

ORDER NO. 23-422

ENTERED Nov 02 2023

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2040

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Approval for the Calculation of
Disbursements from the Oregon Universal
Service Fund for 2024 through 2028.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on October 31, 2023, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:



Nolan Moser

Chief Administrative Law Judge



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.

ITEM NO. CA6

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: October 31, 2023

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A _____

DATE: October 13, 2023

TO: Public Utility Commission

FROM: Nicola Peterson

THROUGH: Bryan Conway and Marc Hellman **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. UM 2040)
Approve the calculation of disbursements from the Oregon Universal Service Fund for 2024 through 2028.

STAFF RECOMMENDATION:

Staff recommends that the Commission approve the disbursement amount from the Oregon Universal Service Fund (OUSF) for 2024 through 2028 to support basic telephone service as detailed in Attachment A.

DISCUSSION:

Issue

Whether the Commission should approve the disbursement amount recommended by Staff from the OUSF for 2024 through 2028 to support basic telephone service.

Applicable Rule or Law

The Commission established the Oregon universal service fund (OUS Fund) pursuant to the directive in ORS 759.425.¹ The OUS Fund is used to ensure basic telephone service is available at a reasonable and affordable rate² and for transfers to the Oregon Business Development Department for deposit in the Broadband Fund as provided in

¹ ORS 759.425 (1)(a).

² ORS 759.425(1)(a)(A).

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ORS 759.425(1)(a).³ The amount to be used to ensure basic telephone service may not exceed \$28 million per year, as directed in ORS 759.425(1)(b).

ORS 759.425(3)(a) states that:

The commission shall establish a benchmark for basic telephone service as necessary for the administration and distribution of the universal service fund. 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.

Under ORS 759.425(3)(b), the Commission is required to periodically review the benchmark and adjust it as necessary to reflect:

- (A) Changes in competition in the telecommunications industry;
- (B) Changes in federal universal service support; and
- (C) Other relevant factors as determined by the commission.

OAR Chapter 860, Division 100 contains the existing administrative rules governing the OUSF. The Commission recently adopted revisions specific to the OUSF distributions in Docket Nos. AR 649 and AR 661. Now, under OAR 860-100-0300(2), the Commission uses the Cost Quest model, or a similar model approved by the Commission, to calculate support amounts. The model is used to set a benchmark at one standard deviation over weighted average cost, calculate the cost of providing basic telephone service, and to calculate the difference between the two, minus the compensation and support identified in ORS 759.425. The rules specify the network to be supported and clarify that initial total required support amounts would be split into two categories using the Commission approved cost model.

Per OAR 860-100-0300(3), Commission Staff must prepare a report on or before October 31 detailing the calculation of the required support amount for Commission review and approval annually for 2023 and 2024 and every 5 years thereafter. Upon approval by the Commission, the available amount to be disbursed from the OUS Fund is distributed as provided under OAR 860-100-0300(3)(a)-(c).

³ ORS 759.425(1)(a)(B).

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Analysis

Background

Docket No. UM 2040, Staff Investigation into the Oregon Universal Service Fund, was opened in December 2019 for purposes of reviewing various issues that a previous investigation into the OUSF (Docket No. UM 1481) had not resolved. Docket No. UM 2040 was from the beginning viewed as policy development with the results being transferred to a permanent rulemaking.

Docket No. AR 649 was filed with the Secretary of State on July 26, 2022,⁴ and AR 661 was approved by the Commission on October 3, 2023.⁵

Summary and Discussion

Over the past few months, Staff has met with OTA to discuss the implications of the rulemaking. Implementing the OARs results in a Net Support amount that is higher than the cap of \$28 million.⁶ As per the new rules, the \$28 million total disbursement amount was split between the large pool and the small pool based on the amounts attributed to support areas as per the Cost Quest model. The calculations resulted in material differences for the pool amounts as compared to what is currently being disbursed. Staff initially suggested a five percent per year phase-in (no companies support would decline by more than five percent in a year). However, after discussions about the implications of the declining contribution base, which is approximately six percent a year, Staff and OTA agreed upon a three percent a year phase-in percentage. In areas where a CLEC is designated as eligible to receive OUSF support, the amount available for disbursement in the wire center is allocated between the CLEC and the applicable ILEC on a per line basis. The calculation of support for Warm Springs Telecommunications is unchanged from that proposed in the October 2022 Commission Report.

