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December 1, 2008

VIA ELECTRONIC MAIL AND U.S. MAIL

Filing Center
Oregon Public Utility Commission
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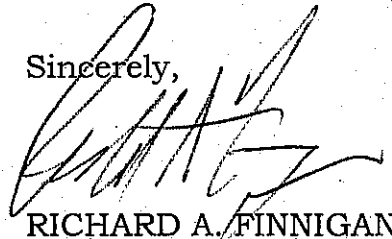
Re: Oregon Telecommunications Association, Cascade Utilities, Inc.
d/b/a Reliance Connects and Clear Creek Mutual Telephone
Company Petition for Declaratory Ruling

Dear Sir/Madam:

Enclosed are the original and three copies of the above-referenced
Petition for Declaratory Ruling.

Thank you for your attention to this matter.

Sincerely,



RICHARD A. FINNIGAN

RAF/km
Enclosures

cc: Clients (via e-mail)

BEFORE THE OREGON PUBLIC UTILITY COMMISSION

In the Matter of the

Oregon Telecommunications Association,
Cascade Utilities, Inc. d/b/a Reliance
Connects and Clear Creek Mutual Telephone
Company Petition for Declaratory Ruling

DOCKET NO. _____

PETITION FOR DECLARATORY RULING

**OREGON TELECOMMUNICATIONS ASSOCIATION
CASCADE UTILITIES, INC. d/b/a RELIANCE CONNECTS
AND
CLEAR CREEK MUTUAL TELEPHONE COMPANY
PETITION FOR DECLARATORY RULING**

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1. The Oregon Telecommunications Association (“OTA”), Cascade Utilities, Inc. d/b/a Reliance Connects (“Reliance Connects”) and Clear Creek Mutual Telephone Company (“Clear Creek”) respectfully submit this petition for a declaratory ruling (“Petition”) requesting that the Oregon Public Utility Commission (“Commission”):

- i. Declare whether OTA’s member companies and, specifically Reliance Connects and Clear Creek, are required to negotiate terms of interconnection pursuant to Section 251 of the Communications Act of 1934, as amended (the “Act”) with Comcast Phone (see, Paragraph 8, below, for the identification of Comcast Phone) for the provision of fixed location VoIP services by Comcast Phone or an affiliate of Comcast Phone; and,
- ii. Declare that Comcast Phone is not acting as a telecommunications carrier¹ for purposes of its VoIP service, whether provided by itself or through an affiliate, and, thus, is not entitled to interconnection rights pursuant to Section 251 of the Act; or,
- iii. In the alternative, declare that Comcast Phone is a telecommunications carrier and the VoIP service that it, or its affiliate, is offering is a telecommunications service² and is subject to regulation for those services as a telecommunications company offering telecommunications within the state of Oregon.

2. In addition, OTA and Reliance Connects and Clear Creek respectfully request that the Commission toll the running of the interconnection clock between Comcast Phone and any OTA member that has received what purports to be a bona fide request for interconnection from

¹ The term “telecommunications carrier” is defined at 47 U.S.C. § 153(44).

² 47 U.S.C. § 153(46).

Comcast Phone. At the current date, OTA is aware that Reliance Connects and Clear Creek have received what is purported to be a bona fide request for interconnection from Comcast Phone.

3. To effectuate the foregoing, OTA respectfully requests that the Commission accept this Petition, set a pre-hearing conference at the earliest possible date and establish a schedule for discovery and hearing to determine the factual matters underlying this Petition.

I. INTRODUCTION AND BACKGROUND

4. OTA is a trade association representing telecommunications companies that are classified as rural telephone companies³ under the Act. OTA's business address is as follows:

777 13th Street SE, Suite 120
Salem, OR 97301-4038

OTA is represented in this matter by Richard A. Finnigan whose business address and contact information is as follows:

2112 Black Lake Blvd SW
Olympia, WA 98512
(360) 956-7001
(360) 753-6862 (fax)
rickfinn@localaccess.com

5. OTA's members that are classified as rural telephone companies under the Act are as follows:

Asotin Telephone Company d/b/a TDS Telecom
Beaver Creek Cooperative Telephone Company
Canby Telephone Association d/b/a Canby Telecom
Cascade Utilities, Inc.
CenturyTel of Oregon, Inc.
CenturyTel of Eastern Oregon, Inc.
Clear Creek Telephone & Television
Colton Telephone Company
Eagle Telephone System, Inc.
Gervais Telephone Company

³ 47 U.S.C. § 153(37).

Helix Telephone Company
Home Telephone Company d/b/a TDS Telecom
Midvale Telephone Exchange
Molalla Communications, Inc. d/b/a Molalla Communications
Monitor Cooperative Telephone Company
Monroe Telephone Company
Mt. Angel Telephone Company
Nehalem Telecommunications, Inc.
North-State Telephone Co.
Oregon-Idaho Utilities, Inc.
Oregon Telephone Corporation
People's Telephone Co.
Pine Telephone System, Inc.
Pioneer Telephone Cooperative
Roome Telecommunications Inc.
St. Paul Cooperative Telephone Association
Scio Mutual Telephone Association
Stayton Cooperative Telephone Company
Trans-Cascades Telephone Company

6. Reliance Connects is a rural telephone company serving areas in several locations in the State of Oregon. The business address for Reliance Connects is as follows:

303 Zobrist Street
PO Box 189
Estacada, OR 97023

Reliance Connects is represented by Richard A. Finnigan whose business address and contact information is as follows:

2112 Black Lake Blvd SW
Olympia, WA 98512
(360) 956-7001
(360) 753-6862 (fax)
rickfinn@localaccess.com

Reliance Connects received what purports to be a bona fide request for interconnection from Comcast Phone on or about July 15, 2008. A copy of the letter received by Reliance Connects is attached hereto as Exhibit 1 to the Declaration of Brenda Crosby, which Declaration is attached as Attachment A.

7. Clear Creek is a rural telephone company serving areas in the southern portion of Clackamas County, Oregon. The business address for Clear Creek is as follows:

18238 South Fischers Mill Road
Oregon City, OR 97045

Clear Creek is represented for purposes of this Petition by Richard A. Finnigan whose business address and contact information is as follows:

2112 Black Lake Blvd SW
Olympia, WA 98512
(360) 956-7001
(360) 753-6862 (fax)
rickfinn@localaccess.com

Clear Creek received what purports to be a bona fide request for interconnection from Comcast Phone on or about May 27, 2008. A copy of the letter received by Clear Creek is attached hereto as Exhibit 1 to the Declaration of Mitchell Moore, which Declaration is attached hereto as Attachment B.

8. Comcast Phone of Oregon, LLC (“Comcast Phone”) is registered with the Commission and is classified as a competitive telecommunications company. On information and belief, Comcast Phone’s contact information as listed with the Commission is as follows:

Comcast Phone of Oregon, LLC
Rhonda Weaver, Director, Government Affairs
440 Yauger Way
Olympia, WA 98502

With a copy to:

Comcast Phone of Oregon, LLC
One Comcast Center
Philadelphia, PA 19103

9. For purposes of this Petition, the defined term “telecommunications carrier” shall be referred to with initial capitalization as “Telecommunications Carrier” and the defined term

“telecommunications service” shall be referred to with initial capitalization as “Telecommunications Service.” The terms “Incumbent Local Exchange Company” or “ILEC” and “Competitive Local Exchange Company” or “CLEC” are used throughout this Petition.

10. This Petition is filed pursuant to ORS 756.450 and the rules of the Commission set forth in OAR 860-013-0020. Pursuant to OAR 860-013-0020, the petition for a declaratory order is to set forth facts and reasons upon which the petitioner relies. In the body of the Petition that follows, OTA will demonstrate that there is substantial uncertainty as to whether OTA’s members, including Reliance Connects and Clear Creek, must enter into negotiations of the terms of interconnection with Comcast Phone under 47 U.S.C. §251 for the VoIP services that Comcast or its affiliate offer or intend to offer to end users. OTA will further show that there is an actual controversy arising from such uncertainty in that Comcast Phone has delivered a purported bona fide request for interconnection to Reliance Connects and Clear Creek and, thus, the declaratory order will not be merely an advisory opinion. The need to understand the extent to which Comcast Phone can request interconnection for VoIP services, which Comcast Phone characterizes as information services, not telecommunications services, has a direct effect on OTA’s members, and specifically Reliance Connects and Clear Creek, and that effect outweighs any adverse effect that may exist on others since it is OTA’s members that receive purported bona fide requests for interconnection and are required to respond to such requests, if valid. Finally, OTA is not aware of any additional requirements established by the Commission, except as to the form of the petition and this Petition complies with those requirements.

11. Upon information and belief, it appears that Comcast Phone’s business plan is to offer a VoIP service to end users through an unregulated affiliate. However, it is unclear at this time whether Comcast Phone, for the purpose of its interconnection request to Reliance Connects and

Clear Creek, intends to offer a wholesale service, acting as an intermediary carrier between Reliance Connects and Clear Creek and Comcast Phone's VoIP affiliate, or whether Comcast Phone will use the interconnection with Reliance Connects and Clear Creek to offer a retail VoIP service directly to end users. It is also unclear whether, in either case, Comcast Phone will be providing a Telecommunications Service as a Telecommunications Carrier.

II. THE OREGON TELECOMMUNICATIONS ASSOCIATION, CASCADE UTILITIES, INC. D/B/A RELIANCE CONNECTS AND CLEAR CREEK MUTUAL TELEPHONE COMPANY REQUEST THAT THE COMMISSION DECLARE WHETHER OR NOT OTA'S MEMBERS, AND SPECIFICALLY RELIANCE CONNECTS AND CLEAR CREEK, MUST ENTER INTO INTERCONNECTION NEGOTIATIONS WITH COMCAST PHONE

12. At issue in this Petition is the question of whether Comcast Phone should be treated as a Telecommunications Carrier providing a Telecommunications Service which is subject to regulation for the purpose of the VoIP services that Comcast Phone has proposed to introduce into the service territories of OTA's members. If the Commission determines that Comcast Phone is a Telecommunications Carrier providing a Telecommunications Service, it should declare that Comcast Phone is subject to carrier rights and obligations pursuant to Section 251 of the Act and regulations applicable to telecommunications companies in the state of Oregon. If the Commission determines that Comcast Phone is not a Telecommunications Carrier, however, it should declare that OTA's members, including Reliance Connects and Clear Creek, do not have to enter into interconnection negotiations with Comcast Phone and that Comcast Phone does not have Section 251 interconnection rights.

