

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON

Staff investigation of the Oregon Universal
Service Fund

Docket No. UM 1481

**CLOSING COMMENTS OF COMCAST
PHONE OF OREGON, LLC**

I. INTRODUCTION

Comcast Phone of Oregon, LLC (“Comcast”) submits these closing comments to the Public Utility Commission of Oregon (“Commission”) concerning the Staff investigation of the Oregon Universal Service Fund (“OUSF”). In its initial comments, Comcast urged the Commission to distinguish (1) the narrowband issue – whether the OUSF remains necessary to support narrowband services, from (2) the broadband issue – whether Oregon needs an intrastate broadband funding mechanism to complement the mechanisms being developed through the Federal Communications Commission’s (“FCC”) National Broadband Plan. On November 23, 2010, Administrative Law Judge Shani Pines held a conference call with the parties, informing the parties of the Commission’s particular interest in questions five through thirteen on the issues list, which concern the role of the existing narrowband OUSF. In the closing comments below, Comcast has addressed each of those issues. Comcast trusts that these comments will assist the

Commission in reviewing how OUSF money has been invested and whether the OUSF remains necessary for the support of incumbent local exchange carrier (“ILEC”) narrowband services.¹

II. COMMENTS

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 statutory goal of affordable basic telephone service has been met throughout Oregon. As of March 2009, over 98 percent of Oregon households subscribed to voice service through wireline, wireless, or cable providers.² However, the achievement of this goal should not be credited solely to the OUSF. As Staff points out, Oregon’s two largest ILECs, Frontier (formerly GTE) and Qwest (formerly US West), used OUSF payments not to reduce the cost of residential telephone service in high-cost areas, but instead to subsidize rates for business customers.³ Because businesses tend to be located in higher-density areas, closer to city and town centers, there are serious questions as to whether the OUSF funding – as opposed to natural growth and market forces – has driven the expansion of affordable basic telephone service.

Contrary to Staff’s assertions⁴, the situation today differs fundamentally from the circumstances prevalent when the OUSF was established in the wake of the Telecommunications Act of 1996. While the need for affordable and reasonably comparable service still exists, the options for providing that service have expanded, as have the number of companies offering such services, or even more valuable services, to consumers. Ten years’ worth of infrastructure has been constructed since that time, including not only wireline loops and wire centers but also extensive digital cable facilities and wireless facilities. Certainly, low-income consumers and

¹ Comcast continues to believe that the Commission should not take on the monumental task of designing an intrastate broadband funding mechanism until the FCC has acted on implementation of the universal service reform aspects of the National Broadband Plan.

² Qwest’s Opening Comments, at 2 (citing FCC data).

³ Staff’s Comments, Issue 5, at 3.

⁴ Staff’s Comments, Issue 1, at 1-2.

high-cost areas continue to exist, and the objective of affordable service remains important.⁵ However, the Commission must not overlook the fact that, with a decade of innovations in technology, significant infrastructure investments, and growth in competitive offerings, this objective has largely been achieved.

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?

While Comcast urges the Commission to wait for implementation of the FCC's National Broadband Plan before determining whether an intrastate broadband funding mechanism is needed and, if so, what type of mechanism might be appropriate, the Commission need not wait to embark on a comprehensive review of whether or not the current narrowband OUSF should be discontinued or otherwise modified. As explained in Comcast's Initial Comments, action on broadband funding before FCC pending actions on the National Broadband Plan ("NBP") become known would be premature.⁶ As part of implementing the NBP, the FCC has initiated a proceeding to consider retargeting Federal USF funding to stimulate broadband deployment to all U.S. households. If FCC and Congress implement this type of comprehensive reform as part of the NBP, it would significantly impact the potential need for, and the role of, any state broadband fund. The impact of such reform cannot be known until final FCC action. Action on broadband before the FCC acts would be premature.

It is simply not possible, until the USF reform aspects of the National Broadband Plan are implemented, to say whether a supplemental Oregon broadband funding plan is needed or to define the scope of such a plan.

⁵ Staff's Comments, Issue 1, at 1-2.

⁶ A National Broadband Plan for Our Future, GN Docket No. 09-51; *see also* National Broadband Plan, available at <http://www.broadband.gov/download-plan/>.

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

This question, as stated, is largely moot because 2010 is nearly over. Going forward, it is Comcast's position that the OUSF as it is now constituted may no longer be necessary to support basic telephone service availability, which has largely been achieved and paid for as discussed herein. However, should the Commission determine that the OUSF remains necessary for affordable telephone service availability, the services supported should be voice-grade retail telecommunication services with tone-dialing capability, as well as access to: EAS, long-distance, directory assistance and operator services. Comcast further believes that, to the extent any funding remains necessary, it should apply to primary residential basic service only.⁷

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

No. Comcast agrees with Staff on this point. In keeping with the original goals of the plan, only primary lines should be supported. Furthermore, to the extent business services receive any support, it should be limited to single-line small business service and pegged to a significantly higher benchmark rate. As stated above, it is Comcast's position the OUSF may no longer be necessary for the purpose for which it was designed. Any expansion of that purpose before the effectiveness of the current OUSF has been assessed by the Commission would be premature. Comcast believes that following a comprehensive assessment of the current narrowband OUSF, the Commission will likely find that no further support is needed and that the OUSF should be discontinued or that any remaining need for support can be more narrowly targeted, greatly reducing the size of the fund.

