

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

GEORGE R. DUNCAN, SR.  
1897-1981

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

ATTORNEYS AT LAW

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

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

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

June 25, 2004

**VIA EMAIL AND FIRST CLASS MAIL**

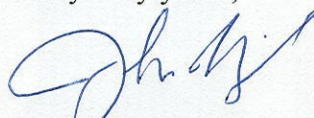
Lindsey Nunes  
Administrative Hearings Division  
Oregon Public Utility Commission  
550 Capitol Street NE, Suite 215  
PO Box 2148  
Salem OR 97308-2148

RE: Clear Creek Mutual Telephone Company ("Clear Creek") v. Beaver Creek Cooperative Telephone Company ("Beaver Creek") – UM 1142

Dear Ms. Nunes:

Enclosed please find Clear Creek's Opposition to Petitions to Intervene. Also enclosed are five copies pursuant to Commission rules. Thank you in advance for your attention to this matter. Please do not hesitate to contact me if you have any questions or desire further information.

Very truly yours,



Jennifer L. Niegel

cc: UM 1142 Service List  
Michelle Lipka

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UM 1142**

CLEAR CREEK MUTUAL TELEPHONE )  
COMPANY, )  
 )  
Complainant, )  
 )  
v. ) OPPOSITION TO PETITIONS TO  
 ) INTERVENE  
BEAVER CREEK COOPERATIVE )  
TELEPHONE COMPANY, )  
 )  
Defendant. )

Clear Creek Mutual Telephone Company ("Clear Creek") respectfully requests that the Commission deny the Petitions to Intervene of Michelle Lipka and lipka.com, inc. because granting the Petitions to Intervene would unreasonably broaden the issues and unreasonably delay this proceeding in violation of OAR 860-013-0021(2).

**I.  
THE PETITIONERS' PARTICIPATION IN THIS DOCKET WOULD  
UNREASONABLY BROADEN THE ISSUES**

The Petitions to Intervene should be denied because granting the Petitions to Intervene would unreasonably broaden the issues in this proceeding contrary to the requirements of OAR 860-013-0021(2). The only relevant issue in this docket is whether Beaver Creek is providing

1 intrastate telecommunications service in the Redland exchange without a certificate of authority  
2 in violation of ORS 759.020(1). At the prehearing conference held on June 4, 2004, Beaver  
3 Creek stipulated that it is in fact providing intrastate telecommunications service in the Redland  
4 exchange without a certificate of authority in violation of ORS 759.020(1). The only matter left  
5 for the Commission to decide, therefore, is the extent of sanctions to impose on Beaver Creek.

6 The Petitions to Intervene essentially ask the Commission to allow Beaver Creek to  
7 continue providing service to Ms. Lipka and lipka.com, inc. without a certificate of authority.  
8 The Commission does not have authority to do so. ORS 759.020(1) prohibits Beaver Creek from  
9 providing intrastate telecommunications service on a for-hire basis without first obtaining a  
10 certificate of authority from the Commission. The statute provides no exception and no authority  
11 to the Commission to carve out any exceptions. The Commission must enforce the statute.  
12 Petitioners' request, therefore, is beyond the scope of this proceeding.

13 A separate process exists for Beaver Creek to obtain a certificate of authority to serve in  
14 Clear Creek's territory. Beaver Creek filed such an application in docket CP 1181, but  
15 voluntarily withdrew its application when faced with the possibility of a Staff audit. Despite  
16 withdrawing its application in CP 1181, Beaver Creek chose to continue illegally providing  
17 service to customers in the Redland exchange.

18 Including the issues raised by Ms. Lipka and lipka.com, inc. would inappropriately shift  
19 the narrow focus of this docket from appropriate sanctions for Beaver Creek's illegal conduct to  
20 an examination of whether Beaver Creek should be granted a certificate of authority. This is not  
21 the docket for such an inquiry. While it is unfortunate that the consumers that Beaver Creek has  
22

1 deceived may be inconvenienced by the Order in this docket,<sup>1</sup> the Commission cannot make  
2 exceptions for providers who are intentionally violating the law. The Petitions to Intervene raise  
3 issues outside the scope of this case and beyond the scope of the Commission's authority and  
4 must, therefore, be denied.

5 **II.**

6 **THE PETITIONERS' PARTICIPATION IN THIS DOCKET WOULD**  
7 **UNREASONABLY DELAY THIS PROCEEDING**

8 The Petitions to Intervene should also be denied because granting the Petitions to  
9 Intervene would unreasonably delay this proceeding in contravention of OAR 860-013-0021(2).  
10 At the prehearing conference, the parties agreed to settle the dispute by having the Commission  
11 issue a Final Order requiring Beaver Creek to cease and desist from providing intraexchange  
12 switched telecommunications service in the Redland Exchange. The Stipulated Motion and  
13 Proposed Cease and Desist Order have been circulated among the parties and agreement is  
14 imminent. If the Petitions to Intervene are granted and further proceedings become necessary,  
15 settlement and issuance of an Order will be unreasonably delayed or impeded and further  
16 proceedings will be necessary. Therefore, the Petitions to Intervene should be denied.

