

**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.

RULING

DISPOSITION: MOTIONS TO CERTIFY RULING DENIED

I. SUMMARY

In this ruling, I deny the joint motion of the Oregon Cable Television Association (OCTA) and the Commission Staff to certify my December 3, 2012, ruling to the Commission for review.

II. PROCEDURAL BACKGROUND

On November 14, 2012, OCTA filed motions to compel the Oregon Telecommunications Association (OTA), Frontier Communications Northwest, Inc., and CenturyLink, Inc., to produce documents and information relative to the provision of broadband services within their Oregon service areas, along with a request to modify the schedule for the submission of testimony. On November 19, 2012, I revised the procedural schedule and, in accordance with those revisions, OTA, Frontier and CenturyLink filed responses on November 20, 2012, opposing the motions, and the following day OCTA filed a reply.

On December 3, 2012, I issued a ruling denying the motion to compel. Pursuant to the modified schedule, opening testimony was filed by parties and Staff on or before December 10, 2012. In accordance with the procedures prescribed in OAR 860-001-0420(3), OCTA and Staff filed a joint motion requesting certification of the ruling to the Commission. OTA, Frontier, and CenturyLink filed a response on December 17, 2012.

III. LEGAL STANDARD

OAR 860-001-0110(1) provides that any party may request that the Administrative Law Judge certify a ruling within 15 days after it has been issued. Subsection (2) of the rule provides that the ALJ must certify the ruling to the Commission if the ALJ finds that either: (a) the ruling may result in substantial detriment to the public interest or undue prejudice to a party; (b) the ruling denies or terminates a person's participation; or (c) good cause exists for certification.

IV. DISCUSSION

The current dispute relates to Issue 2: “What changes should be made to the existing OUSF related to the calculation, the collection, and the distribution of funds?”

On December 3, 2012, I denied OCTA’s motion to compel which asked for the confidential versions of the last three Annual Report Forms O from Frontier, CenturyLink, and each OTA member company, as well as year-end line counts by wire centers for various services, including residential and business broadband services provided by the companies and their affiliates.

OCTA and Staff seek the Commission’s review of that decision, citing the following paragraph of my ruling as erroneous:

In Oregon, unregulated companies and the unregulated affiliates of regulated telecommunications service providers are authorized to receive subsidies from both the federal government and the Oregon Residential Service Protection Fund for providing cellular telephone service and handsets. No company receives greater or lesser subsidies on account of the size or success of its cellular telephone business. Each company’s market penetration and revenues by wire center are no more relevant in the unregulated broadband market than they are in the unregulated cellular telephone market when it comes to the issue of providing a subsidy to making basic telephone service broadly available to the public. The information requested by OCTA is therefore not “reasonably calculated to lead to the discovery of admissible evidence,” as required by ORCP 36B(1).

OCTA and Staff ask that the ruling be certified to the Commission so that it “can opine on whether the broadband revenues ILECs derive from the networks that are used to determine the costs of basic service for purpose [*sic*] of calculating the OUSF are relevant in this proceeding.” The issue is essentially “whether or not the Commission should take into account broadband revenues in calculating OUSF is relevant to this docket.” OCTA also asserts that it needs the specific information to prepare complete testimony regarding proposals for modification of the manner in which the OUSF is calculated.¹

In support of their request, OCTA and Staff argue that the ruling’s broad assertions concerning the lack of relevance of broadband revenue data will preclude full consideration, an issue that was included by the ALJ, and is the focus of this docket: “What changes should be made to the existing OUSF related to the calculation, collection and distribution of funds?” Staff argues that broadband revenues should be looked at to

¹ Staff notes that it has no position on the underlying motions to compel. It did not file any comments with respect to the motions to compel and its sole purpose for participating in the motion for certification is to “confirm that broadband revenues can be relevant to determine an allocation of the cost of providing basic telephone service on a network that provides more than one service.” (Motion at 1, fn. 1).

allocate shared services on one network and that, if broadband revenues cannot be considered to make some manner of allocation, then cost information may become more relevant as a way of allocating costs. The joint motion argues that the scope of discovery is very broad under the rules of the ORCP and that the ALJ's ruling was erroneous: its rationale presupposes that changes with respect to calculation, collection and distribution cannot include any consideration of broadband revenues derived over common facilities. To provide fully-informed testimony, OCTA maintains that it needs discovery on all revenues and costs attributable to networks used to provide OUSF-supported services.

CenturyLink, Frontier and OTA jointly respond by asserting that the ruling was consistent both with the law and the ALJ's explanation for including Issue 2 on the issues list adopted earlier in the proceeding. They highlight the emphasis placed in the issues list ruling on the benchmark rate and method of calculating basic service costs and the prevention of direct or indirect cross-subsidization of competitive services. ORS 759.218(2) specifically prohibits the consideration of broadband revenues in calculating basic service costs for OUSF distributions. The law permits the Commission to target support explicitly, thus preventing cross-subsidization of competitive services by regulated services.

V. RESOLUTION

As made clear by my ruling establishing the issues list, the scope of this proceeding is limited to reexamining the OUSF under the current statutory framework.² That framework includes ORS 759.218, which provides in part:

- (1) A telecommunications utility may not use revenues earned from, or allocate expenses to, that portion of the utility's business that is regulated under this chapter in order to subsidize activities that are not regulated by this chapter
- (2) The Public Utility Commission may not require revenues or expenses from an activity that is not regulated under this chapter to be attributed to the regulated activities of a telecommunications utility.

OCTA and Staff asks the Commission to clarify and thereby confirm that broadband revenues are indeed relevant in determining what funds a telecommunications carrier may receive for providing basic local service. That, however, is clearly not permissible. Given the express restrictions of ORS 759.218(2), neither expenses nor revenues from unregulated services can be involved in any attribution formula with respect to the support of basic local services.

The portions of the ruling with which OCTA and Staff disagree go to questions of relevance and ask the Commission to opine on that topic. However, the prohibitive clarity of the statute does not provide the Commission with the latitude to undertake that analysis. Accordingly, no cause exists for certification. The motion to certify is denied.

² See ALJ Ruling at 2 (Aug 29, 2012).

Finally, I clarify that, consistent with ORS 759.218(1) and (2), this decision does not preclude the consideration of methods to allocate the costs of services provided over a shared network (both regulated and unregulated), in order to determine the how those costs should be allocated amongst the services.

Dated this 17th day of January, 2013, at Salem, Oregon.

A handwritten signature in cursive script, appearing to read "Allan J. Arlow", written over a horizontal line.

Allan J. Arlow
Administrative Law Judge