

Law Office of  
Richard A. Finnigan

Richard A. Finnigan  
(360) 956-7001  
rickfinn@localaccess.com

2112 Black Lake Blvd. SW  
Olympia, Washington 98512  
Fax (360) 753-6862

Kathy McCrary, Paralegal  
(360) 753-7012  
kathym@localaccess.com

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February 16, 2006

**VIA ELECTRONIC MAIL AND U.S. MAIL**

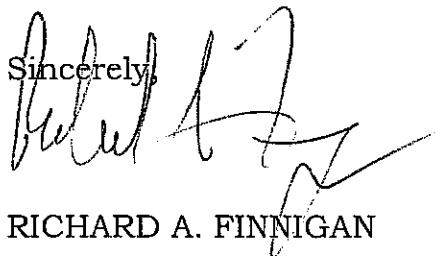
Filing Center  
Oregon Public Utility Commission  
550 Capitol Street NE, Ste 215  
Salem, OR 97301-2551

Re: ARB 714 – Reply to Staff Comments

Dear Sir/Madam:

Enclosed are the original and one copy of the Reply to Staff Comments and Certificate of Service.

Sincerely,



RICHARD A. FINNIGAN

RAF/km  
Enclosures

cc: Service List (w/encl., via e-mail)  
Linda Lowrance (w/encl., via e-mail)  
Gail Long (w/encl., via e-mail)

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7 **BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

8 ARB 714

9 In the Matter of

10 T-MOBILE USA, INC. and HOME  
11 TELEPHONE COMPANY,

12 Interconnection Agreement Submitted for  
13 Commission Approval Pursuant to Section  
14 252(e) of the Telecommunications Act of  
15 1996.

REPLY TO STAFF COMMENTS

16 The Staff Comments filed in this matter dated February 10, 2006, recommend rejection of the  
17 agreement reached between T-Mobile USA, Inc. ("T-Mobile") and Home Telephone Company  
18 ("Home" or "TDS"). The basis for the recommendation for rejection is Staff's position that the  
19 agreement is "discriminatory since the agreement may only be adopted by other companies on a  
20 forward-going basis" and does not, therefore, allow other companies to take advantage of the true up  
21 language in the agreement. Staff states its position that it is not in the public interest to approve  
22 agreements that are discriminatory.  
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REPLY TO STAFF COMMENTS - 1

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Olympia, WA 98512  
(360) 956-7001

1 Home Telephone Company respectfully disagrees with Staff's recommendation. Home  
2 believes that Staff's conclusion that the agreement is discriminatory is in error. Further, Home firmly  
3 believes that the agreement is in the public interest.  
4

#### 5 BACKGROUND

6 First, some background may be helpful. The agreement filed in this docket represents the  
7 culmination of over a year of negotiations between T-Mobile and TDS. This is an agreement that is  
8 being put in place on a national basis between T-Mobile and each of the TDS operating companies. As  
9 the Commission can tell by the length of time that the negotiations took, this was a tedious and  
10 contentious negotiation process.  
11

12 This agreement has been filed in twenty-five states. To date, it has been approved in the states  
13 of Alabama, Kentucky, Michigan, Minnesota and Wisconsin. In each state, the Agreement contains  
14 the same "true up" provision the Staff finds objectionable in Oregon.  
15

#### 16 THE AGREEMENT IS NOT DISCRIMINATORY

17 As noted above, Home believes that the agreement is not discriminatory. The first reason the  
18 agreement is not discriminatory is pragmatic. TDS has been able to negotiate agreements with nearly  
19 all major wireless carriers. Thus, the likelihood that anyone will want to "opt-in" to the T-Mobile  
20 agreement is remote, at best.  
21

22 Even if one assumes that there is some regional carrier with whom TDS does not have an  
23 agreement or upon the expiration of one of the existing agreements with a major wireless carrier, that  
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25  
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1 wireless carrier would like to opt-in to the T-Mobile agreement, there is no discrimination. To  
2 understand why the agreement is not discriminatory, it is helpful to place the T-Mobile agreement in  
3 context.

