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April 7, 2022

**VIA E-FILING**

Public Utility Commission of Oregon  
PO Box 1088  
Salem, OR 97308-1088

Re: UM 2040 – AR 649 – Comments of the Oregon Telecommunications Association

Dear Sir/Madam:

Attached for filing in the above referenced dockets you will find the comments of the Oregon Telecommunications Association.

Sincerely,



RICHARD A. FINNIGAN

RAF/cs

cc: Client (via e-mail)

## Comments of the Oregon Telecommunications Association

The Oregon Telecommunications Association (OTA) welcomes the opportunity to comment on the discussion draft of the proposed rule changes to OAR Chapter 860-100. OTA does support moving forward to adopt the proposed changes to OAR 860-100-0115, OAR 860-100-0125 and OAR 860-100-0250. It appears that these changes are needed to replace the existing temporary rule and allow support to continue as agreed among the parties for the remainder of 2022.

OTA does not support moving forward with the remainder of the proposed rulemaking at this time. The remainder of the proposed rulemaking is predicated on moving forward to adopt a cost model as a basis for OUSF support beginning January 1, 2023. However, the information that is available concerning the Cost-Quest model, which from a practical standpoint is the only model under consideration, is lacking. There really is no information about the model and how it would be used in Oregon. For this reason it is premature to propose rules adopting a cost model.

The remainder of OTA's comments will address specific aspects of the rules.

1. Use of a model to determine the size of the OUSF should be undertaken with great care.

OTA is not absolutely opposed to the use of a cost model to determine the size of the OUSF. However, the model should not be a hypothetical construct that does not reflect the actual cost to provide service in Oregon. At this stage we do not know enough about how the Cost-Quest model is proposed to be used to know if it is appropriate. There are certainly a number of questions that need to be answered before the Cost-Quest model (or any model) can be used. At the very least, there needs to be an agreement on the inputs and algorithms that will be used before a rule can be adopted incorporating a model into the operation of the OUSF.

At the end of the day, if the questions cannot be adequately answered, or the results of using the model produce unintended consequences it may be better and more efficient to use actual costs.

Here are some questions for consideration:

1. Which version of the Cost-Quest model is proposed for use? Is it the State Broadband Cost Model? What is the cost of using the model? How is the use of the model paid for? OTA's position is that the available support should not be reduced by the cost of using a model.
  2. How do stakeholders get access to the model? Is there a cost to the stakeholders for access to the model? It appears from Staff's comments at the March 31, 2022, Workshop that that stakeholder access to the model will be limited at the very best.
  3. It is OTA's understanding that the Cost-Quest model derives total costs but does not include the full cost of switching. Will total costs be used rather than unseparated loop costs? How will switching costs be recognized?
  4. The Cost-Quest model as incorporated into A-CAM does not do a very good job of predicting the number of locations in a census block. Sometimes it is too high and sometimes it is too low. And, no, a rough average is not acceptable, especially for a small rural carrier with few census blocks. How will this be addressed?
  5. In the A-CAM version of the Cost-Quest model utilized by the FCC, residential locations were based on 2010 census data. Will this be updated? For commercial locations, Cost-Quest used a proprietary data base (TIGER) which is not available for examination. How does this not constitute a black box approach? What level of transparency should there be in a model?
  6. The draft rules propose that in some cases the "support area" will be wire centers and some cases census blocks. It is OTA's understanding that the Cost-Quest model is based on census blocks. Can census blocks be rolled up to the wire center? Is it more efficient to use study area for rural carriers? OTA believes that for rural carriers the study area should be used.
  7. How does the Cost Quest model accomplish the goal of the OUSF as stated in ORS 759.425 to "ensure basic service is available at a reasonable and affordable rate."
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2. There are several issues on the use of a benchmark that should be considered.

The draft rules state that the cost model will determine the benchmark. However, it is OTA's understanding that the benchmark is an input in the Cost Quest model not a determination (outcome) made by the model. If OTA's understanding is correct, how will the benchmark be determined?