13. The Federal Communications Commission ("FCC") has yet to provide clear guidance on this issue and, as described below, appears to have left the issue to the states. Thus, OTA's members, including Reliance Connects and Clear Creek, are not certain of their obligations under the Act in relation to Comcast Phone. Comcast Phone also appears to be uncertain of its

responsibilities in this area based on its recent statements that “[s]ince the FCC has not determined the appropriate classification of interconnected VoIP service, the precise scope of ILEC interconnection rules applicable to interconnected VoIP providers is not entirely clear.”⁴

14. The FCC has not yet determined whether the vast majority of retail VoIP services are a ‘Telecommunications Service’ or whether providers of these VoIP services are ‘Telecommunications Carriers.’ The FCC’s inaction in this respect has created an atmosphere of confusion in the industry. Thus, in the midst of VoIP’s pending status with the FCC, there exists a great need for clarification in this area from the states. As a result, OTA’s members need guidance as to their responsibilities under Section 251 as these responsibilities relate to the provision of VoIP services by Comcast Phone or its affiliate.

III. THE SERVICES THAT COMCAST PHONE DESIRES TO PROVIDE HAVE NOT BEEN CLASSIFIED BY THE FCC FOR REGULATORY PURPOSES NOR IS STATE REGULATION PREEMPTED.

15. Comcast Phone has indicated the service it provides is not the type of VoIP service for which the FCC has already designated a regulatory classification, nor is it the type of VoIP service for which state regulation has been preempted.⁵ It is important to understand why Comcast Phone’s interconnected VoIP services are distinct from the services the FCC has previously addressed.

16. First, Comcast Phone indicates in its 2008 10-K filing with the Securities and Exchange Commission that it is “using interconnected VoIP technology.”⁶ The FCC has defined “interconnected VoIP services” as “a service that (1) Enables real-time, two-way

⁴ Comcast’s 2007 Annual Report in its 10-K filing with the Securities and Exchange Commission (“SEC”), excerpted and included with the Declaration of Richard A. Finnigan, Attachment C. The entire SEC filing is available for viewing at <http://www.sec.gov/Archives/edgar/data/1166691/000119312508034239/0001193125-08-034239-index.htm>.

⁵ See, Declaration of Richard A. Finnigan.

⁶ Declaration of Richard A. Finnigan.

communications; (2) Requires a broadband connection from the user's location; (3) Requires Internet protocol-compatible customer premises equipment (CPE); and (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.”⁷ In its *IP-Enabled Services Order*,⁸ the FCC established E911 regulation for providers of Interconnected VoIP services, but stopped short of designating a regulatory classification for the service.⁹ Specifically, the FCC stated that it had “not decided whether interconnected VoIP services are telecommunications services or information services....”¹⁰ Thus, if Comcast Phone is offering interconnected VoIP services as defined by the FCC, it is not providing the type of VoIP services for which the FCC has determined a regulatory classification as either Telecommunications Service or an information service.

17. Further, if Comcast Phone is providing a fixed interconnected VoIP service, then its service is not of the type for which regulation has been preempted by the FCC. To the best of OTA's information and understanding, Comcast Phone's interconnected VoIP service is a fixed VoIP service.¹¹ In 2004, the FCC made a distinction between fixed VoIP services and VoIP services able to move around with the subscriber, known as nomadic VoIP services.¹² In the *Vonage Order*, the FCC reviewed the Minnesota Public Utilities Commission's (“MPUC”) decision to apply state regulation to the VoIP services of Vonage. The FCC found that for

⁷ 47 C.F.R. § 9.3.

⁸ *In the Matter of IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 and 05-196, *First Report and Order and Notice of Proposed Rulemaking*, FCC 05-116 (rel. Jun. 3, 2005) (“*IP-Enabled Services Order*”).

⁹ *IP-Enabled Services Order* at ¶ 22.

¹⁰ *Id.*

¹¹ Declaration of Richard A. Finnigan.

¹² *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, *Memorandum Opinion and Order*, FCC 04-267 (rel. November 12, 2004) (“*Vonage Order*”) at ¶ 5.

Vonage's VoIP service "it is not relevant where that broadband connection is located or even whether it is the same broadband connection every time the subscriber accesses the service. Rather, Vonage's service is fully portable; customers may use the service anywhere in the world where they can find a broadband connection to the Internet."¹³ In preempting the MPUC's decision to regulate Vonage's service, the FCC found that "the characteristics of [Vonage's] DigitalVoice preclude any practical identification of, and separation into, interstate and intrastate communications for purposes of effectuating a dual federal/state regulatory scheme...."¹⁴ That is not the case with Comcast Phone's VoIP service.

18. Comcast Phone's service is a fixed service and not a nomadic service. It appears that an end user must utilize Comcast Phone's service from that end user's fixed residential or business location. Accordingly, to the extent that Comcast Phone's service is a fixed Interconnected VoIP service, it is distinct from Vonage's VoIP service and does not fall into the category of VoIP services expressly preempted by the FCC.

IV. A DETERMINATION BY THE COMMISSION AS TO WHETHER COMCAST PHONE IS A TELECOMMUNICATIONS CARRIER PROVIDING A TELECOMMUNICATIONS SERVICE IS CONSISTENT WITH THE LAW.

19. In its *Time Warner* decision,¹⁵ the FCC left it to the states to determine, based on the facts of each case, whether a service provider is a Telecommunications Carrier providing a Telecommunications Service.¹⁶ The FCC stated it would not address "any state

¹³ *Vonage Order* at ¶ 5.

¹⁴ *Vonage Order* at ¶ 14.

¹⁵ *In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, *Memorandum Opinion and Order*, DA 07-709 (rel. Mar. 1, 2007) ("*Time Warner*").

¹⁶ *Time Warner* at ¶ 14. In addition, in *Time Warner*, the FCC stated that "the definition of telecommunications services is intended to clarify that telecommunications services are common carrier services." *Id.* at ¶ 12 quoting from the *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket No. 96-149, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rd. 21905 (1996) at 22033, ¶ 264.

commission's evidentiary assessment of the facts before it in an arbitration or other proceeding regarding whether a carrier offers a telecommunications service."¹⁷ And, further, that "we do not find it appropriate to revisit any state commission's evidentiary assessment of whether an entity demonstrated that it held itself out to the public sufficiently to be deemed a common carrier...."¹⁸

20. The Act makes clear that a carrier must be a Telecommunications Carrier in order to have Section 251 interconnection rights. Under Section 251, a Telecommunications Carrier must, at minimum, "interconnect. . . with the facilities and equipment of other *telecommunications carriers*...." (Emphasis added.)¹⁹ As part of its interconnection duties pursuant to Section 251, a local exchange carrier must also provide dialing parity to "competing providers of *telephone exchange service and telephone toll service*" and access to rights-of-way "to competing providers of *telecommunications service*...." (Emphasis added.)²⁰ Furthermore, the FCC has concluded that Section 251 obligations "are triggered by the provision of a 'telecommunications service'."²¹ Section 51.100 of the FCC's rules requires that there be Telecommunications Services over facilities obtained pursuant to Section 251 before other non-telecommunications services may be provided over the same facilities.²² Accordingly, the Commission must declare Comcast Phone to be a Telecommunications Carrier providing Telecommunications Services in order for a OTA member to be obligated to negotiate interconnection terms with Comcast Phone and, conversely, for Comcast Phone to obtain interconnection rights pursuant to Section 251.

¹⁷ *Time Warner* at ¶ 14.

¹⁸ *Time Warner* at ¶ 17.

¹⁹ 47 U.S.C. § 251(a).

²⁰ 47 U.S.C. § 251 (b)(3) and (4).

²¹ See, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.*, CC Docket No. 98-147, et al., *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 13 FCC Red. 24011 at ¶ 34 (rel Aug. 7, 1998).

²² 47 C.F.R. § 51.100(b); see, also, *Time Warner* at fn 39 (quoting 47 C.F.R. § 51.100(b): "[a] telecommunications carrier that has interconnected or gained access under section [] 251(a) . . . of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well.") (Emphasis in the original.)

21. In addition, to the extent that Comcast Phone will act as an intermediary carrier providing wholesale services to its affiliate VoIP provider, Comcast Phone only has Section 251 interconnection rights to the extent that the wholesale services it provides are Telecommunications Services as determined by this Commission based on the facts in this proceeding. The FCC stated that “we emphasize that the rights of telecommunications carriers to section 251 interconnection are limited to carriers that, at a minimum, do in fact provide telecommunications services to their customers, either on a wholesale or retail basis.”²³ Thus, in order for Comcast Phone to have the right to obtain Section 251 interconnection facilities for the purpose of offering a wholesale service, it must have Telecommunications Services over those facilities as a precondition to transmitting non-telecommunications services over the same facilities.²⁴

22. The Commission’s determination whether Comcast Phone is a Telecommunications Carrier is consistent with the law because: (1) the FCC has left to the states to determine whether an entity is a Telecommunications Carrier providing a Telecommunications Service; (2) only Telecommunications Carriers are subject to Section 251 interconnection rights and regulation; and (3) to the extent that Comcast Phone’s VoIP service is a fixed Interconnected VoIP Service, it is not the type of VoIP service the regulation of which has been preempted by the FCC. In addition, Comcast Phone is only entitled to 251 interconnection rights for the purpose of offering a wholesale service to the extent that Comcast Phone is a Telecommunications Carrier offering a Telecommunications Service.

²³ *Time Warner*, ¶ 14.

²⁴ *Time Warner* at fn 39; *see, also*, 47 C.F.R. § 51.100(b).

