

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.

STAFF'S REPLY BRIEF

8 **INTRODUCTION**

9 Staff's Opening Brief anticipated and discussed many of the parties' positions on the  
10 various issues in this docket as stated in their respective opening briefs. Further, the parties'  
11 opening briefs confirm that there continues to be agreement, or at least no dispute, on several of  
12 the issues. Accordingly, staff will respond only to selective points raised by the parties' opening  
13 briefs. To the extent an issue is not discussed, staff stands by its Opening Brief as its response to  
14 the matter.

15 Staff has a preliminary matter before providing its response to the parties' briefs.  
16 Cingular Wireless, LCC (Cingular) did not present testimony in this case, yet filed a brief. As  
17 the time for submitting testimony is now over, staff has a general objection to Cingular's Brief to  
18 the extent it presents the company's factual testimony on issues. Nevertheless, staff will respond  
19 to Cingular's Brief to the extent it can be construed as presenting legal comment on evidence  
20 (presented by the other parties) that is properly in the record.

21 **ISSUES**

22 **I. Overall: What policy objectives should the Commission attempt to achieve**  
23 **through this docket?**

24 While all parties seem to agree with the general policy objectives as delineated by staff,  
25 Verizon discusses the complementary policy directives issued by Governor Kulongoski. *See*  
26 Verizon Opening Post-Hearing Brief (Verizon Brief) at 5. Staff has taken great effort to tailor its

1 recommendations to, paraphrasing Verizon’s summary of the Governor’s directives, eliminate  
2 unnecessary paperwork, reporting or review requirements. Staff’s various eligibility, reporting  
3 and re-certification requirements comply with the Governor’s policy directives.

4 In advocating that competitive neutrality is a major public policy objective for this  
5 docket, RCC-USCC state “The USF is designed to bring a number of benefits to rural  
6 consumers. Long distance as well as local service is an integral component of universal service.”  
7 See RCC-USCC Brief at 3. However, while long distance may have been one component of  
8 telephone services addressed by the Act, this docket is focused on local telephone services. 47  
9 U.S.C. § 254(g), cited by RCC-USCC on page 4 of their Brief, refers to interexchange carriers  
10 who are not part of this docket, or the universal service support addressed in this docket.  
11 Support funds at issue in this docket are limited to those defined by the Federal Communication  
12 Commission as supported services in 47 C.F.R. Section 54.101(a). That list includes access to  
13 interexchange (long distance) services, not the long distance services themselves. If long  
14 distance services were supported, interexchange carriers would be eligible for USF support - they  
15 are not.

16 Continuing its discussion of long distance services on page 4, RCC-USCC argues that the  
17 public interest is advanced when an “eligible telecommunications carrier” (ETC) is designated  
18 that can carry calls that an “incumbent local exchange carrier” (ILEC) would treat as long  
19 distance and provide cheaper long distance calls. While staff agrees that cheaper long distance  
20 calling is in the public interest, this docket is not about promoting, or supporting, carriers that  
21 provide cheaper long distance alternatives.

## 22 **II. Initial Designation of ETCs**

### 23 ***II(A)(1). Should the Commission adopt any, or all, of the requirements proposed by*** 24 ***the FCC in Order 05-46?***

25 Cingular states that wireless carriers are not required to provide equal access to toll  
26 service providers under 47 U.S.C. § 332(c)(8). Cingular further states that only the FCC, not the

1 states, may require wireless carriers to make equal access available. Cingular Brief at 3.  
2 Cingular then concludes that the Commission should not adopt any equal access requirement for  
3 ETCs in Oregon.

4 Staff discussed the equal access requirement at Staff/1, Marinos/44-45. Briefly stated,  
5 under FCC Order 05-46 an applicant must acknowledge that it may be required to offer equal  
6 access to long distance carriers in the event that no other ETC is providing equal access within  
7 the service area. Staff's recommendation is for the Commission to adopt this FCC requirement.  
8 Staff agrees with the FCC that it is good policy to ensure all ETCs are willing and able to  
9 provide access to long distance carriers serving the relevant area in case the ILEC relinquishes its  
10 ETC status. There is nothing unlawful about the Commission adopting this FCC-originated  
11 requirement.

12 Turning to a different requirement, staff observes that Cingular has no objection to staff's  
13 recommendation for the network improvement plan. *See* Cingular Brief at 2-3.

14 ***II(A)(2). Should the Commission adopt other basic eligibility requirements?<sup>1</sup>***

15 OTA continues to urge the Commission to impose several service quality standards from  
16 its rules on wireless ETCs. *See* OTA Opening Brief (OTA Brief) at 2-9. OTA also discusses  
17 decisions of three other state commissions that purport to support its recommendation. *Id.* at 4-5.

18 Staff continues to urge the Commission to not impose upon wireless carriers the various  
19 service quality standards OTA suggests. *See* Staff Opening Brief at 5-6. Foremost among the  
20 reasons against adopting OTA's recommendation is that the Commission previously determined  
21 its authority to impose such standards on wireless carriers is questionable at best under existing  
22 state law. *See* PUC Order No. 04-335 at 9.

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24 <sup>1</sup> Preliminarily, staff would like to clarify that its recommended seven "additional" requirements  
25 (none of which are opposed by any party and are delineated at Staff/1, Marinos/47-48) are  
26 essentially restatements of existing requirements set forth at 47 C.F.R. Section 201. The term  
"additional" is thus somewhat of a misnomer and is intended to only signal that these seven  
requirements are additive to the new requirements set forth in paragraph 17 of FCC Order 05-46.

1 Even if the Commission has the authority to impose one or more of the service quality  
2 standards OTA recommends, staff has a better path. A “competitive eligible telecommunications  
3 carrier” (CETC) is to use its universal service funds to improve its network and, as such, its  
4 service quality. The requirement that a CETC file its network improvement plan, and that it  
5 report on progress with its network on an annual basis, satisfies the same service quality goal  
6 OTA attempts to achieve. Further, staff’s approach avoids the legal concern surrounding the  
7 Commission’s authority to impose service quality standards upon wireless carriers, as well as the  
8 problem of trying to make service quality rules, that were developed for a wireline network, “fit”  
9 the wireless paradigm.

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

12 OTA argues that the downside of not requiring a creamskimming analysis is that it may  
13 make it difficult for the rural ILEC to continue to provide service to its customers if a CETC  
14 serves only the more profitable areas. OTA Brief at 11. Further, in footnote 38, OTA states:  
15 “Anyone who is of the belief that the current system of USF support where if an incumbent loses  
16 a line, it receives the same amount of support is dreaming (the assertion is not factually correct in  
17 any event given limitations on corporate operations expense and freezes in some parts of the  
18 fund). A public policy decision should not be predicated upon hopes.”

19 OTA’s arguments are fallacious. If an incumbent loses a line to a competitor, high cost  
20 loop support (HCLS) is the only type of ILEC support that could potentially decrease in total,  
21 and then only if support per line rises high enough to exceed caps set on this support. Levels of  
22 local switching support and interstate access support would not decrease, but could, in fact,  
23 actually increase. The FCC, in paragraph 125 of FCC 01-157 (“Rural Task Force Order”),  
24 released May 23, 2001, contradicts OTA’s assertion regarding a decrease in HCLS support:

25 Due to the nature of telecommunications as an industry with high fixed costs, an  
26 incumbent carrier’s loss of subscriber lines to a competitive telecommunications  
carrier is unlikely to be offset by a corresponding reduction in its total embedded  
cost of service [cite omitted]. If the incumbent’s lines decreased while its fixed

1 costs remained roughly the same, its per-line costs would increase. Consequently,  
2 the incumbent would be entitled to higher support per line.

3 In footnote 324 of the same Order, the following example is given:

4 . . . if an ILEC served 1,000 lines and received \$1,000 in monthly universal service  
5 support, this would equate to \$1 of support per line. This amount would be  
6 available to any CETC that captured a line from the ILEC. If the ILEC lost 500  
7 lines to competitors, but the ILEC's support based on embedded costs still  
8 amounted to \$1,000 per month, the per line support available to the ILEC and the  
9 CETC would double to \$2 per line to the ILEC and CETC.

10 In this example, the ILEC receives the same amount of total support (\$1,000) with 500 lines as  
11 with 1,000 lines. This example is applicable in cases where the ILEC actually loses existing  
12 customer lines to a CETC. While this was expected to be the case with the earliest type of  
13 competitors, wireline CLECs, it is now less common since the majority of competitors receiving  
14 support are wireless carriers, whose customers tend to buy wireless as a service in addition to  
15 their wireline service. And although the HCLS fund is subject to an overall fund level cap that  
16 may impact ILECs needing extremely high amounts of support per line, the cap does not include  
17 any support granted to CETCs. Therefore, the ILEC caps are not impacted by support granted to  
18 CETCs (see FCC 01-157, paragraph 125).

19 Contrary to OTA's assertions, the Commission should not be concerned that the lack of a  
20 creamskimming test will result in ILECs going out of business. On the other hand, the  
21 Commission should be concerned that retaining the creamskimming test will aid the ILECs in  
22 their anti-competitive quest to try to lock competitors out of the federal funds, to the detriment of  
23 Oregon consumers. Instead of retaining a creamskimming test, the Commission should order the  
24 ILECs to disaggregate their per-line support amounts and eliminate any possibilities of  
25 creamskimming. Disaggregation of support is addressed under Issue II.B.4.

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1 ***II(B)(4). Whether and to what extent the Commission should require incumbent local***  
2 ***exchange carriers to disaggregate and target support in a different manner,***  
3 ***as permitted by 47 CFR Section 54.315(c)(5).***

4 OTA and Verizon appear to misunderstand staff's recommendation for this issue. Both  
5 companies state that the Commission does not have information in this docket to make a  
6 determination about disaggregation. OTA Brief at 13-17; Verizon Brief at 6.  
7 Staff does not assert there is sufficient information in this docket about the costs and benefits of  
8 disaggregation. Instead, staff merely asks the Commission to determine there is a need for rural  
9 ILECs to disaggregate (de-average) their high-cost support and "interstate common line support"  
10 (ICLS) to the wire center level on a per-line basis. Based upon this determination, staff then asks  
11 the Commission to open a docket to deal with the cost-benefit analysis that is needed to actually  
12 accomplish disaggregation.

