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April 15, 2005

VIA ELECTRONIC MAIL AND U.S. MAIL

Filing Center
Oregon Public Utility Commission
PO Box 2148
Salem, OR 97308-2148

Re: UM 1140 – Rate Center Consolidation

Dear Sir/Madam:

Enclosed for filing are Beaver Creek Cooperative Telephone Company's Response Brief and Certificate of Service.

Sincerely,

/s/ Richard A. Finnigan

RICHARD A. FINNIGAN

RAF/km
Enclosures

cc: Tom Linstrom
Service List

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1140

In the Matter of

BEAVER CREEK COOPERATIVE
TELEPHONE COMPANY

Petition to Consolidate the Beavercreek Rate
Center with the Clackamas Rate Center.

BEAVER CREEK COOPERATIVE
TELEPHONE COMPANY'S RESPONSE BRIEF

This Response Brief is filed by Beaver Creek Cooperative Telephone Company ("BCT") to address certain issues raised in Qwest Corporation's Opening Post-Hearing Brief ("Qwest Brief").

INTRODUCTORY COMMENTS

In many ways, this case is about Qwest trying to force BCT to become something it is not; akin to forcing a round peg into a square hole. This is because Qwest is faced with a whole field of "square hole" competitors. Qwest would like BCT to look and act like other competitive local exchange carriers ("CLECs"). But BCT is not like other competitors. It would be a shame to let Qwest control the look and feel of competition.

BEAVER CREEK COOPERATIVE
TELEPHONE COMPANY'S RESPONSE
BRIEF - 1

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1 One reason that BCT has been a thorn in Qwest's side has nothing to do with BCT being
2 "anti-Qwest." Instead, it has everything to do with the fact that BCT is a cooperative corporation
3 whose mission is to serve the long-term best interests of its members. This member-driven
4 philosophy causes BCT to look and act a little different than other CLECs. By looking at the long-
5 term benefits for members, BCT is able to avoid a short-term focus on immediate return that many
6 CLECs require. An example of this is BCT's behavior over the past couple of years. As testified
7 by Mr. Linstrom, BCT has been building infrastructure in the Oregon City area, not concentrating
8 on sales.¹ Now that that infrastructure is in place, the focus is more toward sales.² This produces a
9 long-term vision. In many ways, this case is about that long-term vision.
10

11 Many of the issues raised in the Qwest Brief were anticipated and addressed by BCT in its
12 Opening Brief. As a result, this Response Brief can be mercifully shorter than it would otherwise
13 be. This Response Brief will point out some of the errors and misstatements made by Qwest in the
14 Qwest Brief. This Response Brief will then conclude with a short summary of the status of the case
15 and the direction in which BCT believes the outcome should point.
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24 ¹ Qwest/9; TR 18, l. 22 – TR 20, l. 11.

25 ² Ibid.

1 RESPONSE TO THE QWEST BRIEF

2 1. General Overview.

3 Qwest has two lines of argument in the Qwest Brief. The first line of argument is that rate
4 center consolidation will cause routing problems and, therefore, compensation issues. The second
5 line of argument is that there is no demonstrable need for rate center consolidation premised upon
6 number conservation. Qwest's argument is that if there is not a demonstrable need for rate center
7 consolidation premised upon member conservation, then rate center consolidation should be denied.
8 In this Response Brief, BCT will respond to these two lines of argument.
9

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11 2. Rate Center Consolidation will not Create any Routing Issues that do not Exist Today.
12 Further, any Compensation Issues can be Readily Addressed.

13 At page 5 of the Qwest Brief, Qwest makes the following statement concerning routing:

14 *** if the rate centers were to be consolidated and Beaver Creek were able to use its
15 503/518 and 503/632 prefixes for both its ILEC and CLEC operations combined, Qwest
16 would not be able to route traffic to Beaver Creek's CLEC operations versus its ILEC
operations over distinct facilities based upon NPA/NXX alone.

17 Here the issue appears to be routing of traffic to BCT, as opposed to routing traffic from BCT to
18 Qwest. Qwest goes on to argue that this routing issue may cause compensation confusion because
19 there are different compensation arrangements for EAS traffic exchanged between ILEC operations
20 and traffic exchanged for competitive purposes.

21 While it is accurate to state that there might be difficulty in determining which trunk group
22 to use if the 503/518 and 503/632 prefixes could be used for both ILEC and CLEC operations, that
23 statement is predicated on a false premise and is further predicated on a false outcome. The false
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1 premise is that separate trunk groups are needed to exchange traffic. The false outcome is that
2 separate trunk groups are needed in order to accurately determine compensation.

