Chapter 759 — Telecommunications Utility Regulation

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GENERAL PROVISIONS

759.005 Definitions. (1)(a) As used in this chapter, except as provided in paragraph (b) of this subsection, “telecommunications utility” means:

(A) Any corporation, company, individual, association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the provision of telecommunications service, directly or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly within any town or city.

(B) Any corporation, company, individual or association of individuals, which is party to an oral or written agreement for the payment by a telecommunications utility, for service, managerial construction, engineering or financing fees, and having an affiliated interest with the telecommunications utility.

(b) As used in this chapter, “telecommunications utility” does not include:

(A) Any plant owned or operated by a municipality.

(B) Any corporation not providing intrastate telecommunications service to the public in this state, whether or not such corporation has an office in this state or has an affiliated interest with a telecommunications utility as defined in this chapter.

(C) Any person acting only as a competitive telecommunications provider.

(D) Any corporation, company, individual or association of individuals providing only telephone customer premise equipment to the public.

(2) As used in this chapter:

(a) “Competitive telecommunications provider” means a telecommunications services provider which has been classified as such by the Public Utility Commission pursuant to ORS 759.020.

(b) “Intrastate telecommunications service” means any telecommunications service in which the information transmitted originates and terminates within the boundaries of the State of Oregon.

(c) “Local exchange telecommunications service” means telecommunications service provided within the boundaries of exchange maps filed with and approved by the commission.

(d) “Private telecommunications network” means a system, including the construction, maintenance or operation thereof, for the provision of telecommunications service or any portion of such service, by a person for the exclusive use of that person and not for resale, directly or indirectly.

(e) “Radio common carrier” means any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers and any town making available facilities to provide radio communications service, radio paging or cellular communications service for hire.

(f) “Shared telecommunications service” means the provision of telecommunications and information management services and equipment to a user group located in discrete premises in building complexes, campuses or high-rise buildings, by a commercial shared services provider or by a users’ association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to local exchange telecommunications service.

(g) “Telecommunications service” means two-way switched access and transport of voice communications but does not include:

(A) Services provided by radio common carrier.

(B) One-way transmission of television signals.

(C) Surveying.

(D) Private telecommunications networks.

(E) Communications of the customer which take place on the customer side of on-premises equipment.

(h) “Toll” means telecommunications between exchanges carried on the public switched network for which charges are made on a per-unit basis. “Toll” does not include services which are an option to flat rate local or extended area service, even though such options may include charges on a per-unit basis. [1987 c.447 §1; 1989 c.5 §15; 1991 c.326 §2]

759.010 “Affiliated interest” defined. As used in ORS 759.100 (1) and 759.390, “affiliated interest” with a telecommunications utility means:

(1) Every corporation and person owning or holding directly or indirectly five percent or more of the voting securities of such telecommunications utility.

(2) Every corporation and person in any chain of successive ownership of five percent or more of voting securities of such telecommunications utility.

(3) Every corporation five percent or more of whose voting securities are owned by any person or corporation owning five percent or more of the voting securities of such telecommunications utility or by any person or corporation in any chain of successive ownership of five percent or more of voting securities of such telecommunications utility.

(4) Every person who is an officer or director of such telecommunications utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of such telecommunications utility.

(5) Every corporation which has two or more officers or two or more directors in common with such telecommunications utility.

(6) Every corporation and person, five percent or more of which is directly or indirectly owned by a telecommunications utility.

(7) Every corporation or person which the Public Utility 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 utility, even though such influence is not based upon stockholdings, stockholders, directors or officers to the extent specified in this section.

(8) 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 utility 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 utility within the meaning of this section even though no one of them alone is so affiliated. [1987 c.447 §2; 1989 c.17 §2]

759.015 Legislative findings. The Legislative Assembly finds and declares that it is the goal of the State of Oregon to secure and maintain high-quality universal telecommunications service at just and reasonable rates for all classes of customers and to encourage innovation within the industry by a balanced program of regulation and competition. The Public Utility Commission shall administer the statutes with respect to telecommunications rates and services in accordance with this policy. [Formerly 757.810]

759.020 Certificate of authority required; application; procedure; criteria; intrastate toll service level. (1) No person, corporation, company, association of individuals or their lessees, trustees, or receivers shall provide intrastate telecommunications service on a for-hire basis without a certificate of authority issued by the Public Utility Commission under this section.

(2) Applications for certificates of authority shall be in a form prescribed by the commission and shall describe the telecommunications services the applicant proposes to provide. Notice of all applications shall, within 30 days of filing, be served by the commission upon all persons holding authority to provide telecommunications service issued under this section or providing local exchange telecommunications service.

(3) Except as provided in ORS 759.050, no certificate shall authorize any person to provide local exchange telecommunications service within the local exchange telecommunications service area of a telecommunications utility unless such utility consents, is unable to provide the service, or fails to protest an application. This subsection shall not apply to any application for a certificate by a provider of shared telecommunications services.

(4) After notice, a hearing need not be held prior to issuance of a certificate of authority except upon the commission's own motion or unless the application is to authorize a person to provide local exchange telecommunications service in the local exchange telecommunications service area of a telecommunications utility and such utility protests. After hearing, the commission shall issue the certificate only upon a showing that the proposed service is required by the public interest.

(5) The commission may classify a successful applicant for a certificate as a telecommunications utility or as a competitive telecommunications services provider. If the commission finds that a successful applicant for a certificate has demonstrated that services it offers are subject to competition or that its customers or those proposed to become customers have reasonably available alternatives, the commission shall classify the applicant as a competitive telecommunications services provider. The commission shall conduct the initial classification and any subsequent review of the classification in accordance with such procedures as the commission may establish by rule, after hearings. The commission may attach reasonable conditions to such classification and may amend or revoke any such order as provided in ORS 756.568. For purposes of this section, in determining whether telecommunications services are subject to competition or whether there are reasonably available alternatives, the commission shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions.

(c) Existing economic or regulatory barriers to entry.

(d) Any other factors deemed relevant by the commission.

(6) Any provider of intrastate toll service must inform customers of the service level furnished by that provider, according to rules of the commission. The commission, by rule, shall determine the level of intrastate toll service that is standard. Any provider of intrastate toll service must identify the service level the provider plans to furnish in an annual report to the commission. The commission shall revoke the certification of any provider that does not consistently furnish the service level identified in the provider's annual report. [Formerly 757.815; 1991 c.326 §1; 1993 c.423 §1]

759.025 Certificates of authority for persons, companies and corporations providing services on January 1, 1986. (1) Notwithstanding ORS 759.020, the Public Utility Commission shall issue to any person, company or corporation providing intrastate telecommunications services that are subject to regulation by the commission on January 1, 1986, a certificate of authority to continue to provide those services on and after January 1, 1986.

(2) Notwithstanding any other provision of law, the commission shall issue to any cooperative corporation, or unincorporated association providing intrastate telecommunications service on January 1, 1986, a certificate of authority to continue to provide those services on and after January 1, 1986. Such actions shall not subject such

cooperative corporations or association to the commission's general powers of regulation. [Formerly 757.820]

759.030 Extent of regulation; exemptions; considerations; use of revenues; price listing of services; subsidies; alternative access. (1) Except as otherwise provided in this section, the Public Utility Commission shall have authority to determine the manner and extent of regulation of telecommunications services within the State of Oregon.

(2) Upon petition by any interested party and following notice and investigation, the commission may exempt in whole or in part from regulation those telecommunications services for which the commission finds that price or service competition exists, or that such services can be demonstrated by the petitioner or the commission to be subject to competition, or that the public interest no longer requires full regulation thereof. The commission may attach reasonable conditions to such exemption and may amend or revoke any such order as provided in ORS 756.568.

(3) Upon petition by any telecommunications utility, and after notice and hearing, the commission shall exempt a telecommunications service from regulation under the following conditions:

(a) Price and service competition exist.

(b) A service which is deregulated under this subsection may be regulated, after notice and hearing, if the commission determines an essential finding on which the deregulation was based no longer prevails, and reregulation is necessary to protect the public interest.

(4) Prior to making the findings required by subsections (2) and (3) of this section, the commission shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions.

(c) Existing economic or regulatory barriers to entry.

(d) Any other factors deemed relevant by the commission.

(5) No telecommunications utility may use revenues earned from or allocate expenses to that portion of its business which is regulated under this chapter to subsidize activities which are not regulated under this chapter; nor shall the commission require revenues or expenses from any activity not regulated under this chapter to be attributed to the regulated activities of a telecommunications utility. However, this subsection shall not be interpreted to affect any appropriate subsidy determined by the commission under subsection (9) of this section.

(6) If the commission determines that a product or service offered by a telecommunications utility as part of local exchange telecommunications services can be demonstrated by the utility to be subject to competition, or if a product or service is not an essential product or service, the commission may authorize the utility to file a price list, which shall contain the description, terms, conditions and prices of such services or products. No other schedule for price listed services need be filed with the commission. The price list or any revision thereof is not subject to the provisions of ORS 759.180 to 759.190 and shall become effective immediately on filing with the commission unless a later date is specified. In making the determination of whether a product or service is subject to competition, the commission shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions.

(c) Existing economic or regulatory barriers to entry.

(d) Any other factors deemed relevant by the commission.

(7) Within 60 days of a filing under subsection (2), (3) or (6) of this section, the commission shall either determine the appropriateness of the filing or determine that further investigation is necessary. If the commission determines that further investigation is necessary, the commission may suspend operation of the filing for a period not longer than five months from the end of the initial 60-day period. Upon a showing of good cause, any party may request extension of the suspension period for an additional three months.

(8) If the commission determines that a product or service offered by a telecommunications utility as part of interexchange telecommunications services can be demonstrated by the utility to be subject to competition, the commission, under such conditions as it determines are reasonable, may authorize the utility to file a price list, which shall contain the description, terms, conditions and prices of such services or products. No other schedule for price listed services need be filed with the commission. The price list or any revision thereof is not subject to the provisions of ORS 757.210 to 757.220 and shall become effective immediately on filing with the commission unless a later date is specified. In making the determination of whether a product or service is subject to competition, the commission shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions.

(c) Existing economic or regulatory barriers to entry.

(d) Any other factors deemed relevant by the commission.

(9) The commission is authorized to determine whether and to what extent a telecommunications service provided by a telecommunications utility within the State of Oregon should be subsidized in order for telecommunications services to be available at reasonable rates. If any subsidy is found to be required, the commission shall undertake an investigation and determine, after hearings, the revenue source or sources of a fund necessary to provide the subsidy and the manner of collection and distribution of the fund.

(10) If the commission finds upon notice and investigation that customers of shared telecommunications services have no alternative access to local exchange telecommunications services, the shared telecommunications service provider may be required to make alternative facilities or conduit space available on reasonable terms and conditions at reasonable prices. [Formerly 757.825; 1991 c.301 §1]

Note: Sections 2 and 3, chapter 589, Oregon Laws 1999, provide:

Sec. 2. In order to ensure consistency with the federal Telecommunications Act of 1996 (P.L. 104-104), to enhance fair competition and to promote deregulation of the telecommunications industry, the Public Utility Commission annually shall submit a report to the Governor and the Legislative Assembly or the Emergency Board on or before January 31 each year. The report shall include information on:

(1) The status of competition in the telecommunications industry;

(2) Significant changes that have occurred in the telecommunications industry during the preceding 12 months;

(3) Statutes that inhibit or discourage competition in and deregulation of the telecommunications industry;

(4) Specific actions taken by the commission to reduce the regulatory burden imposed on the telecommunications industry, including telecommunications utilities and competitive telecommunications providers;

(5) Specific actions taken by the commission to maximize the opportunities for telecommunications utilities and competitive telecommunications providers to achieve pricing flexibility, including rate rebalancing, exemption from regulation and streamlined regulations;

(6) Specific actions taken by the commission to:

(a) Minimize implicit sources of support; and

(b) Maximize explicit sources of support that are specific, sufficient, competitively neutral and technologically neutral and that support telecommunications services for customers of telecommunications providers in high-cost locations; and

(7) Statutes that should be enacted, amended or repealed to enhance and respond to the competitive telecommunications environment or promote the orderly deregulation of the telecommunications industry. [1999 c.589 §2]

Sec. 3. This 1999 Act is repealed June 30, 2005. [1999 c.589 §3]

759.035 Duty to furnish adequate and safe service at reasonable rates. Every telecommunications utility is required to furnish adequate and safe service, equipment and facilities, and the charges made by any public utility for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited. [1987 c.447 §3]

759.040 Application of law to certain unaffiliated utilities with fewer than 50,000 access lines. (1) Subject to subsection (6) of this section, ORS 759.180 to 759.190 do not apply to new or revised tariff schedules filed with the Public Utility Commission by telecommunications utilities or affiliated groups of telecommunications utilities serving fewer than 50,000 access lines in Oregon and not affiliated or under common control with any other kind of public utility providing service in Oregon.

(2) Subject to subsection (6) of this section, ORS 759.375 to 759.393 do not apply to telecommunications utilities or affiliated groups of telecommunications utilities serving fewer than 50,000 access lines in Oregon and not affiliated or under common control with any other kind of public utility providing service in Oregon.

(3) Subject to subsection (6) of this section, ORS 759.100 to 759.115 and 759.300 to 759.360 do not apply to telecommunications utilities or affiliated groups of telecommunications utilities serving fewer than 50,000 access lines in Oregon and not affiliated or under common control with any other kind of public utility providing service in Oregon.

(4) Upon petition by any telecommunications utility serving fewer than 50,000 access lines in Oregon and affiliated or under common control with another public utility providing service in Oregon, and a finding that such action is consistent with the public interest, the commission by order may exempt such telecommunications utility from:

(a) ORS 759.180 to 759.190.

(b) ORS 759.375 to 759.393.

(c) ORS 759.100 to 759.115 and 759.300 to 759.360.

(5) Upon petition by any telecommunications utility serving fewer than 50,000 access lines in Oregon, and finding that such action is consistent with the public interest, the commission by order may exempt such telecommunications utility from ORS 759.175 and 759.205 to 759.215.

(6) Upon petition by the telecommunications utility or upon petition by 10 percent of the then current access line subscribers, or 500 subscribers, whichever is the lesser, of any telecommunications utility:

(a) Filed with the commission not less than 10 days prior to the proposed effective date of new or revised tariff schedules, the commission may impose the procedures of ORS 759.180 to 759.190 or any part thereof, to any such schedules of a telecommunications utility exempted from ORS 759.180 to 759.190 pursuant to this section.

(b) After notice and hearing and a finding that such action is required by the public interest, the commission may revoke any exemption granted pursuant to this section, or any part thereof, or impose reasonable conditions upon the continued exercise thereof.

(7) Any telecommunications utility for which an exemption from the application of ORS 759.180 to 759.190 is provided pursuant to this section shall notify its affected customers of any price increase for intrastate telecommunications services at least 45 days prior to the proposed effective date of the increase.

(8) Any telecommunications utility for which an exemption from the application of any statute is provided pursuant to this section shall file with the commission an annual report that includes copies of the income statement and balance sheet the telecommunications utility files with the Federal Communications Commission. Each such telecommunications utility shall notify customers that the income statement and balance sheet are on file with the commission. [Formerly 757.870; 1999 c.451 §1]

759.045 Special rules for utilities exempted from regulation under ORS 759.040. The Public Utility Commission shall adopt specific rules to apply to telecommunications utilities which are exempted from certain regulation under ORS 759.040. An objective of these rules shall be to minimize the regulatory burden on these utilities to the extent this objective is feasible and consistent with the public interest. These rules shall not pertain to the statutes from which these utilities are exempted under ORS 759.040. [1991 c.658 §2]

759.050 Competitive zone service regulation. (1) As used in this section:

(a) “Competitive zone” means a telecommunications service area within all or part of a local exchange, described both by service and territory, that has been designated a competitive zone by the Public Utility Commission under subsection (2) or (4) of this section.

(b) “Competitive zone service” means a local exchange telecommunications service that the commission has authorized to be provided within a competitive zone.

(c) “Essential function” means a functional component of a competitive zone service necessary to the provision of the service by a telecommunications provider for which there is no adequate alternative in terms of quality, quantity and price to the incumbent telecommunications utility.

(d) “Telecommunications utility” and “competitive provider” mean those entities that are classified as such by the commission under ORS 759.020. “Telecommunications provider” includes both telecommunications utilities and competitive providers.

(2)(a) Notwithstanding the provisions of ORS 759.020 (3), the commission may certify one or more persons, including another telecommunications utility, to provide local exchange telecommunications service within the local exchange telecommunications service area of a certificated telecommunications utility if the commission determines that such authorization would be in the public interest. For the purpose of determining whether such authorization would be in the public interest, the commission shall consider:

(A) The effect on rates for local exchange telecommunications service customers both within and outside the competitive zone.

(B) The effect on competition in the local exchange telecommunications service area.

(C) The effect on access by customers to high quality, innovative telecommunications service in the local exchange telecommunications service area.

(D) Any other facts the commission considers relevant.

(b) Upon certification of a telecommunications provider under paragraph (a) of this subsection, the commission shall establish a competitive zone defined by the services to be provided by the telecommunications provider and the geographic area to be served by the telecommunications provider. Price and service competition within the meaning of ORS 759.030 shall not be deemed to exist by virtue of the establishment of a competitive zone.

(c) At the time of certification of a telecommunications provider, or thereafter, the commission may impose reasonable conditions upon the authority of the telecommunications provider to provide competitive zone service within the competitive zone including, but not limited to, conditions designed to promote fair competition, such as interconnection, and contributions of the type required of a telecommunications utility on account of the provision of local exchange service, including those to the Residential Service Protection Fund or the Telecommunication Devices Access Program.

(3) Upon demand, a competitive provider of competitive zone services shall make available to the commission any information relating to competitive zone services that the commission requests. Information provided to the commission by a competitive provider under this subsection shall be confidential and shall not be disclosed by the commission, except for regulatory purposes in the context of a proceeding before the commission.

(4) Upon application by a telecommunications utility and a showing of competition within its local exchange, whether or not from certificated providers, the commission may designate all or part of the local exchange a competitive zone.

(5)(a) Except with respect to telecommunications utilities that are exempt from the provisions of ORS 759.180 to 759.190, unless the commission determines that it is not in the public interest at the time a competitive zone is created, upon designation of a competitive zone, price changes, service variations and modifications of competitive zone services offered by a telecommunications utility in the zone shall not be subject to ORS 759.180 to 759.190 and, at the telecommunication utility's discretion, may be made effective upon filing with the commission.

(b) The price and terms of service offered by a telecommunications utility for a competitive zone service within a competitive zone may differ from that outside of the zone. However, the price for a competitive zone service within the zone may not be lower than the total service long run incremental cost, for nonessential functions, of providing the service within the zone and the charges for essential functions used in providing the service, but the commission may establish rates for residential local exchange telecommunications service at any level necessary to achieve the commission's universal service objectives. Within the zone, the price of a competitive zone service, or any essential function used in providing the competitive zone service, may not be higher than those prices in effect when the competitive zone was established, unless authorized by the commission.

(c) The commission may revoke the exemption of a telecommunications utility from ORS 759.180 to 759.190 if the commission finds that the utility has violated statutes, rules or conditions of the commission applicable to competitive zone services or that there has been a substantial change in the circumstances that prevailed at the time the competitive zone was first established.

(d) On the motion of a telecommunications provider or on its own motion, the commission may order a telecommunications utility to disaggregate and offer essential functions of the telecommunications utility's local exchange network.

(6) A decision of the commission, with respect to the terms and conditions under which competitive zone services may be offered within a competitive zone by a telecommunications utility, to authorize a competitor to provide service within the local exchange service area of a telecommunications utility or to otherwise designate a competitive zone shall be subject to judicial review but shall not be stayed other than by order of the commission, except upon a showing by clear and convincing evidence that failure to stay the decision will result in irreparable harm to the aggrieved party.

(7) The exclusive remedy of a telecommunications provider aggrieved by the prices, terms of service or practices of another provider with respect to competitive zone services within a competitive zone shall be a complaint filed with the commission under ORS 756.500. The commission, either upon complaint or its own motion, may permanently suspend a filing made by a provider with respect to a competitive zone service or take such other action as the commission deems appropriate, except an award for damages. A claim for damages arising from a commission decision in favor of the provider on a matter alleged in the complaint shall be brought as a separate action at law.

(8) Nothing in this section shall serve to shield any telecommunications provider of local exchange telecommunications service from state or federal antitrust laws.

(9) The commission shall report annually to the Legislative Assembly:

(a) The number of competitive zones created under ORS 759.020 and 759.050;

(b) The number of competitive providers authorized under ORS 759.020 and 759.050;
(c) The number and types of competitive services made available to consumers; and
(d) Consumer comments on competitive telecommunications services. [1993 c.423 §3]

759.060 Information submitted by local exchange telecommunications utilities; rules exempting disclosure. (1) The Public Utility Commission, by rule, shall specify information submitted to the commission by local exchange telecommunications utilities or cooperatives that is exempt from disclosure under ORS 192.410 to 192.505 as provided in this section. In adopting rules, the commission shall consider, among other matters:

(a) Whether the information is of a type that could potentially be used to the competitive disadvantage of a local exchange telecommunications utility or cooperative.

