

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 **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  
Areas of Rural Telecommunications Carriers

THE STAFF OF THE PUBLIC UTILITY  
COMMISSION OF OREGON'S RESPONSE  
BRIEF

9 **1. Introduction and Summary**

10 Staff of the Public Utility Commission of Oregon (staff) submits its responsive brief to  
11 the opening brief submitted by the Oregon Exchange Carrier Association (OECA). In summary,  
12 staff agrees with OECA on the primary issue it briefed. Specifically, the Commission's decision  
13 in its Order 03-082 to allow "rural local exchange carriers" (RLECs) to use the support money  
14 provided by the Oregon Universal Service Fund (OUSF or Fund) to reduce carrier access charges  
15 is lawful and not inconsistent with ORS 759.425 and OAR 860-032-0190. However, staff  
16 concludes that OECA's Proposal (Proposal), as set forth in OECA/100 and 200 and OECA/200-  
17 207, is inconsistent with ORS 759.425(3) and thus unlawful.

18 **2. Caveat about use of "facts"**

19 At the request of the parties, this docket was bifurcated to allow briefing of a critical  
20 threshold issue: whether the Commission has legal authority to adopt OECA's proposed  
21 expansion of the OUSF. *See* Administrative Law Judge Ruling dated August 29, 2011. OECA  
22 is the only party to submit testimony and exhibits under the current schedule. As such, staff  
23 accepts the facts presented by OECA only for the purposes of this responsive brief. Should this  
24 matter proceed after resolution of the threshold legal question, staff expressly reserves the right  
25 to challenge any fact presented by OECA.

26 ///

1 **3. Staff agrees with OECA that the Commission may lawfully allow RLECs to use**  
2 **OUSF support to reduce their carrier access charges**

3 OECA's Opening Brief primarily defends the legality of using OUSF support to reduce  
4 intrastate access charges. Staff agrees with OECA's analysis on this issue and will not further  
5 brief it. Simply stated, the Commission's decision in its Order No. 03-082 on how the RLECs  
6 may use Fund support is not inconsistent ORS 759.425 or OAR 860-032-0190.

7 **4. Important aspects of OECA's Proposal are not consistent with ORS 759.425(3) and**  
8 **are thus unlawful**

9 Staff concludes that aspects of the Proposal, as staff understands it, are inconsistent with  
10 ORS 759.425(3). Staff will begin its discussion with a short explanation of how ORS 759.425 is  
11 structured, followed by a short primer on how OUSF support is currently disbursed to RLECs  
12 today. Staff will then explain its understanding of the Proposal and discuss why staff concludes  
13 it is unlawful.

14 *A. ORS 759.425*

15 Preliminarily, staff agrees with OECA that ORS 759.425(1) sets forth the general purpose  
16 for the OUSF as follows: subject to one exception, the Commission is to use Fund support "to  
17 ensure basic telephone service is available at a reasonable and affordable rate." ORS 759.425(1).  
18 The single exception to the use of the support for basic telephone service is found in ORS  
19 759.425(6). Under ORS 759.425(6), OUSF moneys may be used to facilitate the availability of  
20 broadband under certain circumstances. As stated, staff agrees with OECA that the current use  
21 of the Fund support, to reduce carrier access charges, is not inconsistent with ORS 759.425(1).

22 After having set forth the purpose for the OUSF in ORS 79.425(1), ORS 759.425(3) then  
23 mandates how the Commission is to "size" the Fund: an eligible carrier will receive support that  
24 is:

25 "equal to the difference between the cost of providing basic telephone service and  
26 the benchmark, less any explicit compensation received by the carrier from federal  
sources specifically targeted to recovery of the local loop costs and less any

1 explicit support received by the carrier from a federal universal service program.”  
2 See also Order 03-082, “Impacts” at 4 (for RLECs); Order 00-312 at 23-24 (for  
3 non-rural incumbent local exchange carriers).

4 The Commission establishes a “benchmark” for basic telephone service as necessary for  
5 the administration and distribution of the Fund. ORS 759.425(3). In implementing ORS  
6 759.425, for both “non-rural incumbent local exchange carriers” (ILECs) and for RLECs, the  
7 Commission has set the benchmark at \$21.00 per month for telephone lines. See generally Order  
8 03-082 at 4; Order 00-312 at 23-24.

