

ORDER NO. 00-265

ENTERED MAY 19 2000

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 368

In the Matter of a Rulemaking to Define)
Basic Telephone Service as Required by)
Chapter 1093, Laws of 1999 (SB 622).) ORDER

DISPOSITION: RULE ADOPTED

On October 18, 1999, the Public Utility Commission of Oregon opened a rulemaking proceeding to define the term “basic telephone service.” Notice of the rulemaking and a statement of fiscal impact were filed with the Oregon Secretary of State in November 1999. Notice of the rulemaking was published in the Oregon Bulletin on December 1, 1999.

Staff of the Public Utility Commission conducted a workshop on January 5, 2000, at the Commission’s offices. Written comments were filed by January 21, 2000. On February 9, 2000, a public comment hearing was held in Salem, Oregon. Final written statements were filed until February 22, 2000.

Background

On September 1, 1999, Chapter 1093, Laws of 1999 (Senate Bill 622; called SB 622 or Bill in this order) became effective. SB 622 employs the term “basic telephone service,” a term not presently defined in the Commission’s Administrative Rules. Section 23(1) of SB 622 states that basic telephone service is “local exchange telecommunications service defined as basic by rule of the Public Utility Commission.” The purpose of this proceeding is to develop a definition of basic services to be used to implement SB 622.

The term “basic telephone service” is employed in two different contexts in SB 622. First, the Bill requires the Commission to set the prices for basic services charged by telecommunications utilities, whether the telecommunications utility is operating under the alternative form of regulation allowed under Section 25 or remains

under traditional rate of return regulation. Specifically, Section 25(3) states that the price a telecommunications utility electing to participate in the alternative form of regulation may charge for basic telephone service, “shall be established by the Public Utility Commission under section 28 of this 1999 Act.” Section 28(2)(a) more broadly directs the Commission to “establish the price a telecommunications utility may charge its customers for basic telephone service.” Thus, the prices for basic services are to be set by the Commission for all telecommunications utilities.¹

Second, under SB 622, the Commission’s definition of basic services also will determine what services are supported by the Oregon Universal Service Fund (OUSF). Section 28 of SB 622 requires the Commission to establish a universal service fund to “ensure basic telephone service is available at a reasonable and affordable rate.” The universal service fund will provide explicit support for the provision of basic telephone service where the cost of providing basic telephone service exceeds a Commission-established benchmark. The definition of basic services developed by the Commission will therefore determine the services supported by the fund and have a major impact on the size of the fund.

Staff’s Proposal as Modified

Based upon information offered at the workshops and in the written comments filed by interested persons, Staff modified its original proposed rules in several ways. Staff’s modified proposal is set out below:

860-032-0260 Definition of Basic Telephone Service

(1) Purpose of rule. This rule defines the term “basic telephone service” pursuant to Ch. 1093, Laws of 1999 (SB 622), Section 23(1), as the term is used in Ch. 1093, Laws of 1999 (SB 622), Sections 23 through 38.

(2) “Basic telephone service” means retail telecommunications service that is single party, has voice grade or equivalent transmission parameters and tone-dialing capability, provides local exchange calling, and gives customers access to but does not include:

- (a) Extended area service (EAS);
- (b) Long distance services;
- (c) Relay services for the hearing and speech impaired;
- (d) Operator services such as call completion assistance, special billing arrangements, service and trouble assistance, and billing inquiry;
- (e) Directory assistance; and
- (f) Emergency 9-1-1 services, including E-9-1-1 where available.

¹ Utilities with fewer than 50,000 lines are specifically exempt from this provision.

(3) The following are classified as basic telephone service, whether sold separately or in a package:

- (a) Residential single party flat rate local exchange service, ~~commonly known as “R-1” service~~;
- (b) Business single party flat rate local exchange service, ~~commonly~~ also known as “B-1” or “simple” business service;
- (c) Residential single party measured local exchange service, including local exchange usage;
- (d) Business single party measured local exchange service, including local exchange usage;
- (e) Private branch exchange (PBX) trunk service;
- (f) Multiline or “complex” business service; and
- (g) Public access line (PAL) service.

