ORDER NO. 12 204

ENTERED JUN 05 2012

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1017

In the Matter of

PUBLIC UTILITY COMMISSION OF OREGON,

Expansion of the Oregon Universal Service Fund to Include the Service Areas of Rural Telecommunications Carriers.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED IN PART WITH AMENDMENTS

At its Public Meeting on June 5, 2012, the Public Utility Commission of Oregon adopted Staff's recommendation and the Memorandum of Understanding (MOU) in this matter, attached as Appendix A, except as modified by the Commission with respect to MOU Section D. The Commission ruled that the MOU will be in effect for one year.[1]

Prior to the end of the one year period of the MOU, July 1, 2012, the Commission will decide, either by addressing an objection to renewal of the MOU as described in Section D, or on its own motion, the terms and conditions of any further extension.

As part of Staff's recommendations, the Commission also ordered a further investigation of the Oregon Universal Service Fund in a second phase of docket UE 1481.

BY THE COMMISSION:

Becky L. Beier

Becky L. Beier
Commission Secretary

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[1] Under the MOU, The Commission may also terminate the MOU earlier upon the Commission's issuing an order revising the Oregon Universal Service Fund.

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

ITEM NO. 1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: June 5, 2012

REGULAR X **CONSENT** ____ **EFFECTIVE DATE** **July 1, 2012**

DATE: May 22, 2012

TO: Public Utility Commission

FROM: Roger White

THROUGH: Jason Eisdorfer and Bryan Conway

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF: (Docket No. UM 1017) Expansion of the Oregon Universal Service Fund to Include the Service Areas of Rural Telecommunications Carriers; Memorandum of Understanding (proposal to increase level of support for rural carriers).

STAFF RECOMMENDATION:

The Commission approve and adopt the UM 1017 Memorandum of Understanding (MOU) between the Public Utility Commission of Oregon Staff (Staff), the Oregon Exchange Carrier Association (OECA), and the Oregon Telecommunications Association (OTA) submitted with this memo as Attachment 1. Staff also recommends that an order be issued that: A) approves the rural companies' revised support per line amounts found in Attachment 2, B) instructs OECA and the rural companies to apply the projected annual Oregon Universal Fund (OUSF) support as directed in Order No.03-082, and C) open a docket to investigate reform of the Oregon Universal Service Fund.

DISCUSSION:

Background

In Docket No. UM 1017, the Commission issued Order No. 03-082 (February 3, 2003) to expand the Oregon Universal Service Fund (OUSF) to include the incumbent rural telecommunications companies (rural companies). The Order adopted a stipulation signed by the parties in the docket (Stipulation). Generally, the Stipulation outlined methods for computing the cost of basic service, the federal support offsets, the support

per line, and how the revenue offsets would be applied to achieve revenue neutrality.[1] It also set forth the method for the distributions from the OUSF.
Paragraph 5 of the Stipulation states:

> The interval for reviewing and updating the embedded cost calculations will not be longer than three years, unless extended by the Commission. Companies may request, or the Commission may initiate, a more frequent review, but not more frequently than once a calendar year. A company requesting a more frequent review will do so by November 15 for the previous calendar year. The OUSF study area support per line per month amount will remain unchanged until the next embedded cost review.

Staff first made the basic service[2] cost calculations in 2003 to develop the initial OUSF support per line per month for the rural carriers. The rural companies received support based on those per line amounts from November 2003 until June 2006.

<u>2006 Triennial Review Process</u>

In 2006, the three-year review interval ended. After a review of the rural companies' embedded cost calculations, staff determined that the aggregate, annual support for rural companies would increase from $8.9 to $16.3 million under the Order No. 03-083 methodology. After two workshops, the companies agreed to hold the increase in disbursement amounts to 15 percent instead of the 81 percent obtained by staff's study. At the time, the intrastate Carrier Common Line (CCL) charge, which the OUSF support is used to reduce,[3] was approximately one third what it is today. A MOU was signed by all parties agreeing to hold the increase in disbursement amounts to15 percent.