9 While it is not entirely clear from OECA’s Opening Brief, to the extent the Association is  
10 trying to assert the Commission is not required to follow the formula found in ORS 759.425(3)  
11 in order to size the Fund, staff disagrees with it. See OECA Opening Brief at 10-17. OECA  
12 cannot simply read ORS 759.425(3) out of existence. See *PGE v. BOLI*, 317 OR 606 (1993).

13 *B. Current Method for sizing the Fund and disbursing support to RLECs*

14 The Commission currently sizes the Fund and disburses support to the RLECs as follows:

15 Current Method

16 1. Develop the Projected Total Company Revenue Requirement [from information  
17 provide by the RLECs];

18 2. To determine the Local Revenue Requirement [which is an equivalent concept to  
19 the economic “cost of providing basic telephone service” component of the formula  
20 provided in ORS 759.425(3)] deduct the following from the Total Company Revenue

Requirement:

- 21 a. Interstate revenue requirement;
- 22 b. Intrastate special access, billing and collection, and intrastate access
- 23 revenue requirements; and
- 24 c. EAS revenue requirement.

25 ///

26 ///

1           3.       Convert Local Revenue Requirement into a monthly per line revenue requirement  
2           by taking the following deductions:

- 3                   a.       Deduct the “Benchmark” (as stated earlier, the Commission decided in  
4                   Order 03-082 to set the RLEC benchmark at \$21 per line); and  
5                   b.       Deduct federal loop compensation (known as the SLC) and the federal  
6                   USF support per line.<sup>1</sup>

7           The Current Method funding methodology accomplishes two important goals:

- 8                   (1)     By calculating a Local Revenue Requirement, it properly focuses on  
9                   providing support for the cost of providing basic telephone service;  
10                  (2)     By using the \$21 Benchmark, it establishes which companies receive  
11                  support and it establishes how much support each company should receive.

12           C.       OECA’s Proposal

13           Staff provides the following description of what it understands to be the Proposal only for  
14           the purpose of explaining how the Proposal is inconsistent with ORS 759.425(3). As such,  
15           staff’s description is not intended to address every nuance and detail of the Proposal. Further,  
16           staff refers to “its understanding of the Proposal” because the current briefing phase occurs prior  
17           to completion of the evidentiary phase, including discovery, in this docket. As such, it is  
18           possible that staff’s understanding of the Proposal is incorrect. If so, staff expects OECA will  
19           point out, and correct, any misstatements by staff in its reply brief.

20           Proposal<sup>2</sup>

21           1.     Develop the Projected Total Company Revenue Requirement [from information  
22           provided by the RLECs];

23           \_\_\_\_\_  
24           <sup>1</sup> This is of course a greatly simplified explanation of the components of the current OUSF  
25           Funding methodology. For a more complete discussion, refer to Order 03-082 and the  
26           accompanying Stipulation.

25           <sup>2</sup> This is a simplified explanation of the Proposal for illustrative purposes only. For greater  
26           detail, refer to OECA/201 and the accompanying explanation at OECA/200.

1           2. Deduct the following from the Total Company Revenue Requirement to determine  
2           carrier *Intrastate Access Revenue*:

- 3           a. interstate revenue requirement;  
4           b. intrastate special access, and billing and collection revenue requirements;  
5           c. EAS revenue requirement; and  
6           d. Local Revenue Requirement.

7           3. To determine the (*additional*)<sup>3</sup> OUSF support, deduct the following from the  
8           Intrastate Access Revenue requirement:

- 9           a. intrastate revenues (calculated using interstate rates multiplied by intrastate  
10           minutes); and  
11           b. current OUSF support (calculated under the Current Method).