3 It has only been recently that separate trunk groups (LIS trunks) have been established for
4 BCT's CLEC operations.³ This is an inefficient and more expensive way of doing business than is
5 needed. It is a method of doing business which increases the costs for both BCT's ILEC and CLEC
6 operations. It is shared efficiencies that benefit a cooperative's members and Qwest is taking away
7 that benefit.
8

9 As the record shows, there are more economic means of tracking traffic for compensation
10 purposes. One of these is an industry standard use of ratios. Qwest admits that it uses ratios for
11 jurisdictionally determining interstate versus intrastate toll traffic.⁴ Interexchange carriers are not
12 required to have two separate trunk groups into Qwest for interexchange traffic, one trunk group for
13 interstate traffic and a separate trunk group for intrastate traffic. It would be economically
14 inefficient to have separate trunk groups.
15

16 Further, the order of magnitude of compensation from interexchange carriers that is handled
17 through this ratio methodology must dwarf anything that would be involved with BCT. If it is
18 economically efficient to use a separate trunk group and use ratios for determining access billing,
19 why is this not appropriate for compensation for local traffic? Why is BCT being forced to bear the
20 uneconomic costs of separate trunk groups? More important, why are BCT's competitive efforts
21 being thwarted by an argument from Qwest premised on separate trunk groups over compensation
22

23 _____
24 ³ Post-hearing Declaration of Nathan Halderman.

25 ⁴ BCT/10; TR 100, l. 5 – TR 101, l. 18.

1 issue that is *di minimis* compared to the compensation issue for access for interexchange traffic?

2 Qwest admits that it also allows CLECs to jurisdictionally mix traffic on a separate trunk
3 group.⁵ This means that a CLEC can have both local traffic and access traffic on one trunk group.
4 CLECs are not required to build two trunk groups.⁶ Instead, compensation is tracked through a
5 percent local usage or PLU ratio. Again, why is BCT being forced to incur the costs of separate
6 trunk groups? If CLECs that operate in Oregon can put jurisdictionally mixed traffic on a single
7 trunk group, it stands to reason that the compensation issues involved are far greater than anything
8 that might be raised by BCT's combination of CLEC and ILEC traffic on a single trunk group. It is
9 just as appropriate to use ratios for this compensation purpose as it is for tracking local versus
10 access traffic from other CLECs.
11

12 A. Qwest Makes Mistaken Arguments Concerning the LERG in Support of its
13 Argument on Routing.

14 At page 17 of the Qwest Brief, Qwest makes the following statement:

15 For example, to properly route traffic to Beaver Creek's ILEC and CLEC operations,
16 respectively, Beaver Creek would need to establish specific routing instructions in the Local
17 Exchange Routing Guide (LERG) that uniquely identifies each of Beaver Creek's operations
18 (i.e., its ILEC and CLEC operations). These routing instructions would allow Qwest (and
19 other carriers) to properly route traffic either to Beaver Creek's ILEC operations or to its
20 CLEC operations, as appropriate.

21 This statement ignores BCT's actual operations. Qwest admitted that if a single company has a
22 single operation with a single switch, the routing instructions to get traffic to that company would

23 ⁵ Ibid.

24 ⁶ Qwest itself does much the same thing on EAS trunks, sending wireless, CLEC and its own traffic on EAS trunks,
25 instead of using separate trunk groups. TR 109, l. 7 – TR 115, l. 6. And, perhaps, FGC trunks. TR 113, l. 20 – TR 114,
l. 10.

1 be identical, whether it is a CLEC or an ILEC.⁷ BCT is operating as a cooperative corporation
2 serving its members. It uses one switch. All traffic goes to that switch whether it is ultimately
3 destined to a CLEC customer or an ILEC customer.⁸ The routing instructions would be no different
4 after rate center consolidation. There is no routing confusion today. There would be no routing
5 confusion under rate center consolidation. As the trunk diagrams attached to BCT's Opening Brief
6 demonstrate, trunking would remain exactly the way it is today.⁹

8 Qwest goes on to state "The fact that the LERG has a field to populate the company type,
9 and Beaver Creek has chosen to represent its carrier information solely as an ILEC, has contributed
10 to the adverse impact of any potential rate center consolidation."¹⁰ This is a misstatement because it
11 carries an erroneous assumption. That assumption is that a single company must have more than
12 one OCN. As Qwest admitted, it knows of no such requirement.¹¹ It is only when separate OCNs
13 are entered is the OCN identified as a CLEC or ILEC operation in the LERG. Since BCT has one
14 OCN, it must make a choice as to how to populate the field. The LERG field does not allow
15 multiple designations. It would be misleading for BCT to say that its OCN is a CLEC operation.
16 The majority of lines that BCT serves today are ILEC lines. Qwest's argument is misleading
17 because Qwest fails to inform the Commission on the mechanism for populating the LERG and
18 implies there can be multiple designations for a single OCN.
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22 ⁷ TR 62, l. 13-18.

