
April 7, 2022

Sent via electronic mail to puc.filingcenter@puc.oregon.gov

Attn: Filing Center
Oregon Public Utilities Commission
201 High Street S.E., Suite 100
Salem, Oregon 97301

Re: AR 649/UM 2040 – Comments of Ziplly Fiber

Dear Commissioners:

Zipty Fiber appreciates the opportunity to comment on staff's proposed draft of rules regarding the Oregon Universal Service Fund (OUSF). Zipty Fiber joined in OTA's comments of March 28, 2022, and continues to support the points made there. Zipty Fiber has had the opportunity to review Lumen's comments and concurs with them as well. In addition, Zipty Fiber would like to add several points of concern with the proposed rules.

1. Zipty Fiber finds the current rulemaking process unpredictable. Timelines have been established, and subsequently largely ignored or discarded. For example, the latest draft rules were published Monday and parties were given only until Thursday to respond with comments.
2. The ORS § 759.425 2(a) requirements of "a competitively neutral and nondiscriminatory universal service fund" are at odds with these draft rules. Staff is proposing to treat small rural ILECs in one manner by allowing them to calculate cost-to-serve based on information provided in periodic reports to the OPUC. However, the two large ILECs in the state are being treated in a potentially discriminatory and distinctly non-neutral manner by being subject to an entirely different process of cost-to-serve calculations, despite the fact that they too provide periodic reports of the same sort proposed for use by the rural ILECs.
3. There has been advocacy by OCTA and others that OUSF should not be disbursed in geographic areas also served by an unsubsidized competitor. This advocacy has been notable by the absence of mention that FCC rules

would require that the unsubsidized carriers serve at least 85% of the wire center(s) where the unsubsidized competition is alleged before the subsidy is removed.

4. The draft rules are unclear on exactly which federal subsidies would be used to calculate an offset under ORS § 759.425. The draft rule should explicitly identify the offsets to disbursements contemplated by the draft rule.
5. As the number of UNEs required to be offered by ILECs to CLECs continue to dwindle, the draft rules should be revised after consideration of whether proposed OAR § 860-100-0125 needs to refer to UNEs at all. At very least the rules need to conform with the variety of current FCC orders and rules on the subject, as a number of the current UNE requirements sunset this year or early in 2023.
6. Zply Fiber does not support the further erosion of support contemplated in draft OAR § 860-100-0250. The fact that between 2016 and 2021 Zply Fiber (and its predecessor) saw an annual percentage decrease in the amount of support only reflects the terms of an expired stipulation. A rulemaking is not a substitute for a contested proceeding in which future disbursements from the fund are ordered consciously by the Commission after the presentation of evidence and creation of a record justifying the action. The possibility exists that a new settlement and stipulation may be reached and presented to the Commission in UM 2040, but until that point, embedding a reduction in support into a draft rule without an appropriate process or record seems to skirt the Commission's judicial role and calls the legitimacy of the draft rule into question. Zply Fiber has continually raised the point in this (and its related) proceeding that its costs per line to manage that portion of the network supported by the OUSF have steadily increased as the number of access lines served by the Company have decreased by roughly 10% year over year for more than a decade. To embed a reduction in the rule without the appropriate consideration of ongoing costs to maintain that network is simply wrong.
7. Draft OAR § 860-100-XXXX has a number of flaws. First, it embeds the confusion among the parties about when or if the staff will actually use the CostQuest model, or a "similar model". Because the parties have not seen any detailed explanation of the CostQuest model, nor a demonstration of how it works, much less any detailed information about inputs to the model, it is still a black box to the participants in this rulemaking. Zply Fiber cannot support the adoption of a model about which it knows little, much less any "similar model". Second, this draft rule also discards the to-date exclusive use of the wire center as the appropriate geographic area on which to base

distribution of funds. Substituting a different geographic measure creates unnecessary complexity and results in less transparency. There is no existing Commission-approved process for substituting a different geographic measure and no information about how the use of a different geographic measure would affect the analysis of funds to be disbursed, or the outputs of the model to be selected. Lumen points out in detail how this may skew results. Third, this draft rule has combined the large companies with their small ILEC affiliates for the purpose of calculating disbursements, which is contrary to the way that those small affiliates (in particular, Ziplly Fiber of Oregon, LLC) were treated for over ten years. The impact of moving Ziplly Fiber of Oregon, LLC from category two into category one is impossible to analyze, given the lack of detailed information about the CostQuest (or similar) model.

In sum, Ziplly Fiber's issues with the draft rules (in addition to the comments by OTA and Lumen) should be a reason for caution before the Commission decides whether to adopt the draft rules. There is no doubt that if this proceeding had remained a contested docket rather than been converted into a rulemaking that all of these issues would have been fully examined on the record and the basis for these proposed changes vetted through testimony and cross-examination. The Commission should avoid adopting these draft rules while many of the parties continue to oppose them, and while questions remain about the impact that these changes will produce.

Sincerely,



George Baker Thomson, Jr.
Associate General Counsel