

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1481

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| In the Matter of |) | |
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| PUBLIC UTILITY COMMISSION OF OREGON |) | OPENING COMMENTS OF VERIZON COMPETITIVE PROVIDERS |
| |) | |
| Staff Investigation into the Oregon Universal Service Fund |) | |

Pursuant to the Telephone Conference Report issued in this docket on June 22, 2010, MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services; MCI Communications Service, Inc. d/b/a Verizon Business Services; TTI National, Inc.; Teleconnect Long Distance Services and Systems Co. d/b/a Telecom*USA; Verizon Select Services Inc.; Verizon Enterprise Solutions LLC, and Verizon Long Distance LLC (collectively the “Verizon Competitive Providers” or “Verizon”) submit these opening comments.

The Verizon Competitive Providers are competitive telecommunications providers (as defined in ORS 759.005(1)) that are authorized to provide a variety of intrastate telecommunications services in Oregon including local exchange service and interexchange services. These entities are required to collect Oregon Universal Service Fund (“OUSF”) surcharges from their customers for retail, intrastate telecommunications services and remit those surcharges to the OUSF. Therefore, *customers* of Verizon must pay these surcharges to the OUSF to fund operations of other local exchange carriers (“LECs”).

INTRODUCTION AND BACKGROUND

On April 14, 2010, the Commission Staff recommended that the Commission open this docket to investigate the OUSF. In support of its recommendation, Staff stated that due to changes in technology and anticipated action by the Federal Communications Commission (“FCC”), the Commission should explore changes to the fund in order to address broadband deployment and rate rebalancing for intrastate access reform. The Staff recommendation noted that the Commission had not investigated the performance and the operation of the OUSF in the 15 years since its inception. As a result of Staff’s recommendation, the Commission opened this docket.¹ Staff identified seven issues to be addressed, namely:

1. Should there continue to be an Oregon USF?
2. What services should the Oregon USF support?
3. How should the Oregon USF be designed for contribution purposes?
4. How should the Oregon USF be designed for distribution purposes?
5. What should be the requirements to qualify for Oregon USF support?
6. How should end-users contributions be assessed?
7. What changes, if any, should be made to intercarrier compensation, and is rate rebalancing required in order to implement changes to Oregon USF?

On January 19, 2010, the National Regulatory Research Institute issued a report (hereafter “NRRI USF Report”) on the current status of state high cost funds.² It reports that twenty-one states have state high cost funds.³ Conversely, twenty-nine states, the

¹ Public Utility Commission of Oregon Staff Report for Public Meeting Date - April 26, 2010 (Item No.5).

² National Regulatory Research Institute, *State High Cost Funds: Purposes, Design, and Evaluation*, January 19, 2010, (hereafter “the NRRI USF Report”) available at: www.nrri.org/pubs/telecommunications/NRRI_state_high_cost_funds_jan10-04.pdf

³ *Id.*, Executive Summary, p iii.

District of Columbia, and the Virgin Islands do not have state high cost funds.⁴ The NRRI USF Report shows that the OUSF is the sixth largest fund in the country based upon overall fund revenues⁵ and has one of the highest customer surcharge rates in the country.⁶ It is now set at 5.6 percent of customers' intrastate retail telecommunications charges, although it was set at 7.12 percent until February 28, 2010.⁷ Therefore, each month, Oregon consumers currently pay a combined federal and state surcharge of over 18 percent of their retail telecommunications services bill to fund the operations of other local exchange carriers.⁸ This is separate from and in addition to the federal subscriber line charge of up to \$6.50 per month that Oregon LECs may impose on their local service customers. These figures alone demonstrate the critical need to re-examine whether a state USF—and the burdens it imposes on consumers—still makes sense, in light of the technological and market changes that have occurred since the fund's inception.

Below, Verizon addresses several overarching issues identified by Staff or by the parties on the Consolidated Issues List Staff filed on September 8, 2010.

⁴ *Id.* 3.

⁵ *Id.* 60.

⁶ *Id.* 64-5.

⁷ Order No. 10-046 issued in Docket No. UM 731 on February 8, 2010, p 1. At the time the NRRI USF Report was issued, the OUSF surcharge was the highest in the country, *see* NRRI USF Report at 65.

⁸ The federal USF assessment recently reached a high of more than 15%. *Proposed Second Quarter 2010 Universal Service Contribution Factor*, Public Notice, 25 FCC Rcd 2383 (2010) which can be found at: <http://www.fcc.gov/omd/contribution-factor.html>.

