

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DOCKET NO. UM 2040

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation of the Oregon Universal Service
Fund.

OCTA REPLY COMMENTS
REGARDING OUSF
DISBURSEMENT
CALCULATION
METHODOLOGY

Pursuant to Administrative Law Judge Spruce’s January 24th Memorandum revising the schedule in this docket, the Oregon Cable Telecommunications Association (“OCTA”) respectfully submits this reply to the initial comments of the Oregon Telecommunications Association (“OTA”), filed January 13, 2023, regarding the proper methodological framework for calculating Oregon Universal Service Fund (“OUSF”) disbursements for 2024.¹

The OTA comments suggest that the methodology used to determine OUSF disbursements for 2023 “achieved rough justice.” To the contrary, as discussed in OCTA’s Initial Comments,² that methodology has flaws that result in inflated OUSF disbursements that are neither consistent with the statutory mandate for the calculation of OUSF support set forth in ORS 759.425(3), nor with the requirement in ORS 759.425(1) that the OUSF be competitively

¹ No other parties filed initial comments.

² See OCTA’s Initial Comments Regarding OUSF Disbursement Calculation Methodology, filed in this docket on January 13, 2023, including Attachment A thereto (a copy of OCTA’s Letter to the Commission, dated October 14, 2022) (“OCTA Initial Comments”).

neutral and nondiscriminatory. The Commission should correct the flaws in the method used to calculate the 2023 OUSF disbursements by adopting the recommendations in OCTA’s Initial Comments to determine disbursements for 2024. This is especially important because, pursuant to the Commission’s rules, the 2024 disbursements will remain in place for five years.³

The Commission should also reject the adjustments to the methodology recommended in OTA’s Initial Comments. OTA’s recommended adjustments are inconsistent with statutory requirements as well as the Commission’s rules and precedent, and would only exacerbate the anticompetitive impact of the methodology used to establish the 2023 OUSF disbursements. Each of OTA’s recommended methodological adjustments is addressed below.

- **An Allocation of Network Costs Is Required to Isolate the Costs of Basic Telephone Service.**

The Commission should reject OTA’s argument that OUSF support for basic telephone service should be based on the total estimated cost of a ubiquitous broadband-capable network. While OCTA believes the thirty percent (30%) allocation factor used to calculate the 2023 disbursements is too high,⁴ Staff did correctly conclude that an allocation of costs is necessary in order to comply with the requirements of ORS 759.425. Specifically, ORS 759.425(3)(a) limits OUSF support 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.” (Emphasis added). Basic telephone service, as that term used in ORS 759.425, is defined by Commission rule to

³ See OAR 860-100-0300(3).

⁴ See OCTA Initial Comments, Attachment A, pp. 4-6.

include voice service, and does not include the provision of broadband service.⁵ OTA's proposal to cost out basic telephone service based on the total cost of a ubiquitous broadband network is directly at odds with ORS 759.425(3)(a).

OTA's reliance on the statement from CostQuest that the entire broadband network is required to provide voice service is misplaced. The total network cost of a broadband network should not be included in the calculation of OUSF support because the total costs of a broadband network is not the equivalent of "the cost of providing basic telephone service" as that term is used in ORS 759.425(3)(a). In fact, it would grossly overstate the costs of basic telephone service. OTA's recommended approach would be similar to ascribing the cost of an entire airplane to one passenger because the "entire" airplane is required for the flight. To be sure, since other passengers are using the airplane, an appropriate allocation (*e.g.*, by seat) would be more appropriate.

As OCTA has previously explained, the CostQuest model estimates the cost of state-of-the-art broadband network capable of supporting numerous non-voice services, with a bandwidth that far exceeds the 64-kbps needed to provide basic telephone service (*i.e.*, voice).⁶ This additional capacity is used by OTA members to provide other services, from which they derive additional revenues. Thus, it is inappropriate to include the total cost of a broadband network when calculating OUSF support for voice service.