13 OTA's and Verizon's arguments against opening a disaggregation docket are inconsistent  
14 with their alleged concerns about a CETC engaging in creamskimming. If creamskimming is a  
15 true concern, then OTA and Verizon should support disaggregation as the best cure for the  
16 creamskimming problem.

17 At page 14 of its brief, OTA states relative to disaggregation that "The only benefits that  
18 have been described are perhaps a general benefit of being able to address creamskimming."  
19 There are other benefits that OTA refuses to acknowledge. The benefits of disaggregated  
20 support can be clearly demonstrated using OTA's example (pp. 15-16 of brief) of how  
21 disaggregation allegedly produces a "windfall" for CETCs. The numbers in OTA's example are  
22 as follows:

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<u>ILEC</u>	<u>ILEC averages support</u>			<u>ILEC disaggregates support</u>	
	<u>lines</u>	<u>support/line</u>	<u>total support</u>	<u>support/line</u>	<u>total support</u>
Wire center A	800	\$10	\$8,000	\$5	\$4,000
Wire center B	<u>200</u>	<u>\$10</u>	<u>\$2,000</u>	<u>\$30</u>	<u>\$6,000</u>
Total ILEC	1000	\$10	\$10,000	\$10	\$10,000
<u>CETC</u>					
Wire center A	200	\$10	\$2,000	\$5	\$1,000
Wire center B	<u>300</u>	<u>\$10</u>	<u>\$3,000</u>	<u>\$30</u>	<u>\$9,000</u>
Total CETC	500	\$10	\$5,000	\$20	\$10,000

OTA sets forth this example to demonstrate that if the ILEC disaggregates support to the wire center level, the CETC’s support would increase from \$5,000 to \$10,000. OTA calls the resulting increase to the CETC a “windfall” and asks “Why should CETC support double after the fact of designation as an ETC just because of disaggregation?” The answer is simple. The CETC’s support increases from \$5,000 to \$10,000 after disaggregation because it reflects the correct amount of support based on wire-center specific costs (\$5 and \$30) rather than the average cost across both wire centers (\$10). The extra \$5,000 resulting from disaggregation of support is not a “windfall” – it represents the additional amount the CETC should have been receiving all along, were it not for the ILEC refusing to disaggregate per-line support. Note in either case that the ILEC total support amount remains the same. The ILEC is not affected by the disaggregation of support – only the CETC is.

Instead of bolstering OTA’s case in opposition to disaggregation of support, this example, when viewed from the proper perspective, actually illustrates Staff’s arguments supporting disaggregation. If the fallacy in OTA’s argument is not clear from the discussion above, reverse the sequence of events by starting with disaggregated support and moving to averaged support. If the support had been disaggregated from the beginning, the CETC would have received \$10,000 of CETC support. If the support was later changed to be based on average costs (aggregated), the CETC would receive only \$5,000 of support and lose \$5,000 that it should properly receive.

1           This example can also be used to illustrate the perverse incentives associated with  
2 aggregated per-line support. Assume the CETC was considering entering the market in the case  
3 where the ILEC has not disaggregated support, i.e. support available to the CETC is \$10 per line  
4 in each wire center. In this case, the ETC is motivated to provide service in wire center A where  
5 it can receive a real windfall of \$5 per line (support is \$10, while costs would require only \$5 of  
6 support). On the other hand, the CETC is discouraged from providing service in wire center B  
7 where the available support of \$10 per line is less than the \$30 of support that would be needed  
8 to cover costs. Based on the relative support amounts, wire center B is the higher cost area, and  
9 most likely a more rural area. An efficient public policy would seek to motivate, not discourage,  
10 CETCs to enter wire center B. This can only happen if the ILEC is required to disaggregate  
11 support and establish different per-line amounts for each wire center.

12           A recent case from the Washington Utilities and Transportation Commission (WUTC)  
13 illustrates the disingenuous nature of certain ILEC's arguments on this issue. In *WUTC Docket*  
14 *Nos. UT 013058 and UT 023020 (WUTC Order)*, the WUTC examines the history of  
15 disaggregation in Washington State from 1998 through the time the decision was issued in  
16 August, 2002.

17           In brief, the WUTC worked with the rural ILECs to file a joint petition in 1998 for  
18 disaggregation with the FCC. The petition was prompted by ILEC concerns regarding  
19 competition from CETCs at a time the amount of universal service support was fixed. Since the  
20 USF support was fixed in the total amount provided, the rural ILECs could lose support to their  
21 competitors. However, the FCC changed its rules in 2000 so that the amount of available federal  
22 support in any exchange was no longer fixed. The result was a rural ILEC would receive 100%  
23 of the federal support due them regardless of whether it faced competition from a CETC. *See*  
24 *WUTC Order* at footnote 4.

25           At this point, the rural ILECs reversed course and chose Path 1 under the FCC's 2001  
26 disaggregation rules, which resulted in no disaggregation below the study area level. In other



1 words, when the Washington rural ILECs concluded they could lose USF support money to  
2 CETCs, they requested disaggregation. But, when the rules changed so that USF support was no  
3 longer a “zero-sum game,” these ILECs wanted to go back to averaged support (so the CETCs  
4 would get less support than otherwise).

5 The WUTC understood the circumstances and motivations and rejected all ILEC requests  
6 and ordered retention of disaggregated support. A copy of the *WUTC Order* is attached as  
7 Attachment A.

8 In Oregon, although some ILECs filed disaggregation plans, none but Pioneer and  
9 Malheur disaggregated to the wire center level (or below). Now that the Commission has  
10 designated several CETCs in Oregon, the Oregon ILECs’ earlier “disaggregation” plans should  
11 be reviewed and revised to reflect more efficient disaggregation of support amounts. It is  
12 obvious that the ILECs will not do so of their own accord as their current plans act to discourage  
13 competitors from entering their higher-cost service areas and they are counting on the  
14 creamskimming test to serve as a related barrier to entry. This is exactly why the Commission  
15 must abandon the creamskimming test and require ILECs to disaggregate per-line support to the  
16 wire center level.

17 ***II(B)(5). Should the Commission adopt an upper limit on the number of ETCs that***  
18 ***can be designated in any given area? Any party proposing an upper limit***  
19 ***should explain its proposal in detail, including the legal basis for its position.***

20 OTA briefly mentions the potential for impacts on Oregon’s universal service fund  
21 program as a reason to place a limit on the number of ETCs for the federal USF program. OTA  
22 poses, but does not provide an answer to, the following query: “What happens when multiple  
23 ETCs are designated for the same service area for OUSF purposes, as well as federal universal  
24 service fund purposes?” OTA Brief at 18.

25 The present docket is not concerned with the impact of ETCs on Oregon’s USF program.  
26 As such, the record is insufficient to consider OTA’s rather cryptic question. However, staff  
observes that the current state of the law is that, while a federal wireless ETC may voluntarily

1 request ETC status under Oregon’s USF program, wireless federal ETCs are not required to  
2 participate in Oregon’s USF program. *See* ORS 759.425(6). Further, the wireless federal ETC  
3 may not even request ETC status under Oregon’s USF program until the wireless ETC has  
4 already contributed to the Oregon fund for at least one year immediately prior to the ETC’s  
5 request.

6 This illustrates the complexity of trying to gauge the impact of wireless ETCs on the  
7 viability of the Oregon fund. It is nothing more than speculation and conjecture to say what  
8 impact, if any, a decision to have no cap for the number of ETCs for the federal fund would have  
9 on Oregon’s fund.

10 ***III(A). What specific requirements should the Commission adopt for the annual***  
11 ***recertification of ETCs?***

12 There seems to be general, albeit sometimes grudging, support for staff’s  
13 recommendations on the issue of the requirements for annual recertification of ETCs.<sup>2</sup> However,  
14 Cingular, who did not sponsor testimony during the evidentiary phase of this proceeding,  
15 belatedly and inappropriately testifies against staff’s recommendations for emergency outage  
16 reporting and complaint reporting. *See* Cingular Brief at 6-8. Staff objects to this late-filed  
17 testimony and asks that it not be admitted into the record.

18 However, in case the Commission decides to allow Cingular’s statements, staff will  
19 briefly respond to them. As to the emergency outage reporting requirement, Cingular suggests  
20 the Commission get these necessary reports from the federal Department of Homeland Security.  
21 Cingular Brief at 7. This is not acceptable from a practical standpoint. Moreover, even the FCC  
22 will not use the Homeland Security reports for ETC purposes. *See* FCC Order 05-46, footnote  
23 94.

24 \_\_\_\_\_  
25 <sup>2</sup> Verizon now seems to accept staff’s reporting recommendations, saying “Thus, while the  
26 Commission would be better served by not requiring duplicative reporting at all for the reasons  
set forth above, if such reports are to be required, then Staff’s proposals – which generally permit  
regulated carriers to reference other applicable filings – are an appropriate compromise.”  
Verizon Brief at 10, footnote 7.

1 Staff is not persuaded by Cingular’s professed inability to meet staff’s complaint  
2 reporting requirements. Cingular Brief at 7-8. Staff observes that the wireless carriers who  
3 actively participated in all phases of this docket, RCC-USCC, state that they are able to comply  
4 with staff’s requirements. The Commission should not make an exception just for Cingular.

5 ***III(A)(2). Should the Commission adopt other reporting requirements?***

6 Verizon has consistently opposed submitting evidence of advertising of the supported  
7 services, including lifeline services, as part of the recertification process. *See Verizon/2,*  
8 *Fulp/10-11 and Verizon Brief at 7-9.* Verizon thus seems to reject any reporting requirements  
9 regarding advertising, despite the fact that the Act and the FCC state clearly that ETCs must  
10 advertise the supported services. Verizon states:

11 *Moreover, the FCC has registered no objection to Verizon’s advertising to date*  
12 *designed to satisfy these requirements, and this Commission should not attempt to*  
13 *fix a non-existent problem – certainly no problems in this regard were even*  
*suggested in any testimony in the record – by imposing additional obligations on*  
*the implementation of this federal program.*

14 Verizon Brief at 8 (emphasis added).

15 To the contrary, the FCC has indeed “registered an objection” to Verizon’s lack of  
16 advertising, and very recently too. In FCC Order DA 05-525, released on March 2, 2005, the  
17 FCC admonished Verizon for “violating Section 214(e)(1)(B) of the Communications Act of  
18 1934” -- the section of the Act that requires ETCs to advertise the availability of supported  
19 services. A copy of FCC Order DA 05-525 is included as Attachment B.

