

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

AR 509

In the Matter of a Rulemaking to Amend )  
Division 016 Rules Governing )  
Interconnection Agreements )

ORDER

**DISPOSITION: RULES AMENDED**

Currently, the Public Utility Commission of Oregon's (Commission's) rules governing the processing and review of negotiated interconnection agreements exceed requirements imposed by federal law by allowing a 21-day comment period. *See, e.g.,* OAR 860-016-0020(5). While this process has been used successfully for many years, the Commission rarely receives comments from outside parties. Moreover, while some agreements present novel questions that must be addressed, most are routine in nature.

Due to these facts, the Commission Staff (Staff) proposed the rules be amended to streamline the process for routine filings. The primary change would be to eliminate the specific comment period and, if the filing is acceptable, have Staff place the agreement on the consent agenda for approval at a Public Meeting. Staff also recommended minor changes to the arbitration process to clarify existing procedures.

On August 30, 2006, the Commission filed a Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact with the Secretary of State. On September 6, 2006, notice was provided to certain legislators specified in ORS 183.335(1)(d), and to all interested persons on the service lists maintained pursuant to OAR 860-011-0001. Notice of the rulemaking was published in the Oregon Bulletin on October 1, 2006.

The Commission received written comments from AT&T Communications of the Pacific Northwest, Inc., TCG Joint Venture Holdings Inc. d/b/a/ TCG Oregon, and SBC Long Distance, LLC d/b/a/AT&T Long Distance (collectively referred to as AT&T), and Trans National Communication International, Inc. (TNCI).

## DISCUSSION

The rulemaking participants generally support the proposed rules but offer two modifications. First, TNCI requests that the Commission retain, at least, a shortened formal comment period to ensure an opportunity for interested parties to comment on negotiated agreements that are submitted for approval. The elimination of the 21-day comment period, however, does not, as TNCI assumes, eliminate the opportunity for comment. As explained above, negotiated agreements will be presented at a Commission public meeting for approval. Any interested party may obtain notice of these meetings and appear or submit comments in opposition to any filed agreement.

AT&T expresses a concern about the proposed change to OAR 860-016-0030 concerning the rights of a respondent in an arbitration proceeding. The proposed change would allow a respondent in an arbitration proceeding to file a motion requesting that the Commission dismiss, with prejudice, the petition for arbitration if the petitioner failed to timely prepare and serve an interconnection agreement after the Commission issued a decision in the arbitration. AT&T agrees that a petitioner in an arbitration proceeding should not be able to avoid the results of what it may consider an unfavorable decision by not preparing or serving an interconnection agreement that conforms to the arbitration decision. AT&T is concerned, however, that the proposed rule inadvertently could produce unjust results because well-intentioned parties may need more than 14 days to agree upon language to effectuate the results of a Commission decision. To avoid this problem, AT&T recommends that the proposed amendment be revised to state:

If petitioner, without respondent's consent, fails to timely prepare and serve an interconnection agreement on respondent, respondent may file a motion requesting the Commission dismiss the petition for arbitration with prejudice. The Commission may grant such motion if the petitioner's failure to timely prepare and serve the interconnection agreement was the result of inexcusable neglect on the part of petitioner.

AT&T's recommendation is reasonable and will be incorporated in the rules.

## CONCLUSION

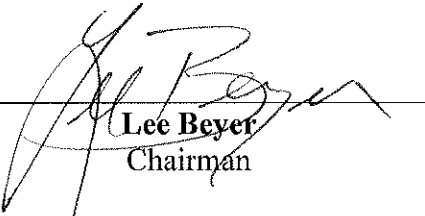
The amended rules, as set forth in Appendix A, should be adopted. To facilitate the transition to the new processes set forth in the amendments, the rules shall be filed with the Secretary of State to become effective and applicable to all negotiated agreements filed on or after January 1, 2007.

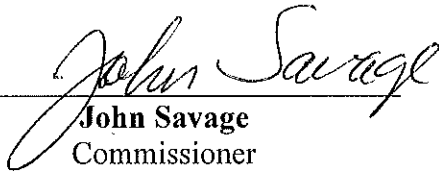
**ORDER**

IT IS ORDERED that:

1. The modifications to Oregon Administrative Rules 860-016-0020, 860-016-0021, 860-016-0025, and 860-016-0030, as set forth in Appendix A, are adopted.
2. The amended rules shall become effective upon filing with the Secretary of State, and will be applicable to all negotiated agreements filed on or after January 1, 2007.

Made, entered, and effective DEC 14 2006.

  
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**Lee Beyer**  
Chairman

  
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**John Savage**  
Commissioner

  
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**Ray Baum**  
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.

