

**DUNCAN, TIGER & NIEGEL, P.C.**

GEORGE R. DUNCAN, SR.  
1897-1981

GEORGE R. DUNCAN, JR.  
Retired  
[rich@staytonlaw.com](mailto:rich@staytonlaw.com)

ATTORNEYS AT LAW

582 E. Washington Street  
Post Office Box 248  
Stayton, Oregon 97383-0248  
Telephone: (503) 769-7741  
Fax: (503) 769-2461

JAMES D. TIGER  
[jim@staytonlaw.com](mailto:jim@staytonlaw.com)

JENNIFER L. NIEGEL  
[jennifer@staytonlaw.com](mailto:jennifer@staytonlaw.com)

May 11, 2007

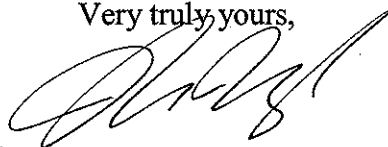
**VIA E-MAIL AND FIRST CLASS MAIL**

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

RE: ARB 789

Enclosed are the original and five copies of Clear Creek's Opening Brief and the Certificate of Service.

Very truly yours,



Jennifer L. Niegel

Enclosures

cc: Service List  
Mitchell Moore

1  
2  
3  
4 **BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

5 **ARB 789**

6 In the Matter of the Petition of CCMT )  
7 MUTUAL TELEPHONE COMPANY for ) CLEAR CREEK'S OPENING BRIEF  
8 Arbitration of an Interconnection Agreement )  
9 with BCT COOPERATIVE TELEPHONE )  
10 COMPANY, Pursuant to the 47 U.S.C. §§ 251 )  
11 and 252 )

12 Clear Creek Mutual Telephone Company ("CCMT") respectfully submits its opening  
13 brief regarding the issues in this docket.

14 **I. INTRODUCTION**

15 CCMT is the ILEC in the Redland exchange. Beaver Creek Cooperative Telephone  
16 Company ("BCT") is an Incumbent Local Exchange Carrier ("ILEC") in the Beaver Creek  
17 exchange area and a Competitive Local Exchange Carrier ("CLEC") throughout the rest of the  
18 state. This proceeding relates to the arbitration of an Interconnection Agreement ("ICA") for the  
19 exchange of traffic between CCMT and BCT in its capacity as a CLEC in the Redland exchange.

20 BCT has repeatedly attempted to obtain approval to operate its CLEC in the same manner  
21 and over the same trunk groups as its ILEC. In previous proceedings with other carriers, the  
22 Oregon Public Utility Commission (the "Commission") has made clear that when BCT operates  
as a CLEC it must abide by the rules established for CLECs.

This brief will address three issues, two of which relate to trunking and routing. BCT  
seeks to interconnect indirectly with CCMT and to commingle various types of non-toll traffic

1 on the same interconnection trunk groups. Under the ICA proposed by CCMT, BCT would be  
2 required to interconnect with CCMT on a direct basis and BCT would only be allowed to deliver  
3 local and ISP-bound traffic from its CLEC operation over Local Interconnection ("LIS") trunks.  
4 Separate trunks would have to be established for other traffic.

5 The third issue pertains to the rates for reciprocal compensation. The parties have agreed  
6 to compensate one another for the transport and termination of traffic, but disagree as to what the  
7 rate must be. BCT believes that various orders from the FCC require the parties to use the same  
8 rates for local traffic as for ISP-bound traffic. CCMT believes that such orders allow the  
9 Commission to establish differing rates for local and ISP-bound traffic.

10 For the reasons set forth herein, CCMT asks the Arbitrator to determine that: (1) BCT  
11 must interconnect with CCMT on a direct basis; (2) BCT may not commingle ILEC and CLEC  
12 traffic or various kinds of non-toll traffic onto the same trunk groups; and (3) the Commission  
13 has the authority to approve differing rates for the exchange of local and ISP-bound traffic.

