

**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.)

ORDER

DISPOSITION: APPLICATION FOR RECONSIDERATION DENIED

On June 13, 2006, the Commission issued Order No. 06-292, setting forth requirements for eligible telecommunications carriers (ETCs) to receive federal Universal Service Fund (USF) support pursuant to 47 USC § 214(e). On August 14, 2006, RCC Minnesota and United States Cellular Corporation (Applicants) filed an application for rehearing and reconsideration based on the order’s conclusion that incumbent local exchange carriers (ILECs) “are relieved from having to file annually as part of the recertification process any information regarding how universal service support funds have been or will be used.” Application, 1-2. Applicants assert that this was an error of fact and law, and that good cause exists for the Commission to reexamine this matter.

Applicants argue that the fact in error was the Commission’s conclusion that “ILEC ETCs already submit detailed cost studies to the Commission that support investments made under universal service fund requirements” and that “requiring ILECs to resubmit this information for recertification would be redundant and unnecessary.” Application, 6-7. They also argue that the Commission made an error of law, “in that the Commission ignores the federal legal standard that it must satisfy in order to certify annually that ILEC ETCs have expended and intend to spend universal service support ‘only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.’” Application, 11. To rectify these errors, Applicants request that the Commission require ILEC ETCs to provide “sufficient information for the Commission to determine: 1) how much USF was received in the preceding year, 2) how that support was spent on the supported services, 3) how much USF is expected for the

next year, and 4) how the ILEC anticipates it will use that support on the supported services as required by law.” Application, 10.¹

Verizon Northwest, Inc. (Verizon) argues that the Commission should reject the application because Applicants merely reargue points that they raised in the initial proceeding.² First, Verizon asserts that the application states that the Commission made an error of law, but then does not specify what that error was. Moreover, Verizon supports the Commission’s conclusions of law that ILEC ETCs need not provide build out plans “‘because their USF support is not expressly provided to build out their networks.’” Verizon Response, 4 (citing Order No. 06-292, 16). Second, Verizon counters the application’s claim of an error of fact, asserting that the Commission was correct to avoid redundancy in ILEC filings. Finally, Verizon urges the Commission to ignore Applicants’ restated policy arguments that ILEC ETCs should be subject to additional filing requirements.

The Oregon Telecommunications Association (OTA) also argues that the application for reconsideration is merely a rehash of issues discussed in the proceeding and should be denied. Based on policy arguments it made earlier in this proceeding, OTA refutes Applicants’ assertions and argues that the Commission should deny their application for reconsideration.

In addition, Staff opposes the application for reconsideration, arguing that Applicants merely reiterate their earlier arguments and Applicants point to no actual errors in the decision. Staff begins by asserting the awkwardness of Applicants’ arguments: they do not ask the Commission to reverse its decision to exempt ILEC ETCs from providing build out plans, but request that the Commission require ILEC ETCs to provide “sufficient information” that “in essence amounts to the same type of information that the Commission determined must be contained in the network improvement plans.” Staff response, 2. Staff characterizes Applicant’s assertion of an error of law in this way: “Because the Commission decided to exempt the ILEC ETCs from the requirement to file build out plans, the Commission cannot satisfy the federal mandate that the Commission know whether the ILEC ETCs are properly using their support funds.” Staff response, 4. Staff counters that assertion, pointing to the Commission’s receipt of information from ILEC ETCs that allow it to certify that it has the information required by federal law.

¹ Applicants also request that the Commission take official notice of a report circulated in the Senate Bill 17 task force process, written by Professor Tom Hazlett, and titled “Universal Service Telephone Subsidies, What Does \$7 Billion Buy.” See Application, 9 n 26. The Commission has authority to take official notice pursuant to OAR 860-014-0050(e). OTA objects to Commission notice of the document, arguing it has not been sponsored by a witness in this proceeding and is not subject to cross examination. See OTA Response, 6. The record has long been closed in this docket. Even if the Commission were to take notice of the document, it could not take notice of the truth of its contents, which Applicants attempt to argue in their application. See Application, 9. We decline to take notice of the Hazlett report, or any other late-submitted documents, and do not consider any arguments based on that report.

