

# Chapter 757

## 1987 REPLACEMENT PART

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**DEFINITIONS; GENERAL PROVISIONS**

**757.005 Definitions for ORS chapter 757.** (1)(a) As used in this chapter, except as provided in paragraph (b) of this subsection, "public 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, for the transportation of persons or property by street railroads or other street transportation as common carriers, or for the production, transmission, delivery or furnishing of heat, light, water or power, 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 public utility, for service, managerial construction, engineering or financing fees, and having an affiliated interest with the public utility

(b) As used in this chapter, "public utility" does not include

(A) Any plant owned or operated by a municipality

(B) Any railroad, as defined in ORS 760 005, or any industrial concern by reason of the fact that it furnishes, without profit to itself, heat, light, water or power to the inhabitants of any locality where there is no municipal or public utility plant to furnish the same

(C) 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 public utility as defined in this chapter

(D) Any corporation, company, individual or association of individuals providing heat, light or power

(1) From any energy resource to fewer than 20 customers, if it began providing service to a customer prior to July 14, 1985,

(11) From any energy resource to fewer than 20 residential customers so long as the corporation, company, individual or association of individuals serves only residential customers,

(111) From solar or wind resources to any number of customers, or

(1v) From biogas, waste heat or geothermal resources for nonelectric generation purposes to any number of customers

(E) A qualifying facility on account of sales made under the provisions of ORS 758 505 to 758 555

(F) Any water utility serving less than 300 customers at an average annual residential rate of \$18 per month or less, which provides adequate and nondiscriminatory service

(G) Any person acting only as a competitive telecommunications provider

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

(2) Nothing in sub-subparagraph (1v) of subparagraph (D) of paragraph (b) of subsection (1) of this section shall prohibit third party financing of acquisition or development by a utility customer of energy resources to meet the heat, light or power requirements of that customer

(3) As used in this chapter

(a) "Competitive telecommunications provider" means a telecommunications services provider which has been classified as such by the commission pursuant to ORS 757 815

(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) "Telecommunications public utility" means a public utility providing telecommunications service that has been so classified by the commission pursuant to ORS 757 815

(i) "Toll" means telecommunications between exchanges carried on the public switched network for which charges are made on a per-unit basis

(4) This section does not apply to street transportation in cities of less than 50,000 population [Amended by 1973 c 583 §2, 1967 c 241 §1 1967 c 314 §1 1971 c 655 §64a 1973 c 726 §1 1979 c 62 §1, 1981 c 360 §1, 1981 c 749 §21, 1983 c 118 §1, 1983 c 799 §7 1985 c 550 §1, 1985 c 633 §7 1985 c 779 §1 1987 c 900 §3]

**Note** The amendments to 757 005 by section 96, chapter 447 Oregon Laws 1987 take effect July 1, 1989 See section 143 chapter 447 Oregon Laws 1987 The text is set forth for the user's convenience

**757 005** (1)(a) As used in this chapter except as provided in paragraph (b) of this subsection, "public 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 for the transportation of persons or property by street, railroads or other street transportation as common carriers or for the production, transmission, delivery or furnishing of heat, light, water or power 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 public utility for service, managerial construction, engineering or financing fees, and having an affiliated interest with the public utility.

(b) As used in this chapter, "public utility" does not include

(A) Any plant owned or operated by a municipality

(B) Any railroad, as defined in ORS 760 005 or any industrial concern by reason of the fact that it furnishes, without profit to itself, heat, light, water or power to the inhabitants of any locality where there is no municipal or public utility plant to furnish the same

(C) Any corporation, company, individual or association of individuals providing heat, light or power

(i) From any energy resource to fewer than 20 customers, if it began providing service to a customer prior to July 14 1985,

(ii) From any energy resource to fewer than 20 residential customers so long as the corporation, company, individual or association of individuals serves only residential customers,

(iii) From solar or wind resources to any number of customers, or

(iv) From biogas, waste heat or geothermal resources for nonelectric generation purposes to any number of customers

(D) A qualifying facility on account of sales made under the provisions of ORS 758 505 to 758 555

(E) Any water utility serving less than 300 customers at an average annual residential rate of \$18 per month or less which provides adequate and nondiscriminatory service

(2) Nothing in sub-subparagraph (iv) of subparagraph (C) of paragraph (b) of subsection (1) of this section shall prohibit third party financing of acquisition or development by a utility customer of energy resources to meet the heat, light or power requirements of that customer

(3) This section does not apply to street transportation in cities of less than 50,000 population

**757 010** [Repealed by 1971 c 655 §250]

**757.015 "Affiliated interest" defined.** As used in ORS 757 105 (1) and in ORS 757 495, "affiliated interest" with a public utility means

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

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

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

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

(6) Every corporation or person which the commission determines as a matter of fact after

investigation and hearing actually is exercising any substantial influence over the policies and actions of such public utility, even though such influence is not based upon stockholding, stockholders, directors or officers to the extent specified in this section

(7) 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 public 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 public utility within the meaning of this section even though no one of them alone is so affiliated [Amended by 1971 c 655 §65]

**757.020 Duty of utilities to furnish adequate and safe service at reasonable rates.** Every public 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 [Amended by 1971 c 655 §66]

**757 025** [Amended by 1971 c 655 §14, renumbered 756 062]

**757 030** [Repealed by 1971 c 655 §250]

**757.035 Adoption of safety regulations; enforcement.** (1) The commission has power, after a hearing had upon the motion of the commission or upon complaint, to require by general or special orders embodying reasonable rules or regulations, every person or municipality, their agents, lessees or acting trustees or receivers, appointed by court, engaged in the management, operation, ownership or control of telegraph, telephone, signal or power lines within this state, upon the public streets or highways, and also upon all other premises used, whether leased, owned or controlled by them, to construct, maintain and operate every line, plant, system, equipment or apparatus in such manner as to protect and safeguard the health and safety of all employes, customers and the public, and to this end to adopt and prescribe the installation, use, maintenance and operation of appropriate safety or other devices, or appliances, to establish or adopt standards of construction or equipment, and to require the performance of any other act which seems to the commission necessary or proper for the protection of the health or safety of all employes, customers or the public

(2) When acting pursuant to subsection (1) of this section, the commission shall adopt by rule

as the standard of such construction, operation and maintenance the 1973 edition of the American National Standard, National Electrical Safety Code, C2

(3) In lieu of subsection (2) of this section, or in addition thereto, the commission may adopt by rule any revision or edition of or amendment to the National Electrical Safety Code approved by the American National Standards Institute after July 14, 1977, and in effect on the date of adoption by the commission [Amended by 1969 c 530 §1, 1971 c 655 §68, 1975 c 658 §1, 1977 c 346 §1]

**757.039 Regulation of hazardous substance distribution and storage operations; cooperation with federal agencies; disclosure of reports and information.** (1) As used in this section, "hazardous substance or material" means

(a) Fuel gas, whether in a gaseous, liquid or semisolid state,

(b) Petroleum or petroleum products, and

(c) Any other substance or material which may pose an unreasonable risk to life or property when transported by pipeline facilities

(2) The commission has power, after a hearing had upon the commission's own motion or upon complaint, to require by general or special orders embodying reasonable rules, every person or municipality, their agents, lessees or acting trustees or receivers, appointed by court, engaged in the management, operation, ownership or control of facilities for the transmission or distribution of a hazardous substance or material by pipeline, or of facilities for the storage or treatment of a hazardous substance or material to be transmitted or distributed by pipeline or upon the public streets or highways, or of any other premises used, whether leased, owned or controlled by them, to construct, maintain and operate every pipeline, plant, system, equipment or apparatus used in the transmission, distribution, storage or treatment of a hazardous substance or material to be transmitted by pipeline or upon the public streets or highways in such manner as to protect and safeguard the health and safety of all employes, customers and the public, and to this end to adopt and prescribe the installation, use, maintenance and operation of appropriate safety or other devices, or appliances, to establish or adopt standards of construction or equipment, and to require the performance of any other act which seems to the commission necessary or proper for the protection of the health and safety of all employes, customers or the public

(3) The commission is authorized to cooperate with, make certifications to, and to enter into

agreements with the Secretary of Transportation of the United States of America under provisions of the Natural Gas Pipeline Safety Act of 1968, as amended, and the Hazardous Liquid Pipeline Safety Act of 1979 and to assume responsibility for and to carry out on behalf of the Secretary of Transportation, safety jurisdiction relating to pipeline facilities and transportation of hazardous substances and materials in Oregon in any manner not otherwise subject to the jurisdiction of any other agency of this state

(4) Notwithstanding any other provisions to the contrary, the commission shall make public such reports as are required to be made public under the Natural Gas Pipeline Safety Act of 1968, as amended, and the Hazardous Liquid Pipeline Safety Act of 1979 and the regulations thereunder and provide such information as is required thereunder to the Secretary of Transportation

(5) The jurisdiction of the commission over propane, butane or mixtures of these gases shall be limited to systems transporting such gases to 10 or more customers, or to systems any portion of which is located in a public place [Formerly 757 095, 1983 c 540 §3]

**757 040** [Amended by 1971 c 655 §101, renumbered 758 035]

**757 045** [Amended by 1967 c 394 §1, repealed by 1971 c 781 §1]

**757.050 Authority of commission to order extension of service to unserved areas.** The commission has power to require any public 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 public 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 public utility in extending its line, plant or system into such locality and furnishing such service [Amended by 1971 c 655 §67]

**757 055** [Repealed by 1971 c 655 §250]

**757.056 Information on energy conservation to be furnished by certain utilities.**

(1) As used in this section, "energy conservation services" means services provided by public utilities to educate and inform customers and the public about energy conservation. Such services include but are not limited to providing answers to questions concerning energy saving devices and providing inspections and making sug-

gestions concerning the construction and siting of buildings and residences .