(4) Services that are not considered basic telephone service include, but are not limited to, the following:

- (a) Integrated Services Digital Network (ISDN) service;
- (b) Digital subscriber line service, also known as xDSL service;
- (c) Frame relay service;
- (d) Centrex type service;
- (e) Private line, or dedicated point-to-point service;
- (f) Packet switched service;
- (g) Foreign exchange service;
- (h) Multiparty service, such as two-party and four-party suburban service;
- (i) Custom calling features, such as call waiting and caller ID; ~~and~~
- (j) ~~Any package of services, including any package which contains a service which is classified as basic telephone service when offered separately. A package is a combination of two or more services presented for sale as a single offering, with distinctive prices, terms, and conditions for the combination.~~

Relationship to UM 731

Staff's proposed rule relies to some extent on the Commission's decisions in UM 731, the docket in which issues relating to universal service are under consideration. In Order No. 95-1103 in UM 731, the Commission adopted a definition of basic telephone service that includes the following capabilities: “Affordable switched access to the network, consisting of single-party, voice grade service with touch-tone capability. A customer would have access to local calling, including extended area service (EAS), and to ancillary services (e.g., operator services, 911). Toll blocking would be available at no cost for low-income customers.” (at 1).

Issues

The participants commented on several issues. Some were ultimately resolved by Staff's modification of its original proposal. Others remain contested. Below is a discussion and Commission disposition on the issues.

1. The Definition of Basic Telephone Service

MCI WorldCom (MCIW) Position. MCIW argues that Staff's definition, which would include what MCIW labels as discretionary services and business services, is far too broad. It asserts that the definition should include only a "primary residential line." At the hearing it noted that this phrase means "one residential line." According to MCIW, Staff's definition is outside the scope of the definition of universal service set out in the Telecommunications Act of 1996 (the Act), which limits coverage to services which are essential to education, public health, or public safety. Those needs can be met by USF support for one line, which can provide access to affordable service for all USF purposes. MCIW also argues that the definition should be limited to services which are purchased by a substantial majority of residential customers. MCIW points out that the Commission, in Order No. 98-094, appeared to adopt criteria that mirror the provisions in the Act.²

MCIW also notes that the FCC has emphasized "ability to pay" in defining the scope of universal service support. MCIW claims that ability to pay has little relevance to business lines because the cost of the lines is a business expense. It also notes that in the vast majority of instances current prices for business lines more than cover the relevant costs, thus removing any need for subsidization.

Staff's broad definition, according to MCIW, will add over \$11 million to the OUSF. This fund, MCIW notes, comes from a surcharge on non-subsidized services, some of which are paid for by people living on lower incomes. The effective price of these other services is thus raised above cost, inefficiently deterring competition.

MCIW notes that one possible argument for a broad definition of basic services is that under SB 622 the definition is to be used not only to determine the scope of universal service but also to determine which services are subject to full price regulation. MCIW argues, nevertheless, that consumers will be adequately protected if full price regulation is limited to primary residential lines. It points out that even under an alternative form of regulation, regulated services other than basic services are subject to significant price regulation by Sections 3 and 4 of SB 622, which set a price cap and price floor for such services. These caps and floors, MCIW asserts, will provide customers with reasonable protections even if the definition of basic services is limited to primary residential lines.

² Order No. 98-094 (UM 731) at 7.

TRACER Position. Telecommunications Ratepayers Association for Cost-based and Equitable Rates (TRACER) shares MCIW's concern about the breadth of the definition. It argues that the Commission should use caution in defining the scope of the USF because of the impact of the subsidy on users, particularly large users. It notes that the definition of "high-cost" areas has yet to be developed. TRACER points out that the inclusion of more than one line in the definition is not necessary to accomplish the purpose of the universal service subsidy: protection of health and safety. It also points out that inclusion of business lines could result in businesses in lower cost areas subsidizing the costs of competitors in high-cost areas.

TRACER notes that one argument against a narrow rule is that it may be difficult to determine what a primary residential line is. TRACER argues, however, that appropriate coding could differentiate a subsidized line from those not subsidized. It also notes the potential problems of arbitrage and rate shock if only one line is subsidized, but argues that a gradual approach to creation of the subsidy and variations in average costing methodology can ameliorate those problems.

AARP Position. AARP argues that Staff's proposed definition is too narrow. It asks that additional services be included, such as the usage of (as well as access to) the following: operator services, directory assistance, call trace and blocking of 900-type service, and telecommunications relay service for the hearing impaired. It also requests that the definition include equal access to advanced switching technology, annual local directories, and unlimited calling to local government offices, schools, and other essential service entities where such calls are between exchanges.

OTA Small Company Committee Position. The OTA Small Company Committee urges the Commission to adopt as the definition of basic services the FCC definition of "core services" which are to be supported by federal universal service mechanisms.³ Adoption of the federal list would provide consistency between state and federal jurisdictions. If the two definitions are inconsistent, Oregon carriers eligible for federal support might be required to track separate line counts for both jurisdictions, creating confusion and inaccuracies. Moreover, OTA points out, anything in the Oregon definition that goes beyond the federal definition must be supported entirely by the OUSF. OTA asks that the Commission regularly review its definition of basic services.