**OAR 860-016-0020****Agreements Arrived at through Negotiation**

- (1) Upon receiving a request for interconnection, services, or network elements pursuant to Section 251 of the Act, the affected telecommunications carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier.
- (2) The negotiating parties may ask a mediator outside the Commission to help them reach agreement. If they request the Commission to mediate, the Commission will use an Administrative Law Judge (ALJ) or a member of the utility Staff to mediate. Only the negotiating parties and the mediator will participate in mediation sessions.
- (3) After the parties reach agreement under Section 252(a) of the Act, they must file an application with the Commission seeking approval of the agreement, or for approval of an amendment to an approved agreement on file with the Commission. The application must include an original plus two copies of the negotiated agreement and a completed Carrier-to-Carrier Agreement Checklist. A copy of the checklist is available on the Commission's website. The parties may also include any other supporting information with their application.
- (4) The negotiating parties must supplement the filing with an exact copy of the negotiated agreement and checklist in electronic form as required in OAR 860-013-0036. ~~The Commission will provide notice of the application by posting the checklist and the agreement on its Internet website.~~
- (5) ~~The public may file written comments within 21 days of the filing date of the application, unless the Commission establishes a different time limit.~~
- (6) The Commission will ~~accept~~**approve** or reject the agreement within 90 days **of filing**, with written findings as to any deficiencies. **Prior to rejecting the agreement, the Commission will notify the negotiating parties of its intended action and provide an opportunity for the carriers to respond.** The grounds for rejection are that the agreement:
- (a) Discriminates against a carrier not a party to the agreement; or
  - (b) Is not consistent with the public interest, convenience, and necessity. Applicable Commission policies will be a factor in public interest, convenience, and necessity determinations.

Stat. Auth.: ORS Ch. 183 & 756

Stats. Implemented: 47 USC 252

Hist.: PUC 8-1998, f. & cert. ef. 4-8-98 (Order No. 98-132) ); PUC 25-2001, f. & cert. ef. 11-5-01 (Order No. 01-895); PUC 6-2002, f. & cert. ef. 2-13-02 (Order No. 02-069); PUC 12-2004 (Temp), f. & ef. 8-31-04 (Order No. 04-480); PUC 2-2005, f. & ef. 2-11-05 (Order No. 05-087)

**OAR 860-016-0021****Wholesale Promotions**

- (1) A carrier intending to offer a wholesale promotion that would modify the terms of a Carrier-to-Carrier Agreement must provide the Commission and other

telecommunications carriers notice of the promotion at least 30 days prior to the effective date of the promotion. The notice to the Commission must include:

(a) A copy of a form contract, containing the terms and conditions of the promotional offering that would be submitted as an amendment to an existing Carrier-to-Carrier Agreement; and

(b) A description of the means used to notify other telecommunications carriers of the promotion.

(2) The offering carrier must file with the Commission an original plus two copies of the form contract. With the filing, the offering carrier must include a completed Carrier-to-Carrier Agreement Checklist, a copy of which is available on the Commission's Internet website. The carrier must supplement the filing with an exact copy of the contract and checklist in electronic form as required in OAR 860-013-0036. ~~The Commission will post the notice and checklist on its website.~~

~~(3) The public may file written comments on the form contract within 15 days of the filing date of the notice, unless the Commission establishes a different time limit.~~

(4) The Commission will approve the form contract unless it finds that the contract, if filed as an amendment to an interconnection agreement, would be subject to rejection under OAR 860-016-0020(65).

(4) If another carrier accepts the promotional offering, the offering and accepting carriers must file, within ten days of execution by the parties, an amendment to an existing Carrier-to-Carrier Agreement incorporating the exact terms and conditions of the approved amendment in the form contract. Any such filed amendment will be deemed effective upon the later of the Commission approval of the form contract or execution of the amendment by the parties.

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

Stats. Implemented: 47 USC 252

Hist.: PUC 12-2004 (Temp), f. & ef. 8-31-04 (Order No. 04-480); PUC 2-2005, f. & ef. 2-11-05 (Order No. 05-087)

### **860-016-0025**

#### **Adoption of Previously Approved Agreement or Statement of Generally Available Terms**

(1) If a requesting telecommunications carrier decides to adopt an identical agreement or an identical individual arrangement contained in an agreement, pursuant to Section 252(i) of the Act and 47 CFR Section 51.809, with the exception of the adopting party's name and new effective date, previously approved by and on file with the Commission, or a Statement of Generally Available Terms approved by the Commission under OAR 860-016-0040, it shall file notice of the adoption with the Commission. The notice shall include a completed Carrier-to-Carrier Agreement Checklist.

(2) The requesting carrier shall also submit a copy of the checklist in electronic format compatible with Adobe Acrobat Reader or Rich Text Format. ~~The Commission may provide notice of the adoption by posting the checklist on its Internet website.~~

- (3) If the notice is filed jointly with the affected telecommunications carrier, the adoption shall become effective on the date filed.
- (4) If the notice is filed unilaterally by the requesting telecommunications carrier, the requesting telecommunications carrier shall simultaneously provide notice of the adoption to the affected carrier. The affected carrier may then file objections to the adoption within 21 calendar days of such notice. If no objections are filed, the adoption shall become effective on the 22nd day after filing.
- (5) An affected carrier may object to an adoption on the following grounds:
  - (a) The costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement;
  - (b) The provision of a particular interconnection, service, or element to the requesting carrier is not technically feasible;
  - (c) There is new federal or state law that requires modification of the agreement proposed to be adopted;
  - (d) The agreement proposed to be adopted has expired or been cancelled; or
  - (e) The proposed adoption is unlawful.
- (6) If the affected carrier files objections, the requesting carrier may file a reply within 14 calendar days after the objections are filed. An assigned Administrative Law Judge (ALJ) shall schedule a conference within five business days after the reply is filed, to be held as soon thereafter as practicable. At the conference, the ALJ shall determine whether the issues raised by the affected carrier's objection can be resolved based on the pleadings and all supporting documentation, or whether further proceedings are necessary. If further proceedings are necessary, the ALJ shall establish a schedule for resolving the dispute on an expedited basis. Pending resolution of the dispute, other provisions of the proposed adoption not contested by the affected carrier will become effective.

