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March 7, 2007

VIA ELECTRONIC FILING

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

Re: Docket No. ARB 789

Attached for filing is Beaver Creek Cooperative Telephone Company's Response to Petition for Arbitration.

A copy of this filing has been served on all parties to this proceeding as indicated on the attached certificate of service.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa F. Rackner".

Lisa F. Rackner

cc: Service List

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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

ARB 789

In the Matter of the Petition of CLEAR
CREEK MUTUAL TELEPHONE COMPANY
for Arbitration of an Interconnection
Agreement with BEAVER CREEK
COPPERATIVE TELEPHONE COMPANY,
Pursuant to 47 U.S.C. §§ 251, 252

**BEAVER CREEK COOPERATIVE
TELEPHONE COMPANY'S RESPONSE TO
PETITION FOR ARBITRATION**

Pursuant to Section 252 of the Telecommunications Act of 1996 ("the Act"),¹ and OAR 860-016-0030(3), Beaver Creek Cooperative Telephone Company ("BCT") hereby responds to the petition for arbitration of an interconnection agreement filed by Clear Creek Mutual Telephone Company ("CCMT") on February 8, 2007. BCT respectfully requests that the Public Utility Commission of Oregon (the "Commission") resolve each of the issues identified below by ordering BCT and CCMT (collectively, the "Parties") to incorporate BCT's proposed language into an Interconnection Agreement ("ICA" or "Agreement") to be executed by the Parties. Attached as Exhibit A to this response is a version of the ICA submitted by CCMT showing BCT's proposed revisions.

INTRODUCTION

BCT is a small rural cooperative telephone company, certified by the Commission as a competitive provider outside of its service territory, throughout the State of Oregon. *In re Application of Beaver Creek Cooperative Telephone Co.*, CP 1242, Order 06-155 (OPUC Apr. 3, 2006). BCT is a competitive local exchange carrier ("CLEC") within the meaning of the Act.

BCT has built out a broadband-based network to approximately 50 homes located in the Redland exchange in CCMT's service territory and is offering advanced services to

¹ The Act is codified at 47 USC § 251 et seq.

1 these customers. As a full facilities-based provider, BCT has no plans to purchase
2 unbundled network elements, finished services for resale, or collocation from CCMT.
3 Currently, BCT interconnects to CCMT's network indirectly, via a third-party transit service.
4 CCMT's proposed ICA is largely acceptable to BCT. However, points of dispute
5 stem from CCMT's failure to recognize BCT's right as a small carrier to interconnect on
6 terms and conditions that are economically efficient and proportionate to the scale of BCT's
7 operations in CCMT's territory. For example, CCMT seeks to require BCT to directly
8 interconnect by building out local interconnection trunks between the Parties' networks.
9 While the traffic between the parties may at some point in the future justify the costs of such
10 direct trunking, BCT does not anticipate that being the case for some time to come.

11 Additionally, CCMT proposes several contractual terms that are inconsistent with the
12 costs imposed by BCT's interconnection, given the fact that BCT's current and future service
13 to customers within CCMT's service territory is entirely facilities-based. For example, the
14 nonrecurring charges imposed by the Agreement should reflect the fact that CCMT will incur
15 only minimal administrative costs when BCT connects and disconnects customers in the
16 Redland exchange.

17 Finally, CCMT has proposed general terms and conditions that are one-sided,
18 seeking to protect only CCMT. This Commission should reject such unbalanced terms and
19 instead adopt provisions that protect both Parties in an evenhanded manner by, for
20 example, indemnifying each Party against loss caused by the other Party's breach of the
21 ICA, and providing clarifications to help avoid future disputes between the Parties.

22 In sum, BCT is willing to compromise its negotiating positions, and to accept CCMT's
23 proposed contract as the base Agreement between the Parties. However, the specific
24 changes, described in this response, and in the attached proposed agreement, are essential
25 in order to produce an interconnection agreement that is: (a) consistent with the
26 requirements of 47 USC §§ 251 and 252; (b) reflective of the relationship between the

1 Parties and of the services BCT is providing; and (c) flexible enough to accommodate the
2 needs of the Parties presently and as they grow.

3 **BCT's POSITION ON ISSUES IDENTIFIED IN CCMT's PETITON**

4 **1. Issue Nos. 1-3 and 11—Indirect Interconnection**

5 BCT's Statement of the Issue: Does the Act require BCT to
6 interconnect directly to CCMT's network or does it allow BCT
7 to interconnect indirectly to CCMT's network through a third
8 party carrier?

8 CCMT's Statements of the Issue:

9 BCT wishes to expand the scope of interconnection addressed
10 by the agreement by redefining the term "Point of
11 Interconnection." Petitioner disagrees. Pet. at 4 (Issue 1).

12 BCT proposes to change the definition of "Point of
13 Termination" to suggest that a Point of Interconnection is
14 optional. Petitioner disagrees. Petitioner requires direct
15 interconnection with an inherent Point of Interconnection. Pet.
16 at 4 (Issue 2).

17 BCT attempts to redefine the term "Transit Service." Petitioner
18 disagrees as BCT's new definition is inconsistent with
19 references to Transit Service throughout the agreement.
20 Pet. at 4 (Issue 3).

21 BCT does not believe that direct trunking or a physical point of
22 interconnection is warranted or required and wants language
23 regarding interconnection to refer only to future requests for
24 connection. Petitioner disagrees. Pet. at 5 (Issue 11).

25 CCMT's statement of Issues 1 through 3 and 11 all stem from a single objection—
26 CCMT objects to BCT's proposal to interconnect indirectly with CCMT's network through a
27 third party transit service. It appears from CCMT's description of these issues that CCMT
28 believes that the Act requires CLECs to interconnect their networks directly to the ILECs'
29 networks, thus requiring direct trunking between CCMT's and BCT's networks. CCMT is
30 incorrect.

31 ILEC-CLEC arrangements such as the one at issue here are pursuant to ICAs
32 established, enforced and interpreted under the Act and the federal and state rules related

1 to the Act. CCMT's objection to indirect interconnection ignores the plain language of the
2 Act, which provides that CCMT has the duty "to interconnect directly *or indirectly* with the
3 facilities and equipment of other telecommunications carriers." 47 USC § 251(a)(1)
4 (emphasis added). Interconnection is "indirect" when the attachment occurs through the
5 facilities or equipment of a third party carrier or carriers. *In re Deployment of Wireline*
6 *Services*, Order on Reconsideration and Further Notice of Proposed Rulemaking, CC
7 Docket 98-147, 15 FCCR 17806, 17845 n.198, 2000 WL 1128623 (FCC Aug. 10, 2000).
8 The Federal Communications Commission ("FCC") has recognized that indirect
9 interconnection through a transit service is "a form of interconnection explicitly recognized
10 and supported by the Act." *In Re Developing a Unified Intercarrier Compensation Regime*,
11 CC Docket 01-92, Further Notice of Proposed Rulemaking, 20 FCCR 4685 ¶ 125, 2005 WL
12 495087 (FCC Mar. 03, 2005); *see also Atlas Telephone Co. v. Oklahoma Corp. Comm'n*,
13 400 F.3d 1256, 1268 (10th Cir. 2005) (wireless telecommunications service provider was not
14 required to establish direct physical connection within ILEC's network for exchange of local
15 traffic; provider could insist that ILEC deliver local calls to it through interexchange carrier
16 switch).²

17 Indeed, the FCC recognizes that the Act's provision for indirect interconnection
18 allows many CLECs and rural LECs to compete when they otherwise could not, stating that
19 "it appears that indirect interconnection via a transit service provider is an efficient way to
20 interconnect when carriers do not exchange significant amounts of traffic." *In Re*
21 *Developing a Unified Intercarrier Compensation Regime*, 20 FCCR 4685 ¶¶ 125-26. By

22 _____
23 ² BCT is not aware of any Commission orders addressing indirect interconnection.
24 However, the Commission has rejected an incumbent LEC's argument that a competitive
25 LEC's access to the incumbent's unbundled network elements, under section 252(a)(1), is
26 dependent upon physical interconnection with the incumbent's network. *In re Petition of*
Metro One Telecommunications for Enforcement of an Interconnection Agreement, IC 1,
Order 00-213 at 5-6 (OPUC Apr. 20, 2000) ("while many requesting carriers seek
interconnection when requesting network elements, nothing in the Act requires both").

1 allowing indirect interconnection via a third party transiting service, the Act lowers barriers to
2 entry thereby allowing small carriers to provide competitive service to small numbers of
3 customers. *Id.*

4 This is precisely the case here. Without indirect interconnection through a third party
5 transiting service BCT could not justify the costs of constructing direct trunking to serve the
6 approximately 50 customers that it wishes to offer service to in CCMT's service territory.

7 Recognizing the express duty on the incumbent LEC to interconnect directly or
8 *indirectly*, 47 USC § 251(a)(1), BCT has revised the proposed ICA to provide for indirect
9 interconnection. See Ex. A (Redlined ICA) attach. 1.

10 **2. Issue No. 4—Credit Policy**

11 BCT's Statement of the Issue: Should the security deposit
12 provisions apply to both Parties to the ICA, and should they
13 contain limits consistent with industry practice and other
Commission-approved ICAs?

14 CCMT's Statement of the Issue: BCT wishes to modify
15 Petitioner's credit policy. Petitioner disagrees. Pet. at 4 (Issue
4).

16 CCMT proposes a one-sided credit policy that would apparently presumptively
17 require BCT to provide a security deposit to CCMT until BCT had established a satisfactory
18 24-months payment history. Additionally, CCMT's credit policy would allow CCMT to
19 increase the amount of the security deposit in CCMT's sole discretion. BCT proposes
20 specific modifications to the credit policy language proposed by CCMT in order to produce a
21 more fair and evenhanded approach.

22 In order to evaluate the terms proposed by CCMT, it is helpful to use the Qwest
23 Statement of Generally Acceptable Terms ("SGAT") as a point of reference. The SGAT was
24 drafted by Qwest in order to comply with the strict requirements of Section 272 of the Act. It
25 was subjected to thorough review by all interested members of the industry, and ultimately
26 extensively litigated, both at the Commission and in the Courts. Each one of its terms has

1 been the subject of intense scrutiny, many of them specifically ordered by the Commission.
2 Accordingly, all of its terms are presumptively consistent with the requirements of the Act.
3 *Re Qwest Corporation*, Docket UM 823, Final Recommendation Report, 2002 WL 31103656
4 (OPUC Aug. 19, 2002); *Re Qwest Corporation*, Docket UM 823, Order 00-243 (OPUC May
5 5, 2000) (establishing procedures for series of workshops on SGAT); *Re Qwest Corporation*,
6 Docket UM 823, Order 00-180 (OPUC Apr. 3, 2000) (same).

7 In particular, Qwest's SGAT provides a sound credit policy that protects both Parties
8 against credit risks while also providing clear limits on the amount either Party may require
9 the other to provide as a security deposit. See, e.g., Qwest SGAT in the State of Oregon ¶¶
10 5.4.2, 5.4.5, 5.4.7 (18th rev. Nov. 24, 2004) ("Qwest SGAT").³ Consistent with the model

11 ³ In pertinent part, the Qwest SGAT provides as follows:

12 "The Billing Party may require a deposit (or additional
13 deposit) from the billed Party, pursuant to this section [if the
14 Billed Party fails to make full payment for the services provided
under this Agreement less any disputed amounts within thirty
days following the payment due date]." *Id.* ¶ 5.4.2.

15 Each Party will determine the other Party's credit status
16 based on previous payment history or credit reports such as
17 Dun and Bradstreet. If a Party has not established satisfactory
18 credit with the other Party according to the above provisions or
19 the Party is repeatedly delinquent in making its payments, or
20 the Party is being reconnected after a disconnection of service
or discontinuance of the processing of orders by the Billing
21 Party due to a previous nonpayment situation, the Billing Party
22 may require a deposit to be held as security for the payment of
23 charges before the orders from the billed Party will be
24 provisioned and completed or before reconnection of service.
25 "Repeatedly delinquent" means any payment received thirty
26 (30) calendar Days or more after the payment Due Date, three
(3) or more times during a twelve (12) month period. The
deposit may not exceed the estimated total monthly charges
for an average two (2) month period within the 1st three (3)
months for all services. The deposit may be a surety bond if
allowed by the applicable Commission regulations, a letter of
credit with terms and conditions acceptable to the Billing Party,
or some other form of mutually acceptable security such as a
cash deposit. Required deposits are due and payable within
thirty (30) calendar Days after demand." *Id.* ¶ 5.4.5.

(continued...)

1 provided by the Qwest SGAT, BCT proposes the following clarifications and revisions to the
2 credit policy proposed by CCMT:

- 3 1. The credit policy should apply to both Parties to the Agreement. *See id.*
4 2. The credit policy should state clearly that a security deposit is required only if
5 the other party has not established that it has satisfactory credit, either
6 through the provision of a satisfactory credit report or payment history. *See*
7 *id.* ¶¶ 5.4.2, 5.4.5.
8 3. A satisfactory payment history is established by a party having made all
9 payments within the most recent 12-month period within 30 days of each
10 payment due date. *See id.* ¶¶ 5.4.2 (security deposit may be required if billed
11 party failed to make full payment for services less any disputed amount within
12 30 calendar days following payment due date), 5.4.5 (defining “repeatedly
13 delinquent” as payment received thirty (30) calendar days or more after
14 payment due date three or more times during twelve month period).
15 4. Neither party may increase the security deposit amount “in its sole judgment.”
16 Rather, the billing party may increase the amount of the security deposit it
17 requires the billed party to provide in the following circumstances only: (a) if
18 the billed party failed to make full payment for services less any disputed
19 amount within 30 calendar days following the payment due date; (b) if the
20 billed party’s credit status as reported on a credit report becomes

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“The Billing Party may review the other Party’s credit standing and modify the amount of deposit required but in no event will the maximum amount exceed the amount stated in 5.4.5.” *Id.* ¶ 5.4.7.

- 1 unsatisfactory;⁴ or (c) if the billed party must be reconnected after
2 disconnection for non-payment. See Qwest SGAT ¶ 5.4.5.
- 3 5. Clarify that in no event may the amount of the security deposit required by the
4 billing party exceed one-sixth the estimated average annual charges.⁵ See
5 Qwest SGAT ¶ 5.4.7.
- 6 6. Clarify that the deposit may be a surety bond, a letter of credit with terms and
7 conditions acceptable to the billing party, or some other form of mutually
8 acceptable security such as a cash deposit. See *id.* ¶ 5.4.5.

9 The above revisions are reflected in Exhibit A paragraphs 4.2 and 4.5.

10 **3. Issue No. 5—Notice Before Termination**

11 BCT's Statement of the Issue: Can CCMT engage in self-help
12 by terminating service to BCT customers that CCMT suspects
13 are undertaking illegal activities without first providing notice
14 and an opportunity for dispute resolution?

14 CCMT's Statement of the Issue: BCT requests 10 days notice
15 on disconnects for service used for any unlawful purpose.
16 Petitioner is willing to provide concurrent notice. Pet. at 5
17 (Issue 5).

16 CCMT's proposal gives it the right to terminate service to any BCT customer that
17 CCMT has "reasonable grounds to believe" will use that service in violation of the law
18 without any prior notice to BCT. Accordingly, CCMT's provision would allow CCMT to
19 terminate service to any BCT customer, unilaterally, without any attempt to contact BCT to
20 investigate or amicably resolve the situation.

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22 ⁴ CCMT's proposed ICA provides that CCMT may increase the security deposit
23 amount if there is a significant probability of a bankruptcy filing by BCT. Pet. Ex. C ¶ 4.7.
24 BCT believes its proposed modification encompasses CCMT's concern regarding
25 bankruptcy, while also allowing the deposit to be increased if the billed party's credit status
26 becomes unsatisfactory whether or not bankruptcy is imminent.

