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November 20, 2012

**VIA E-MAIL AND U.S. MAIL**

Filing Center  
Oregon Public Utility Commission  
PO Box 2148  
Salem, OR 97308-2148

Re: Docket UM 1481

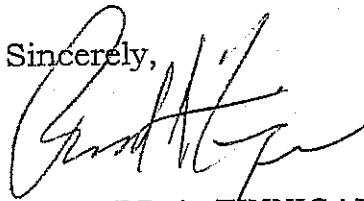
Dear Sir/Madam:

Enclosed is the Response of the Oregon Telecommunications Association to the Oregon Cable Telecommunications Association's Motion to Compel.

Please note that the original and one copy of the Response is enclosed. The Certificate of Service is also enclosed.

Thank you for your attention to this matter.

Sincerely,



RICHARD A. FINNIGAN

RAF/cs  
Enclosures

cc: Service List (via e-mail)

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BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UM 1481 (Phase II)

In the Matter of  
PUBLIC UTILITY COMMISSION OF  
OREGON  
Staff investigation of the Oregon Universal  
Service Fund.

OREGON TELECOMMUNICATIONS  
ASSOCIATION'S RESPONSE TO OCTA'S  
MOTION TO COMPEL

On November 14, 2012, the Oregon Cable Telecommunications Association (OCTA) filed a Motion to Compel the Oregon Telecommunications Association (OTA) and its members to produce certain information concerning broadband services as sought by OCTA's data requests 1, 3, 4 and 8 of its First Set of Data Requests (the "Motion"). By this pleading, OTA files its response to the Motion. OTA respectfully requests that the Motion be denied.

There are three reasons why the Motion should be denied. The first is that the purported reason for seeking the broadband information is barred by ORS 759.218 and, therefore, the requests are not relevant.

1 The second reason that the Motion should be denied is that it is beyond the scope of this  
2 docket as determined by the Ruling issued August 29, 2012 in this matter.

3  
4 The third reason that the Motion should be denied is that the reasons advanced by OCTA  
5 why the broadband data is relevant are taken out of context and when put in to proper context do not  
6 support OCTA's argument in its Motion.

7  
8 This Response will explain each of these three reasons in more detail and then address other  
9 discovery issues raised by the Motion

10  
11 1. The Purported Use of the Broadband Data is a Violation of ORS 759.218.

12 The primary argument advanced by OCTA is as follows:

13  
14 A central issue in the docket is "[w]hat changes should be made to the existing  
15 OUSF related to the calculation, the collection, and the distribution of funds."  
16 Calculation of OUSF support must take into consideration whether a carrier actually  
17 *needs* support. Carrier revenues that can be used to off-set the cost of providing  
18 service are relevant to that analysis.<sup>1</sup>(emphasis in original, footnote omitted)

19 Thus, OCTA seeks to use revenues from broadband service to off-set the cost of providing basic  
20 telephone service. This purported reason for seeking the broadband data would result in the use of  
21 such information in violation of ORS 759.218.

22 The basic purpose of the Oregon Universal Service Fund (OUSF) is set out in ORS  
23 759.425(1). In that statute it is stated ". . . the Commission shall use the universal service fund to

24  
25 <sup>1</sup> Motion at p.5.

1 ensure basic telephone service is available at a reasonable and affordable rate." Thus, the focus of  
2 the current legislation is on basic telephone service. Under ORS 759.218(2), legislature directed  
3 that "The Public Utility Commission may not require revenues or expenses from an activity that is  
4 not regulated under this chapter to be attributed to the regulated activities of a telecommunications  
5 utility." Thus, the very reason advanced by OCTA that broadband revenues "can be used to off-set  
6 the cost of providing service"<sup>2</sup> (by definition the term "service" used by OCTA is basic telephone  
7 service as the term is used in ORS 759.425) is barred by ORS 759.218. It is clear that broadband  
8 services and the revenues from broadband services are not regulated under Chapter 759 ORS.<sup>3</sup>

9  
10 In addition, ORS 759.218(3) goes on to expressly provide that basic local service rates can  
11 be subsidized by revenues "from other *regulated* services to partially cover the costs of providing  
12 basic local service." (Emphasis supplied) Thus the legislature made it clear that regulated revenues  
13 may be used to address basic local service rates, the focus of the OUSF under ORS 759.425. By  
14 doing so, the legislature is also clearly stating that unregulated revenues, such as broadband  
15 revenues, may not be used for that purpose.

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16  
17 <sup>2</sup> *Ibid.*  
18 <sup>3</sup> Most of OTA's members offer the DSL (transport) portion of the services as an interstate service. The ISP  
19 portion of the service is not regulated. Neither an interstate service nor an unregulated service are regulated  
20 under Chapter 759 ORS. See, *In the Matters of Appropriate Framework for Broadband Access to the*  
21 *Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, Review of Regulatory*  
22 *Requirements for Incumbent LEC Broadband Telecommunications Services, Computer III Further Remand*  
23 *Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review --*  
24 *Review of Computer III and ONA Safeguards and Requirements, Conditional Petition of the Verizon*  
25 *Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services*  
26 *Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or,*  
*Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises,*  
*Consumer Protection in the Broadband Era, CC Docket No. 02-33, CC Docket No. 01-337, CC Docket Nos.*  
*95-20, 98-10, WC Docket No. 04-242, WC Docket No. 05-271, Report and Order and Notice of Proposed*  
*Rulemaking, FCC 05-150 (Released Sep. 23, 2005) (classifying DSL as an interstate or unregulated service*  
*at the rate-of-return carrier's option).*

1 OCTA relies on ORS 40.150 and ORCP 36B(1) as the relevancy tests for discovery. Under  
2 ORS 40.150, the material sought must be designed to produce evidence having any tendency to  
3 make the existence of any fact that is of consequence to the determination of the action more  
4 probable or less probable than it would be without the evidence. Under ORCP 36B(1) the  
5 information sought must be reasonably calculated to lead to the discovery of admissible evidence.  
6 Here, the argued reason for the requested information--to use broadband revenue to off-set the cost  
7 of basic local service--would be a violation of statute. Thus, there could not be a clearer case of  
8 seeking information that is not relevant.

9  
10 2. The Broadband Information that is Sought is Beyond the Scope of this Docket.

11 By a letter dated August 21, 2012, Jason W. Jones, Counsel to Staff, submitted a proposed  
12 Joint Issues List on behalf of all parties for Commission review. The purpose of submitting the  
13 proposed Joint Issues List was to obtain a ruling on what issues the Commission would like  
14 addressed in this phase of the proceeding. The first issue that was set forth on that list was "What is  
15 the purpose of the Oregon Universal Service Fund (OUSF)?" This issue would have entailed  
16 consideration of what role broadband plays in the purpose of the OUSF.

17  
18 In the Ruling issued August 29, 2012, the Commission determined that Issue 1 would not be  
19 included in the current proceeding, stating as follows: "Issue 1 will not be included in these  
20 proceedings, as the purpose of the OUSF has been established--and may only be revised--by an act  
21 of the legislature. The purpose of the OUSF is to assure the availability of basic telephone service  
22 at a reasonable and affordable rate."<sup>4</sup>

23  
24  
25 <sup>4</sup> Ruling at p.2.  
26

1 While it might be desirable at some future date to explore the role of broadband in the  
2 OUSF, that issue, much like the desirability of reviewing the level of contribution from wireless  
3 carriers to the OUSF, is a matter of legislative determination at the present time and is beyond the  
4 scope of this docket. Therefore, the information sought is not relevant to this docket.  
5

6 3. The Arguments Advanced by OCTA Do Not Support its Conclusion.

7 OCTA offers two specific arguments to imply that the Commission has already determined  
8 that the use of broadband data is relevant to this proceeding. The first of these is to point to Staff's  
9 comments on the Issues List in an earlier phase of UM 1481. As argued by OCTA, in Staff's earlier  
10 comments, Staff took the position that DSL revenues should be used to reduce support from the  
11 OUSF.<sup>5</sup> While it is uncontroverted that Staff made those statements, there are two reasons why the  
12 OCTA argument is unpersuasive. First, this is simply a Staff comment, it is not a Commission  
13 decision. Second, and, more importantly, OCTA takes Staff's comments out of context. If the  
14 entire breadth of Staff's comments are reviewed, a copy of which is attached as Exhibit 1, what Staff  
15 was talking about was what a future OUSF might look like if it included broadband as part of the  
16 OUSF considerations.<sup>6</sup> In that context, if the OUSF includes broadband then looking at broadband  
17 revenues makes sense. However, since we are not looking at what future purposes might be served  
18 by including broadband the OUSF in this phase of the docket, arguing that Staff's comments  
19 somehow makes broadband data relevant is to take Staff's comments out of context. OCTA fails to  
20 present the proper context for consideration and its argument is simply an effort to mislead.  
21  
22  
23

24 <sup>5</sup> Motion of p.5.

25 <sup>6</sup> Staff Comments at Issues 26-29

1 The second argument advanced by OCTA is that the Commission itself, in its first triennial  
2 review of rural carrier OUSF funding, somehow approved a statement regarding use of broadband  
3 revenues. As advanced by OCTA in its Motion that statement is as follows:

4 " '[i]mput[ing] DSL revenues as an additional OUSF off-set'; and '[a]adjust[ing] the line count to  
5 include DSL capable lines in the denominator to calculate cost per line,'"<sup>7</sup> OCTA's apparent  
6 argument is that this statement is somehow part of the Commission's determination. Again, OCTA  
7 is taking the language out of context.

8  
9 The entire 2006 Order is attached as Exhibit 2. As is clearly set out of page 12, beginning at line 7,  
10 of the cited Appendix A, the purpose of the language provided by the Commission Staff was to  
11 present various alternatives for discussion early in the proceeding: "Two workshops were held to  
12 discuss the possible increases to the size of the draw from the OUSF by rural companies and steps  
13 that might be taken to mitigate that draw. This included discussing the alternatives on Appendix  
14 A."<sup>8</sup> As the document goes on to state, "At the first workshop, representatives of OTA asked for the  
15 opportunity to explore options beyond those listed on Appendix A. That opportunity was granted  
16 and a second workshop was scheduled for March 30, 2006. Shortly before the second workshop,  
17 OTA circulated its initial position, which was that the Commission Order should be implemented as  
18 adopted."<sup>9</sup>

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20  
21  
22 <sup>7</sup> Motion at p. 5-6 citing, *In the Matter of the Public Utility Commission of Oregon Staff Investigation of the*  
*Oregon Universal Service Fund*, Order 06-297, UM 1017, Appendix A, at 7(June 14, 2006).

23 <sup>8</sup> Please note that the Appendix A referenced in this quote is Appendix A to the Memorandum of  
24 Understanding (page 16 of the Appendix A to the Order). The same list of alternatives is found at both pages  
25 7 and 16 of Appendix A to the Order.

26 <sup>9</sup> Appendix A at p. 12 l. 14-17.

1 Appendix A to the Order goes on to point out: "At the March 30, 2006 workshop, OTA  
2 developed and offered a compromise position. . . . That compromise was discussed and received  
3 general support at the workshop."<sup>10</sup> Appendix A to the 2006 Order sets forth the history of  
4 negotiations ultimately resulting in the Memorandum of Understanding that was submitted to the  
5 Commission. The Commission accepted the Memorandum of Understanding. However, there is no  
6 possible way that it can be properly construed that the Commission approved or adopted the one  
7 sentence on Staff's initial list of alternatives for discussion relied on by OCTA. It is clear from the  
8 context that the parties moved beyond that list of alternatives and came up with a proposal  
9 completely separate and apart from that initial listing of alternatives. It is that separate proposal that  
10 the Commission approved. There can be no inference that the Commission has ruled that  
11 broadband revenues are relevant to OUSF issues. Thus, OCTA again takes language out of context.  
12 When placed in proper context, OCTA's position is not supported by its own argument.

