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DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

October 23, 2015

Public Utility Commission of Oregon
Attention: Filing Center
P.O. Box 1088
Salem OR 97308-1088

Re: **UM 1648 ETC Requirements**
Joint Testimony
DOJ File No.: 860105-GB0226-13

Attention Filing Center:

Enclosed for filing on behalf of the Stipulating Parties in this matter is the JOINT TESTIMONY in support of the Stipulation, including Exhibits 201-203.

Thank you for your assistance.

Sincerely,

for Johanna M. Riemenschneider
Senior Assistant Attorney General
Of Attorneys for Staff of the Public Utility
Commission of Oregon

Enclosures
JMR:mxg/#6885165
(Electronic copy only)
c: UM 1648 Service list

DOCKET: UM 1648 (Phase II)
WITNESSES: Kay Marinos, Brant Wolf, Bob Jenks, Kim Lehrman, Marsha Spellman

PUBLIC UTILITY COMMISSION

OF OREGON

STIPULATING PARTIES EXHIBIT 200

Joint Testimony of Public Utility Commission of Oregon Staff, Oregon Telecommunications Association, Citizens' Utility Board of Oregon, Boomerang Wireless, LLC, and Warm Springs Telecommunications Company in Support of Third Partial Stipulation

October 23, 2015

Q. Please state your name and position.

A. My name is Kay Marinos. I am a Manager in the Telecommunications and Water Division of the Public Utility Commission of Oregon (Commission). My witness qualifications statement was pre-filed as Exhibit 101.

My name is Brant Wolf. I am the Executive Vice President of the Oregon Telecommunications Association (OTA). My witness qualifications statement was pre-filed as Exhibit 102.

My name is Bob Jenks. I am the Executive Director of the Citizens' Utility Board of Oregon (CUB). My witness qualifications statement is attached as Exhibit 201.

My name is Marsha Spellman. I am the Regulatory Director for the Warm Springs Telecommunications Company (WSTC). My witness qualifications statement is attached as Exhibit 202.

My name is Kim Lehrman. I am the President of Boomerang Wireless, LLC dba enTouch Wireless ("Boomerang"), and I am testifying on behalf of Boomerang. My witness qualifications statement is attached as Exhibit 203.

Q. What is the purpose of your testimony?

A. The purpose of our testimony is to describe and support the Third Partial Stipulation (Stipulation) entered into by Staff, OTA, CUB, WSTC and Boomerang, collectively referred to as the "Stipulating Parties."

Q. Ms. Marinos, which portions of this exhibit contain your testimony?

A. I am responsible for the testimony in this entire exhibit.

Q. Mr. Wolf and Mr. Jenks, which portions of this exhibit contain your testimony?

A. We are responsible for the testimony in this exhibit, with the exception of the answers that respond to questions that are specifically directed to Staff.

Q. Ms. Lehrman, which portions of this exhibit contain your testimony?

A. I am responsible for the testimony in this exhibit insofar as it pertains generally to the elements of the stipulation and requirements that concern the Lifeline program, but not for answers that respond to questions that are directed specifically towards high-cost support, or for answers to questions that are specifically directed to Staff.

Q. Ms. Spellman, which portions of this exhibit contain your testimony?

A. I am responsible for the testimony in this exhibit insofar as it pertains to requirements for ETC designation on Tribal Lands.

Q. Please explain the purpose of the Stipulation.

A. In June of 2006, the Commission adopted Oregon-specific requirements in Order No. 06-292 (*ETC Order*)[1] for the initial designation of ETCs to receive federal universal fund support (FUSF). Those requirements were generally based on requirements either mandated or recommended by the FCC for ETC designation. Since their adoption, these requirements were used by the Commission and Staff to assess ETC applications and to designate applicants. However, in November of 2011, the FCC issued Order 11-161 (*Transformation Order*)[2] that, in relevant part, provided new types of FUSF high-cost

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[1] *See Order No. 06-292,* Docket No. UM 1217, entered June 13, 2006 (*ETC Order*). The Commission has amended the annual reporting requirements in Order No. 06-292 in three subsequent orders: Order Nos. 13-28, 14-198 and 15-169.

[2] *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. November 18, 2011) (*Transformation Order*).

support and established new eligibility requirements. Additionally, in February of 2012, the FCC issued Order 12-11 (*Lifeline Reform Order*)[3] that reformed the federal Lifeline program and modified initial designation requirements for ETC applicants for the low-income program support. The FCC requirements for ETC designation are codified in 47 CFR §§ 54.201–54.207 and the obligations of ETCs receiving specific types of support are in other regulations in Part 54. In the Stipulation, the Parties propose a revised set of ETC designation requirements to incorporate changes related to, and reflected in, the current federal rules and related FCC orders. After the Commission adopts the revised requirements, any carrier requesting designation as an ETC in Oregon will be required to demonstrate in its application that it meets these requirements.