25 ⁵ CCMT's proposed ICA provides that the "deposit may not exceed one-sixth the
26 estimated annual billing." Pet. Ex. C ¶ 4.2. BCT agrees with this proposed language and
 seeks only to clarify that in no event may the required deposit exceed this amount.

1 In contrast, BCT proposes that CCMT provide BCT with 10 days notice prior to any
2 termination of service. Such notice would allow the Parties to: (1) explore the
3 reasonableness of the grounds for believing the customer will use the service in violation of
4 the law; (2) initiate dispute resolution proceedings if a party disagrees about whether such
5 reasonable grounds exist; and (3) if possible, address the issue without resorting to
6 termination of service.

7 Similarly, CCMT's draft ICA includes a provision that would allow CCMT to
8 unilaterally terminate service if a law enforcement agency advises CCMT that service is
9 being used in violation of the law. Pet. Ex. C ¶ 6.5. BCT agrees that CCMT may
10 discontinue service if any law enforcement agency advises CCMT that the service is being
11 used in violation of the law; however, BCT proposes that such law enforcement advice must
12 be in writing, that CCMT must provide BCT with a copy of such written notice, and that BCT
13 must be provided a reasonable opportunity to investigate and respond prior to termination of
14 service. While BCT understands CCMT's need to respond to the concerns of law
15 enforcement agencies, BCT's counter proposal allows for responsiveness to law
16 enforcement concerns while also facilitating timely but amicable dispute resolution and
17 providing an opportunity to avoid unnecessary interruptions in service.

18 BCT's proposal is consistent with the Qwest SGAT, which provides for notice, a
19 dispute resolution process, and, where appropriate, maintenance of the status quo pending
20 resolution of disputes. See, e.g., SGAT ¶ 9.23.3.7.2.9 ("Any disputes regarding whether an
21 EEL meets the local use requirements shall be handled pursuant to the dispute resolution
22 provisions of this SGAT. While a dispute is pending resolution, the status quo will be
23 maintained and the EEL will not be converted to special access or private line rates[.]").

24 BCT's proposals are reflected in Exhibit A paragraph 6.4.

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1 **4. Issue Nos. 6 & 7—Non-Recurring Charges**

2 BCT's Statement of the Issue: What charges are appropriate
3 for an entirely facilities-based carrier such as BCT?

4 CCMT's Statements of the Issue:

5 BCT wants to charge Petitioner for the coordinated transfer of
6 service activities scheduled outside of the specified hours in
7 accordance with BCT's tariff. Petitioner disagrees. Pet. at 5
8 (Issue 6).

9 BCT does not want to have to pay nonrecurring charges as set
10 forth in Petitioner's tariff if an end user terminates service with
11 BCT and restores service with Petitioner. Petitioner disagrees.
12 Pet. at 5 (Issue 7).

13 Both CCMT Issues 6 and 7 relate to non-recurring charges appropriate for
14 connection and disconnection of customers. CCMT proposes to charge BCT nonrecurring
15 charges equal to those it would charge any CLEC using unbundled network elements to
16 serve its customers. Typically, such charges contemplate that the ILEC will undertake to
17 physically connect or disconnect jumper cables at the main and/or intermediate distribution
18 frame or switch. In this case however, BCT has built out its own facilities to the customers'
19 homes and, as a result, the only physical activity required for a connection or disconnection
20 is performed by BCT itself when it connects and disconnects its customers' inside wiring to
21 the network interface device ("NID"). Thus CCMT's costs associated with nonrecurring
22 activities for BCT will be for the administrative required when the company loses a customer.
23 For these reasons, BCT asks the Commission to adopt terms commensurate to the modest
24 activities CCMT will be required to engage in on BCT's behalf, and to require CCMT to
25 provide estimates of the costs it will actually incur associated with these minimal
26 nonrecurring activities.

Specifically, with respect to Issue 6, BCT agrees with CCMT that the cost of
providing the coordinated transfer of services outside specified business hours is an
appropriate nonrecurring charge for CLECs providing services via unbundled network

1 elements. However, because BCT will be performing all of its own connections at the NID
2 when it turns up and terminates service for a customer, time-sensitive coordinated transfers
3 will not be necessary and BCT should not be charged for them.

4 Similarly, with respect to Issue 7, BCT agrees that it should be responsible for the
5 costs that CCMT actually incurs when BCT terminates service to a customer. However, in
6 this case, CCMT will not be undertaking any physical activities associated with BCT's
7 termination of customers. Therefore, the only costs CCMT will incur with respect to BCT's
8 termination (or connection) of service would be the administrative costs associated with the
9 bookkeeping changes reflecting the change in customer's status.

10 Given the facts above, in addition to adopting the language proposed by BCT, BCT
11 asks the Commission to order CCMT to calculate the actual costs it will incur when BCT
12 connects and terminates customers and to include those costs as nonrecurring charges to
13 be assessed when BCT connects and terminates customers on its facilities-based service.
14 Pending review of CCMT's costs, BCT reserves the right to comment on CCMT's pricing
15 proposal and propose alternative pricing language.

16 BCT's proposals, which recognize that CCMT's connection and disconnection costs
17 will be limited to minimal administrative expenses, are reflected in Exhibit A Section 7.

18 **5. Issue No. 8—Service Announcement**

19 CCMT's Statement of the Issue: BCT wishes a service
20 announcement be provided and invoiced by the Party formerly
21 providing service to the End User. Petitioner agrees, but
wishes to clarify the proposed language. Pet. at 5 (Issue 8).

22 BCT accepts the language regarding termination of service announcements
23 proposed by CCMT.

24 **6. Issue No. 9—Insurance**

25 BCT's Statement of the Issue: Should the insurance
26 requirements apply to both Parties to the ICA, and should they
contain limits consistent with the scope of the Agreement?

1 CCMT's Statement of the Issue: BCT has rejected Petitioner's
2 insurance requirements, while failing to make any alternative
 proposal. Petitioner awaits a proposal. Pet. at 5 (Issue 9).

3 CCMT proposes insurance requirements that would require BCT only (not CCMT) to
4 obtain insurance and that sets the coverage amounts for certain types of insurance at levels
5 disproportionately high compared to the size of the Parties and the nature of their
6 relationship. For these reasons, BCT proposes specific modifications in order to render the
7 insurance provisions more evenhanded and fair. Specifically, BCT proposes the following
8 revisions to the insurance requirements proposed by CCMT:

- 9 1. Both Parties shall at all times carry and maintain the insurance coverage
10 identified in CCMT's draft agreement (commercial general liability, business
11 automobile liability insurance, workers compensation and employer's liability
12 insurance, excess liability insurance, and property insurance). See, e.g.,
13 Qwest SGAT ¶ 5.6 (each party shall carry workers' compensation insurance,
14 commercial general liability insurance naming the other party as an additional
15 insured, business automobile liability insurance, umbrella/excess liability
16 insurance, and property coverage).
- 17 2. Clarify that the property insurance coverage will be on a full replacement cost
18 basis. See *id.* (property coverage shall be "all risk" property coverage on a
19 full replacement cost basis).
- 20 3. Delete the statement that the property policy "will provide that the insurance
21 company will waive all rights of recovery by way of subrogation against Clear
22 Creek in connection with any damage covered by the policy." It is
23 unreasonable to require the policy to determine fault before the event that
24 causes the property damage occurs.
- 25 4. Decrease the business automobile and excess liability insurance minimum
26 limits to reflect the size of the Parties to, and scope of, the ICA. Specifically,

1 decrease the business automobile liability insurance minimum limit from two
2 million to one million dollars (combined single limit for each occurrence for
3 bodily injury, including death, and property damage), and decrease the
4 excess liability insurance minimum limit from ten million to three million
5 dollars.

6 BCT's proposals are reflected in Exhibit A paragraphs 14.1.1-14.1.5.

7 **7. Issue No. 10—Indemnification**

8 BCT's Statement of the Issue: Should CCMT indemnify BCT
9 against losses attributable to CCMT?

10 CCMT's Statement of the Issue: BCT wants Petitioner to
11 indemnify and defend BCT and hold BCT harmless from and
12 against any and all loss alleged to have been incurred by end
13 user of Petitioner or any other third party to the extent such
14 loss arises from or is attributable to Petitioner's [sic].
15 Petitioner disagrees as Petitioner's end users will not be
16 affected by any interconnection. Pet. at 5 (Issue 10).

17 CCMT proposes that BCT indemnify CCMT against certain losses while not
18 providing any reciprocal indemnity for BCT. Pet. Ex. C ¶¶ 18.4 and 19.4. A reasonable
19 agreement that is consistent with industry practice and Commission-approved ICAs should
20 also include corresponding provisions providing for CCMT's indemnification of BCT. See,
21 e.g., Qwest SGAT ¶¶ 5.9.1.1 (providing for indemnification by both parties of other party
22 against losses attributable to indemnifying party's breach of or failure to perform under
23 SGAT), 5.9.1.2 (providing for indemnification by both parties of other party against losses by
24 customer of either party arising out of or in connection with services provided to customer by
25 indemnifying party unless loss was caused by willful misconduct of indemnified party and
26 excluding claims for physical bodily injury or death, or for loss, damage to, or destruction of
27 tangible property, alleged to have resulted directly from negligence or intentional conduct of
28 indemnified party).

29 BCT's proposals are reflected in Exhibit A paragraph 18.5 and Section 19 Indemnity.

1 **8. Issue No. 12—Reciprocal Compensation**

2 BCT's Statement of the Issue: Is bill and keep appropriate
3 when there is no reason to believe traffic will not be in
balance?

4 CCMT's Statement of the Issue: BCT proposes bill and keep
5 be used as compensation for the transport and termination of
interchanged traffic. Petitioner wants all local interconnection
6 traffic, regardless of the destination or type of traffic, or the
protocols used in connection with such traffic, to be terminated
7 to a party subject to that party's local interconnection service
charge if local traffic is destined for a customer in Petitioner's
8 serving area and for all other traffic routed to Petitioner to be
billed at Petitioner's tarried access charges. Pet. at 5-6 (Issue
9 12).

10 CCMT argues for per-minute reciprocal compensation. Pet. at 5-6. However, where,
11 as here, there is no reason to believe that traffic will not be in balance and a small number of
12 customers will not justify the tracking costs associated with per-minute reciprocal
13 compensation, the appropriate form of reciprocal compensation is "bill and keep."⁶

14 The Act requires that each telecommunications carrier "establish reciprocal
15 compensation arrangements for the transport and termination of telecommunications." 47
16 USC § 251(b)(5). This does not mean, however, that the Parties must track and bill for all
17 traffic. See 47 CFR § 51.711; see also *In re Beaver Creek Cooperative Telephone*
18 *Company's Petition for Arbitration*, ARB 747, Order 06-637, 2006 WL 3616451, n.4 (OPUC
19 Nov. 20, 2006) (ILEC-CLEC exchanges are pursuant to ICAs established, enforced and
20 interpreted under the Act and federal and state rules related to the Act). Rather, a state

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22 ⁶ "Bill and keep" refers to an arrangement in which neither of two interconnecting
23 networks charges the other for terminating traffic that originates on the other network.
24 Instead, each network recovers from its own end-users the cost of both originating traffic
25 that it delivers to the other network and terminating traffic that it receives from the other
26 network. Bill and keep does not preclude intercarrier charges for transport of traffic between
carriers' networks. *In re Implementation of Local Competition Provisions*, CC Docket No. 96-
98, Order on Remand and Report and Order, 16 FCCR 9151, 9153 n.6 (Apr. 27, 2001),
remanded sub nom, WorldCom Inc. v. FCC, 288 F3d 429 (DC Cir 2002).

1 commission may presume that the traffic to and from each network is roughly balanced and
2 is expected to remain so. 47 CFR § 51.711. Thus, a state commission may choose to
3 require bill and keep unless a party rebuts the presumption that the traffic is roughly in
4 balance. *Id.*; see also *In re Beaver Creek Cooperative Telephone Company's Petition for*
5 *Arbitration*, ARB 747, Order 06-637, 2006 WL 3616451 at *12 (“[t]he plain language of the
6 federal rules permits but does not require state commissions to order bill-and-keep as the
7 presumptively used form of reciprocal compensation.”); see also *In re Implementation of*
8 *Local Competition Provisions*, 16 FCCR at 9181 ¶¶ 66-67 (considering merits of adopting bill
9 and keep as uniform intercarrier compensation mechanism applicable to all traffic
10 exchanged among telecommunications carriers).

11 BCT's bill and keep proposal is reflected in Exhibit A, attachment 1 section 4 and
12 attachment 4 section 1.

13 **9. Issue No. 13—To Be Determined**

14 BCT's Statement of the Issue: [to be determined]

15 CCMT's Statement of the Issue: BCT does not want to pay
16 Petitioner reciprocal compensation, resale charges,
17 supplemental purchase order number charges, miscellaneous
18 charges or charges for traffic where the calling party number
19 or automatic number identification is not provided. BCT has
20 removed all pricing excluding ICB language from the proposed
21 agreement. Petitioner disagrees. Pet. at 6 (Issue 13); *id.*, Ex.
22 C, Attach. 4 ¶ 1.2, 2.1, 3.1, 4.1.

23 BCT does not understand the issue as described in Petitioner's application. BCT
24 therefore requests that Petitioner clarify its statement of this issue, after which BCT requests
25 leave to respond.

26 **ADDITIONAL ISSUES**

27 **10. Issue No. 14—Force Majeure**

28 BCT's Statement of the Issue: Should the *force majeure*
29 clause be clarified to provide that: (1) a Party is only excused
30 from performance by delays caused by service or equipment

1 vendors to the extent that the delay is beyond the Party's
2 control and not due to the Party's fault or negligence, and (2)
3 in the event of labor difficulties such as a strike, the Parties
4 agree to provide service to each other at a level equivalent to
5 the level they provide themselves?

6 CCMT's proposed ICA contains a *force majeure* clause that includes provisions that
7 could be interpreted to excuse the Parties from performance or obligation under the ICA for
8 acts caused by the Parties or within the control of the Parties. To avoid this result, which is
9 unreasonable and inconsistent with the purpose of *force majeure* clauses generally,⁷ BCT
10 proposes the following points of clarification:

11 1. A Party is only excused from performance by delays caused by service or
12 equipment vendors to the extent that the delay is beyond the Party's control
13 and not due to the Party's fault or negligence. See Qwest SGAT ¶ 5.7.1
14 (providing same).

15 2. In the event of labor difficulties such as a strike, the Parties agree to provide
16 service to each other at a level equivalent to the level they provide
17 themselves. See *id.* ¶ 5.7.1 (providing same).

18 BCT's proposed changes to the *force majeure* clause are reflected in Exhibit A
19 section 10.

20 **11. Issue No. 15—Term of Agreement**

21 BCT's Statement of the Issue: Considering the level
22 investment in negotiating and arbitrating the ICA, is two years
23 a reasonable term?

24 BCT proposes that the term of the ICA be two years, as opposed to one year. A two-
25 year term is reasonable in light of the significant investment of time and resources
26

27 ⁷ See Rest. (Second) of Contracts § 261 (1981) (listing cases addressing *force*
28 *majeure* clauses, which relieve parties of obligations under contract for causes beyond the
29 parties' control); 30 Williston on Contracts § 77:6 (4th ed. 2006) (*force majeure* provision is
30 not intended to buffer party against normal risks of contract).

1 necessary to negotiate and arbitrate this ICA. This is especially true here, where BCT is
2 providing facilities-based services to a small number of customers. Unlike CCMT's
3 proposed one-year term, a two-year term encourages the kind of investment that BCT is
4 making in the Redland exchange center by allowing BCT to recover its costs despite its
5 small customer base. See Qwest SGAT ¶ 5.2.1 (three-year term).

