

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

Docket Nos. AR 649/UM 2040

In the Matter of  
PUBLIC UTILITY COMMISSION OF  
OREGON

Rulemaking to Adopt Rules Pursuant to  
ORS 759.425

In the Matter of  
PUBLIC UTILITY COMMISSION OF  
OREGON

Investigation of the Oregon Universal  
Service Fund

WARM SPRINGS  
TELECOMMUNICATIONS  
COMPANY'S COMMENTS ON  
DRAFT PROPOSED RULES

Warm Springs Telecommunications Company (WST) hereby provides these comments on the proposed draft rules distributed by Public Utility Commission of Oregon (PUC) Staff on March 16, 2022.

**I. INTRODUCTION AND SUMMARY**

Staff requests comment on a set of proposed draft rules to revise Oregon Universal Service Fund (OUSF) distribution pursuant to ORS 759.425. These proposed draft rules are the culmination of significant time and effort by Staff and the industry on how to move the OUSF forward within the boundaries established by ORS 759.425. WST believes the proposed draft rules represent a good first step but will need some more work and clarification before moving forward.

## **II. OUSF SUPPORT DISTRIBUTION PER ORS 759.425**

ORS 759.425(3) requires that OUSF support for Eligible Telecommunications Carriers (ETC) be determined based on a formula that includes the cost of providing basic telephone service, a benchmark for basic telephone service, and certain types of federal high-cost support received. As WST has stated in the past, this formula is not applied to competitive carriers and thus the inputs to the formula have little or nothing to do with WST.

Staff's proposed rules would utilize a cost model developed by CostQuest Associates (CQA) to determine the cost of service and the benchmark rate. As of now, the results of these new inputs are unknown and therefore the OUSF support going to ETCs is unknown. WST's support is tied to that received by the incumbent local exchange carrier (ILEC) serving in and around the Confederated Tribes of Warm Springs reservation area by operation of OAR 860-100-0125 (OUS Fund Support Portability). This rule currently allows competitive providers to receive support based on the ILEC's per-line support generated in the same area.

Since the CQA model-determined support for ILECs is currently unknown, ILECs and competitive carriers such as WST cannot comment on the sufficiency of the OUSF support thus created. Consequently, WST cannot support (or oppose) the revisions to the OUSF support distribution rules until the amounts are known; however, WST can tentatively support the rule revisions given solutions to the issues raised in regards to its support discussed herein.

## **III. OUS FUND PORTABILITY**

Staff's proposed rules would make some changes to OAR 860-100-0125 to reflect revisions made elsewhere in the rules. First, the determination of per-line support for competitive carriers is now linked to the geographic support area to recognize, WST assumes, the change in

how ILEC OUS support will be generated and targeted via the CQA model. Second, Staff has proposed a new section (2)(d) to set WST's support for 2022 at the level "set forth in Table A of this rule." While there was no Table A distributed with Staff's proposed rule, WST assumes the amounts are the same or similar to Attachment 2 of the Staff recommendation included in Order No. 21-413 in Docket No. AR650 (\$1.288 million annually for WST).

WST appreciates the attention being paid to the OAR 800-100-125 OUSF support portability rule. As stated above, the ultimate outcome of WST's support (i.e, January 1, 2023 forward) is unknown due to the ILEC support being undetermined. However, there are certain rule changes that should be made that will ensure WST's support remains sufficient and predictable. These changes will be discussed further below but include a different benchmark for a support area that contains Tribal lands and a floor for WST's support or a limit on the decrease in support WST would experience in any given year.

With the revisions discussed herein, WST can tentatively support the revisions to the support portability rule, OAR 860-100-0115.

#### **IV. OUS Fund Support Distribution Calculations**

##### *A. Tribal-Specific Benchmark*

Staff proposes a new section of the Oregon Universal Service Fund rules that establish cost model-based factors for the determination of ILEC OUSF support, including the benchmark and cost of service. Also introduced is the establishment of a "different benchmark" for a support area that contains Tribal lands as defined in 47 C.F.R. §54.5. As stated above, WST's support is not directly determined via operation of this new rule but is rather based on the support received by the ILEC in the relevant support area (i.e., a census block or wire center).

WST supports the concept of a benchmark specific to support areas that include tribal areas. The benchmark, currently set at \$21, represents the amount customers should be expected to pay for service. There is ample precedent for recognizing the inherent higher cost of serving Tribal lands, including the enhanced Tribal Lifeline credit, which provides up to an additional \$25 per month in credits, and the recent use of a Tribal Broadband Factor by the Federal Communications Commission (FCC) in its Alternative Connect America Cost Model (ACAM) II support offers to rate-of-return regulated ILECs and the Rural Digital Opportunity Fund (RDOF) support auction.

