



February 18, 2019

To: Chair Lively, Members of the House Committee on Economic Development

From: Fawn Barrie, OCTA Executive Director

Thank you for the opportunity to provide comments on HB 2184 on behalf of the Oregon Cable Telecommunications Association. I want to start by thanking Rep. Marsh for her willingness to include OCTA in these discussions. I know we have a shared goal of providing access to broadband for those who live in unserved areas of our state. My hope was that we would be able to find a compromise on these complicated issues that would allow our association to support HB 2184. But unfortunately, we are not able to support HB 2184 with the amendments as currently proposed.

OCTA entered discussions with the Oregon Telecommunications Association and with Rep. Marsh regarding the concept of including both wireless and VoIP under the Oregon Universal Services fund late last year. VoIP providers are not currently required to pay into the fund. While some of our members currently pay into the fund voluntarily, creating a new obligation on our members that our companies and its customers cannot benefit from is a big departure in law and practice. Because our company's are not eligible telecommunications carriers under the statutes, the result is that our customers will be forced to pay a surcharge but we cannot apply for universal service funding. For these reasons, our discussions have focused on creating a broader base of funding for OUSF to limit the surcharge amount, capping the fund, and establishing safeguards around the new broadband grant program.

While we appreciate the efforts of both Rep. Marsh and the OTA to draft legislation we could support, information released late last week from the PUC has us extremely concerned. We originally told, based on numbers from the PUC, that the surcharge amount could be set less than half of the current 8.5% cap. But, revised estimates from the PUC released mere days prior to the February 11th hearing on this bill suggest that this may not be the case, and the -2 amendments now contain an unreasonably high 7% surcharge cap.

As we approached HB 2184, OCTA supported the following components:

- A broadened contribution base that includes wireless services in order to establish a reasonable surcharge (particularly given that our customers and companies do not benefit from it);
- A strict limit on the overall size of the fund, which wireless, VoIP and traditional voice consumers are being asked to pay for;
- Statutory certainty that the OUSF Legacy Fund, administered by the PUC, will continue to follow the stepdown formula agreed to by the negotiated agreement adopted by the PUC in Order No. 16.093.

- A new Broadband Fund administered in a competitively neutral way that focuses on unserved, rural areas and that includes an adequate challenge process to ensure that applicants are seeking funds only for homes and businesses that lack broadband access..
- And we want to ensure traditional common carrier regulation is not imposed on VoIP service.

We appreciate that some of these provisions are in proposed amendments, but there are fundamental issues that we believe need to be resolved and we cannot endorse this bill until they are addressed:

There must be an express HARD CAP on the fund. The cap should be less than the \$40 million proposed, consistent with the support amounts currently provided under the PUC's Legacy USF Fund.

We appreciate that the amendments include a sunset on the broadband fund portion. However, we also believe there should be a sunset on the legacy fund. Telecommunications is an ever changing field, and a sunset on this fund would force a true examination of the issues related to this fund.

We are opposed to the recommended 7% surcharge cap. This cap is much too high and creates too much uncertainty about the future impact on our member companies' customers. Many of our members now provide both VoIP *and* wireless services and so this is doubly difficult as we attempt to offer customers the opportunity for both wireless and wireline voice services.

Further and again, since they are not eligible to receive OUSF funding, it is much too great a burden to place on our member companies' customers, especially in light of the fact that we compete with entities that are completely unregulated such as SKPE, Facetime and What's App that do not pay any of these surcharges.

Numbers initially released by the PUC suggested the cap could be as low as 3.5%. We are unclear how the initial numbers varied so greatly from the new numbers released by the PUC. We would also point out that the range the PUC has put forward in its estimates for various surcharge caps has a \$10 to \$15 million swing depending on which "alternative" is considered. When we are considering the total amount of funding is \$40 million, that is a huge differential. We urge the committee to request additional information about the proposed surcharge estimates and to set the surcharge cap as low as possible.

We would also point out, that for 2020-2021, the overall amount needed for the Legacy OUSF, based on the stipulation adopted by the PUC, will be considerably **less** than \$30 million. In advance of the end of the stipulation, the PUC will open a docket to determine the appropriate amount of funding for the OUSF. For a variety of reasons, we would expect the amount needed to fund the OUSF to be less after 2021, not more.

It is OCTA's understanding that the \$30 million for that fund in the -2 amendments is meant as a ceiling, not a floor, and that the actual amount the PUC determines will be needed may be significantly less. We recommend the committee consider this in determining the appropriate

surcharge cap to protect wireless and voice consumers, many of whom have not been subject to this tax.

While we greatly appreciate the language Rep. Marsh has included as to prioritization of funding under the broadband grant program, we want to ensure state funds collected from our providers and customers are used only in areas that are truly unserved and not in areas that already have access to broadband service. Overbuilding will not help get access to broadband to unserved areas, and we think a robust challenge process is necessary to ensure those guardrails are in place.

OCTA also requests additional consideration be given to the entities that currently receive funding from the OUSF and whether those entities should also be able to access the new broadband fund. Under the OUSF, those entities are already able to receive money for providing broadband services. We do not think it's appropriate for them to be able to also receive money from the new broadband fund, and essentially be subsidized twice for the same infrastructure.

If these entities are allowed to receive grants or loans under the Broadband Fund, additional safeguards must be added to the bill to ensure that support under the Legacy OUSF is calculated to both recognize all broadband revenues these entities derive from the subsidized network and that no Legacy OUSF is used to support network infrastructure these entities build with Broadband Fund grants or loans.

OCTA looks forward to continuing to work with you on these issues, but at this time, and for the reasons discussed, we must oppose the bill without additional amendments addressing the surcharge cap and our other concerns.