BEFORE THE
OREGON PUBLIC UTILITY COMMISSION

In the Matter of	)	
	)	
PUBLIC UTILITY COMMISSION OF OREGON	)	UM 1017(3)
	)	
Investigation into Expansion of the Oregon Universal Service Fund to Include the Service Areas of Rural Telecommunications Carriers	)	

RESPONSIVE BRIEF OF VERIZON ON WHETHER THE COMMISSION HAS LEGAL AUTHORITY TO ADOPT OECA'S PROPOSED EXPANSION OF THE OREGON UNIVERSAL SERVICE FUND

Verizon[1] hereby submits its response to the "Brief of the Oregon Exchange Carrier Association on the Question of Whether the Proposal by OECA Is Consistent with ORS 759.425," filed September 8, 2011 ("OECA Brief").

I. Introduction

As the Administrative Law Judge explained, the purpose of this briefing cycle is to address the question of "whether the Commission currently has legal authority to adopt the OECA's proposed expansion of the Oregon Universal Service Fund" ("OUSF").[2] OECA's Brief strays well beyond this limited purpose to address the substance and purported merits of the rural incumbent local exchange carriers' ("RLECs'") proposal to

[1] The Verizon entities participating in this proceeding include 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; Verizon Long Distance LLC; and MClmetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services (collectively, "Verizon").

[2] Administrative Law Judge's Ruling granting the Joint Motion to Modify Schedule, issued August 29, 2011, at 1.

reduce their access charges and recover the lost revenues from the OUSF. Verizon disagrees with OECA's policy arguments and underlying assumptions,[3] but, given the intended narrow focus of the issue set forth for briefing, Verizon's response to those arguments is properly left to testimony scheduled to be submitted later. Verizon will address OECA's factual assertions and omissions only to the extent that they are linked to OECA's arguments on the threshold legal issue of whether the RLECs' proposal is consistent with ORS 759.425.

II. OECA Ignores the Impact of Technological Change and Rapidly Growing Competition on the Market for Switched Access Services

In plain terms, OECA proposes to reduce the RLECs' intrastate switched access rates to the level of the carriers' interstate access rates and to offset the reductions with support from a greatly expanded OUSF.[4] OECA contends that access revenues have "been under attack" for several years, and attributes a decline in intrastate switched access minutes of use to "arbitrage and access avoidance," including claims that "some" interexchange carriers have not properly reported the jurisdictional division of traffic or "disguis[ed] interexchange toll traffic … as local (extended area service) traffic," for which access charges do not apply. OECA Brief at 4-6.

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[3] OECA admits that its members' intrastate switched access rates "have increased almost 94% since 2004," and that composite intrastate access rates are now $0.09929 per minute of use. *See* Opening Testimony of Gail Long on behalf of OECA, filed August 5, 2011, at 6, lines 14-15; OECA Brief, Attachment 2 (Declaration of Craig Phillips) at ¶3. Rates of this magnitude are nearly *20 times higher* than those charged by Qwest/CenturyLink for the same service, and are some of the highest in the country. The RLECs are thus constrained to acknowledge that their access rates are excessive, harm competition and disadvantage consumers, and that they should be reduced. *See*, *e.g.*, OECA Brief at 22 and Attachment 5. But the RLECs should be required to reduce their access rates to more reasonable levels as quickly as possible, and to recover more of their costs from their own end users instead of from their competitors, irrespective of their current proposal.

[4] *See* OECA's Petition to Reopen Docket, filed May 19, 2011, at 1, 3.

OECA offers no facts to support these claims or try to explain how any such incidents, even if they had occurred, would be primarily responsible for the continuing decline in intrastate switched access traffic in Oregon.[5] OECA's "analysis," of course, ignores what everyone in the industry, as well as federal and state regulators, knows -- that the dramatic technological and marketplace developments that have radically reshaped the communications landscape both in Oregon and nationally have driven the steady, tremendous erosion of switched access traffic.

