ORDER NO. 15 365

ENTERED: NOV 12 2015

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1481
Phase III

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Investigation of the Oregon Universal Service Fund.	ORDER

DISPOSITION: MOTION TO ADOPT STIPULATION DENIED

We deny the motion to adopt the parties' stipulation and encourage the parties to develop a new proposed resolution of the Phase III issues consistent with the parameters outlined in this order.

I. INTRODUCTION

We are asked to adopt the stipulation intended to resolve all issues in Phase III of our investigation of the Oregon Universal Service Fund (OUSF). Those issues, which we identified in Order Nos. 13-162 and 15-005, are as follows:

1. Accountability for Non-Rural Companies: Identify methods for accurately estimating how OUSF funds are directed to operating expenses in claimed high-cost areas.

2. Develop a method (other than revenues) to allocate incumbent local exchange carrier (ILEC) network costs between basic telephone and other services, including a review of the cost models used to calculate OUSF support; and

3. Identify areas of unsubsidized competition and determine if OUSF support should continue to be provided there.

When the parties first filed the stipulation in September 2014, we rejected it based on our desire to more fully examine the Phase III issues and address threshold questions about our statutory obligations to administer the OUSF.[1] We found that the parties "would effectively limit our ability to examine and further develop this evidence by presenting a stipulation that summarily proposes continued reductions in OUSF support and other agreements."[2] For that reason, we concluded that we were not able "to determine whether the joint parties' stipulated OUSF funding levels are appropriate to meet the need for OUSF support, or whether the joint parties' stipulated program design will ensure the efficient and effect delivery of those funds."[3]

Following a May 2015 Commission Workshop on the current operation of the OUSF, the parties refiled the same stipulation, accompanied by a "White Paper" and written materials presented at the workshop. The parties assert that the stipulation fairly resolves all Phase III issues, contend that the stipulation is in the public interest, and recommend that we adopt it without modification.

II. STIPULATION

The stipulation consists of two parts. The first part, Attachment 1, generally addresses carrier compensation and was signed by all the active parties to this docket.[4] The second part, Attachment 2, addresses reporting accountability for the non-rural companies and was signed by Qwest Corporation, dba CenturyLink QC (CenturyLink); Frontier Communications Northwest Inc. (Frontier); the Citizens' Utility Board of Oregon; and the Commission Staff.

A. Carrier Compensation

The parties contend that Attachment 1 of the stipulation will result in material reductions to the overall size of the OUSF yet continue to provide needed support for universal service. Specifically, they propose further reductions to the OUSF by continuing the Phase II annual OUSF support declines,[5] and imposing further Phase III declines through 2021. The parties propose a review of the OUSF in 2019 to determine if the funding after 2021 should change. Until and unless the Commission acts, the parties also agree that there would be no further reductions after 2021 except as required to comply with other terms of the stipulation.

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[1] *In the Matter of the Public Utility Commission of Oregon, Investigation of the Universal Service Fund,* Docket No. UM 1481, Order No. 15-005 (Jan 12, 2015).
[2] *Id.* at 3.
[3] *Id.*
[4] Those parties include the Citizens' Utility Board of Oregon; Comcast Phone of Oregon, LLC; CenturyLink, et al; Frontier and the Citizen's Telecommunications Company of Oregon; GVNW Consulting, Inc.; Oregon Cable Telecommunications Association; Oregon Telecommunications Association; tw telecom of oregon llc; Verizon, et al; Warm Springs Telecommunications Company (Warm Springs); and the Commission Staff.
[5] *See* Order No. 13-162 (May 2, 2013).

For the non-rural carriers, CenturyLink and Frontier, the proposed disbursement schedule is as follows:

Phase II		Phase III				
Company	2016	2017	2018	2019	2020	2021
Frontier	$7,000,000	$6,615,000	$6,230,000	$5,845,000	$5,460,000	$5,075,000
CenturyLink	$10,500,000	$9,922,500	$9,345,000	$8,767,500	$8,190,000	$7,612,500
Total	$17,500,000	$16,537,500	$15,575,000	$14,612,500	$13,650,000	$12,687,500

For the rural carriers, the proposed disbursement schedule is as follows:

Phase II		Phase III				
	2016	2017	2018	2019	2020	2021
Rural Companies[6]	$14,431,170	$13,991,643	$13,552,115	$13,112,587	$12,673,059	$12,233,531

With respect to each rural ILEC, the parties recommend that the agreed-upon amounts be subject to review, conducted by Staff in conjunction with the rural company, to ensure that relative support amounts for each company are consistent with the model-based process in Order No. 03-082 (docket UM 1017). The stipulation sets out a schedule for review, to be conducted by the Staff in conjunction with the rural companies. Under the terms of the stipulation, any reduction in support to a rural company would be passed on to the other rural companies as an increase in their support.