6 BCT's proposed change to the term of the agreement is reflected in Exhibit A at
7 paragraph 13.1.

8 **12. Issue No. 16—Disclaimer of Warranties**

9 BCT's Statement of the Issue: Is it reasonable for CCMT to
10 disclaim any warranty that BCT's performance under the
11 agreement will not give rise to claims related to intellectual
12 property rights?

12 CCMT included a provision in its proposed ICA that disclaims any warranty that
13 BCT's use of CCMT's facilities, arrangements, or services under the ICA will not give rise to
14 third party claims of infringement of an intellectual property right or rights. Pet. Ex. C ¶ 20.1.
15 Such a disclaimer of intellectual property warranties is not reasonable. See Qwest SGAT
16 5.10.2 (indemnification related to intellectual property claims). Accordingly, BCT has
17 removed the intellectual property warranty disclaimer from Exhibit A.

18 **13. Issue No. 17—Limitation of Liability**

19 BCT's Statement of the Issue: Should the ICA limit either
20 Party's liability to the other Party for willful or intentional
21 misconduct or damage to property caused solely by one
22 Party's negligence?

22 To protect the Parties' interests, and consistent with standard industry practices,
23 BCT proposes to clarify the limitation of liability as follows:

24 1. Clarify that the agreement does not limit either Party's liability to the other for
25 willful or intentional misconduct or damage to tangible real or personal
26

1 property proximately caused solely by such Party's negligence. See Qwest
2 SGAT ¶ 5.8.4 (providing same).

3 2. Clarify that nothing contained in the limitation of liability is intended to limit
4 either Party's obligations of indemnification as specified in the ICA Agreement
5 or obligations to make payments under the ICA. See *id.* ¶ 5.8.5 (providing
6 same).

7 BCT's proposed clarifications are reflected in Exhibit A at paragraph 18.4.

8 **14. Issue No. 18—Assignment**

9 BCT's Statement of the Issue: May either Party withhold
10 unreasonably its consent to assignment or delegation of the
ICA?

11 BCT has inserted language in the assignment clause to clarify that neither Party may
12 withhold unreasonably its consent to assignment or delegation of the ICA. See Ex. A ¶ 21.1.
13 This provision protects the reasonable commercial interests of both Parties.

14 **15. Issue No. 19—Separate Trunking**

15 BCT's Statement of the Issue: May BCT combine various
16 types of non-toll traffic on the same interconnection trunk
groups when it is economically efficient to do so?

17 CCMT's proposal would require BCT to establish separate trunk groups between the
18 Parties for local interconnection, EAS, E911, connections to wireless carriers, and operator
19 services. As described above, these requirements are unlikely to become an issue between
20 the Parties because BCT is currently interconnected only indirectly with CCMT, and does
21 not contemplate that situation changing during this contract term. However, in the event
22 BCT does establish a direct connection with CCMT, CCMT's proposal would unnecessarily
23 impose significant costs on BCT. Instead, BCT should be allowed to combine local, EAS,
24 E911, operator services, and connections to wireless carriers all on one trunk.

25 BCT's proposed language on this issue is shown on Exhibit A at paragraph 1.3.

26

1 **16. Issue No. 20—Miscellaneous Edits**

2 To improve the clarity of the ICA, BCT proposes the following editorial changes:

- 3 1. Clarifying that the definition of “Point of Interconnection” means the physical
4 location or locations at which the Parties’ networks meet for the purpose of
5 exchanging traffic of any kind, not just local traffic. See Ex. A ¶ 2.1.43.
- 6 2. Revising the language of the definition of “Transit Service” for the sole
7 purpose of making it clearer. See *id.* ¶ 2.1.55.
- 8 3. Replacing the term “carrier” with “the Parties” or the appropriate Party (either
9 CCMT or BCT), depending on the provision at issue. BCT proposes this
10 revision to provide clarity as the term “carrier” is not defined and is sometimes
11 used to designate CCMT, sometimes BCT, and sometimes when both Parties
12 should be designated. See, *id.* ¶¶ 2.1.53, 7.5.
- 13 4. To avoid confusion regarding when deposits are due, BCT removed the
14 language regarding deposits from section 3 of the ICA, which addresses the
15 documentation necessary for CCMT to establish a master account for BCT,
16 and inserted language regarding when deposits are due in Section 4
17 Deposits and Advanced Payments. BCT’s proposed language states
18 “Required deposits are due and payable within thirty (30) calendar days after
19 demand.” See Ex. A ¶ 4.9; see also Qwest SGAT ¶ 5.4.5 (providing same).
- 20 5. Inserting language to clarify that transfer of service announcements will be
21 provided if requested by the customer. Ex. A ¶ 7.8.
- 22 6. Although CCMT’s proposed draft states that, “[i]n the event of a dispute
23 between the Parties, the Parties shall follow the dispute resolution
24 procedures set forth in Section 9,” Pet. Ex. C ¶ 5.5, certain references in
25 other sections of the ICA to specific disputes and procedures applicable
26 thereto could create confusion regarding the applicability of the Section 9

1 dispute resolution procedures. To avoid such confusion, BCT has inserted
2 language to clarify that the dispute resolution procedures apply to the
3 following types of disputes:

- 4 a. Disputes regarding whether service is being used for an unlawful
5 purpose. See Ex. A ¶¶ 6.4.
- 6 b. Disputes regarding whether service will jeopardize the reliability or
7 efficiency of CCMT's network or interfere with or prevent other
8 persons from using their service, or otherwise impair the quality of
9 service to other carriers or to End Users. *Id.* ¶ 6.6.
- 10 c. Disputes regarding whether BCT has authority to act on behalf of the
11 End User or other carrier. *Id.* ¶ 7.7.
- 12 d. Disputes regarding a breach or alleged breach of the ICA. *Id.* ¶ 25.1.

13 For the types of disputes identified in a-c above, BCT has also inserted
14 language clarifying that while the dispute is pending the status quo shall be
15 maintained.

- 16 7. Inserting language in the dispute resolution policy to clarify that the aggrieved
17 Party shall provide written notice to the other Party of any claimed default or
18 dispute. Ex. A ¶ 9.2. This clarification is consistent with CCMT's proposed
19 requirement that the Party's must first "discuss" any claimed default or dispute
20 before proceeding to mediation. See Pet. Ex. C ¶ 9.2.
- 21 8. BCT clarified that the limitation of rights to third parties applies equally to
22 CCMT and BCT. Ex. A ¶ 27.1.

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1 **17. Issue No. 21—Requests for Clarification**

2 BCT has deleted the following provisions from CCMT's proposed ICA because the
3 provisions do not make sense to BCT. Until CCMT clarifies the meaning of these provisions
4 and their applicability to this Agreement, BCT cannot agree to them.

5 1. Definition of and reference to "Point of Termination." See Pet. Ex. C ¶ 2.1.44,
6 attach. 1 ¶ 1.1.2. It is not clear to BCT how this term differs from Point of
7 Interconnection and, if it does differ, how it applies to this Agreement.

8 2. The language: "If the End User's service has not been disconnected and
9 services have not yet been established, BCT will be responsible to pay the
10 applicable service order charge for any order it has placed. If the End User's
11 service has been disconnected and the End User's service is to be restored
12 with Clear Creek, BCT will be responsible to pay the applicable nonrecurring
13 charges as set forth in Clear Creek applicable tariff to restore the End User's
14 prior service with Clear Creek." See *id.* ¶ 7.6. BCT does not understand
15 what this provision means.

16 3. The language: "Each Party's indemnification obligation will be to the extent
17 of infringement by the indemnifying Party." See *id.* ¶ 19.2. BCT does not
18 understand what this provision means.

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CONCLUSION

BCT respectfully requests the Commission enter an order adopting BCT's proposed revisions and clarifications on all disputed issues. Additionally, BCT requests the Commission order CCMT to calculate the actual costs it will incur when BCT connects and terminates customers and to provide that data to BCT so that the Parties may compute pricing appropriate to this Agreement.

DATED: March 7, 2007.

McDOWELL & RACKNER PC

Lisa F. Rackner
Sarah J. Adams
Attorneys for Beaver Creek Cooperative
Telephone Company

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in Docket ARB 789 on the following named person(s) on the date indicated below by email at his or her last-known address(es) indicated below.

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DATED: March 7, 2007.



Lisa F. Rackner

Of Attorneys for Beaver Creek Cooperative Telephone Company

Final Offer

**AGREEMENT FOR
LOCAL INTERCONNECTION**

between

Clear Creek Mutual Telephone Company

and

Beaver Creek Cooperative Telephone Company

Dated: October 2, 2006

Version: 5.0

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LOCAL INTERCONNECTION**

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AGREEMENT FOR LOCAL INTERCONNECTION

This Agreement For Local Interconnection ('Agreement') made this ____ day of _____, 2006, is by and between Clear Creek Mutual Telephone Company, an Oregon Cooperative ("Clear Creek"), having its principal place of business at 18238 S Fischers Mill Road, Oregon City, OR 97045-9696 and Beaver Creek Cooperative Telephone Company ("BCT"), an Oregon Cooperative, having its principal place of business at 15223 S Henrici Road, Oregon City, OR 97045. Clear Creek and BCT may also be referred to herein singularly as a "Party" or collectively as "the Parties".

SECTION 1. RECITALS AND PRINCIPLES

- 1.1 Clear Creek is a telecommunications company authorized to provide telecommunications services in the State of Oregon; and
- 1.2 BCT is a telecommunications company authorized by the Commission to provide local exchange telecommunications services in the State of Oregon; and
- 1.3 Pursuant to the Telecommunications Act of 1996 (the "Act"), the Parties wish to establish terms for the provision of certain services and Ancillary Functions as designated in the Attachments hereto for the purpose of determining the rates, terms, and conditions for the interconnection of the Parties' Telecommunications Networks within the State of Oregon; and
- 1.4 The Parties have in good faith negotiated, and agreed on local Interconnection terms and conditions as set forth below, and agree that by entering into and performing in accordance with this Agreement, the Parties have not waived or relinquished any applicable exemptions that are provided by or available under the Act, including but not limited to those described in §251(f) of the Act, or under state law; and
- 1.5 In consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BCT and Clear Creek hereby covenant and agree as follows:

SECTION 2. GENERAL DEFINITIONS

- 2.1 Except as otherwise specified herein, the following definitions will apply to all sections contained in this Agreement. Additional definitions that are specific to the matters covered in a particular section may appear in that section.
 - 2.1.1 Access Services is a service that connects interexchange carriers to their End Users located within a local access and transport area (LATA). Access service is used in originating and terminating intraLATA interLATA toll telecommunications.
 - 2.1.2 Access Service Request (ASR) means the industry standard forms and supporting documentation used for ordering Access Services. The ASR will be used to identify the specific trunking and facilities request for Interconnection.

- 2.1.3 Act means the Telecommunications Act of 1934, as amended from time to time.
- 2.1.4 Ancillary Services are services which support but are not required for interconnection of telecommunications networks between two or more parties, e.g., 911, DA, and Directory Service.
- 2.1.5 Automatic Number Identification (ANI) refers to the number transmitted through the network identifying the calling party.
- 2.1.6 Automatic Location Identification/Data Management System (ALI/DMS) means the emergency service (E911/911) database containing subscriber location information (including name, address, telephone number, and sometimes special information from the local service provider) used to determine to which Public Safety Answering Point (PSAP) to route the call.
- 2.1.7 CLLI Codes means Common Language Location Identifier Codes
- 2.1.8 Commission means the state administrative agency, to which the United States Congress or state legislature has delegated authority to regulate the operations of Local Exchange Carriers ("LECs") as defined in the Act,
- 2.1.9 Competitive Local Exchange Carrier (CLEC) means a telephone company certified by the Commission, for Clear Creek's franchised area, to provide local exchange service within Clear Creek's franchised area, and which has a Competitive Local Exchange Carrier Certificate approved by the Commission.
- 2.1.10 Common Channel Signaling (CCS) means a special network, fully separate from the transmission path of the public switched network that digitally transmits call setup and network control data.
- 2.1.11 Confidential Information has the meaning set forth in Section 26 of the General Terms and Conditions.
- 2.1.12 Contract Year means a twelve (12) month period during the term of the contract commencing on the Effective Date and each anniversary thereof.
- 2.1.13 Customer means, whether or not capitalized, any business, residential or governmental customer of services covered by the Agreement, and includes the term "End User".
- 2.1.14 Customer Proprietary Network Information (CPNI) means information that relates to the quantity, technical configuration, type, destination, and amount of a Telecommunications Service subscribed to by any customer of a Telecommunications Carrier, and that is made available to the carrier by the customer solely by virtue of the carrier customer relationship; and information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.
- 2.1.15 DS1 is a digital signal rate of 1.544 Megabits per second ("Mbps").
- 2.1.16 DS3 is a digital signal rate of 44.736 Mbps.

- 2.1.17 E911 Service is a method of routing 911 calls to a PSAP that uses customer location data in the ALI/DMS to determine the PSAP to which a call should be routed.
- 2.1.18 End Office means a local Clear Creek switching point where Clear Creek end user customer station loops are terminated for purposes of interconnection to each other and to the network.
- 2.1.19 End User means the ultimate user or consumer of the telecommunications services being sold or resold by either Party.
- 2.1.20 End User Location means the physical location of the premises where an End User makes use of the telecommunications services.
- 2.1.21 End User Of Record means the entity responsible for placing orders or requests for service; requesting additions, rearrangements, maintenance or discontinuance of service, and making payment in full of charges incurred such as toll, directory assistance, etc.
- 2.1.22 Enhanced Services shall refer to services, offered over common carrier transmission facilities, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. In addition and with out limiting the foregoing, Internet, information services, voicemail, and so-called "chat line" services are Enhanced Services.
- 2.1.23 Exchange Message Interface (EMI) is the standard used for exchange of telecommunications message information between telecommunications providers for billable, non-billable, sample, settlement and study data. EMI format is contained in ATIS/OBF-EMI-016, an Alliance of Telecommunications Industry Solutions (ATIS) document, which defines industry standards for exchange message records.
- 2.1.24 Exchange is the geographic territory delineated as an exchange area for Clear Creek by official commission boundary maps.
- 2.1.25 Exchange Access is defined in the Act.
- 2.1.26 Exchange Services are two-way switched voice-grade telecommunications services with access to the public switched network which originate and terminate within an exchange.
- 2.1.27 Extended Area Service (EAS) is toll-free calling outside the Clear Creek Exchange to specific geographically contiguous exchanges as designated by the Commission.
- 2.1.28 ICB means individual case basis.
- 2.1.29 Incumbent Local Exchange Carrier (ILEC) has the meaning given the term in the Act.
- 2.1.30 Interconnection has the meaning given the term in the Act and refers to the connection of separate pieces of equipment, facilities, or platforms

between or within networks for the purpose of transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic.