Indeed, if the decline in intrastate access minutes since 2004 reported by OECA (OECA Brief at Attachment 2, ¶ 3) was caused by interexchange carriers "classify[ing] more traffic as interstate than actually was the case," as OECA claims (*id.* at 4), then the reduction in intrastate minutes would be offset by a shift of access traffic to the interstate jurisdiction. However, switched access minutes of use ("MOU") have declined in *both* jurisdictions, and in proportionately similar amounts. A recent Federal Communications Commission ("FCC") report[6] confirms this fact:

Telephone Calls:

	InterLATA Interstate Calls	Percent Change	InterLATA Intrastate Calls	Percent Change
2000	59,212,055		30,608,629	
2007	40,692,976	-31	21,105,173	-31

Billed Access Minutes:

	Interstate	Percent Change	Intrastate	Percent Change
2000	535,011,649		257,252,187	
2007	348,506,441	-35	155,955,683	-39

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5 Nor does OECA provide any support for its contention that its proposal to offset access reductions with OUSF support will "reduce" alleged, but unproven, "call termination problems." *See* OECA Brief at 22.

6 *Trends in Telephone Service*, Industry Analysis and Technology Division, Wireline Competition Bureau (September 2010) at Table 10.2.

OECA also fails to acknowledge the emergence of new technologies and competitive service offerings, let alone the profound effect they have had on switched access services provided by incumbent LECs. Today, consumers can and do obtain communication services from a wide variety of service providers – including not just traditional wireline ILECs, but wireline CLECs, wireless carriers, cable companies, and VoIP providers. It is the rapid growth of competitive alternatives to traditional landline voice services, not access rate arbitrage, that has had the most significant impact on the volume of RLECs' switched access minutes.

For example, in the last five years, non-ILECs have more than doubled their share of wireline access lines in Oregon; as a result, 36% of the wireline access lines in the state are now served by an entity other than an incumbent LEC.[7] The fact that the ILECs' access traffic has declined reflects, in part, the fact that a large number of access lines are now being provided by competitive carriers.

In addition, consumers are increasingly choosing wireless services for their voice communications. As of June 2010, there were more than three times as many mobile wireless subscribers in Oregon (3.297 million) as there were ILEC access lines (1.08 million).[8] The shift to wireless communications is consistent with nationwide trends, as wireless penetration in the United States reached 93% by the end of 2009.[9] Since then, the percentage has increased, with many Americans choosing to forego any wireline telephone communication service and to utilize instead only wireless devices for voice

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[7] *See Local Telephone Competition: Status as of June 30, 2010*, Industry Analysis and Technology Division, Wireline Competition Bureau, FCC (March 2011) at Table 11.

[8] *See id.* at Tables 8 and 17.

[9] FCC's *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services,* Fifteenth Report, FCC 11-103, W.T. Docket No. 10-133 (2011), ¶ 393, available at http://wireless.fcc.gov/index.htm?job=reports.

services. The Centers for Disease Control estimated that, by December 2010, "[t]hree of every ten American homes (29.7%) had only wireless telephones" and "[i]n addition, nearly one of every six American homes (15.7%) received all or almost all calls on wireless telephones despite having a landline."[10] In Oregon, wireless usage is equally pervasive: more than 45% of Oregon adults living in households receive all or almost all calls on wireless telephones.[11]

Similar trends are visible in broadband and VoIP services, both in Oregon and nationwide. According to data compiled by the National Telecommunications and Information Administration in collaboration with the FCC, by June 30, 2010, more than 95 percent of Oregonians had access to one or more wireline broadband providers[12] -- many of which also provide voice services. Similarly, in that same time frame, 97.3% of Oregon consumers had access to wireless broadband services.[13]

These data show that Oregonians are increasingly choosing alternatives to traditional ILEC wireline services to meet their communications needs. As a result, universal service no longer means subsidizing an ILEC-provided wireline telephone for everyone, as OECA's plan for full recovery from the OUSF assumes. Moreover, the Commission should recognize that RLECs are seeking to offset a decline in access revenues that has occurred because of competition and shifts in consumer preferences, not because of nefarious IXC conduct.

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[10] Blumberg, S.J., Luke, J.V., *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2010,* National Center for Health Statistics (June 8, 2011), available at http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201106.htm.

[11] Blumberg, S.J., Luke, J.V., *Wireless Substitution: State-level Estimates From the National Health Interview Survey, January 2007 – June 2010,* National Center for Health Statistics, Centers for Disease Control, U.S. Dept. of Health and Human Services (April 20, 2011), at Table 3.

[12] *See* http://www.broadbandmap.gov/summarize/state/oregon.

[13] *Id.*

The Oregon legislature did not intend for the OUSF to be used to lock in access subsidies the RLECs receive today in order to insulate them from competition. The statute does not authorize millions of dollars in handouts to carriers without any showing that subsidies in access rates are today used to support universal service and that, without such subsidies, universal service in Oregon would suffer. OECA has not yet made any such showings.