<u>2009 Triennial Review Process</u>

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[1] Paragraphs 29 through 33 of the Stipulation address rate rebalancing. Rate rebalancing is how revenue neutrality was achieved. The first priority was for the rural carriers to reduce access charges, specifically the Carrier Common Line Charge. The rural carriers were to reduce their Carrier Common Line revenue requirement by the annual amount of their OUSF distribution. If there was any residual balance, the rural carriers were to reduce prices for other services that provide implicit subsidies or elect to forego some of their OUSF support.

[2] The definition of basic service is found at ORS 860-032-0190(2),which states "basic telephone service" means retail telecommunications service that is single party, has voice grade or equivalent transmission parameters and tone-dialing capability, provides local exchange calling, and gives customer access to, but does not include, extended area service, long distance service, relay service for the hearing and speech impaired, operator service such as call completion assistance, special billing arrangements, service and trouble assistance, and billing inquiry, directory assistance, and emergency 9-1-1 services including E-9-1-1, where available.

[3] Order No. 03-082 directed the support to be used first to reduce the CCL, then to reduce other rates.

Three years later, the companies signed another agreement to extend the existing MOU, even though the CCL charge had jumped significantly and the minutes of use had declined sharply. Although the intrastate access minutes declined significantly between 2006 and 2009, the higher CCL rate, which was based on the forecasted minutes, offset the revenue loss that would have resulted had the rate not adjusted with the minutes.[4]

At the end of 2011, the Federal Communications Commission (FCC) issued FCC Order No. 11-161, which directed the rural companies to start a process of reducing their intrastate access rates. The first step in the access rate reduction process, with an effective date of July 3, 2012, brings the terminating intrastate rates down to a point half way between each company's current intrastate rates and their current interstate rates.[5] Since the volume of minutes is relatively unresponsive to price changes, this drop in rates is expected to result in a reduction in revenues to the companies.

2012 Triennial Review Results

Staff conducted the triennial review in 2012 using the model specified in Order No. 03-082, and data from the most current financial, separations,[6]and federal support sources. The rural companies also performed a similar study. Before any adjustments, the basic, monthly, per-line service cost increased for 27 of the 30 rural companies (the remaining three companies had no change). The model-based monthly changes ranged from no change to $55 per line.

Expressed as aggregate annual disbursements, the model results had the support for the rural companies going from approximately $6.8 million per year to $30 million per year. To support this $23 million dollar increase, the surcharge rate would have had to be well over 10 percent. All parties were concerned about the effect this rate would have on the public.

As a result of staff's and the companies' findings, Staff, OECA, and OTA had a series of meetings. As a result of those discussions and extensive analysis, Staff, OECA, and OTA reached an agreement that disbursements from the OUSF for rural companies would be capped at $15,650,933. The reduction from the initial $30 million to the $15.6 million is equivalent to the dollar amount that would have been generated by the model

[4] The CCL rate is calculated each year by dividing the CCL revenue requirement by the forecasted minutes. If the minutes are forecasted to drop, the CCL rate will adjust accordingly.
[5] By company, the composite interstate access rates are between10 percent and 40 percent lower than the composite intrastate rates.
[6] The financial and separation information is taken from the Form O and the Form I. The Form O is the company's income and balance sheet; the Form I is a separation report that assigns revenues, expenses, plant, and reserves to jurisdictions. The jurisdictions on the form are intrastate access, interstate access, EAS, and Local.

if the $21 benchmark that was established when the studies were first conducted for the non-rural companies was adjusted for inflation.

Once the level of support was set, the rural companies met to determine how the support would be divided among them. Because of the large reduction from the modeled results to the compromise reached by staff and the companies, there was no correct formula that could be imposed on the result. The companies made the decision based on a number of meetings among themselves.

