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July 14, 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 747 – Opening Testimony of Tom A. Linstrom on Behalf of
Beaver Creek Cooperative Telephone Company

Dear Sir/Madam:

Enclosed are the original and five copies of the Opening Testimony of
Tom A. Linstrom and Certificate of Service.

Sincerely,



RICHARD A. FINNIGAN

RAF/km
Enclosures

cc: Service List (w/encl., via U.S. mail and e-mail)
Tom Linstrom (w/encl., via e-mail)

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

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

DOCKET NO. ARB 747

OPENING TESTIMONY OF

TOM A. LINSTROM

ON BEHALF OF

BEAVER CREEK COOPERATIVE TELEPHONE COMPANY

July 14, 2006

IDENTIFICATION OF WITNESS

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Q. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

A. Tom A. Linstrom, Beaver Creek Cooperative Telephone Company (BCT), 15223
S. Henrici Road, Oregon City, Oregon.

**Q. WHAT IS YOUR POSITION WITH BEAVER CREEK COOPERATIVE
TELEPHONE COMPANY?**

A. I am the CEO/President and General Manager of BCT.

**Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES AS CEO/PRESIDENT
AND GENERAL MANAGER.**

A. In a cooperative, like BCT, the ultimate control of the policies of the cooperative
is in its members. The members have the ultimate voice and exercise control
through their election of the cooperative Board of Directors.

The Board of Directors establishes the overall management policies and direction
for the cooperative. It is then my responsibility to implement and carry out the
policies that are established by the Board.

**Q. PLEASE PROVIDE AN EXAMPLE OF HOW THIS RELATIONSHIP
BETWEEN THE MEMBERS, THE BOARD AND YOURSELF MIGHT
PLAY OUT.**

1 A. As an example, the Board may determine that the goal for the cooperative is to
2 have broadband services available to all members of the cooperative. To
3 implement that policy, I would first determine which of our personnel should be
4 involved in the project and assign them specific tasks. For example, staff would
5 research the availability and pricing of alternative forms of broadband, such as the
6 availability of DSL, wireless technology, satellite technology, cable modem and
7 fiber to the home. Based on the information that was gathered concerning the
8 availability of the technology and its relative cost, I would then go back to the
9 Board and, with perhaps other staff involved, make a presentation to the Board of
10 the various alternatives and pricing with my recommendation. As a standard
11 policy, I would provide them with more than one option in most cases. I would
12 explain to them the relative costs of the technologies I have listed and rank order
13 them or give a couple of different trade-offs. For example, since we offer both
14 Cable TV and Broadband services, it might be a feasible option to provide both
15 DSL and cable modem services. Further, as you may be aware, DSL comes in
16 various capacities and differences in costs associated with those capacities. It
17 could very well be that a recommendation to the Board would be that BCT can
18 provide the Board's goal of one hundred percent broadband coverage by going to
19 fiber to the home and delivering 100 megabytes per second of capacity to each
20 home for cost of X or, in the alternative, the Board can also reach its objective by
21 using existing drops with a much lower capacity and also for a lower cost. The
22 Board would discuss the merits of the different approaches and the relative costs

1 and would make its decision. For example, deciding to go with fiber to the home
2 and 100 megabytes per second of capacity.

3
4 When the Board made its decision, it would then be my responsibility to see that
5 the decision got fully implemented and be resourceful and diligent with the
6 members' money.

7
8 The way the members fit into this is their control over the Board. If the members
9 thought that spending X dollars to deliver 100 megabytes per second of service
10 through a fiber to the home project was too expensive, they could then vote
11 against those directors that were behind the project and by the election process
12 change the direction of the cooperative.

13

14

PURPOSE OF TESTIMONY

15 **Q. PLEASE EXPLAIN THE PURPOSE OF YOUR TESTIMONY IN THIS**
16 **PROCEEDING.**

17 A. My testimony explains the reasons why BCT is seeking to arbitrate the five issues
18 that it set out in the Petition for Arbitration and BCT's position on each issue.

19

20 **Q. PLEASE IDENTIFY THE FIVE ISSUES.**

21 A. The five issues are as follows: (1) routing and trunking of traffic; (2) form of
22 reciprocal compensation; (3) transport of third party (transit) traffic and treatment

1 of BCT's switch as a local/EAS tandem; (4) approach to help resolve phantom
2 traffic; and (5) the change of law provision in the agreement.

3
4 **OVERVIEW**

5 **Q. PLEASE EXPLAIN BCT'S OPERATIONS FROM A HIGH LEVEL**
6 **PERSPECTIVE.**

7 A. BCT is a cooperative that provides a range of communication services in Oregon.
8 BCT provides telecommunications service, cable TV service, Internet services
9 (both broadband and dial-up) and other services such as computer services. BCT
10 currently serves over five thousand customers.

11
12 BCT operates in the Beavercreek exchange and in the Oregon City exchange. All
13 telecommunications customers, whether they are within Oregon City or the
14 Beavercreek exchange, must be members of the cooperative to receive
15 telecommunications service.

16
17 **Q. WHAT IS THE BENEFIT OF BEING A MEMBER OF BCT?**

18 A. In addition to receiving great telecommunications service, and if BCT has a
19 financially successful year, then all of BCT's net proceeds flow back to the
20 members in the form of patronage dividends. BCT has a strong track record of
21 providing patronage dividends to its members.

22

1 **Q. WHY DID BCT CHOOSE TO HAVE ITS OPERATIONS IN OREGON**
2 **CITY BE PART OF ITS COOPERATIVE ACTIVITIES?**

3 A. The founding members of BCT wanted BCT to serve all members of the
4 cooperative fairly and equitably. The management today still believes that BCT
5 shall provide all services as a cooperative. It is almost like asking why is the sky
6 blue or why does it rain in Oregon. That is just the way it is. BCT's operations
7 meet all of the requirements of ORS Chapter 62.

