

ORDER NO. 99-197

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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 731
Phase III

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

ORDER

DISPOSITION: ADMINISTRATION ISSUES RESOLVED

INTRODUCTION AND PROCEDURAL HISTORY

We are continuing with the development and implementation of the Oregon Universal Service (OUS) program that complements the federal universal service program. We completed Phase I of the OUS plan On October 17, 1995, by issuing Order No. 95-1103. In that order, we addressed policy issues and proposals relating to universal service funding. We completed Phase II of the OUS plan on March 13, 1998, by issuing Order No. 98-094. In that order, we addressed OUS design objectives, adopted criteria for defining basic universal services, and established policies for funding the program and making distributions from it. We resolved additional Phase II issues in Order No. 98-430. In this order, we address issues relating to the administration of the OUS program. In Phase IV we will adopt a cost proxy model and resolve several remaining issues.

On May 11, 1998, Administrative Law Judge Lowell Bergen presided over a procedural conference. The parties also met in informal workshops to discuss Phase III issues on June 26 and August 11, 1998. As a result of discussions held during the workshops, the parties agreed on a schedule and Issues List. On August 20 Staff filed a motion to amend the schedule. On August 27 ALJ Bergen adopted the revised proposed schedule and Issues List. Pursuant to the schedule, Staff filed its direct testimony on September 25, other parties filed rebuttal testimony on October 19, and parties filed reply testimony on November 9. Post-hearing briefs were filed until January 22, 1999.

The following parties filed testimony or comments or otherwise actively participated in this proceeding: AT&T Communications of the Pacific Northwest, Inc., and AT&T Wireless Services, Inc., (hereinafter AT&T); GTE Northwest (GTE); MCI Telecommunications Corporation (MCI); Oregon Exchange Carrier Association (OECA); Oregon Telecommunications Association (OTA); Sprint Corporation on behalf of United Telephone Company of the Northwest (Sprint); TCG Oregon (TCG); the American Association

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of Retired Persons, GVNW Inc./Management (GVNW), and U S WEST Communications, Inc., (USWC).

In this order, we resolve disputed issues involving administration of the OUS plan. This order is organized around the issues specified for determination in this phase of the proceeding.

ISSUE 1: WHAT SHOULD BE THE TIMING AND PROCESS FOR SETTING THE OUS FUND CONTRIBUTION RATE?

Staff recommends a semiannual process for setting the OUS contribution rate. The OUS Administrator would receive the first quarter's (also called the reporting quarter) retail end-user revenue information by the tenth calendar day of the second month following the end of the reporting quarter. The Administrator would also receive monthly line count information by OUS support area for the last month of the reporting quarter. The Administrator would use the revenue and line count information plus 1) the PUC-approved cost-of-service information by support area derived from the cost-proxy model, 2) the federal and state benchmarks, and 3) the budgeted OUS Administrator's expenses to calculate the OUS contribution rate for the third and fourth quarters of the year. The OUS contribution fund requirement divided by the Oregon intrastate retail telecommunications revenues would determine the contribution rate. The Administrator would file the proposed rate and supporting papers with the PUC by the end of the second month of the second quarter. The rate would be reviewed and approved in time for the Administrator to post the rate on its public-access database and notify OUS contributors 15 days prior to the start of the third quarter. The OUS contribution rate would remain in effect for the third and fourth quarters.

Staff's original proposed schedule would allow 35 days between the time the OUS Administrator received the first quarter information and the approval and notification of the contribution rate. Staff envisioned two weeks for rate development, and three weeks for PUC review, approval, and notification. Staff acknowledged that the schedule would be tight, and might require occasional special Commission public meetings.

No party objected to Staff's proposal that the contribution rate be established semiannually. AT&T noted that the mix of monthly and quarterly elements to Staff's proposal is complicated, and recommended that the issue of timing be reevaluated after the program is underway. USWC suggested that the Commission may want to provide for mid-period adjustments during the first year or two of the program to accommodate any serious funding shortfalls. USWC stated that if the cost recovery mechanism adopted by the Commission is an end-user surcharge, USWC could meet the schedule only if customer notification is not required each time a surcharge adjustment is made. GTE pointed out that the timeline recommended by Staff is very short, and stated that if the Commission elects to permit recovery of OUS fund contributions from an end-user surcharge on customer bills, implementation would be difficult if not impossible. As an alternative, GTE suggested that the Administrator determine the contribution rate using the quarterly revenue information for the quarter preceding the one

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recommended by Staff. That change would give the participants more time to perform each task in the process.

After reviewing concerns about inadequate time to perform the tasks required in the process, Staff agreed that its schedule was too short. Staff now recommends adding a quarter between the rate-setting quarter and the recovery quarter. Staff does not completely agree with the proposed schedule recommended by GTE. Staff would allow only 40 days between the end of the reporting quarter and the date that the revenue information is due to the Administrator rather than the 75 days proposed by GTE. As an example, Staff's schedule for the period ending December 31 would require universal service worksheets to be received by the Administrator by February 10. The Administrator would then file its report with the Commission by March 25. The Commission would review the filing and approve the contribution rate by May 15. The recovery period would start on July 1. The schedule for the period ending June 30 would be based on the same intervals.

Resolution

We adopt the semiannual interval for setting the OUS contribution rate. It allows for an orderly and timely development of the necessary rate.