23 ⁸ See, trunking diagrams BCT/13 and BCT/14.

24 ⁹ See, BCT's Opening Brief and BCT/13 and BCT/14.

25 ¹⁰ Qwest Brief at p. 17.

26 ¹¹ TR 98, l. 20 – TR 99, l. 15.

1 B. Qwest's Argument Concerning Separate Trunk Groups are Misleading.

2 At pages 18 and 19 of the Qwest Brief, Qwest continues to argue that the use of separate
3 trunk groups should be required, but would become a problem if rate center consolidation is
4 allowed to occur. Qwest agrees that recently trunking has been established between BCT and
5 Qwest for competitive traffic. Apparently, for the seven years that competitive traffic was
6 exchanged prior to establishment of the LIS trunks, it was not a problem. Today, apparently it is.
7 That argument makes no sense.
8

9 Qwest argues that rate center consolidation would confuse compensation issues. Yet, Qwest
10 ignores the very simple proposition that the use of billing ratios would produce. Qwest makes no
11 allegation that BCT would improperly route traffic or would improperly use such a ratio. Indeed,
12 such arguments would ring hollow given the way in which Qwest routes traffic to BCT. If there is
13 any entity with a traffic routing problem, it is Qwest, not BCT.
14

15 Today, Qwest causes its own confusion in the routing of EAS traffic. Qwest takes EAS
16 traffic that originates from CLECs operating in the Portland EAS Metro area and either routes that
17 traffic to BCT over its ILEC EAS trunks, so that it looks like Qwest traffic, or routes it over the LIS
18 trunks, so that it looks like Qwest local traffic. If it is routed over LIS trunks, [check what Nancy
19 Batz stated] is BCT entitled to compensation from Qwest for this traffic? Mindful of the need to
20 separate out UCB 18 issues, only a limited inquiry was allowed in this area. However, it is simply
21 hypocritical for Qwest to argue that there are routing problems given the way that Qwest itself
22 routes traffic.
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1 3. Number Conservation is not a Prerequisite to Rate Center Consolidation.

2 Qwest argues that there must be a demonstrable need for number conservation before rate
3 center consolidation can be considered.¹² In this regard, Qwest makes a number of misstatements.

4 The first of the misstatements is at page 6 of the Qwest Brief. There Qwest states "... to
5 Qwest's knowledge, the FCC has not considered the implementation of rate center consolidation
6 when there has not been a numbering optimization or numbering conservation concern in the first
7 place." This is a misrepresentation of the FCC orders. What is clearly established is that the FCC
8 orders state that rate center consolidation is a matter of state determination, it is not a matter for the
9 FCC.¹³

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11 In fact, the FCC has encouraged rate center consolidation where local calling areas are
12 identical, as they are here.¹⁴ BCT agrees that the FCC has discussed rate center consolidation in the
13 context of number conservation. However, there is no requirement that number conservation be a
14 prerequisite to rate center consolidation. Qwest's witness agreed with this statement, even though
15 Qwest's briefing does not.¹⁵

16
17 At page 7 of the Qwest Brief, Qwest states "Moreover, as stated, rate center consolidation
18 has only been used in number conservation situations." Qwest provides no citation for its
19 statement. In fact, historically, rate center consolidation has been used at times that predate number
20 conservation.

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23 ¹² Qwest Brief at p. 6.

24 ¹³ TR 39, l. 1 – TR 40, l. 24; BCT/6; BCT/8.

25 ¹⁴ BCT/8; TR 44, l. 1-14.

26 ¹⁵ TR 34, l. 6-14.

1 In addition, Qwest goes on to imply that the FCC “permits” rate center consolidation where
2 there are number conservation issues.¹⁶ However, it is clear that there is nothing that the FCC
3 “permits.” Rate center consolidation is a matter of state discretion.