20 The admonishment resulted from revelations that Verizon had not publicized the  
21 availability of Lifeline or Link-Up services to low-income residents of 11 Indian tribes in its  
22 service areas for a period of about three years. This investigation began at the request of Indian  
23 Tribal Leaders, not through any monitoring that the FCC was doing in this regard. Further, as  
24 part of the same investigation, CenturyTel was found to be derelict regarding lifeline advertising  
25 obligations as well, and entered into a Consent Decree with the FCC in which specific  
26 advertising requirements were agreed to by the company. This FCC order, DA 05-2992,

1 released on November 22, 2005, is included as Attachment C. These two examples demonstrate  
2 the need for the Commission to monitor adherence to the advertising requirements that are part  
3 of every ETC's obligations.

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

7 OTA and Verizon continue to argue that if an ILEC only receives access-related support  
8 (IAS and ICLS), it should not be subject to staff's annual reporting requirements. *See* OTA Brief  
9 at 21-22; Verizon Brief at 11-12.<sup>3</sup> Staff continues to disagree. While this is an extremely  
10 important issue for the Commission, staff has nothing new to add to the debate other than to state  
11 it agrees with RCC-USCC's discussion of the matter. *See* RCC-USCC Brief at 21-22. The  
12 Commission has primary responsibility for ensuring all ETCs meet all ETC-related requirements  
13 for eligibility and recertification. An ETC's self-certification to the FCC is merely for the use of  
14 the funds received, which is only one of the many ETC-requirements delineated in staff's  
15 recommendations in this docket.

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24 <sup>3</sup> Staff is unclear about Qwest's position on this matter. Qwest supported staff's  
25 recommendation in its testimony, but its brief presents conflicting statements on the issue. Staff  
26 notes Qwest's statement that it "would support an annual Commission recertification for IAS, so  
long as ILECs receiving IAS would be subject to the same reporting requirements as ILECs  
recertifying traditional high-cost support." Qwest Brief at 7. This "offer" is consistent with  
staff's recommendation on the issue.

1 **CONCLUSION**

2 Staff's thoughtful, well-reasoned recommendations strike the appropriate balance  
3 between the ILECs' and the CETCs' sometimes competing concerns. For the reasons stated,  
4 staff asks the Commission to adopt each of its recommendations.

5 DATED this 1<sup>st</sup> day of May 2006.

6 Respectfully submitted,

7  
8 **HARDY MYERS**  
9 Attorney General

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12 Assistant Attorney General  
13 Of Attorneys for the Public Utility Commission  
14 of Oregon  
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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

In the Matter of Disaggregation of  
Federal Universal Service Support of

Asotin Telephone Company, CenturyTel  
of Cowiche, Ellensburg Telephone  
Company, Inland Telephone Company,  
Kalama Telephone Company, McDaniel  
Telephone Company, The Toledo  
Telephone Company, United Telephone  
Company, Western Wahkiakum County  
Telephone Company, Hat Island  
Telephone Company, Hood Canal  
Telephone Company, Inc., Mashel  
Telecom, Inc., Pend Oreille Telephone  
Company, Pioneer Telephone Company,  
St. John Telephone & Telegraph  
Company, Tenino Telephone Company,  
Whidbey Telephone Company, YCOM  
Networks, and

Joint Petition of CenturyTel of  
Washington, Inc., and CenturyTel of  
Inter Island, Inc. (collectively  
CenturyTel). For approval of USF  
Disaggregation Plan

DOCKET NOS. UT-013058 AND  
UT-023020

ORDER REJECTING  
DISAGGREGATION FILINGS BY  
ASOTIN TELEPHONE COMPANY  
AND CENTURYTEL, AND  
DIRECTING RURAL ILECS TO FILE  
DISAGGREGATION PLANS WITH  
THE COMMISSION NOT LATER  
THAN AUGUST 23, 2002

## I. BACKGROUND

- 1 Federal universal service support ordinarily is provided on a study area or company-wide basis. Where support is disaggregated, it is assigned to geographic areas that are less than the company's study area. Disaggregation affects the amount of support received by competitors of rural incumbent local exchange companies (ILECs), but does not affect the amount of support rural ILECs will receive.
- 2 In 1998, the Commission worked with the rural ILECs to develop a disaggregation petition (Joint Petition) to the Federal Communications Commission (FCC), which has authority over the assignment of federal universal service support. The disaggregation effort was initiated by the rural ILECs in response to our decision to designate eligible telecommunications carriers (ETCs) at the geographic level of the

exchange, rather than the study area. *See* docket Nos. UT-970333–54 and UT-970356. Only ETCs may receive federal universal service funds.

- 3 The 1998 Joint Petition was prompted by the concern that a competitor could enter a relatively low-cost exchange and compete with the rural ILEC and be eligible to receive federal universal service support that was based on the study area average per-line support. For example, a competitor entering the Gig Harbor exchange of CenturyTel would have been eligible, without disaggregation, to receive funds for each line served in an exchange that, if standing alone, might not qualify for any federal universal service support.
- 4 The opposite was also a concern. For example: a company entering the Vantage exchange of Ellensburg Telephone would have received per-line support at the study area average, an amount well below the cost of service in the large, sparsely populated exchange. (Some areas are considered “high cost” because they contain so few customers that the cost of service is very high in relation to the revenue generated. Other areas are high cost because they present features that drive-up construction costs, such as mountains or the need to close busy streets.)
- 5 The concerns about misalignment were the basis of the Joint Petition. The FCC granted the Joint Petition on September 9, 1999, and rural ILECs and competitors have operated under its terms since then.
- 6 On December 29, 1999, the Commission granted United States Cellular Corporation ETC status in 70 exchanges served by rural ILECs, and it has collected federal support funds since 2000 based on the disaggregation methodology approved by the FCC in its September 9, 1999, order. More recently, RCC Minnesota petitioned for, and was granted, ETC status in several exchanges served by rural ILECs, and a third competitor in some rural ILEC exchanges, Inland Cellular, has petitioned for ETC designation.<sup>1</sup>

## II. FCC RULE CHANGES AFFECTING DISAGGREGATION

- 7 Between 1997, when this Commission made its first ETC designations, and 2001, the FCC made two major changes that affect disaggregation of federal universal service support. One changed the relative share of federal universal service support between incumbents and competitors, while the other required disaggregation.
- 8 In 1998, when rural ILECs and the Commission filed the joint Petition with the FCC, the amount of federal universal service support available in an exchange was fixed and whatever a competitor garnered, the incumbent did not receive. In 2000, the FCC

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<sup>1</sup> *See* Docket No. UT-023033, Petition of RCC Minnesota for Designation as an ETC, and Docket No. UT-023040, Petition of Inland Cellular for Designation as an ETC.

changed its rules so that the amount of available federal support in any exchange is not fixed; federal support in rural ILEC exchanges is no longer a “zero-sum game.”

9 The change from competition over total support within an exchange to support provided for all lines no matter which company provides service, is consistent with the long-standing practice of support for all lines served by rural ILECs.<sup>2</sup> This change also promoted sufficiency of support for competitors, a requirement of the Telecommunications Act of 1996. See 47 U.S.C. §§ 254(e) and (f).

10 The second major change in FCC rules affecting federal universal service support for areas served by rural ILECs came in 2001 when the FCC required all rural ILECs to choose a method of disaggregation of federal universal service support. See 47 C.F.R. § 54.315.

11 These, and other changes in the FCC’s rules, have resulted in the disaggregation filings that are the subject of this Order.

### III. DISAGGREGATION IN WASHINGTON

12 As noted in the opening paragraphs, Washington began planning for disaggregation in 1997; petitioned for FCC acceptance of a plan for disaggregation in 1998; approved a petition for ETC designation for a competitor that would demonstrate the effect of disaggregation in 1999; and is now revising the method of disaggregation to be used in the future.

13 Rural ILECs were required to choose a disaggregation “path” from those offered in 47 C.F.R. § 54.315 not later than May 15, 2002. The rural ILECs in Washington did so, and 18 of them chose Path 1, disaggregation using the study-area average per line support. One, CenturyTel, chose to disaggregate by dividing its 70 exchanges into two groups and assigning a per-line support amount to each group. Asotin chose a disaggregation approach that differed in a significant way from the approach taken by the FCC in that it replaced the residential and business revenue benchmarks with a cost benchmark in the methodology from the 1998 Joint Petition approved by the FCC.

14 Rural ILECs that chose disaggregation at the study-area per-line average contended that it was fair because the only competitors they currently face are wireless companies which the rural ILECs contend face different costs than wireline carriers.

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<sup>2</sup> State commissions throughout the nation, and the FCC, have always supported every line in high-cost locations. A home in the Palouse exchange with two lines, where the cost per line per month has been determined to be \$71.67 on average, and where support in the amount of \$40.67 per residential line is provided through the state universal service support mechanism, pays no more for the second line than for the first; that is, the monthly rate for each line is \$13.00. Similarly, costs incurred by rural ILECs to support multi-line business service are part of the over-all cost considered in the FCC-prescribed process for determining federal universal service support for rural ILECs.



In the view of rural ILECs, study-area average per-line support is fair to those competitors whose costs are different (and largely, if not wholly, unknown to rural ILECs).

- 15 Rural ILECs also raised a concern that disaggregation other than by using a study area, per-line average amount might, under the FCC rules, result in rural ILECs receiving substantially less than 100 percent of the annual support to which each company is due under the FCC process for determining total federal universal service support.
- 16 CenturyTel chose to divide its 70 Washington exchanges into two groups, assigning a higher and a lower per-line support amount for each based upon underlying costs, in acknowledgment of the wide cost and revenue variations apparent across its 70 exchanges.
- 17 Asotin arrived at its per-line disaggregation amounts through a methodology similar to that used to prepare the 1998 Joint Petition. However, Asotin's methodology was significantly different in that it replaced the revenue benchmark used in 1998 with a cost benchmark that did not differentiate between residential and business service.
- 18 In response to the rural ILEC's disaggregation plans, the staff of the Commission (Commission Staff or Staff) initially proposed using the Joint Petition methodology and continuing to disaggregate federal universal service support at the sub-exchange level approved by the FCC when it accepted the Joint Petition. That methodology divided all rural ILEC exchanges into two zones, a relatively lower cost (or higher revenue) Zone A and relatively higher cost (or lower revenue) Zone B. Each zone of each exchange was assigned a different per-line support amount through the application of the methodology used in 1998.<sup>3</sup> This approach also promoted sufficiency of support for competitors, consistent with requirements of the federal Act.
- 19 Rural ILECs opposed continuation of this methodology, in particular the division of exchanges into two zones. During the two-year period in which the two-zone methodology had been in place, only competitors had to undertake the task of determining whether lines were located in Zone A or Zone B in order to collect federal universal service support. If, however, we had approved a continuation of this division of exchanges under the FCC's 2001 rules, then rural ILECs would have had to determine the zone in which each customer lives. This would have been a substantial undertaking that rural ILECs opposed.