(b) Whether the information concerns matters of a nature personal to an employee or stockholder of a local exchange telecommunications utility or an employee or member of a cooperative.

(c) Whether the information is otherwise publicly available.

(2) Information specified under subsection (1) of this section is exempt from disclosure unless the public interest requires disclosure in the particular instance.

(3) Nothing in subsection (1) of this section limits the exemptions granted to a local exchange telecommunications utility or cooperative under ORS 192.410 to 192.505. [1995 c.538 §2]

RIGHTS OF WAY

759.075 Authority to construct lines and facilities; condemnation power; procedure. (1) Any telecommunications utility may:

(a) Enter upon lands within this state for the purpose of examining, locating and surveying the line thereof and also other lands necessary and convenient for the purpose of construction of service facilities, doing no unnecessary damage thereby.

(b) Condemn such lands not exceeding 100 feet in width for its lines (including poles, towers, wires, supports and necessary equipment therefor) and in addition thereto, other lands necessary and convenient for the purpose of construction of service facilities.

(2) Notwithstanding subsection (1) of this section, any telecommunications utility may, when necessary or convenient for transmission lines (including poles, towers, wires, supports and necessary equipment therefor) designed for voltages in excess of 330,000 volts, condemn land not to exceed 300 feet in width. In addition, if the lands are covered by trees which are liable to fall and constitute a hazard to its wire or line, such telecommunications utility may condemn such trees for a width not exceeding 100 feet on either side of the condemned land, as may be necessary or convenient for such purpose.

(3) The proceedings for the condemnation of such lands shall be the same as that provided in ORS chapter 35, provided that any award shall include, but shall not be limited to, damages for destruction of forest growth, premature cutting of timber and diminution in value to remaining timber caused by increased harvesting costs. [1987 c.447 §69]

759.080 Use of property outside limits of municipal corporation; agreement; condemnation upon failure to agree. When it is necessary or convenient, in the location of any poles or lines mentioned in ORS 759.075, to appropriate any part of any public road, street, alley or public grounds not within the corporate limits of any municipal corporation, the county court or board of county commissioners of the county within which such road, street, alley or public grounds is located, may agree with the telecommunications utility upon the extent, terms and conditions upon which the same may be appropriated or used and occupied by such corporation. If such parties are unable to agree, the telecommunications utility may condemn so much thereof as is necessary and convenient in the location and construction of the poles or lines. The provisions of ORS chapter 35 are applicable to condemnations under this section. [1987 c.447 §70]

BUDGETS, ACCOUNTS AND RECORDS

759.100 Budgetary control by commission; matters covered; preparation and filing; investigation; pension expenses. (1) The Public Utility Commission has the right and power of regulation, restriction and control over the budgets of expenditures of telecommunications utilities, as to all items covering:

(a) Proposed payment of salaries of executive officers;

(b) Donations;
(c) Political contributions and political advertising;
(d) Expenditures for pensions or for a trust to provide pensions for employees and officers;
(e) Other expenditures and major contracts for the sale or purchase of equipment; and
(f) Any payment or contemplated payment to any person or corporation having an affiliated interest for service, advice, auditing, associating, sponsoring, engineering, managing, operating, financing, legal or other services.

(2) On or before November 1 of each year, each telecommunications utility shall prepare a budget showing the amount of money which, in its judgment, shall be needed during the ensuing year for covering all such activities and expenditures, and file it with the commission.

(3) When any such budget has been filed with the commission, the commission shall examine into and investigate the same and unless rejected within 60 days thereafter, the proposed budget is presumptively fair and reasonable and not contrary to public interest.

(4) Proposed expenditures for pensions or for a trust to provide pensions for the employees and officers of such utility, whether for future service or past service or both, shall be recognized as an operating expense if the trust fund is irrevocably committed to the payment of pensions or benefits to employees and if such pensions are reasonable and nondiscriminatory. The commission may disallow as an operating expense any expenditure for pension purposes in excess of the amount necessary and proper to maintain an actuarially sound retirement plan for the employees of the utility in Oregon. [1987 c.447 §5]

759.105 Certain taxes allowable as operating expense; charge pro rata to users; condition. The privilege tax authorized by ORS 221.515, or other similar exactions imposed by any municipality in this state upon telecommunications utilities for use and occupancy of streets, alleys or highways, or all of them, shall be allowed as an operating expense of the affected telecommunications utilities operating in the municipality for rate-making purposes by the Public Utility Commission. The cost of such privilege tax or other similar exactions shall be charged pro rata to the users of such telecommunications utility within the municipality unless the Public Utility Commission determines on a statewide basis that such pro rata charges would be inequitable, in whole or in part, to city ratepayers or should otherwise be borne as a statewide operating expense by the telecommunications utility. [1989 c.484 §7]

759.110 Supplementary budgets. Adjustment and additions to such budget expenditures may be made from time to time during the year by filing supplementary budgets with the Public Utility Commission. The provisions of ORS 759.100 (3) apply to adjustments and additions to budgets. [1987 c.447 §6]

759.115 Effect of budget orders; rejecting imprudent or unwise expenditures. (1) Any finding and order made and entered by the Public Utility Commission under ORS 759.100 and 759.110 shall have the effect of prohibiting any unapproved or rejected expenditure from being recognized as an operating expense or capital expenditure in any rate valuation proceeding or in any proceeding or hearing unless and until the propriety thereof has been established to the satisfaction of the commission. Any such finding and order shall remain in full force and effect, unless and until it is vacated and set aside in a suit brought and prosecuted as provided in ORS 756.580 to 756.610 or modified or set aside by the commission.

(2) Nothing in ORS 759.100 and 759.110 prevents the commission from at any time making and filing orders rejecting imprudent and unwise expenditures or payments. Such orders when so made shall be in full force and effect, and the telecommunications utility shall not have the right to make such expenditures or payments found to be imprudent or unwise until the order has been vacated or set aside in a suit brought and prosecuted as provided in ORS 756.580 to 756.610 or modified or set aside by the commission. [1987 c.447 §7]

759.120 Form and manner of accounts prescribed by commission. (1) Every telecommunications utility shall keep and render to the Public Utility Commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted. All forms of accounts which may be prescribed by the commission shall conform as nearly as practicable to similar forms prescribed by federal authority.

(2) Every telecommunications utility engaged directly or indirectly in any other business than that of a telecommunications utility shall, if required by the commission, keep and render separately to the commission, in like manner and form, the accounts of all such other business, in which case all the provisions of this chapter shall apply with like force and effect to the accounts and records of such other business. [1987 c.447 §8]

759.125 Records and accounts prescribed by commission; others prohibited; exception; commission to furnish blanks for reports. (1) The Public Utility Commission shall prescribe the accounts and records required to be kept and every telecommunications utility is required to keep and render its accounts and records accurately and faithfully in the manner prescribed by the commission and to comply with all directions of the commission relating to such accounts and records.

(2) No telecommunications utility shall keep any other accounts or records of its telecommunications utility business transacted than those prescribed or approved by the commission except such as may be required by the laws of the United States.

(3) The commission shall cause to be prepared suitable blanks for reports for carrying out the purposes of this chapter, and shall, when necessary, furnish such blanks for reports to each telecommunications utility. [1987 c.447 §9]

759.130 Closing date of accounts; filing balance sheet; audit. (1) The accounts shall be closed annually on December 31 and a balance sheet of that date promptly taken therefrom. On or before April 1 following, such balance sheet, together with such other information as the Public Utility Commission shall prescribe, verified by an officer of the telecommunications utility, shall be filed with the commission.

(2) The commission may examine and audit any account. Items shall be allocated to the accounts in the manner prescribed by the commission. [1987 c.447 §10]

759.135 Depreciation accounts; undepreciated investment allowed in rates; conditions. (1) Every telecommunications utility shall carry a proper and adequate depreciation account. The Public Utility Commission shall ascertain and determine the proper and adequate rates of depreciation of the several classes of property of each telecommunications utility. The rates shall be such as will provide the amounts required over and above the expenses of maintenance, to keep such property in a state of efficiency corresponding to the progress of the industry. Each telecommunications utility shall conform its depreciation accounts to the rates so ascertained and determined by the commission. The commission may make changes in such rates of depreciation from time to time as the commission may find to be necessary.

(2) In the following cases the commission may allow in rates, directly or indirectly, amounts on the utility's books of account which the commission finds represent undepreciated investment in a utility plant, including that which has been retired from service:

(a) When the retirement is due to ordinary wear and tear, casualties, acts of God, acts of governmental authority; or

(b) When the commission finds that the retirement is in the public interest. [1987 c.447 §11; 1989 c.956 §3]

RATE REGULATION AND PROCEDURES; MEASURING EQUIPMENT

759.175 Filing rate schedules and data with commission. (1) Every telecommunications utility shall file with the Public Utility Commission, within a time to be fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are in force at the time for any service performed by it within the state, or for any service in connection therewith or performed by any telecommunications utility controlled or operated by it.

(2) Every telecommunications utility shall file, with and as part of every such schedule, all rules and regulations that in any manner affect the rates charged or to be charged for any service. Every telecommunications utility shall also file with the commission copies of interstate rate schedules and rules and regulations issued by it or to which it is a party.

(3) Where a schedule of joint rates or charges is or may be in force between two or more telecommunications utilities, such schedules shall in like manner be printed and filed with the commission. [1987 c.447 §12]

759.180 Hearing on reasonableness of rates; procedures; exceptions. (1) Except as provided in ORS 759.030 and 759.195, whenever any telecommunications utility files with the Public Utility Commission any rate or schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing rate or schedule of rates, the commission may, either upon written complaint or upon the commission's own initiative, after reasonable notice, conduct a hearing to determine the propriety and reasonableness of such rate or schedule. The commission shall conduct such a hearing upon written complaint filed by the telecommunications utility, its customer or customers, or any other proper party within 60 days of the telecommunications utility's filing; provided that no hearing need be held if the particular rate change is the result of an automatic adjustment clause. At such hearing the telecommunications

utility shall bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is just and reasonable. The term “automatic adjustment clause” means a provision of a rate schedule, authorized pursuant to ORS 759.195 (6), which provides for rate increases, or decreases or both, without prior hearing, reflecting increases, decreases or both in costs incurred by a telecommunications utility and which is subject to review by the commission at least once every two years.

(2) The commission and staff may consult at any time with, and provide technical assistance to, telecommunications utilities, their customers, and other interested parties on matters relevant to utility rates and charges. If a hearing is held with respect to a rate change, the commission’s decisions shall be based on the record made at the hearing. [1987 c.447 §13; 1989 c.5 §16]

759.182 Rate schedules for service promotions; rules. (1) A telecommunications utility may file rate schedules for service promotions that are offered by the utility for the purpose of:

(a) Increasing the use of the utility’s services by present or future customers;

(b) Preventing a decrease in the use of the utility’s services by present or future customers; or

(c) Inducing any person to use the utility’s services instead of a competing provider’s services.

(2) The rates charged under a service promotion by a telecommunications utility must be adequate to ensure that:

(a) The utility will recover an amount equal to the sum of the total service long run incremental cost of providing the nonessential functions of the service and the price that is charged to other telecommunications carriers for the essential functions; and

(b) The utility will recover the amount under paragraph (a) of this subsection during the average time that customers use the service.

(3) Notwithstanding ORS 759.190, service promotion rate schedules become effective upon filing with the Public Utility Commission.

(4) The commission shall adopt rules governing service promotion rate schedules filed under this section. [2001 c.309 §2]

Note: 759.182 was added to and made a part of 759.180 to 759.190 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

759.185 Suspension of rates pending hearing; time limitation; revenue collected subject to refund; interim rates. (1) The Public Utility Commission may, pending such investigation and determination, order the suspension of the rate or schedule of rates, provided the initial period of suspension shall not extend more than six months beyond the time when such rate or schedule would otherwise go into effect. If the commission finds that the investigation will not be completed at the expiration of the initial suspension, the commission may enter an order further suspending such rate or schedule for not more than three months beyond the last day of the initial suspension.

(2) This section does not prevent the commission and the telecommunications utility from entering into a written stipulation at any time extending any period of suspension.

(3) After full hearing, whether completed before or after such rate or schedule has gone into effect, the commission may make such order in reference thereto as would be proper in a proceeding initiated after such rate or schedule has become effective.

(4) If the commission is required to or determines to conduct a hearing on a rate or schedule of rates filed pursuant to ORS 759.180, but does not order a suspension thereof, any increased revenue collected by the telecommunications utility as a result of such rate or rate schedule becoming effective shall be received subject to being refunded. If the rate or rate schedule thereafter approved by the commission is for a lesser increase or for no increase, the telecommunications utility shall refund the amount of revenues received that exceeds the amount approved as nearly as possible to the customers from whom such excess revenues were collected, by a credit against future bills or otherwise, in such manner as the commission orders.

(5) The commission may, in a suspension order, authorize an interim rate or rate schedule under which the telecommunications utility’s revenues will be increased by an amount deemed reasonable by the commission, not exceeding the amount requested by the telecommunications utility. An interim rate or rate schedule shall remain in effect until terminated by the commission. [1987 c.447 §14]

759.190 Notice of schedule change required. No change shall be made in any schedule, including schedules of joint rates, except upon 30 days’ notice to the Public Utility Commission. All changes shall be plainly indicated upon

existing schedules, or by filing new schedules in lieu thereof 30 days prior to the time they are to take effect. However, the commission, for good cause shown, may allow changes without requiring the 30 days' notice by filing an order specifying the changes to be made and the time when they shall take effect. [1987 c.447 §15]

759.195 Price listing of services; conditions; maximum rates; essential services; justification by utility of rates for price-listed services. (1) Except as provided in subsection (6) of this section, upon petition of a telecommunications utility which provides local exchange service directly, or is affiliated with a utility which provides local exchange service, and after notice and hearing, the Public Utility Commission may authorize the utility to set rates for toll and other telecommunications services by filing a price list containing the price and terms for the service. The price list or any revisions thereof, shall not be subject to the provisions of ORS 759.180 to 759.190 and shall become effective as determined by the commission. The commission may prescribe conditions on an authorization to establish rates by price list, including conditions relating to the sharing of revenues received by the utility which are in excess of allowances provided for in the order of authorization.

(2) Telecommunications utilities which provide telecommunications services only between exchanges and are not affiliated with a utility which provides local exchange service, may price list services without special authorization of the commission.

(3) Prior to granting a petition to set rates by price list under this section, the commission shall find that pricing flexibility:

(a) Is reasonably necessary to enable the utility to respond to current and future competitive conditions for any or all telecommunications services;

(b) Will maintain the appropriate balance between the need for price flexibility and the protection of consumers;

(c) Is likely to benefit the consumers of fixed rate services; and

(d) Is unlikely to cause any undue harm to any customer class.

(4) A rate set for a service by a utility shall not be lower than the long run incremental cost of providing the service.

(5) Upon its own motion the commission may fix maximum rate levels and terms of service for price listed services and for toll services on noncompetitive routes. Upon request of any affected person, the commission shall fix maximum rate levels and terms of service for price listed services not subject to competition and for toll services on noncompetitive routes.

(6) By rule the commission shall designate local exchange services which it deems essential and rates for such services shall be prescribed under ORS 759.180 to 759.190. Rates for essential services need not be designed to recover the cost of service of such services, but may be supported by revenues from other regulated telecommunication services of the utility or its affiliates. Such support is in addition to any subsidy which may be provided under ORS 759.030 (9). The commission also may authorize automatic adjustment clauses which reflect increases, decreases, or both, in particular costs incurred by the utility. For the purposes of this subsection, "essential services" need not be essential for all classes of customers.

(7) The commission may, at any time, order a telecommunications utility to appear and establish that any, or all, of its price listed rates are just and reasonable and in conformity with the requirements of this section and the authorization to price list issued by the commission. Such rates shall also be subject to complaint under ORS 756.500. [Formerly 757.850]

759.200 Amortizations included in rates; deferral of certain expenses or revenues; limitation on amounts; prohibited uses. (1) In addition to powers otherwise vested in the Public Utility Commission, and subject to the limitations contained in subsection (5) of this section, under amortization schedules set by the commission, a rate or rate schedule may reflect the following:

(a) Amounts lawfully imposed retroactively by order of another governmental agency; or

(b) Amounts deferred under subsection (2) of this section.

(2) Upon application of a telecommunications utility or ratepayer or upon the commission's own motion and after public notice and opportunity for comment, the commission by order may authorize deferral, for later incorporation in rates, telecommunications utility expenses or revenues, the recovery or refund of which the commission finds should be deferred in order to minimize the frequency of rate changes or the fluctuation of rate levels or to match appropriately the costs borne by and benefits received by ratepayers. The authority under this subsection is limited to the following accounts:

(a) Increases or decreases in amounts incurred by a telecommunications utility resulting from changes in

jurisdictional separations approved by the Federal Communications Commission;

(b) Increases or decreases in amounts incurred by a telecommunications utility resulting from changes in depreciation rates or amortization schedules approved by the commission;

(c) Increases or decreases in amounts incurred by a telecommunications utility resulting from changes in income, excise, franchise or ad valorem taxes by the federal, state or local governments;

(d) Increases or decreases in amounts incurred by a telecommunications utility resulting from restoration of telecommunications services interrupted by floods, fires, earthquakes, storms or other acts of nature;

(e) Increases or decreases in amounts incurred by a telecommunications utility for research, development, planning and advance advertising for products and services not yet in service;

(f) Increases or decreases in amounts incurred by a telecommunications utility for telephone plant transfers and property sales approved by the commission;

(g) Increases or decreases in amounts incurred by a telecommunications utility from affiliated interest contracts and transactions approved by the commission;

(h) Increases or decreases in amounts incurred by a telecommunications utility from attorney's fees, court settlements and court awards;

(i) Increases or decreases in amounts incurred by a telecommunications utility resulting from changes in accounting methods approved by the commission; and

(j) Increases or decreases in amounts incurred by a telecommunications utility from customer service contracts, intercompany service contracts and joint and through service arrangements.

(3) The commission may authorize deferrals under subsection (2) of this section beginning with the date of application, together with interest established by the commission. A deferral may be authorized for a period not to exceed 12 months beginning on or after the date of application.

(4) Unless subject to an automatic adjustment clause under ORS 759.180, amounts described in this section shall be allowed in rates only to the extent authorized by the commission in a proceeding to change rates and upon review of the utility's earnings at the time of application to amortize the deferral.

(5) In any one year, the overall average rate impact of the amortizations authorized under this section shall not exceed three percent of the telecommunications utility's gross revenues for the preceding calendar year.

(6) The provisions of this section may be used as a means of deferring the effect of readily identifiable and readily measurable changes in particular costs or revenues of a telecommunications utility, but shall not be used to implement a claim for an increase or decrease in the overall revenue requirement of a telecommunications utility when the amount of the change or changes would not be known until the completion of a rate case. [1989 c.929 §2]

759.205 Rates charged required to conform to schedule. No telecommunications utility shall charge, demand, collect or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in printed rate schedules as may at the time be in force, or demand, collect or receive any rate not specified in such schedule. The rates named therein are the lawful rates until they are changed as provided in this chapter. [1987 c.447 §16]

759.210 Classification of service and rates; considerations. (1) The Public Utility Commission shall provide for a comprehensive classification of service for each telecommunications utility and such classification may take into account the quantity used, the time when used, the purpose for which used, the existence of price competition or a service alternative, the services being provided, the conditions of service and any other reasonable consideration. Based on such considerations the commission may authorize classifications or schedules of rates applicable to individual customers or groups of customers. The service classifications and schedule forms shall be designed consistently with the requirements of ORS 469.010. Each telecommunications utility is required to conform its schedules of rates to such classification. If the commission determines that a tariff filing under ORS 759.175 results in a rate classification primarily related to price competition or a service alternative, the commission, at a minimum, shall consider the following:

(a) Whether the rate generates revenues at least sufficient to cover relevant short and long run costs of the utility during the term of the rates; and

(b) Whether the rate generates revenues sufficient to insure that just and reasonable rates are established for remaining customers of the telecommunications utility.

(2) The commission may prescribe such changes in the form in which the schedules are issued by any telecommunications utility as may be found to be expedient. The commission shall adopt rules which allow any person

who requests notice of tariff filings described under subsection (1) of this section to receive such notice. [1987 c.447 §17; 1989 c.5 §17]

759.215 Filing schedules in places accessible to public; time for filing. (1) A copy of so much of all schedules, including schedules of joint rates and charges, as the Public Utility Commission deems necessary for the use of the public, shall be printed in plain type and kept on file in every business office of such telecommunications utility, open to the public, and in such form and place as to be readily accessible to the public for convenient inspection.

(2) Copies of all new schedules shall be filed in every business office of such telecommunications utility 30 days prior to the time the schedules are to take effect, unless the commission prescribes a shorter time. [1987 c.447 §18]

759.217 Effect of tax credit under ORS 315.511. The Public Utility Commission may not require a reduction in a rate or a schedule of rates as a result of a tax credit under ORS 315.511 being allowed to a telecommunications utility. [2001 c.957 §17]

759.220 Joint rates and classifications; procedure; considerations. (1) A telecommunications utility may establish reasonable through service and joint rates and classifications with other telecommunications utilities. Telecommunications utilities establishing joint rates shall establish just and reasonable regulations and practices in connection therewith and just, reasonable and equitable divisions thereof, as between the public utilities participating therein which shall not unduly prefer or prejudice any of the participating telecommunications utilities and every unjust and unreasonable rate, classification, regulation, practice and division is prohibited.