III. OECA's Contention That Interexchange Switched Access Service Provided to Interexchange Carriers Is Part of "Basic Telephone Service" Is Incorrect.

ORS 759.425(1) states, in pertinent part, that

> The Public Utility Commission shall establish and implement a competitively neutral and nondiscriminatory universal service fund. Subject to subsection (6) of this section, the commission shall use the universal service fund to ensure ***basic telephone service*** is available at a reasonable and affordable rate. (Emphasis added)[14]

OECA points out that the Commission's rules define basic telephone service, in part, as follows:

> "Basic telephone service" means 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:
> … (b) Long distance service …. OAR 860-032-0190(2).

OECA suggests that "the definition of basic telephone service … can be read as including access services to interexchange carriers." OECA Brief at 18. Because "customer[] access to … long distance service" is included in the Commission's definition of "basic telephone service," OECA argues that "the

[14] ORS 759.425(3)(a) describes the amount of universal service funding that the Commission may provide to a carrier that is eligible for support. The amount "is equal to the difference between the cost of providing basic telephone service" and the local service benchmark established by the Commission, less any explicit compensation received by the carrier from federal support programs.

cost of providing access to long distance service is [also] part of basic telephone service." *Id*. OECA goes on to argue that its proposal to provide OUSF support to RLECs that reduce intrastate switched access charges satisfies the requirements of ORS 759.425 because under the plan RLECs would receive the difference between the cost of providing "local service, *including access to toll service*, and the benchmark." *Id.* (emphasis added).

There is no merit to this convoluted argument. The notion that basic telephone service "gives customers access to long distance service" simply means that an end user obtains the ability to place and receive long distance calls as part of his or her purchase of retail basic exchange service. Interexchange switched access service, on the other hand, is a service that a local exchange carrier provides on a wholesale basis to other telecommunications service providers. Interexchange access service consists of end office and tandem switching, interoffice transport, 800 database look-ups (in order to route toll-free calls to the proper IXC), and other capabilities, such as SS7 signaling. Retail basic local exchange service and wholesale switched access service are offered through entirely separate tariffs: "basic telephone service" is provided under retail tariffs that contain services offered to end users, while switched access service is provided under the carrier's access tariffs.[15] And the Commission's rules do not include switched access service in the list of services that are "classified as basic telephone service"[16] -- a fact that

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[15] Retail long distance and local exchange services are both competitive, whereas switched access service is not subject to competitive pressures, as evidenced by the RLECs' ability to virtually double their intrastate rates in Oregon in recent years.

[16] OAR 860-032-0190(3) classifies the following local exchange offerings as "basic telephone service":
"(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;

OECA completely ignores. Moreover, OAR 860-032-0190(2) specifies that basic telephone service "means *retail* telecommunications service," which, by definition, excludes wholesale access services. Given the fundamental, longstanding, and well understood differences between local exchange and switched access services, OECA's attempt to shoehorn switched access into the definition of basic telephone service to buttress its interpretation of the statute is plainly implausible.

OECA's assertion that "the cost of providing access to long distance service is part of basic telephone service" (OECA Brief at 18) is just wrong. Interexchange access services and capabilities are not provided to retail end users, nor are end users charged for them in the rates they pay for basic exchange service. Similarly, OECA's contention that its proposal to replace high access rates with OUSF support complies with ORS 759.425(3) because it is equivalent to "funding the difference between the benchmark and the *embedded cost of providing [local] service, including access to long distance service*" (*id*., emphasis added) is incorrect, because it rests on the erroneous assumption that switched access costs are included in the cost of providing local service.

OECA has not shown that using OUSF funds to offset access charge reductions is a permitted use of the funds under ORS 759.425, nor has it substantiated its claim that replacing access revenues with OUSF support is necessary to ensure that basic telephone service remains available at reasonable and affordable rates.[17] Among other things,

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(f) Multiline or 'complex' business service; and
(g) Public access line (PAL) service."