COMMENTS

A. SHOULD THERE CONTINUE TO BE AN OREGON USF?

No. Affordable basic local telephone service is already available to all citizens of Oregon. Because the significant intermodal competition that generally developed without OUSF support will continue to ensure that basic telephone service is available to Oregon consumers at affordable rates, the OUSF is obsolete, unnecessary and should be eliminated – or at least substantially reduced.

ORS 759.425 directs the Commission to ensure that “basic telephone service” is available at a reasonable and affordable rate.⁹ In addition, the OUSF may use the OUSF to facilitate the availability of broadband throughout the state.¹⁰ The Commission defined basic telephone service in OAR 860-032-0190(2), in pertinent part, as a “retail telecommunications service that is single party, has voice grade or equivalent transmission parameters and tone-dialing capability, provides local exchange calling, and gives customers access to but does not include: . . .”¹¹

⁹ ORS 759.425(1).

¹⁰ ORS 759.425(6).

¹¹ Under the Commission’s definition, basic telephone service gives customers access to but does not include:

(a) Extended area service (EAS); (b) Long distance service; (c) Relay service for the hearing and speech impaired; (d) Operator service such as call completion assistance, special billing arrangements, service and trouble assistance, and billing inquiry; (e) Directory assistance; and (f) Emergency 9-1-1 service, including E-9-1-1 where available.

(3) Basic telephone service includes , whether sold separately or in a package:

(a) Residential single party flat rate local exchange service; (b) Business single party flat rate local exchange service, also known as "simple" business service; (c) Residential single party measured local exchange service, including local exchange usage; (d) Business single party measured local exchange service, including local exchange usage; (e) Private branch exchange (PBX) trunk service; (f) Multiline or "complex" business service; and (g) Public access line (PAL) service.

(4) Services that are not considered basic telephone service include but are not limited to the following:

(a) Integrated Services Digital Network (ISDN) service; (b) Digital subscriber line service, also known as xDSL service; (c) Frame relay service; (d) Centrex-type service; (e) Private line or dedicated point-to-point

In addition, ORS 759.425 directs the Commission to establish the price that a telecommunications utility may charge its customers for basic telephone service¹² and further directs the Commission to establish a retail rate benchmark for basic telephone service as necessary for the administration and distribution of the OUSF. The OUSF provides explicit support to an eligible telecommunications carrier (“ETC”) that is equal to the difference between the cost of providing basic telephone service and the benchmark, less any explicit compensation received by the carrier from federal sources specifically targeted to recovery of local loop costs and less any explicit support received by the carrier from a federal universal service program. The Commission is directed to limit the difference between the price a telecommunications utility may charge for basic telephone service and the benchmark.¹³

The Commission is also required periodically to review and: i.) evaluate the status of telecommunications services in the state and designate the services included in basic telephone service; and ii.) adjust as necessary the price a telecommunications utility may charge for basic telephone service and the benchmark. When reviewing the benchmark, the Commission is directed to adjust the benchmark 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.¹⁴

service; (f) Packet switched service; (g) Foreign exchange service; (h) Multiparty service, such as two-party and four-party suburban service; and (i) Custom calling features, such as call waiting and caller ID.

¹² ORS 759-425(2).

¹³ ORS 759-425(3).

¹⁴ ORS 759-425(2) and (3) do not apply to basic telephone service provided by a telecommunications utility described in ORS 759.040 relating to exemptions for certain unaffiliated utilities with fewer than

There has been no formal review of the benchmark rate in over ten years since the Commission set it at \$21.00 per month.¹⁵ The Commission should undertake the reviews required by statute before deciding whether to perpetuate the OUSF. As noted by the Staff, no review of the performance or operation of the OUSF has occurred since the OUSF was established, and much has changed in ten years.

1. Changes in Competition in the Telecommunications Industry Since 2000.

Ten years ago, CLECs had 70,221, or just 3%, of the landlines in Oregon,¹⁶ while ILECs, with 2.1 million, had the rest.¹⁷ By the end of 2008, the non-ILECs' (collectively, CLECs and those interconnected VoIP providers that do not have ILEC regulatory status) share of the landline market had grown to 31%. Non-ILECs now have 571,000 landlines, of which 270,000 are VoIP landlines, and ILECs have 1.286 million landlines.¹⁸ Further, Bernstein Research states that four factors underlie today's decline in the wireline business, namely, wireline cord cutting; share loss to cable; second line loss; and share loss by DSL.¹⁹

50,000 access lines. However, by Order No. 03-082 issued in Docket No. UM 1017 on February 3, 2003, at p. 1, rural telecommunications carriers were brought into the Oregon Universal Service Program.

