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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 837

In the Matter of an Investigation into)
Universal Service Requirements for)
Education Providers (K-12 Schools and) ORDER
Libraries).)

DISPOSITION: UNIVERSAL SERVICE POLICIES ADOPTED FOR EDUCATION PROVIDERS

BACKGROUND AND SUMMARY

On February 8, 1996, the federal Telecommunications Act of 1996 (Telco Act) became effective, amending the Communications Act of 1934. The Telco Act, in Section 254(h)(1)(B), provides that telecommunications carriers are to provide services to eligible elementary schools, secondary schools, and libraries at rates less than the amounts charged for similar services to other parties. The discount amount is to be established by the Federal Communications Commission (FCC) for interstate services, and by the states for intrastate services. The discount amount is to be "appropriate and necessary to ensure affordable access to and use of such services by such entities."

On May 7, 1997, the FCC issued Order No. 97-157 addressing universal service issues. Among other things, Order No. 97-157 adopted rules implementing Section 254(h)(1)(B) of the Telco Act. The rules establish discounts to eligible schools and libraries for the purchase of commercially available telecommunications services, Internet access, and installation and maintenance of internal connections. The FCC adopted a matrix of discounts ranging between 20 percent and 90 percent. The discounts will be funded by an assessment on interstate, intrastate, and international end-user telecommunications revenues. There will be an annual cap of \$2.25 billion per calendar year for this program.

At its February 18, 1997, public meeting, the Commission opened an investigation into universal service requirements for eligible schools and libraries. The Commission issued Order No. 97-101 memorializing its decision. On May 30, 1997, the Commission's Staff filed a motion requesting that the Commission adopt a temporary rule establishing a matrix of discounts available to education providers. The motion was based on the need to meet a time deadline for education providers to be eligible for the discounts. Available universal service funds will be disbursed on a first-come, first-served basis, and the administrator of the federal funding program was scheduled to begin accepting requests from education providers for the discounts beginning July 1, 1997. To ensure that Oregon education providers could make their requests on time, the Commission adopted, in a temporary rule, the same discount matrix that had been established by the FCC in a rule adopted in FCC Order No. 97-157. *See* Order No. 97-202, issued on June 9, 1997.

Lowell Bergen, an Administrative Law Judge for the Commission, presided over a procedural conference on May 22, 1997. After receiving comments on a schedule proposed at the conference, he issued a memorandum establishing the schedule for the processing of this case. On August 22, 1997, he established an issues list for comment by the parties. Parties filed rounds of comments until October 17, 1997.

In this order, we address the issues addressed by the parties pursuant to the issues list established by the Administrative Law Judge. We also adopt the same discount matrix established by the FCC and adopted by us in Order No. 97-202.

ISSUE 1: In addition to adopting an intrastate discount matrix for educational providers, what, if any, state responsibilities are specified in the federal statute?

Parties' Positions

MCI notes that the federal act does not mandate to state commissions any additional responsibilities to enhance universal service for education providers. However, MCI notes that the FCC recommended that state commissions undertake additional responsibilities.

Staff points out that the FCC has assigned responsibility to the states in two areas: 1) education providers must have a technology plan that has been certified by its state or an independent entity approved by the FCC, and 2) education providers have recourse to a state public utility commission if they have an intrastate rate dispute about the lowest corresponding price charged to similarly situated non-residential customers for similar services.

GTE finds the obligation of state commissions to resolve rate disputes regarding the lowest corresponding price for a service as the only additional responsibility given to the states.

Sprint states that dispute resolution is a state matter, and that the Commission should not take on the task of approving technology plans.

Resolution

47 CFR 54.504(b)(2)(vii), adopted by the FCC in its Universal Service Order issued on May 7, 1997, provides that an education provider must certify that it has a technology plan that has been certified by its state or an independent entity approved by the FCC. Section 54.504(c) provides that eligible school or libraries and telecommunications service providers have recourse to a state commission regarding intrastate rate disputes about whether the lowest corresponding price is unfairly high or low.

