

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1017(3)

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGONInvestigation into Expansion of the
Oregon Universal Service Fund to
Include the Service Areas of Rural
Telecommunications Carriers

ORDER

DISPOSITION: PROPOSED OREGON UNIVERSAL SERVICE FUND
REVISIONS FOUND TO BE BEYOND SCOPE OF
LEGISLATIVE INTENT; PROPOSAL REJECTED

I. SUMMARY

In this order, we find that the proposal of the Oregon Exchange Carriers Association (OECA) to increase the support levels of the Oregon Universal Service Fund (OUSF) to offset a reduction in intrastate access rates is beyond the scope of the intent of the statutes relating to the OUSF. We do not address the merits of the proposal or the associated public policy issues.

II. INTRODUCTION

A. Background

The Oregon Legislative Assembly has adopted the goal to secure and maintain high-quality universal telecommunications service for all classes of customers throughout the state at just and reasonable rates. Local telephone companies, called incumbent local exchange carriers (ILECs), are the "carriers of last resort" with the obligation to provide these services. ILECs primarily obtain revenue through the provision of retail and wholesale services. Retail revenues come from end-user customers for voice and data services. Wholesale revenues come from other telecommunication carriers for various inter-carrier services.

A key component of the wholesale revenues is “access charges”—payments made when a customer from another phone company places a call to a customer of the ILEC. The access charge is designed to compensate the ILEC for the cost of completing the call.

Calls originating in one state and terminating in another give rise to interstate access charges; those charges are set under a national regulatory framework by the Federal Communications Commission (FCC). Intrastate access charges, arising when calls both originate and terminate in Oregon, are subject to the jurisdiction of the Public Utility Commission of Oregon (Commission). Although the actual function of completing a call is identical in both instances, the amount of the access charge for completing a call originating outside of Oregon is lower than the payment for completing an intrastate call, which is set under Oregon’s state tariffs and regulations.

The cost of providing basic telephone service varies according to circumstances, but population density is one of the most consistent markers of per-customer costs. For many years, ILECs were able to keep retail rates at lower levels throughout the state by implicit subsidies—averaging the higher per-customer costs for serving rural areas with the lower per-customer costs of serving urban areas. However, as price competition in the telecommunications industry grew in densely populated, low-cost areas, it became increasingly difficult for ILECs with both urban and rural operations to compete in urban areas while simultaneously subsidizing service to the high-cost rural customers.

This problem was addressed by federal and state governments by establishing funds explicitly designed to support the provision of basic telephone services in high-cost areas, replacing the implicit subsidies which were under competitive pressure. On the federal level, the FCC established a high-cost fund, with implementation for non-rural carriers¹, effective January 1, 2001. In Oregon, the 1999 Legislative Assembly enacted Senate Bill 622, codified as ORS 759.425, establishing the OUSF as a means to keep “basic telephone service” available at a reasonable and affordable rate in higher cost areas.

The OUSF was to be funded by imposing a surcharge on the retail customers’ bills of all carriers providing retail communications services over landline facilities, including companies that directly competed with ILECs for retail customers. Carrier providers of radio-based services, such as cellular telephone service companies, were specifically exempted from collecting and remitting the surcharge.² This Commission originally limited the fund to offset the losses of the two large Oregon telephone companies to competitive pressures. In 2003, however, the Commission expanded the fund, to support all “high-cost carrier[s], whether the carrier is large or small.”³

In expanding the fund, this Commission approved a stipulation which contained the same ORS 759.425(3)(a) prescribed computational model that had been used for larger non-rural carriers to calculate the small ILEC’s costs per customer line and the amount of

¹ In Oregon, there were two such carriers—US West Communications and GTE, the predecessors, respectively, of Qwest and Verizon.

² See ORS 759.425(4), (7).

³ See Order No. 03-082 at 1 (Feb 03, 2003).

subsidy payments the carrier would receive from the OUSF. Contributions to the OUSF were based on a percentage surcharge applied solely to intrastate retail telecommunications services sold in Oregon. Distributions from the fund were based on the number of common lines used in the provision of basic telephone service. In order to include rural carriers in the plan, the surcharge needed to be increased accordingly.⁴

The calculated amount each rural carrier received was based on a formula that compared certain of its per-line costs against a benchmark rate. Costs for the 31 rural ILECs ranged from \$30 to \$217 per month, per line. The amount of support for individual carriers was based, in general terms, on the cost of basic telephone service, less federal loop compensation and USF amounts, less the Commission-established benchmark. The Commission's current benchmark is \$21 per month, per line.