We want to fairly balance the needs of the carriers, the Administrator, the Commission's Staff, and the Commissioners to perform the required tasks expeditiously. Staff's revised proposed schedule reasonably balances those needs, and is adopted. It gives the carriers adequate time to file the required reports with the Administrator, and gives the other participants adequate, but not excessive, time to complete their tasks. The specific time lines for the adopted schedule are shown on Appendix A to this order.

ISSUE 2: HOW OFTEN SHOULD CONTRIBUTIONS BE COLLECTED?

Staff recommends that contributions be collected quarterly. Staff proposes a two-step contribution process in which the carriers would send to the Administrator an estimated contribution amount by the 28th day of the first month following the end of each quarter. The estimated amount would be based on revenue information from the quarter previous to the one just ended. By the 28th day of the following month, there would be a true-up contribution or refund based on revenue information from the quarter just ended.

Prior to Staff filing its proposal, OECA recommended that contributions be collected monthly. OECA did not respond to Staff's proposal on Issue 2. The other parties support the quarterly collection of contributions. However, USWC and GTE oppose the two-step process (except for the initial quarter), contending that it would be burdensome and complex. They would have the carriers make just the final contribution payment to the Administrator, eliminating the estimated contribution payment. GTE also suggests an alternative of having the true-up contribution be deferred to the next quarter and combined with that quarter's estimated contribution. Staff responds that its proposal puts funds in the hands of the Administrator as soon as possible, providing a reserve float for administration purposes. If the

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Commission adopts Staff's two-step contribution process, USWC would like the issue raised again after the system has been in place long enough to know how well it works.

USWC requests that we order carriers to impose an end-user surcharge to recover OUS fund contributions. USWC argues that the surcharge is the most competitively neutral and administratively easy way to collect the needed revenues. GTE agrees with USWC. USWC requests the Commission to make that decision now. Staff opposes a mandatory end-user surcharge on customer bills, but recommends that the Commission address this issue in Phase IV of this proceeding. Staff notes that the FCC took a permissive approach to contribution recovery when it considered the issue. AT&T also supports addressing the recovery issue in Phase IV.

Resolution

We want to make the OUS process as simple as possible. Other things being equal, we would prefer a one-step process to a two-step process. However, the two-step process proposed by Staff would get needed funds to the Administrator a month prior to the time the one-step proposal would get them to the Administrator. The Administrator needs the money as soon as possible to administer the fund. We therefore adopt the two-step process proposed by Staff for the initial operation of the fund. GTE's proposal to combine the true-up payment with the next quarter's estimated contribution has the advantage of possibly reducing administrative expenses. The Administrator and the Advisory Board should look at the feasibility of GTE's proposal or another one-step process after the fund has been operational for a reasonable amount of time.

We are not prepared to mandate a specific mechanism for the recovery of OUS contributions. Carriers should have the flexibility to recover their OUS contributions as they think best. The parties may address the issue again in Phase IV if they desire, but we are not persuaded now to mandate a specific recovery mechanism.

ISSUE 3: WHAT SHOULD BE THE MECHANISM FOR THE ADMINISTRATOR TO COLLECT OUS FUNDS?

Staff and all parties recommend that contributions be made by wire transfer or by check. Staff would limit checks to the smallest contributions, with the Administrator deciding what is small enough to qualify. GTE recommends that the contributors rather than the fund Administrator make the decision whether to pay by wire transfer or check. Staff points out that because there is only a one-day difference between the collection of OUS funds and their distribution, it is important that payments to the Administrator be made quickly. Wire transfers would eliminate postal delivery delays.

AT&T recommends a netting process in which contributors would pay the Administrator the difference between what they collected and what they were due in OUS distributions. USWC supports either netting or not netting if the Commission allows or mandates an end-user surcharge recovery mechanism. Otherwise, USWC would not support a netting process. Staff opposes a netting process, contending that when the frequency of

collections (quarterly) is different from the frequency of distributions (monthly), a netting process is awkward. GTE agrees with Staff.

Resolution

Wire transfers are faster and more secure than checks sent through mail service. All contributions must be made by wire transfer, except when the Administrator agrees to accept small payments by check.

AT&T's proposal for a netting process for fund contributions is not adopted. It would be awkward and confusing to use a netting process when distributions are made monthly but contributions are made quarterly. A netting process might also require a change in how the Administrator is provided a reserve float. We rejected the netting process proposal in Phase II of this proceeding, and see no reason to now change the decision we made then.

ISSUE 4: WHAT IS A FEASIBLE TIME LINE FOR COLLECTION AND DISTRIBUTION OF THE OUS FUNDS?

Staff developed a detailed plan for the commencement of the fund, contributions to it, and distributions from it. *See* exhibit A to this order. Under Staff's plan, the fund Administrator would develop an initial OUS contribution rate in the first quarter for recovery in the third quarter. OUS distributions would start on the 30th day of the third month of the fourth quarter. The Administrator's operating expenses for the first three quarters would be billed directly to the contributors in each of the first three quarters. After that, the Administrator's expenses would be incorporated in the OUS contribution rate development. Fourth quarter operations would be the first quarter of normal collections and distributions. Staff recommends an average reserve float of one quarter between collections and distributions. The float would vary between a low of two months and a peak of four months because of the difference in the timing of collections and distributions. Staff notes that the Commission adopted the principle of one quarter's float in Order No. 98-094.

The parties generally support Staff's proposal for the collection and distribution of OUS funds. USWC, however, recommends that the fund reimburse providers for the amount they have been billed until the fund is up and running. To accomplish that reimbursement, USWC recommends that the Administrator's expenses for the start-up period be included in the initial fund calculations.