¹⁵ Order No. 00-312 issued in Docket No. UM 731 on June 16, 2000, at p 20.

¹⁶ See FCC, Industry Analysis Division, Common Carrier Bureau, *Trends in Telephone Service Report* ("2001Trends in Telephone Service Report"), Table 9.5 (August 2001), available on-line at: http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend801.pdf

¹⁷ *2001Trends in Telephone Service Report*, Table 9.5.

¹⁸ See FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service Report* ("2010 Trends in Telephone Service Report"), Tables 8.5, 8.6 and 8.7 (September 2010), available on-line at: http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db0930/DOC-301823A1.pdf

¹⁹ Craig Moffett, et al., Bernstein Research, *The Long View: U.S. Telecom – The End of the Lines* (December 8, 2009) at p. 8 (hereafter "2009 Bernstein Research").

The widespread and growing availability of wireless, VoIP and broadband services has resulted in greater choice and lower rates for consumers. This robust intermodal competition has generally evolved without any overt state retail end user funded “universal service” support. Because consumers increasingly have access to quality services provided by a number of competing carriers and alternative technologies at affordable rates, the notion of “universal service” as exclusive access to a traditional landline phone is anachronistic. Insofar as universal service policies were conceived in the context of a single ubiquitous wireline network, the assumptions underlying the OUSF’s creation also need to be re-examined in today’s environment, where consumers have access to multiple suppliers that offer voice services through an array of alternative technologies.

For example, wireless growth has exploded in both rural and urban areas. According to the FCC’s most recent report, as of the end of 2008, 90% of Americans had a mobile wireless device.²⁰ Of the more than 423 million voice lines in service nationwide as of December 31, 2008, over 261 million – more than 61% – were wireless.²¹ By the end of 2008, there were over 4.94 million voice lines in Oregon, and of those, nearly 3.1 million – nearly 63% - were wireless.²² In contrast, ten years ago, there were only 1.2 million wireless subscribers on Oregon.²³

²⁰ See *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Fourteenth Report, WT Docket No. 09-66, FCC 10-81*, ¶ 4, at 5 (May 20, 2010) (proceeding terminated) (hereinafter “*Fourteenth Report*”), available on-line at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-81A1.pdf

²¹ See FCC, Industry Analysis & Technical Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of December 31, 2008* (hereinafter “*Local Telephone Competition Report*”), Tables 1 & 17 (June 2010), available on-line at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-299052A1.pdf

²² *Id.* Tables 8 and 17.

Approximately 284 million people, or 99.6% of the U.S. population, are served by one or more mobile voice providers; about 281 million people, or 98.6%, are served by at least two mobile voice providers, and some 273 million people, or 95.8%, are served by at least three mobile voice providers.²⁴ In many instances, wireless carriers are providing a competitive alternative in historically difficult-to-serve rural areas. Based on census blocks, 98.5% of the U.S. rural population receives coverage by at least one mobile wireless voice provider.²⁵

Finally, a 2010 Center for Disease Control study (“CDC study”) shows that households with landline-only service decreased from 31 to 15 percent during the January 2006 through December 2009 timeframe.²⁶ Wireless-only households rose from 10.5 to 24.5 percent during the same period, and this trend can be expected to continue.²⁷

Particularly compelling is that the use of wireless services has increased dramatically among those considered to be poor.²⁸ The CDC study shows that for the

²³ *2001 Trends in Telephone Service Report*, Table 12.1.

²⁴ *Fourteenth Report*, ¶ 4, at 7. About 280 million people, or 98.1% of the U.S. population, are served by one or more mobile *broadband* providers, according to the FCC’s coverage analysis. Approximately 255 million people, or 89.55 of the U.S. population, are served by two or more mobile broadband providers. Roughly 217 million people, or 76.15 of the population, are served by at least three mobile broadband providers. *Id.*

²⁵ *Id.* at 18.

²⁶ Center for Disease Control, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2009*, released May 12, 2010, at Table 1. This report may be found at: <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201005.htm>

²⁷ *Id.* See also, 2009 Bernstein Research at p. 8

²⁸ See Morgan Stanley Research Report, “Telecom Services – Cutting the Cord: Voice First, Broadband Close Behind (October 1, 2008), **Key Findings**, *Poverty Status*, at p. 2 (“Morgan Stanley Report”).

poor and near poor²⁹, wireless-only households rose from 15.8 and 14.4 percent respectively to 36 and 29 percent respectively during the same period, whereas higher income wireless-only households rose from 9.4 to 19.6 percent during the same period.³⁰ In other words, a relatively larger percentage of the poor or near poor has “cut the cord.” This is further evidence that wireless services are priced competitively with traditional landline services and provide an affordable choice to residential customers in lower income brackets.

