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February 22, 2011

Carol Hulse  
Oregon Public Utility Commission  
550 Capitol St., NE  
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Re: UM 1481

Dear Ms. Hulse:

Enclosed for filing in the above entitled matter please find an original and (1) copy of Qwest Corporation's Motion for Reconsideration and Stay of Order No. 10-496, along with a certificate of service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Carla".

Carla M. Butler

CMB:  
Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

**UM 1481**

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

**QWEST'S MOTION FOR  
RECONSIDERATION AND STAY OF  
ORDER NO. 10-496**

Pursuant to ORS 756.561 and OAR 860-014-0095, Qwest Corporation ("Qwest") and Frontier Communications Northwest Inc. ("Frontier") hereby respectively move for reconsideration and stay of pertinent portions of the Commission's Order No. 10-496 issued on December 28, 2010 ("Order"). The portions of the Order that Qwest and Frontier seek to have reconsidered and stayed include the Commission's decision "that interim measures should be adopted for non-rural companies to further promote [Oregon Universal Service Fund] transparency and accountability," "that non-rural companies may only use OUSF distributions for investment in infrastructure or maintenance, such as new investment or investment associated with repairs and maintenance," and that "non-rural companies, must, beginning March 1, 2011, submit semiannual reports to show that the funds were used in areas with demonstrably higher installation and maintenance costs (i.e., supported wire centers) as compared to the remaining wire centers (i.e., unsupported wire centers)." See Order, p. 3.

The principal basis for this motion for reconsideration and stay is that this proceeding was not noticed as a docket in which changes to the purpose of the Oregon Universal Service Fund ("OUSF") would be considered, and there was no evidentiary basis for any such changes to the OUSF. There is no evidentiary record to support the Commission findings in the Order, and thus, there was not sufficient due process for any such findings. Further, apart from the procedural concerns, the Order is substantively inconsistent with the Commission order that was

the genesis of the OUSF (Order No.00-312; UM 731 Phase IV), which specifically stated that the purpose of the OUSF is the transfer of implicit support to explicit support, and which required companies to file revenue-neutral cost studies to participate in the fund. Indeed, Staff's testimony in docket UM 731, Phase IV, supported the implicit-to-explicit support basis for the OUSF, and explicitly rejected the position that the OUS is an infrastructure improvement fund. Finally, even if the Commission were inclined to revisit its decision in Order No. 00-312 in Docket UM 731, any amendment of that order would be inconsistent with ORS 756.568.

### **BRIEF PERTINENT PROCEDURAL BACKGROUND**

#### **A. Commission Docket UM 731 and Order No. 00-312**

On December 19, 1994, the Commission issued Order No. 94-1852 in Docket UM 731 to undertake a universal service investigation for the state of Oregon. That proceeding was then bifurcated into various phases, with a long history of investigation into universal service issues, including extensive testimony by many parties over four phases and numerous years.<sup>1</sup>

Ultimately, on June 16, 2000, the Commission issued Order No. 00-312 in Phase IV in Docket UM 731. In that order, the Commission approved the final plan for the OUSF and initiated the OUSF's operations for Oregon's two non-rural companies: GTE (now Frontier) and U S WEST (now Qwest). In order to receive money from the OUSF, Frontier and Qwest agreed to a reduction of a variety of business rates. The reason for reduction was the agreement by all parties that a revenue-neutral filing should be made by all telecommunications utilities in Oregon to offset the OUSF support amounts received. Specifically, the Commission found:

We agree that a revenue-neutral filing by telecommunications utilities is necessary when they start receiving OUS support. It would be unconscionable to allow them to receive explicit universal support while continuing the same level of implicit support. However, the best time to decide exactly what service rates should be changed will be when the

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<sup>1</sup> In the meantime, the Legislature in 1999 passed legislation directing the Commission to establish a universal service fund and defined key characteristics of the fund. ORS 759.425.

companies make their tariff filings. They and other parties will have an opportunity to analyze the issues in depth and make their arguments during the rate-rebalancing process. That, in turn, will provide a more complete record on which we can make the most appropriate decisions.

