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October 14, 2022

VIA E-MAIL

Commissioner Megan Decker
Commissioner Letha Tawney
Commissioner Mark Thompson
Oregon Public Utility Commission
PO Box 1088
Salem OR 97308-1088

Re: UM 2040 - Comments of the Oregon Telecommunications Association in
Response to Commission Staff Memorandum

Dear Commissioner Decker, Commissioner Tawney and Commissioner Thompson:

The Oregon Telecommunications Association (OTA) is submitting these comments concerning Staff's proposal for the Oregon Universal Service Fund (OUSF) for 2023. This letter is in response to the Staff Memorandum of October 3, 2022, which was distributed on October 7, 2022.

OTA agrees to the conclusion that Staff arrived at in its calculations for 2023 OUSF distributions. In agreeing to the outcome, OTA is relying on the premise that none of the factors that were used by Commission Staff to arrive at the outcome are precedential. OTA understands that the concept is to work on the elements of the calculation in more detail in 2023 to arrive at a methodology to be used for 2024 and following. OTA supports that procedure.

OTA offers the following comments not to disagree with Staff's proposal for 2023, but to highlight areas in which more work and discussion is needed. OTA looks forward to working on these issues in 2023.

1. Comments on the Allocation of the Network.

One of the premises used by Commission Staff is to allocate the total network cost between the provision of broadband service and the provision of basic telephone service. That allocation is on a 70/30 basis with 70 percent being allocated to broadband service. OTA disagrees with an allocation of network costs.

The entire network is needed to provide basic telephone service. It is not possible to

deliver basic telephone service over thirty percent of the network. That logically just does not make sense. Even CostQuest recognized this as stated in their email reply to Commission Staff responding to a Commission Staff inquiry: “[t]he presence of the entire broadband network is a necessary condition to support voice.” The network, the entire network, is needed to provide basic telephone service.

Based on the statutory language, the allocation of the network is not an allowed deduction in calculating the amount of support. ORS 759.425(4)(a) states, in pertinent part, as follows: “The universal service fund shall provide explicit support to the 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 telecommunications carrier from federal sources specifically used to recover local loop costs and less any explicit support received by the telecommunications carrier from a federal universal service program.” This language does not contemplate and, hence, the Legislature did not allow, a deduction for any proposed allocation of costs of providing broadband as a way of reducing the size of the fund.

In addition, ORS 759.425 specifically allows the Commission to include support for broadband as part of the OUSF program. ORS 759.425(1)(c)(B) states as follows: “In addition to using the universal service fund to ensure basic telephone service, [the Commission may] use the universal service fund to encourage broadband service availability and to provide support to telecommunications carriers that provide both basic telephone service and broadband service.” A network allocation is not needed nor is it warranted.

In further support of the concept that the public telecommunications network is a unified network that serves both telecommunications and broadband objectives, the Legislature adopted the following policy on broadband services in ORS 759.016:

- (1) That it is the goal of this state to promote access to broadband services for all Oregonians in order to improve the economy in Oregon, improve the quality of life in Oregon communities and reduce the economic gap between Oregon communities that have access to broadband digital applications and services and those that do not, for both present and future generations; and
- (2) That the goal set forth in subsection (1) of this section may be achieved by:
 - (a) Expanding broadband and other telecommunications services;
 - (b) Creating incentives to establish and expand broadband and other telecommunications services;
 - (c) Undertaking telecommunications planning at the local, regional and state levels that includes participants from both the public and the private sectors;

- (d) Removing barriers to the full deployment of broadband digital applications and services and providing incentives for the removal of those barriers; and
- (e) Removing barriers to public-private partnerships in areas where the private sector cannot justify investments.

When dovetailed with the Legislature’s policy on universal telecommunications service, the point that there is one network is underscored. In ORS 759.015, the Legislature declared “that it is the goal of the State of Oregon to secure and maintain high-quality universal telecommunications service at just and reasonable rates for all classes of customers and to encourage innovation within the industry by a balanced program of regulation and competition. The Public Utility Commission shall administer the statutes with respect to telecommunications rates and services in accordance with this policy.”

This supports the concept that there should not be an allocation of the network between the broadband services and basic local telecommunication service. The network should be viewed as one facility that is used to advance both Oregon’s public policies on broadband service and basic telecommunication service.

2. Comments on Support Offsets.

The Commission Staff deducted from the cost of providing service the High Cost Loop support (HCL), the Connect America Fund Broadband Loop Support (CAF BLS), and the Alternative Connect America Cost Model (A-CAM), both versions one and two. OTA’s position is that if there is going to be an allocation of the network costs between broadband services and basic voice services, the support mechanisms that are aimed primarily at broadband service should not be included as deductions. These are the CAF BLS and the two A-CAM versions. The way Staff did the calculations means that essentially thirty percent of these broadband support mechanisms were used as a deduction in figuring out the OUSF support for basic telephone service.

3. Comments on the Coverage of “Unsubsidized” Competitors.

OTA agrees with the Staff position on not deducting costs that could arguably or theoretically be associated with the presence of a “unsubsidized” competitor. Under ORS 759.425(4)(a) the only deductions that are allowed from the cost of providing the service are the benchmark, and then “explicit compensation received by the telecommunications carrier from federal sources specifically used to recover local loop costs and less any explicit support received by the telecommunications carrier from the federal universal service program.” The presence of an unsubsidized competitor is not included in this statutory formula. Nowhere does the statute say “and less any costs in an area served by an unsubsidized competitor.” The issue is simply not a factor in the determination of the level of OUSF support.

