the proposed rules do not conflict with the Declaratory Ruling. A copy of this
17 correspondence is attached as Attachment 3.

18 **C. Development of the ATIS Handbook Does not Affect the Need for a Rule.**

19 Several commenters urge the Commission to allow the industry to implement the
20 standards and practices outlined in the recently-released Intercarrier Call Completion/Call
21 Termination Handbook¹ published by the Alliance for Telecommunications Industry Solutions
22 (ATIS). CenturyLink Comments at 1; OCTA Comments at 6-7; AT&T Comments at 5, 7.

23 Staff supports this industry effort to develop best practices related to call completion, and
24 Staff encourages carriers to implement the standards and practices outlined by ATIS in its
25 Handbook. Indeed, implementing the standards and practices in the handbook would be

26 ¹ This handbook is available online for a free download by the public at:
<http://www.atis.org/docstore/product.aspx?id=26780>.

1 evidence that a certificate holder in Oregon is taking reasonable steps to ensure that it does not
2 adopt or perpetuate routing practices identified in subsection (17) of the proposed rule
3 amendments.

4 However, rulemaking is still necessary in Oregon for several reasons. ATIS is a
5 voluntary membership organization. Not all carriers are members of ATIS. Compliance with
6 the handbook is not mandatory and ATIS has no authority to enforce its voluntary standards.
7 AT&T acknowledges this point. AT&T Comments at 5. There is no indication that carriers are
8 necessarily following these standards. For example, Section 5 of the Handbook addresses
9 “Management of Underlying Carriers.” Yet several commenters who endorse the use of ATIS
10 also comment that subsections (19) and (20) of the proposed rule should not be adopted because
11 they have no ability to manage underlying carriers. *See* Verizon Comments at 16; CenturyLink
12 at 4; tw telecom/Sprint/Level 3 at 9-10. The arbitrary nature of such comments illustrates the
13 fallacy of reliance on a private organization with a voluntary membership to adopt guidelines
14 that are neither enforceable nor mandatory. The Commission cannot shun this opportunity to
15 protect the public interest in Oregon.

16 Moreover, the ATIS Handbook does not establish new standards. It simply reiterates
17 existing standards as best practices. The new material in the handbook outlines symptoms of the
18 call completion problem and provides suggestions for how carriers should work with each other
19 to resolve issues. In a separate document, ATIS provides an updated list of carrier-specific
20 contacts dedicated to resolving call completion issues. This is informative. But, just as the 2012
21 FCC Declaratory Ruling, which restates the 2007 FCC Declaratory Ruling, has not eliminated
22 call completion problems, reliance on the handbook will not be sufficient action.

23 **D. Allowing carriers to resolve call completion issues among themselves is not a**
24 **viable option.**

25 A couple of commenters suggest that rather than adopt the rule amendments, the
26 Commission should allow carrier-to-carrier resolution of call completion issues. Verizon

1 Comments at 10; AT&T Comments at 6.

2 Staff agrees that carriers could accomplish much by cooperating to resolve these issues
3 and sharing information. If carriers had been engaged in such efforts, call completion problems
4 would not have occurred and would not now be occurring. Yet they persist. Given the length of
5 time that this problem has persisted, and the attention devoted to it, it appears that the industry
6 has not been able to resolve the issue internally. Some carriers may not have much incentive to
7 engage in such efforts, particularly if their own customers are not adversely affected. The public
8 interest therefore requires more than the carriers have been able to provide through their self-
9 policing efforts.

10 Staff nonetheless encourages continued efforts by the Industry to deal with these issues,
11 including sharing carrier-specific contact information. Given the complexity of modern
12 networks, the proposed rules do not attempt to pinpoint the cause of the failures – Staff agrees
13 that is best left to the carriers. But Staff disagrees that carriers left to their own devices will
14 resolve the issue without regulatory oversight. The industry has been aware of these problems
15 for two years. It has operated without state regulatory oversight of this problem during that time,
16 yet the problems persist and a solution has not been forthcoming. Further delaying action by this
17 Commission is therefore not in the public interest. Nothing in these rules prevents carriers from
18 continuing to work together and as an industry to resolve the issue.

19 **E. Exercise of the Commission's Existing Statutory Authority is not Preferable to**
20 **Adopting Call Completion Rule Amendments.**

21 A few commenters stated that call completion rule amendments are not necessary
22 because the Commission has sufficient existing statutory authority. CenturyLink Comments at
23 2; OCTA Comments at 3; tw telecom/Sprint/Level 3 Comments at 4. OCTA asserts that
24 enforcement of existing authority on a case-by-case basis is preferable because rulemaking is
25 impractical, would lead to regulatory uncertainty and chilled investment. OCTA also asserts that
26 rulemaking would lead to an increase in complaints filed, but that would only exacerbate the

1 underlying problems because there would be additional enforcement proceedings and litigation.
2 (OCTA at 3).

3 Case-by-case enforcement actions have limited effect as they involve a single certificate
4 holder and a specific set of facts. Rather than expend a significant amount of time and resources
5 on a number of enforcement actions, Staff recommends that the Commission adopt the proposed
6 rule amendments. The proposed rule amendments only serve to clarify, for the entire industry,
7 Commission's expectations of certificate holders, which are included with the conditions of
8 certification. Essentially, the rule amendments spell out for certificate holders that as a condition
9 of their certificate, they must complete their customers' long distance calls within Oregon.
10 Having clarified the Commission's expectations, Staff expects the number of complaints, and the
11 need for individual enforcement actions, to drop. It is difficult for Staff to envision how the rule
12 amendments will, if adopted, generate more complaints, as OCTA alleges. Rather, any
13 enforcement action following adoption of the proposed rules is likely to be much more effective
14 and efficient.

15 Staff has examined the State regulatory regime and considered amendments to the service
16 quality rules. *See* Staff Comments at 7-8, 10, Docket No. UM 1547, Attachment 2. Staff
17 concluded it would be extremely difficult to adopt a blockage/call failure standard as no known
18 industry standards exist. *See* Staff Comments at 10, Docket No. UM 1547, Attachment 2. For
19 that reason, Staff supports amendment of the conditions for certification rule, OAR 860-032-
20 0007. Compliance with the conditions set forth in the proposed amendments is not impractical.

21 **F. The Commission Cannot Duplicate the FCC's Approach.**

22 CenturyLink references the FCC Declaratory Ruling and comments that the Commission
23 could take the same approach and " * * clarify by order whether and to what extent the existing
24 law applies to call termination * * * ." CenturyLink Comments at 3.