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

Stat. Auth.: ORS Ch. 756

Stat. Implemented: 47 USC 252

Hist.: PUC 25-2001, f. & ef. 11-5-01 (Order No. 01-895); PUC 6-2002, f. & ef. 2-13-02 (Order No. 02-069)

### **860-016-0030**

#### **Arbitration of Disputes**

- (1) Negotiating parties may engage the services of an outside arbitrator rather than file a petition with the Commission. If the negotiating parties petition the Commission to arbitrate their dispute, the Commission will use an ALJ as arbitrator unless workload constraints necessitate the use of an outside arbitrator.
- (2) A petition for arbitration must contain:
  - (a) A statement of all unresolved issues;
  - (b) A description of each party's position on the unresolved issues;

- (c) A proposed agreement addressing all issues, including those on which the parties have reached agreement and those that are in dispute. Wherever possible, the petitioner should rely on the fundamental organization of clauses and subjects contained in an agreement previously approved by the Commission;
- (d) Documentation showing that the request complies with the time requirements of the Act.
- (3) Respondent may file a response within 25 days of the request for arbitration. In the response, the respondent shall address each issue listed in the request, describe the respondent's position on those issues, and identify and present any additional issues for which the respondent seeks resolution.
- (4) The arbitration will be conducted in a manner similar to a contested case proceeding, and the arbitrator will have the same authority to conduct the arbitration process as an ALJ has in conducting hearings under the Commission's rules. However, the arbitration process will be streamlined to meet the Act's timelines. An early conference will be held to discuss processing of the case, and to receive the proposal put forth by each party. The arbitrator will establish the schedule, and decide whether an oral hearing would be helpful. After the oral hearing or other procedures (for example, rounds of comments), each party will submit its "final offer" proposed agreement. The arbitrator will choose between the two final offers. However, if neither offer is consistent with the Act and Commission policies, the arbitrator will make an award that meets those requirements.
- (5) Formal discovery procedures will be allowed only to the extent deemed necessary by the arbitrator. Parties will be required to cooperate in good faith in voluntary, prompt, and informal exchanges of information relevant to the matter. Unresolved discovery disputes will be resolved by the arbitrator upon request of a party. The arbitrator will order a party to provide information if he/she determines the requesting party has a reasonable need for the requested information and that the request is not overly burdensome.
- (6) Only the two negotiating parties will have full party status. The arbitrator may confer with Staff for assistance throughout the arbitration process. If Staff assistance is desired, the arbitrator will notify (by telephone or other means) the parties at least 24 hours before the consultation with Staff. The parties may attend or listen to the consultation and may respond in a manner allowed by the arbitrator.
- (7) To keep the process moving forward, appeals to the Commission will not be allowed during the arbitration process. An arbitrator may certify a question to the Commission if deemed necessary.
- (8) To accommodate the need for flexibility, the arbitrator may use procedures that vary from those set out here if he/she deems it helpful in a particular arbitration, as long as the procedures are fair, treat the parties equitably, and substantially comply with the procedures listed here.
- (9) Each arbitration award must:
- (a) Ensure that the requirements of sections 251 and 252 of the Act and any valid applicable Federal Communications Commission regulations under that section are met;
  - (b) Establish interconnection and network element prices consistent with the Act;
  - (c) Establish a schedule for implementation of the agreement; and
  - (d) Be consistent with Commission policies.

(10) After an arbitration award is submitted to the Commission, notice will be served on those who have indicated a desire to receive notice of mediated and arbitrated agreements. Any person may then file comments within 10 days of service of the award.

(11) The Commission will accept or reject an arbitration award within 30 days.

(12) Within 14 days after the Commission issues its arbitration decision, petitioner ~~shall~~**must** prepare an interconnection agreement complying with the terms of the arbitration decision and serve it on respondent. Respondent shall either sign and file the agreement, or file objections to it, within 10 days of service of it. If objections are filed, **theyrespondent** shall state how the agreement fails to comply with the arbitration decision, and offer substitute language complying with the decision. The Commission will approve or reject a filed interconnection agreement within 30 days of its filing, or the agreement will be deemed approved. **If petitioner, without respondent's consent, fails to timely prepare and serve an interconnection agreement on respondent, respondent may file a motion requesting the Commission dismiss the petition for arbitration with prejudice. The Commission may grant such motion if the petitioner's failure to timely prepare and serve the interconnection agreement was the result of inexcusable neglect on the part of petitioner.**

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