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April 18, 2005

Frances Nichols Anglin
Oregon Public Utility Commission
550 Capitol St., NE
Suite 215
Salem, OR 97301

Re: UM 1140

Dear Ms. Nichols Anglin:

Pursuant to the schedule as modified by Administrative Law Judge Sam Petrillo on March 14, 2005, enclosed for filing please find an original and (5) copies of Qwest Corporation's Post-Hearing Reply Brief, along with a certificate of service.

If you have any question, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in cursive script that reads "Carla".

Carla M. Butler

CMB:

Enclosure

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1140

In the Matter of Beaver Creek Cooperative
Telephone Company Request to Consolidate the
Beavercreek Rate Center with the Clackamas
Rate Center

QWEST CORPORATION'S POST-
HEARING REPLY BRIEF

Pursuant to the schedule agreed upon by the parties at the January 27, 2005 evidentiary hearing, as modified by Administrative Law Judge Sam Petrillo on March 14, 2005, Qwest Corporation ("Qwest") hereby submits its Post-hearing Reply Brief.

INTRODUCTION AND SUMMARY

Although Beaver Creek attempts to make a case for rate center consolidation of the Clackamas and Beavercreek rate centers, it fails to do so with any convincing argument. The weakness in its case is amply illustrated by the myriad of important numbering resources issues it completely ignores, including the fact that there are *no present numbering resources concerns* in these rate centers, the numbering resources in the 503 and 971 area codes are not estimated to be exhausted until *2011* and *2026*, respectively, there are various number conservation measures that Beaver Creek can employ, *but has not*, Beaver Creek has not needed telephone numbers in the past eight years (and has used only a *small fraction* of its present allotment), and that Beaver Creek has yet to comply with not one, not two, but *three* different FCC numbering resources rules. The rest of its numbering resources arguments are based on speculation, overstatement or wishful thinking.

In addition, despite unsubstantiated and speculative notions of hypothetical "benefits" to competition and number assignment, Beaver Creek fails to show that its requested rate center consolidation would have any appreciable impact on competition or on number assignment issues. Finally, although Beaver Creek attempts to downplay the problems that rate center

consolidation would have on the routing and compensation of Beaver Creek's competitive traffic, it fails to rebut Qwest's evidence that there would be several competitive traffic routing and measurement (or recording) problems if the Commission were to grant Beaver Creek's petition.

In short, this is neither the time nor the place for the Commission to grant Beaver Creek's petition for rate center consolidation of the Clackamas and Beaver Creek exchange rate centers. Accordingly, Qwest respectfully submits the Commission should deny Beaver Creek's request.

ARGUMENT

I. There are no number conservation concerns justifying rate center consolidation

A. Beaver Creek ignores many of the pertinent number conservation facts

Although Beaver Creek speculates that its rate center consolidation request "can benefit" number conservation, the undisputed evidence shows there are no number conservation needs for rate center consolidation at the present time. In fact, Beaver Creek's arguments on the number conservation or numbering resource issues are telling by what Beaver Creek apparently ignores.

For example, Beaver Creek ignores the fact that the FCC has only addressed rate center consolidation in the context of it being one of many numbering resource conservation issues.¹ It further ignores the fact there are currently no number conservation concerns in the affected rate centers. (See e.g., Qwest Opening Brief, pp. 8-10, 10-14.) Beaver Creek further ignores the fact (indeed, it completely fails to mention) that the North American Numbering Plan Administrator (NANPA) has estimated there will not be any exhaust of telephone numbers in the 503 area code until approximately *2011*, and that there will not be any exhaust in the 971 area code until

¹ Although the FCC has stated that rate center consolidation is a matter of state discretion, the FCC sets policy regarding numbering resource conservation issues for the telecommunications industry across the country.

approximately **2026**. (See e.g., Qwest Opening Brief, pp. 10, 11; see also Qwest/2, Whaley/8.)² Nor does Beaver Creek address the fact that this Commission has previously solved any potential number exhaust problem in this geographic area with its 1999 orders in docket UM 924 (Order Nos. 99-105, 99-286 and 99-652) to “overlay” the original 503 area code with the new 971 area code. (See e.g., Qwest Opening Brief, p. 10; see also Qwest/2, Whaley/8.)

Another issue that Beaver Creek ignores is whether rate center consolidation would have any significant impact on number conservation in these two rate centers, or on the lives of the area codes themselves, absent the return of full codes or large quantities of “thousands-blocks” of numbers to NANPA or the Pooling Administrator. The undisputed evidence not only showed that there are no number conservation concerns here, but that even if there were, rate center consolidation would *not* have any significant impact on number conservation without Beaver Creek returning full codes or large quantities of thousands-blocks of number to NANPA or the Pooling Administrator. (See e.g., Qwest Opening Brief, p. 11; see also Qwest/2, Whaley/8-9.)

Beaver Creek also completely ignores the fact that it has needed only a very small number of 503/518 telephone numbers thus far since it became certified as a CLEC almost eight years ago. (See e.g., Qwest’s Opening Brief, pp. 11-12; see also Qwest/4, Batz/3; Qwest/5; Qwest/9; Tr., pp. 13-15, 96.) Further, although Beaver Creek makes very optimistic (and necessarily *speculative*) projections of possible future numbering resource demands (Beaver Creek Brief, p. 6, line 4 (“if Beaver Creek’s projections are accurate”)), it completely ignores the FCC’s rules regarding telephone number utilization rates. Those rules (47 CFR 52.15(h)) provide as follows:

² According to the NANPA website, “NANPA holds overall responsibility for the neutral administration of NANP [North American Numbering Plan] numbering resources, subject to directives from regulatory authorities in the countries that share the NANP.” (See <http://www.nanpa.com>.)