(2) The Public Utility Commission may, and shall, whenever deemed by the commission to be necessary or desirable in the public interest, after full hearing upon complaint, or upon the commission's own initiative without complaint, establish through service, classifications and joint rates, the divisions of such rates and the terms and conditions under which such through service shall be rendered. If any tariff or schedule canceling any through service or joint rate or classification without the consent of all the telecommunications utilities party thereto, or authorization by the commission is suspended by the commission for investigation, the burden of proof is upon the telecommunications utility proposing such cancellation to show that it is consistent with the public interest.

(3) Whenever, after full hearing upon complaint or upon the commission's own initiative without complaint, the commission is of the opinion that the divisions of joint rates between the telecommunications utilities are or will be unjust, unreasonable, inequitable or unduly preferential or prejudicial as between the telecommunications utilities party thereto, whether agreed upon by such telecommunications utilities or otherwise established, the commission shall, by order, prescribe the just, reasonable and equitable divisions thereof to be received by the several telecommunications utilities. In cases where the joint rate was established pursuant to the finding or order of the commission and the divisions thereto are found by the commission to have been unjust, unreasonable or inequitable, or unduly preferential or prejudicial, the commission may also by order determine what, for the period subsequent to the filing of the complaint or petition or the making of the order of investigation, would have been the just, reasonable and equitable division thereof to be received by the several telecommunications utilities and require adjustment to be made in accordance therewith.

(4) In so prescribing and determining the divisions of joint rates, the commission shall give due consideration, among other things, to:

(a) The efficiency with which the telecommunications utilities concerned are operated;

(b) The amount of revenue to pay their respective operating expenses, taxes and a fair return on their telecommunications utility property held for and used in service;

(c) The importance to the public of the services of such telecommunications utilities;

(d) Whether any particular participating telecommunications utility is an originating, intermediate or delivering utility; and

(e) Any other fact or circumstance which ordinarily would entitle one telecommunications utility to a greater or less proportion of the joint rate than another. [1987 c.447 §19]

759.225 Application of ORS 759.220 to unincorporated associations and cooperative corporations. Notwithstanding any other provision of law, ORS 759.220 applies to any unincorporated association or cooperative corporation providing intrastate telecommunications service. The application of ORS 759.220 to unincorporated associations and cooperative corporations:

(1) Does not allow the Public Utility Commission to establish terms, conditions, classifications or rates for services

rendered to members of unincorporated associations or cooperative corporations;

(2) Does not make unincorporated associations or cooperative corporations subject to the commission's general powers of regulation;

(3) Allows the commission to regulate access charges imposed by unincorporated associations and cooperative corporations; and

(4) Requires unincorporated associations and cooperative corporations to provide information to the commission that the commission deems necessary to establish new extended service areas. [Formerly 757.860; 2001 c.853 §1]

Note: Section 2, chapter 853, Oregon Laws 2001, provides:

Sec. 2. The amendments to ORS 759.225 by section 1 of this 2001 Act do not apply to an action or proceeding commenced before the effective date of this 2001 Act [January 1, 2002]. [2001 c.853 §2]

759.230 Measured service rate for business customers; restriction. (1) Notwithstanding any other provision of this chapter, the Public Utility Commission shall not authorize a telecommunications utility to implement a rate schedule that includes optional measured service for business customers unless the rate for the service is sufficient to defray all costs that must be incurred to implement the service, including the costs of measuring and billing.

(2) As used in this section:

(a) "Local exchange telephone service" means telephone service provided within the boundaries of exchange maps filed with and approved by the commission.

(b) "Measured service" means local exchange telephone service, the rate for which is based upon the number of calls, length of calls, distance or time of day. [Formerly 757.835]

759.235 Mandatory measured service rate; prohibition. (1) The Public Utility Commission shall be prohibited from requiring any call aggregator, telephone customer or class of customers to pay for local exchange telephone service, or any portion thereof, on a mandatory measured service basis.

(2) As used in this section:

(a) "Call aggregator" has the meaning given that term in ORS 759.690.

(b) "Measured service" means charging for local exchange telephone service based upon number of calls, length of calls, distance, time of day, or any combination thereof.

(3) Nothing in this section is intended to prohibit the commission from requiring telephone customers to pay on a mandatory measured service basis for:

(a) Land, marine, or air mobile service.

(b) Local exchange telephone service resold at a profit.

(4) The commission shall not change boundaries of local exchange service areas nor take any other actions if such changes or actions have the effect of circumventing subsections (1) and (2) of this section. [Formerly 757.840; 1997 c.317 §1]

759.240 Measuring quality of service; standards; rules. (1) The Public Utility Commission shall ascertain and prescribe for each kind of telecommunications utility suitable and convenient standard commercial units of service. These shall be lawful units for the purposes of this chapter.

(2) The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage or other conditions pertaining to the supply of the service rendered by any telecommunications utility and prescribe reasonable regulations for examination and testing of such service and for the measurement thereof. It shall establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for the measurements, and every telecommunications utility is required to carry into effect all orders issued by the commission relative thereto. [1987 c.447 §20]

759.245 Examination and testing of measuring appliances. (1) The Public Utility Commission may provide for the examination and testing of any and all appliances used for the measuring of any service of a telecommunications utility and may provide by rule that no such appliance shall be installed and used for the measuring of any service of any telecommunications utility until it has been examined and tested by the commission and found to be accurate.

(2) The commission shall declare and establish a reasonable fee governing the cost of such examination and test, which shall be paid to the commission by the telecommunications utility.

(3) The commission shall declare and establish reasonable fees for the testing of such appliances on the application

of the customer, the fee to be paid by the customer at the time of the customer's request, but to be repaid to the customer by the commission and to be paid by the telecommunications utility if the appliance is found defective or incorrect to the disadvantage of the customer or used beyond such reasonable limit as may be prescribed by the commission.

(4) All fees collected under the provisions of this section shall be paid by the commission into the State Treasury.

(5) The commission may purchase such materials, apparatus and standard measuring instruments for the examination and tests as the commission deems necessary. [1987 c.447 §21]

759.250 Contracts for special services; procedure for filing and approval; subsequent review and investigation. (1) A telecommunications utility may enter into a contract with any customer for the provision of a telecommunications service that the Public Utility Commission determines is a new service with limited availability, is designed to respond to a unique customer requirement or is subject to competition. Contracts shall be for a stated time period, not to exceed five years. If a contract includes competitive and noncompetitive service elements, the noncompetitive service elements shall be unbundled and priced separately from all other facilities and service elements in the contract. Such noncompetitive service elements shall be made available to all purchasers under the same or substantially the same circumstances at the same rate, terms and conditions.

(2) The telecommunications utility shall file any contract with the commission no later than 90 days following its effective date. At the customer's request, the telecommunications utility shall file the contract at least 30 days in advance of the effective date. Notice of the filing of the contract shall be given by the commission to all persons who have filed with the commission a petition to receive such notice.

(3) Contracts entered into under this section are not schedules of rates, tolls or charges within the meaning of ORS 759.175. A contract entered into under this section shall be enforceable by the contracting parties according to its terms, unless the contract has been rejected by the commission as provided in this section.

(4) Notwithstanding ORS 759.175 to 759.185, the commission shall approve any contract for a telecommunications service entered into under this section if the commission finds the following:

(a) The telecommunications service is a new service with limited availability, is designed to respond to a unique customer requirement or is subject to competition. In making the determination of whether a service is subject to competition, the commission shall consider whether the customer might reasonably have chosen an alternative to the telecommunications utility's service.

(b) The contracted price for the telecommunications service is above the long run incremental costs of providing such service during the term of the contract. In making this calculation for a contract that includes both competitive and noncompetitive service elements, the commission shall consider separately whether the competitive service elements are priced above the long run incremental costs of providing such service elements.

(c) The contracted price for the telecommunications service includes all costs of providing such service, including the rate that would be charged by a telecommunications utility to any competitive telecommunications provider for any component essential to the competitive telecommunications provider's ability to offer the telecommunications service. The commission shall determine which components of the service shall be deemed essential and the method to include prices of those components in costs of such services.

(5) The commission shall issue an order regarding any contract filed under subsection (2) of this section within 90 days of the filing. If the commission does not act within 90 days of the filing, the contract shall be deemed approved. If the commission disapproves the contract, it shall enter an order describing the ways in which the contract fails to meet the standards set forth in subsection (4) of this section and declaring the contract null and void. The telecommunications utility or customer may request that the commission hold a hearing to determine whether the order should continue in effect. Any such request for hearing shall be submitted to the commission not later than 15 days after the date of service of the order, and the commission shall hold the hearing not later than 60 days after receipt of such request for hearing.

(6) Notwithstanding ORS 192.410 to 192.505, the commission shall not disclose the identity of a customer or any customer proprietary information contained in a contract filed under subsection (2) of this section without the consent of the customer and the telecommunications utility.

(7) No contract filed under subsection (2) of this section may be automatically renewed. A contract renewal shall be treated as a new contract.

(8) Nothing in this section shall be deemed state action for the purpose of exempting a telecommunications utility from liability for anticompetitive conduct or other unlawful practices.

(9) Any contract executed prior to September 29, 1991, and approved by the commission is deemed lawful and

shall be enforceable by the contracting parties according to its terms. A contract renewal shall be deemed a new contract.

(10) Nothing in this section shall restrict the commission from subsequent scrutiny of the reasonableness of contracts filed under this section for ratemaking purposes.

(11) In accordance with ORS 756.515, the commission may investigate contracts filed by a specific telecommunications utility under this section. Notwithstanding any other provision of this section, if the commission finds that contracts entered into by a telecommunications utility have not generally been in the public interest, the commission, by order, may prevent or restrict the telecommunications utility from future contracting pursuant to this section and may require the telecommunications utility to file contracts under ORS 759.175. [1991 c.527 §2]

759.255 Prices charged set without regard to return on utility investment; petition; findings; conditions; application of statutes to approved plan. (1) In addition to powers vested in the Public Utility Commission under ORS 759.195, and subject to the limitations contained in subsections (2) to (4) of this section, upon petition of a telecommunications utility that provides local exchange service directly, or is affiliated with a utility that provides local exchange service, the commission, after notice and hearing, may approve a plan under which the commission regulates prices charged by the utility, without regard to the return on investment of the utility. Prices approved under the plan shall not be subject to the provisions of ORS 759.180 to 759.190 and shall become effective as stated in the plan.

(2) Prior to granting a petition to approve a plan under subsection (1) of this section, the commission must find that the plan is in the public interest. In making its determination the commission shall consider, among other matters, whether the plan:

(a) Ensures prices for telecommunications services that are just and reasonable;

(b) Ensures high quality of existing telecommunications services and makes new services available;

(c) Maintains the appropriate balance between the need for regulation and competition; and

(d) Simplifies regulation.

(3) If the commission approves a plan under subsection (1) of this section, it shall establish objectives of the plan and conditions for review of the plan during its operation. The commission shall not consider return on investment of the utility when it establishes objectives of the plan and conditions for review of the plan during its operation.

(4) A rate for any service in the plan authorized under subsection (1) of this section may not be lower than the total service long run incremental cost, for nonessential functions, of providing the service and the charges of essential functions used in providing the service. However, the commission may allow a telecommunications utility to establish rates for residential local exchange service at any level necessary to achieve the commission's universal service objectives.

(5) If the commission approves a plan under subsection (1) of this section, the commission may waive, in whole or in part, compliance by the telecommunications utility with ORS 759.100, 759.110 to 759.135, 759.180 to 759.205, 759.215, 759.220, 759.285 and 759.300 to 759.393. [1995 c.399 §2]

759.257 Extended area service: Portland to Scappoose. (1) Two-way, flat rate or measured extended area service shall be provided by each telecommunications utility providing service between the Portland EAS Region and the Scappoose Exchange, as described by EAS and exchange maps filed with and approved by the Public Utility Commission.

(2) The service provided for in subsection (1) of this section may be implemented during the currently pending Portland EAS Region Expansion, but in no event shall such implementation occur later than November 1, 1998.

(3) Nothing in subsection (1) of this section authorizes a telecommunications utility to discontinue two-way, flat rate or measured extended area service in any exchange area where that service was provided prior to October 4, 1997. [1997 c.796 §2]

759.259 Extended area service: Portland to Molalla. (1) Two-way, flat rate or measured extended area service shall be provided by each telecommunications utility providing service between the Portland EAS Region and the Molalla Exchange, as described by EAS and exchange maps filed with and approved by the Public Utility Commission.

(2) The service provided for in subsection (1) of this section may be implemented during the currently pending Portland EAS Region Expansion, but in no event shall such implementation occur later than November 1, 1998, after approval by customers of the Molalla Exchange.

(3) Nothing in subsection (1) of this section authorizes a telecommunications utility to discontinue two-way, flat rate or measured extended area service in any exchange area where the service was provided prior to October 4, 1997. [1997 c.505 §2]

ILLEGAL PRACTICES

759.260 Unjust discrimination in rates. (1) Except as provided in ORS 759.265, no telecommunications utility or any agent or officer thereof shall, directly or indirectly, by any device, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by it than:

(a) That prescribed in the public schedules or tariffs then in force or established; or

(b) It charges, demands, collects or receives from any other person for a like and contemporaneous service under substantially similar circumstances. A difference in rates or charges based upon a difference in classification pursuant to ORS 759.210 shall not constitute a violation of this paragraph.

(2) Any telecommunications utility violating this section is guilty of unjust discrimination. [1987 c.447 §46; 1989 c.5 §22; 1993 c.18 §165]

759.265 Practices not constituting unjust discrimination. (1) ORS 759.260 does not prevent any telecommunications utility from giving free service, or reduced rates therefor, to:

(a) Its officers, directors, employees and members of their families;

(b) Former employees of such telecommunications utilities or members of their families where such former employees have become disabled in the service of such telecommunications utility or are unable from physical disqualification, including retirement, to continue in the service; or

(c) Members of families of deceased employees of such telecommunications utility.

(2) The Public Utility Commission may require any telecommunications utility to file with the commission a list, verified under oath, of all free or reduced rate privileges granted by a telecommunications utility under the provisions of this section. [1987 c.447 §47]

759.267 Service promotion activities not discrimination. A telecommunications utility may promote the use of its services by offering a waiver of part or all of a recurring or a nonrecurring charge, a redemption coupon or a premium with the purchase of a service. ORS 759.260 and 759.265 do not apply to promotions under this section, but the customer group to which the promotion is available must be based on reasonable distinctions among customers. [1993 c.204 §4]

759.270 Reducing rates for persons furnishing part of facilities; rental of customer facilities; furnishing meters and appliances. (1) No telecommunications utility shall demand, charge, collect or receive from any person less compensation for any service rendered or to be rendered by the telecommunications utility in consideration of the furnishing by such person of any part of the facilities incident thereto.

(2) This section does not prohibit any telecommunications utility from renting any customer’s facilities incident to providing its services and for paying a reasonable rental therefor.

(3) This section does not require a telecommunications utility to furnish any part of such appliances which are situated in and upon the premises of any customer, except meters and appliances for measurements of any service, unless otherwise ordered by the Public Utility Commission. [1987 c.447 §48]

759.275 Undue preferences and prejudices. (1) No telecommunications utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.

(2) Any telecommunications utility violating this section is guilty of unjust discrimination. [1987 c.447 §49]

759.280 Soliciting or accepting rebates or special advantage. No person shall knowingly solicit, accept or receive any rebate, concession or discrimination in respect to any service whereby any such service shall, by any device, be rendered free or at a lesser rate than that named in the published schedules and tariffs in force, or whereby any service or advantage is received other than authorized in this chapter. [1987 c.447 §50]

759.285 Charging rates based on cost of property not presently providing service. No telecommunications

utility shall, directly or indirectly, by any device, charge, demand, collect or receive from any customer, rates which are derived from a rate base which includes within it any construction, building, installation or real or personal property not presently used for providing utility service to the customer. [1987 c.447 §51]

759.290 Automatic dialing and announcing device use limited; exceptions. (1) No person shall use an automatic dialing and announcing device to solicit the purchase of any realty, goods or services.

(2) Subsection (1) of this section does not apply to:

(a) The solicitation for funds by charitable or political organizations or institutions.

(b) Contacts between persons with an existing business relationship.

(3) As used in this section:

(a) "Automatic dialing and announcing device" means equipment that dials programmed telephone numbers and plays a recorded message when the call is answered.

(b) "Existing business relationship" means a preexisting and continuing course of dealing between parties involving the purchase or sale of realty, goods or services. [1989 c.621 §2]

ISSUANCE OF SECURITIES

759.300 "Stocks" defined. As used in ORS 759.300 to 759.360, "stocks" means stocks, stock certificates or other evidence of interest or ownership. [1987 c.447 §28]

759.305 Power to regulate issuance of telecommunications stocks. The power of telecommunications utilities to issue stocks and bonds, notes and other evidences of indebtedness and to create liens on their property situated within this state is a special privilege, the right of supervision, regulation, restriction and control of which is and shall continue to be vested in the state. Such power shall be exercised as provided by law and under such rules and regulations as the Public Utility Commission may prescribe. [1987 c.447 §29]

759.310 When issuance of securities void. All stocks and bonds, notes or other evidences of indebtedness and any security of a telecommunications utility shall be void when issued:

(1) Without an order of the Public Utility Commission authorizing the same then in effect except as provided in ORS 759.315 (3) or (5).

(2) With the authorization of the commission, but not conforming in its provisions to the provisions, if any, which it is required by the order of authorization of the commission to contain; but no failure to comply with the terms or conditions of the order of authorization of the commission and no informality or defect in the application or in the proceedings in connection therewith or with the issuance of such order shall render void any stock or bond, note or other evidence of indebtedness, or security issued pursuant to and in substantial conformity with an order of the commission, except as to a person taking the same otherwise than in good faith and for value and without actual notice. [1987 c.447 §30; 1993 c.204 §1]

759.315 Purposes for which securities may be issued; order required; exceptions. (1) A telecommunications utility may issue stocks and bonds, notes and other evidences of indebtedness, and securities for the following purposes and no others, except as otherwise permitted by subsection (4) of this section:

(a) The acquisition of property, or the construction, completion, extension or improvement of its facilities.

(b) The improvement or maintenance of its service.

(c) The discharge or lawful refunding of its obligations.

(d) The reimbursement of money actually expended from income or from any other money in the treasury of the telecommunications utility not secured by or obtained from the issue of stocks or bonds, notes or other evidences of indebtedness, or securities of such telecommunications utility, for any of the purposes listed in paragraphs (a) to (c) of this subsection except the maintenance of service and replacements, in cases where the applicant has kept its accounts and vouchers for such expenditures in such manner as to enable the Public Utility Commission to ascertain the amount of money so expended and the purposes for which such expenditures were made.

(e) The compliance with terms and conditions of options granted to its employees to purchase its stock, if the commission first finds that such terms and conditions are reasonable and in the public interest.

(2) Before issuing such securities, a telecommunications utility, in addition to the other requirements of law, shall secure from the commission upon application an order authorizing such issue, stating:

(a) The amount of the issue and the purposes to which the issue or the proceeds thereof are to be applied;

(b) In the opinion of the commission, the money, property or labor to be procured or paid for by such issue reasonably is required for the purposes specified in the order and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a telecommunications utility, and will not impair its ability to perform that service; and

(c) Except as otherwise permitted in the order in the case of bonds, notes or other evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

(3) This section and ORS 759.310 apply to demand notes but do not apply to the issuance or renewal of a note or evidence of indebtedness maturing not more than one year after date of such issue or renewal.

(4) Nothing in ORS 759.300 to 759.360 shall prevent issuance of stock to stockholders as a stock dividend if there has been secured from the commission an order:

(a) Finding that the stock dividend is compatible with the public interest;

(b) Authorizing such issue and a transfer of surplus to capital in any amount equal to the par or stated value of the stock so authorized; and

(c) Finding that a sum equal to the amount to be so transferred was expended for the purposes enumerated in subsection (1) of this section.

(5) A telecommunications utility that derives one-half or more of its gross revenue from sources outside this state does not require commission authorization to issue stocks and bonds, notes or other evidences of indebtedness and any security unless the commission finds that the authorization requirements of ORS 759.310 and subsection (2) of this section are necessary to:

(a) Prevent the telecommunications utility from issuing securities for purposes not permitted under subsection (1) of this section; or

(b) Prevent impairment of the telecommunications utility's ability to provide telecommunications utility services to its customers in this state. The commission shall adopt rules that set forth independently determined financial indicators upon which the commission must base any finding of impaired ability to provide utility telecommunications services. [1987 c.447 §31; 1993 c.204 §2; 2001 c.236 §1]

759.320 Application of ORS 759.315. ORS 759.315 does not apply to the issuance, renewal or assumption of liability on any evidence of indebtedness when such issuance, renewal or assumption is for the purpose of acquiring specific real or personal property, if the aggregate principal amount thereof, together with all other then outstanding evidences of indebtedness issued, renewed or assumed under this section, does not exceed whichever is the greater of the following amounts:

(1) The amount of $75,000.

