

1 presentation allows staff to rely upon its previously-filed testimony and its Opening Brief as a
2 complete rebuttal to the Application. *See* Staff/1, Marinos/89-91; Staff/4, Marinos/39-41;
3 Transcript (TR) at 179-180 (Marinos); Staff’s Opening Brief at 16-17.

4 However, in addition to relying upon its previously-filed testimony and its opening brief,
5 staff will use these responsive comments to address specific assertions made by the Applicants.
6 Before beginning, staff will first address a particular representation made in the Application that
7 requires clarification.

8 The stated purpose of the Application is to request the Commission correct a claimed
9 erroneous decision to exempt the “incumbent local exchange company eligible
10 telecommunications carriers” (ILEC ETCs) from having to file a “build out” or network
11 improvement plan as part of the annual ETC certification process. *See* Application at 4-5.²
12 Unfortunately, the Applicants confuse the matter when they later say they are not really asking
13 the Commission to reverse its decision in this regard. *See* Application 5, 10. Instead, the
14 Applicants then propose that the Commission require the ILEC ETCs to file, in lieu of the
15 network improvement plans, what they term as “sufficient information” as further delineated at
16 pages 5 and 10 of their Application.

17 However, the Applicants’ “sufficient information” in essence amounts to the same type
18 of information that the Commission determined must be contained in the network improvement
19 plans. *Compare* Order at Appendix A, pages 5-6 *with* Application at 5, 10. Accordingly,
20 staff’s comments should be considered as a response in opposition to both Applicants’ stated
21 purpose (i.e. asking the Commission to reverse its decision to exempt ILEC ETCs from having to
22 file network improvement plans) and its proffered solution (i.e. asking the Commission to
23 instead require the ILEC ETCs file “sufficient information”).

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25 ² Appendix A attached to the Order identifies the “build out plan” as a detailed network
26 improvement plan. *See* Order at Appendix A, Paragraph 7.3.

1 **3. Order mandates detailed recertification reporting requirements for ILEC ETCs**

2 As the Applicants correctly state, the Commission determined that ILEC ETCs need not
3 file a “build out plan” as part of the annual recertification process. What the Applicants fail to
4 note, however, is that the Commission imposed numerous other reporting requirements upon *all*
5 ETCs desiring recertification, ILEC ETCs as well as “competitive eligible telecommunications
6 carriers” (CETCs). These reporting requirements include, but are not limited to, the filing of
7 detailed reports about: (1) the supported service offerings, (2) the provision of supported services
8 throughout the designated service area, (3) advertisement of the supported services, (4) the
9 ability to remain functional in emergencies, (5) the commitment to service quality and consumer
10 protection, and, importantly, (6) the submission of an affidavit from a responsible corporate
11 officer certifying that the funds will be used only for the intended purposes. *See* Order at
12 Appendix A, pages 4-6.

13 These detailed reporting requirements, which expressly apply to ILEC ETCs, absolutely
14 refute the Applicants’ broad claim that the Commission failed to require from the ILEC ETCs
15 “any information regarding how universal service support funds have been or will be used.” *See*
16 Application at 1-2 (emphasis in original). Moreover, while the requirement of a sworn affidavit
17 is important, it is not the only tool the Commission employs to meet its recertification
18 responsibilities as Applicants assert. *See* Application at 5.

19 **4. The Commission did not commit an error of law**

20 It is not easy to discern from their Application precisely in what way the Applicants
21 believe the Order contains an allegedly fatal “error of law.” Applicants provide the clearest
22 statement of their claim at the conclusion of their Application, where they assert the Commission
23 “ignores the federal legal standard that it must satisfy in order to certify annually that ILEC
24 ETCs have expended and intend to spend universal service support ‘only for the provision,
25 maintenance, and upgrading of facilities and services for which the support is intended.’”
26 Application at 11. It appears the “federal legal standard” to which the Applicants refer is found