The Need to Expedite the Change

Order No. 03-082 established the procedure for calculating support and the primary way the rural companies should use the OUSF disbursements. According to the Order, the disbursements are to be used to reduce the CCL element of their access charges. Each year, on July 1, the access pool[7] companies[8] update their access, special access, and billing and collection rates. The OUSF support plays an integral part of this process since it is used to reduce the CCL revenue requirement and subsequently the CCL rate element. Since 2003, there has been only a small change in the support per line due to the MOUs that have been adopted by the Commission. The MOUs reflect the fact that there has been no real desire to change the OUSF support. During this period, the companies had been covering their revenue requirement without changing the support per line. The ever-increasing access rates more than offset the declining minutes.

As discussed earlier, in November 2011, the FCC issued FCC Order No.11-161, which requires the rural companies to begin the process of sharply reducing their intrastate access rates. Beginning July 3, 2012, the companies will be required to sharply lower their terminating access rates so they no longer cover the revenue requirement for those rate elements. This rate decrease in combination with the declining minutes is forcing the companies to increase their originating rates or seek revenues from other sources.

Effect on the OUSF surcharge rate

The proposed MOU increases total disbursements to rural and non-rural companies from $35 million to $43 million. To cover this higher level of disbursements, contributions to the fund need to be increased on an approximate dollar-for-dollar basis.

[7] The access pool is the Oregon Customer Access Fund pool. This pool allows the rural company members to provide access services at a standard, somewhat lower rate. The lower cost per unit of the larger pool companies offsets the higher cost of the small ones.
[8] With the exception of United Telephone, which is not a pool member, Attachment 2 contains the full list of pool members.

This can be accomplished by raising the surcharge rate from the current 6.55 percent to 8.5 percent.[9]

2012 Memorandum of Understanding

Beginning April 5, 2012, starting with staff's initial proposal, OTA and OECA developed a MOU outlining the agreement. On May 15, 2012, a draft copy of the MOU was distributed to the parties in Docket No. UM 1017. The parties were also contacted by phone by the attorney for OECA and OTA to get their feedback on the MOU. With the exception of Comcast, none of the parties voiced any concerns about the MOU. Staff understands that Comcast's representative has been in contact with OTA and OECA's attorney about possible issues. The attorney for OTA and OECA also submitted a motion requesting adoption of the MOU in Docket UM 1017 on May 22, 2012. A subsequent motion on May 24, requested expedited treatment and requires responses by June 1.

Staff recommends that the Commission address the MOU in its June 5, 2012 public meeting, rather than through the request for approval pending in Docket No. UM 1017. Staff has submitted a companion memorandum that recommends approval of an increase to the surcharge rate to fund the increase in OUSF disbursements at issue in this memorandum. Staff's request for an approval to the surcharge rate is conditioned on its request to approve the proposed increase in disbursements. The Commission can address the proposed increase in disbursements and the proposed increase in surcharge rates together in the June 5, 2012 public meeting.

Furthermore, staff recommends in this memorandum that the Commission open a generic investigation into the OUSF. This investigation would specifically address the use of the fund, accountability measures, and how levels of support should be determined. During this investigation Comcast will have an opportunity to present its concerns regarding disbursements from the OUSF and how to pay for them.

In summary, the MOU states that:

- The initial time period for the MOU is one year; two additional one-year extensions are allowed by the MOU.
- The projected rural companies' annual OUSF distribution will increase from approximately \$6.8 million to approximately \$15.65 million.
- The new draws will begin July 1, 2012; at that time, eligible rural ILECs will take 75 percent and continue to do so until February 2013. Beginning February 2013,

[9] The Docket No. UM 1594 Public Meeting Memo on the June 5, 2012, Regular Agenda, discusses how the 8.5 percent rate was derived.

the companies' draws will reflect 100 percent of the eligible draws for each eligible rural ILEC.

- The per-line amount will be initially based on the January 2012, line counts. The per-line amount will be adjusted every six months based upon a six month trailing line count.
- The parties intend that the interim limitation would be in effect until the next triennial review in 2015.
- Any party may file a petition to seek Commission review of the OUSF plan upon:
    - An increase to the contribution base,
    - A decrease in the number of eligible telecommunications carriers receiving support from the OUSF, or
    - A material, overall increase in federal universal service support for the rural ILECs.
- In the event of a petition to terminate the interim limitations, the interim limitation will continue until the Commission issues a final order which grants, denies, or takes other appropriate final action upon the petition.
- The OUSF average balance will drop to 3.2 equivalent months and stay between 3.2 and 3.3 equivalent months until the next required support review at the beginning of 2015.
- Parties to the MOU will recommend to the Commission that it open a docket to investigate reform of the Oregon Universal Service Fund.