13  
14 4. Other Matters.

15 There are other objections that are raised to producing the data that have not been addressed  
16 by OCTA. These objections include that the data requests are seeking to have the OTA members  
17 perform a special study. The objection is also made that the data requests are overly burdensome.  
18 The data requests have also been objected to as misleading. A sample of the entire objection is  
19 attached as Exhibit 3.

20  
21 The data requests seek revenue by customer class. Most OTA members do not track  
22 revenues by customer class. Thus, to respond to that portion of data requests would require each  
23 OTA member to perform a special study by examining each and every bill that it has issued to each

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25 <sup>10</sup> Appendix A at p. 13 l. 2-4.



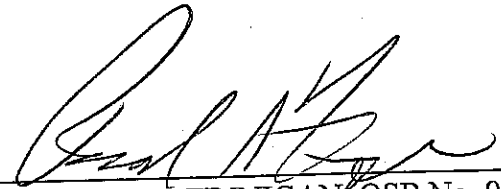
1 and every customer throughout 2011. Not only is that requiring a special study, it is clearly overly  
2 burdensome. Such a special study is barred by OAR 860-001-0500(4). Further, since the data  
3 request requested broadband revenues but without the corresponding expenses, it is clearly seeking  
4 information that would be misleading. OCTA does not address these objections.

5  
6 As to data request 8, that portion of the discovery dispute has been resolved.

7  
8 CONCLUSION

9 Based on the foregoing, OTA respectfully requests that OCTA's Motion to Compel be  
10 denied.

11  
12 DATED: November 20, 2012.

13  
14 

15 RICHARD A. FINNIGAN, OSB No. 965357  
16 Attorney for the Oregon Telecommunications Association

# EXHIBIT 1

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1481**

In the Matter of PUBLIC UTILITY  
COMMISSION OF OREGON  
Investigation Into The Oregon Universal  
Service Fund

STAFF'S COMMENTS

**Need For an OUSF**

1. *Is there a need for an Oregon Universal Service Fund (OUSF)?*

The OUSF was brought into existence by ORS 759.425 to meet the needs of Oregon residents for affordable, basic telecommunication service. The underpinning of ORS 759.425 was the principle laid out in Section 254 of the Telecommunications Act of 1996 (Section 254), which stated:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.<sup>1</sup>

Since 1996, the need to have affordable and reasonably comparable service has not changed. The same conditions that produced the policy statement still exist: low income consumers and pockets of high cost service produced by low densities, difficult terrain, or a combination of both. Since 1996 communication requirements have increased further widening the gap between people residing in high-density, low-cost areas and those in low density areas. With the expanded requirement for advanced services such as broadband, it has also expanded the difference between service available to the population as a whole and those available to low-income customers. With the increased requirement for basic and advanced services, the objective stated in the principle cited above has become more important, not less.

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<sup>1</sup> The Telecommunications Act of 1996, 47 U.S.C. § 254(b)(3) (referenced hereafter as "Section 254").

Although the federal and state programs have been successful in achieving penetration rates above 90%, it is likely that these penetration rates would rapidly drop should the prices start rising as a result of the support being discontinued.

2. *Is there a need for an OUSF to fund narrowband telecommunications service?*

Yes, there is a need to ensure that affordable and reasonably comparable narrowband telecommunications services are available to everyone in the state of Oregon. Over the past several years, the number of low-income households has grown, not diminished. Narrowband phone service, beyond Lifeline, provides a means of searching for jobs, communicating with businesses and other households, and getting help in case of emergencies and requires no additional equipment beyond a relatively inexpensive telephone. Although broadband networks may supplant voice grade networks in the near future, there still exists the requirement for additional equipment and a certain level of expertise to use them that has acted as a barrier to low income households.

3. *Is there a need for an intrastate mechanism to fund broadband?*

Yes, there is a need for a fund supporting these services to make them affordable to low-income customers and customers located in high cost areas. The goal of such a fund should be the specific targeting of areas and customer groups that would not otherwise have access to broadband services. This access does not necessarily have to be at the household level, which is important for narrowband services; searches and e-mails do not have to be on a real-time basis to be effective. The potential need for broadband services was stated in the Section 254 policy cited earlier when it addressed the need for advanced and information services.

The scope of a broadband fund could be fairly narrow, targeting only specific customers and regions that have not been served. As a result of the conditions imposed in the mergers involving Verizon and Qwest and the deployment of broadband networks by the smaller companies, most customers will have access to broadband services in the very near future. These actions address what the Federal Communication Commission (FCC) refers to as the last-mile and at the speed requirement considered to be the present standard for broadband, but they do not address the need for high-speed connections between anchor institutions located in low-density, high-cost areas.

4. *Assuming there is a need for an OUSF to fund both narrowband and broadband services, should there be a separate Fund for each?*

It is important to first note that it would require a statutory change to allow the OUSF to support broadband services. Staff's response to this question, and other questions concerning broadband services, is premised upon this understanding.

No, there should only be one OUSF, with two or more funds operating under that general umbrella. By having only a single OUSF with multiple funds under it, it is possible to simplify the process by having only a single fee paid into the fund. Having multiple funds under a single umbrella would also allow the smooth transition from one objective to the next objective. It would also allow funds to be quickly brought into existence or eliminated as conditions change.

Over the past ten years the OUSF has consisted of multiple funds: one fund directing money to the non-rural companies, another fund directing money to the rural companies, and a final one being used to direct money to broadband mapping. While the function of these funds was loosely defined in the past, going forward there should be specific objectives and benchmarks.

### **The Current OUSF**

5. *Has the current OUSF met the statutory goal found in ORS 759.425 of ensuring basic telephone service is available at a reasonable and affordable rate?*

The current OUSF has not been directly used to make basic telephone service available at a reasonable and affordable rate, but the statutory goal was met via an indirect approach. For GTE (now Frontier) and US West (currently Qwest) the OUSF payments were used to reduce, and keep at the present level, selected business rates on a revenue neutral basis. Revenue neutral means that for every dollar the company received in support there was a dollar reduction in revenues as a result of price decreases.

For the small companies, the OUSF payments were and are used to reduce the Carrier Common Line Charge (CCL) component of their intrastate access rates on a revenue neutral basis.

6. *Should the Commission retain the status quo until it knows what the FCC is doing and how the National Broadband Plan and American Recovery and Reinvestment Act are implemented?*

No, the Commission should start making changes to the OUSF sooner rather than later to improve. Sources of ideas for improvements will be the comments filed by the parties in this docket.

7. *What services should be supported as basic telephone service in 2010?*

Administrative Rule 860-032-0190 defines "basic service" consistent with ORS 759.400(1) as retail telecommunications service that is single party, has voice grade or equivalent transmission parameters and tone-dialing capability, provides local exchange calling, and gives customers access to EAS, long distance, directory assistance, and operator services. For 2010, these should be the services that are supported, so they are available at reasonable rates and relatively comparable in quality across the state.

8. *Should OUSF support all lines? If not what lines should be supported (e.g. primary, residential)?*

No, the OUSF, as its charter is presently laid out, should not support all lines. Included for support are primary residential and business lines, PBX trunks, Key lines, and Public Access lines. The intent in restricting the support to just these lines was to control the size of the fund to avoid the ambiguity of using "equivalent channels" as a proxy for lines, and to not have to address the significant difference in cost per line of providing high capacity systems.<sup>2</sup>

9. *What is a reasonable and affordable rate for basic telephone service in 2010? Should the Commission revisit the current benchmark rate for basic telephone service?*

Within the context of the current OUSF it would be pointless to speculate on what a reasonable and affordable benchmark rate would be today. It would also be pointless for the Commission to revisit the current benchmark.

When the benchmark was developed, it was the average economic cost of providing service, derived from the FCC model using the combined GTE-US West serving areas. The benchmark was not based on an estimate of a reasonable and affordable rate. The benchmark was used to separate wire centers into two groups: those whose economic cost was above the benchmark and those whose economic cost was below the benchmark.

At this time, changing the benchmark would not impact the non-rural companies whose economic cost was calculated using a model that has not been updated since the late 1990s. Similarly, changing the benchmark most likely would not impact the rural companies either, since their support per line has been effectively frozen since 2003.

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<sup>2</sup> An equivalent channel refers to the number of voice grade paths that can be produced by a transmission level, such as a DS3.

10. *The 2003 order permitting small carriers to draw from the OUSF (Docket UM 1017, Order No. 03-082) contemplated that the fund would be used to offset access rate reductions. Has such an offset occurred? If not, why not?*

Yes, the offset has occurred and is occurring each year. The OUSF support per line that each company receives is used to reduce its Carrier Common Line (CCL) revenue requirement. This reduction takes place each year when the Intrastate Access rates are calculated for the companies participating in the OECA access pool. The effect of this reduction is to reduce the CCL component of the intrastate access charge rate.

11. *Is the OUSF money currently provided to companies spent for the intended purpose of the fund?*

Yes, see the response to Question 5.

12. *How does the Commission insure that the OUSF money provided to the companies is spent for the intended purpose? Is documentation required? Is a report required? Is an attestation required? Is documentation currently subject to audit and, in fact, audited?*

Each year the intrastate access rates are developed for the rural companies and the OUSF support is applied directly against the CCL element of these rates. With the exception of some small amounts, the use of the funds by the small companies is easily tracked. For the two large companies the Commission currently has no effective way to determine how the money has been spent. Staff will review the parties' opening comments and reserves the right to supplement this response in the next round of comments.

13. *Can the Commission verify today that the OUSF money provided to companies has historically been spent for the intended purpose?*

See response to Question 12.

### **Future Objectives of an OUSF**

14. *What key public policy objectives should be supported through an OUSF?*

The key public policy objective should be based on the principle stated in Section 254. That objective for Oregon should be as follows:  
Consumers in all regions of Oregon, including low-income consumers those in rural and high cost areas, and those on reservations should have access to

telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

There are also secondary policy objectives that should be considered as well: the development of an infrastructure that supports the growth of jobs throughout Oregon, the development of a network that ties together key institutions, and the transitioning of incumbent telecommunications companies that are seeing their support diminished while being impacted by federal-level policy changes.

15. *How do Oregon Universal Service fund(s) advance the Commission's universal service goals?*

The Commission's universal service goals or policy objectives, as discussed in Response 14, generally require special funding since the key element of the policy focuses on providing services and levels of service in areas where it is generally uneconomical to do so, yet socially responsible to do so. In these areas it is not reasonable to assume that private companies will pick up the cost of providing the service. The Oregon Universal Service fund(s) can defer all or part of the cost of providing service in those specific areas by collecting a small fee from all telecommunications users.

16. *How is progress toward OUSF goals measured?*

The key element of measuring progress toward OUSF goals is to have clearly stated goals with a set of milestones against which progress can be measured and a system of reimbursement that is consistent with the project being funded. If the project involves making a specific investment, the support payments should be based on a percentage of completion or some similar method for contract payment. If the payments are used to defer the ongoing maintenance or support of a project, then the pattern of payments should match the disbursements.

17. *Should the OUSF support multiple funds, each fund targeting a specific goal (e.g. compensation for access rates reduction, broadband expansion, special projects or voice service vouchers to offset access rate reduction rate rebalancing)?*

Yes, depending on the final set of policy objectives selected, the OUSF should be structured so that there is a fund within it that clearly supports each of the objectives. This would facilitate a clear measurement of how well each fund is meeting its goals and allow money to be transferred from one fund to another as the objectives of a fund are completed.



