

ORDER NO. 01-140

ENTERED JAN 29 2001

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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 731

In the Matter of the Investigation of)
Universal Service in the State of Oregon.) ORDER

DISPOSITION: PETITION FOR STAY DENIED

On June 16, 2000, we issued Order No. 00-312 that resolved the last of the remaining disputed issues to be decided in this docket. Then, on October 9, 2000, we issued Order No. 00-638 denying applications for reconsideration of Order No. 00-312. On December 8, 2000, AT&T Communications of the Pacific Northwest, Inc. (AT&T) filed a Petition for Stay of Order No. 00-312. AT&T has filed judicial actions in Oregon and in federal court on the issue of whether the universal service charge should be imposed statewide or only on intrastate telecommunications services. On December 22, 2000, our Staff filed a response to AT&T's petition and on December 29, 2001, Qwest Corporation filed a response. On January 5, 2001, AT&T filed a Reply to Qwest's and Staff's responses.

AT&T cites OAR 860-014-0093 as authorizing the Commission to stay one of its orders. That rule is entitled "Extension of Date to Comply With Rules and Orders" and gives a party 60 days to file a petition "for extension of an effective date or of time to comply with a rule or an order of the Commission." AT&T's petition to stay Order No. 00-312 was filed long after 60 days from June 16, 2000. It also isn't clear that the rule cited by AT&T is appropriate for a request to stay an order while the petitioner appeals an issue addressed in the order. However, we will not dismiss the petition on that basis and will briefly discuss once again the issue raised.

AT&T asks us to stay Order No. 00-312 while AT&T's judicial actions are processed. That could be a long time, perhaps several years. We have noted in our previous orders in this docket that ORS 759.425 directed us to establish and implement a universal service fund by September 1, 2000.

The issue AT&T raises in its petition -- that revenues only from strictly intrastate services should fund the Oregon Universal Service Program -- was addressed at some length and considered during the extensive proceedings that culminated in Order

No. 00-312. The issue was again seriously considered and addressed in our Order on Reconsideration, Order No. 00-638. We are not persuaded by AT&T's petition to change our minds and impose the universal service charge on only intrastate telecommunications in Oregon.

Staff suggests that we look at the Attorney General's Model Rules of Procedure on the issue of whether a stay should be granted. The Model Rules are not binding on us on this issue, but provide another point of reference. The Model Rules require a party seeking a stay to show that irreparable injury will occur to the petitioner if the order is not stayed and that there is a colorable claim of error in the order. If the agency finds in petitioner's favor on those two issues, the agency will grant the stay unless the agency determines that substantial public harm will result if the order is stayed.

In what could be considered an argument to show irreparable harm, AT&T argues that if it prevails in its judicial actions and we do not stay Order No. 00-312, there will be a large administrative burden on the Commission and telecommunications carriers to restructure the program and recalculate contributions.¹ We agree that it would be a significant burden. But the same can be said if we stay Order No. 00-312 and AT&T does not prevail in getting our decision on the intrastate/interstate issue reversed and a court holds that the fund should have been based on all telecommunications revenues (intrastate and interstate) sold in Oregon. Recalculating the basis for the fund would not cause irreparable harm to AT&T or any other party. The fact that it might be a tedious process does not rise to the level of irreparable harm.

AT&T argues that Order No. 00-312 puts it at a competitive disadvantage because it pays interstate charges to other jurisdictions. We reiterate that the universal service charge in Oregon is on all carriers selling telecommunications in Oregon. The fact that some carriers have more interstate traffic than others does not make the uniform charge discriminatory or unfair.

Funding the Universal Service Program from both intrastate and interstate revenues does not cause irreparable harm to AT&T or any other carrier. We also continue to disagree with AT&T's argument that we are misconstruing ORS 759.425, or are violating other state or federal statutes. We are convinced that the Universal Service Program should be funded from both intrastate and interstate revenues as a policy matter and conclude that we are correctly following the statutory mandates.

¹ That would be true only if it is assumed the decision would have retroactive effect. A going-forward decision would not require recalculation of past amounts paid.

ORDER

IT IS ORDERED that the Petition for Stay of Order No. 00-312 is denied.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may appeal this order to a court pursuant to applicable law.

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