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VIA E-Filing

Nicola Peterson
Oregon Public Utility Commission
201 High St SE, Suite 100
Salem, OR 97301

Re: AR 604 – Petition to Amend OAR 860-032-0190, Definition of Basic Telephone Service to Include Access to Broadband Service

Dear Ms. Peterson:

Enclosed for filing in the above entitled matter, please find the Initial Comments of AT&T Corp., Teleport Communications America LLC and AT&T Mobility LLC (“AT&T”).

Also, please make the following additions to the service list in this docket:

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

Sincerely,

Sharon Mullin
Sharon Mullin
Director – External Affairs

Attachment

cc: Service List

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

In the Matter of

THE OREGON TELECOMMUNICATIONS
ASSOCIATION

Petition to Amend OAR 860-032-0190,
Definition of Basic Telephone Service to
Include Access to Broadband Service.

Docket No. AR 604

**AT&T COMMENTS TO OTA
PETITION TO AMEND BASIC
TELEPHONE SERVICE**

INTRODUCTION

The Oregon Telecommunications Association’s (“OTA”) Petition to amend the definition of “basic telephone service” in the Commission’s rules, OAR 860-032-0190, to include “access to broadband service” should be denied. OTA submitted a nearly identical request on November 4, 2013, which the Commission denied.¹ Although OTA attempts to position its request as a simple change to the definition of “basic telephone service,” AT&T² believes that OTA’s suggested change may have far ranging impacts. OTA, however, has not been forthcoming with the reason it is seeking this definitional change or exactly what it means by “access to broadband service.”

The parties to the Revised Stipulation, approved by the Commission in Order No. 13-162, in Docket UM-1481, recommended that the Commission conduct a comprehensive review of the OUSF commencing in 2019. AT&T believes that a comprehensive review is warranted and will allow the Commission and all parties to fully examine the purpose of the OUSF and its future need. Such a review will also allow the Commission to comprehensively consider restructuring

¹ Order No. 14-113 (Docket Nos. AR 577, UM 1481, April 7, 2014)

² The AT&T entities include AT&T Corp. and Teleport Communications America LLC

the OUSF, if needed. For all of the reasons stated herein, the Commission should deny OTA's request.

I. ARGUMENT

A. OTA Has Not Explained Why "Access to Broadband" Should be Added to the Definition of Basic Telephone Service

OTA is elusive as to why it is seeking to include the "access to broadband" in the definition of basic service. The Commission noted in Order No. 14-113, that the definition of "basic telephone service" determines which services receive distributions from the Oregon Universal Service Fund (OUSF).³ Specifically, ORS 759.425(3) requires the Commission to "establish a benchmark for basic telephone service as necessary for the administration and distribution of the universal service fund. The universal service fund shall provide explicit support to an eligible telecommunications carrier that is equal to the difference between the cost of providing basic telephone service and the benchmark, less any explicit compensation received by the carrier from federal sources specifically targeted to recovery of local loop costs and less any explicit support received by the carrier from a federal universal service program."

However, OTA claims that adding "access to broadband" to the definition of "basic service" will not cause the OUSF to increase in size.⁴ To support this claim OTA points to the Revised Stipulation adopted by the Commission in Phase III of UM 1481 which calls for the size of the OUSF to decrease each of the next five years.⁵ OTA, however, is silent on what would happen to the OUSF at the expiration of the Revised Stipulation, whether this change would impact the current Revised Stipulation, or have implications for federal universal service

³ Order No. 14-113 (Docket Nos. AR 577, UM 1481, April 7, 2014), p. 1.

⁴ OTA Petition, p.13-14 ("There may be some concern that changing the definition will have an adverse effect on the Oregon Universal Service Fund (OUSF). In other words, the concern may be that adding 'access to broadband service' will cause the OUSF to increase in size. That is not the case.")

⁵ OTA Petition, p. 14.

funding. OTA has also failed to address other issues that must be resolved prior to changing the definition, including how to allocate costs among services, including services the Commission does not have jurisdiction to regulate, that are sharing the network.⁶

The Revised Stipulation, which OTA signed, recommends that the Commission “commence no later than 2019 a proceeding to review the OUSF in order to issue a final ruling prior to the end of the 5 year term of the Stipulation regarding any and all aspects of the OUSF, without excluding any options available under Oregon law.”⁷ OTA has not explained why there should be a change to the definition of basic service at this time, when the Commission just over four months ago approved the Revised Stipulation which recommended that the Commission commence a comprehensive review of the OUSF in 2019.