12           D.     *The Proposal is unlawful under ORS 759.425(3)*

13           As discussed, other than a limited exception for broadband service, ORS 759.425(1)  
14           states that the purpose of the Fund is to ensure basic telephone service is available at a  
15           reasonable and affordable rate. However, staff understands the goal of the Proposal to be to  
16           “size” the Fund under ORS 759.425(3) to directly support the OCEA’s members’ intrastate  
17           switched access service (also referred to as “long distance service”). But, the Commission has  
18           expressly excluded “long distance services” from the definition of basic telephone service. *See*  
19           OAR 860-032-0190(2)(b)<sup>4</sup>. Thus, the Proposal is inconsistent with ORS 759.425(3) because it is  
20           expressly structured to size the fund to essentially support long distance services (i.e. intrastate  
21           access revenue), a non-basic telephone service.<sup>5</sup>

22           \_\_\_\_\_

23           <sup>3</sup> It is important to note that the OUSF support arising from the Proposal is in *addition to*, not a  
24           replacement for, the OUSF support the OECA members currently receive.

25           <sup>4</sup> The Commission’s rule implements ORS 759.400.

26           <sup>5</sup> This conclusion about *sizing* the Fund under ORS 759.425(3) does not suggest that the support  
              provided by the Fund, once properly sized, may not be *used* to support access to long distance  
              services. Such a *use* is lawful under ORS 759.425(1) for reasons discussed earlier.

1 Comparing the Proposal to the Current Method, it is easily seen how the Current Method  
2 lawfully focuses on the Local Revenue Requirement (i.e cost to provide basic local telephone  
3 service) to size the Fund and uses the \$21 benchmark to identify carriers eligible for support and  
4 also the amount of support each should receive. Conversely, the Proposal unlawfully focuses on  
5 Intrastate Access Revenue requirement (i.e. the RLECs' long distance services, a non-basic  
6 telephone service).

7 Further, the Proposal ignores the use of a cost-based benchmark to determine how much  
8 support to distribute to eligible carriers. While the OECA asserts that the Proposal employs a  
9 benchmark, the Proposal's so-called benchmark actually plays no role as a point of reference to  
10 determine the amount of additional support a company should receive or in establishing which  
11 companies are eligible to receive the additional support. Indeed, the Proposal's benchmark is  
12 found in a section of the formula that is completely peripheral to the main calculation. *See*  
13 OECA/201, line 11c. Stated differently, removal of the Proposal's benchmark would have no  
14 impact on the final results and thus is ineffective as a reference point to determine support  
15 amount.

16 Finally, as briefly discussed in footnote 3, OECA does not intend for the Proposal to  
17 replace the Current Method. Rather, the Proposal is structured to generate support in addition to  
18 that already provided by the Current Method to support basic telephone service (\$12 million  
19 more). While it is not clear whether a hybrid approach to calculate Fund support is permitted  
20 under ORS 759.425(3), it is not necessary to analyze the question since the goal of the Proposal,  
21 to support the RLECs' non-basic long distance services, is unlawful.

22 ///  
23 ///  
24 ///  
25 ///  
26 ///

1 **5. Conclusion**

2 For the reasons stated, the Administrative Law Judge and the Commission should reject  
3 OECA's Proposal because it is unlawful under ORS 759.425(3).

4 Dated this 22<sup>nd</sup> day of September, 2011.

5 Respectfully submitted,

6 JOHN R. KROGER  
7 Attorney General

8 

9 Michael T. Weirich, #82425  
10 Assistant Attorney General  
11 Of Attorneys for Staff of the Public Utility  
12 Commission of Oregon

1 **CERTIFICATE OF SERVICE**

2 I certify that on September 22, 2011, I served the foregoing The Staff of the Public Utility  
3 Commission of Oregon's Response Brief upon the parties in this proceeding by electronic mail.

4 **W**  
5 CHARLES L BEST  
6 ATTORNEY AT LAW  
7 1631 NE BROADWAY #538  
8 PORTLAND OR 97232-1425  
9 chuck@charleslbest.com

10 **W**  
11 **AT&T**  
12 CYNTHIA MANHEIM (C)  
13 PO BOX 97061  
14 REDMOND WA 98052  
15 cindy.manheim@att.com

16 **W**  
17 **AT&T COMMUNICATIONS OF THE**  
18 **PACIFIC NORTHWEST INC**  
19 DAVID COLLIER (C)  
20 645 E PLUMB LN  
21 PO BOX 11010  
22 RENO NV 89502  
23 david.collier@att.com

24 **W**  
25 **AT&T SERVICES, INC.**  
26 SHARON L MULLIN (C)  
DIRECTOR--EXTERNAL AFFAIRS  
400 W 15TH ST, STE 930  
AUSTIN TX 78701  
slmullin@att.com

