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November 2, 2006

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 original and five copies of Beaver Creek Cooperative Telephone Company's Comments on Arbitrator's Decision 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 U.S. mail and 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

BEAVER CREEK COOPERATIVE
TELEPHONE COMPANY'S COMMENTS
ON ARBITRATOR'S DECISION

BEAVER CREEK COOPERATIVE
TELEPHONE COMPANY'S COMMENTS ON
ARBITRATOR'S DECISION - 1

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1 Beaver Creek Cooperative Telephone Company ("BCT") files its comments concerning the
2 Arbitrator's Decision entered in this matter. BCT will address four aspects of the Arbitrator's
3 Decision in the order set forth below:

- 4 • The Arbitrator's Decision did not give unbiased and fair consideration to the issues in
5 the case.
- 6 • Bill and keep is the form of reciprocal compensation that should be used.
- 7 • Routing of traffic should have the same effect on both companies.
- 8 • Transiting traffic issues should allow BCT's switch to function as a tandem switch.

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10 COMMENT 1: THE ARBITRATOR'S DECISION DID NOT GIVE
11 FAIR AND UNBIASED CONSIDERATION TO THE ISSUES RAISED BY BCT

12 It is clear from reading the Arbitrator's Decision that the Arbitrator did not give fair and
13 unbiased consideration to the issues before him. This biased approach is clearly underscored with
14 the language that appears in the Arbitrator's Decision at page 10. The Arbitrator's Decision at this
15 point reads as follows:

16 In this instance, Qwest asserts, and BCT does not deny, that for whatever reason,
17 it is not observing the terms of its current agreement with respect to the transport
18 of BCC-originated traffic over its LIS trunks. BCT has asked the Commission to
19 reward this behavior by assuming that traffic is in balance with Qwest, even as the
20 BCC traffic, by being routed as BCI traffic, gets treatment that is better than that
21 available to other CLEC traffic for purposes of compensation...BCT's proposed
22 contract language is another attempt to circumvent requirements that the
23 Commission has previously established. (Emphasis added.)

24 The bias against BCT in this statement is obvious and unwarranted.

25 The issue of BCT's use of the LIS trunks under the existing interconnection agreement
26 ("ICA") was not before the Arbitrator. This is a fact that the Arbitrator barely acknowledges in

1 footnote 42. It almost seems like the Arbitrator is disappointed that he cannot sanction BCT over an
2 issue that is not even before the Arbitrator.

3 The issue is whether bill and keep is an appropriate form of reciprocal compensation for
4 purposes of the new agreement. It has nothing to do with the old agreement. Further, as BCT
5 pointed out, BCT does deny that its actions are inconsistent with the old ICA.¹ Because that issue
6 was not before the Arbitrator, as the Arbitrator admits, BCT did not submit any evidence as to its
7 view of interpreting the old ICA. How can the old ICA have anything to do with what should be
8 contained in the new ICA?

9 The Arbitrator states that BCT is asking the Commission to “reward” behavior that the
10 Arbitrator, without facts and without legal argument before it, concludes is a violation of the prior
11 ICA. This is bias, pure and simple. BCT is not asking the Commission to reward anything.
12 Further, the Arbitrator’s use of the word “reward” assumes that BCT is attempting to gain some
13 advantage from improper behavior. That is not the case and there is no evidence that that is the
14 case. The Arbitrator has leaped to a conclusion over an issue that is not before him and on which
15 there is no evidence in the record or any argument concerning the old ICA.

16 This demonstration of bias is further evidenced by the underscored language where the
17 Arbitrator describes BCT’s suggestion that bill and keep be adopted as “another attempt to
18 circumvent requirements that the Commission has previously established.” Bill and keep is used in
19 many agreements between Qwest and CLECs in the State of Oregon. A full description of this
20 issue is set forth related to Comment 2, discussed below. However, what is clear is that the
21 Arbitrator’s use of the idea that BCT is proposing bill and keep, which is a well established and well

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23 ¹ BCT’s Reply Brief at p. 4. As BCT points out, the fact that there is a difference of opinion between BCT and Qwest
24 as to how to interpret the old ICA has nothing to do with this case. BCT further pointed out, it is inappropriate to “use
25 vague and un-pursued allegations to mischaracterize BCT’s motivations and operations.” Yet, this is precisely what the
Arbitrator has done.