We therefore direct telecommunications utility companies in Oregon to file with the Commission by September 1, 2000, revenue-neutral tariffs to offset universal service receipts. The tariffs should be filed to be effective when the utility companies begin receiving universal service support payments from the fund Administrator. Order No. 00-312, p. 269.

Frontier and Qwest then made their tariff filings in order to receive OUSF support. See e.g., Tariff Filing Advice No. 719; Tariff Filing Advice No. 1844.<sup>2</sup> Both Frontier and Qwest have been receiving OUSF support based on the requirements set forth in Order No. 00-312.

**B. Docket UM 1481**

In April 2010, Commission Staff recommended that the Commission open a docket to conduct a full investigation of the OUSF. See Staff Report of April 14, 2010 for April 26, 2010 Public Meeting. Staff's two stated reasons for its recommendation that the Commission open a universal service investigation and explore whether the OUSF should change from wireline support to *broadband support* and whether reforming the OUSF requires *rebalancing intrastate access charges* were (1) changes in technology in the past 15 years and (2) anticipated Federal Communications Commission ("FCC") action. Staff Report, p. 1.

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<sup>2</sup> Staff also supported the implicit-to-explicit support basis for the OUSF. Staff rejected the position that the OUSF is an infrastructure fund. See e.g., Rebuttal Testimony of Thomas A. Turner, Exhibit Staff/26, Turner/54, in which Mr. Turner testified:

In regard to USWC's proposal to use some of its OUS funds for infrastructure investment, I prefer offsetting the OUS support through rate re-balancing rather than using the money for additional infrastructure investment for the following reasons:

- (1) SB 622 already sets up a separate Telecommunications Infrastructure Account with a separate funding source. I do not see the need for another account.
- (2) From the customer's perspective, the payment of OUS surcharges to fund infrastructure are simply cash contributions to construction, whereas revenue-neutral re-balancing means that some customers will receive reduced rates on other services that have been traditionally overpriced.
- (3) From the LEC's perspective, revenue neutrality is profit neutrality. This mitigates the public's concern that the OUS program represents corporate welfare.

Specifically, Staff noted that the Commission had not investigated the OUSF since its inception more than 15 years ago, and since that time, there have been significant changes in the telecommunications industry (including the migration to high-speed digital and data service, drastic increases in wireless use, and that wireline carriers have experienced both access line losses and losses in compensated minutes carried on their networks). *Id.*, pp. 1-2. With respect to anticipated FCC action, Staff noted that the FCC has stated it intends to change the supported services from voice service support to broadband support. *Id.*, p. 2. Staff further noted that since the scope of the OUSF and underlying methodology for calculating support is in part defined by the Federal USF, major changes in the Federal USF should trigger a review of the OUSF. *Id.*<sup>3</sup>

The Commission then opened this docket. A number of interested parties intervened, including Qwest and Frontier. There were several workshops and prehearing conferences, and Staff filed a Consolidated Issues List on August 17, 2010. The parties then submitted two rounds of comments, on October 25, 2010 and November 23, 2010. There was no discovery, testimony or hearing, however. Moreover, although the parties commented on a wide variety of issues, there were no issues or comments pertaining to interim measures for non-rural companies (i.e., Frontier and Qwest), or any requirement that non-rural companies only use OUSF distributions for investment in infrastructure or maintenance, or regarding any reporting requirements to show that any such distributions were used in areas with higher installation or maintenance costs.

**C. Order No. 10-496**

On December 28, 2010, the Commission issued its Order. The Commission briefly summarized the background of the OUSF and the parties' comments. The Commission then correctly ruled that many of the issues deserve more time and careful consideration than was

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<sup>3</sup> Staff also noted that as part of the National Broadband Plan, the FCC is reviewing intercarrier compensation (access charges) with a stated goal of reducing these rates. Staff Report, p. 1.

available at that stage of the docket, particularly given the possibility of legislative action on universal service in early 2011. According, the Commission deferred ruling on the parties' comments at that time, with the intent of taking up these issues later in this docket. Order, p. 3.

