

This is an electronic copy. Attachments may not appear.
BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

CP 906
CP 523

In the Matter of the Application of CITY OF)
ASHLAND, OREGON, dba ASHLAND)
FIBER NETWORK, for a Certificate of) ORDER
Authority to Provide Telecommunications)
Service in Oregon and Classification as a)
Competitive Provider.)

DISPOSITION: CP 906 APPLICATION GRANTED;
CP 523 AUTHORITY CANCELED.

Note: By issuing this certificate, the Commission makes no endorsement or certification regarding the certificate holder's rates or service.

The Application

On January 5, 2001, City of Ashland, Oregon, dba Ashland Fiber Network (Applicant or Ashland), filed with the Commission an application for certification to provide telecommunications service in Oregon as a competitive provider. The City of Ashland (City) is a municipality in Oregon. Applicant seeks authority to provide intraexchange (local exchange) switched service (i.e., local dial tone), and non-switched, private line (dedicated transmission service) within all exchanges of the telecommunications utility listed in Appendix A to this order. Applicant also seeks to provide interexchange telecommunications service statewide in Oregon.

Applicant proposes to provide intraexchange (local exchange) switched service (i.e., local dial tone), and non-switched, private line service (dedicated transmission service) within all exchanges of the telecommunications utility listed in Appendix A to this order. Applicant will operate as a reseller as well as a facilities-based provider of local exchange service. Applicant may also purchase unbundled network elements (building blocks), as well as finished services for resale, from other certified carriers.

Applicant also proposes to provide interexchange switched service (toll) and private line service (dedicated transmission service) statewide in Oregon. Applicant will operate as a reseller and as a facilities-based provider of interexchange telecommunications service. Applicant may also purchase unbundled network elements (building blocks), as well as finished services for resale, from other certified carriers.

Operator services are part of switched telecommunications service. Applicant will not directly provide operator services as defined in OAR 860-032-0001. Applicant will not be an “operator service provider” as defined in ORS 759.690(1)(d). Commission rule OAR 860-032-0007 and Oregon statute ORS 759.690 establish conditions regarding provision of operator services.

The Commission served notice of the application on the Commission’s telecommunications mailing list on January 12, 2001. On February 1, 2001, the Commission received a protest from AT&T Communications of the Pacific Northwest, Inc., and AT&T Local Services on behalf of TCG Oregon (AT&T/TCG). There were no other protests or requests for party status filed.

On February 12, 2001, an Administrative Law Judge (ALJ) with the Commission issued a ruling granting the protest by AT&T/TCG. The ruling also requested comments and proposals for processing the application. Staff filed comments, along with a proposed schedule on February 27, 2001. Ashland and AT&T/TCG filed comments on February 28, 2001. Ashland and AT&T/TCG did not object to Staff’s proposed schedule. On March 2, 2001, the ALJ issued a ruling adopting Staff’s proposed schedule. On March 9, 2001, the Commission Staff distributed a proposed order for review by the parties. No exceptions to the proposed order were filed.

AT&T/TCG broadly stated in its protest that there is a danger that Ashland will “utilize its authority in a manner that will unfairly thwart competition.” The protest asserts that there should be “numerous safeguards” in place before the Commission approves the Ashland application.

This application is similar to a previously approved application submitted by the City of Ashland. *See* Order No. 98-545 in docket CP 523. In that docket, Qwest Corporation (Qwest), formerly U S WEST Communications, Inc., raised issues similar to the ones AT&T/TGC raise here. Another similar application is in the final order phase of processing. That application is from City of Eugene by and through the Eugene Water and Electric Board (EWEB), docketed CP 876. AT&T/TCG raised the same issues in the EWEB case as they raise here.

In Order No. 98-545 we concluded:

“Municipalities have the right to provide utility services and should not have to contend with potentially onerous conditions because of their status as cities. It is not our duty to instruct Ashland in how to operate a telecommunications service absent any showing of discriminatory or unreasonable conduct in the way utility service is operated. Nor do we want to attempt to restrict the source of funds Ashland may use to operate a telecommunications system. We are particularly uninterested in granting certificates of authority or imposing restrictive conditions based on allegations about the amount of resources available to an applicant. Our goal is to treat all those we regulate fairly and to treat similarly situated groups equally.”