(2) All public utilities as defined in ORS 757 005, that produce, transmit, deliver or furnish heat, light or power shall establish energy conservation services and shall provide energy conservation information to customers and to the public. The services shall be performed in accordance with such rules as the commission may prescribe [1977 c 197 §2, 1977 c 887 §11]

**757 060** [Amended by 1955 c 145 §1, repealed by 1961 c 691 §20]

**757 065** [Renumbered 756 370] .

**757 070** [Renumbered 756 375]

**757 075** [Repealed by 1971 c 655 §250]

**757 080** [1953 c 356 §1, 1961 c 354 §1, 1971 c 655 §30a renumbered 756 380]

**757 085** [1953 c 356 §2, 1961 c 354 §2, renumbered 756 385]

**757 090** [1953 c 356 §3, 1961 c 354 §3, renumbered 756 390]

**757 095** [1969 c 372 §2, 1971 c 655 §69, renumbered 757 039]

## BUDGET, ACCOUNTS AND REPORTS OF UTILITIES

**757.105 Filing of budget; review by commission; pensions as operating expenses.** (1) The commission has the right and power of regulation, restriction and control over the budgets of expenditures of public 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 employes 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 public 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 employes 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 employes 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 employes of the utility in Oregon. [Amended by 1957 c 593 §1, 1971 c 655 §82]

**757.107 Supplemental budgets and orders.** Adjustment and additions to such budget expenditures may be made from time to time during the year by filing supplementary budgets with the commission. The provisions of ORS 757 105 (3) apply to adjustments and additions to budgets. [Amended by 1971 c 655 §83]

**757.110 Effect of budget orders.** (1) Any finding and order made and entered by the commission under ORS 757 105 or 757 107, 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 757 105 or 757 107 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 public 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. [Amended by 1971 c 655 §84]

**757 115** [Amended by 1971 c 655 §20, renumbered 756 105]

**757.120 Accounts required.** (1) Every public utility shall keep and render to the 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 public utility engaged directly or indirectly in any other business than that of a public 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. [Amended by 1971 c 655 §85]

**757.125 Duty of utility to keep records and accounts; duty of commission to furnish blanks.** (1) The commission shall prescribe the accounts and records required to be kept, and every public 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 public utility shall keep any other accounts or records of its public 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 public utility. [Amended by 1971 c 655 §86]

**757 130** [Repealed by 1971 c 655 §250]

**757.135 Closing accounts and filing balance sheet; auditing accounts.** (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 commission shall prescribe, verified by an officer of the public 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. [Amended by 1983 c 540 §4]

**757.140 Depreciation accounts.** Every public utility shall carry a proper and adequate depreciation account. The commission shall ascertain and determine the proper and adequate rates of depreciation of the several classes of

property of each public 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 public 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. [Amended by 1971 c 655 §87]

757 145 [Repealed by 1971 c 655 §250]

757 150 [Repealed by 1971 c 655 §250]

757 155 [Amended by 1971 c 655 §90, renumbered 757 480]

757 160 [Amended by 1971 c 655 §91, renumbered 757 485]

757 165 [Amended by 1971 c 655 §92, renumbered 757 490]

757 170 [Amended by 1971 c 655 §93, renumbered 757 495]

757 175 [Amended by 1971 c 655 §94, renumbered 757 500]

757 180 [Amended by 1971 c 655 §21, renumbered 756 115]

### RATE SCHEDULES; MEASURING EQUIPMENT

**757.205 Filing schedules with commission; data filed with schedules.** (1) Every public utility shall file with the 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 public utility controlled or operated by it.

(2) Every public 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 public 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 public utilities, such schedules shall in like manner be printed and filed with the commission. [Amended by 1971 c 655 §70]

**757 210 Hearing to establish new schedules.** (1) Except as provided in ORS 757 825, whenever any public utility files with the 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 utility, its customer or customers, or any other proper party within 60 days of the 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 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 which provides for rate increases or decreases or both, without prior hearing, reflecting increases or decreases or both in costs incurred by a utility and which is subject to review by the commission at least once every two years. In the case of telecommunications public utilities, the clause is one authorized under ORS 757 850 (6).

(2) The commission and staff may consult at any time with, and provide technical assistance to, 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. [Amended by 1971 c 655 §70a, 1981 c 715 §1, 1985 c 550 §2, 1987 c 613 §1]

**Note** The amendments to 757 210 by section 97 chapter 447, Oregon Laws 1987, take effect July 1, 1989. See section 143, chapter 447, Oregon Laws 1987. The text is set forth for the user's convenience.

**757 210** (1) Whenever any public utility files with the 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 utility, its customer or customers, or any other proper party within 60 days of the 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 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 which provides for rate increases or decreases or both without prior hearing, reflecting increases or decreases or both in costs incurred by a utility and which is subject to review by the commission at least once every two years. In the case of telecommunications public utilities, the clause is one authorized under ORS 757 850 (6).

(2) The commission and staff may consult at any time with and provide technical assistance to, 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.

**757.215 Commission authorized to suspend new rates or order interim rates during hearings; revenues collected under unapproved rates subject to refund; order after hearing.**

(1) The 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 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 757 210, but does not order a suspension thereof, any increased revenue collected by the 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 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 utility's revenues will be increased by an amount deemed reasonable by the commission, not exceeding the amount requested by the utility. Any such interim increase for a public utility as defined in ORS 757 005 that produces, transmits, delivers or furnishes heat, light or power shall be effected by rates designed to increase the utility's revenues

without materially changing the revenue relationships among customer classes or between the revenues derived from demand charges and from energy charges. An interim rate or rate schedule shall remain in effect until terminated by the commission. [Amended by 1981 c 715 §2]

**757.220 Notice of schedule changes required.** No change shall be made in any schedule, including schedules of joint rates, except upon 30 days' notice to the 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.

**757.225 Utilities required to collect for their services in accordance with schedules.** No public 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 ORS 757 210 to 757 220 and 757 825. [Amended by 1971 c 655 §71, 1985 c 550 §3]

**757.230 Control of commission over classification of services and forms of schedules.** (1) The commission shall provide for a comprehensive classification of service for each public 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 public utility is required to conform its schedules of rates to such classification. If the commission determines that a tariff filing under ORS 757 205 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,

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

(c) For electric and natural gas utilities

(A) Whether it is appropriate to incorporate interruption of service in the utility's rate agreement with the customer, and

(B) Whether the rate agreement requires the utility to acquire new resources to serve the load, and

(d) For electric utilities, for service to load not previously served, the effect of the rate on the utility's average system cost through the residential exchange provision of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, Public Law 96-501, as amended

(2) The commission may prescribe such changes in the form in which the schedules are issued by any public 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. [Amended by 1971 c 655 §72, 1977 c 682 §1, 1987 c 900 §1]

757.235 [Amended by 1953 c 285 §2, repealed by 1981 c 715 §3]

**757.240 Filing schedules in places where utility consumers make payments.**

(1) A copy of so much of all schedules, including schedules of joint rates and charges, as the 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 public 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 public utility 30 days prior to the time the schedules are to take effect, unless the commission prescribes a shorter time. [Amended by 1971 c 655 §73]

**757.245 Establishment of joint rates.**

(1) A public utility may establish reasonable through service and joint rates and classifications with other public utilities. Public 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 such participating public utilities, and every unjust and unreasonable rate, classification, regulation, practice and division is prohibited

(2) The 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 public utilities parties thereto or authorization by the commission is suspended by the commission for investigation, the burden of proof is upon the public utilities 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 public utilities are or will be unjust, unreasonable, inequitable or unduly preferential or prejudicial as between the public utilities parties thereto, whether agreed upon by such public utilities or otherwise established, the commission shall, by order, prescribe the just, reasonable and equitable divisions thereof to be received by the several public 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 public 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 public utilities concerned are operated,

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

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

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

(e) Any other fact or circumstance which ordinarily would entitle one public utility to a

greater or less proportion of the joint rate than another [Amended by 1971 c 655 §74]

**757.250 Standards and appliances for measuring service** (1) The commission shall ascertain and prescribe for each kind of public 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 public 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 public utility is required to carry into effect all orders issued by the commission relative thereto [Amended by 1971 c 655 §75]

**757.255 Testing of measuring appliances.** (1) The commission may provide for the examination and testing of any and all appliances used for the measuring of any service of a public utility, and may provide by rule that no such appliance shall be installed and used for the measuring of any service of any public 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 public 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 public 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 [Amended by 1971 c 655 §76]

**757.259 Amounts includable in rate schedule; deferral; limit in effect on rates**

**by amortization.** (1) In addition to powers otherwise vested in the commission, and subject to the limitations contained in subsection (6) 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 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 of the following amounts for later incorporation in rates:

(a) Amounts incurred by a utility resulting from changes in the wholesale price of natural gas or electricity approved by the Federal Energy Regulatory Commission,

(b) Balances resulting from the administration of Section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, or

(c) 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.

