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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

AR 415

In the Matter of a Rulemaking proceeding)
for the transfer of Certificates of Authority)
to provide telecommunications service as a)
Competitive Provider.)

ORDER

DISPOSITION: AMENDED RULES ADOPTED

At its May 22, 2001 Public Meeting, the Public Utility Commission granted Staff's request to open a rulemaking docket to adopt procedures allowing telecommunications providers to transfer certificates of authority to provide telecommunications services in Oregon. While OAR 860-032-0005(4) prohibits the transfer or assignment of certificates of authority without Commission consent, there currently are no rules that govern the transfer process. Accordingly, after soliciting comments from industry representatives, Staff proposed rules to address the transfer of certificates of authority, and prepared a draft transfer application form.

On May 25, 2001, the Commission filed a Notice of the Proposed Rulemaking with the Secretary of State, and subsequently served it on persons interested in such matters. The notice set out the amendments proposed by Commission Staff, and included a Statement of Need, Statutory Authority, Principal Documents Relied Upon, and Fiscal and Economic Impact. The notice was published in the Secretary of State's *Oregon Bulletin* on July 1, 2001.

Staff conducted a workshop on July 23, 2001 to discuss its rulemaking proposals with telecommunications providers and other interested persons. In addition, Michael Grant, an Administrative Law Judge with the Commission, held a comment hearing in this matter on September 24, 2001. At the hearing, Dean Randall, authorized representative, appeared on behalf of Verizon Northwest, Inc. (Verizon); Brant Wolf, authorized representative, appeared on behalf of the Oregon Telecommunications Association (OTA); and Michael Weirich, Assistant Attorney General, appeared on behalf of Staff. Alia Miles, attorney, appeared via telephone on behalf of Worldcom, Inc. (Worldcom).

At its October 22, 2001 Public Meeting, the Commission considered the comments and recommendations of the participants in this matter and entered the decisions set out in this order.

DISCUSSION

Staff's Proposed Rulemaking

Staff's proposed rules are based on existing requirements for obtaining a certificate of authority, including notification and opportunity for protest under ORS 759.020(2) and (3). The proposed rules differ from the existing process, however, by requiring both parties to a transaction to file a joint application. Having both the transferor and the transferee complete a joint application ensures that both parties to a merger or acquisition concur with the specifics of the transfer.

The proposed rules provide that the Commission will serve notice of the application and allow any interested person to file a protest within 20 days. If there are no timely protests, the Commission will review the application and either grant or deny it. If there are no protests, Staff plans to process the applications on an expedited basis, without going through a proposed order and exceptions process. These internal procedures will speed up the issuance of transferred certificates. Staff anticipates that the Commission will routinely grant uncontested applications where Staff does not object to the transfer.

In addition to language explaining the transfer procedure, the proposed rules include a definition of affiliated interest. The definition that has previously been used relates to utilities and not competitive providers. The new definition is similar to that found in ORS 759.010, but the revised version specifically leaves out the words "utility" and "utilities." These words are changed to "telecommunications provider" and "telecommunications providers." The interpretation of affiliated interest concerning competitive providers has caused confusion in the past. The revised definition is intended to clearly represent the Commission's intent when referring to affiliated interest and competitive providers.

Comments

In response to the proposed rulemaking, Qwest Corporation (Qwest) and OTA filed comments. Qwest recommends that the proposed rules be slightly modified to expressly state that the failure of a telecommunications utility to protest an application shall not be considered consent to the application. After review, Staff agrees with Qwest's suggestion and modified OAR 860-032-0005(13)(d) to track the similar proviso contained in OAR 860-032-0005(8)(b).

OTA makes two recommended changes to the proposed rules. First, OTA suggests that the definition of affiliated interest between telecommunications providers be modified to exclude cooperatives. Staff opposes OTA's request and contends that cooperatives should not be exempt from the requirement to provide information about affiliates in applying to transfer a certificate of authority.