Including rural carriers and increasing the size of the OUSF had an immediate financial impact. If reductions were not made in the rural ILECs' existing tariffs, the distributions from the OUSF would have resulted in a significant financial windfall, which was clearly not the Commission's intention. In order to maintain revenue neutrality, the ILECs needed to file new tariffs, effective the same date they received their first OUSF payment, which reflected the payments and reduced the implicit subsidies traditionally used to support basic telephone service.

When this Commission adopted the stipulation and expanded the fund, we specifically encouraged the reduction in intrastate access charges distributed among carriers.⁵ Although the terms of the stipulation have been renewed periodically ever since, intrastate access charges still exceed the interstate access charge rates.

B. The OECA Proposal

On May 19, 2011, the OECA petitioned to reopen this docket for the purpose of considering a revision to the OUSF. The proposal has two interdependent parts: First, OECA proposes further reductions in intrastate access rates until they are equal to the current interstate access rates; second, OECA proposes to increase support levels from the OUSF to replace those revenues lost through the access charge reductions. In other words, OECA essentially proposes that OUSF monies be used to offset decreased access charges paid to ILECs.

OECA explains the goal of the "proposal is to build upon the existing OUSF with an expansion to allow intrastate access rates to be brought to the composite interstate access rate level for the rural companies"⁶ and to "continue the universal service and access reform work that began in UM 1017(1) through the reduction of intrastate access rates to the interstate access rate levels."⁷

⁴ Order No. 03-082 at 3-4.

⁵ *Id.* at 5.

⁶ OECA/200, Phillips/5.

⁷ OECA/100, Long/3.

If the OECA proposal is adopted, the retail customers who currently fund the OUSF via a surcharge on their monthly bills would see an increase in the surcharge, while telephone company inter-carrier payments would be reduced.

C. Procedural History

Numerous parties intervened in the proceeding, a prehearing conference was held and a procedural schedule was established.

Shortly after a workshop/settlement conference was held, OECA, along with Comcast Business Communications LLC (Comcast), tw telecom of oregon llc (tw), TRACER Oregon (Tracer), and Citizens' Utility Board of Oregon (CUB) filed a joint motion that identified a threshold legal issue as to this Commission's authority to adopt OECA's proposal. The procedural schedule was subsequently modified to allow briefing by the parties and a determination by the Commission on the following question:

Does the Commission currently have the legal authority to adopt the OECA's proposed expansion of the Oregon Universal Service Fund?

On September 8, 2011, OECA filed its brief and characterized this question as "whether the Proposal by the Oregon Exchange Carrier Association is Consistent with ORS 759.425." On September 21 and 22, 2011, response briefs were filed by the following parties: (1) MCI Communications Service, Inc. d/b/a Verizon Business Services; TTI National, Inc.; Teleconnect Long Distance Services and Systems Co. d/b/a Telecom*USA; Verizon Select Services Inc.; Verizon Enterprise Solutions LLC; Verizon Long Distance LLC; and MCI metro Access Transmission Services LLC d/b/a Verizon Access Transmission services (collectively, Verizon); (2) AT&T Communications of the Pacific Northwest, Inc. TCG Joint Venture Holdings, Inc d/b/a TCG Oregon, and AT&T Mobility LLC and its subsidiaries operating in Oregon (collectively AT&T); (3) Oregon Cable Telecommunications Association (OCTA); (4) Comcast, Tracer, and tw, (collectively, Joint Respondents); (5) CUB; and (6) Commission Staff (Staff).

III. DISCUSSION

We address the question posed by the parties regarding our legal authority to adopt the OECA proposal by examining and analyzing the statutory language according to the prescribed methodology and looking at our prior actions in promulgating rules pursuant to the statute and in issuing orders relating to those rules.

A. Statutory Language

The OUSF is established and implemented by ORS 759.425. The pertinent sections of the statute read as follows:

(1) The Public Utility Commission shall establish and implement a competitively neutral and nondiscriminatory universal service fund. Subject

to subsection (6) of this section, the commission shall use the universal service fund to ensure basic telephone service is available at a reasonable and affordable rate.