25 Outside the context of a contested case, rulemaking is the appropriate vehicle for the
26 formulation of generally-applicable Commission policy. The Commission is free to initiate

1 rulemaking proceedings at any time, which the Commission has done in this instance, following
2 the UM 1547 investigation. We also note that while an “interested person” can petition the
3 Commission for a declaratory ruling on a given set of facts at any time, no one has filed a
4 petition to date. ORS 756.450.

5 **G. The Proposed Rule Amendments will not have Unintended Harmful**
6 **Consequences.**

7 Some comments allege that the proposed rule amendments may lead to unforeseen or
8 unintended consequences. For example, CenturyLink comments that the proposed amendments
9 could affect routing practices, potentially resulting in higher long distance rates. CenturyLink
10 Comments at 3.

11 The proposed rule amendments merely require that calls that should be completed
12 actually are completed. The proposed amendments do not dictate specific routing practices; it is
13 not clear to Staff why carriers doing what they are in business to do (i.e., terminate legitimate
14 traffic) should actually increase their retail costs. However, to the extent carriers are dropping
15 traffic in order to avoid paying higher terminating access charges, Staff agrees carrier costs may
16 increase as a result of carrier compliance with the proposed rules. A carrier will not be avoiding
17 such costs if they are, in fact, complying with the FCC Declaratory Rulings.

18 Staff agrees with AT&T that, given the complexity of the existing network, call failures
19 may result from unintended causes. Any number of things can cause calls to fail, including
20 human error, equipment failure, etc. What Staff finds puzzling is that, although such faults have
21 existed for years, the number of rural call completion problems has exploded in recent years.
22 There is no *a priori* reason to believe that humans are more prone to error than they were two
23 years ago, or that equipment fails at a greater rate than two years ago. Some other factor is
24 causing these problems.

25 If the proposed rule amendments are adopted, then the case-by-case enforcement process
26 advocated by some commenters would become a tool to provide effective and informative

1 guidance to the industry. Staff expects to work cooperatively with carriers if a complaint is
2 received after adoption of the proposed rules. For example, Staff would not expect to take
3 enforcement action if a rule violation is due to an isolated instance of hardware failure. Similarly,
4 the Commission has a long history of working cooperatively to resolve enforcement issues. Staff
5 does not expect such practices to change if the proposed amendments are adopted.

6 **H. The Rule Amendments Cannot be Limited to Addressing Call Failures.**

7 At least one commenter states that the proposed should focus on a failure to complete
8 calls, not routing practices. See CenturyLink Comments at 3.

9 Staff's proposed rule amendments do not dictate specific routing practices. However, call
10 completion problems extend beyond call failures, as even the FCC recognized in its 2012
11 Declaratory Ruling, which listed examples of call termination and call quality problems
12 including excessive call setup delay, calls that fail to connect, prolonged ringing before the called
13 phone actually rings or is never rung at all, looping between providers, and false and misleading
14 intercept messages. 2012 Ruling at ¶ 6.

15 The ATIS Handbook contains guidelines clearly designed to prevent looping and address
16 quality issues. See ATIS Handbook, page 26, Section 4.3.6. These guidelines would not be
17 necessary if call termination was the only issue resulting from call completion issues.

18 **I. Staff's proposed rule amendments Do Not exceed the Commission's Authority.**

19 Staff identified three different comments to the effect that a particular proposed
20 amendment is not within the Commission's rulemaking authority. We address each in turn.
21 First, Verizon comments that proposed subsection (17) exceeds the Commission's authority,
22 because it cannot impose a non-discrimination standard on IXCs or CLECs. Verizon Comments
23 at 14. Verizon bases this argument on the fact that ORS 759.260 and 759.275 proscribe
24 discriminatory practices for telecommunications utilities, and alleges the Commission's
25 rulemaking authority is somehow limited by these statutes. Verizon Comments at 14.

26 Verizon misses the point. It is precisely because the Legislative Assembly has not

1 expressly prohibited IXCs or CLECs from engaging in discriminatory practices that a rule is
2 necessary. An agency with rulemaking authority is generally not limited to repeating what is
3 already provided in statute. The Commission's rulemaking authority is certainly broad enough
4 to authorize the proposed amendments. *See* ORS 759.036 and ORS 756.060.

5 Second, CenturyLink and OCTA both comment that the proposed subsection (18) is
6 outside the scope of the Commission's authority because the Oregon Unlawful Trade Practices
7 Act (UTPA) exists. CenturyLink Comments at 3-4; OCTA Comments at 11. The UTPA does
8 not conflict with the Commission's authority to condition the manner in which a carrier may
9 hold a certificate of authority. ORS 646.605 to 646.652. The broad regulatory authority of the
10 Commission over the conduct of certificate holders is set forth in ORS 759.036. We further note
11 that it is not uncommon for a state agency to establish rules restricting deceptive practices in a
12 particular trade. *See, e.g.,* OAR 830-030-0100. Because the Commission has the expertise to
13 identify what may be a deceptive or misleading practice on the part of a certificate holder,
14 adoption of subsection (18) is appropriate. If the commenters believe that the Commission has
15 the authority to issue an Order prohibiting misleading practices such as false intercept messages,
16 as they propose, it is not clear to Staff why the Commission would not have authority to issue a
17 rule prohibiting the same practice.

18 Third, CenturyLink comments that the proposed subsection (19) attempts to change the
19 legal definition or relationship between carriers because an underlying carrier may not be an
20 agent of the certificate holder. CenturyLink Comments at 4. If adopted, the terms of subsection
21 19 may or may not apply to an underlying carrier. The text of the proposed rule plainly does not
22 require a certificate holder to employ or retain an underlying carrier as an agent.

23 **J. Federal Requirements Are Not Sufficient to Address Intrastate Issues.**

24 Two comments allege that federal rules already apply to local exchange and
25 interexchange carriers terminating telecommunications traffic in Oregon. OCTA Comments at
26 8; Verizon Comments at 12.

1 The FCC has limited, if any, enforcement over purely intrastate traffic in Oregon.
2 Authority to enforce federal law or regulations associated with call completion has not been
3 delegated to the Commission. To protect the public interest, the Commission has authority to
4 regulate intrastate traffic and may exercise that authority to resolve this issue.

5 The OCTA comments that the FCC has not precisely defined what actions give rise to
6 call completion issues. OCTA Comments at 4. Neither do the proposed amendments. The
7 proposed rule amendments regulate results and outcomes, not a carrier's intent, methods or
8 procedures. The amendments prohibit the blocking and choking of traffic, just as the FCC's
9 Declaratory Ruling does. The amendments prohibit discrimination, prohibit misleading intercept
10 messages and hold certificate holders responsible for their underlying carriers, just as the FCC
11 did in its Declaratory Ruling.

