ITEM NO. RM1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: April 24, 2018

REGULAR X **CONSENT** ____ **EFFECTIVE DATE** N/A

DATE: April 17, 2018

TO: Public Utility Commission

FROM: Nicola Peterson NAP

THROUGH: Jason Eisdorfer, Bryan Conway, and Roger White

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. AR 615) Request for approval to initiate a rulemaking to require companies providing services using Interconnected Voice over Internet Protocol (VoIP) to contribute to the Oregon Universal Service Fund.

STAFF RECOMMENDATION:

Staff recommends that the Commission initiate the informal stage of a permanent rulemaking to require companies providing services using Interconnected Voice over Internet Protocol (VoIP) to contribute to the Oregon Universal Service Fund.

DISCUSSION:

Issue

Whether the Commission should initiate the informal stage of a permanent rulemaking to require companies providing services using Interconnected Voice over Internet Protocol to contribute to the Oregon Universal Service Fund.

Applicable Rule or Law

Under ORS 759.425(2)(a), the Oregon Public Utility Commission (Commission) is required to "establish and implement a competitively neutral and nondiscriminatory universal service fund." The Commission must use the OUSF "to ensure basic telephone service is available at a reasonable and affordable rate," and may also use the OUSF "to encourage broadband service availability and to provide support to telecommunications carriers that provide both basic telephone service and broadband service." ORS 759.425(2)(a)-(b).

The Commission is authorized under state law to adopt rules to conform the OUSF to section 254 of the federal Telecommunications Act of 1996 (Telecommunications Act) and the rules of the Federal Communications Commission (FCC) to the extent that the Commission determines conformance is appropriate. ORS 759.425(2)(a). Additionally, under ORS 756.060, the Commission may adopt reasonable and proper rules relative to all statutes administered by the Commission. The Telecommunications Act also explicitly preserves states' authority to "adopt regulations not inconsistent with the [FCC's] rules to preserve and advance universal service." 47 USC § 254(f).

In 2006, the FCC ruled that VoIP providers, like providers of traditional telephone service, must collect and remit federal universal service contributions.[1] In 2010, in response to a petition for a declaratory ruling filed by the states of Kansas and Nebraska, the FCC ruled that states can likewise require VoIP providers to collect and remit state universal service contributions if the state requirements are properly structured.[2] In that order, the FCC observed that "the application of state universal service contribution requirements to interconnected VoIP providers does not conflict with federal policies, and could, in fact, promote them."[3]

<u>Analysis</u>

Background
The FCC classifies wireline retail voice telephone service customers into two categories: switched access lines and VoIP subscriptions.[4] Over time, VoIP subscriptions have grown to constitute an increasing share of the retail voice telephone services market. Per FCC statistics, in Oregon from 2010 through 2016, VoIP subscriptions increased on average by 8 percent per annum while switched access lines declined by 10 percent per annum.[5] In December 2016, approximately 46 percent of wireline retail voice telephone service customers in Oregon were VoIP subscriptions.

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[1] *Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, FCC 06-94, 21 FCC Rcd 7518, 7537-47 ¶¶ 34-57 (2006) (*Interim USF Contribution Order*), *petition for review denied in relevant part*, *Vonage Holdings Corp v. FCC*, 489 F3d 1232, 1235-41 (DC Cir 2007).
[2] *Universal Service Contribution Methodology*, WC Docket No. 06-122, Declaratory Ruling, FCC 10-185, 25 FCC Rcd 15,651, 15,656 ¶ 11 (2010) (*Kansas/Nebraska Contribution Ruling*).
[3] *Id.* at 15,658 ¶ 16.
[4] FCC, Voice Telephone Services: Status as of December 31, 2016, at 2 (Feb. 2018), https://apps.fcc.gov/edocs_public/attachmatch/DOC-349075A1.pdf.
[5] FCC, Voice Telephone Services Report (last updated Feb. 7, 2018), https://www.fcc.gov/voice-telephone-services-report.