- 2.1.31 Interexchange Carrier (IXC) means a telecommunications provider that provides long distance communications services between LATAs and authorized by the Commission to provide long distance communications services.
- 2.1.32 InterLATA has the meaning given the term in the Act.
- 2.1.33 IntraLATA Toll Traffic means all IntraLATA calls provided by a LEC other than traffic completed in the LECs local exchange boundary or areas designated as Extended Area Service exchanges.
- 2.1.34 Local Access and Transport Area (LATA) has the meaning given to the term in the Act.
- 2.1.35 Local Exchange Carrier (LEC) means the incumbent carrier that provides facility-based Exchange Services, which has universal-service and carrier-of-last-resort obligations.
- 2.1.36 Local Exchange Routing Guide (LERG) is a Telcordia reference document used by carriers to identify NPA-NXX routing and homing information as well as network element and equipment designations.
- 2.1.37 Local Traffic shall refer to calls originated by one Party's End Users and terminated to the other Party's End Users within the local exchange area as defined in Clear Creek's tariffs. Local calls must be actually originated by and actually terminated to parties physically located within the same local calling area regardless of the NXX assigned to the calling and called parties. Foreign exchange or foreign exchange like service will be treated as Local Traffic based on the assigned NXX if the Party provides a dedicated channel between the rate center of the assigned NXX and the End User Location.
- 2.1.38 Local Service Provider (LSP) has the same meaning as CLEC which means a telephone company certified by the Commission, for Clear Creek's franchised area, to provide local exchange service within Clear Creek's franchised area, and which has a Competitive Local Exchange Carrier Certificate approved by the Commission.
- 2.1.39 Local Service Provider Guide (the "Guide") means the document provided to BCT by Clear Creek, included by reference herein, which outlines the process and procedures for ordering and maintaining carrier services. This document may be updated from time to time by Clear Creek. This document is to be used as reference only and is not a part of this agreement.
- 2.1.40 Local Service Request (LSR) means an industry standard form used by the Parties to add, establish, change or disconnect trunks, circuits and/or facilities associated with unbundled Network Elements.
- 2.1.41 Network Interface Device (NID) is a device that connects the inside wire at the End User Location to a telephone network.

- 2.1.42 Operating Company Number (OCN) means nationally recognized company codes set forth in Bellcore's LERG that will be used as the official identification code for each company that provides local exchange telephone service.
- 2.1.43 Point of Interconnection (POI) means the physical location(s) at which the Parties' networks meet for the purpose of exchanging ~~Local~~ Traffic.
- ~~2.1.44 Point of Termination (POT) means the location in a Clear Creek Central Office at which the Parties' networks meet for the purpose of exchanging Local Traffic. There may be POI but no POT if BCT does not provide any equipment inside Clear Creek's Exchange.~~
- 2.1.4544 P.01 Transmission Grade of Service means a trunk facility provisioning standard with the statistical probability of no more than one call in 100 blocked on initial attempt during the average busy hour.
- 2.1.4645 Percent Interstate Local Usage (PLU) is a calculation which represents the ratio of the local minutes to the sum of local intraLATA toll minutes between exchange carriers sent over Local Interconnection Trunks. Directory assistance, BLV/BLVI, 900, 976, transiting calls from other exchange carriers and switched access calls are not included in the calculation of the PLU.
- 2.1.4746 Public Safety Answering Point (PSAP) is the public safety communications center where 911 calls placed by the public for a specific geographic area will be answered.
- 2.1.4847 Reciprocal Compensation is as Described in the Act.
- 2.1.4948 Signaling System 7 (SS7) means a signaling protocol used by the CCS network.
- 2.1.5049 Subscriber List Information ("SLI") has the meaning given to that term under 47 CFR 64.2305(e).
- 2.1.5150 Telephone Exchange Service means wireline exchange connections amongst LEC end users.
- 2.1.5251 Telecommunications has the meanings given in the Act.
- 2.1.5352 Termination means the switching of Local Traffic at the terminating ~~carrier's~~ Party's end office switch, or equivalent facility, and delivery of such traffic to the called Party.
- 2.1.5453 Territory means the incumbent local exchange areas within the states identified in (Attachment I – Exhibit B).
- 2.1.5554 Trading Partner Profile (TPP), Clear Creek's required documentation necessary to enable the establishment of a master account for BCT as provided in (Attachment 1 – Exhibit A).
- 2.1.5655 Transit Service is the delivery of Local, EAS and Toll traffic between BCT and Clear Creek via a third party ILEC, CLEC or CMRS provider over that third party provider's trunk groups. ~~certain traffic~~

~~between BCT and a third party ILEC, CLEC or CMRS provider by Clear Creek. Clear Creek does not provide Transit Service.~~

2.1.5756 Undefined Terms, the Parties acknowledge that terms may appear in the Agreement that are not defined and agree that any such terms shall be construed in accordance with their end-user usage in the telecommunications industry as of the Effective Date of this Agreement.

2.1.5857 Wire Center is the location of one or more local switching systems, a point at which End Users' loops converge.

SECTION 3. CARRIER ACCOUNT SET UP

3.1 BCT must provide the appropriate Clear Creek representative the necessary documentation to enable Clear Creek to establish a master account for BCT. Such documentation will include a completed Trading Partner Profile (TPP) (Attachment 1 – Exhibit A), proof of authority to provide telecommunications services within Clear Creek territory, and a tax exemption certificate, if applicable. Clear Creek will have no obligation to begin taking orders for service until after the necessary documents have been provided to Clear Creek, ~~and the necessary deposit requirements are met.~~

SECTION 4. DEPOSIT AND ADVANCE PAYMENT REQUIREMENTS

4.1 ~~If the billed Party has not established that it has satisfactory credit, either through the provision of a satisfactory credit report or payment history, the billing Party Clear Creek may, in order to safeguard its interest, require the billed Party BCT to make a deposit to be held by the billing Party Clear Creek as a guarantee of the payment of rates and charges, unless satisfactory credit has already been established. A satisfactory payment history is established by a party having made all payments within the most recent 12-month period within 30 days of each payment due date. Any such deposit may be held during the continuance of the service as security for the payment of any and all amounts accruing for the service.~~

4.2 ~~Any such deposit may be held during the continuance of the service as security for the payment of any and all amounts accruing for the service; provided that, a deposit will be returned with interest, at the Commission prescribed deposit rate, if and when the billed Party BCT pays its undisputed bills on time for 24-12 consecutive months. Such deposit may not exceed one-sixth the estimated annual billing. Deposits may be paid through arrangements, which are reasonable for the circumstances. Deposits may be a surety bond, a letter of credit with terms and conditions acceptable to the billing party, or some other arrangement, which is reasonable for the circumstances such as a cash deposit.~~

4.3 Upon payment of a deposit, ~~the billing Party Clear Creek~~ shall furnish a receipt showing the date, name of the carrier, the business address, the amount of deposit, a statement that the deposit will accrue interest at the rate prescribed by

- the Commission, and an explanation of the conditions under which the deposit will be refunded.
- 4.4 Interest, at the rate prescribed by the Commission, will be paid on deposits. Interest payments will be made annually as a credit on the bill for service. Interest will be prorated when a deposit is held for less than a full year.
- 4.5 The billed Party's BCT's deposit, if required, plus accrued interest, shall be promptly refunded when service is discontinued, provided that refunds due shall be applied to any unpaid balance on the the billed Party BCT's account.
- 4.6 ~~Clear Creek~~ The billing Party may continue holding a deposit until such time as credit is satisfactorily established or reestablished. After satisfactory credit has been established or reestablished, the deposit plus any accrued interest shall be promptly refunded or credited to the BCT's-billed Party's account.
- 4.7 ~~Clear Creek~~ The billing Party reserves the right to increase the deposit requirements in the following circumstances only: (a) if the billed party failed to make full payment for services less any disputed amount within 30 calendar days following the payment due date for any billing period within the preceding 12 months; (b) if the billed party's credit status as reported on a credit report becomes unsatisfactory; or (c) if the billed party must be reconnected after disconnection for non-payment when, in its sole judgment, the conditions justify such action; such conditions include but are not limited to: current deposit does not cover two (2) months billing, history of late payment, or reconnection after disconnection for non-payment, or a significant probability of a bankruptcy filing by BCT. In no event, however, shall the required deposit exceed one-sixth the estimated annual billing.
- 4.8 In the event that ~~BCT~~ the billed Party defaults on its account, service to ~~BCT~~ the billed Party will ~~may~~ be terminated subject to the dispute resolution and default provisions contained herein and any deposits held will be applied to ~~its~~ the defaulting Party's account. The fact that a deposit has been made in no way relieves ~~BCT~~ the billed Party from complying with the billing Party's Clear Creek's regulations as to advance payments and the prompt payment of bills on presentation nor, does it constitute a waiver or modification of the regular practices of ~~Clear Creek~~ the billing Party providing for the discontinuance of service for non-payment of any sums due the billing Party ~~Clear Creek~~.
- 4.9 Required deposits are due and payable within thirty (30) calendar days after demand.

SECTION 5. CHARGES AND PAYMENTS

- 5.1 In consideration of the services provided by Clear Creek under this Agreement, BCT shall pay the charges set forth in this Agreement and in applicable tariffs. In consideration of the services provided by BCT under this Agreement, Clear Creek shall pay the charges set forth in this Agreement. Invoices with charges set forth in this Agreement and in applicable tariffs shall be sent to:

TO BCT:

Beaver Creek Cooperative Telephone Company
Attn: Accounting Department
15223 S Henrici Road
Oregon City, OR 97045
Telephone (503) 632-3113

TO CLEAR CREEK :

Clear Creek Mutual Telephone Company
Attention: Accounts Receivable
18238 S Fischers Mill Road
Oregon City, OR 97045-9696
Telephone (503) 631-2101

- 5.2 A monthly billing statement with a consistent, regular bill date shall be prepared by each Party and will reflect the calculation for amounts due under this Agreement. All bills dated as set forth above will be due thirty (30) days after the bill date and are payable in immediately available funds. The Parties represent and covenant to each other that all invoices will be promptly processed and mailed in accordance with the Parties' regular procedures and billing systems.
- 5.2.1 If the payment due date falls on a Sunday or on a Holiday which is observed on a Monday, the payment due date shall be the first non-Holiday following such Sunday or Holiday. If the payment due date falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-Holiday preceding such Saturday or Holiday. If payment is not received by the payment due date, a late penalty, as set forth in Section 5.3 below, will be assessed.
- 5.3 If the amount billed is received by the billing Party after the payment due date or if any portion of the payment is received by the billing Party in funds which are not immediately available to the billing Party, then a late payment charge will apply to the unpaid balance and carried forward to the next month's statement.
- 5.4 Except as otherwise specifically provided in this Agreement the late payment penalty shall be 1.5% per month or 18% annually, or the maximum allowed by law, whichever is less.
- 5.5 In the event of a dispute between the Parties, the Parties shall follow the dispute resolution procedures set forth in Section 9.

SECTION 6. SERVICE TO END USER

- 6.1 BCT will be the End User of Record for all services purchased from Clear Creek. Except as otherwise specified herein, Clear Creek will only take orders from, bill and expect payment from BCT for all services. BCT will be Clear Creek's single point of contact for all services purchased pursuant to this Agreement.

- 6.2 Clear Creek will continue to bill the End User for any services that the End User specifies it wishes to receive directly from Clear Creek.
- 6.3 Clear Creek maintains the right to actively market and serve directly any End User within Clear Creek's serving area. Clear Creek will continue to directly market its own telecommunications products and services and in doing so may establish independent relationships with End Users of BCT.
- 6.4 Service is furnished subject to the condition that it will not be used for any unlawful purpose. ~~Clear Creek may refuse to provide service to BCT when it has reasonable grounds to believe that service will be used in violation of the law. Any disputes regarding whether service is being used for an unlawful purpose shall be handled pursuant to the dispute resolution provisions of this Agreement. While a dispute is pending resolution, the status quo will be maintained. Provided, however, that Clear Creek may discontinue service if any law enforcement agency advises Clear Creek in writing that the service is being used in violation of the law, Clear Creek provides BCT with a copy of such written notice, and BCT has a reasonable opportunity to investigate and respond prior to termination of service.~~
- ~~6.5 Service will be discontinued by Clear Creek if any law enforcement agency advises that the service is being used in violation of the law.~~
- 6.6 Clear Creek may refuse to provide service to BCT when ~~it has reasonable grounds to believe~~ that service will jeopardize the reliability or efficiency of Clear Creek's network or interferes with or prevents other persons from using their service, or otherwise impairs the quality of service to other carriers or to End Users. Any disputes regarding whether service will jeopardize the reliability or efficiency of Clear Creek's network or interfere with or prevent other persons from using their service, or otherwise impair the quality of service to other carriers or to End Users shall be resolved pursuant to the Dispute Resolution Section of the General Terms and Conditions of this Agreement. While a dispute is pending resolution, the status quo will be maintained.
- 6.7 BCT will be the single point of contact with Clear Creek for all subsequent ordering activity resulting in additions or changes to services, except that Clear Creek will accept a request directly from the End User for conversion of the End User's service from BCT to Clear Creek, or will accept a request from another carrier for conversion of the End User's service from BCT to the other carrier.

SECTION 7. COORDINATION OF TRANSFER OF SERVICE

- 7.1 BCT's service in Clear Creek's territory is entirely facilities-based. Additionally, BCT intends to perform all connection and disconnection services at the End User's NID. It is therefore unnecessary for the Parties to coordinate the timing of disconnection from one Party and connection with the other Party. If and when BCT expressly orders from Clear Creek services that require the coordinated transfer of service, To serve the public interest of End Users, the Parties agree that, when an End User transfers service from one Party to the other Party, it ~~is~~ will become necessary for the Parties to coordinate the timing for

disconnection from one Party and connection with the other Party so that transferring End Users are not without service for any extended period of time. Other coordinated activities associated with transfer of service will be coordinated between the Parties to ensure quality services to the public.

- 7.2 The Parties agree to establish mutually acceptable, reasonable, and efficient transfer of service procedures that utilize the industry standard LSR format for the exchange of necessary information for coordination of service transfers between the Parties. Clear Creek may describe some of these procedures in its Guide. Reference to Clear Creek Guide is for convenience of the Parties and is not intended to be a part of or to affect the meaning of this Agreement, including, but not limited to, provisions with respect to implementation of the cooperative coordination of transfer of service activities described herein. If any provision contained in this Agreement and the Guide cannot be reasonably construed or interpreted to avoid conflict, the provision contained in this Agreement shall apply.
- 7.3 There will be no premium charges between the Parties or compensation provided by one Party to the other Party for the coordinated transfer of service activities between the hours of 8:00 a.m. and 5:00 p.m. Monday - Friday excluding holidays. Clear Creek may charge BCT for the coordinated transfer of service activities scheduled outside of the specified hours in accordance with Clear Creek's tariff.
- 7.4 Each Party is responsible for obtaining Proof of Authorization (POA) and a Letter of Authorization (LOA) from each End User initiating transfer of service from one Party to the other Party if necessary.
- 7.5 BCT shall obtain Proof of Authorization (POA) from an End User in order to act on the End User's behalf in matters pertaining to their communications services or to perform activities on behalf of another carrier when trunk facilities are owned by another carrier. POA means a Letter of Authorization (LOA) for Access Services and Access Service Requests (ASRs). In all other cases, POA means an LOA or an alternative method described below.
- 7.6 The Party obtaining the POA from the End User will furnish it to the other Party upon request. The Party obtaining the POA is required to maintain the original document, for a minimum of twenty-four (24) months from the date of signature. If there is a conflict between an End User and BCT regarding the disconnection or provision of services, Clear Creek will honor the latest dated POA. ~~If the End User's service has not been disconnected and services have not yet been established, BCT will be responsible to pay the applicable service order charge for any order it has placed. If the End User's service has been disconnected and the End User's service is to be restored with Clear Creek, BCT will be responsible to pay the applicable nonrecurring charges as set forth in Clear Creek applicable tariff to restore the End User's prior service with Clear Creek.~~
- 7.6.1 For Access Service Requests (ASRs)
- 7.6.1.1 Clear Creek may request a LOA from BCT when carriers are acting on behalf of another entity. The LOA must be received prior to the initiation of the work requested.

7.6.1.2 An LOA must identify:

The name(s) of the company involved, the name(s) of the authorizing representative, the name of a contact and telephone number for the owner; complete details explaining the requested action(s) such as addresses, facility information, Purchase Order Number and order numbers; the range of effective dates for which the LOA is in force or that the LOA is open ended (no pre-determined end date), scope of authorization must include a complete and detailed description of what is being requested.

7.6.2 For Local Service Requests (LSRs)

7.6.2.1 Proof of Authorization for ordering may be obtained in the following ways:

Electronic or written Letter of Authorization, electronic authorization by use of an 8XX number, oral authorization verified by an independent third party.