Although our authority over cooperatives is limited, the Commission does have jurisdiction over some cooperative rates, such as access charges. *See House Bill 2727.* Accordingly, the Commission is authorized to require the disclosure of financial and operational information covering services provided by cooperatives. *See Beaver Creek Cooperative Telephone Co. v. PUC*, 162 Or App 264, *rev den* 329 Or 479 (1999). For this reason, and because the Commission must ensure that no telecommunications provider and its affiliate engages in special transactions that harm the public generally, we decline to exclude cooperatives from the definition of affiliated interest set forth in OAR 860-032-0001(15).

OTA also recommends that proposed OAR 860-032-0005(9)(b) be modified to mandate a hearing on an application if protested by a cooperative. As proposed, the rule requires a hearing only if a telecommunications utility protests. Again, Staff opposes OTA’s recommendation. Staff believes that OTA’s proposal exceeds the Commission’s statutory authority.

ORS 759.020(4) provides that the Commission need not hold a hearing prior to issuing a certificate of authority except on the agency’s own motion or if protested by the affected telecommunications utility. We agree with Staff that the Commission cannot expand this statutory requirement to include protests by cooperatives. As a matter of practice, however, we add that the Commission will generally grant a cooperative’s request for hearing if sufficient reasons are shown.

ORDER

IT IS ORDERED that:

1. The rules set out in Appendix A, attached to and made part of this order, are adopted.
2. The rules shall become effective upon filing with the Secretary of State.

Made, entered and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

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.

860-032-0001

Definitions for Telecommunications

For the purpose of this Division:

(1) “Competitive Provider” means a competitive telecommunications provider as defined in ORS 759.005(2)(a), who provides services authorized pursuant to ORS 759.020.

(2) “Cooperative” means a cooperative corporation or association, which provides local exchange telecommunications service within its own exchanges, which is organized under ORS Chapter 62, and which is certified under ORS 759.025(2).

(3) “Exempt Service” means a telecommunications service that is completely deregulated. All revenues from, costs of, and assets dedicated to providing the service are not under the Commission’s jurisdiction, until and unless the service is reregulated under OAR 860-032-0025(6).

(4) “Local Exchange Service” means local exchange telecommunications service as defined in ORS 759.005(2)(c). Local exchange service includes “shared service.”

(5) “Operator Service” means service provided by a telecommunications provider in response to a request for special billing, dialing assistance, or information regarding the use of and charges for its telecommunications services. An operator service may be manual or automatic.

(6) “Pay Telephone” means a telephone instrument, generally placed in public areas, for transient use on a pay-per-call basis. “Pay Telephone” instruments may be coin operated, noncoin operated, prepay, postpay, central office controlled, instrument controlled, provided by local exchange carriers, or provided by other persons or entities.

(7) “Price-Listed Service” means a product or service whose price and terms are authorized under OAR 860-032-0023, OAR 860-032-0035, ORS 759.030, ORS 759.050, or ORS 759.195, and posted in a price list filed with the Commission. The costs and revenues of a price-listed product or service shall be considered part of the telecommunications utility’s regulated activities.

(8) “Private Telecommunications Network” means a system, including the construction, maintenance, or operation of the system, for the provision of a service or any portion of a service, by a person for the exclusive use of that person and not for resale, directly or indirectly. “Private Telecommunications Network” includes services provided by the State of Oregon pursuant to ORS 190.240 and ORS 283.140.

(9) “Shared Service” means shared telecommunications service as defined in ORS 759.005(2)(f) and:

(a) The provision of telecommunications and information management services and equipment:

(A) To a user group comprised of one person or association served by a single telecommunications system;

(B) Located in a single building or in several buildings on contiguous property;

(C) By a commercial shared service provider or by a users’ association; and

(D) Through privately owned customer premises equipment and associated data processing and information management services.

(b) Includes connection to local exchange service.

(10) “Telecommunications Provider” or “provider” includes competitive providers, cooperatives, and telecommunications utilities.

(11) “Telecommunications Service” or “service” means two-way switched access and transport of voice communications, and all services provided in connection with such services, but excludes:

- (a) Services provided by radio common carrier;
- (b) One-way transmission of television signals;
- (c) Surveying;
- (d) Private telecommunications networks; and
- (e) Customer communications which take place on the customer’s side of the network interface.

