

**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: MOTIONS TO COMPEL PRODUCTION OF
DOCUMENTS DENIED

I. SUMMARY

In this ruling, I deny the motions of the Oregon Cable Telecommunications Association (OCTA) to compel the Oregon Telecommunications Association (OTA); Frontier Communications Northwest, Inc.; and CenturyLink, Inc. to produce information relative to the provision of broadband services.

II. PROCEDURAL HISTORY

On November 14, 2012, the OCTA filed motions to compel against OTA, Frontier, and CenturyLink, (the ILECs) to produce information responsive to a number of data requests.¹ On November 20, 2012, OTA filed a response and Frontier and CenturyLink filed a joint response to the motions. OCTA filed a combined reply in support of its motions on November 21, 2012.

In its data requests, OCTA seeks the confidential versions of the last three Annual Report Forms O from Frontier, CenturyLink, and each OTA member company. OCTA also requests year-end line counts by wire centers for various services, including residential and business broadband services provided by the companies and their affiliates. OCTA additionally seeks data on the average revenue per line, with the most granular data available for various services, including residential and business broadband services. Finally with respect to OTA member companies, OCTA asks for information on United States Department of Agriculture (USDA) Rural Development grants during the previous five years, including the amounts of the funds and conditions as to the grants' funds uses.

¹ The data requests were, respectively, DR-1, 3, 4 and 8 (OTA), FT-3 and 4 (Frontier), and CTL 1, 3 and 4 (CenturyLink).

OCTA states that the ILECs only partially respond to its initial requests; they do not provide data related to broadband services to the extent or in the level of detail OCTA requested. OCTA also declines to provide information relating to USDA Rural Development grants.

III. POSITIONS OF THE PARTIES

The ILECs object to the request for broadband data on several grounds related to their assertion that the data requests fail to meet the standard of the requested information: it must be “reasonably calculated to lead to the discovery of admissible evidence,” as required by ORCP 36B(1).

First, they cite the Administrative Law Judge (ALJ)’s ruling of August 29, 2012, which delineated the issues that would be within the scope of the proceeding. They state that broadband subscribership and revenues are outside of the boundaries of the case and that OCTA improperly applies comments by the Commission Staff made prior to the ALJ’s ruling.

Second, they argue that OCTA’s proposal that broadband revenues be considered in determining whether a company actually needs OUSF support, is misguided because it is unlawful to use broadband revenues to offset the cost of basic telephone services; such a use would violate ORS 759.218.

Third, they contend that the Commission’s statutory mandate excludes regulation of broadband services and their associated revenues and the Commission cannot therefore compel Frontier or anyone else to provide such information to competitors.

Finally, they assert that OCTA has not shown that the requests are not “unduly burdensome” or have a “high degree of relevance” as required under OAR 860-001-0500(4).

In its reply, OCTA states that the ILECs have not addressed the general relevance of ILEC revenues to the OUSF, that is, the actual need for subsidies to companies with other income sources, whether they be broadband or USDA grants, and that this is a matter which the Commission would consider within the confines of the issues if it chose to.

OCTA also asserts that the ILECs have failed to rebut OCTA’s general argument on relevance by emphasizing and misapplying ORS 759.218. OCTA contends that statutory language is focused on ratemaking and the prohibition of cross-attribution of revenues between regulated and non-regulated service offerings, rather than a broader consideration of a company’s operations to determine what subsidies might or might not be appropriate.

OCTA rejects the issue of Commission jurisdiction to compel discovery of broadband revenues. Merely because the federal government has jurisdiction over certain telecommunications matters, such as interstate access rates, it does not deprive a state of

the ability to gather information on such issues, especially insofar as they impact intrastate telecommunications.

Finally, OCTA states that the ILECs' assertion as to the burden of compliance is based on a misreading of the request, because OCTA specifically inserted a provision that, where information is not available at the level it requested, the ILEC could provide information at the most granular level that was available.

IV. DISCUSSION

All of the parties in the proceeding agree that "basic telephone service" does not include the provision of broadband services. OCTA essentially argues that the unregulated telecommunications revenue sources of a company receiving OUSF funds to provide regulated basic telephone service are relevant to the question as to whether it should be receiving OUSF support. OCTA suggests that subsidies should perhaps not be distributed to a company that has no need for such subsidies. OCTA asks for detailed information on broadband customers and revenues by wire center to provide a basis for offering evidence to support that argument.

Both federal and state governments have long-standing policies of providing subsidies to companies that provide basic telecommunications services to those who would not otherwise be able to afford them. These policies generally cap the price that a telecommunications carrier may charge its customers for basic telephone services, and provide the carrier with a subsidy equal to the difference between the "benchmark" rate and the actual cost of providing the service, less any explicit federal subsidies. These subsidies are provided without regard to the robustness of the unregulated services the companies offer, except in those cases where the company may need to demonstrate its financial ability to meet its commitments to the public and the authorizing agencies if it is to receive the subsidy in question.

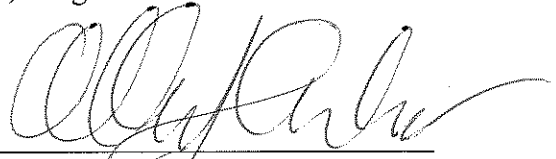
In Oregon, unregulated companies and the unregulated affiliates of regulated telecommunications service providers are authorized to receive subsidies from both the federal government and the Oregon Residential Service Protection Fund for providing cellular telephone service and handsets. No company receives greater or lesser subsidies on account of the size or success of its cellular telephone business. Each company's market penetration and revenues by wire center are no more relevant in the unregulated broadband market than they are in the unregulated cellular telephone market when it comes to the issue of providing a subsidy to making basic telephone service broadly available to the public. The information requested by OCTA is therefore not "reasonably calculated to lead to the discovery of admissible evidence," as required by ORCP 36B(1).

Having failed to meet that threshold issue, it is not necessary to address the questions of Commission jurisdiction, burdensomeness, and the like.

V. RULING

The motions of the Oregon Cable Telecommunications Association to compel the Oregon Telecommunications Association (OTA); Frontier Communications Northwest, Inc.; and CenturyLink, Inc. to produce information relative to the provision of broadband services are denied.

Dated this 3rd day of December, 2012 at Salem, Oregon.



Allan J. Arlow
Administrative Law Judge