V. IS COMCAST PHONE ACTING AS A TELECOMMUNICATIONS CARRIER PROVIDING A TELECOMMUNICATIONS SERVICE?

23. The Act defines a “Telecommunications Carrier,” in relevant part, as “. . . any provider of telecommunications services”²⁵ The Act defines “Telecommunications Service” as “. . . the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”²⁶ Under the Act, “Telecommunications” is defined as “. . . the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”²⁷ In addition, the FCC has determined that Telecommunications Services “are intended to encompass only telecommunications provided on a common carrier basis.”²⁸

24. Under Oregon law, the equivalent to the federal definition of “Telecommunications Service” is in ORS 759.005(2)(g) as “two-way switched access and transport of voice communications....”

25. Assuming that Comcast Phone will offer the VoIP service directly to end users, not through an affiliate, if the VoIP service is not a Telecommunications Service, then Comcast Phone is not a Telecommunications Carrier. Nor would Comcast Phone be a telecommunications provider under Oregon law. On the other hand, if the VoIP service is a Telecommunications Service and is offered on a common carrier basis, Comcast Phone is a Telecommunications Carrier. For federal law purposes, this question becomes whether Comcast Phone’s VoIP service is offered (a) on a common carriage basis and (b) is the transmission between or among points

²⁵ 47 U.S.C. § 153 (44).

²⁶ § 153 (46).

²⁷ § 153 (43).

²⁸ *Time Warner* at ¶ 12 citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd. 8776, 9177-8, ¶ 785 (1997).

specified by the user of information of the user's choosing without change in the form or content of the information as sent and received.

26. If Comcast Phone is offering the service directly to end users, it appears that Comcast Phone is a common carrier. This meets part "a" of the test stated in Paragraph 25, above. Since the information that is transmitted starts and ends as voice traffic and is transmitted from the calling party to the called party at the calling party's direction, this appears to meet the definition of a Telecommunications Service and part "b" of the test stated in Paragraph 25, above. Under this analysis, Comcast Phone's VoIP service, if offered directly to end users, appears to make Comcast Phone a Telecommunications Carrier.

27. This result appears to be logically consistent with the FCC's IP-in-the-middle decision. As stated by the FCC, "When VoIP is used, a voice communication transverses at least a portion of its communication path in an IP packet format using IP technology and IP networks. VoIP can be provided over the public Internet or over private IP networks. VoIP can be transmitted over a variety of media (e.g., copper, cable, fiber, wireless)."²⁹ The FCC concluded that the use of IP technology did not change the nature of the service: "To the extent that protocol conversions associated with AT&T's specific service take place within its network, they appear to be 'internetworking' conversions, which the Commission has found to be telecommunications services. We clarify, therefore, that AT&T's specific service constitutes a telecommunications service."³⁰

28. The same result is produced under state law. Looking to the definitions in RCW 80.04.010, the "signals" used in the VoIP service are transmitted by "wire, radio, optical, cable,

²⁹ *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, *Order*, FCC 04-97 (rel. April 21, 2004) at ¶ 3.

³⁰ *Id.* at ¶ 12.

electromagnetic, or similar means.” If offered by Comcast Phone to the general public, this means Comcast Phone is, by definition, a telecommunications company for its VoIP services under Oregon law.

29. However, Comcast Phone has allegedly ceased the provision of telecommunications services in Oregon and other states.³¹ For example, in an FCC filing related to the Comcast Phone services in Oregon, Comcast Phone stated it “plans to discontinue its provision of telecommunications service in Oregon on or after November 13, 2007.”³² Thus, based on this and other similar filings in at least seventeen other states, it is apparent that Comcast Phone will cease, or has already ceased, the provision of what it considers as telecommunications service pursuant to state rules and regulations in states where Comcast Phone has been registered or certified as a telecommunications carrier.

30. Further, it appears that Comcast Phone is asserting its VoIP service is not a Telecommunications Service under federal and state law. As discussed in this Petition, if Comcast Phone is intending to transmit only “non-telecommunications” traffic over interconnection facilities, it is not entitled to Section 251 interconnection. So, on the one

³¹ See, Section 63.71 Application of Comcast Phone of Oregon, LLC, WC Docket No. 07-228 (filed September 28, 2007) (Oregon) (“Oregon 63.71”); see also Section 63.71 Application of Comcast Phone of Illinois, LLC, WC Docket No. 08-41 (filed March 6, 2008) (Illinois); Section 63.71 Application of Comcast Phone of Massachusetts, Inc., et al, WC Docket Nos. 08-45 and 08-52 (filed February 20, 2008 and April 3, 2008, respectively) (Massachusetts, New Hampshire, Ohio and Pennsylvania); Section 63.71 Application of Comcast Phone of Virginia, Inc., WC Docket No. 08-42 (filed February 20, 2008) (Virginia); Section 63.71 Application of Comcast Phone of California, LLC, WC Docket No. 08-35 (filed February 16, 2008) (California); Section 63.71 Application of Comcast Phone of Maryland, LLC, WC Docket No. 07-276 (filed November 19, 2007) (Maryland); Section 63.71 Application of Comcast Phone of Minnesota, LLC, WC Docket No. 07-277 (filed November 20, 2007) (Minnesota); Section 63.71 Application of Comcast Phone of Washington, LLC, WC Docket No. 02242 (filed October 9, 2007); Section 63.71 Application of Comcast Phone of Colorado, LLC, WC Docket No. 07-231 (filed October 1, 2007) (Colorado); Section 63.71 Application of Comcast Phone of Connecticut, LLC, WC Docket No. 07-200 (filed August 6, 2007) (Connecticut); Section 63.71 Application of Comcast Phone of Georgia, LLC, WC Docket No. 07-187 (filed August 8, 2007) (Georgia); Section 63.71 Application of Comcast Phone of Florida, LLC, WC Docket No. 07-189 (filed August 20, 2007) (Florida); Section 63.71 Application of Comcast Phone of Utah, LLC, WC Docket No. 07-185 (filed August 20, 2007) (Utah); Section 63.71 Application of Comcast Phone of Michigan, WC Docket No. 07-177 (filed August 2, 2007) (Michigan).

³² Oregon 63.71 at ¶ 2.

hand, what Comcast Phone is doing with its VoIP service looks like a Telecommunications Carrier offering Telecommunications Service. On the other hand, what Comcast Phone is saying about its VoIP service looks like Comcast Phone is not a Telecommunications Carrier offering Telecommunications Service. Thus, the uncertainty as to the scope of OTA members' obligations.

31. However, this Commission could look to the actions of the state of Missouri and assert jurisdiction over Comcast Phone to regulate its VoIP service or those of its affiliate as a Telecommunications Carrier. The state of Missouri has opted to regulate Comcast Phone's retail VoIP services because it determined that (1) Comcast Phone's services are a Telecommunications Service (or state law equivalent) pursuant to Missouri regulations; (2) the Missouri Commission may look to the federal definition of "telecommunications" for guidance in determining whether Comcast Phone's service is a Telecommunications Service; and (3) the FCC has not asserted jurisdiction over the sort of VoIP service that Comcast Phone is providing because it is not a nomadic service.³³ The Missouri Commission determined that it had the authority to regulate Comcast Phone's Digital Voice VoIP service.³⁴ It concluded that Comcast Phone's service met the Missouri definition of telecommunications service because the service was "used by customers 'to transmit information by wire, radio and optical cable' both within and between exchanges."³⁵ It also concluded that the FCC "has not yet preempted state regulation of fixed VoIP service."³⁶ The Missouri Commission concluded that Comcast Phone "is offering and

³³ See, *Staff of the Public Service Commission of the State of Missouri v. Comcast IP Phone, LLC*, Report and Order, Case No. TC-2007-0111 (Nov. 1, 2007) ("Missouri PSC Order"); see, also, *Comcast IP Phone of Missouri, LLC, et al. v. The Missouri Public Service Commission*, Case No. 06-4233-CV-C-NKL, Order (U.S. Dist. Court – W.D. Mo.) (filed Jan. 18, 2007) ("Missouri District Court Order").

³⁴ See, generally, *Missouri PSC Order*.

³⁵ *Id.* at Conclusion of Law 11.

³⁶ *Id.* at Conclusion of Law 14.

providing local exchange and interexchange telecommunications services”³⁷ and ordered Comcast Phone to cease the provision of service or to obtain a certificate of public convenience and necessity.³⁸

32. In denying a request by Comcast Phone for an injunction of the Missouri Commission’s decision to regulate Comcast Phone’s VoIP service, the District Court for the Western District of Missouri agreed that the Missouri Commission has the authority to interpret “federal statutes necessary to classify communications services as either telecommunications or information services.”³⁹ The court concluded that a state may interpret and apply a federal statute “unless preempted or faced with a contrary decision from a relevant federal agency...”⁴⁰ and concluded that the Missouri Commission was not preempted from “classifying, or potentially regulating, Comcast’s Digital Voice service on the ground that it cannot be separated into interstate and intrastate components.”⁴¹

VI. COMCAST PHONE MUST PROVIDE TELECOMMUNICATIONS SERVICE TO BE ABLE TO TRANSMIT NON-TELECOMMUNICATIONS TRAFFIC OVER INTERCONNECTION FACILITIES.

33. Whether Comcast Phone is offering the VoIP service directly to end users or is providing service to its affiliate on a wholesale basis, in order to be able to request interconnection for transmission of non-telecommunications traffic, which is apparently what Comcast Phone is seeking from Reliance Connects and Clear Creek, Comcast Phone must first demonstrate it will provide telecommunications service traffic.

³⁷ *Id.* at “Decision.”

³⁸ *Id.* at Ordering Clause 1.

³⁹ *Missouri District Court Order*, p. 5.

⁴⁰ *Id.*, p. 8-9.

⁴¹ *Id.*, p. 9.

34. In *Time Warner*, the FCC concluded that a Telecommunications Carrier must use its Section 251 interconnection rights to actually provide a Telecommunications Service.⁴² The FCC quoted 47 C.F.R. § 51.100(b):

A telecommunication carrier that has interconnected or gained access under Sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, *so long as it is offering telecommunications services through the same arrangement as well.* (Emphasis in original.)