How VoIP Works
VoIP is a technological mechanism for delivering voice communication; services provided using VoIP technology are comparable to switched access services. VoIP technology transmits voice signals using Internet Protocol (IP). Both VoIP and switched access services digitize analog voice, which can then be sent over the network to the intended recipient. The key difference between VoIP services and switched access services is that VoIP services route the digital packets utilizing address labels in a way that permits the packets to take multiple paths to get to the recipient, while switched access services use a single dedicated path to transmit to the recipient. Use of VoIP technology has increased in part because it is a more efficient way of utilizing the network.

Describing a VoIP provider as "interconnected" indicates that the provider's end-user customers are able to originate calls or terminate calls using the public switched network (PSTN) and call to or receive calls from other parties that are similarly interconnected to the PSTN. Practically speaking, a phone that does not reach all other phones is not as valuable as one that does. Therefore, as the FCC has observed, "much of the appeal of [Interconnected VoIP] services to consumers derives from the ability to place calls to and receive calls from the PSTN, which is supported by universal service mechanisms."[6] Interconnected VoIP providers thus benefit from and are "dependent on the widespread telecommunications network for the maintenance and expansion of their business."[7]

The FCC's rules define "Interconnected VoIP" as a service that: (i) enables real-time, two-way voice communications; (ii) requires a broadband connection from the user's location; (iii) requires Internet protocol-compatible customer premises equipment (CPE); and (iv) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.[8]

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[6] *Interim USF Contribution Order,* 21 FCC Rcd at 7540 ¶ 43.
[7] *Id.* at 7541 ¶ 43.
[8] 47 CFR § 9.3.

Federal and State Regulatory Context
In June 2006, the FCC voted to require providers of VoIP services to contribute to the Federal Universal Service Fund.[9] In 2010, the FCC ruled that states could likewise require VoIP providers to contribute to state universal service funds if those requirements are properly structured.[10]

States are now trending toward requiring VoIP providers to contribute to state universal service programs. Since 2010, numerous states have introduced a requirement that Interconnected VoIP providers contribute to their respective state funds. According to the 2014 National Regulatory Research Institute (NRRI) report on state universal service funds, out of twenty-four states with universal service programs that are similar to Oregon's program (designed to support providers of service in high-cost rural areas), eleven required VoIP providers to contribute to those programs by 2014.[11] In two states, Oregon and New York, at least some VoIP providers contribute by agreement. Since the 2014 NRRI report was published, two additional states, Utah and South Carolina, have implemented changes to require VoIP providers to contribute to their universal service programs.[12] Commissions in two more states, Vermont and Idaho, have open dockets that may lead to similar changes.[13]

Oregon Market and Regulatory Background
Annual industry reports show that an increasing number of Oregon's ILECs and CLECS are moving over to using VoIP-capable technology. According to the most recent FCC's Local Telephone Competition report, as of December 2016, there were 58 Interconnected VoIP providers in Oregon serving 591,000 VoIP subscriptions. These providers include four incumbent local exchange carriers. These subscriptions may account for over 46 percent of all wireline retail voice telephone customers in the state.

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[9] *Interim USF Contribution Order,* 21 FCC Rcd at 7537-47 ¶¶ 34-57.
[10] *Kansas/Nebraska Contribution Ruling*, 25 FCC Rcd at 15,656 ¶ 11.
[11] *See* Sherry Lichtenberg, National Regulatory Research Institute, Report No. 15–05, State Universal Service Funds 2014, at Appendix B (June 2015), http:// http://nrri.org/download/nrri-15-05-state-usf/. While the text of the report refers to twenty-two high-cost states, the survey responses in Appendix B to the report show that twenty-four states indicated having high-cost programs in their survey responses.
[12] *See* Memorandum from State of Utah Office of Consumer Services to Utah Public Service Commission 2 (Apr. 26, 2017), https://pscdocs.utah.gov/Rules/17R36001/293598CommOCS4-26-2017.pdf (noting that "the UUSF surcharge applies to all providers that facilitate telecommunications services, including those providing voice over Internet protocol (VoIP) technology"); South Carolina Public Service Commission Order No. 2016-837, Docket No. 2016-267-C (Dec. 15, 2016), https://dms.psc.sc.gov/Attachments/Order/1cdbca2e-223e-4b84-9554-6d211314b0b2 (ordering that "Interconnected VoIP service providers, regardless of whether they hold a Certificate of Public Convenience and Necessity issued by the Commission, must contribute to the State USF based on their retail voice communications services").
[13] *See* Vermont Public Utility Commission Docket No. 18-0443-INV (stayed pending resolution of a motion for reconsideration in Docket No. 7316); Idaho Public Utilities Commission Case No. GNR-T-17-05.