(2) The amount of one-half of one percent of the sum of:

(a) The total principal amount of all bonds or other securities representing secured indebtedness of the telecommunications utility issued or assumed and then outstanding; and

(b) The capital and surplus as then stated on the books of account of the telecommunications utility. [1987 c.447 §32]

759.325 Application of ORS 759.375. ORS 759.375 does not apply to any mortgage or other encumbrance upon any real or personal property given to secure payment of any evidence of indebtedness issued under ORS 759.315. [1987 c.447 §33]

759.330 Hearings and supplemental orders for securities issuance; joint approval for issuance by utility operating in another state. (1) To enable the Public Utility Commission to determine whether the commission will issue an order under ORS 759.315, the commission may hold a hearing and may make such additional inquiry or investigation, examine such witnesses, books, papers, documents and contracts and require the filing of such data as the commission deems necessary. The application for such order shall be given priority and shall be disposed of by the commission within 30 days after the filing of such application, unless that period is extended with the consent of the telecommunications utility.

(2) The commission may, upon application of the telecommunications utility, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as the commission finds necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, extent to which, or the condition under which, any security theretofore authorized or its proceeds may be

applied. Such supplemental orders are subject to the requirements of ORS 759.315. The period of time permitted under subsection (1) of this section for disposing of applications shall not apply to supplemental orders.

(3) If a commission or other agency is empowered by another state to regulate and control the amount and character of securities to be issued by any telecommunications utility within such other state, the commission of Oregon has power to agree with such commission or agency of such other state on the issue of stocks, bonds, notes, other evidences of indebtedness or securities by a telecommunications utility owning or operating a telecommunications utility both in such state and in this state, and has power to approve such issue jointly with such commission or agency and to issue a joint certificate of such approval. However, no such joint approval is required in order to express the consent to and approval of such issue by the State of Oregon if the issue is separately approved by the Oregon commission. [1987 c.447 §34]

759.335 State not obligated by approval of issuance. No provision of ORS 759.300 to 759.360, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the State of Oregon to pay or guarantee, in any manner whatsoever, any stock or bond, note or other evidence of indebtedness, authorized, issued or executed under the provisions of ORS 759.300 to 759.360. [1987 c.447 §35]

759.340 Conditional approval of issuance. The Public Utility Commission may by order grant permission for the issue of stocks or bonds, notes or other evidences of indebtedness in the amount applied for, or in a lesser amount, or not at all, and may attach to the exercise of the permission such condition or conditions as the commission deems reasonable and necessary. [1987 c.447 §36]

759.345 Use of proceeds from issuance restricted; accounting for use of proceeds. (1) No telecommunications utility shall, without the consent of the Public Utility Commission, apply the issue of any stock or bond, note or other evidence of indebtedness, or any part or proceeds thereof, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose, or issue or dispose of the same on any terms less favorable than those specified in such order, or a modification thereof.

(2) The commission has power to require telecommunications utilities to account for the disposition of the proceeds of all sales of stocks and bonds, notes and other evidences of indebtedness, in such form and detail as the commission deems advisable, and to establish such rules and regulations as the commission deems reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in the order. [1987 c.447 §37]

759.350 Limitation on authority of utility to guarantee debt of another. No telecommunications utility shall assume any obligation or liability as guarantor, indorser, surety or otherwise in respect to the securities of any other person, firm or corporation, when such securities are payable at periods of more than 12 months after the date thereof, without first having secured from the Public Utility Commission an order authorizing it to do so. Every assumption made other than in accordance with such an order is void. [1987 c.447 §38]

759.355 Issuance or use of proceeds contrary to commission order prohibited. No telecommunications utility shall directly or indirectly, issue or cause to be issued any stock or bond, note or other evidence of indebtedness in nonconformity with the order of the Public Utility Commission authorizing the same or contrary to the provisions of ORS 759.300 to 759.360, or of the Constitution of this state, or apply the proceeds from the sale thereof, or any part thereof, to any purpose other than the purposes specified in the commission's order, or to any purpose specified in the commission's order, in excess of the amount in the order authorized for such purpose. [1987 c.447 §39]

759.360 Prohibited acts regarding issuance of securities. No person shall:

(1) Knowingly authorize, direct, aid in, issue or execute, or cause to be issued or executed, any stock or bond, note or other evidence of indebtedness, in nonconformity with the order of the Public Utility Commission authorizing the same, or contrary to the provisions of ORS 759.300 to 759.360 or of the Constitution of this state.

(2) In any proceeding before the commission, knowingly make any false statement or representation or with knowledge of its falsity file or cause to be filed with the commission any false statement or representation which may tend in any way to influence the commission to make an order authorizing the issue of any stock or bond, note or other evidence of indebtedness, or which results in procuring from the commission the making of any such order.

(3) With knowledge that any false statement or representation was made to the commission in any proceeding tending in any way to influence the commission to make such order, issue, execute or negotiate, or cause to be issued,

executed or negotiated, any stock or bond, note or other evidence of indebtedness.

(4) Directly or indirectly, knowingly apply, or cause or assist to be applied, the proceeds, or any part thereof, from the sale of any stock or bond, note or other evidence of indebtedness, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose.

(5) With knowledge that any stock or bond, note or other evidence of indebtedness, has been issued or executed in violation of ORS 759.300 to 759.360, negotiate, or cause the same to be negotiated. [1987 c.447 §40]

TRANSACTIONS OF UTILITIES

759.375 Approval required prior to sale, mortgage or disposal of operative utility property. (1) A telecommunications utility doing business in Oregon shall not, without first obtaining the Public Utility Commission's approval of such transaction:

(a) Sell, lease, assign or otherwise dispose of the whole of the property of such telecommunications utility necessary or useful in the performance of its duties to the public or any part thereof of a value in excess of $100,000, or sell, lease, assign or otherwise dispose of any franchise, permit or right to maintain and operate such telecommunications utility or telecommunications utility property, or perform any service as a telecommunications utility;

(b) Mortgage or otherwise encumber the whole or any part of the property of such telecommunications utility necessary or useful in the performance of its duties to the public, including any franchise, permit or right to maintain and operate such telecommunications utility or telecommunications utility property, or perform any service as a telecommunications utility; or

(c) By any means whatsoever, directly or indirectly, merge or consolidate any of its lines, plant, system or other property whatsoever, or franchise or permit to maintain or operate any telecommunications utility property, or perform any service as a telecommunications utility, or any part thereof, with any other public utility or telecommunications utility.

(2) A telecommunications utility that sells, leases, assigns or otherwise disposes of the whole of the property of such telecommunications utility necessary or useful in the performance of its duties to the public or any part thereof of a value in excess of $25,000, but less than $100,000, shall notify the commission of the sale within 60 days following the date of the sale.

(3) Every sale, lease, assignment, mortgage, disposition, encumbrance, merger or consolidation subject to subsection (1) of this section made other than in accordance with the order of the commission authorizing the same is void.

(4) This section does not prohibit or invalidate the sale, lease or other disposition by any telecommunications utility of property which is not necessary or useful in the performance of its duties to the public. [1987 c.447 §41; 1999 c.530 §2]

759.380 Purchase of stock or property of another utility restricted. (1) No telecommunications utility shall, directly or indirectly, purchase, acquire or become the owner of any of the stocks or bonds or property utilized for utility purposes and having a value in excess of $10,000 of any other public utility or telecommunications utility unless authorized to do so by the Public Utility Commission.

(2) Every contract by any telecommunications utility for the purchase, acquisition, assignment or transfer to it of any of the stock of any other telecommunications utility by or through any person, partnership or corporation without the approval of the commission shall be void and of no effect, and no such transfer or assignment of such stock upon the books of the corporation pursuant to any such contract is effective for any purpose. [1987 c.447 §42]

759.385 Contracts regarding use of utility property; filing with commission; investigation. (1) When any telecommunications utility doing business in this state enters into a contract with another corporation with relation to the construction, operation, maintenance or use of the property of said telecommunications utility in Oregon, or the use of the property of the other contracting party, or any part thereof, or for service, advice, engineering, financing, rentals, leasing or for any construction or management charges in respect of any such property, or for the purchase of property, materials or supplies, the proposed contract shall be filed with the Public Utility Commission for the investigation and approval when the telecommunications utility owns a majority of or controls directly or indirectly the voting stock of the other contracting corporations.

(2) Any such proposed contract shall be filed with the commission within 90 days of execution of the contract. The

contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier. The commission shall promptly investigate and act upon the contract in accordance with ORS 759.390 (3) and (6).

(3) In making such investigation the commission and accountants, examiners and agents, appointed by the commission for the purpose, shall be given free access to all books, books of account, documents, data and records of the telecommunications utility as well as of the corporation with which it is proposing to contract, which the commission may deem material to the investigation. The failure or refusal of either of the parties to the proposed contract to comply with this subsection is prima facie evidence that such contract is unfair, unreasonable and contrary to public interest, and is sufficient to justify a determination and finding of the commission to that effect, which has the same force and effect as any other determination or order of the commission.

(4) This section applies only to transactions in which the telecommunications utility's Oregon intrastate expenditure to the affiliate is more than $100,000. [1987 c.447 §43; 1989 c.956 §4; 1991 c.899 §1; 1999 c.809 §1]

759.390 Contracts with affiliated interests restricted; procedure; use in rate proceedings. (1) When any telecommunications utility doing business in this state enters into any contract to make any payment, directly or indirectly, to any person or corporation having an affiliated interest, for service, advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, legal or other services, or enter any charges therefor on its books, which shall be recognized as an operating expense or capital expenditure in any rate valuation or any other hearing or proceeding, the contract shall be filed with the Public Utility Commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

(2) When any telecommunications utility doing business in this state shall enter into any contract, oral or written, with any person or corporation having an affiliated interest relating to the construction, operation, maintenance, leasing or use of the property of such telecommunications utility in Oregon, or the purchase of property, materials or supplies, which shall be recognized as the basis of an operating expense or capital expenditure in any rate valuation or any other hearing or proceeding, the contract shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

(3) When any such contract has been submitted to the commission, the commission promptly shall examine and investigate it. If, after such investigation, the commission determines that it is fair and reasonable and not contrary to the public interest, the commission shall enter findings and order to this effect and serve a copy thereof upon the telecommunications utility, whereupon any expenses and capital expenditures incurred by the telecommunications utility under the contract may be recognized in any rate valuation or other hearing or proceeding. If, after such investigation, the commission determines that the contract is not fair and reasonable in all its terms and is contrary to the public interest, the commission shall enter findings and order accordingly and serve a copy thereof upon the telecommunications utility, and, except as provided in subsection (4) of this section, it shall be unlawful to recognize the contract for the purposes specified in this section.

(4) When any such contract has been filed with the commission within 90 days of execution and the commission has not entered an order disapproving the contract under subsection (3) of this section, the commission shall not base its refusal to recognize any expenses or capital expenditures incurred under the contract in any rate valuation or other hearing or proceeding solely on the basis that such contract has not been approved under subsection (3) of this section.

(5) No telecommunications utility shall issue notes or loan its funds or give credit on its books or otherwise to any person or corporation having an affiliated interest, either directly or indirectly, without the approval of the commission.

(6) The action of the commission with respect to all the matters described in this section when submitted to the commission, shall be by findings and order to be entered within 90 days after the matter has been submitted to the commission for consideration, and the findings and order of the commission with respect to any of such matters shall be and remain in full force and effect, unless and until set aside by suit brought and prosecuted, as provided in ORS 756.580 to 756.610, and the telecommunications utility, or any other person or corporation affected by any such findings and order, may bring and prosecute such suit.

(7) This section applies only to transactions in which the telecommunications utility's Oregon intrastate expenditure to the affiliate is more than $100,000. [1987 c.447 §44; 1989 c.956 §5; 1991 c.899 §2; 1999 c.809 §2]

759.393 Applicability of ORS 759.385 and 759.390. (1) Except as provided in subsection (2) of this section, the filing of proposed contracts under ORS 759.385 and 759.390 shall constitute a telecommunications utility's sole

reporting obligation under ORS 759.385 and 759.390 and the Public Utility Commission may not require a telecommunications utility to submit annual or other cumulative reports regarding such contracts, including contracts with affiliates of the utility.

(2) On April 1 of each year, every telecommunications utility shall file with the commission a list of affiliate contracts executed in the preceding year. The list shall consist of the names of the parties to the contracts, the dollar amounts of the contracts and the dates of execution of the contracts. [1999 c.809 §3]

759.394 [1991 c.899 §4; repealed by 1999 c.809 §5]

759.395 [1987 c.447 §45; repealed by 1991 c.315 §1]

PRICE CAP REGULATION

(Generally)

759.400 Definitions. As used in ORS 759.400 to 759.455 and section 30, chapter 1093, Oregon Laws 1999:

(1) "Basic telephone service" means local exchange telecommunications service defined as basic by rule of the Public Utility Commission.

(2) "Retail telecommunications service" means a telecommunications service provided for a fee to customers. "Retail telecommunications service" does not include a service provided by one telecommunications carrier to another telecommunications carrier, unless the carrier receiving the service is the end user of the service.

(3) "Telecommunications carrier" means any provider of retail telecommunications services, except a call aggregator as defined in ORS 759.690. [1999 c.1093 §23]

759.405 Telecommunications carrier may elect regulation under ORS 759.405 and 759.410; conditions; Telecommunications Infrastructure Account; remedy for failure of utility to comply with conditions. (1) A telecommunications carrier may elect to be subject to this section and ORS 759.410. The telecommunications carrier shall notify, in writing, the Public Utility Commission of its election. Such election shall be effective 30 days after the written notification is received by the Public Utility Commission. A telecommunications carrier that elects to be subject to this section and ORS 759.410 shall be subject to the infrastructure investment and price regulation requirements of this section and ORS 759.410 and shall not be subject to any other regulation based on earnings, rates or rate of return.

(2) A telecommunications carrier that elects to be subject to this section and ORS 759.410 shall establish in its accounts a Telecommunications Infrastructure Account. The telecommunications carrier shall commit to its Telecommunications Infrastructure Account over a four-year period amounts totaling 20 percent of the telecommunications carrier's gross regulated intrastate revenue for the calendar year immediately prior to the year the telecommunications carrier elects to be subject to this section and ORS 759.410. Of the total committed amount, 30 percent shall be credited to and made available for the purposes of the electing carrier's account on the date the telecommunications carrier's election becomes effective. An electing telecommunications carrier shall credit an equal amount on the same date in the next following year. The electing carrier shall credit to its Telecommunications Infrastructure Account an amount equal to 20 percent of the total committed amount on the same date in each of the next following two years.

(3)(a) A telecommunications carrier that elects to be subject to this section and ORS 759.410 shall expend the moneys in the telecommunications carrier's Telecommunications Infrastructure Account on a plan or plans approved by the Oregon Economic and Community Development Commission under ORS 759.430. Subject to paragraphs (c) and (d) of this subsection, the total amount of capital and other expenses associated with completing the projects shall equal the total amount of moneys available in the account.

(b) Moneys in the account shall be used primarily to ensure that rural and urban Oregonians have improved access to telecommunications technology and services. Expenditures from the account shall be used for investment in telecommunications infrastructure and deployment of new and advanced telecommunications services.

(c)(A) Within 120 days following the effective date of a telecommunications carrier's election to be regulated under this section and ORS 759.410, but not later than January 1 of the year following the effective date of a telecommunications carrier's election, and on the same date in each of the next following three years, a telecommunications carrier serving less than one million access lines in Oregon shall transfer 40 percent of the moneys most recently credited to its Telecommunications Infrastructure Account to the Connecting Oregon Communities Fund

established under ORS 759.445.

(B) Within 120 days following the effective date of a telecommunications carrier's election to be regulated under this section and ORS 759.410, but not later than January 1 of the year following the effective date of a telecommunications carrier's election, and on the same date in the next following year, a telecommunications carrier serving one million or more access lines in Oregon shall transfer 70 percent of the moneys most recently credited to its Telecommunications Infrastructure Account to the Connecting Oregon Communities Fund established under ORS 759.445.

(d) Notwithstanding ORS 285A.075 (2), if the Oregon Economic and Community Development Commission determines, following notice and a public hearing, that the telecommunications carrier is not complying with plans or plan modifications approved under ORS 759.430, following notice to the telecommunications carrier and reasonable opportunity to cure any noncompliance, the Oregon Economic and Community Development Commission may require the telecommunications carrier to transfer any or all moneys remaining in the carrier's Telecommunications Infrastructure Account, and any future amounts credited to the account, to the Connecting Oregon Communities Fund established under ORS 759.445.

(4) Nothing in this section affects the authority of a city or municipality to manage the public rights of way or to require fair and reasonable compensation from a telecommunications carrier, on a competitively neutral and nondiscriminatory basis, under ORS 221.420, 221.450, 221.510 and 221.515. [1999 c.1093 §24; 2001 c.104 §295]

759.410 Intent of ORS 759.410; establishing maximum and minimum price for telecommunications services; packaging services; notice of price change, new service; enforcement. (1) It is the intent of the Legislative Assembly that:

(a) The State of Oregon cease regulation of telecommunications carriers on a rate of return basis;

(b) Telecommunications carriers subject to rate of return regulation have the ability to opt out of rate of return regulation;

(c) A telecommunications carrier that opts out of rate of return regulation under this section and ORS 759.405 shall be subject to price cap regulation and the carrier under price cap regulation shall continue to meet service quality requirements; and

(d) Telecommunications carriers that opt out of rate of return regulation under this section and ORS 759.405 shall make payments to the state to support the use of advanced telecommunications services and to support deployment of advanced telecommunications services.

(2) A telecommunications carrier that elects to be subject to this section and ORS 759.405 shall be subject to price regulation as provided in this section and shall not be subject to any other retail rate regulation, including but not limited to any form of earnings-based, rate-based or rate of return regulation.

(3) The price a telecommunications utility that elects to be subject to this section and ORS 759.405 may charge for basic telephone service shall be established by the Public Utility Commission under ORS 759.425. Subject to ORS 759.415, the regular tariff rate of intrastate switched access and retail telecommunications services regulated by the commission, other than basic telephone service, in effect on the date the carrier elects to be subject to this section and ORS 759.405 shall be the maximum price the telecommunications carrier may charge for that service.

(4) A telecommunications carrier that elects to be subject to this section and ORS 759.405 may adjust the price for intrastate switched access or a regulated retail telecommunications service between the maximum price established under this section and a price floor equal to the sum of the total service long run incremental cost of providing the service for the nonessential functions of the service and the price that is charged to other telecommunications carriers for the essential functions. Basic telephone service shall not be subject to a price floor.

(5) The price for a new regulated retail telecommunications service introduced by a telecommunications carrier within four years after the date the carrier elects to be subject to this section and ORS 759.405 shall be subject to a price floor test by the commission to ensure that the service is not priced below the sum of the total service long run incremental cost of providing the service for the nonessential functions of the service and the price that is charged to other telecommunications carriers for the essential functions. Beginning on the date four years after September 1, 1999, the price of a new telecommunications service shall be subject to a price floor test by the commission to ensure that the service is not priced below the total service long run incremental cost of providing the service, without regard to whether the service is considered essential or nonessential.

(6) A telecommunications carrier that elects to be subject to this section and ORS 759.405 may package and offer any of its retail telecommunications services with any other service at any price, provided the following conditions apply:

(a) Any regulated telecommunications service may be purchased separately at or below the maximum price.

(b) The price of the package is not less than the sum of the price floors of each regulated retail telecommunications service included in the package.

(c) The price of a package that is comprised entirely of regulated retail telecommunications services does not exceed the sum of the maximum prices for each of the services.

(d) The price of a package comprised of regulated and unregulated retail telecommunications services does not exceed the sum of the maximum prices established under this section for regulated services and the retail price charged by the carrier for the individual unregulated services in the package. A telecommunications carrier subject to regulation under this section shall provide notice to the commission within 30 days of a change in the price of an unregulated telecommunications service contained in the package.

(7) Nothing in this section or ORS 759.405 is intended to limit the ability of a telecommunications carrier to seek deregulation of telecommunications services under ORS 759.030.

(8)(a) Notice of a price change authorized under subsection (4) of this section, of the introduction of a new regulated telecommunications service or of the packaging of services, must be given to the commission within 30 days following the effective date of the price change, new service or packaged service. Notice of a new regulated telecommunications service shall indicate the retail price charged by the carrier for the service.

(b) The commission may investigate any price change authorized under subsection (4) of this section, the price of a new regulated telecommunications service or the price of a package of services to determine that the price complies with the provisions of this section and any other applicable law. If the commission determines that the price of the service or package of services does not comply with the provisions of this section or other applicable law, the commission may order the telecommunications carrier to take such action as the commission determines necessary to bring the price into compliance with this section or other applicable law.

(9) Nothing in this section affects the authority of a city or municipality to manage the public rights of way or to require fair and reasonable compensation from a telecommunications carrier, on a competitively neutral and nondiscriminatory basis, under ORS 221.420, 221.450, 221.510 and 221.515.

