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May 1, 2006

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VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

Public Utility Commission of Oregon
Attention: Filing Center
550 Capitol Street N.E., Suite 215
Salem, OR 97301-2551

Re: UM 1217

Dear Filing Center:

Enclosed, for filing are an original and five copies of the Reply Brief of Verizon Northwest Inc. and a Certificate of Service in the above-referenced docket.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Veronica Moore".

Veronica Moore
Secretary for Timothy J. O'Connell

TJO:vm

Encl.

cc: Service List

Oregon
Washington
California
Utah
Idaho

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1217

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON

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

REPLY BRIEF
OF
VERIZON NORTHWEST INC.

April 28, 2006

1 **INTRODUCTION**

2 The opening briefs demonstrate the competing policy interests facing the Commission in
3 this matter. Although the Commission must obtain sufficient information to certify to the
4 Federal Communications Commission (“FCC”) regarding the appropriate use of high-cost
5 support funds, it also must avoid imposing unnecessary burdens on eligible telecommunications
6 carriers (“ETCs”). In balancing these competing policy issues, the Commission should not lose
7 sight of the underlying purpose of this docket: the initial designation and annual recertification
8 of ETCs at issue here is for participation in the *federal* universal service fund support programs.
9 Proposals that exceed the requirements of the FCC’s regulations are inherently more burdensome
10 than required.

11 In this Reply Brief, Verizon will address three matters addressed in opening briefs in
12 which other parties offer inappropriate suggestions as to this Commission’s role and the process
13 to be used in making certifications to the FCC. As to all other issues, Verizon’s positions are set
14 forth in its Opening Brief.

15 **A. Specific Reporting Requirements (Issue III.A.2)**

16 The annual recertification requirements proposed by the Commission’s Staff in
17 Attachment A to Staff’s Opening Brief should be rejected in favor of a ruling acknowledging
18 that the routine filing of reports by a regulated company satisfies the certification reporting
19 requirement. Verizon detailed the sufficiency of these reports in its Opening Brief. One change
20 in position detailed in the Staff’s Opening Brief is a modified proposal regarding required
21 advertising of the availability of the supported services. Staff no longer proposes that carriers
22 advertise those services four times per year, but instead would require ETCs to demonstrate that
23 the carrier has advertised throughout the relevant geographic area. Staff’s Opening Brief, at 15.

24 Verizon appreciates Staff’s modification of its earlier proposal, and nothing more is
25 justified on the record in this proceeding. The evidence in the record establishes that Verizon
26 provides notice of the availability of the supported services, and low-income assistance,

1 throughout its serving territory. Hearing Tr. 86: 12-14 (Fulp). There was no suggestion that any
2 other ETC did any less. The FCC made no suggestion that certification of advertising should be
3 required, FCC Order 05-46, ¶ 69, and in doing so expressly weighed the benefits of reporting
4 against the administrative burdens of reporting. *Id.*, ¶ 70.

5 Staff's remaining proposals concerning Lifeline and Link-Up reporting, Staff's Opening
6 Brief, at 15-16, should be deferred for consideration until after the conclusion of the FCC's
7 inquiry into Lifeline and Link-Up outreach. Verizon/9. Although that inquiry commenced only
8 recently, those programs are *federal* programs and thus governed by the FCC. The FCC has
9 evidenced no objection to carriers' advertisements regarding those programs, and no such
10 problems should be presumed.

11 **B. Incumbent ETCs Should Not Have the Same Reporting Requirements as**
12 **Competitive ETCs (Issue III.A.3)**

13 RCC and USCC continue to insist that any reporting required of competitive ETCs
14 should automatically be imposed on all other ETCs. See, e.g., Opening Brief of RCC and
15 USCC, at pp. 19-21. No support is provided for this proposition, other than the baseless claim
16 that this Commission lacks sufficient information to evaluate whether incumbent ETCs are
17 providing universal service. In contrast to competitive ETCs, however, incumbent ETCs file
18 numerous sources of information with the Commission that exhibit the provision of universal
19 service, including the Form O, construction budgets and service quality reports. The
20 Commission's Staff is well able from this information to account for the funds used by
21 incumbent ETCs for the maintenance of their networks. It is undisputed on this record that if
22 incumbent ETCs were not, in fact, providing universal service, this Commission's Staff would
23 know it directly, and not through annual ETC recertification reports. Tr at 151:21-152:8
24 (Marinos).

