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January 17, 2007

**VIA ELECTRONIC MAIL AND OVERNIGHT DELIVERY**

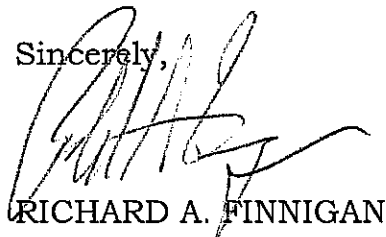
Filing Center  
Oregon Public Utility Commission  
550 Capitol Street NE, Ste 215  
Salem, OR 97301-2551

Re: ARB 747

Dear Sir/Madam:

Enclosed are the pleading entitled Application for Reconsideration or Rehearing and Motion to Request Withdrawal of Order as Moot; Requesting Extension of Time to Comply and Certificate of Service.

Sincerely,



RICHARD A. FINNIGAN

RAF/km  
Enclosures

cc: Service List (via e-mail and overnight delivery)  
Tom Linstrom (via e-mail)

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**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

ARB 747

In the Matter of the Petition for Arbitration of an Interconnection Agreement Pursuant to Sections 251 and 252 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (47 U.S.C. §251 and 252) Between Beaver Creek Cooperative Telephone Company and Qwest Corporation

APPLICATION FOR RECONSIDERATION OR REHEARING AND MOTION TO REQUEST WITHDRAWAL OF ORDER AS MOOT; REQUESTING EXTENSION OF TIME TO COMPLY

Pursuant to ORS 756.561 and OAR 860-014-0095, Beaver Creek Cooperative Telephone Company ("BCT") hereby respectfully files this Application for Reconsideration or Rehearing ("Application"). In addition, this pleading contains a Motion to Request Withdrawal of Order as Moot ("Motion"). The Motion is filed pursuant to OAR 860-013-0031 and the Commission's procedural rules. Finally, pursuant to OAR 860-014-0093, BCT requests an extension of time to comply with the Commission's Order if it is not withdrawn.

This pleading will first address the Application, then the Motion and then the request for extension of time.

APPLICATION FOR RECONSIDERATION OR REHEARING AND MOTION TO REQUEST WITHDRAWAL OF ORDER AS MOOT; REQUESTING EXTENSION OF TIME TO COMPLY - 1

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## PROCEDURAL STATUS

The procedural timeline for this docket as it relates to the Application and Motion is set out below:

- The parties waived the evidentiary hearing. The Arbitrator's Decision was issued on October 20, 2006 ("Arbitrator's Decision").
- On November 2, 2006, BCT filed Comments concerning the Arbitrator's Decision.
- On November 14, 2006, BCT wrote to the Commission in ARB 747 stating that no further proceedings in ARB 747 were necessary because BCT had determined to opt-in to the Ymax agreement filed in ARB 756 and approved by the Commission.
- On November 14, 2006, the Arbitrator issued a memorandum which, in part, asked the parties to advise the Commission whether they would agree to waive the November 20, 2006, deadline for issuance of a final decision. The memorandum was received by BCT on November 16, 2006.
- On November 16, 2006, BCT advised the Commission that it would agree to waive the deadline. Qwest did not file a letter stating its position, thus apparently not agreeing to waive the deadline.
- On November 16, 2006, BCT filed its formal notice of election of the Ymax agreement under Electronic Filing Number 4058.
- The Commission issued its Order in ARB 747 on November 20, 2006, Order No. 06-637 ("Commission Order").

- 1 • Commission Staff asked BCT to make some relatively minor modifications to the opt-in  
2 document as filed and requested guidance as to whether the filing should be docketed as  
3 part of ARB 365, ARB 747 or under a new docket number. Commission Staff made this  
4 request on November 22, 2006, bearing an electronic date stamp of 4:09 p.m. and was  
5 received after the offices of BCT's counsel had closed for the Thanksgiving holiday.  
6
- 7 • The information requested by Commission Staff was completed on November 27, 2006,  
8 the first day following the Thanksgiving holiday.