8
9 From a practical standpoint, it would make service operations more difficult if
10 BCT began a separate commercial operation for service in Oregon City. In some
11 cases, two identical customers no more than a block apart would see the same
12 level of service, but at the end of the year one customer would receive a patronage
13 dividend and the other customer would not. That did not seem to make sense to
14 us.

15
16 Having said that, I do want to stress that BCT has understood from the very outset
17 of its operations the need to keep the financial accounting between its operations
18 in Oregon City and its operations in the Beavercreek exchange as clean as
19 possible. There can be no subsidizing of the operations in Oregon City through
20 BCT's incumbent operations. I will also point out that this past year the
21 Commission Staff came in and did a detailed review of BCT's accounting
22 practices and did not find anything to be out of line.

23

1 BCT's goal is to eliminate the artificial distinctions between its operations as an
2 ILEC and a CLEC to the greatest extent possible. BCT serves its members, not
3 based upon their address, but based on their status as members.
4

5 **Q. SHOULD ALL DISTINCTIONS BE ELIMINATED?**

6 A. In an ideal world, that would happen. However, I understand the need to maintain
7 some distinctions, such as financial accounting. BCT should not, and does not,
8 use universal service money to support operations in Oregon City.
9

10 As an aside, I note that if BCT could combine the operations financially, it is my
11 belief that the competitive side would help support the incumbent side of the
12 operations, not the other way around. This is because BCT can operate more
13 efficiently on the competitive side, with fewer required reports and other things an
14 incumbent must do. Thus, it is my belief that combining the operations
15 financially would lower the per customer costs in the Beaver Creek exchange.
16 However, I recognize the need to keep the financial operations separate so that the
17 Commission is sure that subsidization of the competitive operations does not
18 occur.
19

20 My point for this docket is that there is no good reason to distinguish the
21 competitive and incumbent operations for the purposes of routing and exchange
22 of traffic.
23

ISSUE 1: ROUTING AND TRUNKING OF TRAFFIC

Q. WHAT IS BCT'S GOAL IN ADDRESSING ISSUE 1?

A. BCT is seeking equality of treatment between the way in which Qwest routes traffic to BCT and the way that BCT would then route traffic to Qwest.

Q. PLEASE EXPLAIN.

A. In a general sense, there are three types of traffic that the parties will exchange with one another. One is local or EAS traffic that originates from the company's own customers and is sent to the other company for call termination to one of the other company's customers. This would be normal local or EAS traffic.

A second category of traffic is transit traffic that one carrier carries for a third party. For example, Qwest will carry traffic for a number of CLECs in the Portland EAS area that it sends to BCT for BCT to terminate. As is discussed below related to transiting traffic, Issue 3, it is also at least theoretically possible for BCT to carry transiting traffic for termination to Qwest.

The third category of traffic is access (toll) related traffic. It is BCT's position that access/toll traffic should not be terminated over local/EAS trunks, but must be routed to the access/toll tandem. BCT believes that routing access/toll traffic to the access/toll tandem is the routing mechanism that both Qwest and BCT must use.

1 Q. **WHAT IS THE ISSUE RELATED TO THE HANDLING OF THE TWO**
2 **TYPES OF LOCAL/EAS TRAFFIC THAT YOU HAVE IDENTIFIED?**

3 A. It is BCT's position that the traffic should be handled on a mirror image basis.
4 How Qwest terminates traffic to BCT should be how BCT terminates traffic to
5 Qwest.

6

7 Q. **WHAT IS THE SPECIFIC PROPOSAL THAT BCT IS MAKING?**

8 A. BCT is proposing that all traffic be terminated over a single set of trunk groups.
9 Today Qwest terminates traffic to BCT that originates from Qwest customers over
10 the same trunk group that Qwest sends CLEC customer originated traffic to BCT.
11 BCT believes both parties should be allowed to commingle all traffic that is
12 intended to be terminated within the Portland EAS region on the same trunk
13 group.

14

15 Q. **WHAT IS IN PLACE TODAY?**

16 A. There are two sets of trunk groups in place. One trunk group is intended to
17 terminate traffic to BCT's Oregon City operations. The second set of trunk
18 groups is in place with the intention to terminate traffic to BCT's Beavercreek
19 exchange. Both trunk groups end up at the same BCT switch. In addition, Qwest
20 had some difficulty in "properly" segregating the traffic and has routed traffic for
21 the Oregon City operation over the Beavercreek exchange trunks and vice versa.

22

1 BCT believes this use of multiple trunks is an inefficient arrangement. The use of
2 a single set of trunk groups promotes the highest level of network efficiency by
3 minimizing the degree to which there is excess trunking capacity.

4
5 **Q. WHAT DO YOU UNDERSTAND QWEST'S POSITION TO BE?**

6 A. As I understand it, Qwest believes that all traffic that has originated from BCT's
7 Oregon City operations should be routed over one trunk group and all traffic
8 originating from BCT's operations in the Beavercreek exchange should be routed
9 over a second trunk group.

10
11 **Q. WHAT IS BCT'S POSITION IN RESPONSE?**

12 A. If single trunk groups cannot be used by BCT to carry both ILEC originated and
13 CLEC originated traffic, then Qwest should not be allowed to deliver traffic to
14 BCT that commingles ILEC originated and CLEC originated traffic.

15
16 **Q. DO YOU THINK THE FACT THAT THE CLEC ORIGINATED TRAFFIC
17 THAT QWEST TERMINATES TO BCT IS FROM THIRD PARTY
18 CLECS MAKES A DIFFERENCE?**

19 A. No. One of the primary reasons for Qwest's position that BCT's ILEC traffic
20 must be carried on a separate trunk group from BCT's CLEC traffic is to allow
21 Qwest to bill for termination of the CLEC related traffic. Qwest claims, rightly or
22 wrongly, that it has difficulty in billing for traffic when the traffic is commingled.