1 accepted method of reciprocal compensation, as a "attempt to circumvent" demonstrates that the
2 Arbitrator is clearly biased and did not consider the issues raised in this proceeding in a fair and
3 open manner.

4 Further, the Arbitrator's conclusion that use of bill and keep would produce "treatment that
5 is better than that available to other CLEC traffic for purposes of compensation" ignores the many,
6 many ICAs that exist between Qwest and CLECs that use bill and keep. BCT is not asking for
7 favorable treatment. BCT is asking for the same treatment that is afforded in those ICAs with other
8 CLECs that use bill and keep. The Arbitrator's conclusion is without factual or legal support and is
9 contrary to the many bill and keep ICAs this Commission has approved.²

10 Another portion of the Arbitrator's Decision that shows that the Arbitrator is biased against
11 BCT is found at page 3. There the Arbitrator is describing BCT's goals to treat its members,
12 whether they are from BCT's operations in the Beaver creek exchange or the Oregon City exchange,
13 as consistently as possible. The Arbitrator states "Only the Commission's rules, which BCT has
14 consistently opposed, continue to prevent it from integrating the operations entirely." This language
15 has the connotation that somehow BCT's actions are improper. It is true that BCT has challenged
16 certain Commission rules because they may have a disparate effect on cooperatives as opposed to
17 commercial companies. It is true that BCT does want to try to be sure that its operations as a
18 cooperative can, to the extent possible, be consistent for all of its members. However, BCT has not
19 "consistently opposed" all Commission rules. Nor has BCT sought to hide its operations or
20 somehow disguise what it is doing. BCT has been open and up front with the Commission. BCT

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23 ² The Arbitrator also states that the BCT traffic from its competitive operations would be "routed as BCI traffic,"
24 apparently meaning routed as though it were traffic originating from the Beaver creek exchange. That is a conclusion
25 that is not supported by the record and is not reflective of BCT's proposal. BCT is not trying to disguise the origin of
its traffic. Nor is BCT getting an advantage compared to other CLECs. The Arbitrator's lack of understanding of the
issue is clearly colored by his bias.

1 has raised questions when BCT has thought that the Commission has failed to fully take into
2 account the difference between cooperatives and commercial operations. However, BCT has
3 always abided by what it understands the Commission's rules to be. There should be no adverse
4 connotation from the fact that BCT at times raises questions or seeks clarifications through various
5 dockets. Should a company be punished because it questions the Commission? This Arbitrator
6 clearly thinks so.

7 It is obvious that BCT did not get a fair consideration in this arbitration. For this reason
8 alone, the Arbitrator's Decision should be overturned. At the very least, these matters should be
9 assigned to another arbitrator for reconsideration.

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11 COMMENT 2: BILL AND KEEP AS THE FORM OF RECIPROCAL COMPENSATION

12 On the form of reciprocal compensation, the Arbitrator used an impermissible analysis of
13 issues outside of the scope of this hearing, on which evidence was not presented other than the bare
14 assertion by Qwest that BCT was operating in violation of the old ICA, a proposition that BCT
15 denied. The Arbitrator describes BCT's proposal of the use of bill and keep as affording BCT's
16 competitive traffic of obtaining "treatment that is better than that available to other CLECs' traffic
17 for the purpose of compensation." That is a statement entirely without fact. In the record in this
18 case are a list of interconnection agreements between Qwest and other CLECs that use bill and
19 keep. BCT's proposal would do no more than what Qwest has entered into with other CLECs.
20 There would be no better treatment for BCT's competitive traffic than is available for those other
21 CLECs. The Arbitrator's Decision is factually wrong and inconsistent with the record in this case.

22 Further, as discussed above, the Arbitrator's biased decision that describes BCT's bill and
23 keep proposal, one which is accepted by the Commission in many Oregon agreements, as an
24 attempt to circumvent Commission requirements is a flat out mischaracterization of both BCT's
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1 intent and the effect of instituting bill and keep. The conclusion that the Arbitrator reaches that
 2 "The proposed language [of bill and keep] has a discriminatory effect on other CLECs and must be
 3 rejected on those grounds as well"³ is entirely without basis. The following is a list of agreements
 4 that Qwest has entered into with other CLECs in the State of Oregon which use bill and keep as the
 5 form of reciprocal compensation. This is not an exhaustive list, but illustrative of the many uses of
 6 bill and keep⁴:

7 BILL AND KEEP AGREEMENTS

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

19 As can be seen from the foregoing list, bill and keep is a commonly used approach for
 20 interconnection agreements in the State of Oregon. BCT's proposal is not an attempt to circumvent
 21 Commission requirements. BCT's proposal has no discriminatory effect on other CLECs (either
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 24 ³ Arbitrator's Decision at p. 10.
 25 ⁴ BCT/8, Linstrom/15-16.