Thus, the FCC made it clear that a Telecommunications Carrier must have Telecommunications Service over the Section 251 facilities that it has obtained if it also wants to have non-telecommunications service over the same facilities.⁴³

35. This means that under the terms of 47 C.F.R. § 51.100(b), Comcast Phone may not obtain interconnection exclusively for traffic that is non-telecommunications in nature. It must exchange telecommunications service traffic over the requested trunks and facilities before it can use the same interconnection arrangement to exchange information services traffic.⁴⁴ Comcast Phone must use the requested interconnection arrangement in accordance with section 51.100(b) of the FCC's rules for the exchange of Telecommunications Service traffic and not simply as a pretense to justify the provision of non-telecommunications service traffic.⁴⁵ Thus, if this Commission determines that Comcast Phone will use the requested interconnection arrangement exclusively for the transmission of VoIP service traffic, which Comcast Phone apparently claims is a non-

⁴² *Time Warner* at ¶ 14 and fn 39.

⁴³ *Time Warner* at fn 39.

⁴⁴ See, e.g., *F. Cary Fitch D/B/A/ Fitch Affordable Telecom Petition For Arbitration Against SBC Texas Under § 252 of the Communications Act*, Proposal for Award, Texas PUC Docket No. 29415, p. 20 (Jun. 2005) ("*Fitch Arbitration*"), *aff'd*, *F. Cary Fitch v. Public Utility Commission of Texas*, No. 07-50088 (5th Cir. 2008) ("*Fitch v. TX PUC*"). The Fifth Circuit Court of Appeals described section 51.100(b) on appeal as being "the heart of this dispute" on the issue of the use of interconnection facilities to carry information service traffic. *Fitch v. TX PUC* at p. 7. The Fifth Circuit Decision is attached as Attachment D.

⁴⁵ See, *Fitch Arbitration*, p. 21, stating "47 C.F.R. § 51.100(b), by allowing delivery of information service over interconnection facilities, does not change the purpose of interconnection facilities. That is, a carrier may only obtain interconnection facilities for telecommunications purposes. Otherwise, a carrier could obtain interconnection facilities unnecessary for telecommunications service and instead use them for information service."

telecommunications service, then Comcast Phone is not meeting the requirements of section 51.100(b) and this Commission should find that Comcast Phone does not have rights to Section 251 interconnection.

VII. IF COMCAST PHONE WILL PROVIDE A WHOLESALE SERVICE TO ITS AFFILIATE VOIP PROVIDER, THIS COMMISSION SHOULD DETERMINE WHETHER COMCAST PHONE IS A TELECOMMUNICATIONS CARRIER PROVIDING TELECOMMUNICATIONS SERVICE ON A COMMON CARRIER BASIS.

36. Comcast Phone has stated that “we plan to phase out our circuit-switched phone service in 2008....”⁴⁶ Further, Comcast noted that the uncertainty of the applicability of interconnection rules for interconnected VoIP providers and stated “We have arranged for such interconnection rights through our own CLECs and through third party CLECs.”⁴⁷ However, in order for this statement to be carried into effect, if Comcast Phone is proposing to offer a wholesale service to its VoIP affiliate in an ILEC service area, Comcast Phone must demonstrate that it is a Telecommunications Carrier providing a Telecommunications Service. The Commission should make the determination on the extent OTA members are obligated to negotiate interconnection terms for wholesale service based on (1) whether Comcast Phone is meeting the FCC’s rule governing access to interconnection facilities codified at 47 C.F.R. § 51.100(b), discussed above, and (2) whether Comcast Phone is providing its wholesale service on a common carrier basis. If Comcast Phone is not meeting these standards, this Commission should determine that Comcast Phone is not a Telecommunications Carrier providing a Telecommunications Service and OTA members are not required to negotiate interconnection terms pursuant to Section 251 of the Act.

37. This Commission must find that Comcast Phone is providing its wholesale service on a common carrier basis pursuant to generally available rates, terms and conditions for Comcast

⁴⁶ See, Declaration of Richard A. Finnigan.

⁴⁷ *Id.*

Phone to have Section 251 interconnection rights for the wholesale service. A

Telecommunications Carrier is offering its Telecommunications Services on a common carrier basis⁴⁸ when it “hold[s] oneself out indiscriminately” to the public; “But a carrier will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal.”⁴⁹ Furthermore, a carrier can be a common carrier with respect to some of its activities and not with respect to others.⁵⁰ For example, if Comcast Phone were offering local exchange services on a common carrier basis in other parts of Oregon, it does not follow necessarily that Comcast Phone is offering its wholesale services in, for example, the Reliance Connects and Clear Creek service areas on a common carrier basis.

38. Thus, if Comcast Phone has not offered its wholesale services to other similarly-situated VoIP or other providers, it is not offering its services on a common carrier basis. If Comcast Phone is offering its wholesale services pursuant to a private agreement with its affiliate VoIP provider, then Comcast Phone’s wholesale arrangement is a private arrangement. Thus, to the extent that Comcast Phone is providing a wholesale service to its VoIP affiliate, if this Commission determines that Comcast Phone is not providing such services on a common carrier basis, it must declare that Comcast Phone does not have rights to Section 251 interconnection.

VIII. PUBLIC POLICY CONSIDERATIONS

39. This Commission has the authority to regulate intrastate telecommunications services. If Comcast Phone will offer a retail VoIP service for the purpose of its interconnection request to, for example, Reliance Connects and Clear Creek, this Commission may look to the state

⁴⁸ See, e.g., *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630 (D.C. Cir. 1976) (“NARUC I”); see also, *Southwestern Bell Telephone Company v. Federal Communications Commission*, 19 F.3d 1475 (D.C. Cir. 1994) (“*Southwestern Bell Decision*”).

⁴⁹ NARUC I at 641.

⁵⁰ *Southwestern Bell Decision* at 1481: “[I]t is at least logical to conclude that one can be a common carrier with regard to some activities but not others,” quoting *National Ass’n of Regulatory Util. Comm’ers v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976).

regulations, as well as to the federal statutory definitions of ‘Telecommunications Carrier’ and ‘Telecommunications Service’ to determine whether Comcast Phone’s service should be regulated. Regulation of Comcast Phone’s (or its affiliate) services as a “Telecommunications Carrier” would end confusion in the marketplace regarding Comcast Phone’s rights and obligations and would move Comcast Phone towards a more level playing field with other Telecommunications Carriers.

40. Furthermore, this Commission could regulate Comcast Phone (or its affiliate) to ensure that Comcast Phone remains on a level playing field in terms of regulations with other telecommunications companies in the industry. If Comcast Phone is allowed to reap the benefits of Section 251 interconnection without being subject to regulation as a telecommunications company as to those services, it will be patently unfair to other telecommunications providers in the state of Oregon.

41. Comcast Phone, or its unregulated affiliate, should not be able to offer the VoIP service to end users without meeting the same standards that other Competitive Local Exchange Company must meet while garnering the benefits of interconnection rights. If what Comcast Phone or its affiliate are providing to customers is functionally the equivalent of a telecommunications service under Oregon law, those customers should be entitled to the same protections they receive when served by other telecommunications companies. The provision of service that allows communications between the calling and called party through a platform that happens to involve VoIP on the originating side of the call should not be a shield that hides the provider from even-handed regulation, while leaving the provider’s customers without protection. Nor should the provision of communications through a VoIP technology be a spear that allows the provider to force interconnection for the provision of a competitive service that the provider claims is not a

Telecommunications Service. If the VoIP service provided by Comcast Phone or its affiliate is a Telecommunications Service, or, under Oregon law, the provision of telecommunications as defined by statute, then the service should be subject to the same level of regulation as the telecommunications service provided by any other CLEC. If, however, the service is an information service, and Comcast Phone cannot otherwise demonstrate that it is entitled to interconnection rights under the FCC's rules, the interconnection obligation should not apply for such an information service.

42. In addition, if Comcast Phone has ceased the provision of its telecommunications services, it is no longer providing the services for which it obtained its CLEC authorization. If the only reason the registration is maintained in Oregon is to give Comcast Phone the appearance of the ability to demand Section 251 interconnection rights, its registration has become an empty shell. If the CLEC status is maintained only as a pretext, the Commission should give serious consideration to revoking the registration.

IX. THE TIME PERIOD FOR INTERCONNECTION NEGOTIATIONS SHOULD BE TOLLED WHILE THIS DOCKET IS CONSIDERED BY THE COMMISSION.

43. There are at least two OTA members, Reliance Connects and Clear Creek, that are facing what is purported to be a bona fide request for interconnection from Comcast Phone. Given the uncertainty of the status of Comcast Phone and the uncertainty of its rights to request interconnection, those requests should be considered tolled or stayed until this docket has been resolved.

44. OTA has not found any authority on the issue of tolling or staying the time period for interconnection discussions prior to the statutory date to file a request for arbitration, either one way or the other. However, from a logical standpoint, it makes sense that if the status of the carrier requesting interconnection is in doubt as to the legal authority to request such

interconnection, then until that issue is resolved, the time periods for negotiation should not commence. On behalf of Reliance Connects and Clear Creek, OTA specifically requests that the Commission enter an order tolling the time for negotiation and seeking arbitration under Comcast Phone's purported bona fide request to Reliance Connects and Clear Creek until this docket has been concluded.

X. THE COMMISSION SHOULD CONVENE A PRE-HEARING CONFERENCE, INVOKE THE DISCOVERY RULES AND PROCEED WITH AN INVESTIGATION TO RESOLVE THE ISSUES RAISED IN THIS DOCKET.

45. OTA has brought this matter forward based on its best information and belief as to the state of the facts. However, clearly there is some clarification of facts that are needed to be able to provide a definitive determination in this matter. On this basis, OTA respectfully requests that under OAR 860-014-020 the Commission accept this Petition, set a pre-hearing conference at the earliest possible time and allow discovery to be sure that there is a clear understanding as to the state of the facts related to Comcast Phone's offering of VoIP service, either through itself or through an affiliate, and hold a hearing.