1 For traffic flowing in the opposite direction, the exact same situation is true. If
2 Qwest places all of its ILEC originated traffic and the traffic originated by CLECs
3 on the same trunk group, BCT will have greater difficulty in identifying and
4 billing CLEC related traffic for termination, if BCT chooses to do so with third
5 party CLECs. Of course, if bill and keep is used, there is no reason to segregate
6 the traffic.

7
8 **Q. IS THERE ANY LIKELIHOOD THAT BCT WOULD WANT TO BE**
9 **ABLE TO BILL THIRD PARTY CLECS FOR TERMINATION OF THE**
10 **CLEC'S TRAFFIC?**

11 A. Yes. Let me explain. As stated below, BCT's preferred position for exchange of
12 local/EAS traffic is that it be on a bill and keep basis. However, BCT has found
13 that a number of CLECs appear to be using Qwest to transport what appears to be
14 access/toll traffic over local/EAS trunks. Whether this is deliberate or by mistake,
15 the result is that instead of that traffic being terminated over access trunks and
16 access charges being assessed, the traffic is currently being terminated over
17 local/EAS trunks and those termination services are being used for free. If a
18 reciprocal compensation charge is levied to the CLECs for traffic over local/EAS
19 trunks, they have less incentive to bypass or arbitrage the access traffic. Thus, it
20 makes sense to charge that rate to third party CLECs until such time as the routing
21 issues get resolved. Once we are back in an environment where traffic is routed
22 properly, then BCT would be willing to follow its preferred position for
23 local/EAS traffic, even for third party CLECs. However, being able to charge

1 reciprocal compensation rates provides at least some incentive for the traffic to be
2 correctly routed.

3

4 **Q. COULDN'T THE SAME BE SAID IN HAVING QWEST CHARGE BCT A**
5 **PER MINUTE RECIPROCAL COMPENSATION RATE?**

6 A. No. BCT is not engaging in access bypass. The access traffic is routed to the
7 access tandem by BCT. BCT is not using EAS/local trunks to route access/toll
8 traffic.

9

10 **Q. DO YOU HAVE AN EXHIBIT THAT COMPARES THE LANGUAGE**
11 **PROPOSED BY BCT WITH THE LANGUAGE PROPOSED BY QWEST?**

12 A. Yes. Please see Exhibit BCT/2. The differences in the parties' proposed
13 language is set out in Exhibit BCT/2.

14

15 **ISSUE 2: FORM OF RECIPROCAL COMPENSATION**

16 **Q. WHAT FORM OF RECIPROCAL COMPENSATION IS BCT**
17 **ADVOCATING?**

18 A. BCT is advocating bill and keep. It was not one hundred percent clear until
19 Qwest filed its Response to the Petition for Arbitration, but it is now apparent that
20 Qwest is arguing for a per minute rate.

21

1 **Q. WHY DOES BCT ADVOCATE BILL AND KEEP?**

2 A. BCT has a long history of exchanging traffic with Qwest for the Portland metro
3 EAS area on a bill and keep basis. BCT sees no reason why traffic that originates
4 from Oregon City should be any different than traffic that originates from the
5 Beavercreek exchange for this purpose. All of it is traffic that originates from
6 BCT's members. The traffic uses the same switch.

7

8 In addition, BCT is aware that Qwest offers bill and keep to other CLECs. Why
9 is bill and keep not available to BCT?

10

11 **Q. WHAT IS YOUR UNDERSTANDING OF QWEST'S POSITION ON**
12 **RECIPROCAL COMPENSATION?**

13 A. During the course of the arbitration, Qwest could never really explain why it was
14 advocating reciprocal compensation and would not accept straight bill and keep.
15 In its Response to the Petition for Arbitration, Qwest identifies that it has the
16 processes in place to bill for traffic terminated on its network and feels it should
17 do so so that the parties are properly compensated "in accordance with applicable
18 law for the termination of traffic" and that the use of a per minute rate is
19 consistent with past Commission decisions.

20

21 As to consistency with past Commission practice, again, BCT is aware that bill
22 and keep is offered to other CLECs by Qwest. A bill and keep methodology is

1 equally acceptable to a per minute rate as a form of reciprocal compensation. Bill
2 and keep is equally available under “applicable law” as the term is used by Qwest.

3
4 In addition, BCT’s position is that it wants to avoid the cost of putting in
5 arrangements to bill for traffic. Even if Qwest will not save money, BCT will
6 save money using a bill and keep approach. Further, there should be at least some
7 savings to Qwest in not having to run the reports and calculate bills for traffic.
8 The differences in the parties’ proposed language is set out in Exhibit BCT/3.

9
10 **ISSUE 3: TRANSPORTING OF THIRD PARTY TRAFFIC**

11 **AND TREATMENT OF BEAVER CREEK’S SWITCH AS A TANDEM SWITCH**
12

13 **Q. WHAT IS BCT’S POSITION ON THE TRANSPORT OF THIRD PARTY**
14 **(TRANSIT) TRAFFIC AND TREATMENT OF BEAVER CREEK’S**
15 **SWITCH AS A LOCAL/EAS TANDEM SWITCH?**

16 **A.** BCT is seeking equality of treatment with Qwest. Today, Qwest transports third
17 party CLEC traffic originating in the Portland metro area and delivers that traffic
18 to BCT. BCT is simply stating that it should have the contractual ability to do the
19 same. It should not be up to Qwest to control the financial arrangements that
20 BCT may be able to arrange with third party carriers for the transport of their traffic.

