

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 RESPONSE TO  
STAKEHOLDER QUESTIONS

Warm Springs Telecommunications Company (WST) hereby responds to the list of Stakeholder Questions filed by Public Utilities Commission of Oregon (Commission) Staff in the above-captioned docket on September 18, 2020. The purpose of the questions is to discuss general policy considerations related to distributions from the Oregon Universal Service Fund (OUSF) and the operation/accounting of the OUSF.

**I. INTRODUCTION AND BACKGROUND**

WST is a 100% Tribally-owned and operated telecommunications company that provides service solely to the Confederated Tribes of Warm Springs (CTWS) reservation in Oregon. WST was created to specifically serve the historically un- and underserved areas of the reservation, and has made progress in bringing quality, affordable telecommunications and broadband services to the CTWS residents since it obtained a certificate of authority from the Commission in 2010.<sup>1</sup> With the help of an United States Department of Agriculture Community Connect Grant and, more importantly, a \$5.6 million grant from the American Recovery and Reinvestment Act of 2009 (ARRA) Broadband Infrastructure Program (BIP), WST was able to begin investment and

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<sup>1</sup> Commission Order No. 10-137, Docket CP 1470, April 8, 2010

construction of a combination fiber/microwave backbone and fiber to the premises and fixed wireless last mile network on the Reservation. WST now serves nearly 800 access lines across the 1,000 square mile CTWS reservation.

WST was granted Eligible Telecommunications Carrier (ETC) status by the Commission in 2011<sup>2</sup>, and received permission to participate in the OUSF for the Warm Springs wire center as an Eligible Telecommunications Provider (ETP) in March 2012.<sup>3</sup> At the time of its ETP designation, WST was eligible to receive \$149.81 per line – the amount the incumbent at the time, Qwest, was receiving – pursuant to OAR 860-100-0125. Subsequently, WST’s OUSF support was capped (subject to phase down) by the Commission in Docket No. UM 1481’s Phase II and Phase III orders. Currently, WST receives just over \$100,000 per month for the lines it serves on the CTWS reservation.

## **II. THE FUTURE OF WST’S OUSF**

While most of the Stakeholder Questions appear to be focused on OUSF distributions to incumbent carriers (*e.g.*, ORS 759.425(4)), WST wants to ensure that the support it currently receives continues. The CTWS reservation covers 1,000 square miles, and of the approximately 800 access line WST serves, around 216 (27% of all lines, 31% of residential lines) of those lines are eligible for Federal Lifeline support. This level of Lifeline support eligibility in Tribal areas is not unusual and is well-known and documented. In 2000, when the FCC adopted the Tribal Lifeline Credit, it noted “the significantly lower-than-average incomes and subscribership levels of members of federally-recognized Indian tribes.”<sup>4</sup> Lifeline support helps low-income consumers

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<sup>2</sup> Commission Order No. 11-522, Docket No. UM 1549, December 20, 2011

<sup>3</sup> Commission Order No. 12-089, Docket No. UM 1581, March 12, 2012

<sup>4</sup> Federal Communications Commission (FCC) *Tribal Lifeline Order*, FCC 00-208 released June 20, 2000 at ¶28

afford the cost of local and broadband services, and allows providers to keep customers connected to the networks they have spent time and resources to build.

In addition to consisting of historically underserved and economically disadvantaged areas, rural Tribal areas are notoriously difficult and expensive to serve. Furthermore, carriers serving Tribal areas face unique circumstances that increase costs of deployment and operations as compared to serving non-Tribal areas, as recognized by the FCC - “[T]here are unique costs associated with serving Tribal lands...”<sup>5</sup> and the need to “address the unique challenges of deploying high-speed broadband to rural Tribal communities...”<sup>6</sup> There are many reasons for these phenomena, including the attributes of the service areas, which are typically sparsely populated. Consider this statement from the FCC, made in 2011:

“Tribally-owned and operated carriers serve cyclically impoverished communities with a historical lack of critical infrastructure. Reservation-based economies lack fundamental similarities to non-reservation economies and are among the most impoverished economies in the country.”<sup>7</sup>

WST can attest to the facts stated by the FCC as to serving the CTWS reservation. Serving approximately 800 lines covering a 1,000 square mile area is the very definition of providing service to a “sparsely populated” area, and the costs associated with deploying a network and providing for continuing operations and maintenance are unusually high. Most recently, WST successfully applied for and received a license for available 2.5 GHz spectrum over the CTWS reservation through the FCC’s Rural Tribal Priority window.<sup>8</sup> This spectrum will assist WST in many aspects of its charge to serve all areas of the CTWS reservation, including, potentially,

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<sup>5</sup> FCC Report and Order, FCC 18-37 released April 5, 2018 at ¶5

<sup>6</sup> FCC Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 18-176 released December 13, 2018 at ¶55

<sup>7</sup> FCC Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, released November 18, 2011 (WC Docket No. 10-90, et al.) at ¶1059

<sup>8</sup> See *FCC Grants First Licenses in 2.5 GHz Rural Priority Window*, News Release, October 23, 2020

middle mile and last mile infrastructure. In order to afford the high costs of deployment, WST has relied on federal grants and the OUSF to survive and continue providing service to the reservation – an area that was significantly underserved by Qwest/CenturyLink.

