

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UM 1217

4 In the Matter of PUBLIC UTILITY
5 COMMISSION OF OREGON Staff
6 Investigation to Establish Requirements for
7 Initial Designation and Recertification of
8 Telecommunications Carriers Eligible to
9 Receive Federal Universal Service Support.

10 **STAFF'S OPENING BRIEF**

11 **INTRODUCTION**

12 The Commission opened this docket at the request of its staff for the purpose of
13 establishing requirements for the initial designation and recertification of telecommunications
14 carriers eligible (ETCs) to receive federal universal support.¹ *See* Staff/1, Marinos/13. Staff's
15 recommendation, in turn, arose from action taken by the Federal Communication Commission
16 (FCC), memorialized in its Order No. 05-46 (FCC Order). *See In the Matter of Federal-State*
17 *Joint Board on Universal Service*, CC Docket No. 96045, Order No. 05-46 (released March 17,
18 2005).

19 The FCC Order set forth various standards relating to basic eligibility of
20 telecommunications carriers and requirements for their reporting and re-certification. While the
21 FCC did not require the states to adopt its requirements, it encouraged them to do so.
22 Accordingly, staff recommended the Commission open this docket to consider this matter
23 generally, and the applicability of the FCC Order specifically. Subsequently, after the
24 commencement of this docket, the parties agreed to an issues list, submitted extensive written
25 testimony on those issues, and testified orally at an evidentiary hearing.

26 ¹ As used in this brief, "ETCs" refers to all telecommunication providers designated as eligible to receive federal support funds. This brief also occasionally uses the term "CETC." CETC is an acronym for "competitive eligible telecommunications carrier." Unless otherwise specifically noted, CETC refers to an ETC that is a non-incumbent local exchange carrier (ILEC).

1 Staff's Opening Brief will address each issue sequentially, identifying which issues
2 appear settled and discussing those issues still in dispute. Due to the extensive, detailed nature of
3 some of staff's recommendations, staff will not always repeat those recommendations in full, but
4 will instead refer the Administrative Law Judge to the relevant parts of staff's testimony where
5 they are discussed. Staff has also attached a detailed summary (Attached Summary) of its
6 recommendations regarding proposed initial designation and recertification requirements as an
7 exhibit to this Opening Brief. See Attachment A. Finally, staff stands by its recommendations
8 presented in its written testimony, and during cross examination, except as otherwise expressly
9 stated in this brief or shown in the Attached Summary.

10 ISSUES

11 I. Overall: What policy objectives should the Commission attempt to achieve through 12 this docket?

13 Staff generally supports the policy objectives found in the past orders of the FCC, the
14 current FCC Order, and relevant parts of the Telecommunications Act. See Staff/1, Marinos/13-
15 21. Staff's summarizes the eight key points relevant to the Commission's setting its own policy
16 objectives for this docket at Staff/1, Marinos/20-21. Staff's understanding is that, while there
17 may be a different focus or weight assigned to one or another of these eight objectives, no party
18 seriously opposes staff's recommended policy objectives.

19 Staff observes that RCC Minnesota, Inc. (RCC) and United States Cellular Corporation
20 (USCC) propose the following two additional policy objectives:

- 21 9. Complete and thorough accountability of the use of all USF support received
22 by both competitive ETCs and ILEC ETCs, based on information collected
during the annual recertification process; and
- 23 10. Efficient monitoring of an ETC through reporting requirements that reflect the
market power and position of each competitive ETC or ILEC ETC.

24 See RCC-USCC/4, Wood/6.

25 Staff opposes these two additional policy objectives. Additional objective (9) is
26 subsumed under staff's recommended objective (3) in that Section 254(e) of the

1 Telecommunications Act requires that support funds be used only for the intended purposes.
2 Although staff is concerned about accountability for all ETCs, staff explains at Staff/1,
3 Marinos/89-90 why “incumbent local exchange carriers” (ILECs) should not be required to
4 provide network improvement plans to account for the use of support funds during the annual
5 recertification process.

6 Staff also opposes additional objective (10) because it is unclear as to the meaning of
7 “market power and position.” RCC-USCC does not explain how these factors would be
8 determined or explain how they should result in differing reporting requirements.

9 **II. Initial Designation of ETCs**

10 ***A. What specific basic eligibility requirements should the Commission adopt for the*** 11 ***initial certification of ETCs?***

12 Staff generally identifies and explains the minimum federal requirements for initial
13 certification of ETCs set forth by various federal laws and FCC pronouncements. *See generally*
14 *Staff/1, Marinos/22-25.* To briefly summarize, the Act provides six minimum requirements
15 relating to an ETC’s offering and advertising of its services that are supported by the Federal
16 universal service support mechanism. *See Staff/1, Marinos/22.* The FCC rules further define the
17 nine services that are supported by federal universal service funds. *See Staff/1, Marinos/22-23.*
18 Staff recommends the Commission adopt these requirements, as further explained in its
19 testimony and this brief. This Commission is also authorized to adopt additional requirements,
20 as further discussed below.

21 **1. Should the Commission adopt any, or all, of the requirements proposed by the** 22 **FCC in Order 05-46?**

23 Staff discusses this issue in detail at Staff/1, Marinos/26-46 and at Staff/4, Marinos/6-11.
24 The FCC Order delineates five “permissive guidelines” which the states are encouraged to adopt.
25 These guidelines require an ETC applicant to demonstrate: (1) commitment and ability to
26 provide supported services throughout the proposed service area, including submission of a

1 5-year service quality/network improvement plan, (2) ability to remain functional in emergency
2 situations, (3) commitment to meeting consumer protection and service quality standards, (4)
3 offering of a local usage plan comparable to the ILEC in the serving area, and (5)
4 acknowledgement that it may be required to offer equal access to long distance carriers in the
5 event no other ETC is providing equal access within the service area. *See* Staff/1, Marinos/26.

