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April 17, 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 Opening Post-Hearing Brief of Verizon Northwest Inc. and a Certificate of Service in the above-referenced docket.

Very truly yours,

A handwritten signature in cursive script that reads "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

**OPENING POST-HEARING BRIEF**

**OF**

**VERIZON NORTHWEST INC.**

**April 17, 2006**

1 **INTRODUCTION**

2 The hearing in this matter established that the Commission must weigh competing policy  
3 goals. On the one hand, the Commission must carefully review initial petitions by a carrier  
4 seeking designation as an Eligible Telecommunications Carrier (“ETC”) so as to receive federal  
5 Universal Service Fund (“USF”) support. Rigorous review of such petitions is necessary so that  
6 the limited funds available for USF are not exhausted inappropriately. On the other hand, the  
7 Commission must avoid making the ETC designation and annual certification process unduly  
8 burdensome and redundant such that resources devoted to providing actual services to end user  
9 customers are not diverted to comply with unnecessary reporting requirements.

10 With regard to the second goal, the Commission should not impose new reporting  
11 requirements on incumbent wireline ETCs, such as Verizon Northwest Inc. (“Verizon”), which  
12 already make regular filings that provide the Commission with the information necessary for  
13 USF implementation purposes. Moreover, the Commission should not impose *any* reporting  
14 requirements on ETCs that only receive funding from federal universal service support programs  
15 that do not require annual recertification by state commissions. For example, the only federal  
16 universal service support Verizon receives in Oregon<sup>1</sup> is Interstate Access Support (“IAS”), for  
17 which recipients make annual certifications directly to the FCC rather than state commissions.

18 **PROCEDURAL BACKGROUND**

19 This proceeding arose in response to Order 05-46 issued by the Federal Communications  
20 Commission (“FCC”) on March 17, 2005.<sup>2</sup> In the March 17 Order, the FCC encouraged state  
21 commissions to utilize the requirements it established for initial designation as an ETC (§ 58)  
22 and reporting requirements for annual recertification (§ 71).

23  
24 \_\_\_\_\_  
25 <sup>1</sup> Verizon also received federal Lifeline and Link-Up reimbursements on behalf of eligible  
customers in Oregon.

26 <sup>2</sup> *Report and Order, In the Matter of Federal-State Joint Board on Universal Service*, CC Docket  
No. 96-45 (hereinafter, “March 17 Order”).

1 In response, and on the recommendation of its staff, the Commission decided at the  
 2 August 16, 2005, public meeting to commence a proceeding for the purpose of examining  
 3 requirements for initial designation and annual recertification of telecommunications carriers  
 4 eligible to receive federal USF support. This docket was opened shortly thereafter, and the  
 5 parties conferred and agreed to an issues list, which was adopted by ALJ Michael Grant on  
 6 October 28, 2005. The parties then filed two rounds of testimony, concluding in an evidentiary  
 7 hearing before ALJ Christina Smith on February 9, 2006.

8 The parties have largely followed the approved issues list throughout this proceeding,  
 9 which is reproduced below, along with a summary of Verizon's positions. As is evident from the  
 10 following, Verizon has attempted to minimize its disputes with Staff and other parties, and this  
 11 brief will address only issues critical to Verizon:

<u>ISSUE</u>	<u>VERIZON'S POSITION</u>
<b>I. Overall</b>	
I (A): What policy objectives should the Commission attempt to achieve through this docket?	Verizon largely agrees with Staff's proposals. Please see Part 1, below.
<b>II. Initial Designation of ETCs</b>	
II (A): What specific basic eligibility requirements should the Commission adopt for the initial certification of ETCs?	Verizon largely agrees with Staff's proposals. Please see Part 2(A), below.
II (A)(1): Should the Commission adopt any, or all, of the requirements proposed by the FCC in Order 05-06?	Verizon largely agrees with Staff's proposals. Please see Part 2(A), below.
II (A)(2): Should the Commission adopt other basic eligibility requirements?	Verizon largely agrees with Staff's proposals. Please see Part 2(A), below.