9  
10 APPLICATION

11 BASIS FOR RECONSIDERATION OR REHEARING

12 The elements that the Application must contain are set out in OAR 860-014-0095(2).

13 Seeking reconsideration of a Commission Order on review of an Arbitrator's Decision does not  
14 necessarily fit easily into the categories contained in OAR 860-014-0095(2). However, this portion  
15 of the Application will explain how each of those elements are met by this Application.  
16

17 OAR 860-014-0095(2)(a): The portion of the challenged order which the applicant contends is  
18 erroneous or incomplete.

19 BCT contends that the analysis in the Commission's Order and in the Arbitrator's Decision  
20 on the issues of the routing of traffic and the use of bill and keep as a form of reciprocal  
21 compensation are both erroneous and incomplete. The reasons supporting BCT's contention are set  
22 forth in the Analysis section, below.  
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1 OAR 860-014-0095(2)(b): The portion of the record, laws, rules, or policy of the Commission  
2 relied on to support the application.

3 The portion of the record and prior decisions of the Commission are set forth in the Analysis  
4 section, below.

5 OAR 860-014-0095(2)(c): The change in the order which the Commission has requested to make.

6 BCT requests that the Commission reverse its position on the routing of traffic so that both  
7 BCT and Qwest Corporation ("Qwest") have the same obligation. The preferred methodology  
8 would be to use the most efficient trunking, which would be to allow both parties to route all traffic  
9 to one another over the same trunk group. However, BCT is willing to follow a segregation of  
10 traffic routing scheme so long as Qwest must follow the same set of rules; thus creating a set of  
11 conditions in the interconnection agreement for competition that are symmetrical in nature.  
12

13 BCT further requests that the Commission reconsider its position on reciprocal  
14 compensation and adopt a bill and keep provision for the proposed interconnection agreement.

15 OAR 860-014-0095(2)(d): How the applicant's requested changes in the order will alter the  
16 outcome.

17 This requirement is self-evident in this case. BCT's requested changes will alter the  
18 outcome by including provisions in the interconnection agreement to effectuate the routing and  
19 compensation issues described above. Attached as Appendix A is the language that BCT suggests  
20 be adopted.

21 OAR 860-014-0095(2)(e): One or more grounds for rehearing or reconsideration as set forth in  
22 Section (3) of OAR 860-014-0095.

23 BCT respectfully asserts that the grounds for reconsideration or rehearing are contained in  
24 OAR 860-014-0095(3)(c): an error of law or fact in the order which is essential to the decision; and  
25

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1 OAR 860-014-0095(3)(d): that good cause for further examination of a matter essential to the  
2 decision exists. Further demonstration of the grounds for reconsideration or rehearing are set forth  
3 in the Analysis section, below.  
4

5 ANALYSIS

6  
7 1. Routing of Traffic Under an Interconnection Agreement Should Impose Symmetrical  
8 Burdens on the Parties.

9 Under the Arbitrator's Decision, BCT is to route all of its Oregon City originated traffic  
10 over "LIS" trunks<sup>1</sup> and must segregate that traffic from its traffic originating from the Beaver creek  
11 exchange.<sup>2</sup> In other words, BCT's traffic from its Beaver creek operations may not ride the same  
12 trunk group as traffic from BCT's operations in the Oregon City exchange. The Commission's  
13 Order affirmed the Arbitrator's Decision.<sup>3</sup> By taking this position, the Commission is imposing  
14 duty on BCT that is not imposed on Qwest. Further, the Commission is imposing costs on BCT that  
15 do not exist for Qwest.