7.6.2.2 POA must identify:

Scope of authorization and include a complete and detailed description of what is being requested (e.g., local service, telephone number, account number, circuit ID, associated CIC including billing responsibility, authorized to initiate trouble reports, etc.), name of End User or representative authorizing the agreement, effective date(s) of agreement (open ended or definite begin and end dates).

7.7 While the POA need not accompany BCT's requests for records or services, the indication of authorization is a required field entry when BCT requests Customer Service Records (CSR) or submits Local Service Request (LSR) forms. However, in accordance with applicable laws and rules, if a dispute or discrepancy arises regarding BCT authority to act on behalf of the End User or other carrier, then BCT is responsible for providing Clear Creek evidence of the authorization within ~~three~~-ten business days. Any disputes regarding whether BCT has authority to act on behalf of the End User or other carrier shall be resolved pursuant to the Dispute Resolution Section of the General Terms and Conditions of this Agreement. While a dispute is pending resolution, the status quo will be maintained.

7.8 Where an End User changes service from one Party to the other Party and the End User does not retain his or her original telephone number, the Party formerly providing service to the End User will provide a transfer of service announcement, where transfer of service announcement capability is available, on the vacated telephone number if requested by the End User. This announcement will provide details regarding the new number that must be dialed to reach this End User. The service announcement will be provided, where available, by the Party formerly providing service to the End User to the extent and at the price specified in Attachment 4, Pricing.

- 7.9 When an End User changes service from one Party to the other Party and the End User does not retain his or her original telephone number, the Party from which the End User is transferring will honor requests for disconnection and service announcement initiation, where available, from the Party to which the End User is transferring. The Party to which the End User is transferring service will provide to the other Party the End User's name, address, current telephone number, new telephone number, and date service should be transferred using the industry standard LSR format. The Party from which the End User is transferring will coordinate with the other Party the disconnection and service announcement initiation to coincide with the service transfer request date. The service announcement where available will be provided on the vacant number upon disconnect coinciding with the service transfer date. The Parties agree that the installation date will precede the disconnection date.
- 7.10 When an End User changes service from one Party to the other Party and the End User retains his or her original telephone number(s), the Party from which the End User is transferring will honor requests for disconnection and local number portability, where available, from the Party to which the End User is transferring. The Party to which the End User is transferring will provide the other Party the End User's name, address, current telephone number, and the Location Routing Number (LRN) for LNP, and the date service should be transferred using the industry standard LSR format. With LNP, the Parties will coordinate the disconnection, the connection, and number portability activities in accordance with the North American Numbering Council (NANC) flows.
- 7.11 Each Party will accept transfer of service requests from the other Party for one End User that includes multiple requests for transfers where the End User will retain one or more telephone numbers.
- 7.12 From time to time, either Party may benefit from the transfer of service for groups. The Parties agree to process bulk transfer of service requests for End Users having the same billing account number.
- 7.13 Each Party will allow the other Party access to the End User side of the NID consistent with FCC rules. The Party to which the End User is transferring service may move all inside wire from the other Party's existing NID to one provided by the Party to which the End User is transferring service. Where a NID is of the type which provides for End User access to one side of the NID, the Party to which the End User is transferring service may elect to remove the inside wire at the connection(s) within the End User side of the NID. Where a NID is of an older type not allowing access to the End User side of the NID, the Party to which the End User is transferring service must make a clean cut of the inside wire at the closest point to the NID.
- 7.14 Expedited order requests will be accepted where reasonable and practical but will be assessed an expedited order charge. The expedited order charges are listed in Attachment 4, Pricing.
- 7.15 BCT may request a change in due date at least 24 hours prior to the originally scheduled due date. Supplemental charges will apply when a request for a new due date is received after the LSR has been confirmed via firm order commitment. Supplemental order charges are listed in Attachment 4, Pricing.

Alternate workforce is required when an increase in the complexity of the service order results in a higher per hour rate. If the new service date is changed to an earlier date, than expedited order charges will apply. If the request for modification to the service date occurs within twenty-four (24) hours of the scheduled due date, BCT will be subject to charges for work and labor-related expenses already completed. If the due date change is requested due to a class of service change, additional and/or alternate workforce may be required and associated charges will apply. These charges will apply on a per occurrence basis.

SECTION 8. AUDIT

- 8.1 Subject to the terms and conditions of this Section, and the reasonable security requirements of each Party and except as may be otherwise specifically provided in this Agreement, each Party (the "Auditing Party") may audit the other Party's (the "Audited Party") books, records and other documents that relate solely to the Parties' billing to the other Party under this Agreement and to the identification of traffic subject to this Agreement, once each year at the conclusion of each calendar year, in order to evaluate the accuracy of such other Party's billing and invoicing. The Parties may employ other persons or firms for this purpose. Such audits shall take place at a time and place agreed to by the Parties no later than thirty (30) days after notice thereof to such other Party.
- 8.2 Each Audited Party shall use reasonable efforts to promptly correct any billing error that is revealed in an audit, including reimbursing any overpayment in the form of a credit to the Auditing Party on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results. Any disputes concerning audit results shall be resolved pursuant to the Dispute Resolution Section of the General Terms and Conditions of this Agreement.
- 8.3 Each Audited Party shall cooperate fully in any such audit, providing reasonable access to any such auditors, providing reasonable access to any and all appropriate employees and relevant books, records and other documents reasonably necessary to assess the accuracy of its bills.
- 8.4 Each Auditing Party may perform a single additional audit of the Audited Party's relevant books, records and documents during any calendar year if the previous audit uncovered incorrect net variances or errors in invoices in favor of the Audited Party having an aggregate value of no less than five percent (5%) of the total amount payable by the Auditing Party during the period covered by the audit.
- 8.5 All audits shall be conducted at the sole cost and expense of the Auditing Party.
- 8.6 Upon the discovery by either Party of the overcharges not previously reimbursed to the other Party or the resolution of disputed audits, each Party shall promptly reimburse to the Party thereto the amount of any overpayment together with interest thereon at a rate of 0.5% per month.

SECTION 9. DISPUTE RESOLUTION

- 9.1 The Parties agree that disputed and undisputed amounts due under this Agreement shall be handled as follows:
- 9.1.1 If any portion of an amount due to a Party (the ‘Billing Party’) under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the Billed Party) shall within thirty (30) days of its receipt of the invoice containing such a disputed amount give written notice to the Billing Party of the amount it disputes (‘Disputed Amounts’) and include in such notice the specific details and reasons for disputing each item. The Billed Party shall pay when due all undisputed amounts to the Billing Party, and shall include a copy of the dispute with the payment of the undisputed amount.
 - 9.1.2 In the event that a billing dispute is resolved in favor of the Billed Party, any payment of the disputed amount withheld pending settlement of the dispute shall not be subject to the late payment penalty.
 - 9.1.3 In the event that a billing dispute is resolved in favor of the Billing Party, any payments withheld pending settlement of the dispute will be subject to the late payment penalty as set forth herein.
 - 9.1.4 Undisputed amounts shall be paid when due as set forth in Section 5.2 above. If any payment or portion thereof is either received by the Billing Party in funds that are not immediately available to the Billing Party or not received by the bill due date, a late payment penalty shall be due to the Billing Party. The late payment penalty shall be 1.5% per month or 18% annually, or the maximum allowed by law, whichever is less.
- 9.2 The Parties agree that in the event of a default or any other dispute arising hereunder or in connection herewith, the aggrieved Party shall first provide written notice of the default or dispute to the other Party, discuss the default or dispute with the other Party, and seek resolution prior to taking any action before any court or regulator or before authorizing any public statement about or disclosure of the nature of the dispute to any third party. In the event that the Parties are unable to resolve a default or other dispute, the Parties shall then submit the matter to the Commission or another mutually agreed upon mediator for non-binding mediation. If mediation is unsuccessful, recourse may be had by either Party to the Commission, if it has jurisdiction over the breach or dispute or to an appropriate court having jurisdiction over the Parties and the dispute. Each Party shall bear the cost of preparing and presenting its case through all phases of the dispute resolution procedure herein described.

SECTION 10. FORCE MAJEURE

- 10.1 If the performance of the Agreement, or any obligation hereunder is prevented, restricted or interfered with by reason of any of the following:

- 10.1.1 Fire, explosion, flood, earthquake, hurricane, cyclone, tornado, storm, epidemic, breakdown of plant or power failure;
- 10.1.2 War, revolution, civil commotion, acts of public enemies, terrorism, blockade or embargo;
- 10.1.3 Any law, order, proclamation, regulation, ordinance, demand or requirement of any government or any subdivision, authority, or representative of any such government;
- 10.1.4 Labor difficulties, such as strikes, picketing or boycotts;
- 10.1.5 Delays caused by other service or equipment vendors to the extent that the delay is beyond the reasonable control of the Party seeking to be excused from performance of the Agreement or any obligation hereunder;
- 10.1.6 Any other circumstance beyond the reasonable control of the Party affected;
- 10.1.7 then the Party affected, upon giving notice to the other Party, will be excused from such performance on a day-for-day basis to the extent of such prevention, restriction, or interference (and the other Party will likewise be excused from performance of its obligations on a performance so prevented, restricted or interfered with): provided that the Party so affected will use reasonable efforts to avoid or remove such causes of nonperformance and both Parties will proceed to perform with dispatch whenever such causes are removed or cease.
- 10.1.8 Notwithstanding the above, in the event of labor difficulties, such as a strike, picketing or boycotts, the Parties agree to provide service to each other at a level equivalent to the level they provide themselves.

SECTION 11. REGULATORY APPROVALS

- 11.1 This Agreement, and any amendment or modification hereof, will be submitted to the Commission for approval in accordance with Section 252 of the Act. In the event any governmental authority or agency of competent jurisdiction rejects any provision hereof, the Parties shall negotiate promptly and in good faith such revisions as may reasonably be required to achieve approval.
- 11.2 In the event the FCC or the Commission promulgates rules or regulations, rates or issues orders, or a court with appropriate jurisdiction issues orders, which make unlawful or changes the intent of any provision of this Agreement, the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which are consistent with such rules, regulations or orders. In the event the Parties cannot agree on an amendment within thirty (30) days from the date any such rules, regulations or orders become effective, then the Parties shall resolve their dispute under the applicable procedures set forth in the Dispute Resolution Section of this Agreement.
- 11.3 The Parties acknowledge that terms of this Agreement were established pursuant to FCC and Commission orders. Nothing in this Agreement shall be

deemed an admission by the Parties regarding the interpretation or effect of these rules or orders or an admission by either party that the existing rules or order shall not be changed, vacated dismissed or modified.

- 11.4 The Parties jointly agree to cooperate in the filing of this Interconnection Agreement and share equally the expenses associated with obtaining Commission approval.

SECTION 12. ENTIRE AGREEMENT

- 12.1 This Agreement, including all attachments as referenced, sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained herein and merges all prior discussions between them, and neither Party will be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

SECTION 13. TERM OF AGREEMENT

- 13.1 This Agreement will become effective upon the first business day following the date this Agreement has been approved by the Commission and will continue for a period of ~~one-two~~ (+2) year unless terminated earlier under the conditions set forth herein. This Agreement will be automatically renewed for successive periods of six (6) months after the initial term unless either Party provides the other Party with no less than ninety (90) day's prior, written notification of, in the case of Clear Creek, its intent to terminate this Agreement, or, in the case of either Party, its desire to renegotiate at the end of the initial or any successive period. If BCT does not respond to Clear Creek's written notification of the intent to terminate the Agreement prior to the expiration of the Agreement term, the Agreement will terminate and not renew at the end of the Agreement term. Either Party may send a request to renegotiate this Agreement upon its termination and the Parties intend that the negotiation and arbitration processes of the Act will be applicable to such a request. The date of the notice to negotiate a successor agreement will be the starting point for the negotiation window under Section 252 of the Act. The Parties intend that a renegotiated or arbitrated Agreement will be effective as of the date of termination of this Agreement and any new negotiated or arbitrated rates will be subject to true-up as of the termination date of this Agreement.
- 13.2 Upon termination or expiration of this Agreement each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement.

SECTION 14. INSURANCE

- 14.1 BCT-Each Party will carry or cause to be carried the following insurance coverage which will be paid for and maintained at all times during the term of this

Agreement. Such coverage will be provided through an insurance provider with an A.M. Best financial rating of "A" or better.

- 14.1.1 Commercial General Liability Insurance with a minimum limit of liability of \$2,000,000.00 combined single limit for each occurrence for bodily injury including death, and property damage.
- 14.1.2 Business Automobile Liability Insurance with a minimum limit of liability of \$~~21~~,000,000.00 combined single limit for each occurrence for bodily injury, including death, and property damage, covering any automobile used and or operated by, or on behalf of the BCT-insured Party on the other Party's Clear Creek's Real Property.
- 14.1.3 Workers Compensation Insurance with statutory limits and Employer's Liability Insurance with limits of \$500,000 each accident, \$500,000 disease - each employee, \$500,000 disease - policy limit.
- 14.1.4 Excess Liability Insurance with a minimum limit of \$~~103~~,000,000. The limit of liability under this insurance may be increased accordingly to satisfy the minimum limit requirements under the Commercial General Liability, Business Automobile Liability and Employer's Liability Insurances.
- 14.1.5 Property Insurance coverage on a full replacement cost basis insuring all in an amount sufficient to cover the cost of replacing BCT's Equipment on Clear Creek's property or located at or used at Clear Creek's facility. Such insurance policy will provide that the insurance company will waive all rights of recovery by way of subrogation against Clear Creek in connection with any damage covered by the policy.
- 14.1.6 Upon the commencement of this Agreement and upon renewal of any policy referenced, satisfactory evidence of compliance with such insurance requirements will be issued to Clear Creek. The insurance companies referenced on such evidence will give Clear Creek at least thirty (30) days advance written notice of any material change to, and/or cancellation of any of the policies referenced in such evidence.

SECTION 15. AMENDMENT OF AGREEMENT

- 15.1 No provision of this Agreement shall be deemed waived, amended or modified by either Party unless such a waiver, amendment or modification is in writing, dated, and signed by both Parties.

SECTION 16. WAIVERS

- 16.1 No waiver of any provisions of this Agreement and no consent to any default under this Agreement shall be effective unless the same shall be in writing and properly executed by or on behalf of the Party against whom such waiver or consent is claimed.

- 16.2 No course of dealing or failure of any Party to strictly enforce any term, right, or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment of such term, right or condition.
- 16.3 Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default.

SECTION 17. INDEPENDENT CONTRACTORS

- 17.1 Each Party agrees that it will perform its obligations hereunder as an independent contractor and not as the agent, employee, or servant of the other Party. Neither Party nor any personnel furnished by such Party will be deemed an employee or agent of the other Party nor be entitled to any benefits available under any plans for such other Party's employees. Each Party will at all times during the term of this Agreement retain full control of the employment, direction, compensation and discharge of all employees as is consistent with and necessary to preserve its independent contractor status. Each Party will be solely responsible for all matters relating to payment of its employees including compliance with social security taxes, withholding taxes, worker's compensation, disability and unemployment insurance, and all other regulations governing such matters.

SECTION 18. LIMITATION OF LIABILITY

- 18.1 Each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance under this Agreement, whether in contract, warranty, strict liability, or tort, including (without limitation) negligence of any kind, shall be limited to the total amount that is or would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed.
- 18.2 EXCEPT AS OTHERWISE PROVIDED IN SECTION 18.1, NEITHER PARTY WILL BE LIABLE TO THE OTHER IN CONNECTION WITH THE PROVISION OR USE OF SERVICES PROVIDED UNDER THIS AGREEMENT. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOSS, COST, CLAIM, INJURY, LIABILITY OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES, RELATING TO OR ARISING OUT OF ANY ORDINARY NEGLIGENT ACT OR OMISSION BY A PARTY IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES. INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, INCOME OR REVENUE, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY AND WHETHER SUCH DAMAGES WERE FORESEEABLE OR NOT AT THE TIME THIS AGREEMENT WAS EXECUTED.
- 18.3 No liability shall attach to either Party, its parents, subsidiaries, affiliates, agents, servants or employees for damages arising from errors, mistakes, omissions,

interruptions, or delays in the course of establishing, furnishing, rearranging, moving, termination, changing, or providing or failing to provide services or facilities (including the obtaining or furnishing of information with respect thereof or with respect to users of the services or facilities) in the absence of gross negligence or willful misconduct.

