

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***  
A Statement of Need and Fiscal Impact accompanies this form

**FILED**  
9-15-16 3:06 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Public Utility Commission of Oregon  
Agency and Division  
Diane Davis  
Rules Coordinator  
Public Utility Commission of Oregon, PO Box 1088, Salem, OR 97308-1088  
Address

860  
Administrative Rules Chapter Number  
(503) 378-4372  
Telephone

**RULE CAPTION**

In the Matter of Creating a New Division for Oregon Universal Service Fund (OUSF) Rules.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
10-24-16	10:00 a.m.	Public Utility Commission Hearing Room, 201 High Street SE, Salem, OR	ALJ Arlow

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

860-100-0001, 860-100-0005

**AMEND:**

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

860-032-0640 to 860-100-0130,  
860-032-0650 to 860-100-0140,  
860-032-0660 to 860-100-0150,  
860-032-0670 to 860-100-0160

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

860-032-0610 to 860-100-0100,  
860-032-0620 to 860-100-0110,  
860-032-0630 to 860-100-0120

**Statutory Authority:**

ORS Ch. 183, 192, 756, 759

**Other Authority:**

**Statutes Implemented:**

ORS 756.040, 759.005, 759.015, 759.020, 759.425

**RULE SUMMARY**

Currently, the administrative rules specific to the Oregon Universal Service Fund (OUSF) are found in OAR 860-032-0610 through 860-032-0670. OAR Chapter 860, Division 032 is large and unwieldy. This rulemaking is a step in reorganizing the OUSF information to create a comprehensive framework in the rules. While primarily housekeeping in nature, this rulemaking moves the rules from Division 032, with some minor grammatical corrections, into new Division 100, and creates new rules for similar scope and applicability, and definitions from Division 032. This reorganization is intended to help telecommunications providers better understand their obligations to the OUSF and provide clarity of definitions and procedures.

The Commission encourages participants to file written comments as early as practicable in the proceedings so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 605 on comments and file them by e-mail to the Commission's Filing Center at [PUC.FilingCenter@state.or.us](mailto:PUC.FilingCenter@state.or.us).

Interested persons may review all filings online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=20381>. For guidelines on filing and participation, please see OAR 860-001-0140 through 860-001-0160 and 860-001-0200 through 860-001-0250 found online at [http://arcweb.sos.state.or.us/pages/rules/oars\\_800/oar\\_860/860\\_001.html](http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_860/860_001.html).

Participants wishing to monitor the hearing by telephone must contact Diane Davis at [diane.davis@state.or.us](mailto:diane.davis@state.or.us) or (503) 378-4372 by close of business October 21, 2016, to request a dial -in number. The Commission strongly encourages those planning to present oral comment at the hearing to attend in person.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

<u>11-03-2016 5:00 p.m.</u>	<u>Diane Davis</u>	<u><a href="mailto:diane.davis@state.or.us">diane.davis@state.or.us</a></u>
Last Day (m/d/yyyy) and Time for public comment	Rules Coordinator Name	Email Address

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking Hearing accompanies this form.

**FILED**  
9-15-16 3:06 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Public Utility Commission of Oregon  
Agency and Division

860  
Administrative Rules Chapter Number

In the Matter of Creating a New Division for Oregon Universal Service Fund (OUSF) Rules.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Creating a New Division for Oregon Universal Service Fund (OUSF) Rules.

**Statutory Authority:**

ORS Ch. 183, 192, 756, 759

**Other Authority:**

**Statutes Implemented:**

ORS 756.040, 759.005, 759.015, 759.020, 759.425

**Need for the Rule(s):**

PUC Staff identified a need to consolidate and clarify the Oregon Universal Service Fund information into a comprehensive framework within the administrative rules. Staff anticipates that the consolidation and clarification will reduce the time for Staff and subject companies to find relevant information.

**Documents Relied Upon, and where they are available:**

OAR 860-032-0001, 860-032-0610 through 860-032-0670

**Fiscal and Economic Impact:**

Because this rulemaking is housekeeping in nature, there is no anticipated fiscal or economic impact. The reorganization does not create any additional recordkeeping, reporting, or administrative costs for the PUC or subject companies.

**Statement of Cost of Compliance:**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

The PUC is the only state agency expected to be impacted by the rules. The companies subject to compliance with these rules are telecommunications providers, including 11 small telecommunications cooperative, 15 small telecommunications utilities and approximately 400 competitive local exchange carriers. The proposed rules do not change current recordkeeping, reporting, or administrative requirements.

