Chapter 759

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Telecommunications Utility Regulation

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GENERAL PROVISIONS

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

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

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

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

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

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

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

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

(2) As used in this chapter:

(a) "Competitive telecommunications provider" means a telecommunications services provider which has been classified as such by the commission pursuant to ORS 759.020.

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

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

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

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

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

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

(A) Services provided by radio common carrier.

(B) One-way transmission of television signals.

(C) Surveying.

(D) Private telecommunications networks.

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

(h) "Toll" means telecommunications between exchanges carried on the public switched network for which charges are made on a per-unit basis. [1987 c.447 §1; 1989 c.5 §15]

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

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

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

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

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

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

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

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

(8) Every person or corporation who or which the commission determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and actions of such telecommunications utility in conjunction with one or more other corporations or persons with whom they are related by ownership or blood or by action in concert that together they are affiliated with such telecommunications utility within the meaning of this section even though no one of them alone is so affiliated. [1987 c 447 §2; 1989 c 17 §2]

759.015 Legislative findings. The Legislative Assembly finds and declares that it is the goal of the State of Oregon to secure and maintain high-quality universal telecommunications service at just and reasonable rates for all classes of customers and to encourage innovation within the industry by a balanced program of regulation and competition. The commission shall administer the statutes with respect to telecommunications rates and services in accordance with this policy. [Formerly 757 810]

759.020 Certificate of authority required; application; procedure; criteria. (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 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. [Formerly 757.815]

759.025 Certificates of authority for persons, companies and corporations

providing services on January 1, 1986. (1) Notwithstanding ORS 759.020, 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. [Formerly 757.820]

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

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

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

(a) Price and service competition exist.

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

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

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

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

(c) Existing economic or regulatory barriers to entry.

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

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

(6) If the commission determines that a product or service offered by a telecommunications utility as part of local exchange telecommunications services can be demonstrated by the utility to be subject to competition, or if a product or service is not an essential product or service, the commission may authorize the utility to file a price list, 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 759.180 to 759.190 and shall become effective immediately on filing with the commission unless a later date is specified. In making the determination of whether a product or service is subject to competition, the commission shall consider:

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

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

(c) Existing economic or regulatory barriers to entry.

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

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

of the suspension period for an additional three months.

(8) If the commission determines that a product or service offered by a telecommunications utility as part of interexchange telecommunications services can be demonstrated by the utility to be subject to competition, the commission, under such conditions as it determines are reasonable, may authorize the utility to file a price list, 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.

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

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

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

759.040 Application of law to certain unaffiliated utilities with less than 15,000 access lines. (1) Subject to subsection (6) of this section, ORS 759.180 to 759.190 do not apply to new or revised tariff schedules filed with the commission by telecommunications utilities or affiliated groups of telecommunications 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.

(2) Subject to subsection (6) of this section, ORS 759.375 to 759.390 do not apply to telecommunications utilities or affiliated groups of telecommunications 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 759.100 to 759.115 and 759.300 to 759.360 do not apply to telecommunications utilities or affiliated groups of telecommunications 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 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 utility from:

(a) ORS 759.180 to 759.190.

(b) ORS 759.375 to 759.390.

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

(5) Upon petition by any telecommunications 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 utility from ORS 759.175 and 759.205 to 759.215.

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

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

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

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

(8) Any telecommunications utility for which an exemption from the application of any statute is provided pursuant to this section shall file with the commission an annual report that includes copies of the income statement and balance sheet the telecommunications utility files with the Federal Communications Commission. Each such telecommunications utility shall notify customers that the income statement and balance sheet are on file with the commission. [Formerly 757 870]

RIGHTS OF WAY

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

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

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

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

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

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

BUDGETS, ACCOUNTS AND RECORDS

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

(a) Proposed payment of salaries of executive officers;

(b) Donations;

(c) Political contributions and political advertising;

(d) Expenditures for pensions or for a trust to provide pensions for employees and officers;

(e) Other expenditures and major contracts for the sale or purchase of equipment; and

(f) Any payment or contemplated payment to any person or corporation having an affiliated interest for service, advice, auditing, associating, sponsoring, engineering, managing, operating, financing, legal or other services.

