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August 28, 2006

VIA ELECTRONIC MAIL AND OVERNIGHT MAIL

Public Utilities Commission of Oregon
Attention: Filing Center
550 Capitol Street NE, Suite 215
Salem, OR 97301-2551

Re: Docket No. UM 1217

Dear Sir or Madam:

Enclosed for filing is a copy of the Response of Verizon Northwest Inc. to the RCC and USCC Application for Rehearing and Reconsideration of Order No. 06-292.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Gregory M. Romano".

Gregory M. Romano

GMR:pl

Enclosure

cc: Please see Certificate of Service

1
2
3 BEFORE THE PUBLIC UTILITY COMMISSION
4 OF OREGON

5 UM 1217

6 In the Matter of

7 PUBLIC UTILITY COMMISSION OF
8 OREGON

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

RESPONSE OF VERIZON
NORTHWEST INC. TO RCC AND
USCC APPLICATION FOR
REHEARING AND
RECONSIDERATION OF ORDER NO.
06-292

14 The Application for Rehearing and Reconsideration (“Reconsideration Application”)
15 filed by the United States Cellular Corporation (“USCC”) and RCC Minnesota, Inc. (“RCC”)
16 (collectively, “Litigants”) seeking reversal of a key portion of Commission Order No. 06-292
17 (“Order”) should be denied. The Reconsideration Application is simply a rehash of arguments
18 explicitly rejected by the Commission in the Order regarding the annual reporting requirements
19 imposed on incumbent local exchange company eligible telecommunications carriers (“ILEC
20 ETCs”), such as Verizon Northwest Inc. (“Verizon”). As such, the Reconsideration Application
21 is facially deficient, as it fails to satisfy the prerequisites in the Commission rules that would
22 permit the Commission to reverse its determinations on ILEC ETC reporting.

23
24 1. *The Reconsideration Application does not satisfy Commission Rules.*

25 Unsatisfied with failed advocacy attempts in this docket to saddle other parties such as
26 Verizon with inappropriate annual reporting requirements, the Litigants try again in the

1 Reconsideration Application. This latest attempt violates rules established by the Commission
2 (OAR 860-014-0095(3), referred to here as the “Reconsideration Rules”) to ensure that it hears
3 challenges to its orders only when such orders are “unjust” or “unwarranted,” the standard for
4 reversal or modification under ORS 756.561. In fact, the Reconsideration Application is exactly
5 the type of re-litigation attempt that the Reconsideration Rules are designed to preclude.

6 The Reconsideration Rules specify that the Commission may only grant an application
7 for reconsideration if the applicant establishes: (a) New evidence which is essential to the
8 decision and which was unavailable and not reasonably discoverable before issuance of the
9 order; (b) A change in the law or agency policy since the date the order was issued, relating to a
10 matter essential to the decision; (c) An error of law or fact in the order which is essential to the
11 decision; or (d) Good cause for further examination of a matter essential to the decision. OAR
12 860-014-0095(3). The Litigants claim that the Order’s finding on ILEC ETC reporting
13 requirements satisfies (c) because it is based on errors of law and fact. Reconsideration
14 Application at 3. Neither error exists.

15

16 A. The Order’s ILEC ETC reporting requirements are not based on an “error of law.”

17 The Litigants do not even bother to offer an argument in the Reconsideration Application
18 about the alleged error of law, relegating that claim to a half-sentence in the Conclusion. The
19 conclusory sentence makes the unsupported allegation that the Commission “ignores the federal
20 legal standard that it must satisfy in order to certify annually that ILEC ETCs have expended and
21 intend to spend universal service support ‘only for the provision, maintenance, and upgrading of
22 facilities and services for which the support is intended’.” Reconsideration Application at 11.
23 Perhaps the Litigants do not dwell on this alleged error of law because it was specifically
24 rejected by the Commission in the Order. Order at 16-17 (noting, before rejecting the position,
25 that “RCC and USCC argue[] that the same reporting requirements should apply to both ILECs
26 and competitive ETCs because reports already filed do not contain critical information regarding

1 exactly how universal service support was used.”). A party, however, may not rely on legal
2 arguments already rebuffed by the Commission to support an application for reconsideration.
3 *See, e.g., In re Portland General Electric Co.*, UM954 & UM958, Order No. 00-308 (2000)
4 (denying arguments raised and considered previously because they “provide[] no new legal or
5 historical basis for review.”); *May v. Portland General Electric Co.*, UC 196, Order No. 92-1769
6 (1992) (denying legal arguments because they were raised and considered previously).
7 Accordingly, the Commission need not even entertain Litigants’ claim of an alleged error of law.