21
22 In essence, through the interconnection agreement or ICA, Qwest wants to be able
23 to control competition for transiting service. Qwest wants to be the only entity

1 providing transiting service. That is an inappropriate leveraging of its position
2 and should not be allowed.

3
4 Although it is for more than just the issues in this arbitration, there is a
5 circumstance that points out why this issue is so important. BCT is seeking to
6 move its point of presence through either the construction of its own facilities to
7 the Pittock Building or leasing such facilities, which would put it in close
8 proximity to interexchange carriers and other local providers for the exchange and
9 transport of traffic. This would allow BCT to provide a greater level of transport
10 services to interexchange carriers and to CLECs. However, Qwest has adamantly
11 refused to honor BCT's desire to move BCT's point of presence.

12
13 Under the language in the proposed ICA, BCT can provide third party transit
14 services only if it can show Qwest that BCT's switch serves an area comparable
15 to the tandem switch used by Qwest. In essence, this is the Portland metro area.
16 However, what Qwest is doing in opposing BCT moving BCT's point of presence
17 is preventing BCT from making that showing.

18
19 BCT's switch is fully capable of providing tandem functions. Right now, BCT is
20 serving Oregon City and the Beavercreek exchange. BCT is trying to move its
21 point of presence into downtown Portland so that it can provide transit services
22 for other parties. Qwest is refusing to allow that move and has stated that it will
23 refuse to route traffic to that new location. By doing so, Qwest is refusing to

1 allow BCT to operate throughout the Portland metro area. Therefore, under the
2 ICA, BCT can never meet the standard to be treated as a transit provider because
3 of Qwest's own actions.

4
5 As a solution, BCT is proposing language in the ICA which would rely on the
6 functionality of a switch and the switch's capabilities, rather than a geographic
7 area which Qwest is refusing to allow BCT to reach.

8
9 The flip side of this coin is using a third party to transport traffic. In its Response
10 to the Petition for Arbitration, Qwest blithely states that BCT is free to negotiate
11 an agreement with a third party transit provider and use those services. However,
12 the language that Qwest proposes for the ICA is as follows: "Unless otherwise
13 agreed to by the Parties, via an amendment to this Agreement, the Parties will
14 directly exchange traffic between the respective networks without the use of third
15 party transit providers." (Emphasis added.) Qwest states that "This proposed
16 language would simply require Beaver Creek to negotiate an appropriate
17 amendment for the use of third party transit provider." Does Qwest really believe
18 that its statement has any credibility?

19
20 The language proposed by Qwest would place all control of whether BCT can use
21 third party transit providers in the hands of Qwest. This is again a means by
22 which Qwest will stifle competition. Qwest wants to be in the position of
23 approving the terms that are reached between BCT and a third party transit

1 provider. Why should Qwest get to see commercially valuable and confidential
2 information, such as the pricing that a third party provider might offer to BCT?
3 Why should Qwest have any say over any agreement that BCT and a third party
4 provider might reach? There should no such restriction. Qwest should not be the
5 gatekeeper for the transport market. The differences in the parties' proposed
6 language is set out in Exhibit BCT/4.

7
8 **ISSUE 4: TREATMENT FOR RESOLVING PHANTOM TRAFFIC**

9 **Q. PLEASE DESCRIBE THE ISSUE RELATED TO PHANTOM TRAFFIC**
10 **FOR PURPOSES OF THIS ARBITRATION.**

11 A. Qwest is delivering traffic over local trunks to BCT that appears to originate
12 outside of the Portland metro EAS area. This is toll traffic that should be
13 delivered to the access tandem, not local traffic that can rightfully be delivered
14 using the EAS/local tandem.

15
16 Attached as Exhibit BCT/5 is a summary of the traffic that BCT has captured.
17 The column labeled "Non-EAS Traffic" on the exhibit shows the amount of
18 traffic with an apparent origin outside of the Portland metro EAS area. This
19 traffic came in over local/EAS trunks, thereby avoiding the payment of access
20 charges.

21
22 The Exhibit also shows what is the combination of (1) EAS traffic on toll trunks
23 and (2) toll traffic that is sent without an access record to allow the preparation of

1 an access bill. This information is under the column on the Exhibit labeled "BCT
2 Unmatched."

3
4 One way to address this issue is to have all non-Qwest traffic that is local in
5 nature be delivered over one EAS trunk group, have Qwest originated traffic on a
6 separate local/EAS trunk group and require the parties to route toll traffic to the
7 access tandem. BCT is aware that there may be some technical limitations of
8 routing traffic that is delivered to Qwest improperly or erroneously by the
9 originating carrier. BCT is also aware that these issues are being addressed on a
10 national level, but have not yet been resolved. That does not mean the language
11 in the ICA should be such to encourage the continued delivery of phantom traffic.
12

13 As an alternative means to get a handle on some phantom traffic issues, BCT
14 proposes that Qwest deliver the records for third party toll traffic that is routed to
15 BCT over EAS/local trunks. As Qwest states, it already has measuring equipment
16 in place. The issue is not knowing where the traffic originates, the issue is that
17 Qwest wants BCT to pay for the information that is in Qwest's control even
18 where Qwest is routing traffic that should not be on EAS/local trunks over those
19 trunks. That is kind of like saying to someone who has been robbed that I drove
20 the robber to the scene from the robber's home address but will only provide the
21 home address if I am paid. Extortion should not be allowed to assist the robber in
22 getting away with the crime.
23

1 BCT is also proposing language requiring the parties to cooperate in obtaining the
2 correct routing of traffic from the originating carrier as a part of the solution to
3 this issue. The differences in the parties' proposed language is set out in Exhibit
4 BCT/6.

