

**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: LIST OF ISSUES DESIGNATED FOR INCLUSION IN  
THESE PROCEEDINGS

In Order 10-496, entered December 28, 2010, the Commission delayed the consideration of certain substantive issues raised by the parties in these proceedings.<sup>1</sup>

Pursuant to a previously agreed-upon schedule, the parties submitted a Joint Issues List on August 21, 2012. The proposed list of issues was “broad enough to cover all of the issues each party would like to address. However the parties request guidance from the Commission on whether or not it wants the parties to address all of these issues. As a result, the parties jointly propose this issues list, but respectfully request a ruling on which issues the Commission would like addressed in this phase of the proceeding.”

Each of the five issues is addressed in order below.

**Discussion and Ruling**

**Issue 1: What is the purpose of the Oregon Universal Service Fund (OUSF)?**

Under federal law, Section 254(b) of the Telecommunications Act of 1996 (the Act) provides five basic principles supported by the federal USF and includes a subsection (f) which permits states to adopt similar regulations requiring intrastate carriers to contribute on an equitable and nondiscriminatory basis to meet the same goals within a state. Accordingly, in 1999, the Oregon Legislature in Senate Bill 622 enacted ORS 759.425 requiring the Commission to establish and implement a federally-conforming OUSF. Section (1) states that the purpose for establishing and implementing “a competitively neutral and nondiscriminatory universal service fund” was “to ensure basic telephone

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<sup>1</sup> See Order No. 10-496 at 2, for a list of the general groupings of issues raised by the parties. Several parties seeking resolution to some of the issues indicated that statutory changes would be necessary prerequisites.

service is available at a reasonable and affordable rate.” That section also provides that the Commission “may adopt rules to conform the universal service fund to section 254 of [the Act], and to related rules adopted by the Federal Communications Commission to the extent that the Public Utility Commission determines is appropriate.”

**Ruling:** Issue 1 will not be included in these proceedings, as the purpose of the OUSF has been established—and may only be revised—by an act of the legislature. The purpose of the OUSF is to assure the availability of basic telephone service at a reasonable and affordable rate.

When the legislature enacted SB 622, it specifically adopted a consistent, but narrower purpose (“ensure basic telephone service”) than the list of principles set forth in the Act. Although, in Section (2)(a), the statute authorizes the Commission to “periodically review and evaluate the status of telecommunications services in the state and designate the services included in basic telephone service,” the Commission has not, as yet, performed that review and evaluation.<sup>2</sup> Until such time, the scope of the OUSF’s purpose remains unchanged.

**Issue 2: What changes should be made to the existing OUSF related to the calculation, the collection, and the distribution of funds?**

**Ruling:** The issue is relevant to the purposes of these proceedings. ORS 759.425(3) authorizes the Commission to review the methods used to determine the support that companies receive. The critical elements of this methodology are the setting of the benchmark and determining the cost of providing basic service. In light of the changes that have taken place in the telecommunications industry since the benchmark and the method of calculating basic service costs were developed, it is appropriate to review both within the context of this investigation.

Similarly, Section (4) authorizes the Commission to impose a charge on all retail telecommunications services “sold in this state” except as provided in Section (6). Discussion of policy questions regarding imposing charges on telecommunications service providers currently exempted by Section (6) is outside the scope of these proceedings. The issue of collection of funds may include identifying entities on whose retail services the OUSF charge should be imposed, consistent with the statutory limitations.

Section (2) provides that the OUSF “shall provide explicit support to an eligible telecommunications carrier,” thus giving the Commission the authority to determine the means to target support explicitly (and prevent a situation where the funds could be used to cross-subsidize competitive services, either directly or indirectly) and establishing the classes and criteria of those carriers eligible to receive such funds.

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<sup>2</sup> As noted in Order 10-496, The Oregon Telecommunications Association, AT&T, and Frontier Communications discussed “moving forward with laying a foundation for the transition to a broadband funding mechanism.” *Id.* at 2. That issue must first be examined in a proceeding to address changes to the definition of “basic telephone service.”

**Issue 3: What changes should be made to the existing OUSF related to how funds are used?**

**Ruling:** As with the distribution of funds, the issue of their use, that is, the specificity in criteria and identification of eligible investments and expenses, is relevant to the purposes of these proceedings. Issue 3 will be included in these proceedings.

**Issue 4: What changes should be made to the existing OUSF related to transparency and accountability?**

**Ruling:** Order No. 10-496 addressed this issue directly, stating “we reaffirm our expectation that any company receiving distributions from the OUSF must be able to document and demonstrate how the funds were used to support high-cost areas in Oregon” and adopted “interim measures” with respect to non-rural companies and specifically indicated that, in the second phase of this docket, they would “further examine what additional reporting and auditing requirements should be imposed on companies receiving OUSF distributions.”<sup>3</sup> The issue remains relevant to the purposes of this investigation and will be included.

**Issue 5: What changes to the OUSF rules should be made?**

**Ruling:** Issue 5 will not be included in these proceedings. Rule changes are properly the subject of a rulemaking proceeding. After the investigations of Issues 2, 3, and 4 have been completed and an order addressing those issues has been entered, there will be a sufficient record upon which to base any proposed changes to the Commission’s rules consistent with the order.

Dated this 29th day of August, 2012 at Salem, Oregon.



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Allan J. Arlow  
Administrative Law Judge

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<sup>3</sup> Order No. 10-496 at 3.