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VIA ELECTRONIC MAIL AND OVERNIGHT MAIL

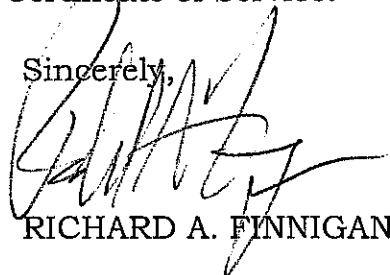
Filing Center
Oregon Public Utility Commission
550 Capitol Street NE, Ste 215
Salem, OR 97301-2551

Re: UM 1217

Dear Sir/Madam:

Enclosed are the original and five copies of the Oregon Telecommunications Association Response to RCC and USCC Application for Rehearing and Reconsideration of Order No. 06-292 and Certificate of Service.

Sincerely,



RICHARD A. FINNIGAN

RAF/km
Enclosures

cc: Service List (w/encl., via e-mail and U.S. mail where specified)
ALJ Christina Smith (w/encl., via e-mail and U.S. mail)
Brant Wolf (w/encl., via e-mail)

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6 **BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**
7

8 In the Matter of

DOCKET NO. UM 1217

9 OREGON PUBLIC UTILITY
10 COMMISSION

11 Staff Investigation to Establish Requirements
12 for Initial Designation and Recertification of
13 Telecommunications Carriers Eligible to
14 Receive Federal Universal Service Support

OREGON TELECOMMUNICATIONS
ASSOCIATION RESPONSE TO RCC AND
USCC APPLICATION FOR REHEARING AND
RECONSIDERATION OF ORDER NO. 06-292

15 The Oregon Telecommunications Association (“OTA”) hereby submits its response to the
16 Application for Rehearing and Reconsideration (the “Application”) filed by United States Cellular
17 Corporation (“USCC”) and RCC Minnesota, Inc. (“RCC”). OTA submits that the Application should
18 be rejected.

19 I. INTRODUCTION: The Application Should be Rejected.

20 The Application is simply a rehash of issues that were before the Commission in this docket
21 and decided correctly by this Commission. The Application offers nothing new.

22 As stated in the Application, the challenge to the Commission’s Order No. 06-292 (the
23 “Order”) is as follows: “...the Commission’s Order with respect to ILEC ETC annual reporting
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OREGON TELECOMMUNICATIONS
ASSOCIATION RESPONSE TO RCC AND
USCC APPLICATION - 1

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1 requirements is unjust and unwarranted and based upon an error of fact and an error of law.”¹ The
2 apparent error of fact alleged in the Application is the Commission’s determination that it has
3 sufficient information concerning incumbent ETCs that it need not require a build-out plan for
4 incumbent ETCs² as it has for competitive ETCs.³ The Application is somewhat oblique in its
5 description of the error of law. However, it is apparently that the Commission did not accept the
6 FCC’s urging that the requirement for a build-out plan apply not only to CETCs, but to ILEC ETCs.⁴
7

8 The Commission has broad discretion in determining the standards that should apply to the
9 recertification process for ETC designations. As will be discussed below, the Commission has
10 information available to it that allows the Commission to be assured that ILEC ETCs are using federal
11 universal service support properly. It lacks that type of information for CETCs.

12 In addition, there is nothing in federal or state law that mandates that the Commission accept
13 the FCC’s recommendation on build-out plans. The Commission has basis in the record in this docket
14 to exercise its discretion to determine whether or not build-out plans should apply to CETCs only or to
15 both CETCs and ILEC ETCs. For good reason, the Commission chose to apply the build-out plan
16 requirement only to CETCs.
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¹ Application at p. 3, l. 2-5.

23 ² As the terms are used herein, incumbent ETCs will sometimes be referred to as ILEC ETCs and competitive ETCs will
sometimes be referred to as CLEC ETCs or CETCs.

24 ³ See, generally, Application at pages 5-6.

25 ⁴ See, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 05-46
(Rel. March 17, 2005) (“ETC Order”) at ¶71.
26

1 II. ANALYSIS: The Application is Misplaced.

2 In the Application, USCC and RCC argue that the Commission does not have sufficient
3 information concerning ILEC ETCs to distinguish between ILEC ETCs and CETCs. The argument in
4 the Application is mistaken.