The Commission accepts the responsibility to resolve rate disputes involving the lowest corresponding price for similarly situated non-residential customers. We discuss this issue in more detail in Issues 2 and 3a below. We discuss the approval of technology plans under Issue 5 of this order.

ISSUE 2: Does the PUC need to establish rules, or are there existing rules to resolve intrastate rate disputes between educational providers and service providers?

Parties' Positions

MCI points to ORS 756.500, the statute allowing the filing of a complaint with the Commission, and ORS 756.450, the statute authorizing the Commission to issue a declaratory ruling, and contends that those statutes are adequate to resolve any disputes that may arise. GTE and USWC also state that no additional rules are necessary. Staff agrees that the Commission has dispute resolution procedures, but thinks they may not be broad enough to include all possible disputes. For example, Staff questions whether the Commission has jurisdiction to resolve disputes between educational providers and station connection providers, Internet service providers, and certain telecommunications service providers such as radio common carriers. Staff therefore recommends the Commission's dispute resolution rule, OAR 860-021-0015, be broadened to the extent possible to encompass other telecommunications service providers besides utilities.

Resolution

ORS 756.500 authorizes "any person" to file a complaint with the Commission "against any person whose business or activities are regulated by some one or more of the statutes, jurisdiction for the enforcement or regulation of which is conferred upon the commission." OAR 860-021-0015 discusses procedures when there is a "dispute between a consumer and a utility." We have authority to resolve most disputes involving those we regulate. However, an issue has been raised as to whether our rule is sufficient to include all entities that may be involved in providing and receiving universal support. The Commission will initiate an investigation to determine if the rule can be broadened under the statutes giving the Commission authority to resolve disputes.

ISSUE 3: In establishing the "pre-discount" price for telecommunications services offered to educational providers, the FCC ordered eligible service providers not to charge a price above the "lowest corresponding

price" they charge to similarly situated non-residential customers for similar services. *See* FCC Order 97-157, ¶¶ 484 and 490, and FCC Regulation 54.511(b) and 54.504(c).

ISSUE 3a: Are existing PUC dispute resolution procedures sufficient to resolve disputes on lowest corresponding price determinations?

The parties referred to their comments filed in response to Issue 2. We stated there that we will initiate an investigation to determine if our dispute resolution rule should and can be broadened.

ISSUES 3b and 3h: What, if any, additional rules should be adopted to clarify what should or should not be considered in determining the lowest corresponding price? Should the lowest corresponding price be based on a properly imputed price floor?

Parties' Positions

GTE criticizes the FCC for requiring that carriers, in determining the lowest corresponding price for interstate services, look at rates charged both under tariffs and under contracts, for the previous three-year period. GTE thinks the three-year look-back period is excessive and burdensome, and recommends that for intrastate services, the Commission should require only an examination of current tariffs and contracts.

MCI argues that the Commission should adopt rules incorporating standards suggested by MCI. Those standards include the following principles: only forward-looking economic costs, not embedded costs, should be considered in determining the lowest corresponding price; prices should vary with respect to both population density and terrain factors; and, the lowest corresponding price should be based on an imputed price floor. MCI contends that the prices of an incumbent local exchange carrier (ILEC) should recover the sum of the total element long-run incremental costs of the unbundled network elements used for the provision of the service in question, plus any efficiently-incurred forward-looking common costs, and any costs associated with an ILEC's retail function. MCI argues that these principles should be adopted to prevent ILECs from offering services below costs, thus squeezing potential competitors. MCI doubts that existing tariff and contract rates meet the standards MCI advocates. On the issue of an imputed price floor, MCI argues that not having a price floor allows an ILEC the ability to offer service at prices which do not cover costs, which would put potential competitors at a disadvantage.

Staff agrees with GTE that continually looking back three years causes historical rates to remain current. Staff recommends that the lowest corresponding price for intrastate service be that which a service provider currently charges similar nonresidential customers for similar services. Staff disagrees with MCI's arguments favoring the adoption of rules establishing the lowest corresponding price. Staff notes that the FCC rejected MCI's arguments based on the impracticality of subjecting service providers, educational providers, and regulators to lengthy negotiation, arbitration, or litigation. Staff contends the Commission has rules regarding tariffs and contracts that provide an adequate basis for determining the lowest corresponding price; Staff therefore does not propose any additional rules to determine the lowest corresponding price. On the issue of imputation of a price floor, Staff points out that the Commission already has an imputation policy, and argues that there is no necessity to resurrect that issue in this proceeding. Also, Staff believes that tariff rates generally cover average long-run incremental costs for most services.