This structure would also allow new funds to come into existence as the need arises and statute permits. The final value of having multiple funds under the OUSF is that it would allow the costs and benefits of each fund to be compared and the amount of money in each fund determined by the relative benefit. This would allow the allocation to each fund to be adjusted as well as its overall size.

18. *Should access reform be an integral part of OUSF reform? Should any portion of the OUSF fund be used to offset access rate reductions?*

As a practical matter, access reform cannot be separated from OUSF reform. At this time, a portion of the present OUSF is currently dedicated to reducing intrastate access rates for the small companies by reducing the CCL charge element. This use of the fund was dictated by Orders No. 03-082 coming out of UM 1017.

If access rates are forced down, the companies receiving the access revenues will be forced to recover the lost revenues by raising prices to their customers.

19. *Should any portion of the OUSF be directed to providing vouchers to individuals, who qualify based on income, impacted by increases in basic service charges resulting from mandatory access rate reductions?*

Vouchers provide a highly focused way of targeting support and measuring whether the support is working as intended. A major strength and weakness of a voucher system is that it allows the individuals to pick their service provider; this could lead to customers in the higher density areas of a wire center, where there could be competition, abandoning the wireline network. If this happened, the per line cost of providing service for those customers remaining on the wireline network would increase. Another potential weakness of vouchers is they require a set of criteria to determine who gets them and who does not, with potentially many borderline cases. This could lead to a fairly high administration cost.

As a practical matter, there are a number of issues that would need to be worked out before vouchers could be used to offset the impact of rate re-balancing driven by access rate reductions.

20. *Should any portion of the fund be used for loans or grants for specific voice grade or broadband projects? If a portion of the fund is used for such a purpose, what qualifications must the grantee possess to receive funding?*

Having a fund under the OUSF umbrella that is dedicated to providing loans or grants for specific voice grade or broadband projects would be very useful in

promoting investment in areas, which without some support could not be justified. It would also provide a better way of monitoring projects, as was discussed in Response 16.

21. *Can the cost of providing service in high cost areas be recovered by increasing rates to the customers in those high cost areas while meeting the affordability test under 47 U.S.C. §254(b)(1) and (2) and others, while providing vouchers to customers who meet the income/wealth tests? If so, should it?*

To the extent that there is no comparably priced competition in the area, the cost of providing service in high cost areas can be done so it meets the affordability test. After the prices are increased, the affordability test can be met by using vouchers to assist the customers for whom the service is now no longer affordable.

If there is a competitor with a comparably priced service, raising prices will result in a loss of customers to the competitor, which in turn will drive up prices; these higher prices will result in further losses. This process will continue until there are effectively no customers left.

22. *As a larger number of households opt for wireless service instead of wireline service, is there a need to support the wireline network in rural Oregon?*

At this time there is a need to support the wireline companies, in particular the small wireline companies, even though wireless services are becoming more pervasive. The small companies still account for tens of thousands of customers primarily located in the rural and high cost areas. Aside from the telecommunications and data services that they provide for their customer base, they are also an important source of jobs in communities that would otherwise have no or a minimal employment base. As recipients of funds from other parts of the state and from other parts of the country, they bring an infusion of cash into the communities where they are located that would otherwise not be there. For no other reason, this makes them important.

From the standpoint of the service that they provide, the wireline companies and the wireless companies are to some extent interdependent, with the wireless companies purchasing special access facilities from the wireline companies.

23. *Should one of the purposes of the OUSF be to fund worthy communications-related projects, similar in scope to those that were being funded by ARRA?*

There are a number of complex implementation issues that would need to be addressed, but having a fund in the OUSF that focuses on financing projects rather than making monthly payments would allow more control over how OUSF

money is spent. In the case of new projects, tracking could be done to ensure the money is invested as it should be. In the case of existing projects, a one-time payment could be made to the company to take the investment off of its books and reduce the companies' cost of providing service.

24. *Should it be a specific objective of the fund to ensure that under-served areas get the needed communication services to create parity throughout the state of Oregon?*

No, it should not be the objective of the fund to produce parity throughout the state. There should be core communications services that should be available to all communities throughout the state, but this is not the same as having parity. Some services by their nature are not a necessity and are too expensive to provide outside of high density areas. Also, there are some remote locations where there are only a few households being served. These locations, by their nature, cannot be expected to have service fully comparable with that found in the rest of the state of Oregon.

25. *Should there be OUSF funding where a large percentage of the funded area has unsubsidized competition today?*

With the present fund, there generally is no funding in areas where a large percentage of the area has unsubsidized competition. These are the high and medium density areas, wire centers for the two large companies and the entire serving area for the rest, where the cost of service is below the benchmark rate and the support is zero.

Even if there is a large percentage of unsubsidized competition in an area where the incumbent is receiving support, the competitor could be operating in the high density portion of the serving area. The high cost of providing service can generally be attributed to the customers residing outside the core area. The company receiving support is required to serve all of the customers in the area; the unsubsidized company is not required to do so. This allows the unsubsidized company to pick the relatively high-density areas to serve while bypassing the relatively low-density areas that are expensive to serve. This can happen at any geographic level: wire center or total company.

### **Future Size of the Fund**

26. *Should the size of the fund be directly tied to its objectives (e.g. supporting voice service in high cost areas, expanding broadband service to currently un-served areas, providing on-going support for voice and broadband service in high cost areas)?*

The size of the OUSF should be directly related to the functions that it is designed to perform and should be relatively free to expand or contract within a range as those functions evolve over time.

27. *Should there be a stated limit on the size of the OUSF? If so, how should it change over time or as the federal jurisdiction assigns more cost to the state jurisdiction? Should there be: 1) mechanisms to reduce the fund over time; 2) mechanisms to periodically review whether the fund is still needed; or 3) associated triggers for determining whether unfunded competitive offerings are sufficient to do away with funding?*

The size of the OUSF should be tied to the programs that it is supporting and not to some arbitrary dollar amount. Control of the fund size should be done through controlling the programs covered by the fund and through controlling the assessment rate once the size of the fund has been established.

28. *Before determining the size of the universal service fund, should local service rates for companies receiving money from the fund be brought up to a minimum, state-wide, zone specific rate? If yes, how should these rates be determined?*

Without knowing the programs that are going to be sponsored by a new OUSF and what actions are going to be required of the companies, it is difficult to say what actions the small companies should take. Minimum state-wide, zone specific rates seem reasonable, but they may not turn out to be reasonable for low-income areas. If they are significantly higher than the current rates they may produce line losses, which will drive up the per line cost of service.

### **Future Requirements for Receiving Money from the Fund**

29. *Should there be a revenue test or a profitability test as well as a cost test for determining eligibility of a company to receive money from the fund? If yes, which revenues should be included?*

If support is directed to a company as opposed to an individual, total profitability of the company in the area being supported should be considered when determining the amount of support that a company receives. Presently, only federal support is used to reduce the support level. Other items, such as DSL revenues or revenues derived from providing internet services, should also be used to reduce the company's revenue requirement. Support should be based on what is required to make the company profitable in a particular serving area.

30. *Should competitive bidding, or other similar mechanisms, be considered in order to ensure the smallest burden possible on all consumers who support the fund?*

Competitive bidding is not an effective way to ensure the support being provided is the smallest possible. Competitive bidding to provide service in a specific geographic area assumes that the bidder has the capability of providing service in that area and can provide service to all of the customers presently being served.

If a competitor has effectively taken over the serving area of an existing company, with the exception of a few pockets, and is willing to add the remaining customers if it receives support for them, then the support should be terminated to the incumbent and the competitor should become the designated provider. The only support the competitor would receive is for the small pockets that were not cost effective to provide service to.

31. *If the fund provides ARRA type grants, what qualifications are required of the bidding companies and what are the requirements for information to be included in the bid?*

This is an implementation question. If an ARRA type grant process is adopted for consideration, all of the issues of company qualifications, project selection criteria, and the nature of the grants or loans need to be thoroughly reviewed.

### **Future Requirements: Company, Customer, or Specific Geographic Area**

32. *Should the support go to communication consumers in the form of vouchers in a high cost area or should the support go to the specific company serving that consumer?*

Presently, support is paid to the companies on a per line basis and if that line is lost to an eligible competitor, the support goes to the competitor or if the line is lost to an ineligible competitor the support goes away completely. There are only two material differences between this and a voucher system: the customer is unaware that they have this money, and only the incumbent or an eligible ETC is allowed to receive the money.

33. *If vouchers are provided to consumers, should providers price their service in high cost areas at cost?*

No, the prices in general should not be set at cost. Even if every customer were to receive a voucher to offset a price set at cost, such a price could drive the customer to seek an alternative service provider, with the result that the cost per line for the remaining customers would increase.

A critical issue with high cost service areas is maintaining the customer base, particularly those in the relatively low cost sections of the serving area where there may be alternative service providers. As this group of customers is lost, the overall cost to serve will rise rapidly and the required support increases.

34. *How should on-going support be targeted to high cost areas that contain no unsubsidized competitor?*

There are a number of ways that support can be provided to a high cost area. The one that is commonly used presently is a per line support paid on a periodic basis (monthly, quarterly) to the company. An alternative form of support would involve having the fund provide a grant to cover the cost of the initial investment and have the periodic support cover ongoing maintenance and repairs. If this type of process were adopted for consideration, the details would have to be worked out in the implementation stage.

### **Future Accountability**

35. *How should the Commission ensure that the money provided to the companies is spent for the intended purpose?*

This is an implementation stage issue and is highly dependent on what is going to be supported by the fund. At a high level, it would be useful for tracking purposes to see the money received from the fund carried in an account on the company's books. It would also be useful to see a list of withdrawals from the accounts that were used to cover explicit expenses related to supporting the high cost areas. Further, it would be useful to see what portion of the expenses booked to specific expense account was covered by the fund.

36. *What type of accountability measures should be in place to ensure that money paid out from the fund is used for the purposes for which the fund is established, including that the OUSF receipts are spent in Oregon?*

See response to Question 35.

37. *How should the Commission ensure that the money provided to the customers in the form of vouchers is spent for the intended purpose?*

This is an implementation stage issue and needs to be addressed in depth at that stage, but in principle, there should be a periodic investigation conducted to determine if the vouchers are going to the right people and are being used as intended. This can be done by taking a periodic sample of the recipients and

determining what portion of the vouchers are being incorrectly distributed or misused.

38. *Should the companies receiving money from the fund be required to show the total Oregon earnings of the company?*

This is an implementation stage issue and needs to be addressed in depth at that stage. There are a number of issues regarding product lines and subsidiary companies that need to be addressed in depth; however, as a principle, a company's total communications earnings should be considered when determining if a company needs support for serving a particular geographic area.

39. *Should the companies that have been receiving money from the fund be required to itemize how they have spent the money?*

For all of the companies participating in the Access Pool it is clear that the money has been used to reduce the CCL component of access rates on a revenue neutral basis. For the two large carriers, the money was used to reduce business rates on a revenue neutral basis. In the future, depending on the nature of the funds supported by the OUSF, the use of the money should be tracked as flows in and out of accounts, but not on an itemized basis as this would be too difficult to collect and analyze.

40. *If one of the goals of the fund is to distribute the funds in an efficient, targeted manner that avoids waste and minimizes the burden on Oregon customers, how should this be executed?*

This is an implementation issue that needs to be addressed once the specific goals of the fund or funds that will make up the OUSF have been determined. The general principle that needs to be followed at that stage is the need for frequent, periodic monitoring of how the money is being used and periodic reviews of need for the fund. Also, the payment methods need to be structured so they are consistent with the company's expenditures: if it is a one-time investment, the payment from the fund should reflect that; if it is to cover monthly expenses, the payments should be monthly.