5
6 **ISSUE 5: CHANGE OF LAW PROVISIONS**

7 **Q. WHAT IS BCT'S POSITION ON THE CHANGE OF LAW PROVISIONS?**

8 A. BCT's position is that the change of law provisions should allow a change to be
9 incorporated into the ICA effective when the change of law occurred.

10
11 **Q. WHAT IS THE DIFFERENCE BETWEEN BCT'S POSITION AND**
12 **QWEST'S POSITION?**

13 A. Qwest's position is that there needs to be an amendment to the ICA fully
14 negotiated, executed and approved before the change of law provision can be
15 deemed to affect the ICA. BCT believes that that position just induces
16 unnecessary delay in having the ICA reflect the change in law. The differences in
17 the parties' proposed language is set out in Exhibit BCT/7.

18
19 **Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?**

20 A: At the present time, it does.

21

The language for Beaver Creek's preferred alternative of combining all traffic onto one trunk is as follows: "Notwithstanding anything to the contrary in this Agreement, the Parties agree that traffic originating from a Party and transiting traffic, whether its own or a third party's transiting traffic, may be combined on a single trunk group for delivery to the other Party."

Under the alternative for separation of traffic, the following provisions show Beaver Creek's suggested changes to Qwest's proposed language. Thus, Qwest's proposal would be to include the language that has been shown with cross throughs and exclude the language that is shown as underlined. Beaver Creek's suggested language would delete the language with the cross throughs and add the language with the underlining.

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. Neither Party may route IntraLATA Toll Exchange Access traffic of any kind on trunks used for Exchange Service.~~

7.2.2.2.1 Exchange Access traffic shall be delivered to Qwest at the Access Tandem Switch or via separate trunks to Qwest's End Office Switch(es), as designated by CLEC. Exchange Access traffic shall be delivered to CLEC at switch locations designated by CLEC. Neither Party may route Exchange Service traffic over trunks used for Exchange Access traffic.

7.2.2.3.1 Qwest will accept traffic originated by CLEC for termination to another CLEC, existing LEC, or wireless Carrier that is connected to Qwest's local and/or Access Tandem Switch. Qwest will also terminate traffic from these other Telecommunications Carriers to CLEC over separate trunks from Qwest originated traffic. For purposes of the Agreement, transit traffic does not include traffic carried by Interexchange Carriers. That traffic is defined as Jointly Provided Switched Access. Neither party shall deliver traffic from Interexchange Carriers through local or EAS tandems. CLEC will accept traffic originated by Qwest for termination to another CLEC, existing LEC or wireless Carrier that is connected to CLEC's local or access tandem switch. While CLEC may provide transit service to Qwest, Qwest shall not be obligated to utilize transit services of CLEC and nothing in this Agreement shall be construed as a waiver of Qwest's right to seek direct interconnection to any Telecommunications Carriers that CLEC may provide transiting services between the Telecommunications Carrier and Qwest.

7.2.2.9.3.1 ~~Exchange Service, ISP Bound Traffic, Exchange Access (IntraLATA Toll carried solely by Local Exchange Carriers), and Jointly Provided Switched Access (InterLATA and IntraLATA Toll involving a third party IXC) may be combined in a single LIS trunk group or transmitted on separate LIS trunk groups. If traffic is combined, Section 7.3.9 of this Agreement applies.~~ Exchange Service traffic shall not be combined with Switched Access or Jointly Provided Switched Access on the same trunk group. i.e. Exchange Service may not be combined with FGD to a Qwest access tandem switch and/or end office switch. Nor may Exchange Service be combined with FGC or Exchange Access traffic for termination to CLEC.

7.2.2.9.6 ~~CLEC may interconnect at either the Qwest local Tandem Switch or the Qwest Access Tandem Switch for the delivery of local exchange traffic. When CLEC is interconnected at the Access Tandem Switch and where there would be a DS1's worth of local traffic (512 BHCCS) between CLEC's Switch and those Qwest End Office Switches subtending a Qwest local Tandem Switch, CLEC will order a trunk group to the Qwest local Tandem Switch. As an alternative, CLEC shall terminate traffic on Qwest End Office Switches. When Qwest lacks available capacity at the Access Tandem Switch, Qwest will arrange local Tandem Switch or End Office Switch Interconnection at the same cost to CLEC as Interconnection via the Qwest Access Tandem Switch. The Parties shall terminate Exchange Service traffic on local Tandem Switches or End Office Switches. When there is a DS1 level of traffic (512 BHCCS) between CLEC's Switch and a Qwest End Office Switch, Qwest may request CLEC to order a direct trunk group to the Qwest End Office Switch. CLEC shall comply with that request unless it can demonstrate that such compliance will impose upon it a material adverse economic or operations impact.~~

7.2.2.9.6.1 ~~Qwest will allow Interconnection for the exchange of local traffic at Qwest's Access Tandem Switch without requiring Interconnection at the local Tandem Switch, at least in those circumstances when traffic volumes do not justify direct connection to the local Tandem Switch; and regardless of whether capacity at the Access Tandem Switch is exhausted or forecasted to exhaust.~~

Qwest's proposal would be to include the language that has been shown with cross throughs and exclude the language that is shown as underlined. Beaver Creek's suggested language would delete the language with the cross throughs and add the language with the underlining.