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

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

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

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

Note: Sections 8 and 9, chapter 484, Oregon Laws 1989, provide:

Sec. 8. On the effective date of this Act [July 1, 1990], existing franchise fees or privilege taxes imposed on telecommunications utilities shall be superseded by sections 4, 5 and 7 of this Act [221.510, 221.515 and 759.105]. [1989 c 484 §8]

Sec. 9. This Act takes effect on July 1, 1990. [1989 c.484 §9]

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

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

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

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

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

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

(2) No telecommunications utility shall keep any other accounts or records of its telecommunications utility business transacted than those prescribed or approved by

the commission except such as may be required by the laws of the United States.

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

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

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

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

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

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

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

RATE REGULATION AND PROCEDURES; MEASURING EQUIPMENT

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

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

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

759.180 Hearing on reasonableness of rates; procedures; exceptions. (1) Except as provided in ORS 759.030 and 759.195, whenever any telecommunications utility files with the commission any rate or schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing rate or schedule of rates, the commission may, either upon written complaint or upon the commission's own initiative, after reasonable notice, conduct a hearing to determine the propriety and reasonableness of such rate or schedule. The commission shall conduct such a hearing upon written complaint filed by the telecommunications utility, its customer or customers, or any other proper party within 60 days of the telecommunications utility's filing; provided that no hearing need be held if the particular rate change is the result of an automatic adjustment clause. At such hearing the telecommunications utility shall bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is just and reasonable. The term "automatic adjustment clause" means a provision of a rate schedule, authorized pursuant to ORS 759.195 (6), which provides for rate increases, or decreases or both, without prior hearing, reflecting increases, decreases or both in costs incurred by a telecommunications utility and which is subject to review by the commission at least once every two years.

(2) The commission and staff may consult at any time with, and provide technical assistance to, telecommunications utilities, their customers, and other interested parties on matters relevant to utility rates and

charges. If a hearing is held with respect to a rate change, the commission's decisions shall be based on the record made at the hearing. [1987 c.447 §13; 1989 c.5 §16]

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

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

759.190 Notice of schedule change required. No change shall be made in any schedule, including schedules of joint rates, except upon 30 days' notice to the commission. All changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof 30 days prior to the time they are to take effect. However, the commission, for good cause shown, may allow changes without requiring the 30 days' notice by filing an order specifying the changes to be made and the time when they shall take effect. [1987 c.447 §15]

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

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

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

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

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

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

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

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

(5) Upon its own motion the commission may fix maximum rate levels and terms of service for price listed services and for toll services on noncompetitive routes. Upon request of any affected person, the commission

shall fix maximum rate levels and terms of service for price listed services not subject to competition and for toll services on non-competitive routes.

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

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

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

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

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

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

(a) Increases or decreases in amounts incurred by a telecommunications utility resulting from changes in jurisdictional separations approved by the Federal Communications Commission;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The commission may prescribe such changes in the form in which the schedules are issued by any telecommunications utility as may be found to be expedient. The commission shall adopt rules which allow any person who requests notice of tariff filings described under subsection (1) of this section to receive such notice. [1987 c.447 §17; 1989 c.5 §17]

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

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

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

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

(3) Whenever, after full hearing upon complaint or upon the commission's own initiative without complaint, the commission is

of the opinion that the divisions of joint rates between the telecommunications utilities are or will be unjust, unreasonable, inequitable or unduly preferential or prejudicial as between the telecommunications utilities party thereto, whether agreed upon by such telecommunications utilities or otherwise established, the commission shall, by order, prescribe the just, reasonable and equitable divisions thereof to be received by the several telecommunications utilities. In cases where the joint rate was established pursuant to the finding or order of the commission and the divisions thereto are found by the commission to have been unjust, unreasonable or inequitable, or unduly preferential or prejudicial, the commission may also by order determine what, for the period subsequent to the filing of the complaint or petition or the making of the order of investigation, would have been the just, reasonable and equitable division thereof to be received by the several telecommunications utilities and require adjustment to be made in accordance therewith.

