

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1481
Phase II

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON

Staff Investigation of the Oregon Universal
Service Fund.

ORDER

DISPOSITION: STIPULATION ADOPTED; REDUCTIONS IN
OREGON UNIVERSAL SERVICE FUND
DISTRIBUTIONS ORDERED; PHASE III
PROCEEDING OPENED

In this order, we adopt a stipulation of the parties reducing the funds annually collected from customers and distributed to telecommunications carriers by the Oregon Universal Service Fund (OUSF) by \$18.5 million over a three year period. We also open a third phase of this proceeding to address key aspects of the OUSF.

I. INTRODUCTION

ORS 759.425 directs this Commission to establish and implement a competitively neutral and nondiscriminatory universal service fund (OUSF) conforming with the federal Telecommunications Act of 1996 (the Act), to ensure that basic telephone service is available at a reasonable and affordable rate. The statute also states that “the commission may delay implementation for rural telecommunications carriers, as defined in the Act, for up to six months after the date the Federal Communications Commission (FCC) adopts a cost methodology for rural carriers.” In docket UM 731, we created and implemented the OUSF. After a four-phase, multi-year investigation, we approved the final plan for the OUSF, applying only to non-rural carriers, and initiated the fund’s operations.¹

Although the FCC did not subsequently adopt a rural carrier cost methodology, in 2003, we added rural carriers into the OUSF regime and directed that a triennial review of the cost of the companies vying for the rural portion of the OUSF be undertaken.² In the succeeding years, the size of the OUSF, calculated according to the method required by ORS 759.425(3)(a), increased dramatically, as did the concomitant need to increase the

¹ See Docket No. UM 731, Order No. 00-312 (Jun 16, 2000).

² See Docket No. UM 1017, Order No. 03-082 (Feb 3, 2003).

customer surcharge on telecommunications services to fund the OUSF. By 2012, the fund was distributing over \$36.4 million, with further increases expected in 2013 and 2014. The OUSF surcharge, now 8.5 percent, is among the highest in the nation.

II. PROCEDURAL HISTORY

On April 26, 2010, we opened this docket to investigate the OUSF as permitted under ORS 759.425(2)(a) and (3)(b). After several workshops and prehearing conferences, parties submitted two rounds of comments addressing the current status of the fund and recommendations for the fund's revision.

In Order No. 10-496, entered December 28, 2010, we deferred final action on any revision to the OUSF until after the 2011 legislative session, but adopted several procedures to respond to party concerns about perceived accountability with regard to the current fund. Among those procedures was the requirement that "the non-rural companies must, beginning March 1, 2011, submit semiannual reports to show that the funds were used in areas with demonstrably higher installation and maintenance costs * * * as compared to the remaining wire centers * * *."³ We also delayed the consideration of certain substantive issues raised by the parties in these proceedings.⁴

On May 22, 2012, with a triennial review of the rural carriers' OUSF funding coming due, the Oregon Telecommunications Association, the Oregon Exchange Carriers Association, and the Commission Staff filed a joint motion in docket UM 1017 asking for the adoption of a memorandum of understanding which would provide for a single further increase to a revenue cap of \$15,650,933. Verizon opposed the motion. By Order No. 12-204, entered June 5, 2012, we adopted the memorandum of understanding, except with respect to a section which would allow for increases in funding of rural carriers beyond the revenue cap under a number of scenarios. We also ordered the second phase proceeding in this docket to address the issues previously held in abeyance.

Pursuant to an agreed-upon schedule in this docket, the parties⁵ submitted a Joint Issues List on August 21, 2012. The proposed list of issues was "broad enough to cover all of the issues each party would like to address," but the parties sought guidance from the Commission on whether or not we wanted them to address all of the listed issues. By an Administrative Law Judge ruling August 29, 2012, the following issues were included:

³ Order No. 10-496 at 3.

⁴ *See Id.* at 2, for a list of the general groupings of issues raised by the parties. Several parties seeking to resolve some of the issues indicated that statutory changes would be necessary prerequisites.