XII. CONCLUSION

46. Based on the foregoing, the Commission should declare that it has the authority to make a determination whether or not Comcast Phone is acting as a Telecommunications Carrier offering Telecommunications Services and whether Comcast Phone's (or its affiliate's) VoIP service is subject to state regulation. A declaration to this effect would minimize confusion in the state's telecommunications industry as to Comcast Phone's rights and responsibilities and it would move Comcast Phone towards a more level regulatory playing field for all similarly situated telecommunications companies in the state. In the alternative, however, if this Commission determines that Comcast Phone's VoIP service is not a Telecommunications Service, it must

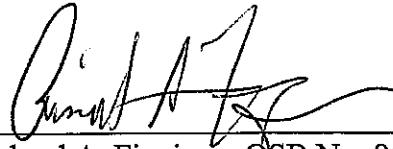
declare that Comcast Phone does not have Section 251 interconnection rights, as such rights are reserved only for Telecommunications Carriers providing Telecommunications Services.

47. OTA, Reliance Connects and Clear Creek respectfully request that the Commission take the following action:

- i. Declare whether OTA's member companies and, specifically Reliance Connects and Clear Creek, are required to negotiate terms of interconnection pursuant to Section 251 of the Communications Act of 1934, as amended, with Comcast Phone for the provision of fixed location VoIP services by Comcast Phone or an affiliate of Comcast Phone.
- ii. Declare that Comcast Phone is not acting as a Telecommunications Carrier for purposes of its VoIP service, whether provided by itself or through an affiliate, and, thus, is not entitled to interconnection rights pursuant to Section 251 of the Act.
- iii. In the alternative, declare that Comcast Phone is a Telecommunications Carrier and the VoIP service that it, or its affiliate, is offering is a Telecommunications Service and is subject to regulation for those services as a telecommunications company offering telecommunications within the state of Oregon.
- iv. That any purported bona fide request filed by Comcast Phone with a OTA member, and, specifically Reliance Connects and Clear Creek, is tolled for the duration of this proceeding and Comcast Phone may not invoke any rights to arbitration until its status to request interconnection pursuant to Section 251 of the Act for its VoIP services, or the VoIP services of its affiliate, are determined.

- v. That the Commission accept this Petition, set a pre-hearing conference at the earliest possible date and establish a schedule for discovery and hearing to determine the factual matters underlying this Petition.

Respectfully submitted this 1st day of December, 2008.



Richard A. Finnigan, OSB No. 965357
Attorney for the Oregon
Telecommunications Association,
Cascade Utilities, Inc. d/b/a Reliance
Connects and Clear Creek Mutual
Telephone Company

ATTACHMENT A

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**BEFORE THE OREGON PUBLIC
UTILITY COMMISSION**

In the Matter of the

Oregon Telecommunications Association,
Cascade Utilities, Inc. d/b/a Reliance
Connects and Clear Creek Mutual Telephone
Company Petition for Declaratory Ruling

DOCKET NO. _____

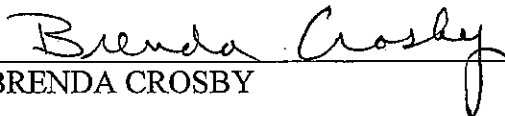
DECLARATION OF BRENDA CROSBY

I, Brenda Crosby, hereby declare under penalty of perjury under the laws of the State of Oregon that the following statements are true and correct:

1. I am the President of Cascade Utilities, Inc. d/b/a Reliance Connects and make this Declaration in that capacity.

2. Attached is a true and correct copy of a letter addressed to me from Comcast Phone of Oregon, LLC dated July 15, 2008. The letter purports to be a bona fide request for interconnection negotiations.

Dated this 25 day of November, 2008.


BRENDA CROSBY

DECLARATION OF
BRENDA CROSBY - 1

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
(360) 956-7001

EXHIBIT 1



Robert Munoz
Director, Regulatory Compliance
183 Inverness Dr. W, Suite 300S
Englewood, CO 80112
(720) 267-2660

VIA OVERNIGHT AND ELECTRONIC MAIL

July 15, 2008

Ms. Brenda Crosby
President
Cascade Utilities Inc. d/b/a Reliance Connects
303 Zobrist Street
Estacada, OR 97023
crosbyb@cuaccess.net

RE: Request of Comcast Phone of Oregon, LLC d/b/a Comcast Digital Phone to Negotiate an Interconnection Agreement with Cascade Utilities Inc. d/b/a Reliance Connects

Dear Ms Crosby:

Pursuant to Sections 251(a) and (b) of the Communication Act of 1934, as amended (the "Act"), Comcast Phone of Oregon, LLC d/b/a Comcast Digital Phone ("Comcast"), requests that Cascade Utilities Inc. d/b/a Reliance Connects ("Reliance") enter into negotiations with Comcast for an interconnection agreement ("Agreement") in the state of Oregon. The Agreement should include terms and conditions for interconnection, including but not limited to the following:

1. Direct and indirect network interconnection;
2. Number portability;
3. Reciprocal compensation at "bill and keep";
4. Access to directory listings and directory assistance; and
5. Access to 911/E911 facilities, if owned or controlled by Reliance.

To the extent that Reliance does not currently support permanent local number portability ("LNP") in its applicable switches in Oregon, this letter shall also serve as a bona fide request ("BFR") for Reliance to open the switch(es) for number portability in the Corbett rate center.

Ms. Crosby
July 15, 2008
RE: Request to Negotiate an Interconnection Agreement
Page 2

For purposes of the negotiation, Comcast represents the following:

1. Comcast represents that it holds a Certificate of Authority to provide competitive local exchange service in the state of Oregon, including in the above rate center.
2. In entering into the Agreement, Comcast does not waive any rights it may have to negotiate or arbitrate amendments to the Agreement, to negotiate a successor agreement or to adopt a replacement agreement should an adoptable agreement become available. In negotiating the Agreement in the state of Oregon, Comcast does not waive any of its rights or remedies under the Act, and such other state and federal law, rules, regulations, and decisions as may be applicable.
3. Notice to Comcast as may be required under the terms of the Agreement shall be provided as follows:

Mr. Brian Rankin
Assistant General Counsel
One Comcast Center, 50th Floor
Philadelphia, PA 19103
brian_rankin@comcast.com
Tel: (215) 286-7325
Fax: (215) 286-5039

with a copy to:

Ms. Beth Choroser
Senior Director of Regulatory Compliance
One Comcast Center, 50th Floor
Philadelphia, PA 19103
beth_choroser@comcast.com
Tel: (215) 286-7893
Fax: (215) 286-5039

In connection with the negotiation of the Agreement, please contact me as soon as possible at Robert_Munoz@comcast.com or the phone number above to commence these negotiations. For the purposes of Section 252 of the Act, Comcast will consider the start date for negotiations to be July 15, 2008 unless the Parties agree to use an alternate start date.

Ms. Crosby

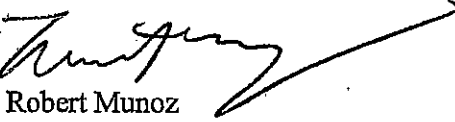
July 15, 2008

RE: Request to Negotiate an Interconnection Agreement

Page 3

Please let me know how you wish to proceed and advise me immediately if there is additional information that you require to process this request. Should you have any questions, please contact me at (720) 267-2660.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Munoz", with a long, sweeping horizontal stroke extending to the right.

Robert Munoz

cc: Richard A. Finnigan
Beth Choroser (Comcast)
Joyce Gailey (Kelley Drye)

ATTACHMENT B

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6 **BEFORE THE OREGON PUBLIC**
7 **UTILITY COMMISSION**
8

9 In the Matter of the

DOCKET NO. _____

10 Oregon Telecommunications Association,
11 Cascade Utilities, Inc. d/b/a Reliance
12 Connects and Clear Creek Mutual Telephone
Company Petition for Declaratory Ruling


DECLARATION OF MITCHELL MOORE

13
14 I, Mitchell Moore, hereby declare under penalty of perjury under the laws of the State of
15 Oregon that the following statements are true and correct:

16 1. I am the President of Clear Creek Mutual Telephone Company and make this
17 Declaration in that capacity.

18 2. Attached as Exhibit 1 is a letter dated May 23, 2006 [sic] to me from Comcast Phone
19 of Oregon, LLC. The more correct date appears on page 2 of the letter as May 27, 2008. The letter
20 purports to be a bona fide request for interconnection negotiations.

21 Dated this 26th day of November, 2008.

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24 _____
MITCHELL MOORE

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26 DECLARATION OF
MITCHELL MOORE - 1

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
(360) 956-7001

EXHIBIT 1



Robert Munoz
Director, Regulatory Compliance
183 Inverness Dr. W, Suite 300S
Englewood, CO 80112

May 23, 2006

VIA OVERNIGHT MAIL

Mr. Mitchell Moore
President
Clear Creek Mutual Telephone Company
18238 S. Fischers Mill Road
Oregon City, OR 97045-9696
(503) 631-2101

RE: Request of Comcast Phone of Oregon, LLC d/b/a Comcast Digital Phone to Negotiate an Interconnection Agreement with Clear Creek Mutual Telephone Company

Dear Mr. Moore:

Pursuant to Sections 251 and 252 of the Communication Act of 1934, as amended (the "Act"), Comcast Phone of Oregon, LLC., d/b/a Comcast Digital Phone, a Delaware Limited Liability Company ("Comcast"), hereby requests that Clear Creek Mutual Telephone Company ("Clear Creek") enter into negotiations with Comcast for an interconnection agreement (the "Agreement"). Comcast seeks an Agreement which includes, but is not limited to, the following:

1. Direct and indirect network interconnection;
2. Number portability;
3. Reciprocal compensation at "bill and keep;"
4. Access to directory listings and directory assistance; and
5. Access to 911/E911 facilities owned or controlled by Clear Creek.

To the extent that Clear Creek does not currently support permanent local number portability ("LNP") in its applicable switches, this letter is to serve as a bona fide request ("BFR") for Clear Creek to open the switch(es) for number portability in the Redland, Oregon Rate Center.

For the purposes of the negotiation, Comcast represents the following:

1. Comcast holds a Certificate of Authority to provide competitive local exchange service in the state of Oregon, including the above Clear Creek Rate Center.