* * * * *

(3)(a) The [Commission] shall establish a benchmark for basic telephone service as necessary for the administration and distribution of the universal service fund. The universal service fund shall provide explicit support to an eligible telecommunications carrier that is equal to the difference between the cost of providing basic telephone service and the benchmark, less any explicit compensation received by the carrier from federal sources specifically targeted to recovery of local loop costs and less any explicit support received by the carrier from a federal universal service program.

* * * * *

(6) In addition to the purpose specified in subsection (1) of this section, moneys in the universal service fund may be used by the Public Utility Commission to facilitate the availability of broadband at fair and reasonable rates throughout this state. The amount of moneys in the universal service fund used for this purpose may not exceed the amount the state is required to expend to receive the maximum amount of funds available from federal sources for broadband services * * *.

ORS 759.400(1) states that "basic telephone service" means "local exchange telecommunications service defined as basic by rule of the Public Utility Commission." The Commission, under that directive, adopted OAR 860-032-0190(2) to define "basic telephone service" as "retail telecommunications service that is single party, has voice grade or equivalent transmission parameters and tone-dialing capability, provides local exchange calling, and gives customers access to but does not include [long distance, among other identified services]."

B. Positions of the Parties

Although many of the parties discuss the alleged facts, policy considerations, and merits of the OECA proposal, we address only the legal arguments on the scope of the legislative mandate in the pertinent statutes. OECA and AT&T both argue that the proposal is consistent with the statutory language directing the Commission with respect to the establishment, implementation, and uses of the OUSF. Verizon, OCTA, Joint Respondents, CUB, and Staff argue that the proposal is, to varying degrees, contrary to the mandates of the Oregon Legislature.

The primary divisions of opinion relate to subsections (1) and (3) of ORS 759.425. With respect to subsection (1), parties disagree as to whether access charges fit within the definition of "basic telephone service" entitled to support under the OUSF. Regarding

subsection (3), the question is whether or not that section acts as a limitation on subsection (1) and, if so, whether the proposal complies with any limitations imposed by subsection (3). Subsection (6), while not being interpreted in this case, was introduced as an exemplar of the means by which the Legislature expresses its intent.

Our decisions on these questions are independent. If access charges are found not to be within the definition of basic telephone service, the proposal is beyond the scope of the Legislature's intent. Regardless of whether access charges are interpreted to be included within the definition of subsection (1), the Commission must make a finding as to whether subsection (3) is the sole permissible means to fulfill the subsection (1) mandate. That finding will determine the overall legality of the proposal as well.

1. OECA

At the outset, OECA contends the Commission has broad authority under ORS 759.425(1) to use the OUSF "to ensure basic telephone service is available at a reasonable and affordable rate." According to OECA, this authority includes the ability to treat access charges as part of "basic telephone service" entitled to support under the OUSF.

OECA points out that treating access charges as part of "basic telephone service" is consistent with current Commission rules and prior practice. OECA notes that the Commission expressly included access to long distance service as part of basic telephone service in OAR 860-032-0190(2). Thus, in OECA's view, the costs for access to those services—the access charges—are part of the costs for basic telephone service eligible for OUSF support. OECA adds that the Commission has effectively adopted this interpretation in its annual reviews of the OUSF and, at least since 2003, used OUSF support to reduce intrastate access charges.⁸

OECA argues that the arguments opposing its proposal that rely on ORS 759.425(3) are misplaced, because those provisions do not limit the Commission's authority under ORS 759.425(1). OECA notes the legislature had several opportunities to expressly limit that authority if it had wanted to do so, and, in fact, placed limitations with respect to other uses. "Thus, the [L]egislature demonstrated that it could condition the broad grant of authority under ORS 759.425(1) when it believed it appropriate to do so. If the [L]egislature had wanted to limit the Commission's authority under ORS 759.425(1) to be subject to subsection (3), it could have done so, but it did not."⁹

2 AT&T

AT&T generally agrees with OECA that "offsetting decreases in implicit subsidies in switched access rates, at least in part, by increased explicit support from the OUSF is consistent with ORS 759.425, the definition of basic telephone service, and the legislative

⁸ *Id.* at 19.

