ORDER NO. 01-1063

ENTERED DEC 14 2001

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 731

In the Matter of the Investigation of Universal Service in the State of Oregon.	))	ORDER

DISPOSITION: ORDER NO. 00-312 AMENDED; UNIVERSAL SERVICE ASSESSMENT BASE CHANGED; SURCHARGE/CONTRIBUTION RATES CHANGED.

On June 16, 2000, we issued Order No. 00-312 resolving issues raised in Phase IV of this proceeding. The order assesses a universal service surcharge on all retail telecommunications services sold in Oregon. The assessment included the portions of interstate and international services sold in Oregon. We made that decision for a variety of reasons, including the mandate of ORS 759.425 to assess a surcharge on "all retail telecommunications services sold in this state."

AT&T Communications of the Pacific Northwest, Inc., and AT&T Wireless Services, Inc. (AT&T) filed state and federal appeals to the portion of Order No. 00-312 that assesses the universal service surcharge on interstate and international telecommunications. On October 18, 2001, a U. S. District Court issued an opinion in favor of AT&T. The court found that the assessment base of the Oregon universal service program, which imposed the surcharge on interstate and international calls, was in conflict with federal law. Therefore, the provisions in Order No. 00-312 concerning the assessment base must be amended. The surcharge and contribution rates also must be changed.

The Commission addressed the issues surrounding the court's decision at Special Public Meetings on November 7, December 11, and December 13, 2001. The Commission took action pursuant to ORS 756.515(4) and ORS 756.568. A copy of the Staff Report presented to the Commission during the Special Public Meeting of December 13, 2001 is attached to this order as Appendix A. The Commission decided to reduce the assessment base for the Oregon universal service charge to include only intrastate telecommunications service revenues.

Because the assessment base for the surcharge is being substantially reduced, the surcharge rate and the contribution rate must be adjusted. The surcharge rate is the rate that is assessed on telecommunications service revenues, and the contribution rate establishes what the carriers must pay to the universal service administrator. The current surcharge rate is 3.00 percent on all telecommunications services sold in Oregon. In this order we change that rate to 5.5 percent on intrastate telecommunications sold in Oregon. We change the corresponding contribution rate to 5.21 percent. Appendix A to this order more fully explains the technicalities of the rates.

ORDER

IT IS ORDERED that:

1. Order No. 00-312 addresses the intrastate/interstate assessment base issue starting on the second paragraph of page 27 and continuing through the first paragraph of page 28. Effective February 1, 2002, that portion of the order will be amended by the decision announced in this order to include only intrastate telecommunications services sold in Oregon in the universal service program assessment base;

2. The end user surcharge rate of 3.00 percent in effect since October 1, 2001, is increased to 5.50 percent on Oregon intrastate telecommunications services, effective February 1, 2002; and

3. The contribution rate for Oregon telecommunications carriers of 2.91 percent in effect since October 1, 2001, is increased to 5.21 percent of Oregon intrastate telecommunications services, effective February 1, 2002.

Made, entered, and effective ____________________________.

Roy Hemmingway Chairman	**Lee Beyer** Commissioner
	Joan H. Smith Commissioner

A party may request the Commission to hold a hearing on these matters pursuant to ORS 756.515. A party may request rehearing or reconsideration of this order pursuant to 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 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

ITEM NO. 1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: December 13, 2001

REGULAR _X_ CONSENT ____ EFFECTIVE DATE February 1, 2002

DATE: December 12, 2001

TO: Phil Nyegaard

FROM: Tom Turner through Dave Booth

SUBJECT: UM 731—AT&T Universal Service Lawsuit

STAFF RECOMMENDATION:

If the Commission decides not to appeal the AT&T lawsuit, staff recommends that the Commission:
(1) change the revenue assessment base for the Oregon Universal Service (OUS) Fund from total Oregon retail telecommunications service revenues to intrastate Oregon retail telecommunications service revenues;
(2) increase the OUS surcharge rate from 3.00 percent to 5.50 percent;
(3) increase the corresponding OUS contribution rate from 2.91 percent to 5.21 percent; and
(4) make these changes on a prospective basis coincident with the effective date of the federal court judgment on February 1, 2002.[1]

