

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 635

In the Matter of

Rulemaking to Implement Permanent Rules
for Temporary Rules Adopted in AR 634 and
Comprehensive Revisions to Rules for RSPF,
OTAP, and TDAP.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

This order memorializes our decision, made and effective at our September 8, 2020 Regular Public Meeting, to adopt Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

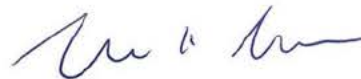
Made, entered, and effective Sep 09 2020.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Mark R. Thompson
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 Circuit Court for Marion County in compliance with ORS 183.484.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT**

PUBLIC MEETING DATE: September 8, 2020

REGULAR ___ **CONSENT** ___ **RULEMAKING** X **EFFECTIVE DATE** _____

DATE: September 1, 2020

TO: Public Utility Commission

FROM: Jon Cray

THROUGH: Michael Dougherty, Phil Boyle, and Diane Davis **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:

(Docket No. AR 635)

Request for approval to initiate a rulemaking to (1) implement permanent rules for the temporary rules adopted in AR 634 and (2) implement comprehensive revisions to rules for RSPF, OTAP, and TDAP.

STAFF RECOMMENDATION:

Open a permanent rulemaking docket to (1) consider permanent rules to implement the temporary rules adopted in AR 634 and (2) consider comprehensive revisions to the existing rules governing the Residential Service Protection Fund (RSPF), Oregon Telephone Assistance Program (OTAP), and Telecommunication Devices Access Program (TDAP).

DISCUSSION:

Issue

Whether the Public Utility Commission of Oregon (Commission) should initiate a permanent rulemaking to (1) implement permanent rules for the temporary rules adopted in AR 634, and (2) implement comprehensive revisions to rules governing the RSPF, OTAP, and TDAP.

Applicable Law

Pursuant to ORS 756.060, the Commission “may adopt and amend reasonable and proper rules and regulations relative to all statutes administered by the commission...”

Docket No. AR 635
September 1, 2020
Page 2

The Oregon Administrative Procedures Act sets forth the process for administrative rulemaking.

Analysis

Scope of Rulemaking - Residential Service Protection Fund

ORS 759.685, as amended, directs the Commission to fund the programs provided in section 2 to 6, chapter 290, Oregon Laws 1987 assessing a surcharge, not to exceed 35 cents,¹ levied on each paying landline and cellular service subscriber with access to the Oregon Telecommunications Relay Service. The 2017 Oregon Legislature enacted Senate Bill 84² into law clarifying that the RSPF surcharge does apply to subscribers of interconnected voice over internet protocol service and directed the Commission to adopt, by rule, the definition of interconnected voice over protocol service consistent with 47 C.F.R. § 9.3. Although providers of voice over internet protocol service in Oregon have been collecting and remitting the RSPF surcharge to the Commission, this proposed rulemaking is an opportunity to integrate interconnected voice over internet protocol service into the Commission's existing administrative rules, among other changes that may be appropriate.

Oregon Telephone Assistance Program

OTAP is a plan of assistance to low income customers established under Sections 2 and 6, chapter 290, Oregon Laws 1987, as amended, to assure adequate, affordable residential telecommunication service is available to all citizens and to support broadband internet access service. The 2019 Oregon Legislature enacted Senate Bill 69,³ effective January 1, 2020, to align Oregon law with FCC regulations, under which eligible low-income customers can receive the OTAP discount on broadband internet access service. On June 5, 2020, the 2019-2020 Oregon Interim Joint Emergency Board allocated \$3.5 million from the federal Coronavirus Relief Fund to the Commission to expand access to affordable telephone and broadband internet access service for eligible low income households.⁴ The Commission, in response to the enactment of Senate Bill 69 and the Oregon Interim Joint Emergency Board allotment, adopted temporary rules in Docket No. AR 634 on June 30, 2020. The temporary rule amendments addressed the need for expanded support by requiring the plan of assistance to include broadband internet access service for eligible low income

¹ The RSPF surcharge is currently \$0.10.