8 Moreover, the legal argument raised by the Litigants was rejected by the Commission
9 because it was wrong. It still is. The Litigants appear to be unhappy because they face a specific
10 reporting requirement not imposed on ILEC ETCs. Yet such sour grapes do not translate into
11 legal error. To the contrary, the legal sufficiency of the “Annual Recertification Requirements”
12 established by the Commission to apply to ILEC ETCs (*See* Order, Appendix A, Pages 4-6) must
13 be analyzed on its own. The Commission developed these requirements in a heavily litigated
14 docket that included an evidentiary hearing, and did so over objections of ILEC ETCs (including
15 Verizon) that the reporting requirements were excessive and/or not contemplated by federal
16 universal service rules. *See, e.g.,* Opening Post-Hearing Brief of Verizon Northwest Inc. at 11-
17 12 (arguing that the Commission should not collect any certification information from carriers
18 receiving funding only through the Interstate Access Support (“IAS”), for which no state
19 commission certification to the FCC is required).¹ In fact, the Annual Recertification
20 Requirements applicable to ILEC ETCs include requirements that specifically address the “Use
21 of support funds” (Section 7), the stated concern of the Litigants. There is no “error of law” in
22 the Commission’s determination that if the ILEC ETCs comply with the Annual Recertification
23 Requirements developed after a fully litigated docket, the Commission will be able to certify

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25 ¹ Verizon stands by its legal arguments on the impropriety of imposition of reporting
26 requirements, but declined to seek reconsideration given the Commission’s rejection of those
arguments.

1 whether federal universal service funds are and/or will be expended by ILEC ETCs for intended
2 purposes.

3 That the Litigants face a requirement to provide a “build-out” plan does not render the
4 Commission’s certification requirements on ILEC ETCs for the “Use of support funds” an “error
5 of law.” There is no legal requirement that all carriers face the same requirements, and in fact,
6 the Litigants state expressly that they are not seeking as much. Reconsideration Application at 5
7 (“Applicants do not contend that ILEC ETCs should be required to submit a two year network
8 improvement plan as part of the annual recertification filing.”). Nonetheless, the Commission
9 explained in the Order why a build-out plan required of CETCS was not required of ILEC ETCs:
10 “because their USF support is not expressly provided to build out their networks.” Order at 16.
11 The Commission made that logical and legal determination after a completed docket that lasted
12 almost a year, included an evidentiary hearing, and was fully briefed by sophisticated counsel.
13 In any event, there is no basis to agree with the Litigant’s unsupported conclusory statement that
14 the ILEC ETC reporting requirements are based on an “error of law” that would require
15 modification to the Order.

16

17 B. The Order’s ILEC ETC reporting requirements are not based on an “error of fact.”

18 The Litigants claim that the Annual Reporting Requirements imposed on ILEC ETCs are
19 based on the “mistaken ‘fact’ that ILEC ETCs already submit detailed cost studies to the
20 Commission that support investments made under universal service fund requirements.”
21 Reconsideration Application at 6. There is no such “mistaken fact.” Indeed it is a bold assertion
22 to claim, as the Litigants do here, that the Commission is “mistaken” or unaware of the types of
23 information and cost studies that it receives from ILECs. As was fully briefed in the docket, it is
24 the Litigants that seem to lack an understanding of the depth of the Commission’s regulatory
25 oversight of incumbent providers such as Verizon. *See, e.g.*, Opening Post-Hearing Brief of
26 Verizon Northwest Inc. at 10. The Commission’s recognition of its heavy oversight over ILECs,

1 and the lack thereof for wireless carriers, is not new. *See, e.g.*, Opening Post-Hearing Brief of
2 Verizon Northwest Inc. at 9-10 (quoting the Commission’s conclusion in its June 2004 order in
3 UM 1083 that “ILEC[s] designated as ETCS currently file extensive reports with the
4 Commission as part of their regulated incumbent status”). Moreover, the Commission heard
5 testimony on this matter during the hearing and reached the logical conclusion that “[t]o
6 eliminate duplicative filing requirements, wireline ILECs that file reports with the Commission
7 may refer to those in lieu of a similar reporting requirement for ETCs.” Order at 16-17.

