

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DOCKET NOS. AR 649/UM 2040

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation of the Oregon Universal Service
Fund.

OCTA COMMENTS
REGARDING
PROPOSED RULES

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Rulemaking to adopt rules pursuant to
ORS 759.425.

OCTA COMMENTS REGARDING PROPOSED RULES

OCTA appreciates this opportunity to provide comments on the proposed rules set forth in the Notice of Proposed Rulemaking filed with the Oregon Secretary of State on April 28, 2022 (“Proposed Rules”). OCTA agrees with the framework reflected in the Proposed Rules, which provide the backdrop for more detailed work regarding inputs, assumptions, and policy determinations regarding the Cost Quest model, appropriate benchmarks, and deductions of federal support that will be detailed in a Staff report to the Commission in October in which Staff will propose OUSF distribution amounts for 2023, and which will be subject to public comment prior to adoption by the Commission. OCTA’s support is also premised on the understanding that the

Commission may determine that amendments to the rules are needed to reflect one or more policy determinations made as part of the process underlying the Staff report.

RECOMMENDED CORRECTIONS TO THE PROPOSED RULES

OCTA recommends two minor corrections to the Proposed Rules.

- The second sentence of proposed OAR 860-0100-0300((2)) should be revised as follows:

The model will be used to assist in setting a-appropriate benchmarks for basic telephone service, and to calculate the difference between the cost and the applicable benchmark, minus the explicit compensation and support identified in ORS 759.425.

This correction is consistent with proposed OAR 860-100-0300(2)(b), which provides that “[t]he Commission may establish a different benchmark for a support area,” based on a number of considerations. It is also consistent with the third sentence of proposed OAR 860-0100-0300(2), which uses the phrase “exceeds the applicable benchmark in a particular geographic support area.”

- Proposed OAR 860-0100-0300(3)(c)(A) appears to contain a typographical error and should be revised as follows:

Category one: The large company pool will be allocated using the eCost gQuest or a similar model approved by the Commission, with annual updates, as necessary.

RESPONSE TO OTA COMMENTS

In comments filed on May 27, 2022, regarding the Proposed Rules, the Oregon Telecommunications Association (OTA) argues that, while “[i]t is not absolutely opposed to the use of a cost model to determine the size of the OUSF. . . . the model should not be a hypothetical

construct that does not reflect the actual cost to provide service in Oregon,” and that “it may be better and more efficient to use actual costs.”¹ These comments mistakenly suggest that any cost model used to determine OUSF support is valid only if it reflects the “actual cost” of providing service. That has never been the intent of the Commission in utilizing a cost model for determining OUSF support.

The use of a forward-looking cost model based on the costs that would be incurred by an efficient provider of basic telecommunications service is critical for satisfying the statutory requirement that the OUSF be competitively neutral and non-discriminatory.² From the very inception of the OUSF in 2000, the Commission has recognized that the OUSF should be based on forward-looking cost model estimates and not on individual company costs. The Commission summarized its holding in this regard, stating:

We are convinced that a forward-looking economic model provides the best forecast of the costs a reasonably efficient telephone carrier would incur to provide basic service. We agree with the criteria established by the FCC for selecting a cost proxy model and adopt them for the OUS program. The costs estimated should be those of an efficient generic telephone carrier, rather than the costs of individual companies. If support amounts were distributed to individual companies based on their specific costs, an inefficient company would receive more universal service support than a more efficient company for serving a similarly situated group of customers. It therefore would not be competitively neutral nor would it encourage efficiency. By adopting a forward-looking economic model, we give carriers incentives to improve operations and increase efficiencies. We have stated our belief in forward-looking cost principles in various orders over many years. *See*, for example, Orders 90-920 and 93-1118. We also encourage carriers to act efficiently by calculating costs on the basis of the costs an efficient carrier would incur, rather than on the costs a particular carrier has incurred in the past. On a practical level, using company-specific data to determine costs would require periodic review of the costs of each

¹ OTA Comments at p. 2.

² ORS 759.425(1)(a).

company participating in the OUS Program, an obviously time-consuming requirement.³

When the Commission subsequently extended the OUSF to include the RLECs, it reiterated its preference for using forward-looking cost models, but allowed for the use of an embedded cost methodology for an interim period.⁴ This was done because, at the time, the Federal Communications Commission (“FCC”) was still in the process of developing a forward-looking cost model for RLECs and had allowed RLECs to continue the use of embedded costs for an interim five-year period while it continued to work on a forward-looking cost methodology for rural carriers.⁵ The Commission made clear its intent to use this embedded cost methodology for RLECs only until such time as the FCC developed a forward-looking cost model applicable to RLECs, stating:

The time is not ripe to use an econometric model to determine the costs of carriers serving in rural areas. The enormous volume of forward-looking costs for rural carriers is not now available in usable form. The FCC is investigating how the costs of carriers serving rural areas should be determined. In the meantime, it uses embedded costs. We elect to do likewise. We plan to investigate this issue again in the future.⁶

That was nearly 19 years ago. In the interim, the FCC developed forward-looking cost model estimates for use in the areas served by RLECs⁷ and has been using it to distribute federal USF support for numerous RLECs, including Oregon RLECs. The time is now ripe for the Commission to base OUSF distributions in RLEC areas on forward-looking cost model estimates. The

³ *In the Matter of the Investigation of Universal Service in the State of Oregon*, Order No. 00-312 at 6 (OPUC Docket No. UM 731, Phase IV, June 16, 2000).

⁴ *See, In the Matter of the Investigation into Expansion of the Oregon Universal Service Fund to Include the Service areas of Rural Telecommunications Carriers*, Order No. 03-082 at 1 and 6 (OPUC Docket No. UM 1017, February 3, 2003).

⁵ *Id.* at 3.

⁶ *Id.* at 6 (emphasis added).

⁷ *See, Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Compensation Regime*, WC Docket No. 10-90, et al., Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (adopting the A-CAM model, also known as the CostQuest model).

CostQuest model is the FCC-approved forward-looking cost model for purposes of estimating costs of providing service in the areas served by RLECs. The Commission should, therefore, adopt use of this model for determining the cost of providing basic telecommunications service in areas served by both non-rural ILECs and RLECs. The Commission should reject OTA's suggestion that individual company embedded costs should be used to determine the size of the OUSF.

CONCLUSION

For the foregoing reasons, OCTA supports the Proposed Rules, with the recommended minor corrections set forth above. The Proposed Rules establish a workable framework for determining the size of the OUSF and distributions to OUSF recipients. While there is considerable work ahead for Staff and stakeholders in working out the details, the Proposed Rules provide appropriate guidelines and should be adopted.

Respectfully submitted this 14th day of June 2022.

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