On the issue of imputation of a price floor, GTE agrees with Staff and points out that tariffed and Commission-approved rates are presumed to be lawful. The fact that these rates are offered to customers eligible for discounts should not trigger any additional examination of those rates. GTE suggests that an imputed price floor might be appropriate for unregulated telecommunications providers to forestall cross-subsidization.

USWC dismisses MCI's comments as irrelevant to this proceeding and supports Staff's comments. Sprint argues that MCI is suggesting major pricing reform that is inappropriate in this docket because it would delay the discount program and should include the input of others who are not parties to this proceeding. Sprint also points out that the Commission has already established an imputation policy in docket UM 351, Order No. 96-188.

Resolution

The Commission agrees with GTE and Staff that only current prices should be used for determining the lowest

corresponding price for intrastate services. Looking at past prices is not the way we want to establish prices for the future. We will look at the lowest corresponding price a service provider currently charges for similar services to nonresidential customers who are similarly situated.

The Commission rejects MCI's suggestion for an overhaul, in this proceeding, of pricing standards for use by ILECs. We are satisfied with the pricing standards currently in place, and are unwilling to take up major price restructuring issues in this proceeding. We also reject revisiting, in this proceeding, the decisions we have made on the imputation of price floors. In sum, our current policies are adequate for determining the lowest corresponding price charged to similarly situated nonresidential customers for similar services.

ISSUE 3c: What authority does the PUC have to adopt additional rules for determination of intrastate lowest corresponding prices?

Parties' Positions

Staff points out that, under the competitive zone service regulations established in ORS 759.050, the Commission has authority to impose reasonable reporting and dispute resolution conditions on telecommunications providers.

GTE points out that the Telco Act gives states authority to adopt universal service rules, as long as they are not inconsistent with federal rules.

MCI agrees that the PUC has authority to adopt additional rules for determination of intrastate lowest corresponding prices.

Resolution

We agree with the parties that we have authority to adopt additional rules relating to lowest corresponding prices.

ISSUE 3d: How should promotional pricing be handled in the determination of the lowest corresponding price?

Parties' Positions

GTE recommends that promotional pricing be excluded from the determination of the lowest corresponding price. Staff agrees that promotions of limited duration should not be included. Staff notes, though, that special contracts have the same legal effect as tariffs, and so would be treated the same as tariffs. MCI recommends that promotions of 90 days or less be excluded.

Resolution

We agree that short-term promotions should not be considered in the determination of the lowest corresponding price. And we adopt MCI's suggestion that offerings of 90 days or less will be considered promotional for this purpose.

ISSUES 3e and 3f: How will Oregon define "similarly situated non-residential customers for similar services"? What factors will the PUC consider in dispute resolutions regarding lowest corresponding prices, i.e. consideration of materially different factors such as contract terms, volume, distance coverage, geographic coverage, or type of service?

Parties' Positions

MCI takes the position that the Commission should rely on geographic boundaries and distance factors, and that the geographic areas should be limited to an exchange or a wire center. Otherwise, an expansive definition might discourage new firms from offering service in one part of a state out of concern that they would be required to serve an area they may not want to serve.

GTE says that service providers will have to determine rates for similarly situated customers on a case-by-case basis. Therefore, the Commission should not adopt a definition of general applicability.

Staff points to the various factors the FCC considers valid in defining similarly situated customers. Staff also notes that the Commission, in Order No. 92-651, addressed factors to be considered in determining a special class of service for certain contracts. Staff recommends that the same factors be considered in defining similarly situated customers when a dispute must be resolved.