A comprehensive review of the OUSF is warranted. As noted in OTA’s filing, the FCC earlier this year adopted an approach whereby rate-of-return carriers may elect either: (1) model-based support for a term of ten years in exchange for meeting defined broadband service availability obligations; or, (2) remaining on the reformed “legacy” mechanism which also have defined service availability obligations.⁸ The rate-of-return carriers must inform the FCC by November 1, 2016, on a state-by-state basis, whether they elect to receive model-based support.⁹

⁶ UM 1481 Phase III was initiated by Order No. 13-162 and, among other issues, was to address a methodology to allocate ILEC network costs between basic telephone and other services. The Revised Stipulation did not explicitly address this issue as it adopted an eight and one-half percent cap on the contribution surcharge for the five-year term of the stipulation which the parties concluded accomplished the goal of this issue by controlling the size of the OUSF. Order No. 16-093, UM 1481, Phase III (March 4, 2016), p. 2.

⁷ UM 1481 Phase III Revised Stipulation, p. 4, para. 15.

⁸ OTA Petition, p. 4; see also *Connect America Fund*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Dkt. No. 10-90, et al, FCC 16-33 (rel. Mar. 30, 2016).

⁹ See FCC Public Notice, *Wireline Competition Bureau Announces Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, DA 16-869 (Aug. 3, 2016), available at https://apps.fcc.gov/edocs_public/attachmatch/DA-16-869A1.pdf (last checked Sept. 29, 2016); see also FCC Public Notice, *Wireline Competition Bureau Releases Report for Alternative Connect America Cost Model with Minor Corrections*, DA 16-929, available at https://apps.fcc.gov/edocs_public/attachmatch/DA-16-929A1.pdf (released Aug. 15, 2016) (last checked Sept. 29, 2016).

Waiting to evaluate the OUSF until after rate-of-return carriers have had time to adjust to the new federal mechanism for distributing universal service support will allow for a more thoughtful analysis of the changes that need to be made to ensure that OUSF support complements and does not duplicate federal support.¹⁰ In the meantime, the rate-of-return carriers will receive the OUSF support provided for in the Revised Stipulation which is not impacted by reduction of lines of the rate-of-return carriers.¹¹

B. Adding “Access to Broadband Service” to the Definition is Not the Same as Access to Long Distance

OTA emphasizes in its filing that “broadband service itself would not be part of the definition of basic telephone service.”¹² OTA points to the existing definition of basic service which includes access to long distance service, 911 and other services without including the services themselves. OTA argues that it is not the broadband service provided by Internet Service Providers (ISPs) that would be part of the basic telephone service definition, instead, it is the ability to access the providers of broadband service.¹³ In the short amount of time AT&T has had to review OTA’s argument it offers the following observations.

Access to long distance service or access to the other services included in the current definition of “basic telephone service” all require only voice grade or equivalent access to the rate-of-return carrier network. In contrast, allowing “access to broadband service” requires network enhancements. Since OTA has not been forthcoming in explaining the reason for the change, it appears to AT&T that OTA wants to include the cost of the network associated with

¹⁰ In denying OTA’s previous petition, the Commission observed that “rulemakings providing broadband services at the federal level may well impact this issue as it implicates the OUSF.” Order No. 14-113, p.3.

¹¹ Order No. 13-162, Docket UM 1481 Phase II (May 2, 2013), p. 4.

¹² OTA Petition, p. 6

¹³ OTA Petition, p. 7

“access to broadband”; however, the Commission would be preempted from reviewing any of the revenues from the broadband service.

Adding “access to broadband service” would also be inconsistent with other items that are already specifically excluded from the definition of basic telephone service, such as xDSL service.¹⁴ The Commission’s exclusion of xDSL service is consistent with the FCC’s previous decision that xDSL service is an interstate service.¹⁵ OTA’s “access to broadband service” is analogous to xDSL and, therefore, should not be included in the definition of “basic telephone service.”

If instead OTA is somehow attempting to include broadband internet access service in the definition of basic telephone service, Oregon is clearly preempted from doing so.¹⁶ OTA’s petition in some places states that it is only seeking “access to broadband service” to be included in the definition, but in other places OTA appears to be discussing broadband internet access service.¹⁷ In fact, OTA explicitly states that “the FCC then took steps to redefine access to broadband service [as] a Title II service” and then asserts that adding “access to broadband service” would, therefore, be consistent with federal policy.¹⁸ Although OTA failed to provide the cites for this statement, it appears that OTA is citing to the FCC’s decision to define “broadband internet access service” or “BIAS” as a Title II service. Although AT&T disagrees with the FCC’s determination that broadband Internet access service is a “telecommunications

¹⁴ OAR 860-032-0190(4)(b).

