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November 23, 2010

**VIA ELECTRONIC MAIL AND U.S. MAIL**

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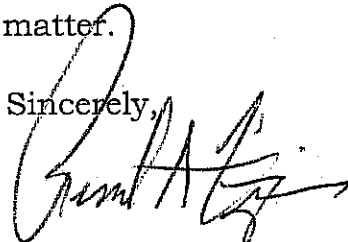
Re: UM 1481 – Reply Comments of the Oregon Telecommunications  
Association

Dear Sir/Madam:

Enclosed are the original and one copy of the Reply Comments of the  
Oregon Telecommunications Association.

Thank you for your attention to this matter.

Sincerely,



RICHARD A. FINNIGAN

RAF/km  
Enclosures

cc: Service List  
Member Companies (via e-mail)  
Brant Wolf (via e-mail)

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON Staff Investigation of the Oregon  
Universal Service Fund.

UM 1481

**REPLY COMMENTS  
OF THE  
OREGON TELECOMMUNICATIONS ASSOCIATION**

**November 23, 2010**

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## **I. INTRODUCTION AND REVIEW**

The Oregon Telecommunications Association (OTA) is filing these Reply Comments to address questions raised by the Commission and to reply to the Comments of other parties.

At a Status Conference on November 1, 2010, Administrative Law Judge Pines relayed to the parties that the Commission was particularly interested in receiving comments on whether the existing Oregon Universal Service Fund (OUSF) was working or not; whether the funds were being used for the purposes for which they were intended; and whether there was verification available as to how the funds were being used. These questions were identified as relating to Issues 5-13.

These Reply Comments will begin by addressing the questions raised in the Status Conference. Then, OTA will turn to replying to some of the Comments made by other parties.

## **II. THE EXISTING OUSF**

The existing OUSF is functioning well to accomplish the purpose that it currently serves. However, OTA recommends that changes be made to the current OUSF in several respects. Before describing those recommended changes, OTA will describe how the existing OUSF is functioning and fulfilling its purpose.

For most of OTA's members, the OUSF has acted as a mechanism to offset access rate reductions. This was the stated purpose of the OUSF as it applied to rural telecommunications companies coming out of Order No. 03-082 in Docket UM 1017. As stated by Commission Staff in response to Issue 10, the OUSF is functioning as it is intended to function. In Staff's words:

10. The 2003 order permitting small carriers to draw from the OUSF (Docket UM 1071, Order No. 03-082) contemplated that the fund would be used to offset access rate reductions, Has such offset occurred? If not, why not?

Yes, the offset has occurred and is occurring each year. The OUSF support per line that each company receives is used to reduce its Carrier Common Line (CCL)

revenue requirement. This reduction takes place each year when the Intrastate Access rates are calculated for the companies participating in the OECA access pool. The effect of this reduction is to reduce the CCL component of the intrastate access charge rate.<sup>1</sup>

It should be noted that to the extent that Frontier Communications Northwest Inc. (Frontier) is the successor-in-interest to Verizon Northwest, Inc., it is receiving OUSF support as described by Commission Staff "... to reduce and keep at the present level, selected business rates on a revenue neutral basis."<sup>2</sup> Commission Staff states that OUSF money currently provided to the companies is spent for the intended purpose of the fund.<sup>3</sup>

A concern expressed on behalf of Commission by ALJ Pines is whether there are ways to verify that the money is being spent for its intended purpose. As pointed out by Commission Staff, this is currently accomplished for the OTA members participating in OECA through the annual OECA filing.<sup>4</sup> In addition, there are periodic Form O and Form I filings by the companies, including an agreed upon schedule for filings by Frontier as the successor to Verizon. There is still another level of review when companies make their federal eligible telecommunications carrier (ETC) annual filings. Although the primary purpose of the ETC filings is to review use of federal universal service fund support, it still allows the Commission to get a sense of what the companies are doing and how they are proceeding.

It should be noted that some of the parties filed Comments suggesting that the existing OUSF should undergo a thorough audit and review.<sup>5</sup> Undertaking such a task would be a waste of resources, particularly in light of Staff's assurances that the OUSF is functioning as it was

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<sup>1</sup> Staff's Comments at Issue 10.