1 in two federal universal service regulations [47 C.F.R. Sections 54.313(a) and 54.314(a)] and one
2 federal statute [47 U.S.C. Section 254(e)]. See Application at 2, footnote 2.³

3 From this, the Applicants' claim of error of law seems to be based upon the following
4 reasoning: Because the Commission decided to exempt the ILEC ETCs from the requirement to
5 file build out plans, the Commission cannot satisfy the federal mandate that the Commission
6 know whether the ILEC ETCs are properly using their support funds. The Applicants then go on
7 to speculate about the possible ways the ILEC ETCs may misspend their assigned support funds.
8 See Application at 8-9.

9 The Commission has clearly not "ignored" the applicable federal standards surrounding
10 its responsibilities when it certifies ETCs. Rather, as explained in Section 3 above, the
11 Commission imposed numerous, detailed reporting recertification reporting requirements upon
12 the ILEC ETCs (as well as the CETCs) which directly relate to informing the Commission about
13 their use of the federal support funds.

14 The Applicants correctly observe that the relevant Federal Communications Commission
15 (FCC) decision "urges" state commissions to apply the reporting requirements to all ETCs, not
16 just CETCs. See Application at 4, quoting from *In the Matter of Federal-State Joint Board on*
17 *Universal Service*, FCC 05-46, 20 RCC Rcd 6371 (released March 17, 2005) at Paragraph 71
18 ("FCC ETC Order"). However, the Applicants ignore the FCC's specific recognition, set forth
19 in the same short paragraph, that state commissions have broad discretion to adopt other
20 reporting requirements. See FCC ETC Order at Paragraph 71 ("Individual state commissions are
21 uniquely qualified to determine what information is necessary to ensure that ETCs are complying
22 with all applicable requirements, including state-specific ETC eligibility requirements").

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25 ³ Note that 47 C.F.R. Section 54.313(a) actually only applies to support to non-rural carriers and
26 is thus not applicable to Oregon.

1 Acting within this broad discretion allowed by the FCC, the Commission carefully
2 explained in its Order the reasons it was allowing an exception for the ILEC ETCs from filing a
3 build out plan. The Commission first summarized each party's position, noting in part:

4 Staff recommends that the same, or appropriately similar, requirements should
5 apply to both ILECs and competitive ETCs, with one exception: ILECs should be
6 exempt from filing a network improvement plan. Staff explains that this is because
7 the level of support given to ILECs is objectively determined based on federal
8 standards and ILECs have no obligation to expand their networks, as do
9 competitive ETCs...

10 Both Verizon and OTA strongly oppose any additional reporting requirements for
11 ILECs. Already, ILECs submit detailed cost studies to the Commission that
12 support investments made under universal fund requirements. These parties
13 contend that requiring ILECs to resubmit this information for recertification would
14 be redundant and unnecessary, and that if an ILEC ceased to offer universal
15 service, the Commission would know. Further, the parties urge the Commission to
16 recognize the long history of ILEC service quality, from years of Commission
17 oversight and ILEC cooperation. OTA also reminds the Commission of its
18 obligation to minimize the burden on small commercial incumbents.

19 Order at 16.

20 Based upon this testimony and accompanying arguments, the Commission concluded:

21 All carriers should be subject to the same reporting requirements, with the
22 exception that wireline ILECs need not provide a build out plan because their USF
23 support is not expressly provided to build out their networks.

24 *Id.*

25 Thus, the Commission properly determined that, with one limited exception for the
26 network improvement plan filing requirement, ILEC ETCs and CETCs would be under the same
27 recertification reporting requirements. The Commission carefully explained why it was allowing
28 this exception. Rather than showing the Commission "ignored" federal law, these circumstances
29 illustrate that the Commission was cognizant of its recertification duties and responsibilities,
30 acted within the discretion allowed by the FCC, and correctly and carefully applied all federal
31 laws relating thereto.