Under the stipulation, the competitive local exchange carriers (CLECs) will receive the same per line amount of support received by the incumbent local exchange carrier (ILEC) for the area a CLEC serves, starting at the "Base Per Line Support Amounts" found on our website. The per-line amount reduction will parallel, percentage-wise, the reduction in support given to the ILEC in the ILEC's service area where the CLEC provides service.

The parties also propose establishing a cap on the OUSF surcharge. Currently, the surcharge is 8.5 percent and not subject to a cap; the parties propose a cap be established so the surcharge can never exceed 9.5 percent. The parties all agree to collect the surcharge based on all intrastate retail revenues, including the parties' Voice over Internet Protocol (VoIP), and pay into the OUSF.

Given the five-year term of the stipulation, the parties propose that we cancel any triennial review to calculate per-line support that may have been required in previous orders. They also recommend Staff continue review of the companies' quarterly OUSF filings to develop recommendations on how to reduce the surcharge rate without reducing the agreed-upon amounts in the stipulation. Furthermore, they propose we review the OUSF in 2019 to determine if the funding beyond 2021 should change.

[6] Warm Springs receives separate treatment: $1.5 million/year cap, beginning in 2017, with annual 3 percent reductions for five years.

Finally, the parties propose we modify the purpose of the OUSF. The parties propose that, beginning January 2017, the use of the OUSF funds will be for investment, construction, operation, maintenance, and repair to ensure that basic telephone service is available at reasonable and affordable rates. The use of the funds will be restricted geographically to the non-rural high-cost areas established by Order No. 12-065 for reporting purposes and to the areas served by the rural companies.

B. Oversight and Reporting Requirements.

Attachment 2 of the stipulation prescribes new recordkeeping and reporting requirements for the non-rural companies that will provide Staff with the opportunity to more thoroughly analyze their expenditures. Currently, both carriers report investments and expenses on a wire center basis. The stipulation modifies the reporting of expenses by requiring the use of an OUSF Accountability Report. This report will be submitted no later than June 1 of each year, or about 90 days following the submission of the Form O. These parties also agree that the data provided in the report may not be used to change the non-rural OUSF support amounts agreed to in prior Commission orders.

III. DISCUSSION

We deny the joint parties' motion to adopt the stipulation in its entirety. Although the stipulation contains many provisions we support, we cannot support the adoption of certain terms and have no basis upon which to conclude that other terms are in the public interest.

We recognize that the stipulation is presented as an integrated document and, therefore, will not modify its terms and impose it on the parties. Instead, we outline below the parameters of a stipulation that we would support, with clarification of our concerns with certain provisions we cannot support. We direct the parties to commence additional settlement discussions to determine whether a revised stipulation may be reached within these parameters.

A. OUSF Disbursement and Surcharge Cap

We cannot support the parties' proposed phase-down of support levels combined with a 9.5 percent OUSF surcharge cap on customer bills. First, although the parties propose material reductions to the overall size of the OUSF, we have no evidence to determine whether the stipulated carrier compensation amounts are in the public interest. Although the proposed amounts to be distributed are quite specific, they are not supported by any forward-looking economic analyses or showing of particular company need. Rather, they reflect the historical distribution methodologies and a compromise among the parties based on a projection of the size of the OUSF in the coming years and a forecast of the rate of decline in wireline customer line counts.[7]

[7] We offer no opinion on the proposed separate treatment of Warm Springs.

Second, we cannot support the parties' proposed elimination of further reductions beyond those agreed to after 2021 in the event we do not take action before then. Again, we have no evidentiary basis on which to conclude those disbursement levels are reasonable and should be retained for an unstated period beyond the term of the stipulation.
More importantly, as a quasi-legislative body, we have no authority to bind this Commission on such future decisions. Therefore, we cannot support the portions of the stipulation that, absent action by the Commission, would apply after 2021.

Third, we have no basis to support the adoption of a landline customer surcharge cap of 9.5 percent. The current surcharge rate of 8.5 percent is already the highest customer surcharge of any of the contiguous states with funds to help support high-cost service areas.[8] In the absence of a showing of compelling necessity, we cannot find that any customer surcharge in excess of the current 8.5 percent will result in just and reasonable rates.

We recognize that the stipulation only establishes a cap and does not propose, at this time, to increase the surcharge above 8.5 percent. A review of the parties' forecasts and analyses, however, indicates that an increase in the OUSF surcharge would soon be necessary to accommodate the projected revenue shortfall during the time covered by the stipulation.