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<sup>3</sup> Many rural exchanges have a central switching office located in the one relatively large town in the exchange, and more rural customers are served by long loops that extend from that central office. Zone As were generally the small town, with remainder of the exchange generally composing Zone B.

- 20 Due to this concern, Commission Staff subsequently recommended disaggregation at the exchange level, abandoning the Zone A and Zone B. This, according to Staff, would be substantially easier to administer and would still result in a distribution of support that reasonably reflected the underlying costs on which companies' total support amounts were based.
- 21 Commission Staff reported that this result could be accomplished by reversing the part of the 1998 methodology that divided exchanges into zones, and the resulting methodology would remain consistent with the disaggregation method that had been in effect for over two years.
- 22 In response to the rural ILECs' view that study-area average disaggregation is appropriate where the only competitors are wireless carriers, Commission Staff noted that to the extent support is a revenue replacement, wireless carriers face low revenue opportunities in rural areas. This is consistent with the purpose of disaggregation, which is to promote competitive entry, and the next competitor may be a wireline company.
- 23 Rural ILECs have voiced some concern about the accuracy of the methodology used in 1998. Commission Staff has acknowledged that the methodology was not then, and is not now, perfect. But its purpose was to make an approximate determination of how total company support should be divided among a given company's several exchanges. Staff noted that the process could be repeated, with more up-to-date proxy models and with the knowledge gained by all involved during, and subsequent to, preparation of the Joint Petition in 1998. The Staff contends, however, that the 1998 methodology is sufficiently accurate to warrant continuation, even if it is continued at the exchange level rather than the two-zone, sub-exchange level.
- 24 Staff also contends that the methodology it has developed will result in each rural ILEC receiving 100 percent of its annual support amount, diminished only in some case by a rounding error of approximately one one-hundredth of a percent (0.01%).
- 25 Finally, rural ILECs with single-exchange study areas have asked that they be permitted to disaggregate at the study area level rather than the exchange level. Staff requests that disaggregation be consistent for all companies, *i.e.*, at the exchange level. Staff notes that consistency of designation will prove valuable whenever there is a change of circumstances, for example if a single-exchange company were to purchase another exchange. Staff notes that the effort required by rural ILECS consists of filing information provided by Staff to companies.

#### IV. DISCUSSION

- 26 This process is a continuation of what we began in 1997 when we determined that preservation and advancement of universal service and promotion of competition

would be enhanced if ETC designation were made at the exchange geographic level rather than the study area geographic level.

- 27 That decision was improved upon by the suggestion in 1997 by rural ILECs that federal universal service support be disaggregated. In that process, the Commission and the rural ILECs determined that disaggregation at the sub-exchange level was preferred. We joined with rural ILECs to petition the FCC for approval of sub-exchange disaggregation, received that approval, and have operated with sub-exchange disaggregation since then.
- 28 It was, in part, the work of our colleague, former Commissioner William R. Gillis, as chair of the FCC's Rural Task Force, that led to the decision by the FCC to require disaggregation by all rural ILECs. In its rules, the FCC listed the options for disaggregation. The FCC also provided very broad authority to state commissions to alter the disaggregation method chosen by rural ILECs if a state commission considered that another approach would better serve the twin goals of preservation and advancement of universal service and promotion of competition.
- 29 We were concerned by Commission Staff's revised recommendation to abandon the two-zone, sub-exchange disaggregation approved by the FCC in 1998. We understand that it was the preferred method of rural ILECs and Staff in 1998 because it was considered both accurate and fair. However, in light of the administrative benefits provided by disaggregation at the exchange level, and the corresponding endorsement of several rural ILECs, we conclude that exchange level disaggregation is reasonable under the circumstances presented today. However, in the event circumstances change, the Commission may consider sub-exchange disaggregation.
- 30 Concluding that exchange-level disaggregation is reasonable, we reject CenturyTel's filing for disaggregation based on a division of its 70 exchanges into two groups, and for determination of only two per-line support amounts. Disaggregation by exchange results in 70 different per-line amounts that we conclude more reasonably reflect underlying costs and therefore more reasonably reflect what a competitor should receive for serving customers in a given exchange.<sup>4</sup>
- 31 We also reject the filing by Asotin because it replaced in the 1998 methodology the \$31 dollar residential and the \$51 dollar business revenue benchmarks with a \$20 dollar per line benchmark based on cost considerations. In 1998, the \$31 dollar and \$51 dollar revenue benchmarks were used so the amount of support needed in a given exchange would be reduced by the revenue received from customers. Cost, on the other hand, was taken into account by the use of a cost proxy model. Changing the revenue benchmark to a cost benchmark is inconsistent with the underlying

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<sup>4</sup> Rural ILECs will receive 100% of the federal support due them regardless of whether they face a competitive ETC and regardless of whether that competition serves a few or many lines in some or only a portion of the incumbent's study area. Competitors, more than rural ILECs, have the most at stake in the outcome of this decision.

methodology, and inconsistent with a reasonable approximation of the support that should be assigned to each exchange.

- 32 We conclude that disaggregation in Washington for areas served by rural ILECs should be done at the exchange level based on the methodology developed in 1998. Staff has presented to rural ILECs and the Commission a spreadsheet showing that the amount of support rural ILECs will receive remain constant, but that the per-line amount may increase or decrease based on the number of lines served. We conclude that this methodology is transparent, results in a reasonable disaggregation of federal universal service support, and will result in a fair per-line amount of support flowing to competitors who serve customers in exchanges identified with rural ILECs. We also conclude that each rural ILEC will receive 100 percent of its annual support amount, affected only by a rounding error of approximately one one-hundredth of a percent in some cases (0.01%).<sup>5</sup> This disaggregation methodology therefore promotes sufficiency of support for competitors and leaves intact the support received by rural ILECs.
- 33 We turn now to the Staff recommendation that rural ILECs be required to provide exchange maps in an electronic format that will permit competitors, the FCC, and this Commission to determine the location of customer addresses within exchange boundaries using available software tools. These files, which have an “.shp” suffix, represent the outline of the exchange and can be combined with additional electronic data such that queries may be made through the use of software to determine if a given address is within the exchange. Because competitors will have to determine the locations of customers in order to claim federal support, and because the amount of support varies depending on the exchange in which the customer address is located, maps of this kind will provide for a substantial reduction in the administrative effort needed to locate, and then to check the accuracy of customer locations.<sup>6</sup>
- 34 Rural ILECs have raised concerns about the cost of preparing .shp maps, and have asked if the Commission, rather than rural ILECs should prepare them. Rural ILECs will receive in excess of \$40 million dollars this year in federal universal service support. Competitors will receive millions in support as well. Approximately the same amount will be forthcoming every year for the foreseeable future. In comparison, a one-time requirement to prepare .shp maps represents a very modest effort and cost.

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<sup>5</sup> We believe it is within the power of the FCC through its support fund administrator to take measures to provide to rural ILECs and competitors those small amounts of support that may be lost to rounding error.

<sup>6</sup> Rural ILECs have suggested that one competitor's location of customers may not be as accurate as it should be. We do not know if this is so, but rural ILECs could use electronic maps to check the accuracy of customer location reports more efficiently than if they were to do it without the aid of electronic maps.

- 35 Rural ILECs, under FCC rules, must submit a map with the disaggregation methodology. The FCC did not specify what type of map is required. It is reasonable for us to determine the type of map that must be filed and the methodology for disaggregation that must be filed with this Commission under 47 C.F.R. § 54.315. We conclude .shp files will serve the ends of disaggregation by substantially reducing the administrative burden that all will face in locating customers within the boundaries of one exchange or another.<sup>7</sup>
- 36 We are aware that the Universal Service Administrative company (USAC) requires only a .jpg or .gif file. Maps made from such files are not much more than an electronic drawing and will not serve to reduce administrative costs associated with the location of customers vis-à-vis exchange boundaries. Because the .shp files can yield a .jpg file that may be sent to USAC, our requirement of a .shp map will not hamper rural ILECs in their effort to comply with USAC's stated requirement (USAC does not have rulemaking authority), and will not result in rural ILECs having to create two files when the .jpg can be created from a .shp file with no more than a few keystrokes.
- 37 The purpose of the .shp maps is to allow competitors to locate customers within one exchange or another and thus enable competitors to make accurate claims for support. Rural ILECs have stated they are skeptical of some of the claims made by one competitor, and apparently extend this skepticism to those in line to compete. In the middle of this relationship is USAC, not this Commission. USAC is responsible for the accurate calculation and distribution of federal universal service support amounts.
- 38 Rural ILECs have an incentive to provide accurate representations of their exchanges in the form of .shp map files, and competitors also have an incentive to be certain that those files are accurate because they will have the most direct bearing on the amount of support they will receive. Similarly, USAC has an incentive – fulfilling its responsibility – to know that both rural ILEC and competitor submissions are accurate.
- 39 Given the responsibilities of USAC, and the rural ILECs and competitors interests in accuracy of the maps, there is no need for the Commission to become involved in the map-making process. This is not to say we are not concerned with accuracy and fairness. Rather, we believe that those recovering federal universal service support should bear the responsibility of producing accurate maps of the affected exchanges.
- 40 Finally, we agree with Staff that consistency of geographic disaggregation at the exchange level even for single-exchange companies will be useful. In the event a single-exchange company were to acquire another exchange, we would have to revisit this issue and that would be time-consuming in comparison to the simple filing

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<sup>7</sup> Commission Staff has also recommended to us that we require competitors seeking ETC designation to prepare .shp files of the areas which they serve.

requirements we order today. Additionally, because our decision will be administered by the FCC and USAC, we should not complicate what is otherwise straightforward. Rural ILECs have not shown there would be any appreciable expense to file at the exchange geographic level.

