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 1,600 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 Georgia 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 deliver 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 *intra*state and *inter*state 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]

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[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 15, 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 Dockets 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

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[12] *See* FCC Order 11-161, para. 736-787, WC Docket No. 10-90, GN Docket N0. 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/db0206/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 disperse 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 provides 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.

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[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
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CERTIFICATE OF SERVICE

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

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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 Georgia 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 deliver 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 *intra*state and *inter*state 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 15, 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]

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[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 Dockets 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

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[12] *See* FCC Order 11-161, para. 736-787, WC Docket No. 10-90, GN Docket N0. 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/db0206/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 disperse 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 provides 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.

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[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,

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