

April 21, 2005

Via Electronic Filing and Overnight Mail

|
Public Utility Commission of Oregon
Attn: Filing Center
Suite 215
550 Capitol St. NE
P.O. Box 2148
Salem, Or 97301-2148

**Re: AR 492 – MCI Initial Comments
Proposed revisions to OAR 860-032-0012**

Dear Filing Center:

This responds to Judge Petrillo's March 24, 2005 Ruling establishing a comment schedule for the Commission's Notice of Proposed Rulemaking Hearing with regard to proposed changes to OAR 860-032-0012.

INTRODUCTION

MCI believes that with limited exceptions, regulators should take a "hands off" approach to retail service quality. With the explosion of the wireless industry, the emergence of Voice Over Internet (VoIP) providers, and the entrance of cable operators into telephony, service quality should be controlled by competition rather than public utility commissions, which had previously been necessary to ensure service quality in a monopoly environment. A company should be allowed to distinguish itself based not only on price or service offerings but also customer service. In addition, wireline providers should not be hampered by the obligations and expenses of regulation that do not likewise

impact competitors providing service through other modes of telecommunications. Accordingly, MCI suggests that instead of imposing additional obligations on wireline telecommunications providers, the Commission begin the process of eliminating service quality standards to recognize today's competitive *intermodal* telecommunications marketplace.

If the Commission disagrees with this approach, however, and insists on implementing and continuing to apply service quality rules to retail telecommunications services of wireline carriers, MCI believes that the rules should be limited to consumer services. Business customer groups are not served by service or repair centers, but on an individual account basis. In addition, the relationship between the business customer and the carrier is governed by contracts, not by rules of regulatory bodies. North Carolina and Nevada are two examples of states that exempt business customer groups from state service quality regulations.

COMMENTS ON SPECIFIC RULES

1. OAR 860-032-0012 (1)(c) and (8)(a)(C)(i)

(1) Definitions.

(c) "Average Speed of Answer" – The average time to reach a customer service representative or an automated system that can be utilized to resolve the concern,~~that elapses between the time the call reaches the interactive answering system queue and the time it is connected to a representative:~~

MCI Comment

MCI recommends that OAR 860-032-0012 (1) (c) and (8)(a)(C)(i) be revised as above to reflect the ability for up to 80% of all Customer Service

issues to be resolved fully through interaction with MCI's automated voice response unit. *Currently, 15% of Oregonian callers have their concerns fully resolved through MCI's automated voice response unit.*

2. OAR 860-032-0012 (1)(i)

(i) "Initial Commitment Date" – The initial date pledged by the telecommunications carrier to provide a service, facility, or repair action. This date is within the minimum time set forth in these rules or a date agreed upon ~~determined by good faith negotiations between by~~ the customer and the telecommunications carrier;

MCI Comment

MCI recommends that OAR 860-032-0012 (1)(i) be revised as shown above to allow customers and providers to agree upon a date which may not fall within the timeframes required by the Oregon rules. MCI wants appropriately to set the customers' expectations given the provisioning model between MCI and the ILECs. A carrier offering local service, operating in an environment utilizing combinations of network elements cannot realistically be expected to advise customers of the specific date that a service installation order will complete. A carrier like MCI that operates in such an environment utilizes an automated electronic interface with the underlying carrier (predominantly Qwest in Oregon) for service provisioning. With Qwest, MCI must comply with hundreds of Qwest business rules in order to successfully provision local customers. As with any automated electronic interface between two carriers, there is a rate of rejected orders known as "fallout." Since it is not possible to predict which orders will be impacted by order rejects and fall into the "fallout" category, it is not realistic to expect that a carrier operating in an environment utilizing combinations of

network elements to inform the applicant of the specific date when the installation order will be completed. Service providers in a competitive market have every incentive to provision such orders in a timely and efficient manner. Therefore, carriers should be permitted to quote a timeframe within which service installation is expected to be completed and use that as the basis for advising the applicant of the due date for the service order.

3. OAR 860-032-0012 (2)

(2) Measurement and Reporting Requirements. A competitive telecommunications provider that maintains 1,000 or more access lines on a statewide basis must take the measurements required by this rule and report them to the Commission as specified. ~~Basic telephone service that is provisioned through alternative technologies, as an example Digital Subscriber Line (DSL), will be included in the calculation of total access lines.~~ Reported measurements will be reported to the first significant digit (one number will be reported to the right of the decimal point). A competitive telecommunications provider that maintains fewer than 1,000 access lines on a statewide basis need not take the required measurements and file the required reports unless ordered to do so by the Commission.

