

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 493

In the Matter of a Rulemaking to Amend)
Oregon Administrative Rules 860-023-0000,) ORDER
860-023-0001, and 860-023-0005 and to Adopt)
OAR 860-023-0054 Regarding Retail Service)
Quality Standards for Intrastate Toll Carriers.)

DISPOSITION: OAR 860-023-0000, OAR 860-023-0001, and
OAR 860-023-0005 AMENDED; OAR 860-023-0054
ADOPTED

Procedural History.

At the February 22, 2005, regular public meeting, the Public Utility Commission of Oregon (Commission) initiated this rulemaking proceeding to amend Oregon Administrative Rules (OARs) 860-023-0000, 860-023-0001, and 860-023-0005, and to adopt OAR 860-023-0054. The purpose of the rulemaking is to establish service quality rules for intrastate toll providers consistent with the requirements of ORS 759.020(6).

Notice of the rulemaking and a statement of need and fiscal impact were filed with the Oregon Secretary of State, President of the Senate, and Speaker of the House on March 8, 2005. The rulemaking Notice was published in the Oregon Bulletin on April 1, 2005. The Commission served notice of the rulemaking on an extensive list of telecommunications carriers and other potentially interested persons.

Opening comments were filed on April 21, 2005, by CenturyTel, Oregon Telecommunications Association, Qwest, Sprint Corporation, Verizon Northwest Inc. (hereafter, jointly "the ILECs"), and MCI, Inc. (MCI). Opening comments were also filed by AT&T Communications of the Pacific Northwest, Inc., and TCG Oregon (collectively, "AT&T"). Reply comments were filed on May 20, 2005, by AT&T. PUC Staff (Staff) filed comments on May 17, 2005. A public hearing was held on June 8, 2005, in Salem, Oregon.

The Scope of ORS 759.020(6).

This rulemaking establishes service quality rules for intrastate toll carriers in accordance with the requirements of ORS 759.020(6). That statute provides:

(6) Any provider of intrastate toll service must inform customers of the service level furnished by that provider, according to rules of the commission. The commission, by rule, shall determine the level of intrastate toll service that is standard. Any provider of intrastate toll service must identify the service level the provider plans to furnish in an annual report to the commission. The commission shall revoke the certification of any provider that does not consistently furnish the service level identified in the provider's annual report.

We do not interpret ORS 759.020(6) to mandate that the Commission adopt minimum mandatory, or "default," service quality rules for intrastate toll providers. Rather, the statute requires only that the Commission determine the level of service quality that shall be considered standard for intrastate toll service. A carrier may provide service quality that is less than or greater than the Commission-approved standard; but in either case, it must inform its customers of the service quality it intends to provide consistent with Commission reporting requirements. Each intrastate toll provider must also identify the service level it plans to furnish in its annual report filed with the Commission. Any carrier who does not consistently meet the service quality level identified in its annual report will have its certificate revoked by the Commission. Likewise, any provider that fails to comply with the reporting requirements in ORS 759.020(6) is subject to the imposition of sanctions, including revocation of its certificate.¹

As currently written, the first three sentences of proposed OAR 860-023-0054(3) treat the Commission-approved standard as a "default" standard. Because ORS 759.020(6) does not provide that the Commission establish a mandatory minimum standard, those sentences must be revised.² The revisions clarify that each intrastate toll provider must specify a service level standard in accordance with the requirements of ORS 759.020(6). Thus, an intrastate toll provider may elect to adopt the Commission-approved service standard set forth in Subsection (b) of the rule, or it may choose to provide an alternative standard of service.

¹ See, e.g., OAR 860-032-0015, ORS 759.990(6).

² The reference is to the first three sentences in Subsection (3) immediately following the heading "Blockage Standard."

OAR 860-023-0054(3)(b) – Commission-Approved Standard for Intrastate Toll Service.

Subsection (3)(b) of OAR 860-023-0054 establishes the Commission-approved standard for intrastate toll service. Specifically, it provides that all intraoffice, interoffice, and access trunking and associated switching components must allow completion of 99 percent of all calls made during the normal busy hour without encountering blockage or equipment irregularities. This service standard is known in the telecommunications industry as the “P.01” standard.

Staff observes that the P.01 service level is the historical standard in the telecommunications industry for blocking and circuit performance. There was no objection to adopting the P.01 service level as the Commission-approved standard. We find that the P.01 standard is reasonable and should be adopted.