<sup>2</sup> See, Staff's Comments at Issue 5.

<sup>3</sup> See, Staff's Comments at Issue 11.

<sup>4</sup> See, Staff's Comments at Issue 12: "Each year the intrastate access rates are developed for the rural companies and the OUSF support is applied directly to the CCL element of these rates. With the exception of some small amounts, the use of the funds by the small companies is easily tracked."

<sup>5</sup> See, e.g., Comments of the Oregon Cable Telecommunications Association at p. 2 and Initial Comments of Comcast Phone of Oregon, LLC at p. 4.

intended to function. OTA believes that the suggestion is offered as a delaying tactic to avoid addressing the beneficial changes to the current OUSF. OTA requests that the Commission not fall for a delaying tactic that would only waste time and money. The existing OUSF has functioned as intended. The focus now should be on improvements to the existing OUSF, not a further examination of past operations.

### III. OTA'S RECOMMENDED IMPROVEMENTS TO THE OUSF

Perhaps the biggest issue facing the Commission is the restrictive contribution base for the current OUSF. The majority of the parties commenting in this docket clearly support broadening the contribution base for the OUSF. The need to broaden the contribution base for the OUSF to include wireless, cable telecommunications providers and VoIP providers has received strong support, not just from OTA, but from the Citizen's Utility Board of Oregon (CUB), AT&T, Frontier, CenturyLink, TRACER and Commission Staff.<sup>6</sup> OTA supports seeking legislation that would eliminate the current statutory exemption for wireless carriers and to broaden the contribution base.<sup>7</sup>

Furthermore, in dealing with the contribution base, there are suggestions that the basis for the contribution mechanism for the fund should be something other than intrastate telecommunications revenues. OTA does not object to those suggestions. For example, CenturyLink suggests using working telephone numbers or capacity charges.<sup>8</sup> That idea should

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<sup>6</sup> Opening Comments of the Citizen's Utility Board of Oregon at p. 6; Comments of AT&T at p. 19-20; Opening Comments of Frontier Communications Northwest, Inc. at p. 2; Opening Comments of CenturyLink at p. 9; Opening Comments of TRACER at p. 12-13; and Staff's Comments at Issue 66.

<sup>7</sup> The Federal Communications Commission has very recently confirmed that states may require VoIP providers, even nomadic VoIP providers, to contribute to a state USF. In the Matter of Universal Service Contribution Methodology, Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues, WC Docket No. 06-122, Declaratory Ruling, FCC 10-185 (Rel. Nov. 5, 2010).

<sup>8</sup> Opening Comments of CenturyLink at p. 10.

certainly be explored. TRACER suggests using a definition of access lines that is used for E-911 purposes in the State of Washington.<sup>9</sup> Again, that is an idea that can be explored. On this issue, OTA believes that an improvement to the existing OUSF would be to give the Commission the authority to modify the contribution base to another basis, and at the least, to be able to be consistent with any action the Federal Communications Commission (FCC) might take, such as moving to a working telephone number based system.

AT&T suggests that there is a need for continued use of the OUSF for access reform purposes.<sup>10</sup> As the Commission recognizes, for most of OTA members, that is the purpose of the existing OUSF as set forth in UM 1081. OTA agrees that this ought to be carefully looked at, particularly if the contribution base can be broadened.

AT&T's concept includes the use of a benchmark and the idea that the companies that are below the benchmark can raise their rates without going through a rate case to reach the benchmark as a means of limiting the size of the OUSF.<sup>11</sup> OTA agrees with this concept. Although, OTA does note that there are only a few companies that would be below any sort of reasonable benchmark. This means the effect on the fund, although beneficial, will be relatively minimal.

There are those commenters who suggest that access reform should be separated from the OUSF and accomplished through local rate rebalancing.<sup>12</sup> As OTA demonstrated in its Opening Comments, that is not feasible. This issue will be discussed in more detail in Section IV.1 of these Reply Comments. OTA's position is that the OUSF should continue to be used to

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<sup>9</sup> Opening Comments of TRACER at p. 12-13.

<sup>10</sup> Comments of AT&T at p. 6-7.

<sup>11</sup> Comments of AT&T at p. 6-7.

