

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 566

In the Matter of

AMENDMENTS TO
OAR 860-032-0007To Address Call Termination Issues.

ORDER

DISPOSITION: RULE MODIFICATIONS ADOPTED

In this order, we adopt rules to help ensure that carriers fulfill their obligations to complete calls placed to customers in rural exchanges within the state.

I. INTRODUCTION

Call termination issues are a nationwide problem affecting both intrastate and interstate traffic to areas that have higher terminating access fees. Rural local exchange carriers (RLECs) have conducted exhaustive testing and found that many long distance calls do not reach their networks or even the subtending tandem switches. These service problems have caused customers to leave the RLEC's service due to the perception of lower quality and the assumption that the RLEC is the responsible party.

One identified cause of the call termination problem is the use of least cost routing (LCR), the process of selecting the path of long distance communications traffic based on cost. Complications associated with LCR experienced by Oregon consumers result in consumers' inability to receive calls or limit received calls to calls with poor voice quality, incorrect caller ID information, or calls that only one party can hear.¹

Although the problem appears to be national in scope, Oregon RLECs reported numerous instances of uncompleted or poor quality calls specifically within the state of Oregon. Due to these reports, the Oregon Telecommunications Association (OTA) requested that we convene a workshop on the subject.² That workshop was held on June 24, 2011, and was attended by members from a broad spectrum of interests within the industry and became the basis for initiating a formal investigation.

¹ Staff Report, June 24, 2011 at 1, 2.

² *Id.* at 1.

II. PROCEDURAL HISTORY

As a result of that workshop, at our regular public meeting on July 5, 2011, we adopted a Staff recommendation to open an investigation into call termination issues in Oregon. That investigation, docket UM 1547, addressed issues related to factors that prevent a telephone call or fax transmission from reaching its intended recipient within the state.

A prehearing conference in that docket was held on April 3, 2012, at which time a procedural schedule was adopted. The Citizens' Utility Board of Oregon (CUB) intervened as of right provided under ORS 774.180. The Administrative Law Judge (ALJ) granted intervenor status to OTA; Oregon Exchange Carrier Association; AT&T Communications of the Pacific Northwest, Inc.; TCG Joint Venture Holdings, Inc. d/b/a TCG Oregon and AT&T Mobility LLC (AT&T); United Telephone Company of the Northwest, CenturyTel of Oregon, CenturyTel of Eastern Oregon and Qwest Corporation (CenturyLink); Oregon Cable Telecommunications Association (OCTA); Level 3 Communications, LLC; Comcast Phone of Oregon, LLC; tw telecom of oregon, llc; Frontier Communications Northwest Inc. and Citizens Telecommunications Company of Oregon d/b/a Frontier Communications of Oregon (Frontier); Integra Telecom; and MCI Communications Services, Inc. d/b/a Verizon Business Services and MCI metro Access Transmission Services LLC d/b/a Verizon Access (Verizon).

On April 23, 2012, Staff filed comments reporting on and discussing its investigation and data requests of carriers relating to specific allegations of call completion problems in Oregon. Responsive comments were filed by parties to the proceeding in May 2012, and an informal workshop was held the following month regarding the need for a rulemaking proceeding and the language that any proposed rule should contain.

On June 26, 2012, we issued Order No. 12-237, directing Staff to initiate a rulemaking on an expedited basis to address the issues raised in docket UM 1547. This rulemaking was opened on July 6, 2012. On July 13, 2012, we filed a Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact with the Secretary of State. On July 23, 2012, the notice was provided to all interested persons on the service lists maintained under OAR 860-001-0030(1)(b) as well as to certain legislators specified in ORS 183.335(1)(d). Notice of the rulemaking was published in the August 2012 *Oregon Bulletin*.

CUB filed comments before the hearing in support of the proposed rule language on July 31, 2012. A rulemaking hearing was held on August 22, 2012 and, comments were filed by the Monroe Telephone Company, Verizon, tw telecom in conjunction with Level 3 and Sprint Communications Company, CUB, OCTA, CenturyLink, OTA, Frontier, and AT&T. Reply comments were filed by CUB, CenturyLink, OTA Verizon, tw telecom in conjunction with Level 3 and Sprint Communications Company, OCTA, AT&T and Staff.