1 that or all of the above-listed agreements are discriminatory). Further, what can be noted from the
2 list is that Qwest has entered into a bill and keep arrangement with its own affiliate. See, ARB
3 616.⁵ What is discriminatory about the Arbitrator's Decision is to impose reciprocal compensation
4 on BCT when Qwest uses bill and keep for its own affiliate.⁶

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6 COMMENT 3: ROUTING OF TRAFFIC

7 The Arbitrator's Decision on routing of traffic, which begins on page 5 of the Arbitrator's
8 Decision, confuses a number of subjects. There are two sets of routing issues which the Arbitrator's
9 Decision unfortunately combines and, in doing so, produces a decision that discriminates against
10 BCT.

11 The first type of routing issue is trying to separate any particular carrier's traffic into
12 EAS/local traffic on the one hand and access traffic on the other hand. That is, CLEC A delivers
13 both EAS traffic ultimately destined to BCT and access traffic ultimately destined to BCT to Qwest
14 at a single location for Qwest to deliver to BCT. The question is whether the types of traffic (EAS
15 and access) can be separated. As to this set of routing issues, BCT was actively investigating
16 possible trunking solutions. One encouraging possible solution dealt with the use of Trunk
17 Numbers (TN) which are uniquely assigned to each carrier. However, after doing diligent review of
18 this issue, BCT felt that the use of trunking routing for this first type of traffic routing would be
19 more expensive than was warranted.

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23 ⁵ Also note that Qwest has entered into a bill and keep agreement with another cooperative that operates much like
24 BCT. See, ARB 351 with Gervais Telephone Company.

25 ⁶ Further, the Arbitrator completely ignores the evidence in the record that Qwest advocates for bill and keep as the best
26 form of interconnection. See, e.g., BCT/8, Linstrom/11-14.

1 BCT notes that the Arbitrator characterizes BCT's diligent work on this issue in a sarcastic
2 mode: "Late in the game, BCT finally acknowledges this reality."⁷ BCT points this out as yet
3 another example of the evidence of bias in the Arbitrator's Decision. The fact that BCT was
4 diligently pursuing issues should not be characterized with sarcasm.

5 The other type of traffic separation relates to the interplay between BCT and Qwest in how
6 they deliver traffic between each other. This is a separate issue from the first type of traffic
7 routing issue. BCT has both incumbent traffic from its Beavercreek exchange and competitive
8 traffic from the Oregon City exchange. On the other side of the coin, Qwest delivers both its
9 incumbent traffic to BCT's customers in the Oregon City exchange and CLEC traffic to BCT's
10 traffic in the Oregon City exchange. Today, Qwest delivers both types of traffic on the same trunk
11 group. Yet, Qwest desires that BCT provide only BCT originated competitive traffic from BCT's
12 Oregon City customers on that same trunk group. This is where the inequity comes into play.

13 In this proceeding, BCT stated its goal was to seek equality in the treatment of traffic
14 routing.⁸ That equality can be obtained in either one of two ways. One way is for Qwest to deliver
15 its own originated ILEC traffic to BCT for termination to BCT's customers in the Oregon City
16 exchange on one trunk group Qwest would deliver and the traffic that originates from CLECs that
17 Qwest carries for termination to BCT's customers in the Oregon City exchange on a second trunk
18 group. This would then be a symmetrical way of handling traffic under Qwest's preferred scenario
19 where BCT has to deliver traffic from BCT's incumbent operations under one trunk group and
20 BCT's originated traffic from its competitive operations on a second trunk group.

21 It should be noted that Qwest's asserted reason for requiring traffic separation, which the
22 Arbitrator accepted, is the need to measure traffic for a reciprocal compensation basis. This same

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24 ⁷ Arbitrator's Decision at p. 7.

25 ⁸ See, e.g., BCT/1, Linstrom/7; BCT/8, Linstrom/1-4.