6 With modifications to the first requirement, staff recommends the Commission adopt the
7 five guidelines set forth above. Staff understands that no party opposes the adoption of these
8 five requirements, including staff's modifications which are discussed immediately below.

9 Regarding the submission of a 5-year service quality/network improvement plan, staff
10 endorses the full five-year period as recommended by the FCC in applications for initial
11 designation, but proposes that detailed information regarding the planned use of funds be
12 required for only the first two years of the plan. *See* Staff/4, Marinos/8, 27.² In addition, staff
13 supports RCC/USCC's suggestion to eliminate the requirement to identify network planning
14 investments at the individual ILEC wire center level of detail. Staff's recommendation on this
15 matter is found in more detail at Staff/4, Marinos/9, which in turn references the required detail
16 discussed at Staff/1, Marinos/36-37.

17 Even though the parties seem to generally agree on the five FCC requirements, there is
18 disagreement on how to apply the fourth requirement – the offering of comparable local usage.
19 The FCC has not provided guidelines for how much local usage an ETC must provide other than
20 to say the ETC's local usage plan must be "comparable" to the one offered by the ILEC in the
21 relevant service area. *See* Staff/1, Marinos/43, quoting from the FCC Order at paragraph 32. As
22 a result of ORS 759.235, flat-rated, unlimited local calling is the standard for wireline local
23 exchange service in Oregon. Incumbent wireline ETCs that are rate-regulated by the
24 Commission must as a matter of law offer unlimited local calling on a flat-rate basis. For

25 _____
26 ² Staff has a different recommendation concerning the 5-year network plan for the annual
reporting requirement as discussed under Issue III(A)(1) later in this brief.

1 competitive reasons, other wireline ETCs are constrained to offer unlimited local calling on a
2 flat-rate basis as well. *Id.*

3 Staff originally recommended that the Commission require an ETC applicant to
4 demonstrate it offers a local calling plan that either offers unlimited local minutes or a plan that
5 includes at least the average number of local calling minutes made by ILEC by the relevant
6 ILEC's customers. Staff/1, Marinos/44. The burden would stay with the applicant to show how
7 its local usage calling plan was "comparable" to those offered by the ILECs in its proposed
8 service area.

9 RCC/USCC, however, advocate that the Commission take a "case-by-case" approach to
10 this issue, "with due consideration given to the differences in geographic scope of the 'local'
11 callings areas offered by various carriers and to other fundamental differences in service
12 offerings." *See* RCC/USCC/1, Wood/19-20; RCC/USCC/4, Wood/30-32. In response, staff
13 clarifies its recommendation that, rather than requiring a minimum level of local usage for an
14 ETC applicant, the Commission adopt RCC/USCC's case-by-case approach *with* the requirement
15 that the applicant will have the burden of showing its comparability to the relevant ILEC's basic
16 service local offering. Staff also recommends that the Commission encourage all ETCs to have
17 at least one affordable offering similar to the ILEC's basic local service offerings as an
18 alternative for low-income consumers who are eligible for Lifeline and OTAP benefits.

19 **2. Should the Commission adopt other basic eligibility requirements?**

20 Staff discusses this issue in detail at Staff/1, Marinos/47-49 and Staff/4, Marinos/12-14.
21 Staff recommends the Commission adopt the seven additional requirements that are set out at
22 Staff/1, Marinos/47-48 as specific items that must be included in an ETC's application for
23 designation. Staff believes its recommendation is acceptable to all parties.

24 For three main reasons, staff opposes OTA's recommendation to impose certain service
25 quality standards and reporting requirements contained in the Commission's rules to wireless
26 ETCs. *See generally* OTA/1, Wolf/15-16; OTA/5, Wolf/2-3; Transcript (TR) at 121-122 (Wolf).

1 First, OTA fails to explain why adoption of the Commission’s wireline rules for wireless
2 carriers is necessary. This is an area where it is difficult to achieve regulatory neutrality between
3 the two different types of carriers and it would be inappropriate to adopt identical uses “just for
4 parity’s sake.” *See* Staff/4, Marinos/12; RCC/USCC/4, Wood/33.

5 Second, while OTA observes the Commission is prohibited by law from imposing its
6 service quality rules upon cooperatives, it fails to note that the Commission is unable to impose
7 its service quality standards under state law to wireless carriers either. *See* ORS 759.450(8);
8 PUC Order No. 04-335 at 9 (UM 1083). The Commission decided the solution to this legal
9 infirmity was to require wireless ETCs to submit annual reports, supplemented with details about
10 any service quality complaints received from their customers. Order No. 04-335 at 9. Staff
11 recommends a similar approach, as further discussed under Issue III later in this brief.

12 Third, and finally, similar to the situation with customers of cooperatives, where
13 dissatisfied customers may vote to replace management, a wireless customer may under some
14 circumstances “vote with his feet” and terminate his service with a carrier that provides poor
15 quality service. *See generally* Staff/4, Marinos13; RCC/USCC/4, Wood/33-34.

16 **3. Should the same requirements apply to applications for designations in rural**
17 **and non-rural ILEC service areas?**

18 Staff recommends the same basic eligibility requirements apply in both rural and non-
19 rural ILEC service areas. *See* Staff/1, Marinos/50. Staff believes the parties agree with its
20 recommendation.

21 **4. Should the same requirements apply regardless of the type of support**
22 **(traditional high-cost, interstate access/common line, low-income) that the ETC**
23 **will receive?**

24 Staff discusses this issue in detail at Staff/1, Marinos/51-53 and at Staff/4, Marinos/16.
25 With one exception, staff recommends the same requirements for basic eligibility apply
26 regardless of the type of support the applicant will receive. The exception involves the
requirement for an applicant to demonstrate in a network improvement plan how the support will

1 be used. Low-income support is used to offset rates to qualifying low-income consumers, and
2 thus represents a direct flow-through from the carrier to the end-user. As such, if the applicant
3 expects to receive only low-income support, the Commission should not require it to submit a
4 network improvement plan with its application. But, if an applicant expects to receive low-
5 income funds to cover the cost of toll-limitation, the applicant should address its use of those
6 funds as part of the requirement pertaining to the commitment to offer Lifeline and LinkUp
7 services. *See* Staff/1, Marinos/23 (regarding the Lifeline/LinkUp requirement) and Staff/4,
8 Marinos/16. Staff believes that, except for OTA, no party opposes its recommendation under
9 this issue.