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1 **5. The ILEC ETC exception makes sense**

2 Although it is not necessary to justify the Commission's decision in order to reject the
3 Application, staff will briefly address the reasoning behind its original recommendation, which is
4 consistent with the Order on this matter.

5 Most importantly, unlike the wireless CETCs, ILEC ETCs are not expected to use their
6 federal universal service support funds to *expand* their networks. *See* Staff/1, Marinos/90. In
7 this regard, it is thus not necessary for ILEC ETCs to file network improvement plans because
8 such plans focus in large part on future network expansion and related projects. *See* Order at
9 Appendix A, at pages 5-6. The situation is different with CETCs, however, which typically
10 begin operations in profitable areas, but then require the universal service support to improve
11 that service, or to expand their networks into other high-cost (and less profitable) service areas.
12 *See* Staff/1, Marinos/90. In such circumstances, it is entirely appropriate to require the CETCs to
13 file network improvement plans.

14 In great measure, the point of the Commission's certification for ILEC ETCs is to assure
15 the FCC that these carriers are adequately providing the services for which the universal service
16 support funds are granted. This essentially means that service and network quality are
17 satisfactory. But, as to these service quality issues, the ILEC ETCs are already subject to
18 Commission-imposed service quality measures and reporting requirements. Further, unlike
19 CETCs, ILEC ETCs are subject to additional reporting requirements when they serve as carriers
20 of last resort. Thus, if an ILEC ETC's service quality deteriorates, the Commission will soon
21 know and has adequate regulatory tools to remedy the situation. *See* Staff/1, Marinos/90;
22 Staff/4, Marinos/41.

23 Finally, as staff witness Marinos testified, it is important to remember that ILEC ETCs
24 are granted federal universal service support based on their costs relative to benchmarks
25 determined by the FCC, not based upon how the funds are spent. *See* Staff/1, Marinos/90.

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1 Stated differently, the amount of universal service support an ILEC ETC qualifies for is
2 independent of its future plans for expanding and improving its network.

3 **6. The Commission did not commit an error of fact**

4 Applicants claim the Commission erred when it found the following fact: “that ILEC
5 ETCs already submit detailed cost studies to the Commission that support investments made
6 under universal service fund requirements.” See Application at 6. The Applicants assert this
7 factual error appears at page 16 of the Order. Application at 6, footnote 20.

8 The Applicants misunderstand the structure of the Order. It is true there is a sentence in
9 the Order at page 16 that reads: “Already, ILECs submit detailed cost studies to the Commission
10 that support investments made under universal service fund requirements.” However, the
11 Applicants fail to recognize that this statement appears in the section of the Order where the
12 Commission is summarizing the position and statements made by Verizon and OTA. The
13 Commission did not adopt the statement as its own in the “Conclusion” part of the Issue
14 III(A)(3) discussion on pages 16-17. Accordingly, the Commission should reject this alleged
15 claim of error.

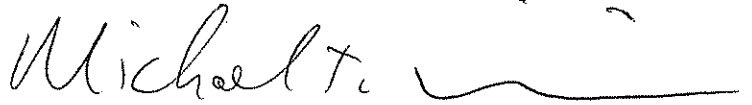
16 **7. Conclusion**

17 For the reasons stated, staff asks the Commission to deny the Applicants’ Application.

18 DATED this 25th day of August 2006.

19 Respectfully submitted,

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22 

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1 **CERTIFICATE OF SERVICE**

2 I certify that on August 25, 2006, I served the foregoing upon all parties of record in this
3 proceeding by delivering a copy by electronic mail and by mailing a copy by postage prepaid
4 first class mail or by hand delivery/shuttle mail to the parties accepting paper service.

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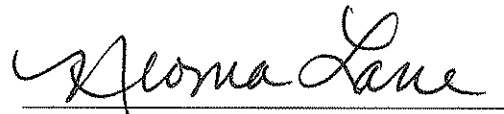
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