⁹ OECA Opening Brief at 10-13.

policy goals established in ORS 759.015.”¹⁰ AT&T notes that the FCC has recognized that universal service support has been both implicit and explicit and that the use of two different funding vehicles on the federal level is similar in approach to the OECA proposal, and generally concurs in the OECA analysis of the uses to which the OUSF may be put under ORS 759.425(1).¹¹

AT&T argues that, although ORS 759.425 subsection (3)(a) states that the OUSF shall be used to provide support that is equal to the difference between the cost of providing basic telephone service and the benchmark, it does *not* state that the OUSF shall *only* be distributed in this manner. AT&T joins OECA and argues that the legislature did not limit the uses of the OUSF as long as it fulfills the purposes of subsection (1).¹²

AT&T asserts that the OECA proposal should not be characterized as a wholesale service subsidy plan. AT&T contends that there is no conflict between the definition of “basic telephone service” and using the OUSF to partially offset a reduction in intrastate switched access rates. According to AT&T, OECA’s plan is similar to a federal finding on the purpose of the federal USF.¹³

3. *Verizon*

Verizon asserts that access services provided to interexchange carriers (IXCs) are not part of basic telephone service as prescribed by ORS 759.425(1). Verizon contends that OECA reliance on Commission rules defining basic telephone service is misplaced. According to Verizon, “access to long distance service”—as used in the Commission’s rules—only means that customers must have the ability to place and receive calls as part of their purchase of retail basic exchange service. Moreover, Verizon contends that OECA’s proposal is limited by ORS 757.425(3), because interexchange access service is provided on a wholesale basis to other telecommunications service providers, and includes end office and tandem switching, interoffice transport, and other such services.¹⁴

Verizon contends this interpretation is supported by amendments to ORS 756.425 made by the Legislative Assembly, during the 2009 session, that added subsection (6) addressing the use of OUSF funding for broadband. These amendments, according to Verizon, reflected the legislature’s clear understanding that subsection (1) limited the ability of this Commission to use the OUSF to support basic telephone service, which was why the subsection (6) amendment was necessary. Verizon concludes that the fact that the legislature amended ORS 759.425 to explicitly expand the permitted uses of the OUSF undercuts OECA’s assumption that the Commission is free to expand the funds uses on its own to replace reduced access charge revenues.¹⁵

¹⁰ AT&T Responsive Brief at 3, 8.

¹¹ *Id.* at 3, 4.

¹² *Id.* at 5.

¹³ *Id.* at 6.

¹⁴ Verizon Responsive Brief at 7-8.

¹⁵ *Id.* at 10-11.

4. *Joint Respondents*

Joint Respondents argue that OECA has proposed a “reinvention” of the OUSF that is outside of statutory authority of the Commission. Rather than ensuring basic telephone service, the OECA proposal, according to Joint Respondents, it creates a second OUSF funding mechanism based on aggregate common-line and switched access revenue requirements. The Joint Respondents contend that the OECA argument that anything supporting the publicly switched telephone network is basic telephone service is, “the absurd position that the OUSF can be used to support practically any service.”¹⁶

Joint Respondents assert that basic telephone service is a retail service distinguishable from intrastate switched access. Joint Respondents state the distinction is drawn in ORS 759.425(4) which refers in an “either-or” manner to intrastate switched access and regulated retail telecommunications service and provides a distinction indicating that “basic telephone service” is treated in a different manner and is applicable throughout the statute.¹⁷

Joint Respondents note that not all retail services are basic and that, as a result, the complete definition of basic telephone service “does not allow OUSF funding to be based on wholesale long distance charges, such as the intrastate access charges that OECA proposes to subsidize.” The OUSF cannot be used to support the PSTN generally because it goes beyond the basic service support authorized by the statute and the Commission’s rules.¹⁸

Joint Respondents also argue that the OECA proposal violates the statutory formula for calculating OUSF funding mandated in ORS 759.425(3) which is based on the difference between the cost of providing basic telephone service and the benchmark and contend that OECA’s statutory interpretation misconstrues the statute and abandons the per line basis of support implied in the statutory formula.¹⁹ Statutory interpretation methodology and the canons of construction require the rejection of OECA’s arguments.²⁰

5. *CUB*

CUB claims that the OECA proposal is beyond the scope and definition of “basic telephone service” as defined by OAR 860-032-0190(2) and applied in ORS 759.425.²¹ The OUSF, CUB asserts, is limited to local and retail services—not long distance and wholesale service.²²

CUB also argues that, even if OECA’s proposal meets the requirements of ORS 759.425(1) by ensuring the availability of basic telephone service, the proposal is

¹⁶ Joint Respondents’ Brief at 1-4.

