

OREGON TELECOMMUNICATIONS ASSOCIATION (OTA) PROPOSAL

OCTOBER 12, 2021

By a memorandum dated December 3, 2020, Commission Staff invited stakeholders in this docket to each file their own “Straw Proposal.” This invitation was subsequently clarified with the June 4, 2021, updated timeline to be a “strawman” proposal<sup>1</sup> to be submitted in July. Ultimately, the due date for the proposals was delayed to October 12, 2021. This paper is OTA’s proposal. Although, it is not a “strawman” proposal, but instead a realistic solution for the docket.

1. Basic Proposition: The Oregon universal service fund (OUSF) supports both voice service and broadband.

Commission Staff’s December 3, 2020, memorandum starts with an incorrect assumption. Commission Staff states that “Per the statute - support equals the difference between the cost of providing basic telephone service and the benchmark, less specific compensation received from federal sources specifically used to recover local loop costs and less any explicit support received from a federal universal service program.” Unfortunately, this statement ignores the changes that occurred to ORS 759.425 in 2017. There are now two purposes to the OUSF. One is to support voice service. The second is to provide support for networks that provide both voice service and broadband service availability.

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.” The statute then goes on to state “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.” While the Legislature left the formula for the support of basic telephone service as it existed prior to 2017, it did not provide a specific formula for supporting the availability of broadband service. Thus, the Commission has a wide range of discretion that allows it to provide support for the availability of broadband service that goes beyond simply the cost of providing basic telephone service.

To say that support is limited only to the formula that applies to voice service would mean that the Commission is stating that the Legislature did a useless act when it amended the statute in 2017 to allow support for broadband service availability. It is inappropriate to make an assumption that the Legislature did a useless act. The job for the Commission is to figure out

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<sup>1</sup> Strawman proposal is an intentionally misrepresented proposition that is set up because it is easier to defeat than an opponent’s real argument. Or, as stated in Wikipedia, a strawman is a form of argument and an informal fallacy of having the impression of refuting an argument, whereas the proper idea of an argument under discussion was not addressed or properly refuted. That is not OTA’s intent in this proposal. Rather OTA intends to present a rock-solid proposal for resolution of this docket.

2. Cost of Basic Service: The cost of basic service is the actual cost of providing service.

One of the primary issues for any proposal for the OUSF is how to determine the cost of basic telephone service. OTA believes that using the Form I provides the best evidence of the cost of providing basic telephone service. This is the actual cost of providing service. To be specific, the OUSF should support the operating costs and the unseparated loop cost as reported on Form I.

This does not mean that every dollar that is used to provide service is being supported by the OUSF. For example, the operating costs associated with the provisioning of non-regulated services are removed and are not reported on Form I. In addition, some plant specific costs are directly assigned to the interstate jurisdiction or to business data services and are not included in the calculation of the unseparated loop cost. Specifically, categories 1.1 and 1.2 of cable plant are directly assigned to business data services that are not included in the calculation of the unseparated loop cost. In addition, costs related to the provisioning of DSL and the Consumer Only Broadband Loop (CBOL) services are directly assigned to the interstate jurisdiction and are not included in the calculation of the unseparated loop cost.

Models should not be used for this purpose. The problem with the models, including A-CAM or CostQuest, is that they often do not reflect the actual cost to provide service. For example, under A-CAM I, if a census block already had Internet access available at 25/3 or greater, that census block was excluded. Such an exclusion ignores the fact that there were real world costs to construct that network and there are ongoing real world costs to operate and maintain the network in that census block. For example, in all likelihood there is substantial debt service that accompanies the ability to provide 25/3 or greater broadband service availability.

Form I information is real world information that can be used to determine the cost of providing basic telephone service. It reflects the actual cost to construct, operate and maintain the networks that provide basic telephone service and help to make broadband service available to Oregon citizens, including the locations actually served by each company. Why use anything else?

3. Allocation Issues: No allocation is needed.

The networks that are constructed today, particularly those in the areas served by rural incumbent local exchange carriers, reflect the actual cost to provide basic telephone service and to make broadband service available. The 2017 amendments to ORS 759.425 clearly allow the Commission to support broadband service availability and to provide support to telecommunications carriers that provide both basic telephone service and broadband service. In addition, any costs directly associated with the provision of broadband service are excluded from the unseparated loop cost calculation. As a result, there is no need to try to allocate the cost of providing the network among voice and broadband service. To do so would be an academic exercise that is totally unnecessary.

As discussed in Section 2, above, many aspects of the provisioning of broadband service are either allocated to the interstate jurisdiction or are excluded as non-regulated costs from the

operating costs that are reported on Form I. Since, as discussed below, certain other costs related to the provisioning of service are, in essence, subtracted when they are supported by a support mechanism for the local loop or a federal universal service fund, no further allocation is needed.