DISCUSSION:
Part A—Background

ORS 759.425, directs the Commission to create and implement an OUS Fund. The purpose of the OUS Fund is to ensure that basic telephone service is available at a reasonable and affordable rate. The statute further provides that the Commission must establish a uniform percentage surcharge on the sale of all retail telecommunications services sold in Oregon by a telecommunications provider certified by the Commission[2] in an amount sufficient to support the purpose of the OUS fund.

[1] The February 1, 2002, date is based on AT&T's agreement as of noon, December 12, 2001, that the judgment will be so dated.
[2] Telecommunications carriers must have an approved certificate of authority under ORS 759.020 or 759.025 to provide intrastate telecommunications services in Oregon.

In PUC Order No. 00-312, Docket UM 731, Phase IV, the Commission completed the implementation of ORS 759.425. In that order, the Commission concluded that the assessment base for OUS funding was not limited to intrastate retail telecommunications revenue, but included all—intrastate, interstate and international—retail telecommunications revenue sold in this state.[3] The order was dated June 16, 2000. The collection of OUS surcharges to support the OUS Fund began on September 1, 2000.

On August 18, 2000, AT&T and WorldCom filed applications for reconsideration of the OUS assessment base. On October 9, 2000, the Commission denied reconsideration.[4]

On December 8, 2000, AT&T filed a Petition for Stay claiming, among other things, that inclusion of interstate and international revenues in the assessment base conflicted with federal law. At the same time, AT&T filed suit in the U.S. District Court and in state court. On January 29, 2001, the Commission denied the Petition for Stay.[5]

On October 18, 2001, the U.S. District Court issued its opinion in favor of AT&T. The court found that the assessment base of the OUS Fund was in conflict with federal law.[6] A final judgment in that case is still pending, to be crafted by the parties.

On November 7, 2001, the Commission met in Executive Session to consider its options for appeal. In part, those options would be based on AT&T's position and wording of the judgment. That same day, the Commissioners' attorney (DOJ) contacted AT&T's attorney (via e-mail) to explore wording of the Judgment.

On December 11, 2001, the Commission again met in an Executive Session and Special Public Meeting to consider its staff's recommendation to change the OUS Fund effective January 1, 2002. Up to that time, AT&T had insisted that the effective date of the judgment be no later than January 1, 2002. Because of the nearly impossible implementation schedule that this date would create for carriers to modify their billing systems, the Commissioners decided to approach AT&T directly to request a delay beyond January 1, 2002.

On December 12, 2001, AT&T agreed to an implementation delay until February 1, 2002.

[3] See PUC Order No. 00-312 at page 27.
[4] See PUC Order No. 00-638.
[5] See PUC Order No. 01-140.
[6] See Civil Case No. 00-6397-HO in the United States District Court for the District of Oregon.

Part B—The OUS Surcharge Rate

The OUS surcharge rate is the rate that carriers may bill end-users to support the OUS Fund. ORS 759.425(4) directs the Commission to establish a surcharge as a uniform percentage of the sale of retail telecommunications services sold in the state in an amount sufficient to support the purpose of the OUS Fund.[7]

Since the inception of the OUS Fund on September 1, 2000, the Commission has adjusted the rate on two prior occasions to insure an adequate level of funding.[8] The current surcharge rate is 3.00 percent on total Oregon retail telecommunications revenue.

To comply with the federal court order, the Commission must now change the assessment base for the OUS Fund from total Oregon retail revenues to intrastate.[9] To keep the fund solvent, there must be a corresponding increase in the surcharge rate. If, for example, intrastate revenues represent only half of the total Oregon revenue base, then the surcharge rate must double (i.e., increase from 3.0 to 6.0 percent) in order to maintain the same level of funding.