(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 after the date of application.

(4) Unless subject to an automatic adjustment clause under ORS 757.210 (1), amounts described in this section shall be allowed in rates only to the extent authorized by the commission in a proceeding to change rates under ORS 757.210 and upon review of the utility's earnings at the time of application to amortize the deferral.

(5) Amounts that have accrued in deferred accounts with commission authorization before July 10, 1987, also may be reflected in rates. However, in order to continue to use such accounts the public utility shall apply for authorization of the commission under subsection (2) of this section.

(6) In any one year, the overall average rate impact of the amortizations authorized under this section shall not exceed three percent of the

utility's gross revenues for the preceding calendar year

(7) The provisions of this section shall not apply to a telecommunications public utility [1987 c 563 §2]

**757.260** [Amended by 1971 c 655 §18 renumbered 756.075]

**757.265** [Repealed by 1971 c 655 §250]

### ATTACHMENTS REGULATION

**757.270 Definitions for ORS 757.270 to 757.290.** As used in ORS 757.270 to 757.290, 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 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) "Public utility" means any electrical company, telephone company or telegraph company, as defined 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

(4) "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 [1979 c 356 §2]

**757.273 Attachments by licensees to public utility facilities regulated.** 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 public utilities. All rates, terms and conditions made, demanded or received by any public utility for any attachment by a licensee shall be just, fair and reasonable [1979 c 356 §3]

**757.276 Attachments by licensees to people's utility districts regulated.** The Public Utility Commission of Oregon shall have the authority to regulate the rates, terms and conditions for attachments by licensees to poles or other facilities of people's utility districts. All rates, terms and conditions made, demanded or received by any people's utility district for any attachment by a licensee shall be just, fair and reasonable [1979 c 356 §4, 1987 c 414 §164]

**757.279 Fixing rates or charges by commission; cost of hearing.** (1) Whenever the Public Utility Commission of Oregon finds, after hearing had upon complaint by a licensee, a public utility or a people's utility district 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 public 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 shall also 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 [1979 c 356 §5, 1983 c 251 §1, 1987 c 414 §165]

**757.282 Criteria for a just and reasonable rate for attachments.** A just and reasonable rate shall assure the public utility or the 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 public 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 [1979 c 356 §6]

**757.285 Presumption of reasonableness of rates set by private agreement.**

Agreements regarding rates, terms and conditions of attachments shall be deemed to be just, fair and reasonable, unless the commission finds upon complaint by a public 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 [1979 c 356 §7, 1987 c 414 §166]

**757.287 Application to electrical utility attachments** Nothing in ORS 757.270 to 757.290 shall be deemed to apply to any attachment by one or more electrical utilities on the facilities of one or more other electrical utilities [1979 c 356 §8]

**757.290 Regulatory procedures.** The procedures of the commission for petition, regulation and enforcement relative to attachments, including any rights of appeal from any decision thereof, shall be the same as those otherwise generally applicable to the commission [1979 c 356 §9, 1987 c 414 §167]

## ILLEGAL PRACTICES

**757.305** [Amended by 1971 c 655 §77, repealed by 1979 c 190 §431]

**757.310 Unjust discrimination in charges for service.** (1) Except as provided in ORS 757.315, no public 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 757.230 shall not constitute a violation of this paragraph

(2) Any public utility violating this section is guilty of unjust discrimination [Amended by 1971 c 655 §78, 1987 c 900 §2]

**757.315 Transactions not constituting unjust discrimination.** (1) ORS 757.310 does not prevent any public utility from giving free service, or reduced rates therefor, to

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

(b) Former employes of such public utilities or members of their families where such former employes have become disabled in the service of

such public utility or are unable from physical disqualification, including retirement, to continue in the service, or

(c) Members of families of deceased employes of such public utility

(2) The commission may require any public utility to file with the commission a list, verified under oath, of all free or reduced rate privileges granted by a public utility under the provisions of this section [Amended by 1971 c 655 §79]

**757.320 Reducing rates for persons furnishing part of necessary facilities** (1) No public utility shall demand, charge, collect or receive from any person less compensation for any service rendered or to be rendered by the public utility in consideration of the furnishing by such person of any part of the facilities incident thereto

(2) This section does not prohibit any public 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 public 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 commission [Amended by 1971 c 655 §80]

**757.325 Undue preferences and prejudices.** (1) No public 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 public utility violating this section is guilty of unjust discrimination

**757.330 Soliciting or accepting special privileges from utilities.** 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 [Amended by 1971 c 655 §81]

**757.335** [Amended by 1971 c 655 §25, renumbered 756.185]

**757.340** [Amended by 1971 c 655 §22, renumbered 756.125]

**757.345** [Repealed by 1971 c 655 §250]

**757.350** [Repealed by 1971 c 655 §250]

**757.355 Costs of property not presently providing utility service excluded from rate base.** No public 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 [1979 c 3 §2]

### ISSUANCE OF SECURITIES

**757.400 Definition of "stocks."** As used in ORS 757 400 to 757 450, "stocks" means stocks, stock certificates or other evidence of interest or ownership

**757.405 Power to regulate issuance of utility securities.** The power of public 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 commission may prescribe

**757.410 When issuance of securities is void.** All stocks and bonds, notes or other evidences of indebtedness, and any security of a public utility shall be void when issued

(1) Without an order of the commission authorizing the same then in effect except as provided in ORS 757 415 (3)

(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

**757.415 Purposes for which securities and notes may be issued; order required.**

(1) A public 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 public utility not secured by or obtained from the issue of stocks or bonds, notes or other evidences of indebtedness, or securities of such public 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 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 employes 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 public 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, and

(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 public 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 757 410 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 757 400 to 757 450 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 an 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 [Amended by 1961 c 319 §1]

**757.417 Limitation on application of ORS 757.415.** ORS 757 415 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 public utility issued or assumed and then outstanding, and

(b) The capital and surplus as then stated on the books of account of the public utility [1971 c 655 §88]

**757.419 Limitation on application of ORS 757.480.** ORS 757 480 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 757 415 [1971 c 655 §89]

**757.420 Hearings and supplemental orders relating to issuance of securities; joint approval of issuance by interstate utility.** (1) To enable the commission to determine whether the commission will issue an order under ORS 757 415, 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 public utility

(2) The commission may, upon application of the public 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 757 415. 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 public 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 public utility owning or operating a public 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

**757.425 State not obligated following approval of issuance.** No provision of ORS 757 405 to 757 450, 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 757 405 to 757 450

**757.430 Conditional approval of issuance authorized.** The 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

**757.435 Disposal of proceeds from issuance of securities.** (1) No public utility shall, without the consent of the 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 public 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

**757.440 Approval required before utility may guarantee another's indebtedness.** No public 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 commission an order authorizing it so to do. Every assumption made other than in accordance with such an order is void

**757.445 Wrongful issues or use of proceeds by utility.** No public 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 commission authorizing the same or contrary to the provisions of ORS 757 400 to 757 450, 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

**757.450 Wrongful acts relating to 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 commission authorizing the same, or contrary to the provisions of ORS 757 400 to 757 450 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 757 400 to 757 450, negotiate, or cause the same to be negotiated

### TRANSACTIONS INVOLVING UTILITIES

**757.480 Approval needed prior to disposal, mortgage or encumbrance of operative utility property or consolidation with another public utility.** (1) No public utility doing business in Oregon shall, without first obtaining the commission's approval of such transaction

(a) Sell, lease, assign or otherwise dispose of the whole or any part of the property of such public utility necessary or useful in the performance of its duties to the public or any part thereof of a value in excess of \$10,000, or sell, lease, assign or otherwise dispose of any franchise, permit or right to maintain and operate such public utility or public utility property, or perform any service as a public utility, or

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

(2) Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing the same is void

(3) This section does not prohibit or invalidate the sale, lease or other disposition by any

public utility of property which is not necessary or useful in the performance of its duties to the public [Formerly 757 155]

**757.485 Purchase of property or stocks of one utility by another.** (1) No public 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 unless authorized so to do by the commission

(2) Every contract by any public utility for the purchase, acquisition, assignment or transfer to it of any of the stock of any other public 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 [Formerly 757 160]

**757.490 Approval needed for certain contracts.** (1) Before any public 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 public 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 commission for the investigation and approval when the public utility owns a majority of or controls directly or indirectly the voting stock of the other contracting corporations