16 The reason that the duties become non-symmetrical, is that Qwest can use the LIS trunks to  
17 route traffic that originates not just from Qwest, but also from other CLECs in the Portland metro  
18 area and other carriers, such as CMRS providers, and route all of that traffic over one set of trunk  
19 groups to BCT. In fact, Qwest states that it is routing all types of traffic without segregation over  
20 the LIS trunks to BCT.<sup>4</sup> Thus, Qwest is allowed to use those trunk groups in an efficient manner,  
21

22  
23 <sup>1</sup> As defined in the proposed interconnection agreement, a "LIS" trunk is a "Local Interconnection Service" trunk.

24 <sup>2</sup> Arbitrator's Decision at p. 7-9.

25 <sup>3</sup> Commission Order at p. 6 and 7.

26 <sup>4</sup> Qwest/2, Cederberg/6, l. 14-17, p. 7, l. 1-4.

1 while BCT may not.

2 Further, the rationale offered by Qwest is that it is necessary for BCT to segregate traffic  
3 from BCT's Oregon City operations and route that traffic over a distinct trunk group from the traffic  
4 that BCT sends Qwest from its Beavercreek operations in order that Qwest may readily bill BCT for  
5 termination of traffic from BCT's competitive operations in the Oregon City exchange. If the  
6 traffic is commingled, it becomes difficult for Qwest to bill that traffic.<sup>5</sup> The Arbitrator's Decision  
7 and the Commission's Order accepted that rationale.<sup>6</sup>

8  
9 What this analysis misses is the evidence in the record from Mr. Linstrom that allowing  
10 Qwest to route multiple categories of traffic over the single LIS group places greater costs on BCT  
11 and makes it difficult for BCT to bill Qwest for that traffic originated by Qwest and terminated to  
12 BCT's competitive operations in Oregon City.<sup>7</sup> This difficulty arises because Qwest's traffic is  
13 commingled or hidden among volumes of traffic from other carriers such as other CLECs and  
14 CMRS providers. Indeed, it is difficult to determine what traffic is Qwest's on this commingled  
15 trunk because of a great deal of porting activity that occurs.<sup>8</sup>

16  
17 Thus, the Commission's Order lessens the burden and cost on Qwest, the incumbent, but  
18 increases the burden and cost on BCT, the CLEC. In order to encourage competition, it would seem  
19 that the goal in reviewing language for a proposed interconnection agreement would be to equalize  
20 that burden as much as possible and certainly not to increase the burden on the CLEC operations.  
21

22  
23 <sup>5</sup> Qwest/5, Cederberg/10, l. 1 - 11, l. 13.

24 <sup>6</sup> Arbitrator's Decision at p. 7-9; Commission Order at p. 6 and 7.

25 <sup>7</sup> BCT/1, Linstrom/10, l. 1-6, BCT/8, Linstrom/2, l. 10-20 .

26 <sup>8</sup> A fact which Qwest recognizes. See, e.g., Qwest/3, Freeberg/26, l. 1-10.

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1 It is the clear intent of the Telecommunications Act of 1996 to encourage competition. This  
2 is the premise of the Federal Communications Commission's orders interpreting provisions of the  
3 Act from its very inception.<sup>9</sup> The Commission's Order runs contrary to this premise.

4 As a solution, BCT favors allowing both BCT and Qwest to each route all of its traffic over  
5 a single set of trunk groups to one another. That is the most efficient, and lowest cost, provisioning  
6 of trunks. However, if the Commission believes that traffic should be segregated, then Qwest  
7 should be required to route Qwest originated traffic over one set of trunk groups to BCT's Oregon  
8 City CLEC operations and traffic originated from third party providers that use Qwest to transit to  
9 BCT's Oregon City operations over a different set of trunk groups. This would equalize the burden  
10 on Qwest and BCT.<sup>10</sup> It would also then make it possible for BCT to readily bill Qwest for traffic  
11 under the interconnection agreement (assuming bill and keep is not allowed).

12  
13 2. The Commission Should Accept Bill and Keep as the Form of Reciprocal Compensation in  
14 this Proceeding.

