

# Warm Springs Telecom



WARM SPRINGS TELECOM

PO Box 910 Warm Springs Or. 07761

[www.warmspringstelecom.com](http://www.warmspringstelecom.com)

541-615-0555

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March 13, 2018

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

RE: Declaratory Petition

Dear Commission staff:

Enclosed for filing please find a copy of a Declaratory Petition which we are filing today with the Oregon Public Utility Commission to ask the Commission to open an investigation of a funding issue that Warm Springs Telecom feels is harming the company and is a result of a difference in interpretation of previous UM 1481 orders and stipulations.

Thank you for your concern in this matter.

Sincerely,

*/Marsha Spellman/*

Marsha Spellman  
Regulatory Director, WSTC  
503-997-1685  
[marsha.spellman@warmspringstelecom.com](mailto:marsha.spellman@warmspringstelecom.com)

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DR \_\_\_\_\_

Petition for Declaratory Ruling )  
Regarding Interpretation of UM 1481 )  
Funding Mechanism as it Impacts )  
 )  
Warm Springs Telecom )

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**PETITION FOR DECLARATORY RULING**

Pursuant to ORS § 756.450 and OAR § 860-001-0430, Warm Springs Telecommunications (“WSTC”), (the “Petitioner”) requests that the Oregon Public Utility Commission (OPUC), (the “Commission”) issue a declaratory ruling confirming the Commission’s intent to clarify and confirm elements of UM 1481 as they relate to Warm Springs Telecommunications (“WSTC”).

WSTC is concerned that as a result of the recent changes to the OUSF funding mechanisms stemming from UM 1481, WSTC has lost \$250,000 in needed funding. WSTC is concerned in particular with two issues: the change to the “two-month lag” which has been identified in all the original orders but suddenly dropped without identification; and the timing of the change of funding to a yearly January starting date. Together, these two changes to the funding have resulted in a \$250,000 negative impact to the company’s bottom line.

We do not believe that the intent of the Commission was to cause this level of financial hardship to WSTC. WSTC is a new company that was started to provide service to the residents of the Reservation of the Confederated Tribes of Warm Springs, in Central Oregon. When the company began, only two-thirds of all tribal residents received basic telephone service and only one-third had any broadband access. Overtime, WSTC has built a broadband/telephone network to serve its members. WSTC serves one of Oregon’s highest cost areas. Unlike most of the other Oregon rural companies, WSTC relies entirely on this funding as its only funding mechanism, as it does not receive Federal USF high cost funding. WSTC has filed a petition with the FCC to become the ILEC for the reservation, but until the FCC grants the petition, the state OUSF is a critical source of income for the company.

To this end, we are asking the Commission for clarification of the order, how it has been interpreted and implemented by Staff, and how the resulting negative impact can be ameliorated.

## INTRODUCTION

On April 26, 2010, the Commission opened UM 1481 to investigate and plan for the future of the Oregon Universal Service Fund (OUSF). After several workshops and prehearing conferences, parties submitted two rounds of comments addressing the current status of the fund and recommendations for the fund's revision to ensure the fund continues to help fund rural telecommunications. In order to maintain a viable fund, parties to UM 1481 have agreed to decreases in individual company funding. WSTC has been party to all phases of the proceeding and has agreed to have its funding cut like the other intervening parties

However, WSTC is a unique company. It is the 9<sup>th</sup> tribally owned company in the USA. It provides service to an underserved community and to a large number of under-privileged people, as indicated by the significant number of Lifeline customers, more than 50% of all customers now are Lifeline eligible. We indicated these numbers in our responses in the proceedings. The unique circumstances of the company have been recognized in the past orders and stipulations resulting in special considerations for WSTC. The following includes the issues as they relate to WSTC as written into the various Commission orders and Stipulations.

### Information Stipulated In Orders Identifying Warm Springs Telecom as related to the requested Declaration:

**Paragraph 2)** Consistent with the discussion in Commission Order No. 15-365, the Parties agree that the OUSF surcharge will not exceed eight and one half percent (8.5%) during the term of the Stipulation and that, to the extent required, the OUSF support amounts agreed upon for the Non-Rural Companies set forth' in paragraphs 3 and 4, below, for the Rural Companies set forth below in Paragraphs 5 and 6, below, and for Warm Springs Telecommunications Company (emphasis added), set forth in paragraph 13, below, shall be reduced on a pro rata basis in order to maintain a surcharge of no greater than eight and one half (8.5%). Any pro rata reductions shall be determined for the Rural Companies in aggregate and for the Rural Companies and Warm Springs Telecommunications Company individually. The adjusted aggregate support amount for the Rural Companies will be allocated to them based on their relative shares of support received to the total adjusted support amount.

