

October 13, 2006

VIA EMAIL AND US MAIL

Filing Center  
Oregon Public Utility Commission  
550 Capitol Street NE #215  
PO Box 2148  
Salem, OR 97308-2148

Re: RIO Communications Complaint

Dear Sir or Madam:

Enclosed for filing are the original and five copies of RIO Communications, Inc.'s Opening Brief on Subject Matter Jurisdiction. Please contact me with any questions.

Very truly yours,



Matthew Stock

Enclosures  
cc: Service List

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 **UM 1270**

4 Umpqua Indian Development Corporation  
5 (UIDC), Telecommunications Division, a  
6 federally chartered corporation, dba RIO  
COMMUNICATIONS, INC.,

7 Complainant,

8 v.

9 PRIME TIME VENTURES LLC dba  
10 INFOSTRUCTURE

11 Defendant.

OPENING BRIEF ON  
SUBJECT MATTER JURISDICTION

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13 Pursuant to the Administrative Law Judge Allan J. Arlow's Prehearing Conference  
14 Report, RIO Communications, Inc. ("RIO") submits its Opening Brief on Subject Matter  
15 Jurisdiction in this docket.

16 **I. INTRODUCTION**

17 On July 11, 2006 RIO filed a complaint before the Public Utility Commission of Oregon  
18 ("the Commission") against Prime Ventures LLC dba InfoStructure ("InfoStructure") for  
19 violations of state and federal law. Specifically, RIO alleged that InfoStructure had requested  
20 that Qwest convert one of RIO's business customer's service to InfoStructure, even though that  
21 customer had expressly stated on more than one occasion that it did not wish to be transferred to  
22 InfoStructure; further, in the process of improperly setting up its own equipment at the  
23 customer's premises, InfoStructure vandalized RIO's equipment, making it difficult for RIO to  
24 restore service to its customer.

25 InfoStructure has alleged that the Commission has no jurisdiction to hear this case  
26 because the service that InfoStructure was installing is an "information service" outside the

1 scope of 47 U.S.C. § 258. As discussed below, this Commission has jurisdiction over this  
2 complaint because (1) it has a duty pursuant to Oregon law to protect customers and the public  
3 generally from unjust and unreasonable practices by certificated telecommunications carriers;  
4 (2) InfoStructure consented to the Commission’s jurisdiction when it applied for and received  
5 certification to provide telecommunications service in Oregon as a competitive provider (or,  
6 alternately, a “CLEC”);<sup>1</sup> (3) in effecting the unlawful conversion, InfoStructure acted as a CLEC  
7 and ordered telecommunications unbundled network elements (“UNEs”) from Qwest, rendering  
8 its actions subject to this Commission’s jurisdiction; and (4) InfoStructure’s actions were so  
9 egregious and unjust as to require the Commission to ensure that InfoStructure is deterred from  
10 taking such actions in the future.

## 11 12 **II. STATEMENT OF FACTS**

13 RIO is a telecommunications carrier headquartered in Roseburg, Oregon offering  
14 telecommunications, Internet access, and web management services. RIO is a division of the  
15 Umpqua Indian Development Corporation, a federally chartered corporation. Complaint, para. 2.

16 Mellelo Coffee Roasters (“Mellelo”) operates two Internet cafés in Medford, Oregon, one  
17 of which is located at 229 West Main Street (“Mellelo West Main”). Cherie Frick is the general  
18 manager of these cafés. In February of 2006 RIO provided DSL services to both of the Mellelo  
19 cafés. Complaint, paras. 8-9.

20 On February 14, an InfoStructure representative arrived at Mellelo West Main and  
21 announced to the Mellelo employee working that night that he was there to transfer the café’s  
22 DSL service from RIO to InfoStructure. The Mellelo employee, who had not been advised that  
23 this transfer was to occur, contacted Cherie Frick to ask her what he should do. Ms. Frick  
24 instructed the employee to tell the InfoStructure representative that she did not agree to the  
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26 <sup>1</sup> Competitive provider is the term given to competitive local exchange carriers under Oregon  
law.

1 installation and that he should not proceed. Complaint, para. 10. The InfoStructure  
2 representative stated that Jeff Rhoden, one of InfoStructure's three owners, would call Ms. Frick  
3 the following morning. Complaint, paras. 10-11.

4 The next day, Mr. Rhoden called Ms. Frick at her office and informed her that Mellelo  
5 West Main was without any DSL service, but that he would be happy to proceed with the  
6 installation of InfoStructure's service. Ms. Frick repeated her direction to Mr. Rhoden that he  
7 was not to proceed with the installation. Complaint, para. 11.

8 Because Mellelo West Main was completely without DSL service, Ms. Frick contacted  
9 RIO to address the problem. When RIO's employees arrived at Mellelo West Main, they  
10 discovered that InfoStructure had (1) removed RIO's modem from service and placed it on a shelf  
11 in a storage room; (2) substituted its own modem and connected it to RIO's Linksys wireless  
12 router; and (3) disconnected the wires connecting RIO's Mellelo circuit to Qwest's central office.  
13 Complaint, paras. 12-13. At the time this action was taken, neither Ms. Frick or any other  
14 Mellelo employee had given InfoStructure permission to do so, either orally or in writing.  
15 Complaint, para. 11.

16 The RIO technicians determined that they would not be able to repair the circuit without  
17 placing an order to Qwest. Upon contacting Qwest, RIO learned that on February 10  
18 InfoStructure had contacted Qwest and ordered a CLEC-to-CLEC conversion. Complaint,  
19 para. 14.