We reach the same conclusion with respect to the current application by Ashland. We decline to impose additional “safeguards” or conditions on Ashland simply because Applicant is a municipality.

Applicant, City of Ashland, Oregon, currently has authority to provide local exchange service and interexchange service in two of Qwest’s exchanges. *See* Order No. 98-545, docket CP 523. The current application included all the authority previously granted to Applicant, therefore, with granting this application Order No. 98-545 becomes superfluous. The Commission will cancel the authority granted in Order No. 98-545.

The Commission has reviewed the proposed order and the record in this matter. Based on a preponderance of the evidence, the Commission makes the following:

FINDINGS AND CONCLUSIONS

Applicable Law

Applications to provide telecommunications service and for classification as a competitive telecommunications services provider are filed pursuant to ORS 759.020. ORS 759.020 provides that:

(1) No person [or] corporation * * * shall provide intrastate telecommunications service on a for-hire basis without a certificate of authority issued by the Public Utility Commission under this section.

* * * * *

(5) The commission may classify a successful applicant for a certificate as a telecommunications utility or as a competitive telecommunications services provider. If the commission finds that a successful applicant for a certificate has demonstrated that services it offers are subject to competition or that its customers or those proposed to

become customers have reasonably available alternatives, the commission shall classify the applicant as a competitive telecommunications services provider. * * * For purposes of this section, in determining whether telecommunications services are subject to competition or whether there are reasonably available alternatives, the commission shall consider:

- (a) The extent to which services are available from alternative providers in the relevant market.
- (b) The extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions.
- (c) Existing economic or regulatory barriers to entry.
- (d) Any other factors deemed relevant by the commission.

Applications to provide local exchange (intraexchange) telecommunications service are reviewed pursuant to ORS 759.050, the “competitive zone law.” Under ORS 759.050(2)(a), the Commission may:

Certify one or more persons, including another telecommunications utility, to provide local exchange telecommunications service within the local exchange telecommunications service area of a certified telecommunications utility, if the commission determines that such authorization would be in the public interest. For the purpose of determining whether such authorization would be in the public interest, the commission shall consider:

- (A) The effect on rates for local exchange telecommunications service customers both within and outside the competitive zone.
- (B) The effect on competition in the local exchange telecommunications service area.
- (C) The effect on access by customers to high quality innovative telecommunications service in the local exchange telecommunications service area.
- (D) Any other facts the commission considers relevant.

Under ORS 759.050(2)(b), the Commission shall:

Upon certification of a telecommunications provider under paragraph (a) of this subsection, establish a competitive zone defined by the services to be provided by the telecommunications provider and the geographic area to be served by the telecommunications provider.

Under ORS 759.050(2)(c), the Commission may:

Impose reasonable conditions upon the authority of [the applicant] to provide competitive zone service within the competitive zone * * * at the time of certification of a telecommunications provider, or thereafter.

Subsection (5)(a) of ORS 759.050 provides that:

Unless the commission determines that it is not in the public interest at the time a competitive zone is created, upon designation of a competitive zone, price changes, service variations, and modifications of competitive zone services offered by a telecommunications utility in the zone shall not be subject to ORS 759.180 to ORS 759.190 [notice, hearing and tariff suspension procedures], and at the telecommunications utility's discretion, such changes may be made effective upon filing with the commission.

OAR 860-032-0015(1) authorizes the Commission to suspend or cancel the certificate if the Commission finds that (a) the holder made misrepresentations when it filed the application, or (b) the applicant fails to comply with the terms and conditions of the certificate.