41. *If a benchmark for voice grade service is used to determine support, such as it is presently done, should that benchmark include mandatory EAS?*

If the methodology used to set the existing benchmark, which is cost based, were used going forward, the incorporation of mandatory EAS would have only minor impact on the level of support provided to the various companies. The addition of

the cost for mandatory EAS could increase the benchmark level, but it could also increase the cost of providing service for each of the companies, with support staying the same as the net effect.

42. *Should all or part of the money received by a company for the support of a specific wire center be spent on that wire center?*

No, the money from the OUSF should be directed toward the high cost wire centers as a pool, but there should be no requirement that the money received from the OUSF for a specific wire center should be spent on that wire center. There are timing issues that would make it difficult to cover investments and expenses for the wire center on that basis.

On a pooled basis, the larger companies could set up a tracking account for the money received from the fund and disbursed to its various expense and investment accounts where expenditures for areas in the high cost pool are tracked.

### **Future Look at Carrier of Last Resort (COLR) Obligations**

43. *Should a company receiving support be required to be a COLR?*

No, companies should not be required to be a COLR to receive money from the OUSF. The concept is currently too vague to make it a requirement for support and it will become even more vague in the future as expectations about geographic coverage change with wireless service.

44. *What role does the COLR play going forward? Should there be a new definition of the COLR obligations to reflect current expectations of communications customers?*

As stated in Response 43, the concept of COLR is presently too vague to use it as criteria for receiving support. The future will become even more vague as customers' expectations change. Customers are starting to have different expectations about their communications service. When the present OUSF was started, voice grade service to one's home was the expectation. Today, the expectation is rapidly evolving where communications service users expect to be able to communicate with anyone, anytime, anywhere with a variety of forms of communication ranging from voice to multi-media applications.

To meet this expectation, the communications service provider must be able to keep the person linked over a large geographic area, not just the serving area of the wireline service providers. This would imply that the COLR must be able to connect the person almost anywhere, not just their home.



45. *Should the COLR be required to provide service to all potential customers in its service territory?*

No, assuming there is such a designation, the COLR should not be required to provide service to all potential customers in its service territory. There are cases where an individual has elected to live in a remote place where it is unreasonable to expect any communications provider to serve the person. The issue of when the COLR does not have to provide service or can bill the customer for all or part of the cost is an implementation issue and will vary with how COLR is finally defined.

46. *Should COLR obligations be based on any one technology such as wireline or wireless?*

No, with the changes in expectations that are taking place as communications service change, the COLR obligation, if there is one, should not be based on one technology. In the near future, it is possible that the COLR obligations may only be met by wireless technology, which permits the user to carry their phone with them wherever they go and transmit both voice and data. At this time, however, both wireline and wireless technologies should be considered. COLR obligations should be technology neutral.

### **Future Broadband Deployment**

47. *Should a company receiving money from a broadband fund be required to be a COLR?*

No, it is not necessary for a company receiving money from a broadband fund be a COLR. If disbursements are made in the form of grants, the grants could conceivably cover interoffice facilities, last mile facilities, or software and facilitating hardware. For only the last-mile obligations would the concept of COLR have any meaning. Further, if communications start to look like wireless service with no specific geographic boundary, the concept of COLR completely changes.

48. *Should one of the objectives of a broadband fund be to have every home that has broadband be able to access it at a minimum standard upload and download speed? Other objectives?*

No, a broadband fund should not dictate a minimum standard speed. For most wireline customers receiving service from the rural companies the issue has already been resolved. For wireline customers served by the non-rural companies

the issue will likely be resolved shortly since DSL service levels is one of the conditions of the mergers.

49. *How should the standard for broadband service be determined? Should there be multiple standards depending on customer distance from the serving location?*

The standards that should be adopted for broadband service are an implementation issue that needs to be addressed at that stage. In principle, there should be multiple standards varying by distance from the serving location. These standards should reflect locations where the cost of providing service at a given level takes significant jumps.

50. *Should the level of support be tied to the speed of the service?*

This is an implementation issue. As a general matter, assuming there are multiple zones with multiple standards based on the distance from the serving location, it is not unreasonable that support within a zone should be tied to the speed of the service.

51. *Should the focus of a broadband fund be on the middle-mile, the last-mile, or something else?*

This issue is an implementation issue and requires more data before a determination can be made of what projects need to be supported.

52. *With most of the small companies already providing broadband service to a high percentage of their customers and the large companies being required to do the same as part of settlement conditions, is there a need for a fund focused on broadband service?*

The proper place to discuss this issue is the implementation stage where there will be more data available on which to base a judgment. In principle, the OUSF should have a fund to address broadband projects, which could be middle-mile, last-mile, or other. This fund would have a variable amount of money available to fund projects that meet the general objectives proposed by the governor.

53. *Should a company that receives OUSF be required to provide access to all its customers at the same speeds, ensuring that customers in rural or poorer communities receive the same quality of broadband throughout Oregon?*

No, companies that are receiving money for broadband services should not have to provide the service at the same speed. There are significant cost differences that are density and distance-based that need to be considered. Actual speeds provided to the different areas are an implementation issue and should be determined at that time.

### **Future Look at Companies Receiving Support**

54. *Should there be a restriction on the size of the companies that can draw money from the fund?*

Depending on how the OUSF is ultimately structured, there should be a size restriction on companies receiving money from the fund. One purpose of the fund should be supporting companies that do not have the financial wherewithal to serve high cost areas without getting support; the companies that need support are ones with just a few serving locations and at least one of those is high cost.

Large companies, serving multiple states for which these high cost offices are a small portion of their portfolio, do not need to be drawing from the fund to support these operations. With the present OUSF, these companies received from the fund last year, on a combined basis, \$37 million dollars or approximately 80% of all disbursements.

55. *Should the number of companies receiving support be restricted? If yes, what criteria should be used?*

The number of companies receiving support should not be restricted by arbitrarily selecting a number of recipients or freezing the number to those presently receiving support. Any restrictions on the companies receiving support should be established during the implementation stage once the specifics of the fund have been established.

56. *What geographic coverage requirements should there be to qualify for OUSF support? How should this coverage be defined?*

This is an implementation question since it requires knowing the final structure of the fund or funds making up the OUSF. At a policy level, there should not be geographic restriction. As an example, assume that both wireline and wireless companies are eligible to receive money from the fund, but there is a geographic restriction that is going to be imposed. If the wireline company were forced to match the wireless company's serving area it would not be able to do so; likewise, if the wireless company were forced to serve all of a wireline companies customers, it is unlikely that it would be able to do so.

57. *For companies receiving OUSF, should the companies be required to provide services to customers in high cost areas without these customers paying higher rates or receiving lesser quality services than other company's customers in urban or suburban settings? What are just, reasonable and affordable rates? What are reasonable line extension charges? Should rural customers needing a line extension be required to pay additional installation costs, above and beyond those of urban customers?*

No, companies providing services in both low density rural areas and high density suburban and urban areas should not have to have the price and the quality be the same for those services. There should, however, be zones based on cost and density where the prices are the same and the quality is comparable within the zone.

58. *Should companies be able to use fixed wireless facilities to provide high speed services to residents in geographically difficult areas and receive OUSF funding?*

Under the current system, wireless providers can receive support from the fund if they take the necessary steps, so wireless technology is not in and of itself excluded by the fund. In the case of fixed wireless, there are already companies receiving money from the fund that are using that technology or radio systems to provide service. The distinction that is made involves the general means for providing service: if the company is predominantly wireless, the wireless guidelines are applied; if the company is predominantly wire line, those guidelines apply.

59. *Should companies receiving OUSF be required to provide the same level of advanced services to all of its customers, or is it enough just to "provide access" to any level of these services?*

As a practical matter, companies receiving money from the OUSF should not have to provide the same level of advanced services to all of its customers. An isolated residential customer sitting on top of a mountain should not expect to have the same range of communications services available to them that a customer residing in a high density area would have. The consideration in each case should be the cost of providing service and how much of that cost has to be picked up by other customers.

60. *Should low-income consumers and those in rural, insular, and high cost areas, have access to telecommunications and information services, including inter-exchange services and advanced telecommunications and information services, that are*

*reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas?*

Yes, this is the policy statement found in Section 254 and it applies as much today as it did in 1996 when the statement was formulated. The key word in this statement for both price and service availability are "reasonably comparable." What is "reasonably comparable" needs to be determined at the implementation stage.

61. *Should support be provided in an area with an unsubsidized competitor?*

Yes, the fact that an unsubsidized competitor has entered the market should not impact whether or not the company serving the entire market should receive support. For wireline companies in particular, the cost of providing service goes up directly with density and distance from the serving location. If a competitor is operating in the higher density areas of the serving area, they can provide service without incurring the much higher cost of serving the entire area.

### **Future Level of Support**

62. *Should support be based on the least cost provider of service in a given geographic area?*

No, assuming a fund like the one that exists today, support should not be based on the least cost provider of service in a given geographic area. It would be ideal, as a general principle, to have service support based on the least cost provider of service, but it is highly unlikely that such a comparison could be made, except on a modeled basis. To make a reasonable comparison of cost, the two providers would have to have working infrastructure capable of reaching all of the same customers.

63. *What should be the basis for a benchmark for affordable rates for voice grade service? For broadband service?*

Assuming a fund like the one that exists today would exist in the future, the benchmark for affordable rates should have the following four features: 1) it should vary by average income in a specific geographic area, 2) it should vary over time with the general price index, 3) the base rate should be based on a statewide average, and 4) the rate should not be set so that the resulting prices for service are a barrier to entry for competitors.

64. *Should the level of support be the difference between the cost of providing service in the area and a benchmark rate?*

This is an implementation issue that will need to be addressed once the nature of future OUSF is determined. If one assumes a fund like the one that exists today exists in the future, the level of support calculated as the difference between the cost of providing service in an area and a benchmark rate could no longer be calculated. For the two largest companies the cost per wire center was calculated using a model and that model is no longer close to being current nor capable of addressing broadband services.

65. *Should the level of support for expanding a network into an unserved area be the lowest bid? If so, how should the lowest bid be examined for reasonability if it is the only bid in the area?*

This is an implementation issue that will need to be addressed once the nature of future OUSF is determined. In general, as with most bidding processes, there are more factors that need to be addressed than just price alone.

### **Future Funding**

66. *Should all communications service providers operating in Oregon contribute to the fund, including wireless and VoIP providers?*

Communications service providers do not presently contribute to the fund nor would they contribute in future. The current funding for the OUSF comes from the telecommunications service customers and it should be that way in the future.

Wireless customers and customers using receiving communications service from VoIP or any other type of provider should all contribute to the fund. Regardless of the type of technology being used, these are communications customers and should be contributing to ensure the ubiquitous availability of these services.

67. *Should the basis for contributing to the fund be revenues, telephone numbers (or their equivalent), or some other basis?*

This is an implementation issue and should be addressed at that time. What we know from experience is that using revenues as a basis for collecting funds is fairly complex. In the current system, revenues on which the fee is collected are identified at a fairly detailed level with a lot of subtle distinctions being made by product and classification of the product as wholesale, retail, interstate or intrastate.

68. *If categories of companies are ineligible for support, should they or their customers be required to pay into the fund?*

The intent of the fund is to provide affordable and reasonably comparable communications service, where feasible, for everyone in the state of Oregon. The fees are paid by consumers of telecommunications services in the state of Oregon and not by the companies serving them. Since it is the consumers of telecommunications services in the state that are paying the fee, it is inconsequential whether or not the company providing their service is eligible for support.