Unfortunately, the available data on intrastate retail revenues are not precise. Published FCC statistics show about a 50-50 split in retail revenues between the interstate and state jurisdictions. This means the OUS revenue base would be cut in half. However, FCC statistics have not been particularly accurate at the state level.

I have reviewed OUS revenue reports for the largest contributors for the second and third quarters of 2001. These revenue reports show that intrastate revenues were 51.1 and 61.3 percent of total Oregon revenues, respectively. However, one-third of the revenue reports had missing or erroneous intrastate information.[10] If I correct for obvious errors and estimate missing revenue data, it appears that the intrastate revenues as a percent of total could be about 60 percent. This means that the OUS assessment base might be reduced by only 40 percent. At a 40 percent reduction in the base, the offsetting surcharge would increase from 3.0 to 5.0 percent to maintain the same level of funding.

[7] Staff emphases that end-user billing of the OUS surcharge is optional, but if imposed by a carrier, it must be at the percentage established by the Commission. Whether or not a carrier bills the surcharge, its obligation to contribute to the OUS Fund is unchanged. See PUC Order No. 00-312 at page 27.

[8] See PUC Order Nos. 00-760 and 01-752.

[9] Total telecommunications revenue includes revenues derived from intrastate, interstate, and international services sold in Oregon. Intrastate telecommunications is a subset. It includes telecommunications services in which the information transmitted originates and terminates within the boundaries of the State of Oregon (ORS 759.005(2)(b)). Thus, for example, exchange services, EAS services, and message toll services where the call originates and terminates in Oregon—regardless of the route—are intrastate. Dedicated private line services, where the end user terminus points are within the state, are generally intrastate.

[10] To date the intrastate revenue column on the OUS revenue report has not been used to compute the OUS Fund contribution. Thus, carriers could be negligent when filling in this information.

Because of the uncertainty in the intrastate revenue data and the continuing economic recession that is eroding telecommunications revenue, I recommend the Commission adopt a 5.5 percent OUS surcharge—half way between 5.0 percent and 6.0 percent. As the carriers and the OUS Fund adjust to an intrastate revenue base, staff will recommend further adjustments to the surcharge rate in order to maintain a sufficient funding level.

Based on the change in revenue base from total to intrastate, and the increase in the surcharge rate from 3.0 to 5.5 percent, some customers will pay more OUS support and some less. Generally, customers with high interstate toll calling will pay less and customers with low interstate toll calling will pay more. Support for the OUS Fund will shift toward the basic services that the Commission is trying to preserve. Residential customers in the low-to-moderate toll calling range (i.e., $0 to $25 per month in toll charges) will pay about 20 cents more per month per line. Business customers in the low-to-moderate toll calling range may pay 50 cents more per month per line depending on the local services ordered. In contrast, residential or business customers with high interstate calling (e.g., $75 per line per month) will pay between $1.00 and $1.30 less per month.

The burden of supporting the OUS Fund will also shift from long distance carriers to local exchange carriers. Long distance carriers will see a 40 to 50 percent reduction in OUS contributions and local exchange carriers will see a 30 to 60 percent increase. The percentage change for any one carrier will depend on the carrier's mix of state and interstate revenues.

Part C—The OUS Contribution Rate

The OUS contribution rate is directly derived from the end user OUS surcharge rate. The contribution rate is the rate at which carriers pay into the OUS Fund. Because the OUS contribution base includes the surcharge-billing amount, the contribution rate is slightly less than the surcharge rate as illustrated by the following example.

OUS Contribution and Surcharge Rate

	Customer A.	Customer B.
A. Customer's local service telephone bill[11]	$50.00	$20.00
B. OUS surcharge rate	5.50 %	5.50 %
C. OUS recovery amount	$2.75	$1.10
D. Total customer bill	$52.75	$21.10
E. OUS contribution rate	5.21 %	5.21 %
F. OUS contribution amount	$2.75	$1.10

[11] Included in the example bill are local service charges, EAS charges, and any intrastate long distance charges. Excluded are interstate long distance charges and federal subscriber line charges.