Designation as a Competitive Provider

Applicant has met the requirements for classification as a competitive telecommunications service provider. Applicant's customers or those proposed to become customers have reasonably available alternatives. The incumbent telecommunications utility, listed in Appendix A, provides the same or similar local exchange service in the local service area requested by Applicant. AT&T, WorldCom, Sprint Communications, Qwest, Verizon Northwest, Inc. (Verizon), formerly GTE Northwest Incorporated, and others provide interexchange telecommunications service in the service area requested by Applicant. Subscribers to Applicant's services can buy comparable services at comparable rates from other vendors. Economic and regulatory barriers to entry are relatively low.

Conditions of the Certificate

There are several conditions listed in the application. Oregon Administrative Rules relating to certificates of authority are generally included in OAR chapter 860, division 032. Conditions applicable to certificate holders include, but are not limited to the following: OAR 860-032-0007, 860-032-0008, 860-032-0011, 860-032-0012, 860-032-0013, 860-032-0015, 860-032-0045, 860-032-0060, 860-032-0090, and 860-032-0095. The conditions listed in the application and those contained in Oregon Administrative Rules are adopted and made conditions of this certificate of authority. A condition of this certificate of authority is that Applicant shall comply with applicable laws,

Commission rules, and Commission orders related to provision of telecommunications service in Oregon.

The Commission first applied the competitive zone law, ORS 759.050, in dockets CP 1, CP 14, and CP 15. After full evidentiary hearings and consideration of the public interest criteria set forth in ORS 759.050(2)(a), the Commission designated three competitive providers of switched local exchange services as alternate exchange carriers or competitive local exchange carriers (CLECs) in the Portland metropolitan area. *See* Order No. 96-021. The Commission subsequently applied those findings and conclusions to dockets CP 132, CP 139, and CP 149, and certified two CLECs to provide switched local exchange service in areas located throughout the state.

The Commission takes official notice of the record in dockets CP 1, CP 14, and CP 15.¹ In Order No. 96-021, the Commission established conditions applicable to CLEC certificates. Since Applicant proposes to offer local exchange service, it seeks certification as a CLEC. Pursuant to ORS 759.050(2)(c) and Order No. 96-021, Applicant as a CLEC shall comply with the following conditions:

1. Applicant shall terminate all intrastate traffic originating on the networks of other telecommunications utilities, competitive providers, and cooperative corporations that have been issued a certificate of authority by the Commission.
2. Whenever Applicant terminates intrastate long distance traffic directly or indirectly from interexchange carriers or from its own toll network to its end user customers, Applicant shall contribute to the Oregon Customer Access Fund (OCAF), or its equivalent, in accordance with provisions of the Oregon Customer Access Plan (OCAP) or any successor plan approved by the Commission. Applicant shall contribute using rates approved by the Commission on intrastate terminating carrier common line access minutes, or on any other basis determined by the Commission. Applicant may not participate in (i.e., receive money from) pooling arrangements established under the OCAP or any successor plan unless authorized by the Commission.
3. Applicant shall comply with the Oregon Exchange Carrier Association's (OECA) informational and operational needs as specified by the OCAP or any successor plan approved by the Commission.
4. Applicant shall offer E-911 service. Applicant has primary responsibility to work with the E-911 agencies to make certain that all users of their services have access to the

¹ Under OAR 860-014-0050(2), a party may object to facts noticed within 15 days of notification that official notice has been taken. The objecting party may explain or rebut the noticed facts.

