

ORDER NO. 22-120

ENTERED Apr 20 2022

**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 April 19, 2022 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 Apr 20 2022.



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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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 Oregon Universal Service Fund (OUSF).

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. Docket No. UM 2040, Staff Investigation into the Oregon Universal Service Fund, was opened in December 2019 for purposes of that review.

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 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: Although the ORS 759.425 gives a high-level guidance on how disbursements are to be calculated, a process to set 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 held six workshops, issued questions and after receiving comments and straw proposals, opened the informal stage of the rulemaking on September 21, 2021 (AR 649).

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Two further workshops were held where three options were initially identified and then after comments and discussion, the participating stakeholders indicated support for one of those options.

The preferred option uses one cost model to calculate total required support, which would then be split into two pools, representing large and small companies respectively, and those pools would then be allocated between the applicable companies using a cost model that was most appropriate for those particular companies.

There are two types of cost models available: forward-looking cost models and historical embedded-cost models. The only model that is capable of being used for all companies is a forward-looking cost model, as the larger companies do not have historical cost information available at the required level of detail. Staff believes the forward-looking cost model will be most appropriate, and stakeholders supported the use of the Cost Quest model to calculate total required support and to address the smaller companies' concern that this model's results are not representative for all of the smaller companies. Staff and stakeholders agreed that the small pool be allocated among those companies using a modified version of the historical embedded cost model.

Staff drafted proposed rules reflecting this approach and disseminated them on March 14. Written comments were received by March 28, and a workshop was held on March 31 to discuss the proposed rules and comments.

Workshop participants included industry associations, telecommunications utilities, VoIP and wireless providers, and consumer advocacy groups. Staff acknowledges and appreciates the investment of time made by and constructive input offered by all participants.

No changes to the rules were proposed by the parties, but based on the discussions at the workshop, staff made some changes to the rules and issued an updated version of the rules on April 4 for comment. These comments have been reviewed and Staff has made some additional changes to the draft proposed rules as a result. Given the need to have rules in place once the current temporary rules for the calculation of distributions in 2022 expire at the end of June, Staff presents the draft rules in Attachment 1 for purposes of issuing a notice of proposed rulemaking with sufficient time to consider public comment and have the rules in place to address future disbursements.

Summary and Discussion of Proposed Draft Rules

Stakeholder comments and the discussion at the workshop revolved around the details of the calculations: the specifics of the benchmark, federal support and the role of

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competition, and when those aspect of the calculations would be addressed. Staff explained that those elements of the calculation would be addressed at future workshops when Staff actually calculates its recommendation for disbursements, with input from stakeholders and consultants from the cost model company. The results of those calculations would be detailed in the staff report that the rules propose will be presented to the Commission prior to October 31, 2022. Working on and adjusting the elements of the calculation would not affect the overall formula as laid out in the rules. The draft proposed rules in Attachment 1 provide a framework for this process.

Oregon Cable Telecommunications Association (OCTA) indicated that they were in agreement with Staff's desire to move forward with the rulemaking. Cellular Telecommunications and Internet Association (CTIA) noted that as stakeholders were unlikely to reach a consensus in this docket then it should be Staffs decision on how best to move forward. CTIA also raised the subject of a settlement between the parties. OCTA and CTIA requested that the subject of unsubsidized competition should be an integral part of the calculation. Warm Springs Telecommunications Company initially stated it is not in a position to agree or oppose the rulemaking until the actual results are known, but now is in favor of moving forward with the rulemaking. Oregon Telecommunications Association (OTA), Lumen Technologies, and Ziplly Fiber have concerns about the CostQuest model and are opposed to this rulemaking. OTA requested that the formal stage of the rulemaking be delayed until the final calculations and results are available.

Each rule change is summarized below.

860 -100-0115 Distribution Worksheet

This rule is amended to reflect the requirement for only competitive providers to file the distribution worksheet monthly from January 1, 2023, onwards.

860-100-0125 OUS Fund Support Portability

Changes reflect that the portable support amounts would now be based on amounts available in the supported area. An additional rule was added to address payments to Warm Springs Telecommunications Company for the remainder of 2022, consistent with existing practice.