(2) When any such proposed contract has been filed with the commission, the commission shall promptly investigate and act upon it in accordance with ORS 757 495 (3) and (5)

(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 public 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 [Formerly 757 165]

**757.495 Contracts involving utilities and persons with affiliated interests.** (1) No public utility doing business in this state shall make or 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, until the propriety and reasonableness of any such payment, or contract for payment, has been submitted to and approved by the commission

(2) No public 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 public 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, unless and until such proposed contract has been submitted to and approved by the commission

(3) When any such proposed 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 public utility, whereupon the contract may lawfully be recognized for the purposes entered into. 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 public utility, and it shall be unlawful to recognize the contract for the purposes specified in this section

(4) No public 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

(5) 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 public utility, or any other person or corporation affected by any such findings and order may bring and prosecute such suit [Formerly 757 170]

**757.500 Contracts between certain public utilities.** When any public utility is primarily engaged in another enterprise and is only indirectly engaged in the production, transmission, delivery or furnishing of heat, light, water or power to or for the public by reason of a contract or agreement, express or implied, between itself and another public utility which is directly engaged in such business, the jurisdiction of the commission over such public utility extends only to the right to modify, control, rescind, alter or amend any such existing contract or agreement where the interest of the customers of such public utility directly engaged in such business demands. No such contract or agreement is valid or enforceable until it has been approved by the commission as being in the public interest [Formerly 757 175]

**757 505** [Repealed by 1971 c 655 §250]

**757.506 Findings and policy regarding exercise of influence over utility by person not engaged in utility business.** (1) The Legislative Assembly finds and declares that

(a) The protection of customers of public utilities which provide heat, light or power is a matter of fundamental state-wide concern,

(b) Existing legislation requires the commission's approval of one public utility's acquisition of another public utility's stocks, bonds and certain property used for utility purposes, but does not require the commission's approval of such acquisitions by persons not engaged in the public utility business in Oregon, and

(c) An attempt by a person not engaged in the public utility business in Oregon to acquire the power to exercise any substantial influence over the policies and actions of an Oregon public utility which provides heat, light or power could result in harm to such utility's customers, including but not limited to the degradation of utility service, higher rates, weakened financial structure and diminution of utility assets

(2) It is, therefore, the policy of the State of Oregon to regulate acquisitions by persons not engaged in the public utility business in Oregon of

the power to exercise any substantial influence over the policies and actions of an Oregon public utility which provides heat, light or power in the manner set forth in this section and ORS 757 511 in order to prevent unnecessary and unwarranted harm to such utilities' customers [1985 c 632 §2]

**757 510** [Repealed by 1971 c 655 §250]

**757 511 Application for authority to exercise influence over utility; contents of application; issuance of order; dissemination of information about acquisition.** (1) No person, directly or indirectly, shall acquire the power to exercise any substantial influence over the policies and actions of a public utility which provides heat, light or power without first securing from the commission, upon application, an order authorizing such acquisition if such person is, or by such acquisition would become, an affiliated interest with such public utility as defined in ORS 757 015 (1), (2) or (3)

(2) The application required by subsection (1) of this section shall set forth detailed information regarding

(a) The applicant's identity and financial ability,

(b) The background of the key personnel associated with the applicant,

(c) The source and amounts of funds or other consideration to be used in the acquisition,

(d) The applicant's compliance with federal law in carrying out the acquisition,

(e) Whether the applicant or the key personnel associated with the applicant have violated any state or federal statutes regulating the activities of public utilities,

(f) All documents relating to the transaction giving rise to the application,

(g) The applicant's experience in operating public utilities providing heat, light or power,

(h) The applicant's plan for operating the public utility,

(i) How the acquisition will serve the public utility's customers in the public interest, and

(j) Such other information as the commission may require by rule

(3) The commission promptly shall examine and investigate each application received pursuant to this section and shall issue an order disposing of the application within 19 business days of its receipt. If the commission determines that approval of the application will serve the public utility's customers in the public interest, the commission shall issue an order granting the

application. The commission may condition an order authorizing the acquisition upon the applicant's satisfactory performance or adherence to specific requirements. The commission otherwise shall issue an order denying the application. The applicant shall bear the burden of showing that granting the application is in the public interest.

(4) Nothing in this section shall prohibit dissemination by any party of information concerning the acquisition so long as such dissemination is not otherwise in conflict with state or federal law [1985 c 632 §3]

**757 515** [Amended by 1971 c 655 §39, renumbered 756 515]

**757 520** [Repealed by 1971 c 655 §250]

**757 525** [Repealed by 1971 c 655 §250]

**757.530** [Repealed by 1971 c 655 §250]

**757 535** [Repealed by 1971 c 655 §250]

**757 540** [Amended by 1971 c 655 §53, renumbered 756 568]

## EXCAVATION REGULATION

**757.541 Definitions for ORS 757.541 to 757.571** As used in ORS 757 541 to 757 571, unless the context requires otherwise

(1) "Business day" means any 24-hour day other than a Saturday, Sunday or federal, state or local legal holiday

(2) "Damage" means harm to, or destruction of, underground facilities including, but not limited to, the weakening of structural, lateral or subjacent support, the penetration, impairment or destruction of any coating, housing or other protective device, and the denting of, penetration into or severance of underground facilities

(3) "Emergency" means any condition constituting an immediate danger to life or property, or a customer service outage

(4) "Excavation" means any operation in which earth, rock or other material on or below the ground is moved or otherwise displaced by any means, except sidewalk, road and ditch maintenance less than 12 inches in depth that does not lower the road grade or original ditch flow line. "Excavation" does not include the tilling of soil for agricultural purposes, as defined in ORS 215 203 (2), conducted on private property that is not within the boundaries of a recorded right of way or easement for underground facilities

(5) "Excavator" means any person who engages in excavation

(6) "Locatable underground facilities" means underground facilities which can be marked with reasonable accuracy

(7) "Mark" means the use of stakes, paint or other clearly identifiable material to show the field location or absence of underground facilities

(8) "Reasonable accuracy" means a distance measured from the outside lateral dimensions of an underground facility, as the commission, by rule, may prescribe

(9) "Response" means action by the owners of underground facilities to mark or identify by other means the location of its locatable underground facilities in the area of the proposed excavation, to notify the excavator that there are unlocatable underground facilities in the area of the proposed excavation, to notify the excavator that there are no underground facilities in the area of the proposed excavation or to notify the excavator that there are underground facilities in the area of the proposed excavation which are at a depth greater than the excavator plans to dig

(10) "Underground facilities" means items below the surface of the ground for use in connection with the storage or conveyance of electrical energy, water, sewage, petroleum products, gas, gaseous vapors or hazardous liquids, or the transmission of electronic, telephonic, telegraphic or cable communications. Such items include, but are not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those parts of poles or anchors which are underground

(11) "Unlocatable underground facilities" means underground facilities which cannot be marked with reasonable accuracy, including non-conductive sewers and nonmetallic underground facilities that have no trace wires

(12) "Utilities notification system" means a system through which a person can notify the owners of underground facilities of proposed excavations and request that the underground facilities be marked [1987 c 599 §1]

**757 545** [Repealed by 1971 c 655 §250]

**757.546 Project plans to notify excavator of law requirements.** Project plans shall contain language notifying the excavator performing the project that the excavator must comply with the provisions of ORS 757 541 to 757 571 [1987 c 599 §2]

**757 550** [Repealed by 1971 c 655 §250]

**757.551 Excavator to give notice of proposed work; exemption.** (1) Except as provided in subsection (2) of this section, at least 48 business day hours, but not more than 10 business days before commencing an excavation, the excavator shall notify a utilities notification system of the date, location and depth of the

proposed excavation, and the type of work to be performed. Notifying a utilities notification system constitutes notice only to the participating members of that service. If no utilities notification system is available, or if the owner of underground facilities is not a member of a utilities notification system, the excavator shall give the same notice to each owner of underground facilities who is known to the excavator or who can be identified and contacted by the excavator.

(2) The notice requirement of subsection (1) of this section shall not apply if the excavator is an employee or tenant of an owner of private property, the excavation is on the private property of that owner and the excavation is less than 12 inches in depth and the excavation is not within an established easement.

(3) The excavator, when giving notice in compliance with subsection (1) of this section, shall furnish information as to how the excavator can be contacted. [1987 c 599 §3]

757 555 [Amended by 1971 c 655 §49, renumbered 756 555]

**757 556 When excavator exempt from giving notice.** (1) The excavator is exempt from providing at least 48 business day hours prior notice when

(a) The excavator is responding to an emergency.

(b) The excavator has an agreement with each owner of underground facilities that marks will be provided on a regular basis as the excavator progresses through a project of more than one day's duration.

(c) The excavator has an agreement with each owner of underground facilities that the notice required by this section is unnecessary.

(d) The excavator discovers an underground facility in an area where the owner of underground facilities had previously indicated there were no facilities.

(2) Notwithstanding paragraphs (a) and (b) of subsection (1) of this section, the excavator shall notify the utilities notification system or the owner of underground facilities of the proposed excavation prior to commencing or continuing excavations.