III. DISCUSSION

A. Proposed Rules

To address the issue of call termination problems, Staff proposed that minor word changes be made to various sections governing telecommunication carriers, and the following new sections be added to OAR 860-032-0007, Conditions of Certificates of Authority:

(16) Except as otherwise allowed under state or federal law, the certificate holder must not block, choke, reduce or restrict traffic in any way.

(17) The certificate holder must take reasonable steps to ensure that it does not adopt or perpetuate routing practices that result in lower quality service to an exchange with higher terminating access rates than like service to an exchange with lower terminating access rates.

(18) The certificate holder must not engage in deceptive or misleading practices including but not limited to informing a caller that a number is not reachable or is out of service when the number is in fact reachable and in service.

(19) The certificate holder must take reasonable steps to ensure that the actions of any underlying carrier acting as an agent of or employed by the certificate holder used to deliver traffic on behalf of the certificate holder would not put the certificate holder in violation of any Commission rule.

(20) The certificate holder is liable for the actions of an underlying carrier used to deliver traffic on behalf of the certificate holder, if that underlying carrier is an agent of or employed by the certificate holder and the certificate holder knew or should have known of the underlying carrier's actions.

B. Rulemaking Comments

OTA, CUB, and Monroe Telephone Company all support adoption of the proposed rules. They argue that the Commission should enact new rules now and not wait for the FCC to act.

OTA acknowledges concerns raised by other rulemaking participants, and offers compromise language for sections (16) and (17) it developed with CenturyLink and Frontier. OTA explains that the compromise language “while not ideal for those entities that operate in multiple states, will at least minimize the issues when compared to the draft rules.”

If the Commission decides to adopt its proposed rules without changing sections (16) and (17), OTA requests that the proposed section (20) be revised because it may inadvertently be too narrow. OTA proposes that language to hold the certificate holder responsible “for actions of the underlying carrier is *a contractor or subcontractor of* and agent of or employed by the certificate holder.”

OCTA, Verizon, Frontier, AT&T, CenturyLink, Level 3 and tw telecom oppose the proposed rules. They note that the problem is not only in Oregon, but nationwide and that much of the traffic involved is interstate in nature. The FCC and numerous industry standards bodies and associations have been working on the problem and the participants believe the Commission, rather than pursuing a unique path that could require costly enhancements to expand monitoring and reporting, should support an overall effort to find an integrated solution.

These participants believe that carriers should improve cooperation to document and resolve specific call termination complaints, which constitute only a tiny portion of the total traffic across the networks. Some also question whether the proposed rules requirements are within the Commission's jurisdiction. For example, they argue that the rules provide for carrier responsibility that goes beyond the obligations set forth in Oregon statutes. They also comment that proposed sections (18) through (20) are particularly problematic because they appear to impose a strict liability standard. Finally, they question whether the rules are sufficiently unambiguous, and will not lead to unintended consequences, and recommend that the rules should sunset once national rules are adopted.

C. Staff Response

With respect to the need for the rule generally, Staff disputes any assertion that the rulemaking itself is unnecessary and that the Commission should wait for the FCC to act. Staff explains that the call termination problem was not fixed following the FCC's Declaratory Ruling in 2007, and there is no evidence that the FCC's 2012 Declaratory Ruling (DA-12-154) will be any more effective. Furthermore, Staff notes that the transition to bill-and-keep that will eliminate the incentive not to complete calls will take another eight years.

Staff believes the proposed rule amendments, with certain revisions addressed below, will not conflict with FCC actions, mirror FCC requirements, and minimize conflicts. Staff adds that the FCC staff member working with the Rural Call Completion Task Force is aware of this proceeding and there is no indication that a conflict between federal and state action on the issue exists. The fact that the industry has developed a handbook to implement standards and best practices does not remove the need for the rule. Neither, in Staff's view, is it a viable option to merely allow carriers to resolve issues among themselves.