⁵ Citizens' Utility Board of Oregon; the Oregon Telecommunications Association; GVNW Consulting, Inc., Frontier; CenturyLink; Verizon and their numerous affiliated companies listed in the Joint Motion to Adopt Stipulation and Explanatory Brief at 2, fn. 1-3, Warm Springs Telecommunications Company, Oregon Cable Telecommunications Association, and Oregon Telecommunications Ratepayers Association for Cost-based and Equitable Rates. The Staff of the Public Utility Commission of Oregon was also a signatory to the Motion, Agreement, Stipulation and Explanatory Brief.

What changes should be made to the existing OUSF related to the calculation, the collection, and the distribution of funds?

What changes should be made to the existing OUSF related to how funds are used?

What changes should be made to the existing OUSF related to transparency and accountability?

On April 16, 2013, the parties filed a Joint Motion to Adopt Stipulation and Explanatory Brief, with the stipulation.

III. AGREEMENT AND STIPULATION

The stipulation proposes to resolve all of the issues designated in Phase II of this docket. The parties ask that we approve changes to the OUSF and take future actions over a 3-year period, as described in the stipulation's substantive paragraphs, numbered and organized as follows:

1. OUSF Support to Decrease Over Staggered 3-Year Terms.

The 3-year period for Non-Rural Companies⁶ begins on January 1, 2014. Non-Rural Companies will see stepped decreases in OUSF support occurring on January 1, 2014, January 1, 2015, and January 1, 2016.

The 3-year period for Rural Companies⁷ begins on July 1, 2013. Rural Companies will see a single-funding step decrease taking effect on July 1, 2015 and ending June 30, 2016, subject to the normal two-month OUSF lag.

2. OUSF Funding Not Affected by Line Counts.

Non-Rural Companies' support will be fixed according to the schedule in paragraph 3, below, and will drop to a combined level of \$17.5 million by 2016.

⁶ Qwest (CenturyLink) and Frontier.

⁷ Asotin Telephone Company d/b/a TDS Telecom; Beaver Creek Cooperative Telephone Company; Canby Telephone Association d/b/a Canby Telecom; Cascade Utilities, Inc., d/b/a Reliance Connects; CenturyTel of Oregon, Inc., d/b/a Century Link; CenturyTel of Eastern Oregon, Inc., d/b/a CenturyLink; Clear Creek Mutual Telephone Company; Colton Telephone Company, d/b/a Colton Tel. Eagle Telephone System; Gervais Telephone Company; Helix Telephone Company; Horne Telephone Company d/b/a TDS Telecom; Molalla Telephone Company d/b/a Molalla Communications Company; Monitor Cooperative Telephone Company; Monroe Telephone Company; Mt. Angel Telephone Company; Nehalem Telecommunications, Inc., d/b/a RTI Nehalem Telecom/ North-State Telephone Co.; Oregon-Idaho Utilities Inc. ; Oregon Telephone Corporation; People's Telephone Co.; Pine Telephone System, Inc.; Pioneer Telephone Cooperative; Roome Telecommunications Inc.; St. Paul Cooperative Telephone Association; Scio Mutual Telephone Association, Stayton Cooperative Telephone Company, TransCascades Telephone Company, d/b/a Reliance Connects; and United Telephone Company of the Northwest, d/b/a Century Link .

Rural Companies will have a single *pro-rata* reduction of \$1 million on July 1, 2015 and will also not be affected by line counts as currently agreed to in the Memorandum of Understanding approved in docket UM 1017.⁸

3. Non-Rural Companies' Support to Decline on a Specific Phase-Down Schedule

	2014 Support	2015 Support	2016 Support
Frontier Northwest	\$9.8 Million	\$8.4 Million	\$7.0 Million
Qwest Corp (CenturyLink)	\$13.2 Million	\$11.8 Million	\$10.5 Million
Total	\$23 Million	\$20.2 Million	\$17.5 Million

4. Phase III Proceeding.

The parties recommend that a Phase III proceeding be opened to address the designated issues in a specifically targeted way beginning after September 30, 2013 and concluding before July 16, 2016.