1 need exists for BCT if reciprocal compensation (i.e., not bill and keep) is used. It is difficult for
2 BCT to accurately assess Qwest charges if CLEC originated traffic is delivered to BCT on the same
3 trunk group as Qwest's ILEC originated traffic is delivered to BCT for termination to BCT's
4 customers in the competitive Oregon City exchange. Traffic separation by Qwest has the same
5 effect as traffic separated by BCT for reciprocal compensation. It should also be noted that this
6 whole issue about the difficulty of measuring traffic goes away if bill and keep is used.

7 The separation of traffic along these lines is described by the Arbitrator as "wasteful,
8 burdensome to Qwest and to carriers beyond the two parties in this case and technically difficult."⁹
9 That is not the case. It is no more burdensome for Qwest to separate its incumbent originated traffic
10 onto one trunk group and the CLEC traffic it transits onto another trunk group than it is for BCT to
11 put its incumbent traffic from the Beaver Creek exchange on one trunk group and its competitive
12 traffic originated from the Oregon City exchange on another trunk group. There is no more
13 difficulty one way or the other. It is no more wasteful or burdensome one way or the other. If it is
14 wasteful and burdensome for Qwest to do so, it is also wasteful and burdensome for BCT to be
15 required to do so. Further, this issue has no effect on carriers beyond the parties in the case. This
16 proposal affects only Qwest and BCT. The Arbitrator is factually wrong. The Arbitrator's Decision
17 discriminates against BCT by requiring BCT to separate traffic which allows Qwest to commingle
18 traffic.

19 The second alternative, which ultimately BCT said it would favor because of trunking
20 efficiency, would be to have the parties route all traffic to each other on the same trunk group. As
21 to this proposal, the Arbitrator concludes that "The combining of BCC and BCI traffic over BCI
22 trunks in treating all such traffic as BCI traffic would give BCT's BCC operations preferential
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25 ⁹ Arbitrator's Decision at p. 7.

1 treatment through a reduction in charges unavailable to other CLECs.”¹⁰ (Emphasis added.) This
2 statement is also wrong in many respects. Carrying combined traffic from the Oregon City and
3 Beavercreek exchanges does not make the Oregon City traffic incumbent traffic. The Arbitrator has
4 a fundamental misunderstanding of the relationship. Further, there is no preferential treatment. As
5 pointed out above, there are many agreements between Qwest and other CLECs that have bill and
6 keep as the form of compensation and those bill and keep arrangements are available to other
7 CLECs.¹¹ The Arbitrator’s conclusion is factually wrong, inconsistent with the record and
8 inconsistent with past Commission decisions allowing bill and keep.

9 Further, the Arbitrator’s conclusion that there is a reduction in charges unavailable to other
10 CLECs is simply wrong. Bill and keep is often used. The entire rationale offered by the Arbitrator
11 for adopting Qwest’s proposal that Qwest route all traffic to BCT over one trunk group while BCT
12 has to use separate trunk groups has no basis in fact and is discriminatory to BCT.

13 In addition, the Arbitrator’s Decision on this issue places BCT in an unwarranted
14 straightjacket. As will be discussed related to the transiting traffic issue below, BCT is looking to
15 move its point of interconnection (“POI”) for handling traffic to the Pittock Building, which is
16 essentially a meet me room for carriers to exchange traffic. If BCT does this, then there will be no
17 need to use LIS trunks between BCT’s switch and the local/EAS tandem of Qwest. If BCT moves
18 its POI so that it effectively exchanges traffic at Qwest’s tandem, then BCT can obtain trunking
19 either through its own facilities or the facilities of another carrier and LIS trunks are not needed. A
20 requirement to use LIS trunks would effectively prevent relocation of the POI to the Pittock
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24 ¹⁰ Arbitrator’s Decision at p. 8-9.

25 ¹¹ See, the list of approved bill and keep agreements at p. 6, above. See, also, 47 C.F.R. §51.809(a) authorizing any carrier to opt into an existing approved interconnection agreement.

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COMMENT 4: TRANSITING ISSUES

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On this issue, it is obvious that the Arbitrator did not understand what was involved. The Arbitrator describes BCT's position as involving a desire by BCT "to move its switch...to downtown Portland so that it can serve the same geographic area as Qwest."¹² The switch would not be moved. It is the POI that would be relocated.¹³ The Arbitrator has a fundamental misunderstanding of the issue.