PROPOSED COMMISSION MOTION:

The 2012 Memorandum of Understanding found in Attachment 1, be approved and an order be issued that:

- approves the rural companies' revised support per line amounts shown in Attachment 2, subject to the conditions found in the MOU, effective with the July 2012 OUSF distributions.

- instructs OECA and the rural companies to apply the projected annual OUSF support as directed in Order No.03-082.

- opens a docket to investigate reform of the Oregon Universal Service Fund.

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1017

In the Matter of the Investigation into Expansion of the Oregon Universal Service Fund to Include the Service Areas of Rural Telecommunications Carriers.	MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by and between the Public Utility Commission of Oregon Staff ("Staff"), the Oregon Exchange Carrier Association ("OECA") and the Oregon Telecommunications Association ("OTA") on behalf of its members.[1]

BACKGROUND

Under the terms and conditions set out by the Commission in its Order No. 03-082 in this Docket ("Commission Order"), the Commission is to conduct a triennial review of the costs of those companies drawing from the rural company portion of the Oregon Universal Service Fund

[1] For purposes of this Memorandum of Understanding, OTA's members are as follows: Asotin Telephone Company d/b/a TDS Telecom, Beaver Creek Cooperative Telephone Company, Canby Telephone Association d/b/a Canby Telcom, Cascade Utilities, Inc. d/b/a Reliance Connects, CenturyTel of Eastern Oregon, Inc. d/b/a CenturyLink, CenturyTel of Oregon, Inc. d/b/a CenturyLink, Citizens Telecommunications Company of Oregon d/b/a Frontier, Clear Creek Mutual Telephone Company d/b/a Clear Creek Communications, Colton Telephone Company d/b/a ColtonTel, Eagle Telephone System, Inc., Gervais Telephone Company, Helix Telephone Company, Home Telephone Company d/b/a TDS Telecom, Molalla Telephone Company d/b/a Molalla Communications, Monitor Cooperative Telephone Company, Monroe Telephone Company, Mt. Angel Telephone Company, Nehalem Telecommunications, Inc. d/b/a RTI Nehalem Telecom, North-State Telephone Company, Oregon-Idaho Utilities, Inc., Oregon Telephone Corporation, People's Telephone Company, Pine Telephone System, Inc., Pioneer Telephone Cooperative, Roome Telecommunications Inc., St. Paul Cooperative Telephone Association, Scio Mutual Telephone Association, United Telephone Company of the Northwest d/b/a CenturyLink, Stayton Cooperative Telephone Company and Trans-Cascades Telephone Company d/b/a Reliance Connects.

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represents a substantial amount of negotiation and compromise both (a) among the rural ILECs and (b) between the rural ILECs and Commission Staff. As a result of limiting the OUSF surcharge for the initiation of this triennial review to 8.5%,[2] it is anticipated that the OUSF surcharge will generate $15,650,000 in total for the rural company portion of the OUSF rather than $30,000,000 in total for the rural company portion of the OUSF.

On the basis of the foregoing, Staff, OTA and OECA offer the following:

MEMORANDUM OF UNDERSTANDING

A. OUSF Support Amounts.

This triennium will begin with an OUSF surcharge of 8.5%. This 8.5% surcharge is expected to generate $15,650,000 in total distributions for the rural company portion of the OUSF. To achieve that level of distribution, all rural ILECs have agreed to accept less than the full amount that they would otherwise be entitled to under the current UM 1017 mechanism. The estimated distributions are set out in Attachment 1, which is incorporated herein as if fully set forth.