8 The Litigants attempt to confuse the Commission’s determination on this point by,
9 among other things, ascribing to it the contentions of the parties.² Yet the Commission’s
10 determination was relatively straightforward: where an ILEC is already required to provide the
11 Commission with particular reports, it may refer to the filed reports to satisfy the Annual
12 Recertification Requirements rather than reproduce the information. The concept was
13 implemented in specific places throughout the Annual Recertification Requirements in Appendix
14 A. *See, e.g.*, 2.2. (“Wireline carriers that file service quality reports to the PUC: reference
15 reports filed for primary held orders over 30 days”); 6.2.2 (“Wireline ETCs that file PUC trouble
16 reports: reference filed trouble reports.”). Thus, with regard to the specific types of information
17 that the Commission determined were already filed by the ILEC in another report, the
18 Commission decided that a report reference, rather than reproduction, was all that was required.

19 The Litigants also try to confuse the determination made by the Commission on avoiding
20 redundancy in reproducing reports with the Commission’s separate finding (discussed *supra* in
21 Section 1.A) that ILEC ETCs need not provide a “build-out” plan by addressing those two
22 determinations interchangeably. In any event, there was no “error of fact” relied upon by the
23 Commission in the reporting requirements it imposed on ILEC ETCs in the Order. The

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25 ² For example, the Reconsideration Application omits introductory phrases such as “[t]hese
26 parties contend that” in quoting Order statements. *See* Reconsideration Application at 6-7. The
selective omissions give the impression that the quotations are from the Commission directly
rather than a description of the respective party positions.

1 Commission determined reasonably based on the facts presented in the docket that: (i) with
2 regard to specific information that was included in other ILEC reports, the ILEC could simply
3 refer to the other report rather than reproduce the information and (ii) an ILEC ETC is not
4 required to provide a build-out plan because USF support for ILEC ETCs is not expressly
5 provided to build out their networks.

6

7 2. *The Litigants’ rhetorical and general policy arguments should not be considered.*

8 Having failed to establish errors of law or fact, the Litigants resort to a number of
9 rhetorical and policy arguments that have no place in a reconsideration application. For
10 example, the Litigants argue that without requiring more information from ILEC ETCs, the
11 Commission will be unable to tell whether universal service funding is being used “to pay
12 dividends to shareholders or members” or toward “paying family members or friends for
13 consulting or other services.” Reconsideration Application at 8. The Litigants, however, offer
14 no explanation as to how having ILEC ETCs file the same reports as the Litigants would expose
15 such hypothesized actions. In fact, the Commission would be better poised through its
16 regulatory oversight to detect such inappropriate behavior by ILECs than it would be with regard
17 to the Litigants, even with their ETC reports. Thus, rhetoric about such hypothesized activities
18 provides no plausible ground on which the Commission could grant reconsideration.

19 The Litigants also cite to a policy study that is not included in the record of this docket.
20 Reconsideration Application at 9. Under OAR 860-014-009(3)(a), the study would have to
21 constitute “new evidence which is essential to the decision” to be considered by the Commission
22 at this point. The lengthy report, however, is a general critique of the entire universal service
23 system and thus is not essential – and barely even relevant – to the Commission’s decision on the
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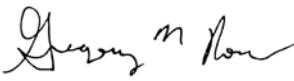
1 annual reporting requirements it imposes on ILEC ETCs.³ Thus, the report does nothing to
2 advance the insufficient arguments set forth in the Reconsideration Application, and the
3 Commission need not take “notice” of it, as requested by the Litigants.

4
5 Conclusion

6 The Reconsideration Application reiterates arguments rejected by the Commission in this
7 docket. It does not satisfy the Commission’s Reconsideration Rules, and thus should be rejected.

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9 Dated this 28th day of August, 2006.

10
11 VERIZON NORTHWEST INC.

12
13
14 By 
15 _____
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21
22
23
24 _____
25 ³ The Reconsideration Application (at footnote 26) notes that the report was circulated by the
26 Commission to the SB 17 Task Force. Circulating a general policy report of this type to such a
body examining broad telecommunications policy issues makes sense; including it in a
reconsideration application of specific reporting requirements already adopted by the
Commission does not.

**CERTIFICATE OF SERVICE
UM 1217**

I certify that on August 28, 2006, I served the Response of Verizon Northwest Inc. to RCC and USCC Application for Rehearing and Reconsideration of Order No. 06-292 by electronic mail and Overnight Mail to:

Filing Center
Public Utility Commission of Oregon
550 Capitol Street NE, Suite 215
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I further certify that I have this day sent the above-referenced document(s) upon all parties of record in this proceeding by mailing a copy properly addressed with the first class postage prepaid, and by electronic mail pursuant to OAR 860-013-0070, to the following parties or attorneys of parties:

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DATED: August 28, 2006

VERIZON NORTHWEST INC.

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