69. *Should contributions be collected based on revenues, lines, or the equivalent of telephone numbers?*

See response to Question 67.

70. *How should the amount of support be determined?*

This is an implementation issue and needs to be determined once the nature of the fund is established.

71. *If the fund supports broadband or its deployment, should all broadband providers be assessed?*

The only contributors to the fund, present and future, are residents of the state of Oregon. The issue is whether a provider should be required to collect the fee from their consumers of communications service in the state and not whether a provider should have to pay into the fund.

### **Transitioning of the Fund**

72. *Should companies that have made investments under the assumption that the current structure would continue to exist in the future be compensated from the fund? If yes, how should this be done?*

Yes, these companies should be compensated. The primary purpose of the fund is to ensure that Oregon customers have reasonably comparable services at affordable rates. This is accomplished by having recipient companies make long term investments in the network. Since payments are made on a monthly basis, the company has to make the assumption that the payments will exist until sometime in the future. One assumption that is likely to have been made by a company is that the revenue stream is going to exist in the future. To the extent that a company made investments in the network based on this assumption, they

should be compensated. The determination of whether a company is entitled to transition payments must be determined during the implementation stage.

73. *If there is a need for an intrastate mechanism for funding broadband, should it be separate and apart from any OUSF fund?*

No, like proposed earlier, there should only be one OUSF made up of different funds with different objectives. If it is decided that broadband should be supported, the fund should be one of the OUSF funds. Aside from simplifying the administration of the fund, it would allow fund allocations to be rapidly changed as the cost and benefits associated with each fund evolve.

74. *If broadband is to be funded using the OUSF, what steps should be taken to transition from the present fund to a broadband fund and over what timeframe?*

These are implementation questions, but at a general level the first step in transitioning from the current OUSF is to create separate funds under the OUSF umbrella. This would allow money to smoothly flow from one fund to another without requiring a statute or rule changes to do so.

### **Tribal Lands**

75. *Should the Tribal Sovereign Nations located within Oregon have the right to determine which telecommunications providers serve their Reservations?*

In principle, the Tribal Sovereign Nations should have the right to determine which telecommunication providers serve their reservation; however, where there is a company presently serving the reservation, the assets of the company remain the property of the company and should only be used by entering into an agreement with the new company.

76. *If a provider receiving OUSF is not providing adequate service, should a Tribal Council be able to work with the PUC to compel the company to provide better service or decertify the company as to the OUSF funding?*

This is an implementation item since it would require a working definition of adequate service, a time frame for remedying the problem, and a procedure for addressing the issue.

In principle, however, if a company is not providing adequate service in an area where it is receiving support, it should be subject to having the support for that area taken away from it. In most cases it should not lead to the company losing its certificate.



77. *Assuming Tribes have the sovereign right to provide telecommunications services on their Reservation, when a tribe asserts that right, should the Tribe be eligible for OUSF funding?*

This is an implementation item since there are a number of items that need to be investigated. In principle, however, if the telephone company owned by the tribe has met all of the legal requirements to receive funds from the OUSF, then they should be allowed to receive payments from the fund.

78. *If an incumbent provider on tribal lands is currently receiving ETC support, should the Tribally-owned provider also be eligible for ETC status and related OUSF funding?*

This is an implementation item since there are a number of items that need to be investigated. In principle, however, if the telephone company owned by the tribe has met all of the legal requirements (among which is ETC status) to receive funds from the OUSF, then they should be allowed to receive payments from the fund.

This concludes Staff's Comments.

Dated at Salem, Oregon, this 25th day of October 2010.



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**Roger White**  
Program Manager  
Cost Analysis

# EXHIBIT 2

**BEFORE THE PUBLIC UTILITY COMMISSION****OF OREGON**

UM 1017(2)

In the Matter of	)	
	)	
Investigation Into Expansion of the Oregon	)	ORDER
Universal Service Fund to Include the Service	)	
Areas of Rural Telecommunications Carriers.	)	

DISPOSITION: MEMORANDUM OF UNDERSTANDING  
ACCEPTED

At the June 13, 2006, Public Meeting, Utility Staff (Staff) presented to the Public Utility Commission of Oregon (Commission) a Memorandum of Understanding (MOU) among Staff, the Oregon Exchange Carrier Association (OECA), and the Oregon Telecommunications Association (OTA) establishing an interim limit on the rural incumbent telecommunications companies' (rural companies) support per line from the Oregon Universal Service Fund (OUSF). Staff's Report and the MOU are attached as Appendix A, and incorporated by reference.

In Order No. 03-082, the Commission expanded the OUSF to include the rural companies. The order also adopted a stipulation between the parties that, among other things, established a triennial embedded cost review to update the rural companies' support per line. In October 2005, the Commission approved an increase in the contribution and surcharge rates which included an estimated 15 percent increase in the rural companies' disbursement from the OUSF. After Staff's cost review, the actual increase was an 81 percent increase in the disbursement. Given this significant increase, the OUSF could not implement the increase disbursement until July 2007.

As a result of Staff's concerns regarding this substantial increase and in order to avoid the costs associated with a contested docket, the parties negotiated an MOU to limit the increase in support per line to 15 percent through 2009, as incorporated in the current contribution and surcharge rates. Staff's attorney and the attorney for OTA and OECA signed the MOU on May 15, 2006.

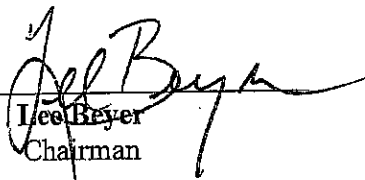
The MOU represents a compromise between the rural companies and Staff and, in addition, will allow the OUSF to begin distributions in July 2006 based on the interim limitation. Staff recommends the Commission adopt the MOU and enter an order approving the revised support per line amounts shown, as presented in Appendix A, effective with the July 2006 OUSF distributions.

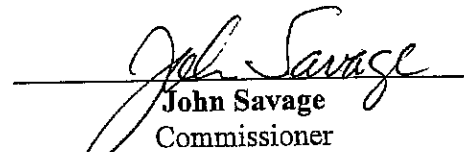
**ORDER**

IT IS ORDERED that:

1. The Memorandum of Understanding among the Oregon Exchange Carrier Association, the Oregon Telecommunications Association, and the Utility Staff of the Public Utility Commission of Oregon, as presented in Appendix A, is accepted.
2. Revised per-line support amounts for the rural companies, as presented in Appendix A, are approved, to be effective with the July 2006 OUSF distributions.
3. Oregon Exchange Carrier Association, and the rural companies shall apply the projected annual OUSF support, based on the revised support per line, as an offset first to the rural companies' intrastate carrier common line revenue requirement, contained in Oregon Exchange Carrier Association's pending 2006 annual access charge filing, and then to other services that provide implicit subsidies.

Made, entered and effective JUN 14 2006

  
Lee Beyer  
Chairman

  
John Savage  
Commissioner

  
Ray Baum  
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

ITEM NO. 1

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: June 13, 2006**

REGULAR  X  CONSENT      EFFECTIVE DATE  July 1, 2006

DATE: June 6, 2006

TO: Public Utility Commission

FROM: <sup>CV</sup> Cynthia Van Landuyt

THROUGH: <sup>W</sup> Lee Sparling and <sup>PM</sup> Phil Nyegaard

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF: (Docket No. UM 1017) Expansion of the Oregon Universal Service Fund to Include the Service Areas of Rural Telecommunications Carriers, Memorandum of Understanding.

**STAFF RECOMMENDATION:**

Staff recommends the Commission adopt the UM 1017 Memorandum of Understanding between the Public Utility Commission of Oregon Staff (Staff), the Oregon Exchange Carrier Association (OECA) and the Oregon Telecommunications Association (OTA) contained in Attachment 4. Staff also recommends the Commission approve the revised support per line amounts for the rural companies contained in Attachment 3.

**DISCUSSION:**

**Background:**

The Commission, in docket UM 1017, issued Order No. 03-082 (February 3, 2003) which expanded the Oregon Universal Service Fund (OUSF) to include the incumbent rural telecommunications companies (rural companies). The order adopted a stipulation signed by the parties in the docket. Generally, the stipulation outlined methods for computing the cost of basic service, the federal support offsets, the support per line and how the revenue offsets would be applied to achieve revenue neutrality.<sup>1</sup> It also contained the method for the distributions from the OUSF.

<sup>1</sup> Paragraphs 29 through 33 of the stipulation address rate rebalancing. Rate rebalancing is how revenue neutrality was achieved. The first priority is for the rural carriers to reduce access charges, specifically the Carrier Common Line Charge. The rural carriers were to reduce their Carrier Common Line revenue requirement by the annual amount of their distribution from the OUSF. If there was any

UM 1017 Memorandum of Understanding

June 6, 2006

Page 2

Paragraph 5 of the stipulation states,

The interval for reviewing and updating the embedded cost calculations will not be longer than three years, unless extended by the Commission. Companies may request, or the Commission may initiate, a more frequent review, but not more frequently than once a calendar year. A company requesting a more frequent review will do so by November 15 for the previous calendar year. The OUSF study area support per line per month amount will remain unchanged until the next embedded cost review.

Staff first made the basic service<sup>2</sup> cost calculations in 2003<sup>3</sup> to develop the initial OUSF support per line per month for the rural carriers. The rural companies have received support based on those per line amounts since November 2003. The maximum three-year review interval ends in 2006. Staff conducted the review of the rural companies' embedded cost calculations based on the 2004 Form I. Staff's findings regarding the changes from the 2001 embedded costs to the 2004 embedded costs are:

- Common Lines<sup>4</sup> decreased 5.90 percent
- Plant in Service increased 14.75 percent overall with 14 of the 31 companies above that percentage increase. Sixty percent of the increase was in subscriber line and wideband investment mainly for deploying Digital Subscriber Loop (DSL). The OUSF does not directly support DSL because DSL is not a basic

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residual balance, the rural carriers were to reduce prices for other services that provide implicit subsidies or elect to forego some of their OUSF support.

<sup>2</sup> The definition of basic service is found at ORS 860-032-0190(2) which states "basic telephone service" means retail telecommunications service that is single party, has voice grade or equivalent transmission parameters and tone-dialing capability, provides local exchange calling, and gives customer access to, but does not include extended area service (EAS), long distance service, relay service for the hearing and speech impaired, operator service such as call completion assistance, special billing arrangements, service and trouble assistance, and billing inquiry, directory assistance and emergency 9-1-1 services including E-9-1-1 where available.

<sup>3</sup> The embedded costs were based on the 2001 Form I. The Form I includes an Incumbent Local Exchange Carrier's (ILEC's) revenues, expenses, taxes, plant and depreciation separated between the federal and state jurisdictions and within the state jurisdiction between Toll, EAS and Local. The Form I for a particular calendar year is due the following October 31<sup>st</sup>. In addition, the Federal support offsets used in calculating the OUSF support per line in 2003 were also based on the rural carriers' 2001 embedded costs.

<sup>4</sup> A common subscriber line is a voice-grade or equivalent working (i.e., revenue producing) loop or channel that connects the retail service customer's premises to the serving wire center's switch. It is used jointly for access to local exchange services, extended area services, and interexchange long distance services. It excludes point-to-point and point-to-multipoint private lines, closed-end WATS lines, wideband data lines, feature group carrier access lines, and unbundled network element (UNE) access lines leased to another telecommunications provider. It excludes station lines (inside wire) on the line-side of a key system or Private Branch Exchange (PBX).

UM 1017 Memorandum of Understanding  
 June 6, 2006  
 Page 3

service. However, under the current FCC separations rules some of the DSL investment is assigned to subscriber line investment, which is part of the basic service costs.<sup>5</sup>

- Operating expenses increased 15.84 percent with 17 of the companies above that percentage increase.