As you can see from this example, the 5.50 percent surcharge rate applied to intrastate service charges yields the same OUS amount as the 5.21 percent contribution rate applied to total intrastate billed revenues. By setting the contribution rate slightly lower than the surcharge rate, the fund collects the appropriate amount on retail telecommunications revenues whether carriers choose to pass the OUS assessments on to end users or not. Staff recommends that the OUS Contribution rate be set at 5.21 percent effective with the OUS contributions due on May 28, 2002.[12]

Part D—Implementation Schedule

The Commission, in the UM 731, Phase III, Order No. 99-197, adopted procedures for setting the OUS surcharge. Generally, the Commission reviews the surcharge rate on a semiannual basis.[13] The Commission may, however, adjust the surcharge on a shorter interval if required. A notification letter of the new surcharge rate must be mailed to all carriers 45 days prior to the effective date of the new surcharge. The 45-day notification interval was at the request of the carriers in order to allow them sufficient time to adjust their billing systems.

Based on the 45-day interval and the quarterly basis for OUS collections, staff would have preferred an April 1, 2002, date for implementing these changes. As mentioned, at the request of the Commissioners, AT&T agreed to defer its original target date for the judgment from January 1, 2002, to February 1, 2002. This delay will provide the requisite 45-day notice.

Based on the AT&T offer, staff recommends the changes go into effect on February 1, 2002. Staff notes that under ORS 759.425(4), the obligation of the Commission is to insure the sufficiency of the OUS fund and that the Commission has authority to amend its orders and act expeditiously on its own motion without hearing under ORS 756.515(4) and 756.568.

Part E—Other Options

In the short term, the Commission does not have viable options to increasing the surcharge, assuming the Commission does not appeal the court decision. In the long term, the Commission could reopen UM 731 and consider increasing the benchmark. An

[12] Under the UM 731, Phase III, Order No. 99-197, the OUS Fund collects moneys on a quarterly basis. Carriers may bill end users an OUS surcharge in advance of remitting contributions to the OUS Fund. Thus, if the new OUS surcharge is effective for customer bills rendered on or after February 1, 2002; the moneys due to the OUS Fund for the first quarter (i.e., January 1 through March 31) would not be due until May 28, 2002. Because the first quarter, 2002, will be mixed with January's revenues at the old surcharge rate and revenue base, and February and March's revenues at the new surcharge rate and base, the effective contribution rate for that quarter will have to be prorated between the old and new rates and revenue bases.

[13] The last review and surcharge adjustment was at the Commission's August 7, 2001, public meeting.

increase in the current benchmark from the $21.00 per line per month to, for example, $24.00 per line per month would reduce the funding requirement of the OUS Fund by about $8.0 million annually ($48 million to $40 million). The surcharge rate could then be reduced from the proposed 5.5 percent to 4.6 percent. Both Qwest and Verizon may seek to reverse a portion of their previous revenue neutral filings to offset the loss in OUS support.[14]

Staff does not recommend the Commission reopen UM 731 to reconsider the benchmark at this time. The choice is not one that can be implemented in the near term. The Commission would still need to act on the surcharge while the new UM 731 proceeding is in progress.

The following Proposed Commission Motion assumes that the Commission will not appeal the AT&T lawsuit.

PROPOSED COMMISSION MOTION:

Order 00-312 be amended to prospectively change the revenue assessment base for the OUS Fund from total Oregon retail telecommunications service revenues to intrastate Oregon retail telecommunications service revenues.

The OUS surcharge rate be increased from 3.00 percent to 5.50 percent, and the corresponding OUS contribution rate be increased from 2.91 percent to 5.21 percent.

These changes be allowed to go into effect on February 1, 2002, to coincide with the effective date of the federal court Judgment.

[14] Effective with the first distribution from the OUS Fund, the Commission directed Qwest and Verizon to make revenue–neutral filings to offset universal service support payments. See PUC Order 00-312 at page 29.