12 **K. The Notice of Proposed Rulemaking Is Consistent with the Proposed**
13 **Amendments.**

14 OCTA alleges that the Notice of Proposed Rulemaking is "not broad enough to
15 encompass the apparent subject matter of the proposed rules," specifically subsections (18) to
16 (20). OCTA Comments at 8-9.

17 The Notice issued in this proceeding meets the requirements of the Administrative
18 Procedures Act. ORS 183.335 requires that a Notice contain an objective statement
19 summarizing the subject matter in sufficient detail to inform a person that his or her interests
20 may be affected. ORS 183.335(2)(a)(B). The purpose of this requirement is to inform the public
21 of intended agency action and to provide the agency a chance to receive the benefit of public
22 comment on the matters being considered. *Bassett v. State Fish and Wildlife Commission*, 27 Or
23 App 639 (1976).

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1 The Notice provides the following summary:

2 Amendments to the OAR 860-032-0007 are proposed to address the problem of
3 long distance calls not being completed to rural areas in Oregon at the same rate
4 at which long distance calls are completed to urban areas. The proposed
5 amendments prohibit intrastate telecommunications certificate holders from
6 blocking, choking, reducing or restricting traffic in any way; subjecting any
7 person, locality or exchange to undue or unreasonable discrimination; or engaging
8 in deceptive or misleading practices. Further, the amendments make certificate
holders liable for the actions of their underlying carriers. The proposed
amendments provide clearly stated call termination expectations for certificated
telecommunications providers and the framework for the PUC to hold certificate
holders accountable to complete long distance calls to rural areas at the same rate
at which they complete to urban areas.

9 Each of the five proposed amendments is squarely within the scope of this Notice. The text of the
10 proposed rule amendments were issued on July 20, 2012. As OCTA has commented on
11 proposed subsections (18) to (20), it is apparent that OCTA had notice of the intended agency
12 action and exercised its opportunity to provide the Commission with public comment.

13 **L. The Extent of Oregon's Jurisdiction over Wireless Providers Is Not a Roadblock.**

14 Joint comments submitted by tw telecom, Sprint and Level 3 Communications state that
15 the proposed rule amendments will be ineffective with respect to wireless traffic. tw
16 telecom/Sprint/Level 3 Comments at 4.

17 The Commission's authority over the terms and conditions of wireless service is not the
18 focus of this rulemaking. Assuming for the sake of argument that the commenters are correct,
19 that is not a reason to refrain from adopting the proposed amendments that apply to certificate
20 holders over which the Commission does have authority.

21 **III. Staff's Response to Alternate Language Proposals.**

22 First, we note that CUB supports Staff's proposed language. Monroe Telephone
23 reiterates in its comments that the problem is not cured, a wait and see approach is not
24 acceptable, and that Staff's proposal "may not be perfect but it is a positive step in addressing a
25 significant problem." Monroe Comments at 2. OTA comments that as an initial position, it was
26 willing to support Staff's proposed rules, although that was not supported by OTA members

1 CenturyLink and Frontier. OTA Comments at 2. Other commenters, including CenturyLink,
2 OCTA and Verizon, oppose Staff's proposed rule amendments. CenturyLink Comments at 4;
3 OCTA Comments at 8; Verizon Comments at 11.

4 Several commenters propose alternate language to the proposed rule amendments.
5 CenturyLink Comments at 4-5; OCTA Comments at 8, 14; tw telecom/Sprint/Level 3 Comments
6 at 6. Staff does not support adoption of any of these alternate proposals.

7 Staff's proposed rule amendments represent a carefully considered balance between
8 customers and carriers, are within the scope of the Commission's jurisdiction, mirror federal
9 requirements to the extent practicable, and are necessary to protect the public interest.
10 Staff opposes adding language to rules 16 and 17 that has the effect of limiting the application of
11 those rules to terminating access charges. Any rule must be enforceable. Staff does not wish to
12 be in a position where it must divine a certificate holder's intent. Staff's proposed rule allows
13 the Commission to simply review a carrier's practices and the results of those practices. The
14 rules seek to regulate the result of carrier behavior rather than evaluate intent.

15 We note here that Staff's proposed rule does not establish strict liability, as OCTA
16 alleges. "Strict liability" means liability without fault. Black's Law Dictionary 1422 (8th Ed
17 2004). Staff's proposed rules simply prohibit certain practices and require a certificate holder to
18 take certain reasonable steps.

19 Staff cannot support deletion of subsections (18)-(20) of the proposed rule. Proposed
20 subsection (18) proscribes deceptive practices, and it is directly relevant to the call completion
21 issue (as evidenced by the FCC's discussion in paragraphs 6 and 13 of its 2012 Declaratory
22 Ruling). As discussed above, ORS 759.036 provides statutory authority for Staff's proposed rule,
23 including these subsections.

24 CenturyLink provides little explanation as to why its proposed rules are superior to
25 Staff's proposal. CenturyLink and the OCTA both claim that subsections (18)-(20) have nothing
26 to do with call termination issues. Yet the FCC addressed each of the issues addressed in the

1 proposed rule in its Declaratory Ruling. Staff believes that inserting a false intercept message,
2 rather than completing a call to its destination, is certainly related to call completion. Our
3 proposed rule prohibits such practices, just as the FCC's Declaratory Ruling does.

4 Staff's proposed subsections (19) and (20), with the revisions proposed in these
5 comments, clarify that as a condition of certification, certificate holders are responsible for the
6 actions of their underlying carriers, if those carriers are acting as agents, employees, contractors
7 or subcontractors of the certificate holder. These two subsections are critical for effective
8 enforcement. Without them, originating carriers can wash their hands of any responsibility to the
9 end user for completing long distance traffic by simply pointing to a third party, claiming they
10 (the certificate holder) had nothing to do with the problem and are powerless to do anything
11 about it.

12 OCTA's proposed version of rule subsection (16) suffers from the same problem as other
13 proposed alternatives: the rule incorporates enforcement language in what is supposed to be a
14 certification condition. The certification conditions apply to applicants and certificate holders;
15 the enforcement requirements would apply to complainants and to Staff. It makes no sense to
16 add OCTA's proposed language under a certification section of the rules.

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1 **IV. Conclusion**

2 For the foregoing reasons, Staff respectfully requests that the proposed permanent rules
3 in Docket AR 566 be adopted as proposed with the revisions noted in Comment I. above.

4 DATED this 5th day of October 2012.

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Respectfully submitted,

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AR 566 Proposed Rule Amendments

860-032-0007

Conditions of Certificates of Authority

A certificate to provide telecommunications service ~~shall be~~ subject to the following conditions:

(1) The certificate holder ~~shall~~must provide only the telecommunications service authorized in the certificate.