Q. Please explain whether the Third Partial Stipulation resolves all of the issues in this phase of the proceeding.

A. It does. The Stipulating Parties set out to address each of the initial designation requirements in Appendix A of Order No. 06-292 in light of subsequent changes to the FUSF programs, for both high-cost and low-income (Lifeline) funds. The Stipulating Parties also considered the policy objectives, as well as the issues, set out in UM 1217 that established the current requirements, to the extent that they are still relevant. The revised requirements take the form of a revised Appendix A, which is appended to the Third Partial Stipulation.

Q. Are all parties to the proceeding signatories to the stipulation?

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[3] *See Lifeline and LinkUp Reform and Modernization et al.*, WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. February 6, 2012) (*Lifeline Reform Order*).

A. No. The following parties in this docket are not parties to the Third Partial Stipulation: AT&T Corp., Teleport Communications America LLC, AT&T Mobility LLC, Cricket Communications, Inc. (collectively "AT&T"); Budget PrePay, Inc.; CenturyLink Companies; Frontier Communications Northwest Inc. and Citizen's Telecommunications Co. of Oregon dba Frontier Communications of Oregon; Nexus Communications Inc.; and United States Cellular Corp. T-Mobile West LLC and YourTel America have withdrawn as parties to this docket. Some of the above-listed parties participated in all or most of the proceedings, while others participated based on their interest in the areas of discussion, e.g., Phase I or Phase II, and within Phase II, high-cost or low-income support. No party opposes this Third Partial Stipulation.

Q. What is the purpose of this docket?

A. At Staff's request, in February of 2013, the Commission opened Docket No. UM 1648 to review and consider changes to ETC requirements that were established in the *ETC Order*. As explained above, the changes are necessitated by significant modifications made by the FCC to the Federal Universal Service Fund (FUSF) from which ETCs receive support. The Docket addresses the issues in two phases. Phase I addresses requirements for ETC annual reporting, while Phase II addresses requirements for initial ETC designation. Phase I activities concluded with Order No. 15-169 issued June 4, 2015, in which the Commission granted a Joint Motion to Amend Order 06-292 annual ETC requirements. The Third Partial Stipulation addresses all remaining issues in Phase II of the docket.

Q. Please briefly describe the events that took place in Phase II of this docket.

A. The parties to this docket conducted a series of workshops and settlement conferences to discuss and identify necessary modifications to the initial designation requirements in Appendix A of the *ETC Order*. The first conference was held on July 31, 2014. At that time, it was decided to address changes to the requirements related to Lifeline services first. To that end, settlement conferences were held on September 8, October 15, November 4, and November 25, 2014. Following those meetings, interested parties met on January 30, 2015, to address requirements related to designation to receive high-cost support funds. A conference to address the combined results for both low-cost and high-income support was then held on March 13, 2015.

Q. What changes did the FCC make to the high-cost portion of the FUSF that impact ETC designation requirements?

A. Prior to the issuance of the FCC's *Transformation Order* in 2011, ETCs were required to use FUSF high-cost funds for the maintenance and provisioning of voice telephony services. In the *Transformation Order,* the FCC updated the definition of supported voice services to reflect changes in technology (e.g., wireless and VoIP) and began a transition to providing support for broadband networks capable of delivering high-speed internet access services. The FCC radically restructured the framework of the existing types of high-cost funds for voice service (e.g., IAS/ICLS, high-cost loop, CETC support) by freezing and phasing them out. The previous funds are to be replaced by new types of funding mechanisms, e.g., various Connect America Funds (CAF I and CAF II), Mobility Fund, Tribal Fund, and Remote Area Fund. Funding for large (federal price-cap regulated) incumbent local exchange carriers (ILECs) differs from funding for smaller (federal rate-of-return regulated) ILECs. Where ILECs choose not to accept available funds, the FCC proposes to award funds to new or current ETCs via reverse auctions implemented at the federal level. Although the FCC determines which specific entities are awarded funds in the auction process, it has not pre-empted the authority granted to the states in Section 214(e) of the federal Communications Act of 1934, as amended by the Telecommunications Act of 1996 (Telecom Act), to designate carriers as ETCs to receive such funds. The FCC also continues to rely on the states to monitor ETC performance and annually certify that the ETCs are using the support funds for the intended purposes.

Q. What changes did the FCC make to the low-income (Lifeline) portion of the FUSF that impact ETC designation requirements?