- (a) Accountability for Non-Rural Companies. Identify methods for accurately estimating how OUSF funds are directed to operating expenses in claimed high-cost areas.
- (b) Consideration of a methodology to allocate Incumbent Local Exchange Carriers (ILEC) network costs between basic telephone and other services, including a review of the cost models used to calculate OUSF support. Apply the methodology to the support calculation for all companies receiving OUSF support.
- (c) Consideration of a methodology, applicable to all current OUSF recipients, for identifying areas of unsubsidized competition and determine if OUSF support should continue to be provided there.

5. Reallocation of OUSF Funds among Rural Company Recipients.

- (a) Reallocations will be decided by January 1, 2014 with a July 1, 2014 implementation date, subject to normal two-month OUSF lag period.
- (b) Rate of reductions in OUSF funding per company is capped at 5 percent per year, to take place after the \$1 million reduction on July 1, 2015. Other than the \$1 million *pro rata* reduction among Rural Companies, if OUSF support is re-allocated so that one or more Rural Companies' support is reduced, the support amounts resulting from reductions shall be re-allocated among the other Rural Companies.

6. Implementation Dates for Commission Changes to Funding.

If the Commission's review of cost allocation methodologies and unsubsidized competition, under paragraph 4 above, results in changes, those

⁸ See Order No. 12-204 (Jun 5, 2012) and Errata Order No. 12-309 (Aug 14, 2012).

changes will not be implemented before July 2016 for Rural Companies or before July 2017 for Non-Rural Companies.

7. CLEC ETCs to Receive Identical Compensation; Warm Springs Support Capped.

Between January 1, 2014 and December 31, 2016, any Competitive Local Exchange Carrier (CLEC) designated an Eligible Telecommunications Carrier (ETC) for purposes of OUSF funding will receive the ILEC per-line amount in its service area. Warm Springs Telecommunications Company will not be able to receive in excess of \$1.5 million in OUSF annual support.

III. DISCUSSION

A. Position of the Parties.

In their supporting brief, the parties assert that the stipulation results in a full and complete resolution of the issues included in the ALJ's Phase II ruling of August 29, 2012. They further state that the stipulation is in the public interest and meets the statutory requirements of ORS 759.425(1). The parties argue the proposed stipulation, if approved, would fulfill the Commission's mandate to ensure basic telephone service is available at a reasonable and affordable rate.

The parties state that adopting the terms of the stipulation will result in material reductions to the overall size of the OUSF from a phase-down in Non-Rural Company support and a one-time \$1 million reduction in Rural Company support, along with the Commission's ability to reallocate funds among the Rural Companies within a 5 percent OUSF reduction limit at specified times.

The parties state that adopting the stipulation will provide carriers with clarity and certainty with respect to OUSF funding for the next three years. At the same time, the Commission will continue to have the flexibility it needs in this ongoing proceeding to address funding-related issues raised by the parties. The parties assert that the proposed three-pronged approach for Phase III will enable the Commission to develop a record that will both ensure the availability of universal service in Oregon, consistent with ORS 759.425, and fully consider the rights of the parties when implementing changes to the OUSF.

B. Findings of Fact and Conclusions of Law.

Phase II of this proceeding was opened to address the three questions noted above. The parties now propose to address these issues in a Phase III proceeding. In essence, the parties have reached an agreement with respect to near-term changes that will mitigate the existing problem by reducing the current size of the fund rather than agreeing on the means to achieve an over-arching solution.

We find that adopting paragraphs 1-3 of the stipulation will, over the next three years, directly reduce the amounts distributed to carriers by the OUSF. We also find that the

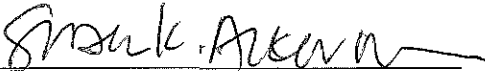
terms in stipulation paragraphs 4-7 will fairly balance the competing interest of the parties, will provide the Commission with the flexibility to address open issues in the next phase of this proceeding without undue delay and will not adversely affect the adoption of paragraphs 1-3. We therefore conclude that the terms of the stipulation will result in just and reasonable rates and adopting the stipulation is in the public interest.