The provision of universal service in high cost rural areas, including rural Tribal areas, is by necessity a partnership between the provider and the federal and state governments. There is no place more illustrative of this than rural Tribal areas, where another factor in the partnership is the Tribal government. The state of Oregon recognized this partnership when it adopted the OUSF. Further, the OUSF rules expressly recognize the state-federal partnership from a technical perspective by reducing the OUSF need of incumbent carriers by the amount of federal high cost support received. Unfortunately, WST has, as of yet, been unable to participate in the federal high cost support program.<sup>9</sup> This leaves WST at a disadvantage compared to Oregon ILECs, who in total receive approximately \$75 million per year in federal high-cost support.<sup>10</sup> Thus, 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.

### **III. WST'S RESPONSES TO STAKEHOLDER QUESTIONS**

The Stakeholder Questions distributed by Commission Staff cover two main topics: (1) distributions of OUSF support under ORS 759.425(4), and (2) the general subject of how to determine eligibility to receive support from the OUSF. WST provides comments below on these questions.

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<sup>9</sup> WST petitioned the FCC to be declared the ILEC in the Wanapine exchange and other parts of its service area on September 9, 2016. Despite WST's best efforts, the FCC has yet to act on WST's request, which would have allowed WST to receive federal high cost support.

<sup>10</sup> Universal Service Administrative Company 4Q2020 FCC Filings, Appendix HC01

### **A. OUSF Distributions Under ORS 759.425(4)**

WST does not receive support under ORS 759.425(4), and instead receives OUSF support under the Commission's OUSF Support Portability rules contained in OAR 860-100-0125. As such, and as a non-ILEC, WST (1) does not perform cost studies that would allow it to determine the cost of basic telephone service, and (2) does not receive federal universal service support (that is deducted from the cost of providing basic telephone service). While WST's initial support determination was directly related to support received by the incumbent, Qwest/CenturyLink, it no longer is by virtue of subsequent decisions in UM 1481 (Phase II and Phase III). Now, WST's support is capped at a certain amount per month and is not dependent upon what Qwest/CenturyLink receives or line counts (although WST still makes line count filings). As a result, WST has no comment to offer on Stakeholder Questions 1-9.

### **B. OUSF Support Eligibility Determination**

Staff requests comment on a number of issues surrounding "the general subject of how to determine eligibility to receive support from the OUSF." WST will provide responses to these questions below.

*Question 10 – Should a distribution be made directly to carriers or be passed through to individuals?*

WST Response: OUSF support should be distributed to carriers, and not passed through to customers. With universal service policy, there are two main goals – universal availability of service, and the affordability of that service. The OUSF, as can be seen from the construction of the support calculation methods contained in ORS 759.425(4), is designed to support the availability of a universal service-capable network and the operations and maintenance costs related to that network. This is a separate issue from the affordability of

the services made available with the assistance of OUSF. Issues surrounding affordability are in the purview of federal and state Lifeline programs, which are designed to provide credits to low-income customers to allow them to better afford the service. In WST's case, the approximately 200 Lifeline customers it serves receive up to \$34.25 per month pursuant to the FCC's Tribal Lands support amount.<sup>11</sup> WST urges the Commission to keep these goals and programs separate.

*Question 11 – By what methods can the Commission encourage broadband service availability?*

WST Response: The best method the Commission can use to encourage broadband service is the full funding of OUSF support. In WST's case, as stated above OUSF is the only source of revenues outside those generated by end user charges. While WST is considering all avenues to becoming an ILEC within its CTWS reservation service area, at this time obtaining federal high cost support is not possible. WST is hopeful that further expansion of its broadband-capable network will be substantially enhanced by its acquisition of 2.5GHz spectrum, but taking advantage of the promise this spectrum holds, like all other investment in a Tribal area such as the CTWS reservation, will take significant resources. Fully funding WST's OUSF support would go a long way to helping the Native Americans living on the reservation obtain and retain vital broadband services.

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<sup>11</sup> See 47 CFR §54.403(a)(3)

*Question 12 – Are there classes of companies the Commission should classify as not eligible for support?*

WST Response: Only providers that have met the requirements of OAR 860-100-0200 should be eligible to receive OUSF support. This rule has served the OUSF well, and all current OUSF recipients, to WST's knowledge, have met these requirements. As such, WST sees no reason to revise this long-standing rule.

*Question 13 – Should the Commission tie eligibility to maintaining COLR obligations?*

WST Response: OUSF rules (OAR 860-100-0200) require recipients to offer service throughout the area designated by the Commission for support. This means an ETC, which is designated so for a certain defined area, must, in essence, meet carrier of last resort obligations and provide service to all who request it. WST believes this policy should continue.

## **CONCLUSION**

WST appreciates this opportunity to provide input to the Commission on the important issues raised in Staff's list of Stakeholder Questions. Due to its status as a competitive carrier receiving support pursuant to OAR 860-100-0125, WST is not able to provide direct input on the majority of the Stakeholder Questions. However, WST stresses the importance of its current level of OUSF support, and the fact that it constitutes, along with end user charges, its sole source of revenues. WST has taken significant actions to bring voice and broadband service to this historically underserved area but more work is necessary to meet WST's commitment to the CTWS to bring high quality, affordable service to all on the reservation who request it. Beyond

the funding necessary to assist with network deployment, support is also necessary in high cost, rural Tribal areas such as the CTWS reservation to provide for the long-term sustainability of the services demanded by consumers. The OUSF is a vital portion of WST's ability to provide and sustain these services, and any reduction in support would be devastating to the company and the Native Americans it serves.

Respectfully submitted this 23<sup>rd</sup> day of October 2020.

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*Tim York*  
General Manager  
Warm Springs Telecommunications  
4202 Holliday Street  
Suite 1  
Warm Springs, OR 97761  
(541)615-0555