15 BCT respectfully asserts that the Commission erred in not adopting bill and keep as the form  
16 of reciprocal compensation and insufficiently explained why it accepted the Arbitrator's Decision  
17 on this point. Further, BCT asserts that both the Commission and the Arbitrator did not sufficiently  
18 analyze the record in this case regarding bill and keep provisions.

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23 <sup>9</sup> In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd.  
15499 (1996) (First Report and Order).

24 <sup>10</sup> Under this scenario, BCT would place its traffic originating from its Oregon City operations and terminating to Qwest  
25 on one set of trunk groups and traffic originating from its Oregon City operations and destined for CLECs or CMRS  
providers in the Portland metro area over a separate set of trunk groups.

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1           A.     The Premise that Traffic Must be Proven to be in Balance as a Precondition to Bill  
2                     and Keep is in Error.

3           The Arbitrator's Decision and the Commission Order are deficient and in error to  
4 the extent that they accept, yet fail to analyze Qwest's assertion that bill and keep must be used  
5 because the traffic may not be in balance.<sup>11</sup> In other words, the theory is that traffic must be in  
6 balance before bill and keep may be used. This analytical failure is particularly glaring in light of  
7 Qwest's adamant position before the Federal Communications Commission (FCC) that bill and  
8 keep is the appropriate mechanism for intercarrier compensation.

9           The Commission Order appears to rest its affirmation of the Arbitrator's Decision on the  
10 theory that the traffic between Qwest and BCT has not been proven to be "in balance."<sup>12</sup> This is the  
11 theory advanced by Qwest. However, Qwest offers insufficient legal basis for a standard that bill  
12 and keep may be used only where the traffic is in balance. Qwest's primary assertion in support of  
13 this theory appears to be that FCC rules give either carrier the right "to veto" bill and keep, citing to  
14 47 C.F.R. §51.713.<sup>13</sup> However, the better reading of 47 C.F.R. §51.713 is that it gives the  
15 Commission the flexibility to apply bill and keep as a standard for interconnection responsibilities  
16 under 47 U.S.C. §251(b)(5) and is not a limiting factor for negotiations and arbitrations under 47  
17 U.S.C. §251(c) and 47 U.S.C. §252. The reason is that 47 C.F.R. §51.713 is in Subpart H of the  
18 FCC's interconnection rules which specifically deal with the duty to provide reciprocal  
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23 <sup>11</sup> Qwest/1, Freeberg/19, 1. 22-29; Qwest/3, Freeberg/11, 1. 7-13. The evidence in the record is incomplete as to whether  
24 the traffic is or is not in balance. It is not appropriate based on this record to reach any conclusion that the traffic is not  
25 in balance. Further, such a conclusion is not relevant in any case.

<sup>12</sup> Commission Order at p. 5.

<sup>13</sup> Qwest/3, Freeberg/10, 1. 15-16.

1 compensation. See, 47 C.F.R. §51.703. This is an obligation that applies to all local exchange  
2 companies, not just incumbent local exchange companies. In contrast, it is the duty of incumbent  
3 local exchange companies, not all local exchange carriers, to negotiate interconnection agreements  
4 under 47 U.S.C. §251(c) and 47 U.S.C. §252.<sup>14</sup> The FCC's rules for implementing Section 252 are  
5 found in Subpart I of Section 51, including rules on arbitration and "opt-in" provisions.<sup>15</sup> The  
6 decision making process for resolving arbitrations between incumbent and competitive providers  
7 appears to be broader than the provisions to impose specific types of reciprocal compensation duties  
8 to fulfill the obligations for all carriers under 47 U.S.C. §251(b)(5).

10 In addition, Qwest's argument would place Qwest in the role of decision maker – deciding  
11 who gets bill and keep and who does not. Leaving the incumbent as the sole entity to decide the  
12 form of competition is obviously not what Congress intended. Further, such a result – any carrier  
13 can veto bill and keep – would totally scuttle Qwest's arguments before the FCC that bill and keep  
14 should be mandated in all situations.

