ORDER NO. 01-576

ENTERED JUL 13, 2001

This is an electronic copy. Attachments may not appear.

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1017

In the Matter of the Investigation into Expansion of the Oregon Universal Service Fund to Include the Service Areas of Rural Telecommunications Carriers.	))))	ORDER

DISPOSITION: PROCEEDING TO MOVE FORWARD

BACKGROUND

In 1999 the Oregon Legislative Assembly enacted SB 622, which was codified in ORS 759.425. The statute required the Commission to establish and implement a universal service fund in Oregon. We established a universal service fund and established policies for non-rural telecommunications carriers in Docket No. UM 731.[1]

The last sentence of ORS 759.425(1) provides that the "commission may delay implementation for rural telecommunications carriers, as defined in the federal Act, for up to six months after the date the Federal Communications Commission adopts a cost methodology for rural carriers." The Federal Communications Commission (FCC) recently took action on universal service issues for rural telephone companies. On May 23, 2001, the FCC released Order No. 01-157 which it had adopted on May 10, 2001. The order establishes policies to be effective on July 1, 2001.

The parties in this docket met in a workshop on May 23, 2001, to discuss issues relating to universal service for rural telecommunications carriers. Disagreement arose about the appropriate function of this docket, and the parties request that the Commission resolve several threshold issues before proceeding further in this docket. The issues are: Does the FCC Order trigger the six-month period for expansion of the Oregon Universal Service Fund (OUSF) to include the service areas of rural local exchange carriers (LECs) under ORS 759.425(1)? If yes, when does the six-month period begin? What constitutes implementation for purposes of expanding the OUSF? If no, should the PUC move forward with Docket UM 1017? If so, what issues should be addressed?

---

[1] *See* Order Nos. 94-1852, 95-1103, 97-491, 98-094, 98-278, 98-430, 99-197, 00-312, 00-638, 00-760, and 01-140 for more information on Docket No. UM 751.

The parties filed opening briefs on the threshold issues on June 22, 2001, and reply briefs on July 6, 2001.

The controversy stems from the language in and the impact of FCC Order 01-157. The order is about 100 pages in length and is subject to several interpretations. Qwest Corporation and our Staff contend that the FCC order triggers the six-month time limitation in ORS 759.425, while Verizon Northwest Inc., AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Oregon and WorldCom, Inc (referred to as AT&T/WorldCom), United Telephone Company of the Northwest and Sprint Communications Company LLP. (Sprint), and the Oregon Telecommunications Association Small Company Committee (OTA) contend that the FCC order does not trigger ORS 759.425. Basically the parties argue about how "final" the FCC order is. Is it just another interim FCC order dealing with universal service for rural carriers or is it a final order establishing a cost methodology for those carriers?

EFFECT OF FCC ORDER NO. 01-157

Pro-Trigger Arguments

Qwest and Staff point to paragraph three of the FCC order which includes these sentences: "In 1999, we took action to ensure that the rates for supported services provided by non-rural carriers remain reasonably comparable and affordable for all Americans. Today, we take action with respect to rural carriers." Qwest and Staff argue that this language indicates that the FCC dealt with non-rural carriers in 1999 and now, in its current order, is dealing with rural carriers. They point out that the FCC order modifies the existing embedded cost mechanism for rural carriers and that the modified rules will remain in effect for five years.

The modified embedded cost rules adopted by the FCC in its order will remain in effect until 2006. Staff contends that it seems unlikely that the Oregon Legislature would create a universal service program in 1999 that would not be final until at least 2006.

No-Trigger Arguments

The parties contending that FCC order 01-157 does not trigger the six-month deadline of ORS 759.425 point out that the FCC in 1997 adopted forward-looking cost estimates as the appropriate universal service cost methodology.[2] However, the FCC stated that forward-looking econometric cost methodologies were not sufficiently accurate at that time to predict the costs of serving rural areas. Forward-looking econometric models were sufficiently robust for non-rural carriers, so it adopted a forward-looking methodology for non-rural carriers in 1999. The FCC continued the

[2] FCC Order No. 97-157 in Docket No. 96-45.

embedded cost methodology for rural carriers while it worked toward the goal of adopting a forward-looking methodology that would adequately estimate costs of rural carriers. OTA contends that when the 1999 Oregon Legislative Assembly passed SB 622, the universal service mechanism for non-rural carriers was substantially complete and the Legislature knew that the FCC's work on a new cost model for rural carriers was far from complete. Pending adoption of a forward-looking cost model for rural carriers, the existing embedded cost methodology would continue, with modifications from time to time. OTA contends that if "the Legislature had intended that the Commission act based upon an embedded cost methodology for rural carriers, there would have been no need for the exception established by the Legislature in ORS 759.425(1) because that embedded cost methodology was already in place." The Legislature must have intended the six-month deadline to be triggered by the adoption of a new cost model for rural carriers. OTA argues that FCC adoption of a new cost model for rural carriers will trigger ORS 759.425(1), not modest modifications to an existing cost methodology.[3]