AT&T Position. AT&T urges the Commission to use caution at this point and to avoid over-inclusion of services in the definition of basic services. It notes that once a service is subsidized, it is difficult to eliminate the subsidy. It also questions whether residential customers will react favorably to subsidizing businesses, particularly large ones which might use multi-line services.

³ 47 C. F. R. 54.101.

Staff Position. Staff acknowledges the tension created by the dual use of the definition of basic services. It also acknowledges that the definition it is proposing will result in a larger universal service fund than would the narrow definition proposed by MCIW and others. It estimates that its definition will increase the size of the fund by about 25 percent over what it would be if it included only one residential line. It argues, however, that its definition strikes a reasonable balance between the degree of regulation needed and the size of the universal service fund. It notes that if only one primary residential line is included in the definition, consumers who want additional lines for internet connections or other uses will not be protected.⁴ In fact, Staff argues, the price floor requirement in SB 622 would probably force the price for additional residential lines upward.

Staff argues that its definition is not in conflict with SB 622. It points out that the bill leaves the definition up to the Commission and does not contain any language prescribing a narrow definition. It points out the difficulty in defining what a “primary” line is. Staff also points out that under current practice, all lines that are not residential are by definition “business” lines. Excluding “business” lines from the definition would thus exclude not only lines used by for-profit enterprises but also lines used by churches, schools, non-profit organizations, and government agencies, entities which might not be able to afford significant increases.

Staff believes its definition is not in conflict with the FCC definition. It is, however, tailored to SB 622 and to the specific circumstances existing in Oregon. For example, SB 622 specifically excludes EAS from basic services and the Commission’s definition must mirror that requirement.

Commission Disposition

The Commission concludes that Staff’s proposed definition of basic services is appropriate. SB 622 is a complex enactment designed to further the interests of Oregon consumers in several ways. On the one hand, it moves toward reduced regulation by providing for an alternative form of regulation which permits pricing flexibility for some telecommunications services. On the other hand, it seeks to guarantee that the availability of basic services is not threatened by the reduction in regulation. To that end, SB 622 protects all consumers by requiring the Commission to set the prices for basic services for everyone, and it especially protects those in high-cost areas by creating a subsidy for those basic services. The definition of basic services thus must establish what services are so vital that they should be afforded this complex protection. Of course, the protection we implement in this order must not be so broad that it conflicts with the reduction in regulation mandated in SB 622 or places an unreasonable financial burden on those who subsidize the OUSF.

⁴ Staff removed the reference to “R-1” service in its proposed rule to make clear that it does not intend that the definition include only one line.

We believe Staff's definition protects the reasonable minimum of services necessary to attain the goals set out in SB 622. The importance of telecommunications services in the lives of citizens nowadays necessitates protection for more than the bare bones service permitted by one residential line. It has become common for consumers to use more than one line for various important purposes, including internet usage. It is reasonable to protect that interest. We also agree with Staff's inclusion of "business" lines. The "business" designation is so broad that eliminating it from the definition would impact the availability of telecommunications services to many entities which clearly need protection. Moreover, there is nothing in SB 622 that would suggest that businesses, in either the narrow sense of the term or the broader usage relevant to telecommunications services, should be excluded from the protections offered by the law.

We do not believe that the definition proffered by Staff and adopted by the Commission in this order will result in unreasonable costs to those paying for the OUSF subsidy. Obviously, the size of the fund will be determined to a significant degree by the breadth of the definition. But that fact does not mean we should adopt the unreasonably narrow "one residential line" definition proposed by some parties. The cost of the OUSF will be spread among most of the population of the State. We find arguments that it will work a hardship on the consumers who will pay for the subsidy or create unacceptable economic distortions, as asserted by some of the participants in this proceeding, to be unpersuasive.

We believe Staff's definition is consistent with SB 622, contrary to claims made by some parties. We also believe it is generally consistent with FCC usage. Whatever inconsistencies there may be will not have a serious negative impact on any carriers or on the general public.