¹⁵ *GTE Telephone Operating Cos, GTOC Tariff No. 1*, Memorandum Opinion and Order, CC Dkt No. 98-79, FCC 98-292 (rel. Oct. 30, 1998), para. 1.

¹⁶ *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14-28, FCC 15-24 (“*Order on Remand*”).

¹⁷ For example, OTA cites to a report to the Legislature that “approximately 74.7 percent of all Oregon households have broadband in the home” (OTA Petition, p. 7); growth in Internet usage (OTA Petition, p. 8); and the adoption rates of 25/3 service in rural versus urban areas (OTA Petition, p. 10). In discussing adoption rates, OTA is clearly discussing the number of people subscribed to broadband internet access service.

¹⁸ OTA Petition, p. 13

service,” AT&T concurs with the FCC’s reaffirmation of its “longstanding conclusion that broadband Internet access service is jurisdictionally interstate for regulatory purposes.”¹⁹ The Commission, therefore, cannot regulate this service.

C. The Commission Previously Denied OTA’s Request To Expand the Definition of Basic Telephone Service Citing the Need for Policy Guidance from the Legislature

The definition of “basic telephone service” determines which services receive distributions from the “OUSF.”²⁰ In denying OTA’s previous petition to add “access to broadband” to the definition of basic telephone service, the Commission noted that the Legislature has previously indicated its intention to address more universally available broadband access via legislation.²¹ The Legislature dictated the establishment of the OUSF and specifically provides for the expenditure of OUSF support, including to “survey or map the state to determine where adequate broadband services are available.”²² While OTA claims that there is no impact by its suggested change to the current OUSF, it makes this claim by citing to the cap established in the Revised Stipulation.²³ As such it appears that OTA is either acknowledging that after the term of the Revised Stipulation there will be changes or that OTA’s suggested change will have implications on other programs. In either case, the Commission previously determined that it needed policy guidance from the Legislature. The Legislature is indeed in the best position to evaluate whether there are other ways to promote broadband availability in the State.

¹⁹ *Order on Remand*, para. 431.

²⁰ Order No. 14-113, p.1-2

²¹ *Id.*, p. 2-3

²² ORS 759.425

²³ OTA Petition, p. 13-14.

D. Amending the Definition of “Basic Telephone Service” Has Broader Impact than just the Oregon Universal Service Fund

The Commission does not have authority to regulate broadband. However, changing the definition of “basic telephone service” to include “access to broadband” would inevitably result in some form of regulation over broadband. For example, ORS 759.425(2)(a) requires the Commission to “establish the price a telecommunications utility may charge its customers for basic telephone service.” This would mean that the Commission could determine how much a telecommunications utility charges its customers for a service that include access to broadband service. For the reasons discussed in Section B above, Oregon does not have the ability to regulate the price for broadband internet access service²⁴ Pursuant to Oregon’s current statute’s changing the definition of “basic telephone service” would result in the Commission regulating the rates for access to broadband.

Changing the definition of basic service would also result in changes to other programs. For example, pursuant to the rules governing the Residential Service Protection Fund, “basic service” is defined as “‘basic telephone service’ as defined in OAR 860-032-0190.” Eligible Telecommunications Providers must offer to all low-income customers who meet eligibility requirements OTAP discounts with all service offerings that “include basic telephone service.” OAR 860-033-000(2). Before a change is made to the definition of basic service the Commission must thoroughly explore all of the resulting consequences.


II. CONCLUSION

OTA has not been forthcoming in its request about the benefit to OTA of including “access to broadband” in the definition of “basic telephone service” and the consequences to the OUSF

²⁴ Para. 433 (“...should a state elect to...regulate the rates of broadband Internet access service...we expect that we would preempt such state regulations as in conflict with our regulations.”)

and other programs. OTA was a signatory to the Revised Stipulation which was just approved in March 2016. The Revised Stipulation recommended that the Commission initiate a new proceeding in 2019 to review the OUSF and issue a final order prior to the term of the Revised Stipulation. A comprehensive review of the OUSF is warranted. For these reasons, AT&T respectfully requests that the Commission deny OTA's Petition.

Respectfully Submitted,

By: 

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CERTIFICATE OF SERVICE
AR 604

I hereby certify that on the 23rd day of September, 2016, I served the foregoing Initial Comments by AT&T Corp., Teleport Communications America LLC and AT&T Mobility LLC in the above entitled docket on the following persons via email.

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DATED this 23rd day of September, 2016

AT&T Corp., Teleport Communications America LLC
and AT&T Mobility LLC

By: 

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