OECA is not sure that a two-month float is necessary. If it is not necessary, carriers could keep their money longer for the benefit of themselves and their customers. GTE does not oppose the Administrator holding some revenues in advance of distributions, and initially recommended a float of one quarter. However, it now contends that incumbent local exchange carriers (ILECs) will be unfairly burdened by the float mechanism recommended by Staff. It argues that the revenue of ILECs is primarily from intrastate operations, putting more of a burden on them in comparison to other carriers who have a broader revenue source. GTE also points out the greater pricing flexibility of carriers less regulated than ILECs.

Resolution

Staff proposes that expenses of the Administrator be billed directly to carriers during the first three quarters of operation, and the Administrator's expenses thereafter be included in the amounts to be billed to the carriers. Staff's proposal did not provide a mechanism for the carriers to recover what they had paid for the first three quarters of the Administrator's expenses, because, according to Staff, the amounts would not be substantial. USWC and GTE propose that those expenses be recovered from the OUS fund.

We agree with USWC and GTE that the initial expenses of the Administrator should be recovered from the OUS fund. We do not know how substantial those expenses will be, but it is only fair to allow them to be paid from the OUS fund. They should be included in the computation of the fund contribution rate for the carriers.

We decided in Phase II of this proceeding that the Administrator needed a reserve float of money between collections and disbursements to fund its operation. The reserve float is needed to meet contingencies and smooth out seasonal variations without the need for frequent changes to the contribution rate. To allow contributors to keep their contributions longer for their own use would deprive the Administrator of needed money for efficient administration of the fund. We accepted GTE's recommendation in Phase II to establish the float at approximately one quarter. We affirm that decision here. We are not persuaded by GTE's current argument that a modest float funded by OUS participants will unfairly disadvantage ILECs.

ISSUE 5: AT WHAT GEOGRAPHIC LEVEL CAN SUPPORT DISTRIBUTIONS BE REASONABLY ADMINISTERED?

The geographic level at which cost-of-service data is disaggregated and high-cost universal service support is calculated is called a support area. Staff recommends that the support area be no larger than a wire center. Staff would disaggregate a wire center cost data into two support areas based on customer locations inside and outside urban growth boundaries. OUS support areas should be coordinated with geographic price deaveraging for unbundled loops or network channels; they should also be coordinated with the federal high-cost program. The FCC has not resolved significant issues relating to the federal high-cost program, causing Staff to recommend that the Commission defer the designation of support areas to Phase IV of this proceeding.

The parties support Staff's recommendation to designate support areas at a later date. USWC recommends that the Commission make a general statement now that support needs to be targeted below a wire center, specifically into urban and non-urban areas. USWC states that designations of support areas below the wire center level (whether urban growth boundaries or concentric circles around each central office, for example) could be deferred. AT&T also recommends deferral of this issue, but emphasizes that OUS cost of service calculations and the pricing of unbundled elements must be done in an identical manner. MCI declares there is a need to deaverage the rates for unbundled network elements at the same time

as the cost-based OUS fund is implemented. GTE disagrees, alleging that MCI wants retail rates to be left undisturbed and unbundled network elements (UNE) rates deaveraged to obtain a competitive advantage. OECA wants the Commission to select a methodology to target support prior to granting a second company "Eligible Telecommunications Carrier" status in a rural area.

Resolution

We would like to consider FCC actions that impact our selection of a support area before we establish specific support areas. The FCC has not made some of the decisions it will make on the issue. In addition, we would like to receive additional discussion from the parties about specific support area recommendations. At this time we are only prepared to state our preference for a support area no larger than a wire center. We will address the issue again in Phase IV.

ISSUE 6: WITH WHAT FREQUENCY SHOULD OUS FUNDS BE DISTRIBUTED TO ELIGIBLE PROVIDERS?

All parties support monthly distributions to eligible providers. In workshops held prior to Staff publishing its testimony, AT&T recommended quarterly distributions, to match quarterly contributions. However, after Staff filed its testimony, AT&T stated that it did not object to monthly distributions, but commented that monthly distributions add an element of complexity to the process.

Resolution

The Administrator will disburse funds to eligible providers monthly.

ISSUE 7: WHAT SHOULD BE THE BASIS OF, AND INFORMATION REQUIRED FOR, DISTRIBUTING OUS FUNDS TO ELIGIBLE PROVIDERS?

Staff recommends that the Administrator maintain a public-access database showing the economic cost of service per line by service area and support area. Both service area and support area information is necessary because the eligibility of telecommunications providers to receive universal service funds is determined by service area, but the level of support is determined by support area. Staff would exclude non-switched private lines from line counts because they do not meet the criteria for OUS support. Staff would exclude UNE lines on the theory that it is the provider who purchases the UNE lines that may be eligible for OUS support, not the provider who sells the lines.

The funding amount is equal to the excess of cost per line over a prescribed benchmark. The specific formula will depend on federal and state parameters that have not been set yet. Therefore, Staff recommends that decisions regarding the scope of support and benchmarks be deferred to Phase IV of this proceeding (or to a separate proceeding) after the cost studies are completed.

The other parties support Staff's recommendation to defer decisions regarding the scope and basis of distributions to a later time. USWC does not agree, however, that the provider who sells UNE lines is not eligible for OUS support. USWC contends that the provider who bears the burden of the cost of providing the facility should receive the support. Staff, MCI, and AT&T respond with comments on the merits of the USWC contention.

