ORDER NO. 00-638

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 731
Phase IV

In the Matter of the Investigation of	)	
Universal Service in the State of Oregon.	)	ORDER

DISPOSITION: RECONSIDERATION DENIED

On June 16, 2000, we issued Order No. 00-312 resolving issues raised in Phase IV of this proceeding. On August 18, 2000, Verizon Northwest Inc., (formerly known as GTE Northwest Incorporated) and AT&T and WorldCom (WorldCom was formerly known as MCI) filed applications for reconsideration of Order No. 00-312. Our Staff filed a response to the applications. In this order, we deny reconsideration but briefly address some of the issues raised.

Issue Raised by Verizon

Verizon faults Order No. 00-312 because it does not establish prices for basic telephone service. Verizon asks the Commission to modify the order to permit the company "to reset its rates for basic telephone service on a geographically deaveraged basis at levels up to $21" and to make offsetting changes in other rates. The $21 figure is the monthly benchmark of $21 established in Order No. 00-312.

ORS 759.425 directs the Commission to establish and periodically review and adjust the prices telecommunications utilities may charge for basic telephone service. The Commission has established the prices Verizon may charge for basic telephone service. Those rates can be found in the tariff schedules Verizon has filed with the Commission. We review and adjust basic telephone rates in periodic rate proceedings for Verizon and other telecommunications utility companies. UM 731 is not a rate proceeding.

In Senate Bill 622 (codified in ORS 759.425), the 1999 Legislative Assembly required the Commission to establish and implement a universal service fund within twelve months of September 1, 1999. We met that directive by issuing Order No. 00-312 on June 16, 2000. It would have been impossible to process rate cases for the

two major telecommunications utilities involved in this proceeding (Verizon and Qwest Corporation) and establish and implement the universal service program in this docket by September 1, 2000. Each rate change request by a telecommunications utility company requires investigation and has enough issues to require a separate proceeding. We will continue our review of the rates for basic telephone service of Verizon and other telecommunications utilities. Of course, Verizon may initiate a rate proceeding by filing a request to increase its rates to $21 per month for basic telephone service.

Issue Raised by AT&T and WorldCom

ORS 759.425(4) states that "there is imposed on the sale of all retail telecommunications services sold in this state a universal service surcharge." The statute imposes the surcharge on **all** telecommunications services **sold in this state**. Both intrastate and interstate telecommunications (as well as international telecommunications) services are sold in Oregon, so in Order No. 00-312 we made the surcharge applicable to both intrastate services and the portion of interstate telecommunications services sold in Oregon. Our decision was based on the specific language of the statute and a desire to treat all telecommunications services rendered in Oregon on an equal and fair basis. We construe "all" to mean "any" and "every," and "sold in this state" to mean telecommunications sold within Oregon's borders. The order includes a discussion of the arguments of AT&T and WorldCom to exclude interstate telecommunications services sold in Oregon.

In their application for reconsideration, AT&T and WorldCom again question our decision to include interstate (and also international) calls in the calculation of the surcharge. The application expands on the arguments they made during the hearing and in their post-hearing briefs. There is no need to respond to all the arguments advanced, but we will briefly comment on a few of them.

AT&T and WorldCom point out that the United States Court of Appeals for the Fifth Circuit has ruled that the FCC lacks jurisdiction under the Telecommunications Act of 1996 to impose a surcharge on intrastate telecommunications revenues of carriers. AT&T and WorldCom contend that the reverse (that is, that a state may not impose a surcharge on interstate telecommunications revenues) must also be true. We disagree. The Court's decision was based on specific language in the 1996 federal Act. We have no quarrel with the Court's interpretation of the federal language: our jurisdiction comes from an Oregon statute. The statute imposes the surcharge equally on all telecommunications revenues sold in Oregon.

AT&T and WorldCom point out that the interstate revenues included for Oregon Universal Service (OUS) purposes include amounts customers pay to carriers for support of the federal program. They contend that including those revenues in the calculation of the revenues subject to the Oregon Universal Service Program relies on and burdens the federal universal service program.

The prices charged by telecommunications carriers are designed to recover the costs of doing business. Those costs include labor expenses, capital costs, and a variety of taxes, fees and other expenses (state and federal income taxes, for example). The carriers themselves largely determine how those costs are recovered in retail rates. Some cost components are separately identified on customers' bills, and some are not. The federal universal service program allows the carriers to decide how to recover contributions to that program. The carriers may separately identify the federal universal service charge or simply include it in their retail rates (they also are free to absorb the cost of the charge). All retail revenues from telecommunications services, whether individual cost components are separately identified or not, should be included in the revenue base for the OUS program. The OUS program places the surcharge on all telecommunications services sold in Oregon, without regard to the various components that comprise the retail rates.

AT&T and WorldCom cite other telecommunications statutes in Oregon that specifically refer to intrastate services or revenues. They argue that those statutes indicate that the Commission lacks any jurisdiction over interstate telecommunications sold in Oregon. We disagree. In ORS 759.425, the legislature used the phrase "all retail telecommunications services sold in this state" rather than the more restrictive phrase "intrastate telecommunications services." The language in ORS 759.425 obviously encompasses more telecommunications services than the language in statutes specifically limiting services or revenues to intrastate telecommunications services.

AT&T and WorldCom allege that Oregon assessments on interstate revenues are discriminatory and not competitively neutral because carriers doing more interstate telecommunications business in Oregon will have to contribute more to the OUS program than companies with little interstate business in Oregon.

Carriers choose how much intrastate and interstate telecommunications business they will do in Oregon. The fact that some choose to do more interstate business here does not make the OUS assessment discriminatory. Staff's brief clearly notes the result of adopting the argument of AT&T and WorldCom. The brief states that adopting their argument would mean "the Commission would always have a discriminatory surcharge methodology because there will always be individual differences among the many telecommunications carriers and their business practices. The best solution out of this 'box' is to assess all carriers equally, which is what the Commission has done."

In a letter of clarification filed after their application for reconsideration was filed, AT&T and WorldCom state that their arguments also apply to international calls that originate or terminate in Oregon. Our response is that the same reasons for including interstate calls sold in Oregon apply to international calls sold in Oregon.

OPINION AND CONCLUSIONS

Our standard for reconsideration is set out in OAR 860-014-0095(3). That rule establishes the grounds for reconsideration or rehearing as follows:

(a) New evidence which is essential to the decision and which was unavailable and not reasonably discoverable prior to issuance of the order;

(b) A change in the law or agency policy since the date the order was issued, relating to a matter essential to the decision;

(c) An error of fact or law in the order which is essential to the decision; or

(d) Good cause for further examination of a matter essential to the decision.

The applications for reconsideration have not satisfied any of these criteria. The arguments made are similar to those made previously in this proceeding. We remain convinced that the decisions we announced in Order No. 00-312 should continue in force.

ORDER

IT IS ORDERED that the applications for reconsideration of Order No. 00-312 are denied.

Made, entered, and effective _____.

_____
Ron Eachus
Chairman

_____
Roger Hamilton
Commissioner

_____
Joan H. Smith
Commissioner

A party may appeal this order to a court pursuant to ORS 756.580.

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