The enhanced Tribal Lifeline credit was adopted by the FCC in 2000, and provides up to an additional \$25 per month (for a total of \$34.25 per month) to qualifying low-income customers. Customers on non-Tribal lands currently receive a \$9.25 per month that can be applied towards qualifying services. In adopting the enhanced Tribal Lifeline credit, the FCC addressed “the lower-than-average incomes and subscribership levels of members of federally-recognized Indian tribes” by reducing “the monthly cost of telecommunications services for qualifying low-income individuals on Tribal lands, so as to encourage those without service to initiate service and better enable those currently subscribed to maintain service.” (*FCC Tribal Lifeline Order, FCC 00-208, at 44*) The additional up to \$25 per month provided to low-income customers living on Tribal lands addresses an issue that is analogous to Staff’s proposal to establish a different benchmark for a support area that contains Tribal lands. If the current benchmark represents the amount customers can be expected to pay for service, on average, then, similar to the federal enhanced Lifeline credit, this amount should be lower based on documented conditions that exist in Tribal areas.

The FCC also recognized the inherently higher cost of serving and purchasing services in Tribal areas in the ACAM II and RDOF support programs. In ACAM II, carriers serving Tribal

areas (census blocks) were provided additional support through the ACAM support calculation. Specifically, the high-cost funding benchmark – the amount of monthly revenues that can reasonably be expected to be collected from customers – was decreased by 25% from \$52.50 per month to \$39.38 per month. This was done to recognize the “high concentration of low-income individuals and few business subscribers in many rural, Tribal areas. By reducing the funding threshold by 25%...the revised model directly addresses the lower expected end-user revenues” in these areas. (*FCC Rate-of-Return Budget Order, FCC 18-176, at 19*) Additionally, the FCC increased the per-location cap of \$200 by 25% for the same reasons. In the RDOF program, the FCC made similar adjustments to the funding threshold and per-location funding cap to “account for the unique challenges of deploying broadband to rural Tribal communities” and in recognition of “the difficulty Tribal lands have faced in obtaining broadband deployment.” (*FCC RDOF Report and Order, FCC 20-5, at 16 and 28*)

WST believes these decisions at the federal level to adjust the parameters of support in the ACAM II and RDOF programs directly speak to Staff’s proposal to establish a Tribal area-specific benchmark. In the adjustments for both programs, the FCC specifically addressed the amount of revenues that can be expected from residents in Tribal lands, and reduced the benchmark applied to locations outside of Tribal areas accordingly. This would be the same rationale for establishing a different, lower, benchmark for OUSF support generated for areas located in the CWTS, and other, areas.

*B. Treatment of Federal USF*

Part of the OUSF support calculation involves reducing the cost of service, less the benchmark, by the amount of federal support “specifically used to recover local loop costs and less any explicit support received by the telecommunications carrier from a federal universal service

mechanism.” (ORS 759.425(3)) This provision of the Oregon statutes is a reasonable policy to ensure areas are not funded by state and federal support for the same types of service.

WST does not receive federal high-cost support of any type. Therefore, it would be improper to reduce support generated by the OUSF calculation, as revised, for support areas containing WST’s service area. To do so would put WST at an immediate disadvantage, and would result in severe underfunding of services supported by the OUSF.

*C. OUSF Support Floor*

Unlike many of the OUSF support recipients, WST’s only source of revenues are from end users for services rendered and OUSF support. WST has received OUSF support that at one point was deemed to be just and reasonable and has relied on that support to continue providing quality services to the CWTS reservation residents and businesses. A severe reduction in OUSF support would jeopardize the significant work WST has undertaken to serve the previously unserved and underserved parts of the CWTS reservation.

WST requests that the results of the new OUSF support determination and portability rules ensure a reasonable continuing level of support. This mechanism could include a floor on WST’s support or a limit on any reduction in support that may flow from operation of the new rules in 2023 forward. In addition, if the new rules result in a reduction of support targeted to WST’s service area, WST requests the new rules allow for a phase-down of that support over a period of years to lessen the impact on WST’s customers and its operations.

**CONCLUSION**

WST appreciates the OUSF support determination policy put forth by Staff in the draft proposed rules. WST can tentatively support the draft proposed rules given adequate consideration

of the support portability rules, the establishment of a different benchmark for Tribal areas, and the treatment of federal USF support for WST's service area discussed above. WST looks forward to working with Staff in addressing these issues and in ensuring the residents of the CTWS that WST serves continue to receive quality, affordable services well into the future.

Respectfully submitted this 28<sup>th</sup> day of March 2022.

\_\_\_\_\_/s/\_\_\_\_\_  
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