Resolution

All parties agree with the general thrust of Staff's proposal for the maintenance of a public-access database showing the economic cost of service per line by service area and by support area. Staff proposes that other decisions about distributing OUS funds be deferred to Phase IV of this proceeding or to a separate proceeding. Staff's proposal is adopted. Some parties disagree with Staff's exclusion of UNE lines from the line count. We plan to look at this issue again in greater detail in the future. It is sufficient now to adopt the proposal outlined above for distributing OUS funds to eligible providers.

ISSUE 8: WHAT SYSTEMS AND PROCEDURES MAY BE MOST EFFECTIVELY USED TO DISTRIBUTE OUS FUNDS?

Staff recommends that the Administrator's responsibilities include recommending ways to improve the efficiency of the OUS fund mechanism. As an example, Staff cites the possibility that worksheets could be distributed on an electronic or computer readable medium if the proper certification of the information can be obtained. GTE recommends that the Administrator establish and maintain an Internet website to facilitate communication about OUS matters.

Resolution

We agree that one of the Administrator's responsibilities will be to recommend ways to improve the efficiency of administering the OUS fund. Of course, others are also encouraged to suggest improvements to the OUS program.

ISSUES 9 & 10: HOW SHOULD OUS FUND SURPLUSES AND SHORTFALLS BE HANDLED?

Staff recommends that if the reserve float gets too large, the Administrator should credit the next quarter's contribution rate. Because of the two-month reserve float, shortfalls should be rare. However, if a shortfall were to occur, Staff recommends that the Administrator have the authority to borrow money for an interim period and file a revised contribution rate with the Commission for the next quarter. Staff recommends that the Commission limit the authority of the Administrator to borrow money to some fraction of one month's normal distribution.

The other parties agree generally with Staff's recommendations. However, AT&T contends that how large the reserve gets before it is too large should be defined. It recommends that all funds that exceed the average two-month reserve be credited back to the

contributing companies in the month following the estimation of the surplus. As to shortfalls, AT&T recommends that there be procedures in place to give the other participants an opportunity to be heard in the event a major contributor failed to make its payments, causing a shortfall. In response to AT&T's suggestion for defining what is too large, Staff declined to offer a definition, feeling that the Advisory Board will be in a better position to define it. The Advisory Board would then make a recommendation to the Commission.

Resolution

We agree with Staff's proposal and its advice to involve the Advisory Board in making specific recommendations about fund surpluses and shortfalls. We are not prepared at this time to specifically define what constitutes a reserve fund surplus, or to specify what portion of a month's float the Administrator would be allowed to borrow in the event of a shortfall. We will seek recommendations from the Advisory Board after the fund becomes operational. If a shortfall develops, the Administrator will need to take action without delay. We agree with AT&T that other contributors should be able to offer their views if a contributor fails to pay, causing a shortfall. However, if necessary the Administrator may have to act prior to hearing from all the contributors who want to comment on the matter.

ISSUE 11: SHOULD THE OPUC PROCEED WITH THE SELECTION OF AN OUS ADMINISTRATOR?

Staff opposes selection of an Administrator now. It cites three reasons for waiting to select the Administrator: 1) Resolution of the details of administration still to be decided in this proceeding would give the Administrator a more clearly defined framework within which to operate; 2) The FCC continues to reconsider its position, creating uncertainty for the state's complementary role in the high-cost fund; 3) An Administrator should be paid after it is selected and performs work, so premature selection is costly. To facilitate selection of an Administrator, Staff recommends that an OUS Advisory Board be convened right after the conclusion of this phase of the proceeding.

USWC contends that it is not too early to start the selection process. It points out that the process involves selection of the Advisory Board, development of a Request for Proposal (RFP), distribution of the RFP, evaluation of the responses, and interviews. USWC does not agree that the Administrator would have to be paid prior to performing any work; the Administrator should be paid only for work actually performed. During the fund development phase, the Administrator could provide consultation services, for which it should be paid. AT&T sees no need for the immediate selection of an Administrator, and cites problems with interim payments for services performed prior to the start-up of the fund. GTE also supports starting the selection process now, but believes it would not be a problem if the Administrator is selected after further development of the OUS fund.

Resolution

The appropriate role and responsibilities of an Administrator are not yet determined. The FCC has yet to decide significant issues relating to the administration of the federal portion of the universal service program, and we have more decisions to make regarding our state program and its complementary role with the federal program. The Administrator will be able to better focus its activities after an Advisory Board is functioning and more details of the Administrator's duties are decided. An Advisory Board will be created soon after this order is issued, and the board will then participate in the process to select an Administrator.

ISSUE 12: WHAT CRITERIA SHOULD BE USED TO SELECT THE OUS ADMINISTRATOR?

The Administrator will be directly responsible to the Commission. The parties are in basic agreement that the following criteria should be used to select the Administrator:

1. The Administrator should be neutral and impartial;
2. The Administrator should not be an advocate in Commission proceedings except on matters limited to OUS administration;
3. The Administrator should not be affiliated with any telecommunications provider;
4. The Administrator should not have any significant financial interest in any telecommunications provider;
5. The Administrator should be accessible to the Commission Staff and to participating telecommunications providers;
6. The Administrator should demonstrate a capability to efficiently administer the OUS fund.

GVNW would like criterion number 3 revised by adding the words "or with the PUC" at the end of the sentence. GVNW's concern apparently is with the Commission's responsibilities for both the administration and regulation of the fund. Staff opposes GVNW's proposed language, citing the Commission's regulatory and executive responsibilities for other programs, such as the Oregon Telephone Assistance Program and the Telecommunications Devices Access Program. In addition, Staff is concerned that the proposed language may limit a Commission option to place the OUS fund with the State Treasury or to use other state agencies in some manner associated with the OUS program.