4 Qwest makes a number of other statements along the same lines, such as at page 8, “The
5 FCC has not considered the implementation of rate center consolidation where there has not been a
6 numbering optimization or number conservation concern in the first place.” Of course, the FCC
7 does not consider rate center consolidation; the states do. At page 10, Qwest asserts “Rate center
8 consolidation itself dates back to the FCC’s recognition in the mid-to-late-1990s of the potential
9 exhaust of 10-digit telephone numbers.”¹⁷ As the FCC noted and Qwest’s witness, Mr. Whaley
10 agreed, rate center definition has long been a determination of the incumbent local exchange
11 carriers and is a matter of state discretion.¹⁸ Rate centers have been consolidated in the past without
12 consideration of number conservation. Rate center consolidation accelerated as a result of number
13 conservation, but it is not conditioned upon number conservation.

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16 A. The Long-Term View for Rate Center Consolidation.

17 Qwest argues that there is no need for rate center consolidation because there is no need for
18 number conservation. While not agreeing that number conservation need is required, BCT points
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24 ¹⁶ Qwest Brief at p. 8.

25 ¹⁷ Qwest Brief at p. 10.

26 ¹⁸ TR 42, l. 19 – TR 43, l. 5; TR 39, l. 1-3; BCT/6; BCT/8.

1 out that there is at least a marginal need for number conservation that supports rate center
2 consolidation.¹⁹ BCT's witnesses also pointed out that there are competitive goals that support rate
3 center consolidation.²⁰

4 If the Beavercreek exchange and the Clackamas rate center are combined into a single rate
5 center, then competitive entry into the Beavercreek exchange is lowered. Qwest agrees.²¹ Given
6 how many other actions are taken in the name of competition in the un-quantified trust that there
7 was a benefit to competition, it makes no sense not to acknowledge a benefit to competition in this
8 case.
9

10 Further, as stated at the outset of this Response Brief, BCT is a cooperative corporation that
11 is able to take a longer term view of the world. This means that during its first few years of entry
12 into the Oregon City exchange, BCT concentrated on construction, rather than sales. With the
13 infrastructure now in place, BCT expects the 518 code to be exhausted in short order.²² This is
14 because BCT will now concentrate on sales. In looking at a planning horizon for the Clackamas
15 rate center, BCT believes that rate center consolidation would provide at least a marginal benefit to
16 number conservation.
17

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23 ¹⁹ BCT/1, Linstrom/3, l. 13 – Linstrom/4, l. 13; Qwest/9; TR 13, l. 4-16; TR 18, l. 22 – TR 21, l. 9.

24 ²⁰ BCT/1, Linstrom/4, l. 15 – Linstrom/6, l. 23. See, also, BCT/9 where the FCC recognizes there are competitive
25 issues in number resource conservation goals.

26 ²¹ TR 97, l. 11-14.

²² TR 13, l. 4-16; TR 18, l. 22 – TR 21, l. 9; Qwest/9.

1 CONCLUSION

2 BCT has a goal of advancing its services to the long-range benefit of its members. Rate
3 center consolidation will enhance the accomplishment of that goal. BCT is a cooperative owned by
4 its members who use the services provided by their company. If BCT is not allowed to grow at the
5 least possible cost to its members, then BCT's customers will pay inflated costs for services.
6 Allowing BCT to join the Clackamas rate center and use its network in the most efficient manner as
7 requested will allow BCT to offer the highest level of service to its members.
8

9 Qwest, on the other hand, wants to control the face of competition. It wants BCT to behave
10 exactly as all other CLECs behave. Qwest's expectation ignores BCT's role as a cooperative
11 corporation serving its members. Qwest should not have the authority or ability to control the form
12 of competition it encounters. Rate center consolidation of the Beavercreek and Clackamas rate
13 centers is in the public interest and should be granted.
14

15 Dated this 15th day of April, 2005.

16
17 By: /s/ Richard A. Finnigan
18 RICHARD A. FINNIGAN, OSB# 96535
19 Attorney for Beaver Creek Cooperative
20 Telephone Company
21
22
23
24
25

CERTIFICATE OF SERVICE
UM 1140

I certify that I have this day served the foregoing Beaver Creek Cooperative Telephone Company's Response Brief upon all parties of record in this proceeding by mailing a copy properly addressed with 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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I further certify that I have this day served the foregoing Beaver Creek Cooperative Telephone Company's Response Brief upon the Oregon Public Utility Commission by electronic mail and by mailing a copy properly addressed with first class postage prepaid to the following:

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Dated this 15th day of April, 2005.

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