(3) Notwithstanding paragraph (d) of subsection (1) of this section, if an excavator discovers underground facilities in an area where the owner of underground facilities had previously stated there were no underground facilities, the excavator shall notify the utilities notification system of the location and depth of the underground facilities. If no utilities notification sys-

tem is available, the excavator shall notify the owner of the underground facilities and the owner of the property upon which the underground facilities were discovered. [1987 c 599 §5]

757 560 [Repealed by 1971 c 655 §250]

**757.561 Owner to mark facilities or notify excavator that none exist; rules.** (1) Except as provided in subsection (2) of this section, within 48 business day hours after the excavator notifies a utilities notification system or the owner of underground facilities of a proposed excavation, the owner of the underground facilities shall

(a) Mark with reasonable accuracy all of its locatable underground facilities within the area of the proposed excavation. All marks should indicate the name, initials or logo of the owner of the underground facilities and the width of the facility if it is greater than two inches.

(b) Provide the excavator the best description available to the owner of the unlocatable underground facilities in the area of the proposed excavation.

(c) Notify the excavator that in the area of the proposed excavation there are underground sewer or storm drain facilities which are not marked because those facilities are at a depth greater than the excavator plans to dig, or

(d) Notify the excavator that the owner does not have any underground facilities in the area of the proposed excavation.

(2) If the excavator notifies the owner of underground facilities of an excavation in response to an emergency, the owner of underground facilities shall comply with subsection (1) of this section as soon as possible.

(3) The Public Utility Commission shall adopt rules designating the color with which underground facilities shall be marked.

(4) Each mark shall be effective for not more than 10 days from the date it is made. [1987 c 599 §4]

757 565 [Repealed by 1971 c 655 §250]

**757.566 Delay of excavation until response from facility owners; duty of excavator to use care; damage to facilities.**

(1) The excavator shall not commence a proposed excavation which requires notice under ORS 757 541 to 757 571 until a response is received from each owner of underground facilities in the area of the proposed excavation, or until 48 business day hours have elapsed from the time of notification.

(2) Once underground facilities have been marked, the excavator shall

(a) Maintain marks during the excavation period to insure that the original marks remain effective not to exceed 10 days and can be reestablished

(b) Use reasonable care to expose the underground facilities through excavations by hand in a safe manner during trenching and other open excavation

(c) Use reasonable care during all other types of excavation to avoid damaging the underground facilities

(3) The excavator shall provide such lateral and subjacent support for underground facilities as may be reasonably necessary for the protection of such facilities

(4) If the excavator causes or observes damage to underground facilities, the excavator shall notify the owner of the underground facilities immediately. If the damage causes an emergency, the excavator shall also notify all appropriate local public safety agencies immediately and shall take reasonable steps to insure the public safety. The excavator shall not bury damaged underground facilities without consent of the owner of the damaged underground facilities [1987 c 599 §6]

757 570 [Repealed by 1971 c 655 §250]

**757.571 Public authority not liable for unauthorized installations; effect of law on powers of governmental agencies.** (1) The public authority with jurisdiction over a right of way is not liable under ORS 757 541 to 757 571 for improper or unauthorized installations not made by the public authority

(2) Nothing in ORS 757 541 to 757 571 shall limit or affect any of the powers granted to cities, counties, the Department of Transportation or the Public Utility Commission [1987 c 599 §§7, 8]

757 575 [Repealed by 1971 c 655 §250]

757 580 [Repealed by 1971 c 655 §250]

757 585 [Repealed by 1971 c 655 §250]

757 590 [Amended by 1971 c 655 §48 renumbered 756 552]

757 595 [Repealed by 1971 c 655 §250]

757 605 [1961 c 691 §2, 1971 c 655 §97, renumbered 758 400]

757 606 [Formerly 758 040, renumbered 165 475]

757 610 [1961 c 691 §18, renumbered 758 405]

757 611 [Formerly 758 050, renumbered 165 480]

757 615 [1961 c 691 §§3, 11, part renumbered 757 652, 1971 c 655 §98, renumbered 758 410]

757 616 [Formerly 758 060, renumbered 165 485]

757 620 [1961 c 691 §4, renumbered 758 415]

757 621 [Formerly 758 070, renumbered 165 490]

757 625 [1961 c 691 §5, renumbered 758 420]

757 626 [Formerly 758 080, renumbered 165 495]

757 630 [1961 c 691 §6, renumbered 758 425]

757 631 [Formerly 758 090, renumbered 165 840]

757 635 [1961 c 691 §7, renumbered 758 430]

757 636 [Formerly 758 100, renumbered 165 845]

757 640 [1961 c 691 §8, renumbered 758 435]

757 641 [Formerly 758 110 renumbered 165 850]

757 645 [1961 c 691 §9, renumbered 758 440]

757 650 [1961 c 691 §10, renumbered 758 445]

757 652 [Formerly part of 757 615, 1965 c 242 §1, renumbered 758 450]

757 655 [1961 c 691 §13 renumbered 758 455]

757 670 [1961 c 691 §14, renumbered 758 460]

757 675 [1961 c 691 §12, 1971 c 655 §99, renumbered 758 465]

757 680 [1961 c 691 §15, renumbered 758 470]

757 685 [1961 c 691 §16, 1965 c 242 §2 1971 c 655 §99a, renumbered 758 475]

757 690 [1961 c 691 §17 repealed by 1967 c 164 §4]

**EMERGENCY CURTAILMENT OF ELECTRICITY OR NATURAL OR MANUFACTURED GAS**

**757.710 Emergency curtailment plan required; credits for weatherization or alternate energy devices.** (1) Any person, as defined in ORS 758 400, engaged in the sale or resale of electricity or natural or synthetic gas in this state shall present for approval by the commission a plan for curtailment of electrical or gas load in the event of any predictable circumstance that may jeopardize prolonged continuity of service. Utility plans shall be submitted in such form and within such time limits as the commission shall specify

(2) Utility plans may provide for a credit against future curtailment for a customer who has already accomplished a reduction in demand for the utility's service by installing an alternative energy device or by weatherization or other installed conservation measures equivalent to the proposed level of curtailment. Where the level of curtailment exceeds the demand reduction produced, by the conservation measures or installed alternative energy device of the customer, the utility plan may provide for credit against the level of curtailment ordered to the extent of the demand reduction produced by the conservation measure or alternate energy device

(3) The commission shall approve the feature of any plan concerning such credit against curtailment to the extent of the demand reduction produced and shall not penalize either the utility or the customer, in the event of a curtailment order, under ORS 757.720 for the amount of reduced demand [1973 c 309 §2, 1975 c 606 §10, 1979 c 355 §1]

**757.720 Factors to be considered in approving plan; authority to establish plan; consultation with Department of Energy.**

(1) Approval of utility plans for the curtailment of load shall be based on the following factors

(a) The consistency of the plan with the public health, safety and welfare,

(b) The technical feasibility of implementation of the plan,

(c) The effectiveness with which the plan minimizes the impact of any curtailment, and

(d) Consistency with Oregon energy policies formulated under ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.580, 469.533, 469.990, 757.710 and this section

(2) In the event of an emergency threatening the health, safety and welfare of the general public, the commission may on the commission's own motion and without hearing establish a plan for the curtailment of load by any person referred to in ORS 757.710. Where an emergency is not present, the commission shall prior to approval hold public hearings with respect to any proposed plan and give reasonable notice of such hearings.

(3) The commission shall consult with the Director of the Department of Energy before approving a plan [1973 c 309 §3, 1975 c 606 §11]

**757.730 Liability when curtailment occurs.** A utility shall not be liable for damages to persons or property resulting from a curtailment of service in accordance with a plan approved by the commission [1973 c 309 §4]

**HEALTH ENDANGERING  
TERMINATION OF RESIDENTIAL  
UTILITY SERVICE**

**757.750 Legislative findings.** The Legislative Assembly finds that the termination of residential electric and natural gas utility service can lead to the serious impairment of human health and possibly to loss of life, therefore, the Legislative Assembly has enacted ORS 757.750 to 757.760 [1979 c 868 §2, 1983 c 326 §1]

**757.755 Termination of residential electric or natural gas service prohibited; rules of commission.** (1) The Public Utility

Commission of Oregon shall establish rules to prohibit the termination of residential electric or natural gas service when such termination would significantly endanger the physical health of the residential consumer

(2) The commission shall provide by rule a method for determining when the termination of residential electric or natural gas service would significantly endanger the physical health of the residential consumer [1979 c 868 §3, 1983 c 326 §2]

**757.760 Requirements for notice of termination of service; payment schedules.**

The commission shall establish rules to require each electric and natural gas utility to

(1) Give written or personal notice of a proposed termination of residential service in a manner reasonably calculated to reach the residential consumer within a reasonable period of time before the proposed date of termination,

(2) Accept reasonable partial payment on the outstanding account and to establish a reasonable payment schedule for any indebtedness, including a deposit, that the utility claims the residential consumer owes for service at any residential address in lieu of termination of or refusal to provide service, and to inform the residential consumer of the provisions of this subsection,