10 OTA appears to advocate for a less detailed, “shorter” application generally for those
11 carriers who propose to offer only low-income support. *See* OTA/1, Wolf/16. However, OTA
12 fails to provide justification for, and the necessary specifics behind, its recommendation.
13 Without more, and recognizing the FCC makes no such distinction, staff recommends the
14 Commission not adopt OTA’s suggestion. *See* Staff/4, Marinos/16.

15 ***B. What specific criteria should the Commission adopt to determine whether***
16 ***designation of a competitive ETC is in the public interest, as required by Section***
214(e)(2) of the Telecom Act?

17 **1. Should the Commission adopt the criteria proposed by the FCC in Order 05-46?**

18 Staff discusses Issue II(B)(1) in detail at Staff/1, Marinos/55-56 and Staff/4, Marinos/19-
19 20. Staff proposes the Commission adopt the FCC’s public interest criteria that use a cost-
20 benefit analysis that balances two types of factors in considering whether designation of an ETC
21 would be in the public interest. The two factors are: (1) the benefits of increased consumer
22 choice that the designation would bring to an area, and (2) the advantages and disadvantages of
23 the particular service offerings that would be made available by the designation. *See* Staff/1,
24 Marinos/55. The Commission is free to consider and adopt other public interest criteria to
25 encourage different types of services or benefits. *Id.* at 56.

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1 Staff does not believe any party opposes its Issue II(B)(1) recommendation except for
2 OTA’s suggestion that the Commission consider the resulting impact on the USF funds as part of
3 a public interest test when designating an ETC. *See* OTA/1, Wolf/18-19. Designation of any
4 particular ETC is not likely to have a significant impact on the federal fund, given its size. The
5 Commission should not be concerned with the impact that any specific applicant would have on
6 the fund, but should instead concentrate on the benefits that each ETC applicant would bring to
7 Oregon consumers. *See* Staff/4, Marinos/20; RCC-USCC/4, Wood/35.

8 Staff addresses the more controversial “creamskimming” issue immediately below under
9 Issue II(B)(2).

10 **2. Should the criteria differ between designations in rural and non-rural ILEC**
11 **service areas?**

12 The primary area of disagreement among the parties under Issue II(B)(2) is over the need
13 for a “creamskimming” test. Staff discusses this issue at length at Staff/1, Marinos/57-62 and
14 Staff/4, Marinos/19-20. Creamskimming refers to the possibility that an ETC will serve only the
15 higher-density, lower-cost part of a rural ILEC’s study area in order to receive excessive federal
16 support funds. *See* Staff/1, Marinos/57-58; RCC-USCC/1, Wood/27-28. The FCC, through its
17 Joint Board, proposed that a so-called creamskimming test be performed before a rural ILEC
18 study area is redefined below the study area level. As such, the FCC requires that in cases where
19 an ETC proposes to serve only a portion of a rural ILEC’s study area, it must demonstrate that no
20 creamskimming will result. *Id.*

21 Staff proposes the Commission not adopt the FCC’s creamskimming test. Staff
22 recommends instead that the Commission open a docket to disaggregate (i.e. de-average) all
23 rural ILECs’ per-line support amounts. Staff’s reasons for its recommendation, and alternative
24 options, are discussed in detail at Staff/1, Marinos/57-62, and at Staff/4, Marinos/19-20. *See*
25 *also* RCC-USCC/1, Wood/27-38; RCC-USCC/4, Wood/34-43. Should the Commission adopt
26 staff’s recommendation, in the interim, until all rural ILEC’s disaggregate per-line support

1 amounts, if an ETC proposes to serve only a part of a rural ILEC’s service area that has not yet
2 been redefined by the FCC, the ETC should include a creamskimming analysis in its application
3 for ETC designation. Staff/1, Marinos/62.

4 Disaggregation of support is addressed in more detail under Issue II(B)(4) below.

5 **3. Should the Commission require an ETC to include entire ILEC wire centers in**
6 **its service area, regardless of the boundaries of its licensed area?**

7 Staff discusses this issue at Staff/1, Marinos/63-65 and at Staff/4, Marinos/21. Staff
8 initially recommended that the Commission require an ETC to include the entire ILEC wire
9 centers in its service area, regardless of the boundaries of the ETC’s licensed area. *See* Staff/1,
10 Marinos/64-65.

11 RCC-USCC were the only parties to oppose staff’s recommendation. *See* RCC-USCC/1,
12 Wood/37-38. RCC-USCC ask the Commission to address this matter on a case-by-case basis.

13 After considering RCC-USCC’s objection and request, staff modified its
14 recommendation to have inclusion of entire ILEC wire centers as the “rule,” but to allow a
15 particular applicant to ask for an exception to this rule so long as granting the exception would
16 be in the public interest. *See* Staff/4, Marinos/21. Staff’s modified approach strikes the
17 appropriate balance on this issue for all parties.

18 **4. Whether and to what extent the Commission should require incumbent local**
19 **exchange carriers to disaggregate and target support in a different matter, as**
20 **permitted by 47 CFR Section 54.315(c)(5).**

21 Staff recommends the Commission require rural ILECs to disaggregate traditional high-
22 cost support and “interstate common line support” (ICLS) to the wire center level on a per-line
23 basis. *See generally* Staff/1, Marinos/66-70; Staff/4, Marinos/22-24. The result would be per-
24 line support amounts that more closely reflect the costs of serving each individual wire center.