17 **III.**

18 **CLEAR CREEK DENIES THE ALLEGATIONS CONTAINED**  
19 **IN THE PETITIONS TO INTERVENE**

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<sup>1</sup> The Proposed Cease and Desist Order requires Beaver Creek to "cease and desist from providing intraexchange switched (dial tone) telecommunications service to the customers currently being served within the Redland exchange, within 30 days of this Order." By its terms, the Proposed Cease and Desist Order provides Ms. Lipka and lipka.com, inc. time to arrange for alternate service.

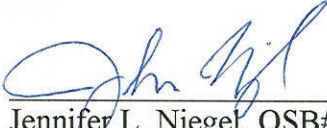
1 Since this docket is not the appropriate place to address the issues raised by the Petitions  
2 to Intervene, Clear Creek will not burden the record rebutting each and every allegation in this  
3 response. However, for the record, Clear Creek wholly denies all of the allegations and, if  
4 necessary, will present evidence to disprove each of the claims contained therein.

5 **IV.**

6 **CONCLUSION**

7 The only relevant issue in this docket is whether Beaver Creek is providing intrastate  
8 telecommunications service in the Redland exchange without a certificate of authority in  
9 violation of ORS 759.020(1). Beaver Creek has admitted doing so. It is not appropriate to  
10 include the issues raised in the Petitions to Intervene because they unreasonably broaden the  
11 issues and unreasonably delay this proceeding under OAR 860-013-0021(2). In addition, the  
12 Petitions request relief that the relevant statutory provisions do not authorize the Commission to  
13 provide. Therefore, Clear Creek respectfully requests that the Petitions to Intervene be denied.

14 DATED: June 25, 2004.

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17 \_\_\_\_\_  
Jennifer L. Niegel, OSB#99089  
Of Attorneys for Clear Creek

18 **Clear Creek**

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

1 **Attorneys for Clear Creek**

Jennifer L. Niegel, OSB#99089

2 James D. Tiger, OSB#71172

Duncan, Tiger & Niegel, P.C.

3 582 E. Washington Street

PO Box 248

4 Stayton, OR 97383-0248

Telephone: (503) 769-7741

5 Fax: (503) 769-2461

Email: [jennifer@staytonlaw.com](mailto:jennifer@staytonlaw.com)

6 [jim@staytonlaw.com](mailto:jim@staytonlaw.com)

7 Mark P. Trincherro

Davis Wright Tremaine LLP

8 1300 S.W. Fifth Avenue, Suite 2300

Portland, OR 97201

9 Telephone: (503) 778-5318

Fax: (503) 778-5299

10 Email: [marktrincherro@dwt.com](mailto:marktrincherro@dwt.com)

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on June 25, 2004, I served the foregoing letter by causing a full, true  
3 and correct copy thereof to be sent by email and by mail in a sealed, first-class postage-prepaid  
4 envelope deposited with the United States Postal Service at Stayton, Oregon to the UM 1142  
5 Service List and to Michelle Lipka as follows:

6 ALEX M DUARTE  
7 QWEST CORPORATION  
8 421 SW OAK ST STE 810  
9 PORTLAND OR 97204  
10 [alex.duarte@qwest.com](mailto:alex.duarte@qwest.com)

CELESTE HARI  
PUBLIC UTILITY COMMISSION  
PO BOX 2148  
SALEM OR 97308-2148  
[celeste.hari@state.or.us](mailto:celeste.hari@state.or.us)

11 TOM HARRIS  
12 PUBLIC UTILITY COMMISSION  
13 PO BOX 2148  
14 SALEM OR 97308-2148  
15 [tom.harris@state.or.us](mailto:tom.harris@state.or.us)

TOM A. LINSTROM  
BEAVER CREEK COOPERATIVE  
TELEPHONE CO  
15223 S HENRICI RD  
OREGON CITY OR 97045  
[tlinstrom@bctelco.com](mailto:tlinstrom@bctelco.com)

16 MARK P. TRINCHERO  
17 DAVIS WRIGHT TREMAINE LLP  
18 1300 SW FIFTH AVE STE 2300  
19 PORTLAND, OR 97201-5682  
20 [marktrinchero@dwt.com](mailto:marktrinchero@dwt.com)

MICHAEL WEIRICH  
DEPARTMENT OF JUSTICE  
1162 COURT ST NE  
SALEM OR 97301-4096  
[michael.weirich@state.or.us](mailto:michael.weirich@state.or.us)

21 MICHELLE LIPKA  
22 LIPKA.COM, INC.  
23 23732 S. LEISURE LANE  
24 BEAVERCREEK, OR 97004  
25 [michelle@lipka.com](mailto:michelle@lipka.com)

DATED: June 25, 2004.



Jennifer L. Niegel, OSB#99089  
Of Attorneys for Clear Creek Mutual  
Telephone Company