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II (A)(3): Should the same requirements apply to applications for designation in rural and non-rural ILEC service areas?	Verizon largely agrees with Staff's proposals. Please see Part 2(A), below.
II (A)(4): Should the same requirements apply regardless of the type of support (traditional high-cost, interstate access/common line, low-income) that the ETC will receive?	Verizon largely agrees with Staff's proposals. Please see Part 2(A), below.
II (B): What specific criteria should the Commission adopt to determine whether designation of a competitive ETC is in the public interest, as required by Section 214(e) (2) of the Telecom Act?	Verizon largely agrees with Staff's proposals. Please see Part 2(A), below.
II (B)(1): Should the Commission adopt the criteria proposed by the FCC in Order 05-46?	Verizon largely agrees with Staff's proposals. Please see Part 2(A), below.
II (B)(2): Should the criteria differ between designations in rural and non-rural ILEC service areas?	Verizon largely agrees with Staff's proposals. Please see Part 2(A), below.
II (B)(3): Should the Commission require an ETC to include entire ILEC wire centers in its service area, regardless of the boundaries of its licensed area?	Verizon largely agrees with Staff's proposals. Please see Part 2(A), below.
II (B)(4): Whether and to what extent the Commission should require incumbent local exchange carriers to disaggregate and target support in a different manner, as permitted by 47 CFR Section 54.315(c)(5).	The Commission is presented with insufficient information in this docket to make any decision on disaggregation, which does not apply to Verizon in any event. Please see Part 2(B), below.
II (B)(5): Should the Commission adopt for an upper limit on the number of ETCs that can be designated in any given area? Any party proposing adoption of an upper limit should explain its proposal in detail, including the legal basis for its position.	Verizon withdraws any previous advocacy on this point, and not address it in this brief.

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**III. Annual Certification of ETCs**

III (A): What specific requirements should the Commission adopt for the annual recertification of ETCs?	Verizon believes that the Commission should consider the purposes of recertification in making this determination. Please see Part 3(A), below.
III (A)(1): Should the Commission adopt any, or all, of the FCC reporting requirements proposed in Order 05-46?	Verizon believes that the Commission should consider the purposes of recertification in making this determination. Please see Part 3(A), below.
III (A)(2): Should the Commission adopt other reporting requirements?	The Commission should not impose other substantive requirements on ETCs. Please see Part 3(B), below.
III (A)(3): Should the same reporting requirements apply to all types of ETCs-ILEC ETCs and competitive ETCs?	Carriers not similarly situated should not be treated similarly. Please see Parts 3(C) and (D), below.
III (A)(4): Should the same reporting requirement apply regardless of the type of support (traditional high-cost, interstate access/common line, low income) received by the ETC?	This Commission need not make any certification for carriers receiving only IAS and Lifeline/Link-Up support, and should not engage in unnecessary acts. Please see part 3(E), below.

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**ARGUMENT**

1. **Issue I(A): What Policy Objectives Should the Commission Attempt to Achieve Through This Docket?**

Although the parties offer different formulations of the public interest involved in this proceeding, there appears to be little substantive dispute over the policy objectives proposed by Commission Staff, which Verizon generally endorses.<sup>3</sup> See Staff/1, Marinos/20-21. This docket

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<sup>3</sup> Verizon respectfully disagrees with Ms. Marinos' suggestion that because no single state commission can affect the long-term sustainability of the universal service fund, this Commission should therefore ignore that issue as a policy goal. See Staff/1, Marinos/18-19. To the contrary, with the critical role assigned the states in 29 U.S.C. § 214(e), each and every state commission (including this one) must make the sustainability of the fund a high priority.

1 was convened to address the Commission’s duties under federal law to properly make ETC  
2 designations and annual recertifications. In evaluating its fulfillment of these duties, the  
3 Commission should also note the testimony that went unrebutted throughout this proceeding:  
4 that the current USF funding mechanisms are strained. See Verizon/1, Fulp/7-8. USF spending  
5 has increased markedly in the last several years. Id. Although the Commission does not control  
6 the overall size or operation of the federal USF program, the Commission plays an important  
7 “gatekeeper” role by virtue of 47 CFR §§ 54.307, 54.313 and 54.314. Thus, the Commission  
8 must be rigorous in evaluating whether the registration of new ETC applicants would serve the  
9 public interest.