2. Centrex Service and PBX Service

Staff's proposed rule specifically includes private branch exchange (PBX) in its list of basic services and specifically excludes Centrex-type services from the definition. USWC argues that the two services should both be excluded from the definition. It notes that users of PBX are likely to be large entities and that the provisioning PBX is complex. It also asserts that PBX and Centrex, and other services as well, are functionally equivalent and substitutable. The decision as to which to purchase should not be determined by the existence of a subsidy. It also argues that the inclusion of flat and measured business rate service, as Staff proposes, will be sufficient to provide rate protection and subsidy for businesses. GTE and OTA argue that both PBX and Centrex-type services should be included in the definition. GTE asserts that, since Centrex-type services are implicitly supported now in high-cost areas, exclusion of them from the definition could lead to the withdrawal of those services in some areas. OTA notes that in some areas up to 15 percent of working groups use Centrex. Without the subsidy of the USF, prices of Centrex might go so high that some of these entities could no longer afford the service.

Staff Position. Staff agrees that some of the customers of PBX are large. It also acknowledges that PBX, Centrex, and other services may be substitutable. It argues, however, that the USF fund should support one service that businesses in high-cost areas can use for their more complex needs. Inclusion of other similar services is unnecessary and would increase the size of the subsidy. It would also subject these additional services to rate regulation and would thus be at odds with the intent of SB 622. Staff also points out that PBX services are used by non-profit entities whose interests should be protected by a subsidy.

Commission Disposition

Staff's proposal to include PBX in the definition of basic services and to exclude Centrex is adopted. We can understand the consternation of some parties on this point. However, we believe it is consistent with SB 622 to include a service in the subsidy, such as PBX, that will benefit many businesses and other organizations in the high-cost areas by providing them with an efficient telecommunications service. On the other hand, we agree with Staff that it is not consonant with the bill to add other, though similar, services simply because they are similar. Doing so would increase the cost of the subsidy and subject more services to full rate regulation. We conclude that Staff has made the best choice in a situation where no decision would go unquestioned.

3. Packages of Services

Staff's original proposal excluded from the definition of basic services "packages" of services, "including any package which contains a service which is classified as basic telephone service when offered separately." Several participants objected to this exclusion, and at the hearing Staff presented a modified proposal which allowed basic services to be classified as basic services "whether sold separately or in a package."

Staff changed its position after concluding that a basic service will retain its character as a basic service even if included in a package. Its price will thus be set by the Commission and its costs will be supported by the OUSF. When a basic service is included in a package, the determination as to whether the package price is within the ceiling and floor established by SB 622 will assume that the price for the basic service is the price that has been set by the Commission. All participants except MCIW agreed with this change.

MCIW Position. MCIW views packaging as essentially a new service which should be subject to competition. Innovation and development of products, including various types of packaging, will flourish if competition is allowed. MCIW also

avers that inclusion of supported services in packages will create the potential for cross-subsidization of the other, competitive, services that are included in the packages.

Commission Disposition

The Commission concludes that Staff's final version of the rule is sound as to packaging. We agree with Staff's description of how such packages will be treated if they contain a basic service. We do not think it likely that the rule will thwart the innovation promised by competition or lead to cross-subsidization.

4. EAS Access

In response to comments by OTA, Staff has explained that Subsection (2)(a) of the rule, which includes in the definition of basic services access to EAS, but not the service itself, will require access to that service only where it is offered. The Commission believes the rule is clear.

5. The Single Party Requirement

The proposed rule specifically limits the definition of basic residential and business service to single party service. OTA objects to the exclusion of multi-party service. The Commission notes, as Staff points out, that the FCC definition is limited to single party service. We also agree with Staff that multi-party service is more or less a thing of the past and that whatever is left will be eliminated soon. We adopt Staff's proposal on this issue.

6. The List of Non-Basic Services

OTA objects to Subsection (4) of the proposed rule, which lists examples of services which are not basic services. The Commission agrees with Staff that such a list cannot but be helpful to those having an interest in the matter. The inclusion of certain services in this list will make their status clear. In addition, their example may be informative to a company contemplating whether a service not mentioned in the rule will be considered a basic service or a non-basic service.

7. Review of the Rule

In response to a comment by OTA, Staff noted that the rule will be reviewed as necessary. We agree and conclude that there is no need to mention the review in the rule.

ORDER

IT IS ORDERED that the rule attached to and made part of this order as Appendix A is adopted.

The rule will become effective upon filing with the Secretary of State.

Made, entered, and effective _____.

BY THE COMMISSION:

Vikie Bailey-Goggins
Commission Secretary

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

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- (e) Private line or dedicated point-to-point service;
- (f) Packet switched service;
- (g) Foreign exchange service;
- (h) Multiparty service, such as two-party and four-party suburban service; and
- (i) Custom calling features, such as call waiting and caller ID.

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

Stats. Implemented: ORS 759.005 & 759.400

Hist: NEW