(12) “Telecommunications Utility” means a person who is not a competitive provider and is designated as a telecommunications utility under OAR 860-032-0010.

(13) “Toll Service” means a telecommunications service between local exchanges carried on the public switched network for which charges are made on a per-unit basis.

(14) “Unserved Person” means a person:

- (a) Who lacks local exchange service;
- (b) Who is applying for residential service or business service with five or fewer lines; and
- (c) Who, for the initiation of such service, would be required to pay line extension charges.

(15) “Affiliated interest” between telecommunications providers means:

(a) Every corporation and person owning or holding directly or indirectly 5 percent or more of the voting securities of such telecommunications provider;

(b) Every corporation and person in any chain of successive ownership of 5 percent or more of voting securities of such telecommunications provider;

(c) Every corporation 5 percent or more of whose voting securities are owned by any person or corporation owning 5 percent or more of the voting securities of such telecommunications provider or by any person or corporation in any chain of successive ownership of five percent or more of voting securities of such telecommunications provider;

(d) Every person who is an officer or director of such telecommunications provider or of any corporation in any chain of successive ownership of 5 percent or more of voting securities of such telecommunications provider;

(e) Every corporation which has two or more officers or two or more directors in common with such telecommunications provider;

(f) Every corporation and person, 5 percent or more of which is directly or indirectly owned by a telecommunications provider;

(g) Every corporation or person which the Commission determines as a matter of fact, after investigation and hearing, actually is exercising any substantial influence over the policies and actions of such telecommunications provider, even though such influence is not based upon stockholdings, stockholders, directors or officers to the extent specified in this subsection;

(h) Every person or corporation who or which the Commission determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and actions of such telecommunications provider in conjunction with one or more other corporations or persons with whom they are related by ownership or blood or by action in concert that together they are

affiliated with such telecommunications provider within the meaning of this section even though no one of them alone is so affiliated.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, ~~759.005~~ & **759.020**

Hist.: PUC 27-1985 (Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 19-1986 (Temp), f. & ef. 12-15-86 (Order No. 86-1253); PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 10-1989 (Temp), f. & cert. ef. 7-10-89 (Order No. 89-847); PUC 1-1990, f. & cert. ef. 2-6-90 (Order No. 90-96); PUC 5-1993, f. & ef. 2-19-93 (Order No. 93-184); PUC 1-1994, f. & ef. 1-5-94 (Order No. 94-040); PUC 10-1998, f. & ef. 4-28-98 (Order No. 98-170); PUC 2-2000, f. & ef. 2-9-00 (Order No. 00-068)

860-032-0005

Application for New or Amended Certificate of Authority

(1) No person shall provide intrastate telecommunications service on a for hire basis except as authorized in a certificate of authority from the Commission.

(2) Any person intending to provide intrastate telecommunications service in Oregon shall file an application, on forms provided by the Commission, for a new or amended certificate of authority to provide service.

(3) For applicants who request classification as a telecommunications utility, all services proposed to be offered by the applicant shall be deemed essential services.

However, applicant may accompany the application with a petition to exempt some services pursuant to

OAR 860-032-0025 or to price list some or all services pursuant to OAR 860-032-0035.

~~————(4) Certificates of authority may not be transferred or assigned without the prior consent of the Commission.~~

~~(5)~~**(4)** An application shall contain:

(a) The name, address, and telephone number of the applicant;

(b) A description of the service the applicant seeks to provide, including designation of such service as local exchange, shared, or interexchange service;

(c) A description of the territory where the service is to be offered. An application to provide local exchange service shall include a description of the local exchange service boundaries or a list of the local exchanges to be served;

(d) The names of affiliated interests of the applicant, as defined in ~~ORS 759.010~~ **OAR 860-032-0001(15)**, which are certified to provide or are actually providing telecommunications service in Oregon; and

(e) A request for classification as a telecommunications utility or competitive provider.

~~(6)~~**(5)** If an application, in any material respect, is incomplete, inaccurate, false, or misleading, the Commission shall reject the application.

~~(7)~~**(6)** The Commission shall serve notice of the application as provided in OAR 860-032-0002(1).