- emergency system. Applicant will deliver or arrange to have delivered to the correct 911 Controlling Office its customers' voice and dialable Automatic Number Identification (ANI) telephone numbers so the lead 911 telecommunications service provider can deliver the 911 call to the correct Public Safety Answering Point (PSAP). Applicant shall work with each 911 district and lead 911 telecommunications service provider to develop database comparison procedures to match Applicant's customer addresses to the 911 district's Master Street Address Guide in order to obtain the correct Emergency Service Number (ESN) for each address. Applicant shall provide the lead 911 telecommunications service provider with daily updates of new customers, moves, and changes with the correct ESN for each.
5. Applicant shall not take any action that impairs the ability of other certified telecommunications utilities, competitive providers, or cooperative corporations to meet service standards specified by the Commission.
 6. At the request of the Commission, Applicant shall conduct and submit to the Commission traffic studies regarding traffic exchanged with telecommunications service providers and other entities designated by the Commission.
 7. For purposes of distinguishing between local and toll calling, applicant shall adhere to local exchange boundaries and Extended Area Service (EAS) routes established by the Commission. Applicant shall not establish an EAS route from a given local exchange beyond the EAS area for that exchange.
 8. When Applicant is assigned one or more NXX codes, Applicant shall limit each of its NXX codes to a single local exchange or rate center, whichever is larger, and shall establish a toll rate center in each exchange or rate center proximate to that established by the telecommunications utility or cooperative corporation serving the exchange or rate center.
 9. Applicant shall comply with universal service requirements as determined by the Commission.
 10. Any obligation regarding interconnection between Applicant and the telecommunications utilities or cooperative corporations listed in the Appendices to this order shall be governed by provisions of the Telecommunications Act of 1996 (the Act), including but not limited to sections 251 and 252 of the Act (47 USC §§ 251 and 252), as well as the applicable rules and regulations of the Federal Communications Commission and this Commission implementing the Act. Order No. 96-021 will govern the interconnection obligations between such parties for the provision of switched local services, unless otherwise addressed by an interconnection agreement or the Commission modifies the principles established in Order No. 96-021.

11. If Applicant provides services to a subscriber who, in turn, resells the services, including operator services, then Applicant and the subscriber must comply with ORS 759.690 and OAR 860-032-0007.
12. Applicant shall pay an annual fee to the Commission pursuant to ORS 756.310, 756.320, and 756.350 and OAR 860-032-0008, 860-032-0080, 860-032-0090, and 860-032-0095. By November 1, of each year, the Commission will set the fee level that is to be based on gross retail intrastate revenues for the following calendar year. The minimum annual fee is \$100. Applicant is required to pay the fee for the preceding calendar year by April 1.
13. Pursuant to Oregon Laws 1987, chapter 290, sections 2-8, and to OAR chapter 860, division 033, Applicant shall be responsible to ensure that the Residential Service Protection Fund surcharge is remitted to the Commission. This surcharge is assessed against each paying retail subscriber at a rate that is set annually by the Commission.

Public Interest

In Order No. 93-1850, docket UM 381, the Commission considered the public interest aspects of local exchange competition for dedicated transmission service. In dockets CP 1, CP 14, and CP 15, Order No. 96-021, the Commission made several public interest findings regarding local exchange competition in general.

With regard to the general factual conclusions relevant to this proceeding, the Commission adopts the Commission's Findings of Fact and Opinion in docket UM 381, Order No. 93-1850, at pages 4-6, and the Commission's Findings and Decisions in dockets CP 1, CP 14, and CP 15, Order No. 96-021 at pages 6 - 21, entered pursuant to ORS 759.050(2)(a)(A) - (C). The Commission takes official notice of the record in dockets UM 381, CP 1, CP 14, and CP 15.²

Based on a review of those findings, as well as information contained in the application, the Commission concludes that it is in the public interest to grant the application of Ashland, to provide local exchange telecommunications service as a competitive telecommunications provider in exchanges of the telecommunications utility listed in Appendix A, as described in the application. Further, it is in the public interest to grant the statewide interexchange authority as described in the application.

² Under OAR 860-014-0050(2), a party may object to facts noticed within 15 days of notification that official notice has been taken. The objecting party may explain or rebut the noticed facts.

This finding will have no bearing on any determination the Commission may be called upon to make under sections 251 or 252 of the Act (47 USC § 251, 252) with regard to the telecommunications utility in this docket.

Competitive Zones

All the exchanges of the telecommunications utility listed in the Appendix to this order are designated competitive zones pursuant to ORS 759.050(2)(b).