**Paragraph 13)** It is recognized that the Warm Springs Telecommunications Company is in a unique situation as it builds a new network to serve the Confederated Tribes of Warm Springs Reservation and surrounding area. Pursuant to Order No. 13-162, Warm Springs Telecommunications Company will be capped at \$1,500,000 per year from the OUSF. Beginning with the calendar year 2017 and a separate stipulation between Staff, CenturyLink QC and Frontier Communications resolves the issue of accountability for the non-rural ILECs

each year thereafter for a period of five (5) years. Warm Springs Telecommunications Company's adjusted cap will be calculated by reducing the \$ 1,500,000 cap by three percent (3%) per year, subject to any additional reductions required pursuant to Paragraph 2, above.

**Paragraph 12)** For the period January 1, 2017 through December 31, 2021, a qualified CLEC that is designated as an ETC for purposes of OUSF will draw at the ILEC per-line amount for the area it serves. The ILEC per line support amount will begin with the base per-line support value contained in the "Base Per Line Support Amounts," which is found on the PUC website. The per-UNE amount will be adjusted to reflect the percent reduction that has occurred for the specific Non-Rural Company that owns the wire center between 2016 and the date the support amount is being calculated.

Listed below are additional statements from the various orders and stipulations as they relate to WSTC and the changing funding process of UM 1481.

1. UM 1481 (Order No. 10-496; Dec. 28, 2010)

- Parties Comments, identifies Warm Springs Telecommunications Company as participant in the proceeding.
- Identifies that OUSF raised the issue of serving historically underserved.  
(Reply comments of WSTC identified in order)

2. UM 1481 (Order No. 13-162; May 2, 2013)

- Pg. 3. OUSF Support to Decrease over Staggered 3-year terms  
Paragraph 2: The 3-year period for Rural Companies begins on July 1, 2013. Rural Companies will see a single-funding step decrease taking effect on July 2015 and ending June 30, 2016, subject to the **two-month lag**. (emphasis added  
(NOTE: At this point WST was NOT identified as a rural company. See footnote 7 in order showing list of rural companies.)
- Pg. 3. OUSF Funding not affected by Line Counts  
Paragraph 2 (page 4). Rural Companies will have a single pro-rata reduction of \$1 million on July 1, 2015 and will also not be affected by line counts...
- Pg. 5. CLEC ETCs to receive Identical Compensation; Warm Springs Support Capped  
Between January 1, 2014 and December 31, 2016, any Competitive Local Exchange Carrier (CLEC) designated an Eligible Telecommunications Carrier (ETC) for purposes of OUSF funding will receive the ILEC per-line amount in its service area. Warm Springs Telecommunications Company will not be able to receive in excess of \$1.5 million in OUSF annual support.

3. ATTACHMENT I: UM 1481 Phase II Stipulations; identifying the issue regarding to the 2-month lag.
- The term for Rural Companies is three years, beginning on July 1, 2013 and ending on June 30, 2016, with one funding decrease taking effect on July 1, 2015, **SUBJECT TO THE NORMAL TWO-MONTH Oregon Universal Service Fund (OUSF) lag.** (emphasis added)
  - There will be no reductions of more than 5% for any one company in a year. Re-allocations, if any, for implementation July 1, 2015 (**SUBJECT TO THE TWO MONTH OUSF FUNDING LAG**) (emphasis added)

## CONCLUSION

Warm Springs Telecom requests that the OPUC Commission opens a proceeding to review the issues that have been raised by WSTC in regard to the funding that it believes it is due. WSTC also believes that it is in a unique position, as indicated in the UM 1481 rulings and stipulations. While other companies were minimally impacted by the same issues, it is only WST that has been harmed to the extent that we have argued. Without any federal funding, serving a very underserved and poor community, this funding is critical to the success of the company. We are presently in a proceeding at the FCC to become the ILEC for the reservation where WSTC serves, but until that time comes, the only subsidy received is the state OUSF. Losing a quarter of a million dollars is a significant impact for the company.

To this end, we request that the OPUC look into this issue as we believe this is both unfair and unintended.

Thank you for your consideration,

*/Marsha Spellman/*

Marsha Spellman, JD  
Regulatory Director,  
Warm Springs Telecom

# DDR Consulting

## Background

I was engaged by Warm Springs Telecommunication Company (WSTC) to review questions pertaining to a \$250,000 account receivable balance that they have on their books.

I was the CEO of Warm Springs Ventures, the economic development corporation of the Confederated Tribes of Warm Springs (TRIBES). Ventures is the tribal entity that created and initially oversaw WSTC, a corporation that is wholly owned by the Tribes. WSTC became a Tribal LLC in January 2010 and I became the CEO of that entity in addition to my role as CEO of Ventures. I was intimately involved in obtaining financing, setting up the accounting records and oversaw the startup operations of the newly formed telecommunication enterprise. I also helped to obtain and record OUSF funding. I was on the phone with Marsha Spellman, the Regulatory Director for WSTC, as she was in Salem during the UM 1481 proceeding, negotiating for WSTC. Those proceedings dealt with the issues surrounding the OUSF fund. At this time, the PUC moved companies from a line count funding process to one where companies were to receive a lump sum amount monthly. During this proceeding, UM 1481 Part II, we negotiated that WSTC would receive \$1.5million per year.