IV. ORDER

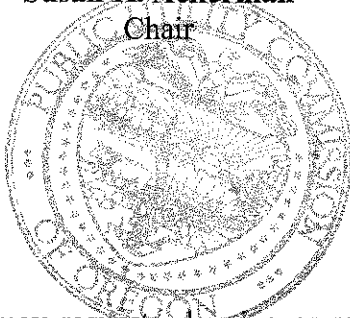
IT IS ORDERED that:

1. The Stipulation among Citizens' Utility Board of Oregon; Comcast Phone of Oregon, LLC; CenturyLink; Frontier; GVNW Consulting, Inc.; Oregon Cable Telecommunications Association; the Oregon Telecommunications Association; Telecommunications Ratepayers Association for Cost-based and Equitable Rates; Verizon; Warm Springs Telecommunications Company; and the Staff of the Public Utility Commission of Oregon attached hereto as Appendix , is adopted;
2. A third phase of this proceeding shall be opened to address the issues as set forth in paragraph 4 of the stipulation; and
3. The Staff of the Public Utility Commission of Oregon and the Administrator of the Oregon Universal Service Fund shall take such steps as necessary to effectuate changes to the collection and distribution of funds between January 1, 2014 and June 30, 2016, as set forth in the stipulation.

Made, entered, and effective MAY 02 2013.



Susan K. Ackerman
Chair





John Savage
Commissioner



Stephen M. Bloom
Commissioner

A party may request rehearing or reconsideration of this order under 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 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

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UM 1481 Phase II Stipulation

- 1) This Stipulation has a three-year term for Non-Rural Companies,¹ beginning January 1, 2014 and ending December 31, 2016, with funding decreases occurring on January 1, 2014, January 1, 2015, and January 1, 2016. The term for Rural Companies² is three years, beginning on July 1, 2013 and ending on June 30, 2016, with one funding decrease taking effect on July 1, 2015, subject to the normal two-month Oregon Universal Service Fund (OUSF) lag.
- 2) For Non-Rural Companies, the amount of OUSF funding will be fixed according to the schedule in paragraph 3 of this Stipulation and will not be affected by line counts. The final reduction in 2016 will result in a \$17.5 million level of annual OUSF support for Non-Rural Companies. For Rural Companies, there will be one pro rata reduction of \$1 million in funding, occurring on July 1, 2015. Rural Company OUSF receipts will not be affected by line counts, per the existing Memorandum of Understanding (MOU) approved in Order No. 12-204 in Docket UM 1017 on June 5, 2012, as modified by the Errata Order, Order No. 12-309.
- 3) The phase-down of OUSF support for the Non-Rural Companies will occur according the following schedule:
- | | <u>2014 Support</u> | <u>2015 Support</u> | <u>2016 Support</u> |
|--------------------|---------------------|---------------------|---------------------|
| Frontier Northwest | \$9.8 Million | \$8.4 Million | \$7.0 Million |
| Qwest Corporation | \$13.2 Million | \$11.8 Million | \$10.5 Million |
| Total | \$23 Million | \$20.2 Million | \$17.5 Million |
- 4) The Parties agree to request that the Commission open Phase III of UM 1481, which will address three issues in the order of priority set forth below. While the Parties

¹ The Non Rural Companies are Qwest Corporation d/b/a CenturyLink QC and Frontier Communications Northwest Inc. ("Frontier Northwest").