Based on the changes discussed above, the basic service cost per line per month increased for 22 of the 31 rural companies. The increases ranged from \$1 to \$65 per line per month with 11 rural companies increasing over \$10 per line per month. ORS 759.425(3)(a) states the OUS support is equal to the difference between the cost of basic service and the benchmark<sup>6</sup> less any federal loop support or USF support. Between 2001 and 2004 the rural companies' federal offsets increased from \$1 to \$58 per line per month. For the most part, the federal offset increase was less than the basic service increase which results in a higher support per line requirement from the OUSF based on the formula contained in ORS 759.425(3)(a).

**Effect on the OUSF surcharge rate:**

At the October 11, 2005, Public Meeting, the Commission approved an increase in the contribution and surcharge rates, to 6.65 percent and 7.12 percent, respectively, effective January 1, 2006. This increase included assumptions that the contribution base would decline 6 percent annually, disbursements would decline 2.3 percent annually and the UM 1017 rural company 3-year review would result in an estimated 15 percent increase in the rural companies' support per line. The 15 percent increase translates to an estimated increase in annual disbursements from \$8.9 to \$10.3 million.

Following staff's cost review, the increase in the rural companies' support per line showed the annual disbursement from the fund would increase from \$8.9 to \$16.3 million, an 81 percent increase. The OUSF surcharge rate would increase to 7.87 percent effective January 1, 2007.<sup>7</sup>

<sup>5</sup> The basic service cost includes the local loop and some usage costs. The subscriber line investment is assigned 100 percent to the local loop.

<sup>6</sup> The Commission set the benchmark at \$21 in docket UM 731 Phase IV, Order No. 00-312. The discussion at Issue 8, page 21 states the composite average economic cost of service for Oregon's two major local exchange carriers, GTE Northwest (GTE) and U S WEST Corporation (USWC), makes a good surrogate for an affordable rate for basic local exchange service.

<sup>7</sup> With that large of an increase, the rural companies would not receive disbursements based on the higher support per line until July 2007. Per the Commission order, the OUSF must retain a 3.5 month reserve. Given the time required to calculate the revised rate, present the increase to the OUSF Advisory Board for recommendation, obtain Commission approval at a Public Meeting and notify the contributors to the OUSF, the rate increase would not be effective until January 1, 2007. The first collection at the new rate would be due May 28, 2007, with disbursement in July 2007 to preserve the 3.5 month reserve.

UM 1017 Memorandum of Understanding  
June 6, 2006  
Page 4

**Workshops:**

Staff was concerned with the increase in the surcharge rate and conducted a workshop on March 8, 2006, to discuss the findings with the rural companies<sup>8</sup>. Staff presented its findings and a list of options. Staff's options, as shown on Attachment 1, involve opening a docket and revisiting the Commission's decisions set out in order No. 03-082. The rural companies requested time to meet and develop further options. Staff scheduled a second workshop for March 30, 2006, to discuss all options.

At the second workshop, the rural companies stated their preferred option was to proceed with the support per line increase as reflected in the 3-year review. Acknowledging staff's concern with the increased contribution and surcharge rate resulting from implementing that option, the industry caucused during the workshop and offered a compromise. The rural companies offered the option of limiting the increases in the support per line to staff's 15 percent estimate incorporated in the current contribution and surcharge rates. Staff agreed to develop the revised support per line based on this option. See Attachment 2.

**Memorandum of Understanding:**

Over the next six weeks, staff, OTA and OECA developed a Memorandum of Understanding (MOU) outlining the agreement. Staff's attorney and the attorney for OTA and OECA signed the MOU on May 15, 2006. See Attachment 4. In summary, the MOU states:

- There is an interim limitation on the amount of support per line based on the 15 percent increase built into the current contribution and surcharge rates and the distribution ratio created by the unlimited 2004 support per line.
- The interim limitation would increase the projected rural companies' annual OUSF distribution from \$8.9 to approximately \$10.3 million<sup>9</sup>.
- The parties intend that the interim limitation would be in effect until the next triennial review in 2009.

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<sup>8</sup> Representatives from the rural companies, their consultants, representatives from Qwest and Verizon and some OUSF Advisory Board members attended the workshops.

<sup>9</sup> The rural companies would receive the difference between the \$10.3 and the \$16.3 million from intrastate access charges.



UM 1017 Memorandum of Understanding  
 June 6, 2006  
 Page 5

- Either party may file a petition<sup>10</sup> to seek Commission review of the OUSF plan upon:
  - Issuance of an FCC order changing the federal contribution method, unless such change can only be implemented through legislation.
  - Issuance of an FCC order changing the intercarrier compensation mechanism if such order may effect intrastate access charges or OUSF issues.
  - An increase to the contribution base or a decrease in the number of ETCs receiving support from the OUSF such that increasing the support per line does not increase the contribution or surcharge rates.

The Commission's Order No. 03-082 in UM 1017 would not be changed by the MOU except for the interim limitation on the OUSF support per line calculation.

**Recommendation:**

Staff presented the MOU to the OUSF Advisory Board at its quarterly meeting on May 10, 2006. Those members present<sup>11</sup> agreed that staff should recommend adoption of the MOU at a Public Meeting.

The MOU represents a compromise between the rural companies and staff which does not require an increase in the current contribution and surcharge rates.<sup>12</sup> In addition, the OUSF could begin distributions July 2006 based on the interim limitation rather than July 2007. And finally, the MOU avoids the costs, in time and money, associated with a contested docket.

Staff recommends the Commission adopt the MOU and issue an order approving the revised support per line amounts shown in Attachment 3 effective with the July 2006 OUSF distributions.

<sup>10</sup> The parties agree that the interim limitation will not automatically terminate because a petition is filed, but will continue until the Commission issues a final order which grants, denies or takes other appropriate final action upon the petition.

<sup>11</sup> Members present were Natalie Baker, AT&T, Brian Thomas, Time-Warner, Don Mason, Qwest, Schelly Jensen, Verizon, Karen Ellison, Midvale Telephone and Cynthia Van Landuyt, OPUC Staff. Members absent were Fred Peterson, TRACER, Rommel Raj, Oregontel, LLC and Doug Crow, CUB. There is a vacant Radio Common Carrier (cellular) position.

<sup>12</sup> Based on current projections of contribution revenue change and line count growth, the current rate should be in effect until January 1, 2007, when the rate would increase slightly to 7.18 percent.

UM 1017 Memorandum of Understanding  
June 6, 2006  
Page 6

**PROPOSED COMMISSION MOTION:**

The Commission:

- adopt the UM 1017 Memorandum of Understanding between the Public Utility Commission of Oregon Staff, the Oregon Exchange Carrier Association and the Oregon Telecommunications Association; and
- issue an order:
  - approving the rural companies' revised support per line amounts shown in Attachment 3 effective with the July 2006 OUSF distributions.
  - instructing OECA and the rural companies to apply the projected annual OUSF support, based on the revised support per line, as an offset first to the rural companies' intrastate carrier common line revenue requirement, contained in OECA's pending 2006 annual access charge filing<sup>13</sup>, and then to other services that provide implicit subsidies.

UM 1017 MOU/cv

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<sup>13</sup> OECA Advices 96 and 97, effective July 1, 2006, are scheduled for the June 27, 2006, Public Meeting.

## Options for OUSF Support Update

1. Freeze support per line and open docket.
2. Calculate composite rate for rural telcos (2001 level) and increase by an index such as CPI. Distribute support based on 2004 revised support ratios times the capped fund amount.
3. Include a productivity factor in the calculation of the support per line.
4. Change ROR from 11.1% to a lower rate.
5. Impute DSL revenues as an additional OUSF offset.
6. Allocate a portion of COE Cat. 4.13 and CWF Cat. 1.3 (subscriber line for DSL). Would have to remove some federal loop support offset as well.
7. Adjust the line counts to include DSL capable lines in the denominator to calculate cost per line.
8. Use a tiered approach to disallow X% of the increase over a set amount. The % disallowance increases with the size of company.
9. Apply plant and expense per line caps on costs.
10. Adopt Federal formula to calculate loop cost.
11. Change the benchmark.
  - a. Index the benchmark. Penalizes Qwest and Verizon if no review of their costs.
  - b. Deaverage the benchmark between urban and rural companies.
12. Use economic cost model to calculate support per line.
13. Require companies to demonstrate the need for the support.
14. Revise the definition of supported lines, e.g., primary lines only.
15. Use an affordability benchmark which is company specific.
16. Limit ETC status to 1 ETC in rural areas.

UM 1017 Memorandum of Understanding

Ln. No.	Company	2005		Current Support/ln/mo	Annual Distribution	Support/ln/mo based on 2004 Form I	Annual Distribution	% of Distribution	Revised Distribution	Revised Support per line
		Basic Service Lines	Support/ln/mo							
1	Asotin	146	\$0.00	\$0	\$0.00	\$0	0.000000	\$0	\$0.00	
2	Beaver Creek	4,287	\$5.47	\$281,399	\$12.77	\$658,940	0.040381	\$416,749	\$8.10	
3	Canby	11,029	\$1.10	\$145,583	\$6.62	\$876,144	0.053855	\$555,808	\$4.20	
4	Cascade Utilities	8,900	\$6.48	\$692,064	\$4.27	\$456,036	0.028032	\$289,300	\$2.71	
5	CenturyTel	68,669	\$4.90	\$4,037,737	\$6.71	\$5,529,228	0.339872	\$3,507,630	\$4.26	
6	Citizens	12,582	\$2.69	\$406,147	\$5.56	\$839,471	0.051601	\$532,543	\$3.53	
7	Clear Creek	3,607	\$0.00	\$0	\$3.96	\$171,405	0.010536	\$108,736	\$2.51	
8	Colton	1,180	\$0.00	\$0	\$0.00	\$0	0.000000	\$0	\$0.00	
9	Eagle	454	\$8.22	\$44,783	\$11.42	\$62,216	0.003824	\$39,469	\$7.24	
10	Gervais	1,033	\$5.51	\$68,302	\$9.78	\$121,233	0.007452	\$76,908	\$6.20	
11	Helix	323	\$14.40	\$55,814	\$17.26	\$66,900	0.004112	\$42,440	\$10.95	
12	Home	843	\$2.16	\$21,851	\$3.07	\$31,056	0.001909	\$19,701	\$1.95	
13	Malheur	12,303	\$2.58	\$380,901	\$6.92	\$1,021,641	0.062798	\$648,108	\$4.39	
14	Midvale	252	\$0.00	\$0	\$0.00	\$0	0.000000	\$0	\$0.00	
15	Molalla	6,519	\$6.86	\$536,644	\$12.11	\$947,341	0.058231	\$600,974	\$7.68	
16	Monitor	632	\$8.46	\$64,161	\$14.52	\$110,120	0.005769	\$69,858	\$9.21	
17	Montro	927	\$4.06	\$45,163	\$18.17	\$202,123	0.012424	\$128,223	\$11.53	
18	Mount Angel	1,676	\$0.49	\$9,865	\$0.41	\$8,246	0.000507	\$5,231	\$0.26	
19	Nehalem	3,102	\$0.95	\$35,363	\$2.76	\$102,738	0.006315	\$65,175	\$1.75	
20	North State	495	\$0.00	\$0	\$0.35	\$2,079	0.000128	\$1,319	\$0.22	
21	Oregon	1,718	\$2.28	\$47,004	\$0.00	\$0	0.000000	\$0	\$0.00	
22	Oregon-Idaho	633	\$8.77	\$66,617	\$13.29	\$100,951	0.006205	\$64,041	\$8.43	
23	Peoples	1,445	\$0.00	\$0	\$0.00	\$0	0.000000	\$0	\$0.00	
24	Pine	927	\$0.00	\$0	\$0.00	\$0	0.000000	\$0	\$0.00	
25	Pioneer	14,987	\$0.36	\$64,744	\$4.33	\$778,725	0.047867	\$494,007	\$2.75	
26	Roome	641	\$24.02	\$184,762	\$21.46	\$165,070	0.010147	\$104,717	\$13.61	
27	Scio	1,800	\$0.00	\$0	\$0.00	\$0	0.000000	\$0	\$0.00	
28	Sprint	65,797	\$1.87	\$1,476,485	\$4.63	\$3,655,681	0.224708	\$2,319,090	\$2.94	
29	Stayton	7,171	\$3.59	\$308,927	\$3.70	\$318,392	0.019571	\$201,982	\$2.35	
30	St. Paul	630	\$0.00	\$0	\$5.93	\$44,831	0.002756	\$28,440	\$3.76	
31	TransCascades	205	\$0.00	\$0	\$0.00	\$0	0.000000	\$0	\$0.00	
32	TOTAL	234,913		\$8,974,304		\$16,268,566		\$10,320,450	\$7	