25 Deaveraging achieves several goals. Deaveraged per-line support sends the correct
26 economic signals and encourages ETCs to expand into higher cost areas in order to obtain the
higher support amounts. Conversely, averaged per-line support sends the wrong economic signal

1 and encourages ETCs to serve the lower cost areas where support payments exceed costs. *See*
2 Staff/1, Marinos/67-68. Because it sends the correct economic signal, disaggregation of per-line
3 support also solves the creamskimming issue discussed under Issue II(B)(2). Without a
4 creamskimming test as a barrier, wireless ETCs would be able to include more of their cellular
5 licensed areas in their designated service areas for universal service purposes. *Id.* Staff also
6 agrees with the well-reasoned arguments RCC-USCC present in support of disaggregation. *See*
7 RCC-USCC/1, Wood/27-38; RCC-USCC/4, Wood/34-50.

8 OTA and Verizon oppose staff’s disaggregation proposal, primarily on the grounds that
9 the record is not sufficient to reach judgment on whether the “benefits” of disaggregation
10 outweigh its costs. *See* OTA/1, Wolf/23; OTA/7, Mason/2-12. OTA further argues that the
11 Commission should not reach any determination on the disaggregation issue in the present
12 docket. *Id.*

13 Staff (and RCC-USCC) disagrees. It is important to note that the only decision on this
14 issue that staff asks the Commission to make in the present docket is to determine the need for
15 disaggregation and to agree to open a future docket to further consider the matter. In that future
16 docket, staff and any interested party would then tackle the quantitative details surrounding
17 disaggregation, including conducting the “cost versus benefit” analysis that OTA seeks. *See*
18 Staff/4, Marinos/24. Thus, while staff agrees a decision on “how” to disaggregate is premature
19 in this docket, staff sees no downside to the Commission opening a docket to address and resolve
20 this critical issue in the near future.³

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25 ³ Staff notes that while OTA makes vague assertions about how expensive a disaggregation
26 analysis would be for a rural ILEC (*see* OTA/1, Wolf/23; OTA/7), RCC-USCC presented
detailed, un rebutted testimony to the contrary. *See* RCC-USCC/4, Wood/45-50.

1 **5. Should the Commission adopt an upper limit on the number of ETCs that can be**
2 **designated in any given area? Any party proposing adoption of an upper limit**
3 **should explain its proposal in detail, including the legal basis for its position.**

4 Staff recommends the Commission not impose a “cap” or otherwise limit the number of
5 ETCs that can be designated in a given area. Staff explains at length the reasons against such a
6 cap at Staff/1, Marinos/71-72. In brief, most arguments for a cap are for the purpose of
7 minimizing the growth in the overall universal service fund. But, cap proposals are
8 discriminatory in that they reward applications based on their “place in line,” or order of
9 designation. Such a method rewards applicants based on the timeliness of their application, and
10 not on merit. *See* RCC-USCC/4, Wood/51.

11 The public interest test provides better ways to achieve the goal of minimizing fund
12 growth. Applying the test will ensure that new applicants meet strict eligibility requirements.
13 Further the Commission may reject any applicant who cannot show that the benefits it offers
14 exceeds the costs of its designation. Staff/1, Marinos/72. For these reasons, the Commission
15 should adopt staff’s recommendation and disregard OTA’s and Verizon’s advocacy for an upper
16 limit on ETCs in a given area. *Compare* Staff/1, Marinos/25 and RCC-USCC/4, Wood/50-54
17 with Verizon/1, Fulp/7-8; OTA/1, Wolf/24-25.

18 **III. Annual Certification of ETCs**

19 ***A. What specific requirements should the Commission adopt for the annual***
20 ***recertification of ETCs?***

21 The Commission must certify to the FCC each year that certain of the state’s ETCs are
22 eligible to continue receiving federal universal service traditional high-cost support funds in the
23 coming year. Staff/1, Marinos/73. Currently, non-rural ILECs and CETCs that are designated in
24 only non-rural ILEC areas certify directly with the FCC, not through the Commission.

25 Conversely, the Commission is responsible for certifying the remaining ETCs to the FCC. The
26 Commission currently meets its recertification responsibilities by requiring the rural ILEC ETCs
27 and CETCs designated in rural ILEC areas to submit affidavits to the effect that they will use

1 support funds for the intended purposes. In addition, CETCs designated in rural ILEC areas
2 must submit certain annual reports imposed as designation conditions. The issues under Issue III
3 address whether, and how, the Commission should change its current recertification procedures.

4 **1. Should the Commission adopt any, or all, of the FCC reporting requirements**
5 **proposed in Order 05-46?**

6 Staff starts from the premise that the Commission should select reporting requirements
7 that are designed to ensure each ETC is fulfilling its universal service obligations as set forth in
8 the Telecommunications Act and the FCC's rules. Staff has tried to keep its recommendations
9 "technology neutral" and to minimize the reporting burdens for all ETCs to the maximum extent.
10 Staff further developed its reporting requirements to correspond to the basic eligibility
11 requirements for initial designation.

12 The Commission should generally adopt the nine FCC reporting requirements, as set
13 forth in detail at Staff/1, Marinos/75-84, as modified at Staff/4, Marinos/27-36, and as further
14 modified in this brief and the Attached Summary. In general, staff proposes adoption of the
15 FCC's recommended "certification" statements, but modifies the required reports and
16 documentation. For instance, the network improvement plan reporting is made consistent with
17 the eligibility recommendations (i.e. details for the first two years only). *See, e.g.* Staff/4,
18 Marinos/28-29.

19 Qwest generally agrees with staff's recommendations (*see* Qwest/2, Copeland/3-4) but
20 other parties quibble with one or another of them. Because the recommendations are detailed,
21 staff will address in summary form the parties' objections and respond more fully in its reply
22 brief as necessary.

23 Verizon seems to say it is able to comply with staff's recommendations but finds most of them
24 redundant to the reports it already provides to the Commission. *See* Verizon/2, Fulp/9-16.

