

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

Public Utility Commission	860
Agency and Division	Administrative Rules Chapter Number
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Rules Coordinator	Telephone
Address	

RULE CAPTION

In the Matter of a Rulemaking to Amend Division 016 Rules Governing Interconnection Agreements

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

Hearing Date	Time	Location	Administrative Law Judge
October 27, 2006	9:30 a.m.	Public Utility Commission Main Hearing Room, 1st Floor 550 Capitol Street NE Salem, Oregon	Michael Grant

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Secure approval of new rule numbers (adopted or renumbered) with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND: OAR 860-016-0020, 860-016-0021, 860-016-0025, 860-016-0030

REPEAL:

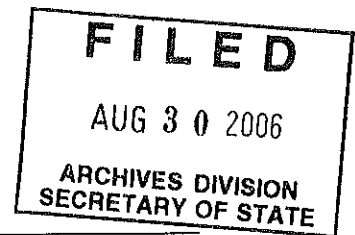
RENUMBER:

AMEND and RENUMBER:

ORS Ch 756	47 USC 252
Stat. Auth:	Other Authority

ORS 756.060; 47 USC 252

Stats. Implemented:



RULE SUMMARY

Currently, Commission rules for processing negotiated interconnection agreements exceed federal law by requiring an opportunity for other carriers to formally comment on the filings. While this process has been successfully used for many years, no other carriers, outside the rare case, file comments. Moreover, while some agreements present novel questions that must be addressed, most are routine in nature.

To help expedite the approval process, the Commission proposes to streamline procedures for routine filings. The primary change would be to eliminate the specific comment period and, if the filing is acceptable, have Staff place the agreement on the consent agenda for approval at a Public Meeting. The Commission also proposes a minor change to the arbitration process to clarify the rights of the parties in arbitration.

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.

October 27, 2006 5:00 p.m.

Last day for Public Comment

Last day to submit written comments to the Commission

Diane Davis

Signature

Diane Davis 8-30-06

Printed Name Date

**Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 p.m. on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday.

ARC 920-2005

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Agency and Division

Public Utility Commission

Administrative Rules Chapter Number

860

In the Matter of a Rulemaking to Amend Division 016 Rules Governing Interconnection Agreements

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

In the Matter of a Rulemaking to Amend Division 016 Rules Governing Interconnection Agreements

Statutory Authority: ORS Ch. 756

Other Authority: 47 USC 252

Stats. Implemented: ORS 756.060; 47 USC 252

Need for the Rule(s):

Currently, Commission rules for processing negotiated interconnection agreements exceed federal law by requiring an opportunity for other carriers to formally comment on the filings. While this process has been successfully used for many years, no other carriers, outside the rare case, file comments. Moreover, while some agreements present novel questions that must be addressed, most are routine in nature.

To help expedite the approval process, the Commission proposes to streamline procedures for routine filings. The primary change would be to eliminate the specific comment period and, if the filing is acceptable, have Staff place the agreement on the consent agenda for approval at a Public Meeting. The Commission also proposes a minor change to the arbitration process to clarify the rights of parties in arbitration.

Documents Relied Upon, and where they are available:

47 USC 252; Administrative rules adopted and made available via the internet by other state agencies governing the approval of negotiated agreements submitted under 47 USC 252

Fiscal and Economic Impact, including Statement of Cost of Compliance.

Telecommunication Carriers seeking to interconnect networks pursuant to 47 USC 252 are impacted by rules governing the Commission's processes used to approve the resulting interconnection agreements. The proposed amendments to these rules have no economic impact on these carriers, however, as the amendments address only internal Commission processes and to do not modify carrier obligations.

It is difficult to estimate what fiscal impact these rule changes will have on the Commission itself. While the Commission might incur some cost savings due to the streamlining of the process, such savings might be offset, in part, by other methods required to approve agreements. Any fiscal impact will be minimal.

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

Telecommunication carriers that routinely file interconnection agreements were consulted on the proposed amendments. Those responding supported the changes.

Administrative Rule Advisory Committee consulted?

No formal Advisory Committee was used in the development of these proposed rules. However, as noted above, telecommunication carriers affected by the rules were consulted and support the amendments.

Information on Need and Fiscal Impact provided by: Michael Grant

<i>Diane Davis</i>	Diane Davis	8-30-06
Authorized Signer	Printed Name	Date

OAR 860-016-0020**Agreements Arrived at through Negotiation**

(1) Upon receiving a request for interconnection, services, or network elements pursuant to Section 251 of the Act, the affected telecommunications carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier.

(2) The negotiating parties may ask a mediator outside the Commission to help them reach agreement. If they request the Commission to mediate, the Commission will use an Administrative Law Judge (ALJ) or a member of the utility Staff to mediate. Only the negotiating parties and the mediator will participate in mediation sessions.

