

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: December 22, 2020**

REGULAR ___ CONSENT ___ RULEMAKING X EFFECTIVE DATE N/A

DATE: December 15, 2020

TO: Public Utility Commission

FROM: Christopher Allwein

THROUGH: Nolan Moser and Diane Davis **SIGNED**

SUBJECT: ADMINISTRATIVE HEARINGS DIVISION: Request for adoption of rule changes to division 100 rules per 2020 Senate Bill 1603. (AR 640)

RECOMMENDATION:

Adopt the permanent administrative rule changes as set forth in the attached draft order.

DISCUSSION:

This rulemaking implements the 2020 First Special Session Senate Bill 1603 (SB 1603), which subjects the sale of retail commercial mobile radio services and retail interconnect voice over internet protocol (VoIP) services to the universal service charge and reduces the surcharge rate cap from 8.5 percent to 6 percent of the sale of subject services.

Staff proposed rules in this docket, and the Commission opened the formal stage of this rulemaking on September 22, 2020 through Order No. 20-305. The Administrative Hearings Division (AHD) held a hearing to receive public comment on October 22, 2020, and no public comments were received. Written comments were received from the Oregon Cable Telecommunications Association (OCTA) on October 29, 2020.

OCTA raised two concerns with the proposed rules in its comments and provided recommended language to address these concerns. OCTA proposes adding a new subsection to OAR 860-100-0001 to clarify that nothing in the rules is intended to expand the Commission's regulatory authority with respect to commercial mobile radio services or interconnected VoIP. The second issue is the inclusion of uncollectable amounts in the definition (and calculation) of "retail telecommunications service gross revenue."

The rules changes in the attached order do not adopt OCTA's suggested changes.

First, OCTA requests the addition of a new subsection to this rule which provides an unequivocal statement that our regulatory authority, other than what is necessary to assess and collect fees, does not extend to commercial mobile radio services or interconnected VoIP. The proposed rules do not include this addition, because SB 1603 already provides this express limitation on Commission authority.

Second, OCTA requests that OAR 860-100-0005(19), the definition of "retail telecommunications service gross revenue," be modified to exclude the phrase "uncollectable amounts" in the calculation of total amount of sales of OUS intrastate retail telecommunications services sold in Oregon. OCTA states that there is "no rational basis for assessing the surcharge on amounts that a provider is owed that has not become revenue."¹ OCTA further notes that the forms providers currently utilize to calculate gross revenues for the OUSF charge, both pre and post SB 1603, do not include uncollectible amounts. Staff notes that this change could create potential implications to other rules.

The attached rules do not include OCTA's modifications to OAR 860-100-0005(19), because Staff has made clear, as is discussed in Order No. 20-205, that Staff will address this issue in subsequent proceedings. Staff noted that they would like to address this subject in through an additional process where there will be "adequate time to deal with this rather complex matter and address the implications to other rules."² Accordingly, the attached rules do not strike the language as requested by OCTA at this time, given Staff's assertion of impacts to other rules, and Staff's commitment to address issues through additional process.³

PROPOSED COMMISSION MOTION:

Adopt AHD's recommendation to adopt changes to rules in division 100 to implement First Special Session SB 1603.

¹ Oregon Cable Telecommunications Association comments at 3 (Oct 29, 2020).

² Order No. 20-305, Appendix A at 2 (Sep 22, 2020).

³ Order No. 20-305, Appendix A at 3 (Sep 22, 2020).

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 640

In the Matter of

Rulemaking to Adopt and Amend Rules per
2020 Senate Bill 1603.

ORDER

DISPOSITION: RULE AMENDMENTS ADOPTED

I. SUMMARY

In this order, we adopt rule amendments to implement 2020 First Special Session Senate Bill 1603 (SB 1603), which subjects the sale of retail commercial mobile radio services and retail interconnect voice over internet protocol (VoIP) services to the universal service charge and reduces the surcharge rate cap from 8.5 percent to 6 percent of the sale of subject services. Changes to the rules are necessary to conform to and implement the new law, relevant provisions of which become operative on January 1, 2021.

