

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 DOCKET NO. UM 1017(3)

4 In the Matter of the
5 PUBLIC UTILITY COMMISSION OF
6 OREGON

7 Investigation into Expansion of the Oregon
8 Universal Service Fund to Include the Service
9 Areas of Rural Telecommunications Carriers

**RESPONSE OF THE OREGON
CABLE TELECOMMUNICATIONS
ASSOCIATION TO THE BRIEF OF
THE OREGON EXCHANGE
CARRIER ASSOCIATION
CONCERNING THE QUESTION OF
WHETHER THE PROPOSAL OF THE
OREGON EXCHANGE CARRIER
ASSOCIATION IS CONSISTENT
WITH ORS 759.425**

10 **I. INTRODUCTION**

11 This brief is filed by the Oregon Cable Telecommunications Association
12 (“OCTA”) in response to the September 8, 2011, brief filed by the Oregon Exchange Carrier
13 Association (“OECA”). OECA argues that its proposal to base Oregon Universal Service Fund
14 (“OUSF”) funding on wholesale intrastate access reductions (“Proposal”) complies with
15 ORS 759.425. For the reasons that follow, OCTA respectfully disagrees.

16 **II. ARGUMENT**

17 OCTA agrees with and incorporates by reference the analysis and argument in the
18 September 22, 2011, response submitted by Comcast, Tracer, and TW Telecom (“Joint Brief”).
19 OCTA writes separately to address an additional statutory compliance issue of concern to its
20 cable telecommunications members: The unfair competitive advantage that will be enjoyed by
21 rural local exchange carriers (“RLECs”) if the Proposal is approved.

22 ORS 759.425(1) provides that the “Public Utility Commission shall establish and
23 implement a competitively neutral and non-discriminatory universal service fund.” The Proposal
24 violates this requirement with respect to non-regulated services such as Internet, because the
25 Proposal would effectively subsidize such services provided by a certain class of competitor
26 using a specific technology.

1 As noted in the Joint Brief, the Proposal violates ORS 759.425(3) by de-coupling
2 the determination of the OUSF from the actual costs of providing basic telephone service. By
3 providing increased support for RLEC public switched telecommunications networks (“PSTN”)
4 generally, the Proposal would provide a competitive advantage to RLECs by allowing them to
5 offer unregulated broadband services that leverage the same OUSF-subsidized copper system.
6 Competitors that provide broadband services via other technologies such as cable or wireless do
7 not have the advantage of doing so over infrastructure supported by the OUSF.

8 Some OCTA members compete directly with RLECs receiving OUSF support,
9 and a number of RLECs offer video services in direct competition to OCTA members. Any
10 increase in OUSF support that is not directly tied to the costs of providing basic telephone
11 service will effectively subsidize non-regulated services provided by RLECs in a way that will
12 chill or limit competition. Under OECA’s argument that anything that supports the PSTN is
13 “basic telephone service,” rural OUSF recipients will be able to use the increased OUSF support
14 to develop and enhance their Internet, VoIP, and video services and, potentially, to expand their
15 service footprint to compete directly against OCTA members. This will chill competition
16 because OCTA members will be reluctant to invest in expanding their services into areas where
17 competitors’ systems are subsidized.

18 Such a subsidy may also have the unintended effect of distorting the market for
19 broadband in rural areas by making DSL more attractive, but delaying development of
20 alternatives such as digital cable Internet and 4G LTE wireless. This is inconsistent with the
21 general legislative direction in ORS 759.015 and 759.016 to encourage innovation in the market
22 place to promote access to broadband services and remove barriers to access.

23 The Proposal also provides an indirect anti-competitive subsidy to the extent that
24 it replaces lost revenue due to decreases in the number of access lines. Such decreases are driven
25 in part by the RLECs’ own DSL offerings, which allow customers to replace existing access
26 lines with Internet capabilities such as VoIP and Internet facsimile service while providing

1 additional non-regulated revenue streams to the RLECs. Carriers should not be able to seek
2 OUSF support for losses in regulated revenue while at the same time benefitting from new
3 unregulated revenue streams.

4 Any government subsidy of a private company runs the risk of diminishing
5 competition unless it is carefully structured. The limitation in ORS 759.425(1) that the OUSF be
6 competitively neutral and non-discriminatory recognizes—and directs the Public Utility
7 Commission ("PUC") to address—this problem. This statutory limitation provides further
8 contextual support for the interpretations in the Joint Brief that the statutory basis for the OUSF
9 is limited to support of basic telephone service, and that ORS 759.425(3) mandates use of a very
10 specific formula for calculating the OUSF. See State v. Gaines, 346 Or 160, 206 P3d 1042
11 (2009). The statutory scheme reflects a careful balancing of the need to support affordable basic
12 telephone service in rural Oregon, the need to ensure and encourage fair and equal competition,
13 and the need to protect ratepayers from excessive charges. The OECA Proposal would upset this
14 balance.

15 III. CONCLUSION

16 For the reasons stated above, OCTA submits that the OECA Proposal is
17 inconsistent with the requirements of ORS 759.425 and therefore is outside of the PUC's
18 authority. If OECA believes a change to these requirements is necessary, then it needs to make
19 its case to the Oregon Legislature.

20 Dated: September 22, 2011

21 MILLER NASH LLP

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23 _____
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CERTIFICATE OF FILING AND SERVICE

I certify that I have this day sent the foregoing Response of the Oregon Cable Telecommunications Association to the Brief of the Oregon Exchange Carrier Association Concerning the Question of Whether the Proposal of the Oregon Exchange Carrier Association is Consistent with ORS 759.425 by electronic mail and Federal Express to the following:

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I further certify that I have this day sent the attached Response of the Oregon Cable Telecommunications Association to the Brief of the Oregon Exchange Carrier Association Concerning the Question of Whether the Proposal of the Oregon Exchange Carrier Association is Consistent with ORS 759.425 by electronic mail to the following parties or attorneys of parties on:

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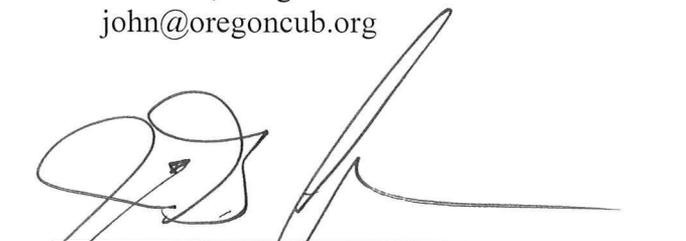
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