From 2003 to the 3rd quarter of 2009, the largest cable multiple service operators (“MSOs”) have acquired 18.3 million VoIP subscribers – roughly a 24 percent market share of total wired primary residential voice lines today.³¹ Moreover, according to the FCC’s most recent report on high-speed Internet access, as of June 30, 2007, cable broadband was available – both nationally and in Oregon – to 96% of households for which cable operators offer cable TV service.³² In addition to cable and wireless companies, independent VoIP providers offer another service choice for consumers. For example, as of December 31, 2008, non-ILECs were providing wireline telephone service to some 270,000 VoIP subscribers in Oregon.³³

²⁹ The CDC study uses U S Census Bureau’s poverty thresholds and defines poor and near poor as follows: “Poor” persons are defined as those below the poverty threshold. “Near poor” persons have incomes of 100% to less than 200% of the poverty threshold. “Not poor” persons have incomes of 200% of the poverty threshold or greater. See footnote 4 to Table 2.

³⁰ Center for Disease Control, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2009*, released May 12, 2010, at Table 2.

³¹ 2009 Bernstein Research at p. 10.

³² See *2010 Trends in Telephone Service Report*, Table 2.8.

³³ *Local Telephone Competition Report* Table 14.

Most if not all of these numerous intermodal service providers can and already do provide affordable voice services to consumers in Oregon without the help of any OUSF support. The Commission should refuse to perpetuate subsidies that technological and competitive developments over the past decade have rendered unnecessary to promote universal service, which is properly understood to mean access to basic telephone service – not to *wireline* telephone service.

2. Changes in Federal Universal Service Support

Oregon LECs are projected to receive approximately \$78.6 million in Federal Universal Service Fund (“FUSF”) support as of the third quarter of 2010.³⁴ Ten years ago, Oregon LECs were projected to receive approximately \$39.2 million in FUSF support³⁵, approximately half of what is projected to be received in 2010.

3. Other Relevant Factors

a. Telephone services are far more affordable than ten years ago

As of November 2009, nearly 98 percent of all Oregon households had telephone service, higher than the national average of 96 percent.³⁶ This is up from 94.8 percent in 2000 (compared with 94.4 percent of households on a national basis). Telephone services are far more affordable now than they were ten years ago, when the

³⁴ See USAC, *High Cost Support Projected by State –3Q2010*, App. HC02, available on-line at: <http://www.universalservice.org/about/governance/fcc-filings/2010/quarter-3.aspx> (“USAC 3Q2010”); see also <http://www.universalservice.org/about/universal-service/fund-facts/fund-facts.aspx>. The [Universal Service Administrative Company \(“USAC”\)](#) is an independent, not-for-profit corporation designated as the administrator of the federal Universal Service Fund by the Federal Communications Commission (“FCC”).

³⁵ <http://www.universalservice.org/about/governance/fcc-filings/2000/default.aspx>

³⁶ FCC, Industry Analysis & Technical Division, Wireline Competition Bureau, *Telephone Subscribership in the United States*, Data through March 2010 (hereinafter “*2010 Telephone Subscribership Report*”), Table 2 (August 2010), available on-line at: http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db0831/DOC-301241A1.pdf

Telecommunications Act of 1996 (“TA 96”) was in its infancy. Wireless prices have declined nationwide by more than 50% since 2001.³⁷ Prices charged by wireless, VoIP and other intermodal competitors have also constrained the rates ILECs can charge for traditional voice service, because the competing services are highly cross-elastic.³⁸