~~(8)~~**(7)**(a) Within 20 days of the date of service under section ~~(7)~~**(6)** of this rule, any interested person may file a protest to an application. The protest shall set forth the grounds for the protest. Except as provided in section ~~(8)~~**(7)**(b) of this rule, failure to protest within the time limit shall be deemed consent to the application. The Commission

may require a person filing a protest to show that it is affected by the application or that its appearance and participation will not unreasonably broaden the issues or burden the record;

(b) If the application is to provide local exchange service within the service territory of a telecommunications utility or cooperative, the telecommunications utility or cooperative may protest. Failure of the telecommunications utility or cooperative to protest an application to provide local exchange service, other than shared service, shall not be considered consent to the application. The telecommunications utility or cooperative shall be made a party to the application process upon written request to the Commission and mailing a copy of the request to the applicant;

(c) The applicant shall serve protestants and parties with copies of amendments and additional information submitted during the application process. If an applicant intends to broaden the authority requested during the application process, it shall follow the procedures set forth in sections (2) through ~~(8)~~(7) of this rule. However, it may narrow its request by serving its amendment on each protestant and party.

~~(9)~~(8) The Commission shall review applications for interexchange service or shared service pursuant to ORS 759.020. Applications for local exchange service, other than shared service, shall be reviewed pursuant to ORS 759.020 and ORS 759.050.

~~(10)~~(9) For all applications:

(a) The Commission may hold a hearing regarding an application upon request of any person or on its own motion;

(b) The Commission may consider protests to an application and may grant or deny an application without hearing. However, if the application is to provide local exchange service, other than shared service, within the service territory of a telecommunications utility, and the telecommunications utility protests, the Commission shall hold a hearing regarding the application; and

(c) If an application is denied in whole or in part, without hearing, the Commission shall set forth in writing the reasons for the denial. Within 30 days of the date of service of the denial, the applicant may, in writing, request a hearing.

~~(11)~~(10) For applications for local exchange service, other than shared service, the following apply in addition to provisions of section ~~(9)~~(8) of this rule:

(a) The Commission may apply the public interest criteria from ORS 759.050(2), or the Commission may determine pursuant to ORS 759.020(3) that the affected telecommunications utility or cooperative is unable to provide service;

(b) Failure by the telecommunications utility or cooperative to provide reasonable and adequate local exchange service shall constitute inability to provide service;

(c) If the Commission processes the application without a hearing, the Commission staff shall issue to the applicant and to affected parties a proposed order which grants or denies the application; and

(d) The applicant or affected parties may file exceptions to the proposed order. Exceptions shall be filed with the Administrative Hearings Division, Commission staff, and all parties to the application proceeding. Commission staff and all parties may reply to exceptions.

(11) A telecommunications provider shall transfer a certificate of authority only with approval of the Commission and subject to the following requirements:

(a) The transferor may transfer some or all of its authority;

(b) Transferee shall be liable for all fees incurred and reports due by the transferor as of the date the transfer is approved;

(c) All relevant conditions and restrictions which attend the authority held by the transferor will apply to the certificate held by the transferee.

(12) An application to transfer authority to provide telecommunications service shall be on forms provided by the Commission.

(13) For applications to transfer authority to provide telecommunications service:

(a) The Commission will serve notice of the application to transfer pursuant to OAR 860-032-0002(1);

(b) Within 20 days of the date of service of notice of the application, any interested person may file a protest to the application. The protest shall set forth the grounds for the protest. The Commission may require a person filing a protest to show how it is affected by the application;

(c) Any interested person may be made a party to the application process upon written request to the Commission and mailing copies of the request to the applicants in accordance with OAR 860-013-0021;

(d) If the application is to provide local exchange service within the service territory of a telecommunications utility or cooperative, the telecommunications utility or cooperative may protest. Failure of the telecommunications utility or cooperative to protest an application to provide local exchange service, other than shared service, shall not be considered consent to the application. The telecommunications utility or cooperative shall be made a party to the application process upon written request to the Commission and mailing a copy of the request to the applicants;

(e) The applicants shall serve protestants and parties with copies of amendments and additional information submitted during the application process;

(f) Applications to transfer authority to provide telecommunications service are subject to section (9) of this rule;