II. BACKGROUND

We convened this proceeding to implement 2020 SB 1603 on August 11, 2020 at a regular public meeting. Staff led a workshop with stakeholders on August 31, 2020, and brought proposed rules to the regular public meeting on September 22, 2020. We issued Order No. 20-305 to open the formal stage of rulemaking.

On September 30, 2020, we filed a Notice of Proposed Rulemaking and Statement of Need and Fiscal Impact with the Secretary of State. On October 1, 2020, notice was provided to all interested persons on the service lists maintained pursuant to OAR 860-01-0030(1)(b) and to certain legislators specified in ORS 183.335(1)(d). Notice of the rulemaking was published in the October 2020 *Oregon Bulletin*, establishing a hearing date of October 22, 2020, and a comment due date of October 29, 2020.

We held a hearing to receive public comment on October 22, 2020. Staff opened comments, and there were no other comments offered at the hearing. The comment period closed on October 29, 2020. Written comments were received from the Oregon Cable

Telecommunications Association (OCTA) on October 29, 2020. No other written comments were submitted.

OCTA raised two concerns with the proposed rules in its comments and provided recommended language to address these concerns. OCTA proposes adding a new subsection to OAR 860-100-0001 to clarify that nothing in the rules is intended to expand the Commission's regulatory authority with respect to commercial mobile radio services or interconnected VoIP. The second issue is the inclusion of uncollectable amounts in the definition (and calculation) of "retail telecommunications service gross revenue." These two concerns will be discussed in the applicable sections below.

III. DISCUSSION

We provide a summary of the rule changes in relation to 2020 Senate Bill (SB) 1603, and provide a brief review of comments by stakeholders where applicable. We provide our resolution and, as appropriate, offer clarification for interpreting the rules, and signal issues that we intend to consider and adjust in later implementation proceedings.

A. OAR 860-100-0001: Scope and Applicability

This rule change clarifies a rule reference to accurately reflect other rule changes as a result of SB 1603.

OCTA requests the addition of a new subsection to this rule which provides an unequivocal statement that our regulatory authority, other than what is necessary to assess and collect fees, does not extend to commercial mobile radio services or interconnected VoIP. We decline to add such a subsection. As noted by OCTA, 1603 expressly states this limitation:

Nothing in this section is intended to grant the commission the authority to impose any requirement or condition, or to exercise any regulatory authority, with respect to commercial mobile radio services or interconnected voice over internet protocol services other than as expressly provided for in this section.⁴

Resolution:

⁴ ORS 749.425(8) as amended by SB 1603, Section 2.

Because the law already provides this express limitation on our authority, we decline to add similar language into the rules implementing the statutory provisions.

B. OAR 860-100-0005: Definitions

The addition of two definitions here reflect the changes to ORS 759.400, Section 1. Definitions for “commercial mobile radio service” and “interconnected voice over internet protocol (VoIP) service” are provided to introduce the services to be included by the new legislative provisions. Other new definitions to this rule include the addition of providers that supply the above services. The definition of “OUS retail telecommunications service” is expanded to include the additional services. Finally, the definitions of “telecommunications provider” and “telecommunications service” are supplemented to include commercial mobile radio service and VoIP service for the limited purpose of instituting SB 1603.

In its comments, OCTA requests that 860-100-0005(19), the definition of “retail telecommunications service gross revenue,” be modified to exclude the phrase “uncollectable amounts” in the calculation of total amount of sales of OUS intrastate retail telecommunications services sold in Oregon. OCTA states that there is “no rational basis for assessing the surcharge on amounts that a provider is owed that has not become revenue.”⁵ OCTA further notes that the forms providers currently utilize to calculate gross revenues for the OUSF charge, both pre and post SB 1603, do not include uncollectible amounts.

Resolution:

While we agree that the issue of uncollectible amounts should be addressed, we will allow Staff, as stated in Order No. 20-205, to address in a subsequent proceeding. Staff noted that they would like to address this subject in a subsequent proceeding where there will be “adequate time to deal with this rather complex matter and address the implications to other rules.”⁶ Therefore, we decline to strike the language as requested by OCTA at this time, noting Staff’s assertion of potential implications to other rules.