10 When fulfilling that role, and its ongoing obligation to annually certify to the FCC  
11 regarding the activities of ETCs receiving high-cost fund support, the Commission must be  
12 guided by the salutary policy directives issues by the Governor of the State of Oregon. Governor  
13 Kulongoski has “directed and ordered” that state agencies look for ways to achieve “better  
14 coordination and communication where government agencies have overlapping regulatory  
15 authority.” Oregon administrative agencies should also seek the “elimination of any unnecessary  
16 paperwork, reporting or review requirements.” Verizon/3. Both of these policy directives from  
17 Governor Kulongoski are implicated by this proceeding. When the Commission is called on to  
18 obtain better coordination with other governmental agencies, it should ensure that its  
19 requirements are consistent with those of the FCC, the agency having authority over federal USF  
20 mechanisms. Similarly, any attempt by the Commission to impose reporting requirements that  
21 simply seek information already within its possession would clearly be unnecessary and contrary  
22 to the Governor’s policy directives.

23 **2. Issue II: Initial Designation**

24 **A. Requirements for Initial Designation**

25 There is general unanimity by all parties to this proceeding (including the Commission  
26 Staff) that existing ETCs not be required to revise their designation in response to any changed

1 requirements the Commission might enunciate in this docket. Staff/1, Marinos/25. Accordingly,  
2 and in light of its designation as an ETC for a number of years, Verizon will not comment on  
3 initial designation issues, except for the question of disaggregation.

4 **B. Issue II.B.4: Should Incumbent Local Exchange Carriers Be**  
5 **Required to Disaggregate and Target Support?**

6 There is insufficient information in this docket for the Commission to rule on the  
7 question of disaggregation. As a recipient of only IAS, which is already disaggregated by zone  
8 under the FCC's program (and no party has suggested any further disaggregation), Verizon is not  
9 impacted directly by this issue. See Staff/3, Marinos/22. Nonetheless, as a general matter,  
10 Verizon is concerned by suggestions that the Commission issue a ruling on disaggregation at this  
11 time even though it has not yet been presented with an adequate record. In fact, it was not until  
12 reply testimony that any party even purported to identify a particular mechanism for performing  
13 disaggregation analysis. See RCC-USCC/4, Wood/47-49. Moreover, no party has actually  
14 investigated the costs involved in performing a disaggregation study. In the absence of  
15 meaningful evidence about the costs or the alleged benefits of disaggregation, the Commission  
16 should not declare any policy preference at this time.

17 **3. Issue III: Annual Certification of ETCs**

18 **A. Issue III.A.1 and .2: The Commission's Ongoing Regulation of**  
19 **Incumbent Wireline ETCs Already Fulfills the Functions of Annual**  
20 **Recertification.**

21 This Commission's regulation and oversight of incumbent wireline carriers already fulfill  
22 the functions and goals associated with ETC monitoring. These providers' charges for basic  
23 telephone service are supervised by the Commission. Incumbent providers provide these  
24 services throughout their serving territories. The Commission also supervises the quality of these  
25 service offerings. These activities implement the very mandate of universal service: reasonably  
26 priced basic telephone service, throughout all regions of the state.

Wireline incumbent ETC providers file a multitude of reports with this Commission in  
the furtherance of its regulatory goals. Thus, this Commission is well informed as to incumbent



1 wireline ETCs' efforts to promote universal service – because incumbent wire line ETCs under  
2 this Commission's jurisdiction actually do provide reasonably priced basic local telephone  
3 service. Indeed, on the record in this docket, this fact is agreed to. Staff's witness Marinos  
4 testified that if incumbent providers such as Verizon were having any difficulties providing the  
5 supported services on demand throughout their serving areas, the Commission's staff would be  
6 aware of it. Hearing Transcript 151:21-152:8 (Marinos).