18.4 Notwithstanding any other provision of this Agreement, this Agreement does not limit either Party's liability to the other for willful or intentional misconduct or damage to tangible real or personal property proximately caused solely by such Party's negligence. Nor does anything contained in this Limitation of Liability section limit either Party's obligations of indemnification as specified in this Agreement or obligations to make payments under this Agreement.

18.45 Notwithstanding any other provisions of this Agreement, ~~BCT~~each Party (the "Indemnifying Party") shall defend and indemnify the other Party (the "Indemnified Party") ~~Clear Creek~~ and shall hold the Indemnified Party ~~Clear Creek~~ harmless from and against any and all loss alleged to have been incurred by an End User of ~~BCT~~the Indemnifying Party or any other third party to the extent such loss arises or is attributable to the Indemnifying Party's ~~BCT's~~ performance or failure to perform under this Agreement.

SECTION 19. INDEMNITY

19.1 Each Party will each defend, indemnify, hold harmless the other Party from any liabilities, claims or demands (including the costs, expenses and reasonable attorney's fees on account thereof) that may be made by third parties for (a) personal injuries, including death, or (b) damage to tangible property resulting from the sole negligence and/or sole willful misconduct of the Indemnifying Party~~that Party~~, its employees or agents in the performance of this Agreement. The Indemnifying ~~Each~~ Party will defend the Indemnified Party ~~other~~ at the Indemnified Party's ~~other's~~ request against any such liability, claim, or demand. Each Party will notify the other promptly of written claims or demands against such Party of which the other Party is solely responsible hereunder.

19.2 Each Party will each defend, indemnify, hold harmless the other Party and/or acquire any license or right for the benefit of the other Party, arising from any claim, demand or proceeding (hereinafter "Claim") by any third party alleging or asserting that the use of any circuit, apparatus, or system, or other facilities, or the use of any software, or the performance of any service or method, or the provision or use of any facilities by the Indemnifying Party ~~either Clear Creek's or BCT~~ under this Agreement constitutes direct or contributory infringement, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any third party. ~~Each Party's indemnification obligation will be to the extent of infringement by the indemnifying Party.~~

19.3 The indemnified Party will notify the indemnifying Party promptly in writing of any claims, lawsuits, or demands by third Parties for which the indemnified Party alleges that the indemnifying Party is responsible under this Section and if

requested by the indemnifying Party, shall tender the defense of such claim, lawsuit or demand.

19.3.1 In the event the indemnifying Party does not promptly assume or diligently pursue the defense of the tendered action, then the indemnified Party may proceed to defend or settle said action and the indemnifying Party shall hold harmless the indemnified Party from any loss, cost, liability, damage and expense.

19.3.2 In the event the Party otherwise entitled to indemnification from the other elects to decline such indemnification, then the Party making such an election may, at its own expense, assume defense and settlement of the claim, lawsuit or demand.

19.2.3 The Parties will cooperate in every reasonable manner with the defense or settlement of any claim, demand, or lawsuit.

19.4 Notwithstanding any other provisions of this Agreement, in the case of claims or loss alleged or incurred by an End User ~~Customer~~ of ~~BCT~~ either Party arising out of or in connection with services provided to the End User ~~Customer~~ by that Party ~~BCT~~, the Party providing service to the End User ~~BCT~~ shall defend and indemnify ~~Clear Creek the other Party~~ and its officers, directors, employees and agents against any and all such claims or loss by ~~BCT's~~ the End User ~~Customers~~.

SECTION 20. DISCLAIMER OF WARRANTIES

~~20.1 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION THE PARTIES' RESPECTIVE INDEMNIFICATION OBLIGATIONS), THE PARTIES AGREE THAT CLEAR CREEK HAS NOT MADE, AND THAT THERE EXISTS, NO WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY BCT OF FACILITIES, ARRANGEMENTS, OR SERVICES PROVIDED BY CLEAR CREEK UNDER THIS AGREEMENT WILL NOT GIVE RISE TO A CLAIM BY ANY THIRD PARTY OF INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT OF SUCH THIRD PARTY.~~

~~20.2~~—It is the express intent of the Parties that each Party be solely responsible for all claims of its End Users, including, without limitation, any credits or adjustments that may be issued or required to be issued to its End Users.

SECTION 21. ASSIGNMENT

21.1 Any assignment or delegation by either Party to any non-affiliated entity or to any affiliated entity that is not certificated as a Local Exchange Carrier of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party, which consent shall not be withheld unreasonably, shall be void. A Party assigning or delegating this Agreement or any right, obligation, duty or other interest hereunder to an affiliate that is certificated as a Local Exchange Carrier shall provide written notice to the other

Party. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement.

SECTION 22. CONTROLLING LAW

22.1 This Agreement shall be governed by and construed in accordance with the Act, the FCC's Rules and Regulations, and the Commission Rules and Regulations, except insofar as state law may control any aspect of this Agreement, in which case the domestic laws of the state of Oregon, without regard to its conflicts of laws principles, shall govern.

SECTION 23. SEVERABILITY

23.1 Subject to Section 11, Regulatory Approval, if any part of this Agreement is held to be invalid for any reason, such invalidity will affect only the portion of this Agreement which is invalid. In all other respects this Agreement will stand as if such invalid provision had not been a part thereof and the remainder of the Agreement shall remain in full force and effect.

SECTION 24. NO JOINT VENTURE OR THIRD PARTY BENEFICIARIES

24.1 Nothing herein contained shall be construed as creating a partnership or joint venture by or between the Parties.

24.2 The provisions of this Agreement are for the benefit of the Parties and not for any other Person. This Agreement will not provide any Person not a Party to this Agreement with any remedy, claim, liability, reimbursement, claim of action, or other right in excess of those existing by reference in this Agreement.

SECTION 25. DEFAULT

25.1 Any disputes regarding a breach or alleged breach of this Agreement shall be resolved pursuant to the Dispute Resolution Section of the General Terms and Conditions of this Agreement. Additionally, in the event of breach of any material provision of this Agreement by either Party, the non breaching Party shall give the other Party written notice thereof, and:

25.1.1 If such material breach is for non-payment of amounts due hereunder, the breaching Party shall cure such breach within ten (10) days of receiving such notice. The non-breaching Party shall be entitled to pursue all available legal and equitable remedies for such breach. Amounts disputed in good faith and withheld or set off shall not be deemed "amounts due hereunder" for the purpose of this provision. Neither Party shall withhold or set off undisputed amounts.

- 25.1.2 In addition, if such material breach is for non-payment of amounts due hereunder and such amounts have not been disputed, the non-breaching Party may:
- 25.1.2.1 refuse additional applications for any service provided under this Agreement;
 - 25.1.2.2 refuse to complete any pending orders for additional services any time thereafter, and/or;
 - 25.1.2.3 on thirty (30) days' written notice by overnight delivery or certified U.S. mail, with a copy to the Commission, to the person designated to receive such notice, discontinue the provision of existing services at any time thereafter.
- 25.1.3 If the non-breaching Party does not refuse additional applications for additional services, and the non-payment continues, nothing contained herein shall preclude the non-breaching Party from refusing additional applications for services without further notice. If the non-breaching Party discontinues provision of the additional services, all applicable charges, including termination charges, shall become due. If the non-breaching Party does not discontinue the provision of services on the date specified in the thirty (30) days notice, and the nonpayment continues, nothing contained herein shall preclude the non-breaching Party from discontinuing the provision of services without further notice.
- 25.1.4 Clear Creek reserves the right to refuse an application for additional services made by any entity that owns or is substantially owned, directly or indirectly, by or is under common control with, BCT, so long as BCT or any such entity is indebted to Clear Creek for services previously furnished, until the indebtedness is satisfied. In the event that services are provided to BCT or an entity that owns or is substantially owned, directly or indirectly, by or is under common control with, BCT, such services may be terminated by Clear Creek unless BCT satisfies the indebtedness owing to Clear Creek within thirty (30) days after written notification. Such notification shall be made by certified U. S. mail to the person designated by BCT to receive such notices.
- 25.1.5 If such material breach is for any failure to perform in accordance with this Agreement, other than for non-payment of amounts due hereunder, or if either Party is otherwise in violation of the law, the non-breaching Party shall give notice of the breach and the breaching Party shall cure such breach within sixty (60) days of such notice, and if breaching Party does not, the non-breaching Party may, at its sole option, terminate this Agreement. The non-breaching Party shall be entitled to pursue all available legal and equitable remedies for such breach.

SECTION 26. CONFIDENTIALITY AND PUBLICITY

- 26.1 All proprietary or confidential information ("Proprietary Information") disclosed by either Party during the negotiations and the term of this

Agreement will be protected by both Parties in accordance with the terms provided herein.

- 26.2 As used in this Agreement, the term ‘Proprietary Information’ will mean written, recorded, machine readable or other information provided in tangible form to one Party by the other Party regarding the above referenced subject matter and which is marked proprietary or confidential with the appropriate owner corporation name, e.g., ‘Clear Creek Proprietary’. Information disclosed orally will not be considered proprietary unless such information is reduced to writing by the disclosing Party and a copy is delivered to the other Party within thirty (30) business days after such oral disclosure. The writing will also state the place, date and person(s) to whom disclosure was made.
- 26.3 Each Party agrees that it will not disclose any Proprietary Information of the other Party in whole or in part, including derivations, to any third party for a period of three (3) years from the date of disclosure unless the Parties agree to modify this Agreement to provide for a different nondisclosure period for specific materials. Neither Party will be liable for inadvertent or accidental disclosure of Proprietary Information of the other Party provided that:
- 26.3.1 each Party uses at least the same degree of care in safeguarding such Proprietary Information as it uses for its own proprietary information of like importance, and such degree of care will be reasonably calculated to prevent such inadvertent disclosure;
- 26.3.2 it limits access to such Proprietary Information to its employees and agents who are directly involved in the consideration of the Proprietary Information and informs its employees and agents who have access to such Proprietary Information of its duty not to disclose; and
- 26.3.3 upon discovery of any such inadvertent disclosure of Proprietary Information, it will endeavor to prevent any further inadvertent disclosure.
- 26.4 Information will not be deemed proprietary and the receiving Party will have no obligation with respect to any such information which:
- 26.4.1 is or becomes publicly known through no wrongful act, fault or negligence of the receiving Party; or
- 26.4.2 was known by the receiving Party or by any other affiliate or subsidiary of the receiving Party prior to disclosure, or is at any time developed by the receiving Party independently of any such disclosure; or
- 26.4.3 was disclosed to the receiving Party by a third party who was free of obligations of confidentiality to the disclosing Party; or
- 26.4.4 is disclosed or used by the receiving Party, not less than three (3) years following its initial disclosure or such other nondisclosure period as may be agreed in writing by the Parties; or

- 26.4.5 is approved for release by written authorization of the disclosing Party; or
- 26.4.6 is disclosed pursuant to a requirement or request of a governmental agency or disclosure is required by operation of law; or
- 26.4.7 is furnished to a third party by the disclosing Party without a similar restriction on the third party's rights.
- 26.5 Since either Party may choose not to use or announce any services, products or marketing techniques relating to these discussions or information gained or exchanged during the discussions, both Parties acknowledge that one is not responsible or liable for any business decisions made by the other in reliance upon any disclosures made during any meeting between the Parties or in reliance on any results of the discussions. The furnishing of Proprietary Information to one Party by the other Party will not obligate either Party to enter into any further agreement or negotiation with the other.
- 26.6 Nothing contained in this Agreement will be construed as granting to one Party a license, either express or implied, under any patent, copyright, or trademark, now or hereafter owned, obtained, controlled, or which is or may be licensable by the other Party.
- 26.7 All publicity regarding this Agreement and its Attachments is subject to the Parties' prior written consent.
- 26.8 Unless otherwise agreed upon, neither Party will publish or use the other Party's name, language, pictures, or symbols from which the other Party's name may be reasonably inferred or implied in any advertising, promotion, or any other publicity matter relating directly or indirectly to this Agreement.

SECTION 27. NO RIGHTS TO THIRD PARTIES

- 27.1 This Agreement will not provide any third party, including, but not limited to any End User of ~~BCT~~either Party, with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference to this Agreement.

SECTION 28. HEADINGS

- 28.1 The headings in this Agreement are for convenience and will not be construed to define or limit any of the terms herein or affect the meanings or interpretation of this Agreement.

SECTION 29. EXECUTION IN DUPLICATE

- 29.1 This Agreement may be executed in counterparts. Each counterpart shall be considered an original and such counterparts shall together constitute one and the same instrument.

SECTION 30. NOTICES

30.1 Except as otherwise provided herein, all notices or other communication hereunder shall be deemed to have been duly given when made in writing and delivered in person or deposited in the United States mail, certified mail, postage prepaid, return receipt requested, or delivered by prepaid overnight express mail, and addressed as follows:

TO BCT:

Beaver Creek Cooperative Telephone Company
Attention: Tom Linstrom
15223 S Henrici Road
Oregon City, OR 97045
Telephone: (503) 632-3113
Facsimile: (503) 631-7161

TO CLEAR CREEK :

Clear Creek Mutual Telephone Company
Attention: Mitchell Moore
18238 S Fischers Mill Road
Oregon City, OR 97045-9696
Telephone: (503) 631-2101
Facsimile: (503-631-2098

30.2 If personal delivery is selected to give notice, a receipt of such delivery shall be obtained. The address to which notices or communications may be given to either Party may be changed by written notice given by such Party to the other pursuant to this Section.

30.3 The Parties have caused this Local Interconnection Agreement to be executed on their behalf on the dates set forth below.

BCT

By: _____
Typed: Tom A. Linstrom
Title: President

Date: _____

CLEAR CREEK

By: _____
Typed: Mitchell Moore
Title: President

Date: _____

ATTACHMENT I INTERCONNECTION

BCT initially intends to utilize its existing trunking facilities to Qwest's Portland tandem switch at PTLDOR13 to carry all LNP traffic originating from and terminating to Redland exchange from or to BCT. BCT will build direct interconnection trunks between itself and CCMT if and when BCT determines in its sole discretion that the amount of traffic exchanged between the Parties warrants the expense of constructing a direct interconnection.

If and when BCT determines in its sole discretion that the amount of traffic exchanged between the Parties warrants the expense of constructing a direct interconnection, the Parties ~~hereto~~, agree to directly interconnect their facilities and networks for the transport of Local Traffic as follows:

SECTION 1. DIRECT INTERCONNECTION TRUNKING ARRANGEMENTS

1.1 The Parties will directly interconnect their networks as specified in the terms and conditions contained herein:

1.1.1 Connection of Clear Creek and BCT facilities shall be at the Points of Interconnection (POI) set forth in this Attachment, may be modified from time to time by either Party with the written consent of the other Party, which consent will not be unreasonably withheld. BCT will agree to establish each POI at a technically feasible point on Clear Creek's network.

~~1.1.2 Physical connection of BCT's facilities to Clear Creek's facilities may also require a Point of Termination (POT) at Clear Creek's Central Office.~~

1.1.~~32~~ In order to establish direct Interconnection, a POI is required at one or more of the following locations:

1.1.~~32~~.1 A Clear Creek provided facility between the Clear Creek Host Office and the Clear Creek Exchange boundary.