(2) A telecommunications utility ~~shall~~may not abandon service except as authorized under the Commission's rules.

(3) For telecommunications utilities, the records and books of the certificate holder are open to inspection by the Commission, and ~~shall~~must be maintained according to the Commission's rules.

(4) For competitive providers and cooperatives, the books and records of the certificate holder ~~shall~~must be open to inspection by the Commission to the extent necessary to verify information required of the certificate holder. The books and records ~~shall~~must be maintained according to the applicable rules of the Commission.

(5) The certificate holder ~~shall~~must pay all access charges and subsidies imposed pursuant to the Commission's rules, orders, tariffs, or price lists.

(6) The certificate holder involved in the provision of an operator service ~~shall~~must:

(a) Notify all callers at the beginning of each call of the telecommunications provider's name; however, a telecommunications provider furnishing operator service for another telecommunications provider may brand the call by identifying the other provider;

(b) Disclose rate and service information to the caller when requested;

(c) Maintain a current list of emergency numbers for each service territory it serves;

(d) Transfer an emergency call to the appropriate emergency number when requested, free of charge;

(e) Transfer a call to, or instruct the caller how to reach, the originating telecommunications utility's operator service upon request of the caller, free of charge;

(f) Not transfer a call to another operator service provider without the caller's notification and consent;

(g) Not bill or collect for calls not completed to the caller's destination telephone number; and

(h) Not screen calls and prevent or block the completion of calls which would allow the caller to reach an operator service company different from the certificate holder. In addition, the certificate holder shall, through contract provisions with its call aggregator clients, prohibit the blocking of a caller's access to his or her operator service company of choice. A certificate holder may apply for a waiver from this requirement if necessary to prevent fraudulent use of its services.

(7) Telecommunications providers who enter into operator service contracts or arrangements with call aggregators ~~shall~~must include in those contracts or arrangements provisions for public notification as follows:

(a) A sticker or name plate identifying the name of the certificate holder ~~shall~~must be attached to each telephone available to the public; and

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(b) A brochure, pamphlet, or other notice **shall must** be available in the immediate vicinity of the telephone giving the name of the operator service provider, stating that rate quotes are available upon request, listing a toll-free telephone number for customer inquiry, and giving instructions on how the caller may access other operator service providers.

(8) Competitive providers may contract with telecommunications utilities, other competitive providers, or other persons for customer billing and collection under the following conditions:

(a) The telecommunications utility, other competitive provider, or other person, in billing for the competitive provider, **shall must** include on the bill the name of a company with the information and authority to provide information and resolve disputes about billing entries, a toll-free number to reach that company, and details of the services and charges billed;

(b) The telecommunications utility **shall may** not deny telecommunications service to customers for failure to pay charges for competitive provider services or unregulated utility services.

(9) The certificate holder **shall must** comply with Commission rules and orders applicable to the certificate holder.

(10) The certificate holder **shall may** not take any action that impairs the ability of other certified telecommunications providers to meet service standards specified by the Commission;

(11) The certificate holder **shall must respond** in a timely manner to Commission inquiries.

(12) The certificate holder **shall must** submit required reports in a timely manner.

(13) The certificate holder **shall must** notify the Commission of changes to the certificate holder's name, address, or telephone numbers within ten days of such change.

(14) Telecommunications providers **shall must** meet service standards set forth in applicable Commission's rules, including OAR 860-032-0012.

(15) The certificate holder **shall must** timely pay all Commission taxes, fees, or assessments adopted pursuant to Oregon law or Commission rules, orders, tariffs or price lists.

(16) Except as otherwise allowed under state or federal law, the certificate holder must not block, choke, reduce or restrict intrastate traffic in any way.

(17) The certificate holder must take reasonable steps to ensure that it does not adopt or perpetuate routing practices that, except as otherwise allowed under state or federal law, result in lower quality service to an exchange with higher terminating access rates than like service to an exchange with lower terminating access rates.

(18) The certificate holder must not engage in deceptive or misleading practices including but not limited to informing a caller that a number is not reachable or is out of service when the number is in fact reachable and in service.

(19) The certificate holder must take reasonable steps to ensure that the actions of any underlying carrier, if that underlying carrier is acting as an agent, contractor or subcontractor of or employed by the certificate holder and acting within the scope of the person's employment, used to deliver traffic on behalf of the certificate holder would not put the certificate holder in violation of any Commission rule.

(20) The certificate holder is liable for the actions of an underlying carrier used to deliver traffic on behalf of the certificate holder, if that underlying carrier is an agent, contractor or subcontractor of or employed by the certificate holder and acting within the scope of the person's employment and the certificate holder knew or should have known of the underlying carrier's actions and engages in acts or omissions that effectively allow those actions to persist.

Stat. Auth.: ORS 183, 756 & 759

State. Implemented: ORS 756.040, 759.020, 759.036, 759.050, 759.226, 759.450 & 759.690

Hist.: PUC 27-1985(Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 10-1889(Temp), f. & cert. ef. 7-10-89 (Order No. 89-847); PUC 1-1990, f. & cert. ef. 2-6-90 (Order No. 90-98); PUC 23-1990, f. & cert. ef. 12-31-90 (Order No. 90-1918); PUC 9-1991, f. & cert. ef. 7-16-91 (Order No. 91-854); PUC 2-1998, f. & cert. ef. 2-24-98; PUC 10-1998, f. & cert. ef. 4-28-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 4-2000, f. & cert. ef. 2-9-00, Renumbered from 860-032-0005(9); PUC 6-2011, f. & cert. ef. 9-14-11

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1547**

In the Matter of PUBLIC UTILITY
COMMISSION OF OREGON STAFF
Investigation of Call Termination Issues.

STAFF'S COMMENTS

INTRODUCTION

In January of 2011 the Oregon Public Utility Commission's telecommunication and consumer complaint staff ("Staff") began receiving complaints from rural telecommunications carriers that their customers were reporting problems receiving calls and fax transmissions. Over time, these problems increased in volume and became significant enough, in some cases, to threaten the viability of local businesses and to jeopardize the health and safety of residents unable to place emergency calls.

On July 5, 2011, the Commission opened docket UM 1547 to formally investigate the problem. Since that time, Staff's investigation has yielded evidence of over 1,000 customer complaints regarding call completion, a pattern of call completion complaints filed by rural consumers with OPUC's Consumer Service Division, and significant variances in call completion rates reported by carriers.