**2. Cost of compliance effect on small business (ORS 183.336):**

**a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:**

As noted above, only telecommunications providers are subject to the OUSF rules. Some of those providers are small businesses. There is no anticipated cost of compliance increase under these proposed rules.

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

The proposed rules do not change any of the current reporting, recordkeeping, or other administrative activities required for compliance.

**c. Equipment, supplies, labor and increased administration required for compliance:**

The proposed rules do not change any of the current compliance requirements, so there is no need for increased equipment, supplies, labor or administration.

**How were small businesses involved in the development of this rule?**

Staff invited comment from all telecommunications providers subject to the current rules. Some of those providers are small businesses.

**Administrative Rule Advisory Committee consulted?: No**

**If not, why?:**

Staff invited comment from all telecommunication providers subject to the current rules, and these rules are housekeeping in nature.

11-03-2016 5:00 p.m.	Diane Davis	diane.davis@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

**DIVISION 100  
OREGON UNIVERSAL SERVICE FUND (OUSF)**

**860-100-0001**

**Scope and Applicability**

**(1) The rules in this Division apply to all telecommunications providers as defined in 860-100-0005 (11).**

**(2) Upon request or its own motion, the Commission may waive any of the division 100 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.**

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

**Stats. Implemented: ORS 756.040, 759.005, 759.020**

**Hist.: NEW**

**860-100-0005**

**Definitions for the Oregon Universal Service Fund**

**For the purpose of this Division:**

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

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

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

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

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

**(6) "OUS Administrator" means the person selected by the Commission to administer the OUS Fund.**

**(7) "OUS Fund" means the Oregon Universal Service Fund.**

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

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

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

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

- (A) To a user group comprised of one person or association served by a single telecommunications system;  
(B) Located in a single building or in several buildings on contiguous property;  
(C) By a commercial shared service provider or by a users' association;  
(D) Through privately owned customer premises equipment and associated data processing and information management services; and  
(b) Includes connection to local exchange service.  
(11) "Telecommunications provider" or "provider" includes competitive providers, cooperatives, and telecommunications utilities.  
(12) "Telecommunications service" or "service" means two-way switched access and transport of voice communications, and all services provided in connection with such services, but excludes:  
(a) Services provided by radio common carrier;  
(b) One-way transmission of television signals;  
(c) Surveying;  
(d) Private telecommunications networks; and  
(e) Customer communications that take place on the customer's side of the network interface.  
(13) "Telecommunications utility" means a person who is not a competitive provider and is designated as a telecommunications utility under OAR 860-032-0010.

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

Stats. Implemented: ORS 756.040, 759.005, 759.020

Hist.: NEW

### 860-032-0610860-100-0100

#### **General Provisions**

- (1) For the purpose of these rules, each calendar year has four quarters as follows: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.
- (2) For the purpose of OAR s ~~860-032-0610860-100-0100~~ through ~~860-032-0660860-032-0150~~, the quarterly revenue worksheet identified as "OPUC OUS 2" is known as the "contribution report."
- (3) A telecommunications provider may pay any amounts due to the Public Utility Commission (Commission) by electronic transfer.
- (4) The Commission may add all costs incurred in collecting a past-due "Oregon universal service" (OUS) contribution amount. In the event the Commission refers the debt to the Department of Revenue or to a collection agency, the Commission may add to the debt the anticipated amount necessary to generate a net return to the Commission of the amount of the debt.
- (5) A telecommunications provider must pay a service fee in accordance with OAR 860-001-0050 for each payment returned for non-sufficient funds.
- (6) In addition to any other penalty, obligation or remedy provided by law, the Commission may suspend or cancel the telecommunications provider's certificate of authority to provide

telecommunications service in Oregon for its failure to file its contribution report or its failure to pay its contribution amount in full.

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

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

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

Stats. Implemented: ORS 756.040, 759.015 & 759.425

Hist.: PUC 23-2002, f. & cert. ef. 12-9-02; PUC 18-2004, f. & cert. ef. 12-30-04

**860-032-0620860-100-0110**

**Quarterly OUS Report: Filing and Payment**

(1) For the purpose of the OUS fund, a telecommunications provider must file its contribution report with the OUS Administrator. For the first quarter (January through March) the contribution report is due on or before May 28, for the second quarter (April through June) it is due on or before August 28, for the third quarter (July through September) it is due on or before November 28, and for the fourth quarter (October through December) it is due on or before February 28 of the following year. The contribution report must include the signature of an officer of the telecommunications provider, or an officer's designee, verifying the accuracy of the information in the contribution report. In the case of the electronic filing, the required signature is an electronic signature. A telecommunications provider must send or transmit its contribution report so that it is received in the OUS Administrator's offices no later than 5 p.m. on the date it is due.