In Oregon, the status of Interconnected VoIP providers with respect to contributing to the OUSF is currently somewhat varied. The issue was raised but not definitively resolved on an industry-wide basis in the Commission's last investigation into the OUSF. Specifically, the Phase III Stipulation in Docket No. UM 1481, which was adopted by the Commission in Order No. 16-093, requires signing parties to collect the OUSF surcharge based on their intrastate retail revenues from VoIP.[14] Signatories to this stipulation include, among others, certain of the major Oregon ILECs' affiliates and multiple industry associations, including the Oregon Cable Telecommunications Association, although an association's signature did not necessarily convey that all association members agreed to contribute according to the terms of the stipulation. At least one major VoIP provider in Oregon represented by these signing parties is paying into the OUSF in accordance with this stipulation. Staff understands that certain other VoIP providers in Oregon may also be paying into the OUSF, either on a voluntary basis or because they believe that doing so is required of them. Staff is also aware of additional VoIP providers in Oregon who are not currently contributing to the OUSF.

Recommended Process
Proceedings in other states suggest that this rulemaking will receive considerable input and interest from industry. Upon the initiation of the informal stage of a rulemaking, Staff therefore proposes to schedule multiple workshops that will address the subjects of rule language, the OUSF contribution mechanism, updated OUSF forms, methods for contribution calculations, and implementation issues. Consistent with the limited scope of this proposed rulemaking, Staff plans to address the contribution mechanism, calculation, and form issues only with respect to Interconnected VoIP providers. After conducting workshops and engaging stakeholders, Staff expects to propose rules to the Commission by the end of the summer so that the Commission will be in a position to issue a notice of proposed rulemaking in the fall. The formal stage of the rulemaking process should conclude by the end of 2018, with updated rules going into effect in January 2019.

Conclusion

Requiring Interconnected VoIP providers to contribute to the OUSF would conform the OUSF to the federal program, update the fund to mirror widespread practice in other states with similar universal service programs, and better reflect changes in technology and trends in the market. Interconnected VoIP providers rely on and benefit from the statewide telecommunications network that is supported by the OUSF.

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[14] Order No. 16-093, Appendix A, at 4 ¶ 14.

ORS 759.425(2)(a) requires the Commission to establish and implement a competitively neutral and nondiscriminatory OUSF. Competitive neutrality is the principle that carriers who provide voice service, regardless of the technology employed, should contribute on an equitable and non-discriminatory basis. Requiring Interconnected VoIP providers to contribute to the OUSF will level the playing field in Oregon not only for Interconnected VoIP providers as compared to other voice telephone service providers, but also among Interconnected VoIP providers themselves.

While Staff will initiate an overall review of the OUSF no later than 2019 in accordance with the Order No. 16-093, separately addressing the single issue of Interconnected VoIP providers before beginning that more comprehensive review has multiple benefits and is superior to delaying action on this particular issue. In addition to being more manageable for Staff and the Commission, acting now on this issue will serve to inform stakeholders' decision regarding whether and how to engage with the upcoming overall review of the OUSF program.

PROPOSED COMMISSION MOTION:

Initiate the informal stage of a permanent rulemaking to require companies providing services using Interconnected Voice over Internet Protocol to contribute to the Oregon Universal Service Fund.

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