

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1481

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON

Staff Investigation of the Oregon Universal
Service Fund.

RULING

**DISPOSITION: MOTION TO STRIKE TESTIMONY DENIED;
SURREBUTTAL TESTIMONY AUTHORIZED**

In this ruling, I deny the joint motion of the Oregon Telecommunications Association (OTA); Frontier Communications Northwest, Inc.; and CenturyLink, Inc., et. al., to strike the rebuttal testimony of the Oregon Cable Telecommunications Association (OCTA) and authorize an additional round of surrebuttal testimony limited to rebutting or commenting upon new matters raised by OCTA in its rebuttal testimony.

I. PROCEDURAL HISTORY

On November 14, 2012, OCTA filed motions to compel the OTA, Frontier, and CenturyLink, Inc., to produce information on an expedited basis. In conjunction with each motion, OCTA also asked for an extension of time for the submission of the parties' opening testimony. By ruling of November 19, 2012, I revised the procedural schedule, delaying the due dates for opening testimony to December 10, 2012 and reply testimony to January 30, 2013. I denied the OCTA motions to compel by ruling of December 3, 2012.

Opening testimony was timely filed by all parties, including OCTA. That same day, OCTA and Staff filed a joint motion for certification of my December 3 ruling to the Commission regarding the ability of the Commission to consider revenues from unregulated services in determining the appropriate amount of OUSF support. On January 17, 2013, I denied the joint motion to certify my ruling and, at page 4 of my ruling, stated:

Finally, I clarify that, consistent with ORS 759.218(1) and (2), this decision does not preclude the consideration of methods to allocate the costs of services provided over a shared network (both regulated and unregulated), in order to determine the how those costs should be allocated amongst the services.

Having already filed its direct testimony and lost its motion for certification, OCTA was placed in the position of having to prepare reply testimony without being able to propound its original line of fact development of its direct testimony. Thus, on January 30, 2013, in an effort to place facts before the Commission that would support its position and still follow the direction contained in the January 17 ruling, OCTA filed reply testimony which I find has indeed exceeded the scope of the opening testimony of all parties.

The joint motion of Frontier, CenturyLink, and OTA objects to this introduction of new evidence in rebuttal and, accordingly seeks to strike those portions of OCTA testimony.

II. DISCUSSION

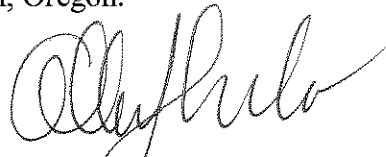
In order to assist the Commission in reaching decisions that further the public interest, its procedures should encourage the creation of a full and complete record and promote and maintain fairness in the treatment of all parties who appear before it. This latter fairness requirement usually includes the rule of limiting the scope of rebuttal to direct; it fulfills the legitimate purpose of prohibiting the practice of offering new testimony or argument in rebuttal to avoid the possibility of a party “sandbagging” a line of testimony or argument to make it immune from rebuttal by another party.

In this instance, direct testimony was due before OCTA had time to exhaust its appeal of the denial of information which it deemed essential to that testimony. To strike OCTA’s rebuttal testimony, which reflected the clarifications and limitations in my ruling, would essentially prevent it from making a meaningful contribution to the record for the Commission to consider. Nevertheless, the OTA, Frontier, CenturyLink and every other party should have the opportunity to reply to the new matters raised in OCTA’s rebuttal testimony prior to the scheduled hearing dates and all sponsoring witnesses related to such testimony should be available for cross-examination should any party so choose.

RULING

The motion to strike is denied. Parties may file surrebuttal testimony limited to new matters raised in OCTA’s rebuttal testimony no later than February 14, 2013. Each party, as well as Commission Staff, shall notify other parties no later than February 15, 2013 of any intention to cross-examine surrebuttal witnesses.

Dated this 6th day of February, 2013, at Salem, Oregon.



Allan J. Arlow
Administrative Law Judge