Pricing Flexibility

In Order No. 93-1850, docket UM 381, the Commission granted pricing flexibility for dedicated transmission service at the same time the Commission granted the certificate of authority. Therefore, the telecommunications utility listed in Appendix A is granted pricing flexibility for dedicated transmission service in their respective exchanges by this order.

With regard to the general factual conclusions relevant to this proceeding and intraexchange, switched telecommunications service, the Commission adopts the Commission's Findings and Decisions in dockets CP 1, CP 14, and CP 15, Order No. 96-021 at pages 82 and 83, entered pursuant to ORS 759.050(5)(a) to (d). The telecommunications utility listed in Appendix A, will gain pricing flexibility for intraexchange, switched service on an exchange-by-exchange basis under ORS 759.050(5) if:

1. Applicant, or an authorized CLEC, has received a certificate of authority to provide local exchange service;
2. The telecommunications utility files a tariff that satisfies the Commission's requirements regarding the provision of interim number portability, as set forth in Order No. 96-021, and the Commission approves the tariff; and
3. Staff notifies the Commission that a mutual exchange of traffic exists between the telecommunications utility and an authorized CLEC, including but not limited to, Applicant. If Staff previously provided the required notice regarding an exchange, no additional notice is required for that exchange.

(a) As used in paragraph 3 above, "mutual exchange of traffic" means a mutual exchange of traffic between the telecommunications utility and the CLEC within the telecommunications utility's exchange.

(b) As used in paragraph 3 above, for a CLEC who is a reseller (i.e., a CLEC does not use its own lines or switches to provide the particular service at issue), a "mutual exchange of traffic" exists when the CLEC orders and receives one service, at a wholesale rate, from the telecommunications utility for resale pursuant to a certificate granted under ORS 759.050.

Qwest has satisfied requirement No. 2, above. *See* Order No. 96-277, docket UT 130.

ORDER

IT IS ORDERED that:

1. The application of City of Ashland, dba Ashland Fiber Network, to provide intraexchange switched service and non-switched dedicated transmission service, and to provide interexchange switched (toll) and dedicated transmission service, as described in the application, is in the public interest and is granted with conditions described in this order.
2. Applicant is designated as a competitive telecommunications provider for intraexchange service in the local exchanges of the telecommunications utility listed in Appendix A. In addition, Applicant is designated as a competitive telecommunications provider for interexchange service statewide in Oregon.
3. The local exchanges of the telecommunications utility listed in Appendix A are designated as competitive zones.
4. Any obligation regarding interconnection between Applicant and the telecommunications utility listed in Appendix A shall be governed by the provisions of the Telecommunications Act of 1996 (the Act), including but not limited to sections 251 and 252 of the Act (47 USC §§ 251 and 252), as well as the applicable rules and regulations of the Federal Communications Commission and this Commission implementing the Act. Order No. 96-021 will govern the interconnection obligations between such parties for the provision of switched local services, unless otherwise addressed by an interconnection agreement or the Commission modifies the principles established in Order No. 96-021.
5. No finding contained in this order shall have any bearing on any determination the Commission may be called upon to make under sections 251 or 252 of the Act (47 USC § 251 or 252) with regard to the telecommunications utility listed in the appendix to this order.
6. The telecommunications utility listed in Appendix A shall receive pricing flexibility on an exchange-by-exchange basis as set forth in this order.
7. Pursuant to ORS 759.050(2)(c), Applicant shall comply with Commission imposed universal service requirements as a condition of authority to provide local exchange service.

8. The authority granted to City of Ashland, Oregon, by Order No. 98-545, dated December 30, 1998, docket CP 523, is canceled.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

APPENDIX A

CP 906

EXCHANGES ENCOMPASSED BY THE APPLICATION:

ALL EXCHANGES OF THE TELECOMMUNICATIONS
UTILITIES LISTED BELOW

Telecommunications Utilities Not Exempt Pursuant to ORS 759.040

Qwest Corporation, formerly U S WEST Communications, Inc.

Telecommunications Utilities Exempt Pursuant to ORS 759.040

None