Resolution

We believe that all relevant factors should be considered when a dispute involving the lowest corresponding price is presented to us for resolution. The factors we found relevant in Order No. 92-651, as well as the factors the FCC has found to be important, will be considered. Those factors include: geographic area, mileage from a switching center, volume of service ordered, the terms and conditions of service, the existence of price competition or the availability of service alternatives, and the time when the services are used.

ISSUE 3g: Are educational providers who are receiving discounts considered in the mix of similarly situated non-residential customers?

The parties who commented on this issue agree that the discounted price applicable to education providers should not be considered. If it were considered, there would be double counting of the discount, resulting in a perpetual downward spiral of prices. To get around that problem, some argue that the pre-discount price charged to education providers should be included. Others argue for simply not including education providers in the mix.

Resolution

The Commission elects to simply exclude education providers from the mix of similarly situated non-residential customers. It will be administratively less complicated, and should yield the same result as calculating the pre-discount price for educational providers. Being simpler, it should be less prone to errors in calculation.

ISSUE 4: Should service providers be required to file revised tariffs to reflect the discounts available to educational providers?

The FCC addressed this issue and decided to allow service providers to self-certify that the prices offered to schools and libraries are not greater than the lowest corresponding price. It found unnecessary the filing of tariffs showing the discounts. The parties in this proceeding agreed with that approach, except MCI. MCI argues that filing tariffs showing the discounts should act as the certification process. Sprint suggests that it could be helpful if ILECs filed a one-page summary of discount prices.

Resolution

We see no benefit to requiring the filing of post-discount tariffs. The discount applicable to a particular school or library will be determined by the federal Schools and Libraries Corporation, based on the applicant's eligibility and the availability of federal funds. It would be very cumbersome if ILECs had to revise each tariff schedule, and, of course, competitive local exchange carriers do not file tariffs with the Commission.

We like Sprint's suggestion for a summary of the discounts available. ILECs shall file the discount matrix with their tariffs, and include a statement that availability of the discounts depends on approval by the Schools and Library Corporation.

ISSUE 5: What agencies or mechanisms exist, or should be implemented, to facilitate the necessary independent approval of technology plans for educational providers, including private schools? What is the PUC's role in determining who will provide independent approval of an applicant's technology plan?

Parties' Positions

The Oregon State Library is willing to approve technology plans for Oregon libraries. We accept that offer.

GTE points out that many education providers, including private, vocational, and charter schools, do not typically have

their technology plans approved by a state education agency. GTE recommends that the Commission prescribe eligibility requirements for approval and prescribe the means for meeting the requirements.

The other parties recommend that the Commission not burden itself with the responsibility to approve technology plans.

Resolution

Under federal regulations, the preferred plan is for an appropriate state agency to approve technology plans. An appropriate state agency would be one that regulates schools or libraries, rather than a public utility commission. The regulations also provide that the Schools and Libraries Corporation is to review and certify technology plans when a state agency has indicated it will be unable to do so. The FCC may authorize an independent entity to approve technology plans.

We agree with the parties who contend that we should not get involved in the technology-approving process. Entities that regulate or coordinate activities of schools or libraries, or an independent organization approved by the FCC, are better suited to that task. Therefore, we decline to take on that task.

ISSUE 6: How should consortia be managed? Does the PUC have the authority to require consortia to designate a lead member for all communications and interactions with carriers and the PUC? Should this lead consortia member have the responsibility to manage the tracking of discounts among eligible consortia members?

The FCC allows schools and libraries to join together in consortia to deal with telecommunications providers. The issue here is what role, if any, the Commission should play in managing consortia that may form. All parties recommend that the consortia self-manage and select their own lead persons. Some parties also note that the Schools and Libraries Corporation may authorize audits of the consortia and its education provider members.

We agree with the parties. Consortia should be more effective and responsible if they govern themselves. They then can be unified as they deal with carriers and communicate with regulators. We therefore decline to regulate education provider consortia.

ISSUE 7: What is the impact on Oregon educational providers of the FCC's present decision that contracts signed after November 8, 1996, (the date of the Joint Board's Recommendation to the FCC) and before the adoption of the procurement website (later in 1997) are eligible for discounts, but only if contracts for those services terminate no later than December 31, 1998?