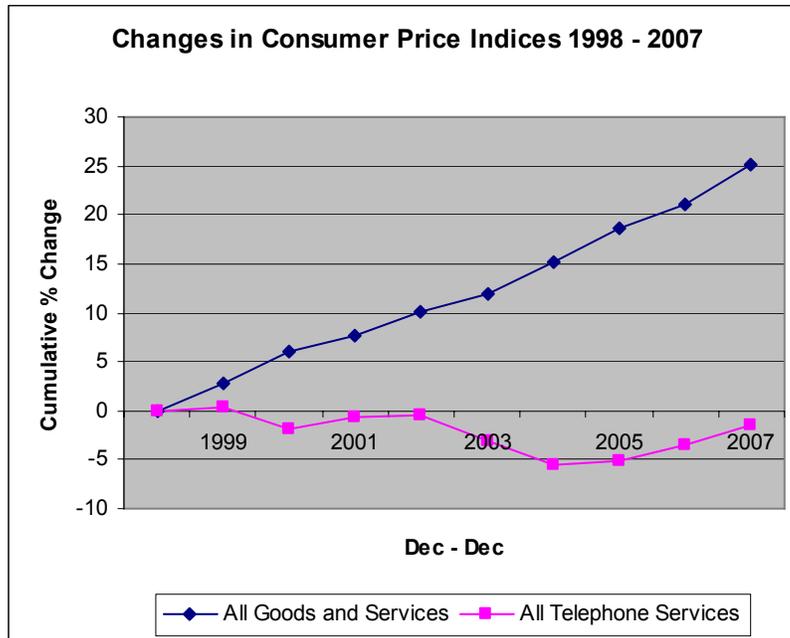
According to the FCC, from 1996 to 2006, expenditures on telephone service as a percentage of total household expenditures remained relatively stable, ranging from 2.25% to 2.35%.³⁹ However, the overall bills paid by customers for telephone services, already widely affordable, have become even more so as a result of competition generally and the increase in bundled service offerings. For example, the prices for total telephone service *decreased* 25.6% from 1998 to 2007, after adjusting for inflation; at the same time, the cost of all consumer items *increased* 25.2%.⁴⁰ Thus, as reflected in the graph below, voice service has been growing increasingly affordable, both in real terms and when compared to the costs of other services:

³⁷ See Kate Griffin, Yankee Group, *Pervasive Substitution Precedes Displacement and Fixed-Mobile Convergence in Latest Wireless Trends* at Exhibit 2 (December 2005).

³⁸ See, e.g., Marguerite Reardon, *Verizon Plays Hardball on Pricing*, News.com, Nov. 9, 2005, http://news.com.com/Verizon+plays+hardball+on+pricing/2100-1037_3-5942158.html. (“Verizon Communications has reduced rates on its traditional telephony service to new lows as it tries to compete with cable companies who are now offering telephony as part of their own packages.”); Jeffrey Halpern, Sanford C. Bernstein & Co., Inc., *The State of the US Telecom Market and a Preference for Verizon*, at 4 (June 16, 2006) (“Steep Declines in Consumer Voice ARPU: RBOCs discount voice pricing to compete with cable VoIP, Verizon Freedom now priced at parity with some VoIP offers; AT&T not far behind.”).

³⁹ See FCC Industry Analysis & Technology Division Wireline Competition Bureau, Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service (August 2008) (“*2008 Reference Book*”), available on-line at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284934A1.pdf, at Table 2.1 – Average Residential Rates for Local Service in Urban Areas, 1986-2007. Much of the change in the price of local residential services did not result from changes in the monthly rate, but from increases in the subscriber line charge (“SLC”), taxes, 911 and other charges. For example, while the average monthly charge for residential service increased 18.4% from 1994 to 2007 (\$13.19 to \$15.62), taxes, 911, and other charges on average grew 84.4% (\$2.31 to \$4.26) at Table 1.2.

⁴⁰ See *id.* at Table 3.1.



The trend toward more affordable traditional and non-traditional voice services appears to be consistent in both rural and urban areas and since offerings by cable, wireless, and VoIP providers increasingly include nationwide calling plans with unlimited minutes of use.⁴¹

b. Expanding the OUSF undermines affordability

Of course, USF support is not free money. Parties in proceedings around the country – including consumer advocate agencies – have stressed the anti-consumer aspects of creating and expanding state universal service funds. For example, the Colorado Consumer Counsel has recommended changes that would cut the existing

⁴¹ See, e.g., Verizon Wireless, *Calling Plans*, <http://www.verizonwireless.com/b2c/store/controller?item=planFirst&action=viewPlanOverview> (offering nationwide wireless calling plans and unlimited minutes of use); Vonage, <http://www.vonage.com/> (a VoIP provider offering nationwide calling plans and unlimited minutes of use); Net2Phone, <http://web.net2phone.com/consumer/voiceline/plans.asp> (a VoIP provider offering nationwide calling plans and unlimited minutes of use).

Colorado high-cost fund nearly in half.⁴² In Washington, the Public Counsel concluded that there was no need to establish a new state Universal Service Fund, which would “merely add to the financial burden already borne by consumers for the federal program.”⁴³ In this regard, both consumer advocates cited the adverse impact state USF surcharges have on the affordability of basic telephone service. This Commission must consider the consumer impact of potentially expanding the size of the OUSF, which would increase a state surcharge imposed on Oregon consumers that is already one of the highest in the country.