25 Similarly, OTA generally supports the FCC reporting requirements, but for CETCs only.

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1 OTA/1, Wolf/25-31. RCC-USCC submitted testimony advocating that the standards be adopted
2 for all ETCs. *See* RCC-USCC/1, Wood/40-42; RCC-USCC/4, Wood/54-61.

3 In response, staff explained in extensive detail why its recommended reporting
4 requirements should apply to all ETCs, including Verizon, except where otherwise noted. Staff
5 stands by its testimony on this matter. *See* Staff/1, Marinos/75-84, Staff/4, Marinos/27-36 and
6 Attached Summary.

7 RCC-USCC also addressed the particular issue of a wireless carrier complying with
8 service quality reporting, including staff's recommended "complaint" reporting requirement. *See*
9 Staff/1, Marinos/81-82; Staff/4, Marinos/30-34; RCC/2, Kohler/6-9; RCC-USCC/3, Otto/2-8.
10 RCC-USCC asks the Commission to allow it "flexibility" in how it reports the following four
11 categories of complaints: no service, network busy, interruption of service (including dropped
12 calls), and poor reception. *See* Staff/1, Marinos/33; RCC-USCC/3, Otto/2-3; TR at 158-159
13 (Marinos).

14 In reply testimony, RCC indicated that it could report "complaints" by type from its
15 trouble ticket system according to the categories suggested by staff in direct testimony. *See*
16 RCC/3, Otto/2-3; Staff/1, Marinos/81-82. In reply testimony, staff modified its recommendation
17 to change "complaint" reports to "trouble reports" and suggested four broad categories (no
18 service, network busy, interruption of service (including dropped calls), and poor reception) for
19 wireless trouble reporting. These four categories include the types of trouble reports that RCC
20 implied that it already records. The issue became somewhat muddled at the hearing, however,
21 when staff was asked by RCC counsel if there was "flexibility" in the categories, and staff
22 indicated there was. *See* TR at 158-159 (Marinos).

23 Upon reconsideration, staff's position is that the four categories proposed in reply
24 testimony already reflect sufficient flexibility for trouble reporting. Carriers generally use more
25 detailed classifications of types of trouble reports that can be assigned to one of these four
26 categories. For instance, RCC had reported the number of calls "experiencing static" and the

1 number of calls with “echo.” Both of these types of troubles can be classified under the
2 proposed “poor reception” category. However, if a carrier cannot report using these four
3 categories, it should obtain approval from staff to use different categories, prior to filing the
4 annual certification reports. *See* Attached Summary at Paragraph 6.2.1 under “Annual
5 Recertification.”

6 **2. Should the Commission adopt other reporting requirements?**

7 Staff recommends the Commission adopt the following three additional reporting
8 requirements: (1) advertising documentation, (2) CETC reporting progress on any special
9 commitments or conditions related to its initial designation, and (3) reporting on various aspects
10 related to low-income support. *See* Staff/1, Marinos/85-86; Staff/4, Marinos/37-38 and Attached
11 Summary. These additional reporting requirements are necessary for the reasons delineated in
12 staff’s testimony. *Id.* Staff understands that Qwest agrees, or does not oppose, these additional
13 reporting requirements. *See* Qwest/2, Copeland/4-5.

14 RCC-USCC recommend against adopting further reporting requirements but also
15 acknowledge that “the key is for the Commission to ensure that it has *all* of the necessary
16 information for *all* of the ETCs that it is being asked to recertify to the FCC.” RCC-USCC/4,
17 Wood/59-60 (emphasis in original). In response, the additional reporting requirements staff
18 recommends are designed to obtain only information that staff, who will do the initial review on
19 the Commission’s behalf, believes is necessary for recertification.

20 Verizon opposes staff’s additional advertising reporting requirement. *See* Verizon/2,
21 Fulp/10-11. In response to a Verizon data request for further clarification, staff proposed that the
22 ETC submit hard copies of at least four advertisements for supported services that ran during the
23 previous year. Staff/4, Marinos/38. During her cross-examination, Ms. Marinos elaborated on
24 her recommendation, noting that she had not necessarily intended to set a minimum number of
25 advertisements per year. TR at 143-145 (Marinos).

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1 As reflected in staff’s Attached Summary, staff position is that the annual reporting
2 requirement related to advertising the supported services consists of a demonstration that the
3 ETC advertised the supported service offerings (excluding low-income service offerings)
4 *throughout* all geographic areas in the state where it is designated as an ETC. This
5 demonstration should identify the types of media used (e.g., newspaper, radio, internet, etc.) and
6 the general frequency of advertising for supported services. It should also include examples of
7 actual advertisements for supported services (noting dates, specific distribution methods, and
8 target geographical populations) sufficient to demonstrate the geographical extent of the ETC’s
9 advertising. Staff will not propose a minimum number of advertisements to be submitted, but
10 the ETC will bear the burden of showing that it has met the legal requirement to advertise
11 supported services throughout its designated service area. *See* Attached Summary at “Annual
12 Recertification Requirements” Paragraph 3.1.

13 Verizon also opposes staff’s additional reporting requirement concerning an ETC’s low-
14 income support. *See* Verizon/2, Fulp/11-12. Staff proposes an ETC submit an annual report that
15 includes: (1) the number of Lifeline and Link Up customers at the end of the previous year, by
16 ILEC study area; (2) a description of how and where low-income services were advertised; and
17 (3) examples of advertised low-income service offerings. Staff/1, Marinos/86; Attached
18 Summary. Staff’s recommendation arises from a recognition that currently there is little
19 monitoring regarding whether an ETC is fulfilling its Lifeline and Link Up obligations. *Id.*

20 Verizon objects to this requirement by noting the FCC has recently opened a docket to
21 “investigate outreach efforts for Lifeline and Link-up customers.” Verizon/2, Fulp/11-12.
22 Verizon asks the Commission to not impose any additional requirements relating to Lifeline and
23 Link Up until the FCC’s investigation is concluded. *Id.*; TR at 91 (Fulp).