4 From a factual standpoint, what has happened is that negotiations began prior to January 1,  
5 2005. T-Mobile and TDS agreed that the starting date for any rates that would ultimately be negotiated  
6 would be January 1, 2005. Contrary to Staff's assertion, any carrier in a similar position would be  
7 entitled to a similar treatment.  
8

9 For example, if a wireless carrier approaches TDS on July 1, 2006, and says that it would like  
10 to negotiate a new agreement (either because there is no agreement or because the existing agreement  
11 has lapsed) and, subsequently, for example, on September 1, 2006, that carrier states that it would like  
12 to opt-in to the T-Mobile agreement, the carrier would be entitled to apply the terms of the T-Mobile  
13 agreement, including the "true up" to the date that negotiations were initiated, July 1, 2006, even  
14 though the request for opting in came later. Thus, there is no discrimination to be had.  
15

16 This is important to understand. The agreement on its face relates back to the time that  
17 negotiations began.<sup>1</sup> There is nothing about the agreement that would suggest that relating back to the  
18 time that negotiations begin with another carrier would not also be available to that carrier.  
19 Apparently, Staff focuses on the January 1, 2005 date. It is not the date that is critical in determining  
20 whether the agreement is discriminatory. It is the concept of relation back. The concept of relation  
21 back is built into the agreement and would be available for any carrier. All carriers would be treated in  
22 a similar fashion. Thus, there is no discrimination.  
23

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24  
25 <sup>1</sup> Actually to a mutually agreeable convenient date as a proxy date for when negotiations began.  
26

1  
2 THE AGREEMENT IS IN THE PUBLIC INTEREST AND  
3 CONSISTENT WITH FCC PRINCIPLES

4 It is also important to recognize that the agreement in this docket is very much in the public  
5 interest. The Commission is probably aware that negotiations between small wireline carriers and  
6 CMRS or wireless carriers have been difficult to accomplish. As a result, in the past, some wireline  
7 carriers adopted the practice of submitting "wireless" terminating traffic tariffs. This practice was  
8 pursued because wireless carriers were not entering into traffic exchange or interconnection  
9 agreements with the small wireline carriers. Ultimately, the wireless carriers challenge the practice of  
10 the filing of wireless terminating traffic tariffs by the wireline carriers. In fact, such a petition was  
11 brought by T-Mobile.<sup>2</sup>

12  
13 The Federal Communications Commission adopted an order on February 17, 2005 addressing  
14 these issues. The order is found in the case of In the Matter of Developing a Unified Intercarrier  
15 Compensation Regime T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC  
16 Wireless Termination Tariffs, CC Docket No. 01-92, Declaratory Ruling and Report and Order, FCC  
17 05-42 (Released February 24, 2005/Adopted February 17, 2005) ("T-Mobile Decision"). In that  
18 Order, the FCC rejected the claim that the wireless termination traffic tariffs filed prior to the date of  
19 the FCC's Order were illegal. However, the FCC went on to "amend our rules to make clear our  
20 preference for contractual arrangements by prohibiting LECs from imposing compensation obligations  
21 for non-access CMRS traffic pursuant to tariff."<sup>3</sup>

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24 <sup>2</sup> It is ironic that the contract at issue in this docket is a T-Mobile Agreement.

25 <sup>3</sup> T-Mobile Decision at ¶9.

1 Thus, two things became apparent. First, new wireless termination tariffs were prohibited.  
2 Second, the FCC expressed its very strong preference for negotiated arrangements. The preference for  
3 the negotiated agreements was emphasized in ¶14 of the T-Mobile Order as follows: "... the  
4 Commission intended for compensation arrangements to be negotiated agreements and we find that  
5 negotiated agreements between carriers are more consistent with the pro-competitive process and  
6 policies reflected in the 1996 Act." This is exactly what has occurred in this case. Two parties with  
7 very different viewpoints sat down and through a long, arduous process have negotiated an agreement  
8 between those carriers that meets the needs of those carriers. Under those circumstances, the  
9 Commission should be very hesitant about overturning such an agreement. Only if clear evidence of  
10 discrimination is present, should the Commission reject such an agreement. That is not the case before  
11 this Commission.  
12

13 Further, the FCC recognized that LECs may have difficulty obtaining agreements with CMRS  
14 providers. The FCC acknowledged that the LECs did not have the authority to require CMRS  
15 providers to negotiate interconnection agreements or submit to arbitration under Section 252 of the  
16 Act.<sup>4</sup> As a result, the FCC imposed upon CMRS providers the Section 252 negotiation requirements.<sup>5</sup>  
17 The Agreement that has been reached between Home and T-Mobile is entirely consistent with the  
18 basic pro-competitive policies established by the FCC in the T-Mobile Decision.  
19

20 Finally, in addition to the concept that favors negotiated agreements as a general principle, the  
21 specific elements of the agreement at issue, the "true up" provisions, are consistent with the principles  
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24 <sup>4</sup> T-Mobile Decision at ¶15.