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

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

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

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

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

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

759.225 Application of ORS 759.220 to unincorporated associations and cooperatives. Notwithstanding any other provision of law, ORS 759.220 applies to any unincorporated association or cooperative corporation providing intrastate telecommunications service. [Formerly 757 860]

759.230 Measured service rate for business customers; restriction. (1) Notwithstanding any other provision of this chapter, 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. [Formerly 757.835]

759.235 Mandatory measured service rate; prohibition. (1) The 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 commission from requiring telephone customers to pay on a mandatory measured service basis for:

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

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

(4) The commission shall not change boundaries of local exchange service areas nor take any other actions if such changes or actions have the effect of circumventing subsections (1) and (2) of this section. [Formerly 757 840]

759.240 Measuring quality of service; standards; rules. (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 this chapter.

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

759.245 Examination and testing of measuring appliances. (1) The 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]

ILLEGAL PRACTICES

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

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

(b) It charges, demands, collects or receives from any other person for a like and contemporaneous service under substantially similar circumstances. A difference in rates or charges based upon a difference in classification pursuant to ORS 759.175 shall not constitute a violation of this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

759.285 Charging rates based on cost of property not presently providing service. No telecommunications utility shall, directly or indirectly, by any device, charge, demand, collect or receive from any customer, rates which are derived from a rate base which includes within it any construction, building, installation or real or personal property not presently used for providing utility service to the customer. [1987 c 447 §51]

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

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

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

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

(3) As used in this section:

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

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

ISSUANCE OF SECURITIES

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

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

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

(1) Without an order of the commission authorizing the same then in effect except as provided in ORS 759.315 (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. [1987 c 447 §30]

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

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

(b) The improvement or maintenance of its service.

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

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

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

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

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

(b) In the opinion of the commission, the money, property or labor to be procured or

paid for by such issue reasonably is required for the purposes specified in the order and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a telecommunications utility, and will not impair its ability to perform that service; and

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

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

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

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

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

(c) Finding that a sum equal to the amount to be so transferred was expended for the purposes enumerated in subsection (1) of this section. [1987 c 447 §31]

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

(1) The amount of $75,000.

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

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

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

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

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

(2) The commission may, upon application of the telecommunications utility, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as the commission finds necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, extent to which, or the condition under which, any security theretofore authorized or its proceeds may be applied. Such supplemental orders are subject to the requirements of ORS 759.315. The period of time permitted under subsection (1) of this section for disposing of applications shall not apply to supplemental orders.

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

759.335 State not obligated by approval of issuance. No provision of ORS 759.300 to 759.360, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the State of Oregon to pay or guarantee, in any manner whatsoever, any stock or bond, note or other evidence of indebtedness, au-

thorized, issued or executed under the provisions of ORS 759.300 to 759.360. [1987 c.447 §35]

759.340 Conditional approval of issuance. 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]

759.345 Use of proceeds from issuance restricted; accounting for use of proceeds. (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]

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

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

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

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

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

(3) With knowledge that any false statement or representation was made to the commission in any proceeding tending in any way to influence the commission to make such order, issue, execute or negotiate, or cause to be issued, executed or negotiated, any stock or bond, note or other evidence of indebtedness.

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

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

TRANSACTIONS OF UTILITIES

759.375 Approval required prior to sale, mortgage or disposal of operative utility property. (1) 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]

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

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

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

(2) Any such proposed contract shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier. The commission shall promptly investigate and act upon the contract in accordance with ORS 759.390 (3) and (6).

(3) In making such investigation the commission and accountants, examiners and agents, appointed by the commission for the purpose, shall be given free access to all books, books of account, documents, data and records of the telecommunications utility as well as of the corporation with which it is proposing to contract, which the commission may deem material to the investigation. The failure or refusal of either of the parties to the proposed contract to comply with this subsection is prima facie evidence that such contract is unfair, unreasonable and contrary to public interest, and is sufficient to justify a determination and finding of the commission to that effect, which has the same force and effect as any other determination or order of the commission. [1987 c.447 §43, 1989 c.956 §4]

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

(2) When any telecommunications utility doing business in this state shall enter into any contract, oral or written, with any per-

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

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

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

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

(6) The action of the commission with respect to all the matters described in this section when submitted to the commission, shall be by findings and order to be entered within 90 days after the matter has been submitted to the commission for consideration, and the findings and order of the commission with respect to any of such matters shall be and remain in full force and effect, unless and until set aside by suit brought and prosecuted, as provided in ORS 756.580 to 756.610, and the telecommunications utility, or any other person or corporation affected by any such findings and order, may bring and prosecute such suit. [1987 c.447 §44; 1989 c.956 §5]