(h) *National utilization threshold.* All applicants for growth numbering resources shall achieve a **60% utilization threshold**, calculated in accordance with paragraph (g)(3)(ii) of this section, for the rate center in which they are requesting growth numbering resources. This 60% utilization threshold shall increase by 5% on June 30, 2002, and annually thereafter until the utilization threshold reaches 75%. (Emphasis added.)

Clearly, Beaver Creek is nowhere near the current 75% telephone number utilization threshold.

Further still, Beaver Creek ignores the fact that it has never engaged in number pooling, and that the record evidence showed there has been very little “contamination” of the “thousands-blocks” that it has used in the 503/518 NPA/NXX (area code). (See e.g., Qwest’s Opening Brief, pp. 12-13; see also Qwest/8; Tr., pp. 15-17.) Beaver Creek also ignores the fact that it could use “sequential number assignment” (in which it would sequentially assign telephone numbers to its customers from a thousands-block, before opening another block), but that it has failed to do so. (See e.g., Qwest Opening Brief, pp. 13-14; see also Qwest/2, Whaley/10; Tr., p. 17.) This is so despite that the FCC’s rules (47 CFR 52.15(j)) require that “all service providers shall assign all available telephone numbers within an opened thousands-block before assigning telephone numbers from an uncontaminated thousands-block, unless the available numbers in the opened thousands-block are not sufficient to meet a specific customer request.” (See e.g., Qwest’s Opening Brief, p. 13, and fn. 8.)

Finally, Beaver Creek ignores the fact that the FCC rules (47 CFR 52.15(g)(3)(B)(iii)) state that a carrier “shall maintain *no more than a six-month inventory* of telephone numbers in each rate center or service area in which it provides telecommunications service.” (Emphasis added.) Clearly, Beaver Creek is not complying with this FCC rule.

Accordingly, the numerous number conservation or numbering resource facts and issues that Beaver Creek ignores are glaring examples that show there are no number conservation concerns here which would justify rate center consolidation. Thus, Qwest respectfully submits that the Commission should deny Beaver Creek’s request for rate center consolidation based on

the lack of number conservation concern basis alone, without even having to consider any other of the concerns that Qwest has raised in response to Beaver Creek's request.

B. Beaver Creek's number conservation arguments are not well taken

In addition, Beaver Creek's number conservation arguments (regarding those issues that it did not ignore) are not well taken, and are easily rebuttable or ultimately not material to the decision here. For example, Qwest does not disagree with any of the general pronouncements that Beaver Creek makes in its first paragraph of this section. (See Beaver Creek Brief, p. 5, lines 9-16.) However, these general pronouncements add nothing to the matters at issue.

Indeed, Qwest acknowledges that the FCC has stated that rate center consolidation is a matter of state discretion (Beaver Creek Brief, pp. 3-5, and fn. 12), and that it is one of various number conservation measures that state commissions can employ (*id.*, p. 5). However, Beaver Creek, the petitioner here with the burden of proof, does not show that this Commission has ever engaged in any rate center consolidation other than a *voluntary* consolidation, such as that of the Oregon City, Milwaukie and Lake Oswego rate centers into the Clackamas rate center five years ago in docket UM 953 (Beaver Creek Brief, p. 2, fn. 2), and then only in the context of number conservation issues. (That docket also addressed three other rate center consolidations.) This Commission certainly has not engaged in any *forced* rate center consolidation, over the objections of one of the affected incumbent carriers, at least to Qwest's knowledge. Of course, petitioner Beaver Creek fails to cite to any such case, in Oregon or elsewhere, in which a Commission forced an objecting carrier to engage in rate center consolidation, *or* to do so in the absence of any number conservation concerns.

In addition, as Beaver Creek notes (Beaver Creek Brief, p. 4), rate centers "are designed to facilitate billing and routing of local calls." Here, however, the evidence shows that consolidation

of these current rate centers does *not* “facilitate billing” (especially given the different inter-company compensation schemes for Beaver Creek’s CLEC and ILEC operations). In fact, the record is clear that consolidation of these rates centers would actually *confound* the billing for this traffic. In other words, since rate centers “are designed to facilitate billing,” and the current state of affairs enables the identification of CLEC and ILEC traffic based on NPA/NXX (whereas under rate center consolidation, it would not), Qwest submits that the Commission keep the status quo.³

Beaver Creek also implicitly acknowledges that its number conservation arguments are based on speculation. First, it acknowledges that “the demand for numbering resources has slackened in recent years,” and that the demand has “taper[ed] off,” due to a variety of factors. (Beaver Creek Brief, p. 5.) Beaver Creek then argues that the proposed rate center consolidation “can” (but *not* “will”) benefit number conservation “[i]f BCT’s projections [based on its “sales efforts”] are accurate.” (Id., pp. 5-6 (emphasis added).)

Beaver Creek then argues that rate center consolidation “will allow companies currently operating in the Clackamas rate center to expand their operations into the *Beavercreek exchange* without obtaining new numbering resources.” (Beaver Creek Brief, pp. 5-6 (emphasis added).) It then goes on to cite to ten CLECs holding codes in the *Clackamas rate center* (id., and fn. 14), but it does so without making any showing that such carriers desire codes in the Beavercreek exchange, or that they plan to compete against Beaver Creek there, or that the Beavercreek exchange is attractive to such competitors. Again, as Qwest has stated, if there ever develops a true *need* for numbering resources in these rate centers in the future, Beaver Creek (or any other carrier, for that matter) would be free to seek consolidation at that time.