7 Thus, in a very real sense, the process set up by the FCC for annual recertification is a  
8 proxy for the actual provisioning of universal service inapplicable to incumbent wireline ETCs.  
9 ETCs register and provide plans and assurances as to how federal USF monies will be used, and  
10 must report annually on how the funds were used (including providing gross measures of  
11 effectiveness). The Commission, however, need not resort to any such proxy process for  
12 incumbent wireline ETCs: the Commission and its staff are well aware in fact of those  
13 companies' routine provision of universal service.

14 **B. Issue III.A.2: The Commission Should Not Use the Annual**  
15 **Certification Process to Expand ETC's Substantive Obligations.**

16 Two of the reporting obligations proposed by Staff do more than just require ETCs to  
17 report on their efforts to maintain and expand universal service: (i) the proposal that ETCs be  
18 required to increase their advertising of the availability of supported services to four times over  
19 the course of a year (Staff/4, Marinos/38) and (ii) the apparent suggestion that ETCs further  
20 advertise the availability of Lifeline and Link-Up support. Staff/1, Marinos/86. Neither proposal  
21 should be adopted.

22 As a preliminary matter, the obligation for ETCs to advertise the availability of the  
23 supported services arises from 47 U.S.C. § 214(e)(1)(B) and is further enunciated in the FCC's  
24 regulations, 47 C.F.R. § 201(d)(2). Neither authority requires such advertisements to be run four  
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1 times over the course of a year, as Staff proposes.<sup>4</sup> Staff has not identified any authority under  
2 ORS Ch. 759, or any other source of authority, for this Commission to impose such an  
3 obligation. Moreover, the FCC has registered no objection to Verizon’s advertising to date  
4 designed to satisfy these requirements, and this Commission should not attempt to fix a non-  
5 existent problem – certainly no problems in this regard were even suggested in any testimony in  
6 the record – by imposing additional obligations on the implementation of this federal program.

7 Additionally, this Commission should always be hesitant to interfere with the advertising  
8 plans of telecommunications providers. The availability of the supported services from an  
9 incumbent wireline carrier such as Verizon is widely assumed by most consumers. Those  
10 carriers should not have their advertising resources diverted to reminding consumers about the  
11 availability of services that are already generally known, when incumbent carriers can more  
12 appropriately target their advertising to more competitively appropriate products and services.<sup>5</sup>

13 The staff proposal that ETCs increase their advertising of availability of Lifeline and  
14 Link-Up services should be rejected for a different reason. The FCC has already initiated a  
15 public inquiry into the most effective forms of outreach to ensure that consumers are aware of  
16 Lifeline and Link-Up services. Verizon/9. The Commission should wait for the conclusion of  
17 that inquiry before calling for any particular form of outreach for Lifeline and Link-Up. One  
18 item that will be considered by the FCC is whether avenues other than advertising in generally  
19 available media is the most effective way of informing potential Lifeline and Link-Up customers  
20 about the availability of those programs. For example, outreach through appropriate  
21 governmental or private social agencies may be far more effective in serving such a purpose.

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23 <sup>4</sup> At the hearing, Staff clarified that its advertising proposal could be accomplished by the same  
advertisement in multiple media or locations. Hearing Transcript, 143-145 (Marinos).

24 <sup>5</sup> This is particularly true when incumbent ETCs and competitive ETCs—particularly wireless  
25 carriers—are, in fact, increasingly active competitors. Indeed the most recent data from the FCC  
26 indicates that sometime within the last eighteen months, the number of mobile wireless telephone  
subscribers passed all ILEC (and CLEC) switched access lines. *Local Telephone Competition:  
Status as of June 30, 2005*, Industry Analysis and Technology Division, Wireline Competition  
Bureau, April, 2006 (compare Table 1 and Table 14).