The Commission also noted that several parties had raised issues about "accountability and transparency of the OUSF." Order, p. 3.<sup>4</sup> The Commission therefore ruled that it "reaffirm[s] [its] expectation that any company receiving distributions from the OUSF must be able to document and demonstrate how the funds were used to support high-cost areas in Oregon," and set newly-articulated *additional requirements* on non-rural companies (namely, Frontier and Qwest). Specifically, the Commission ruled:

We further find, however, that interim measures should be adopted for nonrural companies to further promote OUSF transparency and accountability. First, we *clarify* that non-rural companies *may only use OUSF distributions for investment in infrastructure or maintenance*, such as new investment or investment associated with repairs and maintenance. Second, the non-rural companies must, beginning March 1, 2011, submit semiannual reports to show that the funds were used in areas with *demonstrably higher installation and maintenance costs (i.e., supported wire centers) as compared to the remaining wire centers (i.e., unsupported wire centers)*. The non-rural companies must prepare these reports at an aggregate level and provide all supporting documentation to facilitate any audit performed by our Staff. Order, p. 3. (Emphasis added.)<sup>5</sup>

Qwest and Frontier respectfully submit that the Commission erred in adopting these interim measures, and in finding (or "clarifying") that non-rural companies may only use OUSF distributions for investment in infrastructure or maintenance, or that such companies should file the semi-annual reports that the Order imposes. Thus, Qwest and Frontier respectfully request

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<sup>4</sup> The Commission did not articulate what those concerns were, but only referred to (without any specifics, or page references) the "Closing Comments of Comcast, OCTA, and Verizon." Order, p. 3, fn. 1.

<sup>5</sup> The Commission also opened a second phase of the docket to further examine what additional reporting and auditing requirements should be imposed on companies receiving OUSF distributions. Order, p. 3. Qwest and Frontier do not have any objections to a second phase of the docket to explore reporting and auditing requirements *per se*, but they do object to the extent that "additional" reporting and auditing requirements means that the non-rural company reporting requirements which the Commission has just imposed on Qwest and Frontier and which are at issue in this motion for reconsideration and stay remain in place.

that the Commission reconsider the Order, and that it stay the effectiveness of the Order to allow the proceeding to continue with a full evidentiary record.

## **ARGUMENT**

### **I. STANDARDS FOR MOTIONS FOR RECONSIDERATION**

A party may file a motion for reconsideration within 60 days of the service of a Commission order. See ORS 759.561; OAR 860-014-0095(1). Thus, this motion is timely.

Further, grounds for reconsideration include error of law or fact in the order which is essential to the decision (OAR 860-014-0095(3)(c)), or good cause for further examination of a matter essential to the decision (OAR 860-014-0095(3)(d)). For the reasons set forth below, Qwest and Frontier respectfully submit that the Commission's decision regarding interim measures for non-rural companies and its newly-articulated restrictions on the use of OUSF support has several errors of law and/or fact which are essential to the Commission's decision. At a very minimum, there is good cause for further examination of a matter essential to the Commission's decision. Thus, the Commission should reconsider and stay the Order.

### **II. THE COMMISSION SHOULD GRANT RECONSIDERATION**

Qwest and Frontier respectfully submit that the Commission should grant reconsideration because there is *no evidentiary basis* for that portion of the Order in which the Commission mandated interim measures on Qwest and Frontier. There has not been an evidentiary proceeding, and thus no full evidentiary record on which the Commission could set new standards or requirements on Qwest and Frontier. Not only has there been no evidentiary hearing, there has not even been testimony or discovery.<sup>6</sup> Rather, there were merely a series of general, unverified comments filed by numerous parties on a wide variety of issues. Moreover,

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<sup>6</sup> Qwest and Frontier note that in the past few days, Staff has issued a series of data requests, including data requests on issues related to the Commission's decision.

none of the comments and issues pertained to the specific issues the Commission addressed regarding restricted uses (limited to investment and maintenance) for OUSF distributions.

Just as importantly, the Commission's order requiring Qwest and Frontier to only use OUSF distributions for investment in infrastructure or maintenance is inconsistent with the Commission's Order No. 00-312. In that order, the Commission found that telecommunications utilities like Qwest and Frontier were required to file revenue-neutral tariffs to offset universal service receipts, but there was no restriction about using such support only for "investment in infrastructure or maintenance."<sup>7</sup> The Commission's Order now articulates new requirements that it had not previously established.