## V. FINDINGS OF FACT

- 41 (1) The companies that are the subject of this Order are telecommunications companies doing business in the state of Washington.
- 42 (2) Each company that is the subject of this Order has made a filing directly with the FCC or with this Commission that is inconsistent with the disaggregation methodology in use in Washington since 1999.
- 43 (3) The use of study area average per-line amounts for disaggregation of federal universal service support would not result in support to competitors that is consistent with the underlying costs and revenue of rural ILECs. Neither would it result in sufficiency of support for competitors.
- 44 (4) The use of only two per-line amounts for disaggregation of federal universal service support by CenturyTel would not result in support to competitors that is consistent with the underlying costs and revenue of CenturyTel.
- 45 (5) The use of cost benchmark amounts rather than revenue benchmark amounts by Asotin TDS in its proposed methodology for disaggregation of federal universal service support would not result in support to competitors that is consistent with the underlying costs and revenue of Asotin.
- 46 (6) The methodology for disaggregation of federal universal service support developed in 1998 and accepted by the FCC in 1999, and that has been in use since 1999, has not been the subject of complaints.
- 47 (7) The methodology developed in 1998 and altered to disaggregate support at the exchange level rather than the sub-exchange level results in a reasonably accurate approximation of the portion of total support that should be attributed to each rural ILEC exchange and results in sufficiency of support for competitors.
- 48 (8) A requirement that all rural ILECs use the same methodology will result in consistency in the disaggregation of federal universal service support.
- 49 (9) Designation of single-exchange companies at the exchange level rather than the study area level will promote consistency without any appreciable cost.

- 50 (10) The use of the methodology developed by Commission Staff will result in rural ILECs receiving 100 percent of the annual support due to each company, diminished in some cases by no more than a rounding error of approximately one one-hundredth of a percent (0.01%), and the FCC has the authority to correct for a rounding error.
- 51 (11) The production and use of .shp map files will provide significant administrative benefits, including longer-term cost savings, and does not burden rural ILECs.
- 52 (12) Commission participation in production of .shp map files is unnecessary.

## VI. CONCLUSIONS OF LAW

- 53 (1) The Commission has jurisdiction over the companies that are the subject of this Order.
- 54 (2) The Commission has authority under RCW 80.36.610(1) to take actions, conduct proceedings, and enter orders as permitted or contemplated for state commissions under the federal Telecommunications Act of 1996.
- 55 (3) Entrance of an order concerning disaggregation in accordance with 47 C.F.R. § 54.315 and related FCC rules concerning disaggregation of federal universal service support is an order permitted or contemplated for a state commission under the federal Telecommunications Act of 1996.
- 56 (4) The Commission has broad authority under 47 C.F.R. § 54.315 to reject previously filed disaggregation plans and to order rural ILECs to file new plans with the Commission.
- 57 (5) The Commission has authority under 47 C.F.R. § 54.315 to determine a methodology to be used by rural ILECs for disaggregation of federal universal service support that results in sufficiency of support for competitors and results in competitors encountering consistency wherever they may compete.
- 58 (6) The Commission has authority to require disaggregation at the exchange level for all rural ILECs.
- 59 (7) The Commission has authority under 47 C.F.R. § 54.315 to determine that a .shp map file should be used to meet the requirements of 47 C.F.R. § 54.315 maps to be filed with disaggregation plans.

## ORDER

60 Based upon the foregoing, the Commission Orders as follows:

- 61 (1) The Commission rejects the filing made by CenturyTel to disaggregate federal universal service support using two groups of exchanges.
- 62 (2) The Commission rejects the filing by Asotin to disaggregate federal universal service based on a methodology that uses a cost rather than a revenue benchmark.
- 63 (3) The Commission directs rural ILECs to file new disaggregation plans with the Commission not later than August 23, 2002. The new plans must conform to the following:
- a. The methodology used must be that supplied to rural ILECs by Staff as represented by the sample spreadsheets attached to this Order;
  - b. The filings must be made at the exchange geographic level;
  - c. The filing must contain an explanation of the workings of the methodology;
  - d. The filing must contain an electronic version of the methodology in .xls format;
  - e. The filing must contain a print out of the results of using the methodology with the “Cost Input – BCPM 3.1 – Output ‘98” provided by Staff, the most current annual federal universal service support amount divided by four, and the most current Category 1.3 loop count provided to USAC;
  - f. The filing must contain an electronic map of each exchange in .shp format consistent with the following standards and containing the attributes listed below;
    - i. Standards
      - A. The result must be an Environmental Systems Research institute (ESRI) shape file;
      - B. The shape file must be projected in Washington State Plane South Zone, North American Datum (NAD) 83;
      - C. The units must be in feet;
      - D. The shape file must be created with reference to Washington Department of Natural Resources Public Land Survey/Ownership/County/Administration (POCA) theme, including latitude and longitude references; and
      - E. The shape file must include Federal Geographic Data Committee (FGDC) compliant metadata.
    - ii. Attributes



- A. Exchange name;
- B. Company name;
- C. Legal description (metes and bounds) of exchange; and
- D. Company contact, with each of the following as a separate attribute: mailing and physical address, telephone number and FAX number, and e-mail address.

- iii. The filing must contain a printout of the .shp map file for each exchange.

64 The Commission directs Staff to assist any company that requests assistance with preparation of a company specific spreadsheet (.xls file), and, upon request, provide such other assistance as may be reasonable.

Dated in Olympia, Washington, and effective this 2<sup>nd</sup> day of August, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Verizon Communications Inc. ) File No. EB-03-TC-125

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 1, 2005**

**Released: March 2, 2005**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Order, we admonish Verizon Communications Inc. (“Verizon”) for violating Section 214(e)(1)(B) of the Communications Act of 1934, as amended (“the Act”),<sup>1</sup> and Sections 54.405(b) and 54.411(d) of the Commission’s rules,<sup>2</sup> by failing to publicize the availability of Lifeline or Link-Up services “in a manner reasonably designed to reach those likely to qualify” for the services. Specifically, Verizon failed adequately to publicize Lifeline or Link-Up to low-income residents of 11 tribes in its service area for a period of approximately three years. While, as discussed below, we are constrained from proposing a monetary sanction at this time, we find that an admonishment is necessary to redress the statutory and rule violations enumerated herein. Moreover, we believe it is appropriate to inform Verizon of our specific concerns to ensure future compliance. Finally, we require Verizon to file a report with the Enforcement Bureau (“Bureau”) within 60 days of this Order detailing its plans for future compliance with the Act and the Commission’s rules and orders in this area.

**II. BACKGROUND**

2. Section 214(e)(1)(B) of the Act provides the statutory basis for the action we take here: “A common carrier designated as an eligible telecommunications carrier . . . shall be eligible to receive universal service support in accordance with Section 254 and shall, throughout the service area for which the designation is received advertise the availability of such services and the charges therefore using media of general distribution.”<sup>3</sup> Lifeline and Link-Up are universal service support mechanisms that provide for discounted services to low-income consumers. Lifeline provides low-income consumers with discounts on the monthly cost of telephone service for a single telephone line in their principle residence.<sup>4</sup> Link-Up provides low-income consumers with discounts on the initial costs of installing telephone

<sup>1</sup>47 U.S.C. § 214(e)(1)(B).

<sup>2</sup>47 C.F.R. §§ 54.405(b), 54.411(d).

<sup>3</sup>47 U.S.C § 214(e)(1)(B).

<sup>4</sup>47 C.F.R. § 54.401(a)(2); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8957, ¶ 341(1997), *affirmed in part, reversed in part and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *cert. denied*, 530 U.S. 1210 (2000), *cert. dismissed*, 531 U.S. 975 (2000).

service.<sup>5</sup> Recognizing the unique needs and characteristics of tribal communities, Lifeline and Link-Up provide qualifying low-income individuals living on tribal lands with larger discounts than any other group, *i.e.*, up to \$25 more in monthly Lifeline support and \$70 more in Link-Up discounts.<sup>6</sup>

3. Verizon is an eligible telecommunications carrier (“ETC”) in 14 states,<sup>7</sup> *i.e.*, a telephone company eligible to receive universal service support in accordance with Section 254 of the Act.<sup>8</sup> Verizon indicates that it serves 67 tribes in its 14-state region.<sup>9</sup> On October 7, 2003, based on concerns raised informally with the Bureau by tribal leaders, the Bureau sent a Letter of Inquiry (“LOI”) to Verizon<sup>10</sup> to investigate whether Verizon was satisfying its obligation under Sections 54.405(b) and 54.411(d) of the Commission’s rules to publicize the availability of Lifeline and Link-Up services to low-income residents on tribal lands “in a manner reasonably designed to reach those likely to qualify” for those services.<sup>11</sup> The LOI directed Verizon to describe actions it had taken to satisfy Sections 54.405(b) and 54.411(d) and to support its response with recordings or transcripts of any radio or television advertisements, written material, or narrative descriptions with accompanying documentation of any other outreach, such as coordination with social service agencies, contact with tribes that administer any relevant government assistance programs, or personal letters to eligible customers. Based on Verizon’s response, the Bureau sent a second LOI to Verizon on April 6, 2004<sup>12</sup> and later directed Verizon to clarify and supplement its earlier LOI responses.<sup>13</sup>

### III. DISCUSSION

4. The Commission’s Lifeline and Link-Up outreach rules give an ETC some flexibility in deciding the type and frequency of outreach that is “reasonably designed to reach those likely to qualify” for the services. In applying the outreach rules to tribal lands, however, the Commission stated that it was concerned that eligible subscribers may not be aware of the discounts.<sup>14</sup> The Commission further

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<sup>5</sup>47 C.F.R. § 54.411(a)(1).

<sup>6</sup>47 C.F.R. §§ 54.403(a)(4), 54.411(a)(3). “Tier four” support provides eligible subscribers living on tribal lands up to an additional \$25 per month towards reducing basic local service rates, but this discount can not bring the subscriber’s cost for basic local service to less than \$1. *See* 47 C.F.R. § 54.403.