25 The arguments raised by RCC and USCC on this issue are thus little more than a
26 diversion. For example, RCC and USCC cite to a data request (Exhibit RCC/7) focusing on how
"support" was used to improve service "quality, coverage or capacity"; the standard cited in the

1 request, however, is inapplicable to Verizon, which only receives IAS in Oregon. Compare FCC
2 Order No. 05-46, ¶ 69(1)(information required as part of annual recertification for receipt of
3 high-cost funds includes reports on improvements in service “quality, coverage or capacity”)
4 with 47 C.F.R. §54.809 (carrier certification required for receipt of IAS is that those funds are
5 used for provisioning, operating or maintaining the carrier’s network). Moreover, the nature of
6 the question misses the point. Form O, the form referred to in the data request, does not attempt
7 to account for how some specific portion of IAS funds were used for a particular network
8 improvement process.¹ But the Commission Staff possesses documentation from incumbent
9 carriers with regard to spending on network maintenance going back many years. A comparison
10 of those filings readily demonstrates the incumbent carrier’s maintenance activities.

11 RCC and USCC further distract from the Staff’s regular oversight of the actual
12 provisioning of universal service by making a baseless and irrelevant claim regarding Verizon’s
13 earnings. Specifically, RCC and USCC allege that Verizon’s earnings exceed its intrastate
14 authorized rate of return. RCC-USCC Opening Brief, at 20-21. RCC and USCC support this
15 irrelevant allegation by misusing statistical summaries prepared by this Commission.² RCC and
16 USCC refer to the line item in the Commission’s “2004 Oregon Utility Statistics” (Exhibit RCC-
17 USCC/22) for “Return on Rate Base” without acknowledging the limited usefulness of that
18 figure as evidenced in that document. Specifically, that exhibit itself (see page 84) indicates that
19 the entry for “Return on Rate Base” is expressly subject to footnote “A,” which warns:

20 Total Oregon amounts include interstate operations subject to FCC
21 jurisdiction, and the rates of return are provided for comparative
22 purposes only.

23

24 ¹ The nature of IAS also demonstrates the fallacious assumptions underlying the data request at
25 issue. IAS is treated as general revenue of the recipient carrier to defray operating and
26 maintenance costs of an existing network. Verizon/1, Fulp/11. There is no particular earmarking
of IAS funds for specific projects.

² See Hearing Transcript, 78:7-11; 81:19-23 (ALJ).

1 RCC-USCC/22. at 74. RCC and USCC fail to heed this warning by the Commission, and use the
2 figures for something other than comparative purposes: namely, to make an otherwise wholly
3 unsupported allegation about Verizon’s rate of return that is irrelevant in this context.

4 Once the RCC and USCC red herrings are set aside, the fundamental difference between
5 incumbent ETCs and unregulated carriers is apparent. Incumbent ETCs already provide the
6 Commission with numerous sources of information that enable the Commission to make
7 necessary certifications to the FCC; unregulated carriers do not. Thus, reporting requirements
8 imposed on unregulated carriers should not be applied to incumbent ETCs. If any reporting
9 requirements are to be imposed on incumbent ETCs (which they should not be, for the reasons
10 set forth in Part C below), Staff’s proposal to permit those parties to refer to the numerous other
11 reports they file with this Commission would be more than sufficient.

12 **C. No Reporting Should Be Required of ETCs Receiving Only IAS**
13 **(Issue III.A.4)**

14 Despite its acknowledgement that carriers receiving only IAS do not and need not obtain
15 annual certification through this Commission (See Staff’s Opening Brief at 11, ll. 22-23), Staff
16 and certain other parties continue to urge the Commission to impose reporting requirements on
17 such carriers. Nothing in the opening briefs, however, effectively rebuts arguments raised by
18 Verizon throughout this proceeding that the Commission may not impose regulatory burdens for
19 a certification that it is beyond the Commission’s authority to make.