The draft rules state that multiple benchmarks may be used. This means that theoretically there may even be a specific benchmark for each wire center. How is this consistent with the direction

in ORS 759.425 for the Commission to set “a benchmark”? What is the legal authority to establish multiple benchmarks?

### 3. What offsets will be used?

In the draft rules, Staff refers to “subtracting the explicit compensation and support identified in ORS 757.425 (sic).” What does Staff have in mind? Given the changes that have occurred on the federal level since the adoption of ORS 759.425, it is not clear what should be included and what should not be included. For example, from OTA’s perspective RUS ReConnect grants should not be included. One reason for this is that plant facilities built with ReConnect grants are not included in Form I calculation of rate base.

Another issue is CAF ICC revenue. Is CAF ICC a universal service program? Part 54 of the FCC’s rules deal with universal service. CAF ICC is not a Part 54 program. If it is a universal service program, should an adjustment be made to remove the portion attributable to reciprocal compensation? What about CBOL related support?

The point is that a specific delineation of offsets should be produced. In doing so, it is important to match the correct starting point with the offsets so that there is not a reduction from a starting point that does not include all of the related costs.

### 4. Wire center or study area data should be used for rural carriers rather than census blocks.

The draft rules state that the support may be either at the wire center or census block level. However, the draft rules are not specific as to when each level will be used. OTA’s position is that study areas should be used for rural carriers, with wire centers as a second-best option. Use of census blocks may promote cream skimming in rural wire centers where there are not enough census blocks to be confident that the appropriate cost is assigned over a relatively sparsely populated area.

5. Recalculating support on an annual basis violates the “predictability” standard.

The draft rules propose recalculating the support levels for companies on an annual basis. However, 47 USC Sec. 254 requires that state funds adhere to certain principles. One of these principles is that support be “specific, predictable and sufficient.” 47 USC Sec. 254(b)(5). Support is not predictable if it is recalculated every year.<sup>1</sup>

There does not appear to be a sound reason for annual recalculation. The OUSF has been based on five year plans in the past. Why shouldn’t support be provided on a five-year basis in the future?

There is also a nagging question as to whether support based on a theoretical model will be sufficient.

At the March 31, 2022, Workshop Staff explained that the reason for the annual review is to make adjustments if the contribution mechanism is projected to produce a shortfall. If that is the sole purpose, it should be stated as such. OTA understands that pro-rata reductions in support may be needed at some time in the future.

6. Safeguards should be established.

One issue to consider is whether there should be safeguards included in the proposal. When the A-CAM results were distributed some companies would have seen a huge drop in the level of support they received if they elected A-CAM. That was a result of the inputs that were chosen, one of which was to eliminate census blocks that had 25/3 broadband access available. While that type of result can be mitigated by choice of inputs, that may not cure the problem. The Cost-Quest model is so complex that there can be, and probably will be, unintended consequences. That may be a reason to consider using actual costs for rural companies. Or, at the very least put in safeguards that if support is going down (or even up) by more than two percent, it is phased in over time.

In other words language should be added that reads: “In no case shall support be reduced or increased by more than two percent of the prior year’s support for a recipient.”

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<sup>1</sup> Although federal support for rate-of-return companies is calculated on a yearly basis, it is based on actual costs, not model costs, and can be projected. Thus, it is predictable. For A-CAM companies, there is fixed support.

## Conclusion

OTA is very concerned about an approach that adopts a rule to use a model without knowing how that model works or the result it produces. There is a high level of risk in rushing to adopt a model when it is not known what it will produce for Oregon.

The examination of the model and the development of a rule should move on parallel tracks. That is the only way to be sure that universal service in Oregon meets the goals of the Legislature. It is the only way to be sure the cart is not put before the horse.

Respectfully submitted this 7th day of April, 2022.

A handwritten signature in cursive script that reads "Richard Finnigan / cs".

Richard A. Finnigan  
Attorney for the Oregon Telecommunications Association