MCI Comment

In addition to MCI's general comment that no mandatory reporting rules should apply to telecommunications carriers in today's competitive environment, MCI recommends that OAR 860-032-0012 (2) be amended as above, to omit language that would implicitly subject alternative technologies such as Digital Subscriber Line (DSL) and Voice over Internet Protocol (VoIP) to PUC oversight. Pursuant to the Federal Telecommunications Act and applicable FCC Orders, state commissions have no authority to impose such a regulation.

First, IP-enabled services are properly classified as information services, and thus, cannot be subjected to telecommunication services regulation. IP-enabled services are properly classified as information services because networks based on IP inherently offer end users "a capability for generating, acquiring, sorting, transforming, processing, retrieving, utilizing or making available information via telecommunications."¹

Moreover, Congress has declared that "[i]t is the policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."² That policy reflects a finding by Congress that "[t]he Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation."³

The conclusion that IP-enabled services are information services applies to all IP-based applications, including those that may include a voice component. Although certain aspects of some voice applications and content are similar to traditional voice telecommunications services, the broader capabilities of IP-based voice applications render them information services. As the FCC describes in the Notice of Proposed Rulemaking (NPRM) with regard to IP-based services, IP-based voice applications already include, or will soon include, information retrieval and processing capabilities.⁴ More specifically, IP-based voice applications generally include many, if not all, of the advanced functions

¹ 47 U.S.C. Section 153(20).

² 47 U.S.C. Section 230(b).

³ 47 U.S.C. Section 230(b)(4).

⁴ Notice of Proposed Rulemaking, *In re IP-Enabled Services*, WC Docket No. 04-36, FCC 04-28 (FCC rel. March 10, 2004) at para. 18.

that contributed to the FCC's finding that Pulver's Free World Dialup (FWD) is an information service.⁵

Under FCC precedent, the FCC cannot single out the voice component of an information service for separate classification as a telecommunications service, even if that voice component may superficially resemble traditional voice services.

As the FCC found in the 1998 *Stevens Report*⁶, ISPs "do not offer subscribers separate services – electronic mail, Web browsing, and others – that should be deemed to have separate legal status." Rather, IP-based services constitute information services "regardless of whether subscribers use all of the functions provided as part of the service, such as e-mail and hosting"⁷

Finally, many, if not all, IP-based voice services are properly classified as information services for an independent reason: they typically include a net protocol conversion capability.⁸ Such protocol conversion would occur whenever traffic is exchanged between an IP network and the traditional circuit-switched PSTN.

The states also have no authority to impose regulations inconsistent with the Commission's policy of nonregulation with respect to such services. As the FCC explains in *Pulver*, exclusive FCC jurisdiction has prevailed unless an information service can be characterized as "purely intrastate," or it is practically

⁵ *In re Petition for Declaratory Ruling that Pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, 19 F.C.C.R. 3307 (2004) at paras. 11-12.

⁶ *In re Federal-State Joint Board Universal Service*, 13 F.C.C.R. 11501 (1998).

⁷ *In re Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17 F.C.C.R. 4798 (2002).

⁸ 47 C.F.R. Section 64.702(a).

and economically possible to separate interstate and intrastate components of a jurisdictionally mixed information service without negating federal objectives for the information service component.⁹ Neither condition is likely to apply in the case of IP-enabled services. Specifically, almost any IP-enabled service is likely to possess the same characteristics as the FWD service found to be interstate in *Pulver* – (1) the user can typically “initiate and receive on-line communications from anywhere in the world; and (2) such services are unlikely to be able to determine “the actual physical location of an underlying IP address.”¹⁰ Consequently, it would be impossible or impractical to attempt to identify separately interstate and intrastate components of the service. As the FCC points out in its *IP-NPRM*, “[p]ackets routed across a global network with multiple access points defy jurisdictional boundaries.”¹¹

4. OAR 860-032-0012 (4)

(4) Provisioning and Held Orders for Lack of Facilities.: The representative of the competitive telecommunications provider must give a retail customer an initial commitment date ~~of not more than six business days after a request for access line service, unless a later date is determined through good faith negotiations between the customer and the competitive telecommunications provider.~~ The competitive telecommunications provider may change the initial commitment date if requested by the customer. The competitive telecommunications provider may take into account, when establishing the initial commitment date, the actual time required for the customer to meet prerequisites, for example, line extension charges or trench and conduit requirements, as well as any time required to coordinate with other carriers for the provision and/or transfer of service. If a request for service becomes a held order for lack of facilities, the serving competitive telecommunications provider must, within five business days, ~~send attempt to reach the customer by phone~~ or otherwise provide the customer with a written commitment to fill the order.