7.3.1.1.3.1 The provider of the LIS two-way Entrance Facility (EF) will initially share the cost of the LIS two-way EF by assuming an initial relative use factor (RUF) of fifty percent (50%) for a minimum of one (1) quarter if the Parties have not exchanged LIS traffic previously. The nominal charge to the other Party for the use of the EF, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other Party will be according to this initial relative use factor for a minimum of one (1) quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor, based upon actual minutes of use data for non-ISP-bound traffic to substantiate a change in that factor. If CLEC's End User Customers are assigned NPA-NXXs associated with a rate center different from the rate center where the End User Customers are physically located, traffic that does not originate and terminate within the same Qwest Local Calling Area (as approved by the Commission), regardless of the called and calling NPA-NXXs involving those End User Customers, is referred to as "VNXX traffic." For purposes of determining the relative use factor, the terminating carrier is responsible for ISP-bound traffic and for VNXX traffic. If either Party demonstrates with traffic data that actual minutes of use during the previous quarter justifies a new relative use factor, that Party will send a notice to the other Party. ~~The new factor will be calculated based upon Exhibit H.~~ Once the Parties finalize a new factor, bill reductions and payments will apply going forward from the date the original notice was sent. ISP-bound traffic or traffic delivered to Enhanced Service providers is interstate in nature. Qwest has never agreed to exchange VNXX traffic with CLEC. Under a bill-and-keep compensation, the relative use factor shall be fifty percent (50%).

7.3.2.2.1 The provider of the LIS two-way DTT facility will initially share the cost of the LIS two-way DTT facility by assuming an initial relative use factor of fifty percent (50%) for a minimum of one (1) quarter if the Parties have not exchanged LIS traffic previously. The nominal charge to the other Party for the use of the DTT facility, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other Party will be according to this initial relative use factor for a minimum of one (1) quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor, based upon actual minutes of use data for non-ISP-bound traffic to substantiate a change in that factor. If CLEC's End User Customers are assigned NPA-NXXs associated with a rate center other than the rate center where the End User Customers are physically located, traffic that does not originate and terminate within the same Qwest Local Calling Area (as approved by the Commission), regardless of the called and calling NPA-NXXs involving those End User Customers, is referred to as "VNXX traffic." For purposes of determining the relative use factor, the terminating carrier is responsible for ISP-bound traffic and for VNXX traffic. If either Party demonstrates with traffic data that actual minutes of use during the previous quarter justifies a new relative use factor, that Party will send a notice to the

other Party. ~~The new factor will be calculated based upon Exhibit H. Once the Parties finalize a new factor, bill reductions and payments will apply going forward from the date the original notice was sent. ISP-bound traffic is interstate in nature. Qwest has never agreed to exchange VNXX traffic with CLEC. For bill-and-keep compensation, the relative use factor shall be fifty percent (50%).~~

7.3.4.1.1 ~~The per-minute-of-use call termination rates as described in Exhibit A of this Agreement will apply reciprocally for Exchange Service traffic terminated at a Qwest or CLEC End Office Switch. For purposes of this Agreement, the Parties agree to use a bill-and-keep form of call termination rate.~~

7.3.6.1 ~~Subject to the terms of this Section, intercarrier compensation for ISP-bound traffic exchanged between Qwest and CLEC will be billed pursuant to rates in bill and keep Exhibit A, 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.~~

7.3.6.2 ~~Identification of ISP-Bound Traffic — Qwest will presume traffic delivered to CLEC that exceeds a 3:1 ratio of terminating (Qwest to CLEC) to originating (CLEC to Qwest) traffic is ISP-bound traffic. Either Party may rebut this presumption by demonstrating the factual ratio to the Commission. Traffic exchanged that is not ISP-bound traffic will be considered to be Section 251(b)(5) traffic. The provisions in this Section apply regardless how the ISP-bound traffic is determined.~~

Qwest's proposal would be to include the language that has been shown with cross throughs and exclude the language that is shown as underlined. Beaver Creek's suggested language would delete the language with the cross throughs and add the language with the underlining.

7.2.1.2.4 Transit traffic is any traffic that originates from one Telecommunications Carrier's network, transits another Telecommunications Carrier's network, and terminates to yet another Telecommunications Carrier's network. For purposes of the Agreement, transit traffic does not include traffic carried by Interexchange Carriers. That traffic is defined as Jointly Provided Switched Access. Transit service is provided by Qwest, as a local and Access Tandem Switch provider, to CLEC to enable the completion of calls originated by or terminated to another Telecommunications Carrier (such as another CLEC, an existing LEC, or a wireless Carrier), which is connected to Qwest's local or Access Tandem Switches. ~~To the extent that CLEC's Switch functions as a local or Access Tandem Switch, as defined in this Agreement,~~ CLEC may also provide transit service to Qwest.

7.3.1 The Reciprocal Compensation provisions of this Agreement shall apply to the exchange of Exchange Service traffic between CLEC's network and Qwest's network. Where either Party acts as an IntraLATA Toll provider, each Party shall bill the other the appropriate charges pursuant to its respective tariff or price lists. Where either Party interconnects and delivers traffic to the other from third parties, each Party shall bill such third parties the appropriate charges pursuant to its respective tariffs, price lists or contractual offerings for such third party terminations. ~~Absent a separately negotiated agreement to the contrary, the Parties will directly exchange traffic between their respective networks without the use of third party transit providers.~~

7.3.2.1.2 When DTT is provided to a local ~~or Access Tandem Switch~~ for Exchange Service traffic, or to an Access Tandem Switch for Exchange Access or Jointly Provided Switched Access traffic, the applicable DTT rate elements apply between the Serving Wire Center and the Tandem Switch. Additional rate elements for delivery of traffic to the terminating End Office Switch are tandem switching and tandem transmission. These rates are described below.