<sup>12</sup> See, Initial Comments of Comcast Phone of Oregon, LLC at p. 5 and Opening Comments of Verizon Competitive Providers at p. 18-19.

accomplish access reform goals.

Another way in which the existing OUSF can be improved is to give the Commission some authority to transition to a broadband fund. Many of the parties filing Comments in this docket urge the Commission not to do anything on broadband until such time as the FCC has acted.<sup>13</sup> However, waiting for the FCC to act has proven to be a dangerous policy. It is much like waiting for Godot: the answer arrives either too late or not at all and, in the end, the act of waiting becomes the problem, not the solution.

OTA believes that the existing OUSF can be improved by giving the Commission the authority to address broadband and the ability to transition to a broadband fund. As stated by CUB: "CUB sees a need for a fund for broadband service, particularly in underserved rural areas of Oregon, but the focus of that fund is not entirely clear."<sup>14</sup> OTA understands that uncertainty. Action does not have to be taken in early 2011. Being given authority does not mean that all of the details must be accomplished immediately. The ground work for action can be laid through initial workshops and dockets. There is time to look at and consider what action or inaction the FCC takes and whether it is time for the Commission to act. However, it is imperative that the Commission have the basic authority to be in a position to address the issue.

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<sup>13</sup> See, e.g., Qwest's Opening Comments at p. 2-3; Initial Comments of Comcast Phone of Oregon, LLC at p. 3; and Opening Comments of Warm Springs Telecommunications Company at p. 2-3.

<sup>14</sup> Opening Comments of the Citizen's Utility Board of Oregon at p. 5.



#### IV. REPLIES TO COMMENTS OF OTHER PARTIES

1. Access Reform Cannot be Accomplished by Increasing Local Rates.

Comcast, Verizon and TRACER all suggest that access reform can be accomplished through increases to local rates.<sup>15</sup> As OTA conclusively demonstrated in the Opening Comments, that is not the case. Local rates would quickly rise to levels that are unacceptable and would violate the principles of 47 U.S.C. § 254 and ORS 759.425. Rates in rural areas would not be comparable to rates for the same type of service in urban areas as required under Section 254. Rates would not be reasonable as required by ORS 759.425.

Comcast and Verizon rely heavily on national data to support their argument.<sup>16</sup> This national data cannot be considered to have the same impact as the fact-specific Oregon data that OTA has provided in its Opening Comments.

The schedule set out below sets out the existing levels of rates for local service in Oregon and compares that set of existing rates to the level base rates would be at after the transition of access charges to the interstate equivalent level if the entire burden is transferred to each company's customers. It can clearly be seen that rates for access reform would be far higher than the standards of Section 254 and ORS 759.425 would permit. Rates of \$30, \$40 and \$50 a month for local service are not reasonably comparable. Nor are they fundamentally reasonable basic rates.

(Intentionally left blank)

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<sup>15</sup> See, Initial Comments of Comcast Phone of Oregon, LLC at p. 5; Opening Comments of Verizon Competitive Providers at p. 18-19; and Opening Comments of TRACER at p. 14.

<sup>16</sup> See, e.g., Initial Comments of Comcast Phone of Oregon, LLC at Exhibits 1 and 2; and Opening Comments of Verizon Competitive Providers, passim.

OTA ILEC MEMBERS

EFFECT OF TRANSITION OF INTRASTATE SWITCHED ACCESS RATES  
TO COMPOSITE INTERSTATE SWITCHED RATE LEVEL

Company	Current Rate*	Post Transition Rate
Asotin	\$18.75	\$32.52
Beaver Creek	\$30.50	\$33.04
Canby	\$30.58	\$33.43
Cascade	\$33.89/\$30.24	\$37.81/\$34.16
Clear Creek	\$32.87	\$35.47
ColtonTel	\$44.35	\$50.08
Eagle	\$18.10	\$37.77
Gervais	\$34.45	\$40.78
Helix	\$22.17-\$26.17	\$28.29-\$32.29
Home	\$23.05	\$35.92
Molalla	\$34.45	\$36.00
Monitor	\$23.15	\$57.84
Monroe	\$30.08	\$38.93
Mt. Angel	\$24.50	\$35.08
Nehalem	\$19.50	\$34.69
North-State	\$33.30	\$52.66
OR-Idaho	\$18.15-\$26.55	\$37.96-\$46.26
Oregon Tel	\$29.00	\$63.24
People's	\$29.40	\$41.85
Pine	\$16.50	\$70.55
Pioneer	\$22.95	\$30.62
Roome	\$33.50/\$36.50	\$42.26/\$45.26
St. Paul	\$27.35	\$37.56
Scio	\$29.65-\$31.00	\$42.72-\$44.07
Stayton	\$24.99	\$32.00
Trans-Cascades	\$28.62	\$38.72