² Asotin Telephone Company d/b/a TDS Telecom, Beaver Creek Cooperative Telephone Company, Canby Telephone Association d/b/a Canby Telecom, Cascade Utilities, Inc., d/b/a Reliance Connects, CenturyTel of Oregon, Inc., d/b/a CenturyLink, CenturyTel of Eastern Oregon, Inc., d/b/a CenturyLink, Clear Creek Mutual Telephone Company, Colton Telephone Company, d/b/a ColtonTel, Eagle Telephone System, In., Gervais Telephone Company, Helix Telephone Company, Home Telephone Company d/b/a TDS Telecom Molalla Telephone Company d/b/a Molalla Communications Company, Monitor Cooperative Telephone Company, Monroe Telephone Company, Mt. Angel Telephone Company, Nehalem Telecommunications, Inc., d/b/a RTI Nehalem Telecom, North-State Telephone Co., Oregon-Idaho Utilities, Inc., Oregon Telephone Corporation, People's Telephone Co., Pine Telephone System, Inc., Pioneer Telephone Cooperative, Roome Telecommunications Inc., St. Paul Cooperative Telephone Association, Scio Mutual Telephone Association, Stayton Cooperative Telephone Company, Trans-Cascades Telephone Company, d/b/a Reliance Connects, and United Telephone Company of the Northwest d/b/a CenturyLink.

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will endeavor to complete examination of each issue prior to commencing the investigation of subsequent issues, they acknowledge that some overlap may occur if necessary to complete resolution of all three issues in time to implement any results by July 1, 2016; however, neither subparagraph (b) nor (c) of this paragraph will be initiated before September 30, 2013:

- (a) Accountability for the Non-Rural Companies. This review will identify a method or methods for accurately estimating how OUSF funding is being directed to operating expenses in claimed high-cost areas.
 - (b) Consideration of a methodology for allocation of ILEC network costs between basic telephone service and other services. This will include review of the cost models used to calculate OUSF support and will apply to the support calculation for all companies that receive OUSF support.
 - (c) Consideration of a methodology for identifying areas in which there is unsubsidized competition and whether OUSF support should be provided in such areas. This review will apply to all Oregon companies that currently receive OUSF support.
- 5) Rural Company OUSF may be re-allocated among those rural companies that receive OUSF support.
- (a) Re-allocations will be decided upon by January 1, 2014 and implemented on July 1, 2014 (subject to the normal two-month OUSF lag).
 - (b) There will be no reductions of more than 5% for any one company (total OUSF funding per company) in a year. Re-allocations, if any, for implementation July 1, 2015 (subject to the two-month OUSF funding lag) will take place after the \$1 million reduction to total funding is calculated. The \$1 million reduction in funding will be implemented on a pro rata basis among the Rural Companies based on funding for the 2014 funding year. Other than the \$1 million pro rata reduction among Rural Companies, if OUSF support is re-allocated so that one or more Rural Companies' support is reduced, the support amounts resulting from reductions shall be re-allocated among the other Rural Companies.

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- 6) Any changes resulting from the Commission's review of cost allocation methodologies and/or unsubsidized competition will not be implemented before July 2016 for Rural Companies or before January 2017 for Non-Rural Companies.
- 7) For the period January 1, 2014 through December 31, 2016, a qualified CLEC that is designated as an ETC for purposes of OUSF will draw at the ILEC per-line amount for the area it serves. There will be a \$1.5 million cap on the amount of annual OUSF support that the Warm Springs Telecommunications Company may receive.
- 8) The Parties agree that any Party may file a petition to request Commission review of this Stipulation if there is a substantive change in Oregon law that materially affects the terms of this Stipulation or there is a substantive change in federal law or Federal Communications Commission precedent that materially affects the terms of the Stipulation. The Parties further agree that the Stipulation will not automatically terminate merely because a Party has filed a petition as described above, but will continue until the Commission issues a final order that grants, denies or takes other appropriate final action upon the petition. Finally, each Party reserves the right to make whatever arguments it deems appropriate in any docket resulting from the filing of the aforementioned petition.
- 9) The terms and conditions of the Memorandum of Understanding approved by Order No. 12-204 in Docket UM 1017, as modified by the Errata Order, Order No. 12-309, shall be deemed to be modified, to the extent necessary, by the terms of this Stipulation, and the remaining terms and conditions of the Memorandum of Understanding shall remain in full force and effect.