A. Since the Commission first adopted the *ETC Order*, one of the most significant FCC actions to impact the designation process for Lifeline services was its issuance of blanket forbearance of the Telecom Act's facilities ownership requirement for any ETC applicants that request only low-income support.[4] Section 214(e)(1)(A) of the Telecom Act requires that ETCs offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services." This is often referred to as the "own facilities" requirement. In granting forbearance of this requirement, the FCC reasoned that, given two conditions, facility ownership is not

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[4] See *Lifeline Reform Order*, paragraphs 361-381. Forbearance is subject to two conditions: applicants must comply with certain 911 requirements and obtain FCC approval of a compliance plan meeting certain specifications. Prior to this Order, the FCC had entertained forbearance requests on an individual case basis.

essential to ensure just and reasonable rates or to protect consumers, and such action is in the public interest.

Many of the other changes to the low-income program were of an administrative nature and directed at reducing waste, fraud and abuse in the Lifeline program. Oregon's Lifeline program, OTAP, incorporated similar changes, as well as others, in order to minimize waste, fraud and abuse at the state level.

Q. What is the best way to address the changes in designation requirements proposed in the Stipulation, as well as the supporting rationale?

A. The clearest and most comprehensive way is to walk through each of the proposed requirements in Appendix A of the Stipulation, and explain the changes from current requirements and the supporting rationale for those changes. Appendix A in the *ETC Order* was intended to be a "checklist" for ETC applicants to use to ensure that their applications include all of the necessary information for designation and demonstrate that they meet requirements for ETC designation. Appendix A has also been used by Staff to review applications since its adoption in 2006. While it is designed as a checklist for ETC applications, it also embodies the ongoing responsibilities and obligations of ETCs following their initial designation as well.

Q. What is the first proposed requirement and the rationale for changes from the current requirement?

A. The first requirement relates to general information about the applicant and its common carrier status. A new sub-requirement 1.1 was added to specify the name of the entity requesting designation and its corporate affiliations. The requirements in 1.1 and 1.2 of the current appendix were retained and re-numbered as 1.2 and 1.3. A sub-requirement 1.4 was added to include a demonstration that the applicant is financially and technically capable of providing the supported services in compliance with FCC and Commission rules. This relates to FCC regulation 47 C.F.R. § 54.201(h) adopted by the FCC specifically for Lifeline-only applicants. The Stipulating Parties agree that this new sub-requirement has utility for all types of ETC applicants, not just those applying only to offer Lifeline services.

Q. What is the second proposed requirement and the rationale for any changes?

A. The second proposed requirement is new. It requires identification of the type of support that the applicant seeks. This change is necessitated by the FCC's expansion in the types of support now available, e.g., Mobility Fund, Connect America Fund, etc. It also requires submission of any FCC documents related to conditions of designation. For instance, applicants that do not own facilities and wish to provide Lifeline services must first be granted FCC approval of Lifeline compliance plans before states can grant ETC designation.

Q. What is the third proposed requirement and the rationale for any changes?

A. The third proposed requirement is similar to the current requirement 2 but modified to reflect FCC changes. Sub-requirement 3.1 relates to voice services and modifies current sub-requirement 2.1 to reflect the new definition of supported voice services in 47 CFR § 54.101(a). Sub-requirements 3.2 and 3.3 modify current sub-requirements 2.2 and 2.3 to explicitly refer to voice telephony services, as the FCC now requires the provision of broadband services in addition to voice services. In a similar vein, a new sub-requirement 3.4 is added to pertain specifically to broadband services associated with federal support. Current sub-requirements 2.4 (comparable local usage plan) and 2.5 (equal access obligations) are eliminated as these are no longer relevant and the FCC has dropped these requirements from its rules.

Q. What is the fourth proposed requirement and the rationale for any changes?

A. The fourth proposed requirement corresponds to the current requirement 3 but is modified significantly to reflect the newer types of ETCs and changes in how designated service areas are defined.

Q. Please explain the changes in proposed sub-requirement 4.1 compared to current requirement 3.1.

A. Both of these sub-requirements address identification of the applicant's proposed designated service area. The designated service area must be well-defined because an ETC is obligated to provide the supported services to any requesting customers within this area. It is a carrier-of-last-resort type of obligation. The proposed requirements still require a map of the applicant's licensed or certificated service area with identification of the area for which it proposes to be an ETC. A significant difference from current requirements pertains to the units used to define the ETC's designated service area.

Q. What changes are proposed for defining an ETC's designated service area and why?

A. In the past, the units used to define every ETC's designated service area were ILEC wire center areas. However, as part of its transformation of FUSF, the FCC changed the relevant geographical areas from wire centers to census blocks for the new Connect

America and Mobility Funds. The ILECs will continue for some time to be designated by study area (the sum of all their wire centers in the state), but that could possibly change in the future as well.