## 14 II. DISCUSSION

15 **A. Do Sections 251 and 252 of the Telecommunications Act of 1996 require BCT to**  
16 **interconnect directly to CCMT network [sic] or do they allow BCT to interconnect**  
**indirectly to CCMT's network through a third party carrier?**

17 CCMT asks the Arbitrator to require BCT to interconnect directly to CCMT. Standard  
18 LIS trunks are warranted in order for CCMT to properly route and ticket the competitive traffic  
19 governed by the ICA. No LIS trunks presently exist between the two companies. Indeed, no  
20 physical facilities exist between the two companies.

1 BCT argues that requiring direct interconnection violates Sections 251 and 252 of the  
2 Telecommunications Act.<sup>1</sup> Section 251(a)(1) provides that a telecommunications carrier  
3 generally has the duty to “interconnect directly or indirectly with the facilities and equipment of  
4 other telecommunications carriers”. However, the FCC has determined that the  
5 telecommunications carrier “should be permitted to provide interconnection . . . based upon their  
6 most efficient economic and technical choices.”<sup>2</sup>

7 In this case, direct interconnection is necessary because indirect interconnection as  
8 contemplated by BCT is not technically feasible. If BCT is allowed to interconnect indirectly, a  
9 third party, likely Qwest, would have to transit BCT’s traffic to CCMT. BCT has proposed to  
10 transit its traffic over the existing Qwest local/EAS trunks. CCMT believes that Qwest is neither  
11 willing nor able to transit traffic associated with BCT’s CLEC customers within the Redland  
12 exchange over the existing local/EAS trunks. In fact, the Interconnection Agreement recently  
13 approved between Qwest and BCT in ARB 747 (the “Qwest ICA”) does not permit such routing.<sup>3</sup>  
14 If no third party carrier is willing to transit BCT’s traffic in the manner in which it desires,  
15 indirect trunking between BCT and CCMT is not technically feasible.

16 Further, indirect interconnection is the best option to ensure proper routing and reduce  
17 costs to CCMT. Because BCT operates as both an ILEC and CLEC, BCT does not distinguish  
18 or separately identify its ILEC traffic from its CLEC traffic. Therefore, it would be difficult and  
19 more costly for CCMT to measure and bill traffic if BCT were allowed to interconnect indirectly.  
20

21 <sup>1</sup> ARB 789 Beaver Creek’s Response To Petition at 5.

22 <sup>2</sup> In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC  
Rcd 15499, Paragraph 997 (1996) (Local Competition Order)).

<sup>3</sup> See ARB 747 OPUC Order 06-637.

1 The configuration proposed by CCMT is identical to that selected by BCT in ARB 747  
2 and should therefore be approved. In ARB 747, BCT was ordered to directly interconnect and  
3 route all CLEC traffic between Qwest and BCT on separate LIS trunks or designate all BCT  
4 ILEC traffic as CLEC traffic, pay the reciprocal compensation rates and route all traffic over  
5 either BCT ILEC or LIS direct trunk groups.<sup>4</sup> BCT opted to deliver the traffic associated with its  
6 ILEC customers to Qwest over the pre-existing switched access trunk groups and the traffic  
7 associated with its CLEC customers over separate LIS trunks as defined in the Qwest ICA.

8 Indirect interconnection in this case is not technically feasible as there is not a willing  
9 third party to transit traffic in the manner BCT desires and it would also be burdensome to  
10 CCMT. The language proposed by CCMT in Section 1.3 is consistent with the  
11 Telecommunications Act and other interconnection agreements. Accordingly, BCT should be  
12 required to directly interconnect with CCMT and the language proposed by CCMT should be  
13 approved.