1 The Commission should await the outcome of that inquiry before considering staff's proposal on  
2 such advertising.

3 **C. Issue III.A.3: The Commission Should Not Impose on Incumbent**  
4 **Wireline ETCs Reporting Requirements Necessary Only For Non-**  
5 **Regulated ETCs.**

6 Commission Staff wisely acknowledges that for a number of its proposed reporting  
7 requirements, regulated incumbent ETCs already file comparable information with the  
8 Commission. Staff therefore proposes that in those instances the regulated incumbent ETCs  
9 should be permitted to merely reference such tariffs, reports or filings. *E.g.*, Staff/4,  
10 Marinos/30-31 (references held order reports in lieu of "unfulfilled service requests"; *id.*, at  
11 Marinos/34 (reference trouble reports in lieu of "customer complaint" reports). Some of the non-  
12 regulated carriers object. Their efforts to impose redundant reporting requirements on incumbent  
13 ETCs rest solely on specious "parity" claims. Parity, however, is not mandated nor logical for  
14 carriers that are not similarly situated. In this case, non-regulated competitive ETCs provide the  
15 Commission with little or no information in the ordinary course of running their business, as this  
16 Commission has already recognized:

17 In addition, we conclude that ETCs, particularly wireless carriers, should be  
18 subject to vigorous annual recertification reporting requirements. ILEC  
19 designated as ETCs currently file extensive reports with the Commission as part  
20 of their regulated incumbent status. While we do not require ETCs to file similar  
21 reports, we do require that they file the reports as recommended by Staff, and as  
22 listed in the ordering clauses, by July 15 of each year that they seek  
23 recertification, beginning in 2005

24 *In the Matter of RCC Minnesota, Inc. Application for Designation as an Eligible*  
25 *Telecommunication Carrier, Pursuant to the Telecommunications Act of 1996*, UM 1083, Order  
26 No. 04-355 (June 2004). If the Commission is to nonetheless certify that the competitive ETC  
("CETC") is operating pursuant to the principles of universal service, it must acquire that  
information from the CETC in some fashion. As stated above, however, the Commission  
already has such information from incumbent ETCs and, should follow the FCC's guidance to  
"avoid duplicative or inapplicable reporting requirements" (March 17 Order ¶ 71) on such

1 incumbents. The Commission should reject the attempts of CETCs to impose duplicative and  
2 wholly unnecessary burdens on incumbent wireline ETCs simply based on the mistaken notion  
3 of “parity,” when the carriers are not similarly situated as to the information provided regularly  
4 to the Commission.

5 To the degree that competitive ETCs offer any rationale for their proposal to impose  
6 redundant reporting on incumbent ETCs, it arises from a lack of understanding of the depth of  
7 this Commission’s regulatory oversight of incumbent providers such as Verizon. Specifically,  
8 RCC-USCC’s witness Wood complained that the filings regulated companies make, such as the  
9 Form I, do not “connect the dots” and show how USF is spent for the designated purposes.  
10 RCC-USCC/4, Wood/59. Mr. Wood overlooks, however, the Commission staff’s review of  
11 those filings, and their ability to do so year to year.<sup>6</sup> One of the appropriate uses of USF is the  
12 “maintenance” of existing networks, and this Commission’s staff is well aware of incumbent  
13 providers’ activities in that regard. No party has identified any reason, much less a convincing  
14 rationale, for the Commission to revise the analysis it made in the *RCC Minnesota* decision, and  
15 to impose redundant reporting on incumbent ETCs.

16 **D. Issue III.A.3: The Commission Should Declare Incumbent Wire**  
17 **Line ETCs’ Routine Filings and Reports as Satisfying the**  
18 **Certification Requirements.**

19 Commission Staff has proposed a list of reports and information that would be required  
20 as part of annual certification from all ETCs. Staff/5, Marinos/1-2. Although many of these  
21 proposed reporting requirements are not onerous, they would call for incumbent wireline ETCs  
22 to duplicate reports and other information already provided to the Commission.<sup>7</sup> For all the  
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24 <sup>6</sup> Wood admitted that he has never been involved in the preparation of filings such as Form I,  
25 Form O, or construction budgets. Hearing Transcript, 71:7-25.

26 <sup>7</sup> Thus, while the Commission would be better served by not requiring any 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. *See* Verizon/2, Fulp/6-11.

