

ORDER NO. 11 329

ENTERED AUG 25 2011

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1517

In the Matter of

ATL COMMUNICATIONS

Request for Waiver of OAR 860-033-0006.

ORDER

DISPOSITION: APPLICATION APPROVED

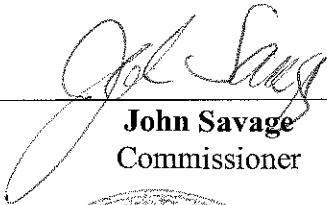
On April 11, 2011, ATL Communications filed a request with the Public Utility Commission of Oregon (Commission) to waive the assessed late report fee, the late penalty, and the interest on the unpaid surcharge fees for Residential Service Protection Fund (RSPF) surcharge reports and remittances submitted to the Commission after the deadlines in 2008 and 2009. A full description of the filing, its procedural history, and Staff's recommendation are contained in the Staff Report, attached as Appendix A and incorporated by reference.

At its Public Meeting on August 23, 2011, the Commission adopted Staff's recommendations to waive the late reporting fees, late payment penalties, and interest charges in the amount of \$569.11 that were assessed for ATL Communication's remaining violations after the first incident of delinquency.

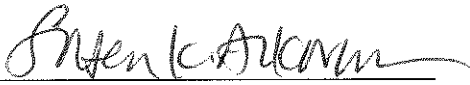
ORDER

IT IS ORDERED that ATL Communication's request for waiver of RSPF late reporting fees, late payment penalties and interest charges assessed in the amount of \$569.11 for its violations after the first incident of delinquency is allowed effective August 23, 2011.

Made, entered, and effective AUG 25 2011



John Savage
Commissioner



Susan K. Ackerman
Commissioner



A party may request rehearing or reconsideration of this order under 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 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

ITEM NO. CA4

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 23, 2011**

REGULAR _____ CONSENT X EFFECTIVE DATE August 23, 2011

DATE: July 26, 2011

TO: Public Utility Commission

FROM: Jon Cray

THROUGH: Rick Willis  and David Poston 

SUBJECT: RESIDENTIAL SERVICE PROTECTION FUND (RSPF):
(Docket No. UM 1517) ATL Communications, Inc. Request for Waiver of Oregon Administrative Rule (OAR) 860-033-0006(6), 860-033-0006(7) and 860-033-0006(8).

STAFF RECOMMENDATION:

Staff recommends the Commission, as authorized by OAR 860-033-0006(9), waive the assessed RSPF late report fee, the late payment penalty and the interest on the unpaid surcharge fees to ATL Communications, effective August 23, 2011.¹

DISCUSSION:

On April 4, 2011, Staff issued a letter requesting payment from ATL Communications for noncompliance with OAR 860-033-0006(4), which states that "Each telecommunications

¹ The 2009-2011 and 2011-2013 Legislature approved funding for the Commission to create a Compliance Specialist position to ensure that all telecommunications providers and all cellular, wireless and other radio common carriers accurately collect, report and remit all RSPF surcharges to which the State is entitled pursuant to chapter 290, Oregon Laws 1987. Since the position was filled in December 2009, the Compliance Specialist, in accordance with OAR 860-033-0008, conducted an extensive audit of all telecommunications providers' and all cellular, wireless and other radio common carriers' RSPF surcharge remittance reports that were submitted no later than three years after the due date. In addition, the Compliance Specialist monitors all companies' ongoing compliance. ATL Communications is one of five companies that filed a waiver request in response to the Compliance Specialist's findings. See RESIDENTIAL SERVICE PROTECTION FUND (RSPF): (Docket No. UM 1517) Thomson Reuters Request for Waiver of Oregon Administrative Rule (OAR) 860-033-0006(6), 860-033-0006(7) and 860-033-0006(8) on behalf of Allied Wireless Communications Corporation, RESIDENTIAL SERVICE PROTECTION FUND (RSPF): (Docket No. UM 1517) American Fiber Network, Inc. Request for Waiver of Oregon Administrative Rule (OAR) 860-033-0006(6), 860-033-0006(7) and 860-033-0006(8), RESIDENTIAL SERVICE PROTECTION FUND (RSPF): (Docket No. UM 1517) Ztar Mobile, Inc. Request for Waiver of Oregon Administrative Rule (OAR) 860-033-0006(6), 860-033-0006(7) and 860-033-0006(8), RESIDENTIAL SERVICE PROTECTION FUND (RSPF): (Docket No. UM 1517) United Telephone Company of the Northwest f.k.a. Embarq d.b.a. CenturyLink Request for Waiver of Oregon Administrative Rule (OAR) 860-033-0006(6), 860-033-0006(7) and 860-033-0006(8). Therefore, for consistency purposes, Staff adopted the approach of accepting payment for the first infraction if the telecommunications provider or cellular, wireless or radio common carrier provided evidence showing that it submitted the RSPF Remittance Report and surcharge fees late due to circumstances beyond its control.