<sup>7</sup>Verizon has been an ETC in the following 14 states since 1998: Arizona, California, Florida, Idaho, Maine, Massachusetts, Michigan, Nevada, New York, North Carolina, Oregon, Rhode Island, Washington and Wisconsin. *See* Letter from Kathleen Grillo, Vice President, Federal Regulatory Advocacy, Verizon, to Cynthia Bryant, Attorney, FCC (Apr. 27, 2004) (“Second LOI Response”).

<sup>8</sup>47 U.S.C. § 254.

<sup>9</sup> Second LOI Response at Exhibit 1.

<sup>10</sup>*See* Letter of Inquiry from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, to Suzanne Carmel, Verizon (Oct. 7, 2003) (“First LOI”).

<sup>11</sup>47 C.F.R. §§ 54.405(b), 54.411(d). Based on concerns that low-income residents on tribal lands may not be aware of the benefits of Lifeline and Link-Up, the scope of the investigation was limited to Verizon’s efforts to publicize Lifeline and Link-Up to eligible residents on tribal lands.

<sup>12</sup>*See* Letter of Inquiry from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, to Suzanne Carmel, Verizon (April 6, 2004) (“Second LOI”).

<sup>13</sup>*See* Email from Cynthia Bryant, Attorney, FCC, to Kathleen Grillo, Vice President, Federal Regulatory Advocacy, Verizon (Nov. 30, 2004).

<sup>14</sup>*See In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Twelfth Report and Order, 15 FCC Rcd 12208, 12249, ¶ 76 (2000) (“*Twelfth Report and Order*”).

expressed an expectation that ETCs would have a system of evaluating the need for and the most appropriate efforts of outreach to tribal communities.<sup>15</sup>

5. Verizon states that it publicized Lifeline and Link-Up to 11 tribes in six states in late 2000 through January 2001 via social service agencies, tribal newspapers, and senior citizen centers.<sup>16</sup> Verizon did not renew its Lifeline or Link-Up outreach efforts to any of these tribes again until December 2003 in Wisconsin,<sup>17</sup> and February 2004 in the other five states,<sup>18</sup> which came after the Bureau's first LOI in October 2003. In sum, Verizon allowed more than two-and-a-half to three years to elapse between outreach efforts directed to these 11 tribes.

6. Although the Commission's rules do not include a specific statement specifying how frequently carriers must conduct Lifeline and Link-Up outreach, we nevertheless conclude that a delay of approximately three years in providing outreach to these 11 tribes does not fulfill Verizon's obligation to publicize Lifeline and Link-Up "in a manner reasonably designed to reach those likely to qualify." Several factors support our conclusion. First, as the Commission recently noted, only one-third of eligible low-income residents subscribe to Lifeline and Link-Up.<sup>19</sup> Thus, regular outreach is necessary to reach the substantial portion of eligible subscribers who do not currently take advantage of the discounts. Second, eligibility criteria<sup>20</sup> and individual income levels change regularly such that persons who may not qualify in one year may qualify the next. Third, eligible individuals may move onto tribal lands and, absent regular outreach, may not be aware that they qualify for the unique discounts available to residents on those lands. Thus, a reasonably designed outreach program must be ongoing and frequent to ensure that new and existing eligible consumers are aware of the benefits of the discount programs.<sup>21</sup> Verizon's lack of outreach for these 11 tribes left potential beneficiaries without Lifeline and Link-Up information for a significant period of time and is therefore not reasonable under the Act and the rules.

7. Our finding is supported by Verizon's apparent ad-hoc approach to compliance. After its initial outreach to the 11 tribes in six states in late 2000 and early 2001, which came shortly after the Commission's outreach rules took effect, the record indicates that Verizon's next action with respect to these tribes came only after the Bureau's initial LOI in October 2003. It appears that Verizon did not have any system or procedure for monitoring outreach needs and taking appropriate action for these tribal lands and states. In the future, we expect Verizon and other ETCs to take a proactive rather than reactive approach to complying with Section 214(e)(1)(B) of the Act, and Sections 54.405(b) and 54.411(d) of the Commission's rules.

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<sup>15</sup>*Id.* at 12250, ¶ 79.

<sup>16</sup>Letter from Sara Cole, Associate Director, Federal Regulatory Advocacy, Verizon, to Lynn Vermillera, Attorney, FCC (Nov. 24, 2003) ("First LOI Response") at VZ-FCC 0493. The six states are Idaho, Michigan, North Carolina, Nevada, Oregon, and Wisconsin. This admonishment applies only to Verizon's lack of outreach to the 11 tribes in these states. We make no finding regarding Verizon's outreach to the remaining 56 tribes it serves.

<sup>17</sup>First LOI Response at VZ-FCC 0519.

<sup>18</sup>See Second LOI Response at VZ-FCC 2192-99, 2101-2305, 2310-24; *see also* email from Kathleen Grillo, Vice President, Federal Regulatory Advocacy, Verizon, to Cynthia Bryant, Attorney, FCC (Dec. 10, 2003) at Exhibit 1.

<sup>19</sup>See *In the Matter of Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8305, ¶ 1 (2004).

<sup>20</sup>See, e.g., *id.* at 8308-09, ¶ 10 (changing the federal default eligibility criteria for Lifeline and Link-Up to 135% of the Federal Poverty Guidelines, among other things).

<sup>21</sup>The Commission recently provided examples of effective frequent outreach. *See e.g., id.* at 8327-28, ¶ 46 (stating that carriers, among other things, "may wish to send regular mailings" as a means of reaching households that do not currently have telephone service).

8. Notwithstanding Verizon's violations of the Act and the Commission's rules, we do not propose a forfeiture at this time. Section 503(b)(6) specifies that a proposed forfeiture must be issued against a common carrier for violations of the Act or the Commission's rules within one year of the occurrence of the violation.<sup>22</sup> Because Verizon undertook renewed outreach efforts in these six states within the last year, we are constrained from pursuing a proposed forfeiture at this time. Nevertheless, we will closely monitor Verizon's outreach efforts to ensure future compliance with the Act and the Commission's rules.

#### IV. CONCLUSION AND ORDERING CLAUSES

9. After reviewing the record, we find that Verizon's failure to publicize Lifeline and Link-Up for approximately three years for 11 tribes in its service area violates Section 214(e)(1)(B) of the Act, and Sections 54.405(b) and 54.411(d) of the Commission's rules.<sup>23</sup> Accordingly, IT IS ORDERED THAT, Verizon IS ADMONISHED for failing adequately to publicize Lifeline and Link-Up for 11 tribes in its service area in violation of Section 214(e)(1)(B) of the Act,<sup>24</sup> and Sections 54.405(b) and 54.411(d) of the Commissions rules.<sup>25</sup>

10. It is further ordered that Verizon shall file a report with the Enforcement Bureau within 60 days of this Order detailing its plans for future compliance with the Act and the Commission's rules and orders regarding the obligation to advertise the availability of Lifeline and Link-Up "in a manner reasonably designed to reach those likely to qualify" for the services.<sup>26</sup>

11. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order shall be sent by Certified Mail Return Receipt Requested to Kathleen Grillo, Vice President, Federal Regulatory Advocacy, Verizon, 1300 I Street NW, Suite 400 West, Washington, DC, 20005.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>22</sup> 47 U.S.C. § 503(b)(6).

<sup>23</sup> 47 C.F.R. §§ 54.405(b), 54.411(d).

<sup>24</sup> 47 U.S.C. § 214(e)(1)(B).

<sup>25</sup> 47 C.F.R. §§ 54.405(b), 54.411(d).

<sup>26</sup> See 47 C.F.R. §§ 54.405(b), 54.411(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
CenturyTel, Inc. )
Compliance with the Commission's )
Rules and Regulations Governing )
Advertising the Availability of Lifeline and )
Link-Up )
File No. EB-03-TC-121
NAL Acct. No. 200632170001
FRN: 0003740651

ORDER

Adopted: November 17, 2005

Released: November 22, 2005

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau and CenturyTel, Inc. ("CenturyTel"). The Consent Decree terminates an investigation initiated by the Enforcement Bureau regarding CenturyTel's compliance with section 214(e)(1)(B) of the Communications Act of 1934, as amended (the "Act"), and sections 54.405(b) and 54.411(d) of the Commission's rules, as it relates to the duty to publicize Lifeline and Link-Up programs to low-income residents on tribal lands.

2. The Enforcement Bureau and CenturyTel have negotiated the terms of a Consent Decree that would resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation. We also conclude that, in the absence of material new information not previously disclosed to the Bureau, the matters raised in the investigation do not raise any substantial and material questions of fact regarding CenturyTel's qualifications to be a Commission licensee.

4. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, and the authority delegated by sections 0.111 and 0.311 of the Commission's rules, that the attached Consent Decree IS ADOPTED.

147 U.S.C. § 214(e)(1)(B); 47 C.F.R. §§ 54.405(b), 54.411(d).

247 U.S.C. § 154(i).

347 C.F.R. §§ 0.111, 0.311.

5. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of )
)
CenturyTel, Inc. ) File No. EB-03-TC-121
) NAL Acct. No. 200632170001
Compliance with the Commission's ) FRN: 0003740651
Rules and Regulations Governing )
Advertising the Availability of Lifeline and )
Link-Up )

CONSENT DECREE

I. INTRODUCTION

1. The Enforcement Bureau ("Bureau") of the Federal Communications Commission (the "FCC" or "Commission") and CenturyTel, Inc. ("CenturyTel"), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation (the "Investigation") regarding CenturyTel's compliance with section 214(e)(1)(B) of the Communications Act of 1934, as amended (the "Act"), and sections 54.405(b) and 54.411(d) of the Commission's rules, as it relates to the duty to publicize Lifeline and Link-Up programs to low-income residents on tribal lands.

II. BACKGROUND

2. CenturyTel is an eligible telecommunications carrier ("ETC"), i.e., a telephone company eligible to receive universal service support under section 214 of the Act. CenturyTel serves numerous tribal lands in the 22-state area in which it operates as an incumbent Local Exchange Carrier.