(10) Notwithstanding any other provision of this section, the commission shall establish prices for extended area service in a manner that allows a telecommunications carrier that elects to be subject to this section and ORS 759.405 to recover all costs and lost net revenues attributable to implementing new extended area service routes. The provisions of this subsection apply to telecommunications service provided on a flat or measured basis between exchanges defined by exchange maps filed with and approved by the commission. [1999 c.1093 §25; 2001 c.966 §1]

759.415 Order in rate proceeding filed prior to January 1, 1999, to establish maximum rate for affected telecommunications services; dismissal of rate proceeding filed after January 1, 1999. (1) In a rate proceeding brought by a telecommunications carrier that elects to be subject to ORS 759.405 and 759.410, or by the Public Utility Commission against an electing telecommunications carrier, prior to January 1, 1999, that is on appeal on September 1, 1999, a final rate for a telecommunications service implemented as a result of the final judgment and order or negotiated settlement shall become the maximum rate for purposes of ORS 759.410.

(2) A rate proceeding brought by or against an electing telecommunications carrier, after January 1, 1999, that is pending on the effective date of the carrier's election to be subject to ORS 759.405 and 759.410, shall be dismissed by the commission or by the court if on appeal, provided the carrier elects to be subject to regulation under ORS 759.405 and 759.410 within the later of:

(a) Ninety days from the commencement of the proceeding; or

(b) Ninety days from September 1, 1999.

(3) Notwithstanding subsection (2) of this section, the parties to a rate proceeding brought by or against an electing telecommunications carrier, after January 1, 1999, that is pending on the effective date of the carrier's election to be subject to ORS 759.405 and 759.410, may agree to continue the proceeding. [1999 c.1093 §27]

759.420 Application of ORS 759.400 to 759.455 to wholesale transactions regulated under federal law. Nothing in ORS 759.400 to 759.455 is intended to affect, alter or in any way modify wholesale transactions regulated by the federal Telecommunications Act of 1996 (Public Law 104-104) as in effect on September 1, 1999, and regulations adopted thereunder. [1999 c.1093 §26]

(Universal Service Fund)

759.425 Universal service fund; commission to establish price for basic telephone service; universal service surcharge; application to cellular services. (1) Within 12 months following September 1, 1999, the Public Utility Commission shall establish and implement a competitively neutral and nondiscriminatory universal service fund to ensure basic telephone service is available at a reasonable and affordable rate. The universal service fund shall conform to section 254 of the federal Telecommunications Act of 1996 (Public Law 104-104). The commission may delay implementation for rural telecommunications carriers, as defined in the federal Act, for up to six months after the date the Federal Communications Commission adopts a cost methodology for rural carriers.

(2)(a) The Public Utility Commission shall establish the price a telecommunications utility may charge its customers for basic telephone service. The commission in its discretion shall periodically review and evaluate the status of telecommunications services in the state and designate the services included in basic telephone service. The commission in its discretion shall periodically review and adjust as necessary the price a telecommunications utility may charge for basic telephone service.

(b) The provisions of this subsection do not apply to the basic telephone service provided by a telecommunications utility described in ORS 759.040.

(3)(a) The Public Utility 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.

(b) The commission in its discretion shall periodically review the benchmark and adjust it as necessary to reflect:

(A) Changes in competition in the telecommunications industry;

(B) Changes in federal universal service support; and

(C) Other relevant factors as determined by the commission.

(c) Except for a telecommunications utility described in ORS 759.040, the commission shall seek to limit the difference between the price a telecommunications utility may charge for basic telephone service and the benchmark.

(4) Except as provided in subsections (6) and (7) of this section, there is imposed on the sale of all retail telecommunications services sold in this state a universal service surcharge. The surcharge shall be established by the commission as a uniform percentage of the sale of retail telecommunications services in an amount sufficient to support the purpose of the universal service fund. The surcharge may be shown as a separate line item by all telecommunications carriers using language prescribed by the commission. A telecommunications carrier shall deposit amounts collected into the universal service fund according to a schedule adopted by the commission.

(5) The commission is authorized to establish a universal service fund, separate and distinct from the General Fund. The fund shall consist of all universal service surcharge moneys collected by telecommunications carriers and paid into the fund. The fund shall be used only for the purpose described in this section, and for payment of expenses incurred by the commission or a third party appointed by the commission to administer this section. All moneys in the fund are continuously appropriated to the commission to carry out the provisions of this section. Interest on moneys deposited in the fund shall accrue to the fund.

(6) For purposes of this section, “retail telecommunications service” does not include radio communications service, radio paging service, commercial mobile radio service, personal communications service or cellular communications service.

(7)(a) Notwithstanding subsection (6) of this section, a person who primarily provides radio communications service, radio paging service, commercial mobile radio service, personal communications service or cellular communications service may request designation as an eligible telecommunications carrier by the Public Utility Commission for purposes of participation in the universal service fund.

(b) In the event a person who primarily provides radio communications service, radio paging service, commercial mobile radio service, personal communications service or cellular communications service seeks designation as an eligible telecommunications carrier for purposes of participation in the universal service fund, the person shall provide written notice to the Public Utility Commission requesting designation as an eligible telecommunications carrier within 60 days of the date the commission establishes the fund. Upon receiving notice, the commission may designate the person as an eligible telecommunications carrier for purposes of participation in the fund.

(c) A person who primarily provides radio communications service, radio paging service, commercial mobile radio service, personal communications service or cellular communications service who fails to request designation as an eligible telecommunications carrier within 60 days of the date the universal service fund is established by the Public

Utility Commission may not be designated as an eligible telecommunications carrier unless the person has contributed to the fund for at least one year immediately prior to requesting designation. [1999 c.1093 §28]

Note: The amendments to 759.425 by section 3, chapter 966, Oregon Laws 2001, become operative July 1, 2003, and apply to universal service surcharges imposed on pay telephone service provided on or after July 1, 2003. See sections 4 and 6, chapter 966, Oregon Laws 2001. The text that is operative on and after July 1, 2003, is set forth for the user's convenience.

759.425. (1) Within 12 months following September 1, 1999, the Public Utility Commission shall establish and implement a competitively neutral and nondiscriminatory universal service fund to ensure basic telephone service is available at a reasonable and affordable rate. The universal service fund shall conform to section 254 of the federal Telecommunications Act of 1996 (Public Law 104-104). The commission may delay implementation for rural telecommunications carriers, as defined in the federal Act, for up to six months after the date the Federal Communications Commission adopts a cost methodology for rural carriers.

(2)(a) The Public Utility Commission shall establish the price a telecommunications utility may charge its customers for basic telephone service. The commission in its discretion shall periodically review and evaluate the status of telecommunications services in the state and designate the services included in basic telephone service. The commission in its discretion shall periodically review and adjust as necessary the price a telecommunications utility may charge for basic telephone service.

(b) The provisions of this subsection do not apply to the basic telephone service provided by a telecommunications utility described in ORS 759.040.

(3)(a) The Public Utility 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.

(b) The commission in its discretion shall periodically review the benchmark and adjust it as necessary to reflect:

(A) Changes in competition in the telecommunications industry;

(B) Changes in federal universal service support; and

(C) Other relevant factors as determined by the commission.

(c) Except for a telecommunications utility described in ORS 759.040, the commission shall seek to limit the difference between the price a telecommunications utility may charge for basic telephone service and the benchmark.

(4) Except as provided in subsections (6) and (7) of this section, there is imposed on the sale of all retail telecommunications services sold in this state a universal service surcharge. The surcharge shall be established by the commission as a uniform percentage of the sale of retail telecommunications services in an amount sufficient to support the purpose of the universal service fund. The surcharge may be shown as a separate line item by all telecommunications carriers using language prescribed by the commission. A telecommunications carrier shall deposit amounts collected into the universal service fund according to a schedule adopted by the commission.

(5) The commission is authorized to establish a universal service fund, separate and distinct from the General Fund. The fund shall consist of all universal service surcharge moneys collected by telecommunications carriers and paid into the fund. The fund shall be used only for the purpose described in this section, and for payment of expenses incurred by the commission or a third party appointed by the commission to administer this section. All moneys in the fund are continuously appropriated to the commission to carry out the provisions of this section. Interest on moneys deposited in the fund shall accrue to the fund.

(6) For purposes of this section, "retail telecommunications service" does not include radio communications service, radio paging service, commercial mobile radio service, personal communications service or cellular communications service.

(7)(a) Notwithstanding subsection (6) of this section, a person who primarily provides radio communications service, radio paging service, commercial mobile radio service, personal communications service or cellular communications service may request designation as an eligible telecommunications carrier by the Public Utility Commission for purposes of participation in the universal service fund.

(b) In the event a person who primarily provides radio communications service, radio paging service, commercial mobile radio service, personal communications service or cellular communications service seeks designation as an eligible telecommunications carrier for purposes of participation in the universal service fund, the person shall provide

written notice to the Public Utility Commission requesting designation as an eligible telecommunications carrier within 60 days of the date the commission establishes the fund. Upon receiving notice, the commission may designate the person as an eligible telecommunications carrier for purposes of participation in the fund.

(c) A person who primarily provides radio communications service, radio paging service, commercial mobile radio service, personal communications service or cellular communications service who fails to request designation as an eligible telecommunications carrier within 60 days of the date the universal service fund is established by the Public Utility Commission may not be designated as an eligible telecommunications carrier unless the person has contributed to the fund for at least one year immediately prior to requesting designation.

(8) A pay telephone provider may apply to the Public Utility Commission, on a form developed by the commission, for a refund of the universal service surcharge imposed on the provider under subsection (4) of this section for the provision of pay telephone service.

(Public Purpose Funding)

759.430 Oregon Economic and Community Development Commission to approve projects funded by carrier's Telecommunications Infrastructure Account; Connecting Oregon Communities Advisory Board; membership; purpose and duties of board. (1)(a) Notwithstanding ORS 285A.075 (2), the Oregon Economic and Community Development Commission shall approve plans and plan modifications for projects funded by a telecommunications carrier's Telecommunications Infrastructure Account established under ORS 759.405. Projects funded from a telecommunications carrier's Telecommunications Infrastructure Account shall be completed by the carrier and shall be substantially for the benefit of the carrier's customers. Plans approved by the commission must be consistent with the purpose of the fund as described in ORS 759.405. The commission shall give priority to projects that provide increased bandwidth between communities, route diversity and access to advanced telecommunications services in an expedited manner. The commission shall seek to ensure that an approved project is the most technically appropriate means of addressing the circumstances presented in a project plan. The commission shall review recommendations and analysis from the Connecting Oregon Communities Advisory Board established in subsection (2) of this section prior to approving a plan. Project plans may be submitted by local communities including but not limited to local governments, community institutions, citizen groups, public and private educational institutions and business groups.

(b) Under the policies and guidance of the commission, the Economic and Community Development Department shall adopt rules for the submission of project plans by telecommunications carriers and other persons, including criteria for approval of such plans. The rules shall include criteria to determine if the telecommunications carrier reasonably should be expected to make the investment based on an economic analysis of the project. Projects that are determined to meet the criteria but are not economically self-supporting or would not be undertaken in the time frame proposed shall be given priority over similar projects that would be economically self-supporting or likely would be completed in the time frame proposed. The rules shall provide for review of the economic benefits of the proposed plan to the affected community and the potential for the proposed plan to leverage other funding sources including but not limited to federal, state and private sources.

(c) The commission also shall approve expenditures from the Public Access Account of the Connecting Oregon Communities Fund established in ORS 759.445 (4).

(2) There is established within the Economic and Community Development Department the Connecting Oregon Communities Advisory Board consisting of five members appointed by the commission. The commission shall seek advice from the Governor prior to making an appointment to the advisory board.

(3) There shall be one member of the advisory board from each of the following areas:

(a) Eastern Oregon, including Hood River County;

(b) Central Oregon;

(c) Southern Oregon;

(d) Coastal Oregon; and

(e) The Willamette Valley.

(4) Employees of the Public Utility Commission, employees of state or local government who are responsible for purchasing telecommunications services or equipment and employees of a telecommunications carrier may not be appointed to the advisory board.

(5) The advisory board shall select one of its members as chairperson and another of its members as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of those offices

as the board determines.

(6) The purpose of the advisory board is to review and make recommendations to the Oregon Economic and Community Development Commission for approval of and modifications to projects funded by a telecommunications carrier's Telecommunications Infrastructure Account under this section and ORS 759.405. The advisory board shall seek advice and comment on plans submitted by a telecommunications carrier from affected local communities including but not limited to local governments, citizens and businesses. The advisory board also shall seek advice and comment from state and federal agencies when appropriate to ensure that investments will maximize statewide public benefits and are consistent with the needs and desires of the local communities. The advisory board shall consider the needs of and impact on education, health care, economic development and the delivery of state and local governmental services when evaluating a plan.

(7) The advisory board also shall review proposals submitted to the commission under ORS 759.445 (5) and make recommendations to the commission regarding approval, modification or denial of the proposals.

(8) The advisory board shall make an annual report to the Joint Legislative Committee on Information Management and Technology on the plans and activities funded under ORS 759.405 and 759.445 (5).

(9)(a) Reasonable expenses incurred by the members of the advisory board in the performance of their duties, costs of the Economic and Community Development Department directly related to providing staff to the advisory board and costs to the department for providing technical assistance to local communities shall be paid out of the Telecommunications Infrastructure Accounts created under ORS 759.405.

(b) Following the transfer of funds required under ORS 759.405 (2) and (3), a telecommunications carrier that elects to be subject to regulation under ORS 759.405 and 759.410 shall transfer from the remaining funds in its Telecommunications Infrastructure Account the following amounts to the Economic and Community Development Department to be used for the payment of expenses described in paragraph (a) of this subsection:

(A) $575,000 in 2000;

(B) $325,000 in 2001;

(C) $325,000 in 2002; and

(D) $325,000 in 2003.

(c) If more than one telecommunications carrier elects to be subject to regulation under ORS 759.405 and 759.410, the funding requirements described in paragraph (b) of this subsection shall be distributed pro rata among the electing carriers. [1999 c.1093 §31]

759.435 Economic and Community Development Department to conduct assessment of telecommunications infrastructure and community needs; contents; report to Joint Legislative Committee on Information Management and Technology and Oregon Economic and Community Development Commission. (1) The Economic and Community Development Department, in collaboration with affected telecommunications carriers, the Connecting Oregon Communities Advisory Board, representatives of local communities and other members of the public interested in improved telecommunications services, shall conduct an assessment of telecommunications infrastructure and community telecommunications needs in local communities and across the various regions of this state. The assessment shall include:

(a) The type of telecommunications services and technology, including infrastructure, already deployed within communities and regions;

(b) The type of telecommunications technology and services desired by communities within regions;

(c) The competitiveness of the local telecommunications market, including a list of all telecommunications carriers and Internet service providers;

(d) The economic significance of desired telecommunications investments;

(e) Community and regional priority lists for telecommunications infrastructure and service investments;

(f) The ability of qualified public and nonprofit users within the community or region to aggregate demand for telecommunications services and the benefits of such aggregation;

(g) The estimated costs and implementation schedule of desired or proposed telecommunications investments;

(h) An analysis of state, federal, nonprofit and private sources of funding for the proposed improvements;

(i) The ability of the investment to be self-supporting; and

(j) The ability of a community or region to make the investments necessary to connect to the Oregon Enterprise Network, and the local and statewide benefits of such investments.

(2)(a) To the maximum extent practicable, the assessment shall recognize and include existing state, regional and local plans and information. The department may use its own staff or may contract with third parties to conduct the

assessment.

(b) A copy of the assessment shall be submitted to the Oregon Economic and Community Development Commission and to the Joint Legislative Committee on Information Management and Technology. The commission shall consider the information contained in the report when adopting or amending the rules required under ORS 759.430 (1).

(3) The commission shall not approve plans under ORS 759.430 (1) until the commission has received the assessment required under this section. The department shall report to the Joint Legislative Committee on Information Management and Technology on implementation of ORS 759.430 to 759.445 prior to the approval of project plans under ORS 759.430 (1). [1999 c.1093 §32]

759.440 Economic and Community Development Department may request funds from Telecommunications Infrastructure Account; Emergency Board approval; order of commission. The Economic and Community Development Department may request approval from the Emergency Board for the transfer of additional funds from a telecommunications carrier's Telecommunications Infrastructure Account created under ORS 759.405 for the purpose of providing technical assistance to the department and the Oregon Economic and Community Development Commission in evaluating project plans submitted under ORS 759.430. If the request is approved, the commission by order may direct the transfer of funds from a telecommunications carrier's Telecommunications Infrastructure Account to the Economic and Community Development Department. The department may not request and the Emergency Board shall not approve a request or requests in excess of $100,000 per year. [1999 c.1093 §32a]

759.445 Connecting Oregon Communities Fund; purpose; School Technology Account; Public Access Account; purpose and uses of accounts; distribution of funds. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Connecting Oregon Communities Fund. Moneys in the fund shall consist of amounts deposited in the fund under ORS 759.405 and any other moneys deposited by a telecommunications carrier that elects to be subject to ORS 759.405 and 759.410, including amounts deposited pursuant to a performance assurance plan implemented by a telecommunications carrier in connection with an application under 47 U.S.C. 271, as in effect on January 1, 2002. Interest earned on moneys in the fund shall accrue to the fund. Moneys in the fund may be invested as provided in ORS 293.701 to 293.820. Moneys in the fund shall be used to provide access to advanced telecommunications technology in elementary schools and high schools, colleges and universities, community colleges, public television corporations, rural health care providers, public libraries and other eligible persons.

(2) Two dedicated accounts shall be established within the Connecting Oregon Communities Fund for purposes of supporting education and public access to advanced telecommunications services. The first $25 million of the moneys deposited in the Connecting Oregon Communities Fund in both 2000 and 2001 shall be appropriated to the School Technology Account established under subsection (3) of this section. Except as provided in subsection (8) of this section, any additional moneys available in the fund shall be appropriated to the Public Access Account established under subsection (4) of this section.

(3) There is established the School Technology Account within the Connecting Oregon Communities Fund. The purpose of the School Technology Account is to improve access to advanced telecommunications services for students attending public school in kindergarten through grade 12. Moneys in the account shall be expended as provided in section 34, chapter 1093, Oregon Laws 1999.

(4)(a) There is established the Public Access Account within the Connecting Oregon Communities Fund. The purpose of the Public Access Account is to improve access to advanced telecommunications services for community colleges, universities, public libraries and rural health care providers.

(b) If funding has not been provided from other sources, the first $3 million available in the Public Access Account shall be transferred to the Department of Higher Education for the purpose of funding the Oregon Wide Area Network project to provide and expand Internet access for the Oregon University System. The Department of Higher Education shall complete an audit of bandwidth utilization and report to the Joint Legislative Committee on Information Management and Technology during the Seventy-first Legislative Assembly in the manner provided in ORS 192.245.

(c) Following the transfer of funds described in paragraph (b) of this subsection, the next $1 million available in the Public Access Account shall be transferred to the Department of Higher Education for Oregon State University for the purpose of providing virtual access to persons with disabilities.

(d) Following the transfer of funds as described in paragraphs (b) and (c) of this subsection, the next $2 million available in the Public Access Account shall be transferred to the Department of Community Colleges and Workforce

Development for distribution to community colleges for the purpose of developing connectivity and distance education programs.

(e) Following the transfer of funds described in paragraphs (b) to (d) of this subsection, the next $4 million available in the Public Access Account shall be transferred to the Department of Higher Education for video transport and network management services for the Oregon University System.

(f) Following the transfer of funds described in paragraphs (b) to (e) of this subsection, the next $5.5 million available in the Public Access Account shall be transferred to the Oregon Public Broadcasting Corporation for the purpose of digitizing the state television network, using the Oregon Enterprise Network when possible.

(g) Following the transfer of funds described in paragraphs (b) to (f) of this subsection, the next $500,000 available in the Public Access Account shall be transferred to the Southern Oregon Public Television Corporation for the purpose of digitizing the state television network, using the Oregon Enterprise Network when possible.

(h) Following the transfer of funds described in paragraphs (b) to (g) of this subsection, a state institution of higher education, including the Oregon Health and Science University, may apply for one-time matching funds up to $1 million from the Public Access Account to endow a telecommunications chair for the purpose of increasing research and development of advanced telecommunications services applications. Only one chair may be endowed under this paragraph.

(5)(a) The Oregon Economic and Community Development Commission shall approve expenditure of any remaining moneys in the Public Access Account consistent with this section and ORS 759.430.

(b) Community colleges, state institutions of higher education, public libraries, public television corporations and rural health care providers may apply to the Oregon Economic and Community Development Commission for funding from the Public Access Account under this subsection.

(c) Funds received from the account shall be used for the purchase of advanced telecommunications services, equipment or recurring costs of telecommunications connectivity. Priority shall be given to collaborative projects that improve access to advanced telecommunications services.

(d) Funds available in the Public Access Account under this subsection are continuously appropriated to the Economic and Community Development Department for the purposes described in this subsection.

(6) Public libraries and rural health care providers must apply for federal universal service support in order to be eligible for a grant from the Public Access Account.

(7) The video transport and network management services purchased with funds made available under this section shall be purchased through the Oregon Department of Administrative Services.