## Attachment 3

UM 1017

## Memorandum of Understanding

Ln. No.	Company	Support per line
1	Asotin	\$0.00
2	Beaver Creek	\$8.10
3	Canby	\$4.20
4	Cascade Utilities	\$2.71
5	CenturyTel	\$4.26
6	Citizens	\$3.53
7	Clear Creek	\$2.51
8	Colton	\$0.00
9	Eagle	\$7.24
10	Gervais	\$6.20
11	Helix	\$10.95
12	Home	\$1.95
13	Malheur	\$4.39
14	Midvale	\$0.00
15	Molalla	\$7.68
16	Monitor	\$9.21
17	Monroe	\$11.53
18	Mount Angel	\$0.26
19	Nehalem	\$1.75
20	North State	\$0.22
21	Oregon	\$0.00
22	Oregon-Idaho	\$7.43
23	Peoples	\$0.00
24	Pine	\$0.00
25	Pioneer	\$2.75
26	Roome	\$13.61
27	Scio	\$3.00
28	Sprint	\$2.94
29	Stayton	\$2.35
30	St. Paul	\$3.76
31	TransCascades	\$0.00

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1017

In the Matter of the Investigation into  
Expansion of the Oregon Universal Service  
Fund to Include the Service Areas of Rural  
Telecommunications Carriers.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by and between the Public Utility  
Commission of Oregon Staff ("Staff"), the Oregon Exchange Carrier Association ("OECA") and  
the Oregon Telecommunications Association ("OTA") on behalf of its members.<sup>1</sup>

<sup>1</sup> For purposes of this Memorandum of Understanding, OTA's members are as follows: Asotin Telephone Company,  
Beaver Creek Cooperative Telephone Company, Canby Telephone Association, Cascade Utilities, Inc., CenturyTel of  
Eastern Oregon, Inc., CenturyTel of Oregon, Inc., Citizens Telecommunications Company of Oregon, Clear Creek  
Mutual Telephone Company, Colton Telephone Company, Eagle Telephone System, Inc., Gervais Telephone  
Company, Helix Telephone Company, Home Telephone Company, Malheur Home Telephone Company, Midvale  
Telephone Exchange, Inc., Molalla Telephone Company, Monitor Cooperative Telephone Company, Monroe  
Telephone Company, Mt. Angel Telephone Company, Nehalem Telecommunications, Inc., North-State Telephone  
Company, Oregon-Idaho Utilities, Inc., Oregon Telephone Corporation, People's Telephone Company, Pine Telephone  
System, Inc., Pioneer Telephone Cooperative, Roome Telecommunications Inc., St. Paul Cooperative Telephone  
Association, Scio Mutual Telephone Association, Sprint/United Telephone Company of the Northwest, Stayton  
Cooperative Telephone Company and Trans-Cascades Telephone Company.

MEMORANDUM  
OF UNDERSTANDING - 1

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APPENDIX 14  
PAGE 10 OF 19

ORDER NO. 06-297

BACKGROUND

1  
2 Under the terms and conditions set out by the Commission in its Order No. 03-082 in this  
3 Docket ("Commission Order"), the Commission is to conduct a triennial review of the costs of  
4 those companies drawing from the rural company portion of the Oregon Universal Service Fund  
5 ("OUSF"). Under the standards set forth in the Commission Order, that review is to be conducted  
6 in 2006, with a target effective date of July 1, 2006. The review is based on the 2004 Form I  
7 submitted by each company to the Commission in the fall of 2005.<sup>2</sup>

8 Under the Commission Order, initial support for the small companies was predicated upon  
9 the formula adopted in the Commission Order, which was based upon a review of each company's  
10 costs as set out on the 2001 Form I for each company. In anticipation that the costs for the rural  
11 companies may have increased from 2001 to 2004, Commission Staff recommended to the OUSF  
12 Advisory Board that the surcharge rate for 2006 be increased to 7.12%. That increase anticipated a  
13 growth of approximately 15% in per line support for the rural companies.<sup>3</sup> In October 2005, the  
14 Commission approved an increase in the surcharge and contribution rates to 7.12% and 6.65%,  
15 respectively, effective January 1, 2006.

16 Commission Staff reviewed the 2004 Form I as submitted by each of the rural incumbent  
17 local exchange carriers (rural "ILECs"). Based upon that review, Commission Staff found that if all  
18 aspects of the Commission Order were applied on a step-by-step basis, there would be a  
19 substantially larger increase in the size of the OUSF than anticipated. As a means of comparison,  
20 the anticipated growth was from a current draw of approximately \$8.9 million for the rural ILECs to  
21 approximately \$10.3 million. The theoretical draw which was calculated based upon the review of  
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23 <sup>2</sup> Qwest Corporation and Verizon Northwest Incorporated receive support from the OUSF based upon a forward-  
24 looking cost model, rather than upon embedded costs and are not affected by the triennial review concept.

25 <sup>3</sup> It should be noted that the increase was not solely due to an anticipated increase in costs for the small companies. It  
26 also reflected a reduction in the contribution base.

MEMORANDUM  
OF UNDERSTANDING - 2

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APPENDIX A  
PAGE 11 OF 19

ORDER NO. 06-297

1 each individual company's 2004 Form I would increase the draw from the current level of \$8.9  
2 million to approximately \$16.3 million. This would require revisiting the OUSF surcharge rate or  
3 taking action to possibly modify the formula that is contained in the Commission Order.

4 As a result, the product of the review by Commission Staff was discussed with the OUSF  
5 Advisory Board. The OUSF Advisory Board and Commission Staff came up with a number of  
6 alternatives that might be explored. Those alternatives are set out on Appendix A.

7 Two workshops were held to discuss the possible increases to the size of the draw from the  
8 OUSF by rural companies and steps that might be taken to mitigate that draw. This included  
9 discussing the alternatives on Appendix A. Appendix A was first presented to the industry at the  
10 first workshop held on March 8, 2006. The companies affected by the possible changes in the draw  
11 from the OUSF were invited to attend. In addition, representatives from Verizon Northwest  
12 Incorporated and Qwest Corporation also attended the workshop, as did some members of the  
13 OUSF Advisory Board.

14 At that first workshop, representatives of OTA asked for the opportunity to explore options  
15 beyond those listed on Appendix A. That opportunity was granted and a second workshop was  
16 scheduled for March 30, 2006. Shortly before the second workshop, OTA circulated its initial  
17 position, which was that the Commission Order should be implemented as adopted. OTA's  
18 reasoning for this position is attached as Appendix B. Once again, the companies affected by the  
19 possible changes in draws from OUSF were invited to attend the workshop. And again,  
20 representatives from Verizon Northwest Incorporated and Qwest Corporation also attended the  
21 second workshop, as did some members of the OUSF Advisory Board.

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26 MEMORANDUM  
OF UNDERSTANDING - 3

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APPENDIX A  
PAGE 12 OF 19



1 OTA's Compromise Proposal

2 At the March 30, 2006 workshop, OTA developed and offered a compromise position. That  
3 compromise would place an interim limitation on distributions from the rural portion of OUSF.  
4 That compromise was discussed and received general support at the workshop. Following the  
5 workshop, OTA canvassed its members to determine if any member had an objection to the  
6 proposal. No objection was heard.

7 On the basis of the foregoing, Staff, OTA and OECA offer the following:

8  
9 MEMORANDUM OF UNDERSTANDING

10 For purposes of an interim period of time (defined below) the rural companies that are  
11 eligible to draw from the OUSF agree to an interim limitation in the amount of support per line.  
12 This interim limitation would be the support per line that is built into the 2006 surcharge rate of  
13 7.12%. The amount for the rural portion of the OUSF would be distributed to the rural companies  
14 based upon a distribution ratio created by each rural company's 2004 cost per line derived from the  
15 2004 Form I for each rural company.

16 This interim limitation would increase the current projected annual draw for rural  
17 companies' support in the OUSF from approximately 8.9 million dollars to approximately 10.3  
18 million dollars. A spreadsheet depicting the anticipated draw from OUSF based upon the 2004  
19 Form I for each company is attached as Appendix C. The support would be based on the cost per  
20 line as derived from the 2004 Form I for each rural company.

21 For the estimated 10.3 million dollar annual distribution, the rate rebalancing would follow  
22 the method set out at paragraphs 29 through 33 of the stipulation adopted in order 03-082. The  
23 OUSF support disbursements to eligible LECs would follow the method set out at paragraphs 19  
24 through 22 of the stipulation.

25  
26 MEMORANDUM  
OF UNDERSTANDING - 4

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APPENDIX A  
PAGE 13 OF 19

ORDER NO. 06-297

1 The parties to this Memorandum of Understanding intend that the interim limitation will be  
2 in effect until the completion of the next triennial review as contemplated by the Commission  
3 Order. However, OTA and Staff agree that either party may file a petition to seek Commission  
4 review of the OUSF plan upon: (1) the issuance of a future Federal Communications Commission  
5 (FCC) order creating a new federal contribution method in CC Docket No. 96-45, unless such  
6 change can only be implemented through legislation; (2) the issuance of a future FCC order  
7 changing the intercarrier compensation mechanism in CC Docket No. 01-92, if such FCC order may  
8 have an effect on intrastate access charges or OUSF issues; or (3) an increase in the per line support  
9 for rural companies that does not require a corresponding increase in the surcharge rate based upon  
10 either of the following two events: a) an increase to the contribution base or b) a decrease in the  
11 number of ETCs receiving support from the OUSF. The parties further agree that the interim  
12 limitation will not automatically terminate merely because OTA or Staff have filed a petition as  
13 described above but will continue until the Commission issues a final order which grants, denies or  
14 takes other appropriate final action upon the petition. Finally, each party reserves the right to make  
15 whatever arguments they deem appropriate in any docket resulting from the filing of the  
16 aforementioned petition.

17 This Memorandum of Understanding constitutes an interim proposal and should not be  
18 interpreted as incorporating any agreement as to the theoretical basis to adjust any aspect of the  
19 Commission Order other than an agreed limitation on the OUSF support per line calculation under  
20 paragraphs 10 through 13 of the stipulation adopted in Order 03-082 for purposes of the triennial  
21 review contemplated by paragraph 5 of said stipulation.

22 The advantage of the proposal contained in this Memorandum of Understanding is that it  
23 does not require an increase in the 2006 surcharge rate of 7.12%. There may need to be a future  
24 increase in the surcharge rate if the contribution base continues to decline.