When funds being distributed to eligible CLECs located in rural areas are added to the proposed disbursement schedules set out above for non-rural and rural carriers, the total distribution from the OUSF for each year of the Phase III stipulation is as follows:

2017	2018	2019	2020	2021
$32,435,643	$30,989,740	$29,545,153	$28,094,998	$26,639,812

However, a review of the parties' analyses and forecasts indicate that the size of the OUSF revenue base for each of the years in the stipulation, assuming the customer surcharge remained at 8.5 percent, would be less than the scheduled disbursement amounts. The forecasted size of the OUSF revenue base is as follows:

2017	2018	2019	2020	2021
$29,967,393	$27,625,667	$25,475,037	$23,497,351	$21,617,563

To make up for this forecasted shortfall, the surcharge required to fund the OUSF would need to increase to the following levels:

2017	2018	2019	2020	2021
9.20 percent	9.54 percent	9.86 percent	10.16 percent	10.48 percent

Thus, adopting the stipulated carrier compensation amounts proposed by the parties would require an increase of the OUSF surcharge on customers' bills of 0.7 percent from

[8] We take official notice of *Survey of State Universal Service Funds 2012,* Lichtenberg, S. Ph.D., Akyea, K, Bernt, P, Ph.D., National Regulatory Research Institute Report No. 12-10, July 2012.

the current 8.5 percent rate in the first year of the stipulation in order to accommodate the projected revenue shortfall.[9] The surcharge would reach the proposed 9.5 percent cap in the second year of the stipulation under current projections.[10]

B. Rural ILECs

We support, in part, the proposed provisions governing support for the rural ILECs. We agree that any relative support amounts for each company should be consistent with the model-based process adopted in Order No. 03-082. We support the parties' proposed dispute resolution process on any proposed reallocation of benefits.

We cannot adopt the parties' proposal to reallocate any decrease in support for one company to the benefit of other companies. Without more explanation or evidence to support, we believe any such decrease should be used to decrease the size of the fund expenditures in total.

C. CLECs

We support the parties' proposal to provide CLECs the same per line support as the ILEC in whose territory they are located. While such treatment of CLECs might conceivably put further pressure on the amounts of funds, we find that the stipulation's proposal with respect to the treatment of CLECs providing basic services in high cost areas is a fair and equitable means to address their status in a competitive environment for rural telecommunications services.

D. OUSF Purpose

We support the parties' recommendation that we modify the purpose for which OUSF support is to be used. The proposed language change removes any potential ambiguities as to the proper uses for the funds and increases the likelihood that the distributions will fund those aspects of the ILECs' and CLECs' operations that will directly support basic telecommunications services in high cost areas. We agree that the purpose should be changed so that, beginning January 2017, the use of the OUSF funds should be for investment, construction, operation, maintenance, and repair to ensure that basic telephone service is available at reasonable and affordable rates. Moreover, the use of the funds should be restricted geographically to the non-rural companies' high-cost areas established by Order No. 12-065 for reporting purposes and to the areas served by the rural companies.

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[9] We assume no utilization or penetration elasticity due to a change in the OUSF surcharge which might exacerbate the effect.

[10] To the extent that there is a shortfall in the OUSF receipts, the stipulation does not address any pro rata reduction in amounts until such time as a 9.5 percent cap is reached.

E. Commission Oversight

We support most, but not all, of the parties' proposals relating to our oversight of the OUSF. Given our on-going examination of potential changes to the OUSF, we agree that any triennial review to calculate per-line support required by prior orders should be canceled. We also agree that our Staff should continue to review the companies' quarterly OUSF filings to investigate any discrepancies and develop recommendations on how to reduce the surcharge rate (without regard to any limits imposed by the stipulation).

We further agree that we should revisit the OUSF in 2019. We must be allowed to fully review the OUSF and take any actions necessary to fulfill our statutory obligations to ensure the program is effectively and efficiently meeting its purpose.

F. Non-Rural Reporting

We support the proposal that CenturyLink and Frontier modify their reporting of expenses by utilizing a new OUSF Accountability Report. The use of such a more detailed report will provide Staff the opportunity to more thoroughly analyze the non-rural companies' expenditures and is an appropriate step toward greater accountability.

IV. RESOLUTION

We encourage the parties to develop a new proposed resolution of the Phase III issues. Any such proposal should continue further reductions to the overall size of the OUSF and be consistent with the parameters outlined in this order. Most notably, any proposed disbursement schedule must be consistent with and sustainable under the current 8.5 percent OUSF customer surcharge. Without any forward-looking economic analyses or evidence to establish specific need, we will not support an OUSF surcharge that exceeds 8.5 percent.

Absent such agreement, we will hold additional proceedings to more fully develop a record on the Phase III issues we identified in Order No. 13-162. This will include the reexamination of threshold questions as to what constitutes the "availability of basic telephone services," as well as what it means to make those services available at "reasonable and affordable rates" for purposes of our administration of the OUSF under ORS 759.425.

V. ORDER

IT IS ORDERED that:

1. The Joint Motion to Adopt Stipulation and Joint Explanatory Brief, filed on June 18, 2015, is denied.

2. The parties shall notify the Commission within sixty days from the date of this order whether a new stipulation has been reached or if they wish to request that further proceedings be scheduled.

Made, entered, and effective NOV 12 2015.

Susan K. Ackerman
Chair

John Savage
Commissioner

Stephen M. Bloom
Commissioner

PUBLIC UTILITY COMMISSION OF OREGON

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.