(3) Inform those residential consumers who cannot afford to pay their bills or deposits of the names and telephone numbers of the appropriate unit within the Department of Human Resources or other appropriate social service agencies that can help the consumer investigate what federal, state or private aid might be available to that consumer, and

(4) Provide that a transfer of service from one premise to another within the utility's service area shall not be considered a discontinuation of service [1979 c 868 §4, 1983 c 326 §3]

**REGULATION OF  
TELECOMMUNICATIONS SERVICE**

**757.810 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 commission shall administer the statutes with respect to telecommunications rates and services in accordance with this policy [1985 c 550 §5]

**757.815 Certificates of authority required; application; notice; restrictions;**

**hearing; classification of successful applicants.** (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 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) No certificate shall authorize any person to provide local exchange telecommunications service within the local exchange telecommunications service area of a telecommunications public 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 public 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 public 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 [1985 c 550 §6]

**757.820 Certificates of authority for persons, companies and corporations providing services on January 1, 1986.** (1) Notwithstanding ORS 757.815, the 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 [1985 c 550 §6a, 1987 c 302 §1]

**757.825 Regulation by commission; exemptions; use of revenues; price list filing; toll service rates; subsidies; alternative access requirements.** (1) Except as otherwise provided in this section, the 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 public 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 public 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 public 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 public 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, together with the terms and prices of such services or products. 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

(7) The commission is authorized to determine whether and to what extent a telecommunications service provided by a public 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

(8) 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 [1985 c 550 §7 1987 c 613 §2]

**757.835 Optional measured service for business customers; conditions for authorization.** (1) Notwithstanding any other provision of this chapter, the commission shall not authorize a public utility providing telephone service 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 [1985 c 389 §3]

**757.840 Mandatory measured service restriction.** (1) The Public Utility Commission shall be prohibited from requiring any telephone customer or class of customers to pay for local exchange telephone service, or any portion thereof, on a mandatory measured service basis

(2) "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 Public Utility 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 Public Utility 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 [1987 c 1 §§1, 2, 3]

Note 757 840 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**757.850 Price listing of services; findings by commission; terms and conditions.**

(1) Except as provided in subsection (6) of this section, upon petition of a telecommunications public utility which provides local exchange service directly, or is affiliated with a utility which provides local exchange service, and after notice and hearing, the 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 757 210 to 757 220 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 public 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 757 210 to 757 220. 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 757 825 (7). 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 public 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 [1987 c 613 §4]

**757.860 Applicability of ORS 757.245 to cooperatives and associations.** Notwithstanding any other provision of law, ORS 757 245 applies to any unincorporated association or cooperative corporation providing intrastate telecommunications service [1987 c 302 §3]

**757.870 Applicability of rate making procedure to certain service providers; revocation of exemption; financial report required.** (1) Subject to subsection (6) of this section, ORS 757 210 to 757 220 do not apply to new or revised tariff schedules filed with the commission by telecommunications public utilities or affiliated groups of telecommunications public utilities serving less than 15,000 access lines in Oregon and not affiliated or under com-

mon control with any other kind of public utility providing service in Oregon

(2) Subject to subsection (6) of this section, ORS 757 480 to 757 495 do not apply to telecommunications public utilities or affiliated groups of telecommunications public utilities serving less than 15,000 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 757 105 to 757 110 and 757 400 to 757 450 do not apply to telecommunications public utilities or affiliated groups of telecommunications public utilities serving less than 15,000 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 public utility serving less than 15,000 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 public utility from

(a) ORS 757 210 to 757 220

(b) ORS 757 480 to 757 495

(c) ORS 757 105 to 757 110 and 757 400 to 757 450

(5) Upon petition by any telecommunications public utility serving less than 15,000 access lines in Oregon, and finding that such action is consistent with the public interest, the commission by order may exempt such telecommunications public utility from ORS 757 205 and 757 225 to 757 240

(6) Upon petition by the telecommunications public utility or upon petition by 10 percent of the then current access line subscribers, or 500 subscribers, whichever is the lesser, of any telecommunications public 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 757 210 to 757 220, or any part thereof, to any such schedules of a telecommunications public utility exempted from ORS 757 210 to 757 220 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 public 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 public utility files with the Federal Communications Commission. Each such telecommunications public utility shall notify customers that the income statement and balance sheet are on file with the commission [1987 c 388 §2]

## RESIDENTIAL SERVICE PROTECTION

**Note** Sections 2 to 8 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 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 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 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 of this 1987 Act, the 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 of this 1987 Act 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 of this 1987 Act, "low income customer" means an individual determined by the commission to have been certified as meeting eligibility criteria for federal food stamps [1987 c 290 §6]

**Sec 7** (1) In order to fund the programs provided in sections 2 to 6 of this 1987 Act and sections 9 to 14 of this 1987 Act, the commission shall develop and implement a system for assessing a surcharge in an amount not to exceed 25 cents per access line per month, against all telecommunication's subscribers other than those who receive the benefits of these programs. Of the surcharge moneys received

(a) Up to 15 cents per access line per month shall be paid into the account referred to in subsection (2) of section 8 of this 1987 Act.

(b) Up to 10 cents per access line per month shall be paid into the account referred to in subsection (3) of section 8 of this 1987 Act.

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

(3) 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]

**Sec 8** (1) The Residential Service Protection Fund is established in the State Treasury, separate and apart from the General Fund. All moneys in the fund are appropriated to the Public Utility Commission to carry out the provisions of this 1987 Act, as specified in this section.

(2) The Account for Low Income Customers is established as an account in the Residential Service Protection Fund. The account shall consist of all moneys received by the Public Utility Commission pursuant to paragraph (a) of subsection (1) of section 7 of this 1987 Act. Moneys in the account may be expended only to carry out the provisions of sections 2 and 6 of this 1987 Act including costs to the telecommunications utility to educate customers and administer any approved plan.

(3) The Account for the Deaf is established as an account in the Residential Service Protection Fund. The account shall consist of all moneys received by the Public Utility Commission pursuant to paragraph (b) of subsection (1) of section 7 of this 1987 Act. Moneys in the account may be expended only to carry out the provisions of sections 9 to 14 of this 1987 Act, including costs to the telecommunications utility to educate customers and administer any approved plan [1987 c 290 §8]

## 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 of this Act, unless the context requires otherwise

(1) "Applicant" means a person who applies for a telecommunication device for the deaf or signal device.

(2) "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 and Hearing Association.

(3) "Deaf" means a hearing loss that requires use of a telecommunication device for the deaf to communicate effectively on the telephone.

(4) "Deaf-blind" means a hearing loss and a visual impairment that requires use of a telecommunication device for the deaf to communicate effectively on the telephone.

(5) "Recipient" means a person who receives a telecommunication device for the deaf or a signal device.

(6) "Severely hearing impaired" means a hearing loss that requires use of a telecommunication device for the deaf to communicate effectively on the telephone.

(7) "Severely speech impaired" means a speech disability that requires use of a telecommunication device for the deaf to communicate effectively.

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

(9) "Speech or language pathologist" means a person who has a master's degree or equivalency in speech or language.

pathology or both, and a Certificate of Clinical Competence issued by the American Speech, Language and Hearing Association

(10) "Telecommunication device for the deaf" means an electrical device for use with a telephone that utilizes a keyboard, acoustic coupler, display screen or braille display to transmit and receive messages

(11) "Telephone relay center" means a facility authorized by the Public Utility Commission to provide telephone relay service

(12) "Telephone relay service" means the provision of voice and teletype communication between users of telecommunication devices for the deaf and other parties [1987 c 290 §9]

**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 for effective communication. 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 telecommunication devices for the deaf and a telecommunication device for the deaf dual party relay service available to deaf, severely hearing and speech impaired people at no additional cost beyond normal telephone service. The provision of telecommunication devices for the deaf and a telecommunication device for the deaf relay service 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 telecommunication device for the deaf 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]

**Sec 11** With the advice of the Telecommunication Device for the Deaf Advisory Committee, the Public Utility Commission shall establish and administer a state-wide program to purchase and distribute telecommunication devices for the deaf 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 [1987 c 290 §11]

**Sec 12** (1) A Telecommunication Device for the Deaf Advisory Committee shall be established to advise the Public Utility Commission concerning matters of general development, implementation and administration of the Telecommunication Device for the Deaf Distribution Relay Program

(2) The Telecommunication Device for the Deaf Advisory Committee shall include

(a) Seven consumers including six who are deaf or hearing impaired and one who is speech impaired,

(b) Two professionals in the speech impairment hearing impairment or deafness field

(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 a telecommunication device for the deaf relay services [1987 c 290 §12]

**Sec 13** (1) The Public Utility Commission shall employ a coordinator for the Telecommunication Service for the Deaf Access Program who shall be primarily responsible for

(a) The distribution and maintenance of telecommunication devices for the deaf,

(b) The provision of telecommunication devices for the deaf relay services and monitoring of those service providers, and

(c) Community outreach to locate potential beneficiaries of the Telecommunication Device for the Deaf 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 of this Act [1987 c 290 §13]