C. OAR 860-100-0100: General Provisions

Changes here remove references to rescinded law (ORS 759.425(7)) and to a commission order (Order No. 16-093) that is no longer relevant. The capped amount of surcharge that may be collected from an individual provider’s retail communication telecommunications service gross

⁵ Oregon Cable Telecommunications Association comments at 3 (Oct 29, 2020).

⁶ Order No. 20-305, Appendix A at 2 (Sep 22, 2020).

revenue of any applicable service is reduced from 8.5 percent to 6.0 percent. Finally the rule is changed to clarify that a provider may collect *up to* the 6.0 percentage from customers, but may not exceed this amount.

D. OAR 860-100-0105: Identification Worksheet

This rule change adds a requirement for each telecommunications provider to identify the method used to determine jurisdictional split of revenues, as described in SB 1603 Section 2(4) (ORS 759.425(4)).

E. OAR 860-100-0110: OUS Fund Reporting: Filing and Payment

The rule additions here reflect the options presented in SB 1603 Section 2(4) (ORS 759.425(4)). One of these options may be employed by certain telecommunications providers to determine the allocation of revenues between intrastate and interstate.

**F. OAR 860-100-0120: Estimated Report;
OAR 860-100-0130: Commission Audit and Proposed Assessment**

The rule amendments in these two sections are to acknowledge that commercial mobile radio providers and interconnected VoIP providers are not required to hold a certificate of authority but still may be assessed a contribution under the provisions of SB 1603.

G. OAR 860-100-0125: OUS Fund Support Portability

The rule change to this section is to correct an existing scrivener's error.

**H. OAR 860-100-0140: Notice and Hearing on Proposed Orders and Assessments;
OAR 860-100-0150: OUS Record Keeping Requirements;
OAR 860-100-0160: Refund of Oregon Universal Service Surcharge;
OAR 860-100-0200: OUS Fund Support Eligibility**

The rule amendments in these four sections are to modernize the language of the rules. In addition, OAR 860-100-0160, the rule amendment provides clarity to the time period listed in section (3) regarding an application for a refund.

IV. ORDER

IT IS ORDERED that:

1. The modifications to OAR 860-100-0001, 860-100-0005, 860-100-0100, 860-100-0105, 860-100-0110, 860-100-0120, 860-100-0125, 860- 100-0130, 860-100-0140, 860-100-0150, 860-100-0160, and 860-100-0200 are adopted as set forth in Appendix A to this order.
2. The rule changes become effective upon filing with the Secretary of State.

Made, entered, and effective _____.

Megan W. Decker
Chair

Letha Tawney
Commissioner

Mark R. Thompson
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)****860-100-0001****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 ~~D~~ivision 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.: PUC 5-2016, f. & cert. ef. 11-22-16 (Order No. 16-449)

860-100-0005**Definitions for the Oregon Universal Service Fund**

For the purpose of this Division:

(1) "Basic telephone service" has the same meaning as provided in OAR 860-032-0190.

(2) "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.

(3) "Commercial mobile radio service provider" means a person that provides commercial mobile radio service.

(4) "Commercial mobile radio service" has the meaning given that term in ORS 759.400.

~~(53)~~ "Competitive provider" means a competitive telecommunications provider as defined in ORS 759.005(1), who provides services authorized pursuant to ORS 759.020.

~~(64)~~ "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).

~~(75)~~ "Exchange" has the same meaning as provided in OAR 860-032-0012.

(8) "Interconnected voice over internet protocol service provider" or "interconnected VoIP service provider" means a person that provides interconnected voice over internet protocol services.

(9) "Interconnected voice over internet protocol service" or "interconnected VoIP service" has the meaning given the term "interconnected voice over internet protocol service" in ORS 759.400.

~~(106)~~ "Local exchange service" means local exchange telecommunications service as defined in ORS 759.005(3). Local exchange service includes "shared service."

(~~117~~) "Loop facilities" consists of the cables, poles, conduit, microwave, or carrier equipment used by a telecommunication service provider to connect a customer's premise to a central office.

(~~128~~) "OUSF Board" means the advisory board selected by the Commission to provide advice on the administration of the OUS Fund.

(~~139~~) "OUS Administrator" means the person selected by the Commission to administer the OUS Fund.

(~~140~~) "OUS Fund" means the Oregon Universal Service Fund.