759.395 Contracts between utilities; limitation on commission authority; approval required. 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]

ALLOCATION OF TERRITORIES AND CUSTOMERS

(Generally)

759.500 Definitions for ORS 759.500 to 759.575. As used in ORS 759.500 to 579.575, 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 ORS 759.005 (2)(c). "Telecommunications utility service" does not include service provided through or by the use of any equipment, plant or facilities:

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

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

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

759.505 Purpose of allocation laws. The elimination and future prevention of duplication of utility facilities is a matter of 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 ORS 759.500 to 759.575, all persons and entities providing telecommunications utility services. [1987 c 447 §54]

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

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

759.515 Contract approval by commission; conditions. Notwithstanding any other provisions of law, a contract entered into pursuant to ORS 759.510, when approved by the commission as provided in ORS 759.520 to 759.575, shall be valid and enforceable; provided, that the commission shall approve such a contract only if the commission finds, after a hearing as provided in ORS 759.520 to 759.575, that the contract will eliminate or avoid unnecessary duplicating facilities and will promote the efficient and economic use and development and the safety of operation of the telecommunications utility systems of the parties to the contract, while providing adequate and reasonable service to all territories and customers affected thereby. [1987 c.447 §56]

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

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

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

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

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

759.530 Amendment of contract; commission approval. Any contract that has been approved as provided in ORS 759.500 to 759.575 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 ORS 759.520 and 759.525. However, no hearing is required if all affected customers approve the amendatory agreement. An amendatory agreement may be enforced in the manner provided in ORS 759.565. [1987 c.447 §59]

759.535 Application by utility to serve unserved territory; hearing; notice. (1) Any person providing a telecommunications utility service in a territory that is not served by another person providing a similar telecommunications utility service may make application to the commission for an order allocating such territory to it. The application may include any adjacent area that it is more economical and feasible to serve by an extension of the applicant's existing facilities than by an extension of the facilities of another person.

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

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

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

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

759.545 Suit to set aside order of commission. Any party to the hearing may commence a suit to vacate and set aside the 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]

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

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

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

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

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

(3) In considering competing applications to serve the same territory, there shall be a disputable presumption that applicants have an equal ability to extend, improve, enlarge,

build, operate and maintain existing or proposed facilities. [1987 c.447 §64]

759.560 Assignment or transfer of allocated territory; effect of approval by commission. (1) The rights acquired by an allocation of territory may only be assigned or transferred with the approval of the commission after a finding that such assignment or transfer is not contrary to the public interest. However, no hearing is required if all affected customers agree to the proposed assignment or transfer.

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

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

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

759.570 Application of law to local government. (1) ORS 759.500 to 759.575 shall not be construed or applied to restrict the powers granted to cities to issue franchises or to restrict the exercise of the power of condemnation by a municipality; and when a municipality has condemned or otherwise acquired another person's equipment, plant or facilities for rendering telecommunications utility service, it shall acquire all of the rights of the person whose property is condemned to serve the territory served by the acquired properties.

(2) ORS 759.500 to 759.575 shall not be construed to restrict the right of a municipality to provide telecommunications utility service for street lights, fire alarm systems, airports, buildings and other municipal installations regardless of their location.

(3) ORS 759.500 to 759.575 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]

759.575 Fees. Except in cases under ORS 759.530 and 759.560, where no hearing is required to cover the costs of administering ORS 759.500 to 759.575, 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 ORS 759.535 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 ORS 759.520, $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 ORS 759.535 subsequent to an original allocation and payment of fee under ORS 759.535, $100. [1987 c 447 §68]

(Unserved Territory)

759.580 Power of commission to require service to unserved territory. 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]

759.585 Definitions for ORS 759.585 to 759.600. As used in ORS 759.585 to 759.600:

(1) "Adjoining telecommunications utility" means a telecommunications utility that serves territory adjacent to the territory in which an unserved person who applies for local exchange telecommunications service is located.