1.1.~~32~~.2 The POI shall be located at the Clear Creek Exchange Boundary. Clear Creek-provided Facilities from the Clear Creek Exchange Boundary to the Clear Creek Host Office provides switched Interconnection to Clear Creek's End Users' served by that host office and any subtending remote offices.

~~1.1.4~~1.1.3 BCT shall be responsible for all transport of Local Interconnection Trunks outside the Clear Creek Exchange.

~~1.1.5~~1.1.4 If Transport of Local Interconnection Trunks from the Clear Creek Exchange boundary to the Clear Creek Host Office is provided by Clear Creek, rates shall be per the NECA Tariff FCC No. 5 for special access transport. Transport is not provided as part of Local Interconnection or

Reciprocal Compensation charges. Interconnection may be accomplished through the provision of DS1 or DS3 circuits.

- ~~1.1.6~~1.1.5 Each Party will be responsible for the engineering and construction of its own network facilities on its side of the POI, however, should Clear Creek be required to modify its network to accommodate the Interconnection request made by BCT, BCT agrees to pay Clear Creek ICB charges for such modifications. If BCT uses a third party network to reach the POI, BCT will bear all third party BCT charges for facilities and traffic in both directions on its side of the POI.
- 1.2 In order for BCT to establish a POI, BCT must submit a request, using the POI Request Form that can be obtained from Clear Creek's business office located at 18238 S. Fischers Mill Rd., Oregon City, OR 97045.
- 1.3 If BCT determines in its sole discretion that the amount of traffic exchanged between the Parties warrants the expense of constructing a direct interconnection, BCT shall be responsible for establishing separate trunk groups for:
- 1.3.1 Local Interconnection Traffic including ISP Bound Traffic, ~~and~~ locally-dialed Enhanced Services traffic that terminates directly on Clear Creek's switch, and EAS traffic; Local Interconnection trunks shall be used solely for exchange of traffic between BCT's CLEC customers and Clear Creek's customers; and ~~A separate trunk group shall be provided for any traffic other than Local Traffic between Clear Creek and BCT. The following types of traffic are specifically excluded from the Local Interconnection trunk group(s), and shall be provided for using separate trunks groups:~~
- ~~1.3.1.1 EAS traffic in both directions between Clear Creek and any other company except BCT's own directly originated or directly terminated CLEC traffic. This exclusion includes all third party traffic, including ILEC traffic or BCT traffic, traffic of affiliates of BCT, and all toll and/or access traffic.~~
- 1.3.1.2 IntraState and Interstate Access traffic regardless of origination point and destination.
- ~~1.3.1.3 Ancillary and tandem traffic per Paragraphs 1.3.2—1.3.4.~~
- ~~1.3.1.4 Connection to Wireless Carriers on either a Wireline-Wireless or Wireless-Wireline basis.~~
- ~~1.3.2 Connecting BCT's switch to the applicable 911/E911 routers or PSAPs. Clear Creek does not provide tandem or transit service for 911/E911 traffic. BCT shall not route any 911/E911 traffic over any trunk group connecting Clear Creek and BCT. BCT agrees to hold Clear Creek harmless for any problems with completing any 911/E911 traffic that BCT may attempt to route over Clear Creek's network. For all 911/E911 traffic originating from BCT, it is the sole responsibility of BCT and the appropriate state or local public safety answering agency to negotiate the manner in which 911/E911 traffic from BCT will be processed.~~

~~1.3.3 Connecting BCT's switch directly to the applicable Operator and Directory Assistance services for all 0+ or 0- or Directory Assistance, Intercept and/or Verification services. Clear Creek does not provide tandem or transit service for Operator Directory Assistance, Intercept or Verification traffic. BCT shall not route any Operator traffic over any trunk group connecting Clear Creek and BCT. BCT agrees to hold Clear Creek harmless for any problems with completing any Operator traffic either to or from BCT.~~

1.3.4 Clear Creek does not provide Tandem Switching function or Transit Service for any traffic originated by or terminated to BCT, including any calls to numbers ported from Clear Creek or BCT to another carrier. Any traffic routed by BCT, its affiliates, or any traffic originated by any other party destined for BCT's switch that is directed to Clear Creek's switch on a tandem or transit basis will not be transited under this Agreement.

1.3.5 Any violation of ~~this~~ paragraph 1.3 inclusive shall be deemed a material breach of this Agreement

1.46 The Parties mutually agree that all Interconnection facilities will be sized according to mutual forecasts and sound engineering practice, as mutually agreed to by the Parties. The Parties further agree that all equipment and technical Interconnections will be in conformance with all generally accepted industry standards with regard to facilities, equipment, and services.

1.46.1 If a trunk group is consistently utilized (trunks required for traffic divided by trunks in service) at less than fifty percent (50%) of rated busy hour capacity each month of any consecutive three (3) month period, Clear Creek will notify BCT of Clear Creek's desire to resize the trunk group. Such notification shall include Clear Creek's information on current utilization levels. If BCT does not submit an ASR to resize the trunk group or provide Clear Creek with its reasons for maintaining excess capacity within thirty (30) calendar Days of the written notification, Clear Creek may reclaim the unused facilities and rearrange the trunk group. When reclamation does occur, Clear Creek shall not leave the carrier-assigned trunk group with less than twenty-five percent (25%) excess capacity. Ancillary trunk groups are excluded from this treatment.

1.57 Interconnection will be provided via two-way trunks. The only compensation or other responsibility for payment for terminating Local traffic from the POI onward shall be Reciprocal Compensation, if applicable per this agreement. BCT shall pay Clear Creek Switched Access charges where BCT is acting as an Interexchange Carrier.

~~1.6-8~~ The mutually agreed upon technical and operational interfaces, procedures, grade of service and performance standards for Interconnection between the Parties will conform with all generally accepted industry standards with regard to facilities, equipment, and services. All Interconnection facilities and trunking will be ordered using industry standard ASR as referenced in Clear Creek's Local Service Provider Guide.

1.7-9 Interconnection shall be at the DS-1 level, using channelized DS-1's (24 DS-0 channels) with a minimum of 1 DS-1. BCT or Clear Creek may agree to assign multiple trunk groups to a single DS-1.

- | 1.8-10 BCT will not expect Clear Creek's local end office switch to act as a local, EAS, or access/toll tandem, on BCT's behalf nor will Clear Creek expect BCT's local end office switches to act as a local, EAS, or access/toll tandem on Clear Creek's behalf.
- | 1.9-11 This Agreement is applicable only to Clear Creek's serving areas. Clear Creek will not be responsible for interconnections or contracts relating to any of BCT's interconnection with any other service provider or telecommunications carrier.
- | 1.10-12 If BCT provides service using an NPA-NXX assigned to a rate center where Clear Creek provides extended area service or a applicable regulatory authority approved optional calling plan, and BCT chooses to indirectly interconnect by using the tandem switching facilities of a third party, Clear Creek will have no obligation to route and rate traffic to BCT's NPA-NXX as an EAS call or pursuant to an optional calling plan unless BCT has established a trunking arrangement for this traffic with Clear Creek and transiting arrangements with the other telecommunications carrier(s) utilizing the trunks and providing transiting service for the traffic.
- | 1.11-13 Clear Creek and BCT will route all ported numbers based on NPA-NXX contained in the Location Routing Number (LRN) using the same routing that is used for dialed calls to the same NPA-NXX.
 - | 1.11-13.1 However, if either Party's End User customer ports a number from that Party to another carrier and the Originating one Party routes a call to that ported number to the other Party, the Receiving Party will notify the Originating Party that calls are being incorrectly routed to the Terminating Party instead of the NPA-NXX designated in the LRN. The Originating Party shall immediately cease routing such calls to the Terminating Party. Failure to cease routing such calls to the Terminating Party shall be considered a material breach of this Agreement.
- | 1.12-14 Signaling Systems and Administration
 - | 1.12-14.1 The Parties will, where Clear Creek and BCT have ~~has~~ the capability, interconnect their networks using SS7 signaling associated with all Interconnection trunk groups as defined in Telcordia GR-246 "Telcordia Specification of Signaling Systems 7 (SS7) and GR-905, "Common Channel Signaling Network Interface Specification (CCSNIS) Supporting Interconnection, Message Transfer Part (MTP), and Integrated Services Digital Network (ISDN) User Part (ISUP) "including ISDN User Part ("ISUP") for trunk signaling and Transaction Capabilities Application Part ("TCAP") for CCS-based features in the Interconnection of their networks. For glare resolution, Clear Creek will have priority on odd trunk group member circuit identification codes, and BCT will have priority on even trunk group member circuit identification codes, unless otherwise mutually agreed.
 - | 1.12-15.2 Parties agree to populate all fields in SS7 messages that are populated by operating practice in the Portland metro area, including but not limited to ANI, CNI, and, if a number is ported, LRN and dipped/non-dipped indication.

SECTION 2. TESTING AND TROUBLE RESPONSIBILITIES

- 2.1 The Parties agree to:
- 2.1.1 Cooperatively plan and implement coordinated repair procedures for the local Interconnection trunks and facilities to ensure trouble reports are resolved in a timely and appropriate manner. BCT shall be responsible for all ordering, implementation, testing, and maintenance on all third-party facilities required for interconnection with Clear Creek under this Agreement.
 - 2.1.2 Provide trained personnel with adequate and compatible test equipment to work with each other's technicians.
 - 2.1.3 Promptly notify each other when there is any change affecting the service requested, including the date service is to be started.
 - 2.1.4 Coordinate and schedule testing activities of their own personnel, and others as applicable, to ensure its Interconnection trunks/trunk groups are installed per the Interconnection order, meet agreed upon acceptance test requirements, and are placed in service by the due date.
 - 2.1.5 Perform sectionalization to determine if a trouble condition is located in its facility or its portion of the Interconnection trunks prior to referring any trouble to each other.
 - 2.1.6 Provide each other with a trouble reporting number to a work center that is staffed 24 hours a day, 7 days a week.
 - 2.1.7 Based on the trunking architecture, provide for mutual tests for system assurance for the proper recording of AMA records in each company's switch. These tests are repeatable on demand by either Party upon reasonable notice.
 - 2.1.8 A maintenance service charge applies whenever either Party requests the dispatch of the other Party's personnel for the purpose of performing maintenance activity on the Interconnection trunks, and any of the following conditions exist:
 - 2.1.8.1 No trouble is found in the Interconnection trunks; or
 - 2.1.8.2 The trouble condition results from equipment, facilities or systems not provided by the Party whose personnel were dispatched; or
 - 2.1.8.3 Trouble clearance did not otherwise require a dispatch, and upon dispatch requested for repair verification, the Interconnection trunk does not exceed maintenance limits.
 - 2.1.8.4 If a maintenance service charge has been applied and trouble is subsequently found in the facilities of the Party whose personnel were dispatched, the charge will be canceled.
 - 2.1.8.5 Billing for maintenance service is based on Clear Creek's respective tariff.

SECTION 3. INTERCONNECTION FORECASTING

- 3.1 Semi-annually BCT will provide Clear Creek a one (1) year forecast for expected trunk utilization. Orders for trunks that exceed forecasted quantities for forecasted locations will be accommodated as facilities and/or equipment are available.
- 3.2 The forecasts will include the number, type, and capacity of trunks as well as a description of major network projects anticipated for the following six months. Major network projects include trunking or network rearrangements, shifts to anticipated traffic patterns, or other activities that are reflected by a significant increase or decrease in trunking demand for the following forecast period.
- 3.3 If a trunk group is under 75 percent of centum call seconds capacity on a monthly average basis for each month of any six-month period, either Party may issue an order to resize the trunk group, which will be left with not less than 25 percent excess capacity. The grade of service for all final facilities between Clear Creek' central office and BCT's will be engineered to achieve P.01 grade of service.

SECTION 4. RECIPROCAL COMPENSATION FOR THE TRANSPORT AND TERMINATION OF INTERCHANGED TRAFFIC

- 4.1 All Local Interconnection Traffic, regardless of the destination or type of traffic, or the protocols used in connection with such traffic, shall be terminated to a Party subject to ~~that Party's Local Interconnection Service charge if Local traffic destined for a customer in the Clear Creek serving area. All other traffic routed to Clear Creek shall be billed at Clear Creek's tariffed access charges~~Bill and Keep.

SECTION 5. TRANSIT SERVICE

- 5.1 Clear Creek does not offer Transit Service.

ATTACHMENT 2 ANCILLARY SERVICES

SECTION 1. DIRECTORY LISTINGS AND DISTRIBUTION

- 1.1 The parties agree that the use by BCT of Clear Creek's Subscriber List Information has been and will continue to be addressed in a separate agreement and shall not be covered by this Interconnection Agreement.

ATTACHMENT 3 LOCAL NUMBER PORTABILITY

SECTION 1. LOCAL NUMBER PORTABILITY (LNP)

- 1.1 BCT agrees to follow the procedures in Clear Creek's Local Service Provider Guide for the porting of numbers.
- 1.2 Terms and Conditions
 - 1.2.1 Clear Creek will only provide LNP services and facilities where technically feasible, subject to the availability of facilities, and only from properly equipped central offices.
 - 1.2.2 An LNP telephone number may be assigned by BCT only to BCT's End Users located within Clear Creek' rate center, which is associated with the NXX of the ported number.
- 1.3 Obligations of Parties
 - 1.3.1 Both Parties will participate in LNP testing in accordance with North American Numbering Council (NANC) standards.
 - 1.3.2 Both Parties will follow recommended National Emergency Number Association (NENA) standards for LNP until such time the standards are superseded by federal, state, or local legislation.
 - 1.3.3 BCT is required to send to Clear Creek a completed Bona Fide Request Form for LNP.
 - 1.3.4 BCT is responsible to coordinate with the local E911 and Public Services Answering Point (PSAP) coordinators to insure a seamless transfer of End User emergency services.
 - 1.3.5 BCT is required to meet all mutually agreed upon testing dates and implementation schedules. Both Parties will perform testing as specified in industry guidelines and cooperate in conducting any additional testing to ensure interoperability between networks and systems. Each party shall inform the other Party of any system updates that may affect the other Party's network and each Party shall, at the other Party's request perform tests to validate the operation of the network.
 - 1.3.6 Each Party is responsible for the following:
 - 1.3.6.1 Adhere to all Number Portability Administration Center (NPAC) and North American Numbering Council (NANC) requirements and in providing its own access to regional NPAC.
 - 1.2.6.2 For providing its own access to the Service Order Administration (SOA).

EXHIBIT A

WIRELINE-WIRELINE TRADING PARTNER PROFILE

The following items are pertinent to the successful establishment of operations within **Carrier's BCT's** local service territories.