(15) "OUS retail telecommunications service" includes retail telecommunications service, retail commercial mobile radio service and retail interconnected VoIP service.

(~~164~~) "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.

(~~172~~) "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.

(~~183~~) "Retail telecommunications service" has the same meaning as provided in ORS 759.400.

(~~194~~) "Retail telecommunications service gross revenue" means the total amount of sales of **OUS** intrastate retail telecommunications services sold in Oregon before any deduction or adjustment for uncollectible amounts or a provider's expenses.

(~~2015~~) "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.

(~~2116~~) "Telecommunications provider" or "provider" includes competitive providers, cooperatives, ~~and~~ telecommunications utilities **and includes, for the purpose of this Division, commercial mobile radio service providers and interconnected VoIP service providers.**

(~~2217~~) "Telecommunications service" or "service" means two-way switched access and transport of voice communications, and all services provided in connection with such services. **For the purpose of this Division "telecommunication service" or "service"**

includes commercial mobile radio service and interconnected VoIP service, and does not include but excludes:

- ~~(a) Services provided by radio common carrier;~~
- ~~(ab)~~ One-way transmission of television signals;
- ~~(be)~~ Surveying;
- ~~(cd)~~ Private telecommunications networks; and
- ~~(de)~~ Customer communications that take place on the customer's side of the network interface.

~~(2318)~~ “Telecommunications utility” means a person who is not a competitive provider and is designated as a telecommunications utility under OAR 860-032-0010.

~~(2419)~~ “UNE loop” means an unbundled network element loop.

~~(250)~~ “Wire center” has the same meaning as provided in OAR 860-032-0012.

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

Stats. Implemented: ORS 756.040, 759.005, 759.020

Hist.: PUC 5-2016, f. & cert. ef. 11-22-16 (Order No. 16-449); PUC 7-2017, f. & cert. ef. 10-6-17 (Order No. 17-366)

860-100-0100**General Provisions**

(1) For the purpose of this Division, 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) ~~E~~~~Except as provided in ORS 759.425(7),~~ each telecommunications provider must pay into the OUS Fund, on a quarterly basis, an amount of the provider’s retail telecommunications service gross revenue, as may be established by the Commission. This amount shall not exceed 6.08.5 percent of the provider’s retail telecommunications service gross revenue, ~~and shall be otherwise consistent with the amounts established in the Commission’s Order No. 16-093, available at:-~~

(3) A contributor to the OUSF may recover the Oregon universal service charge from its customers subject to all other applicable statutes and rules of the Commission for setting a surcharge. A contributor to the OUSF who imposes such a surcharge on customers may not exceed must do so using the same percentage established as required under section (2) of this rule.

(4) For the purpose of this Division, there are three worksheet forms that a telecommunications provider must complete and file when required to do so under these rules. The forms are available at: <http://www.puc.state.or.us/ousf/Pages/index.aspx>. Form OPUC OUS 1 is titled “Oregon Universal Service Identification Worksheet” and is referenced in these rules as the “identification worksheet.” Form OPUC OUS 2 is titled “Oregon Universal Service Contribution Worksheet” and is referenced in these rules as the “contribution report.” Form OPUC OUS 3 is titled “Oregon Universal Service Support Distribution Worksheet” and is referenced in these rules as the “distribution worksheet.”

(5) Each report and worksheet that a telecommunications provider is required to file with the OUS Administrator under this Division is considered filed when received by the OUS Administrator.

(6) A telecommunications provider may pay any amounts due to the Public Utility Commission (Commission) by electronic transfer.

(7) The Commission may add all costs incurred in collecting a past-due "~~Oregon universal service~~" (OUS) **Fund** 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.

(8) A telecommunications provider must pay a service fee in accordance with OAR 860-001-0050 for each payment returned for non-sufficient funds.

(9) 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 **that telecommunications provider's** failure to file any report or worksheet required under these rules or for its failure to pay its contribution amount in full.