Additionally, with the proliferation of wireless ETCs offering Lifeline service, designation by wire center for wireless carriers has proven to be challenging and costly. Wireless carriers do not operate according to ILEC wire center boundaries. Current wireless ETCs designated by wire centers faced considerable expense to geo-code wire center boundaries to determine which addresses were included in the wire centers that make up their designated service areas. The new requirements proposed in the Stipulation assume that wireless ETCs can define their designated service areas by zip codes, which are easier to determine and are identifiers known to the customers themselves. Using zip codes also facilitates a potential customer's ability to ascertain the extent of a carrier's wireless coverage area when choosing a carrier. For Lifeline purposes, a customer must have acceptable wireless coverage at his/her residence, particularly since one of the purposes of Lifeline is to be able to reach help in emergencies, as in the case of landline service. Due to changes in the FCC's geographical units for certain funds as well as the increasing popularity of wireless Lifeline services, there is a pressing need to permit ETCs to define their designated service areas in terms of units other than ILEC wire centers.

Q. Has the Commission prohibited the use of units other than wire centers to date?

A. No, it has not. In fact, the Commission has twice granted applications for ETC designation based on units other than wire centers. On May 19, 2015, in docket UM

1721, the Commission granted a request by Douglas Services Inc., dba Douglas FastNet for designation as an ETC in an area defined by census blocks. On September 16, 2015, in docket UM 1668, the Commission granted Boomerang designation as an ETC in an area defined by zip codes.

On a somewhat related matter, the Commission considered the issue in the *ETC Order* in the context of whether an entire wire center should be included in an ETC's designated service area. The Commission indicated that it prefers, in keeping with FCC guidance at that time, that ETCs include all the area in an individual wire center. However, the Commission decided to consider exceptions and evaluate each circumstance in light of whether the public interest would be served. The Parties believe that the public interest is served when alternatives to ILEC wire centers are permitted, particularly in light of changes made by the FCC that no longer define support areas using wire centers.

Q. Would the use of zip codes to define the designated service area for wireless Lifeline-only ETCs violate any federal rules or requirements?

A. The use of zip codes for Lifeline-only ETCs does not appear to be prohibited by any federal rules or orders.

Q. Ms. Marinos, did you contact the FCC regarding this issue?

A. Yes, I spoke with several Staff members of the FCC Wireline Competition Bureau via telephone in January of this year regarding the use of zip codes for designation. The FCC Staff indicated they were not aware of any federal requirements that would be violated if a Lifeline-only ETC were to be designated using areas based on zip codes rather than wire centers.

Q. What type of geographic units may be used to define a particular applicant's designated service area?

A. The type of unit will depend upon FCC limitations associated with the type of support to be received. For instance, in the case of Mobility Funds, funding is granted for specific census blocks. If the Commission receives an application for ETC status to receive Mobility Funds, then the designated service area will be comprised of census blocks. But for Lifeline-only designation, applicants will be permitted to choose the geographic units that make the most sense for its type of facilities and business. They could decide to use wire centers, zip codes, or other geographic areas for which they can make the case. To meet sub-requirement 4.1.2, the applicant must explain the rationale for its choice of geographical units. And similar to current sub-requirement 3.1.2, proposed requirement 4.1.3 requires a listing of all specific units (wire centers, zip codes, census blocks, etc.) that the applicant proposes to be included in its designated service area, with indications as to those individual units that are only partially included. Finally, a new 4.1.4 sub-requirement is proposed to make explicit the identification of any Tribal Lands that are to be included in the designated service area. Tribal Land designation is addressed later under proposed Requirement 11.

Q. Please explain the changes in proposed sub-requirement 4.2 compared to current requirement 3.2.

A. Both requirements are intended to address the applicant's commitment and ability to provide the supported services throughout the designated service area. The six-step process to fulfill a customer's service request that is included in the current sub-requirement 3.2 is proposed for deletion as the FCC has eliminated this requirement from its rules. Such a requirement that an ETC make every attempt to try to build out facilities to any requesting customer is no longer consistent with how the FCC has transformed the support funds and the expectations and scheduling for use of the funds. The proposed sub-requirement 4.2 expands the amount and type of information related to the carrier's service coverage, both present and future. For instance, applicants wishing to receive certain types of high-cost support, e.g., CAF and Mobility Fund support, will not be able to immediately provide services in most areas at the time they receive designation. They will receive funds for the express purpose of building out facilities where the necessary facilities do not exist.