24 Staff opposes Verizon’s request for a delay. First, the FCC docket is just beginning. *See*
25 TR at 93 (Fulp). As with all FCC dockets, there is no guarantee when it will conclude. Second,
26 the current FCC rules require that ETCs advertise their low-income programs, and it is not likely

1 that the just-beginning FCC docket will strike down this basic requirement. Indeed, the FCC
2 may impose additional advertising responsibilities if it concludes that the current advertising and
3 outreach for low-income programs is lacking. Third, and last, staff notes Verizon's response to
4 RCC-USCC's data request for all low-income advertising that Verizon ran during the past year.
5 This response is in the record as RCC-USCC/9. It consists of a one page print ad that ran one
6 time in the Oregonian and another page from Verizon's telephone book. Verizon appears to
7 believe that these two publications were adequate to meet the advertising requirements for low-
8 income support. Since the Commission does not regularly gather such advertising, an annual
9 reporting requirement should be adopted to enable the Commission to gauge each carrier's actual
10 advertising commitments.

11 **3. Should the same reporting requirements apply to all types of ETCs – ILEC**
12 **ETCs and competitive ETCs?**

13 With one exception, staff's proposed reporting requirements apply equally (or
14 appropriately similarly) to all types of ETCs.⁴ The exception concerns the network improvement
15 plan. Staff recommends that ILECs be exempt from filing the network improvement plan while
16 CETCs remain subject to this requirement. *See* Staff/1, Marinos/89-91; Staff/4, Marinos/39-41.
17 Qwest appears to support staff's recommendation for Issue III(A)(3). *See* Qwest/2, Copeland/5.

18 Verizon and OTA generally argue that the ILECs already file numerous reports with the
19 Commission and the FCC and they should not have to file any more. *See* Verizon/1, Fulp/9-10;
20 Verizon/2, Fulp/6-12; OTA/1, Wolf/30. Conversely, RCC-USCC argues that the reporting
21 requirements should apply to all ETCs and that the reports the ILECs file with the Commission
22 for other purposes are not sufficient for tracking the use of the federal support funds and for
23 ensuring compliance with the federal requirements generally. *See* RCC-USCC/1, Wood/40-42;
24 RCC-USCC/4, Wood/54-61.

25
26 ⁴ Staff discusses the specific reporting requirements in detail under Issues III(A)(1) and III(A)(2).

1 Staff stands by its recommendation for the reasons delineated at length in its filed
2 testimony and during cross examination of Ms. Marinos. Staff’s reporting requirements are not
3 overly onerous for the ILECs. Further, staff is not convinced that additional reports are required
4 from ILECs for their network build-out plans as RCC-USCC urges. *See* Staff/1, Marinos/89-91;
5 Staff/4, Marinos/39-41; TR at 179-180 (Marinos).

6 **4. Should the same reporting requirements apply regardless of the type of support**
7 **(traditional high-cost, interstate access/common line, low-income) received by**
8 **the ETC?**

8 Staff recommends that, with one exception, the same reporting requirements apply
9 regardless of the type of support the ETC receives. *See* Staff/1, Marinos/92-93; Staff/4,
10 Marinos/42-45. The only exception is for an ETC that receives only low-income support. In that
11 case, the ETC would not submit annual updates to its network improvement plan. Staff’s
12 exception is consistent with the position it takes on the same circumstance involving low-income
13 support under Issue II(A)(4): the low-income support flows through to the end-user customer and
14 is not intended to be used for network improvements. Staff/4, Marinos/44-45.

15 The ILEC parties (Qwest, Verizon, and OTA) dispute one aspect of staff’s
16 recommendation for Issue III(A)(4). Verizon and Qwest argue that “interstate access support”
17 (IAS) falls under “access reform” and not universal service. *See* Qwest/1, Pappas/8-9;
18 Verizon/2, Fulp/13-16. OTA asserts that ICLS is an interstate replacement mechanism. *See*
19 OTA/1, Wolf/31.

20 Staff stands by its reply to these arguments found at Staff/4, Marinos/43-44. Access-
21 related support subsidies (IAS and ICLS) were originally recovered through interstate access
22 charges, but they are now recovered from the federal universal service fund, as is traditional high
23 cost support. Thus, any carrier receiving IAS or ICLS is required to meet all ETC obligations
24 and responsibilities, the same as any carrier receiving traditional high-cost support. As the FCC
25 has few, if any, checks on the carriers who receive these funds, the Commission should require
26

1 the same reporting requirements regardless of the type of funds an ETC receives (except for low-
2 income support discussed above).

3 **CONCLUSION**

4 For the reasons stated, staff asks the Commission to adopt each of its recommendations in
5 this docket.

6
7 DATED this 17th day of April 2006.

8 Respectfully submitted,

9 **HARDY MYERS**
10 Attorney General

11 /s/Michael T. Weirich
12 Michael T. Weirich, #82425
13 Assistant Attorney General
14 Of Attorneys for Staff of the Public Utility
15 Commission of Oregon
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SUMMARY OF STAFF'S RECOMMENDATIONS

Initial Designation – Application Requirements (Issues II.A., II. B. 1 &2)

Requirements apply to all applicants (wireline and wireless) in all ILEC service areas (rural and non-rural) regardless of type of federal universal service support sought unless specifically noted.

1. Common carrier status
 - 1.1. Demonstration of the applicant's common carrier status.
 - 1.2. Description of the general types of services and geographic area for which the applicant is authorized in the state of Oregon.