OAR 860-023-0054(3)(b)(B) – Blockage Standard.

Opening comments filed by the ILECs and MCI recommend changes to the Commission-approved P.01 service level standard to reflect unanticipated increases in calling volumes that have the effect of placing a provider out of compliance with the call blockage standard. These parties observe:

The proposed trunk blocking standard for engineering and maintaining trunk groups is not in dispute by the Telecommunications Providers. However, the way the proposed rule is currently written, each time a trunk group exceeds the current standard of one percent blockage during the average busy season busy hour, the provider is considered to be out of compliance with the standard. Trunk Blockage can be caused by many reasons, some of which are initiated by customers making changes resulting in calling pattern changes. An example of this would be an ISP changing locations and not notifying the provider ahead of time. . . . [t]hese incidents occur without notice to the provider. Each time a trunk group blocks analysis must take place to determine if it is a one time event or if the traffic pattern has changed and augmentation is necessary. Most of the time the cause of the blocking is not known to the provider. If the cause is not known by the provider then monitoring of the trunk group over a period of time must occur and augmentation of the trunk group takes place as necessary. The providers request that Staff consider the providers to be in compliance with the rule if the provider has engineered the trunk group and maintained the trunk group to meet the Commission standard.

In response to these comments, Staff proposes revising the P.01 standard to allow providers four months to monitor and augment a trunk group before they are considered in violation of the blockage standard. The Commission finds that Staff's proposal is a reasonable solution to the concerns raised by the ILECs and MCI regarding unanticipated changes in calling patterns or volumes. Staff's proposed language has been revised to clarify the fact that the Commission-approved standard is not a mandatory minimum, or default, standard. Subsection (3)(b)(B) of proposed rule OAR 860-023-0054 is therefore revised to add the following sentence:

If a final trunk group provisioned by an intrastate toll provider exceeds the blockage standard specified herein for four consecutive months, the trunk group will be considered in violation of this standard.³

OAR 860-023-0054(3)(c) – Reporting Requirement.

Proposed Subsection (3)(c) addresses reporting requirements for intrastate toll providers. The Commission has revised the language of proposed Subsection (3)(c) to correspond more closely to the reporting obligations set forth in ORS 759.020(6). The revised language makes clear that each intrastate toll provider must (a) inform customers of the service level provided, and (b) identify the service level it plans to furnish in the annual report filed with the Commission. As revised, Subsection (3)(c) reads as follows:

(c) Reporting Requirement: In accordance with ORS 759.020(6), each intrastate toll service provider must inform customers of the service level furnished by the carrier. Each provider must also identify the service level it plans to furnish in the annual report filed with the Commission. An intrastate toll provider must file a switching system blockage report after a Commission-directed switching-system blockage test is completed.

OAR 860-023-0054(3) – Additional Revisions.

Staff also proposes to revise OAR 860-023-0054(3) to replace the term “properly dialed calls” with “calls made.” The revision corresponds to wording changes recommended by telecommunications providers in docket AR 492 (retail telecommunications service quality). The purpose of the change is to prevent

³ The same requirement is also added as Subsection (7)(d) of OAR 860-023-0054. This will clarify that the four-consecutive month requirement applies not only to the Commission-approved service standard, but also to any other service standard adopted by an intrastate toll provider.

unnecessary strain on carrier resources by having to subtract out misdialed calls. The Commission finds that the change is reasonable and should be adopted.⁴

OAR 860-023-0054(7) – Remedies for Violation of This Standard.

Proposed Section (7) addresses the procedures and remedies for violations of service quality standards. The Commission has revised the language of the proposed rule to correspond more closely to ORS 759.450. In addition, we have added subsection (d) in accordance with our revisions to section (3)(b) discussed above. Otherwise, there are no substantive changes to the proposed rule.

OAR 860-023-0054(8) – Exemption From These Rules.⁵

Proposed Section (8) allows a toll service provider to petition for exemption from the requirements of OAR 860-023-0054, by demonstrating that effective competition exists. If the Commission determines that effective competition exists in one or more telephone exchange(s), it may exempt all telecommunications carriers providing telecommunications services in those exchanges from the requirements of the rule.