Q. Please explain how proposed sub-requirement 4.2 relates to wireless applicants.

A. For wireless ETC applicants, sub-requirement 4.2 is aimed at gaining sufficient information to understand the carrier's coverage areas relative to its proposed designated service area. The majority of new ETC applicants are Mobile Virtual Network Operators (MVNOs) that do not own facilities but resell the services of carriers that do. These types of applicants desire ETC status only to offer wireless Lifeline services, generally at no cost to the qualifying Lifeline customer. Because the MVNOs use other carriers' facilities, they lack control over, and have limited knowledge of, the performance of the networks and concomitant service levels. In order to minimize the number of Lifeline customers who may find that the wireless service is inadequate where they live, an ETC applicant must investigate coverage within the proposed designated service area to identify areas where adequate service may not be available. This is the rationale behind proposed sub-requirements 4.2.2.1 and 4.2.2.2. In recognition of the fact that there are pockets where cell service is inadequate, proposed sub-requirement 4.2.2.3 is intended to gather information regarding the specific areas within the designated service area where customers are unable to receive adequate service due to lack of sufficient coverage.

If an ETC has its own facilities, it should make every effort to provide service or explain why it cannot. As another consumer protection measure, sub-requirement 4.2.3 requires applicants to agree to make coverage maps available to potential and actual customers. This is also one of the principles of the CTIA Consumer Code.[5]

Q. What is the fifth proposed requirement and the rationale for any changes?

A. The fifth proposed requirement is similar to the current requirement 4, but expands the current requirement to cover applicants that do not own the networks they use to provide the supported services, such as wireless resellers. The Telecom Act requires ETCs to provide supported services using their own facilities. However, as mentioned previously, the FCC granted conditional forbearance from the facilities requirement for Lifeline-only providers. The new proposed sub-requirement 5.2 requires that this type of ETC applicant provide certain relevant information. Additionally, proposed sub-element 5.3 slightly modifies current sub-requirement 4.2 to allow wireless applicants to explain

[5] The CTIA Consumer Code is available at: http://www.ctia.org/policy-initiatives/voluntary-guidelines/consumer-code-for-wireless-service.

the basis for depiction of coverage in their required coverage maps rather than show signal strengths. MVNO applicants have indicated that the carriers they use do not provide access to maps that show various levels of signal strength.

Q. What is the sixth proposed requirement and the rationale for any changes?

A. The sixth proposed requirement corresponds to the current requirement 5, but includes several changes. An affidavit certifying to the appropriate use of support funds will be required for all ETCs, not just those applying for high-cost support. Proposed sub-requirement 6.2 updates current sub-requirement 5.2 to reflect the newer types of support and obligations now in FCC rules. The network plan in current sub-requirement 5.3 is replaced by the network plan in proposed sub-requirement 6.3. The current network plan was adopted for application to competitive ETCs that had been receiving funding that is now being phased out. For the new types of high-cost funds, the FCC requires a network plan that applies to a different set of ETCs. The language in the proposed sub-requirement is similar to that in FCC regulations at 47 CFR § 54.202(a)(1)(ii).

Q. What is the seventh proposed requirement and the rationale for any changes?

A. The seventh proposed requirement, which addresses advertising on non-Lifeline supported services, corresponds to the current requirement 6, with no proposed changes in language.

Q. What is the eighth proposed requirement and the rationale for any changes?

A. The eighth proposed requirement, which addresses the commitment to offer and advertise Lifeline services, expands current requirement 7 to incorporate several changes. The sub-requirements are clarified to apply not just to Lifeline, but to OTAP services as well.

ETCs cannot be designated to provide federal Lifeline without also agreeing to follow OTAP requirements. Proposed sub-requirement 8.2 expands on the specifics of Lifeline service information described in the more general current sub-requirement 7.2. Proposed sub-requirement 8.2.1 requires that an applicant that wishes to provide Lifeline services at no charge to the customer (free) must commit to report changes in minutes or other material terms of the Lifeline service to the Commission within certain time frames and then must also file the revised service offerings in the ETC's designation docket. Because designation recommendations will be based on free Lifeline plans proposed in the application, or agreed to by stipulation, any subsequent changes to the Lifeline plans should be subject to scrutiny prior to offering and then memorialized in the docket. Similarly, proposed sub-requirement 8.2.2 requires the applicant to make the customers aware of the changes and enable them to subscribe immediately to the new plans. Proposed sub-requirement 8.3 is essentially the same as current sub-requirement 7.3.

Q. Please explain the reasons for adding new proposed sub-requirements 8.4 – 8.6.

A. Sub-requirement 8.4 incorporates the OTAP ETP application process into the ETC application process. In earlier years a carrier would apply for federal ETC designation first. Then, after receiving that designation, it would apply for ETP designation in order to participate in the OTAP. In recent years, Staff has combined the two processes to reduce the time and effort necessary, considering that an ETC cannot offer Lifeline services without receiving ETP designation and participating in the OTAP. Proposed sub-requirement 8.5 incorporates OTAP training and customer application-related requirements. Proposed sub-requirement 8.6 incorporates a new requirement for filing designation information with the FCC after designation is granted by the Commission.