14 **B. How should the parties be compensated for local and ISP-bound traffic?**

15 While the parties have tentatively agreed that they will compensate one another for the  
16 exchange of traffic, they disagree about what the rates must be. BCT has suggested that the FCC  
17 in its Core Forbearance Order<sup>5</sup> lifted the new markets rule imposed in the ISP Remand Order<sup>6</sup>  
18 and requires CCMT to opt either a \$.0007 rate for both ISP-bound traffic and local traffic or bill  
19 and keep for both. CCMT believes that the mirroring rule allows differing rates for local and  
20 ISP-bound traffic. Paragraph 89 of the 2001 Order provides:

21  
22 <sup>4</sup> ARB 747 OPUC Order 06-637

<sup>5</sup> WC Docket No. 03-171, Order, FCC 04-241 at 8

<sup>6</sup> WC Docket No. 03-171, Order, DA 04-1764

1 "The rate caps for ISP-bound traffic that we adopt here apply, therefore, only if an  
2 incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the  
3 same rate....For those incumbent LECs that choose not to offer to exchange  
4 section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound  
5 traffic, we order them to exchange ISP-bound traffic at the state-approved or  
6 state-arbitrated reciprocal compensation rates reflected in their contracts."<sup>7</sup>

7 Paragraph 98 further provides:

8 "If an incumbent LEC does not offer to exchange all section 251(b)(5) traffic  
9 subject to the rate caps set forth herein, the exchange of ISP-bound traffic will be  
10 governed by the reciprocal compensation rates approved or arbitrated by state  
11 commissions."<sup>8</sup>

12 Therefore, the \$.0007 rate cap applies only if the ILEC offers to exchange all traffic  
13 subject to 251(b)(5) at the same rates. However, if the ILEC wants to do so, it can opt instead to  
14 exchange traffic at state-arbitrated reciprocal compensation rates. Nothing in the Order requires  
15 the state-arbitrated reciprocal compensation rates for local traffic and ISP-bound traffic to be the  
16 same. In fact, in ARB 747, the OPUC approved charges of \$.0013301 for call termination of  
17 local calls and charges of \$.0007 for ISP-bound traffic between BCT and Qwest.<sup>9</sup>

18 For the reasons set forth above, CCMT requests that the Arbitrator determine that the  
19 Commission has the authority to approve differing rates for local and ISP-bound traffic.

20 **C. May BCT combine various types of traffic on the same interconnection trunk  
21 groups when it is economically efficient to do so?**

22 CCMT asks the Arbitrator to prohibit BCT from commingling different types of non-toll  
traffic onto the same trunk groups. The language proposed by CCMT in Attachment 1, Section  
1.3 requires BCT to establish LIS trunk groups for local and ISP-bound traffic exchanged  
between BCT's CLEC customers and CCMT's customers. In addition, it requires BCT to

<sup>7</sup> CC Docket No. 99-68, Order, FCC 01-131 at 44

<sup>8</sup> CC Docket No. 99-68, Order, FCC 01-131 at 49

<sup>9</sup> ARB 747 OPUC Order 06-637

1 establish a separate trunk group for any other kind of traffic, including EAS, E911, wireless  
2 services, operator services, third party traffic, and traffic from BCT's ILEC. The language  
3 proposed by CCMT does not require such separate trunk groups to be directly connected to  
4 CCMT or established until there is an intention to deliver the excluded services to CCMT.

5 This issue arises in part because of BCT's unique position as an ILEC and CLEC. BCT  
6 should not be allowed to combine its ILEC traffic and CLEC traffic over existing ILEC  
7 local/EAS trunk groups through a third party carrier or over LIS trunk groups to CCMT. If BCT  
8 was allowed to commingle its traffic, CCMT would be unable to properly measure and bill for  
9 such traffic for purposes of reciprocal compensation. Further, such commingling could  
10 dramatically change the balance of traffic and cause CCMT to pay a disproportionately large  
11 amount to BCT for calls that would otherwise normally be delivered over the Public Switched  
12 Network.