**Sec 14** (1) In order to be eligible for services under this Act, eligibility requirements for persons to receive telecommunication devices for the deaf, individuals must be certified as deaf, severely hearing impaired or severely speech impaired by a licensed physician audiologist, speech pathologist, the Vocational Rehabilitation Division or the Deaf and Hearing Impaired Access Program Certification implies that the individual cannot use the telephone for expressive or receptive communication

(2) No more than one telecommunication device for the deaf shall be provided to a household

(3) Nothing in sections 9 to 14 of this Act shall require a telecommunications utility to provide a telecommunication device for the deaf to any person in violation of ORS 646 730 [1987 c 290 §14]

**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** This Act is repealed January 1, 1992 [1987 c 290 §16]

## SEPARATE REGULATION (Definitions; General Provisions)

**Note** Sections 1 to 74 and sections 142 and 143, chapter 447, Oregon Laws 1987, and section 2a, chapter 613, Oregon Laws 1987, provide

**Sec 1** As used in sections 1 to 70 of this Act

(1) "Competitive telecommunications provider" means a telecommunications services provider which has been classified as such by the commission pursuant to this chapter

(2) "Intrastate telecommunications service" means any telecommunications service in which the information transmitted originates and terminates within the boundaries of the State of Oregon

(3) "Local exchange telecommunications service" means telecommunications service provided within the boundaries of exchange maps filed with and approved by the commission

(4) "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

(5) "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

(6) "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

(7) "Telecommunications service" means two-way switched access and transport of voice communications but does not include

(a) Services provided by radio common carrier

(h) 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

(8) "Telecommunications utility" means a utility providing telecommunications service that has been so classified by the commission pursuant to sections 1 to 70 of this Act

(9) "Toll" means telecommunications between exchanges carried on the public switched network for which charges are made on a per-unit basis

(10) The term "telecommunications utility" does not include

(a) 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 public utility as defined in sections 1 to 70 of this Act

(b) Any person acting only as a competitive telecommunications provider

(c) Any corporation, company individual or association of individuals providing only telephone customer premise equipment to the public [1987 c 447 §1]

**Sec 2** As used in subsection (1) of section 5 of this Act and section 44 of this Act, "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 or person which the commission determines as a matter of fact, after investigation and hearing actually is exercising any substantial influence over the policies and actions of such telecommunications utility, even though such influence is not based upon stockholdings, stockholders, directors or officers to the extent specified in this section

(7) 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]

**Sec 3** 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]

**Sec 4** The 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]

### (Budgets, Accounts and Reports)

**Sec 5** (1) The 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 employes 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 employes 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 employes and if such pensions are reasonable and non-discriminatory. 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 employes of the utility in Oregon [1987 c 447 §5]

**Sec 6** Adjustment and additions to such budget expenditures may be made from time to time during the year by filing supplementary budgets with the commission. The provisions of subsection (3) of section 5 of this Act apply to adjustments and additions to budgets [1987 c 447 §6]

**Sec 7** (1) Any finding and order made and entered by the commission under sections 5 and 6 of this Act 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 sections 5 and 6 of this Act 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]

**Sec 8** (1) Every telecommunications utility shall keep and render to the 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 sections 1 to 70 of this Act shall apply with like

force and effect to the accounts and records of such other business [1987 c 447 §8]

**Sec 9** (1) The 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 sections 1 to 70 of this Act, and shall, when necessary, furnish such blanks for reports to each telecommunications utility [1987 c 447 §9]

**Sec 10** (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 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]

**Sec 11** Every telecommunications utility shall carry a proper and adequate depreciation account. The 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 [1987 c 447 §11]

### (Rate Schedules and Procedure; Measuring Equipment)

**Sec 12** (1) Every telecommunications utility shall file with the 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]

**Sec 13** (1) Whenever any telecommunications utility files with the 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 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]

**Sec 14** (1) The 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 section 13 of this Act 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 telecom-

munications 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]

**Sec 15** No change shall be made in any schedule, including schedules of joint rates, except upon 30 days' notice to the 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]

**Sec 16** 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 sections 1 to 70 of this Act. [1987 c 447 §16]

**Sec 17** (1) The 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 and any other reasonable consideration. 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.

(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. [1987 c 447 §17]

**Sec 18** (1) A copy of so much of all schedules, including schedules of joint rates and charges, as the 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]

**Sec 19** (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 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]

**Sec 20** (1) The 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 sections 1 to 70 of this Act.

(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]

**Sec 21** (1) The 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]

### (Attachment Regulation)

**Sec 22** As used in sections 22 to 27 of this Act, 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 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) "Telecommunications utility" means any telecommunications utility as defined in section 1 of this Act 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]

**Sec 23** 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]

**Sec 24** 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 [1987 c 414 §166d, 1987 c 447 §24]

**Sec 25** 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]

**Sec 26** Agreements regarding rates, terms and conditions of attachments shall be deemed to be just, fair and reasonable unless the commission or director 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]

**Sec 27** The procedures of the commission or director 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 and director respectively [1987 c 447 §27]

### (Issuance of Securities)

**Sec 28** As used in sections 28 to 40 of this Act, "stocks" means stocks, stock certificates or other evidence of interest or ownership [1987 c 447 §28]

**Sec 29** 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 commission may prescribe [1987 c 447 §29]

**Sec 30** 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 commission authorizing the same then in effect except as provided in subsection (3) of section 31 of this Act

(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]

**Sec 31** (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 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 section 30 of this Act 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 sections 28 to 40 of this Act 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 [1987 c 447 §31]

**Sec 32** Section 31 of this Act 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]

**Sec 33** Section 41 of this Act 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 section 31 of this Act [1987 c 447 §33]

**Sec 34** (1) To enable the commission to determine whether the commission will issue an order under section 31 of this Act, 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 section 31 of this Act. 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]

**Sec 35** No provision of sections 28 to 40 of this Act 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 sections 28 to 40 of this Act [1987 c 447 §35]

**Sec 36** The 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]

**Sec 37** (1) No telecommunications utility shall without the consent of the 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]

**Sec 38** 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 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]

**Sec 39** 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 commission authorizing the same or contrary to the provisions of sections 28 to 40 of this Act 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]

**Sec 40** 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 commission authorizing the same, or contrary to the provisions of sections 28 to 40 of this Act 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 sections 28 to 40 of this Act, negotiate, or cause the same to be negotiated [1987 c 447 §40]

### (Transactions Involving Utilities)

**Sec 41** (1) No telecommunications utility doing business in Oregon shall, without first obtaining the 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 \$10 000, 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, or

(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) Every such sale, lease, assignment mortgage, disposition, encumbrance merger or consolidation made other than in accordance with the order of the commission authorizing the same is void

(3) 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]

**Sec 42** (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 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]

**Sec 43** (1) Before 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 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) When any such proposed contract has been filed with the commission, the commission shall promptly investigate and act upon it in accordance with subsections (3) and (5) of section 44 of this Act

(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 [1987 c 447 §43]

**Sec 44** (1) No telecommunications utility doing business in this state shall make or 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, until the propriety and reasonableness of any such payment, or contract for payment, has been submitted to and approved by the commission

(2) No 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 unless and until such proposed contract has been submitted to and approved by the commission

(3) When any such proposed 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 the contract may lawfully be recognized for the purposes entered into. 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 it shall be unlawful to recognize the contract for the purposes specified in this section

(4) 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

(5) 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 [1987 c 447 §44]

**Sec 45** When any telecommunications utility is primarily engaged in another enterprise and is only indirectly engaged in the production, transmission, delivery or furnishing of heat, light, water or power to or for the public by reason of a contract or agreement, express or implied, between itself and another public utility which is directly engaged in such business the jurisdiction of the commission over such public utility extends only to the right to modify, control, rescind, alter or amend any such existing contract or agreement where the interest of the customers of such telecommunications utility directly engaged in such business demands. No such contract or agreement is valid or enforceable until it has been approved by the commission as being in the public interest [1987 c 447 §45]

### (Illegal Practices)

**Sec 46** (1) Except as provided in section 47 of this Act 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

(2) Any telecommunications utility violating this section is guilty of unjust discrimination [1987 c 447 §46]

**Sec 47** (1) Section 46 of this Act 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 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]

**Sec 48** (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 commission [1987 c 447 §48]

**Sec 49** (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]

**Sec 50** 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 sections 1 to 70 of this Act [1987 c 447 §50]

**Sec 51** 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]

### (Penalties)

**Sec 52** (1) Any telecommunications utility violating section 46 of this Act shall upon conviction, forfeit and pay to the State Treasurer not less than \$100 nor more than \$1 000

for each offense. Violation of section 46 of this Act by an officer or agent of a telecommunications utility is punishable, upon conviction, by a fine of not less than \$50 nor more than \$100 for each offense.

(2) Any person violating section 49 of this Act 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 section 49 of this Act 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 section 50 of this Act is punishable, upon conviction, by a fine of not less than \$50 nor more than \$1,000 for each offense.