(8) Any moneys deposited in the Connecting Oregon Communities Fund under subsection (1) of this section pursuant to a performance assurance plan implemented by a telecommunications carrier in connection with an application under 47 U.S.C. 271, as in effect on January 1, 2002, shall be placed in the School Technology Account to be expended as provided in section 34, chapter 1093, Oregon Laws 1999. [1999 c.1093 §33; 2001 c.966 §7]

Note: Sections 34 and 37, chapter 1093, Oregon Laws 1999, provide:

Sec. 34. (1) In addition to and not in lieu of any other transfer or appropriation, for the calendar year beginning January 1, 2000, there is transferred to the Department of Education from the School Technology Account the sum of $9,600 for each eligible school facility as defined in section 35 (1), chapter 1093, Oregon Laws 1999, which shall be expended for the purpose of providing a local area network and associated equipment to public school facilities pursuant to section 35, chapter 1093, Oregon Laws 1999.

(2) In addition to and not in lieu of any other transfer or appropriation, there is transferred to the Department of Education from the School Technology Account, to be distributed to the Oregon Association of Education Service Districts for the Oregon Public Education Network, for:

(a) The recurring costs of Internet bandwidth:

(A) $500,000 for the calendar year beginning January 1, 2000; and

(B) $1 million for the calendar year beginning January 1, 2001.

(b) The purchase of telecommunications equipment:

(A) $250,000 for the calendar year beginning January 1, 2000; and

(B) $250,000 for the calendar year beginning January 1, 2001.

(c) The purpose of an on-line film and video server pilot project to digitize and electronically distribute video content, $250,000 for the calendar year beginning January 1, 2000.

(3) In addition to and not in lieu of any other transfer or appropriation, for the calendar years beginning January 1, 2000, and January 1, 2001, there is transferred to the Department of Education from the School Technology Account

the sum of $5,400 for each eligible school facility as defined in section 36 (1), chapter 1093, Oregon Laws 1999, for the purpose of distribution to school districts and education service districts pursuant to section 36, chapter 1093, Oregon Laws 1999, for the recurring costs of telecommunications connectivity.

(4)(a) In addition to and not in lieu of any other transfer or appropriation, there is transferred to the Department of Education from the School Technology Account for the purpose of purchasing a two-way interactive distance education system for each public high school and education service district:

(A) $3,050,000 for the calendar year beginning January 1, 2000; and

(B) $3,050,000 for the calendar year beginning January 1, 2001.

(b) The Department of Education, in consultation with the Oregon Department of Administrative Services, shall develop an implementation plan for this subsection. The implementation plan shall include an implementation timeline and requirements for each public high school and education service district that receives a two-way interactive distance education system under this subsection. The Department of Education shall ensure that a distance education system purchased by the Department of Education meets State of Oregon information technology standards, is consistent with any related interactive video strategy of the Oregon Department of Administrative Services and is procured through a competitively bid or negotiated state contract. The Department of Education shall reimburse the Oregon Department of Administrative Services from funds made available under this subsection for costs incurred by the Oregon Department of Administrative Services in developing the implementation plan.

(5)(a) In addition to and not in lieu of any other transfer or appropriation, there is transferred to the Department of Education from the School Technology Account for the purpose of paying the recurring costs of telecommunications connectivity and video services associated with the two-way interactive distance education systems purchased with funds transferred under this section:

(A) $550,000 for the calendar year beginning January 1, 2000; and

(B) $550,000 for the calendar year beginning January 1, 2001.

(b) Any telecommunications or video services purchased by the Department of Education with funds transferred under this subsection shall be purchased from the Oregon Department of Administrative Services as long as such services are available through the Oregon Department of Administrative Services at a comparable level and comparable cost as can be obtained elsewhere. Purchase of services and technology from the Oregon Department of Administrative Services shall be through the Oregon Enterprise Network provided the Oregon Enterprise Network can provide the services and technology at a cost equal to or less than the price for the same or similar services and technology from other contracts or programs of the Oregon Department of Administrative Services. The Department of Education shall ensure that telecommunications and video services purchased by the Department of Education meet State of Oregon information technology standards, are consistent with any related interactive video strategy of the Oregon Department of Administrative Services and are purchased through a competitively bid or negotiated state contract.

(c) Upon request of the North Central, Malheur, Jackson or Northwest Region education service district, the Department of Education may waive the requirements of paragraph (b) of this subsection until such time as the district changes its systems to use the services available through the Oregon Department of Administrative Services, as determined by the implementation plan established under subsection (4)(b) of this section.

(d) Upon request of a school district or education service district, the Oregon Department of Administrative Services may waive the requirements of paragraph (b) of this subsection if a state contract is not available for use by the district.

(6)(a) In addition to and not in lieu of any other transfer or appropriation, there is transferred to the Oregon Department of Administrative Services from the School Technology Account for the purchase of hub equipment necessary to support public school needs for two-way interactive video system bridging and other services:

(A) $700,000 for the calendar year beginning January 1, 2000; and

(B) $700,000 for the calendar year beginning January 1, 2001.

(b) The Oregon Department of Administrative Services shall reduce rates paid by school districts and education service districts to the department for video services by the amount transferred under this subsection.

(7) In addition to and not in lieu of any other transfer or appropriation, there is transferred to the Department of Education any amounts remaining in the account after the transfers described in subsections (1) to (6) of this section are made, which shall be distributed to school districts pursuant to section 37, chapter 1093, Oregon Laws 1999.

(8) Amounts described in this section shall be transferred each year only when sufficient funds are available in the School Technology Account. [1999 c.1093 §34; 2001 c.966 §8]

Sec. 37. (1) As used in this section:

(a) “ADMw” means the weighted average daily membership of the school district for the prior fiscal year as calculated under ORS 327.013.

(b) “Statewide ADMw” means the total ADMw of all school districts for the prior fiscal year as calculated under ORS 327.013.

(2) The Department of Education shall distribute grants from amounts transferred under section 34 (7), chapter 1093, Oregon Laws 1999, to school districts.

(3) Except as provided in subsection (4) of this section, a school district’s grant under this section = the school district’s ADMw ´ (the total amount transferred to the department for the grants under section 34 (7), chapter 1093, Oregon Laws 1999 ¸ the total statewide ADMw).

(4) A school district’s grant under this section shall not be less than $25,000.

(5) A school district that receives grant funds under this section shall use those funds to support telecommunications connectivity including:

(a) Building wiring and electrical power requirements;

(b) Servers, hubs and routers;

(c) Network design and installation;

(d) Video distance education equipment;

(e) Technology support staff salaries; and

(f) Other costs necessary to support telecommunications connectivity.

(6) A school district may not use grant funds received under this section for payment of debt service on bonds.

(7) The State Board of Education may adopt any rules necessary for the administration of this section. [1999 c.1093 §37; 2001 c.966 §9]

SERVICE QUALITY STANDARDS AND PROHIBITED ACTS

759.450 Minimum service quality standards; rules; standards to relate to customer impact indices; factors; standards for wholesale services; improvement plan; penalties; exception. (1) It is the intent of the Legislative Assembly that every telecommunications carrier and those telecommunications utilities and competitive telecommunications providers that provide wholesale services meet minimum service quality standards on a nondiscriminatory basis.

(2) The Public Utility Commission shall determine minimum service quality standards that relate to the provision of retail telecommunications services to ensure safe and adequate service. Except as provided in subsections (8) and (9) of this section, minimum service quality standards adopted under this section shall apply to all telecommunications carriers. The commission by rule shall review and revise the minimum service quality standards as necessary to ensure safe and adequate retail telecommunications services.

(3) The minimum service quality standards for providing retail telecommunications services adopted by the commission shall relate directly to specific customer impact indices including but not limited to held orders, trouble reports, repair intervals and carrier inquiry response times. In adopting minimum service quality standards, the commission shall, for each standard adopted, consider the following:

(a) General industry practice and achievement;

(b) National data for similar standards;

(c) Normal operating conditions;

(d) The historic purpose for which the telecommunications network was constructed;

(e) Technological improvements and trends; and

(f) Other factors as determined by the commission.

(4) Consistent with the federal Telecommunications Act of 1996 (Public Law 104-104), as amended and in effect on September 1, 1999, the commission may establish minimum service quality standards related to providing wholesale, interconnection, transport and termination services provided by a telecommunications carrier and those telecommunications utilities and competitive telecommunications providers that provide wholesale telecommunications services.

(5) The commission shall require a telecommunications carrier, telecommunications utility or competitive telecommunications provider that is not meeting the minimum service quality standards to submit a plan for improving performance to meet the standards. The commission shall review and approve or disapprove the plan. If the carrier, utility or provider does not meet the goals of its improvement plan within six months or if the plan is disapproved by

the commission, penalties may be assessed against the carrier, utility or provider on the basis of the carrier's, utility's or provider's service quality measured against the minimum service quality standards and, if assessed, shall be assessed according to the provisions of ORS 759.990.

(6) Prior to commencing an action under this section and ORS 759.990, the commission shall allow a telecommunications carrier, telecommunications utility or competitive telecommunications provider an opportunity to demonstrate that a violation of a minimum service quality standard is the result of the failure of a person providing telecommunications interconnection service to meet the person's interconnection obligations.

(7) Total annual penalties imposed on a telecommunications utility under this section shall not exceed two percent of the utility's gross intrastate revenue from the sale of telecommunications services for the calendar year preceding the year in which the penalties are assessed. Total annual penalties imposed on a competitive telecommunications provider under this section shall not exceed two percent of the provider's gross revenue from the sale of telecommunications services in this state for the calendar year preceding the year in which the penalties are imposed.

(8) The provisions of this section do not apply to:

(a) Radio communications service, radio paging service, commercial mobile radio service, personal communications service or cellular communications service; or

(b) A cooperative corporation organized under ORS chapter 62 that provides telecommunications services.

(9) Telecommunications utilities and groups of affiliated telecommunications utilities that serve fewer than 50,000 access lines in Oregon are exempt from any minimum service quality standard adopted under this section that would require the utility or group to measure carrier inquiry response time. [1999 c.1093 §29; 2001 c.95 §1]

Note: Sections 30 and 41, chapter 1093, Oregon Laws 1999, provide:

Sec. 30. (1) In addition to the minimum service quality standards established by the Public Utility Commission under section 29 of this 1999 Act [759.450], a telecommunications carrier that elects to be subject to sections 24 and 25 of this 1999 Act [759.405 and 759.410] shall be subject to the retail telecommunications service quality standards and associated penalties for noncompliance established in this section. Retail telecommunications service quality standards and associated penalties are as follows:

(a)(A) Held orders. A customer request for access line telephone service shall be considered a held order if the service is not installed due to facility reasons within five business days of the date the service is scheduled to be installed, unless a different date is agreed to by the customer and the telecommunications carrier. The average monthly number of held orders shall not exceed 6.25 per 1,000 inward orders and shall be calculated as a monthly average for each quarterly period. A penalty of $20,000 per held order per quarterly period in excess of the standard may be assessed.

(B) As used in this paragraph, "access line" means a dial tone line that provides basic exchange services extending from the carrier's switching equipment to a point of termination at the premises of the carrier's end use customer.

(b) Held orders over 30 days. The number of held orders for primary basic telephone service held for facility reasons in excess of 30 business days shall not exceed 20 percent of the total held order standard for each quarterly period. A penalty of $10,000 per held order in excess of the standard may be assessed.

(c) Trouble report rate. A wire center shall not have more than four trouble reports per 100 access lines per month calculated as a monthly average for each quarterly period, excluding those trouble reports beyond the control of the telecommunications carrier. A penalty of $25,000 per wire center may be assessed for each month of noncompliance with this standard.

(d) Network blockage. Of all properly dialed calls, 98 percent shall not experience blockage during any normal busy hour, excluding blockage that is beyond the control of the telecommunications carrier. A penalty of $10,000 per wire center may be assessed for each month of noncompliance with this standard.

(e) Trouble reports cleared. Of all trouble reports, 90 percent shall be cleared within 48 hours. A penalty of $15,000 per month may be assessed for each month of noncompliance with this standard, except that a penalty shall not be assessed if the telecommunications carrier has met this standard on an overall basis for the annual period.

(f) Repair center access. Of calls to a telecommunications carrier's repair center or centers, 80 percent shall be answered in 20 seconds or less. A penalty of $15,000 per month may be assessed for each month of noncompliance with this standard.

(g) Sales office access. Of calls to a telecommunications carrier's sales office or offices, 75 percent shall be answered in 20 seconds or less. A penalty of $15,000 per month may be assessed for each month of noncompliance with this standard.

(2) The service quality standards established in this section and section 29 of this 1999 Act apply to normal

operating conditions and do not establish a level of performance to be achieved during periods of emergency, catastrophe, natural disaster, severe storm or other events affecting large numbers of telecommunications customers. The service quality standards shall not apply to extraordinary or abnormal conditions of operation such as those conditions resulting from work stoppage or slowdown, civil unrest or other events for which the telecommunications carrier reasonably may not have been expected to accommodate. To the extent such conditions affect the performance of a telecommunications carrier, it shall be the responsibility of the telecommunications carrier to separately document the duration and magnitude of each occurrence.

(3) A telecommunications carrier subject to this section shall report to the commission quarterly the carrier's performance relative to each of the minimum service quality standards.

(4) Penalties for a violation of the service quality standards established under this section shall be imposed by order following complaint as provided under ORS 756.500 to 756.610. Any complaint filed under this section shall be filed within 90 days of each anniversary of the date the telecommunications carrier became subject to regulation under sections 24 and 25 of this 1999 Act. Penalties imposed under this section shall be:

(a) Paid in the form of bill credits to the telecommunications carrier's customers in a manner approved by the commission; or

(b) Directed by the commission to targeted investments by the telecommunications carrier to address specific issues of service quality.

(5)(a) Total combined annual penalties imposed on a telecommunications utility under this section and sections 29 and 38 of this 1999 Act [759.450 and 759.455] shall not exceed two percent of the utility's gross intrastate revenue from the sale of telecommunications services in the calendar year preceding the year in which the penalties are assessed.

(b) Penalties imposed under section 29 of this 1999 Act shall be reduced by an amount equal to the penalty amount incurred by a telecommunications utility under this section, provided the penalties are imposed or incurred for violations resulting from the same incident. [1999 c.1093 §30]

Sec. 41. Section 30 of this 1999 Act is repealed January 1, 2004. [1999 c.1093 §41]

759.455 Prohibited acts; commission action on allegation of violation; penalties; appeal. (1) Unless exempt from compliance under section 251(f) of the federal Telecommunications Act of 1996 (47 U.S.C. 251(f)), a telecommunications utility shall not:

(a) Discriminate against another provider of retail telecommunications services by unreasonably refusing or delaying access to the telecommunications utility's local exchange services.

(b) Discriminate against another provider of retail telecommunications services by providing access to required facilities on terms or conditions less favorable than those the telecommunications utility provides to itself and its affiliates. A telecommunications facility, feature or function is a required facility if:

(A) Access to a proprietary facility, feature or function is necessary; and

(B) Failure to provide access to the facility, feature or function would impair a telecommunications carrier seeking access from providing the services the carrier is seeking to provide.

(c) Unreasonably degrade or impair the speed, quality or efficiency of access or any other service, product or facility provided to another provider of telecommunications services.

(d) Fail to disclose in a timely and uniform manner, upon reasonable request and pursuant to a protective agreement concerning proprietary information, all information reasonably necessary for the design of network interface equipment, services or software that will meet the specifications of the telecommunications utility's local exchange network.

(e) Unreasonably refuse or delay interconnections or provide inferior interconnections to another provider of telecommunications services.

(f) Use basic exchange services rates, directly or indirectly, to subsidize or offset the cost of other products or services offered by the telecommunications utility.

(g) Discriminate in favor of itself or an affiliate in the provision and pricing of, or extension of credit for, any telephone service.

(h) Fail to provide a service, product or facility in accordance with applicable contracts, and tariffs and rules of the Public Utility Commission.

(i) Impose unreasonable or discriminatory restrictions on network elements or the resale of its services, except that:

(A) The telecommunications utility may require that residential service not be resold as a different class of service; and

(B) The commission may prohibit the resale of services the commission has approved for provision to a not-for-profit entity at rates below those offered to the general public.

(j) Provide telephone service to a person acting as a telecommunications provider if the commission has ordered the telecommunications utility to discontinue telephone service to the person.

(2) A complaint alleging a violation of subsection (1) of this section shall be heard by the Public Utility Commission or, at the commission's discretion, by an Administrative Law Judge designated by the commission. A hearing under this subsection shall be conducted in an expedited manner consistent with the following:

(a) The complaint shall be served upon the telecommunications carrier and filed with the commission.

(b) An answer or other responsive pleading to the complaint shall be filed with the commission not more than 10 days after receipt of the complaint. Copies of the answer or responsive pleading shall be served upon the complainant and upon the commission.

(c) A prehearing conference shall be held not later than 15 days after the complaint is filed. Hearing on the complaint shall commence not later than 30 days after the complaint is filed. 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 final decision shall be issued as an order of the commission in the manner provided under ORS 756.558.

(3) If the commission or Administrative Law Judge finds that a violation of this section has occurred, the commission shall, within five business days, order the telecommunications utility to remedy the violation within a specified period of time. The commission may prescribe specific action to be taken by the utility, including but not limited to submitting a plan for preventing future violations. If the violation continues beyond the time period specified in the commission's order, the commission on its own motion or upon the motion of an interested party may seek penalties as provided in ORS 759.990 or otherwise may seek enforcement under ORS 756.160 or 756.180, or both.

(4) Total annual penalties imposed on a telecommunications utility under this section and ORS 759.450 shall not exceed two percent of the utility's gross intrastate revenue from the sale of telecommunications services for the year preceding the year in which the violation occurred.

(5) An appeal from an order of the commission made pursuant to this section shall be made in the manner provided in ORS 756.580.

(6) The circuit court and, if on appeal from the circuit court, the Court of Appeals shall give proceedings under this section priority over all other matters before the court. [1999 c.1093 §38]

ALLOCATION OF TERRITORIES AND CUSTOMERS

(Generally)

759.500 Definitions for ORS 759.500 to 759.570. As used in ORS 759.500 to 579.570, unless the context requires otherwise:

(1) "Allocated territory" means an area with boundaries established by a contract between persons furnishing a similar utility service and approved by the Public Utility Commission or established by an order of the commission approving an application for the allocation of territory.

(2) "Person" includes individuals, firms, partnerships, corporations, associations, cooperatives and municipalities, or their agent, lessee, trustee or referee.

(3) "Telecommunications utility service" means service provided by any equipment, plant or facility for the provision of local exchange telecommunications service as defined in ORS 759.005 (2)(c). "Telecommunications utility service" does not include service provided through or by the use of any equipment, plant or facilities:

(a) For the provision of telecommunications service, which pass through or over but are not used to provide service in or do not terminate in an area allocated to another person providing a similar utility service;

(b) For the provision of local exchange telecommunications service, as defined in ORS 759.005 (2)(c), commonly known as "private lines" or "farmer lines"; nor

(c) For the provision of shared telecommunications service as defined in ORS 759.005 (2)(f). [1987 c.447 §53]

759.505 Purpose of allocation laws. The elimination and future prevention of duplication of utility facilities is a matter of statewide concern; and in order to promote the efficient and economic use and development and the safety of operation of utility services while providing adequate and reasonable service to all territories and customers affected thereby, it is necessary to regulate in the manner provided in ORS 759.500 to 759.570, all persons and entities providing telecommunications utility services. [1987 c.447 §54]

759.510 Contracts for allocation between utilities; exchange or transfer of facilities. (1) Any person providing a telecommunications utility service may contract with any other person providing a similar telecommunications utility service for the purpose of allocating territories and customers between the parties and designating which territories and customers are to be served by which of said contracting parties; and the territories and customers so allocated and designated may include all or any portion of the territories and customers which are being served by either or both of the parties at the time the contract is entered into, or which could be economically served by the then existing facilities of either party or by reasonable and economic extensions thereto.

(2) Any such contracting parties may also contract in writing for the sale, exchange, transfer or lease of equipment or facilities located within territory which is the subject of the allocation agreed upon pursuant to subsection (1) of this section. Any sale, exchange, transfer or lease of equipment, plant or facilities made pursuant to this subsection by any person which is a "telecommunications utility" as defined in ORS 759.005, is also subject to the approval of the Public Utility Commission to the extent required by this chapter. [1987 c.447 §55]

759.515 Contract approval by commission; conditions. Notwithstanding any other provisions of law, a contract entered into pursuant to ORS 759.510, when approved by the Public Utility Commission as provided in ORS 759.520 to 759.570, shall be valid and enforceable; provided, that the commission shall approve such a contract only if the commission finds, after a hearing as provided in ORS 759.520 to 759.570, that the contract will eliminate or avoid unnecessary duplicating facilities and will promote the efficient and economic use and development and the safety of operation of the telecommunications utility systems of the parties to the contract, while providing adequate and reasonable service to all territories and customers affected thereby. [1987 c.447 §56]

759.520 Filing of contract; hearing; notice of filing. (1) A contract entered into pursuant to ORS 759.510 shall be promptly filed with the Public Utility Commission, and the commission shall, within 30 days after such filing, give notice of such filing. If the commission chooses or if any customer or customers request a hearing on the matter within 30 days of the notice, the commission shall hold a hearing by telephone or in person. The commission shall give notice of such hearing within 30 days of the customer's request which notice shall set the date and place of hearing on the question as to whether or not such contract will be approved. The hearing shall be held at a place within or conveniently accessible to the territories affected by the contract.