(2) A telecommunications provider must file the contribution report for each quarter with no exceptions, including when the contribution amount shown on the report is \$0.00.

(3) The amount shown on the contribution report referenced in section (1) of this rule is due and payable by the telecommunications provider on or before the following days: February 28, May 28, August 28, and November 28. A telecommunications provider must send payment (electronically or by mail) so that it is received in the Commission's offices by no later than 5 p.m. on the date it is due.

(4) If the telecommunications provider's contribution amount for a quarter is less than a minimum of \$10 (i.e., \$9.99 or less), the telecommunications provider is not required to pay the contribution amount for that quarter but it must still file its contribution report. If the telecommunications provider has outstanding amounts owing for contributions, late statement fees, late payment penalties, and interest totaling more than the \$10 minimum amount, this section does not apply and the total amount is due and payable.

(5) If a telecommunications provider fails to file a contribution report as required by these rules, the Commission shall impose a late report fee of \$100.

(6) If a telecommunications provider files a contribution report but fails to pay the contribution amount in full on or before the day it is due, the Commission shall add a late

payment fee equal to nine percent (9%) of the unpaid amount of the contribution, up to a maximum of \$500.

(7) If a telecommunications provider fails to pay the contribution amount in full on or before the day it is due, the Commission shall add interest on the unpaid contribution amount at the rate of nine percent per annum from the day payment was due until paid.

(8) If the amount shown due on a contribution report is not paid on the due date, the Commission may issue a written notice of proposed assessment or proposed order to set the sum due. The Commission may waive the late report fee, the late payment fee, the interest on the unpaid contribution amount, or any combination thereof, if the provider requests the waiver and provides evidence showing that the provider paid its contribution amount late due to circumstances beyond its control.

(9) A telecommunications provider must submit revisions to a previously-filed contribution report no later than three years from its due date. If making the refunds arising from one or more Commission-verified revised contribution reports received from the telecommunications provider would have a material financial impact on the OUS fund, the OUSF Board may enter into an agreement with the telecommunications provider to spread payment of the refunds over a time period not to exceed three years.

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

Stats. Implemented: ORS 756.040, 759.015 & 759.425

Hist.: PUC 23-2002, f. & cert. ef. 12-9-02; PUC 3-2009, f. & cert. ef. 4-14-09; PUC 4-2010, f. & cert. ef. 9-10-10

### **860-032-0630860-100-0120**

#### **Estimated Report**

(1) For any quarter for which a telecommunications provider fails to file a contribution report as required by these rules, the Commission may make a proposed contribution assessment based upon any information available to the Commission.

(2) The proposed assessment shall include a late payment fee equal to 9 percent of the proposed assessment amount, up to a maximum of \$500 for that quarter.

(3) Each proposed assessment shall bear interest on the amount proposed at the rate of 9 percent per annum from the day the contribution amount was originally due.

(4) The Commission's proposed assessment for a non-filed contribution report must be made no later than three ~~(3)~~ years after the contribution report's due date.

(5) Notwithstanding section (4) of this rule, if the telecommunications provider did not hold a certificate of authority, the Commission shall have an unlimited time to propose an assessment for the time period represented by the non-filed contribution report. The proposed assessment shall include all late payment fees and interest as specified in this rule.

(6) Prior to the expiration of the period allowed for filing a petition for a hearing, the telecommunications provider may file its contribution report. The Commission shall accept the report and calculate late report fees, late payment fees, and interest in accordance with the original due date for that quarter's contribution report and payment, if any, accompanying the report.

Stat. Auth.: ORS 183, 192, 756 & 759  
Stats. Implemented: ORS 756.040, 759.015 & 759.425  
Hist.: PUC 23-2002, f. & cert. ef. 12-9-02

**860-032-0640860-100-0130**

**Commission Audit and Proposed Assessment**

(1) For any quarter for which a telecommunications provider's contribution report was due, the Commission may audit the telecommunications provider as the Commission deems necessary and practicable.

(2) The Commission's audit must be commenced no later than three years after the quarter's contribution report's due date. After completion of its audit, the Commission may propose to assess an additional contribution amount due from the telecommunications provider.

(3) In the event the telecommunications provider failed to file a contribution report for the quarter, the Commission shall add to the proposed assessment a late payment fee equal to 9 percent of the amount of the proposed assessment, up to a maximum amount of \$500.

(4) Each proposed assessment shall bear interest on the additional amount proposed at the rate of 9 percent per annum from the day the original contribution amount was due.

