

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2127

In the Matter of

UNITED TELEPHONE COMPANY OF THE
NORTHWEST,

Request to Set Date Certain of December 1,
2020 for Anyone Who Requests Service in
Wildfire Impacted Service Area.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED WITH MODIFICATIONS

This order memorializes our decision, made and effective at our November 17, 2020 Regular Public Meeting, to adopt Staff's findings of fact, conclusions of law, and recommendations set forth in the Staff memorandum in this matter with modifications.

Our decision is based on the record compiled for this docket, which includes Staff's report, as well as the information submitted to us and reviewed at the November 17, 2020 Regular Public Meeting. We order United Telephone Company of the Northwest (United) to restore basic telephone service to all customers who request service in the company's service territory impacted by the South Obenchain wildfire. For those customers United finds it impracticable to serve using its own facilities, it will provide comparable voice service via other technology at no additional cost no later than December 1, 2020, and provide service to these customers using its own facilities no later than January 1, 2021. For customers requesting service after January 1, 2020, United will provide service within seven calendar days using its own facilities. Given United's Carrier of Last Resort obligations to serve new customers, we order that for new customers receiving service after December 1, 2020, and before January 1, 2021, United may provide voice service from its own facilities or, where impracticable, shall provide alternative service at the cost of United's comparable voice service.

No later than November 23, 2020, United is ordered to provide a status update to the Commission on the alternative service offering. Subject to Staff's preference, United shall submit weekly or bi-weekly reports to Staff describing the status of the full-service restoration efforts. Both reports must include information on United's communications to local governments, first responders, and affected customers.

The Staff Report is attached as Appendix A.

Made, entered, and effective Nov 18 2020.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Mark R. Thompson
Commissioner



The Utility subject to this order has the right, if the Utility requests, to a hearing. A request for hearing must be made in writing to the Commission, and the written request must be received by the Commission within 15 days from the date this order. If a request for hearing is not received within this 15-day period, the Utility's right to a hearing shall be considered waived.

Upon default by the Utility, the contents of the Commission's file regarding the subject of this order automatically becomes part of the evidentiary record for the purpose of proving a prima facie case. The Utility may default by failing to request a hearing within 15 days, withdrawing a hearing request, or by notifying the Commission or Administrative Law Judge that the Utility will not appear at hearing or by failing to appear at hearing.

Default Final Order: If the Utility subject to this order fails to request a hearing within 15 days, this order becomes final.

Appeal Rights: If the above final order on default takes effect, the Utility is entitled to judicial review of the order in accordance with ORS 183.482. The Utility may request judicial review by filing a petition for judicial review with the Court of Appeals in Salem, Oregon within 76 days from the date of issuing this notice.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: November 17, 2020**

REGULAR **CONSENT** **EFFECTIVE DATE** _____

DATE: November 10, 2020

TO: Public Utility Commission

FROM: Malia Brock

THROUGH: Bryan Conway, Michael Dougherty, and Bruce Hellebuyck **SIGNED**

SUBJECT: UNITED TELEPHONE COMPANY OF THE NORTHWEST:
(Docket No. UM 2127)
Request to set date certain of December 1, 2020, for anyone who requests service in wildfire impacted service area.

STAFF RECOMMENDATION:

Staff recommends that the Commission summarily investigate the provision of service in wildfire-impacted service areas by United Telephone Company of the Northwest (United, Utility, or Company) and order the utility to provide service using its own facilities by December 1, 2020.

DISCUSSION:

Issue

Whether the Commission should summarily investigate the provision of service in wildfire-impacted service areas by United and whether the Commission should order United to provide service using its own facilities.

Applicable Law

A telecommunications utility is obligated to afford safe and adequate services. Under ORS 759.506(1), a telecommunications utility with allocated territory is obligated to “[p]rovide adequate and safe service to the customers of this state.”

OAR 860-023-0005 provides: “Each energy utility, large telecommunications utility, and intrastate toll service provider must have and maintain its entire plant and system in such condition that it will furnish safe, adequate, and reasonably continuous service.”

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Under ORS 756.040(1), the Commission's general powers and duties include the obligation to obtain for the customer of telecommunications utility "adequate service at fair and reasonable rates." To this end, "[t]he commission is vested with power and jurisdiction to supervise and regulate every public utility and telecommunications utility in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction." ORS 756.040(2).

Under ORS 757.035(2), the Commission may require the operator a person engaged in the operation of telephone lines, plant, system, equipment or apparatus to take action that is necessary for the protection and safeguarding of the health and safety of its customers and the public.

Per ORS 756.515(1), the Commission may, on motion, and without notice, summarily investigate any matter when the Commission "believes that any rate may be unreasonable or unjustly discriminatory, or that any service is unsafe or inadequate, or is not afforded, or that an investigation of any matter relating to any public utility or telecommunications utility or other person should be made." Upon investigation, without notice or hearing, the Commission may make any findings and orders it deems justified or necessary, as provided in ORS 756.515(4). A party aggrieved by such an order may request as hearing as to whether the order may continue in effect within 15 days, under ORS 756.515(5). If such a hearing is requested, the order is suspended pending the outcome of the hearing, unless the Commission finds the order is necessary for the public health or safety, as relevant here, under ORS 756.515(6).

