

ORDER NO. 02-626

ENTERED SEP 09 2002

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 440

In the Matter of a Rulemaking)
Proceeding to Amend Oregon) ORDER
Administrative Rule 860-012-0007.)

DISPOSITION: RULE AMENDED

On May 28, 2002, the Public Utility Commission opened a rulemaking proceeding to revise Oregon Administrative Rule 860-012-0007 to allow Commission Staff to represent the Commission in cases involving recovery of telecommunications assistive devices, or the value of the devices, and the cost to repair the devices, and cases on the termination of Oregon Telephone Assistance Program (OTAP) and Telecommunications Devices Access Program (TDAP) benefits.

Notice of the Proposed Rulemaking was filed with the Secretary of State on June 14, 2002, and notice was subsequently provided to all interested persons on the Commission's rule changes list. The notice set out the new rule proposed by Commission Staff, and included a Statement of Need, Statutory Authority, and Fiscal and Economic Impact. The notice was published in the July 2002 *Oregon Bulletin*.

There were no written comments nor was there a request for a public hearing as a result of the notice.

At its public meeting on August 20, 2002, the Commission adopted the proposed amendments as set forth in Appendix A.

ORDER

IT IS ORDERED that Oregon Administrative Rule 860-012-0007, as set forth in Appendix A, is adopted. The rule shall become effective upon filing with the Secretary of State.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

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.

860-012-0007

Representation by Authorized Representative or Agency Officer or Employee

(1) For purposes of this rule, the words listed below shall have the following meanings:

(a) "Authorized representative" means a member of a partnership; an authorized officer or regular employee of a corporation, association, or organized group; or an authorized officer or employee of a governmental authority other than a state agency.

(b) "Commission" means the Public Utility Commission of Oregon.

(c) "Contested case" means a proceeding before the Commission in which a person is provided the opportunity for a hearing which is substantially of the character described in ORS 183.310(2).

(d) "Legal argument" includes argument on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; or

(C) The application of court precedent to the facts of the particular contested case proceeding.

(e) "Legal argument" does not include presentation of evidence, examination, and cross-examination of witnesses, presentation of factual arguments, or argument on:

(A) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

(B) Comparison of prior actions of the agency conducting the proceeding;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case; or

(D) The admissibility of evidence or the correctness of procedures being followed.

(2) Except for the Commission's staff, a party or interested person participating in a contested case hearing before the Commission may be represented by an authorized representative, following a determination that the appearance by an authorized representative will not unreasonably broaden the issues, delay the proceeding, or otherwise hinder the orderly and timely development of the record:

(a) On or before the first appearance by an authorized representative, the Administrative Law Judge (ALJ) must be provided with a letter authorizing the named representative to appear on behalf of a party or interested person; and

(b) The ALJ shall have authority to limit an authorized representative's presentation of evidence, examination, and cross-examination of witnesses, or presentation of factual arguments to ensure the orderly and timely development of the hearing record. The ALJ shall not allow an authorized representative to present legal argument as defined in subsection (1)(d) of this rule.

(3) Public Utility Commission staff may represent the agency in a contested case hearing in the following proceedings:

(a) Actions initiated by the Commission to recover telecommunications assistive devices, or the value of devices which the recipients fail to return, or the

cost of repairing the equipment which the recipient returned in a damaged condition; and

(b) Denial or termination of Oregon Telephone Assistance Program benefits.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 through 756.575

Hist.: PUC 10-1994, f. & ef. 7-21-94 (Order No. 94-1127); PUC 1-1996, f. & ef. 2-21-96 (Order No. 96-043); PUC 15-1997, f. & ef. 11-20-97 (Order No. 97-443) PUC 12-1999, f. & ef. 11-18-99 (Order No. 99-709)