3. The Bureau sent a Letter of Inquiry ("LOI") to CenturyTel on October 7, 2003, stating that it was investigating whether CenturyTel was satisfying its obligations under sections 54.405(b) and 54.411(d) of the Commission's rules to publicize the availability of Lifeline and Link-Up services to low-income residents on tribal lands "in a manner reasonably designed to reach those likely to qualify" for those services. The Bureau sent a supplemental LOI on April 6,

147 U.S.C. § 214(e)(1)(B); 47 C.F.R. §§ 54.405(b), 54.411(d).

247 U.S.C. § 214.

3See Letter of Inquiry from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, to John F. Jones, Vice President, Federal Government Relations, CenturyTel, Inc. (October 7, 2003).



2004.<sup>4</sup> The LOIs directed CenturyTel to describe actions it had taken to satisfy sections 54.405(b) and 54.411(d) of the Commission's rules and to support its responses with pertinent documentation and affidavits.

4. During the course of the Investigation, CenturyTel provided written responses to the LOIs on November 17, 2003,<sup>5</sup> and April 26, 2004.<sup>6</sup> After meeting with representatives of CenturyTel on October 28, 2004, the Bureau sent a follow-up letter on November 9, 2004.<sup>7</sup> CenturyTel provided supplemental responses on November 19, 2004,<sup>8</sup> January 14, 2005,<sup>9</sup> and January 26, 2005.<sup>10</sup> In recent meetings with the Bureau, CenturyTel stated that it provides Lifeline and Link-Up services to low-income residents on tribal lands in 12 states within its 22-state incumbent region. CenturyTel asserted that it conducted outreach to low-income residents on tribal lands within its region and provided some evidence to support its contention.<sup>11</sup>

### III. DEFINITIONS

5. For purposes of this Consent Decree, the following definitions shall apply:
- a. "Act" means the Communications Act of 1934, as amended.

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<sup>4</sup>See Letter of Inquiry from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, to John F. Jones, Vice President, Federal Government Relations, CenturyTel, Inc. (April 6, 2004).

<sup>5</sup>See Letter from Terrance Hinkston, Compliance Specialist, CenturyTel, Inc., to Lynn Vermillera, Attorney, Telecommunications Consumers Division, Enforcement Bureau (November 17, 2003) ("November 17, 2003 Response").

<sup>6</sup>See Letter from Robert D. Shannon, Federal Government Relations, CenturyTel, Inc. to Cynthia Bryant, Attorney, Telecommunications Consumers Division, Enforcement Bureau (April 26, 2004) ("April 26, 2004 Response").

<sup>7</sup>See Letter from Mark Stone, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, to Karen Brinkmann, Latham and Watkins, LLP, and John F. Jones, Vice President, Federal Government Relations, CenturyTel, Inc. (November 9, 2004).

<sup>8</sup>See Letter from Karen Brinkmann and Manu Gayatrinath, Latham & Watkins, LLP, and John F. Jones, Director, Federal Government Relations, CenturyTel, Inc., to Mark Stone and Donna Cyrus, Telecommunications Consumers Division, Enforcement Bureau (November 19, 2004) ("November 19, 2004 Response").

<sup>9</sup>See Letter from Karen Brinkmann and Manu Gayatrinath, Latham & Watkins, LLP, and John F. Jones, Director, Federal Government Relations, CenturyTel, Inc. to Mark Stone and Donna Cyrus, Telecommunications Consumers Division, Enforcement Bureau (January 14, 2005) ("January 14, 2005 Response").

<sup>10</sup>See Letter from Karen Brinkmann and Manu Gayatrinath, Latham & Watkins, LLP, and John F. Jones, Director, Federal Government Relations, CenturyTel, Inc. to Mark Stone and Donna Cyrus, Telecommunications Consumers Division, Enforcement Bureau (January 26, 2005) ("January 26, 2005 Response").

<sup>11</sup>See the November 17, 2003 Response, April 26, 2004 Response, November 19, 2004 Response, January 14, 2005 Response, and the January 26, 2005 Response.

- b. "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
- c. "CenturyTel" means CenturyTel, Inc. and any affiliate, d/b/a, predecessor-in-interest, parent companies and any direct or indirect subsidiaries of such parent companies, or other affiliated companies or businesses and their successors and assigns.
- d. "CenturyTel Tribal Land" means that portion of the tribal land described in the Commission's report, "Telephone Subscribership on American Indian Reservations and Off-Reservation Trust Lands," released May 2003, and any subsequent such report, for which CenturyTel is an ETC.
- e. "Commission" means the Federal Communications Commission.
- f. "Effective Date" means fourteen (14) days from the date on which the Bureau releases the Adopting Order.
- g. "Investigation" means the investigation commenced by the Bureau's Letter of Inquiry, dated October 7, 2003, to CenturyTel regarding CenturyTel's possible noncompliance with section 214(e)(1)(B) of the Act and sections 54.405(b) and 54.411(d) of the Commission's rules and possible noncompliance with the Bureau's directives in the October 7, 2003 and April 6, 2004 LOIs.
- h. "Order" or "Adopting Order" means an Order of the Bureau adopting the terms and conditions of this Consent Decree without change, addition, or modification, and formally terminating the above-captioned Investigation.
- i. "Parties" means CenturyTel and the Bureau.
- j. "CenturyTel's Field Team" means Area Supervisors, Public Relations Managers and Area Operations Managers responsible for Lifeline and Link-Up outreach to their respective CenturyTel Tribal Land. Each CenturyTel Field Team member will report directly to CenturyTel's External Communications Manager regarding all Lifeline and Link-Up outreach efforts.

#### IV. AGREEMENT

6. CenturyTel agrees that the Commission and its delegated authority, the Bureau, have jurisdiction over it and the subject matter contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

7. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigation. In express reliance on the covenants and representations contained herein, and to avoid the potential expenditure of additional public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of this Investigation and in accordance with the terms of this Consent Decree, CenturyTel agrees to the terms, conditions, and procedures contained herein.

8. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by CenturyTel with the requirements of the Act or the Commission's rules or orders. The Parties agree that this Consent Decree is for settlement purposes only.

9. In consideration for the termination of the Investigation in accordance with the terms of this Consent Decree, CenturyTel agrees to make a voluntary contribution to the United States Treasury, without further protest or recourse to a trial *de novo*, in the amount of seventy-five thousand dollars (\$75,000) within thirty (30) days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, IL, 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

10. To resolve and terminate the Investigation, and to ensure compliance with the Commission's Lifeline and Link-Up outreach rules, CenturyTel agrees to implement a Lifeline and Link-Up Outreach Plan to low-income residents on CenturyTel Tribal Lands, that CenturyTel has identified in submissions to the Bureau, consisting of the components delineated below in paragraphs 10 through 13. In the event that, after the Effective Date, CenturyTel becomes an ETC on at least a portion of a tribal land appearing in the Commission's report, "Telephone Subscribership on American Indian Reservations and Off-Reservation Trust Lands," released May 2003, and any subsequent such report, it shall extend the outreach programs described herein to those portions of the newly served tribal lands and such areas shall become CenturyTel Tribal Lands for the remainder of the duration of this Consent Decree. In the event that, after the Effective Date, CenturyTel ceases to be an ETC in any portion of the CenturyTel Tribal Lands, such areas shall cease to be CenturyTel Tribal Lands as of the date on which CenturyTel's ETC designation ceased to be effective. In either case, CenturyTel will notify the Bureau of the addition to or deletion from the CenturyTel Tribal Lands, and provide a map or other description of such area and the affected American Indian Reservations or Off-Reservation Trust Lands affected.

A. Individual Tribal Outreach

- i) Individualized Tribal Plans. CenturyTel will develop and submit to the Bureau an individualized Lifeline and Link-Up outreach plan for each CenturyTel Tribal Land not later than three months after the Effective Date. These individualized outreach plans will incorporate various types of outreach efforts designed to reach that specific tribe in the most effective manner and will consist of at least some of the specific outreach efforts, in CenturyTel's judgment most likely to be effective, described in paragraphs 10(A)(iii) through 10(A)(vii) below. The outreach efforts to be incorporated into the individualized tribal plans will be determined by CenturyTel personnel within the state who have experience with the specific tribes. CenturyTel will also make good faith efforts to work in conjunction with tribal liaisons, described in paragraph 10(A)(ii) below, to develop the outreach plan for their particular tribe.

- ii) Tribal Liaisons. CenturyTel will make good faith efforts to identify and contact tribal liaisons for all CenturyTel Tribal Lands not later than thirty days after the Effective Date. Efforts to contact the various tribal liaisons may include in-person visits, direct mail, and/or telephone contact. CenturyTel's Field Team will confer with the tribal liaisons in order to determine the most effective outreach efforts to publicize Lifeline and Link-Up to their particular tribe. CenturyTel will also provide tribal liaisons with Lifeline and Link-Up posters, flyers, and applications that they can distribute to members of their tribe. CenturyTel will notify the FCC's Enforcement Bureau and the Consumer and Governmental Affairs Bureau of any CenturyTel Tribal Land that CenturyTel is unsuccessful in contacting.
- iii) Distribution of Individualized Materials. CenturyTel will conduct personal outreach to inform residents living on CenturyTel Tribal Lands about the availability of Lifeline and Link-Up. CenturyTel will work with tribal liaisons to obtain the names and/or location information for tribal residents for tribes that provide a list of residents. CenturyTel will distribute individualized materials directly to the identified residents on CenturyTel Tribal Lands once a year. These materials will clearly explain the application procedures and eligibility criteria to receive Lifeline and Link-Up services. Where tribal liaisons do not provide specific names of tribal members and how they can be reached, CenturyTel will not be responsible for making personal contact. The personal outreach will be conducted within thirty days of receiving a list from the tribal liaisons.
- iv) Public Service Announcements. CenturyTel will distribute public service announcements ("PSAs") to radio stations that reach CenturyTel Tribal Lands. The PSAs will include a CenturyTel customer service telephone number staffed by trained customer service representatives who can help interested customers apply for the Lifeline and Link-Up programs. These PSAs will be disseminated four times a year and will clearly describe both the Enhanced and the non-Enhanced Lifeline and Link-Up programs and the availability of such programs to those living on tribal lands.
- v) Newspaper Advertisements. CenturyTel will identify tribal newspapers serving CenturyTel Tribal Lands. CenturyTel will place paid advertisements in these tribal newspapers twice yearly. All advertisements will specifically mention both the Enhanced and the non-Enhanced Lifeline and Link-Up programs and provide further information on eligibility criteria and application instructions.
- vi) Press Releases. CenturyTel will send newspapers in-depth press releases that contain information about both the Enhanced and the non-Enhanced Lifeline and Link-Up services offered by CenturyTel, eligibility criteria and application instructions. These press releases will be sent to the tribal newspapers identified in 10 (A)(v) above two times a year.