5 The outcome sought by USCC and RCC is that incumbent ETCs should be required to provide
6 the same network build-out information as competitive ETCs as part of the re-certification process.
7 This argument completely ignores the fact that incumbent ETCs receive USF support for investment
8 that the incumbent ETCs have made two years prior to the year in which they receive the federal
9 universal service funds. This investment and expense information is supported by cost studies filed at
10 the federal level. On the other hand, competitive ETCs receive funding based upon the incumbent's
11 level of support, without a demonstration of what the competitive ETC has invested.

12 In addition, incumbent ETCs already submit detailed reports to the Commission under Forms I,
13 L and O. Form I is the Oregon separated results of operations for each company. This form contains a
14 detailed breakout of the incumbent ETC's plant, depreciation and amortization. Form I also reports to
15 the Commission a company's operating revenues and operating expenses by detail category.⁵ Form L
16 is the annual report describing the services and number of customers by service.⁶ Annual report Form
17 O is the annual total company and total Oregon operations report. It includes a balance sheet, an
18 analysis of depreciation, an analysis of charges related to plant retired, long-term debt, income
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24 ⁵ A copy of Form I is found in the record as RCC/19.

25 ⁶ A copy of Form L is found in the record as RCC/20.

1 statement, number of employees, compensation to directors, officers and managers, and several other
2 detailed reports.⁷

3 Further, incumbent ETCs undergo annual cost reviews of investment and expense numbers by
4 Commission Staff as part of their access filings. Thus, Commission Staff can see changes in
5 investment and expense levels on a year by year basis.

6 In addition, incumbent ETCs undergo a thorough review of their costs by Commission Staff
7 when submitting data to justify support from the Oregon universal service fund.

8 None of this detailed information on investment and expense is available from a competitive
9 ETC. Perhaps CLEC ETCs such as USCC and RCC should have to file Form I, Form L and Form O
10 on an annual basis and prepare cost studies that are reviewed annually. That would provide the same
11 level of treatment with ILEC ETCs that USCC and RCC appear to seek.

12 The difference between incumbent ETCs and CETCs was described by Mr. Wolf in his
13 testimony in this case:

14 Incumbent ETCs have already expended the funds for investment for which they are
15 being reimbursed under the federal USF mechanism. Incumbents support their
16 investment through the submission of detailed cost studies. Competitive ETCs receive
17 support based upon the incumbent's level of cost on a per-line level, not the competitive
18 ETC's own prior investment. CETCs do not submit cost studies for review. Therefore, it
19 is appropriate for competitive ETCs to demonstrate how they will use USF funds to make
20 investments. The incumbent ETC has already made this demonstration through the
investment it has made and the supporting cost studies it has filed.⁸

21 Commission Staff offered a broader rationale for the distinction in treatment between CETCs and
22 incumbent ETCs:

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24 ⁷ A copy of Form O is found in the record as RCC/21.

25 ⁸ OTA/4, Wolf/4, l. 4-11.

1 The FCC developed its reporting requirements specifically for wireless ETCs, since that
2 is the only type of carrier that the FCC designates as an ETC. While the competitive
3 neutrality principle should be considered when selecting annual reporting requirements, it
4 does not mean that all ETCs must have the exact same annual reporting requirements for
universal service recertification. All ETCs should demonstrate compliance with all ETC
requirements, but not necessarily in exactly the same ways.⁹

5 Incumbent ETCs have demonstrated their levels of investment and expenses through numerous
6 filings at both the state and federal level. Competitive ETCs have made no demonstration of how they
7 will spend the money. Requiring competitive ETCs to provide information concerning their network
8 build-out plans only puts them on a footing that approaches, but does not equal, the level of detail
9 provided by the incumbent ETCs who have demonstrated through numerous financial reports how
10 they have invested their money.