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

(11) 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, & OR Laws 2017, ch. 32

Hist.: PUC 23-2002, f. & cert. ef. 12-9-02 (Order No. 02-787); PUC 18-2004, f. & cert. ef. 12-30-04 (Order No. 04-753); Renumbered from 860-032-0610, PUC 5-2016, f. & cert. ef. 11-22-16 (Order No. 16-449); PUC 7-2017, f. & cert. ef. 10-6-17 (Order No. 17-366)

860-100-0105

Identification Worksheet

(1) A telecommunications provider must complete and file an initial identification worksheet with the OUS Administrator within 30 calendar days of notification by the OUS Administrator that the identification worksheet is due.

(2) A telecommunications provider must complete and file a corrected identification worksheet with the OUS Administrator within 30 calendar days of any change to its business name, organization structure, mailing address, contact person or certifying officer.

(3) A telecommunications provider must complete and file an identification worksheet on an annual basis with the OUS Administrator. A provider must file its annual identification worksheet by February 10th each calendar year.

(4) A telecommunications provider must identify the method it uses to determine the jurisdictional split of revenues attributable to the OUS Fund in each identification worksheet.

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

Stats. Implemented: ORS 756.040, 759.015 & 759.425

Hist.: PUC 7-2017, f. & cert. ef. 10-6-17 (Order No. 17-366)

860-100-0110

Quarterly OUS Fund Reporting: 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 **willshall** 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 **willshall** 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 ~~will~~**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.

(10) For the purpose of its contribution reports to the OUS Fund, a commercial mobile radio service provider and an interconnected VoIP service provider may use one of the following methods to allocate its revenue from commercial mobile radio service and interconnected VoIP service, but must use the same method for the OUS Fund that it uses for the federal universal service fund assessment for the corresponding time period:

(a) The FCC safe harbor allocation specified in the Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A; or

(b) A traffic study if that traffic study meets the requirements described in the Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, and was filed with the Universal Service Administration Company (USAC) for the corresponding time period; or

(c) Another means of accurately classifying revenues from commercial mobile radio service and interconnected VoIP service between federal and state jurisdictions.

(11) A provider that provides, to multiple locations, shared simultaneous voice channel capacity configured to provide local dial in different states, the revenue subject to the surcharge shall be only the portion of the shared capacity in this state as identified:

(a) By information itemizing, on the billing statements provided to customers, the charges subject to the surcharge, as may be identified by individual end-user location, the total number of end users and the number of end users at each end-user location; or

(b) If information described in (a) of this rule does not exist, by the provider's billing system books and records.

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 (Order No. 02-787); PUC 3-2009, f. & cert. ef. 4-14-09 (Order No. 09-129); PUC 4-2010, f. & cert. ef. 9-10-10 (Order No. 10-351); amended and renumbered PUC 5-2016, f. & cert. ef. 11-22-16 (Order No. 16-449)

860-100-0120

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 ~~will~~**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 ~~will~~**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 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 and was required to do so in order to provide service, the Commission ~~has~~**shall have** an unlimited time to propose an assessment for the time period represented by the non-filed contribution report. The proposed assessment ~~will~~**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 ~~will~~**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 (Order No. 02-787); amended and renumbered PUC 5-2016, f. & cert. ef. 11-22-16 (Order No. 16-449)

860-100-0125

OUS Fund Support Portability

(1) OUS Fund support is portable, on a per line basis for basic telephone service, from a telecommunications utility to a competitive provider that has been designated by the Commission as eligible for support in the same geographic area.

(2) In support areas that are served by both a telecommunications utility and a competitive provider, distributions from the OUS Fund will be shared in the following manner:

(a) For customer lines served by a competitive provider's own loop facilities, the competitive provider may receive the full OUS Fund support amount per line. The support amount per line is available in a document titled "OUS Support Per ILEC Wire

Center” on the Commission’s website, available at:

<http://www.puc.state.or.us/ousf/Pages/index.aspx>, unless modified by a Commission order posted on the same webpage.

(b) For customer lines served by a competitive provider that resells a telecommunication utility’s supported retail service and does not provide service with its own loop facilities, the competitive provider may not receive OUS Fund support.

(c) For customer lines served by UNE loops leased from a telecommunications utility by a competitive provider, the utility and the **competitive** provider may share the OUS Fund support amount per line. The shared support amount per line with amounts allocated to the telecommunications utility and to the competitive provider is available in a document titled “OUS Support Per ILEC Wire Center” on the Commission’s website, available at: <http://www.puc.state.or.us/ousf/Pages/index.aspx>, unless modified by a Commission order posted on the same website.