³ Beaver Creek also claims that “the rating for EAS calls is bill and keep.” (Beaver Creek Brief, p. 4.) However, although that is true for ILEC-to-ILEC traffic, it is not necessarily true when a CLEC is involved. For example, if there is an EAS call from a Qwest Portland exchange end-user to a Beaver Creek CLEC end-user in

Finally, Beaver Creek concludes its number conservation arguments by twice alleging that rate center consolidation would have “*some* benefit” to number conservation. (Beaver Creek Brief, p. 6 (emphasis added).) It argues in this regard that “there is no requirement in any federal rule that the level of benefit must be quantifiable,” and that “the Commission did not engage in any quantification of benefit when it ordered rate center consolidation in docket UM 953.” (Beaver Creek Brief, p. 6.) However, as stated, the FCC has *only* discussed rate center consolidation as one of various *number conservation* measures (in the context of *numbering resources concerns*, which clearly do not exist here). Moreover, as shown above, there are at least three FCC rules on numbering resources with which Beaver Creek has yet to comply. (See Qwest Opening Brief, pp. 12-14, and fns. 6-9.) Finally, the Commission did not engage in any “quantification” in docket UM 953 precisely because the parties involved *voluntarily agreed* to the consolidation, and it was during a time period (1999-2000) when there were indeed serious number conservation concerns.⁴

Accordingly, Beaver Creek has completely failed to prove that there are any number conservation concerns here, or that rate center consolidation has been (or should be) implemented when there are no number conservation concerns, or when there are valid objections by one of the affected incumbent carriers. The Commission should deny Beaver Creek’s petition in its entirety.

Oregon City, that is not a “bill and keep” call. Compensation for EAS calls between Qwest and other CLECs is not always on a bill and keep basis, as Beaver Creek appears to imply.

⁴ Beaver Creek argues that “[e]ven Qwest admitted that it is not aware of anything that prevents rate center consolidation if there is no benefit to number conservation,” citing to the oral testimony of Qwest witness Don Mason, who is Qwest’s Oregon regulatory director. (See Beaver Creek Brief, p. 6 and fn. 18.) However, as Beaver Creek knows, the purpose of Mr. Mason’s testimony was to introduce other Qwest witnesses, give a brief summary of Qwest’s position, and address a couple of policy issues that Beaver Creek had raised. (See Qwest/1, Mason/2.) Mr. Mason was very clear that Qwest witness Michael Whaley was Qwest’s subject matter expert on telephone numbering issues, and that Mr. Whaley would discuss “Qwest’s reasons why rate center consolidation is not required in this case from a telephone numbering perspective.” (Id.) Perhaps not surprisingly, Beaver Creek’s counsel did not ask Mr. Whaley the question that he asked Mr. Mason. Moreover, as Mr. Whaley testified, he is an expert on these numbering issues, and he is not aware of the FCC ever discussing rate center consolidation in the absence of numbering resource conservation concerns. (See Qwest/2, Whaley/1-3, 5-7; Tr., p. 45.)

II. Rate center consolidation would not have any appreciable impact on competition

Beaver Creek devotes even less energy to its argument that rate center consolidation will somehow (theoretically) “promote competition.” Once again, Beaver Creek simply resorts to its unsubstantiated and speculative argument that rate center consolidation would have “*some* benefit for [sic] competition.” (Beaver Creek Brief, p. 6 (emphasis added).)

In this regard, Beaver Creek implies, without any evidence, that numbering concerns might be a “barrier” to CLECs. It then goes on to argue about “some, at least minimal, level of number porting going on today in the Beavercreek exchange.” (Beaver Creek Brief, p. 7.)⁵ Beaver Creek then *speculates* that as the federal rules on Eligible Telecommunications Carrier (ETC) support from state and federal universal service funds “continue to be clarified,” “it *could be expected* that BCT will face more competition, not less, in the coming years.” (Id. (emphasis added).) It goes without saying that such predictions are merely speculative, and further, that if such predictions were to come true, at a level that actually required reconsideration of this issue, Beaver Creek (or any other carrier) would be free to petition the Commission for such relief at that time.⁶

⁵ In truth, the citation to Exhibit Qwest/6A merely shows an extremely *de minimis* number of requests to port telephone numbers to wireless carriers. All that this data response shows is that a few (very few) Beaver Creek customers have apparently determined to “cut the cord” by replacing their landline Beaver Creek service (and hence their Beaver Creek telephone number) with a wireless carrier’s services.

⁶ Beaver Creek’s statement that “[e]ven Qwest admits that availability of numbering resources reduces the barrier to competition” (Beaver Creek Brief, p. 7 and fn. 20) is more sound than fury. All that Qwest’s witness Nancy Batz testified to, in response to counsel’s direct question whether she believed “more readily available numbering resources” would “encourage competition,” was that “[i]t *could*.” (Tr., p. 97 (emphasis added).) Obviously, as a general proposition, more readily available numbering resources (if there are number conservation concerns or exhaustion issues) *could* have the effect of encouraging competition. However, the same is true about a myriad of other factors, including a strong economy, low interest rates, increased population growth, increased manufacturer infrastructure investment, vigorous entrepreneurial activity, sound legislative, judicial and regulatory policy, sufficient venture capital funding, and a whole host of other factors. There has been no showing, however, that rate center consolidation is needed to encourage or promote competition, or that rate center consolidation will (or is likely to) promote competition. Thus, although number conservation measures in *general* may *theoretically* increase competition *where there are number conservation concerns* (which do not exist here), the evidence was clear that consolidation of the two rate centers would *not* result in any significant, beneficial impact on local competition there. (See Qwest Opening Brief, pp. 14-16; see also Qwest/4, Batz/2; Qwest/9; Qwest/5, Batz/3; Tr., pp. 12-17.)

Accordingly, even if there were number conservation concerns here (which there are not), and even if, despite the lack of number conservation concerns, the Commission were to consider Beaver Creek's general arguments about possible theoretical benefits to competition, it is clear that a consolidation of the two rate centers would *not* have any appreciable benefit to local competition there. The Commission should therefore reject Beaver Creek's petition.

