

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 649

In the Matter of

Rulemaking to Adopt Rules Pursuant to
ORS 759.425.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

This order memorializes our decision, made and effective at our September 21, 2021 Regular Public Meeting, to adopt Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

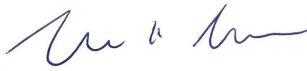
Made, entered, and effective Sep 21 2021 .



Megan W. Decker
Chair



Letha Tawney
Commissioner



Mark R. Thompson
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 Circuit Court for Marion County in compliance with ORS 183.484.

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The universal service fund shall provide explicit support to an eligible telecommunications carrier that is equal to the difference between the cost of providing basic telephone service and the benchmark, less any explicit compensation received by the telecommunications carrier from federal sources specifically used to recover local loop costs and less any explicit support received by the telecommunications carrier from a federal universal service program.

OAR Chapter 860, Division 100 contains the existing administrative rules governing the OUSF. These rules do not yet identify or provide a means for setting a benchmark for basic telephone service or the other components for calculating disbursements under ORS 759.425(3).

Analysis

Background

Docket No. UM 1481, a previous investigation into the OUSF, was resolved in March 2016 with the acceptance of a stipulation, in Order No. 16-093, as corrected in Order No. 16-102. The Stipulation detailed disbursement payments through 2021 to certain OUSF recipients, but as the stipulation did not answer the various issues that the docket had initially set out to resolve, the parties recommended that the Commission open a new investigation in 2019 to review the OUSF in order to issue a final ruling on changes associated with that review prior to the end of the 5-year term of the Stipulation. This docket, UM 2040, Staff Investigation into the Oregon Universal Service Fund, was opened in December 2019 for purposes of that review.

During the 2020 legislative session, Senate Bill 1603 was enacted, which amends ORS 759.425. ORS 759,425(3) was renumbered from (4) to (3). Section (7) of the bill states:

Notwithstanding the amount provided for in ORS 759.425 (1)(b) and the percentage provided for in ORS 759.425 (4)(e), until December 31, 2021, the amount of moneys deposited annually in the universal service fund to be used to ensure basic telephone service shall be as provided for in Appendix A to Public Utility Commission Order No. 16-093, as corrected by Public Utility Commission Order No. 16-102.

In the years since Order No. 16-093 was issued, Staff has been working to consolidate and clarify the OUSF program into a comprehensive framework within the administrative rules (See Docket No. AR 605). Staff informed stakeholders during the first UM 2040 workshop that the investigation would be a continuation of this work and that this docket

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could not be addressed as a contested case and resolved by stipulation. This docket was to be viewed as policy development with the results being transferred to a permanent rulemaking.

Over the past 18 months, Staff and stakeholders have had the opportunity to identify and discuss the various issues still unanswered from UM 1481 regarding disbursements. Currently the docket is split into two Phases: Phase I to focus on the calculation of disbursements, and Phase II to address accounting and operational issues.

Phase I: As noted above, disbursements from the fund are as per Order No. 16-093 until the end of 2021. Although the ORS 759.425 gives a high level guidance on how disbursements are to be calculated, specific policy decisions on setting a benchmark and a methodology for calculating disbursements are needed going forward after the terms of Order No. 16-093 are no longer applicable. Staff has held six workshops, issued questions and received comments and straw proposals.

Phase II is to begin in early 2022 and will be conducted within Docket No. UM 2040, at least initially.

Summary and Discussion

Staff wishes to thank stakeholders and other interested parties for their input over the past 18 months and now would like to move forward in opening a rulemaking so that the more detailed policy development work can commence. Staff, and stakeholders, have identified a cost model which Staff has proposed as the key component of the disbursement calculations. Staff is investigating the cost for the Commission to acquire the model and believes it will be less than \$50,000 based on an earlier estimate that it would be approximately \$30,000. Once the model has been purchased, Staff and Stakeholders can continue to discuss inputs and parameters for applying the model as well as working on appropriate rule language.

Staff understands that certain stakeholders are currently not in agreement with Staff as to the focus of the investigation; and wish to engage in discovery with a view to attempting to resolve the investigation once again with a stipulation among certain parties. Staff remains open to policy proposals that directly address how ORS 759.425(3) is to be implemented by establishing a benchmark for basic telephone service and addressing the additional policy questions surrounding the calculation of disbursements. It is staff's view that this is best accomplished through a rulemaking docket. Staff notes that a stipulation is only binding on its signatories; new entrants to the market who may wish to draw from the fund would not be parties.

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Conclusion

Staff plans to complete this rulemaking by the end of 2022, initially holding workshops with Stakeholders and the cost model suppliers to discuss inputs and parameters. As current disbursements from the OUSF are to be made per Order No. 16-093 until the end of 2021, Staff will propose a temporary rulemaking in order to provide guidance for disbursements from the OUSF for the 12 months ending December 2022 in the near future.

PROPOSED COMMISSION MOTION:

Open a rulemaking docket to adopt and amend rules to implement ORS 759.425.