ORDER NO. 03-082

ENTERED FEB 03 2003

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1017

In the Matter of the Investigation into Expansion of the Oregon Universal Service Fund to Include the Service Areas of Rural Telecommunications Carriers.	))))	ORDER

DISPOSITION: POLICY ISSUES ADOPTED FOR SERVICE AREAS OF RURAL TELECOMMUNICATIONS CARRIERS.

ORDER SUMMARY

In this order, we bring rural telecommunications carriers into the Oregon Universal Service (OUS) program. In doing so, we take another step along the path of encouraging competition among carriers to provide a variety of local as well as toll services. Federal and state legislation mandates the opening of the national telecommunications network to competition. A necessary step in that process is the determination of appropriate costs, particularly those that apply to would-be new competitors. In this order we adopt a type of embedded cost methodology to determine the costs of rural carriers. The information and expertise required to determine costs by a forward-looking econometric model are not now available in usable form. We will address costing issues for rural carriers as information and expertise become available.

Historically, telecommunications rates have included many implicit subsidies of one service by other services. That approach is inconsistent with open competition. The natural tendency of new carriers is to provide service only for the most profitable services, leaving high-cost services to be provided by incumbent carriers. The universal service program is designed to reduce or eliminate implicit subsidies and instead use explicit subsidies for the services that need support. The subsidies will be portable among the carriers that provide the supported services.

Including rural carriers in the Oregon Universal Service Fund (OUSF) will bring all Oregon carriers into the universal service program. Until now, the OUSF has included only Oregon's two largest incumbent telecommunications carriers. With this order, the program can support a high-cost carrier, whether the carrier is large or small. The FCC has not adopted a final set of rules for determining the costs of rural carriers. We could wait until it adopts final rules, but we are moving forward now to make the benefits of the OUSF available to the customers of all Oregon local exchange carriers. Implicit subsidies will be reduced and competition will be encouraged. *See* Order No. 01-576. Oregon's telecommunications carriers support the decisions we make in this order.

INTRODUCTION AND PROCEDURAL HISTORY

In Order No. 00-312 we completed our initial development and implementation of the Oregon Universal Service (OUS) program for non-rural carriers. Non-rural carriers are those that do not qualify as rural carriers.[1] Currently in Oregon, Qwest Corporation and Verizon Northwest qualify as non-rural telecommunications carriers, and other telecommunications carriers qualify as rural telecommunications carriers.

We have been investigating universal service proposals since 1994. In 1996 the federal Telecommunications Act of 1996 (the Act) was passed by Congress and signed by the President. The Act requires state and federal regulators to establish policies and programs for the preservation and advancement of universal service. The Act declares that consumers in all regions of the nation, including those living in rural, insular, and high-cost areas, should have access to telecommunications services at reasonably comparable rates.

The Federal Communications Commission (FCC) established the federal high-cost universal service fund (USF) and implemented it for non-rural local exchange carriers (LECs) as of January 1, 2000. For non-rural carriers the FCC adopted a forward-looking econometric cost methodology based on a very sophisticated computer model. For rural LECs, the FCC adopted an interim cost methodology based on existing embedded costs. The interim methodology became effective on July 1, 2001. The FCC continues to work on a long-term USF plan for rural LECs.

The 1999 Oregon Legislative Assembly enacted Senate Bill 622, now codified in ORS 759.425. The statute requires the Commission to establish and implement a competitively neutral and nondiscriminatory OUSF to ensure that basic telephone service is available at reasonable and affordable rates. The OUSF must not conflict with Section 254 of the Act. The Commission implemented the OUSF for non-rural LECs effective September 1, 2000.

ORS 759.425 allows the Commission to delay the expansion of the OUSF for rural LECs for up to six months after the FCC adopts a cost methodology for rural

[1] 47 U.S.C. 153 defines a rural carrier as a local exchange carrier that: (a) provides service to any area that does not include (1) any incorporated place of 10,000 or more inhabitants, or (2) any urbanized area as defined by the Bureau of the Census; (b) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (c) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines, or (d) has less than 15 percent of its access lines in communities of more than 50,000. All other carriers are classified as non-rural.

LECs. On May 23, 2001, the FCC released Order No. 01-157 relating to costs of rural telecommunications carriers. The FCC allowed the carriers to continue the use of embedded costs, but made modest modifications to the methodology. The FCC adopted that approach for an interim five-year period while the agency continues to consider a forward-looking cost methodology for rural carriers.