⁷ If the Commission determines that basic narrowband single-line small business services should be supported, it should utilize a significantly higher benchmark rate than is utilized for residential service.

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?

Obviously, 2010 is drawing to a close. However, in conducting a comprehensive review of the current narrowband OUSF, the Commission should re-evaluate the reasonable and affordable rate for basic telephone service and update the current benchmark rate. One of the primary means of determining whether any continued support is needed for narrowband services is to examine what consumers are willing to pay for such services in competitive markets. In addition, the best way to size any remaining fund appropriately, and to minimize the negative impact on the customers of contributing carriers, is to limit support only to those customers that are taking a very basic package of phone service. The alternative to this approach would be to compare the entire revenue received from a customer for regulated and unregulated services to the cost of providing those services.

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?

Given the shortfalls in accountability regarding the expenditure of OUSF funds, it is impossible to determine whether the funds were in fact utilized to offset access rate reductions. See the answer to issue 12.

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

It does not appear that the intrastate universal service support currently provided is being spent for the intended purpose of expanding basic narrowband telephone service in Oregon. There is no need to spend substantial funds on that purpose, because the purpose has largely been met. The public switched telephone network has been built, and it has largely been paid for. As of March 2009, over 98 percent of Oregon households subscribed to service through wireline,

wireless, or cable providers.⁸ Moreover, data shows that as of 2009, 81% of total plant in service of mid-sized ILECs was depreciated, i.e., paid for by ratepayers.⁹ Since the network has already been built and paid for, the only reason to provide a subsidy is if the incremental cost in serving a subscriber cannot be recovered from the revenues derived from the subscriber. By and large, ILECs are no longer paying the costs of that OUSF-subsidized infrastructure (including broadband plant), while remaining able to generate future revenue based upon it. Having already achieved the goals of the OUSF, the OUSF funds currently provided are now being spent by carriers for other purposes. These purposes include maintenance of rural ILEC revenues at monopoly-era levels.

Telephone service continues to expand in rural areas through the growth of wireless networks and (VoIP-capable) cable networks. Cable companies provide high speed Internet service to 122 million homes, compared to only 90 million homes in 2003.¹⁰ Such high speed Internet access service provides a platform for over-the-top VoIP services, as well as an indication that cable VoIP is generally available to those homes. As of December 31, 2008, non-ILECs provided 270,000 subscribers with VoIP service.¹¹ In the last ten years, the number of wireless subscribers in Oregon has increased from 1.2 million to nearly 3.1 million.¹² However, the OUSF money no longer funds the carriers that are growing their networks (e.g., wireless carriers, cable operators providing VoIP service), but instead funds ILECs whose numbers of loops are shrinking. Effectively, OUSF support is now undercutting the growth of alternative

⁸ Qwest's Opening Comments, at 2 (citing FCC data).

⁹ See FCC, ARMIS Report 43-01, showing \$34 billion of accumulated depreciation on gross plant in service of \$42 billion.

¹⁰ Data from the National Cable and Telecommunications Association, <http://www.ncta.com/Statistics.aspx> and <http://www.ncta.com/Stats/BroadbandAvailableHomes.aspx> (last visited on November 19, 2010).

¹¹ Opening Comments of Verizon Competitive Providers, at 9 (citing FCC data).

¹² Opening Comments of Verizon Competitive Providers, at 7 (citing FCC data).

service to rural areas – including cost-effective VoIP and 4G services¹³ – by funding only the ILECs at the expense of the carriers with whom they compete. Where unsubsidized competition exists, there is no need to subsidize the ILECs with taxes on the subscribers of their competitors. Continuing to do so will distort competitive markets and slow the expansion of new more efficient services to high-costs areas.

OECA's position appears to be that revenues from intrastate access charges and local telephone service are an entitlement, and that Oregon ratepayers – who in the end fund the OUSF – are obligated to replace any revenue that ILECs lose as a result of competition. The argument that ILECs are entitled to OUSF money to sustain revenue levels – regardless of whether such support promotes universal service, reflects the continuing influence of outdated monopoly-era thinking. The purpose of the OUSF is not, and should not be, a make-whole fund for ILECs to compensate for falling local service and intrastate access revenues. The OUSF framework should put aside a paradigm based on monopoly carriers providing only narrowband service with closely regulated rates and rates of return. The ILECs are no longer subject to rate cases where their revenue requirements are determined and rates for all services are set to yield that revenue requirement. The Commission must not ignore the MANY forms of revenue that the rural ILECs derive from their networks besides basic telephone rates, but which are largely not recognized in ILECs' regulatory books of account. These include sales of broadband Internet services and video programming services, which are now offered over many OUSF-subsidized ILEC networks.