2. Commitment and ability to provide all supported services
 - 2.1. Statement of commitment to offer all required supported services and description of each supported service currently offered (voice grade access to the public switched network, local usage, dual tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent, access to emergency services, access to operator services, access to interexchange service, access to directory assistance, and toll limitation for qualifying low-income consumers).
 - 2.2. Identification of any required supported services that are not currently offered, and an explanation of when and how such services will be made available.
 - 2.3. Identification and description of each of applicant's service offerings (e.g., calling plans) that will qualify for federal universal service support (the name the plan is marketed under, the number of minutes and included calling area, and the price).
 - 2.4. Demonstration that the applicant offers a local usage plan that is comparable to the basic local service offerings of the ILEC in the proposed designated service area.
 - 2.5. Acknowledgment that applicant may be required to provide equal access if it is the only remaining ETC in an area (non-LEC applicants only).

3. Commitment and ability to provide supported services throughout the designated service area
 - 3.1. Explicit identification of the proposed designated service area through:
 - 3.1.1. Map showing applicant's licensed area boundaries and its requested designated service area boundaries overlaid on the boundaries of all ILEC wire centers it proposes to include in its designated service area, and
 - 3.1.2. List of ILEC wire centers (by ILEC name, wire center name and CLLI code), with indications for each wire center, whether it will be fully or partially included in the ETC's proposed designated service area.
 - 3.2. Commitment to offer supported services throughout the proposed service area and to provide service to all customers consistent with the requirements of 47 CFR Section 54.202(a)(1)(i). This section of the FCC rules includes the six-step process that must be used when service is requested within the applicant's designated service area, but outside its existing network coverage.

4. Types of facilities used to offer supported services
 - 4.1. Description of types of network facilities currently used to provide service.
 - 4.2. Map showing extent of current network coverage and, for wireless applicants, signal strengths.
 - 4.3. Identification of current relevant resale or interconnection agreements.

5. Commitment to use support funds only for the intended purposes
 - 5.1. Affidavit, signed by responsible corporate officer, certifying that support funds received pursuant to 47 C.F.R. Part 54, Subpart D, and Part 36, Subpart F, will be used only for the intended purposes.
 - 5.2. Copy of certification required by FCC pursuant to 47 C.F.R. Subpart 54.809 to receive Interstate Access Support, or pursuant to 47 C.F.R. Subpart 54.904 to receive Interstate Common Line Support.
 - 5.3. Formal network improvement plan demonstrating how applicant will use support funds (all federal support types except low-income support).
 - 5.3.1. Detailed plan covering each of first 2 years of designation.
 - 5.3.1.1. Current counts of eligible lines/handsets in service in each ILEC wire center with disaggregated per-line support, and in each ILEC study area where support is averaged, by residence, single-line business, and multi-line business categories.
 - 5.3.1.2. Forecast of support amount, by type other than low-income, and by ILEC service area, that the applicant expects to receive, as well as an explanation of how the forecast was derived.
 - 5.3.1.3. Detailed information for each project that will use support funds:
 - 5.3.1.3.1. Description and purpose of the project, its physical location and the ILEC serving that area.
 - 5.3.1.3.2. The start date and completion data (by quarter).
 - 5.3.1.3.3. Amount of support money allocated to the project, in total and broken down by investment and expense types.
 - 5.3.1.3.4. The amount of company's own funds that will be used for each supported project.
 - 5.3.1.3.5. Brief explanation of why the carrier would not make these improvements without the availability of support funding.
 - 5.3.1.3.6. Quantification of resulting service improvements by type (increased coverage, signal strength, capacity, etc.), population benefited, and geographic area benefited (shown on map).
 - 5.3.2. Overview plan for years 3-5, consisting of descriptions of how applicant plans to expand or improve services 3-5 years into future, using its own money and future support funds. This is a higher level plan to share the applicant's vision and objectives for its operations in Oregon.

6. Commitment to advertise supported services throughout the service area
 - 6.1. Statement of commitment to advertise supported services throughout the service area.
 - 6.2. Brief description of advertising plans for supported services (excluding low-income service offerings).

7. Commitment to offer and advertise Lifeline, Link Up, and OTAP services
 - 7.1. Statement of commitment to offer and advertise required low-income services.
 - 7.2. Identification and description of specific services that will be offered to qualifying low-income customers.
 - 7.3. Description of advertising plans designed to reach the target low-income population.

8. Ability to remain functional in emergencies
 - 8.1. Demonstration of ability to remain functional in emergencies specifically addressing:
 - 8.1.1. Amount of backup power available.
 - 8.1.2. Ability to reroute traffic around damaged facilities.
 - 8.1.3. Ability to manage traffic spikes during emergency periods.
 - 8.2. Description of current status of E911 deployment and compliance; if full deployment has not been attained, describe plans to achieve full deployment.

9. Commitment to meet service quality and consumer protection standards
 - 9.1. Commitment to specific, objective measures for service quality and consumer protection, e.g., the CTIA Consumer Code for wireless carriers or the applicable Commission rules for wireline carriers.
 - 9.2. Commitment to resolve complaints received by PUC, and designation of specific contact person to work with PUC's Consumer Services Division for complaint resolution.

10. Public interest showing
 - 10.1. Demonstration that designation would be in the public; this must address:
 - 10.1.1. Specific ways in which consumer choices will be increased.
 - 10.1.2. Specific advantages and disadvantages of applicant's service offerings.
 - 10.1.3. Any other specific criteria determined by the Commission.
 - 10.2. Creamskimming analysis for cases in which the applicant's proposed designated service area will not include the entire study area of a rural ILEC whose service area has not yet been redefined by the FCC.

Annual Recertification Requirements (Issue II.A.)

Requirements apply to all applicants (wireline and wireless) in all ILEC service areas (rural and non-rural) regardless of type of federal universal service support received unless specifically noted.