20 Several days later, on February 17, 2006, InfoStructure obtained a signed Letter of  
21 Agency ("LOA"), from Katie Goodson, a lower level employee of Mellelo, purportedly agreeing  
22 to the change of service; InfoStructure then presented this LOA to Qwest. *See* Letter of Agency,  
23 attached to InfoStructure's Answer as Exhibit 1. That LOA purported to authorize InfoStructure  
24 to "negotiate on [Mellelo's ] behalf for long distance rates, obtain information from the local  
25 exchange carrier relative to any aspect of our phone systems or billing and to obtain related  
26 information from any company presently providing telecommunications to this organization."

1 **III. ARGUMENT**

2 **A. The Commission Has Jurisdiction to Use Its Powers to Protect the Public from**  
3 **InfoStructure’s Unjust and Unreasonable Actions.**

4 The Commission has the duty to “use . . . the jurisdiction and powers of [its] office to  
5 protect . . . customers, and the public generally from unjust and unreasonable exactions and  
6 practices.” ORS 756.040(1). The Commission’s general jurisdiction extends to doing “all things  
7 necessary and convenient in the exercise of [its] power and jurisdiction.” ORS 756.040(2).  
8 Thus, even if 42 U.S.C. § 258(a), the federal anti-slamming, law does not apply to RIO’s  
9 complaint, the Commission retains jurisdiction over this dispute by virtue of its duty to protect  
10 customers and the public generally from InfoStructure’s unjust practices. *See* ORS 756.040(1);  
11 *In re Oregon Electric Utility Company, LLC, et al.*, Order No. 05-114, UM 1121 (Mar. 10,  
12 2005).

13 This is not a simple “slamming case.” On the contrary, InfoStructure’s actions in this  
14 case were unjust in the extreme and require the Commission to take steps to prevent such actions  
15 in the future. InfoStructure ignored repeated orders by Mellelo’s general manager not to install  
16 service at the café. Despite these request’s, InfoStructure’s employee purposely installed service  
17 at a time when the general manager was absent from the location. InfoStructure’s acts are of the  
18 type which the Commission should protect customers by asserting its authority under  
19 ORS 756.040(1).

20 Not only did InfoStructure act unjustly and unreasonably by installing service without the  
21 customer’s authority, InfoStructure and damaged RIO’s equipment in the process. Specifically,  
22 InfoStructure cut the wires on RIO’s equipment, making it impossible to reinstall the service  
23 without further repairs.

24 Finally, InfoStructure used the LOA process to engage in a clumsy post-hoc cover-up in  
25 order to conceal its bad acts. Indeed, the LOA that InfoStructure appended to its Answer and  
26 that it offers in its defense *proves* that, at the time it transferred Mellelo’s service to itself it *knew*

1 that it was not authorized to do so. *First*, the LOA was signed by Katie Goodson, who, as the  
2 evidence will show, is a 19-year-old Mellelo employee.<sup>2</sup> InfoStructure should have understood  
3 that this young woman could not have had the authority to countermand the instructions of the  
4 general manager. *Second*, the LOA was signed by Ms. Goodson on February 17, 2006—*two*  
5 *days after* InfoStructure had installed service without authorization. Thus, the LOA appears to  
6 be a post-hoc attempt by InfoStructure to conceal the fact that its actions were unauthorized.  
7 InfoStructure’s attempt to conceal its bad acts by presenting the Commission with a LOA dated  
8 two days after it tampered with RIO’s equipment is further evidence that InfoStructure’s actions  
9 were unjust and unreasonable.

10         Allowing InfoStructure to run roughshod over members of the public is contrary to the  
11 Commission’s duty under ORS 756.040(1) to protect the public from such actions. The  
12 Commission has jurisdiction over RIO’s complaint by virtue of its general duty to use its powers  
13 to protect the public from unjust and unreasonable actions.

14 **B. InfoStructure Availed Itself of the Commission’s Jurisdiction by Petitioning the**  
15 **Commission for Certification as a Competitive Provider and by Operating as a**  
16 **CLEC in its Provisioning of its DSL Service.**

17         In addition, InfoStructure availed itself of the Commission’s jurisdiction when it applied  
18 for and was granted certification to provide telecommunications service in Oregon as a  
19 competitive provider. *In re Prime Time Ventures, LLC*, Order No. 03-488, CP 1171 (Aug. 8,  
20 2003). The Commission granted this application after it concluded that it was in the public  
21 interest to do so. *Id.* By availing itself of the jurisdiction of the Commission, InfoStructure  
22 accepted the responsibility to act justly and responsibly in its interactions with the public. In  
23 accepting the benefits of being certified as a competitive provider under Oregon law,  
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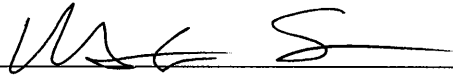
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25 <sup>2</sup> InfoStructure refers to Ms. Goodson in its Answer as the “acting manager.” Ms. Goodson did  
26 in fact have some managerial duties with respect to the West Main location, but at no  
time had sufficient authority to consent to the installation of InfoStructure services.



1 RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of October 2006.

2 ATER WYNNE LLP

3  
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**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **RIO COMMUNICATIONS, INC.**

**OPENING BRIEF ON SUBJECT MATTER JURISDICTION** on the following:

Attorneys for Plaintiff: Thaddeus G. Pauck  
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by  mailing;  hand delivery;  facsimile a true and correct copy thereof to said parties on the date stated below.

DATED this 13<sup>th</sup> day of October, 2006.

  
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Wendy L. Martin