AT&T states that it is unnecessary for the Commission to establish a service quality standard because it has already determined that the intrastate toll market is competitive. Accordingly, it argues that certified competitive providers should be exempt from the rule pursuant to ORS 759.030(2).⁶ The ILECs and MCI likewise assert that competitive providers should either be automatically exempt from the rule or relieved from the obligation of providing data necessary to show that effective competition exists.

In response to these arguments, we reiterate that the service standard required by ORS 759.020(6) does not inflict any Commission-imposed regulatory obligation upon intrastate toll providers. As explained above, compliance with the P.01

⁴ Staff also proposed to replace the term “average busy season busy hour” with “normal busy hour” to correspond with terminology used in docket AR 492. However, that change does not appear in the proposed rules, comments, or hearing transcript of docket AR 492. Accordingly, the proposed change is not adopted at this time.

⁵ Due to a typographical error in the proposed rules, this section was incorrectly numbered as OAR 860-023-0054(9). For purposes of this order, we use the correct section number. In addition, the reference in Subsection (8)(c) to “Section (15)(b)(A)-(H)” is changed to “Section (8)(b)(A)-(H)” to correct another typographical error. Otherwise, there are no substantive changes to Section (8).

⁶ ORS 759.030(2) provides that “[u]pon petition by any interested party and following notice and investigation, the commission may exempt in whole or in part from regulation those telecommunications services for which the commission finds that price or service competition exists, or that such services can be demonstrated by the petitioner or the commission to be subject to competition, or that the public interest no longer requires full regulation thereof. The commission may attach reasonable conditions to such exemption and may amend or revoke any such order as provided in ORS 756.568.”

standard is not mandatory. Carriers may choose to provide a higher or lower level of service quality than the standard adopted by the Commission. The statute requires only that (a) providers specify the service level they intend to provide in their annual reports, and (b) the Commission revoke the certificate of any provider who fails to consistently furnish the level of service specified in the annual report.

With respect to the argument that certified competitive providers should be exempt from ORS 759.020(6), we emphasize that telecommunications carriers may be excused from statutory requirements only after showing that they have met the conditions for deregulation set forth in ORS 759.030. In our view, the showing necessary to satisfy the requirements for deregulation is considerably more extensive than that required to obtain a competitive provider certificate. The requirements in Section (8)(c)(A-H) of the proposed rule specify the type of information that must be produced to exempt a carrier from the service quality standards in ORS 759.020(6).

Revision to Annual Report Form.

It has been suggested that the Commission revise its annual report form to include a section where providers can specify the service quality they intend to furnish. Although this recommendation is not encompassed by the proposed rules, the Commission agrees that Staff should modify the annual report form to permit providers to indicate whether they intend to provide the standard of service quality adopted by the Commission or some other level of service quality.

OAR 860-023-0000, OAR 860-023-0001, and OAR 860-023-0005.

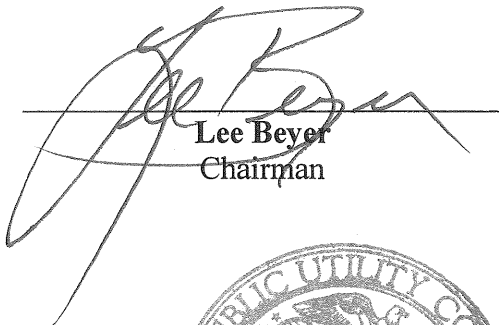
No comments were filed regarding the proposed amendments to OARs 860-023-0000, 860-023-0001, and 860-023-0005. The Commission finds that the proposed changes are reasonable and should be adopted. OAR 860-023-0000 and 860-023-0005 are amended to include intrastate toll service providers. OAR 860-023-0001 is amended to include the definitions of “customer,” “intrastate,” “intrastate toll service provider,” and “toll.”

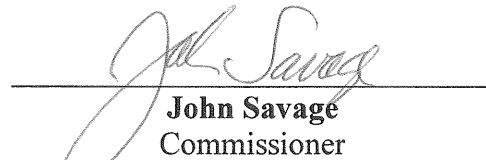
ORDER

IT IS ORDERED that:

1. Oregon Administrative Rules 860-023-0000, 860-023-0001, and 860-023-0005, as set forth in Appendix A of this order, are amended.
2. Oregon Administrative Rule 860-023-0054, as set forth in Appendix A of this order, is adopted.
3. The rules shall become effective upon filing with the Secretary of State.