Mr. Moore
May 27, 2008
RE: Comcast Notice to Negotiate
Page 2

2. In entering into the Agreement, Comcast does not waive any rights it may have to negotiate or arbitrate amendments to the Agreement, to negotiate a successor agreement or to adopt a replacement agreement should an adoptable agreement become available. In negotiating the Agreement in the state of Oregon, Comcast does not waive any of its rights or remedies under the Act, and such other state and federal law, rules, regulations, and decisions as may be applicable.
3. Notice to Comcast as may be required under the terms of the Agreement shall be provided as follows:

Mr. Brian Rankin
Chief Telephony Counsel
One Comcast Center, 50th Floor
Philadelphia, PA 19103
Telephone number: (215) 286-7325
Facsimile number: (215) 286-5039
Brian_rankin@comcast.com

with a copy to:

Ms. Beth Choroser
Senior Director of Regulatory Compliance
One Comcast Center, 50th Floor
Philadelphia, PA 19103
Tel: (215) 286-7893
Fax: (215) 286-5039
beth_choroser@comcast.com

In connection with the negotiation of an Agreement, please contact me either through email at Robert_Munoz@comcast.com or at the phone number below to commence the negotiations. Comcast will consider the start date for negotiations to be May 28, 2008 unless Clear Creak requests and the companies agree on an alternate start date.

Please advise me immediately if there is additional information that you require to process this request. If you have any questions, please contact me at (720) 267-2660.

Sincerely,



Robert Munoz

cc: Joyce Gailey (Kelley Drye)
Beth Choroser (Comcast)

ATTACHMENT C

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**BEFORE THE OREGON PUBLIC
UTILITY COMMISSION**

In the Matter of the

Oregon Telecommunications Association,
Cascade Utilities, Inc. d/b/a Reliance
Connects and Clear Creek Mutual Telephone
Company Petition for Declaratory Ruling

DOCKET NO. _____

DECLARATION OF RICHARD A. FINNIGAN

I, Richard A. Finnigan, hereby declare under penalty of perjury under the laws of the State of Oregon that the following statements are true and correct:

1. I am the attorney for the Oregon Telecommunications Association and make this Declaration in that capacity.
2. Attached are true and correct excerpts from the annual filing of Comcast Corporation with the Securities and Exchange Commission.

Dated this 16th day of November, 2008



RICHARD A. FINNIGAN

DECLARATION OF
RICHARD A. FINNIGAN - 1

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
(360) 956-7001

FORM 10-K
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED DECEMBER 31, 2007

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE TRANSITION PERIOD FROM _____ TO _____

Commission file number 001-32871

Comcast.

COMCAST CORPORATION

(Exact name of registrant as specified in its charter)

PENNSYLVANIA

(State or other jurisdiction of incorporation or organization)

One Comcast Center, Philadelphia, PA

(Address of principal executive offices)

Registrant's telephone number, including area code: (215) 286-1700

27-0000798

(I.R.S. Employer Identification No.)

19103-2838

(Zip Code)

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT:

Title of Each Class	Name of Each Exchange on which Registered
Class A Common Stock, \$0.01 par value	Nasdaq Global Select Market
Class A Special Common Stock, \$0.01 par value	Nasdaq Global Select Market
2.0% Exchangeable Subordinated Debentures due 2029	New York Stock Exchange
6.825% Notes due 2056	New York Stock Exchange
7.00% Notes due 2055	New York Stock Exchange
7.00% Notes due 2055, Series B	New York Stock Exchange
8.375% Guaranteed Notes due 2013	New York Stock Exchange
9.455% Guaranteed Notes due 2022	New York Stock Exchange

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:

NONE

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendments to this Form 10-K.

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

As of June 30, 2007, the aggregate market value of the Class A common stock and Class A Special common stock held by non-affiliates of the Registrant was \$58.283 billion and \$27.777 billion, respectively.

As of December 31, 2007, there were 2,053,564,909 shares of Class A common stock, 948,025,699 shares of Class A Special common stock and 9,444,375 shares of Class B common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Part III - The Registrant's definitive Proxy Statement for its annual meeting of shareholders presently scheduled to be held in May 2008.

Copyright Regulation

In exchange for filing reports and contributing a percentage of revenue to a federal copyright royalty pool, cable operators can obtain blanket permission to retransmit copyrighted material contained in broadcast signals. The possible modification or elimination of this copyright license is the subject of ongoing legislative and administrative review. The elimination or substantial modification of the cable compulsory license could adversely affect our ability to obtain certain programming and substantially increase our programming costs. The U.S. Copyright Office has issued a Notice of Inquiry on issues relating to the calculation of compulsory license fees that could significantly affect the amount we pay. Further, the U.S. Copyright Office has not yet made any determinations as to how the compulsory license will apply to digital broadcast signals and services. In addition, we pay standard industry licensing fees to use music in the programs we create, including our Cable segment's local advertising and local origination programming, and our Programming segment's original programs. These licensing fees have been the source of litigation with music performance rights organizations in the past and we cannot predict with certainty whether license fee disputes may arise in the future.

High-Speed Internet Services

We provide high-speed Internet services by means of our existing cable systems. In 2002, the FCC ruled that this was an interstate information service that is not subject to regulation as a telecommunications service under federal law or to state or local utility regulation. However, our high-speed Internet services are subject to a number of regulatory obligations, including compliance with the Communications Assistance for Law Enforcement Act ("CALEA") requirement that high-speed Internet service providers must implement certain network capabilities to assist law enforcement in conducting surveillance of persons suspected of criminal activity.

In addition, Congress and the FCC are considering defining certain rights for users of high-speed Internet services and regulating or restricting some types of commercial agreements between service providers and providers of Internet content. These proposals are generally referred to as "net neutrality." In August 2005, the FCC issued a nonbinding policy statement identifying four principles that will guide its policymaking regarding high-speed Internet and related services. These principles provide that consumers are entitled to: (i) access lawful Internet content of their choice; (ii) run applications and services of their choice, subject to the needs of law enforcement; (iii) connect their choice of legal devices that do not harm the network; and (iv) enjoy competition among network providers, application and service providers, and content providers. Several parties are advocating that the FCC adopt these principles as formal rules. In addition, some parties have alleged that our high-speed Internet network management practices violate the FCC's "net neutrality" principles and requested that the

FCC adopt rules, declaratory rulings or even penalties to change these practices. Further, Congress and some states are considering legislation that would establish "net neutrality" rules or impose additional obligations on high-speed Internet providers. Any such rules or statutes could limit our ability to manage our cable systems (including use for other services), obtain value for use of our cable systems or respond to competitive conditions. We cannot predict the outcome of the FCC proceedings or whether "net neutrality" rules or statutes will be adopted.

A federal program generally applicable to telecommunications services, known as the Universal Service program, requires telecommunications service providers to collect and pay a fee based on their revenues (in recent years, roughly 10% of revenues) into a fund used to subsidize the provision of telecommunications services in high-cost areas and Internet and telecommunications services to schools, libraries and certain health care providers. The FCC and Congress are considering revisions to the Universal Service program that could result in high-speed Internet services being subject to Universal Service fees. We cannot predict whether or how the Universal Service funding system might be extended to cover high-speed Internet services or, if that occurs, how it will affect us.

Congress and federal regulators have adopted a wide range of measures affecting Internet use, including, for example, consumer privacy, copyright protection, defamation liability, taxation, obscenity and unsolicited commercial e-mail. State and local governments have also adopted Internet-related regulations. Furthermore, Congress, the FCC and certain local governments are also considering proposals to impose customer service, quality of service, privacy and standard pricing regulations on high-speed Internet service providers. It is uncertain whether any of these proposals will be adopted. The adoption of new laws or the application of existing laws to the Internet could have a material adverse effect on our high-speed Internet business.

Phone Services

We currently offer phone services using interconnected VoIP technology and circuit-switched technology. The FCC has adopted a number of orders addressing regulatory issues relating to interconnected VoIP providers. In November 2004, the FCC ruled that a particular form of VoIP service is not subject to state or local utility regulation but has not yet ruled on the appropriate classification of interconnected VoIP services. The state regulatory environment for interconnected VoIP therefore remains uncertain. In September 2006, the Staff of the Missouri Public Service Commission filed a complaint with that commission alleging that our interconnected VoIP service was being offered as telecommunications in Missouri without a certificate of authority. We challenged in federal court the commission's ability to adjudicate the complaint.

In January 2007, the court ruled that the FCC had not yet specifically preempted state or local utility regulation of cable-delivered interconnected VoIP services and permitted the complaint to move forward. In November 2007, the Missouri commission ruled that its enabling statute required it to regulate our interconnected VoIP services. The commission denied our request to reconsider that ruling and we have appealed the commission's ruling in federal court. In addition, the Vermont Public Service Board has opened a proceeding for the review of VoIP services in Vermont.

In April 2007, the FCC extended its customer proprietary network information requirements to interconnected VoIP providers. In June 2007, the FCC held that the disability access requirements that currently apply to telecommunications carriers also apply to providers of interconnected VoIP services. In November 2007, the FCC extended local number portability requirements and benefits to interconnected VoIP providers and their competitive local exchange carrier numbering partners. These requirements are in addition to prior requirements imposed on interconnected VoIP by the FCC, including E911, CALEA and Universal Service.

The FCC has initiated other rulemakings to consider whether to impose further regulations on interconnected VoIP providers. For example, in one rulemaking, it would impose on interconnected VoIP (and telecommunications carriers) a 48-hour number porting interval.

The FCC and Congress are also considering how interconnected VoIP services should interconnect with ILEC's phone networks. Since the FCC has not determined the appropriate classification of interconnected VoIP service, the precise scope of ILEC interconnection rules applicable to interconnected VoIP providers is not entirely clear. As a result, some ILECs may resist interconnecting directly with interconnected VoIP providers. In light of these concerns, VoIP service providers typically either secure CLEC authorization or obtain interconnection to ILEC networks by contracting with an existing CLEC, whose right to deal with ILECs is clear. We have arranged for such interconnection rights through our own CLECs and through third party CLECs. It is uncertain whether and when the FCC or Congress will adopt further rules in this area and how such rules would affect our interconnected VoIP service.