25 <sup>5</sup> T-Mobile Decision at ¶16.

1 for establishing interim compensation created by the FCC. In the T-Mobile Decision, the FCC  
2 recognized that negotiations between a CMRS provider and a LEC could be protracted. As a result,  
3 the FCC stated that the interim compensation provisions contained in the FCC rules would apply.<sup>6</sup> As  
4 stated in 47 C.F.R. §20.11(f) "Once a request for interconnection is made, the interim transport  
5 termination pricing described in Section 51.715 shall apply."

6 Under 47 C.F.R. §51.715, it is clear that interim transport and termination rates apply from the  
7 date that a request for interconnection is made. In this case, T-Mobile and Home Telephone Company  
8 chose a convenient date of January 1, 2005, as a proxy for that date.<sup>7</sup>

9 The next question is what rate should apply. 47 C.F.R. §51.715(b)(3) establishes default rates  
10 for interim transport and termination. These default rates also refer back to §51.707(b)(2) for the  
11 establishment of transport rate. Under §51.707(b)(2), transport is based upon proxies described in  
12 §51.513(3), (4) and (5). In this case, the proxy is found in §51.513(c)(4). That section, in turn, refers  
13 to a calculation based on loading factors for voice grade circuits and weighted per-minute equivalents  
14 of DS1 and DS3 interoffice dedicated transmission link rates. Since the CMRS provider stands in the  
15 shoes of the incumbent under the T-Mobile Decision for these purposes, it becomes almost impossible  
16 to calculate such a rate given that the CMRS provider does not track costs in such a manner. Further,  
17 if it is viewed that because it is symmetrical rates that are applied, a proxy may be used based upon the  
18 LEC's rates; if one can cipher through these proxies, the rate for transport begins to look an awful lot  
19 like the access rates that are in place. Faced with very difficult and unsure calculations of the proxy  
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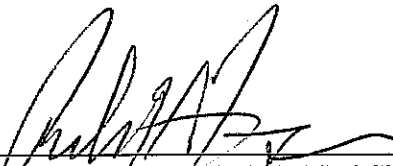
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24 <sup>6</sup> T-Mobile Decision at ¶16.

25 <sup>7</sup> Establishing interim transport as effective at the beginning of a month makes it easier for all parties for billing purposes.

1 rate, in effect what the parties agreed to do is to set the appropriate proxy for interim transport and  
2 termination as the final rate agreed to by the parties. In other words, the parties are agreeing that the  
3 negotiated rate applies from the date (or close to it) that the interconnection request was made and will  
4 be applied for that interim period of time between the date the interconnection request was made and  
5 the date the agreement is approved as the interim transport and termination rate. Such an agreement is  
6 entirely consistent with the FCC's decision that interim transport and termination rates should apply  
7 from the date of the request for interconnection.  
8

9 In all respects, this Agreement is consistent with the public interest. As explained above, this  
10 Agreement is not discriminatory. Home Telephone Company respectfully requests that the Agreement  
11 be approved.

12 Respectfully submitted this 16th day of February, 2006.

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14  
15 By:   
16 RICHARD A. FINNIGAN, OSB# 96535  
17 Attorney for Home Telephone Company  
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**CERTIFICATE OF SERVICE**  
**ARB 714**

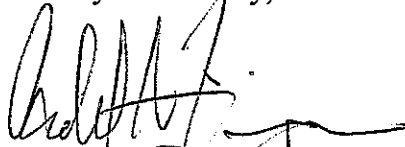
I certify that I have this day served the foregoing Reply to Staff Comments by electronic mail and U.S. mail, postage pre-paid, to the following:

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

I further certify that I have this day served the foregoing Reply to Staff Comments upon all parties of record in this proceeding by electronic mail pursuant to OAR 860-013-0070, to the following parties or attorneys of parties:

Marin Fettman  
marin.fettman@t-mobile.com

Dated at Olympia, Washington, this 16th day of February, 2006.



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Richard A. Finnigan, OSB #96535  
Attorney for Home Telephone Company