Prepared By: _____	Telephone: _____
---------------------------	-------------------------

1)	Wireline Company: _____ _____ _____																									
2)	Wireline Contact Information:																									
	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;"></th> <th style="width: 20%; border-bottom: 1px dotted black;">Contact Name</th> <th style="width: 20%; border-bottom: 1px dotted black;">Phone Number</th> <th style="width: 20%; border-bottom: 1px dotted black;">Facsimile</th> <th style="width: 10%; border-bottom: 1px dotted black;">E-Mail</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">a.) Billing (if applicable)</td> <td style="border-bottom: 1px dotted black;">_____</td> <td style="border-bottom: 1px dotted black;">_____</td> <td style="border-bottom: 1px dotted black;">_____</td> <td style="border-bottom: 1px dotted black;">_____</td> </tr> <tr> <td style="padding: 5px;">b.) SLA/Profile</td> <td style="border-bottom: 1px dotted black;">_____</td> <td style="border-bottom: 1px dotted black;">_____</td> <td style="border-bottom: 1px dotted black;">_____</td> <td style="border-bottom: 1px dotted black;">_____</td> </tr> <tr> <td style="padding: 5px;">c.) Pre activate/ Activation</td> <td style="border-bottom: 1px dotted black;">_____</td> <td style="border-bottom: 1px dotted black;">_____</td> <td style="border-bottom: 1px dotted black;">_____</td> <td style="border-bottom: 1px dotted black;">_____</td> </tr> <tr> <td style="padding: 5px;">d.) LNP Issues-post activation</td> <td style="border-bottom: 1px dotted black;">_____</td> <td style="border-bottom: 1px dotted black;">_____</td> <td style="border-bottom: 1px dotted black;">_____</td> <td style="border-bottom: 1px dotted black;">_____</td> </tr> </tbody> </table>		Contact Name	Phone Number	Facsimile	E-Mail	a.) Billing (if applicable)	_____	_____	_____	_____	b.) SLA/Profile	_____	_____	_____	_____	c.) Pre activate/ Activation	_____	_____	_____	_____	d.) LNP Issues-post activation	_____	_____	_____	_____
	Contact Name	Phone Number	Facsimile	E-Mail																						
a.) Billing (if applicable)	_____	_____	_____	_____																						
b.) SLA/Profile	_____	_____	_____	_____																						
c.) Pre activate/ Activation	_____	_____	_____	_____																						
d.) LNP Issues-post activation	_____	_____	_____	_____																						

3)	States for Porting:
	States: _____ Codes and Additional information: a) OCN: _____ b) SPID: _____

LEC OCN's

OCN:	OCN:	OCN:	OCN:	OCN:	OCN:	OCN:

EXHIBIT A

Wireline-Wireline Trading Partner Profile (TPP)

(Continued)

Contacts

Primary Contact Name:	
Phone	
FAX	
Email Address	
Secondary Contact Name:	
Phone	
FAX	
Email Address	
Escalation Contact Name:	
Phone	
FAX	
Email Address	

FAX

for processing:	FAX number	
	Email	

Operations

Information		
	Operating Company Number (OCN)	
	AOCN	
	Wireless or Wireline	
	Time Zone	
	Holiday Days	
	Holiday Time Begin (hh:mm)	
	Holiday Time End (hh:mm)	
for processing:		
	Service Provider SPID	
	LSMS SPID	
	LSR Version ID	
	FOC Version ID	
	WICIS Version ID	
	Time Zone	
	Business Days	
	Business Day Begin (hh:mm)	
	Business Day End (hh:mm)	

The parties agree that information contained in the Trading Partner Profile is operational in nature and subject to change. The parties agree to make every effort to give the other party 30 days notice of any changes to its information.

EXHIBIT B

LOCAL NUMBER PORTABILITY (LNP) - BONA FIDE REQUEST (BFR)

Please provide Requestor's information below:

DATE	(Date Of Request)
TO	(Name Of Service Provider)
	(Address Of Service Provider)
	(Contact Name /Number)
FROM	(Requester/Service Provider Name/ID)
	(Requester/Operating Company Number (OCN))
	(Requester Switch(es)/CLLI)
	(Authorized By Name)
	(Authorized By Title)
	(Contact Name/Address/Number)

Affidavit attesting requester as authorized agent should accompany request.

Switches

CLLI	Rate Center Name (2)	Rate Center V&H	NPA-NXX(s)
			All: Y or N
			All
			All
			All
			All

DATES:

Requested date switch(es) should be LNP capable: _____ (mm/dd/yy)

Requested code opening date: _____ (mm/dd/yy)

Acknowledgment of BFR is to be sent to the requester within ten business days.

EXHIBIT B

Local Number Portability (LNP)

Bona Fide Request (BFR)

(Continued)

Notes:

- 1.1 List each switch targeted for LNP by its specific CLLI code.
- 1.2 Enter associated Rate Center information from LERG, including: Rate Center Name and Associated V&H Terminating Point Master Coordinates; Source of the LERG information: Destination Code Record (DRD) Screen.
- 1.3 Circle or highlight Y if requesting all eligible NPA-NXX codes in that specific switch to be opened. Circle or highlight N if only certain NPA NXX codes are being requested. Then provide list of desired NPA NXX(s).

EXHIBIT C

ACKNOWLEDGMENT OF LNP BONA FIDE REQUEST (BFR)

DATE: (date of response)

TO	(Requester/Carrier Name/ID)
	(Contact Name/Address/Number)
	Requester Switch(es)/CLLII
FROM	(Name Of Service Provider)
	(Address Of Provider)
	(Contact Name/Number's
	Switch Request(S) Denied/Reason For Denial:
	_____ (CLLII 1)
	_____ (CLLII 2)
	_____ (CLLII 3)
	Authorized Company Representative Signature/Title: _____

Switch request(s) accepted

CLLI Accepted	LNP Effective Date	Modified Effective Date	Ineligible NPA-NXXs

EXHIBIT D

PROOF OF AUTHORIZATION - LETTER OF AUTHORIZATION

SAMPLE LETTER OF AUTHORIZATION

ABC TELECOMMUNICATIONS
LETTER OF AGENCY

Local Exchange Carrier:

ABC Telecommunications appoints _____ (Carrier), the limited purpose of ordering and implementing service to the ABC Telecommunications facility described below. Agent orders are limited not to exceed quantity indicated below. Engineering information and LEC due dates are to be provided to ABC Telecommunications in accordance with standard interval practices.

End User Name/Location:	Big Time Employer 123 Broad St Anytown, OR, 97000
Related Order:	T0884002
Circuit:	MGC090724876
Telco Designation:	1005 /OC03 /ORCYOR18JAI/RDLDORXX

The agency relationship shall remain in effect for the facilities indicated until modified or revoked by ABC Telecommunications. Neither _____ (Carrier) nor ABC Telecommunications shall be precluded by this appointment from dealing with any LEC in arranging for other telecommunication services.

ABC Telecommunications Operations Approval:

Name

Title

EXHIBIT D
SAMPLE PROOF OF AUTHORIZATION

End-user's Name _____
End-user's Phone Number _____
End-user's Address _____
Date:

Carrier's Name
Carrier's Sales Associate
Carrier's Address

Local Exchange Carrier:

This letter authorizes _____(Carrier) to act as our communications representative agent when dealing with Clear Creek Telephone & TeleVision. We authorize _____(Carrier) to obtain information and/or copies of all our network services and to order and manage all negotiations for the installation of telecommunications services for the above listed address and with respect to the following numbers:

503-555-1000, 503-555-1001, 503-555-1002.

This authorization shall remain in effect until canceled by us in writing. This letter of agency rescinds any other letter of agency previously entered into by _____(End-user's Name).

Sincerely,

End-user's Name

Clear Creek Telephone & TeleVision

Local Service Request

Administrative Section		CCNA	PON	VER	LSR NO	LOCQTY	HT
AN	ATN	SC	PG	of	RESID		
D/TSENT	DSPTCH	DDD	APPTIME	DDDO			
NOR	APPTIME	DFDT	PROJECT	LSCP	CHC	REQTYP	ACT SUP EXP AFO
ONSP	AENG	ALBR	SCA	AGAUTH	DATED	AUTHNM	PORTTYP ACTL
LST	LSO	TOS	SPEC	NC	PBT	NCI	CHANNEL SECNCI
RPON	RORD	LSP AUTH	LSP AUTH DATE	LSP AUTH NAME			
LSPAN	CIC	CUST	NPDI				
Bill Section		BII	BAN1	BI2	BAN2	ACNA	EBD CNO
BILLNM	SBILLNM	TE	EBP				
STREET	FLOOR	ROOM/MAIL STOP	CITY				
STATE	ZIP	BILLCON	TEL NO	VTA			
Contact Section		INIT	TEL NO				FAX NO
EMAIL	STREET	FLOOR	ROOM/MAIL STOP	CITY			
STATE	ZIP	IMPCON	TEL NO	PAGER			
ALT IMPCON	TEL NO	PAGER					
DSGCON	DRC	TEL NO	FAX NO				
EMAIL	STREET	FLOOR	ROOM/MAIL STOP	CITY			
STATE	ZIP						
REMARKS							

Clear Creek Telephone & TeleVision

End User Information

Administrative Section

PON VER AN ATN DQTY PG of 2 4

Location and Access

LOC NUM NAME AFT SAPR SANO SASF SASD

SASN SATH

LD1 LV1 LD2 LV2 LD3 LV3

AAI

CITY STATE ZIP LCON

TEL NO EUMI

ACC

ACC (continued)

WSOP CPE MFR CPE MOD ERL IBT

Inside Wire

IWO IWBAN IWCON TEL NO

Bill Section

EAN EATN FBI BILLNM

SBILLNM STREET FLOOR ROOM

CITY STATE ZIP LCON

TEL NO SSN

Clear Creek Telephone & TeleVision

End User Information

Administrative Section

PON VER AN ATN DQTY PG of 3 4

LOC NUM NAME AFT SAPR SANO SASF SASD SASN SATH

LD1 LV1 LD2 LV2 LD3 LV3

AAI

CITY STATE ZIP LCON

TEL NO EUMI

ACC

ACC (continued)

WSOP CPE MFR CPE MOD ERL IBT

Inside Wire

IWO IWBAN IWCON TEL NO

Bill Section

EAN EATN FBI BILLNM

SBILLNM STREET FLOOR ROOM

CITY STATE ZIP LCON

TEL NO SSN

Administrative Section

CCNA	PON	VER	DSR NO	ATN	AN
SC1	SC2	PG_of_			

Listing Control Section

LACT	ALI	RTY	LTY	EOS	STYC	TOA	DOI	WPP	LOCNUM	DLNUM	MTN
PPTN		DDQTY	LTXQTY								

Listing Indicators Section

DML	NOSL	TMKT	BRO	ADV	STR	DLNM	PROF	DIRIDL	DIRNAME	
DIRSUB								LID1	LID2	OMSD
OMSD (continued)										

Listing Instruction Section

LTN	NSTN	OMTN	LEX	DNA	LNPL	LNLN
LNLN (continued)						
LNFN (continued)						
DES						

TL	TITLE 1	TITLE 2	TLD	TITLE 1 D
NICK	PLA			

PLA (continued)	LTXNUM	LTXTY	LPHRASE	LTEXT
LTEXT				
LTEXT (continued)				
LTEXT (continued)				
LTEXT (continued)				

ACA	ADI	LAPR	LANO	LASF	LASD
LASN					
LATH	LASS	LALO			
LALOC			LAST	LAZC	

Remarks

EXHIBIT E

LOCAL RESPONSE

Clear Creek Telephone & TeleVision

LOCAL RESPONSE (LR)

ADMINISTRATION SECTION

CCNA	PON	VER		
D/TSENT	DDD	DD	RESPONSE TYPE (RT)	REASON CODE (RC)
REP	TEL-NO	FAX NO	EMAIL	

END USER LOCATION AND ACCESS

NAME	TN'S			
STREET	CITY	ST	ZIP	

REMARKS

--

*Response Type (RT)
 C=Firm Order Confirmation
 J=Jeopardy Notice

*Reason Code (RC) if RT is J
 1H=Central Office Freeze
 1M=Requested DD is less than published interval
 1N=DD and frame due time can not be met
 1P=Other
 2A=LSR error, incorrect or missing info
 4G=Need to revise TN-send supplement

ATTACHMENT 4 PRICING

BCT reserves the right to comment on CCMT's pricing proposal below and propose alternative pricing language after CCMT provides further information on its costs, as requested in BCT's Response CCMT's Petition for Arbitration.

SECTION 1. RECIPROCAL COMPENSATION

1.1 ~~All Local Interconnection Traffic, regardless of the destination or type of traffic, or the protocols used in connection with such traffic, will be terminated by the Parties on a Bill and Keep basis.~~

1.1.2 ISP Bound and Local wireline to wireline traffic will be terminated by the Parties on a Bill and Keep basis.

1.2.3 BCT will provide accurate Calling Party Number ("CPN") and/or Automatic Number Identification (ANI") on at least ninety-five percent (95%) of all traffic delivered to the POI. ~~Where CPN and/or ANI is not provided, BCT agrees to pay the applicable intrastate terminating access charges for such traffic.~~

1.2.1 ~~Reciprocal Compensation Rate~~

~~.0171 per minute~~

SECTION 2. RESALE

2.1 Nonrecurring Charges:

2.1.1 A nonrecurring charge will apply when converting a Clear Creek account to a BCT account or when changing an End User from one carrier to another.

SECTION 3. SUPPLEMENTAL PON CHARGES

3.1 A supplement is any new iteration of a local service request.

3.1.1 Supplement # 1

Cancel - Indicates that the pending order is to be canceled in its entirety.

Charge - \$27.00

3.1.2 Supplement #.2

New desired due date - Indicates that the pending order requires only a change of desired due date.

3.1.3 Supplement # 3

Other - Any other change to the request.

Supp 2 & 3 Charges are as follows:

Clear Creek Customer Type	Residence	Business
Order Type	Porting	Porting
Charge Per Order	\$10.00	\$18.25
*Expedite Charge will be applied (\$41.50 per telephone number) for any Portings stopped on the Due Date and subsequently reappointed with a new Due Date.		

SECTION 4. OTHER MISCELLANEOUS CHARGES

- 4.1 Expedite Charge - Any work requested before the next available due date or before the standard interval for that service.

The expedite charge is applied for each telephone number being expedited.

Residence 41.50

Business 41.50

Additional Labor Charges also apply if the work is done after hours or on the weekend.

- 4.2 Preferential / Vanity Numbers

NONRECURRING

Residence \$39.50

Business \$39.50

- 4.3 Concurrence Charge

The CLEC is responsible to create subscription versions in the NPAC prior to the 18-hour window. In the event that the CLEC does not create the subscription version(s) within the prescribed time frame, the CLEC is responsible to notify Clear Creek during regular business hours of the need to concur. Failure to do so may result in a delayed porting. A concurrence charge is applied for each telephone number needing concurrence.

NONRECURRING

Residence \$10.00

Business \$18.25

ATTACHMENT 5 INDIVIDUAL CASE BASIS

SECTION 1. ICB DEFINITION

- 1.1 This Agreement contains references to Individual Case Basis (ICB) elements, both ICB rates and ICB intervals. The purpose of this Attachment is to identify how BCT's ICB requests, whether they be for rates or intervals, are processed through and by Clear Creek.

SECTION 2. ICB RATE INTERVALS

- 2.1 For those products and services identified in this Agreement that contain a provision for ICB rates, Clear Creek will provide BCT with a written quote of the ICB rate within sixty (60) business days unless a specific interval for providing the quote is either contained in the Agreement or this Attachment.
- 2.2 Upon request, Clear Creek shall provide BCT with Clear Creek's supporting cost data and/or cost studies for the ICB rated service that BCT wishes to order within seven (7) business days, except where Clear Creek cannot obtain a release from its vendors within seven (7) business days, in which case Clear Creek will make the data available as soon as Clear Creek receives the vendor release. Consistent with the terms and conditions of any applicable vendor contract or agreement, Clear Creek shall diligently pursue obtaining the release of cost information as soon as reasonably possible. To the extent consistent with the terms and obligations of any applicable vendor contract or agreement, Clear Creek shall request the release of vendor cost information when Clear Creek communicates with the vendor(s) when Clear Creek seeks a quote for the costs of the ICB project. Such cost data shall be treated as confidential Information if requested by Clear Creek under Section 26 of this Agreement.

SECTION 3. ICB PROVISIONING INTERVALS

- 3.1 For those products and services provided pursuant to this Agreement that contain a provision for ICB interval but do not contain a specific provision for when the ICB interval shall be provided, the ICB interval shall be provided within sixty (60) business days of receipt of the order, request or application.
- 3.2 For ICB intervals for those products and services that require negotiated project time lines for installation, the Clear Creek representative, authorized to commit to intervals, shall meet with BCT's representative within seven (7) business days of receipt of the request from BCT to negotiate intervals.