From Section 4.0 - DEFINITIONS

"Access Tandem Switch" is a Switch used to connect End Office Switches to interexchange Carrier Switches. Qwest's Access Tandem Switches are also used to connect and switch traffic between and among Central Office Switches within the same LATA ~~and may be used for the exchange of local traffic.~~

"Tandem Office Switches" (or "Tandem Switches") which are used to connect and switch trunk circuits between and among other End Office Switches. CLEC Switch(es) shall be considered Tandem Office Switch(es) to the extent such Switch(es) is a Tandem Switch as registered in the LERG ~~and serve(s) a comparable geographic area as Qwest's Tandem Office Switch. A fact-based consideration by the Commission of geography should be used to classify any Switch on a prospective basis.~~

Beaver Creek Terminating Minutes
1/1/2005 - 12/31/2005

BCT/5
Linstrom/1

BCT All Records			Matched Records				BCT Un-Matched		Non-Eas Traffic	
Trunk	Count	Minutes	Count	BCT Minutes	Qwest Minutes	Macc Minutes	Count	Minutes	Count	Minutes
0301	1087019	4798310.98					1087019	4798310.98		
0302	45240	181792.15					45240	181792.15		
0304	4111968	14537333.81					4111968	14537333.81	199225	824425.65
0334	583959	1753080.82					583959	1753080.82	27333	96443.38
0303	1369036	3989227.69	542108	1647442.37	1639433.25		826928	2341785.32		
0333	215931	540902.87	85616	214208.86	212973.18		130315	326694.01		
0311	284773	1214769.04	283520	1210378.19		1210378.19	1253	4390.85		
0314	275647	1006085.78	274624	1002838.51		1002838.51	1023	3247.27		
0315	320414	637324.46	319277	635860.85		635860.85	1137	1463.61		
0317	33561	43525.65	33519	43499.23		43499.23	42	26.42		
0319	395810	1918310.26	394067	1911980.04		1911980.04	1743	6330.22		
0320	0	0.00	0	0.00			0	0.00		
0323	48	9.60	48	9.60		9.60	0	0.00		
0324	97878	593580.86	97472	591399.18		591399.18	406	2181.68		
Totals:	8821284	31214253.97	2030251	7257616.83	1852406.43	5395965.60	6791033	23956637.14	226558	920869.03

BCT Trunk Legend

- 0301 - EAS Oregon City
- 0302 - EAS Milwaukie
- 0304 - EAS Portland
- 0334 - EAS - Qwest LIS
- 0333 - Toll - Qwest LIS
- 0303 - Toll Qwest
- 0311 - Toll Sprint
- 0314 - Toll MCI
- 0315 - Toll MCIWorldCom
- 0317 - Toll Frontier Communications
- 0319 - Toll AT&T
- 0320 - Toll MCIWorldCom
- 0323 - Toll BCT Long Distance
- 0324 - Toll WITel

Qwest's proposal would be to include the language that has been shown with cross throughs and exclude the language that is shown as underlined. Beaver Creek's suggested language would delete the language with the cross throughs and add the language with the underlining.

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. Neither Party may route IntraLATA Toll Exchange Access traffic of any kind on trunks used for Exchange Service.~~

7.2.2.3.1 Qwest will accept traffic originated by CLEC for termination to another CLEC, existing LEC, or wireless Carrier that is connected to Qwest's local and/or Access Tandem Switch. Qwest will also terminate traffic from these other Telecommunications Carriers to CLEC over separate trunks from Qwest originated traffic. For purposes of the Agreement, transit traffic does not include traffic carried by Interexchange Carriers. That traffic is defined as Jointly Provided Switched Access. Neither party shall deliver traffic from Interexchange Carriers through local or EAS tandems. CLEC will accept traffic originated by Qwest for termination to another CLEC, existing LEC or wireless Carrier that is connected to CLEC's local or access tandem switch. While CLEC may provide transit service to Qwest, Qwest shall not be obligated to utilize transit services of CLEC and nothing in this Agreement shall be construed as a waiver of Qwest's right to seek direct interconnection to any Telecommunications Carriers that CLEC may provide transiting services between the Telecommunications Carrier and Qwest.

7.2.2.3.1 Qwest will accept traffic originated by CLEC for termination to another CLEC, existing LEC, or wireless Carrier that is connected to Qwest's local and/or Access Tandem Switch. Qwest will also terminate traffic from these other Telecommunications Carriers to CLEC. For purposes of the Agreement, transit traffic does not include traffic carried by Interexchange Carriers. That traffic is defined as Jointly Provided Switched Access. Neither party intentionally shall deliver traffic from Interexchange Carriers through local or EAS tandems. Intentional delivery does not include inappropriately routed calls to either party or include unqueried LNP calls. CLEC will accept traffic originated by Qwest for termination to another CLEC, existing LEC or wireless Carrier that is connected to CLEC's local or access tandem switch. While CLEC may provide transit service to Qwest, Qwest shall not be obligated to utilize transit services of CLEC and nothing in this Agreement shall be construed as a waiver of Qwest's right to seek direct interconnection to any Telecommunications Carriers that CLEC may provide transiting services between the Telecommunications Carrier and Qwest.

7.2.2.3.3 ~~The~~ So long as traffic is properly routed, the originating company is responsible for payment of appropriate rates to the transit company and to the terminating company. The Parties agree that it is each Party's sole responsibility to seek to enter into traffic exchange agreements with third party Telecommunications Carriers prior to delivering traffic to be transited to third party Telecommunications Carriers. In the event one Party originates traffic that transits the second Party's network to reach a third party Telecommunications Carrier with whom the originating Party does not have a traffic exchange agreement, then the originating Party will indemnify, defend and hold harmless the second Party against any and all charges levied by such third party Telecommunications Carrier, including any termination charges related to such traffic

and any attorneys fees and expenses. In the case of Exchange Access traffic where Qwest is the designated IntraLATA Toll provider for existing LECs, Qwest will be responsible for payment of appropriate usage rates. If either Party delivers traffic to the other Party without providing sufficient call detail for billing purposes and, in the case of Jointly Provided Switched Access traffic, without an industry standard terminating access record, upon request of the terminating Party, the other Party will deliver all available call records, without charge, to assist the terminating Party in rendering an accurate bill for such terminating traffic.