(3) After the parties reach agreement under Section 252(a) of the Act, they must file an application with the Commission seeking approval of the agreement, or for approval of an amendment to an approved agreement on file with the Commission. The application must include an original plus two copies of the negotiated agreement and a completed Carrier-to-Carrier Agreement Checklist. A copy of the checklist is available on the Commission's website. The parties may also include any other supporting information with their application.

(4) The negotiating parties must supplement the filing with an exact copy of the negotiated agreement and checklist in electronic form as required in OAR 860-013-0036. ~~The Commission will provide notice of the application by posting the checklist and the agreement on its Internet website.~~

(5) ~~The public may file written comments within 21 days of the filing date of the application, unless the Commission establishes a different time limit.~~

(6) The Commission will ~~accept~~ **approve** or reject the agreement within 90 days **of filing**, with written findings as to any deficiencies. **Prior to rejecting the agreement, the Commission will notify the negotiating parties of its intended action and provide an opportunity for the carriers to respond.** The grounds for rejection are that the agreement:

(a) Discriminates against a carrier not a party to the agreement; or

(b) Is not consistent with the public interest, convenience, and necessity. Applicable Commission policies will be a factor in public interest, convenience, and necessity determinations.

Stat. Auth.: ORS Ch. 183 & 756

Stats. Implemented: 47 USC 252

Hist.: PUC 8-1998, f. & cert. ef. 4-8-98 (Order No. 98-132); PUC 25-2001, f. & cert. ef. 11-5-01 (Order No. 01-895); PUC 6-2002, f. & cert. ef. 2-13-02 (Order No. 02-069); PUC 12-2004 (Temp), f. & ef. 8-31-04 (Order No. 04-480); PUC 2-2005, f. & ef. 2-11-05 (Order No. 05-087)

OAR 860-016-0021**Wholesale Promotions**

(1) A carrier intending to offer a wholesale promotion that would modify the terms of a Carrier-to-Carrier Agreement must provide the Commission and other telecommunications carriers notice of the promotion at least 30 days prior to the effective date of the promotion. The notice to the Commission must include:

(a) A copy of a form contract, containing the terms and conditions of the promotional offering that would be submitted as an amendment to an existing Carrier-to-Carrier Agreement; and

(b) A description of the means used to notify other telecommunications carriers of the promotion.

(2) The offering carrier must file with the Commission an original plus two copies of the form contract. With the filing, the offering carrier must include a completed Carrier-to-Carrier Agreement Checklist, a copy of which is available on the Commission's Internet website. The carrier must supplement the filing with an exact copy of the contract and checklist in electronic form as required in OAR 860-013-0036. ~~The Commission will post the notice and checklist on its website.~~

(3) ~~The public may file written comments on the form contract within 15 days of the filing date of the notice, unless the Commission establishes a different time limit.~~

(4) The Commission will approve the form contract unless it finds that the contract, if filed as an amendment to an interconnection agreement, would be subject to rejection under OAR 860-016-0020(65).

(54) If another carrier accepts the promotional offering, the offering and accepting carriers must file, within ten days of execution by the parties, an amendment to an existing Carrier-to-Carrier Agreement incorporating the exact terms and conditions of the approved amendment in the form contract. Any such filed amendment will be deemed effective upon the later of the Commission approval of the form contract or execution of the amendment by the parties.

Stat. Auth.: ORS Ch. 183 & ORS 756

Stats. Implemented: 47 USC 252

Hist.: PUC 12-2004 (Temp), f. & ef. 8-31-04 (Order No. 04-480); PUC 2-2005, f. & ef. 2-11-05 (Order No. 05-087)

860-016-0025

Adoption of Previously Approved Agreement or Statement of Generally Available Terms

(1) If a requesting telecommunications carrier decides to adopt an identical agreement or an identical individual arrangement contained in an agreement, pursuant to Section 252(i) of the Act and 47 CFR Section 51.809, with the exception of the adopting party's name and new effective date, previously approved by and on file with the Commission, or a Statement of Generally Available Terms approved by the Commission under OAR 860-016-0040, it shall file notice of the adoption with the Commission. The notice shall include a completed Carrier-to-Carrier Agreement Checklist.

(2) The requesting carrier shall also submit a copy of the checklist in electronic format compatible with Adobe Acrobat Reader or Rich Text Format. ~~The Commission may provide notice of the adoption by posting the checklist on its Internet website.~~

(3) If the notice is filed jointly with the affected telecommunications carrier, the adoption shall become effective on the date filed.

(4) If the notice is filed unilaterally by the requesting telecommunications carrier, the requesting telecommunications carrier shall simultaneously provide notice of the adoption to the affected carrier. The affected carrier may then file objections to the adoption within 21 calendar days of such notice. If no objections are filed, the adoption shall become effective on the 22nd day after filing.

(5) An affected carrier may object to an adoption on the following grounds:

(a) The costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement;

(b) The provision of a particular interconnection, service, or element to the requesting carrier is not technically feasible;

(c) There is new federal or state law that requires modification of the agreement proposed to be adopted;

(d) The agreement proposed to be adopted has expired or been cancelled; or

(e) The proposed adoption is unlawful.

