

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 2040

In the Matter of
PUBLIC UTILITY COMMISSION OF
OREGON

Investigation of the Oregon Universal Service
Fund

WARM SPRINGS
TELECOMMUNICATIONS
COMPANY'S "STRAW
PROPOSAL" FOR OREGON
UNIVERSAL SERVICE FUND
SUPPORT RULE CHANGES

Warm Springs Telecommunications Company (WST) hereby provides this "straw proposal" for revisions to the rules governing the Oregon Universal Service Fund (OUSF), as requested in the December 3, 2020 memorandum from Public Utility Commission of Oregon (Commission) Staff.

I. INTRODUCTION AND BACKGROUND

WST's position on the future of the OUSF, especially as this future relates to the residents of the Warm Springs Reservation that WST serves, is stated in its October 23, 2020 response to stakeholder questions. In summary, WST urged the stakeholders and the Commission to recognize WST's history and its service to the Confederated Tribes of Warm Springs (CTWS) people. A vital part of WST's ability to serve the people of CTWS is the support received from the OUSF, and any substantial reduction in this support will jeopardize WST's ability to continue operations. WST has participated in this proceeding, attended workshops, and submitted questions for CostQuest in regard to the possible use of a cost model for OUSF support determination.

The topics being investigated in this phase of the OUSF proceeding relate to support distributions, and include such items as cost of service determination, federal support amounts to

deduct from the cost of service, the benchmark rate, competition, and whether broadband service can or should be supported by the OUSF. WST, as one of the few competitive carriers to receive OUSF support, did not provide input on many of the questions dealing with support distribution to incumbent carriers.¹ WST did provide responses to several of the stakeholder questions, including question 10 (should distribution be made directly to carriers or be passed through to individuals), question 11 (by what methods can the Commission encourage broadband service availability?), question 12 (are there classes of companies the Commission should classify as not eligible for support?), and question 13 (should the Commission tie eligibility to maintaining COLR obligations?). WST's straw proposal, as follows, largely follows the principles discussed in its initial response to these questions.

II. WST'S PROPOSAL

A. WST's OUSF Support Must Continue

As stated in the *WST Response*, WST "relies solely on end-user revenue and OUSF support to invest in and operate and maintain its network. Due to this fact, should WST's OUSF support decrease, its vital service to members of the CTWS reservation will be put in jeopardy."² During the course of this proceeding, WST is aware of various proposals and potential support distribution methodologies that either have unknown or adverse effects on WST's OUSF support. For example, some interest has been expressed, by Staff and others, for using a cost model, similar to those used by the FCC, to determine OUSF support.³ Due to the nature of these cost models, the Oregon-specific inputs that may be necessary, and other factors, it is nearly impossible for WST to

¹ See Oct. 20, 2020 WST Response to Stakeholder Questions (*WST Response*), p. 5

² *Id.*, at p.4

³ See Staff's Nov. 23, 2020 Strawman Proposal and Dec. 17, 2020 meeting with CostQuest

accurately determine the level of OUSF support that may result from using a cost model. As a result, WST's straw proposal will, to the extent possible and reasonable, attempt to balance its needs for a consistent and reliable source of high-cost support with the need to ensure the OUSF is used in the most efficient way possible.

WST wishes to stress the nature of the area it serves – a rural Tribal area in Oregon that has been historically neglected as to communications services, and that, due to its remote nature, costs more to serve than many other areas in Oregon. WST documented positions taken by the FCC in granting relief to carriers serving Tribal areas that recognize this fact in the *WST Response*. There are unique costs incurred to serve rural Tribal areas, including the area WST serves, that include those related to “securing rights-of-way and easements to install new broadband facilities on Tribal lands due to the number of permissions that must be obtained. Such permissions include the consent of multiple owners of allotted lands, as well as the consent of Tribal authorities, the Bureau of Indian Affairs (BIA), and other administrators and managers of Native trust lands.”⁴ In addition, the FCC notes, drawing from the record built during the proceeding that “the process of obtaining Tribal cultural clearances, as well as the cost of compliance with the Archeological Resources Protection Act of 1979 and the National Historic Preservation Act of 1966, and coordination of National Environmental Protection Act compliance with BIA, are often significant ...Tribal sovereignty issues require additional negotiation and legal review, that many Tribes require that qualified members of the Tribe be given preference in hiring and promotion, and that some Tribal authorities require construction observation by a Tribal member.”⁵

⁴ In the Matter of Connect America Fund, Report and Order, WC Docket No. 10-90 (rel. Apr. 5, 2018, FCC 18-37) (Tribal Opex Relief Order) at 5 (*footnotes omitted*)

⁵ *Id.*

Given these facts, it is imperative that WST continue receiving OUSF support in order to enable its vital services to the Warm Springs reservation. WST is 100% owned and operated by the CTWS, and as such is uniquely qualified and positioned to provide the voice and broadband services the residents need, and that have been for so long denied to them by the incumbent providers.

B. WST Proposes to Freeze OUSF Support

WST proposes to freeze its OUSF support at current levels, in exchange for certain defined deployment obligations. Currently, WST receives approximately \$1.2 million in annual OUSF support. WST has used this support to greatly extend the availability of voice and broadband services on the reservation, and continues to do so. In addition, the OUSF support will assist WST in reaching the full potential of the 2.5 GHz spectrum recently awarded to it, at no cost, by the FCC through the Rural Tribal Priority window.⁶

Freezing support as proposed by WST was done at the federal level with the FCC's adoption of the Alaska Plan.⁷ In that plan, the FCC froze support for incumbent carriers and some competitive providers at historical levels, in exchange for defined deployment obligations put forth by each participating carrier and approved by the FCC.⁸ During the ten-year term of support, participating carriers are to deploy broadband service to a defined number of locations, report deployment progress via the Universal Service Administrative Company's (USAC) High-Cost Universal Broadband (HUBB) only line system, are subject to broadband performance testing, and are provided an opportunity for a mid-stream revision to account for any changes in circumstances.

