

ORDER NO. 16 449
ENTERED NOV 23 2016

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 605

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

ORDER

DISPOSITION: RULE CHANGES ADOPTED

I. INTRODUCTION

We opened this rulemaking as the first step in reorganizing the Oregon Universal Service Fund (OUSF) information to create a comprehensive framework in a separate division of the administrative rules. The reorganization is intended to help telecommunications providers better understand their obligations to the OUSF and provide clarity of definitions and procedures.

II. PROCEDURAL HISTORY

On September 15, 2016, we filed a Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact for this rulemaking with the Secretary of State, and we provided notice to all interested persons on the service lists established under OAR 860-001-0030(1)(b) and to legislators specified in ORS 183.335(1)(d). Notice of the rulemaking was published in the October 2016 *Oregon Bulletin*, setting a hearing date of October 24, 2016. The notice established a comment due date of November 3, 2016. No written comments were filed.

III. PROPOSED RULEMAKING

This rulemaking moves the OUSF rules currently housed in Division 032, with some minor grammatical corrections, into a new Division 100. The rulemaking also creates new rules for scope, applicability, and definitions that are similar to the scope, applicability and definitions in Division 032.

IV. COMMENTS

We accepted written comments through November 3, 2016. No written comments were received prior to the hearing, and no comments were received at hearing other than Staff's brief overview of the changes.

V. ORDER

IT IS ORDERED that:

1. The rule changes OAR 860-032-0610 through 860-032-0670, and new rules OAR 860-100-0001 through 860-100-0160 are adopted as set forth in Appendix A to this order.
2. The rule changes will be effective upon filing with the Secretary of State.

Made, entered, and effective NOV 23 2016.


Lisa Hardie
 Chair




John Savage
 Commissioner


Stephen M. Bloom
 Commissioner

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

DIVISION 100
OREGON UNIVERSAL SERVICE FUND (OUSF)

860-100-0001Scope 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

860-100-0005Definitions for the Oregon Universal Service FundFor 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 **860-032-0660860-100-0150**, 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

860-032-0650860-100-0140

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

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