1 reasons identified above, this is contrary to the policies of the State of Oregon. Moreover, there  
2 is a better way.

3 Simply put, the Commission could in its order in this case declare that compliance with  
4 the Commission's existing reporting and regulatory regime will, on a going forward basis, satisfy  
5 the certification requirements specified under federal law for carriers subject to that regulatory  
6 regime. As is undisputed on this record, incumbent wireline ETC's file monthly reports that will  
7 fully inform the Commission how well those companies are providing universal service. So long  
8 as an incumbent regulated ETC fulfills its existing reporting obligations, the Commission already  
9 has information in its possession to readily certify that the carrier is fulfilling its federal universal  
10 service duties.

11 **E. Issue III.A.4: Should the Same Reporting Requirements Apply  
12 Regardless of the Type of Service?**

13 In answering this question, the Commission should not lose sight of the rationale for  
14 annual recertification. These certifications are proposed so that the Commission can, in turn,  
15 certify to the FCC that Universal Service Funds are being appropriately utilized. However, for  
16 one specific type of USF support – IAS – such certification is already provided. Specifically,  
17 incumbent providers receiving IAS must annually certify to the FCC and the Universal Service  
18 Administrative Company regarding their use of those funds. 47 C.F.R. § 809(a). Indeed,  
19 contrary to the situation with other types of support, state commissions simply have no role in  
20 the certifications necessary for receipt of IAS. *Compare id. with* 47 C.F.R. § 54.313(a)(state  
21 certification required for ETCs receiving support under 47 C.F.R. §§ 54.309 and 54.311); 47  
22 C.F.R. §54.314(a)(state certification necessary for ETCs receiving support under 47 C.F.R. §§  
23 54.301, 54.305, and/or 54.307). Thus, any certification to this Commission regarding carriers  
24 receiving only IAS support is unnecessary and thus inherently duplicative. Verizon respectfully  
25 submits that the Commission should, consistent with the Governor's direction, avoid such  
26 redundancy. Moreover, in making ETC designations and annual certifications, the Commission  
is acting strictly under a federal delegation. *In the Matter of Eligible Telecommunications*

1 *Carriers*, Docket UM 873, Order 05-1049 (2005), at pp. 1-2. The Commission makes no  
2 certification to the FCC regarding IAS, and thus lacks any legal authority to require annual  
3 certifications regarding it.

4 There is an additional reason why the Commission should not burden IAS recipients with  
5 repetitive certification requirements. Plainly put, even though IAS is treated by the FCC as an  
6 element of USF, it is clearly a mere replacement for interstate access charges, which had always  
7 been part of the general revenue of the recipient telephone company: IAS is “an explicit  
8 interstate universal service support mechanism that will provide support to replace \$650 million  
9 of annual implicit support currently collected through interstate access charges.” Access Charge  
10 Reform, Sixth Report and Order, CC Docket Nos. 96-262 and 94-1 (the “CALLS Order”) ¶ 195  
11 (2000) (emphasis added).<sup>8</sup> IAS thus simply has nothing to do with the high cost support that  
12 some other companies receive.

13 **CONCLUSION**

14 As this Commission is well aware, Verizon offers the supported services ubiquitously  
15 throughout its serving territory on demand. The Commission need not obtain additional  
16 information to so certify to the FCC on behalf of Verizon, or other incumbent ETCs. The  
17 Commission should resist attempts to make the certification process more onerous than  
18 necessary.

19 Respectfully submitted this 17th day of April, 2006.

20 STOEL RIVES LLP

21  
22 By: 

23 Timothy J. O'Connell  
24 Attorneys for Verizon Northwest Inc.

25 \_\_\_\_\_  
26 <sup>8</sup> See *In the Matter of Access Charge Reform, etc.*, CC Docket No. 96-262 et al., FCC 03-164,  
Order on Remand, ¶ 13 (2003) (IAS adopts CALLS rate structure).

**CERTIFICATE OF SERVICE  
UM 1217**

I certify that on April 17, 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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DATED: April 17, 2006

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