The support will be calculated on a per line amount. The per line amount will be initially based on the January, 2012, line counts. The per line amount will be adjusted every six months based upon a six month trailing line count. For example, since the July, 2012, distributions are based on a January, 2012, line count, the distributions beginning in January of 2013 will be based upon July, 2012, line counts. The per line amount will be adjusted every six months in this fashion.

B. OUSF Reserve.

The rural ILECs and Commission Staff agree that the OUSF needs to have a reserve fund that ideally has an average balance for any quarter staying above 3.5 equivalent months of cash reserve. To accommodate this requirement and to allow new draws to begin July 1, 2012, eligible

[2] It should be kept in mind that the OUSF surcharge also funds the non-rural portion of the OUSF.

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Memorandum of Understanding shall renew for no more than two successive one-year periods, subject to the right of any party to file an objection to the renewal with the Commission. If a party desires to file an objection to renewal, it shall do so by March 1 of the year preceding the July 1 renewal. Any renewal shall be subject to early termination upon the Commission issuing an order revising the Oregon Universal Service Fund. However, the rural ILECs and Staff agree that any party may file a petition to seek Commission review of the limitations on this Memorandum of Understanding upon either: a) an increase to the contribution base; b) a decrease in the number of eligible telecommunications carriers receiving support from the OUSF; c) there is a material, overall increase in federal universal service support for the rural ILECs; or d) other good cause. The parties further agree that the interim limitations will not automatically terminate merely because a party has filed a petition as described above, but will continue until the Commission issues a final order which grants, denies or takes other appropriate final action upon the petition. Finally, each party reserves the right to make whatever arguments they deem appropriate in any docket resulting from the filing of the aforementioned petition. For purposes of filing an objection or petition, "party" refers to a party in UM 1017.

E. Request for Opening of Generic Docket to Consider Reform to the OUSF.

The parties to this Memorandum of Understanding agree that they will, at the Commission Public Meeting at which the Commission considers whether to approve this Memorandum of Understanding, jointly recommend to the Commission that it open as soon as possible a generic docket to investigate reform of the Oregon Universal Service Fund,

F. Waiver of Stipulation and Reservation of Positions.

To the extent inconsistent with this Memorandum of Understanding, the provisions of the Stipulation adopted in Order No. 03-082 are deemed waived for this triennium to accommodate this Memorandum of Understanding.

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ATTACHMENT 1

Attachment 2
Page 1

2012 PROPOSED OUS DISTRIBUTIONS

Company	Agreed OUS Draw	January, 2012 Line Count	Initial Per Line Per Month Amount
Asotin	$38,737	124	$26.03
Beaver Creek	$306,666	3,155	$8.10
Canby	$658,938	9,024	$6.09
Cascade	$481,424	7,088	$5.66
CenturyLink*	$3,594,000	48,860	$6.13
Clear Creek	$233,025	2,684	$7.24
Colton	$43,771	1,032	$3.53
Eagle	$294,825	431	$57.00
Frontier	$593,200	10,140	$4.88
Gervais	$121,935	693	$14.66
Helix	$213,341	229	$77.64
Home	$94,352	677	$11.61
Midvale	$29,479	244	$10.07
Molalla	$715,108	4,398	$13.55
Monitor	$413,042	478	$72.01
Monroe	$290,481	820	$29.52
Mt. Angel	$348,957	1,416	$20.54
Nehalem	$467,374	2,604	$14.96
North-State	$39,014	408	$7.97
Oregon Tel	$0	1,621	$0.00
Oregon-Idaho	$354,869	532	$55.59
People's	$247,003	1,084	$18.99
Pine	$1,075,358	943	$95.03
Pioneer	$1,764,942	11,854	$12.41
RTI	$75,127	460	$13.61
Scio	$300,967	1,628	$15.41
Stayton	$683,287	5,226	$10.90
St. Paul	$142,024	548	$21.60
Trans-Cascades	$54,687	214	$21.30
United Telephone	$1,975,000	39,209	$4.20
TOTAL	$15,650,933	157,824	

*Includes CenturyTel of Eastern Oregon and CenturyTel of Oregon