Resolution

Criterion number 3 prohibits the selection of an Administrator having an affiliation with a telecommunications provider. GVNW suggests also prohibiting any affiliation with the Commission. GVNW did not identify any entity or type of entity that might be disqualified under its proposed language. We do not see how adding the proposed additional restriction would address GVNW's apparent concern about our role in the administration of the fund. Nor do we see how adding the restriction that the Administrator cannot have any affiliation with the Commission improves the selection criteria.

We are satisfied with the criteria listed above, and they are adopted.

ISSUES 13 & 14: WHO SHOULD ADMINISTER THE OUS FUND, AND HOW SHOULD THE ADMINISTRATOR BE SELECTED? WHAT ROLE SHOULD THE INDUSTRY HAVE IN SELECTING THE ADMINISTRATOR AND IN ADMINISTERING THE OUS FUND?

Staff recommends that the industry participate in the selection of an Administrator and in the ongoing operation of the OUS program through an OUS Advisory Board. Staff recommends that the Board be convened immediately after the conclusion of this phase of the proceeding. The Advisory Board's first duty would be to assist the Commission in preparing a request for proposal, reviewing responses, and recommending selection of an Administrator. Staff did not recommend who should be selected as the Administrator, but commented that OECA apparently does not have the authority necessary to administer the OUS fund.

AT&T contends that the Commission should select the Administrator using the criteria established in Issue 12, using a competitive bidding selection process. However, AT&T does not support creation of an Advisory Board. AT&T feels that having an Advisory Board would simply add another management layer and increase expenses. AT&T also notes problems with selection of OECA as the Administrator; OECA represents the interests of only one segment of the industry -- incumbent local exchange carriers. GTE supports having an Advisory Board to participate in the selection of an Administrator and for help with the ongoing operations of the fund. GTE recommends that disputed matters be submitted to the Advisory Board. MCI does not object to establishing an Advisory Board for the purpose of selecting an Administrator, but would disband it then. However, if the Commission decides to create an Advisory Board, after the selection of an Administrator MCI would limit the Advisory Board's role to that of a technical advisor to the Administrator. MCI and AT&T think any issues involving contribution and disbursement of funds should be processed by the Commission pursuant to its existing processes.

Resolution

We want the industry to have a voice in the selection of an Administrator and in the ongoing operation of the universal service program. An Advisory Board is an excellent way for OUS fund participants to be heard. We plan to convene an Advisory Board as soon as possible. We are not comfortable with having disputes submitted to the Advisory Board for resolution. In keeping with our oversight responsibilities, we will use our existing processes to resolve disputes. Additional issues relating to the Advisory Board are addressed in the discussion of Issue 20.

ISSUE 15: WHAT ARE THE RESPONSIBILITIES OF THE OUS ADMINISTRATOR?

Staff initially proposed that the OUS Administrator be responsible for the following duties:

1. Preparing budgets and tracking budget-to-actual OUS administration expenses;
2. Determining the OUS funding requirement;
3. Calculating and filing (semiannually) with the Commission the proposed OUS contribution rate;
4. Notifying telecommunications providers of the Commission-approved OUS contribution rate;
5. Collecting OUS contributions (quarterly) from telecommunications providers;
6. Distributing OUS support (monthly) to eligible telecommunications providers;
7. Maintaining an identification file of all telecommunications provider contributors and eligible recipients. Eligible telecommunications provider recipients would be identified by service area;
8. Maintaining a tracking file of contributor revenue data, eligible provider access line data, and the OUS amounts collected and distributed;
9. Reviewing and verifying information provided on the OUS worksheets. Identifying and reporting irregularities to the Commission;
10. Assessing late-payment charges on delinquent contributions;
11. Maintaining the OUS fund float reserve in an interest-bearing account;
12. Establishing and maintaining a public-access (read-only) database for disseminating OUS support information. This information would include: (a) the Commission-approved economic cost of service per access line by service and support area; (b) the available federal and state support amounts per access line by type of line, and by service and support area; (c) the current approved OUS contribution rate; (d) sample OUS worksheets with instructions; and (d) other public information that the Administrator and Advisory Board deem appropriate;
13. Recommending and performing ongoing procedures to improve the efficiency and accuracy of the OUS fund;
14. Coordinating with the federal Universal Service Administrative Company;
15. Preparing and filing reports with the Commission itemizing monthly administrative costs, collections, and disbursements.

GTE agrees with the duties listed above, and recommends the addition of two more duties. First, GTE would require the Administrator to fully understand the rules which establish or define the OUS fund and to implement all necessary administrative procedures to assure compliance with Commission rules related to the OUS fund. Second, GTE would require the Administrator to secure a bond sufficient to hold harmless from liability OUS fund contributors and recipients due to malfeasance by the Administrator. Staff agrees with GTE's first suggestion, but opposes the second. Staff recommends that the Administrator be selected and then the Commission could determine whether a bond is necessary.

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AT&T would add specificity to Staff's general requirement in responsibility No. 15 that the Administrator file reports with the Commission. AT&T recommends that the Commission require the Administrator to report monthly administrative expenses, including all expenses, receipts, and disbursements associated with the administration of the fund. The reports would be required semiannually initially, and annually after the fund is established and functioning. AT&T also recommends that the Administrator be required to file a cost allocation manual with the Commission and grant Commission full access to all data collected in the administration of the OUS fund. Staff agrees with the requirement to file a cost allocation manual. Staff also agrees that reporting requirements (listed above in Requirement No. 15) need greater specificity, but would work those details out later to the satisfaction of the Advisory Board and Commission.