In these comments, Staff summarizes its investigation of the problem and analyzes potential causes. Based on this information, Staff provides alternatives for addressing the problem and recommends that a rulemaking process be initiated to expressly prohibit discriminatory practices in the provision of telecommunications service.

ANALYSIS

A. THE CALL COMPLETION PROBLEM

1. Staff Investigation

~~Staff began to investigate the call completion problem after receiving a number of~~ troubling reports from rural telecommunications carriers, customers of which were reporting problems receiving long distance calls and facsimile transmissions. As Staff soon discovered, the problem can be a difficult one to identify, because the potential recipient of a call may not know that someone has tried to contact them. Problems can only be identified when the originating caller reports to the recipient that they tried to

place a call but it rang without being answered, while the called party never heard the phone ring.

Other complaints related to call completion issues include: dead air on the line after the call is answered; unusually long call setup times (up to 50 rings); poor voice quality of answerable calls (garbled, echo); and false or misleading intercept messages such as: "you have reached a number that is disconnected," or "this number is not taking calls at this time." Staff was told that the issues experienced have been intermittent and cyclical, with each cycle seemingly more severe than the last.

On June 24, 2011, OPUC Staff convened a workshop to discuss the call completion issue, at which additional evidence was provided of widespread call completion problems in rural areas. On July 5, 2011, the Commission opened docket UM 1547 to formally investigate the problem.

After UM 1547 was opened, Staff sent data requests on September 30, 2011 and December 12, 2011 to 398 carriers.

In the first data request Staff attempted to assess the size and scope of the call completion issue in Oregon. Staff's first data request asked carriers how many complaints they had received from customers. Staff received 300 responses listing 1524 customer complaints. Staff is convinced these trouble reports do not represent the true size of the problem, for the reason that, as noted above, it is extremely difficult for individuals to know that calls are not reaching them.

Staff's second data request was for carrier switch records detailing all long distance calls attempted on their network or tandem, and all long distance calls that failed to complete. Staff's goal for requesting this data was to compute a call completion ratio (CCR) for the same eleven months in both 2010 and 2011.

To date, Staff has received 198 responses to this second data request. Call completion parameters used to compile ratios differ by carrier. Most carriers reported call completion rates varying between 90-100%. When reported data was broken down by originating end office, average statewide call completion rates of between 90-92% fell significantly lower with respect to specific areas. The sheer volume of calls to metropolitan areas not experiencing call completion issues can quickly dissipate high call failure rates for a small rural town of 600. However, one carrier reported *statewide* call completion rates of only 23% to 40%.

Staff has also corresponded with other state commissions (e.g., Washington, Nebraska, Iowa and Colorado) many of which have opened similar investigations, in an attempt to ascertain the source of the problem.

2. Impacts on Oregon Citizens

a) Lucas Trucking

The example of Lucas Trucking, inc. ("Lucas Trucking" or "Lucas") is instructive as to both the nature and potential impact of the problem. Lucas Trucking has been in the trucking business for 30 years and employs 20 truck drivers. Steven and Georgla Lucas own and run the business from their home in Monroe, Oregon. They accept load offers from customers and route their trucks to pick up and dellver those loads. In January 2011, Lucas' customers began reporting difficulties getting through to Lucas, many dialing multiple times over periods of several hours. Similar problems were reported by more than twenty Lucas customers located both within and outside the state of Oregon. As a result of call completion problems, Lucas Trucking has seen a significant decline in business, and increases in costs to maintain existing customer relationships.

When the problems first surfaced, Mr. Lucas contacted Monroe Telephone for repair. Monroe repair technicians checked the equipment, fiber, and copper cable servicing Lucas Trucking multiple times, but could not identify a specific problem. Mr. Lucas spent \$5,000 replacing the system, but the rate of dropped and incomplete calls did not improve.

Lucas Trucking has five business roll-over telephone lines (calls dialed to the main telephone line route or 'roll' to a second line when the first line is busy), a home number, and a fax machine. Customers calling into Lucas Trucking report ringing with no answer, dead air, dropped calls, and automated messages saying the number is not accepting calls, which is unlikely because Lucas also has voice mail to receive calls in the event all lines are in use.

Stewart Company, a Lucas customer located in California, was one of the first of Lucas' customers to complain. Monroe Telephone worked with Qwest/Century Link (CTQ)¹ to test times and days reported by Stewart Company when their calls to Lucas Trucking failed to complete. *CTQ spent hours testing and found calls from Stewart Company were not reaching the Eugene tandem for termination.* Despite these investigations, Stewart Company purportedly believes that the problem lies on Lucas Trucking's side, rather than on its own.

The difficulty of tracing the source of call completion problems is clear from this example. Monroe Telephone invested a significant amount of time into tracing calls that never reached their network. CTQ invested additional time tracing calls that never reached the Eugene tandem. ~~While it would be much more efficient to investigate the problem from the originating end of the call, most originating carriers refuse to open trouble tickets unless their customer complains.~~ In cases where the customer believes the problem to be on the terminating end, call completion issues are not reported to the originating carrier.

¹ CTQ owns and operates the tandem in Eugene through which these calls must route.

b) Facsimile Transmissions

In addition to call completion problems for voice calls, call failures are significantly impacting facsimile transmissions to rural areas. Canby Telephone provided evidence to Staff of a fax log from their largest business customer. In March 2011, that customer reported that 65% of all their long distance fax transmissions had failed, meaning that 65% of fax transmissions to this area cannot be completed. National organizations monitoring this issue of rural fax transmissions now place fax failures at 80%. Staff has been advised by a national tandem carrier, ANPI/Zone, that long distance carriers will no longer guarantee fax transmission and many will not open a trouble ticket if faxes fail.

c) Public Health and Safety

The call completion problem has significant health and public safety impacts. On January 10, 2012, a 911 Public Safety Answering Point (PSAP) call center in Stayton, Oregon reported that it was not able to transfer 911 calls (outbound long distance) to a sister PSAP located in Woodburn nor was it able to call neighboring rural areas it served. The issue affected all customers of Stayton Cooperative Telephone and was resolved a mere two days before a major flood hit the area on January 19.

On December 16, 2011, City Hall in Monroe, Oregon reported call completion issues affecting consumer's ability to call them.

OPUC Consumer Services has directly received 152 call completion consumer complaints. Eight complaints relate directly to health and safety issues over consumers' inability to contact loved ones or health care providers. Another fifty seven complaints were from businesses impacted by call completion issues.