7.2.2.9.3.1 Exchange Service, ISP-Bound Traffic, Exchange Access (IntraLATA Toll carried solely by Local Exchange Carriers), and Jointly Provided Switched Access (InterLATA and IntraLATA Toll involving a third party IXC) may be combined in a single LIS trunk group or transmitted on separate LIS trunk groups. ~~If traffic is combined, Section 7.3.9 of this Agreement applies. CLEC may request a separate trunk group for Jointly Provided Switched Access (InterLATA and IntraLATA Toll involving a third party IXC) traffic and Qwest agrees to intentionally exchange only Jointly Provided Switched Access (InterLATA and IntraLATA Toll involving a third party IXC) traffic on that trunk.~~

~~7.2.2.9.6.1 Qwest will allow Interconnection for the exchange of local traffic at Qwest's Access Tandem Switch without requiring Interconnection at the local Tandem Switch, at least in those circumstances when traffic volumes do not justify direct connection to the local Tandem Switch; and regardless of whether capacity at the Access Tandem Switch is exhausted or forecasted to exhaust.~~

7.3.4.1.4 Neither Party shall be responsible to the other for call termination charges associated with third party traffic that transits such Party's network; provided, that this limitation shall not apply to Exchange Access traffic delivered through local Tandems or Exchange Access traffic without sufficient detail for billing that is delivered through Access Tandems.

~~7.3.7.4 Category 11 mechanized record charge, per record, for records provided to the terminating Party, as contained in Exhibit A.~~

7.5.4 Except as otherwise set forth in this Agreement, A charge will apply for Category 11-01-XX records sent in an EMR mechanized format. These records are used to provide information necessary for each Party to bill the Interexchange Carrier for Jointly Provided Switched Access Services and 8XX database queries. The charge for each billable record created and transmitted is listed in Exhibit A of this Agreement.

7.6.1 Qwest and CLEC will exchange wireline network usage data for Jointly Provided Switched Access Service traffic originated by a wireline Local Exchange Carrier (LEC) where the NXX resides in a wireline LEC Switch, transits Qwest's network, and terminates to CLEC's network. Each Party agrees to provide to the other this wireline network usage data when Qwest or CLEC acts as a transit provider currently or in the future. The Parties understand that this information is Carrier proprietary information under §222 of the Act and shall be used solely for the purposes of Billing the wireline LEC. CLEC will provide to Qwest information to be able to provide transit records on a

mechanized basis when Technically Feasible. The information to be exchanged includes, but is not limited to: service center information, operating company number, and state jurisdiction. Qwest and CLEC agree to exchange Jointly Provided Switched Access Service wireline network ~~Exchange Access~~ usage data as Category 11-01-XX.

7.6.3 A charge will apply for Category 11-01-XX records sent in an EMR mechanized format. These records are used to provide information necessary for each Party to bill the originating Carrier for transit when Technically Feasible. The charge for each billable record created and transmitted is listed in Exhibit A of this Agreement. There will be no charge for records related to intraMTA traffic.

Qwest's proposal would be to include the language that has been shown with cross throughs and exclude the language that is shown as underlined. Beaver Creek's suggested language would delete the language with the cross throughs and add the language with the underlining.

2.2 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws, as of March 11, 2005 (the Existing Rules). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified. ~~To the extent that the Existing Rules are vacated, dismissed, stayed or materially changed or modified, then this Agreement shall be amended to reflect such legally binding modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) Days after notification from a Party seeking amendment due to a modification or change of the Existing Rules or if any time during such sixty (60) Day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) Days, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement.~~ To the extent that the Existing Rules are vacated, dismissed, stayed or materially changed or modified, then this Agreement shall be deemed amended to reflect such legally binding modification or change of the Existing Rules, effective with the date of such change. The Parties shall execute an amendment following such legally binding modification or change of the Existing Rules. Any failure to agree upon the terms of such amendment within sixty (60) Days or if the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) Days, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement. It is expressly understood that this Agreement will be corrected, or if requested by CLEC, amended as set forth in this Section 2.2, to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement. Rates in Exhibit A will reflect legally binding decisions of the Commission and shall be applied on a prospective basis from the effective date of the legally binding Commission decision, unless otherwise ordered by the Commission. Where a Party provides notice to the other Party within thirty (30) Days of the effective date of an order issuing a legally binding change, any resulting amendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. In the event neither Party provides notice within thirty (30) Days, the effective date of the legally binding change shall be the Effective Date of the amendment unless the Parties agree to a different date. During the pendency of any negotiation for an amendment pursuant to this Section 2.2 the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement, for up to sixty (60) Days. If the Parties fail to agree on an amendment during the sixty (60) Day negotiation period, the Parties agree that the first matter to be

~~resolved during Dispute Resolution will be the implementation of an interim operating agreement between the Parties regarding the disputed issues, to be effective during the pendency of Dispute Resolution. The Parties agree that the interim operating agreement shall be determined and implemented within the first fifteen (15) Days of Dispute Resolution and the Parties will continue to perform their obligations in accordance with the terms and conditions of this Agreement, until the interim operating agreement is implemented. For purposes of this section, "legally binding" means that the legal ruling has not been stayed, no request for a stay is pending, and any deadline for requesting a stay designated by statute or regulation, has passed.~~

CERTIFICATE OF SERVICE
ARB 747

I hereby certify that I have served the attached Opening Testimony of Tom A. Linstrom upon all parties of record in this proceeding by U.S. mail and electronic mail, pursuant to OAR 860-013-0070, to the following parties or attorneys of parties:

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I further certify that I have sent the attached Opening Testimony of Tom A. Linstrom by e-mail and U.S. mail to the following:

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Dated this 14th day of July, 2006.



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