

ORDER NO. 98-430

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 731
Phase II

In the Matter of the Investigation of)
Universal Service in the State of Oregon.)

ORDER

DISPOSITION: RECONSIDERATION ISSUES RESOLVED

On March 13, 1998, we issued Order No. 98-094 deciding issues raised in Phase II of this proceeding. On May 12, 1998, GTE Northwest Incorporated (GTE) and U S WEST Communications, Inc., (USWC) filed applications for reconsideration of Order No. 98-094. No party filed a response to the applications. On July 13, 1998, we issued Order No. 98-278 granting reconsideration and announcing that after further analysis we would issue an order resolving the still-disputed issues. In this order, we affirm the decisions we made in Order No. 98-094 except on the issue of white page directory listings. The issues raised in the applications for reconsideration are discussed below.

White Page Directory Listings

One of the disputed issues we addressed in Order No. 98-094 relates to how to treat white page directory listings. We decided in Order No. 98-094 that local exchange carriers should continue to provide white page directory listings without imposing a separate charge. We rejected two other options: not including directory listings in the universal service program, or including them in the program and allowing a separate recovery for those costs.

GTE agrees that white page directory listings should be required, but argues that we should either state that such costs are one of the universal service costs for which a subsidy will be provided or postpone a decision on whether to allow recovery of directory costs to Phase IV of this proceeding. GTE argues that denying recovery of costs violates the requirements of the Telecommunications Act of 1996 to make subsidies explicit and to require all telecommunications carriers to fund the universal service program. GTE points out that not all carriers receive actual or imputed yellow page revenues, so assuming that they can use that revenue to support white page listings is not

accurate. GTE argues that not allowing recovery of directory listing costs through a separate charge prevents universal service support from being adequate.

USWC makes many of the same arguments GTE makes. It argues that requiring yellow page revenues to offset white page costs is illegal and not competitively neutral.

Section 254 of the Telecommunications Act of 1996 prohibits implicit, internal subsidies. Requiring telecommunications carriers to provide directory listings as a part of universal service while denying them recovery for those costs would necessarily involve a subsidy of one service by another service. We also realize that not allowing the specific recovery of directory listing costs would impact a variety of carriers in different ways. The arguments made by GTE and USWC are persuasive.

The FCC in its Order No. 97-157 did not include white page directory listings in the universal service program. The decision was based on its interpretation of telecommunications service as defined in the Telecommunications Act of 1996. The definition of telecommunications service in Oregon is different from the federal act, so the reason for the FCC decision does not apply here. But a decision in Oregon to exclude white page directory listings from the universal service program would align the universal service program in Oregon with the federal universal service program on that issue.

We therefore elect not to include white page directory listings in Oregon's universal service program at this time. We will be watching the development of the federal and state universal service programs and could include the listings in the state universal service program in the future if it appears to be in the public interest.

Extent of Residential and Business Support

We decided in Order No. 98-094 to defer the decision about which telephone lines would be included in the universal service program until the proxy model costs had been determined. In the interim, we decided to include in the universal service program only the primary residential and business line at each location. Because of the lack of information about the size of the fund, we were not comfortable at that time with including all telephone lines in the universal service program.

USWC recommends that secondary lines be included in the universal service program. It argues that if secondary lines are included in universal service, then carriers must be compensated from the universal service fund for the costs of those lines, and if secondary lines are excluded, then telecommunications utilities should be relieved of the obligation to provide secondary lines as carriers of last resort. USWC also argues that the price of secondary lines should be deaveraged and potentially price listed.

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We reiterate our decision to decide the secondary line issue after the cost proxy model numbers are available. Practical considerations concerning the size of the fund must be factored into final decisions. It is a matter of balancing the interests of the various participants in the telecommunications industry.

USWC also asks us now to define “primary line,” and offers a proposed definition. Before formally adopting a definition, we prefer to give other participants an opportunity to comment and offer definitions. We therefore decline in this order to adopt a definition of primary line. We also note that the Federal Communications Commission is still wrestling with a definition of primary line. *See* FCC Order Nos. 97-316 and 98-106.

Category 2 Distribution

USWC would like the Commission to create an interim fund to replace the implicit, internal subsidies historically a part of the pricing structure for telecommunications services. The interim fund would continue until the permanent fund is established. We declined to create an interim fund in Order No. 98-094.

The reasons we cited in Order No. 98-094 – that USWC had not shown a need for an interim fund, and our desire to have more information before making a decision – are still true today. We therefore decline to establish an interim universal service fund.

Explicit Surcharge

USWC applauds our decision to base contributions to the universal service fund on retail end-user revenue, but asks us to specify the particular funding mechanism that must be used to fill the fund. USWC argues that the only competitively neutral funding mechanism would be an explicit and uniform end-user surcharge. We did not state in Order No. 98-094 specifically how the carriers should collect the funds, and we decline to do so in this order. We are not convinced that USWC's suggestion is the best method. We are concerned about a specific surcharge's impact on local exchange rates. In addition, at least as of now, we prefer to give the carriers the flexibility to recover their universal service contributions as they deem prudent. We note that the Federal Communications Commission reached similar conclusions in its Order No. 97-157, paragraph 853. If the funding base of the federal universal service program is changed, we may take another look at the issue.

Interstate and International Revenue

In Order No. 98-094 we decided to base universal service contributions on retail end-user intrastate telecommunications revenue. In its application for reconsideration, USWC reiterates its arguments for including interstate and international revenue in the revenue base, and emphasizes its concern that local exchange customers

will be contributing more than their fair share. USWC takes the position that using only intrastate revenue will disproportionately burden customers who primarily use local service and points out that not all carriers differentiate between intrastate and interstate revenue.

The federal universal service program for high-cost carriers and low-income customers bases its revenue calculation on interstate service. We will continue to complement the federal program by using intrastate service revenue for contributions. The concerns USWC raises are legitimate, and we may address this issue again after the program has been in operation a reasonable length of time.

Administrator of High-Cost Category 2 Program

In Order No. 98-094 we stated that we did not want to select the administrator until we had additional information on which to make a selection, and urged the parties to work together to recommend a process and administrator for our consideration. In its application for reconsideration, USWC asks the Commission to establish deadlines for the submission of recommendations to the Commission and for completion of the process.

The parties are continuing their discussions on the process for selecting an administrator and paying for its services. In fact, a schedule has been adopted to address issues related to administration of the universal service fund, including selecting the administrator. The schedule calls for the filing of testimony, and a hearing on December 1, 1998.

OPINION AND CONCLUSIONS

Our standard for reconsideration is set out in OAR 860-014-0095(3). That rule sets out the grounds for reconsideration or rehearing as follows:

- (a) New evidence which is essential to the decision and which was unavailable and not reasonably discoverable prior to issuance of the order;
- (b) A change in the law or agency policy since the date the order was issued, relating to a matter essential to the decision;
- (c) An error of fact or law in the order which is essential to the decision; or
- (d) Good cause for further examination of a matter essential to the decision.

Petitioners have shown good cause for reconsideration of several issues addressed in Order No. 98-094. We are persuaded that white page directory listings should not be included in the universal service program when it becomes effective. We

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are not persuaded to change any of the other decisions reached in Order No. 98-094. The arguments made on those issues are similar to those raised previously in this proceeding. We remain convinced that the decisions we announced in Order No. 98-094 should continue in force on those issues.

ORDER

IT IS ORDERED that the applications for reconsideration of Order No. 98-094 are granted, and we change our decision on the issue of white page directory listings as described above. We affirm the remainder of Order No. 98-094.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may appeal this order to a court pursuant to ORS 756.580.

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