3. Why Are Calls to Rural Areas Not Being Completed?

Staff believes the root of the call termination problem lies within the very complex and cost-sensitive nature of the telecommunications business. Some background is necessary to explain the issue. Long distance or "interexchange" carriers (also known as IXCs) use third party services to route calls to local exchanges, where calls are completed or "terminated." In the telecommunications business, the calling party pays the long distance carrier to complete long distance calls; charges for terminating calls vary by location. Interexchange carriers generally pay more to terminate calls into rural areas than they do to terminate calls in high-density urban areas. For example, using Staff's analysis of statewide average composite rates in 2008, Qwest's statewide average rate to terminate a call was \$0.00491, while the fee to terminate a call to Monroe was \$0.0765.

As a result of the disparity in call termination fees, if the originating carrier charges customers a flat rate for making calls (which they generally do), they make a higher

profit on terminating calls into urban areas. IXCs may actually lose money when terminating calls in rural areas, due to the rate structures in place to support rural 'high cost' areas. Further complicating this issue, IXC carriers do not have networks to all areas. IXC carriers interconnect with other IXC carriers using interconnection agreements that include pricing of traffic exchanged. The *terminating* IXC carrier pays the terminating access fees to the rural local exchange carrier, creating an incentive for IXCs to hand-off rural traffic to *other* IXCs prior to completing calls.

Because the industry is highly cost competitive, and margins are often extremely thin, IXCs work with third party services to minimize their costs to complete calls. A type of complex computerized routing software, called "least cost routing" was developed to minimize costs to the IXCs.

Least call routing has resulted in savings to many customers, and is not in itself a negative development, but it has resulted in unintended consequences. Most notably, Staff believes some least call routing software include algorithms that interfere with or even prevent the termination of calls into rural areas in order to avoid paying the higher termination charges. As a result, calls to rural areas may ring many times without connecting (so the caller thinks the party on the other end is not answering), may not connect at all, or may have significant service quality problems.

Adding to the complexity of this issue is the growing number of Internet Protocol (IP) based providers, including voice-over IP (VoIP) providers, and their role in terminating long distance calls to the Public Switched Telephone Network (PSTN).

Incumbent local carriers generally do not accept IP traffic for termination to the PSTN as the PSTN uses Time Division Multiplex (TDM) protocol, not IP protocol. IP traffic, including VoIP traffic, must therefore be converted to TDM for termination to the PSTN. The conversion of IP traffic to TDM has created additional opportunities for carriers to arbitrage termination fees, particularly in light of legal confusion surrounding the appropriate treatment of VoIP traffic within standard telecommunication and FCC protocols.

4. Federal Investigation and Response

Call completion problems are occurring at both the *intrastate* and *interstate* levels. While Staff's investigation has focused on intrastate carriers, the Federal Communication Commission (FCC) has investigated similar problems relating to interstate long distance providers. On Sept. 26, 2011 the FCC announced the creation of a Rural Call Completion Task Force to investigate and address the delay or completion failure of calls to rural customers.² The FCC also held a workshop on October 18, 2011, on interstate call completion issues.³

² See <http://www.fcc.gov/document/fcc-launches-rural-call-completion-task-force-sets-oct-18-workshop> <visited February 15, 2012>.

³ See <http://www.fcc.gov/events/rural-call-completion-workshop> <visited February 16, 2012>.

Numerous state commissions, the National Association of Regulatory Utility Commissioners (NARUC), and the National Telecommunications Cooperative Association have weighed-in on the issue.⁴ The OPUC mailed a letter to the FCC on November 22, 2011 recommending the FCC open a notice of inquiry surrounding call completion issues.⁵ On January 18, 2012, twenty-six United States Senators, including Oregon's Jeff Merkley, wrote a letter to the FCC requesting an update on the agency's efforts with regard to the problem, in which they noted a "staggering" increase of over 2000% in complaints from March 2010 to April 2011 from rural consumers experiencing call completion problems.⁶

The FCC released a Declaratory Ruling addressing the call completion issue on February 6, 2012.⁷ In the Declaratory Ruling, the FCC pointed to "evidence that there is a pattern of call completion and service quality problems on long distance calls to certain rural areas."⁸ The Declaratory Ruling reminded interstate carriers of the FCC's longstanding prohibition on carriers blocking, choking, reducing or otherwise restricting traffic, and prohibition on routing practices that have the effect of blocking, choking, reducing or otherwise restricting traffic.⁹ The FCC also emphasized that telecommunications carriers are responsible for the actions of their agents or other persons acting for or employed by the carriers.

"[I]f an underlying provider is blocking, choking, or otherwise restricting traffic, employing other unjust or unreasonable practices... or otherwise not complying with the [Communications Act of 1934] or Commission rules, the carrier using that underlying provider to deliver traffic is liable for those actions..."¹⁰

In closing, the FCC noted that carriers that deliberately violate FCC rules, regulations, or orders, can be held liable for penalties of up to \$150,000 for each violation or each day, up to a statutory maximum of \$1,500,000 for a single act or failure to act.¹¹

⁴ See e.g., Letter from the National Association of Regulatory Utility Commissioners to Hon. Julius Genachowski, Chairman, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, at 2 (filed September 29, 2011); Letter from representatives of the Nebraska Public Service Commission, Missouri Public Service Commission, Minnesota Public Utilities Commission, Montana Public Service Commission, South Dakota Public Utilities Commission, Michigan Public Service Commission, and Wyoming Public Service Commission to Hon. Julius Genachowski, Chairman, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, at 2 (filed December 1, 2011); Letter from the National Telecommunications Cooperative Association to Hon. Julius Genachowski, Chairman, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, at 2 (filed September 20, 2011).

⁵ See attached Exhibit A.

⁶ See attached Exhibit B.

⁷ DA 12-154, Federal Communications Commission, CC Docket No. 01-92, WC Docket No. 07-135 (February 6, 2012) ("Declaratory Ruling").

⁸ *Id.* at 1.

⁹ *Id.* at 2, 3-8.

¹⁰ *Id.* at 8, para. 15.

¹¹ *Id.* at 9, citing 47 USC sec 312, 503; 47 CFR sec. 1.80(a)(2).

In a separate proceeding, the FCC stated its intent to phase out the current intercarrier compensation structure, which is the basis of high termination fees in rural areas. The massive universal service fund (USF) and intercarrier compensation (ICC) reform order ("USF-ICC Reform Order") provides for a six to nine-year transition to a "bill-and-keep" methodology for all carriers.¹² The bill-and-keep system requires carriers to terminate calls from other carriers without charging a termination fee. This system shifts responsibility for charges that previously lay solely with the originating caller to a system in which all costs for origination and termination are handled on a carrier-by-carrier basis.