Analysis

Background

Following a number of severe wildfires in the State during September 2020, Staff and the Commission have obtained information concerning the damage to telecommunications equipment and facilities, and the status of service in United's service territory affected by wildfire. The Oregon Public Utility Commission's Consumer Services Section has received approximately 20 complaints relating to continued out of service conditions and the Company's lack of a coordinated proactive approach to wildfire out of service customers to provide out of service credits, porting of non-working telephone numbers, and call forwarding on the out of service telephone lines.

Following its review, Staff requests that the Commission summarily investigate the provision of service in wildfire-impacted service areas by United, and conclude that investigation by adopting the findings of fact and conclusions of law set forth below in an order directing United to provide service using its own facilities by December 1, 2020.

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Staff notes that the Company has avenues to seek recovery of the costs associated with restoring service under its Price Plan.

Obenchain Fire – Findings of Fact

The South Obenchain Wildfire began on September 8, 2020, five miles east of Eagle Point, Oregon and burned over 32,000 acres in Jackson County, affecting the Butte Falls area.

This Butte Falls area is part of United's allocated service territory and is served in conjunction with the White City, Oregon central office switch. As the crow flies, Butte Falls is located approximately 13 miles northeast of Eagle Point, 16 miles northeast of White City, and is roughly 32 miles northeast of Medford.

Staff sent wildfire-related Information Requests (IRs) on October 14, 2020, and the Commission held a Special Public Meeting on October 28, 2020. However, in that Special Public Meeting, other than advising the Commission that a Central Office had been destroyed and that its site was now cleared of debris, United did not identify what efforts, if any, had been made toward recovering service to wildfire affected areas. Neither the amount of work necessary to complete restoration, timelines of restoration efforts, nor the number of customers that were still out of service were provided to the Commission during the Special Public Meeting.

On November 2, 2020, the Company replied to Staff's first set of IRs. A number of United customers (*See attached* Company Confidential Response IR No. 1 for approximate numbers) are living and working in the town of Butte Falls, Oregon and remain without basic service or access to 9-1-1 after the South Obenchain wildfire ravaged this area. The lack of basic telephone service and no access to 9-1-1 creates a risk to health and safety for people living and working here, especially with winter approaching, coupled with tree and fire damage to this area.

Staff has no information whether cellular or competitive providers exist that serve this remote area other than the Company.

Additional Findings of Fact

United has had two months' time to restore basic telephone service to its customers in those portions of its allocated service territory affected by wildfire. This should have been sufficient time to restore service. A date of December 1, 2020, provides United with sufficient time to provide basic telephone service. If the Company were to find it impracticable to serve a particular customer using its own facilities, alternative means are available to the Company to provide a customer with telephone service, e.g. satellite service.

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New customers may request service in areas affected by wildfire. Such requests may be addressed in the same manner as restoring service to existing customers.

Conclusions of Law

United is obligated to afford safe and adequate services to customers in its service area under ORS 759.506(1). United must maintain its entire plant and system to provide safe, adequate, and reasonably continuous service to its customers under OAR 860-023-0005. United is currently not meeting its obligations to provide basic telephone service.

Under ORS 756.040(1), (2), the Commission has authority to direct United to take action to provide adequate service for its customers. The Commission further has authority under ORS 757.035(2) to require United to take action that is necessary for the protection of health and safety of its customers.

Under ORS 756.515(1), the Commission may summarily investigate United's provision of service to its customers following the wildfire events, upon a belief that the service is unsafe or inadequate, or is not afforded or that any other matter should be investigated, and an investigation is warranted in this matter. The Commission may issue an order to United with any findings and orders that are justified or necessary, under ORS 756.515(4).

United may be ordered to restore basic telephone service to all customers in service areas affected by these wildfires, who request service by December 1, 2020. For those customers United finds it impracticable to serve using its own facilities, United may be ordered to provide alternative service via other technology at no additional cost by December 1, 2020, and provide service to these customers using its own facilities by January 1, 2021. For customers requesting service after December 1, 2020, United may be ordered to provide service within seven calendar days using its own facilities. For new customers receiving service after December 1, 2020 and before January 1, 2021, United may be ordered to provide alternative service at no additional cost if United finds it impracticable to serve a customer using its own facilities.

An order that the Commission issues as set forth above is necessary for the public health or safety, and the order shall remain in effect pending any request for hearing, under ORS 756.515(6).

Conclusion

Staff recommends the Commission adopt Staff's findings of fact, the proposed conclusions of law, and issue an order directing the restoration of service to customers

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affected by recent wildfires. Such action will protect customers from further risk to their health and safety.

PROPOSED COMMISSION MOTION:

Issue the following order, and adopt Staff's findings of fact, conclusions of law, and recommendation set forth in this Memorandum:

United will restore basic telephone service to all customers who request service in areas impacted by the South Obenchain wildfire by December 1, 2020. For those customers United finds it impracticable to serve using its own facilities, it will provide alternative service via other technology at no additional cost by December 1, 2020, and provide service to these customers using its own facilities by January 1, 2021. For customers requesting service after December 1, 2020, United will provide service within seven calendar days using its own facilities. For new customers receiving service after December 1, 2020 and before January 1, 2021, United may provide alternative service at no additional cost.

United.Wildfire.Docket.No.UM.2127