III. Rate center consolidation would also cause number assignment problems

Further still, Beaver Creek fails to make a convincing argument about any "beneficial impact" on number assignment issues if the two rate centers were to be consolidated. Indeed, of the two "beneficial effects" that Beaver Creek touts, one is moot (and not a reason for consolidation in any event) and the other is irrelevant. What is relevant, however, is that consolidation of these two rate centers would cause number assignment problems.

A. Consolidation would lead to inability to distinguish ILEC from CLEC traffic

Preliminarily, and as Qwest mentioned, if the Beaver Creek and Clackamas rate centers were to be consolidated, under current industry practices Beaver Creek would presumably be able to assign its 503/518 CLEC prefix to its ILEC customers and/or its 503/632 ILEC prefix to its CLEC customers. Current telecommunications industry standards operate under the assumption that "from a wireline perspective, CO codes/blocks allocated to a wireline service provider are to be utilized to provide service to a customer's premise physically located in the same rate center that the CO

Moreover, as Qwest noted, it is not apparent from the record evidence that Beaver Creek has any pressing need for additional telephone numbers to serve new customers in the existing Clackamas rate center. (Qwest Opening Brief, p. 15; see also Qwest/4, Batz/3; Qwest/9, Qwest/5; Qwest/8.) It is also not apparent that competitors operating in the Clackamas rate center have any strong interests in competing against Beaver Creek in the Beaver Creek exchange. (Qwest Opening Brief, p. 15; see also Qwest/6; Qwest/6A; Qwest/4, Batz/3-4; Tr., pp. 92-93.) Nor did Beaver Creek deny (or even address) the fact that competitors apparently have not found the prospect of competing against it in the Beaver Creek exchange to be particularly attractive from a competitive standpoint. As Qwest mentioned, this exchange is comprised largely of rural residential homes, including farmland, with little business development, and it has a 100-year-old incumbent carrier and cooperative (Beaver Creek) that prides itself on being a member-owned local company with advanced communications technologies and services. (See e.g., www.bctelco.com.) The Beaver Creek exchange

codes/blocks are assigned.” (Qwest Opening Brief, pp. 16-17; see also Qwest/4, Batz/5.) Thus, this presumed number assignment would eliminate Qwest’s mechanized ability to distinguish between Beaver Creek ILEC traffic and Beaver Creek CLEC traffic for compensation purposes. For these reasons alone, the Commission should be very concerned about Beaver Creek’s attempts to convince it to consolidate the Clackamas and Beaver Creek rate centers.

B. Beaver Creek’s number assignment arguments are irrelevant and/or moot

Further, Beaver Creek cites to “number assignment issues that have occurred growing out of confusion” with respect to the transfer of certain territory from Qwest to Beaver Creek almost eight years ago (the so-called “UA 55 transfer” reflected in Order Nos. 97-297 and 04-225 in docket UA 55). (Beaver Creek Brief, pp. 7-8.) However, “confusion,” “mistaken impressions” or “misassignment” of telephone numbers by *Beaver Creek* are not valid reasons to justify forcing Qwest to engage in rate center consolidation, especially without any number conservation concerns.⁷ More importantly, even if this were a legitimate reason for the consolidation of these two rate centers, the issue is now *moot*, especially because Beaver Creek has claimed that it has “resolved” these numbering assignment mistakes. (See e.g., Beaver Creek/1, Linstrom/1-2.)

The second argument in support of Beaver Creek’s number assignment position is its continued invoking of Qwest’s serving of a few customers in the so-called “UA 55 territory” (as a result of Qwest’s mistake in transferring to Beaver Creek territory that contained a few Qwest customers in 1997). However, as Qwest witness Mr. Mason testified, Qwest has made no decision

also lies almost completely (if not completely) outside the current Portland metropolitan urban growth boundary, thus limiting future growth of high-density development. (Qwest Opening Brief, pp. 15-16; see also Qwest/4, Batz/4.)

⁷ Qwest notes that throughout the proceedings in reopened docket UA 55, Beaver Creek strenuously (and successfully) argued that Qwest’s mistake about transferring territory with current customers to Beaver Creek was not an excuse for the Commission to grant the relief that Qwest had requested. Now, however, Beaver Creek argues that the Commission should order *Qwest* to engage in rate center consolidation because *Beaver Creek* itself made number assignment mistakes in the past as a result of that very same transfer of territory almost eight years ago.

on whether to continue serving these few customers after April 2007. (Qwest/1, Mason/6-7.)⁸ In addition, there are many factors that can (and will) change in the remaining two years (which is a long time in the telecommunications world), and thus Qwest will make a decision on this issue at the appropriate time. (Qwest/1, Mason/6-7.)⁹ Moreover, Beaver Creek's arguments are the epitome of speculation, as it speculates about what it believes Qwest will do in two years (when Qwest can no longer continue to serve the few affected customers under its current regulatory status, and thus must thereafter serve them, *if at all*, as a CLEC). Indeed, Beaver Creek resorts to trying to force Qwest to prove a negative. (See Beaver Creek Brief, p. 8, lines 10-11 (arguing that "there is certainly *no* indication that [Qwest] will *not* continue to serve those customers") (emphasis added).)