Staff's comments also show that OUSF support is not needed to fund basic narrowband service for the customers of the two largest ILECs in the State, Frontier and Qwest, which

¹³ For data showing that fixed-wireless 4G networks may in some cases be more efficient than wireline networks, see The Broadband Availability Gap, OBI Technical Paper No. 1, at 77. Such networks could also be the basis for efficient VoIP services.

nonetheless received 80% of the OUSF disbursements last year.¹⁴ Given the many revenue streams of those carriers, further funding makes little policy sense. In addition, any continuing subsidies to smaller ILECs should be computed after netting out all other revenue streams received from the networks that have been built in large part using OUSF support. Even if ILECs' new revenue streams did not offset declines in access revenues, it is not the obligation of Oregon ratepayers, including non-ILEC customers, to offset such losses through the OUSF.

As Comcast discussed in its Initial Comments, make-whole is an antiquated concept dating to the era of monopoly local telephone companies subject to rate-of-return regulation. The dangers of the make whole approach are further discussed in the paper entitled "Debunking the Make-Whole Myth" by Michael D. Pelcovits, Ph.D. of Microeconomic Consulting and Research Associates, Inc., attached as Exhibit 1 to those Initial Comments.

The current OUSF money has continued to enrich ILECs after the purpose of the funding have been achieved. Competition for voice service has increased in size and scope throughout most geographic markets, as a result of private investments made by cable companies and wireless companies. These factors increase the importance of continuing to foster voice competition in these markets in Oregon and diminish any special status or role for the ILECs.

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?

The Commission is currently unable to verify that OUSF money provided to ILECs is spent for its intended purpose. As discussed previously, given that the intended purpose has largely been achieved, it is hard to see how current disbursements are being properly spent. But equally as important, the current mechanism lacks adequate oversight and financial auditing. As

¹⁴ Staff's Comments, Issue 54, at 17.

Staff admits in its comments: “For the two large companies the Commission currently has *no effective way* to determine how the money has been spent.”¹⁵ With respect to the smaller ILECs, Staff claims that the money is capable of being tracked “[w]ith the exception of some small amounts.”¹⁶ However, tracking the OUSF support to particular ILEC accounts does not capture whether that money was actually needed to support the particular expenditures because, as noted above, the OUSF mechanism does not take into account revenues from non-regulated services. The lamentable state of current auditing practices is evident from Staff’s comments on *future* accountability, stating that “it would be useful for tracking purposes to see the money received from the fund carried in an account on the company’s books,” and “to see what portion of the expenses booked to specific expense account [sic] was covered by the fund.”¹⁷ That basic level of accountability should have been in place all along and no further OUSF funding should occur until the Commission can verify how ratepayer’s dollars were actually spent. And while Staff rejects itemized tracking as “too difficult,”¹⁸ Comcast believes that ratepayers are entitled to know precisely how the OUSF is used.

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

No. See the response to issue 12.

III. CONCLUSION

The OUSF, as it exists today, is an ineffective mechanism for its intended purpose of supporting narrowband telecommunications service in high-cost and rural areas in the State. OUSF money is currently expended in ways that do not advance the original goals, in part because the money has long been expended without adequate accountability and auditing. The

¹⁵ Staff Comments, Issue 12, at 5. (Emphasis added).

¹⁶ Staff Comments, Issue 12, at 5.

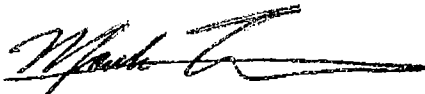
¹⁷ Staff Comments, Issue 35, at 12.

¹⁸ Staff Comments, Issue 39, at 13.

narrowband network that the OUSF was to support is already in place and has largely been paid for (i.e., fully depreciated). The OUSF's focus on ILECs has become outdated, anti-competitive, and counterproductive as new non-ILEC competitors increasingly offer cost-effective service to high-cost areas, without OUSF support. Furthermore, the OUSF continues to fund ILECs without regard for the numerous non-regulated revenue streams these ILECs receive from the same networks they have built over the years using OUSF support. This inefficient and anti-competitive system should be discontinued. Comcast, therefore, urges the Commission to conduct a comprehensive examination of the companies receive funding under current narrowband OUSF to determine whether any such support is still needed for narrowband services. Only after such an examination, and with the benefit of knowing how federal USF support will be repurposed pursuant to the NBP should the Commission (and the Oregon Legislature) commence deliberations on whether an intrastate broadband funding mechanism might be necessary and the form any such mechanism might take.

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**CERTIFICATE OF SERVICE
UM 1481**

I hereby certify that the foregoing **CLOSING COMMENTS OF COMCAST PHONE OF OREGON, LLC** was served on the following persons on November 23, 2010, by email to all parties and by U.S. Mail to parties who have not waived paper service:

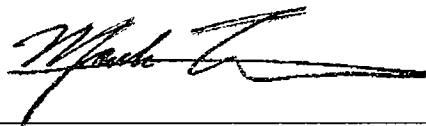
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Dated this 23rd day of November, 2010



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