

## AR 649

### Comments of the Oregon Telecommunications Association

The Oregon Telecommunications Association (OTA) welcomes the opportunity to comment on the discussion draft of the proposed rule changes to OAR Chapter 860-100. OTA's Comments will first address the use of a cost model to determine the amount of total support for the Oregon Universal Service Fund (OUSF). Then OTA will turn to other issues raised by the proposed draft rules.

1. Use of a model to determine the size of the OUSF should be undertaken with great care.

OTA is not absolutely opposed to the use of a cost model to determine the size of the OUSF. However, the model should not be a hypothetical construct that does not reflect the actual cost to provide service in Oregon. At this stage we do not know enough about how the Cost Quest model is proposed to be used to know if it is appropriate. There are certainly a number of questions that need to be answered before the Cost Quest model (or any model) can be used. At the very least, there needs to be an agreement on the inputs and algorithms that will be used before a rule can be adopted incorporating the model's use in developing the size of the OUSF.

At the end of the day, if the questions cannot be adequately answered, or the results of using the model produce unintended consequences it may be better and more efficient to use actual costs.

Here are some questions for consideration:

1. Which version of the Cost Quest model is proposed for use? Is it the State Broadband Cost Model? What is the cost of using the model? How is the use of the model paid for? OTA's position is that the available support should not be reduced by the cost of using a model.
2. How do stakeholders get access to the model? Is there a cost to the stakeholders for access to the model?
3. The draft rules propose that in some cases the "support area" will be wire centers and some cases census blocks. It is OTA's understanding that the Cost Quest model is based

on census blocks. Can that be rolled up to the wire center? Is it more efficient to use study area for rural carriers?

4. It is OTA's understanding that the Cost Quest model derives total costs but does not include the full cost of switching. Will total costs be used rather than unseparated loop costs? How will switching costs be recognized?
5. The Cost Quest Model as incorporated into A-CAM does not do a very good job of predicting the number of locations in a census block. Sometimes it is too high and sometimes it is too low. And, no, a rough average is not acceptable, especially for a small rural carrier with few census blocks. How will this be addressed?
6. In the Cost Quest Model, residential locations were based on 2010 census data. Will this be updated? For commercial locations, Cost Quest used a proprietary data base (TIGER) which is not available for examination. How does this not constitute a black box approach? What level of transparency should there be in a model?
7. How does the Cost Quest model accomplish the goal of the OUSF as stated in ORS 759.425 to "ensure basic service is available at a reasonable and affordable rate."

## 2. There are several issues on the use of a benchmark that should be considered.

The draft rules state that the cost model will determine the benchmark. However, it is OTA's understanding that the benchmark is an input in the Cost Quest model not a determination (outcome) made by the model. If OTA's understanding is correct, how will the benchmark be determined?

The draft rules state that multiple benchmarks may be used. This means that theoretically there may even be to a specific benchmark for each wire center. How is this consistent with the direction in ORS 759.425 for the Commission to set "a benchmark"? What is the legal authority to establish multiple benchmarks?

What is Staff's approach to a benchmark? It is not clear in the draft rules.

## 3. What offsets will be used?

In the draft rules, Staff refers to "subtracting the explicit compensation and support identified in ORS 757.425" (sic). What does Staff have in mind? Given the changes that have occurred on the federal level since the adoption of ORS 759.425, it is not clear what should be included and what should not be included. For example, from OTA's perspective Reconnect grants should not

be included. One reason for this is that plant facilities built with Reconnect grants are not included in Form I calculation of rate base.

Another issue is CAF ICC revenue. Is that a universal service program? Part 54 of the FCC's rules deal with universal service. CAF ICC is not a Part 54 program. If it is a universal service program, should an adjustment be made to remove the portion attributable to reciprocal compensation? What about CBOL related support?

The point is that a specific delineation of offsets should be produced. In doing so, it is important to match the correct starting point with the offsets so that there is not a reduction from a starting point that does not include all of the related costs.

#### 4. Wire center or study area data should be used for rural carriers rather than census blocks.

The draft rules state that the support may be either a wire center or a census block. However, the draft rules are not specific as to when each level will be used. OTA's position is that wire centers or study areas should be used for rural carriers. Use of census blocks may promote cream skimming in rural wire centers where there are not enough census blocks to be confident that the appropriate cost is assigned over a relatively sparsely populated area.

The Cost Quest model is based on census blocks. Can the model results be rolled up to the wire center or study area basis on an efficient and accurate basis? If not, then actual costs not model costs should be used.

#### 5. Recalculating support on an annual basis violates the "predictability" standard.

The draft rules propose recalculating the support levels for companies on an annual basis. However, 47 USC Sec. 254 requires that state funds adhere to certain principles. One of these principles is that support be "specific, predictable and sufficient." 47 USC Sec. 254(b)(5). Support is not predictable if it is recalculated every year.

There does not appear to be a sound reason for annual recalculation. The OUSF has been based on five plans in the past. Why shouldn't support be provided on a five-year basis in the future?

There is also a nagging question as to whether support based on a theoretical model will be sufficient.

## 6. Safeguards should be established.

One issue to consider is whether there should be safeguards included in the proposal. When the A-CAM results were distributed some companies would have seen a huge drop in the level of support they received if they elected A-CAM. That was a result of the inputs that were chosen, one of which was to eliminate census blocks that had 25/3 broadband access available. While that type of result can be mitigated by choice of inputs, that may not cure the problem. The Cost Quest Model is so complex that there can be, and probably will be, unintended consequences. That may be a reason to consider using actual costs for rural companies. Or, at the very least put in safeguards that if support is going down (or even up) by X percent, it is phased in over time.

## Conclusion

OTA is very concerned about an approach that adopts a rule to use a model without knowing how that model works or the result it produces. The examination of the model and the development of a rule should move on parallel tracks. That is the only way to be sure that universal service in Oregon meets the goals of the Legislature.

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

/s/

Richard A Finnigan

OTA Attorney