OTA's reliance on ORS 759.425(1)(c)(B) is also inappropriate. This statutory provision, added by the 2017 Legislature, merely allows the Commission to provide OUSF support "to

⁵ See OAR 860-032-0190. The Commission expressly rejected an OTA petition to open a rulemaking to change the definition basic telephone service to include broadband service. See Order No. 14-113 (entered April 7, 2014 in dockets AR 577/UM 1418.

⁶ See OCTA Initial Comments, Attachment A, p. 5.

telecommunications carriers that provide both basic telephone service and broadband service.” This clarification ensures that the OUSF remains technologically neutral and avoids creating an unintended disincentive to eligible telecommunications carriers for upgrading their networks from copper to fiber. It does not mean that the OUSF is now intended to directly support broadband service. If the Legislature had intended the latter, it would have needed to also amend ORS 759.425(3)(a), which expressly limits support to basic telephone service only; but the Legislature did not amend ORS 759.425(3)(a) to include the cost of broadband service in the calculation of OUSF support.

This statutory language also needs to be understood in the context of SB 1603, passed by the 2020 Legislature, which both amended ORS 759.425 and added statutory provisions creating the Oregon Broadband Fund.⁷ That legislation provides that moneys raised by the OUSF surcharge are to be used first to provide OUSF support per ORS 759.425(3)(a) (*i.e.*, to support voice service), with any additional surcharge moneys, up to \$5 million annually, to be transferred to the Oregon Broadband Fund.⁸ The Oregon Department of Commerce, through the Oregon Broadband Office, then uses any such moneys for broadband grants, awarded pursuant to a set of statutory parameters, completely separate and apart from the OUSF.⁹ The Legislature has subsequently provided that all federal broadband infrastructure moneys provided to the State will also be deposited into the Oregon Broadband Fund.¹⁰ Thus, the Legislature has made abundantly clear that broadband funding is separate and distinct from OUSF support, which is intended exclusively for basic telephone service (*i.e.*, voice, not broadband).

⁷ See Oregon Session Laws 2020, SS1, Ch. 17.

⁸ *Id.*

⁹ *Id.*

¹⁰ See Or. H.B. 4156 § 1.

It is also important to recognize this legislatively enacted separation between funding for voice service and funding for broadband as it relates to the 2023 methodology's erroneous inclusion of support to *all* locations identified in the CostQuest model. As OCTA has explained previously, the 2023 OUSF disbursement methodology provides support to OTA members for numerous locations *they do not even serve*, but that are either served by competitors or not served at all.¹¹ In addition to being absurd on its face, the 2023 disbursement method is inconsistent with not only the Commission's long-standing approach of calculating OUSF disbursement to support only lines actually served by the supported carriers, but also with the legislative approach to broadband funding. The Commission must correct this error in determining OUSF disbursements for 2024 and beyond.

- **Federal Support Offsets for Connect America Fund Broadband Loop Support and Alternative Connect America Funds Are Proper and Should Be Applied in Calculating 2024 Disbursements.**

The Commission should reject OTA's argument that no amount of Connect America Fund Broadband Loop Support ("CAF BLS") and Alternative Connect America Funds ("A-CAM") should be deducted in calculating OUSF support. The two federal programs fund a network that supports both broadband and voice services. Therefore, in this regard, the 2023 disbursement methodology was consistent in its approach. The methodology allocated to voice 30% of the cost of the network that supports both broadband and voice. It then appropriately allocated the 30% factor to reduce the amount of these federal universal service funds that were deducted from the disbursement amounts.¹²

¹¹ See OCTA Initial Comments, Attachment A, pp. 2-3.

¹² As noted above, OCTA believes Staff's 30% allocation to voice is unsupported and unwarranted. Instead, the allocation to voice should be based on percentage of bandwidth on the broadband network that is needed to provide voice service. See OCTA Initial Comments, Attachment A, pp. 4-6.