16 Thus, neither the Arbitrator's Decision nor the Commission Order provide a rationale for the  
17 proposition that bill and keep is to be used only when traffic is in balance. In fact, the  
18 Commission's prior orders accept bill and keep precisely when it is not known if traffic will be in  
19 balance. These are the orders of the Commission approving the interconnection agreements in the  
20 dockets listed on page 11, below.

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24 <sup>14</sup> Of course, certain rural incumbent local exchange companies hold statutory exemptions from some 47 U.S.C. §251(c)  
obligations. See, 47 U.S.C. §251(f).

25 <sup>15</sup> 47 C.F.R. §51.807 and 47 C.F.R. §51.809.

1           B.     The Commission Erred in Accepting the Concept that Use of Bill and Keep Would  
2                     Inappropriately "Reward" BCT.

3           Another part of the Arbitrator's rationale for not accepting bill and keep in this proceeding is  
4           apparently premised on the analysis that to do so would "reward" BCT for alleged improper actions  
5           in the past.<sup>16</sup> The Commission apparently accepted this rationale.<sup>17</sup>

6           The rationale of the "reward" or that BCT engaged in improper behavior in its refusal to use  
7           LIS trunks under the prior interconnection agreement is not a legally sufficient reason for not  
8           adopting bill and keep as a form of reciprocal compensation. The issue before the Commission is  
9           not BCT's alleged behavior in the past.<sup>18</sup> The issue before the Commission is what should be  
10           included in an interconnection agreement for the future. In summary, whether BCT was  
11           contractually required to segregate Oregon City traffic on LIS trunks under the prior interconnection  
12           agreement is not relevant to whether bill and keep should be used as the form of reciprocal  
13           compensation on a forward-looking basis.

15           C.     The Commission Erred in Not Explaining Why Other CLECs may Use Bill and  
16                     Keep, but BCT May Not.

17           In addition, neither the Arbitrator's Decision nor the Commission's Order addresses why bill  
18           and keep is recognized as a form of reciprocal compensation for interconnection agreements in  
19

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21 <sup>16</sup> Arbitrator's Decision at p. 10.

22 <sup>17</sup> Commission Order at p. 5.

23 <sup>18</sup> BCT adamantly disagrees with the Commission's conclusion that the issue of whether it was contractually  
24 permissible for BCT to use or not use LIS trunks under its prior agreement was not before the Commission. While BCT  
25 indicated that it was not using those LIS trunks and offered factual reasons which the Arbitrator found insufficient, that  
26 still does not raise the issue of whether the contract language required or did not require such use, an issue that BCT  
indicated that it did not believe was before the Commission. Thus, the Arbitrator's Decision that reached a conclusion  
as to the meaning of the language in the prior interconnection agreement was done so without any briefing on the issue  
and without that prior agreement in evidence in this proceeding.

1 many Commission orders, but is not appropriate for this proceeding. A sampling of the prior  
2 Commission orders accepting bill and keep as the form of reciprocal compensation is set forth  
3 below:

4 **BILL AND KEEP AGREEMENTS**

5

<u>ARB Number</u>	<u>CLEC</u>	<u>Date Filed</u>
6 ARB 756	Ymax Communications Corporation	6/23/06
7 ARB 754	Springfield Radio Communications Inc.	6/14/06
8 ARB 716	Cordia Communications Corp.	1/19/06
9 ARB 715	360Networks (USA) Inc.	1/19/06
10 ARB 711	Monmouth Independent Network	12/8/05
11 ARB 674	CommPartners, LLC	8/2/05
12 ARB 660	Trans National Communications International, Inc.	3/29/05
13 ARB 654	Vycera Communications Inc.	2/22/05
14 ARB 616	Qwest Communications Corporation	8/2/04
15 ARB 526	Sprint Communications Company LP	1/16/04
16 ARB 520	IDT America Corp.	12/22/03
17 ARB 452	Western Independent Network, Inc.	8/19/02
18 ARB 435	SCS Communications and Security, Inc.	5/29/02
19 ARB 401	Douglas Services, Inc.	2/15/02
20 ARB 398	City of Portland Oregon	1/17/02
21 ARB 351	Gervais Telephone Company	6/27/01
22 ARB 324	Eastern Oregon Telecom, LLC	3/28/01