(2) "Unserved person" means a person:

(a) Who does not have local exchange telecommunications service; and

(b) Who, for the initiation of such service, would be required to pay line extension charges in excess of 100 times the charge for one party, flat rate residential service contained in the tariff of the telecommunications utility to which is allocated the territory in which the person is located. [1989 c.574 §2]

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

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

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

(a) It is more economical and feasible for an adjoining telecommunications utility to provide local exchange telecommunications service to the unserved person; and

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

(2) Any order of the commission issued under subsection (1) of this section shall not have the effect of changing the territories allocated under ORS 758.400 to 758.475. [1989 c.574 §4]

759.600 Extension of service by other utility; compensation for previous service. (1) Notwithstanding ORS 759.595, the telecommunications utility to which is allocated the territory in which an unserved person is located may begin providing local exchange telecommunications service to that person when the utility extends its plant, facilities or lines so that its tariffed line extension charges to serve that person are zero. The adjoining telecommunications utility serving the person pursuant to an order of the commission issued under ORS 759.595 shall then cease to provide local exchange telecommunications service to that person.

(2) The commission may order a telecommunications utility that is commencing local exchange telecommunications service to a person pursuant to subsection (1) of this section to provide just compensation to the adjoining telecommunications utility if the commission finds that:

(a) The person first received such telecommunications service from the adjoining telecommunications utility under ORS 759.595;

(b) Such service was established within the past five years; and

(c) The adjoining telecommunications utility can determine with reasonable accuracy the amount of its unrecovered investment in facilities installed to provide such telecommunications service to the person.

(3) Compensation ordered under subsection (2) of this section shall not exceed the unrecovered investment of the adjoining telecommunications utility. [1989 c.574 §5]

ATTACHMENT REGULATION

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

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

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

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

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

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

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

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

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

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

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

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

OPERATOR SERVICE PROVIDERS

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

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

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

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

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

(2) Each operator service provider shall:

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

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

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

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

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

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

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

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

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

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

RESIDENTIAL SERVICE PROTECTION

Note: Sections 2 to 8, chapter 290, Oregon Laws 1987, which are repealed January 1, 1992, (see section 16 of chapter 290) 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 distinct from the General Fund. Interest earned by moneys in the fund shall be credited to the fund All moneys in the fund are appropriated to the Public Utility Commission to carry out the provisions of chapter 290, Oregon Laws 1987, 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, chapter 290, Oregon Laws 1987 Moneys in the account may be expended only to carry out the provisions of sections 2 and 6, chapter 290, Oregon Laws 1987, 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, chapter 290, Oregon Laws 1987 Moneys in the account may be expended only to carry out the provisions of sections 9 to 14, chapter 290, Oregon Laws 1987, including costs to the telecommunications utility to educate customers and administer any approved plan. [1987 c 290 §8, 1989 c 966 §74]

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 chapter 290, Oregon Laws 1987, 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 However, two telecommunication devices for the deaf may be provided to a household if more than one eligible person permanently resides in the household. Households without any telecommunication devices for the deaf shall be given priority over households with one telecommunication device for the deaf when such devices are distributed

(3) Nothing in sections 9 to 14 of chapter 290, Oregon Laws 1987, 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; 1989 c 115 §1]

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]

DAMAGES

759.900 Utility liable for damages caused by law violation; effect on other remedies; personal injury or property damaged excepted. (1) Any telecommunications utility which does, or causes or permits to be done, any matter, act or thing prohibited by this chapter or ORS chapter 756, 757 or 758 or omits to do any act, matter or thing required to be done by such statutes, is liable to the person injured thereby in the amount of damages sustained in consequence of such violation. If damages are awarded, the court may also fix and award reasonable attorney fees at trial and on appeal.

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

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

PENALTIES

759.990 Penalties. (1) Any telecommunications utility violating ORS 759.260 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 759.260 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 ORS 759.275 shall, upon conviction, forfeit and pay to the State Treasurer not less than $100 and not more than $10,000 for each offense. Violation of ORS 759.275 by any agent or officer of any telecommunications utility or person is punishable, upon conviction, by a fine of not less than $100 and not more than $1,000 for each offense.

(3) Violation of ORS 759.280 is punishable, upon conviction, by a fine of not less than $50 nor more than $1,000 for each offense.

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

(5) Violation of ORS 759.360 is a felony and is punishable, upon conviction, by a fine of not less than $1,000 nor more than $20,000, or by imprisonment in the penitentiary for not less than one nor more than five years, or both. [1987 c.447 §52]