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

Stats. Implemented: ORS 756.040, 759.015 & 759.425

Hist.: PUC 7-2017, f. & cert. ef. 10-6-17 (Order No. 17-366)

860-100-0130

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 ~~will~~ **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 ~~will~~ **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 **and was required to do so in order to provide service**, the Commission ~~has~~ **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 (Order No. 02-787); renumbered PUC 5-2016, f. & cert. ef. 11-22-16 (Order No. 16-449)

860-100-0140**Notice and Hearing on Proposed Orders and Assessments**

(1) The Commission ~~will~~**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 ~~will~~**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 ~~will~~**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 ~~is~~**shall** not ~~be~~ subject to challenge by the telecommunications provider.

(4) A Commission order deciding the petition ~~becomes~~**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 (Order No. 02-787); amended and renumbered PUC 5-2016, f. & cert. ef. 11-22-16 (Order No. 16-449)

860-100-0150**OUS Record-keeping Requirements**

(1) A telecommunications provider ~~must~~**shall** produce for inspection or audit upon request of the Commission or its authorized representative all records supporting its reports and worksheets required to be filed with the OUS Administrator. The Commission, or its representative, ~~will~~**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 report and worksheet required to be filed with the OUS Administrator 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 (Order No. 02-787); Renumbered from 860-032-0660, PUC 5-2016, f. & cert. ef. 11-22-16 (Order No. 16-449, PUC 7-2017, f. & cert. ef. 10-6-17 (Order No. 17-366)

860-100-0160

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 ~~will~~**shall** be on forms prescribed by the Public Utility Commission.

(a) An application ~~must~~**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 ~~is~~**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 ~~for refund under this rule must~~**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 ~~must~~**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, ~~will~~**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 (Order No. 03-221); renumbered PUC 5-2016, f. & cert. ef. 11-22-16 (Order No. 16-449)

860-100-0200

OUS Fund Support Eligibility

(1) A provider that has been designated by the Commission as eligible to receive support from the OUS Fund in a specific geographic area, may receive a distribution from the OUS Fund, provided that it:

(a) Holds a certificate of authority issued under ORS 759.020;

(b) Offers all supported services included in basic telephone service;

(c) Offers, throughout the provider's designated service area, all supported services included in basic telephone service;

(d) Uses the provider's own facilities, leased UNE facilities, or a combination of its own or leased facilities and resale of another provider's retail services to provide the supported services;

(e) Will use funds distributed from the OUS Fund for investment, construction, operation, maintenance, and repair to ensure that basic telephone service is available at reasonable and affordable rates in areas designated by the Commission for support;

(f) Advertises the supported services included in basic telephone service;

(g) Is certified by the Commission to offer and advertise Oregon Telephone Assistance Program supported services or a Commission-approved alternative plan, along with Tribal Lifeline and Tribal Link Up benefits, in compliance with Oregon Administrative Rules Chapter 860, Division 33;

(h) Has the ability to remain functional during emergencies;

(i) Is committed to and maintains service quality and consumer protection standards as required under OAR 860-023-0055 and OAR 860-034-0390;

(j) Demonstrates that the provision of support is in the public interest; and

(k) Meets all Commission reporting requirements related to OUS Fund contributions and distributions.

(2) To be designated by the Commission as eligible to receive support from the OUS Fund, a competitive provider must petition the Commission for such designation in a specific geographic area and must demonstrate through its petition that the provider can meet the criteria listed in Section 1(a)-(k) of this rule.

(3) A telecommunications provider ~~is shall~~ not ~~be~~ eligible to receive an OUS Fund distribution following the Commission's issuance of an order with an outstanding fee assessment for failing to comply with the conditions of its Certificate of Authority, until the terms of the order are satisfied.

(4) A telecommunications provider ~~is shall~~ not ~~be~~ eligible to receive an OUS Fund distribution in any month in which its Certificate of Authority has been cancelled by the Commission.

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

Stats. Implemented: ORS 756.040, 759.015 & 759.425

Hist.: PUC 7-2017, f. & cert. ef. 10-6-17 (Order No. 17-366)