UM 1517
 July 26, 2011
 Page 2

provider must submit to the Commission the RSPF Remittance Report and surcharge fees on or before the 21st calendar day after the close of each month or quarter..." Staff assessed a late report fee, late payment penalty and an interest charge for a total of \$682.31 to ATL Communications in accordance with OAR 860-001-0050. Specific amounts for each assessed charge are not included in order to protect the confidentiality of ATL Communications' business trade secrets. ATL Communications was delinquent in filing the RSPF Remittance Report and corresponding surcharges for the following periods in 2008 and 2009:

Remittance Period	Deadline	Date Received
1 st Quarter 2008	April 21, 2008	April 30, 2008
2 nd Quarter 2008	July 21, 2008	July 31, 2008
3 rd Quarter 2008	October 21, 2008	October 30, 2008
4 th Quarter 2008	January 21, 2009	February 2, 2009
1 st Quarter 2009	April 21, 2009	April 30, 2009
2 nd Quarter 2009	July 21, 2009	July 30, 2009

Pursuant to OAR 860-033-0006(9), "...The Commission may waive the late report fee, the late payment penalty and the interest on the unpaid surcharge fees, or any combination thereof, if the telecommunications provider files a written waiver request and provides evidence showing that the telecommunications provider submitted the Remittance Report and surcharge fees late due to circumstances beyond its control." ATL Communications sent a letter on April 11, 2011, requesting abatement of the assessed charges based on claims that it was not aware the due date on the RSPF Remittance Report had changed from the last day of the month to the 21st calendar day following the quarterly billing period. As a former Competitive Local Exchange Carrier, ATL Communications stated that from 1998 to 2009, it filed all Commission-related regulatory fees in a complete and punctual manner. ATL Communications indicated that the RSPF Remittance Report and surcharge fees and the Emergency Communications 9-1-1 tax were due to the Commission and the Department of Revenue, respectively, on the last day of the calendar month following the end of a quarter. See Attachment A.

Staff researched ATL Communications' claims and identified that prior to Docket No. AR 448, there were no provisions in Division 033 of the OARs for procedures associated with the collection, reporting and remittance of the RSPF surcharge from telecommunications providers. Staff also reviewed ATL Communications' RSPF Remittance Reports back to 2006 and learned that the form instructs the preparer that the "Report is due by last day of month/quarter following report period". Despite the fact that the Commission adopted AR 448 in Order No 02-787 on November 6, 2002, it appears that the RSPF Remittance Report

UM 1517
July 26, 2011
Page 3

was not updated until 2007 to reflect that "The remittance report and surcharge fees are due on the 21st calendar day after the close of each monthly or quarterly billing".

ATL Communications asserts that it did not realize that the due date had changed despite using the revised RSPF Remittance Report in 2007, 2008 and 2009 while demonstrating compliance with the provisions stipulated in OAR 860-033-0006 for all 2007 quarterly filings. OAR 860-033-0008(1) allows the Commission to "...audit the telecommunications provider as it deems necessary and appropriate." OAR 860-033-0008(2) states "The Commission's audit must begin no later than 3 years after the Remittance Report's due date..." Staff supports ATL Communications' abatement request because its filings in 2008 and 2009 are consistent with its claim that it thought the due date was the last calendar day of the month following the quarter. For instance, the Commission received all but one of the 2008 and 2009 quarterly RSPF Remittance Reports from ATL Communications before the last calendar day of the month following the quarter elapsed. The latter is a testament that ATL Communications would, in all probability, have amended its schedule had it been advised of its noncompliance. In addition, ATL Communications rendered payment in the amount \$113.20 to the Commission for its delinquent first quarter 2008 filing.

PROPOSED COMMISSION MOTION:

The Commission, in accordance with OAR 860-033-0006(9), waive the remaining RSPF late reporting fees, the late payment penalties and the interest charges that were assessed to ATL Communications in the amount of \$569.11, effective August 23, 2011.

UM 1517