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Here is the real issue: Qwest's position is that BCT cannot act as a transiting provider unless its switch serves the same geographic area that Qwest serves. To meet this test, BCT needs to move its POI, not its switch, to the Pittock Building. Yet, Qwest opposes, for all effective purposes, the movement of BCT's point of interconnection to the Pittock Building. Qwest states that it will not oppose the movement of the POI for BCT's CLEC operations, but will oppose it for BCT's ILEC operations.¹⁴ Effectively, that means that Qwest is opposing the move of the POI.

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The solution to this Qwest opposition that BCT proposed would be to treat BCT's switch as a tandem switch if it has the functionality of a tandem switch and is registered as such in the LERG. The Arbitrator resolves this issue by making the following statement: "Qwest cannot make the changes BCT proposes without disrupting the agreements and the relationships they embody [relationships with third party carriers]."¹⁵ The Arbitrator is completely mistaken. There is nothing about third party traffic that affects the treatment of BCT's switch as a tandem switch. Qwest has

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¹² Arbitrator's Decision at p. 11.

¹³ See, e.g., BCT/8, Linstrom/5 and BCT's Opening Brief at pages 11-12. The entire discussion is about moving the point of interconnection or point of presence, not moving BCT's switch. These are two different concepts. A difference the Arbitrator ignores.

¹⁴ Qwest/3, Freberg/15-16.

¹⁵ Arbitrator's Decision at page 12.

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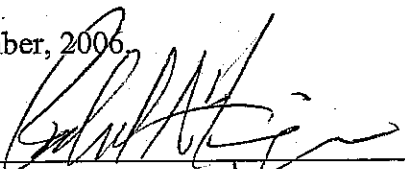
1 the same relationship with other carriers and delivers that traffic to BCT's point of interconnection,
2 whether that point of interconnection is at the Pittock Building or at Oregon City. It does not matter
3 one iota to those third party carriers where BCT's point of interconnection is or whether BCT's
4 switch is a tandem switch. It does matter to Qwest in that Qwest wishes to keep BCT as a captive
5 to Qwest's transport. However, the issue has no affect on any third party. The rationale for the
6 Arbitrator's Decision is not found in the record and is factually wrong.

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8 CONCLUSION

9 Based on the foregoing, BCT requests that the Commission overturn the Arbitrator's
10 Decision and take the following steps:

- 11 1. Order the use of bill and keep as the form of reciprocal compensation and adopt
12 BCT's proposed language in Sections 7.3.1.1.3.1, 7.3.2.2.1, 7.3.4.1.1, 7.3.4.1.4, 7.3.6.1 and 7.3.6.2.
- 13 2. In the interest of trunking efficiency, order BCT and Qwest to exchange all traffic
14 over a combined set of trunk groups (for EAS/local traffic). In the alternative, order Qwest to
15 deliver traffic to BCT's operations in Oregon City over two sets of trunk groups, one for Qwest's
16 ILEC originated traffic and one for third party traffic that Qwest transits. If the former is adopted,
17 then BCT's proposed language in Sections 7.2.2.1.2, 7.2.2.2.1, 7.2.2.3.1, 7.2.2.9.3.1, 7.2.2.9.3.2,
18 7.2.2.9.6, 7.2.2.9.6.1 and 7.3.1 should be adopted.
- 19 3. Order that BCT's switch be treated as a tandem switch for purposes of the ICA. To
20 this end, BCT's proposed language in Sections 7.2.1.2.4, 7.3.2.1.2 and 7.3.1 should be adopted.

21 Respectfully submitted this 2nd day of November, 2006

22
23 By: 
24 RICHARD A. FINNIGAN, OSB No. 96535
25 Attorney for Beaver Creek Cooperative
26 Telephone Company

CERTIFICATE OF SERVICE
ARB 747

I hereby certify that I have served the attached Beaver Creek Cooperative Telephone Company's Comments on Arbitrator's Decision 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:

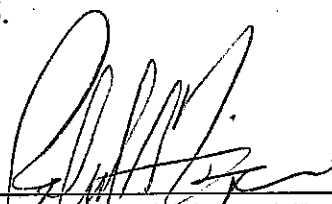
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I further certify that I have sent the attached Beaver Creek Cooperative Telephone Company's Comments on Arbitrator's Decision by e-mail and overnight delivery to the following:

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Dated this 2nd day of November, 2006.



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