20 With regard to ETC annual certifications, the Commission is merely exercising
21 delegated federal authority. See Verizon’s Opening Brief at 10-11. No party has identified any
22 authority for this Commission to make IAS certifications to the FCC because no such authority
23 exists under controlling federal law. 47 C.F.R. § 54.809(a). When the legislature intends to
24 authorize the Commission to undertake actions that intersect with the obligations arising under
25 federal law, it does so expressly. See ORS 759.420. No Oregon statute authorizes the
26

1 Commission to exceed the requirements enacted by the federal USF programs.³ To the contrary,
2 ORS 759.425 required the Commission to establish a state USF—and expressly required that it
3 “conform to Section 254” of the federal act. ORS 759.425(1). Although that statute does not
4 expressly address the Commission’s role in implementing federal USF, it certainly does not
5 authorize Commission actions exceeding federal law.

6 Moreover, no party has identified any compelling reason for the Commission to impose
7 reporting requirements for an unnecessary IAS recertification process. Staff suggests that the
8 FCC “has few, if any, checks.” Staff’s Opening Brief at 17, l. 25. Yet no evidence has been
9 offered in this proceeding suggesting that there is a problem with the administration of IAS.⁴
10 The Commission cannot and should not impose requirements to fix a feature of a federal
11 program that the relevant federal agency has not identified as a problem.

12 Staff also seems to claim that the Commission’s responsibility for the initial ETC
13 designation means that it should also require reporting even for unnecessary recertifications.
14 Staff/4, Marinos/43. That does not follow. Fulfilling its specified role in the initial designation
15 for participation in a federal program does not give the Commission a rationale to require
16 additional reporting and certification beyond that required by the very terms of that federal
17 program.

18 Parties devote considerable attention in their opening briefs to rebut the otherwise
19 undisputed historical fact that IAS was not established as high cost support, but rather as a
20 replacement for implicit subsidies maintained previously in *interstate* access rates. See, e.g.,
21 Staff Opening Brief at 17, RCC-USCC Opening Brief at 22. The Commission need not,
22

23 ³ As an administrative agency, the Commission’s authority is limited to that delegated to it by the
24 Legislature. Beaver Creek Cooperative Telephone Coop v. PUC, 162 Or. App. 258, 262 (1999);
25 Klamath Falls v. Environ. Quality Comm’n, 318 Or. 532, 545 (1994).

26 ⁴ The only evidence offered by Staff on this issue was the bald assertion by Staff’s witness
Marinos that “the FCC has few, if any, checks on the carriers who receive these funds.” Staff/4,
Marinos/44, ll. 8-9. However, Ms. Marinos offered no evidentiary support for this assertion, or
any evidence suggesting that IAS was not being administered as intended by the FCC.

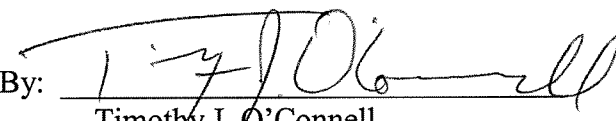
1 however, be long distracted by a debate over the historical origins of IAS. The fact that IAS is
2 included in Part 54 of the FCC's regulations does not provide any grounds to require reporting
3 such that the Commission should make an unnecessary certification.⁵ The FCC has established a
4 certification process for IAS, and no party has given this Commission any sufficient rationale to
5 second guess the FCC's procedure.

6 **CONCLUSION**

7 Verizon appreciates the Commission's attention to these matters. It respectfully requests
8 that the Commission adopt requirements for ETC recertification as recommended above.

9 Respectfully submitted this 30th day of April, 2006.

10 STOEL RIVES LLP

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12 By: 
13 Timothy J. O'Connell
14 Attorneys for Verizon Northwest Inc.

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24 ⁵ RCC-USCC's suggests that such a result is mandated by the text of the Federal
25 Communications Act, see Opening Brief of RCC and USCC at 22, fn. 7. Federal law, 47 U.S.C.
26 § 254(e) requires that USF be used only for the "provision, maintenance and upgrading of
facilities and services for which the support is intended." That requirement has nothing to do,
however, with the mechanism chosen by the delegated agency – the FCC – with how it ensures
that process is carried through.

**CERTIFICATE OF SERVICE
UM 1217**

I certify that on May 1, 2006, I served the Opening Post-Hearing Brief of Verizon Northwest Inc., by electronic mail and Overnight Mail to:

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

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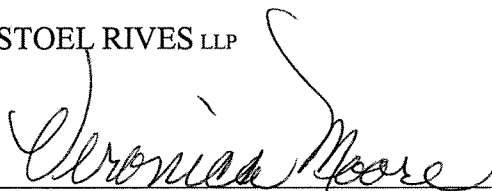
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