11
12 Curiously, USCC and RCC make the argument that because an incumbent ETC applied for
13 temporary suspension of wireline-to-wireless local number porting obligations when it was in the
14 midst of a switch upgrade, that somehow the Commission lacks information about how incumbent
15 ILECs are investing.¹⁰ Instead of supporting the Application, the fact that a rural ILEC needed to
16 obtain a waiver because it was replacing a switch actually underscores the point that there should be
17 differences between how the incumbent ETCs and competitive ETCs are treated. In that particular
18 case, Helix Telephone Company was in the process of doing a switch replacement. The switch
19 investment that Helix made in 2005 does not begin to be recovered through USF support until 2007.
20 In the interim, the Commission has information concerning the investment made by Helix through
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24 ⁹ Staff/1, Marinos/89, l. 4-10.

25 ¹⁰ Application at p. 8, l. 21 – p. 9, l. 3, citing to Order No. 04-052 in Docket UM-1125.

1 Forms I, L and O and the annual access charge review. Thus, the Commission has reviewed the
2 investment level before federal USF support flows to the ILEC ETCs. The Commission lacks such
3 information about CETCs.

4 III. The Hazlett Paper Should be Ignored.

5 In part, the Application points to a paper published by Thomas W. Hazlett entitled "Universal
6 Service Telephone Subsidies: What Does \$7 Billion Buy?" Reliance on such a private paper is
7 inappropriate. The Hazlett Paper should not be considered as part of the record and should be given
8 no credence.
9

10 The Hazlett Paper has not been subject to sponsorship by any witness in this proceeding. The
11 Hazlett Paper has not been subject to cross examination as to the methodologies used in the study, the
12 funding for the study, and what particular interest it may or may not advance. It is not the type of
13 document that the Commission may take official notice of. It is a private paper published for private
14 interests.
15

16 On the other hand, the paper recently published by the Congress of the United States,
17 Congressional Budget Office ("CBO"), entitled "Factors That May Increase Future Spending from the
18 Universal Service Fund" is the type of document that this Commission may take official notice. This
19 paper published in June of this year is provided as Attachment 1.

20 In the paper, the CBO does an analysis of the existing universal service fund and the potential
21 for increases in the size of the fund. The CBO finds that it is competitive ETCs that are the source of
22 the growth in the size of the fund in recent years. As stated at page 12 of that report, "Competitive
23 entrants have accounted for more than 90% of new funding in the High Cost Program since 2003.
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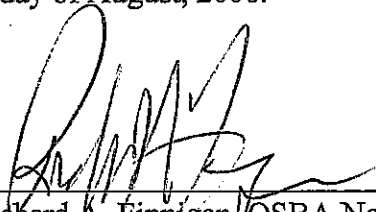
1 Funding for incumbents has been nearly constant for the past three years at between \$3.1 billion and
2 \$3.2 billion...Spending for competitive entrants has grown from \$130 million in 2003 to an estimated
3 \$640 million in 2005. Early projections for 2006 suggest a substantial rise in funding for new entrants
4 and continued stability in funding for incumbents.”

5
6 There is good reason for the Commission to treat CLEC ETCs and ILEC ETCs differently.
7 Given the nature of the way in which ILEC ETCs receive USF funding for past investments, it makes
8 perfect sense that they not be required to produce build-out plans. However, given the lack of
9 information about CLEC ETCs and taking into account the rapid growth in the funding of CLEC
10 ETCs, the Commission is well justified in establishing a build-out plan requirement for CLEC ETCs.

11 CONCLUSION

12 The Application is not well founded. OTA respectfully requests that the Application be
13 denied.

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15 RESPECTFULLY SUBMITTED this 28th day of August, 2006.

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19 _____
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22 Association

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**CERTIFICATE OF SERVICE
UM 1217**

I certify that I have this day served the foregoing Oregon Telecommunications Association Response to RCC and USCC Application for Rehearing and Reconsideration of Order No. 06-292 by electronic mail and overnight mail to the following:

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I further certify that I have this day served the foregoing Oregon Telecommunications Association Response to RCC and USCC Application for Rehearing and Reconsideration of Order No. 06-292 upon all parties of record in this proceeding by electronic mail, pursuant to OAR 860-013-0070, and by U.S. mail to the following parties or attorneys of parties:

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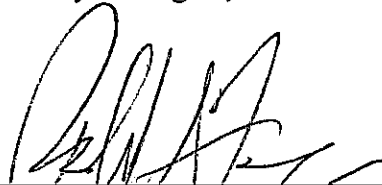
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Dated at Olympia, Washington, this 28th day of August, 2006.



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