Finally, even if the Commission were inclined to revisit Order No. 00-312 in Docket UM 731, and were now inclined to restrict non-rural companies' uses for OUSF distributions, it should do so only after these issues have been fully noticed, addressed and vetted, including the development of a full evidentiary record where all interested parties have had an opportunity to present evidence. Indeed, the Commission's Order may amount to an amendment of the Commission's previous order, Order No. 00-312. However, under ORS 756.568, an existing order may only be amended "upon notice to the public utility or telecommunications utility and after opportunity to be heard as provided in ORS 756.500 to 756.610." Given the truncated process of only two rounds of comments, without discovery, testimony and a hearing, and without notice that the Commission might make such changes on these particular issues, Qwest and Frontier respectfully submit that this proceeding has not met those fundamental procedural requirements.

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<sup>7</sup> As stated, Staff's testimony in Docket UM 731, Phase IV, directly and specifically opposed having the OUSF be an infrastructure fund. See fn. \_\_\_.



### **III. THE COMMISSION SHOULD STAY THE ORDER**

Likewise, for the reasons set forth above, Qwest and Frontier respectfully submit that the Commission should *stay* that portion of its Order regarding any interim measures by non-rural companies to allow the Commission, Staff and all interested parties (including Qwest and Frontier) to further address these issues in Phase II of this docket. Currently, the Commission has established a *March 1, 2011* date for the submission of a semi-annual report that shows that the funds were used in areas with “demonstrably higher installation and maintenance costs (i.e. supported wire centers) as compared to the remaining wire centers (i.e., unsupported wire centers).” This date is fast-approaching. However, because the Order was not based on a full evidentiary record, or on sufficient notice and opportunity to be heard, the Commission should stay the Order. The Commission should also stay the Order because it is inconsistent with the Commission’s Order No. 00-312 in Docket UM 731, but the Commission did not provide adequate notice and an opportunity to be heard as required by ORS 756.568.

Finally, the Commission should stay the Order because it would be unduly burdensome for Qwest and Frontier to comply with the Order’s new reporting requirements within such a short time period (March 1, 2011), especially because there are no specific guidelines for the required reports, and indeed, it is anticipated that such guidelines will not be developed until Phase II. In fact, Judge Pines recognized this lack of specific guidelines in her February 8, 2011 prehearing conference memorandum when she noted that parties subject to the accountability requirements in the Order “should make their *best efforts* to comply with those requirements, regardless of the proceedings in Phase II of this docket,” and that if those requirements are revised, it will note those revisions in its Phase II order. Prehearing Conference Memorandum, p. 2. Qwest and Frontier respectfully submit, however, that this is essentially putting the proverbial “cart before the horse,” as Qwest and Frontier believe it would be more prudent for

the Commission to reconsider these issues, stay its order, and *then* address any future reporting requirements in a *fully-developed* Phase II of this docket.

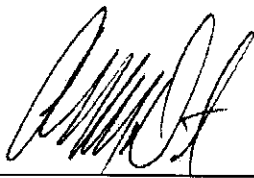
**CONCLUSION**

Accordingly, Qwest and Frontier respectfully submit that the Commission should reconsider and stay that portion of Order No. 10-496 pertaining to interim measures for non-rural companies, including the Commission's newly-articulated restrictions on non-rural companies' use of OUSF distributions, and the Commission's new semi-annual distribution reporting requirements for non-rural companies.

DATED: February 22, 2011

Respectfully submitted,

QWEST AND FRONTIER

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Attorney for Frontier Communications  
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## CERTIFICATE OF SERVICE

UM 1481

I hereby certify that on the 22<sup>nd</sup> day of February 2011, I served the foregoing **QWEST CORPORATION'S MOTION FOR RECONSIDERATION AND STAY OF ORDER NO. 10-496** for the above entitled docket on the following persons via e-mail transmission, and via U.S. Mail, by mailing a correct copy to those not waiving service in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

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DATED this 22<sup>nd</sup> day of February, 2011.

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