(5) Notwithstanding section (2) of this rule, if the telecommunications provider did not hold a certificate of authority, the Commission shall have an unlimited time to audit the telecommunications provider for universal service charges.

Stat. Auth.: ORS 183, 192, 756 & 759  
Stats. Implemented: ORS 756.040, 759.015 & 759.425  
Hist.: PUC 23-2002, f. & cert. ef. 12-9-02

**860-032-0650860-0XX-0140**

**Notice and Hearing on Proposed Orders and Assessments**

(1) The Commission shall provide written notice of the proposed order or proposed assessment to the telecommunications provider and allow the telecommunications provider an opportunity to request a hearing before the Commission.

(2) Within 30 days after service of the notice of proposed order or proposed assessment, a telecommunications provider may petition the Commission in writing for a hearing. If a petition is not filed within the 30-day period, the Commission shall enter a final order or assessment based upon information in the Commission's files. If a petition is filed within the 30-day period, the Commission shall grant the telecommunications provider a hearing and give the telecommunications provider at least 10 days' notice of the time and place of the hearing.

(3) The telecommunications provider must specify in its petition all reasons it disputes the proposed order or the proposed assessment. The Commission shall conduct a hearing on the telecommunications provider's petition under its rules governing hearings and proceedings. Unless the telecommunications provider has filed an amended contribution report, the amount shown on the contribution report shall not be subject to challenge by the telecommunications provider.

(4) A Commission order deciding the petition shall become final after service of the Commission's order upon the petitioning telecommunications provider.

(5) A proposed assessment made by the Commission under these rules is due and payable on the 10th day after the Commission's order becomes final.

Stat. Auth.: ORS 183, 192, 756 & 759  
Stats. Implemented: ORS 756.040, 759.015 & 759.425  
Hist.: PUC 23-2002, f. & cert. ef. 12-9-02

**860-032-0660860-100-0150**

**OUS Record-keeping Requirements**

(1) A telecommunications provider shall produce for inspection or audit upon request of the Commission or its authorized representative all records supporting its contribution reports. The Commission, or its representative, shall allow the telecommunications provider a reasonable time to produce the records for inspection or audit.

(2) A telecommunications provider must keep all records supporting each contribution report for three years, or until a Commission review or audit is complete, whichever is later.

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

Stat. Auth.: ORS 183, 192, 756 & 759  
Stats. Implemented: ORS 756.040, 759.015 & 759.425  
Hist.: PUC 23-2002, f. & cert. ef. 12-9-02

**860-032-0670860-100-0160**

**Refund of Oregon Universal Service Surcharge**

(1) A Pay Telephone provider may apply for a refund of the Oregon Universal Service (OUS) surcharge imposed on, and paid by, the provider under ORS 759.425(4) for the provision of Pay Telephone service.

(2) An application for a refund of the OUS surcharge under this rule shall be on forms prescribed by the Public Utility Commission.

- (a) An application shall contain the applicant's:
- (A) Name;
  - (B) Address;
  - (C) Telephone number;
  - (D) Time period for which the application is made;
  - (E) Name of Pay Telephone provider;
  - (F) Contact person;
  - (G) Requested refund;
  - (H) Number of Pay Telephones located in Oregon;
  - (I) Signature of responsible party;
  - (J) Affidavit of charges and payment; and
  - (K) Mailing address for refund.

(b) The Pay Telephone provider shall be responsible for contacting the Commission to obtain an application form. Forms are available on the Commission's website or by contacting the Commission by telephone.

(3) Applications shall be made on a quarterly basis. Applications must be received by the Commission no later than 180 days after the end of each time period for which a refund is claimed. The quarterly time periods are July 1 through September 30, October 1 through

AR 605 Proposed Rules

December 31, January 1 through March 31, and April 1 through June 30. The initial period begins July 1, 2003, and ends September 30, 2003.

(a) For good cause shown, the Commission may allow a pay telephone provider to submit its application for refund beyond the 180-day deadline.

(b) Applications for service rendered and payments made prior to July 1, 2003, will not be considered.

(4) A Pay Telephone provider shall produce for inspection or audit upon request of the Commission, or its authorized representative, all records supporting its application for refund. The Commission, or its authorized representative, shall allow the Pay Telephone provider a reasonable time to produce the records for inspection or audit. A Pay Telephone provider must keep all records supporting each refund application for three years, or until a Commission review or audit is complete, whichever is later.

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

Stats. Implemented: ORS 759.425(8)

Hist.: PUC 7-2003, f. & cert. ef. 4-28-03