- vii) Social Service Agencies. CenturyTel will make good faith efforts to identify social service agencies that provide outreach to tribal residents on CenturyTel Tribal Lands not later than two months after the Effective Date. Not later than three months after the Effective Date, CenturyTel will provide printed posters, flyers, and applications to these social service agencies for dissemination to those interested in learning more about both the Enhanced and the non-Enhanced Lifeline and Link-Up programs. Twice yearly, the social service agencies will receive either a personal visit, telephone call or an explanatory letter that describes the programs in detail, including eligibility criteria and applications instructions.

B. Service-Area Wide Outreach

In addition to the outreach efforts described in paragraph 10(A) above, CenturyTel will take each of the following steps to publicize the Lifeline and Link-Up programs to all CenturyTel Tribal Lands.

- i) Training. CenturyTel will provide training materials to all appropriate employees, as determined by the CenturyTel Field Team, in CenturyTel Tribal Lands at least once yearly. The training materials will clearly explain the importance of the programs, eligibility criteria and application instructions. These training materials will also be integrated into present Lifeline and Link-Up information in all customer service representatives' handbooks.
- ii) Bill Messages. CenturyTel will continue to publish Lifeline and Link-Up bill messages on a twice yearly basis. The bill messages will alert existing customers about the opportunity to receive help with their phone bills if they meet the eligibility requirements. The bill messages will also promote "word of mouth" advertising aimed at reaching those residents without telephone service. This "word of mouth" advertising should encourage existing customers to tell a friend, neighbor or family member without telephone service about Lifeline and Link-Up. CenturyTel will also publish similar "word of mouth" ads or messages in all of the telephone directories it distributes within CenturyTel Tribal Lands.
- iii) Website. Within 60 days of the Effective Date, CenturyTel will include an informative page on its website, [www.centurytel.com](http://www.centurytel.com), which explains the Lifeline and Link-Up programs. The page will include information on the eligibility requirements, the sign-up procedures, and a phone number by which interested customers can receive further information. Existing customers will be able to request an application be mailed to them using the MyAccount function on the site. Those who are not customers will be offered a toll-free (8YY) number through which they will be able to request an application. This page will provide a link to the appropriate state website, where state law requires. CenturyTel will also offer to work with the tribal liaisons for those tribes with websites to include a link to CenturyTel's Lifeline and Link-Up information page on the tribal websites, providing such tribal liaisons are willing to

participate. CenturyTel will include the URL address for the Lifeline and Link-Up information page in its outreach advertising.

- iv) State and Local Officials. CenturyTel will provide outreach information about Lifeline and Link-Up service to state and local officials and a contact person to whom such officials can refer individuals with questions about Lifeline and Link-Up. This effort will be undertaken twice yearly.
- v) Other. CenturyTel will make good faith efforts to promote Lifeline and Link-Up to all tribes within its service areas. When CenturyTel encounters a tribe that is particularly hard to reach or receives a request for service from a customer on CenturyTel Tribal Land to which CenturyTel cannot get access, CenturyTel will notify the FCC's Enforcement Bureau and Consumer and Governmental Affairs Bureau.

11. CenturyTel will assess its outreach efforts periodically to determine whether they are effective, as follows:

- (a) CenturyTel will conduct a survey of tribal liaisons once a year to determine whether the outreach efforts for the past year have been effective in reaching the residents of CenturyTel Tribal Lands and informing them of the Lifeline and Link-Up programs.
- (b) CenturyTel will assess whether any CenturyTel Tribal Land is within the coverage area of any newspaper, radio, or other media outlet (that CenturyTel is not already using pursuant to paragraph 10 above) that CenturyTel can use to promote Lifeline and Link-Up.
- (c) CenturyTel will track Lifeline and Link-Up applications and chart increases in Lifeline and Link-Up customers over time, by CenturyTel Tribal Land. This assessment will be done relative to October 1, 2005. This assessment will occur twice during the period covered by this Plan, the first assessment to be completed not later than twelve months after October 1, 2005 and the second not later than eighteen months from October 1, 2005.
- (d) If CenturyTel learns that certain outreach efforts are ineffective to reach a particular tribe, CenturyTel will adjust the outreach effort in response to the assessment. In such cases, CenturyTel will also provide the Bureau with a revised individualized tribal outreach plan to reflect the adjustment in the outreach effort for the particular tribe.

12. CenturyTel will implement the following record-keeping mechanisms to document each outreach effort undertaken to promote Lifeline and Link-Up.

- a) CenturyTel will maintain a record of all individuals trained.
- b) CenturyTel will maintain logs of all radio PSAs and press releases that it distributes to radio stations and newspapers for a period of two years.

CenturyTel will also request confirmation from both broadcasters and newspapers of when PSAs and press releases were aired or printed.

- c) Each of CenturyTel's Field Team members will keep a log of all of the efforts undertaken within their service areas to promote Lifeline and Link-Up to those living on CenturyTel Tribal Lands. CenturyTel will submit the logs for each state to the Bureau with its written report of compliance (described in paragraph 13 below) as supporting documentation. The logs will show the contact date, contact person, the outreach method used, the targeted tribe, and the targeted tribal land.
- d) CenturyTel will retain copies of all written material used in newspaper advertisements, press releases, posters, flyers, and other outreach efforts for two years. The field logs will contain documentation of when and where these materials were distributed. For newspaper advertisements, CenturyTel will require confirmation from the media sources of when they were published. Dated copies of the published newspaper advertisements may serve as such confirmation.
- e) CenturyTel will maintain records of all invoices for advertisements as well as any other expenditure that CenturyTel incurs for the promotion of Lifeline and Link-Up to those living on CenturyTel Tribal Lands for two years.
- f) CenturyTel will retain copies of all bill messages sent out to customers on CenturyTel Tribal Lands for two years. CenturyTel will also maintain copies of directory pages that contain printed information about the Lifeline and Link-Up programs for two years.

13. CenturyTel will submit written reports to the Bureau describing its compliance with this Consent Decree twelve and eighteen months after the Effective Date. The reports shall address in detail CenturyTel's compliance with each separate term and provision of this Consent Decree. CenturyTel must mail its reports to Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W. Room 4-C244, Washington, D.C. 20554, and must include the file number listed above. CenturyTel will also send an electronic copy of its reports to Mark Stone, Deputy Chief, Telecommunications Consumers Division, at [Mark.Stone@fcc.gov](mailto:Mark.Stone@fcc.gov) and Donna Cyrus, Senior Attorney Advisor, Telecommunications Consumers Division, at [Donna.Cyrus@fcc.gov](mailto:Donna.Cyrus@fcc.gov).

14. The Bureau agrees that, in the absence of new material evidence related to this matter, it will not use the facts developed in this Investigation through the Effective Date or the existence of this Consent Decree to initiate, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against CenturyTel, including any other enforcement action, nor will the Bureau seek on its own motion any administrative or other penalties from CenturyTel, concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in the Investigation through the Effective Date or the existence of this Consent Decree to initiate, on its own motion, any proceeding, formal or informal, or take any action on its own motion against CenturyTel with respect to CenturyTel's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier. Consistent with the foregoing, nothing in

this Consent Decree limits the Commission's authority to consider and adjudicate any complaint that may be filed pursuant to section 208 of the Act, 47 U.S.C. § 208, and to take any action in response to such complaint. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. The Bureau agrees that, to the extent consistent with paragraph 21, CenturyTel's compliance with all the terms of this Consent Decree constitutes compliance with the Commission's Lifeline and Link-Up outreach rules during the period in which the Consent Decree is effective.

15. CenturyTel's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Adopting Order.

16. Provided the Bureau issues an Adopting Order, CenturyTel waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order.

17. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither CenturyTel nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and CenturyTel and the Commission will waive any statutory right to a trial *de novo* with respect to the issuance of the Adopting Order and shall consent to a judgment incorporating the terms of this Consent Decree.

18. In the event that this Consent Decree is rendered invalid by a court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

19. By this Consent Decree, CenturyTel neither waives nor alters its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information.

20. CenturyTel agrees that any violation of the Order or of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

21. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which CenturyTel does not consent), that provision will be superseded by such Commission rule or order.

22. The Parties agree that the requirements of this Consent Decree shall expire eighteen (18) months from the Effective Date.

23. This Consent Decree may be signed in counterparts.

For: CenturyTel, Inc.

For: Enforcement Bureau  
Federal Communications Commission

\_\_\_\_\_  
Date

\_\_\_\_\_  
(CenturyTel Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kris Anne Monteith  
Chief, Enforcement Bureau



**CERTIFICATE OF SERVICE**

I certify that on May 1, 2006, I served the foregoing upon all parties of record in this proceeding by electronic mail only.

CHARLES L BEST ELECTRIC LIGHTWAVE LLC PO BOX 8905 VANCOUVER WA 98668-8905 charles_best@eli.net	JEFF BISSONNETTE CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205-3404 jeff@oregoncub.org
ALEX M DUARTE - <b>CONFIDENTIAL</b> QWEST CORPORATION 421 SW OAK ST STE 810 PORTLAND OR 97204 alex.duarte@qwest.com	JASON EISDORFER CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205 dockets@oregoncub.org
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KAY MARINOS PUBLIC UTILITY COMMISSION OF OREGON PO BOX 2148 SALEM OR 97308-2148 kay.marinus@state.or.us	TIMOTHY J O'CONNELL - <b>CONFIDENTIAL</b> STOEL RIVES LLP ONE UNION SQUARE 600 UNIVERSITY ST STE 3600 SEATTLE WA 98101-3197 tjoconnell@stoel.com
MARTY PATROVSKY - <b>CONFIDENTIAL</b> WANTEL INC 1016 SE OAK AVE ROSEBURG OR 97470 marty.patrovsky@comspanusa.net	JEFFRY H SMITH - <b>CONFIDENTIAL</b> GVNW CONSULTING INC PO BOX 2330 TUALATIN OR 97062 jsmith@gvnw.com

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