13 BCT argues that it does not plan to offer some of the services mentioned and thus  
14 language requiring separate trunks for those services should be removed. However, BCT has  
15 indicated that it plans to someday serve as a tandem.<sup>10</sup> The proposed ICA provides that this kind  
16 of traffic must be routed under separate trunks, either directly or indirectly connected to CCMT.  
17 Even though BCT is not providing this service at this time, it is appropriate to address this issue  
18 and others in order to avoid the need to later renegotiate terms and conditions.

19 Further, since BCT's CLEC has statewide authority, it is possible for BCT's CLEC to  
20 establish service in an exchange that currently is governed by State access rules. Under the  
21  
22

---

<sup>10</sup> ARB 747 Beaver Creek Opening Testimony at 15

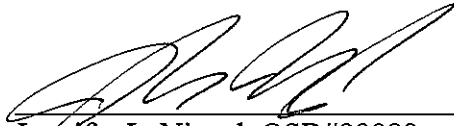
1 language proposed by CCMT, BCT would not be allowed to deliver such access traffic to CCMT  
2 over the LIS trunks governed by the ICA.

3 For the reasons set forth above, CCMT asks the Arbitrator to require BCT to separately  
4 route its CLEC traffic and prohibit traffic other than local and ISP-bound traffic to be delivered  
5 over LIS trunks.

### 6 CONCLUSION

7 In summary, CCMT asks the Arbitrator to determine that: (1) BCT must interconnect  
8 with CCMT on a direct basis; (2) BCT may not commingle various kinds of non-toll traffic onto  
9 the same trunk group; and (3) the Commission is authorized to approve differing rates for the  
10 exchange of local and ISP-bound traffic.

11 DATED: May 11, 2007.

12   
13 Jennifer L. Niegel, OSB#99089  
Of Attorneys for Petitioner

#### 14 Petitioner

15 Clear Creek Mutual Telephone Company  
16 Attn: Mitchell A. Moore  
18238 South Fischers Mill Road  
17 Oregon City, OR 97045-9696  
Telephone: (503) 631-2101  
Fax: (503) 631-2385  
Email: [mmoore@clearcreek.coop](mailto:mmoore@clearcreek.coop)

#### 18 Attorneys for Petitioner

19 Jennifer L. Niegel, OSB#99089  
20 Duncan, Tiger & Niegel, P.C.  
582 E. Washington Street  
PO Box 248  
21 Stayton, OR 97383-0248  
Telephone: (503) 769-7741  
22 Fax: (503) 769-2461  
Email: [jennifer@staytonlaw.com](mailto:jennifer@staytonlaw.com)



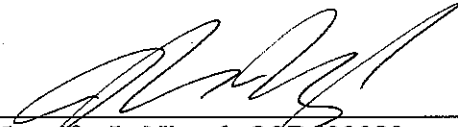
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 11, 2007, I served Clear Creek's Opening Brief upon all  
3 parties of record in this proceeding by causing a full, true and correct copy thereof to be sent by  
4 e-mail and also by mail in a sealed, first-class postage-prepaid envelope deposited with the  
5 United States Postal Service at Stayton, Oregon to the following parties:

6 **BEAVER CREEK COOPERATIVE TELEPHONE COMPANY**  
7 TOM A LINSTROM  
8 ORGANIZER/ACTING PRESIDENT  
9 15223 S HENRICI RD  
10 OREGON CITY OR 97045  
11 [flinstrom@bctelco.com](mailto:flinstrom@bctelco.com)

12 **MCDOWELL & RACKNER PC**  
13 LISA F RACKNER  
14 ATTORNEY  
15 520 SW SIXTH AVENUE STE 830  
16 PORTLAND OR 97204  
17 [lisa@mcd-law.com](mailto:lisa@mcd-law.com)

18 DATED: May 11, 2007.

19  
20  
21  
22  
  
\_\_\_\_\_  
Jennifer L. Niegel, OSB#99089  
Of Attorneys for Petitioner