25  
26 MEMORANDUM  
OF UNDERSTANDING - 5

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APPENDIX A  
PAGE 14 OF 19

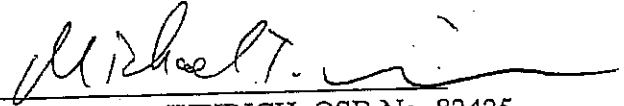
ORDER NO. 06-297

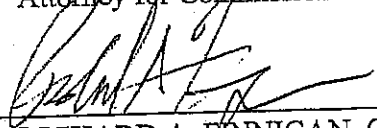
1 A further advantage to the agreed limitation in this Memorandum of Understanding is that it  
2 can be implemented effective July 1, 2006. It was apparent that any restructuring of the  
3 Commission Order would delay implementation, probably until July 1, 2007.

4 Another advantage of the interim limitation as set forth in this Memorandum of  
5 Understanding is that all parties avoid the significant transactional costs that the reopening of  
6 Docket No. UM 1017 would entail.

7 For the reasons set forth above, Staff, OTA and OECA respectfully submit the  
8 Memorandum of Understanding for Commission consideration.

9 Respectfully submitted this 15<sup>th</sup> day of May, 2006.

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26 MEMORANDUM  
OF UNDERSTANDING - 6

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## Appendix A

## Options for OUSF Support Update

1. Freeze support per line and open docket.
2. Calculate composite rate for rural telcos (2001 level) and increase by an index such as CPI. Distribute support based on 2004 revised support ratios times the capped fund amount.
3. Include a productivity factor in the calculation of the support per line.
4. Change ROR from 11.1% to a lower rate.
5. Impute DSL revenues as an additional OUSF offset.
6. Allocate a portion of COE Cat. 4.13 and CWF Cat. 1.3 (subscriber line for DSL). Would have to remove some federal loop support offset as well.
7. Adjust the line counts to include DSL capable lines in the denominator to calculate cost per line.
8. Use a tiered approach to disallow X% of the increase over a set amount. The % disallowance increases with the size of company.
9. Apply plant and expense per line caps on costs.
10. Adopt Federal formula to calculate loop cost.
11. Change the benchmark.
  - a. Index the benchmark. Penalizes Qwest and Verizon if no review of their costs.
  - b. Deaverage the benchmark between urban and rural companies.
12. Use economic cost model to calculate support per line.
13. Require companies to demonstrate the need for the support.
14. Revise the definition of supported lines, e.g., primary lines only.
15. Use an affordability benchmark which is company specific.
16. Limit ETC status to 1 ETC in rural areas.

APPENDIX BOTA's Preferred Course of Action

It was originally anticipated that the OUSF contribution rate would increase to 7.12% under projections made before analysis of the rural companies' 2004 Form I was undertaken. After that analysis, which calculated the increases in per line support that would be generated under the Commission Order, the OUSF contribution rate rises to 7.76%. OTA believes that this is not an undue increase in the contribution rate.

OTA's position is that any such increase is well justified by the actions taken over the course of the three years by the rural ILECs in improving service to customers in rural Oregon.

For example, Monroe Telephone Company has undertaken its first major construction project in over 25 years. It has replaced miles of aerial plant with buried plant. This improves the reliability of service to customers. It is a direct benefit to those customers. In a similar project, Gervais has also replaced aerial plant with underground plant.

Many rural companies have converted to new billing systems in the interval between 2001 and 2004. These new billing platforms are necessary to give customers increased choices and to provide a means which allows the companies to efficiently comply with increased customer education requirements, such as truth-in-billing requirements, notification related to customer rights and responsibilities, and other customer education initiatives. More sophisticated billing systems allow companies to increase customer choice of services and increase the level of customer education through better billing formats.

During this time period, many rural companies had to invest in switch upgrades (usually software, but sometimes hardware) to make their switches CALEA compliant and to enable porting of numbers. The CALEA investment is a matter of national security and thus benefits customer safety. Porting of numbers allows easier competition, which many argue is a benefit to customers.

In addition, many rural companies have added substantial numbers of customer service staff between the years 2001 and 2004. As telecommunications has become more complex, customers have more questions. Those customers more often turn to their local company for information than trying to wade through tedious calling trees that require customers to categorize their questions and wade through multiple layers in an effort to find answers to their questions. This increased need for customer education and customer responsiveness requires more employees and, therefore, a higher level of expense.

ORDER NO. 06-297

In addition, some companies, such as Stayton, Canby and Molalla, among others, find themselves within the boundaries of urban growth areas. This means that the companies are seeing a substantial level of new developments. As carriers of last resort, the rural companies have to build plant to serve throughout each of these new developments, even though they may not have each new home subscribe to service. For example, some customers may not subscribe to wireline service at all, preferring wireless service. Other customers may be enticed by a bundle of services from Comcast, as another example. However, the carrier of last resort obligation requires the investment to be made throughout the service area.

For all of these reasons, the increase in per customer expense and the corresponding increase in per customer support from OUSF is understandable. The result is an increase in the contribution level, but not an outrageous increase.

Appendix C

UM 1017 Memorandum of Understanding

Ln. No.	Company	2005 Basic Service Lines	Current Support/ln/mo	Annual Distribution	Support/ln/mo based on 2004 Form I	Annual Distribution	% of Distribution	Revised Distribution	Revised Support per line
1	Asotin	146	\$0.00	\$0	\$0.00	\$0	0.000000	\$0	\$0.00
2	Beaver Creek	4,287	\$5.47	\$281,399	\$12.77	\$656,940	0.040381	\$416,749	\$8.10
3	Canby	11,029	\$1.10	\$145,583	\$6.62	\$876,144	0.053855	\$555,808	\$4.20
4	Cascade Utilities	8,900	\$6.48	\$692,064	\$4.27	\$456,036	0.028032	\$289,300	\$2.71
5	CenturyTel	68,669	\$4.90	\$4,037,737	\$6.71	\$5,529,228	0.339872	\$3,507,630	\$4.26
6	Citizens	12,582	\$2.69	\$406,147	\$5.56	\$839,471	0.051601	\$532,543	\$3.53
7	Clear Creek	3,607	\$0.00	\$0	\$3.96	\$171,405	0.010536	\$108,736	\$2.51
8	Colton	1,180	\$0.00	\$0	\$0.00	\$0	0.000000	\$0	\$0.00
9	Eagle	454	\$8.22	\$44,783	\$11.42	\$62,216	0.003824	\$39,469	\$7.24
10	Gervais	1,033	\$5.51	\$88,302	\$9.78	\$121,233	0.007452	\$76,908	\$6.20
11	Helix	323	\$14.40	\$55,814	\$17.26	\$66,900	0.004112	\$42,440	\$10.95
12	Home	843	\$2.16	\$21,851	\$3.07	\$31,056	0.001909	\$19,701	\$1.95
13	Malheur	12,303	\$2.58	\$380,901	\$6.92	\$1,021,641	0.062798	\$648,108	\$4.39
14	Midvale	252	\$0.00	\$0	\$0.00	\$0	0.000000	\$0	\$0.00
15	Molalla	6,519	\$6.86	\$536,644	\$12.11	\$947,341	0.058231	\$600,974	\$7.88
16	Monitor	632	\$8.46	\$64,161	\$14.52	\$110,120	0.006769	\$69,858	\$9.21
17	Monroe	927	\$4.06	\$45,163	\$18.17	\$202,123	0.012424	\$128,223	\$11.53
18	Mount Angel	1,676	\$0.49	\$9,855	\$0.41	\$8,246	0.000507	\$5,231	\$0.26
19	Nehalem	3,102	\$0.95	\$35,363	\$2.76	\$102,738	0.006315	\$65,175	\$1.75
20	North State	495	\$0.00	\$0	\$0.35	\$2,079	0.000128	\$1,319	\$0.22
21	Oregon	1,718	\$2.28	\$47,004	\$0.00	\$0	0.000000	\$0	\$0.00
22	Oregon-Idaho	633	\$8.77	\$66,617	\$13.29	\$100,951	0.006205	\$64,041	\$8.43
23	Peoples	1,445	\$0.00	\$0	\$0.00	\$0	0.000000	\$0	\$0.00
24	Pine	927	\$0.00	\$0	\$0.00	\$0	0.000000	\$0	\$0.00
25	Pioneer	14,987	\$0.36	\$64,744	\$4.33	\$778,725	0.047867	\$494,007	\$2.75
26	Roome	641	\$24.02	\$184,762	\$21.46	\$165,070	0.010147	\$104,717	\$13.61
27	Scio	1,800	\$0.00	\$0	\$0.00	\$0	0.000000	\$0	\$0.00
28	Sprint	65,797	\$1.87	\$1,476,485	\$4.63	\$3,655,681	0.224708	\$2,319,090	\$2.94
29	Stayton	7,171	\$3.59	\$308,927	\$3.70	\$318,392	0.019571	\$201,982	\$2.35
30	St. Paul	630	\$0.00	\$0	\$5.93	\$44,831	0.002756	\$28,440	\$3.76
31	TransCascades	205	\$0.00	\$0	\$0.00	\$0	0.000000	\$0	\$0.00
32	TOTAL	234,913		\$8,974,304		\$16,268,566		\$10,320,450	

Appendix C

# EXHIBIT 3



**Data Request OCTA-MONROE 4:** As of December 31, 2011, provide the company average revenue per line for the following line types and by wire center and study area (to the extent these data are not available at the wire center level, please provide the data at the lowest level of granularity available, such as rate center):

- A. Residential local voice service;
- B. Business local voice service;
- C. Residential broadband service provided by the company or its affiliates;
- D. Business broadband service provided by the company or its affiliates.

**RESPONSE:** This data request is objected to as requiring the company to perform a special study. It is also objected to as overly burdensome. Monroe Telephone Company does not track revenues by customer class, other than the access line revenue itself. Therefore, the company would need to examine each and every bill for the calendar year 2011 to provide the information that is requested. This would be a separate study that the Company would not conduct in the normal course of business. Such a study of each individual bill is also overly burdensome. Without waiving the foregoing objections, based on the December 2011 billing, residential local services, which are comprised of local dial tone and flat rate EAS, produced \$87,252 or \$130.42 per line. For the same period, business local service produced \$32,800 for a per line amount of \$197.59.

As to subparts C and D, this portion of the data request is objected to as seeking information not relevant to the matters within this proceeding. In addition, it is seeking information that is beyond the scope of the proceeding. In the Ruling issued August 29, 2012, the Administrative Law Judge stated as follows: "Issue 1 will not be included in these proceedings, as the purpose of the OUSF has been established - and may only be revised - by an

act of the legislature. The purpose of the OUSF is to assure the availability of basic telephone service at a reasonable and affordable rate."

Further, this data request seeks only revenues, but without the corresponding expense and therefore seeks information that would be misleading.

Name of Responder: John T. Dillard  
Title: President  
Employer: Monroe Telephone Company

CERTIFICATE OF SERVICE  
UM 1481

I certify that I sent the attached Response to OCTA's Motion to Compel by electronic mail and U.S. mail to the following:

FILING CENTER  
PUBLIC UTILITY COMMISSION OF OREGON  
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SALEM, OR 97308-2148  
puc.filingcenter@state.or.us

I hereby certify that I served the attached Response to OCTA's Motion to Compel upon all parties of record in this proceeding by electronic mail, pursuant to OAR 860-013-0070, to the following parties or attorneys of parties:

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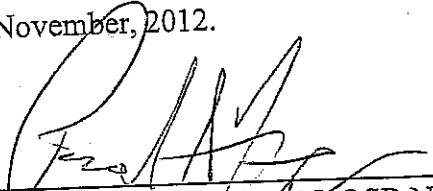
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