

ORDER NO. 00-066

ENTERED FEB 8 2000

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 381

In the Matter of OAR 860-016-0051, a)
Temporary Rule to Implement Ch. 1093, OR)
Laws 1999 (SB 622), Section 38, Relating to)
Complaints Against Telecommunications)
Utilities.)

ORDER

DISPOSITION: TEMPORARY RULE ADOPTED

Under Ch. 1093, OR Laws 1999 (SB 622), Section 38, telecommunications utilities are prohibited from engaging in certain anti-competitive acts. The statute specifies sanctions for violation of the law.

This rule is necessary because the law requires that complaints under that section must be resolved within 45 days of filing with the Commission. If parties do not have adequate guidance, the Commission will be unable to resolve complaints satisfactorily within the statutory time frame. This rule provides procedures that will expedite handling of these complaints.

At its September 21, 1999, public meeting, the Commission adopted a temporary rule (OAR 860-013-0080 - AR 363) for complaints against telecommunications utilities under Ch. 1093, OR Laws 1999 (SB 622), Section 38. The temporary rule became effective on September 21, 1999, and will expire March 18, 2000.

The Commission is considering a docket (AR 379) to adopt these rules on a permanent basis; however, a final order in that docket will not be issued until after the current temporary rule expires. Adoption of OAR 860-016-0051 will insure that procedures will be in place if parties file prohibited practices complaints between the time the original rule expires and the permanent rule is adopted.

The Commission finds that failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned.

ORDER NO. 00-066

At its February 8, 2000, public meeting, the Commission considered and approved the proposal from the Administrative Hearings Division to adopt 860-016-0051, a temporary rule for complaints against telecommunications utilities under Ch. 1093, OR Laws 1999 (SB 622), Section 38. The temporary rule will be effective on March 19, 2000, the day after the original rule expires. The temporary rule is attached as Appendix A.

ORDER

IT IS ORDERED that:

1. The temporary rule attached as Appendix A is adopted.
2. The rule shall be effective for a maximum of 180 days beginning March 19, 2000.

Made, entered, and effective _____.

BY THE COMMISSION:

Vikie Bailey-Goggins
Commission Secretary

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

860-016-0051

Actions Under Ch. 1093, OR Laws 1999 (SB 622), Section 38

(1) Purpose of rule. This rule specifies the procedure for filing an action against a telecommunications utility for a violation of Ch. 1093, OR Laws 1999 (SB 622), Section 38.

(2) The complaint. A complaint for a violation of Ch. 1093, OR Laws 1999 (SB 622), Section 38, must contain the following:

(a) A detailed statement of facts demonstrating that the complainant conferred with respondent in good faith to resolve the dispute, and that despite those efforts the parties failed to resolve the dispute;

(b) A copy of a written notice served upon the respondent telecommunications utility, as described in section (3)(a) below;

(c) A statement of facts specifying each violation of Ch. 1093, OR Laws 1999 (SB 622), Section 38, committed by the respondent, together with complainant's request for relief. The request for relief must indicate whether the remedy sought is consistent with the dispute resolution provisions of any interconnection agreement between the parties. The statement of facts must be supported by written testimony or affidavits, and must be made by persons with personal knowledge of the relevant facts. Any exhibits attached to the testimony or affidavits must contain the foundation for the exhibits;

(d) A statement of applicable law, supported by appropriate citations.

(e) Any motion seeking affirmative relief. Complainant may file a motion subsequent to the filing of the complaint based upon facts or circumstances unknown or unavailable to complainant at the time the complaint was filed.

(f) A statement that the complaint is filed under Ch. 1093, OR Laws 1999 (SB 622), Section 38 and that the Commission should issue an order within 45 days after the complaint is filed.

(3) Service of the complaint. The complaint must be served as follows:

(a) At least ten days prior to filing the complaint, complainant must serve written notice upon respondent stating that complainant intends to file a complaint alleging a violation of Ch. 1093, OR Laws 1999 (SB 622), Section 38. The notice must identify the provisions of Ch. 1093, OR Laws 1999 (SB 622), Section 38 that complainant alleges have been violated by the respondent, and the specific acts or omissions causing the violation. The notice must be served in the manner set forth in subsection (b) below.

(b) On the same day the complaint is filed with the Commission, complainant must deliver a copy of the complaint to respondent, respondent's authorized representative, attorney of record or designated agent for service of process. Complainant must also serve all persons designated in any applicable interconnection agreement to receive notices. Service may be by fax or by overnight mail, provided the complaint arrives at respondent's location on the same day the complaint is filed with the Commission.

(4) The answer. The answer to the complaint must contain the following:

(a) A response to each allegation set forth in the complaint, setting forth all affirmative defenses;

(b) A statement of the facts supporting respondent's position. The statement of facts must be supported by testimony or affidavits, and be made by persons with personal knowledge of the relevant facts. Any exhibits attached to the testimony or affidavits must contain the foundation for the exhibits;

(c) A statement of law, supported by appropriate citations.