Both ORS 759.425 and the TA 96 describe the goal of universal service support as providing “access to” telephone service at “affordable rates.”⁴⁴ As stated earlier, as of November 2009, the nearly 98 percent of households in Oregon had telephone service,⁴⁵ above the national average of 96 percent.⁴⁶ That penetration rate is the result of current market forces, including competitive growth stemming from continued investments in advanced technologies, price reductions and the availability of bundled services. These dynamic market forces have advanced and achieved universal service goals. Because

⁴² See, e.g., *Initial Comments of the Colorado Office of Consumer Counsel*, Docket No. 10R-191T, at 1-2 (Aug. 20, 2010); See also Remarks of Ron Binz, Chairman of Colorado Public Utilities Commission, *Telecommunications in 2010 at the Colorado PUC*, unnumbered slide 14 titled “Impact of Changes to CHCSM”, dated January 6, 2010 and delivered to the Colorado Bar Association, Telecommunications Section.. These remarks can be found at <http://www.dora.state.co.us/puc/about/BinzPresentations.htm> and demonstrate that the OCC proposals would reduce the size of the CHCSM by \$30 million.

⁴³ See Docket UT-100562 entitled *Policy Statement to Review State Universal Service Policies, Initial Comments of Public Counsel*, Docket UT-100562, at 3-4 (June 16, 2010.).

⁴⁴ 47 U.S.C. § 254(b); C.R.S. § 40-15-502(3) (stating that the legislative goal is to make basic service available and affordable to all citizens of Colorado).

⁴⁵ See, e.g., *Telephone Subscribership in the United States*, Released February 2010, Table 3. These reports can be found at: <http://www.fcc.gov/wcb/iatd/lec.html>.

⁴⁶ *Id.*

universal service goals have been satisfied through market forces, supplemental state universal service support is unnecessary.

Instead, the Commission should phase down intrastate support levels in Oregon. Funding is projected to be about \$44 million in 2010, and will primarily benefit wireline ILECs⁴⁷ who will receive an additional \$78.6 million in federal high-cost support.⁴⁸ These sizeable support levels carry a heavy price for consumers, who ultimately bear the burden of high cost support through Commission-approved OUSF surcharges.⁴⁹ This heavy price causes the OUSF to undermine – not advance – the statutory goal that telecommunications services remain just, reasonable, and affordable.

As the Tenth Circuit Court of Appeals has recognized, “excessive subsidization may affect the affordability of telecommunications services, thus violating the principle in 47 U.S.C. § 254(b)(1).”⁵⁰ Interpreting the TA 96, the D.C. Circuit held that the FCC has an affirmative obligation to manage the size of the federal fund and ensure that it is no larger than necessary. The D.C. Circuit found that the FCC must “balance the risks of excessive subsidization with the principles set forth in § 254(b) . . . the Commission must consider not only the possibility of pricing some customers out of the market altogether, but the need to limit the burden on customers” who pay for the fund.⁵¹ In light of the

⁴⁷ See Appendix A to ⁴⁷ Order No. 10-046 issued in Docket No. UM 731 on February 8, 2010.

⁴⁸ See footnote 61, *infra*.

⁴⁹ In addition, service providers in Oregon must establish billing systems and administer the OUSF.

⁵⁰ *Qwest Communications International v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005); see also *Alenco Communications v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000) (“excess subsidization may in some cases detract from universal service by causing rates unnecessarily to rise, thereby pricing some consumers out of the market.”).

⁵¹ See *Rural Cellular Association, et al. v. FCC*, 588 F.3d 1095, 2009 U.S. App. LEXIS 26976, *16 (D.C. Cir. 2009).

numerous competitive choices available to consumers for the provision of basic service at affordable rates, the Commission should not require Oregon consumers to bear the heavy price of finding the OUSF.

Affordable basic local telephone service and broadband services are already available to all citizens of Oregon at reasonable rates, rendering the OUSF unnecessary. If the Commission chooses not to immediately eliminate the OUSF, it must undertake the reviews required by statute before deciding whether the OUSF should be continued or expanded. Since no review of the performance or operation of the OUSF has occurred since the OUSF was established, the impact of competition has not been fully studied and the benchmark rate is out of date.

B. WHAT SERVICES SHOULD THE OREGON USF SUPPORT?

ORS 759.425 directs the Commission to ensure that basic telephone service is available at a reasonable and affordable rate. In addition, the OUSF may be used to facilitate the availability of broadband throughout the state. Nothing in the current statute authorizes the support of any other services.