(2) The commission shall publish notice of the filing in a newspaper or newspapers of general circulation in each of the territories affected by the contract. Each such notice shall be published at least once weekly for two successive weeks. [1987 c.447 §57]

759.525 Order on contract; suit to challenge order. (1) On the basis of the applicant's filing or, if there is a hearing, on the record made at the hearing held pursuant to ORS 759.520, the Public Utility Commission shall enter an order either approving or disapproving the contract as filed, together with any appropriate findings of the facts supporting such order.

(2) Any party to such contract may commence a suit to vacate and set aside the commission's order on the ground that such order is unlawful, and so far as applicable and not inconsistent herewith, the provisions of ORS 756.580 to 756.610 shall govern such suit.

(3) If the commission approves a contract and no suit is filed to vacate or set aside the commission's order as above provided, the contract shall be deemed to be valid and enforceable for all purposes from the date on which the right to file such suit expires. If a suit to vacate or set aside the commission's order is filed, the validity of the contract shall be as determined by the final judgment therein rendered. [1987 c.447 §58]

759.530 Amendment of contract; commission approval. Any contract that has been approved as provided in ORS 759.500 to 759.570 may be subsequently amended by the parties thereto, but any such amendatory agreement shall be filed with the Public Utility Commission and shall thereafter be approved or disapproved by the commission in the manner provided in ORS 759.520 and 759.525. However, no hearing is required if all affected customers approve the amendatory agreement. An amendatory agreement may be enforced in the manner provided in ORS 759.565. [1987 c.447 §59]

759.535 Application by utility to serve unserved territory; hearing; notice. (1) Any person providing a telecommunications utility service in a territory that is not served by another person providing a similar

telecommunications utility service may make application to the Public Utility Commission for an order allocating such territory to it. The application may include any adjacent area that it is more economical and feasible to serve by an extension of the applicant's existing facilities than by an extension of the facilities of another person.

(2) The commission shall within 30 days after the filing of such application give notice of the filing. If the commission chooses, or if a customer requests a hearing on the matter within 30 days of the notice, the commission shall hold a hearing by telephone or in person. The commission shall give notice of the hearing within 30 days of the request which notice shall set the date and place of hearing. The hearing shall be held at a place within or conveniently accessible to the territory covered by the application. Notice of the filing shall be by publication in a newspaper or newspapers of general circulation in the territory covered by the application and shall be published at least once weekly for two successive weeks. Written notice of the filing shall be given to providers of similar telecommunications utility service in adjacent territory.

(3) Territory within the limits of a city, as fixed on May 31, 1961, shall not be deemed to be served exclusively by any person, if such city is, on such date, served by more than one person having necessary municipal or franchise authority to serve within the entire city. [1987 c.447 §60]

759.540 Order of commission on application; approval criteria. (1) On the basis of the application, or, if there is a hearing, on the record made at the hearing held pursuant to ORS 759.535, the Public Utility Commission shall enter an order either approving or disapproving the application as filed or as amended, together with findings of the facts supporting such order.

(2) The commission, before approving an application for the allocation of territory, shall find that the applicant is exclusively serving the territory covered by the application and in the case of an adjacent unserved area that it is more economical and feasible to serve by an extension of the applicant's existing facilities than by an extension of the facilities of another person. [1987 c.447 §61]

759.545 Suit to set aside order of commission. Any party to the hearing may commence a suit to vacate and set aside the Public Utility Commission's order as provided in ORS 756.580 to 756.610. If no suit is filed to vacate or set aside the commission's order within the specified time, the order shall thereafter be valid and enforceable for the purposes herein specified from the date on which the right to file such suit expires. If a suit to vacate or set aside the Public Utility Commission's order is filed, the validity of the order shall be determined by the final judgment therein provided. [1987 c.447 §62]

759.550 Contract required to make certain territories exclusive; service by another in allocated territory prohibited. (1) Territory served by more than one person providing similar telecommunications utility service may only become an allocated territory by a contract approved by the Public Utility Commission.

(2) No other person shall offer, construct or extend telecommunications utility service in or into an allocated territory.

(3) During the pendency of an application for an allocation of exclusively served territory, no person other than the applicant shall offer, construct or extend telecommunications utility service in or into the territory applied for; nor shall any person, without the express consent of the commission, offer, construct or extend telecommunications utility service in or into any unserved territory which is the subject of a filing pending before the commission under ORS 759.520 or 759.535. [1987 c.447 §63]

759.555 Investigation of application or contract by commission; hearing. (1) The Public Utility Commission may make such investigations respecting a contract or an application for the allocation of territory as the commission deems proper including the physical examinations and evaluations of the facilities and systems of the parties to the contract, estimates of their operating costs and revenues and studies of such other information as the commission deems pertinent.

(2) Insofar as applicable and consistent herewith, the provisions of ORS 756.500 to 756.610 shall govern the conduct of hearings.

(3) In considering competing applications to serve the same territory, there shall be a disputable presumption that applicants have an equal ability to extend, improve, enlarge, build, operate and maintain existing or proposed facilities. [1987 c.447 §64]

759.560 Assignment or transfer of allocated territory; effect of approval by commission. (1) The rights

acquired by an allocation of territory may only be assigned or transferred with the approval of the Public Utility Commission after a finding that such assignment or transfer is not contrary to the public interest. However, no hearing is required if all affected customers agree to the proposed assignment or transfer.

(2) No approved contract or order approving an allocation of territory shall be construed to confer any property right; providing, however, upon the death of an individual who is a party to an approved contract or the applicant under an approved order, the executor or administrator shall continue the operation thereunder for the purpose of transferring such rights for a period of not to exceed two years from the date of death.

(3) In the event the property of a person serving an allocated territory is condemned, no value shall be claimed or awarded by reason of the contract or order making such allocation. [1987 c.447 §65]

759.565 Procedure to enforce allocation contract. In the event a contract approved by the Public Utility Commission is breached or in the event an allocated territory is served by a person not authorized by such contract or order of the commission, the aggrieved person or the commission may file an action in the circuit court for any county in which is located some or all of the allocated territory allegedly involved in said breach or invasion, for an injunction against said alleged breach or invasion. The trial of such action shall proceed as in an action not triable by right to a jury. Any party may appeal to the Court of Appeals from the court's decree, as in other equity cases. The remedy provided in this section shall be in addition to any other remedy provided by law. [1987 c.447 §66]

759.570 Application of law to local government. (1) ORS 759.500 to 759.570 shall not be construed or applied to restrict the powers granted to cities to issue franchises or to restrict the exercise of the power of condemnation by a municipality; and when a municipality has condemned or otherwise acquired another person's equipment, plant or facilities for rendering telecommunications utility service, it shall acquire all of the rights of the person whose property is condemned to serve the territory served by the acquired properties.

(2) ORS 759.500 to 759.570 shall not be construed to restrict the right of a municipality to provide telecommunications utility service for street lights, fire alarm systems, airports, buildings and other municipal installations regardless of their location.

(3) ORS 759.500 to 759.570 shall not be construed to confer upon the Public Utility Commission any regulatory authority over rates, service or financing of cooperatives or municipalities. [1987 c.447 §67]

759.575 [1987 c.447 §68; repealed by 1993 c.204 §5]

(Unserved Territory)

759.580 Power of commission to require service to unserved territory. The Public Utility Commission has power to require any telecommunications utility, after a public hearing of all parties interested, to extend its line, plant or system into, and to render service to, a locality not already served when the existing public convenience and necessity requires such extension and service. However, no such extension of service shall be required until the telecommunications utility has been granted such reasonable franchises as may be necessary for the extension of service and unless the conditions are such as to reasonably justify the necessary investment by the telecommunications utility in extending its line, plant or system into such locality and furnishing such service. [1987 c.447 §4]

759.585 Definitions for ORS 759.585 to 759.595. As used in ORS 759.585 to 759.595, "unserved person" means a person:

(1) Who does not have local exchange telecommunications service;

(2) Who is applying for residential service or business service with five or fewer lines; and

(3) Who, for the initiation of such service, would be required to pay line extension charges. [1989 c.574 §2; 1991 c.307 §1]

759.590 Application for service by unserved person; rules. (1) An unserved person may file an application with the Public Utility Commission for an order directing another telecommunications utility to provide local exchange service to the unserved person.

(2) The commission shall adopt rules which prescribe the form of an application filed under subsection (1) of this section and which provide for reasonable notice and opportunity for hearing to all telecommunications utilities affected by an application. [1989 c.574 §3; 1991 c.307 §2]

759.595 Criteria for granting application for service; effect on other territorial allocation. (1) The Public Utility Commission shall grant an application filed under ORS 759.590 if the commission finds that:

(a) The telecommunications utility in whose territory the unserved person is located has declined to serve without line extension charges;

(b) Another telecommunications utility has agreed to provide local exchange telecommunications service to the unserved person with no line extension charge or with line extension charges lower than those offered by the telecommunications utility in whose territory the unserved person is located; and

(c) Approval of the application is not contrary to the public interest.

(2) Any order of the commission issued under subsection (1) of this section shall not have the effect of changing any territory allocated under ORS 758.400 to 758.475 that is being provided with local exchange telecommunications service. [1989 c.574 §4; 1991 c.307 §3]

759.600 [1989 c.574 §5; repealed by 1991 c.307 §4]

ATTACHMENT REGULATION

759.650 Definitions for ORS 759.650 to 759.675. As used in ORS 759.650 to 759.675, unless the context requires otherwise:

(1) “Attachment” means any wire or cable for the transmission of intelligence by telegraph, telephone or television (including cable television), light waves or other phenomena, or for the transmission of electricity for light, heat or power, and any related device, apparatus or auxiliary equipment, installed upon any pole or in any telegraph, telephone, electrical, cable television or communications right of way, duct, conduit, manhole or handhole or other similar facility or facilities owned or controlled, in whole or in part, by one or more public utility, telecommunications utility or people’s utility district.

(2) “Licensee” means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association which is authorized to construct attachments upon, along, under or across the public ways.

(3) “People’s utility district” means any concern providing electricity organized pursuant to ORS 261.010 and includes any entity cooperatively organized or owned by federal, state or local government or a subdivision of state or local government.

(4) “Public utility” has the meaning for that term provided in ORS 757.005, and does not include any entity cooperatively organized or owned by federal, state or local government or a subdivision of state or local government.

(5) “Telecommunications utility” means any telecommunications utility as defined in ORS 759.005 and does not include any entity cooperatively organized or owned by federal, state or local government, or a subdivision of state or local government. [1987 c.447 §22; 1989 c.5 §18]

759.655 Authority of commission to regulate attachments. The Public Utility Commission of Oregon shall have the authority to regulate in the public interest the rates, terms and conditions for attachments by licensees to poles or other facilities of telecommunications utilities. All rates, terms and conditions made, demanded or received by any telecommunications utility for any attachment by a licensee shall be just, fair and reasonable. [1987 c.447 §23]

759.660 Fixing charges or rates; criteria; costs of hearing. (1) Whenever the Public Utility Commission of Oregon finds, after hearing had upon complaint by a licensee or people’s utility district or a telecommunications utility that the rates, terms or conditions demanded, exacted, charged or collected in connection with attachments or availability of surplus space for such attachments are unjust or unreasonable, or that such rates or charges are insufficient to yield a reasonable compensation for the attachment and the costs of administering the same, the commission shall determine the just and reasonable rates, terms and conditions thereafter to be observed and in force and shall fix the same by order. In determining and fixing such rates, terms and conditions, the commission shall consider the interest of the customers of the licensee, as well as the interest of the customers of the telecommunications utility or people’s utility district which owns the facility upon which the attachment is made.

(2) When the order applies to a people’s utility district, the order also shall provide for payment by the parties of the cost of the hearing. The payment shall be made in a manner which the commission considers equitable. [1987 c.414 §166d; 1987 c.447 §24; 1989 c.5 §19]

759.665 Considerations in determining just and reasonable rate. A just and reasonable rate shall assure the telecommunications utility or people's utility district the recovery from the licensee of not less than all the additional costs of providing and maintaining pole attachment space for the licensee nor more than the actual capital and operating expenses, including just compensation, of the telecommunications utility or people's utility district attributable to that portion of the pole, duct or conduit used for the pole attachment, including a share of the required support and clearance space in proportion to the space used for pole attachment above minimum attachment grade level, as compared to all other uses made of the subject facilities and uses which remain available to the owner or owners of the subject facilities. [1987 c.447 §25]

759.670 Presumption of reasonableness of rates set by agreement. Agreements regarding rates, terms and conditions of attachments shall be deemed to be just, fair and reasonable unless the Public Utility Commission finds upon complaint by a telecommunications utility, people's utility district or licensee party to such agreement and after hearing, that such rates, terms and conditions are adverse to the public interest and fail to comply with the provisions hereof. [1987 c.447 §26; 1989 c.5 §20]

759.675 Regulatory procedure. The procedures of the Public Utility Commission for petition, regulation and enforcement relative to attachments, including any rights of appeal from any decision thereof, shall be the same as those applicable to the commission. [1987 c.447 §27; 1989 c.5 §21]

OPERATOR SERVICE PROVIDERS

759.690 Operator service provider duties to service users; rules. (1) As used in this section:

(a) "Call aggregator" means a person who furnishes a telephone for use by the public, including but not limited to hotels, hospitals, colleges, airports, public pay station owners and pay station agents.

(b) "Contract" means an agreement between an operator service provider and a call aggregator to automatically connect users of telephones to the operator service provider when certain operator-assisted long distance calls are made.

(c) "Operator service" includes but is not limited to billing or completion of third-number, person-to-person, collect or credit card calls.

(d) "Operator service provider" means a person who furnishes operator service under contract with a call aggregator.

(2) Each operator service provider shall:

(a) Notify all callers at the beginning of the call of the provider's name.

(b) Disclose rate and service information to the caller when requested.

(c) Maintain a current list of emergency numbers for each service territory it serves.

(d) Transfer an emergency call to the appropriate emergency number when requested.

(e) Transfer a call to, or instruct the caller how to reach, the originating local exchange company's operator service upon request of the caller, free of charge.

(f) Not transfer a call to another operator service provider without the caller's notification and consent.

(g) Not bill or collect for calls not completed to the caller's destination. Where technical limitations of the network prevent the identification of incomplete calls, each operator service provider shall issue credits for such calls upon the request of the caller.

(3) Each call aggregator who has a contract with an operator service provider shall post in the immediate vicinity of each telephone available to the public the name of the operator service provider, a toll-free customer service number, a statement that rate quotes are available upon request and instructions on how the caller may access other operator service providers.

(4) Neither the operator service provider nor the call aggregator shall block or prevent a telephone user's access to the user's operator service provider of choice. In order to prevent fraudulent use of its services, an operator service provider or a call aggregator may block access if the provider obtains a waiver for such purpose from the Public Utility Commission.

(5) The provisions of this section shall be carried out in such manner as the commission, by rule, may prescribe. [1989 c.623 §2]

RESIDENTIAL SERVICE PROTECTION

Note: Sections 2 to 8 and 16, chapter 290, Oregon Laws 1987, provide:

Sec. 2. The Legislative Assembly declares that it is the policy of this state to assure that adequate, affordable residential telecommunication service is available to all citizens of this state. [1987 c.290 §2]

Sec. 3. In carrying out the provisions of section 2 of this 1987 Act, the Public Utility Commission may require telecommunications public utilities to assure that time payment plans for deposits and installation charges or such other options as may be appropriate for a particular telecommunications public utility are made available. [1987 c.290 §3]

Sec. 4. In carrying out the provisions of section 2 of this 1987 Act the Public Utility Commission may:

(1) Notwithstanding ORS 757.310, approve a different rate for local exchange residential telecommunication service for low income customers than the rate charged to other residential customers. However, any such rate is subject to all other provisions of this chapter.

(2) Establish plans, or require telecommunications public utilities to establish plans, to educate customers regarding the options available for obtaining telecommunication services. [1987 c.290 §4]

Sec. 5. (1) In carrying out the provisions of section 2 of this 1987 Act, the Public Utility Commission shall establish rules to prohibit the termination of local exchange residential service when such termination would significantly endanger the physical health of the residential customer.

(2) The commission shall provide by rule a method for determining when the termination of local exchange residential service would significantly endanger the physical health of the residential customer.

(3)(a) The commission shall require that each telecommunications public utility:

(A) Accept medical statements by licensed physicians and licensed nurse practitioners as sufficient evidence of significant endangerment of health; and

(B) Establish procedures for submitting and receiving such medical statements.

(b) A medical statement submitted under this subsection shall be valid for such period as the commission, by rule, may prescribe.

(4) Rules adopted by the commission pursuant to this section shall not apply to telecommunication service other than local exchange residential service.

(5) A customer submitting a medical certificate as provided in this section is not excused from paying for telecommunication service. Customers are required to enter into a time payment agreement with the utility if an overdue balance exists. Local exchange service is subject to termination if a customer refuses to enter into or fails to abide by terms of a payment agreement.

(6) Nothing in this section prevents the termination of local exchange residential service if the telecommunications public utility providing the service does not have the technical ability to terminate toll telecommunication service without also terminating local exchange telecommunication service. [1987 c.290 §5]

Sec. 6. (1) In carrying out the provisions of section 2, chapter 290, Oregon Laws 1987, the Public Utility Commission shall establish a plan to provide assistance to low income customers through differential rates or otherwise. The plan of assistance shall be designed to use, to the maximum extent possible, the available funding offered by the Federal Communications Commission, and may provide different levels of assistance to low income customers based upon differences in local exchange rates. The plan established by the commission shall prescribe the amount of assistance to be provided and the time and manner of payment.

(2) For the purpose of establishing a plan to provide assistance to low income customers under this section, the commission shall require all public utilities, cooperative corporations, and unincorporated associations providing local exchange telecommunication service to participate in the plan, except as provided in subsection (3) of this section.

(3) In lieu of participation in the commission's plan to assist low income customers, a public utility, cooperative corporation, or unincorporated association providing local exchange telecommunication service may apply to the commission to establish an alternative plan for the purpose of carrying out the provisions of section 2, chapter 290, Oregon Laws 1987, for its own customers. The commission shall adopt standards for determining the adequacy of alternative plans.

(4) The commission may contract with any governmental agency to assist the commission in the administration of any assistance plan adopted pursuant to this section.

(5) As used in sections 2 to 6, chapter 290, Oregon Laws 1987, "low income customer" means an individual determined by the commission to be receiving benefits from the federal food stamp program or from another low income public assistance program for which eligibility requirements do not exceed 135 percent of the poverty level. The commission must be able to verify the individual's continuing participation in the qualifying program. [1987 c.290

§6; 1991 c.622 §1]

Sec. 7. (1) In order to fund the programs provided in sections 2 to 6 and 9 to 14, chapter 290, Oregon Laws 1987, the Public Utility Commission shall develop and implement a system for assessing a surcharge in an amount not to exceed 35 cents per month against each paying retail subscriber who has telecommunications service with access to the telecommunications relay service. The surcharge shall be applied on a telecommunications circuit designated for a particular subscriber. One subscriber line shall be counted for each circuit that is capable of generating usage on the line side of the switched network regardless of the quantity of customer premise equipment connected to each circuit. For providers of central office based services, the surcharge shall be applied to each line that has unrestricted connection to the telecommunications relay service. These central office based service lines that have restricted access to the telecommunications relay service shall be charged based on software design. For cellular, wireless or other radio common carriers, the surcharge shall be applied on a per instrument basis.

(2) The surcharge imposed by subsection (1) of this section does not apply to:

(a) Services upon which the state is prohibited from imposing the surcharge by the Constitution or laws of the United States or the Constitution or laws of the State of Oregon.

(b) Interconnection between telecommunications utilities, telecommunications cooperatives, competitive telecommunications services providers certified pursuant to ORS 759.020, radio common carriers and interexchange carriers.

(3) The commission annually shall review the surcharge and the balance in the Residential Service Protection Fund and may make adjustments to the amount of the surcharge to ensure that the fund has adequate resources but that the fund balance does not exceed six months of projected expenses.

(4) Moneys collected pursuant to the surcharge shall not be considered in any proceeding to establish rates for telecommunication service.

(5) The commission shall direct telecommunications public utilities to identify separately in bills to customers for service the surcharge imposed pursuant to this section. [1987 c.290 §7; 1991 c.622 §2; 1991 c.872 §8; 1993 c.231 §1; 1995 c.79 §387; 1995 c.451 §1]

Note: The amendments to section 7, chapter 290, Oregon Laws 1987, by section 2, chapter 408, Oregon Laws 2001, apply to customer bills issued on or after August 1, 2002. See section 3, chapter 408, Oregon Laws 2001. The text that is applicable on and after August 1, 2002, is set forth for the user's convenience.

Sec. 7. (1) In order to fund the programs provided in sections 2 to 6 and 9 to 14, chapter 290, Oregon Laws 1987, the Public Utility Commission shall develop and implement a system for assessing a surcharge in an amount not to exceed 35 cents per month against each paying retail subscriber who has telecommunications service with access to the telecommunications relay service. The surcharge shall be applied on a telecommunications circuit designated for a particular subscriber. One subscriber line shall be counted for each circuit that is capable of generating usage on the line side of the switched network regardless of the quantity of customer premise equipment connected to each circuit. For providers of central office based services, the surcharge shall be applied to each line that has unrestricted connection to the telecommunications relay service. These central office based service lines that have restricted access to the telecommunications relay service shall be charged based on software design. For cellular, wireless or other radio common carriers, the surcharge shall be applied on a per instrument basis, but applies only to subscribers whose place of primary use, as defined and determined under 4 U.S.C. 116 to 126, is within this state.