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860-100-0250 OUS Fund Support Distributions

This is a permanent rule that is added to address payments to telecommunication utilities for the remainder of 2022 and the implications to competitive provider payments, given the expiration of the temporary rules in June.

Provisions addressing the format and timing of disbursements from the OUSF from January 1, 2023 are included.

860-100-0XXX OUS Fund Disbursements Calculations

Provisions were added specifying the means of calculating disbursements from the OUSF from January 1, 2023, forward.

The rules specify the means of calculating total support required, the means of splitting that amount into two pools (large company and small company), and the means of allocating those pools.

The rules also allow for a different benchmark for areas that contain tribal lands and other circumstances and provide for a report to the Commission that would contain the specific details of these calculations for its review and adoption.

Conclusion

Consensus between the stakeholders has been difficult to obtain in this docket, and specific outcomes for future years remain unknown, as Staff is just beginning to work on the specific calculations. However, Staff believes there is no guarantee that delaying this rulemaking will make this a smoother process. The rules provide a general framework to move forward with the process that will allow for continued public input. Staff is close to signing a contract with Cost Quest to use their cost model and understands that once this is completed, the process of calculating disbursements should take approximately 90 days. This allows a further two months to finalize the calculations prior to presenting to the Commission for approval in the fall.

Delaying the rulemaking and potentially listing all elements of the calculation in the rules will seriously impinge time available for rulemaking towards the end of the year, and as stated above, adjusting the elements of the calculation will not affect the overall formula as laid out in the rules. It may be appropriate to amend the rules in the future once there is a better understanding of the elements of the calculation under the available models.

Staff concludes that the proposed rules adequately specify the means of calculating disbursements from the OUSF while still allowing stakeholders and Staff to work on the details that those calculations require.

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PROPOSED COMMISSION MOTION:

Issue a notice of proposed rulemaking to adopt and amend the rules in Attachment 1, pursuant to ORS 759.425.

The following draft administrative rules has been prepared as a working draft for purposes of discussion. These rules have not been approved for publication or for any other use by Staff or the Public Utility Commission of Oregon. A notice of proposed rulemaking has not been issued on this subject.

Attachment 1

860-100-0115

Distribution Worksheet

A ~~telecommunications~~ competitive provider that has been designated as eligible for OUS Fund support must record its number of basic service access lines at the end of the calendar month (referred to as the recording month) on the distribution worksheet by wire center or exchange and must file the completed worksheet with the OUS Administrator no later than 40 days after the end of the recording month, i.e., by the tenth day of the second month following the close of each month. **Disbursements based on lines recorded by the 10th of each month will be made at the end of the month.**

860-100-0125

OUS Fund Support Portability

(1) OUS Fund support is portable, on a per line basis for basic telephone service, from a telecommunications utility to a competitive provider that has been designated by the Commission as eligible for support in the same geographic **support** area.

(2) In support areas that are served by both a telecommunications utility and a competitive provider, distributions from the OUS Fund will be shared in the following manner:

(a) For customer lines served by a competitive provider's own loop facilities, the competitive provider may receive the full OUS Fund support amount per line. ~~The support amount per line is available in a document titled "OUS Support Per ILEC Wire Center" on the Commission's website, available at: <http://www.puc.state.or.us/ousf/Pages/index.aspx>, unless modified by a Commission order posted on the same webpage~~ **based on the amount available for the support area.**

(b) For customer lines served by a competitive provider that resells a telecommunication utility's supported retail service and does not provide service with its own loop facilities, the competitive provider may not receive OUS Fund support.

(c) For customer lines served by UNE loops leased from a telecommunications utility by a competitive provider, the utility and the competitive provider may share the OUS Fund support amount per line. ~~The shared support amount per line with amounts allocated to the telecommunications utility and to the competitive provider is available in a document titled "OUS Support Per ILEC Wire Center" on the Commission's website, available at: <http://www.puc.state.or.us/ousf/Pages/index.aspx>, unless modified by a Commission order posted on the same website.~~

(d) For customer lines served by Warm Springs Telecommunications Company, the support amount for these lines for calendar year 2022 shall be as set forth in Table A of this rule.