As a practical matter, OTA's rate of return members have not received a reduction in federal support due to the presence of an unsubsidized competitor. What this suggests is that there really is not an issue that should be pursued under the rubric of "unsubsidized" competition.

Even if the concept of unsubsidized competition were a valid construct to reduce draws from OUSF, it should never be used to size the fund. The reason is that use of the concept to size the fund inequitably lowers the draw for a company that does not have an unsubsidized competitor. To illustrate: Company A has unsubsidized competitors. Company B does not have unsubsidized competitors. If the presence of unsubsidized competitors in Company A's service area is used to reduce the total size of the fund, Company B loses support even though it does not have an unsubsidized competitor.

4. Comments on the Staff benchmark.

The Commission Staff used a benchmark predicated on the model's average monthly cost per unit of \$94.74. OTA disagrees with using a cost benchmark. First of all, using the total cost is inconsistent with the concept of allocating the network between broadband service and basic telephone service. The cost of \$94.74 is the cost of providing the entire network, not just the thirty percent that Staff allocates to basic telephone service.

Secondly, and more importantly, using a cost benchmark appears to be inconsistent with the stated purpose of the OUSF. As stated in ORS 759.425(2)(a), the Commission is to use the state universal service fund to ensure "basic telephone service is available at a reasonable and affordable rate." This language strongly points in the direction that what is contemplated is a revenue benchmark. In fact, the Commission has used a \$21.00 revenue benchmark for the last fifteen years. This use of a cost benchmark also appears to be inconsistent with the Legislature's declaration of policy in ORS 759.015:

The Legislative Assembly finds and declares that it is the goal of the State of Oregon to secure and maintain high-quality universal telecommunications service at just and reasonable rates for all classes of customers and to encourage innovation within the industry by a balanced program of regulation and competition. The Public Utility Commission shall administer the statutes with respect to telecommunications rates and services in accordance with this policy.

The emphasis is on rates in this statement. That emphasis points to a revenue benchmark.¹

¹ OTA recognizes that the recently adopted OAR 860-100-0300 can be read to suggest the use of a cost benchmark. However, it is not a requirement under the rule. The rule states that the cost model is to "assist" in deriving a benchmark. The benchmark does not have to be determined by the cost model.

5. Comments on OCTA's arguments.

The Oregon Cable Telecommunications Association (OCTA) has advanced several arguments. However, those arguments should not be used to reduce support. OTA will offer some brief comments on OCTA's arguments.

OCTA argues that EUCL should be deducted from the support mechanisms. EUCL stands for end user common line charge. It is also known as the subscriber line charge or SLC. EUCL is a mechanism developed by the FCC to lower the cost of toll service, focusing on interstate toll service. It is not an "explicit compensation . . . received from federal sources."² Rather, it is a rate element in the NECA tariff (for rural carriers) or individual company interstate tariff (for price cap carriers). It is interstate end user revenue. So it does not meet the statutory definition of an authorized deduction. In addition, it is not "specifically used to recover local loop costs." (Emphasis supplied). It is an interstate substitute for interstate access charges. So it fails to meet the statutory definition in ORS 759.425 in a second way. Finally, for rural companies that participate in the NECA pool it is treated not as local revenue, but as if it has been submitted to NECA. So a subtraction for OUSF purposes would serve to be a double deduction.

OCTA argues that CAF ICC should be a reduction from the levels of cost that are used to determine the support. However, CAF ICC is not a universal service support mechanism. It is a replacement of intrastate and interstate terminating access charges. It is not "specifically used to recover local loop costs." It is also not part of the FCC universal service rules. Those rules are in Part 54. CAF ICC is in Part 51 which deals with access charge recovery.

Third, OCTA, at times, argues that it is inappropriate to include all locations since ILECs do not serve all locations. Staff's proposal is based on the model's calculation of cost to provide service. Given that the ILECs have the duty to be the carrier of last resort (COLR) in Oregon, it is only logical that the cost of the network that is the basis for support includes all locations since that is the COLR obligation. There is nothing anticompetitive about meeting a statutory obligation. In addition, for rural carriers, they do, in fact, serve all or virtually all locations.

It should be noted that model has a built in reduction in locations, assuming that a carrier is serving only eighty percent of locations in a particular census block. As noted above, that is really not the case for the small companies. However, that is just something that the model does.

OTCA may also argue that Staff's allocation of the network to broadband is too small. They may also argue that there should be a reduction for the presence of unsubsidized

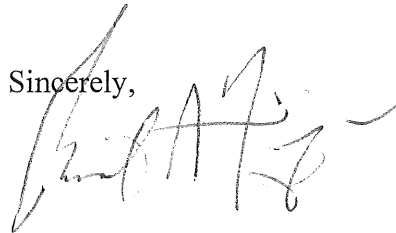
² ORS 759.425.

competitors. Both of those issues have been addressed in the comments above. Clearly these issues are too complex to resolve at an open meeting. Staff's recommended procedure to use 2023 to address these very complex issues is the sound procedure to follow.

6. Last Comments.

OTA agrees with Staff's conclusion on support for 2023. OTA does not agree with the methodology that was used and certainly not in a precedential way. OTA looks forward to further discussions of these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Finnigan", with a long horizontal flourish extending to the right.

RICHARD A. FINNIGAN

RAF/cs

cc: Client (via e-mail)
Service List