[17] There has been no formal review of the local benchmark rate in more than a decade. The $21 monthly rate set in 2000 is now outdated, and well below average monthly rates for residential and business local services nationwide. ORS 759.425(3)(b) directs the Commission to periodically review and adjust the benchmark as necessary to reflect, among other factors, changes in competition in the telecommunications industry and changes in the amount of federal universal service support. As shown above, numerous competitors are providing millions of Oregonians with voice telephone services at affordable rates and without receiving any subsidies. Indeed, the legislature's original purpose in establishing the OUSF has

OECA proposes to calculate the amount of desired support on an industry-wide basis, beginning with the carriers' total statewide revenue requirement and then "smoothing out differences between companies" to produce a uniform result. *See* Opening Testimony of Craig J. Phillips on behalf of OECA, filed August 5, 2011, at 14 and Exhibit OECA/201. This approach does not appear designed to determine the costs of any individual carrier to provide basic telephone service, nor is it likely to demonstrate that the support allocated to any individual carrier is needed to "ensure basic telephone service is available at a reasonable and affordable rate" in that RLEC's service area.

IV. The 2009 Legislative Amendment to ORS 759.425 Confirms the Narrow Scope of the Statute

Two years ago, the legislature added a new subsection, ORS 759.425(6), to provide that "[i]n addition to the purpose specified in subsection (1) of this section," moneys in the OUSF may be used by the Commission "to facilitate the availability of broadband," and specifically, to fund a broadband mapping project. OECA acknowledges this amendment, but it misconstrues the import of the legislature's action. *See* OECA Brief at 12, 14-15.

At the time, the legislature clearly understood that ORS 759.425(1) limited the Commission's ability to use the universal service fund to ensuring the availability and affordability of basic telephone service. Accordingly, in order to authorize the use of the OUSF for a new and different purpose, the legislature amended the statute to expressly

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now been fulfilled; as of July 2010, nearly 98% of all Oregon households had telephone service. *Telephone Subscribership in the United States: Data through July 2010*, Industry Analysis & Technical Division, Wireline Competition Bureau, FCC (May 2011), at Table 2; available on-line at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-306752A1.pdf. In addition to establishing what a reasonable and affordable rate is in today's market, an RLEC wanting to comply with the statute would have to demonstrate that the amount of support it requests is needed to ensure that basic telephone service is available at an affordable rate in its service area.

permit the additional use. By providing in ORS 759.425(6) that fund support could be used for purposes "[i]n addition to the purpose specified in subsection (1)," and adding corresponding language in ORS 759.425 (1) ("Subject to subsection (6) of this section…"), the legislature reinforced the fact that the use of OUSF funds to support broadband projects was an exception to the general requirement that the Commission is strictly limited to using the fund to support basic telephone service.

The fact that the legislature did not also tinker with the language of ORS 759.425(3), or make "ORS 759.425(1) subject to any limitation in ORS 759.425(3)," in 2009 is neither remarkable nor significant, as OECA insinuates. OECA Brief at 12, 14-15. ORS 759.425(1) and ORS 759.425(3) both address the Commission's authority to administer a universal service fund that is intended to support basic telephone service. These two sections are to be read in conjunction with one another, and there is no conflict or inconsistency between them. ORS 759.425(1) establishes the purpose of the fund, while ORS 759.425(3) essentially describes the calculation the Commission is required to make when determining the amount of support it will provide a carrier that is eligible for OUSF funding.

When the legislature decided to authorize the use of the OUSF to finance broadband mapping efforts, it included, within the text of ORS 759.425(6) itself, conditions on the amount of state funds that could be used for the newly-authorized purpose. The ORS 759.425(3) formula addresses an entirely different subject, and thus was unrelated to and unaffected by the methods the legislature enacted to control the financing of broadband projects. Accordingly, there was no reason for the legislature to modify the language of that section when it enacted new language to permit the use of

OUSF funds for broadband mapping projects. Nor did the inclusion of the new subsection (6) provide any cause for making additional changes to the language of ORS 759.425(1), as suggested by OECA, because no such changes were needed.

The fact that the legislature deemed it appropriate to amend ORS 759.425 in order to explicitly expand the permitted uses of the OUSF beyond support for basic telephone service undercuts OECA's assumption that the Commission is free to expand the fund on its own by using OUSF support as a replacement for access charge revenues.

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CERTIFICATE OF SERVICE

UM 1017(3)

I hereby certify that on the 22nd day of September 2011, I served the foregoing **RESPONSIVE BRIEF OF VERIZON ON WHETHER THE COMMISSION HAS LEGAL AUTHORITY TO ADOPT OECA'S PROPOSED EXPANSION OF THE OREGON UNIVERSAL SERVICE FUND** in the above entitled docket by electronic mail and Federal Express to the following:

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