**W**  
**ATER WYNNE LLP**  
ARTHUR A BUTLER (C)  
601 UNION STREET, STE 1501  
SEATTLE WA 98101-3981  
aab@aterwynne.com

**W**  
**ATER WYNNE LLP**  
JOEL PAISNER (C)  
ATTORNEY  
601 UNION ST STE 1501  
SEATTLE WA 98101-2327  
jrp@aterwynne.com

**W**  
**CENTURYLINK, INC.**  
WILLIAM E HENDRICKS (C)  
ATTORNEY  
805 BROADWAY ST  
VANCOUVER WA 98660-3277  
tre.hendricks@centurylink.com

**W**  
**CITIZENS' UTILITY BOARD OF**  
**OREGON**  
ROBERT JENKS (C)  
EXECUTIVE DIRECTOR  
610 SW BROADWAY, STE 400  
PORTLAND OR 97205  
bob@oregoncub.org

G. CATRIONA MCCRACKEN (C)  
LEGAL COUNSEL/STAFF ATTY  
610 SW BROADWAY, STE 400  
PORTLAND OR 97205  
catriona@oregoncub.org

RAYMOND MYERS (C)  
ATTORNEY  
610 SW BROADWAY, STE 400  
PORTLAND OR 97205  
ray@oregoncub.org



1 **W**  
2 **COMCAST BUSINESS**  
3 **COMMUNICATIONS LLC**  
4 DOUG COOLEY  
5 GOVERNMENT AFFAIRS MANAGER  
6 1710 SALEM INDUSTRIAL DRIVE NE  
7 SALEM OR 97303  
8 doug\_cooley@cable.comcast.com

9 **W**  
10 **COMSPAN COMMUNICATIONS INC**  
11 TIM SPANNRING  
12 OPERATIONS MANAGER  
13 278 NW GARDEN VALLEY BLVD  
14 ROSEBURG OR 97470  
15 tims@comspancomm.com

16 **W**  
17 **DAVIS WRIGHT TERMAINE LLP**  
18 ALAN J GALLOWAY  
19 ATTORNEY  
20 1300 SE FIFTH AVENUE  
21 PORTLAND OR 97201-5630  
22 alangalloway@dwt.com

23 **W**  
24 **DAVIS WRIGHT TREMAINE LLP**  
25 MARK P TRINCHERO (C)  
26 1300 SW FIFTH AVE STE 2300  
PORTLAND OR 97201-5682  
marktrinchero@dwt.com

27 **W**  
28 **EMBARQ COMMUNICATIONS INC**  
29 NANCY JUDY  
30 STATE EXEC  
31 902 WASCO ST A0412  
32 HOOD RIVER OR 97031  
33 barbara.c.young@centurylink.com

**W**  
**FRONTIER COMMUNICATIONS**  
PHYLLIS WHITTEN (C)  
ATTORNEY AT LAW  
9260 E STOCKTON BLVD  
ELK GROVE CA 95624  
phyllis.whitten@ftr.com

**W**  
**FRONTIER COMMUNICATIONS**  
**NORTHWEST INC**  
RENEE WILLER (C)  
EXTERNAL AFFAIRS MANAGER  
20575 NW VON NEUMANN DR  
BEAVERTON OR 97006-6982  
renee.willer@ftr.com

**W**  
**GVNW CONSULTING INC**  
CARSTEN KOLDSBAEK (C)  
CONSULTING MANAGER  
PO BOX 2330  
TUALATIN OR 97062  
ckoldsbaek@gvnw.com

JIM RENNARD (C)  
CONSULTING MANAGER  
PO BOX 2330  
TUALATIN OR 97062  
jrennard@gvnw.com

JEFFRY H SMITH (C)  
VICE PRESIDENT & REGIONAL  
MANAGER  
PO BOX 2330  
TUALATIN OR 97062  
jsmith@gvnw.com

**W**  
**LAW OFFICE OF RICHARD A**  
**FINNIGAN**  
RICHARD A FINNIGAN (C)  
ATTORNEY AT LAW  
2112 BLACK LAKE BLVD SW  
OLYMPIA WA 98512  
rickfinn@localaccess.com