C. The discussion on the *Vonage* decision is irrelevant and diversionary

Finally, Beaver Creek goes on to "comment" on the 2004 FCC decision in the *Vonage* Voice over Internet Protocol (VoIP) proceeding. However, although perhaps making for interesting reading about a decision that has nothing to do with the issues here, and while full of speculation about what the *Vonage* decision might mean generally for the telecommunications industry, this discussion simply adds nothing to the issues in this docket.¹⁰ Indeed, Beaver Creek's "comments" on the *Vonage* decision are replete with qualifiers and irrelevant speculation that serve no purpose but to cloud the issues with irrelevant and diversionary

⁸ Accordingly, Beaver Creek's attempt to prove a negative (that Qwest has not made plans to abandon these customers) deserves no weight. (See Beaver Creek Brief, p. 8 and fn. 25.) If anything, this only goes to show that Qwest has not made any decisions about these few customers. (See Qwest/1, Mason/6-7; Tr., p. 33.)

⁹ As Ms. Batz testified, these customers are treated and accounted for as ILEC customers of Qwest. More importantly, the Commission is well aware of how Qwest serves these particular customers, and has permitted Qwest to continue serving those customers under similar terms as before until April 2007. (Tr., pp. 104-105.)

¹⁰ Beaver Creek's discussion on the *Vonage* decision is not based on any evidence (but rather, it merely consists of selected musing about certain unrelated legal issues). This discussion is also not timely. After all, the *Vonage* order was issued in the first part of November 2004, before the filing of prefiled testimony and before the evidentiary hearing in this docket.

arguments.¹¹ Clearly, the impact of the FCC's decision in the *Vonage* proceeding may well have many implications for the telecommunications industry in general, and for this Commission with respect to the regulation (or non-regulation) of VoIP services (not at issue here). However, the FCC *Vonage* order is certainly not a decision for this Commission to address in the context of a docket involving only two carriers, and two particular rate centers, and a request to consolidate those two rate centers. The Commission should simply disregard these comments about *Vonage*.

IV. The burden of consolidation deals with the routing and compensation of traffic

Beaver Creek apparently focuses primarily on the actual costs of *implementing* rate center consolidation in its arguments about the burden of rate center consolidation. However, the real issue here is with respect to the costs *resulting from* rate center consolidation, and not necessarily the costs to “implement” such consolidation itself. Thus, the first two paragraphs of Beaver Creek's “burden” argument (Beaver Creek Brief, p. 10) essentially miss the mark. The real issues here are what Beaver Creek calls the “sub-issues;” that is, the impact that rate center consolidation would have on (1) the *routing* of competitive traffic between Beaver Creek and Qwest and (2) the *measurement* (and hence, *rating* or *compensation*) of such competitive traffic.

A. Rate center consolidation would cause competitive traffic routing problems

As Qwest mentioned in its opening brief, apart from the lack of any number conservation concerns, and lack of any significant benefit on competition if the Commission were to consolidate the two rate centers, rate center consolidation would also cause adverse impacts on the proper

¹¹ For example, Beaver Creek talks about (1) a “*potential bearing*” on this proceeding, (2) the lack of “clear guidance on the substantive issues,” (3) the FCC's “interesting comments,” (4) what the FCC “*seems to be saying*,” (5) that “[*if* this continues to be the trend,” “*it may well be*” that Beaver Creek and Qwest need not be concerned about these number assignment issues, (6) that state commissions “should be thinking” an number conservation issues allegedly raised by *Vonage*, and (7) that “*it may well be* that an explosion of VoIP providers [will] produce a similar run on numbering resources.” (See Beaver Creek Brief, pp. 8-10 (emphasis added).)

routing of traffic on the telecommunications network. These traffic routing problems are sufficient reasons in and of themselves for the Commission to deny Beaver Creek's request.

For example, as Qwest's technical witness Philip Linse showed, to properly route traffic to Beaver Creek's ILEC and CLEC operations, respectively, Beaver Creek would need to establish specific *routing instructions* in the Local Exchange Routing Guide (LERG) that would uniquely identify each of Beaver Creek operations (i.e., its ILEC operations and its CLEC operations). These routing instructions would allow Qwest (and other carriers) to properly route traffic either to Beaver Creek's ILEC operations or to its CLEC operations, as appropriate. (Beaver Creek Brief, pp. 17-18; see also Qwest/3, Linse/3-4.) However, the fact that Beaver Creek has apparently chosen to represent its carrier information *solely* as an "ILEC," despite that it is also operates as a CLEC, is what has contributed to the adverse impacts of any potential rate center consolidation. (See Qwest Opening Brief, p. 17; see also Tr., pp. 84-85; Qwest/7).¹²

Qwest also showed Beaver Creek would need to establish *separate trunking* to properly record and *route* traffic to the trunking of Beaver Creek's ILEC operations or its CLEC operations. Separate trunking allows Qwest to appropriately route traffic to the trunking of Beaver Creek's ILEC operations or its CLEC operations. However, because Beaver Creek would have the ability to assign telephone numbers from both the 503/632 (ILEC) NPA/NXX code and the 503/518 (CLEC) NPA/NXX code end-users of either its ILEC or CLEC operations, consolidating the two rate centers would eliminate this distinction between Beaver Creek's ILEC operations and its CLEC operations for routing purposes, and would therefore prevent Qwest from

¹² As Qwest showed, both the 503/632 and 503/518 NPA/NXXs in the LERG show that they are assigned to "Beaver Creek," and Beaver Creek is identified only as an "ILEC," which clearly is not accurate with respect to its 503/518 NPA/NXX. (Tr., pp. 84-85.) Specifically, Telcordia's Business Integrated Routing/Rating Database System (BIRRDs) User Manual provides (at p. 63) that for purposes of populating data in Telcordia's LERG, carriers are required to populate the database NXX record (called an NXD) in "field 22" ("Company Type") *for each NXX*. Beaver Creek identifies itself as an ILEC (category 1), instead of as an ILEC (for 503/632) and as a CLEC (category 7) (for 503/518). (See Qwest Opening Brief, pp. 17-18, and fns. 14 and 15.)