On July 13, 2001, we issued Order No. 01-576. We determined that FCC Order No. 01-157 did not trigger the six-month time limitation of ORS 759.425. However, we decided to move forward and address issues relating to rural telecommunications carriers. On March 20, 2001, we opened this docket to investigate the expansion of the OUSF to include the service territories of rural incumbent local exchange carriers (ILECs). On November 4, 2002, Staff filed a Stipulation to settle issues in this proceeding. Eleven parties signed the Stipulation prepared by Staff. On November 22, 2002, Staff and the Oregon Telecommunications Association Small Company Committee (OTASCC) filed testimony supporting the adoption of the Stipulation. No testimony opposing the Stipulation was filed.[2]

THE STIPULATION

The Stipulation would cause a straightforward addition of rural carrier operations to the existing OUSF for non-rural carriers. The existing procedural rules would continue like they are now; they have served the OUSF without significant problems.

Cost Computation. One principal difference between rural and non-rural carriers would be the calculation of costs that figure into the amount each carrier contributes to the fund. Non-rural carrier costs are determined on the basis of forward-looking costs calculated by a very sophisticated econometric computer program. In contrast, the Stipulation would have the costs applicable to rural carriers determined by analyzing embedded costs rather than forward-looking economic costs. The use of embedded costs would be interim, to be addressed again when the FCC makes a final determination of how to calculate rural carrier costs. In negotiations in this proceeding, the participants used cost data from the year 2000. They all agree that the 2000 numbers should be updated to 2001 information. The embedded cost of basic telephone service includes the costs of the subscriber loop, the allocated cost of switching and transport, plus certain overheads, taxes and return on investment.

Contributions and Billing. Contributions to the OUSF are based on a percentage surcharge applied to intrastate retail telecommunications services sold in Oregon. A problem presents itself when billing for revenues received from telecommunications services that combine intrastate and interstate services. The calculation can be confusing to the end user. The Stipulation does not resolve this billing

[2] The first three pages of the Stipulation attached to this order contain additional information about the Commission's activities in this and other universal service dockets.

issue, but recommends that a future rulemaking proceeding determine the details of billing for combined intrastate and interstate services.

Distributions. Distributions to non-rural carriers from the OUSF are made monthly and are based on the number of common lines used in the provision of basic telephone service. Rural carriers would join the Fund and receive distributions according to the same distribution schedule.

Study Area. The basic geographic area for OUSF support computations would be the total service territory within Oregon served by a rural carrier. It is referred to as a study area. The Stipulation provides that a rural carrier may petition the Commission to disaggregate costs so they apply to smaller areas, such as a wire center or an exchange, after the Commission certifies a competitive local exchange carrier (CLEC) is eligible to serve a particular service area.

Portability. Support would be portable to CLECs certified as eligible by the Commission. The support would be on a per-line basis for a specific service area. The amount of support available to a CLEC would depend on the manner in which it provisions its loop facilities. The formula would be the same as the one used now for non-rural carriers. The endnote to this order shows the formula. We addressed the formula on Pages 18 and 19 of Order No. 00-312.

Impacts. Commission Staff calculated the embedded costs of basic telephone service for 31 rural ILECs. Costs ranged from a low of $30.00 per line per month to a high of $217.00 per line per month. Calculating the amount of support for individual carriers depends, in general terms, on the cost of basic telephone service, less federal loop compensation and USF amounts, less the Commission-established benchmark. The Commission's current benchmark is $21.00 per month per line, and the Stipulation would adopt that amount. That formula produces support payments between $0.00 per month and $34.71 per month.

The OUSF currently distributes $47 million per year. Staff estimates that bringing rural carriers into the OUSF program will cause the Fund to expand by $11.3 million annually, based on the number of estimated 2003 lines. The OUSF Surcharge currently is set at 5.5 percent of intrastate retail telecommunications revenues. Including rural carriers in the OUSF will cause an increase of 1.2 percentage points, bringing the total OUSF percentage surcharge to 6.7 percent. By way of comparison, the federal rate on interstate revenues is 7.28 percent. Staff recommends that the Commission not change the surcharge rate at this time. Staff will be updating cost information and would like to present up-to-date information to the Commissioners at a future Public Meeting. The Commission would then have current information on which to make costing and pricing decisions.

Rate rebalancing. Under the Stipulation, many eligible rural carriers will receive support payments from the OUSF. In order to maintain revenue neutrality, rural

ILECs will need to file revenue-neutral tariff filings. In accordance with the Stipulation, the tariff filings would be effective coincident with the first OUSF distributions to rural carriers. The parties agree that the tariff changes should work to reduce implicit subsidies that have traditionally been used to support the costs of basic telephone service. The parties agreed that the first priority should be to reduce carrier access charges.