GENERAL PROVISIONS

- 10) The Parties understand that this Stipulation is not binding upon the Commission unless and until it is approved by the Commission.
- 11) This Stipulation does not preclude a party from explaining, as a factual matter, what the Parties agreed to in this Stipulation.

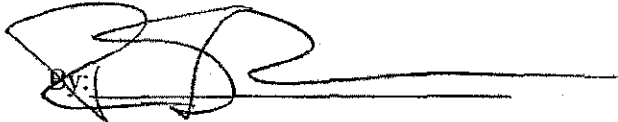
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- 13) The Parties shall cooperate in submitting this Stipulation promptly to the Commission for acceptance, and cooperate in supporting this Stipulation throughout the Commission's consideration of the Stipulation.
- 14) The Parties enter into this Stipulation to avoid further expense, inconvenience, uncertainty and delay. By executing this Stipulation, no Party shall be deemed to have approved, admitted, or consented to the facts, principles, methods, or theories employed in arriving at the terms of this Stipulation. Nor shall any Party be deemed to have agreed that any provision of this Stipulation is appropriate for resolving issues in any other proceeding, except to the extent expressly set forth in this Stipulation.
- 15) This Stipulation may be executed in counterparts and each signed counterpart shall constitute an original document. A signed signature page that is faxed or emailed is acceptable as an original signature page signed by that Party.

This Stipulation is entered into by each Party as follows:

CenturyLink

Frontier Communications



 By: _____

By: _____

Steve R. Davis

Ken Mason

Executive Vice President Public Affairs &
Regulatory Policy

Vice President Government & Regulatory
Affairs

Date: 4/15/13

Date: _____

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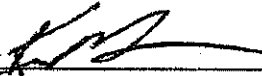
- 12) The Parties agree that this Stipulation represents the entire agreement of the Parties and it supersedes any and all prior oral or written understandings, agreements or representation related to this Stipulation, if any, and no such prior understanding, agreement or representation shall be relied upon by any Party.
- 13) The Parties shall cooperate in submitting this Stipulation promptly to the Commission for acceptance, and cooperate in supporting this Stipulation throughout the Commission's consideration of the Stipulation.
- 14) The Parties enter into this Stipulation to avoid further expense, inconvenience, uncertainty and delay. By executing this Stipulation, no Party shall be deemed to have approved, admitted, or consented to the facts, principles, methods, or theories employed in arriving at the terms of this Stipulation. Nor shall any Party be deemed to have agreed that any provision of this Stipulation is appropriate for resolving issues in any other proceeding, except to the extent expressly set forth in this Stipulation.
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By:  _____

Steve R. Davis

Ken Mason

Executive Vice President Public Affairs & Regulatory Policy

Vice President Government & Regulatory Affairs

Date: _____

Date: April 16, 2013

ATTACHMENT 1

Oregon Telecommunications Association

Oregon Cable Telecommunications Assoc.

By: Richard A. Finnigan
Richard A. Finnigan

By: _____
Mark Trincherro
Of Attorneys for OCTA

Attorney for OTA

Date: _____

Date: _____

Citizens' Utility Board of Oregon

Public Utility Commission of Oregon Staff

By: _____
G. Catriona McCracken

By: _____
Jason W. Jones

Date: _____

Date: _____

Verizon

GWNW CONSULTING, INC.

By: _____
Richard B. Severy

By: _____
James Rennard

Date: _____

Date: _____

Warm Springs Telecommunications
Company

TRACER:

By: _____
Marsha Spellman

By: _____
Arthur A. Butler
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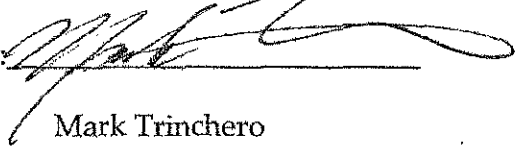
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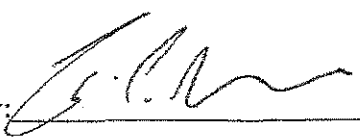
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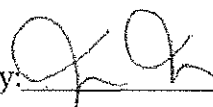
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