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 7-9. “PSTN” is the industry acronym for “Publicly Switched Telephone Network.”

¹⁹ *Id.* at 10-11.

²⁰ *Id.* at 12-16.

²¹ CUB Brief at 3.

²² *Id.* at 3-4.

limited by ORS 759.425(3) for two reasons. First, subsection (3) requires the OUSF to provide explicit support, not just further universal service by any means the Commission should choose. To read the statute otherwise would nullify its meaning.²³ Second, CUB argues that the OECA proposal is impermissible because its proposed method to calculate additional funds is inconsistent with the required method set out in subsection (3).²⁴

6. *Staff*

Staff acknowledges that, in Order No. 03-082, the Commission expanded the OUSF to allow rural local exchange carriers to use the support money from the OUSF to reduce access charges. Staff maintains that the expanded use was lawful and not inconsistent with ORS 759.425 and OAR 860-032-0190.²⁵ Staff concludes, however, that the OECA's current proposal is inconsistent with ORS 759.425(3) because "it is expressly structured to size the fund to essentially support long distance services (*i.e.*, intrastate access revenue), a non-basic telephone service." According to Staff, it is the sizing of the OUSF under subsection (3), not its use under subsection (1), that is unlawful.²⁶

Staff explains that the current authorized method

lawfully focuses on the Local Revenue Requirement to size the OUSF and uses the \$21 benchmark to identify carriers eligible for support and also the amount of support each should receive. Conversely, the Proposal unlawfully focuses on Intrastate Access Revenue requirement.²⁷

Staff also asserts that OECA's proposal ignores the use of a cost-based benchmark to determine how much support to distribute to eligible carriers and that

the Proposal's so-called benchmark actually plays no role as a point of reference to determine the amount of additional support a company should receive or in establishing which companies are eligible to receive additional support. Indeed, the proposal's benchmark is found in a section of the formula that is completely peripheral to the main calculation.

In addition, Staff notes that the OECA does not intend for its proposal to replace the current method, but rather to generate support in addition to that already provided. Because the proposal is structured to support the RLECs' non-basic long distance services, Staff concludes it is unlawful.²⁸

²³ *Id.* at 6-7.

²⁴ *Id.* at 8.

²⁵ Staff Responsive Brief at 2.

²⁶ *Id.* at 5, & fn. 5.

²⁷ *Id.* at 6.

²⁸ *Id.*

C. Resolution

All of the issues raised by the parties regarding the OECA proposal turn on our interpretation of ORS 759.425. The guidelines for this task, set down in *PGE v. Board of Labor and Industries*, are as follows: “[I]n interpreting a statute, the court’s task is to discern the intent of the legislature. To do that, the court examines both the text and the context of the statute.”²⁹

The structure of ORS 759.425 is straightforward. Subsection (1) begins with a mandate that the Commission establish a competitively neutral and nondiscriminatory OUSF. The second sentence of subsection (1) begins with a subsequently-added clause that includes a reference to a new subsection (6) broadband deployment, among permissible uses of the OUSF.³⁰ That second sentence contains the mandate to the Commission to use the OUSF “to ensure that basic telephone service is available at a reasonable and affordable rate.” ORS 759.400 delegates the definition of “basic telephone service” to that defined by this Commission by rule.

Subsection (3) contains three subparts—we concentrate on subsection (3)(a). The first sentence mandates a benchmark for the calculation of how OUSF funds will be distributed. The second sentence provides a specific methodology to calculate the OUSF. The provision states that the OUSF shall provide explicit support equal to the difference between the cost of providing basic telephone service and the benchmark, less explicit compensation received from federal sources specifically targeted to recover specific costs, less any explicit support received from a federal universal service program.

Subsection (4) requires that the universal service charge be imposed on “the sale of all retail communications services.” Subsection (6), as noted, expands the permissible uses of the OUSF specified in subsection (1) to include availability of broadband.

From our reading of the text and context of the statute, we make the following conclusions with respect to the legislature’s intent in enacting Senate Bill 622, codified as ORS 759.425.

First, we address subsection (1), contrary to OECA’s assertions, access charges are not part of basic telephone service as prescribed by ORS 759.425(1). We agree with Verizon that OECA’s misreads our rule defining basic telephone service. As noted above, we have defined “basic exchange service” to mean *retail* services that include a customer’s access to long distance service. This access requires only that customers have the ability to place and receive calls as part of their purchase of retail basic exchange service. It does not include *wholesale* access services provided to interexchange carriers. If wholesale access charge revenues can be included within the statutorily specified definition of “basic telephone service,” then the only criterion for inclusion in that

²⁹ 317 OR 606, 859 P.2d 1143 (1993).