The no-trigger advocates state that the embedded cost methodology for rural carriers has been modified from time to time. They contend that FCC Order 01-157 makes changes to the high cost fund cap, to corporate operations expense limitations, and it adopts modest, incremental changes to the indexed cap relating to exchanges acquired from other carriers. They contend the modifications merely improve the way the embedded cost system functions, but does not adopt the goal of a forward-looking cost methodology.

The no-trigger advocates note several statements by the FCC in Order 01-157 showing the interim nature of the rules adopted in that order. The FCC speaks about a "transitional period" of using embedded cost methodologies while it develops a long-term universal service methodology for rural carriers. In paragraph 29 of its order, the FCC states that during "the duration of the plan, which we are adopting for the interim, we will continue to consider a forward-looking methodology for rural carriers." Finally, the no-trigger advocates point to paragraph 168 of the FCC Order where the FCC states that "the duration of this interim plan is five years."

Commission Discussion and Resolution

We are persuaded that FCC Order No. 01-157 does not trigger the six-month time deadline in ORS 759.425(1). The FCC order makes modest modifications to the cost methodology for rural carriers that was in use when SB 622 became law. It does not adopt a substantially changed or new cost methodology. It continues the existing methodology, with adjustments, for a five-year interim period while it continues to study how to create a forward-looking cost methodology for rural carriers. The existing embedded-cost methodology has not been replaced. In the order, the FCC talks about

[3] Staff researched the legislative history of ORS 759.425(1), and found that the only testimony on the matter at issue here was offered by OTA witness Gary Bauer. OTA points out that Mr. Bauer referred to the adoption by the FCC of a cost <u>model</u> for rural carriers.

how important its decision is, and that no doubt is true. However, the FCC states several times that the rules it is adopting are for an interim five-year period. We conclude that the 1999 legislature did not intend that FCC Order 01-157, which is interim, transitional, and makes modest modifications to an existing cost methodology, trigger the six-month deadline for the implementation of a cost methodology for rural carriers.

FUNCTION OF THIS PROCEEDING

Having decided that FCC Order No. 01-157 does not trigger the six-month deadline in ORS 759.425, we need not decide when the six-month period started. But we do need to decide whether to proceed in this docket to address issues relating to a cost methodology for rural carriers. Sprint and OTA recommend that we close this docket and wait until there is further action on the federal level. They point out that we should coordinate our actions with federal actions to avoid duplication of effort and possible conflicts. AT&T/WorldCom and Verizon recommend that we use this docket to address issues surrounding the Oregon Customer Access Fund. Qwest and Staff recommend that we move forward to adopt a cost methodology for rural carriers if we decide that ORS 759.425 does not require us to do so at this time. They contend that the current cost methodology for rural carriers probably does not meet the competitively neutral and nondiscriminatory requirements of ORS 759.425 and the federal Telecommunications Act of 1996. They recommend that we proceed with this docket, but utilize a schedule that will allow all the issues to be fully considered.

Commission Discussion and Resolution

We are not required to wait for the deadline found in ORS 759.425 to address an appropriate cost methodology for rural carriers. We have discretion to proceed anytime before the triggering action requires us to act. We believe that the 1999 Legislature wanted the implementation of a full universal service program to include rural carriers within a reasonable amount of time. We doubt that waiting until at least 2006 to address these issues would meet the spirit of ORS 759.425. We also are concerned that changes need to be made to the way the costs of rural carriers are handled in order to meet current legal requirements. The current methodology may not be competitively neutral and nondiscriminatory. We therefore move forward with this proceeding to address issues relating to an appropriate cost methodology for rural carriers. We are not required to conclude this proceeding within a six-month period following FCC Order No. 01-157, but we plan to move forward expeditiously to resolve these important issues. We direct the Presiding Administrative Law Judge to schedule a procedural conference to establish a schedule and discuss other issues.

ORDER

IT IS ORDERED that this proceeding continue forward to address and resolve issues relating to an appropriate cost methodology for rural telecommunications carriers in Oregon.

Made, entered, and effective ____________________________.

Roy Hemmingway Chairman	**Roger Hamilton** Commissioner
	Joan H. Smith Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.