appropriately routing and recording traffic on the separate trunking established for Beaver Creek's ILEC and CLEC operations. (Qwest Opening Brief, p. 18; see also Qwest/3, Linse/3-5; Tr., pp. 76-83.)¹³

Beaver Creek apparently seems to make much of the fact that it operates both as an ILEC in the Beaver Creek exchange, and as a CLEC in the Oregon City exchange, using the "same switch." (Beaver Creek Brief, pp. 10-11.) However, the issue is not where the switch is located, or whether it will or "will not move;" this is simply a diversionary argument.¹⁴ Again, the issue is that the LERG information does not reveal whether the traffic at issue is coming to or from Beaver Creek's ILEC operations or to or from Beaver Creek's CLEC operations.¹⁵

In addition, the issue is not whether there is a technical "violation" of the requirements of the LERG.¹⁶ Rather, the real issue here is that there would be no distinguishable characteristic that would identify the traffic exchanged with Beaver Creek as either CLEC or ILEC traffic.¹⁷

¹³ Although Beaver Creek has finally agreed to have these separate trunk groups installed, there is still no assurance that Beaver Creek will actually *send traffic* on these trunk groups. (In other words, there is no guarantee that Beaver Creek will actually use the trunk groups for their intended purposes.) (See e.g., Tr., pp. 83-84, 102-109.) In fact, the recent evidence, occurring at about the same time as the January 27th hearing, bears this concern out. (See Tr., pp. 49-52, 83-84, 107-109.)

¹⁴ Beaver Creek also makes certain arguments about callers getting their traffic to Beaver Creek today and what would happen if the rate centers are consolidated. (Beaver Creek Brief, p. 10, line 17, p. 11, line 4, and fn. 35.) However, it offers no citation to anything in the record to support these statements.

¹⁵ Beaver Creek also overstates Qwest's hearing testimony. For example, it argues that "Ms. Batz *clarified* that there is no requirement to have a separate OCN for competitive purposes." (Beaver Creek Brief, p. 14 and fn. 40.) However, even a casual reading of the transcript makes clear that all that Ms. Batz said (three times) was that she was "not aware of any requirement" (although she also testified that all other companies that have both ILEC and CLEC operations use separate OCNs, and that other carriers rely on OCN information for interconnection and compensation purposes). (See Tr., p. 98, line 20 – p. 99, line 15, and Qwest/4, Batz/8.) Beaver Creek also did not establish that Ms. Batz was Qwest's subject matter expert on this subject, or that she was speaking on behalf of Qwest on this subject.

¹⁶ To be clear, contrary to Beaver Creek's assertion (Beaver Creek Brief, p. 11), Mr. Linse did not say that Beaver Creek was in "violation of the LERG." Rather, he merely testified that Beaver Creek was not appropriately identifying its CLEC operations in order to properly route its CLEC traffic. (See Qwest/3, Linse/3-4.)

Beaver Creek also argues, without citing to any record evidence, that "[w]hile the LERG will show that if an incumbent has a separate affiliate that is a CLEC, the LERG will identify the affiliate as a CLEC." (Beaver Creek Brief, p. 11.) Neither the citations for the previous sentence nor for the subsequent sentence support this statement.

B. Rate center consolidation would cause traffic compensation problems

1. Qwest showed the effects of consolidation on compensation issues

Finally, as Qwest showed, rate center consolidation would also cause compensation problems regarding the parties' exchange of Beaver Creek's competitive traffic. As with routing, Beaver Creek would need to establish separate trunking to allow Qwest to appropriately *record* Beaver Creek CLEC traffic for reciprocal compensation purposes. Otherwise, Qwest would have a technical problem *identifying, recording and segregating* the appropriate traffic if the rate centers were consolidated and Beaver Creek were allowed to combine its CLEC and ILEC traffic on the same trunks. (See Qwest Opening Brief, pp. 18-19; see also Qwest/3, Linse/4, 6; Tr., pp. 76-93.)¹⁸ If the Commission were to approve rate center consolidation, only Beaver Creek would have the information necessary to determine whether any given call was associated with its ILEC or with its

Finally, Beaver Creek attempts to justify how it identifies itself in the LERG (*solely* as an ILEC, through the use of only a *single OCN*) by simply arguing that it must do so because *that is how it chooses to identify itself*. In other words, it essentially makes the circular argument that because it has chosen to use only a single OCN for both its ILEC and CLEC operations in the LERG, it can only identify itself either as an ILEC *or* as a CLEC. This argument, however, ignores the fact that it can (and should) use separate OCNs for these two different types of operations, like other companies do. Finally, the fact that Beaver Creek uses "the same switch" (for both ILEC and CLEC operations) is irrelevant; the OCN pertains to the "operating company name," not the number, location, or use of a switch.

¹⁷ Qwest also does not agree entirely with the diagram that Beaver Creek submitted on March 23, 2005 and that the Administrative Law Judge admitted as Exhibits Beaver Creek/13 and Beaver Creek/14 on April 8, 2005. Although Beaver Creek's counsel correctly indicated that Qwest reviewed the diagrams and suggested certain changes, and that Qwest did not provide further comment after March 22nd, the fact of the matter is that Qwest's counsel was not available after March 18, 2005 until March 31, 2005 due to being out of the office on personal matters, and thus there were no discussions "earlier this week." In any event, the point here is that although Qwest did not object to the diagrams being admitted as exhibits, Qwest does not agree that they are completely accurate.