\*Taken from company tariffs and pricing schedules for residential rates including EAS and existing \$6.50 subscriber line charge (SLC).

Rather than simply asserting access charge reform can be accomplished on a stand alone basis, the better approach is to recognize it is tied to universal service, as Commission Staff has recognized: "As a practical matter, access reform cannot be separated from OUSF reform."<sup>17</sup>

<sup>17</sup> Staff's Comments at Issue 18.

AT&T recognizes the direct connection between access reform and universal service when AT&T states in its Opening Comments: "The loss of access revenues for the ILECs threatens universal service and rural investment, which puts rural connectivity at risk."<sup>18</sup>

The OUSF and access reform cannot be separated. They are inextricably tied together. To try to separate them at this point in time would create significant harm to the public switched telecommunications network (PSTN) in rural Oregon. Even TRACER, while expressing skepticism about the existing OUSF, states that the basic position is to "do no harm." Specifically, TRACER states "As with any significant policy change, the first essential is to do no harm. No matter what specific changes are implemented, care must be taken to not undermine what broadband deployment has already been implemented or undermine the broad availability of voice service that has been achieved through existing policies."<sup>19</sup> Accomplishing further access reform by shifting the responsibility to the consumers of the rural companies would violate that principle. It would do harm.

## 2. The OUSF's Success Does Not Mean it Should be Eliminated.

Qwest, Verizon and TRACER all point out that Oregon has been very successful in obtaining a telecommunications service take rate of approximately 98%.<sup>20</sup> The suggestion, either express or implied, depending on the commenter, is that the OUSF is not needed in light of these take rates.<sup>21</sup> What that discussion fails to realize is achieving the goal of high penetration rates for telecommunications is not a reason that the OUSF should be discontinued. Instead, that is a reason that the OUSF should be continued. As stated by CUB: "Oregon's USF should continue

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<sup>18</sup> Comments by AT&T at p. 3.

<sup>19</sup> Opening Comments of TRACER at p. 3.

<sup>20</sup> Qwest's Opening Comments at p. 2; Opening Comments of Verizon Competitive Providers beginning at p. 4; and Opening Comments of TRACER at p. 2.

<sup>21</sup> Obviously, Warm Springs Telecommunications Company disputes that this goal has been accomplished everywhere in Oregon.

for traditional voice communication. The backbone of universal service has been standalone [sic] basic phone service. By supporting policies to keep stand alone basic local service affordable, Oregon ensures that all of its residents have access to emergency services, and to each other."<sup>22</sup>

There is absolutely no evidence in this record that the 98% level of penetration for telecommunications service can be sustained without OUSF support. It is the combination of federal and state support that has made the penetration rate a success in Oregon. It is not a reason to remove that support. As stated by Commission Staff: "The OUSF was brought into existence by ORS 759.425 to meet the needs of Oregon residents for affordable, basic telecommunications service. The underpinning of ORS 759.425 was the principle laid out in Section 254 of the Telecommunications Act of 1996 ... With the increased requirement for basic and advanced services, the objective stated in the principle cited above [comparable rates for comparable services] has become more important, not less."<sup>23</sup> The OUSF is needed and should continue.

3. The Mere Presence of Unsubsidized Competition Does Not Mean Support Should be Removed.

TRACER and others argue that if there is an unsubsidized competitor in an area, that area should not receive OUSF support.<sup>24</sup> However, what these statements fail to do is to provide any demonstration or mechanism of how the support would be calculated for the areas where there is not the unsubsidized competitor.