Made, entered, and effective DEC 21 2005.


Lee Beyer
Chairman


John Savage
Commissioner


Ray Baum
Commissioner



A party 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.

860-023-0000**Applicability of Division 023**

The rules contained in this Division apply to energy utilities, large telecommunications utilities, ~~and~~ telecommunications carriers, and intrastate toll service providers, as defined in OAR 860-023-0001.

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

Stats. Implemented: ORS 756.040, ORS 759.030, ORS 759.040, ORS 759.045 & ORS 759.450

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 14-1997, f. & cert. ef. 11-20-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 14-2000, f. & cert. ef. 8-23-00; PUC 11-2001, f. & cert. ef. 4-18-01

860-023-0001**Definitions for Service Standards**

For purposes of this Division, except when a different scope is explicitly stated:

(1) "Customer" means any person, firm, partnership, corporation, municipality, cooperative organization, governmental agency, or other legal entity that has applied for, been accepted for, or is currently receiving service from an energy utility, large telecommunications utility, or intrastate toll service provider.

(12) "Energy utility" means a public utility as defined in ORS 757.005 except a water utility or wastewater utility. An energy utility can be an "electric utility," "gas utility," or "steam heat utility."

(3) "Intrastate" means telecommunications service that originates and terminates in Oregon.

(4) "Intrastate toll service provider" means a telecommunications carrier that provides intrastate toll services to retail customers.

(25) "Large telecommunications utility" means any telecommunications utility, as defined in ORS 759.005, that is not partially exempt from regulation under ORS 759.040.

(36) "Local exchange service" has the meaning given to "local exchange telecommunications service" in ORS 759.005(1)(c).

(47) "Telecommunications carrier" has the meaning provided in ORS 759.400(3).

(8) "Toll" has the meaning provided in ORS 759.005(h).

Stat. Auth.: ORS 183 & ORS 756

Stats. Implemented: ORS 756.040 & ORS 759.005

Hist.: PUC 2-1996, f. & cert. ef. 4-18-96 (Order No. 96-102); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01 **(01-488); PUC 7-2005, f. & ef. 11-30-05 (Order No. 05-1229)**

860-023-0005**Maintenance of Plant and Equipment by Energy Utilities, and Large Telecommunications Utilities, and Intrastate Toll Service Providers**

Each energy utility, and large telecommunications utility, and intrastate toll service provider shall~~must~~ have and maintain its entire plant and system in such condition that it will furnish safe, adequate, and reasonably continuous service. Each energy utility, and large telecommunications utility, and intrastate toll service provider shall~~must~~ inspect

its plant distribution system and facilities in such manner, and with such frequency, as may be needed to ensure a reasonably complete knowledge about its condition and adequacy at all times. Each energy utility, ~~and~~ large telecommunications utility, ~~and~~ **intrastate toll service provider shall must** keep such records of the conditions found as the utility considers necessary to properly maintain its system, unless in special cases the Commission specifies a more complete record.

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

Stats. Implemented: ORS 757.020 & ORS 759.035

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 13-2002, f. & cert. ef. 3-26-02; **PUC 7-2005, f. & ef. 11-30-05 (Order No. 05-1229)**

860-023-0054

Retail Intrastate Toll Service Provider Service Standards

Every intrastate toll service provider must adhere to the following standards:

(1) Measurement and Reporting Requirement. Each intrastate toll service provider must take the measurements required by this rule and report them to the Commission as specified.

(2) Additional Reporting Requirements. The Commission may require a telecommunications carrier to provide additional reports on any item covered by this rule.

(3) Blocked Calls. An intrastate toll service provider must engineer and maintain all intraoffice, interoffice, and access trunking and associated switching components to allow completion of all properly dialed calls made during the average busy season busy hour without encountering blockage or equipment irregularities in excess of the Commission-approved service levels listed in subsection (b) of this section, or alternatively, provide the level of service specified by the intrastate toll service provider in accordance with ORS 759.020(6).

(a) Measurement:

(A) An intrastate toll service provider must collect traffic data; that is, peg counts and usage data generated by individual components of equipment or by the wire center as a whole, and calculate blockage levels of the interoffice final trunk groups;

(B) System blockage will be determined by special testing at the wire center.