## History

During the WSTC's most recent audit, there were questions raised as to the collectability of the OUSF receivable recorded on the Company's books. It should be noted that there were no questions as to the validity of the receivable – just as to whether it was collectible. These audit questions resulted in numerous correspondence between the WSTC and the PUC. The outcome of that correspondence was that the PUC believes that OUSF payments to the WSTC was no longer subject to a “two-month lag”. This interpretation meant that WSTC would need to write off a \$250,000 OUSF support receivable on their balance sheet.

It should be stated that I do not believe it was the PUC's intent to penalize Warm Springs by saying that OUSF support payments to them were no longer subject to the “two-month lag”. However, that in effect, is what happened. I also would note that other rural companies would not be as materially impacted by such an interpretation and likely would not care one way or another.

## “Two-Month Lag”/Establishment of WSTC's OUSF Receivable

After reviewing some of the correspondence between the PUC and WSTC there are some questions over the creation of an account receivable to record the OUSF support to be received by the Company.

As per the year over year reconciliation in Appendix A, WSTC first submitted line counts to the PUC in April of 2012. Because it took two months from the submission of the line count reports to the receipt of the PUC's payment, a receivable was created. This receivable, in PUC parlance, is referred to as a “two-month lag”.

The following summary schedule should help to show the difference between what was submitted and what was paid over the years (see monthly detail in Appendix A).

<b>WARM SPRINGS TELECOMMUNICATION COMPANY</b>							
<b>ANALYSIS OF OUSF PAYMENTS</b>							
	<b>Actual</b>	<b>Actual</b>	<b>Actual</b>	<b>Actual</b>	<b>Actual</b>	<b>Budgeted</b>	
	<b>12/31/2012</b>	<b>12/31/2013</b>	<b>12/31/2014</b>	<b>12/31/2015</b>	<b>12/31/2016</b>	<b>12/31/2017</b>	
<b>OUSF Receivables</b>							
Beginning Balance	-	109,361.30	194,453.38	281,193.37	250,000.00	250,000.00	
UM 1481 Phase II OUSF Support	291,230.64	1,018,258.28	1,510,234.61	-	-	-	
UM 1481 Phase III OUSF Support	-	-	-	1,500,000.00	1,500,000.00	604,545.45	
<b>Total OUSF Requested</b>	<b>291,230.64</b>	<b>1,018,258.28</b>	<b>1,510,234.61</b>	<b>1,500,000.00</b>	<b>1,500,000.00</b>	<b>604,545.45</b>	
OUSF Payments Received	(181,869.34)	(933,166.20)	(1,423,494.62)	(1,531,193.37)	(1,500,000.00)	(608,636.36)	
Ending Balance	<b>109,361.30</b>	<b>194,453.38</b>	<b>281,193.37</b>	<b>250,000.00</b>	<b>250,000.00</b>	<b>245,909.09</b>	

# *DDR Consulting*

There really shouldn't be any doubt that WSTC has accounted for this "two-month lag" in accordance with Generally Accepted Accounting Principles. The WSTC auditors believe it has been accounted for properly and it appears that the PUC accounted for it properly (as evidenced by the January/February 2015 payments as seen in Appendix A).

## **UM 1481 Phase II/III Orders**

Where the confusion seems to stem from is the transition between the UM 1481 Phase II to the most recent Phase III order. In the Phase II order the "two-month lag" was eliminated for non-rural companies but was subject to the "two-month lag" for rural companies. The rural and non-rural companies were specifically identified in the order but there was no mention of WSTC. The Phase III order stipulated a reduction but made no mention of the "two-month lag", either for rural or non-rural companies or WSTC.

There are a couple of ways to interpret this order but WSTC's take would likely be; they are rural so the "two-month lag" applies. There was no mention of eliminating the two-month lag in the Phase III order so there was no change. This interpretation would also seem to eliminate any doubt as to whether the "two-month lag" is still in effect. Again, I can understand why other entities have not brought up this two-month lag issue - likely due to immateriality.

This is the basis for why WSTC continues to apply January and February OUSF payments to November and December accruals.

## **Conclusion**

While I do believe that the reduction to the cap as stipulated in Phase III of the order does affect the value of the receivable at December 31, 2016 (i.e., per Appendix A; a \$250,000 receivable at the end of 2016 would only be worth \$245,909.09 after application of the reduction and correction to January 2017 payment) it does not eliminate the fact that there is a "two-month lag" that remains in place throughout the life of the Phase III order.

What this means is that the WSTC should reduce its OUSF receivable at the end of December 31, 2016 to \$245,909.09 and they should recalculate its November/December 2017 receivable to reflect an additional 3% write down for 2018.

The WSTC's OUSF receivable is a material amount on its balance sheet. The validity of that receivable should be supported by the UM 1481 Phase III order. If there is any way to clear up the interpretation of the order to support the receivable it would be greatly appreciated. In addition, this is an issue that would need to be addressed in the next round of discussions pertaining to UM 1481.

I hope that this correspondence helps in clearing up any confusion pertaining to the WSTC accounting for OUSF payments.

Sincerely,

Jeffrey E. Anspach  
Member Manager  
DDR Consulting, LLC