⁹ *Pulver* at para. 20.

¹⁰ *Pulver* at para. 22.

¹¹ *IP-NPRM* at para. 4.

MCI Comment

MCI recommends that 860-032-0012 (4) be revised as shown above for the same reasons outlined for 860-032-0012 (1)(i).

5. OAR 860-032-0012 (5)

(5) Trouble Reports. Each competitive telecommunications carrier provider must maintain an accurate record of all reports of malfunction made by its customers.

(a) Measurement: A competitive telecommunications provider must determine the number of customer trouble reports that were received during the month. The competitive telecommunications provider must relate the count to the total working access lines within a reporting wire center. A competitive telecommunications provider need not report those trouble reports that were caused by circumstances beyond its control. The approved trouble report exclusions are:

(A) Cable Cuts: A competitive telecommunications provider may take an exclusion if the “buried cable location” (locate) was either not requested or was requested and was accurate. If a competitive telecommunications provider or a telecommunications provider’s contractor caused the cut, the exclusion can only be used if the locate was accurate and all general industry practices were followed;

~~(B) Internet Service Provider (ISP) Blockage; if an ISP does not have enough access trunks to handle peak traffic;~~

MCI Comment

MCI recommends removing the reference to “Internet Service Provider Blockage” and “Modem Speed Complaints” that are made in parts (B) and (C) of OAR 860-032-0012 (5) (a). Internet service, whether provided through dial-up or DSL is not subject to PUC jurisdiction, nor is VoIP service. MCI incorporates by reference herein its comments made with regard to OAR 860-032-0012 (2) above.

6. OAR 860-032-0012 (5) (c)

(c) Reporting Requirement: Each competitive telecommunications provider must report monthly to the Commission:

(A) Trouble report rate ~~by wire center;~~ and

- (B) The specific reason(s) ~~a wire center meeting standard~~ the company (did not exceed 2.0 for more than three of the last twelve months) exceeded a trouble report rate of 3.0 per 100 working access lines, during the reporting month;
- (C) The reason(s) ~~a wire center not meeting standard~~, after the exclusion adjustment, the company exceeded 2.0 per 100 access lines during the reporting month; and
- (D) Provide the retail access line count for each wire center or on a statewide basis. ~~Basic telephone service that is part of a Digital Subscriber Line (DSL) will be included in this reported number.~~

MCI Comment

MCI recommends that OAR 860-032-0012 (5) (c) be stricken entirely from the proposed rules. In previous discussions with Staff, CLECs including MCI, informed Staff that those CLECs utilizing combinations of network elements do not, as a business matter, maintain records on a wire center basis. Instead, as the Commission is aware, MCI currently reports on a statewide basis. For any technical or network problems found, MCI would work with the ILEC providing the facilities for resolution. Any requirements that reporting be done on a wire center-specific basis are inconsistent with MCI's operational processes. Any changes to comply with such a requirement would involve costly changes that would add no value to the customer experience. Furthermore, any costs incurred for this reason would likely be passed along to Oregon consumers in the form of higher rates.

MCI also recommends that the last sentence be stricken for the reasons discussed with regard to subsections (2) and (5) above.

7. OAR 860-032-0012(6)

(6) Repair Clearing Time: This standard establishes the clearing time for all trouble reports from the time the customer reports the trouble to the competitive telecommunications provider until the carrier resolves the trouble is resolved. The competitive telecommunications carrier provider must provide each customer making a network trouble report with a commitment time when the competitive telecommunications provider will repair or resolve the problem.

(a) Measurement: The competitive telecommunications provider must calculate the percentage of trouble reports cleared within 48 hours for each repair center;

(b) Objective Service Level: A competitive telecommunications provider must monthly clear at least 95 percent of all trouble reports within 48 hours of receiving a report. Trouble reports attributed solely to customers or another carrier may be excluded from the calculation of the “repair clearing time” results; This requirement will not apply in situations of natural disasters or other emergencies when approved by the Commission;

(c) Reporting Requirement: Each competitive telecommunications provider must report monthly to the Commission the percentage of trouble reports cleared within 48 hours by each repair center or on a statewide basis;

(d) Retention Requirement: None.