(2) The surcharge imposed by subsection (1) of this section does not apply to:

(a) Services upon which the state is prohibited from imposing the surcharge by the Constitution or laws of the United States or the Constitution or laws of the State of Oregon.

(b) Interconnection between telecommunications utilities, telecommunications cooperatives, competitive telecommunications services providers certified pursuant to ORS 759.020, radio common carriers and interexchange carriers.

(3) The commission annually shall review the surcharge and the balance in the Residential Service Protection Fund and may make adjustments to the amount of the surcharge to ensure that the fund has adequate resources but that the fund balance does not exceed six months of projected expenses.

(4) Moneys collected pursuant to the surcharge shall not be considered in any proceeding to establish rates for telecommunication service.

(5) The commission shall direct telecommunications public utilities to identify separately in bills to customers for service the surcharge imposed pursuant to this section.

Sec. 8. The Residential Service Protection Fund is established in the State Treasury, separate and distinct from the

General Fund. Interest earned by moneys in the fund shall be credited to the fund. All moneys in the fund are appropriated to the Public Utility Commission to carry out the provisions of chapter 290, Oregon Laws 1987. [1987 c.290 §8; 1989 c.966 §74; 1991 c.622 §3; 1991 c.872 §1; 1993 c.231 §2]

Sec. 16. Chapter 290, Oregon Laws 1987, is repealed January 1, 2010. [1987 c.290 §16; 1991 c.622 §4; 1997 c.481 §1; 2001 c.408 §1]

DEVICES FOR HEARING AND SPEECH IMPAIRED

Note: Sections 9 to 16, chapter 290, Oregon Laws 1987, provide:

Sec. 9. As used in sections 9 to 14, chapter 290, Oregon Laws 1987, unless the context requires otherwise:

(1) “Adaptive equipment” means equipment that permits a disabled person, other than a person who is hearing or speech impaired, to communicate effectively on the telephone.

(2) “Applicant” means a person who applies for an assistive telecommunication device, adaptive equipment or a signal device.

(3) “Assistive telecommunication device” means a device that utilizes a keyboard, acoustic coupler, display screen, Braille display, speakerphone or amplifier to enable deaf, deaf-blind, severely hearing impaired or severely speech impaired people to communicate effectively on the telephone.

(4) “Audiologist” means a person who has a master’s or doctoral degree in audiology and a Certificate of Clinical Competence in audiology from the American Speech-Language-Hearing Association.

(5) “Deaf” means a profound hearing loss, as determined by an audiologist or a vocational rehabilitation counselor of the Department of Human Services, that requires use of an assistive telecommunication device to communicate effectively on the telephone.

(6) “Deaf-blind” means a hearing loss and a visual impairment, as determined by a licensed physician and by an audiologist or a vocational rehabilitation counselor of the Department of Human Services, that require use of an assistive telecommunication device to communicate effectively on the telephone.

(7) “Disabled” means a physical condition, as determined by a licensed physician or vocational rehabilitation counselor of the Department of Human Services, other than hearing or speech impairment that requires use of adaptive equipment to utilize the telephone.

(8) “Physician” means an applicant’s primary care physician or a medical specialist who is able to determine an applicant’s disability and to whom the applicant was referred by the primary care physician.

(9) “Recipient” means a person who receives adaptive equipment, an assistive telecommunication device or a signal device.

(10) “Severely hearing impaired” means a hearing loss, as determined by an audiologist or vocational rehabilitation counselor of the Department of Human Services, that requires use of an assistive telecommunication device to communicate effectively on the telephone.

(11) “Severely speech impaired” means a speech disability, as determined by a speech-language pathologist or vocational rehabilitation counselor of the Department of Human Services, that requires use of an assistive telecommunication device to communicate effectively on the telephone.

(12) “Signal device” means a mechanical device that alerts a deaf, deaf-blind or severely hearing impaired person of an incoming telephone call.

(13) “Speech-language pathologist” means a person who has a master’s degree or equivalency in speech-language pathology and a Certificate of Clinical Competence issued by the American Speech-Language-Hearing Association.

(14) “Telecommunications relay center” means a facility authorized by the Public Utility Commission to provide telecommunications relay service.

(15) “Telecommunications relay service” means the provision of voice and teletype communication between users of some assistive telecommunication devices and other parties. [1987 c.290 §9; 1991 c.872 §2; 1995 c.280 §32; 1995 c.451 §2; 1999 c.384 §1]

Sec. 10. It is recognized that a large number of people in this state, through no fault of their own, are unable to utilize telecommunication equipment due to the inability to hear or speak well enough or due to other disabilities. It is also recognized that present technology is available, but at significant cost, that would allow these people to utilize telecommunication equipment in their daily activities. There is, therefore, a need to make such technology in the form of assistive telecommunication devices and a telecommunications relay service available to deaf, severely hearing and speech impaired people or adaptive equipment for disabled people at no additional cost beyond normal telephone service. The provision of assistive telecommunication devices and a telecommunications relay service or adaptive

equipment would allow those formerly unable to use telecommunication systems to more fully participate in the activities and programs offered by government and other community agencies, as well as in their family and social activities. The assistive telecommunication devices or adaptive equipment would be provided on a loan basis to each recipient, to be returned if the recipient moves out of the state. [1987 c.290 §10; 1991 c.872 §3; 1999 c.384 §2]

Sec. 11. (1) With the advice of the Telecommunication Devices Access Program Advisory Committee, the Public Utility Commission shall establish and administer a statewide program to purchase and distribute assistive telecommunication devices to persons who are deaf or severely hearing or speech impaired or deaf-blind and establish a dual party relay system making telephone service generally available to persons who are deaf or severely hearing or speech impaired or deaf-blind.

(2) With the advice of the Telecommunication Devices Access Program Advisory Committee, the Public Utility Commission shall establish and administer a statewide program to purchase and distribute adaptive equipment to make telephone service generally available to persons with physical disabilities. [1987 c.290 §11; 1991 c.872 §4; 1999 c.384 §3]

Sec. 12. (1) A Telecommunication Devices Access Program Advisory Committee shall be established to advise the Public Utility Commission concerning matters of general development, implementation and administration of the Telecommunication Devices Access Program.

(2) The Telecommunication Devices Access Program Advisory Committee shall include:

(a) Nine consumers including seven who are deaf or hearing impaired, one who is speech impaired and one who is disabled;

(b) One professional in the field of speech impairment, hearing impairment or deafness or disability;

(c) One member of the Public Utility Commission or a designee of the commission; and

(d) One representative from those telephone companies interested in providing telecommunication devices access relay services. [1987 c.290 §12; 1991 c.872 §5]

Sec. 13. (1) The Public Utility Commission shall employ a coordinator for the Telecommunication Devices Access Program, who shall be primarily responsible for:

(a) The distribution and maintenance of assistive telecommunication devices and adaptive equipment;

(b) The provision of telecommunications relay services and monitoring of those service providers; and

(c) Community outreach to locate potential beneficiaries of the Telecommunication Devices Access Program.

(2) The commission may contract with any governmental agency, or other entity the commission considers to be qualified, to assist the commission in the administration of sections 9 to 14, chapter 290, Oregon Laws 1987. [1987 c.290 §13; 1991 c.872 §6; 1999 c.384 §4]

Sec. 14. (1)(a) In order to be eligible to receive assistive telecommunication devices or adaptive equipment, individuals must be certified as deaf, severely hearing impaired, severely speech impaired or deaf-blind by a licensed physician, audiologist, speech-language pathologist or vocational rehabilitation counselor of the Department of Human Services. Certification implies that the individual cannot use the telephone for expressive or receptive communication.

(b) No more than one assistive telecommunication device or adaptive equipment device shall be provided to a household. However, two assistive telecommunication devices or adaptive equipment devices may be provided to a household if more than one eligible person permanently resides in the household. Households without any assistive telecommunication devices or adaptive equipment shall be given priority over households with one assistive telecommunication device or adaptive equipment device when such devices are distributed.

(c) Nothing in sections 9 to 14, chapter 290, Oregon Laws 1987, shall require a telecommunications utility to provide an assistive telecommunication device to any person in violation of ORS 646.730.

(2)(a) In order to be eligible to receive adaptive equipment, individuals must be certified to have the required disability by a person or agency designated by the Public Utility Commission to make such certifications. Certification implies that the individual is unable to use the telephone.

(b) Nothing in sections 9 to 14, chapter 290, Oregon Laws 1987, shall require a telecommunications utility to provide adaptive equipment to any person in violation of ORS 646.730. [1987 c.290 §14; 1989 c.115 §1; 1991 c.872 §7; 1995 c.280 §33; 1999 c.384 §5]

Sec. 15. The program of distribution provided in sections 9 to 14 of this Act is to be phased in over a period ending January 1, 1992. [1987 c.290 §15]

Sec. 16. Chapter 290, Oregon Laws 1987, is repealed January 1, 2010. [1987 c.290 §16; 1991 c.622 §4; 1997 c.481 §1; 2001 c.408 §1]

INFORMATION SERVICE PROVIDERS

759.700 Definitions for ORS 759.700 to 759.720. As used in ORS 759.700 to 759.720:

(1) “Information provider” means any person, company or corporation that operates an information delivery service on a pay-per-call basis.

(2) “Information delivery service” means any telephone-recorded messages, interactive programs or other information services that are provided for a charge to a caller through an exclusive telephone number prefix or service access code. Where a preexisting written contract exists between the customer and the information provider, this definition does not apply. [1991 c.672 §7]

759.705 Program message preamble required; information to be included. (1) An information provider that does business in this state shall include a preamble in its program messages.

(2) The preamble must:

(a) Describe the service that the program provides.

(b) Advise the caller of the price per call, including:

(A) Any per minute charge;

(B) Any flat rate charge;

(C) Any minimum charge;

(D) The maximum charge possible for the service as determined from multiplying maximum duration in minutes by the cost per minute, unless the call has a possible indefinite duration, in which case the charge for one hour of use shall be stated;

(E) Whether calls that may last more than 20 minutes are interactive or have a possible indefinite duration; and

(F) The maximum possible charges for any pay-per-call numbers to which the caller may be referred by the information provider.

(c) Advise that the billing will begin shortly after the end of the preamble. A reasonable length of time shall be allotted after the preamble to give consumers an opportunity to disconnect before the program message starts.

(3) All preambles must be clearly articulated in the language used in advertisements for the telephone number and the language used within the body of the program. The language in the preamble shall be spoken in a normal cadence and at a volume equal to that of the program message.

(4) When an information provider’s program message consists only of a polling application that permits the caller to register an opinion or to vote on a matter by completing a call, or results in a flat charge of $2 or less, this section does not apply. [1991 c. 672 §2]

759.710 Pay-per-call information; disclosure. (1) An information provider that advertises pay-per-call services that are broadcast by radio or television, contained in home videos or that appear on movie screens must include an announcement that accurately represents the price of the service being advertised. The announcement must be clearly articulated in the language used in the body of the program or any other language spoken in the advertisement. These price disclosures shall be spoken in a normal cadence and at a volume equal to that used to announce the telephone number in the advertisement. The advertisement must state the price of the service each time the telephone number of the information provider appears in the advertisement.

(2) An information provider that advertises pay-per-call services that are broadcast by television, contained in home videos or that appear on movie screens must include, in clearly visible letters and numbers set against a contrasting background, the cost of calling the advertised number. Visual disclosure of the cost of the call must be displayed adjacent to the advertised telephone number each time the number appears in the advertisement. The lettering of the visual disclosure of the cost of the call must be the same size and typeface as that of the advertised telephone number.

(3) Except as provided in subsection (5) of this section, an information provider that advertises pay-per-call services that appear in printed material must include, in clearly visible letters and numbers set against a contrasting background, the cost of calling the advertised telephone number. The printed disclosure of the cost of the call must be displayed adjacent to the advertised number each time the number appears in the advertisement. The lettering of the visual disclosure of the cost of the call must be the same size and typeface as that of the advertised telephone number.

(4) Except as provided in subsection (5) of this section, an information provider that advertises pay-per-call services must include the price or cost, including:

(a) Any per minute charge;

(b) Any flat rate charge;

(c) Any minimum charge;

(d) The maximum charge possible for the service as determined by multiplying maximum duration in minutes by the cost per minute, unless the call has a possible indefinite duration, in which case the charge for one hour of use shall be stated;

(e) An indication whether calls are interactive or have a possible indefinite duration; and

(f) The maximum possible charges for all pay-per-call numbers to which the caller will be referred by the telephone number being advertised.

(5) An information provider that advertises pay-per-call services in telephone directory classified advertising must include a conspicuous disclosure in the advertisement that the call is a pay-per-call service. [1991 c.672 §3]

759.715 Information service blocking; suspension or termination of telephone service for nonpayment of information service charges prohibited. (1) Local exchange carriers shall make information delivery service blocking available to all customers as soon as such a system becomes technically available to local exchange carriers. Local exchange carriers shall notify customers of such a blocking service when available.

(2) A customer's local or long distance service shall not be suspended or terminated for nonpayment of information delivery service charges. The Public Utility Commission through orders and rules shall require telephone utilities providing billing services for information providers to adequately inform consumers of their rights concerning information providers. [1991 c.672 §§5,6]

759.720 Action against information provider for failure to comply with law; remedies; customers not liable for charges. (1) Any customer, telecommunications utility or local exchange carrier who suffers damages from a violation of ORS 646.608, 646.639 and 759.700 to 759.720 by an information provider has a cause of action against such information provider. The court may award the greater of three times the actual damages or $500, or order an injunction or restitution. Except as provided in subsection (2) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(2) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (1) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(3) When an information provider has failed to comply with any provision of ORS 646.608, 646.639 and 759.700 to 759.720, any obligation by a customer that may have arisen from the dialing of a pay-per-call telephone number is void and unenforceable.

(4) Any obligation that may have arisen from the dialing of a pay-per-call telephone number is void and unenforceable if made by:

(a) An unemancipated child under 18 years of age; or

(b) A person whose physician substantiates that:

(A) The person has a mental or emotional disorder generally recognized in the medical or psychological community that makes the person incapable of rational judgments and comprehending the consequences of the person's action; and

(B) The disorder was diagnosed before the obligation was incurred.

(5) Upon written notification to the information provider or the billing agent for the information provider that a bill for information delivery services is void and unenforceable under subsection (2) or (4) of this section, no further billing or collection activities shall be undertaken in regard to that obligation.

(6) The telecommunications utility or local exchange carrier may require the customer to take pay-per-call telephone blocking service after the initial obligation has been voided. [1991 c.672 §4; 1993 c.513 §1; 1995 c.696 §49]

DAMAGES

759.900 Utility liable for damages caused by law violation; effect on other remedies; personal injury or property damaged excepted. (1) Any telecommunications utility which does, or causes or permits to be done, any matter, act or thing prohibited by this chapter or ORS chapter 756, 757 or 758 or omits to do any act, matter or thing required to be done by such statutes, is liable to the person injured thereby in the amount of damages sustained in consequence of such violation. Except as provided in subsection (2) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(2) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (1) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(3) Any recovery under this section does not affect recovery by the state of the penalty, forfeiture or fine prescribed for such violation.

(4) This section does not apply with respect to the liability of any telecommunications utility for personal injury or property damage. [1989 c.827 §4; 1995 c.696 §51]

OREGON TELECOMMUNICATION COORDINATING COUNCIL

Note: Sections 1 and 2, chapter 699, Oregon Laws 2001, provide:

Sec. 1. (1) There is created an interim task force to be called the Oregon Telecommunication Coordinating Council consisting of 12 members. The membership of the task force shall be as provided in this section.

(2) The Governor shall appoint one member to represent each of the following entities, and in making the appointments under this subsection shall give consideration to recommendations made by the entity the member is to represent:

(a) The Central Oregon Telecommunications Consortium.

(b) The Eastern Oregon Telecommunications Consortium.

(c) The Fiber South Consortium.

(d) The Regional Fiber Consortium (Lane and Klamath Counties).

(e) The North Coast Telecommunications Consortium.

(f) The Southern Oregon Telecommunications and Technology Council.

(3) The Governor shall appoint two members of the Oregon Telecommunication Coordinating Council to represent the counties of this state. The Governor shall give consideration to recommendations made by the Association of Oregon Counties in making the appointments under this subsection.

(4) The Governor shall appoint one member of the Oregon Telecommunication Coordinating Council to represent the cities of this state. The Governor shall give consideration to recommendations made by the League of Oregon Cities in making the appointment under this subsection.

(5) The Governor shall appoint one member of the Oregon Telecommunication Coordinating Council to represent telecommunication utilities in this state. The Governor shall give consideration to recommendations made by the Oregon Telecommunications Association in making the appointment under this subsection.

(6) The chairperson of the Connecting Oregon Communities Advisory Board shall appoint two members of the Oregon Telecommunication Coordinating Council. Both members appointed under this subsection must also be members of the Connecting Oregon Communities Advisory Board. The members appointed under this subsection shall work to coordinate the activities and responsibilities of the Oregon Telecommunication Coordinating Council and the Connecting Oregon Communities Advisory Board.

(7) The Oregon Telecommunication Coordinating Council may by a majority vote of the council add members to the council to represent telecommunication consortia coming into existence after the effective date of this 2001 Act [July 2, 2001] or to represent citizen groups recognized by the council.

(8) The Economic and Community Development Department, the Oregon Department of Administrative Services and the Association of Oregon Counties shall provide staff to the Oregon Telecommunication Coordinating Council.

(9) Members of the Oregon Telecommunication Coordinating Council are not entitled to compensation and expenses and shall serve on the council on a volunteer basis.

(10) The Oregon Telecommunication Coordinating Council shall study alternative approaches to providing coordinated statewide, regional and local telecommunication services, including providing services to unserved or underserved areas of the state. In addition, the council shall study the manner in which telecommunication investments can be coordinated to facilitate partnerships between the public sector and the private sector and between state and local governments. The council shall report its findings and recommendations to the Governor and to the Joint Legislative Committee on Information Management and Technology.

(11) All agencies, departments and officers of this state are directed to assist the Oregon Telecommunication Coordinating Council in the performance of its functions and to furnish such information and advice as the members of the council consider necessary to perform their functions.

(12) The Oregon Telecommunication Coordinating Council may accept contributions of funds and assistance from the United States or its agencies or from any other source, public or private, and agree to conditions thereon not inconsistent with the purposes of the council. All such funds are to aid in financing the functions of the council and shall be deposited in the General Fund of the State Treasury to the credit of separate accounts for the council and shall be disbursed for the purpose for which contributed in the same manner as funds appropriated for the council.

(13) Official action by the Oregon Telecommunication Coordinating Council requires the approval of a majority of the members. The council may recommend legislation, and all legislation recommended by the council must indicate that it is introduced at the request of the council. Legislation recommended by the council must be submitted to the Joint Legislative Committee on Information Management and Technology. The legislation shall be prepared in time for presession filing by December 15, 2002, for presentation to the regular session of the Seventy-second Legislative Assembly. [2001 c.699 §1]

Sec. 2. Section 1 of this 2001 Act is repealed on January 2, 2004. [2001 c.699 §2]

PENALTIES

759.990 Penalties. (1) Any telecommunications utility violating ORS 759.260 commits a Class A violation, and upon conviction the court shall impose a fine of not less than $100. Violation of ORS 759.260 by an officer or agent of a telecommunications utility is a Class D violation.

(2) Any person violating ORS 759.275 shall, upon conviction, forfeit and pay to the State Treasurer not less than $100 and not more than $10,000 for each offense. Violation of ORS 759.275 by any agent or officer of any telecommunications utility or person is punishable, upon conviction, by a fine of not less than $100 and not more than $1,000 for each offense.

(3) Violation of ORS 759.280 is a Class A violation.

(4) Violation of ORS 759.355 is punishable, upon conviction, by a fine of not less than $500 nor more than $20,000 for each offense.

(5) Violation of ORS 759.360 is a felony and is punishable, upon conviction, by a fine of not less than $1,000 nor more than $20,000, or by imprisonment in the penitentiary for not less than one nor more than five years, or both.

(6) A telecommunications carrier, as defined in ORS 759.400, shall forfeit a sum of not less than $100 nor more than $50,000 for each time that the carrier:

(a) Violates any statute administered by the Public Utility Commission;

(b) Commits any prohibited act, or fails to perform any duty enjoined upon the carrier by the commission;

(c) Fails to obey any lawful requirement or order made by the commission; or

(d) Fails to obey any judgment or decree made by any court upon the application of the commission.

(7) In construing and enforcing subsection (6) of this section, the act, omission or failure of any officer, agent or other person acting on behalf of or employed by a telecommunications carrier and acting within the scope of the person’s employment shall in every case be deemed to be the act, omission or failure of such telecommunications carrier.

(8) Except when provided by law that a penalty, fine, forfeiture or other sum be paid to the aggrieved party, all penalties, fines, forfeitures or other sums collected or paid under subsection (6) of this section shall be paid into the General Fund and credited to the Public Utility Commission Account. [1987 c.447 §52; 1999 c.1051 §225; 1999 c.1093 §39]