To respond to specific concerns of AT&T, OTA and OCTA, Staff proposes revisions to limit the rule's application specifically to intrastate traffic, provide exceptions for any potential conflict with federal or other state law, and clarify the scope of carriers' responsibilities for others' actions. Staff states that these revisions are the result of seeking a balance between customers' and carriers' concerns and are proposed only after Staff reviewed and rejected proposed alternative language from other participants to address these and other issues.

Staff's review of other participants' comments has affirmed its view that the rule amendments will not have unintended harmful consequences or exceed the Commission's authority. Although failure to complete a call has been the primary adverse effect of some routing practices, the rule should not be limited to completion failure; it should also encompass

excessive call setup delay, ring problems, intercept messages and related quality problems; and addressing these problems is consistent with the scope of the language in our Notice of Proposed Rulemaking. Staff maintains that it is not the intention of the rule to assert jurisdiction over wireless carriers in all circumstances, but only to certificate holders over whom it does have authority.

D. Commission Resolution

Efficient and reliable telecommunications service is especially critical in remote and sparsely populated areas of the state. These communities are particularly vulnerable to the effects of call termination failure and related problems, and it furthers the public interest and general safety of Oregonians generally to have consistent and reliable telecommunications services. The record in this proceeding has clearly demonstrated that the problem is still with us and will not be resolved of its own accord anytime soon.

We find that the Staff revisions to the proposed rule amendments further our intention to address the urgent problem of intrastate communications services that have been plagued with call completion and related problems. However, we believe that a reorganization of the Staff-revised proposed rules will help to clarify and make unambiguous our original intention to limit the applicability of these requirements to matters within the Commission's jurisdiction, specifically to the call termination quality issues which gave rise to this proceeding and to the need for compliance by certificated carriers. The reorganization takes portions of proposed sections (18), (19) and (20) and inserts them in an expanded section (17), which then replaces those sections proposed in the Staff revisions. We adopt the proposed rule amendments as revised in Appendix A. We are not adopting a sunset provision in this order, but we remain open to amend or eliminate sections (16) and (17) when circumstances indicate.

III. ORDER

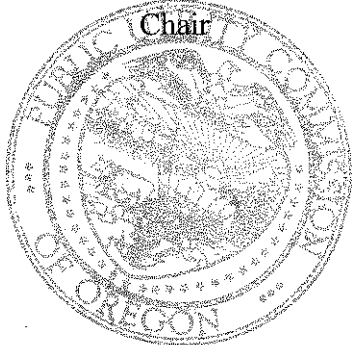
IT IS ORDERED that:

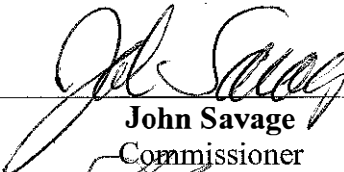
1. Modifications to Oregon Administrative Rule 860-032-0007, as set forth in Appendix A, are adopted.
2. The rule changes become effective upon filing with the Secretary of State.

Made, entered, and effective DEC 17 2012




Susan K. Ackerman
Chair





John Savage
Commissioner



Stephen M. Bloom
Commissioner

A person may petition the Commission for the amendment or repeal of a rule under ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule under ORS 183.400.

860-032-0007

Conditions of Certificates of Authority

A certificate to provide telecommunications service ~~shall be~~ is subject to the following conditions:

(1) The certificate holder ~~shall~~ must provide only the telecommunications service authorized in the certificate.

(2) A telecommunications utility ~~shall~~ may not abandon service except as authorized under the Commission's rules.

(3) For telecommunications utilities, the records and books of the certificate holder are open to inspection by the Commission, and ~~shall~~ must be maintained according to the Commission's rules.

(4) For competitive providers and cooperatives, the books and records of the certificate holder ~~shall~~ must be open to inspection by the Commission to the extent necessary to verify information required of the certificate holder. The books and records ~~shall~~ must be maintained according to the applicable rules of the Commission.

(5) The certificate holder ~~shall~~ must pay all access charges and subsidies imposed pursuant to the Commission's rules, orders, tariffs, or price lists.