MCI Comment

As outlined in our comments concerning OAR 860-032-0012 (5) (c), CLECs utilizing combinations of network elements do not, as a business matter, maintain records on a wire center basis and should be permitted to report on a statewide basis.

8. OAR 860-032-0012(9)

(9) Interruption of Service Notification. A competitive telecommunication provider must report significant outages that affect customer service. These interruptions could be caused by switch outage, cable cut, or major work that would affect customers.

(a) Measurement: The competitive telecommunications providers must notify the Commission when an interruption occurs that exceeds the following thresholds:

(A) Cable or electronic outages lasting longer than 30 minutes that affect 50 percent or more of in-service lines of a central office (host or remote).

(B) Toll or Extended Area Service isolation lasting longer than 30 minutes that affects 50 percent or more of in-service lines.

(C) Isolation of a central office (host or remote) from the E-911 emergency dialing code or isolation of a Public Safety Answering Position (PSAP).

(D) Isolation of a wire center for more than ten minutes.

(E) Outage of the Business Office or Repair Center access system lasting longer than 15 minutes.

(b) Objective Service Level: Not applicable.

(c) Reporting Requirement: A competitive telecommunications provider must report service interruptions to the Commission engineering staff by telephone, by facsimile, by electronic mail, or personally. This initial report should be communicated to the Commission as soon as the company representative receives field notification and the report should provide the location of the outage, estimated impact, services interrupted, and the estimated time to restore. The competitive telecommunications provider should provide updated information when significant events occur, including when the outage is restored. The competitive telecommunications provider must send the final report no later than five business days following the corrective action. The competitive telecommunications provider must provide, as a minimum, facility, incident date, system down time, estimated number of customers affected, services affected, outage description, outage cause, and corrective action taken.

(d) Retention Requirement: None

MCI Comment

Interruption of Service Notification provisions should not be required of non facilities-based providers. Requiring providers that use combinations of network elements or non facilities based providers to report Interruption of Service Notifications would be duplicative of the facilities-based provider's notification and would not provide accurate information for the Commission or value to the customer.

9. OAR 860-032-0012(15)

(15) Remedies for Violation of this Standard:

(a) If ~~the Commission believes that~~ a competitive telecommunications provider subject to this rule has failed to meet a minimum service quality standard, the Commission ~~must~~ may require the competitive telecommunications provider to submit a plan for improving performance as provided in ORS 759.450(5) The Commission may seek penalties against the competitive telecommunications provider as provided in ORS 759.450(5);

(b) In addition to the remedy provided under ORS 759.450(5), if the Commission believes that a competitive telecommunications provider subject to this rule has violated one or more of its service standards, the Commission must give the competitive telecommunications provider

notice and an opportunity to request a hearing. If the Commission finds a violation has occurred, the Commission may require the competitive telecommunications provider to provide the following relief to the affected customers:

~~(A) An alternative means of telecommunications service for violations of subsection (4)(b)(B) of this rule;~~

~~(B) Customer billing credits equal to the associated non-recurring and recurring charges of the competitive telecommunications provider for the affected service for the period of the violation; and~~

~~(C) Other relief authorized by Oregon law.~~

MCI Comment

MCI recommends that the provisions outlined in OAR 860-032-0012 (15) be stricken entirely from the rules or at a minimum, that they be amended as outlined above. Providers that offer local service, operating in an environment utilizing combinations of network elements should not be penalized for failing to meet retail specific service quality metrics when the competitive marketplace can more effectively compel providers to provide the highest possible level of service. Requiring such providers to incur the costs associated with providing an alternative means of telecommunications service to customers when the number of held orders for lack of facilities exceeds the limits outlined in OAR 860-032-0012 (4) (b)(B) would impose costs that could be passed along to consumers. The removal of the entire set of remedies outlined in OAR 860-032-0012 (15) would better serve the interest of promoting competition in Oregon by allowing the marketplace, rather than crediting requirements and other costly measures to dictate service quality and increase the costs of providing service to Oregon consumers.

Thank you for the opportunity to submit comments in this matter.

Sincerely,

Michel Singer Nelson
MCI
707 17th Street, Suite 4200
Denver, CO 80202
303 390 6106
303 390 6333 (fax)
michel.singer_nelson@mci.com