

ORDER NO. 12 131

ENTERED APR 11 2012

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1592

In the Matter of

NEHALEM TELECOMMUNICATIONS,
INC,

Introduces a new DSL promotion to its
Residence and Business customers.
Advice No. 10

ORDER

DISPOSITION: ADVICE NO. 10 REJECTED

On January 25, 2012, Nehalem Telecommunications, Inc. filed a revised tariff proposing a promotion for residential or business customers who subscribe to its Digital Subscriber Line (DSL) service during the promotional period of February 1, 2012 through July 31, 2012.

At the April 10, 2012 Public Meeting, Staff recommended we reject the filing because it pertains to a non-jurisdictional service. Staff explains that the Commission does not have jurisdiction over DSL or other internet services, which are categorized by the federal government as "information services" rather than telecommunications services.¹ Staff further recommends we order Nehalem to remove any tariff sheets related to non-jurisdictional DSL or other internet services from its Commission-regulated tariffs. Staff's recommendation is attached as Appendix A and incorporated by reference.

At our April 10, 2012 Public Meeting, we adopted Staff's recommendation. The purpose of this order is to memorialize that decision.


¹ See Order No. 06-012, UCB31 (Jan. 10, 2006) (citing *Vonage Holdings Corp. v. Minnesota Public Utilities Commission*, 290 F. Supp. 2d 993, 994 (D.Minn.2003)).

ORDER

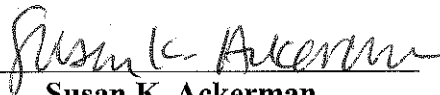
IT IS ORDERED that:

1. Nehalem Communications, Inc.'s revised tariff proposing a promotion for residential or business customers who subscribe to its Digital Subscriber Line (DSL) service during the promotional period is rejected.
2. Nehalem Communications, Inc. must remove any tariff sheets related to non-jurisdictional DSL service or other internet related services from its Commission-regulated tariffs.


Made, entered, and effective APR 11 2012



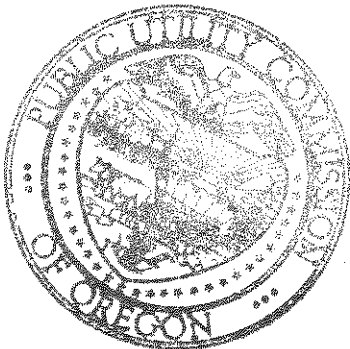
John Savage
Commissioner



Susan K. Ackerman
Commissioner



Stephen M. Bloom
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. CA2

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: April 10, 2012**

REGULAR _____ CONSENT X EFFECTIVE DATE _____ NA _____

DATE: March 28, 2012

TO: Public Utility Commission

FROM: Inara Scott *KS*

THROUGH: *BAC* Bryan Conway and *IE by BAC* Irv Emmons

SUBJECT: NEHALEM TELECOMMUNICATIONS INC.: (Advice No. 10) Introduces a new DSL promotion to its Residence and Business customers.

STAFF RECOMMENDATION:

Staff recommends that the filing be rejected, as it pertains to a non-jurisdictional service.

DISCUSSION:

Nehalem Telecommunications, Inc. (Nehalem) proposes a promotion for residential or business customers who subscribe to its Digital Subscriber Line (DSL) service during the promotional period of February 1, 2012-July 31, 2012. The revised tariff including the promotion was filed on January 25, 2012. Under the terms of the promotion, new DSL subscribers choosing a DSL Package will receive a \$10 monthly discount for the first six months of service. Existing customers choosing to upgrade to a higher tier of DSL Package service will receive a \$10 monthly discount from the new tier monthly rate for the first six months of service. Thereafter, the service would be priced under the current tariff rate.

The Commission does not have jurisdiction over DSL or other internet services, which are categorized by the federal government as "information services" rather than telecommunications services. See Order 06-012, UCB31 (Jan. 10, 2006) (citing *Vonage Holdings Corp. v. Minnesota Public Utilities Commission*, 290 F. Supp. 2d 993, 994 (D. Minn. 2003)).

Historically, some small telecommunications utilities, including Nehalem, have filed tariffs related to DSL and internet services with the Commission, and the Commission has not formally rejected such filings. As a result, a number of tariff sheets addressing

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March 28, 2012
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non-jurisdictional services remain in certain utility tariffs, potentially leading to confusion as to whether this service is regulated by the Commission. Staff therefore recommends that the Commission reject this filing, and order Nehalem to remove any tariff sheets related to DSL from its Commission-regulated tariffs.

PROPOSED COMMISSION MOTION:

The Commission reject this filing, and further order Nehalem to remove any tariff sheets related to non-jurisdictional DSL or other internet services from its Commission-regulated tariffs.

Nehalem.DSL.PubMtg