4. Benchmark Issues.

Another issue is to how to establish a benchmark. OTA proposes that the existing benchmark of \$21.00 continue for the future. One of the goals of the Oregon Universal Service Fund is to “ensure basic telephone service is available at a reasonable and affordable rate.” ORS 759.425(2)(a). The existing benchmark has been an effective tool to meet this goal. As a result, it should be continued. .

5. Federal Deductions: Certain High-Cost supports but not grants.

The federal support mechanisms that should be subtracted to meet the statutory directive in ORS 759.425 are those supporting the unseparated loop costs reported in Form I. Clearly high-cost loop support should be subtracted, as it is cost recovery for costs included in the total unseparated loop cost reported in the Form I. In addition, the voice component of CAF BLS should also be subtracted, but not the CBOL component of CAF BLS, as it does not support costs that are assigned to the total unseparated loop cost reported in the Form I. As noted above, CBOL costs are separated out and are not included on Form I.

For A-CAM I companies, a proxy for the amount of high-cost support for the local loop can be the 2016 ICLS and 2016 HCLS received by the company. For A-CAM II companies, the voice component of 2018 CAF BLS and the 2018 HCLS could be used. The reason for choosing 2016 or 2018, respectively, is that is the last year before the particular A-CAM program started. That amount, on a per company basis, would reflect the amount of loop support that is embedded in the A-CAM process.<sup>2</sup>

One support mechanism that should not be deducted are grants used to build-out new facilities. The reason such funds should not be deducted is that when a grant is received to construct new facilities, those costs are not reflected in the Form I. Thus, to deduct the amount of the grant would be deducting that amount twice. First, by not including the investment in Form I. Second, through a physical reduction of the amount received for the grant. That is not appropriate.

Another support mechanism that should not be deducted is CAF InterCarrier Compensation (ICC). The reason for not deducting this amount is that CAF ICC is a revenue replacement mechanism. It replaces interstate and intrastate terminating access and reciprocal compensation. Some have argued that terminating access included implicit support for local service. Even if that is true, that does not meet the statutory definition in ORS 759.425 of what should be deducted. Further, these costs are not included in the total unseparated loop cost reported in the Form I.

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<sup>2</sup> This paragraph is offered as a suggestion. OTA is exploring other alternatives for A-CAM companies.

Finally, as discussed above, the CBOL portion of CAF BLS should not be deducted. This support is used to recover broadband costs that are allocated to interstate special access and are not included in the unseparated loop costs calculated in Form I.

6. Other Support Issues.

There is one other support issue that OTA desires to raise. From a public policy perspective, OTA believes that OUSF support should not be provided to two companies in the same geographic footprint. The OUSF itself is a finite resource and should be used as wisely as possible.

For example, the recent Rural Digital Opportunity Fund (RDOF) auction winners, should they seek OUSF support in the future, should be required to satisfy COLR obligations in the areas for which support is sought. If such support is awarded to the non-incumbent provider then the incumbent provider should be relieved of its existing COLR obligations for the area.

OTA understands that this may have a negative impact on certain OUSF recipients as far as their total support from the OUSF. OTA suggests that there be a transition. Perhaps tied to the buildout goals that are required under the RDOF auction. Ultimately, it is just good public policy that the OUSF not provide support to multiple carriers for serving the same area.

7. Presence of an Unsubsidized Competitor is not an Appropriate Issue.

Some participants in the Docket have argued that the presence of an unsubsidized competitor in an area should be the basis for reducing or even removing support from a recipient of OUSF funds. That does not appear to be an issue that is supported by the language of ORS 759.425. As Staff correctly noted, the support for voice service is specifically prescribed by the legislation. As stated in ORS 759.425(4)(a) “[t]he universal service fund shall provide explicit support to an eligible telecommunications carrier that is equal to the difference between the cost of providing basic telephone service in 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 the federal universal service program.” Nowhere does the statute say “and less any costs in an area served by an unsubsidized competitor.” That is simply not a factor in the formula.

It is the case that ORS 759.425(4)(b) allows the Commission to review the benchmark and adjust the benchmark as necessary to reflect “changes in competition in the telecommunications industry.” This is one of any number of factors that the Commission can use to review the level of the benchmark. The benchmark in this statute is used to determine the level of support by providing a measuring stick. The lower the benchmark, the more support needs to be made available to the recipient. The higher the benchmark means there is less support provided to the recipient. The presence of competition should mean that the price of local service is a competitive issue and may be lower than what it was before the competitor entered the market. It seems logical that a competitor entering the market with a very high rate is not going to be very successful. If competition brings about lower rates for the customer, is it not also logical then that the benchmark would be lower rather than higher?

In any event, the legislation allows the Commission to consider changes in competition as a possible reason to adjust the benchmark. However, it is not a basis to reduce or remove support on an ipso facto basis.