Expanding the scope of the services supported by the OUSF would require legislative approval,⁵² is unnecessary and inappropriate. Indeed, as explained above, expanding the OUSF right now would be exactly the wrong step for the Commission to take. The Commission's historical policy goal of ensuring the widespread availability of telecommunications services at reasonable rates must be examined in light of numerous

⁵² For example, ORS 759.425(7) states that “ ‘retail telecommunications service’ does not include radio communications service, radio paging service, commercial mobile radio service, personal communications service or cellular communications service” thereby precluding assessment of the OUSGF surcharge on wireless carriers.

developments over the past decade – including the rise of competition, technological innovation, and the proliferation of intramodal and intermodal service providers – that have dramatically altered the communications landscape.

Moreover, any discussion about expansion or design of the OUSF, or the services it supports, is premature without knowing whether and how the FCC will implement its National Broadband Plan⁵³ (“NBP”) proposals. The FCC’s decisions in this regard will likely have a major impact on appropriate state actions. If there is any need for additional state funding, it will become apparent only after the FCC determines how it will implement the NBP. At this point, however, the only actions this Commission should be considering are those—like reductions in excessive action charges and state funds—that are plainly consistent with the NBP’s objective of pushing carriers to recover more of their costs from their own end users, instead of from other carriers.⁵⁴

It is also premature to consider expanding the OUSF before the Commission has evidence showing to what extent broadband is now available in Oregon. The Commission, in conjunction with Broadband Advisory Council, has received a grant of more than \$5.6 million from the National Telecommunications and Information Administration to: 1.) collect comprehensive, statewide broadband data on a detailed and disaggregated basis; 2.) process and map the information into a GIS system; 3.) inventory the data; and 4.) provide the means to aggregate the result for a comprehensive state-wide

⁵³ Federal Communications Commission, “Connecting America: The National Broadband Plan” (<http://www.broadband.gov/download-plan/>) (March 16, 2010).

⁵⁴ See National Broadband Plan Connecting America, Recommendation 8.7:

broadband map that includes technology type and speed.⁵⁵ This data-gathering process is still in the initial stages. Once the Commission completes the contemplated statutory reviews, Verizon is confident that the review will show that the OUSF is no longer necessary to support basic telephone service or to facilitate the widespread availability of broadband services. If there are pockets of unserved areas—which the Commission will know only after the review is complete—then the Commission can focus on solutions targeted to those areas at that time.

C. HOW SHOULD END-USER CONTRIBUTIONS BE ASSESSED?

To the extent the OUSF support continues to exist (and it should not), end-user contributions should be assessed in the same manner as they are now. In no event should the Commission consider imposing OUSF surcharges on wireless or VoIP services. Burdening new and innovative services and technologies with the obligation to finance the LECs' legacy business operations is plainly not in the public interest. Doing so would only retard the progress these technologies and providers have made in advancing and maintaining universal service.

The end user customers of some firms—wireless, VoIP, or wireline—should not be forced to subsidize the customers of other firms—that is, the ILECs—particularly when the ILECs may not be charging retail rates commensurate with the costs of their

⁵⁵ <http://www2.ntia.doc.gov/grantee/public-utility-commission-of-oregon> *see also*, Oregon Telecommunications Coordinating Council Minutes of October 28, 2009, describing the OPUC application for a grant that can be found at: <http://www.ortcc.org/meetingpage.html>

local services or the rates charged to other Oregon consumers for comparable services.⁵⁶ Trying to impose what would effectively be a tax on wireless and VoIP customers to support the rural LECs will chill innovation and drive investment from Oregon.

Finally pursuant to ORS 759.425(7), the Commission cannot require non-eligible telecommunications carrier (“ETC”) wireless carriers to assess an OUSF surcharge on the services provided to their customers because such services are exempt from such contribution unless the wireless carrier seeks ETC status in Oregon.⁵⁷

D. WHAT CHANGES, IF ANY, SHOULD BE MADE TO INTERCARRIER COMPENSATION, AND IS RATE REBALANCING REQUIRED IN ORDER TO IMPLEMENT CHANGES TO OREGON USF?

Intrastate access charges should be reformed to move carriers towards a more rational pricing structure. Today in Oregon, there is a wide disparity among the local exchange carriers’ access rates, from less than what Qwest, the largest carrier charges, to many times than what Qwest charges. Consistent with the National Broadband Plan and the nationwide trend, the Commission should act promptly to reduce the most excessive access rates, so that local exchange carriers recover more of their costs from their own retail customers and not from other carriers and their customers. All carriers should move to a uniform rate. The most appropriate rate is Qwest’s rate because, as a Regional Bell Operating Company, its rates have generally been subject to the strictest scrutiny.