⁶ See *FCC Grants First Licenses in 2.5 GHz Rural Priority Window*, News Release, October 23, 2020

⁷ *In the Matter of Connect America Fund – Alaska Plan*, Report and Order, WC Docket No. 16-271 (rel. Aug. 31, 2016, FCC 16-115) (*AK Plan R&O*)

⁸ *Id.*, at 3

WST states that it faces “uniquely challenging operating conditions” similar to those recognized by the FCC for Alaska Plan participants⁹, and believes a similar plan for OUSF support strikes a reasonable balance for WST’s customers, the Commission, and other industry stakeholders. In exchange for freezing its support, WST will agree to a defined deployment obligation, that will ensure deployment to certain number of locations at speeds of, for example, 25/3, 50/5, or 100/20 speeds. This deployment will take place over a specified term of support, for example five or ten years. WST would also commit to reporting deployment progress to the Commission, and would agree to certain milestones such as 50% deployment completion by year 5 (of a ten year term), as an example.

III. WST’S COMMENT ON OTHER ISSUES

A. Cost of Service

One of the issues bring discussed in this proceeding is how to determine the cost of service, which, for incumbent providers, currently forms the basis of OUSF support.¹⁰ As stated in the *WST Response*, WST receives OUSF support under the Commission’s support portability rules, which does not rely on the recipient’s cost but rather on what the incumbent receives.¹¹ The support portability rule makes sense, as competitive carriers like WST do not produce the cost information contemplated by the OUSF support determination process. A review of Form I, the annual report of Oregon Separated Results, which is currently the basis of local service costs for incumbent carriers, reveals a form that requires information that would be entirely unnecessary to produce for a company such as WST. First, Form I requires input of a lengthy schedule of “separations

⁹ *Id.*, at 2

¹⁰ ORS 759.425(4)

¹¹ OAR 860-100-0125

parameters” that historically and solely apply only to incumbent, rate-of-return regulated carriers. Second, pages 1-7 of Form I require information organized, and in a format, not familiar to those companies, like WST, that are not required to strictly follow FCC part 32 accounting rules.

WST does not maintain its records in a fashion that would easily convert to Form I reporting, and certainly does not perform or maintain separations studies that would allow it to report “separations parameters.” To do so would present WST with a daunting, if not impossible, task of converting accounting records and performing separations studies that many of the incumbent carriers have not been required to perform in years.¹² Obviously, this would be a costly endeavor for WST (if it even could be accomplished) with little to no practical use, and with WST already fighting for the amount of support it has today to cover the high costs of serving a rural Tribal area.

B. Rural Development Opportunity Fund Support

WST notes that two broadband providers, CenturyLink (now Lumen) and SpaceX, were awarded support from the FCC’s Rural Development Opportunity Fund (RDOF) Phase I auction for census block groups located within the Warm Springs reservation.¹³ CenturyLink/Lumen puzzlingly promises to deploy services at the “gigabit” service tier to 334 locations in exchange for a fixed amount of support over ten years. It should be noted that this area where CenturyLink promises to deploy a broadband capable network is the same area that they neglected for decades,

¹² The FCC essentially froze separations factors for incumbent carriers, thus obviating the need to perform annual traffic and separations studies

¹³ See Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes, Winning Bidders Announced, Public Notice, AU Docket No. 20-34, DA 20-1422 (rel. December 7, 2020) (RDOF Public Notice) at Attachment A. Also see RDOF Phase I results map, available at <https://www.fcc.gov/reports-research/maps/rdof-phase-i-dec-2020/>

necessitating the CTWS to take the extraordinary step of forming its own provider to serve the chronically underserved Native Americans living on the reservation.

Given that WST is already serving the CTWS, and that it will likely take CenturyLink/Lumen the full time allotted to serve the awarded areas (if they can at all), this RDOF award should not affect WST's proposal, outlined above, for the distribution of OUSF support. The residents of the Warm Springs reservation need and deserve broadband services quickly, which WST is committed to and is indeed in the process of accomplishing through upgrades to its current network and by the rapid use of its recently-acquired 2.5 Ghz spectrum. WST is doing all of this without any federal USF support, unlike the other incumbent carriers in Oregon and, in the future, CenturyLink/Lumen.¹⁴ Moreover, WST is uniquely qualified to provide service to the residents of the Warm Springs reservation as it is Tribally-owned and operated and knows the needs of the CTWS best.¹⁵

CONCLUSION

WST requests the Commission and interested parties in this proceeding consider the straw proposal outlined above for distribution of OUSF support. WST proposes to freeze its current level of OUSF support, in exchange for defined deployment obligations. WST further proposes to report deployment progress to the Commission, including the adoption of deployment milestones over the term of the OUSF support it receives.

¹⁴ As WST stated in the *WST Response*, Oregon ILECs receive approximately \$75m in annual federal high-cost support (p. 4)

¹⁵ WST has unsuccessfully attempted to gain ILEC status for its service area (*WST Response*, p. 4). It should be noted that CenturyLink opposed this effort (see WC Docket No. 16-284, Opposition of CenturyLink to the Petition of the Warm Springs Telecommunications Company, filed Sep. 19, 2016)

Respectfully submitted this 18th day of January 2021.

_____/s/
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