Resolution

The 15 requirements listed above are reasonable. However, we agree with the additional requirements suggested by GTE and AT&T. If we wait until the Administrator is selected to decide whether it needs a bond, the bidding process would be confused because applicants would not know whether they needed a bond. To treat all applicants equally, we adopt the requirement that the Administrator will need a security bond to cover its potential malfeasance. No party suggested an amount for the bond, so we invite the parties to suggest (in the next phase of the proceeding) an amount and any other conditions they think pertinent to the bond requirement.

We also think AT&T's suggested reporting requirements are reasonable and should be adopted. The information required will allow us to oversee the administration of the fund with sufficient detail to make informed decisions.

We adopt the 15 requirements listed above, except that No. 15 is amended as shown below and No. 16 is added, as follows:

- 15. The Administrator shall report to the Commission its monthly administrative expenses, showing all expenses, receipts, and payments associated with the administration of the OUS fund. The reports shall be filed semiannually initially, and annually after we decide that the fund is established and annual reports are sufficient. In addition, the Administrator shall file a cost allocation manual with the Commission;
- 16. the Administrator shall obtain and maintain a security bond in an amount to be determined by the Commission.

ISSUE 16: HOW SHOULD THE ADMINISTRATOR HANDLE CONFIDENTIAL DATA RECEIVED FROM THE TELECOMMUNICATIONS PROVIDERS?

Staff proposes that information reported by carriers in worksheet forms OUS 2 and OUS 3 be considered confidential and protected to the extent allowed by law. OUS 2 will contain revenue information, and OUS 3 will contain line count information. Staff proposes that other information, including summary data and information about carriers, be considered non-

confidential. GTE apparently agrees with Staff by suggesting that competitive or financial information should be released to parties other than the Commission only by order of the Commission.

OECA suggests that a safer way to protect the confidentiality of sensitive information is for the Commission Staff to review the information at the Administrator's office rather than having the information filed with the Commission, where it may become a public record subject to inspection. OECA also recommends the execution of confidentiality contracts between the information providers and the Administrator clearly specifying how the information will be kept confidential. USWC agrees with OECA. Staff responds by questioning whether reviewing documents at the Administrator's office would provide greater protection than would the filing of documents with the Commission.

Resolution

The information the carriers will be supplying in worksheet forms OUS 2 and OUS 3 will be considered confidential. The Administrator will be obligated to protect it carefully. Other information will not be confidential. We recognize the need of carriers to protect their sensitive information, but verifiable information must be available to the Administrator and the Commission. We adopt the suggestion that the Administrator and the carriers execute a clear contract dealing with confidentiality of information supplied under the OUS program. It appears that all parties want sensitive company-specific information kept confidential, and are comfortable with other information being made public. We expect the parties to work together to find the best ways to accomplish those goals. They can work with the Oregon Department of Justice to establish procedures to preserve confidentiality while meeting the requirements of the Public Records Law.

The Administrator shall provide the Commission Staff copies of the OUS 2 and OUS 3 work sheets upon request.

ISSUE 17: WHAT AUTHORITY SHOULD BE GRANTED TO THE ADMINISTRATOR TO ENSURE THAT INDIVIDUAL CONTRIBUTORS AND ELIGIBLE RECIPIENTS OF OUS FUNDS COMPLY WITH THE OUS PROGRAM?

Staff recommends that it play a direct and active role in overseeing the OUS program. Staff recommends that the Administrator have authority to assess late-payment charges on delinquent contributors. The Commission would set the late-payment rate.

The parties support Staff's recommendations, but GTE wonders what it would mean for the Staff to have a "direct and active" role in overseeing the OUS program. Staff responds that it foresees both a regulatory and an oversight role for itself. In its oversight role, Staff plans to observe, review, and audit the administration of the program. In its regulatory role, Staff plans to review and analyze information to develop recommendations for the Commission.

Resolution

It will be important for the Administrator to have authority to assess late-payment penalties on delinquent carriers, and we will establish an appropriate late-payment rate. It will also be important for our Staff to oversee the administration of the fund and to make recommendations for our consideration. The Staff-proposed recommendations on Issue 17 are adopted.

ISSUE 18: WHAT TYPE OF AUDITS SHOULD BE PERFORMED ON THE OUS PROGRAM AND ITS ADMINISTRATION AND BY WHOM?

Staff states that four types of audits could be performed on the OUS program. The first would be an audit of the Administrator's performance. It would address issues relating to how well the Administrator carries out its responsibilities established by the Commission. It would also determine whether the Administrator is properly and accurately collecting, distributing, and accounting for the OUS funds. Staff originally proposed that this audit be performed by the Secretary of State, with oversight by the OUS Advisory Board and our Staff.

The second audit recommended by Staff is of the accuracy of the information provided to the Administrator by telecommunications providers. Staff recommends that it perform this audit. The Administrator would also have the duty to report any irregularities to the Staff. A third audit possibility would be to track each eligible carrier's use of OUS support. Staff feels it would be an almost impossible task to track funds through the operations of the carriers. Staff therefore does not recommend such an audit be attempted. The fourth audit possibility is of the success of the OUS program. It would address the question: Has the OUS program accomplished the goals established for it by the Commission? Staff recommends that the review start two years after the program begins distributions, with a report made to the Commission four months later. The report would be a collaborative effort between the Advisory Board and the Staff. Fund participants could make comments during that four-month period.