1. Supported services offerings
 - 1.1. Local usage plans: Identification of basic local usage plan offerings, including each offering's name, advertised public description, number of local minutes included, calling area, and rates. ETCs that file tariffs for basic local service offerings can meet this requirement by providing specific tariff references.
 - 1.2. CETCs only: status report on provision of supported services that were not available at designation (e.g., toll restriction for qualifying low-income consumers).
 - 1.3. CETCs only: acknowledgment that carrier may be required to provide equal access if it is the only remaining ETC in an area. This is a one-time requirement and does not apply if the CETC provided such acknowledgment at initial designation.
2. Provision of supported services throughout the designated service area
 - 2.1. Report on the number of unfulfilled service requests.
 - 2.1.1. Wireless carriers: report on number of unfulfilled service requests during past calendar year, noting location of each such request, and description of ETC's attempts to provide service; a brief description of how the ETC ensures that every request for service that cannot be immediately fulfilled is recorded and processed further under the 6-step process set forth in 47 C.F.R. Section 54.202(a)(1)(i).
 - 2.1.2. Wireline carriers that file service quality reports to the PUC: reference reports filed for primary held orders over 30 days.
 - 2.1.3. Wireline carriers that do not file service quality reports to the PUC: report conforming to requirements in either 2.1.1. or 2.1.2. above.
3. Advertisement of supported services throughout the service area
 - 3.1. Demonstration that supported service offerings (excluding low-income offerings) were advertised during the past calendar year throughout all geographic areas in the state where the carrier is designated as an ETC. This demonstration should identify the types of media used (e.g., newspaper, radio, internet) and the general frequency of advertising for supported services. It should also include examples of actual advertisements for supported services (noting dates, specific distribution methods, and target geographical populations) sufficient to demonstrate the geographical extent of the ETC's advertising during the past year.
4. Offering and advertisement of Lifeline, Link Up, and OTAP services
 - 4.1. Report on the number of customers in the Lifeline program, by ILEC study area, during December of the previous calendar year.
 - 4.2. Brief description of how and where low-income program service offerings were advertised.

- 4.3. Copies of all actual advertisements for Lifeline, Link Up, and OTAP service offerings that were run during the previous calendar year. These may include newspaper advertisements, radio announcements, pamphlet distributions, website postings, etc.
5. Ability to remain functional in emergencies
 - 5.1. Statement certifying that ETC is able to remain functional in emergencies.
 - 5.2. Outage report:
 - 5.2.1. Wireless ETCs: annual outage report consistent with definitions and details in 47 C.F.R. § 54.209(a)(2).
 - 5.2.2. Wireline ETCs subject to PUC outage reporting requirement: reference to PUC outage reporting requirement, with indication of whether any reports were filed during previous calendar year.
 - 5.2.3. Other ETCs: annual outage report conforming to requirements in either 5.2.1. or 5.2.2. above.
 - 5.3. CETCs only: E911 implementation status if not complete at time of application.
6. Commitment to service quality and consumer protection
 - 6.1. Statement certifying compliance with specific, objective measures for service quality and consumer protection, e.g., the CTIA Consumer Code for wireless ETCs or applicable Commission rules for wireline ETCs.
 - 6.2. Trouble report:
 - 6.2.1. Wireless ETCs: annual report of troubles per 100 handsets, by wireless switch, experienced by customers of the ETC within the designated service area. Troubles should be categorized into 4 general types: no service, network busy, interruption of service, and poor reception. If the ETC cannot report by the 4 categories listed, it should obtain Staff's approval for any different categorizations prior to filing.
 - 6.2.2. Wireline ETCs that file PUC trouble reports: reference filed trouble reports.
 - 6.2.3. Other ETCs: submit annual trouble report conforming to requirements in either 6.2.1. or 6.2.2. above.
7. Use of support funds
 - 7.1. Affidavit, signed by responsible corporate officer, certifying that support funds received pursuant to 47 C.F.R. Part 54, Subpart D, and Part 36, Subpart F, will be used only for the intended purposes.
 - 7.2. Copy of most recent certification submitted to FCC pursuant to 47 C.F.R. Subpart 54.809 for Interstate Access Support, or pursuant to 47 C.F.R. Subpart 54.904 for Interstate Common Line Support.
 - 7.3. CETCs only: Network improvement plan update consisting of:
 - 7.3.1. Demonstration of use of support funds (other than low-income funds) received during previous calendar year, including:
 - 7.3.1.1. The amount of support funds, by type, received during the year.
 - 7.3.1.2. Year-end counts of eligible lines/handsets in service for each ILEC service area as they were reported to USAC for the past December.

- 7.3.1.2. Identification of each project for which the support was used, the actual support expenditures (by amount and type) for each project, and status of project (completed or still in progress).
 - 7.3.1.3. The resulting benefits to consumers (qualitative and quantitative) from each project and updates to coverage and signal strength maps.
 - 7.3.1.4. Explanation of how and why actual spending of support funds differed from spending proposed in the previous network improvement plan.
 - 7.3.2. Updates to network improvement plan for the current calendar year and the following year:
 - 7.3.2.1. Forecast of support amount, by type (LSS, HCL, ICLS, IAS), that the applicant expects to receive during each of the next 2 years, as well as an explanation of how the forecast was derived.
 - 7.3.2.2. Detailed information for each project that will use support funds:
 - 7.3.2.2.1. Description and purpose of the project, its physical location and the ILEC serving that area.
 - 7.3.2.2.2. The start date and completion data (by quarter).
 - 7.3.2.2.3. Amount of support money allocated to the project, in total and broken down by investment and expense types.
 - 7.3.2.2.4. The amount of company's own funds that will be used for each supported project.
 - 7.3.2.2.5. Brief explanation of why the carrier would not make these improvements without the availability of support funding.
 - 7.3.2.2.6. Quantification of resulting service improvements by type (increased coverage, signal strength, capacity, etc.), population benefited, and geographic area benefited (shown on map).
8. Public interest factors
- 8.1. Report on any special commitments or requirements imposed at initial designation or during the previous annual recertification process.

CERTIFICATE OF SERVICE

I certify that on April 17, 2006, I served the foregoing upon all parties of record in this proceeding by electronic mail only.

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