Q. What is the ninth proposed requirement and the rationale for any changes?

A. The ninth proposed requirement, which addresses emergency functionality, corresponds to current requirement 8, and adds a sub-requirement that applicants commit to comply with Oregon's 9-1-1 emergency system tax requirements.

Q. What is the tenth proposed requirement and the rationale for any changes?

A. The tenth proposed requirement, which addresses service quality and protection standards, corresponds to current requirement 10. The wording of the requirement remains unchanged.

Q. What is the eleventh proposed requirement and the rationale for its inclusion?

A. The eleventh proposed requirement is new and addresses additional requirements applicable to ETC applicants that request to be designated on Tribal Lands. The proposed requirement essentially requires an ETC applicant seeking designation on Tribal Lands to notify and engage the affected Tribal authorities relative to the services to be offered, and to obtain the support of the Tribal authorities for ETC designation.

Q. What is the basis for this new requirement?

A. Prior to the *Transformation Order*, little (if any) distinction was made relative to requirements for designation on Tribal versus non-Tribal Lands. In that order, the FCC specifically noted the need for communications between service providers and Tribal governments[6] and adopted new obligations for ETCs designated on Tribal Lands. The new requirements, found in 47 CFR §§ 54.313(a)(9) and 54.1004(d), require ETCs to engage with Tribes and report annually on the details of such engagement.

Proposed requirement 11 generally incorporates language from these rules to specify the necessary aspects of what constitutes meaningful "engagement." Although the FCC appears to target the requirements to ETCs receiving high-cost support, the Stipulating Parties agree that there is good reason to adopt the same general approach for Lifeline-only providers as well. Tribal Lifeline support is significantly larger than non-Tribal Lifeline support ($34.25 vs. $9.25 per month) and presents issues that the affected Tribes should have the opportunity to address in relation to their own unique circumstances. The approach reflected in proposed requirement 11 respects the status of the nine federally recognized Tribes in Oregon as sovereign nations by requiring initial engagement and evidence that the appropriate Tribal government or regulatory entity either supports or does not oppose an applicant's designation as an ETC on the relevant Tribal Lands. This approach encourages State-Tribal consultation on a matter that will directly affect the interests of the Tribal government and the community it serves.

Q. What is the twelfth proposed requirement and the rationale for any changes?

A. Proposed requirement 12, which addresses the public interest, corresponds to current requirement 10. Proposed sub-requirement 12.1 is the same as current sub-requirement 10.1. However, the Parties propose to eliminate current sub-requirement 10.2 that

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[6] *See Transformation Order*, paragraph 637 which states "We agree that engagement between Tribal governments and communications providers **either currently providing service or contemplating the provision of service on Tribal lands** is vitally important to the successful deployment and provision of service." (emphasis added)

requires a cream-skimming analysis. Several years ago the FCC determined that the cream-skimming test was no longer required for wireless Lifeline-only providers.[7] Furthermore, given the new mechanisms for awarding high-cost support on a census block level, cream-skimming no longer appears to be a relevant concern for high-cost support funding.

Q. What is the thirteenth and final proposed requirement and the rationale for its inclusion?

A. Proposed requirement 13, which addresses the applicant's commitment to provide reports, is new. While the requirement to provide annual ETC reports and other reports as required by the Commission was generally assumed, it was not included as a specific commitment to be made in an application. This requirement makes such a commitment an explicit part of an ETC application.

Q. In Staff's opinion, are the policy objectives set in Docket UM 1217 still relevant in this docket?

A. Many of the policy objectives in Docket UM 1217 remain relevant, but the relevancy varies depending upon whether the applicant requests high-cost funding, or only low-income funding. To a large extent, the FCC reforms to the high-cost support mechanisms reduced state commissions' previously held flexibility to achieve several of the objectives. For instance, before the reforms in the high-cost support mechanisms, state commissions had much more freedom to determine which carriers received funding

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[7] *See Virgin Mobile USA, L.P. Petition for Forbearance*, CC Docket No. 96-45, FCC 09-18 (rel. March 5, 2009), paragraph 39, note 101.

(objective #2), the resulting cost-effectiveness and efficiency of the use of funds (objective #4), and that the funds are directed into areas with the greatest need (objectives #5 and #6). Under the reform measures, the FCC now largely determines who will receive high-cost funding (by incumbent carrier election or through auctions), for what purpose (broadband and voice specifications) and in what areas (determined by census block by the FCC). However, the proposed revised requirements related to applicants for high-cost support do continue to reflect the objectives of consistency with federal law and FCC mandatory decisions (objectives #1 and #3). They also reflect the objectives of designating only committed and capable carriers as ETCs (objective #7) and creating clear expectations regarding ETC obligations (objective #8).