The FCC has decided to limit the term of contracts eligible for the discounts if the contracts were signed between November 8, 1996, and the time the procurement website is created. Parties had little to say about that decision. GTE commented that the FCC's decision unfairly penalizes education providers who entered into multi-year contracts during that time period in good faith.

We decline to take any action on this issue. We do not wish to establish the length of contracts between education providers and carriers. Parties who signed contracts during the subject interim time period may have to sign new contracts.

ISSUE 8: If the FCC discount program proves inadequate to meet the needs of schools and libraries nationwide, should Oregon institute its own discount program that guarantees discounts to all eligible public libraries?

Parties' Positions

All parties, except the Oregon State Library, recommend that the Commission observe and analyze how the federal program works before addressing the possibility of instituting a discount program for Oregon. They point out that the federal program will fund both interstate and intrastate discounts and mention the difficulties of commencing a state program that must be in concert with a federal program that is not yet operational. The Oregon State Library is concerned that the federal \$2.25 billion annual fund cap will be inadequate and worries about budgetary problems that accompany a discount that may not continue year after year. The Oregon State Library suggests that the Commission

begin now to create a discount program to ensure that education providers receive a discount every year.

Resolution

It is not known at this time if there will be a deficiency in the federal discount program. There would be significant problems if the Commission were to now institute its own discount program for schools and libraries. An Oregon discount program would have to work through the federal Schools and Libraries Corporation, which would direct the state to release state funds. That may require Oregon to pay the Schools and Library Corporation for those activities. Any procedures or requirements dictating how that would work are nonexistent. In addition, any state funding requirement would not be known until the federal \$2.25 billion fund had been used up. That would create last-minute uncertainty about the assessment and collection of contributions from intrastate telecommunications service providers.

We decline to address the substantial problems incident to instituting an additional Oregon discount program at this time. If short-falls present problems after the federal program is operational, we will have the opportunity to investigate the problems and seek comments from other agencies and parties before taking any state action.

ISSUE 9: What, if any, action should the PUC take, or authorize others to take, to communicate necessary information about the universal service plans to eligible entities in Oregon? What is the best communication channel to keep Oregon educational providers informed of the federal discount program?

Parties' Positions

Most of the parties believe that the schools, libraries, and their associations are in the best position to communicate information about the discount program to members of their industries. However, MCI suggests that the Commission may want to establish a process through which the state library association and the state department of education communicate with their members and provide information through trade publications. GTE suggests that the Commission may want to examine how it or other agencies publicize the discount program, but does not suggest any specific steps.

Resolution

Schools, libraries and their trade associations and agencies are the best-equipped entities to provide information about the telecommunications discounts available to education providers. Telecommunications providers will also have the incentive to inform potential education providers of the discounts, which could lead to increased sales of their services. We also note that the FCC has placed responsibility on the Schools and Library Corporation to perform outreach and public information functions. Another avenue for information is the Internet, which has several sites devoted to the discount program, including the FCC's website, <http://www.fcc.gov/learnnet>. We will assist in the dissemination of information about the discount program, and will respond to inquiries, but will not assume the lead role in publicizing the discount program.

CONCLUSIONS

The Commission has taken steps to allow schools and libraries in Oregon to participate in the federal telecommunications discount program. In this order, we continue the discount matrix we adopted in Order No. 97-202, and establish policies to facilitate the equitable participation by eligible Oregon schools and libraries in the discount program. These actions comport with the requirements of the Telco Act, the rules established in 47 CFR Part 54, and FCC Order No. 97-157.

ORDER

IT IS ORDERED that:

1. The Commission adopts the policies and decisions announced above;
2. The following discount matrix is adopted for eligible schools and libraries in Oregon:

SCHOOLS & LIBRARIES	DISCOUNT	LEVEL
DISCOUNT MATRIX		
HOW DISADVANTAGED?		
% of Students Eligible for National School Lunch Program	Urban Discount	Rural Discount
< 1	20	25
1 - 19	40	50
20 - 34	50	60
35 - 49	60	70
50 - 74	80	80
75 - 100	90	90

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.