² The response by Verizon Northwest, Inc. was originally submitted on time by Mr. Gregory Romano. Mr. Romano is not a member of the Oregon State Bar, and the response contained legal arguments. The response was resubmitted on September 28, 2006, by Mr. Timothy O’Connell, a member of the Oregon State Bar. The delay does not prejudice any party nor delay the proceeding; the response is accepted.

Staff, too, reiterates its policy arguments in support of the initial Commission decision and in opposition to the application for reconsideration.

Commission Resolution

We may grant an application for reconsideration for several reasons, including an error of law or fact in the order, or good cause for further examination. *See* OAR 860-014-0095(3)(c), (d). “Any of these grounds, if essential to the Commission’s decision, constitutes sufficient reason to grant reconsideration.” *In re PacifiCorp*, UE 121/UE 127, Order No. 03-187, 3.

The relevant paragraph of Commission conclusions challenged by Applicants states the following:

All carriers should be subject to the same reporting requirements, with the exception that wireline ILECs need not provide a build out plan because their USF support is not expressly provided to build out their networks. As to the other requirements, they should apply to each carrier that receives USF support. To eliminate duplicative filing requirements, wireline ILECs that file reports with the Commission may refer to those in lieu of similar reporting requirements for ETCs.

The paragraph sets out several differences in the filings between ILEC ETCs and CETCs: (1) ILECs need not provide a build out plan, and (2) where ILECs already file a particular piece of information required for ETCs, the ILECs may simply refer to that duplicative filing.

In arguing that the Commission made a factual error, Applicants attempt to conflate the two requirements by arguing that the Commission concluded that it already had information as to how universal service support is used by ILECs, therefore ILECs need not submit build out plans. Staff’s uncontradicted testimony states clearly the ILEC ETC support is not to expand networks in designated areas, but is “based on their costs, or cost proxies, relative to benchmarks determined by the FCC. They are given support based on these costs in order to maintain quality service at affordable rate levels, which is the principal goal of the universal service program. While they are expected to maintain acceptable service and network quality, *they are not expected to use universal service funds to expand their networks.*” Staff/1, Marinos/90 (emphasis added). The Commission made no factual errors in its analysis to not require ILEC ETCs to provide build out plans.

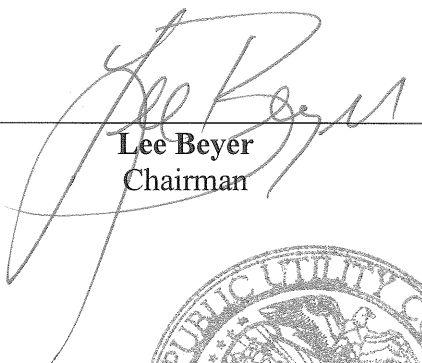
Additionally, the Commission made no legal error in concluding that ILEC ETCs should not be required to provide build out plans. Notably, Applicants do not point to the specific legal error. In our liberal construction of the application for reconsideration, we use Staff's characterization of the legal error argument, that the Commission will not be able to exercise its legal obligations to certify that ILEC ETCs are using support for the purposes for which it was intended. The Commission must be able to certify that ILEC ETCs are eligible to continue receiving USF support. We adopted several reporting requirements for ILEC ETCs that allow the Commission to make that certification. *See* Order No. 06-292, 13-14. The Commission did not make a legal error.

Finally, we find that there is not good cause to reconsider our order and the application for reconsideration should be denied.


ORDER

IT IS ORDERED that the application for reconsideration is denied.


Made, entered, and effective OCT 03 2006 .



Lee Beyer
Chairman



John Savage
Commissioner



Ray Baum
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.