However, while the 2023 methodology properly subtracted support for these two federal mechanisms, as OCTA has pointed out previously, the 2023 disbursement calculation incorrectly omitted a similar subtraction for two other federal sources – federal universal service fund payments under the Intercarrier Compensation (ICC) support mechanism, and revenue from the federal Subscriber Line Charges (also known as End User Common Line, or EUCL). An appropriate allocation of these funds should also be deducted in calculating OUSF disbursements for 2024 and beyond.¹³

- **OTA’s Benchmark Arguments Are Flawed.**

In their comments, OTA raises two inaccurate challenges to the benchmark used for the 2023 disbursement calculation. Although OCTA has proposed its own methodology for calculating the benchmark, one that adopts a federally recognized approach for establishing benchmarks for voice service, OCTA herein addresses OTA’s the inaccurate descriptions of the benchmark used for the 2023 OUSF disbursement calculations.

First, OTA attacks the use of a \$94.74 benchmark because it is based on the “cost of providing the entire network, not just the thirty percent that Staff allocates to basic telephone service.”¹⁴ This is not accurate. Although Staff identified \$94.74 as the total average monthly cost per-demand location of providing both voice and broadband service,¹⁵ it is OCTA’s understanding that the 2023 OUSF disbursements methodology effectively set the benchmark at \$28.42, which is equal to the total cost of both voice and broadband (\$94.74) multiplied by the

¹³ See OTA Initial Comments, Attachment A, pp. 3-4.

¹⁴ OTA Initial Comments at 3.

¹⁵ Order No. 22-380, Appendix A at 8 (Oct. 3, 2022).

30% allocation factor for voice. While OCTA recommends a different approach for calculating the benchmark,¹⁶ the 2023 disbursement method was, at least, internally consistent.

Second, OTA claims that the Commission previously used a \$21.00 *revenue* benchmark.¹⁷ This is also incorrect. The Commission’s \$21 benchmark was instead *cost-based*, specifically “the composite forward-looking economic cost produced by the [Federal Communications Commission’s Synthesis Model] for USWC and GTE.”¹⁸ In fact, the Commission expressly rejected arguments in support of basing the benchmark on ILEC rates or revenues because doing so would not provide a “stable platform” for calculating OUSF support.¹⁹ In addition, a revenue-based benchmark would require an examination of OTA member revenues. OTA itself opposed discovery of its members’ revenues in a previous OUSF docket.²⁰ The Commission should reject OTA’s recommendation to use a revenue-based benchmark and instead adopt OCTA’s recommendation to set the benchmark at two standard deviations above average cost.²¹

CONCLUSION

For the foregoing reasons, the Commission should reject the OTA’s recommended adjustments to the Staff’s 2023 OUSF disbursement calculation methodology. Instead, OCTA respectfully requests that the Commission issue an order directing Staff to calculate OUSF

¹⁶ As explained in OCTA’s initial comments, OCTA proposes that the Commission set the benchmark at two-standards deviations above average cost. OCTA Initial Comments at 7-8. This approach is consistent with the approach the Federal Communications Commission has previously taken in calculating High-Cost Model support and uses currently in setting the benchmark for reasonably comparable voice service rates in high-cost areas. *Id.*

¹⁷ OTA Initial Comments at 3 9(emphasis added).

¹⁸ Order No. 00-312 (entered June 6, 2000, in docket UM 731, Phase IV) at 21.

¹⁹ *Id.*

²⁰ See Response of the Oregon Telecommunications Association to the Oregon Cable Telecommunications Association’s Motion to Compel, filed November 20, 2012 (Docket UM 1481, Phase II).

²¹ See OCTA’s Initial Comments at 6-8.

disbursements for 2024 and beyond consistent with OCTA’s recommendations set forth in OCTA’s Initial Comments, including:

- (1) limiting support to lines actually served by eligible carriers;
- (2) isolating support to basic telephone service by using a cost allocation factor based on the relative bandwidth needed to provide voice service over the hypothetical broadband network simulated by the CostQuest model;
- (3) eliminating support to census blocks served by unsubsidized competitors;
- (4) subtracting from OUSF disbursement calculations all appropriate federal support amounts received by eligible telecommunications carriers, including Connect America Fund Broadband Loop Support (“CAF BLS”), Alternative Connect America Funds (“A-CAM”), the End-User Common Line Charge (also known as the Subscriber Line Charge), and Intercarrier Compensation Support; and
- (5) setting the benchmark at two standard deviations above the average costs derived by the CostQuest model.

Respectfully Submitted this 1st day of February 2023.

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