23 The use of bill and keep is not a "reward." It is a form of reciprocal compensation. Qwest  
24 offers the bill and keep form of reciprocal compensation to CLECs in Oregon. Qwest is legally  
25 obligated under the standards set forth in Federal Commissions Commission rules to offer that same  
26 form of compensation in this proceeding to BCT.<sup>19</sup>

Further, Qwest's assertion of what is nothing more than window dressing that bill and keep

24  
25 <sup>19</sup> 47 C.F.R. §51.809 (referring to adoption of agreements offered other carriers).

1 is offered to carriers with new operations in Oregon because the extent of their traffic is not known  
2 is a legally insufficient distinction. Under 47 C.F.R. §51.809(b), an incumbent must provide  
3 interconnection to a requesting CLEC on the “same rates, terms and conditions” as those provided  
4 in an agreement with another CLEC and may refuse only if the incumbent LEC proves that (1) the  
5 costs of providing a participating agreement are greater than the costs of providing it to the original  
6 CLEC or (2) the provision of the particular agreement to the requesting carrier is not technically  
7 feasible. The experience of the requesting CLEC in a state is not a relevant factor.<sup>20</sup> The FCC  
8 made this abundantly clear by requiring that agreements be made available across classes of  
9 carriers. See, 47 C.F.R. §51.809(a) (“An incumbent LEC may not limit the availability of any  
10 agreement only to those requesting carriers serving a comparable class of subscribers....”).  
11

12 As a final issue on this point, under Qwest’s theory that any carrier can “veto” bill and keep,  
13 it is blatantly discriminating for Qwest to favor its affiliate with bill and keep (see, ARB 616), yet  
14 “veto” BCT’s ability to use the same basis for competition. The Commission Order and the  
15 Arbitrator’s Decision fail to address this discriminatory treatment.  
16

17 D. Qwest’s Position is Contradicted by its Arguments to the FCC; a Contradiction the  
18 Commission Fails to Address.

19 Qwest has contradicted its own theories and evidence in this case by its arguments to the  
20 FCC. The Commission Order and the Arbitrator’s Decision ignore this contradiction. As pointed  
21 out in Mr. Linstrom’s testimony, Qwest has adamantly argued to the FCC that bill and keep is the  
22 proper form of reciprocal compensation with Qwest postulating: “Bill and keep is the most  
23

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24 <sup>20</sup> In addition, as pointed out in earlier pleadings in this docket, at least one of the cited agreements in the list of  
25 arbitrations set out above does not contain the limiting language.

1 economically rational intercarrier compensation system.”<sup>21</sup> Indeed, Qwest argues that to do  
2 otherwise allows one party to export their costs to the other party and produces inefficient  
3 competition. On this point, Qwest asserts: “it [per minute compensation] allows carriers to shift  
4 their cost to their competitors, rather than recovering the cost from their subscribers... There is, of  
5 course, a very powerful economic incentive to raise the costs of one’s competitors where possible,  
6 especially if such cost shifting can result in increased revenues to the cost shifter.”<sup>22</sup>  
7