1 **W**  
2 **MCDOWELL RACKNER & GIBSON**  
3 **PC**  
4 ADAM LOWNEY  
5 419 SW 11TH AVE, STE 400  
6 PORTLAND OR 97205  
7 adam@mcd-law.com

8 **W**  
9 **MCDOWELL RACKNER & GIBSON**  
10 **PC**  
11 LISA F RACKNER  
12 ATTORNEY  
13 419 SW 11TH AVE., SUITE 400  
14 PORTLAND OR 97205  
15 lisa@mcd-law.com

16 **W**  
17 **OCTA**  
18 MICHAEL DEWEY (C)  
19 EXECUTIVE DIRECTOR  
20 1249 COMMERCIAL ST SE  
21 SALEM OR 97302  
22 mdewey@oregoncable.com

23 **W**  
24 **OREGON EXCHANGE CARRIER**  
25 **ASSN**  
26 CRAIG PHILLIPS (C)  
800 C ST  
VANCOUVER WA 98660  
cphillips@oeca.com

**W**  
**OREGON TELECOMMUNICATIONS**  
**ASSN**  
BRANT WOLF (C)  
EXECUTIVE VICE PRESIDENT  
777 13TH ST SE - STE 120  
SALEM OR 97301-4038  
bwolf@ota-telecom.org

**W**  
**PUBLIC UTILITY COMMISSION OF**  
**OREGON**  
ROGER WHITE (C)  
PROGRAM MANAGER  
PO BOX 2148  
SALEM OR 97308  
roger.white@state.or.us

**W**  
**QWEST CORPORATION**  
MARK REYNOLDS (C)  
1600 7TH AVE RM 3206  
SEATTLE WA 98191  
mark.reynolds3@qwest.com

**W**  
**QWEST CORPORATION**  
RON L TRULLINGER (C)  
MANAGER - OREGON REGULATORY  
310 SW PARK AVE, #11  
PORTLAND OR 97205  
ron.trullinger@centurylink.com

**W**  
**TW TELECOM OF OREGON LLC**  
LYNDALL NIPPS  
VICE PRESIDENT, REGULATORY  
AFFAIRS  
9665 GRANITE RIDGE DR - STE 500  
SAN DIEGO CA 92123  
lyndall.nipps@twtelecom.com

**W**  
**VERIZON BUSINESS**  
RICHARD B SEVERY (C)  
ASST GENERAL COUNSEL  
2775 MITCHELL DR, BLDG. 8-2  
WALNUT CREEK CA 94598  
richard.b.severy@verizonbusiness.com

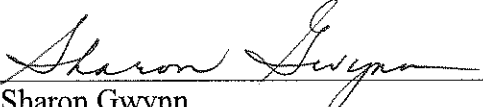
1 **W**  
2 **VERIZON COMMUNICATIONS**  
3 **NORTHWEST INC**  
4 MILT H DOUMIT (C)  
5 DIRECTOR--STATE GOVT. RELATIONS  
6 410 -- 11TH AVE. SE, SUITE 103  
7 OLYMPIA WA 98501  
8 milt.h.doumit@verizon.com

6 **W**  
7 **VERIZON CORPORATE COUNSEL**  
8 RUDOLPH M REYES (C)  
9 201 SPEAR STREET 7TH FLOOR  
10 SANFRANCISCO CA 94105  
11 rudy.reyes@verizon.com

10 **W**  
11 **WARM SPRINGS**  
12 **TELECOMMUNICATIONS**  
13 MARSHA SPELLMAN (C)  
14 10425 SW HAWTHORNE LN  
15 PORTLAND OR 97225  
16 marsha.spellman@warmspringsteleco  
17 m.com

**W**  
**WILLIAMS, KASTNER & GIBBS**  
**PLLC**  
MARC M CARLTON (C)  
888 SW FIFTH AVE, STE. 600  
PORTLAND OR 97204-2025  
mcarlton@williamskastner.com

**W**  
**WSTC**  
ADAM HAAS (C)  
10425 SW HAWTHORNE LN  
PORTLAND OR 97225  
adam.haas@warmspringstelecom.com

18   
19 Sharon Gwynn  
20 Legal Secretary to Michael T. Weirich  
21 Department of Justice  
22 Business Activities Section