Q. In Staff's opinion, does the Commission have more flexibility in designating ETCs requesting only Lifeline support?

A. Yes, in Staff's opinion the Commission has much more latitude in deciding which carriers should receive federal support funds to provide Lifeline services in Oregon, and therefore more flexibility in meeting the objectives adopted in UM 1217. In the past several years there has been much activity in this area, as many smaller wireless resellers have entered the market to provide free-to-the-customer cellphones and minutes. These entities provide Lifeline services by leasing services from other carriers that own network facilities, such as AT&T Mobility, Verizon Wireless, and Sprint. They are not interested in receiving federal high-cost funds to build out or upgrade networks; they seek only low-income fund support for providing Lifeline services. Although the FCC has increased requirements for the Lifeline program in order to reduce waste, fraud and abuse, they have not constrained state designation decisions for Lifeline-only ETCs to the extent that they have for high-cost designations. Therefore, states still have considerable flexibility in terms of deciding which entities to designate for Lifeline services, and with that flexibility can meet more of the objectives laid out in Docket UM 1217. The policy objectives are largely reflected in the revised designation requirements as they relate to designation of Lifeline-only providers. The Commission's role in deciding which ETCs will receive designation to provide Lifeline services is made more critical by the fact that Oregon also makes available its own Lifeline funding from the Residential Service Protection Fund (RSPF).

Q. Do the requirements proposed in the Stipulation significantly conflict with any decisions rendered, or resolve any open issues, in the *ETC Order* that established the current designation requirements?

A. In the *ETC Order* the Commission generally accepted the recommendations of the FCC, and added some additional requirements recommended by Staff. The requirements proposed in the Stipulation are consistent with that approach in that many of the requirements are revised to reflect FCC changes subsequent to the issuance of the *ETC Order*. Some requirements have been eliminated, some definitions have been changed, and new mandatory FCC requirements have been added. The additional Staff requirements adopted in the *ETC Order* remain largely intact, although appropriately modified, in the proposed requirements.

In the *ETC Order*, the Commission concluded that the same requirements should apply for designation in rural and non-rural ILEC service areas, and regardless of the type of support. While this is still relevant for Lifeline-only designations, it can no longer be applied to high-cost support designations. This is due to FCC changes in the types of funding, new FCC support-specific requirements, and the reduced flexibility available to states as discussed above.

As to the issue of geographical areas for inclusion in designated service areas, the *ETC Order* indicated a preference for inclusion of entire ILEC wire centers, but allowed for consideration of exceptions in light of whether the public interest would be served. As explained above, the Parties support the use of zip codes rather than wire centers for Lifeline-only applicants (which are only wireless providers now) based on ease of administration and consumer understanding. Additionally, future support funding for high-cost applicants will likely be limited to census block areas, and designation must follow that approach. As to the issue of ILEC support disaggregation, that is no longer a concern since the equal-support rule has been eliminated by the FCC.

Q. In Staff's opinion, is the FCC likely to make other changes to the federal universal fund program that will necessitate changes to ETC designation requirements in the near future?

A. On June 22, 2015, the FCC issued FCC 15-71[8] that includes several Orders and a Further Notice of Proposed Rulemaking regarding the Lifeline program. The immediate changes imposed in the orders do not impact the requirements proposed in the Stipulation. On the other hand, the Further Notice proposes incorporating broadband services into the

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[8] *See Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Second Further Notice of Proposed Rulemaking, Order of Reconsideration, Second Report and Order, and Memorandum Opinion and Order, (rel. June 22, 2015).

Lifeline program. It is not known when (or if) the FCC will make final decisions regarding adoption and implementation on this significant change to the current Lifeline program. Given the current need for substantial updates related to changes that have already been implemented by the FCC in the last several years, Staff recommends that the Commission adopt the changes in the Stipulation without waiting for the resolution of the FCC's next step in reforming its Lifeline program.

