

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB 567(1), 568(1), 569(1), 570(1), 571(1), 573(1), 590(1), 591(1),
592(1), 593(1), 594(1), 595(1), 598(1), 600(1), 620(1), and 625(1)

In the Matters of

NEHALEM TELECOMMUNICATIONS, INC. (567(1)),
PEOPLE'S TELEPHONE CO. (568(1)), MOUNT ANGEL
TELEPHONE COMPANY (569(1)), STAYTON
COOPERATIVE TELEPHONE COMPANY (570(1)),
MOLALLA COMMUNICATIONS COMPANY (571(1)),
COLTON TELEPHONE COMPANY (572(1)), MONITOR
COOPERATIVE TELEPHONE COMPANY (573(1)),
CASCADE UTILITIES, INC. (590(1)), CLEAR CREEK
MUTUAL TELEPHONE COMPANY (591(1)), GERVAIS
TELEPHONE COMPANY (592(1)), HELIX TELEPHONE
CO. (593(1)), NORTH-STATE TELEPHONE CO. (594(1)),
OREGON TELEPHONE CORPORATION (595(1)),
MONROE TELEPHONE COMPANY (598(1)), PIONEER
TELEPHONE COOPERATIVE (600(1)), CANBY
TELEPHONE ASSOCIATION (620(1)), TRANS-
CASCADES TELEPHONE COMPANY (625(1)), and
SCIO MUTUAL TELEPHONE ASSOCIATION (631(1)),

and SPRINT SPECTRUM L.P. and NEXTEL
OPERATIONS, INC.,

First Amendment to the Interconnection Agreement
Submitted for Commission Approval Pursuant to Section
252(e) of the Telecommunications Act of 1996.

**STAFF SUPPLEMENTAL
COMMENTS**

Staff of the Public Utility Commission of Oregon submitted comments¹ in these dockets recommending that the Commission approve the parties' first amendment to the interconnection agreement previously approved by the Commission. However, staff noted that if approved the effective date of the amendment would be the date the Commission signs an order approving, and that any provision stating that the parties' agreement is effective prior to that date is not enforceable. In response, Rick Finnigan, contact for the affected companies, submitted comments stating that for purposes of applying the pricing, agreements between Incumbent Local Exchange Companies (ILEC) and Commercial Mobile Radio Service (CMRS) providers are authorized by federal law to relate back to the date that a request for interconnection is made,

¹ January 30, 2006, February 6, 2006, January 26, 2006, February 6, 2006, January 30, 2006, February 9, 2006, January 26, 2006, February 14, 2006, February 6, 2006, February 1, 2006, January 27, 2006, January 26, 2006, January 26, 2006, January 27, 2006, January 26, 2006, January 26, 2006, respectively.

and that the rates set forth for the charging of terminating traffic apply as of the date the request was made, not just the date of the Commission order.

For the reasons that follow, staff disagrees with the comments submitted by Mr. Finnigan. The rule relied on by Mr. Finnigan, 47 CFR § 20.11(f) provides,

An incumbent local exchange carrier may request interconnection from a commercial mobile radio service provider and invoke the negotiation and arbitration procedures contained in section 252 of the Act. A commercial mobile radio service provider receiving a request for interconnection must negotiate in good faith and must, if requested, submit to arbitration by the state commission. Once a request for interconnection is made, the interim transport and termination pricing described in § 51.175 shall apply.

47 CFR § 51.715 provides that upon request from a telecommunications carrier without an existing interconnection agreement with an ILEC, the ILEC shall provide transport and termination of telecommunications traffic immediately under an interim arrangement, pending resolution of negotiation and arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Telecommunications Act of 1996. Subsection (d) of the rule provides that if the rates for transport and termination of telecommunications traffic in an interim compensation arrangement differ from the rates established by a state commission pursuant to § 51.705, the state commission shall require carriers to make adjustments to past compensation to allow each carrier to receive the same amount of compensation it would have received had the rates in the interim compensation arrangement equaled the rates later established by the state commission pursuant to § 51.705.

Notably, the provisions of § 51.715 only apply when there is no existing interconnection agreement between the requesting carrier and ILEC providing for the transport and termination and traffic. *See* 47 CFR § 51.715(a)(1). This is not the case in these dockets. Contrarily, there are existing agreements between ILEC's and Sprint Spectrum ("Sprint"). Because the agreement at issue is not a new agreement, the interim compensation provisions described in 47 CFR § 51.715 do not apply to the carriers in this proceeding.

Putting aside the fact that the agreements at issue are not a new agreement, the interim compensation true-up provision of § 51.715 still does not apply because the Commission is not establishing rates for transport and termination of telecommunications traffic pursuant to 47 CFR § 51.705. 47 CFR § 51.715(d) explains when it is appropriate to true up between interim prices for the transport and termination of telecommunications traffic and rates established by the Commission. That provision provides,

If the rates for transport and termination of telecommunications traffic in an interim arrangement differ from the rates established by a state commission pursuant to §51.705, the state commission shall require carriers to make adjustments to past compensation. Such adjustments to

past compensation shall allow each carrier to receive the level of compensation it would have received had the rates in the interim arrangement equaled the rates later established by the state commission pursuant to §51.705. 47 CFR § 51.715(d).

47 CFR § 51.715 does not authorize a truing up for differences between interim prices for the transport and termination of telecommunications traffic agreed to by the interconnection parties and those ultimately included by the parties in the interconnection agreement. Instead, the rule requires the Commission to true up any differences if the interim rates agreed to by the parties differ from rates “established by [the] state commission pursuant to §51.705.” 47 CFR §51.715.² The Commission has not established rates for the transport and termination of telecommunications traffic pursuant to 47 CFR § 51.705. Accordingly, the true up provision in 47 CFR §51.715 is not applicable.

Essentially, Mr. Finnigan asks the commission to conclude that 47 CFR § 51.715 contemplates that the parties will true up between interim rates for the termination and transport of telecommunications traffic that are agreed to by the parties and rates submitted to the commission for approval in an interconnection agreement. This is not what the rule contemplates.

Dated at Salem, Oregon this 14th day of February, 2006.

Celeste Hari
Telecommunications Analyst
Competitive Issues
Telecommunications Division

² 47 CFR § 51.705 provides,

(a) An ILEC’s rates for transport and termination of telecommunications traffic shall be established, at the election of the state commission, on the basis of:

(1) The forward-looking economic costs of such offerings, using a cost study pursuant to §§ 51.505 and 51.511;

(2) Default proxies, as provided §51.707; or

(3) A bill-and-keep arrangement, as provided in §51.713.

(b) In cases where both carriers in a reciprocal compensation arrangement are incumbent LECs, state commissions shall establish the rates of the smaller carrier on the basis of the larger carrier’s forward-looking costs, pursuant to §51.711.