AT&T recommends the use of an independent outside auditor and the performance of biannual audits of the OUS fund. USWC questions the authority of the Secretary of State to perform the annual audit, and recommends the use of an independent auditor. The independent auditor would be paid from the OUS fund. GVNW also questions whether the Secretary of State should perform the annual audit of the Administrator. In response, Staff states that it is not opposed to having the Advisory Board retain an independent auditor to perform the audit of the Administrator, with the expense of that audit paid from the OUS fund.

Resolution

We agree that the Administrator should be audited annually to determine whether it is performing according to the standards we have established. We direct that an independent auditor be employed for that audit, to be paid from OUS funds. We adopt Staff's proposal that it audit the accuracy of the information provided by the carriers to the Administrator. We also agree that no useful purpose would be served by attempting to track OUS funds through the

operations of the carriers. Lastly, we adopt Staff's proposal for a review of the success of the program starting two years after distributions commence.

ISSUE 19: HOW SHOULD THE COSTS ASSOCIATED WITH THE ADMINISTRATION OF THE OUS FUND BE RECOVERED?

All parties agree that the costs of administration should be recovered from the OUS fund. Staff would restrict that recovery, at least for now, to the direct operating expenses of the Administrator. Staff thinks the carriers should be able to incur modest expenses incident to participation in the universal service program without reimbursement from the fund. USWC and GTE agree that such expenses should not be included in the initial expenses reimbursed by the fund, but caution that substantial carrier expenses should be recoverable from the fund. They recommend that the issue be left open while decisions are made as to how the fund will operate.

Resolution

We decided in Order No. 98-094 that we expect carriers to absorb a modest level of administrative expenses incident to participation in the program. We affirm that decision here. The matter can be addressed again if carrier expenses for participation become substantial and onerous.

ISSUE 20: SHOULD THE OPUC PROCEED WITH THE SELECTION OF AN OUS ADVISORY BOARD? IF SO, WHAT SHOULD BE ITS SIZE, COMPOSITION, AND RESPONSIBILITIES?

In its initial proposal, Staff recommended that the Commission convene an Advisory Board at the conclusion of this phase of the proceeding. Staff proposed a board consisting of nine members, with possible expansion to 11 members. The board would be comprised of the following members:

- Four members representing the telecommunications utilities, equally divided between large urban utilities and smaller rural utilities;
- Four members representing competitive telecommunications providers, equally divided between those providing primarily interexchange toll services and those providing primarily competitive local exchange services;
- One member representing the Commission.

Staff recommended that the board function in an advisory capacity, not having day-to-day responsibilities for managing the fund. Staff proposed that the Advisory Board have the following functions:

- Assist and advise the Commission in the selection of an OUS Administrator;
- Advise the Administrator and Commission regarding the effective operation of the fund;

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- Review OUS administration budgets, OUS contribution rate proposals, and various monthly OUS operating reports;
- Assist the Administrator in reviewing and identifying irregularities in information provided on the OUS worksheets;
- Provide an interface between the Administrator and telecommunications providers to resolve problems or disputes and to recommend appropriate action;
- Assist the Commission in evaluating the success of the OUS program.

TRACER recommends that the board include two consumer representatives, one from the residential market and one from the business market. GTE recommends a board with nine members, consisting of three representing local exchange carriers, two representing interexchange carriers, one representing competitive local exchange carriers, one representing radio common carriers, one from the Commission, and one representing consumer groups. OECA doubts that the distinction between interexchange carriers and local exchange carriers can be maintained because the large interexchange carriers also offer local services. OECA recommends a board consisting of three members from the incumbent portion of the industry, three from the competitive portion of the industry, and a representative from a consumer group. A Commission Staff member would be an *ex officio* member, not having the right to vote on issues. OECA also would limit the time that any company may have a member on the board to three consecutive years. AT&T disagrees that an Advisory Board is necessary, but if one is created no member who is a potential recipient of funds should have any involvement in distribution issues. MCI does not object to the establishment of an Advisory Board to help select a fund Administrator. If the Commission elects to establish a board and maintain its existence after the selection of an Administrator, MCI would limit the Board's role to that of a technical advisor. USWC and GTE urge the Commission to expeditiously convene an Advisory Board with balanced representation.

Resolution

Telecommunications carriers who participate in the OUS program should have a voice in how it is administered. We will select an Advisory Board now to provide that opportunity. We believe an Advisory Board will be valuable to us and to the Administrator in representing different types of telecommunications carriers and in giving advice gained from experience in providing telecommunications services. The Advisory Board will be helpful in selecting an Administrator and in providing advice after the Administrator is selected.

Services provided by various telecommunications providers are constantly expanding and changing. Traditional distinctions among telecommunications carriers are becoming more difficult to maintain. However, individual carriers usually have one type of service that dominates their business. We want to have a fair representation of the various types of telecommunications carriers on the Advisory Board. Clear distinctions between the types of services provided by individual carriers are blurred, making selection of members less than exact. However, Advisory Board members who provide more than one type of telecommunications service may be able to provide valuable insight into various aspects of an issue.

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We adopt the basic outlines of the Staff proposal for an Advisory Board. We agree that we should immediately start efforts to select an Advisory Board, and we agree with Staff's recommendations about its functions. However, after considering the comments made by the parties, we will create a ten-member Advisory Board, comprised of members representing the following interests:

- Three from telecommunications utilities;
- Three from competitive telecommunications providers;
- One from radio common carriers;
- One from our Staff; and
- One from a consumer group representing residential customers;
- One from among the business customers.