The Oregon Customer Access Plan (OCAP) governs current intrastate toll/access charges in Oregon. OCAP established the Oregon Customer Access Fund (OCAF), which allows the pooling of access charge revenue requirements and the development of a common access charge tariff. The Oregon Exchange Carrier Association (OECA) administers OCAP, and participation in the OCAF is optional for rural ILECs. The parties agree that a number of changes should be made in the OCAP and agree as to how those changes should be considered for change. They agree that OECA should file a petition with the Commission in Docket No. UM 384 to modify the OCAP. The petition should be due within 45 days of the signing of this order.

OTASCC Comments. OTASCC points out that the Stipulation would cause a significant reduction in the intrastate access charges interexchange carriers would have to pay, but there is no requirement that interexchange carriers must pass those cost savings on to their customers. OTASCC doubts that interexchange carriers will reduce their interexchange charges enough to fully reflect their access charge reductions. OTASCC is concerned that the total telephone bills of rural end-user customers will be increased because they will not fully benefit from the access charge reductions. OTASCC also filed comments about the Commission's jurisdiction. OTASCC points out that adoption of the Stipulation would not constitute a waiver of an OTASCC cooperative member company's exemption from overall regulatory oversight by the Commission.

OTASCC's comments do not constitute an objection to adoption of the Stipulation. OTASCC supports the Stipulation and recommends that the Commission issue an order adopting it.

Scope of Stipulation. The parties reached agreement on the required issues necessary to integrate carriers serving rural areas into the OUSF. However, they did not reach agreement on all issues relating to the integration. Several aspects of how to account for long-distance services have not been resolved. The definition of "public interest" in determining whether to designate additional telecommunications carriers into areas served by rural ILECs was not resolved. The parties recommend that future rulemaking proceedings address these issues.

DISCUSSION

We commend the parties for their diligent efforts to address the relevant issues and consider the concerns of other parties. The parties met numerous times, held several workshops, and distributed information to each other. Adoption of the Stipulation will merge carriers serving rural areas into the Commission's already-existing OUS Program for non-rural carriers. The existing program is working very well and serves as an excellent platform for deciding how best to provide universal service support for carriers serving rural areas.

The time is not ripe to use an econometric model to determine the costs of carriers serving rural areas. The enormous volume of information necessary to construct an econometric model of forward-looking economic costs for rural carriers is not now available in usable form. The FCC is investigating how the costs of carriers serving rural areas should be determined. In the meantime, it uses embedded costs. We elect to do likewise. We plan to investigate this issue again in the future.

The Stipulation makes recommendations that take advantage of decisions we have made in other universal service investigations. We are happy with those decisions and how the existing program is running. We are confident that adopting the Stipulation will create a workable and reasonable universal service program for rural and non-rural telecommunications carriers in Oregon.

OTASCC need not worry about the jurisdiction of the Commission. The Commission is well aware of its jurisdictional boundaries and does not intend to use this proceeding to broaden its jurisdictional reach.

Establishing a fair and effective universal service program requires that basic decisions be decided at its initiation. We need, however, to continue addressing important universal service issues. The Stipulation suggests several issues to be decided in future proceedings. We agree that there still are issues to resolve, and we intend to address them in future proceedings.

CONCLUSIONS

The Stipulation meets the requirements of statutory law and previous Commission decisions. It is reasonable and should be adopted.

ORDER

IT IS ORDERED that:

1. The Commission adopts the Stipulation filed by the parties on November 4, 2002. The Stipulation is attached to and made a part of this order as Attachment A (including Appendices A and B to the Stipulation);

2. The OECA shall file a petition in Docket No. UM 384 in accordance with the provisions in the Stipulation.

Made, entered, and effective ____________________________.

Roy Hemmingway Chairman	**Lee Beyer** Commissioner
	Joan H. Smith Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

Endnote

- For customer lines served by the CLEC's own loop facilities, the CLEC will receive the full OUSF support;

- For customer lines served by a CLEC who is merely reselling an ILEC's supported retail local service, the CLEC will receive no OUS fund support;

- For customer lines served via UNE loops leased from an ILEC, OUS fund support will be divided as follows:

  (a) If the composite UNE platform price for basic local service is less than or equal to the benchmark, the ILEC will receive the full support and the CLEC will receive no OUS fund support.

  (b) If the composite UNE platform price for basic local service is greater than the benchmark but less than the OUS cost, the CLEC and ILEC will share support based on the relative differences of the UNE platform price and the benchmark (CLEC portion) and of the OUS cost and UNE platform price (ILEC portion).

  (c) If the composite UNE platform price for basic local service is equal to or greater than the OUS cost, the CLEC will receive the full OUS support and the ILEC will receive no support.