For example, Qwest does not agree that the "LIS-EAS" trunk appropriately represents the trunking and the associated traffic that should be routed across those trunking facilities. EAS (Extended Area Service) is not an arrangement that Qwest typically establishes with CLECs, as is represented by Beaver Creek's "LIS-EAS" trunking depiction. EAS is, however, an arrangement that Qwest may typically establish with Independent Companies (i.e., ILECs) for non-competitive traffic that is routed between Qwest and ILEC companies. Beaver Creek creates confusion with its representation in its diagram by blurring the distinction between its ILEC and CLEC operations, just as it has created confusion with its representation solely as an ILEC in the LERG.

¹⁸ Although Beaver Creek has argued that "a trunk is a trunk" (Beaver Creek/1, Linstrom/12-13; Beaver Creek/4, Warner/2), Qwest would have to engage in *manual processes*, or develop or revise its existing systems, just for Beaver Creek, and thus Qwest would end up doing for Beaver Creek what it does not do for any other CLEC. (Qwest/4, Batz/8-9; Tr., pp. 105-106, 103.) Clearly, this single-company solution would be both

CLEC operations. Since Qwest has a bill and keep compensation arrangement with Beaver Creek's ILEC operations, and a reciprocal compensation arrangement with its CLEC operations, Qwest would have no way of knowing which traffic would be ILEC (bill and keep) traffic and which traffic would be CLEC (reciprocal compensation) traffic. (Qwest Opening Brief, p. 19; Qwest/3, Linse/6.)

2. Beaver Creek's four points do not undermine Qwest's position

Beaver Creek makes much ado about the alleged "undermining of Qwest's position." (Beaver Creek Brief, p. 12.) None of these four points withstand scrutiny, however.

First, Beaver Creek argues that it has delivered both competitive and incumbent traffic over the same trunk group to Qwest since approximately 1997. This is true, but it is precisely because Beaver Creek has used (or at least was supposed to use) different NPA/NXXs to distinguish between its ILEC (503-632) and CLEC (503-518) traffic.¹⁹

Second, Beaver Creek implies that Qwest improperly required separate (LIS, or Local Interconnection Services) trunks, which were finally installed in November 2004. (Beaver Creek Brief, p. 12.) However, the issue regarding separate trunks is not only an issue about Qwest's ability to properly route and measure the traffic, but it is also one of interconnection agreement compliance.²⁰ Moreover, although Beaver Creek has finally agreed to have these trunk groups

impractical and discriminatory against other carriers that have both ILEC and CLEC operations, and there is simply no basis for it.

¹⁹ Moreover, Qwest does not agree with Beaver Creek's argument (Brief, p. 12, lines 12-13) that "Qwest has not found this to be a problem to date." First, Beaver Creek ignores that Qwest attempted *for years* to require Beaver Creek to establish separate trunk groups, and to enter into an interconnection agreement, for its competitive traffic, and that Beaver Creek refused to do so for years. In fact, this intransigence required Qwest to file a petition for arbitration under section 252 (docket ARB 365), which Beaver Creek strenuously opposed, and only later did Beaver Creek enter into an interconnection agreement. Thereafter, Qwest continually urged Beaver Creek to establish separate trunk groups, which Beaver Creek did only very recently. (See e.g., Tr., pp. 83-84, 107-109, and fn. 21, below.)

²⁰ For example, section 7.1 of the parties' interconnection agreement provides that "Interconnection" (or what is termed "LIS") is provided for the purposes of connecting end offices/tandems for the exchange of Local/EAS, intraLATA toll or jointly-provided switched access traffic. Thus, the need for separate trunks to exchange traffic with

installed, given its years of resistance to installing them, that it already has EAS trunks with Qwest, and that Qwest did not see any Beaver Creek traffic on the trunks in the first 2½ months after they were installed (Tr., pp. 107-109, 83-84), there is still no assurance that Beaver Creek will actually *send traffic* on these trunk groups. (In other words, there is no guarantee that Beaver Creek will actually use the trunk groups for their intended purposes.) In fact, the recent evidence, occurring at about the same time as the January 27th hearing, bears this concern out. (See Tr., pp. 49-52, 83-84, 107-109.)²¹

Third, Beaver Creek again cites to a Colorado proceeding (which Qwest recently lost, incidentally) to argue that Qwest’s position here has somehow been “undermined.” However, as Qwest witness Mr. Mason testified, Colorado is a different state from Oregon, and has a different set of rules and laws to operate under. As Mr. Mason further testified, Colorado law does not clearly define ILEC territories, and thus Qwest’s Colorado application to revise its exchange maps to serve an area within another ILEC’s territory was simply an extension of Qwest’s service territory in Colorado. (See Qwest/1, Mason/5.) Oregon law, however, clearly defines the franchise areas of an ILEC, and requires that any extension by an ILEC to serve customers outside of the areas defined in those maps must be done by a certified CLEC entity. See ORS 759.005(2)(c); OAR 860-032-0010. (See also Qwest/1, Mason/6.)²² Moreover, as Qwest notes,

Beaver Creek’s CLEC operations is required in order to be in compliance with the terms of the agreement. The Commission should therefore disregard Beaver Creek’s unsupported statement (Beaver Creek Brief, p. 12, lines 16 and 17) that “use of these extra trunk groups simply impose[s] more costs on BCT for its competitive operations.”

²¹ Further still, Qwest’s most recent CroSS7 reports (February 2005) reveal that there was Qwest traffic sent to Beaver Creek on these LIS trunks, *but no traffic coming from Beaver Creek*. Although this information is admittedly not in the record (because of the date of the hearing), Qwest does not believe Beaver Creek would dispute this fact.