(4) Violation of section 39 of this Act is punishable, upon conviction, by a fine of not less than \$500 nor more than \$20,000 for each offense.

(5) Violation of section 40 of this Act 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 [1987 c 447 §52].

### (Allocation of Territories and Customers)

**Sec 53** As used in sections 53 to 68 of this Act, 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 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 subsection (3) of section 1 of this Act. "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 subsection (3) of section 1 of this Act, commonly known as "private lines" or "farmer lines", nor

(c) For the provision of shared telecommunications service as defined in subsection (6) of section 1 of this Act [1987 c 447 §53].

**Sec 54** The elimination and future prevention of duplication of utility facilities is a matter of state-wide 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 sections 53 to 68 of this Act all persons and entities providing telecommunications utility services [1987 c 447 §54].

**Sec 55** (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 section 1 of this Act is also subject to the approval of the commission to the extent required by sections 1 to 70 of this Act [1987 c 447 §55].

**Sec 56** Notwithstanding any other provisions of law, a contract entered into pursuant to section 55 of this Act, when approved by the commission as provided in sections 57 to 68 of this Act, 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 sections 57 to 68 of this Act, 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].

**Sec 57** (1) A contract entered into pursuant to section 55 of this Act shall be promptly filed with the 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].

**Sec 58** (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 section 57 of this Act, the 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]

**Sec 59** Any contract that has been approved as provided in sections 53 to 68 of this Act may be subsequently amended by the parties thereto, but any such amendatory agreement shall be filed with the commission and shall thereafter be approved or disapproved by the commission in the manner provided in sections 57 and 58 of this Act. However, no hearing is required if all affected customers approve the amendatory agreement. An amendatory agreement may be enforced in the manner provided in section 66 of this Act [1987 c 447 §59]

**Sec 60** (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 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]

**Sec 61** (1) On the basis of the application, or, if there is a hearing, on the record made at the hearing held pursuant to section 60 of this Act, the 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]

**Sec 62** Any party to the hearing may commence a suit to vacate and set aside the 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 commission's order is filed, the validity of the order shall be determined by the final judgment therein provided [1987 c 447 §62]

**Sec 63** (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 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 section 57 or 60 of this Act [1987 c 447 §63]

**Sec 64** (1) The 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]

**Sec 65** (1) The rights acquired by an allocation of territory may only be assigned or transferred with the approval of the 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]

**Sec 66** In the event a contract approved by the 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]

**Sec 67** (1) Sections 53 to 68 of this Act 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) Sections 53 to 68 of this Act 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) Sections 53 to 68 of this Act shall not be construed to confer upon the commission any regulatory authority over rates, service or financing of cooperatives or municipalities [1987 c 447 §67]

**Sec 68** Except in cases under sections 59 and 65 of this Act, where no hearing is required to cover the costs of administering sections 53 to 68 of this Act, the commission is required to receive fees before filing any contract, application, petition, complaint, protest, appearance, motion, answer or other pleading and for holding any hearing. All fees shall be collected in accordance with the following schedule

(1) Filing application for allocated territory under section 60 of this Act by a person having annual gross revenue derived from within the state for the calendar year 1960

(a) In excess of \$5 million or more, a fee of two-tenths of one mill of such revenue but in no event shall such fee exceed \$10,000

(b) In excess of \$100,000 but less than \$5 million, \$100

(c) Less than \$100,000, \$50

(2) Filing a contract or application under section 57 of this Act, \$100

(3) Filing petition or complaint, \$25

(4) Filing protest, appearance, motion, answer or other pleading, \$10

(5) Filing an application for allocated territory under section 60 of this Act subsequent to an original allocation and payment of fee under subsection (1) of this section, \$100 [1987 c 447 §68]

### (Rights of Way)

**Sec 69** (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]

**Sec 70** When it is necessary or convenient, in the location of any poles or lines mentioned in section 69 of this Act, 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]

### (Miscellaneous)

**Sec 71** ORS 757 810 and 757 820 are added to and made a part of sections 1 to 70 of this Act [1987 c 447 §71]

**Sec 72** ORS 757 815 is added to and made a part of sections 1 to 70 of this Act and is amended to read

**757 815** (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 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

## UTILITIES; RAILROADS AND OTHER CARRIERS

(3) 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.

**Sec 73** ORS 757.825 is added to and made a part of sections 1 to 70 of this Act and is amended to read:

**757.825** (1) Except as otherwise provided in this section, the 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 the commission shall exempt from regulation those telecommunications services for which the commission finds that:

(a) The rates the telecommunications utility proposes for such services cover the full long-range incremental costs of providing such services, and

(b) Price and service competition exists, or

(c) Such services can be demonstrated by the telecommunications utility to be subject to competition.

(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, together with the terms and prices of such services or products. The price list or any revision thereof is not subject to the provisions of sections 13 to 15 of this 1987 Act 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) Rates and terms of toll telecommunications services shall not be established under the procedures of sections 13 to 15 of this 1987 Act. However, the commission, in the public interest, may establish maximum rate levels and terms for toll service on noncompetitive routes.

(8) The commission may require any person providing telecommunications service on noncompetitive toll routes to file rates and terms for service on such noncompetitive routes which may be effective immediately unless otherwise ordered 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.

**Sec 74** ORS 757 835 is added to and made a part of sections 1 to 70 of this Act and is amended to read

**757 835** (1) Notwithstanding any other provision of sections 1 to 70 of this 1987 Act, the 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

**Sec 142** (1) There is created a Telecommunications Statute Review Committee. The study committee shall consist of members appointed by the President of the Senate and the Speaker of the House of Representatives so as to fairly represent the telecommunications industry, the Public Utility Commission or the designee of the commission, the Citizen's Utility Board and other consumer interests and the Legislative Assembly

(2) The committee shall

(a) Review the provisions of House Bill 3072 (1987 Regular Session)

(b) Based upon the review pursuant to paragraph (a) of this subsection, submit for pre-session filing at the Sixty-fifth Legislative Assembly proposed legislation that establishes separate statutes for regulation of telecommunications utilities which does not make substantive changes in existing law

(c) Submit to the Sixty-fifth Legislative Assembly other findings and recommendations the committee determines necessary to facilitate or clarify the separation of regulation of telecommunications from the regulation of energy, transportation and water

(3) Legislative members of the study committee shall receive per diem and expenses under ORS 171 072, payable from funds appropriated to the Legislative Assembly

(4) Subject to the approval of the Legislative Counsel, the Office of the Legislative Counsel shall provide necessary services and support to the study committee

(5) The cost of supplies and miscellaneous expenses incurred by the study committee shall be paid from funds appropriated to the Legislative Counsel Committee, in an amount not to exceed \$1,000 [1987 c 447 §142]

### (Effective Date)

**Sec 143** Sections 1 to 141 of this Act take effect July 1, 1989 [1987 c 447 §143]

**Sec 2a** On July 1, 1989, section 73, chapter 447, Oregon Laws 1987 (Enrolled House Bill 3072) [amendments to 757 825] is repealed [1987 c 613 §2a]

### PENALTIES

**757.990 Penalties.** (1) Any person or municipality, or their agents, lessees, trustees or receivers, who omits, fails or refuses to do any act required by ORS 757 035, or fails to comply with any orders, rules or regulations of the commission made in pursuance of ORS 757 035, shall forfeit and pay into the State Treasury a sum of not less than \$100, nor more than \$10,000 for each such offense

(2) Any public utility violating ORS 757 310 shall, upon conviction, forfeit and pay to the State Treasurer not less than \$100 nor more than \$1,000 for each offense. Violation of ORS 757 310 by an officer or agent of a public utility is punishable, upon conviction, by a fine of not less than \$50 nor more than \$100 for each offense

(3) Any person violating ORS 757 325 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 757 325 by any agent or officer of any public utility or person is punishable, upon conviction, by a fine of not less than \$100 and not more than \$1,000 for each offense

(4) Violation of ORS 757 330 is punishable, upon conviction, by a fine of not less than \$50 nor more than \$1,000 for each offense

(5) Violation of ORS 757 445 is punishable, upon conviction, by a fine of not less than \$500 nor more than \$20,000 for each offense

(6) Violation of ORS 757 450 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 custody of the Department of Corrections for not less than one nor more than five years, or both [Amended by 1971 c 655 §95, 1979 c 990 §428, 1987 c 320 §245]

**757.991 Civil penalty for non-compliance with gas regulations.** Any person or municipality, or their agents, lessees, trustees or receivers, engaged in the management, operation, ownership or control of facilities for

the transmission or distribution of gas by pipeline, or facilities for the storage or treatment of gas to be transmitted or distributed by pipeline, who fails to do any act required by ORS 757 039, or fails to comply with any orders, rules or regulations of the commission made in pursuance of ORS 757 039, shall forfeit and pay into

the State Treasury a civil penalty not to exceed \$1,000 for each such failure for each day such failure persists, except that the maximum civil penalty shall not exceed \$200,000 for any related series of failures [1969 c 372 §4]

757 992 [Formerly 758 990 renumbered 165 990]

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