To the extent carriers believe they need to recover revenues lost through access reductions, they should be permitted to rebalance their regulated retail rates to do so. But

⁵⁶ See Letter filed on behalf of the Oregon Telecommunications Association (“OTA”) filed in this docket on July 19, 2010, regarding local rates that shows the current local residential rates including EAS of the OTA members and demonstrates that many are not charging the \$21 benchmark rate.

⁵⁷ See ORS 759.425(4), (7) and (8).

to the extent the question assumes that rebalancing should be linked to expansion of the state USF, Verizon vigorously disputes that assumption. There is no need to expand the OUSF in conjunction with implementing intrastate switched access charge reform.

In order to promote universal service goals in the past, regulators often set the access charges of LECs at artificially high levels to keep basic exchange service rates for residential consumers below market rates. This approach is no longer sustainable in a competitive environment. Permitting LECs to charge unreasonably high access rates provides these carriers with a competitive advantage because they are able to recover disproportionately more of their costs from other carriers (*i.e.*, their competitors) rather than from their own end users through their retail rates. This cost-shifting distorts competition in interexchange and local markets and harms consumers. Unreasonably high access charges deprive carriers of resources they could otherwise use to introduce new services, improve service quality, enhance their networks, or reduce rates. At the same time, because LECs are able to maintain local service rates at artificially low levels, this discourages competitive entry and denies consumers the benefits that such competition would bring.

Expanding the OUSF in order to replace access charge revenues would be bad public policy. A subsidy is a subsidy, regardless of whether it takes the form of an excessive intrastate switched access rate or a mandatory contribution to a fund designed to recover foregone access revenues. Shifting the revenue burden from one carrier-funded source (access rates) to another (the OUSF) would do nothing to solve the fundamental problem that some LECs are collecting too great a portion of their costs from other carriers, rather than their own end users. Expanding the OUSF as an

insurance policy against reduced access revenues and lower LEC profits would insulate one set of providers from the risks and rigors of competition, and is thus incompatible with a healthy, competitive market for communication services.

The far better solution is to grant all carriers sufficient retail pricing flexibility for their regulated services to allow them a reasonable opportunity to recover their network costs, as well as relaxing any legacy regulatory constraints that may apply to them and not their competitors. Carriers should recoup any foregone access revenues that they choose not to absorb through their rates for retail services. Thus, moving ILEC local rates closer to their underlying costs would have the salutary effect of sending appropriate pricing signals to the market and creating incentives for ILECs to operate more efficiently.

Proceeding in this manner would be far superior to shifting an ILEC's existing intrastate access revenue stream to the OUSF and allowing the ILEC to obtain funding from that source. The latter approach would create an inappropriate "entitlement" mechanism with all of its drawbacks, including insulating LECs drawing from the OUSF from the rigors of the competitive marketplace, to the detriment of competition and consumers.

ILECs should not be able to retain the substantial subsidies currently generated from intrastate switched access services in perpetuity, in direct contravention of the NBP's recommendation that per-minute charges be eliminated completely by 2020.⁵⁸ For the foregoing reasons, the Commission should reject proposals to use a state USF as a replacement vehicle for preserving access revenues, and instead allow all LECS to

⁵⁸ See NBP at 148.

recover their costs primarily from their own retail customers.

CONCLUSION

Mechanisms to support universal service in high cost areas should not exist in a vacuum; they must be consistent with other policy goals of the legislature and Commission. In particular, the OUSF should be recognized as a tool to preserve and advance universal service only *when* market forces are not effectively preserving or advancing Oregon's universal service goals. When universal service at affordable rates is achieved through market forces, universal service support is not necessary. That is the case now, and is why the OUSF should be eliminated or dramatically reduced in size.

Accordingly and for the reasons stated herein, the Commission should oppose the proposed legislation offered by the Oregon Telecommunications Association and instead investigate elimination of or at least a substantial reduction of the OUSF.

DATED: October 25, 2010

Respectfully submitted,



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CERTIFICATE OF SERVICE

UM 1481

I hereby certify that on the 25th day of October 2010, I served the foregoing **OPENING COMMENTS OF VERIZON COMPETITIVE PROVIDERS** in the above entitled docket on the following persons by email and via U.S. Mail by those who have not waived paper service, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below:

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DATED this 25th day of October 2010.

/s/ Christine M. Becerra