² ORS 759.685(1)(b).

³ Or Laws 2019 c.91 §1.

⁴ See Oregon State Legislature; *Oregon Legislative Information; 2019-2020 Interim Joint Emergency Board*, <https://olis.oregonlegislature.gov/liz/2019/1/Committees/EB/2020-06-05-15-00/Agenda> (last visited September 1, 2020).

Docket No. AR 635
September 1, 2020
Page 3

customers. The proposed rulemaking will consider whether these amendments should be included in the rules on a permanent basis.

In addition, the proposed rulemaking is an opportunity to update the OTAP rules regarding subscriber reporting data and on eligibility, such as by defining an eligible resident of Tribal lands, and consistent with FCC regulations, updating the Tribal-specific federal assistance program criteria⁵ through which a Tribal low-income resident can demonstrate eligibility for OTAP.

This rulemaking is also an opportunity to eliminate obsolete OTAP rules. On November 16, 2017, the FCC adopted an Order (17-155) eliminating the benefit port regulation for voice and broadband internet access service. The proposed rulemaking will allow for repeal of the corresponding administrative rule, specifically OAR 860-033-0030(13) and (14), that governs the benefit port regulation.

Telecommunication Devices Access Program

Pursuant to ORS 759.695, as amended, the Commission, with the advice of the Telecommunication Devices Access Program Advisory Committee, is responsible for:

- (1) Establish[ing] and administer[ing] a statewide program to purchase and distribute assistive telecommunication devices to persons who are deaf, hard of hearing, speech-impaired or deaf-blind and establish a telecommunications relay service.
- (2) [E]stablish[ing] and administer[ing] a statewide program to purchase and distribute adaptive equipment to make telephone service generally available to persons with physical disabilities.

In 2018, Moss Adams LLP was commissioned to perform a risk assessment and testing of internal controls over the TDAP in accordance with Standards for Consulting Services established by the American Institute of Certified Public Accountants. Moss Adams LLP identified properly designed internal controls and recommended improvements for administrative efficiency. The proposed rulemaking is an opportunity to address these recommendations, such as allowing for transfers ownership of equipment to the recipient after four (4) years, which generally encompasses the warranty and extended warranty period for most equipment.

⁵ Bureau of Indian Affairs general assistance, Tribally administered Temporary Assistance for Needy Families, Head Start (only those households meeting its income qualifying standard), or the Food Distribution Program on Indian Reservations.

Docket No. AR 635
September 1, 2020
Page 4

In addition to the above proposals, the rulemaking is an opportunity to consider other comprehensive amendments that serve to update definitions, better reflect current practices, and reorganize for clarity and consistency.

Staff anticipates receiving valuable feedback from the public, telecommunications industry, and the OTAP and TDAP advisory committee members. Staff also anticipates drawing on the work of the FCC and other states that have previously engaged in similar policymaking. Pending Commission approval, a workshop has been scheduled for Thursday, September 10, 2020. Staff anticipates bringing proposed rules for Commission consideration shortly thereafter, in anticipation of a January 1, 2021 effective date for any resulting changes.

Conclusion

This permanent rulemaking in Docket No. AR 635 is necessary to respond to recent legislative changes that require the Commission to undertake a permanent rulemaking to implement a system for assessing the RSPF surcharge to subscribers of interconnected voice over internet protocol and to include broadband internet access service in the plan of assistance (OTAP), respectively. Consideration of permanent rules for the temporary rules adopted in Docket No. 634 is also necessary. Staff will consider comprehensive amendments that modernize and clarify rules for the effective administration of the RSPF, OTAP, and TDAP.

PROPOSED COMMISSION MOTION:

Open a permanent rulemaking docket to (1) Consider permanent rules implementing the temporary rules adopted in AR 634, and (2) Consider comprehensive revisions to rules governing the RSPF, OTAP, and TDAP.