8 Further, Qwest argues to the FCC that bill and keep is best used when traffic is not in  
9 balance and that balanced traffic has absolutely no bearing on whether bill and keep should or  
10 should not be used.<sup>23</sup> Qwest points out that reciprocal compensation in the form of a per minute  
11 charge really is not appropriate where there is unbalanced traffic. Qwest states “In fact, such  
12 [unbalanced] traffic should not and cannot be deemed eligible for “reciprocal compensation” in the  
13 first place because there is nothing reciprocal about it.”<sup>24</sup> Qwest argues that it is, in fact, where  
14 there is unbalanced traffic that the greatest potential for arbitrage exists and, therefore, bill and keep  
15 should be used.<sup>25</sup> This evidence is directly contrary to Qwest’s statement in this case that bill and  
16 keep should only be used when traffic is demonstrated to be in balance.<sup>26</sup> Neither the Arbitrator nor  
17 the Commission addresses this direct contradiction in Qwest’s legal theories and evidence.  
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22 <sup>21</sup> BCT/8, Linstrom/12, l. 1-3 and BCT/9.

23 <sup>22</sup> BCT/8, Linstrom/12, l. 6-14; BCT/9.

24 <sup>23</sup> BCT/8, Linstrom/13, l. 19 – p. 14, l. 14.

25 <sup>24</sup> BCT/10, Linstrom/7.

26 <sup>25</sup> BCT/10, Linstrom 7.

<sup>26</sup> Qwest/1, Freeberg/19, l. 22-29; Qwest/3, Freeberg/11, l. 7-13.

1 E. Summary.

2 The Commission has failed to take into account the inconsistency in Qwest's position on bill  
3 and keep and the fact that Qwest's own analysis undermines the evidence it offers in this case.  
4 Further, the Commission has failed to demonstrate why any standard exists that a party must  
5 demonstrate the traffic is in balance before bill and keep can be used.  
6

7 BCT believes that it has a right to avail itself of bill and keep since Qwest offers that as a  
8 form of compensation in Oregon.<sup>27</sup> Bill and keep has been accepted by the Commission as a form  
9 of reciprocal compensation for interconnection agreements in Oregon. The Commission has not  
10 explained why BCT should not be allowed to include bill and keep in its agreement with Qwest,  
11 other than an impermissible basis that to do so would "reward" BCT. There is no legal basis for  
12 that distinction. Having accepted bill and keep as a form of compensation available in Oregon, it is  
13 discriminatory to deny BCT use of that option.  
14

15 MOTION

16 THE COMMISSION ORDER SHOULD BE WITHDRAWN AS MOOT

17 Prior to the issuance of the Commission Order, BCT filed to adopt the Ymax  
18 Interconnection Agreement with Qwest. BCT informed the Commission of its intent to do so prior  
19 to the issuance of the Commission Order and, in fact, BCT made its filing to adopt the Ymax  
20 agreement to the issuance of the Commission Order.  
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<sup>27</sup> 47 U.S.C. §252(i).

1 While Qwest has argued that BCT has acted too late,<sup>28</sup> BCT believes that it acted in a timely  
2 manner. On November 14, 2006, BCT informed the Commission in writing that no further  
3 proceedings in this docket were necessary because BCT had determined to "opt-in" to the Ymax  
4 agreement filed in ARB 756, which had been approved by the Commission. BCT filed its formal  
5 election of the Ymax agreement on November 16, 2006, under Electronic Filing Number 4058. The  
6 Commission Order was issued November 20, 2006. BCT's actions in "opting-in" to the Ymax  
7 agreement made further proceedings in this docket moot. On that basis, BCT respectfully requests  
8 that the Commission withdraw the Commission Order. BCT recognizes that Qwest's objections of  
9 BCT's opt into the Ymax agreement are still pending before the Commission. BCT has asked that  
10 those objections be denied. Obviously, if the Commission accepts Qwest's objections in ARB 780,  
11 then the Commission's Order would not be moot. However, if BCT's position in ARB 780 is  
12 upheld, then the Commission's Order is moot and BCT respectfully requests that it be withdrawn.  
13  
14