(d) Any allegations raised in the complaint and not addressed in the answer shall be deemed admitted.

(e) A response to any motion filed by complainant, filed as a separate document. Respondent may also file motions seeking affirmative relief. Respondent may file a motion subsequent to the filing of the answer based upon facts or circumstances unknown or unavailable to respondent at the time the answer was filed.

(5) Service of the answer. The answer must be served as follows:

(a) Respondent must file the answer with the Commission within ten calendar days after service of the complaint.

(b) Respondent must deliver a copy of the answer to complainant on the same day the answer is filed with the Commission.

(c) Respondent must serve a copy of the answer on the complainant's attorney, as listed in the complaint, or the person who signed the complaint, if complainant has no attorney. Respondent shall serve all persons designated in any applicable interconnection agreement.

(d) Service may be by fax or overnight mail, provided the answer arrives at complainant's location on the same day the answer is filed with the Commission.

(6) The reply. Complainant must reply to an answer that contains affirmative defenses. The reply must be filed with the Commission, no later than 10 calendar days after the answer is filed. On the same day the reply is filed, a copy of the reply must be delivered to the respondent. If the reply contains new facts or legal issues not raised in the complaint, the reply shall also comply with sections (2)(b) and (2)(c) above. Complainant shall serve all persons designated in any applicable interconnection agreement. Service may be by fax or overnight mail, provided that the reply arrives at respondent's location on the same day the reply is filed with the Commission.

(7) Prehearing conference. The Commission will convene a prehearing conference to consider each complaint alleging a violation of Ch. 1093, OR Laws 1999 (SB 622), Section 38.

(a) The Administrative Law Judge will schedule a prehearing conference to be held not later than 15 calendar days after the complaint is filed with the Commission. At the discretion of the Administrative Law Judge, the prehearing conference may be conducted by telephone.

(b) The Administrative Law Judge will determine whether the issues raised in the complaint can be decided on the pleadings and submissions without further proceedings. If the Administrative Law Judge decides that further proceedings are necessary, the Administrative Law Judge will establish a procedural schedule. The schedule shall include a mandatory mediation session. Either party may request that a settlement Judge, other than the presiding Administrative Law Judge, be assigned to the matter.

(c) The Administrative Law Judge may make oral rulings during the prehearing conference on any matters relevant to the conduct of the proceeding, including but not limited to procedural matters, discovery, and the submission of briefs or other documents. Oral rulings shall be on the record or reduced to writing.

(d) The prehearing conference may include a discussion of one or more of the following matters:

(i) Whether the issues can be narrowed;

(ii) The need for additional pleadings or evidentiary submissions, including affidavits or exhibits;

(iii) Whether discovery is necessary, and if so, the type, scope, and schedule for such discovery;

(iv) The prospects for obtaining stipulations of fact;

(v) The prospects for settlement of some or all of the issues;

(vi) The need for written legal memoranda or briefs;

(vii) The establishment of a procedural schedule; and

(viii) Other matters that may aid in the disposition of the case.

(8) Discovery. A party may file a request for discovery upon another party to the dispute. The request shall accompany the complaint or answer and shall state the specific information sought and the relationship of the request to the issues in dispute. The Administrative Law Judge may modify the discovery procedures in OAR Chapter 860, Division 014 to accommodate the prompt disposition of the complaint.

(9) Hearing. If requested, the hearing will begin no later than 30 days after the complaint is filed with the Commission.

(10) Powers of the Administrative Law Judge. In any complaint proceeding alleging a violation of Ch. 1093, OR Laws 1999 (SB 622), Section 38, the Administrative Law Judge has broad discretion to decide how the proceeding shall be conducted. The Administrative Law Judge may, for example:

(a) Limit the record to written submissions or schedule an evidentiary hearing;

(b) Limit the number of exhibits and witnesses and the time for their presentation;

(c) Limit the examination of witnesses;

(d) Require the parties to submit additional information necessary for a fair and expeditious resolution of the case; or

(e) Require the parties to submit a joint statement listing what facts, if any, have been stipulated to, what facts remain in dispute, what legal issues are in dispute, and a brief summary of the position of the parties on each issue.

(f) Bifurcate issues for more efficient considerations of the issues.

(g) Nothing in this section is intended to supercede OAR 860-012-0035.

(h) The Administrative Law Judge may consult with Staff as provided for in OAR 860-016-0030.

(11) Order. Within 45 days after the complaint is filed, the Commission shall either prepare a final decision or approve as final the decision of the Administrative Law Judge. The decision shall be issued as a Commission order.

Stat. Auth.: ORS Ch. 756, Ch. 1093, OR Laws 1999 (SB 622), Section 38

Stats. Implemented: ORS 756.040, 756.518, 759.030(1), Ch. 1093, OR Laws 1999 (SB 622), Section 38 & 47 USC § 252

Hist.: NEW