Although the total amount to be contributed into and therefore disbursed (to support basic telephone service) from the OUSF is capped per ORS 759.425 at \$28 million, after 2024, contributions are expected to be lower than this cap and therefore it is this actual contribution amount that will dictate the available total support for 2025 through 2028. Staff intends to inform the Commission and stakeholders in October of each year as to the forecasted contributions for the following year and the resulting disbursement amounts.

⁴ Docket No. AR 649, *Rules – ORS 759.425, Other Filing/Pleading*, July 26, 2022, accessed at <https://edocs.puc.state.or.us/efdocs/HAH/ar649hah12017.pdf>.

⁵ Docket No. AR 661, *Rulemaking Regarding Universal Service Fund (Div. 100)*, accessed at <https://apps.puc.state.or.us/edockets/DocketNoLayout.asp?DocketID=23773>.

⁶ ORS 759.425.

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One aspect of the calculation that was not addressed in the rulemaking was the specific federal support that would be deducted under ORS 759.425. Staff suggested that the appropriate time for addressing this subject was in this report. Staff has received comments from both Oregon Cable Telecommunications Association (OCTA) and Oregon Telephone Association (OTA) on this subject.

Under ORS 759.425, the federal support deduction applies to two types of compensation: compensation received from federal sources used to recover local loop costs and any explicit support from a federal universal service program.

The End-User Common Line Charge (EUCL) is a flat per-line fee that ILECs may assess on customers to recover a portion of the costs associated with transporting interstate calls on the ILECs' local facilities. In previous discussions with Stakeholders regarding the Federal Support deduction element of the disbursement calculation, this federal program has never been included. OTCA contends that this program falls within the statutory provisions of ORS 759.425, while OTA contends, they do not and further state that it is not compensation received from federal sources and it is also not treated as revenue for NECA pool participants.

The Intercarrier Compensation Support (ICC) is Connect America Fund (CAF) support for the replacement of a portion of intercarrier terminating access charges that non-price cap incumbent local exchange carriers may elect under 47 CFR 51.917, governing transitional access service pricing. Support is based on program eligibility as determined under 47 CFR 51.917 and administered under 47 CFR 54.314. OTA contends that this is not a universal service support program, while OTCA contends that it is.

Staff did not deduct either the EUCL or ICC. If Staff had deducted either or both EUCL and ICC, there would have been no effect, as the final resulting disbursement amount would have still been more than the \$28 million cap. Both OTA and OCTA approve Staff's recommendation presented today. However, OCTA's approval is based on the understanding that if in future calculations the deduction of ICC and/or EUCL becomes material, this subject will be discussed further.

Conclusion

Staff's opinion is that the calculations included in Attachment A reflect the requirements of ORS 759.425 and the rules contained in ORS 860-0100. Staff and OTA have worked together to propose a phase in period and the resulting calculations reflect this agreement.

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PROPOSED COMMISSION MOTION:

Approve the disbursement amount from the OUSF for calendar years 2024 through 2028 to support basic telephone service as detailed in Attachment A.

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OREGON PUBLIC UTILITY COMMISSION STAFF: Docket No. UM 2040

Attachment A

Oregon Universal Service Fund

OUSF Disbursement Calculation	\$'000
Total Support less Benchmark	93,983
Less Federal Support	(49,401)
Total Net Support	44,582
Capped Support	28,000

OUSF Pool amounts	\$'000
Large Pool – Including CLEC Amounts	21,634
Small Pool	6,366
Total Support	28,000

Disbursements for the next five years if contributions remained at or above \$28 million (including three percent per year phase in).

	2023	2023 Rebased	2024	2025	2026	2027	2028
Large Pool	19,270	20,445	20,651	20,858	21,065	21,272	21,479
Small Pool	7,121	7,555	7,349	7,142	6,935	6,728	6,521
Total	26,391	28,000	28,000	28,000	28,000	28,000	28,000

Expected disbursements for the next five years based on the current forecast of declining contributions. (including three percent per year phase in)

	2023	2023 Rebased	2024	2025	2026	2027	2028
Large Pool	19,270	20,445	20,651	20,353	19,547	18,770	18,023
Small Pool	7,121	7,555	7,349	6,969	6,435	5,936	5,472
Total	26,391	28,000	28,000	27,322	25,982	24,706	23,495