Our circuit-switched phone service is subject to federal, state and local utility regulation, although the level of regulation imposed on us is generally less than that applied to the incumbent phone companies. The scope of ILEC obligations is, however, being reevaluated at the FCC and in Congress. The FCC has already adopted measures relieving ILECs of certain obligations to make elements of their networks available to competitors at cost-based rates. The FCC has also initiated rulemakings on intercarrier compensation, Universal Service and other matters that, in the aggregate, could significantly change the rules that apply to phone competitors, including the relationship between wireless and wireline providers, long-distance and local providers, and incumbents and new entrants. It is unclear how

these proceedings will affect our phone services. We plan to phase out our circuit-switched phone service in 2008, in accordance with applicable federal and state regulatory rules.

Other Areas

The FCC actively regulates other aspects of our Cable segment and limited aspects of our Programming segment, including the mandatory blackout of syndicated, network and sports programming; customer service standards; political advertising; indecent or obscene programming; Emergency Alert System requirements for analog and digital services; E911 capabilities and CALEA obligations for interconnected VoIP and circuit-switched service; closed captioning requirements for the hearing impaired; commercial restrictions on children's programming; origination cablecasting (i.e., programming locally originated by and under the control of the cable operator); sponsorship identification; equal employment opportunity; lottery programming; recordkeeping and public file access requirements; telemarketing; and technical standards relating to operation of the cable network. We are unable to predict how these regulations might be changed in the future and how any such changes might affect our Cable and Programming businesses.

State and Local Taxes

Some states and localities have imposed or are considering imposing new or additional taxes or fees on the services we offer, or imposing adverse methodologies by which taxes are computed. These include combined reporting on other changes to general business taxes, central assessments for property tax, and taxes and fees on video and voice services. Other cable industry members are challenging certain of these taxes in court. In addition, in some situations our DBS competitors do not face similar state tax and fee burdens.

Privacy Regulation

The Communications Act generally restricts the nonconsensual collection and disclosure to third parties of subscribers' personal information by cable operators and phone providers. Additional requirements may be imposed if and to the extent that state or local authorities establish their own privacy standards.

Employees

As of December 31, 2007, we employed approximately 100,000 employees, including part-time employees. Of these employees, approximately 86,000 were associated with our Cable business and the remainder were associated with our Programming and other businesses. Approximately 5,000 of our employees are covered by collective bargaining agreements or have organized but are not covered by collective bargaining agreements. We believe we have good relationships with our employees.

ATTACHMENT D

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

January 16, 2008

No. 07-50088

Charles R. Fulbruge III
Clerk

F. CARY FITCH, doing business as Affordable Telecom,

Plaintiff-Appellant,

v.

PUBLIC UTILITY COMMISSION OF TEXAS; SOUTHWESTERN BELL
TELEPHONE COMPANY, doing business as AT&T Texas,

Defendants-Appellees.

F. CARY FITCH, doing business as Affordable Telecom,

Plaintiff-Appellant,

v.

PAUL HUDSON, in his individual and official capacity; JULIE
CARRUTHERS PARSLEY, in her individual and official capacity; BARRY
SMITHERMAN, in his individual and official capacity; TEXAS PUBLIC
UTILITY COMMISSION,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:06-CV-176

Before REAVLEY, STEWART, and OWEN, Circuit Judges.

PER CURIAM:*

Affordable Telecom ("Affordable") appeals from the district court's order affirming the Texas Public Utility Commission's ("PUCT") approval of an arbitrated interconnection agreement between Affordable and Southwestern Bell Telephone Company (hereinafter "AT&T Texas"). We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 2002, Affordable, a small telecommunications company that provides paging service and Internet access, received commercial mobile radio service ("CMRS") licenses from the Federal Communications Commission ("FCC") to provide interconnected common carrier paging services to the public in Corpus Christi and Victoria, Texas. In order to effectuate the services provided by the licenses, Affordable had to enter into an interconnection agreement with AT&T Texas. The Telecommunications Act of 1996 ("FTA"), Pub. L. No. 104-104, 110 Stat. 56 (1996), *codified at* 47 U.S.C. § 151 *et seq.*, which was adopted to encourage the entry of new telecommunications carriers into local service markets, allows competing local exchange carriers ("CLECs") to negotiate interconnection agreements with incumbent local exchange carriers ("ILECs"). However, the FCC has also stipulated that ILECs cannot charge for the use of interconnection facilities for services that do not originate traffic, such as one-way paging. Since Affordable's licenses were for paging services which do not originate any traffic, it was not obligated to provide AT&T Texas any compensation under the terms of the licenses.

The case below began in 2004 as a compulsory arbitration before the PUCT, *see* 47 U.S.C. § 252, when Affordable and AT&T failed to reach a voluntary agreement on all terms. The central issue in contention before the

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

PUCT arbitrators was whether Affordable was legally authorized to avoid payment for the business lines and equipment it had access to through its interconnection agreement with AT&T Texas even though Affordable had used its interconnection agreement to provide dial-up Internet access to its customers.

In rendering their decision, the PUCT arbitrators made a number of factual findings. The PUCT arbitrators determined that Affordable had approximately 5,000 dial-up Internet access customers (through the trade name USAWIDE.net), 200-300 resold numeric paging customers, and 15 Superpaging¹ customers, and they concluded that although Affordable's licenses only allowed it to provide paging services, the majority of the traffic carried over its existing interconnection arrangements was dial-up internet service provider ("ISP") traffic.² Relying on the FCC rule laid out in 47 C.F.R. § 51.100(b),³ the PUCT

¹ Superpaging employs the paging spectrum to transmit "pages" to subscribers' wireless receivers. The page can consist of any type of data that can be sent to a computer (not just phone numbers as with traditional paging). Additionally, the calling party can, if it subscribes to such function, use the Internet to gather information for transmission in the Superpage. In fact, the PUCT arbitrators found that Affordable's dial-up Internet access service subscribers could access the Internet by calling the same platform used to initiate Superpages.

² According to AT&T Texas, 99% of Affordable's traffic was dial-up ISP traffic.

³ 47 C.F.R. § 51.100(b) states:

A telecommunications carrier that has interconnected or gained access under Sections 251(a)(1), 251(c)(2), 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well.

Telecommunications service means "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46). Telecommunications is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43). An information service offers the capability for "generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications," but does not include providing telecommunications itself. 47 U.S.C. § 153(20).

arbitrators held that Affordable could not use the interconnection facilities to carry Internet access traffic because Affordable does not offer telecommunications service "through" interconnection facilities; rather, it merely transmits radio signals to activate its pagers. The PUCT arbitrators explained that "47 C.F.R. § 51.100(b) allows the offering of information service through an interconnection facility, but only as an incident to the telecommunications service for which the carrier obtained the interconnection facility." The PUCT arbitrators concluded that Affordable is only authorized to provide paging services, and "consequently [it] may not receive any traffic other than paging traffic through the interconnection facility."⁴

On June 29, 2005, the parties filed exceptions to the PUCT arbitrators' award proposal. The PUCT approved the arbitration award, making only one modification.⁵

Affordable filed suit in state court, challenging the PUCT's award and its conclusion that Affordable is not entitled to continue providing internet services through its interconnection agreement with AT&T.⁶ The case was removed to federal district court by the PUCT Defendants and AT&T Texas (collectively "Defendants"), on the grounds that the case involved federal questions. The district court denied Affordable's motion to remand and ordered Affordable to

⁴ The arbitrators, in their award, also restricted the services Affordable could provide under its Superpaging services. Additionally, they made findings regarding the compensation rates between Affordable and AT&T Texas under the interconnection agreement.

⁵ The PUCT decided that long-distance calls (calls routed through an interexchange carrier) were not subject to the same reciprocal compensation rates as calls not routed through third party interexchange carriers.

⁶ Affordable also challenged the PUCT's imposition of sanctions arising out of a discovery dispute. Affordable initially sued the individual PUCT Commissioners for imposing sanctions, but amended its complaint to target the PUCT and the Commissioners in their official capacities.

amend its complaints to address the claims under the FTA.⁷ The parties briefed all issues, except Affordable's damages claims against AT&T Texas. On December 12, 2006, the district court entered an order affirming the PUCT order in all respects and ordered that Affordable's damages claim against AT&T be dismissed with prejudice. Affordable timely filed its notice of appeal.

II. STANDARD OF REVIEW

We review state commission rulings that interpret federal law *de novo*. *Southwestern Bell Tel. Co. v. Pub. Util. Comm'n*, 208 F.3d 475, 482 (5th Cir. 2000). Factual findings and state law determinations by state commissions are reviewed "under the more deferential arbitrary and capricious standard." *Id.* We have previously recognized that there is no meaningful difference between the arbitrary and capricious standard and the "substantial evidence" standard. *Id.* at 482 n.8 (citing *GTE South Inc. v. Morrison*, 199 F.3d 733, 745 n.5 (4th Cir. 1999)).

III. DISCUSSION

First, Affordable contends that the PUCT erred when it refused to arbitrate Affordable's claims under 47 U.S.C. §§ 201, 332(c)(1)(B) and 47 C.F.R. § 20.11. It also asserts that the district court erroneously concluded that § 332 is "outside the scope of an arbitration under § 252." In making this claim, Affordable recognizes that the FCC prefers that LEC-CMRS disputes are handled through the negotiation/arbitration process that was adopted in §§ 251/252 of the 1996 amendments, but Affordable nevertheless asserts that the FCC has also "taken great care to ensure that where § 332 or FCC wireless precedent requires a different substantive result than would the 1996 amendments standing alone, then its CMRS rules prevail."

⁷ Affordable initially filed two suits in state court—the first one after the PUCT order approving the award with changes and again after the interconnection agreement was filed. The two cases were consolidated and certain state law issues were remanded to state court.

Affordable's argument must fail. The FCC has clearly directed state commissions to arbitrate LEC-CMRS interconnection agreements under §§ 251 and 252, concluding that state commission arbitration proceedings would achieve "just, reasonable, and fair" agreements, which is the "common goal" of §§ 201, 332, 251, and 252. *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 F.C.C.R. 15499, 16005 ¶ 1023 (Aug. 8, 1996).