Commission Staff or a carrier technician will place test calls to a predetermined test number, and the total number of attempted calls and the number of completed calls will be counted. The percent of completion of the calls shall be calculated.

(b) Commission-Approved Service Level:

(A) An intrastate toll service provider must maintain interoffice final trunk groups to allow 99 percent completion of calls during the average busy season busy hour without blockage (P01 grade of service);

(B) An intrastate toll service provider must maintain its network operation so that 99 percent of the calls do experience blockage during any normal busy hour. If a final trunk group provisioned by an intrastate toll service provider exceeds the blockage standard specified herein for four consecutive months, the trunk group will be considered in violation of this standard.

(c) Reporting Requirement: In accordance with ORS 759.020(6), each intrastate toll service provider must inform customers of the service level furnished by the carrier. Each provider must also identify the service level it plans to furnish in its annual report filed with the Commission. An intrastate toll service provider must file a switching system blockage report after a Commission-directed switching-system blockage test is completed.

(d) Retention Requirement: Each intrastate toll service provider must maintain records for one year.

(4) Special Service Lines. All special service access lines must meet the performance requirements specified in applicable intrastate toll service provider tariffs or contracts.

(5) An intrastate toll service provider connected to the facilities of other telecommunications carriers as defined in ORS 759.400(3) shall operate its system in a manner that will not impede a telecommunications carrier's or intrastate toll service provider's ability to meet required standards of service. A telecommunications carrier or intrastate toll service provider shall report interconnection operational problems promptly to the Commission.

(6) Alternatives to These Telecommunications Standards. An intrastate toll service provider whose normal methods of operation do not provide for exact compliance with these rules may file for a variance from, or waiver of, one or more of these rules, if it specifically indicates the alternative standards to be applied, or indicates which standards would be waived.

(7) Remedies for Violation of This Standard:

(a) If a telecommunications carrier subject to this rule violates one or more of its service standards, the Commission must require the intrastate toll service provider to submit a plan for improving performance as provided in ORS 759.450(5). If an intrastate toll carrier does not meet the goals of its improvement plan within six months, or if the plan is disapproved by the Commission, penalties may be assessed in accordance with ORS 759.450(5) through (7).

(b) In addition to the remedy provided under ORS 759.450(5), if the Commission believes that an intrastate toll service provider subject to this rule has violated one or more of its service standards, the Commission shall give the intrastate toll service provider notice and an opportunity to request a hearing. If the Commission finds a violation has occurred, the Commission may require the intrastate toll service provider to provide the following relief to the affected customers:

(A) Customer billing credits equal to the associated nonrecurring and recurring charges of the intrastate toll service provider for the affected service for the period of the violation; or

(B) Other relief authorized by Oregon law.

(8) Exemption from these rules:

(a) An intrastate toll service provider may petition the Commission for an exemption, in whole or in part, from these rules.

(b) The Commission may grant an exemption including, but not limited to, the following circumstance: If the Commission determines that effective competition exists in one or more exchange, it may exempt all telecommunications carriers providing telecommunications services in those exchanges from the requirements of

this rule, in whole or in part. In making this determination, the Commission must consider:

(A) The extent to which the service is available from alternative providers in the relevant exchange(s);

(B) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;

(C) Existing barriers to market entry;

(D) Market share and concentration;

(E) Price to cost ratios;

(F) Number of suppliers;

(G) Price demand side substitutability (for example, customer perceptions of competitors as viable alternatives); and

(H) Any other factors deemed relevant by the Commission.

(c) When a telecommunications carrier or intrastate toll service provider petitions the Commission for exemption under this provision, the Commission must provide notice of the petition to all relevant telecommunications carriers providing the applicable service(s) in the exchange(s) in question. Such notified telecommunications carriers will be provided an opportunity to submit comments in response to the petition. The comments may include requests that, following the Commission's analysis outlined above in Section 8(b)(A) through (H), the commenting telecommunications carrier be exempt from these rules for the applicable service(s) in the relevant exchange(s).

(d) For purposes of this rule, if a final trunk group provisioned by an intrastate toll provider exceeds the blockage standard specified by the provider for four consecutive months, that trunk group will be considered in violation of the provider's service standard.

[Publications: Publications referenced are available from the agency.]

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

Stats. Implemented: ORS 756.040, ORS 759.020, ORS 759.030, ORS 759.050 & ORS 759.450

Hist.: NEW