15  
16 **REQUEST FOR EXTENSION OF TIME TO COMPLY WITH THE COMMISSION ORDER**

17 Pursuant to OAR 860-014-0095(5), reconsideration does not automatically stay or postpone  
18 compliance with the original order unless the Commission extends the date for compliance pursuant  
19 to OAR 860-014-0093. The parties are currently operating under an existing interconnection  
20 agreement. There is no significant need for immediate action to adopt any particular  
21 interconnection agreement in this docket. Therefore, it would appear that an extension of time to  
22 comply with the Commission Order is appropriate under the terms of OAR 860-014-0093. BCT  
23

24  
25 <sup>28</sup> Please see the pleadings of Qwest and BCT in ARB 780 on the issue of timing of the "opt-in" election.



1 respectfully requests that the time for compliance be extended until thirty days after such further  
2 order of the Commission is entered.

3  
4 CONCLUSION

5 Based upon the foregoing, BCT respectfully requests that the Commission reconsider the  
6 provisions of the Commission Order related to traffic routing and reciprocal compensation. BCT  
7 requests that the Commission adopt the language set out in Appendix A.

8  
9 BCT further requests that the Commission Order be withdrawn as moot upon BCT's  
10 election to opt-in to the Ymax agreement.

11 Finally, BCT requests an extension of time to comply with the Commission Order until the  
12 matters in this docket and ARB 780 are finally resolved.

13  
14 Respectfully submitted this 17th day of January, 2007.

15  
16  
17 By: 

18 RICHARD A. FINNIGAN, OSB No. 96535  
19 Attorney for Beaver Creek Cooperative  
20 Telephone Company

21  
22  
23  
24  
25  
26 APPLICATION FOR RECONSIDERATION OR  
REHEARING AND MOTION TO REQUEST  
WITHDRAWAL OF ORDER AS MOOT;  
REQUESTING EXTENSION OF TIME TO  
COMPLY - 16

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## APPENDIX A

### Traffic Routing

Preferred language:

7.2.2.1.2 As negotiated between the Parties, the transport of Exchange Service traffic may occur in several ways. The Parties agree to use two-way trunk groups. The Parties are not restricted in the type of local or EAS traffic that is delivered to the other Party over these trunk groups.

Alternative language:

7.2.2.1.2 As negotiated between the Parties, the transport of Exchange Service traffic may occur in several ways. The Parties agree to use two-way trunk groups. The Parties shall deliver traffic that originates from their own customers over separate trunk groups from traffic that originates from or is to terminate to customers of third party carriers.

### Compensation

7.3.4.1.1 Bill-and-keep will apply reciprocally for Exchange Service traffic terminated at a Qwest or CLEC Switch.

7.3.6.1 Bill-and-keep shall apply to ISP-bound traffic without limitation as to the number of minutes of use (MOU) or whether the MOU are generated in "new markets" as that term has been defined by the FCC.

CERTIFICATE OF SERVICE  
ARB 747

I hereby certify that I have served the attached Application for Reconsideration or Rehearing and Motion to Request Withdrawal of Order as Moot; Requesting Extension of Time to Comply upon all parties of record in this proceeding by overnight delivery and electronic mail, pursuant to OAR 860-013-0070, to the following parties or attorneys of parties:

ALEX DUARTE  
QWEST CORPORATION  
421 SW OAK STREET, ROOM 810  
PORTLAND, OR 97204  
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LAWRENCE REICHMAN  
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1120 NW COUCH ST FL 10  
PORTLAND, OR 97209-4125  
lreichman@perkinscoie.com

I further certify that I have sent the attached Application for Reconsideration or Rehearing and Motion to Request Withdrawal of Order as Moot; Requesting Extension of Time to Comply by e-mail and overnight delivery to the following:

FILING CENTER  
OREGON PUBLIC UTILITY  
COMMISSION  
550 CAPITOL STREET NE, STE 215  
SALEM, OR 97301  
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Dated this 17th day of January, 2007.



Richard A. Finnigan, OSB No. 96535  
Attorney for Beaver Creek  
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