

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DOCKET NOS. AR 649/UM 2040

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation of the Oregon Universal Service
Fund.

OCTA COMMENTS
REGARDING REVISED
STAFF DRAFT RULES

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Rulemaking to adopt rules pursuant to
ORS 759.425.

OCTA COMMENTS REGARDING STAFF DRAFT RULES

OCTA appreciates this opportunity to provide comments on the Revised Staff Draft Rules distributed on April 4, 2022. As noted in its comments submitted on March 28, 2022, OCTA generally agrees with the framework reflected in the Revised Staff Draft Rules. OCTA also tentatively supports moving forward with the opening of the formal phase of the rulemaking and Commission adoption of rules at its June 1, 2022, Public Meeting, but only with the understanding expressed at the workshop held on March 31, 2022, that these rules merely provide the backdrop for more detailed work regarding inputs, assumptions and policy determinations during the Staff and stakeholder review of the CostQuest model once it becomes available. OCTA's support is

also premised on the understanding that the results of that review will be detailed in a report to be submitted to the Commission with sufficient time for stakeholder comment to the Commission, and the potential for additional amendments to the rules at a later date to the extent needed.

While OCTA agrees with the two revisions reflected in the Revised Staff Draft Rules, OCTA recommends several additional revisions prior to submission of proposed rules to the Commission at its April 19, 2022, Public Meeting. These proposed revisions and the rationale for each are discussed below.

PROPOSED REVISIONS

- **Use of the Model to Set Appropriate Benchmarks**

OCTA recommends that the second sentence of Revised Staff Draft Rule OAR 860-100-XXXX(2) be further amended to read as follows:

“The model will be used to, assist in setting [a appropriate benchmarks](#) for basic telephone service, calculate the cost of providing basic telephone service, and to calculate the difference between the cost and the benchmark, minus the explicit compensation and support identified in ORS ~~7579~~.425.”¹

This proposed revision is consistent with Revised Staff Draft Rule OAR 860-100-XXXX(2)(b), which contemplates “establishing a different benchmark for a support area that contain (sic) tribal lands, as defined in 47 C.F.R. 54.5.” It is also consistent with the

¹ There appears to be a typographical error that should be corrected to ensure the rule refers to the correct statutory provision.

language in the third sentence of Revised Staff Draft Rule OAR 860-100-XXXX(2), which refers to geographic support areas where cost minus federal support “exceeds the applicable benchmark.” This also provides flexibility in the rules to accommodate a subsequent Commission determination adopting OCTA’s recommendation that, in census blocks subject to unsubsidized competition, the benchmark should be set equal to cost to effectuate zero OUSF subsidies for those census blocks.

- **Consideration of Other Factors in High-Cost Areas.**

OCTA recommends that the third sentence of Revised Staff Draft Rule OAR 860-100-XXXX(2) be further amended to read as follows:

“When the cost, after subtracting the explicit compensation and support identified in ORS 757.425, as applicable, exceeds the applicable benchmark in a particular geographic support area, the Commission ~~shall~~may designate the support area as one requiring support from the OUS Fund.”

This revision allows additional flexibility for the Commission to consider additional factors that may influence whether a provider should receive OUSF support in a particular geographic area. For example, OCTA has long-advocated that OUSF support should be eliminated in areas in which COLR relief, in any form that may take, has been granted. Nor is this a controversial recommendation. In joint comments filed in the Commission’s HB 3065 COLR Investigation, Lumen (fka CenturyLink) and Ziplify stated: “An ILEC would no longer be eligible to receive state USF for locations for

which it relinquishes COLR.”² Similarly, OUSF support should not be provided in geographic areas in which unsubsidized competitors are providing the equivalent of basic telephone service (see above).

- **Consideration of Other Factors in High-Cost Areas.**

OCTA recommends that the Revised Staff Draft Rule OAR 860-100-XXXX(2)(b) be amended to read as follows:

“The Commission may establish a different benchmark for a support area, based on the following considerations:

(A) changes in competition in the telecommunications industry;

(B) changes in federal universal service support; or

(C) other relevant factors as determined by the commission, including but not limited to whether it ~~that~~ contains tribal lands, as defined in 47 C.F.R. 54.5.”

This proposed language mirrors the statutory provisions and allows greater flexibility in the use of benchmarks to increase, reduce or eliminate support for particular geographic areas based on relevant considerations in addition to whether the area contains tribal lands.

² See CenturyLink and Zply “HB 3065 COLR Investigation – Recommendations for Legislative Action,” p. 5 (filed August 6, 2020).

CONCLUSION

OCTA again commends the Staff on its efforts to date in developing the Revised Staff Draft Rules. With the above recommended edits to the Revised Staff Rules, OCTA supports the opening of the formal phase of the rulemaking. However, this support is premised on the understanding that significant work in fashioning the methodology for calculating OUSF support is still forthcoming once the CostQuest model is available to Staff and stakeholders. OCTA's support is further conditioned on the understanding that the result of that work will be subject to comment prior to adoption by the Commission and that the rules may need to be further amended depending on those results.

Respectfully submitted this 28th day of March 2022.

By:



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