This group of representatives will strike a reasonable balance of interest among those providing telecommunications services and those interested in how the industry provides those services. We adopt the OECA suggestion that membership be limited to three consecutive years by any member representing a particular company. The terms will be staggered so that no more than one-third of the members will be new in any one year. We will maintain permanent membership on the board.

ISSUE 21: WHAT IS THE IMPACT ON TELECOMMUNICATIONS PROVIDERS' OPERATING SYSTEMS FOR ADMINISTRATION OF THE OUS FUND CONTRIBUTIONS AND DISTRIBUTIONS?

A number of changes will be required of telecommunications providers' operating systems and procedures as a result of participation in the universal service program. Recipients of Category 2 distributions will need to keep records of customer access lines by type of switched access line and by service and support area. This information will be necessary to verify line count information provided to the Administrator. Contributors to the universal service fund will need to have revenue accounting systems that identify, separate, and categorize wholesale revenue from retail revenue. Telecommunications utilities may also have to change tariff provisions filed with the Commission.

ISSUE 22: WHAT INFORMATION DATABASES WILL THE ADMINISTRATOR NEED TO MAINTAIN AND HOW CAN THEY BE VERIFIED?

Staff recommends that the Administrator maintain a number of computerized files, including:

- An identification file of telecommunications providers;
- An identification file of eligible OUS recipients by service area;

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- A file of retail telecommunications revenues by quarter, year, and OUS contributor identification;
- A file of line-count information by month, year, support area, and OUS recipient identification;
- An OUS transaction history file; and
- An OUS public-access information file.

Staff also recommends that verification of the data be the joint responsibility of the Administrator and the Commission's Staff, with assistance from the Advisory Board.

The other parties agree with the list of databases proposed by Staff. AT&T suggests, however, that we coordinate our information requirements with any information requirements established by the FCC. We agree, and adopt the Staff's proposed database requirements, but give the Administrator added flexibility to adapt database requirements to meet information needs in an efficient manner.

ISSUES 23 & 24: WHAT ARE THE IRS REQUIREMENTS ON THE STATE AND ADMINISTRATOR TO MANAGE THE OUS FUND IN A TAX-EXEMPT MANNER? WHERE SHOULD THE OUS FUND RESIDE?

We are discussing these two issues together because the place where the OUS fund resides could have tax implications. Staff proposes that the fund reside in the State Treasury, separate and apart from the General Fund. The Staff witness claims no tax expertise, but thinks an OUS fund placed in the State Treasury should make it tax-exempt like the Residential Service Protection Fund is today. The fund would be under the direction and control of the Commission.

USWC and OECA favor the creation of a non-profit corporation to handle the OUS funds. USWC and OECA are both concerned that OUS funds kept in the State Treasury would possibly be vulnerable to appropriation for other purposes by legislative action. USWC thinks enabling legislation would be needed for the fund to reside in the State Treasury. USWC points out that both federal and state law exempt qualified non-profit corporations from taxation. OECA says that it and the Washington Exchange Carrier Association have collected universal service funds and other pooled revenue without issues being raised about federal income tax.

If the fund is placed with the State Treasury, GTE wonders if the Administrator would have the full access and control needed to efficiently administer the fund. GTE points out that a contract between the Administrator and the State Treasury limiting the use of funds strictly to OUS purposes might be helpful.

Resolution

We are persuaded that a non-profit corporation should be created to handle the OUS funds. The Administrator could be a non-profit corporation itself; or a separate non-profit corporation could be created to handle OUS funds. Creation of a non-profit corporation to

handle OUS funds will eliminate the possible need for enabling legislation, and would remove the potential risk of legislative appropriation.

ISSUE 25: SHOULD AN INTERIM OUS FUND BE ESTABLISHED WHILE THESE ISSUES ARE DEBATED?

Because of the time necessarily consumed in resolving the important issues disputed in this proceeding, the issue has been raised as to whether an interim fund should be established while the universal service program is implemented. No party maintained a position that an interim fund was necessary. However, GTE contends that the Commission should establish an interim surcharge to make up for lost implicit support GTE suffers when competitive providers resell its services or GTE provides unbundled network elements to competitors. USWC thinks that no interim fund is necessary if the permanent funding mechanism is in place when the federal universal service program becomes effective, now set for July 1, 1999. Staff opposes the creation of an interim OUS fund. AT&T also opposes an interim fund, saying there is no need for a fund until robust and irreversible competition develops in Oregon.

Resolution

We have addressed aspects of this issue several times in the recent past. In Orders 95-1103, 96-021, 96-119, and 98-430 we declined to establish an interim fund or interim surcharge. We remain convinced that traditional implicit support mechanisms are sufficient until greater competition develops and the permanent universal service program is operational.

CONCLUSIONS

In this order we have adopted policies for the administration of the Oregon Universal Service Program. Our decisions here implement policies we adopted in previous orders in this proceeding, and complement the federal universal service program. We still have issues to resolve in this universal service proceeding, including the selection of a cost proxy model and its inputs. In addition, various other issues have been left open until the universal service program is ready to commence operations, or in some cases has been operational for awhile. We will now commence processing of Phase IV of this proceeding.

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IT IS ORDERED that the Commission adopts the policies and decisions announced above.

Made, entered, and effective _____.

Ron Eachus
Chairman

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

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