Q. Does this conclude your testimony?

A. Yes, this concludes our testimony.

WITNESS QUALIFICATION STATEMENT

NAME:	Bob Jenks
EMPLOYER:	Citizens' Utility Board of Oregon
TITLE:	Executive Director
ADDRESS:	610 SW Broadway, Suite 400 Portland, OR 97205
EDUCATION:	Bachelor of Science, Economics Willamette University, Salem, OR
EXPERIENCE:	Provided testimony or comments in a variety of OPUC dockets, including UE 88, UE 92, UM 903, UM 918, UE 102, UP 168, UT 125, UT 141, UE 115, UE 116, UE 137, UE 139, UE 161, UE 165, UE 167, UE 170, UE 172, UE 173, UE 207, UE 208, UE 210, UE 233, UE 246, UE 283, UG 152, UM 995, UM 1050, UM 1071, UM 1147, UM 1121, UM 1206, UM 1209, UM 1355, UM 1635, UM 1633, UM 1654, and UM 1662. Participated in the development of a variety of Least Cost Plans and PUC Settlement Conferences. Provided testimony to Oregon Legislative Committees on consumer issues relating to energy and telecommunications. Lobbied the Oregon Congressional delegation on behalf of CUB and the National Association of State Utility Consumer Advocates. Between 1982 and 1991, worked for the Oregon State Public Interest Research Group, the Massachusetts Public Interest Research Group, and the Fund for Public Interest Research on a variety of public policy issues.
MEMBERSHIP:	National Association of State Utility Consumer Advocates Board of Directors, OSPIRG Citizen Lobby Telecommunications Policy Committee, Consumer Federation of America Electricity Policy Committee, Consumer Federation of America Board of Directors (Public Interest Representative), NEEA

WITNESS QUALIFICATION STATEMENT

NAME: Marsha Spellman

EMPLOYER: Warm Springs Telecom

TITLE: Regulatory Director

ADDRESS: 10425 SW Hawthorne Lane, Portland, OR 97225

EDUCATION: Concord Law School, JD
University of Portland, MA, Communications
Boston University, BA History/Education

PROFESSIONAL EXPERIENCE:

Warm Springs Telecommunications Company (WST): Regulatory Director
(2012-present)
Manage Regulatory/policy issues for this tribal telecom company, including participating in proceedings UM 1481/UM 1684 including certifications and transitions to ILEC status.

Converge Communications: President/Principal/Co-Owner
(2006-present)
Converge is certified by the state of Oregon as Women's Business Enterprise and Emerging Small Business, offering a full range of telecommunications consulting services to cities, school districts and Indian Tribes. Converge has been the telecommunications consultants to the Confederated Tribes of Warm Springs in Oregon (CTWS) for more than 10 years where I haveconceived, planned, designed, and did all the regulatory certification to create Warm Springs Telecom (WST) which is wholly owned by CTWS, bringing telephone, broadband and emergency services, to this previously unserved and underserved sovereign native nation.

Cathey Hutton and Associates (now CHR Solutions): Assistant Regulatory Director
(1999-2003)
Managed regulatory needs for northwest and national clients on numerous projects and filings, including CLEC/ILEC applications. Other projects included: Wrote a client handbook on Customer Proprietary Network Information (CPNI) and trained ILEC managers on implementation of this new regulation; Filed International 214 for UK client; worked with ODOT to determine regulatory issues regarding using right of ways alongside highways for wireless telecommunications.

Oregon Cable Telecommunications Association (OCTA): Telecommunications Specialist
(1994-1998)
On behalf of member cable companies, I represented the OCTA at the OPUC in the early days of cable considering telephone provisioning. These were during the days of the Unbundling, Competitive Provider, and USF docketed proceedings,

ITC Consulting: Marketing/Business Development
(1990 – 1993)
In London, UK, I worked for a telecom engineering consultancy where I was taught the basics of telecom engineering and tariffing by John Hunter, one of the leading experts in tariffing in the UK.

Oregon Telecommunications Advisory Committee: Co-Chair (with Commissioner Ron Eachus)
(1995-1996)
Appointed by Governor Roberts, this committee worked for one year to investigate the broadband issues in Oregon and make legislative recommendations. We held fact finding meetings throughout the state culminating in a large meeting in Portland before writing and lobbying for legislation.

WITNESS QUALIFICATION STATEMENT

NAME: Kimberley Lehrman

EMPLOYER: Boomerang Wireless, LLC d/b/a enTouch Wireless

TITLE: President

ADDRESS: 955 Kacena Road. Suite A. Hiawatha, Iowa. 52233

EDUCATION: BBA, University of Iowa, *magna cum laude*, 1983

PROFESSIONAL EXPERIENCE:

President, Boomerang Wireless, LLP. 2013- Present
Officer responsible for overall management of Boomerang Wireless LLC, including launching and expanding operations an Eligible Telecommunications Carrier approved in 22 states and serving over 100,000 ETC Lifeline customers under the enTouch Wireless brand.

Vice President, Marketing, Ready Wireless, 2011 to 2013.
Officer responsible for marketing for Mobile Virtual Network Enabler serving pre-paid wireless carriers.

President & Chief Marketing Officer, Marian Heath Greeting Cards 2002-2011
Responsible for marketing and overall management of greeting card company that grew from a small independent company to become third largest national brand in the market.

Owner, VP Sales, LiveWARE5 1998-2002
Owner of company providing live streaming media software platform funded by Intel. Managed national and international telecommunications distribution platform and events for government, Fortune 500 and non-profits. Acquired by national CLEC- McLeod USA.