(6) The certificate holder involved in the provision of an operator service ~~shall~~ must:

(a) Notify all callers at the beginning of each call of the telecommunications provider's name; however, a telecommunications provider furnishing operator service for another telecommunications provider may brand the call by identifying the other provider;

(b) Disclose rate and service information to the caller when requested;

(c) Maintain a current list of emergency numbers for each service territory it serves;

(d) Transfer an emergency call to the appropriate emergency number when requested, free of charge;

(e) Transfer a call to, or instruct the caller how to reach, the originating telecommunications utility's operator service upon request of the caller, free of charge;

(f) Not transfer a call to another operator service provider without the caller's notification and consent;

(g) Not bill or collect for calls not completed to the caller's destination telephone number; and

(h) Not screen calls and prevent or block the completion of calls which would allow the caller to reach an operator service company different from the certificate holder. In addition, the certificate holder shall, through contract provisions with its call aggregator clients, prohibit the blocking of a caller's access to his or her operator service company of choice. A certificate holder may apply for a waiver from this requirement if necessary to prevent fraudulent use of its services.

(7) Telecommunications providers who enter into operator service contracts or arrangements with call aggregators ~~shall~~ must include in those contracts or arrangements provisions for public notification as follows:

(a) A sticker or name plate identifying the name of the certificate holder ~~shall~~ must be attached to each telephone available to the public; and

(b) A brochure, pamphlet, or other notice ~~shall~~ must be available in the immediate vicinity of the telephone giving the name of the operator service provider, stating that rate quotes are available upon request, listing a toll-free telephone number for customer inquiry, and giving instructions on how the caller may access other operator service providers.

(8) Competitive providers may contract with telecommunications utilities, other competitive providers, or other persons for customer billing and collection under the following conditions:

(a) The telecommunications utility, other competitive provider, or other person, in billing for the competitive provider, **shall** include on the bill the name of a company with the information and authority to provide information and resolve disputes about billing entries, a toll-free number to reach that company, and details of the services and charges billed;

(b) The telecommunications utility **shall** not deny telecommunications service to customers for failure to pay charges for competitive provider services or unregulated utility services.

(9) The certificate holder **shall** comply with Commission rules and orders applicable to the certificate holder.

(10) The certificate holder **shall** not take any action that impairs the ability of other certified telecommunications providers to meet service standards specified by the Commission;

(11) The certificate holder **shall** respond in a timely manner to Commission inquiries.

(12) The certificate holder **shall** submit required reports in a timely manner.

(13) The certificate holder **shall** notify the Commission of changes to the certificate holder's name, address, or telephone numbers within ten days of such change.

(14) Telecommunications providers **shall** meet service standards set forth in applicable Commission's rules, including OAR 860-032-0012.

(15) The certificate holder **shall** timely pay all Commission taxes, fees, or assessments adopted pursuant to Oregon law or Commission rules, orders, tariffs or price lists.

(16) Except as otherwise allowed under state or federal law, the certificate holder must not block, choke, reduce or restrict intrastate traffic in any way.

(17) The certificate holder must take reasonable steps to ensure that it does not adopt or perpetuate routing practices that, except as otherwise allowed under state or federal law, result in lower quality service to an exchange with higher terminating access rates than like service to an exchange with lower terminating access rates.

(a) Reasonable steps include:

(A) Not engaging in deceptive or misleading practices including but not limited to informing a caller that a number is not reachable or is out of service when the number is in fact reachable and in service.

(B) Ensuring that the actions of any underlying carrier, if that underlying carrier is an agent, contractor or subcontractor of or employed by the certificate holder and acting within the scope of the person's employment, used to deliver traffic on behalf of the certificate holder would not put the certificate holder in violation of any Commission rule.

(b) The certificate holder is liable for the actions of an underlying carrier used to deliver traffic on behalf of the certificate holder, if that underlying carrier is an agent, contractor or subcontractor of or employed by the certificate holder and acting within the scope of the person's employment and the certificate holder knew or should have known of the underlying carrier's actions and engages in acts or omissions that effectively allow those actions to persist.