(6) If the affected carrier files objections, the requesting carrier may file a reply within 14 calendar days after the objections are filed. An assigned Administrative Law Judge (ALJ) shall schedule a conference within five business days after the reply is filed, to be held as soon thereafter as practicable. At the conference, the ALJ shall determine whether the issues raised by the affected carrier's objection can be resolved based on the pleadings and all supporting documentation, or whether further proceedings are necessary. If further proceedings are necessary, the ALJ shall establish a schedule for resolving the dispute on an expedited basis. Pending resolution of the dispute, other provisions of the proposed adoption not contested by the affected carrier will become effective.

Stat. Auth.: ORS Ch. 756

Stat. Implemented: 47 USC 252

Hist.: PUC 25-2001, f. & ef. 11-5-01 (Order No. 01-895); PUC 6-2002, f. & ef. 2-13-02 (Order No. 02-069)

860-016-0030

Arbitration of Disputes

(1) Negotiating parties may engage the services of an outside arbitrator rather than file a petition with the Commission. If the negotiating parties petition the Commission to arbitrate their dispute, the Commission will use an ALJ as arbitrator unless workload constraints necessitate the use of an outside arbitrator.

(2) A petition for arbitration must contain:

(a) A statement of all unresolved issues;

(b) A description of each party's position on the unresolved issues;

- (c) A proposed agreement addressing all issues, including those on which the parties have reached agreement and those that are in dispute. Wherever possible, the petitioner should rely on the fundamental organization of clauses and subjects contained in an agreement previously approved by the Commission;
- (d) Documentation showing that the request complies with the time requirements of the Act.
- (3) Respondent may file a response within 25 days of the request for arbitration. In the response, the respondent shall address each issue listed in the request, describe the respondent's position on those issues, and identify and present any additional issues for which the respondent seeks resolution.
- (4) The arbitration will be conducted in a manner similar to a contested case proceeding, and the arbitrator will have the same authority to conduct the arbitration process as an ALJ has in conducting hearings under the Commission's rules. However, the arbitration process will be streamlined to meet the Act's timelines. An early conference will be held to discuss processing of the case, and to receive the proposal put forth by each party. The arbitrator will establish the schedule, and decide whether an oral hearing would be helpful. After the oral hearing or other procedures (for example, rounds of comments), each party will submit its "final offer" proposed agreement. The arbitrator will choose between the two final offers. However, if neither offer is consistent with the Act and Commission policies, the arbitrator will make an award that meets those requirements.
- (5) Formal discovery procedures will be allowed only to the extent deemed necessary by the arbitrator. Parties will be required to cooperate in good faith in voluntary, prompt, and informal exchanges of information relevant to the matter. Unresolved discovery disputes will be resolved by the arbitrator upon request of a party. The arbitrator will order a party to provide information if he/she determines the requesting party has a reasonable need for the requested information and that the request is not overly burdensome.
- (6) Only the two negotiating parties will have full party status. The arbitrator may confer with Staff for assistance throughout the arbitration process. If Staff assistance is desired, the arbitrator will notify (by telephone or other means) the parties at least 24 hours before the consultation with Staff. The parties may attend or listen to the consultation and may respond in a manner allowed by the arbitrator.
- (7) To keep the process moving forward, appeals to the Commission will not be allowed during the arbitration process. An arbitrator may certify a question to the Commission if deemed necessary.
- (8) To accommodate the need for flexibility, the arbitrator may use procedures that vary from those set out here if he/she deems it helpful in a particular arbitration, as long as the procedures are fair, treat the parties equitably, and substantially comply with the procedures listed here.
- (9) Each arbitration award must:
- Ensure that the requirements of sections 251 and 252 of the Act and any valid applicable Federal Communications Commission regulations under that section are met;
 - Establish interconnection and network element prices consistent with the Act;
 - Establish a schedule for implementation of the agreement; and
 - Be consistent with Commission policies.
- (10) After an arbitration award is submitted to the Commission, notice will be served on those who have indicated a desire to receive notice of mediated and arbitrated agreements. Any person may then file comments within 10 days of service of the award.
- (11) The Commission will accept or reject an arbitration award within 30 days.
- (12) Within 14 days after the Commission issues its arbitration decision, petitioner **shall** must prepare an interconnection agreement complying with the terms of the arbitration decision and serve it on respondent. Respondent shall either sign and file the agreement, or file objections to it, within 10 days of service of it. If objections are filed, ~~they~~ respondent shall state how the agreement fails to comply with the arbitration decision, and offer substitute language complying with the decision. The Commission will approve or reject a filed interconnection agreement within 30 days of its filing, or the agreement will be deemed approved. **If petitioner fails to timely prepare and serve an interconnection agreement on respondent, respondent may file a motion requesting the Commission dismiss the petition for arbitration with prejudice.**

Stat. Auth.: ORS Ch. 756

Stat. Implemented: 47 USC 252

Hist.: PUC 8-1998, f. & cert. ef. 4-8-98 (Order No. 98-132)