Second, Affordable argues that the PUCT erroneously held that paging carriers (as contrasted with LECs and cellular carriers) are not allowed to provide both telecommunications and information services under their interconnection agreements with ILECs. Affordable asserts that the FCC has recognized that paging carriers can provide information services, and that the PUCT interpreted 47 C.F.R. § 51.100(b) too narrowly. According to Affordable, the PUCT interpreted the word "through" to mean "in one side and out the opposite," when in the context of § 51.100(b) the word actually means "by the means and agency of." When the proper definition of through is applied, Affordable contends that § 51.100(b) allows it to offer information services through the interconnection agreement it has with AT&T Texas for one-way paging. On the other hand, AT&T Texas and the PUCT Defendants urge this Court to affirm the PUCT award and the district court's determination. They argue that under the proper reading of § 51.100(b), Affordable's licenses permit it to interconnect with AT&T and use AT&T facilities for a limited purpose—to provide one-way paging service—and since § 51.100(b) only permits telecommunications carriers to offer information services "through the same arrangement," Affordable cannot, under its existing one-way paging

interconnection agreement (which just involves receiving information) provide information services (which involves sending and receiving information).

This issue is the heart of this dispute. Affordable believes that the rights it has under its licenses should be interpreted broadly so it can offer a wide range of services via its interconnection agreement with AT&T Texas. AT&T, the PUCT, and the district court all believe that Affordable's licenses only permit it to provide one-way paging. For the following reasons, we hold that the interpretation suggested by Affordable is incorrect.

As the district court recognized, one-way paging is not a service provided "through" an interconnection facility, because the facility is merely relaying a call from the person initiating a page to the paging service provider. The district court cites from the PUCT arbitrators award, where they explain:

[§ 51.100(b)] does not just require that communications *occur* through the arrangement. If this were the standard, then all carriers would be able to offer information services through interconnection agreements, since the very purpose of an interconnection agreement is to transit communications. Rather, the carrier must offer *telecommunication services* through the arrangement.

Affordable argues that the PUCT and the district court unreasonably discriminated by acknowledging differences between CMRS providers (i.e., those that provide telephone exchange service versus those that provide telecommunications services), but Affordable is unable to establish how the PUCT or the district court's interpretations are inconsistent with any FCC decisions or orders issued since the 1996 amendments. Not only is Affordable's argument at odds with the plain language of § 251, but it also goes against the FCC precedent that has recognized the distinctions between different CMRS providers.

Further, common sense demands that we reject Affordable's argument. If its interpretation of § 51.100(b) is correct, it would be able to provide information services without having to pay AT&T Texas anything for using its facilities. This is clearly contrary to FCC precedent, as the FCC has recognized that ISPs are end users of telecommunications services that are required to purchase LEC business lines. *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 14 F.C.C.R. 3689, 3690 ¶ 4 (1999), vacated on other grounds, *Bell Atl. Tel. Co. v. FCC*, 204 F.3d 1 (D.C. Cir. 2000).

Third, Affordable asserts that the PUCT erroneously concluded that it was not authorized to provide services to laptop computers and mobile signs through its Superpaging service.⁸ The PUCT's determination about which Superpaging services are permitted under Affordable's interconnection agreement is a factual finding. We agree with the PUCT that many of the services Affordable provided under the umbrella of Superpaging, such as information storage and retrieval and access to the Internet, are not CMRS services, and therefore Affordable is not permitted, under § 51.100(b), to provide those services through its interconnection with AT&T Texas. Accordingly, we cannot hold that the PUCT's determination was arbitrary and capricious.

Fourth, Affordable Telecom challenges two of the PUCT rulings regarding intercarrier compensation.⁹ First, it asserts that the PUCT violated the FTA

⁸ Specifically, the PUCT arbitrators found that: "Superpaging only qualifies as CMRS to the extent that it meets the previously outlined definition of paging. Accordingly, the arbitrators conclude that Superpaging qualifies as CMRS only when the end user's wireless receiver meets the FCC's definition of a pager. Among the possible applications cited by Fitch Affordable Telecom, only the Pocket PC fits the definition of pager."

⁹ When a call originating from one carrier's customer is made to a customer of another interconnected carrier, the originating carrier must pay the terminating carrier for the costs of transporting and terminating the call. 47 U.S.C. § 251; 47 C.F.R. § 51.701(e). The FCC has established rules that govern these "reciprocal compensation" payments. 47 C.F.R. § 51.701(e); see also 47 C.F.R. § 51.701-.717. In pertinent part, these rules state that CMRS providers may

and FCC rules by failing to establish a rate to be paid for termination of AT&T originated calls. Affordable asserts that under § 251(b)(5), it is entitled to reciprocal compensation for paging, citing to FCC decisions that held that ILECs are required to at least offer to exchange both § 251(b)(5) traffic and ISP-bound traffic at the rate of \$0.0007 per minute of use. See *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(C) from Application of the ISP Remand Order*, 19 F.C.C.R. 20179, 20181 ¶ 6 (2004); see also *T-Mobile Order*, 20 F.C.C.R. at 4862 ¶ 12; see generally *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Intercarrier compensation for ISP-Bound Traffic*, 16 F.C.C.R. 9151 (1999). Affordable argues that since AT&T failed to offer a rate during the arbitration before the PUCT, the arbitrators should have prescribed the FCC's \$0.0007 compensation rate. However, a review of the record indicates that AT&T Texas inadvertently omitted its pricing index during the PUCT arbitration. When AT&T attempted, by motion, to correct its omission and to provide a reciprocal compensation rate of \$0.0013 per minute, Affordable objected, and as a result, AT&T withdrew its motion. AT&T Texas now argues that this classifies as invited error, and assert that because of that, this Court should not reverse the PUCT's determination. See *Hidden Oaks Ltd. v. City of Austin*, 138 F.3d 1036, 1051 (5th Cir. 1998) ("Having made such a choice at trial, Hidden Oakes hardly can request now that we reverse and remand in order for it to reassess its earlier strategy."). We agree, and as a result, this issue cannot

be compensated for terminating calls that originate from customers of the interconnected telecommunications carriers. 47 C.F.R. § 51.701(c) & (e); 47 C.F.R. § 51.701(e). The rules also stipulate that carriers that only provide one-way paging service do not owe reciprocal compensation to LECs.

be raised on appeal. See *Flores v. Cameron County*, 92 F.3d 258, 270 (5th Cir. 1996) (explaining that “the invited error doctrine . . . preclude[s] our review”).¹⁰

Affordable next argues that the PUCT order adopting the award erroneously concluded that any reciprocal compensation paid by AT&T Texas to Affordable should be limited to those calls originating within AT&T and terminating directly with Affordable, and in which (i) the originating caller and the recipient are in the same Metropolitan Traffic Area (“MTA”) and (ii) no intervening interexchange carrier is involved (i.e., the call is not a long-distance call requiring “1+” dialing.) Affordable Telecom argues that the PUCT’s holding in this regard is at odds with the manner in which federal courts have interpreted this issue. See e.g., *Iowa Network Servs. v. Qwest Corp.*, 466 F.3d 1091 (8th Cir. 2006); *Atlas Tel. Co. v. Oklahoma Corp. Comm’n*, 400 F.3d 1256 (10th Cir. 2005). However, this argument is flawed as well. As the PUCT Defendants observe in their brief: “It would be entirely incongruous to require AT&T to pay Affordable for a long-distance page originated by a customer using interexchange service, especially considering that AT&T had nothing to do with the termination of the call.” We agree, and the case law cited by Affordable is inapplicable to this case.

Finally, Affordable sued AT&T Texas for damages under 47 U.S.C. §§ 206 & 207,¹¹ arguing that AT&T violated the FTA by refusing to interconnect with

¹⁰ Even if we were to refrain from classifying it as invited error, we need not reverse the PUCT order on this ground because the PUCT included language in the interconnection agreement that will allow the parties to prospectively include a rate which could be retroactively implemented. And because AT&T’s rate in its withdrawn filing (\$0.0013) is higher than the rate Affordable Telecom alleges should have been adopted (\$0.0007), the parties should be able to reach an agreement on an appropriate rate for reciprocal compensation without intervention from this Court or the PUCT.

¹¹ 47 U.S.C. § 206 provides that if common carriers violate any provisions of the TCA they shall be liable for damages sustained in consequences of that violation, along with reasonable attorney’s fees. 47 U.S.C. § 207 similarly authorizes any person who claims to be damaged by a common carrier to either file a complaint with the FCC or to bring a lawsuit in federal district court to recover damages.

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Affordable and for refusing to negotiate in good faith. Affordable argues that the district court's dismissal of these claims was in error, especially since the court never specifically addressed all of Affordable's allegations. Affordable's argument is without merit. There is no evidence that AT&T Texas violated any provision of the TCA, damaged Affordable in any way, or even acted in bad faith. Therefore, Affordable is not entitled to damages under §§ 206 or 207.

IV. CONCLUSION

For the foregoing reasons, we AFFIRM the judgment of the district court.

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CERTIFICATE OF SERVICE

I certify that I have this day sent the attached Oregon Telecommunications Association, Cascade Utilities, Inc. d/b/a Reliance Connects and Clear Creek Mutual Telephone Company Petition for Declaratory Ruling by electronic mail and U.S. mail to the following:

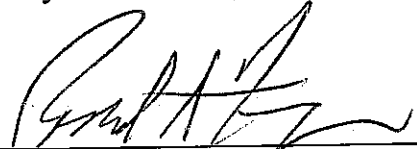
FILING CENTER
PUBLIC UTILITY COMMISSION OF OREGON
550 CAPITOL STREET NE STE 215
SALEM, OR 97301-2551
puc.filingcenter@state.or.us

I further certify that I have this day sent the attached Oregon Telecommunications Association, Cascade Utilities, Inc. d/b/a Reliance Connects and Clear Creek Mutual Telephone Company Petition for Declaratory Ruling by mailing a copy properly addressed with first class postage prepaid to the following parties or attorneys of parties:

COMCAST PHONE OF OREGON, LLC
RHONDA WEAVER, DIRECTOR
GOVERNMENT AFFAIRS
440 YAUGER WAY
OLYMPIA, WA 98502

COMCAST PHONE OF OREGON, LLC
ONE COMCAST CENTER
PHILADELPHIA, PA 19103

Dated at Olympia, Washington, this 1st day of December, 2008.


Richard A. Finnigan, OSB #965357
Attorney for Oregon Telecommunications Association