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860-100-0250

OUS Fund Support Distributions

- (1) For customer lines served by telecommunications utilities, the support amount for these lines for the calendar year 2022 shall be a continuation of the amounts provided for in Appendix A to Public Utility Commission Order No. 16-093, as corrected by Public Utility Commission Order No. 16-102, as set forth in Table A of this rule.
- (2) The support amount for qualified competitive providers for the calendar year 2022 will be adjusted to reflect the percent reduction that has occurred for the specific Non-Rural Company that owns the wire center between 2016 and the date the support amount is being calculated.
- (3) Any review of support amounts stipulated in previous orders has been suspended for calendar year 2022.
- (4) Beginning January 1, 2023, the administrator shall make a monthly disbursement to each telecommunications provider that has been designated by the Commission as eligible to receive support from the OUS Fund in a specific geographic area, and when the Commission has calculated that support is required in that area, and funds are available to make a disbursement.
 - (a) Monthly disbursements shall be processed before the 28th day of the month.
 - (b) The amount of each telecommunications utility's monthly disbursement shall be one-twelfth of its annual determined support amount.
 - (c) Each eligible competitive provider shall receive support as per 860-100-0125.
- (5) The administrator shall not pay, and shall hold in escrow, any disbursements otherwise due to an eligible provider that is also a contributing company if that company is not in compliance with its contribution requirements.

860-100-XXXX

OUS Fund Support Disbursement Calculations

- (1) The provisions of this rule apply to the calculation of disbursements made on or after January 1, 2023.
- (2) The Commission uses the Cost Quest model, or a similar model approved by the Commission to calculate total support amounts. The model will be used to assist in setting a benchmark for basic telephone service, calculate the cost of providing basic telephone service, and to

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calculate the difference between the cost and the benchmark, minus the explicit compensation and support identified in ORS 759.425. When the cost, after subtracting the explicit compensation and support identified in ORS 759.425, as applicable, exceeds the applicable benchmark in a particular geographic support area, the Commission may designate the support area as one requiring support from the OUS Fund.

(a) For purposes of this rule, “support area” may mean a census block or a wire center.

(b) The Commission may establish a different benchmark for a support area, based on the following considerations:

(A) changes in competition in the telecommunications industry;

(B) changes in federal universal service support; or

(C) other relevant factors as determined by the commission, including but not limited to whether it contains tribal lands, as defined in 47 C.F.R. 54.5.”

(3) The Commission will identify initial total required support amounts for all support areas using the approved cost model and adjust the required support for a support area as necessary annually in 2023 and 2024 and then every five years thereafter, beginning in 2029. On or before October 31 of a year in which support amounts must be identified, Commission staff shall prepare a report that details the calculation of required support amounts for Commission review and approval and submit a recommendation to the Commission to designate the amount to be disbursed from the fund to ensure basic telephone service beginning the next calendar year. In making its recommendations, Staff will consider stakeholder feedback through a public process and Staff’s annual report will be filed sufficiently in advance to allow for public comment.

(a) The available amount to be disbursed from the fund will be split into two categories for purposes of allocating the required support at the support area level between:

(A) Category one: The large company pool, which consists of support for support areas served by a telecommunications provider or affiliated group of telecommunications providers that serves 50,000 or more access lines in Oregon.

(B) Category two: The small company pool, which consists of support for support areas served by a telecommunications provider or affiliated group of telecommunications providers that serves fewer than 50,000 access lines in Oregon.

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(b) The size of the Category one and Category two pools will be proportionally reduced to reflect the amount available to be disbursed from the fund when the amount available from the fund, given statutory limits, is less than the required support amount in a given year.

(c) The support amount for an individual telecommunications provider is based on an allocation of the applicable category pool. Each pool will be allocated among eligible telecommunications providers as follows:

(A) Category one: The large company pool will be allocated using the cost quest or a similar model approved by the Commission, with annual updates, as necessary.

(B) Category two: The small company pool will be allocated using the historic embedded cost model as described in Commission Order No. 03-082. The Commission will use historic cost data submitted by a provider on Form I to the Commission.

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Table A

	2022 OUSF Support Amounts (\$m)
Ziply	5.075
Qwest	7.613
Rural ILECs	12.234
Warm Springs	1.288