²² At the January 27th hearing, Beaver Creek’s counsel strayed far beyond the focus of Mr. Mason’s limited testimony on the Colorado matter (which was an issue that Beaver Creek itself raised in the first place). Thus, counsel asked numerous cross-examination questions beyond the scope of Mr. Mason’s testimony, including questions about federal law, trunking requirements and the docket UA 55 customers. (Tr., pp. 27-34.) Nevertheless, the fact remains that Oregon law regarding the definitions of an “ILEC” and of “ILEC territory” are different from Colorado law. (Id.)

both the Commission and the courts have resolved this issue in Oregon. See e.g., Order No. 00-299 in docket UM 177, and subsequent decisions by the Marion County Circuit Court and the Oregon Court of Appeal. (See also Qwest/1, Mason/6.)

Fourth, Beaver Creek argues (but without any cost support) that there are “relatively *inexpensive ways* for Qwest to determine that there is a separation of CLEC and ILEC traffic.” (Beaver Creek Brief, p. 13 (emphasis added).) Beaver Creek does not provide any evidentiary support for this statement, however, but instead attempts to put the burden on *Qwest* to show that these costs are *not* “simple and inexpensive.” (Id., p. 14.)

Moreover, the discussion about whether “ratios” are “common” in the telecommunications industry (Beaver Creek Brief, pp. 13-14) is ultimately irrelevant, especially because Qwest does not dispute there are certain ratios that are commonly used in the industry. However, those ratios, such as PIUs (Percent Interexchange Usage) and PLUs (Percent Local Usage), are not only commonly-accepted measurements in the industry, but they are reflected in tariffs, interconnection agreements and Qwest’s SGAT, and are used for thousands of IXCs and CLECs. What Beaver Creek is proposing, however, is not reflected in tariffs, agreements or the SGAT (nor in its own interconnection agreement with Qwest), and there are no national standards for the segregation of ILEC traffic from CLEC traffic on a common trunk group (and it would be required to be used for only one company). (See e.g., Qwest/4, Batz/9; Tr., pp. 105-106.)

Thus, the real question here is whether Qwest, an ILEC that has interconnection relationships with hundreds of CLECs (and IXCs), and that has entered into thousands of interconnection agreements with CLECs in 14 states, should be forced into a single-company solution just for Beaver Creek. As Qwest’s witness Ms. Batz testified, Qwest would have to engage in *manual processes*, or develop or revise its existing systems, just for Beaver Creek, and thus Qwest would up end up doing for Beaver Creek what it does not do for any other CLEC.

(Qwest Opening Brief, p. 19, and fn. 17; see also Qwest/4, Batz/8-9; Tr., pp. 105-106, 103.) This single-company solution would be both impractical and discriminatory against other carriers (including some cooperatives) that have both ILEC and CLEC operations (and likely not be inexpensive), and thus there is simply no basis for it. (See Qwest/4, Batz/9; Tr., pp. 89-90.) Clearly, Qwest should not be required to engage in costly and discriminatory “one-off” solutions for Beaver Creek’s sake simply because Beaver Creek wants special treatment, or because a certain process or procedure might be possible.

The same holds true with respect to Beaver Creek’s arguments (Beaver Creek Brief, p. 14, lines 8-11) about “measuring devices” and “databases.” (see e.g., Tr., pp. 89-90.) It is *Beaver Creek’s burden* to prove that these are, in fact, “simple and inexpensive solutions,” and that these solutions are practical, generally accepted in the industry, and non-discriminatory. It is not Qwest’s burden to prove a negative (i.e., that these solutions are *not* “simple or inexpensive”), or to know, at the time of hearing and in response to Beaver Creek’s attorney’s cross-examination, the actual or specific (or “quantifiable”) costs of such “solutions.”²³

Finally, Beaver Creek simply could not be more wrong in its allegation that “Qwest is trying to force competition into one mode that suits its preference.” (Beaver Creek Brief, p. 15.) To the contrary, Qwest does not care how Beaver Creek “competes” against Qwest. Qwest’s only concern has been to treat Beaver Creek’s CLEC operations on the same terms and conditions that it treats any other CLEC’s operations, as Qwest is required to do under both state and federal law (including sections 251 and 252). Qwest’s regulatory positions relative to Beaver Creek’s operations are the same positions it takes relative to other CLECs. (Qwest/1, Mason/4-5; Tr.,

²³ Nevertheless, given the IT (information technology) costs involved, such solutions are not likely to be inexpensive. (See e.g., Tr., p. 90, lines 3-9.) For the same reasons, the fact that Qwest uses “databases” for other things (such as for 800 traffic, or the “MSA” or “LMB” or “CMVS” databases) is irrelevant to the issues here.

p. 103.)²⁴ Rather, it is Beaver Creek that is requesting this Commission to do for it what the Commission has not done for any other carrier in the state (i.e., discriminate in favor of Beaver Creek). The Commission should decline this request.

CONCLUSION

For all the reasons, the Commission should deny Beaver Creek's petition for rate center consolidation, especially since there are no number conservation concerns, and any consolidation would cause number assignment, routing and compensation problems. If a numbering exhaustion jeopardy situation or other significant numbering resource conservation concern arises, and if the number assignment, routing and compensation problems could be resolved, Beaver Creek could thereafter file a new petition at that time.

DATED: April 18, 2005.

Respectfully submitted,



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²⁴ Thus, the Commission should ignore Beaver Creek's continual name-calling and unsupported opinions that Qwest's "real motivation" is to oppose competition from Beaver Creek, or Qwest has an "anti-competition motive," or "Qwest wants to fight competition" or Qwest engages in "anti-competitive behavior" and wants to "hamper" competitive choice. (See e.g., Beaver Creek Brief, p. 3, lines 2-3; p. 3, line 11; p. 3, lines 14-15; p. 13, line 12; p. 17, line 2.)

CERTIFICATE OF SERVICE

UM 1140

I hereby certify that on the 18th day of April, 2005, I served the foregoing **QWEST CORPORATION'S POST-HEARING REPLY BRIEF** in the above entitled docket on the following persons via U.S. Mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

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