Under bill-and-keep arrangements, a carrier generally looks to its end-users—which are the entities and individuals making the choice to subscribe to that network—rather than looking to other carriers and their customers to pay for the costs of its network.¹³

Transitioning to a bill-and-keep system will presumably remove the incentive for carriers not to terminate calls in rural areas, albeit over an extended period of years.¹⁴

In a separate proceeding, the FCC also considered, among other issues, the confusion surrounding the appropriate characterization of VoIP traffic, and ruled on certain practices by VoIP providers, including the insertion of local numbers to disguise the origination of interstate calls. The FCC USF-ICC Reform order clarified that VoIP traffic is interstate in jurisdiction, and made clear that VoIP traffic must pay interstate termination fees.^{15,16} The FCC has asked ATIS (Alliance for Telecommunications Industry Solutions) to help evaluate, investigate and resolve the call completion issue as well as to develop Industry Best Practices for managing intermediate providers and their suppliers through contractual or other means.

B. ADDRESSING THE PROBLEM IN OREGON

1. Current State Regulatory Regime

Oregon's complex web of statutes governing telecommunications service differentiates between telecommunications utilities (large and small) and competitive

¹² See FCC Order 11-161, para. 736-787, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208 (Nov. 18, 2011).

¹³ *Id.* at para. 737.

¹⁴ Note that the transition to bill and keep may prove challenging for rural carriers. In Order No. 11-472, the Commission found that support levels of the Oregon Universal Service Fund (OUSF) could not be increased to offset a reduction in intrastate access rates, because such a proposal would be beyond the scope of ORS 759.425.

¹⁵ See http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0208/FCC-11-161A1.pdf, para. 717 <visited February 24, 2012 >.

¹⁶ *Id.*, para. 944

telecommunications providers. Many statutory requirements apply to telecommunications utilities but do not apply to competitive providers.¹⁷ Rules promulgated according to these statutes set forth different duties and obligations for each class of providers, and reconciling the various provisions can be confusing.

While many statutory provisions are narrowly targeted to telecommunications utilities, there can be no doubt that the OPUC retains broad authority over the regulation of telecommunications services. Neither telecommunications utilities nor competitive providers can be issued a certificate of authority to provide intrastate telecommunications service without a showing that the proposed service "is required by the public interest."¹⁸ Perhaps most importantly, the Commission retains broad authority to "determine the manner and extent of the regulation of telecommunications service,"¹⁹ with the latter term including the provision of telecommunication service by *both* telecommunications utilities and competitive providers. Under ORS 759.450, the Commission maintains broad authority to set service quality standards for all telecommunications service providers.²⁰

Despite these broad grants of authority, Staff's review of existing statutes and regulations has uncovered no explicit prohibition on discriminatory practices by competitive telecommunications providers. While it appears clear that the OPUC has the authority to prohibit such practices, it has not explicitly done so. There are service standards that set minimum levels for call blockage,²¹ but those standards are too broad to reach discriminatory practices that result in blocked or failed calls to a small number of rural residents.

Based on the scope and magnitude of the current call completion problem—including real damages to individuals' livelihoods and threats to public safety—there can be no doubt that the public interest necessitates that carriers be required to provide equivalent, non-discriminatory service to rural areas. Staff believes it is therefore essential to make it clear and explicit to telecommunications service providers in Oregon that they are required to provide service to *all localities* on a non-discriminatory basis. Additionally, Staff believes it is important to establish a clear path to levy future penalties against providers who do not provide adequate, non-discriminatory service to rural areas, either by their own actions or by the actions of their agents.

2. Options for Addressing the Problem

Staff has examined a number of paths to addressing the current call completion problem. They are summarized below, along with Staff's recommendation for making

¹⁷ For example, the prohibition under ORS 759.275 against "undue or unreasonable preference or advantage to any person or locality" applies to telecommunications utilities, but not to competitive providers.

¹⁸ ORS 759.020(4).

¹⁹ ORS 759.036.

²⁰ Note, however, that service quality standards established pursuant to ORS 759.020(6) only require the telecommunications provider to accurately represent its service quality levels for which it offers its service.

²¹ See OAR 860-032-0012(7).

clear to telecommunications service providers that they are required to provide non-discriminatory service to all localities.

a) Option A: Support Actions at the Federal Level

As described in Section B(4), the FCC has investigated call completion issues at the federal level, and has made some effort to address those concerns with the issuance of the Declaratory Ruling and the transition to a bill-and-keep methodology as set forth in the USF-ICC Reform Order.

The OPUC could support efforts to address call completion at the federal level by lobbying the FCC for enforcement of the Declaratory Ruling, working toward a successful transition to a bill-and-keep methodology, and actively supporting efforts by NARUC and other bodies to keep public attention on the problem.

While there may be significant value in taking this path, Staff does not believe it is sufficient by itself. It is inappropriate to completely stand back and wait for the FCC to take action with regard to a problem that is having a direct and ongoing impact on Oregon's rural residents. The change to a bill-and-keep structure will not occur for six to nine years, and it is unknown when, or if, the FCC will take direct action against carriers for violation of the Declaratory Ruling. For businesses like Lucas Trucking, and individuals unable to make contact with loved ones or reach emergency operators, the need for a solution is immediate and pressing.

Where the call completion problem occurs at an intrastate level, it is clearly within the jurisdiction of the Commission. Given the Commission's duty to protect the public interest, Staff believes it is essential to use the Commission's authority to take direct action.

b) Option B: Decrease Termination Fees in Rural Areas

The primary motivation for least call routing systems to avoid termination in rural areas is the high cost of termination fees in those areas. One route Staff could take, prior to implementation of the bill-and-keep methodology, would be to recommend that local exchange carriers in high cost areas lower their termination fees. This route could, in fact, reduce the economic incentive for carriers to avoid completing calls in rural areas. Yet the impact of such a change could be disastrous for rural carriers, who depend on termination fees to meet revenue requirements.

Most local exchange carriers in high cost areas set rates on a cost of service basis; their termination fees are higher because it is simply more expensive to serve customers in geographically dispersed rural areas. If local carriers could not charge sufficient termination rates to cover their costs, they would have to seek additional revenue from other sources, which would be burdensome to already-stressed local economies and individuals. In addition, residents with access to broadband or VoIP service may be

incented to leave the carriers, resulting in higher and higher fees for remaining customers.

c) Option C: Amend Service Quality Rules

Existing service quality rules do apply to all certificated telecommunications service providers, and such standards could be amended to create new standards that require carriers to terminate a certain percentage of calls in high costs areas. However, Staff believes it would be extremely difficult to create a blockage/call failure standard that would address a high failure rate in the proportionally small number of calls to rural areas while still recognizing that a system cannot achieve perfect call completion.

d) Option D: Amend Certification Rules

Anyone seeking to provide intrastate telecommunications service in Oregon must first obtain a certificate of authority issued by the Commission.²² Certificate holders are bound by the terms of their certificates, all of which incorporate by reference the rules set forth in OAR 860-032-0007. These rules include a variety of obligations and duties, including the duty to respond in a timely manner to Commission inquiries, meet service standards, and comply with applicable Commission rules and orders.