³⁰ The use of the OUSF to promote broadband deployment is not an issue in the OECA proposal. The amendment in context reflects the legislature’s recognition that broadband is not a component of “basic telephone service,” which was why the amendment was necessary.

definition is that the offering makes a contribution to the ILEC's overall revenue requirement. Such a broad interpretation cannot be supported by the text and context of the statute.

We reject OECA's claim that we previously gave a tacit interpretation of subsection (1) that included access charges in the definition of basic telephone service. In Order No. 03-082, we adopted a stipulation that expanded the OUSF to bring all carriers into the state universal service program. To help ensure that basic telephone service would continue to be available at reasonable and affordable rates to customers of telecommunication utilities throughout Oregon in the future, we expanded the OUSF to support all high-cost carriers, regardless whether the carrier is large or small.

As noted above, however, expanding the OUSF had an immediate financial impact. The small rural ILECs were already receiving implicit subsidies through access charges to keep rates reasonable; expanding the OUSF to also provide explicit subsidies would result in windfall profits, unless there was some form of rate rebalancing. To address this, the stipulation we approved also required general ILEC rate reductions, including reductions in intrastate access charges to offset OUSF funds received based on the statutory formula. Thus, we directed the rural carriers to file revised tariffs with lowered wholesale access rates to ensure that the expansion of the OUSF did not result in unintended consequences. Contrary to OECA's assertion, we did not reduce the access rates to justify OUSF expansion.

Nowhere did we indicate that curtailing overall revenues so as to fall within an ILEC's revenue requirement should be equated with the statute's goal in subsection (1) of ensuring the availability of basic telephone service at reasonable and affordable rates going forward. The avoidance of a windfall profit by ordering wholesale tariff rate reductions does not create the basis for a new revenue model. OECA has not persuaded us that the clear language in ORS 759.425(1) directing OUSF to provide support for basic telephone service a priori includes all potential contributions to an ILEC's revenue requirement.

Second, with respect to the purpose and use of subsection (3), we find that, in light of the specificity of the calculation methodology and the applicability to basic telephone service provided in the statute—subsection (3)(a) mandates the means by which the Commission is to fulfill its mandate under subsection (1). The legislature intended, and we must implement, subsection (1) in conformance with the methodologies of subsection (3)(a). Therefore, even if OECA's view that intrastate access revenues are a component of basic telephone service were to be adopted, its proposed method is inconsistent with the required method set out in subsection (3) and calculates support in a manner inconsistent with and peripheral to the benchmark—the per-line basis of support central to the formula.


We recognize that the issue which OECA members face with respect to declining intrastate access revenues may well be genuine. However, we find that the OECA proposal creates a second OUSF funding mechanism based on aggregate common-line

and switched access revenue requirements, in addition to the current OUSF, which is calculated based upon the difference between the monthly per line costs of basic telephone service and the \$21 per line benchmark rate. This second OUSF funding mechanism is not a basic telephone service under ORS 759.425(1), nor is it derived from the benchmark calculations mandated in subsection (3)(a). The legislature did not intend for the OUSF to be used for the purposes in the OECA proposal and any funds collected pursuant to ORS 759.425(4) may not be redirected in a manner other than through the methodology prescribed in ORS 759.425(3).

IV. ORDER

IT IS ORDERED that the proposal of the Oregon Exchange Carriers Association to increase the support levels of the Oregon Universal Service Fund to offset a reduction in intrastate access rates is not permitted by ORS 759.425 and is therefore rejected.

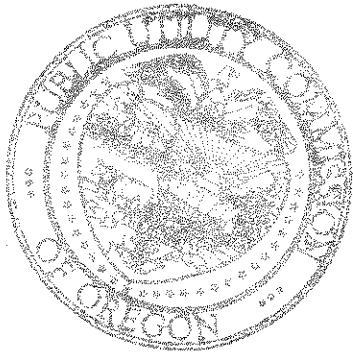
Made, entered and effective NOV 23 2011



John Savage
Commissioner



Susan Ackerman
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 Court of Appeals in compliance with ORS 183.480 through 183.484.