(g) If there are no timely protests, the Commission will review the application and grant or deny the application pursuant to sections (9) and (10) of this rule; and

(h) A party to the application proceeding may request rehearing or reconsideration of the order, which grants or denies the application, pursuant to ORS 756.561.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020, 759.025, 759.030, 759.050, 759.225 & 759.690

Hist.: PUC 27-1985 (Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 10-1989 (Temp), f. & cert. ef. 7-10-89 (Order No. 89-847); PUC 1-1990, f. & cert. ef. 2-6-90 (Order No. 90-96); PUC 23-1990, f. & cert. ef. 12-31-90 (Order No. 90-1918); PUC 9-1991, f. & ef. 7-16-91 (Order No. 91-854); PUC 13-1997, f. & cert. ef. 11-12-97 (Order No. 97-434); PUC 2-1998, f. & cert. ef. 2-24-98 (Order No. 98-060); PUC 10-1998, f. & ef. 4-28-98 (Order No. 98-170); PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468); PUC 2-2000, f. & ef. 2-9-00 (Order No. 00-068)

860-032-0060

Reporting Requirements for Telecommunications Providers

The purpose of this rule is to provide the Commission with accurate information in order to carry out the Legislative policy of ORS 759.015.

(1) The books and records of all telecommunications providers shall be open to the Commission and subject to audit to the extent needed to verify required reports.

(2) Annual report – form and filing date:

(a) Competitive providers – On forms provided by the Commission, each competitive provider, including shared service providers, shall submit an annual report before April 1, containing data required by section (3) of this rule related to its operations for the preceding calendar year.

(b) Telecommunications utilities – Telecommunications utilities shall submit annual reports as required by OARs 860-027-0070 or 860-034-0395.

(c) Cooperatives – Cooperatives shall submit annual reports as required by OAR 860-034-0750. Each cooperative that does not file an annual report pursuant to OAR 860-034-0750 shall submit an annual report before April 1, on forms provided by the Commission, containing data required by section (3) of this rule related to its operations for the preceding calendar year.

(3) Annual report – contents:

(a) Exact legal business name, street address, mailing address, and telephone number; and

(A) Name, address, telephone number, and position of the person who is the contact for the Commission and its staff; and

(B) Name, address, telephone number, and position of the person who is the contact for the general public;

(b) Other names used in Oregon, including Assumed Business Names, “Doing Business As” names, and “Also Known As” names;

(c) Former names used in Oregon during the past three calendar years;

(d) Interests, as defined by ~~ORS 759.010~~ **OAR 860-032-0001(15)**, which are affiliated with the telecommunications provider and which are authorized to provide service, or are actually providing service, in Oregon;

(e) Areas in Oregon served;

(f) Types of telecommunications services provided;

(g) How the services are provided, whether by resale, the telecommunications provider’s own facilities, use of building blocks (unbundled network elements), or a combination of the above; and

(h) As applicable: number of customers, number of lines, originating conversation minutes, percent of conversation minutes which are intrastate and percent which are interstate, and revenue from Oregon operations.

(4) If the Commission receives a public records request for information submitted pursuant to subsection (3)(h) of this rule, the Commission shall assert that, subject to the limitations of the Public Records Law, the materials are trade secrets and, therefore, exempt from disclosure. The material shall be marked “EXEMPT FROM PUBLIC DISCLOSURE AS TRADE SECRETS.” Subject to the applicable requirements of the Public Records Law or ORS 759.060, access to this material shall be limited to

Commissioners, their Counsel, and Commission staff. The materials shall be segregated and maintained in a locked file.

Stat. Auth. : ORS Ch. 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 756.105, 759.020 & 759.050

Hist.: PUC 17-1988, f. & cert. ef. 11-15-88 (Order No. 88-1306); PUC 12-1997, f. & ef. 10-30-97 (Order No. 97-413); PUC 10-1998, f. & ef. 4-28-98 (Order No. 98-170); PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468); PUC 4-2000, f. & ef. 2-9-00 (Order No. 00-068); PUC 4-2001, f. & ef. 1-24-01 (Order No. 01-117)