The unsubsidized competitor - read that to mean cable telephony - provides telecommunications service only in the areas that it already provides cable TV service. These

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<sup>22</sup> Opening Comments of the Citizen's Utility Board of Oregon at p. 3.

<sup>23</sup> Staff's Comments at Issue 1.

<sup>24</sup> See, e.g., Opening Comments of TRACER at p. 6.

are usually the higher density areas within an exchange. This leaves the lower density areas of that same exchange out in the cold. How would support be calculated for these areas? The telecommunications system in any exchange is an integrated system. There is no good way to understand the cost of service to the less dense areas without competition without taking into account the part of the public network that serves the more dense areas.

In fact, the carrier of last resort (COLR) obligation still exists for the incumbent carrier. The competitor can pick and choose who to serve. The incumbent does not have the same freedom. This basic point is recognized by AT&T, who points out that the unsubsidized competitor does not have COLR obligations: "Unsubsidized competitors do not have the same obligations, such as COLR, and therefore can decide where to provide service and what rates to charge. This should be recognized in making any decision regarding areas to fund."<sup>25</sup> The extent of these COLR obligations are discussed in detail in CenturyLink's Comments.<sup>26</sup>

Commission Staff reaches the same conclusion as AT&T:

Even if there is a large percentage of unsubsidized competition in an area where the incumbent is receiving support, the competitor could be operating in the high density portion of the serving area. The high cost of providing service can generally be attributed to the customers residing outside the core area. The company receiving support is required to serve all of the customers in the area; the unsubsidized company is not required to do so. This allows the unsubsidized company to pick the relatively high-density areas to serve while bypassing the relatively low-density areas that are expensive to serve. This can happen at any geographic level: wire center or total company.<sup>27</sup>

The mere presence of an unsubsidized competitor does not mean an area should lose OUSF support. There are no details provided by the advocates of such a proposal as to how that would be accomplished and, in fact, it is not clear that anything along those lines could be accomplished

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<sup>25</sup> Comments by AT&T at p. 14.

<sup>26</sup> Opening Comments of CenturyLink at p. 5-6.

<sup>27</sup> Staff's Comments at Issue 25.

in any meaningful way. In the end, the suggestion is poor public policy and should not be adopted.

4. The Use of Vouchers Should Not be Entertained.

There were several questions on the use of vouchers. Commission Staff seems to suggest that vouchers might be useful in some circumstances. However, as both AT&T and Warm Springs Telecommunications Company point out, vouchers should not be used.<sup>28</sup> A voucher system would be very difficult to administer. More importantly, the core element that is needed is that the network in rural Oregon needs to be supported. That network would not be supported in a way that is at all reliable, sufficient or predictable under a voucher system. A voucher for OUSF support is inappropriate.

### CONCLUSION

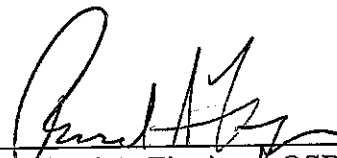
In its Opening Comments, OTA stressed the importance of keeping in mind that the public network that serves rural Oregon is the key for the provision of communications and economic vitality in rural Oregon. It is the ongoing improvement, operation and maintenance of this public network that is the key behind any OUSF policies. It is the crucible for determining whether any idea that is advanced should be adopted. That is, does the idea promote the improvement, operation and maintenance of the public network that serves rural Oregon or does it weaken that public network? This is the test for public policy on universal service.

OTA expresses its sincere thanks to the Commission for providing this opportunity to discuss the public policies surrounding universal service support in the State of Oregon.

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<sup>28</sup> Comments by AT&T at p. 16 and Opening Comments of the Warm Springs Telecommunications Company at p. 3.

Respectfully submitted this 23rd day of November, 2010.

By:   
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CERTIFICATE OF SERVICE  
UM 1481

I certify that I sent the attached Reply Comments of the Oregon Telecommunications Association by electronic mail and U.S. mail to the following:

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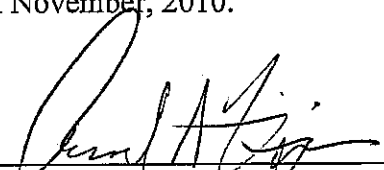
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Dated at Olympia, WA this 23rd day of November, 2010.

By:   
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