Currently, the certification rules do not directly prohibit actions by telecommunications service providers that result in excessive call completion failures in rural areas. Therefore, to address the call completion problem, OAR 860-032-0007 could be amended to include provisions that: 1) prohibit telecommunication service providers from subjecting any particular person, class of person, or locality to any undue or unreasonable prejudice or disadvantage; 2) prohibit blocking, choking, reducing, or restricting traffic in any way, including to avoid termination charges; and 3) make telecommunications service providers responsible for acts, omissions, or failures of their agents or other persons acting for or employed by the carrier.²³

3. Staff Recommendation

Staff recommends amending OAR 860-032-0007, as described in Section C(2)(d), as the most straightforward and administratively efficient way to address the call completion problem.

²² ORS 759.020(1).

²³ Note that ORS 759.260 prohibits telecommunications utilities from charging different customers different amounts for "a like and contemporaneous service under substantially similar circumstances." Federal law broadly prohibits any common carrier from making, "any unjust or unreasonable discrimination in charges, practices... or services for or in connection with like communication service, directly or indirectly." 47 U.S.C. sec. 202. Federal law also prohibits practices, including blocking, choking, reducing, or otherwise restricting traffic to particular locations, that has the effect of degrading service to a particular location. See *Declaratory Ruling* at 5, citing 47 U.S.C. sec 201. Finally, 47 U.S. sec. 217 states that a carrier is liable for the acts, omissions, or failures of its agent, or other persons acting for or employed by the carrier. See also *Declaratory Ruling* at 8.

Due to the significant consumer harm resulting from the current situation, Staff further recommends amending OAR 860-032-0007 in an emergency rulemaking proceeding. A permanent rulemaking proceeding would follow.

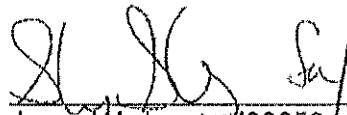
Once the rule is amended, adherence will automatically become a duty and responsibility of the service providers without additional action on the part of the Commission. As this explicit language becomes part of telecommunication providers' certificates and Commission's rules, the Commission will have direct authority to issue penalties or withdraw a provider's certificate for violating these provisions.

Following this rulemaking, Staff plans to pursue investigations of Consumer complaints, with the express intention of levying penalties against carriers that violate these essential call completion principles. Engineering staff will utilize call generator software to determine blockages from consumer's location to specific areas. Staff also intends to remain active and engaged with the ongoing federal proceedings.

Staff does not expect the emergency rulemaking to require the collection of additional data from carriers. Carriers will have opportunities for input in the rulemaking process.

DATED this 23rd day of April 2012.

Respectfully submitted,



Jason W. Jones, #00059
Assistant Attorney General
Of Attorneys for Staff of the Public Utility
Commission of Oregon

1 **CERTIFICATE OF SERVICE**

2 I certify that on April 23, 2012, I served the foregoing Comments upon the parties in this
3 proceeding by electronic mail and by sending a true, exact and full copy by regular mail, postage
4 prepaid, or by hand-delivery/shuttle, to the parties requesting paper service.

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Neoma Lane
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BROCK Malia

From: Richard Hovey [Richard.Hovey@fcc.gov]
Sent: Thursday, October 04, 2012 8:00AM
To: BROCK Malia
Cc: GOODWIN Fred
Subject: RE: Oregon's rulemaking to address rural call completion

Malia,

I forwarded your Inquiry to other members of the RCC Task Force and to WCB staff involved in drafting Declaratory Ruling DA 12-154. I cannot, of course, speak officially for the Commission but based on the feedback that I received, my personal assessment is that the proposed Oregon rules don't conflict with the Declaratory Ruling. I also heard no suggestion that you shouldn't continue forward with your rulemaking.

On a slightly different topic: I'm trying without much success to locate someone on the California PUC staff who may be dealing with these rural call completion problems (or anyone on telecom staff there, for that matter). Do you have any such contact there, or suggestion as to who I might try?

Regards,
Richard

From: BROCK Malia [<mailto:malia.brock@state.or.us>]
Sent: Tuesday, October 02, 2012 2:32 PM
To: Richard Hovey
Cc: GOODWIN Fred
Subject: Oregon's rulemaking to address rural call completion

Hi Richard,

Thank you for your participation in the Oregon Telephone Association seminar on Rural Call Completion last week.

Oregon is in the process of conducting a rulemaking, AR 566 to address intrastate call completion issues in Oregon. Closing comments are due this Friday, October 5th.

You made a point in your presentation that the FCC does not have jurisdiction over intrastate rural call completion and that the FCC welcomes states pursuit to resolve intrastate issues.

Comments filed from carriers in our rule making docket reflect their belief that the FCC solely should address and resolve call completion issues. We have received industry push back toward adoption of state specific rules.

In crafting our rule language, we attempted to align our rules with the FCC Declaratory Ruling. Initial proposed rules as a condition of the carriers certificate of authority in Oregon are:

(16) Except as otherwise allowed under state or federal law, the certificate holder must not

block, choke, reduce or restrict traffic in any way.

(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 to an exchange with higher terminating access rates than like service to an exchange with lower terminating access rates.

(18) The certificate holder must not engage in deceptive or misleading practices including but not limited to informing a caller that a number is not reachable or is out of service when the number is in fact reachable and in service.

(19) The certificate holder must take reasonable steps to ensure that the actions of any underlying carrier acting as an agent of or employed by the certificate holder used to deliver traffic on behalf of the certificate holder would not put the certificate holder in violation of any Commission rule.

(20) The certificate holder is liable for the actions of an underlying carrier used to deliver traffic on behalf of the certificate holder, if that underlying carrier is an agent of or employed by the certificate holder and the certificate holder knew or should have known of the underlying carrier's actions.

Would you recommend we continue forward with our rule making docket? Do you have suggestions as to whether or not you believe our rules conflict with the FCC Declaratory Ruling?

Thanks, Richard.

Malia

Malia Brock

Senior Telecommunications Engineer

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1 **CERTIFICATE OF SERVICE**

2 I certify that on October 5, 2012, I served the foregoing Staff Comments upon all parties
3 of record in this proceeding by delivering a copy by electronic mail only as all parties waive
4 paper service.

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