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Lead Paralegal

May 30, 2006

Frances Nichols Anglin  
Oregon Public Utility Commission  
550 Capitol St., NE  
Suite 215  
Salem, OR 97301

Re: ARB 747

Dear Ms. Nichols Anglin:

Enclosed for filing please find an original and (5) copies of Qwest Corporation's Response to Beaver Creek Cooperative Telephone Co.'s Petition for Arbitration, along with a certificate of service.

If you have any questions, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in black ink that reads "Carla".

Carla M. Butler

CMB:

Enclosure

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PUBLIC UTILITY COMMISSION OF OREGON

ARB 747

In the Matter of

BEAVER CREEK COOPERATIVE TELEPHONE  
COMPANY

Petition for Arbitration of the Terms, Conditions  
and Prices for Interconnection and Related  
arrangements with QWEST CORPORATION

QWEST CORPORATION'S  
RESPONSE TO PETITION FOR  
ARBITRATION

INTRODUCTION

Pursuant to section 252(b)(3) of the Telecommunications Act of 1996, 47 U.S.C. § 151 et seq. (“the Act”) and OAR 860-016-0030, Qwest Corporation (“Qwest”) submits this Response to the Petition of Beaver Creek Cooperative Telephone Company (“Beaver Creek”) for Arbitration of an Interconnection Agreement with Qwest (“Petition”).

As Beaver Creek accurately describes in its Petition, the parties have negotiated for a lengthy period of time concerning the proposed interconnection agreement (“ICA”), and thus the number of unresolved issues is relatively low. (See Petition, pp. 1-2.) Beaver Creek raises five unresolved issues. (Id., p. 2.) Beaver Creek’s petition pertains to a successor ICA to replace the current ICA between the parties.<sup>1</sup> As Beaver Creek mentions (Petition, p. 2, fn. 1), Appendix A to the Petition is the last draft of the ICA that the parties have negotiated, with the unresolved issues identified.

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<sup>1</sup> The parties’ current agreement was approved on October 23, 3002. Order No. 02-724, docket ARB 365.

## DISPUTED ISSUES

As mentioned, Qwest and Beaver Creek have resolved numerous substantive issues through negotiation. These substantial efforts have been productive, as the parties have resolved numerous issues, leaving only a relatively small number of issues (five) to be arbitrated.

In light of the progress the parties made during negotiations, relatively few issues remain unresolved and constitute “open issues” for the Commission’s resolution pursuant to Section 252(b) of the Act. For the reasons set forth below, Qwest respectfully submits the Commission should reject Beaver Creek’s proposed language and should adopt Qwest’s proposed language.

The parties’ proposed language for each unresolved issue as of the date of the Petition is set forth in the Proposed ICA, which is attached as Appendix A to the Petition. Qwest respectfully requests the Commission adopt Qwest’s positions and proposed contract language.

## THE PARTIES’ POSITIONS

Although Beaver Creek included argument regarding its positions in the Petition, it either did not include a summary of Qwest’s positions for some of the issues it described or it mischaracterized such positions. Thus, Qwest has summarized its position on each of the five disputed issue below. Because Beaver Creek detailed its positions in its Petition, Qwest has not repeated Beaver Creek’s positions in this response.

Qwest respectfully submits that its positions on the disputed issues meet the requirements of the Act and other applicable law and reflect sound public policy. As such, Qwest respectfully submits that the Commission should adopt Qwest’s language in its entirety.

### Issue 1: Change of Law (§ 2.2)

The parties’ “change of law” dispute is an issue that Beaver Creek claims is not reflected in the last draft of the ICA (Appendix A). (See Petition, p. 2, fn. 1.) However, in reality, this issue was only expressed to be an issue by Beaver Creek at the end of the parties’ negotiations.

In any event, Beaver Creek's position is that it is appropriate that any changes of law be self-effectuating, with amendments later executed to memorialize and codify the applicable change of law. Thus, Beaver Creek's proposed language evidences this intent. In response, Qwest's position is that Beaver Creek's proposal creates a high likelihood of disputes, and further creates absolutely no incentive for carriers to enter into good faith negotiations for implementation of changes of law, as they could simply take a position as to the effect of the change of law and implement it without amending the contract. In addition, since Qwest's current ICAs require an amendment to implement changes of law, Beaver Creek's proposed language would also create administrative burdens on Qwest for different contractual implementation terms.

Beaver Creek may take the position that the negotiation and drafting process somehow impedes implementation of change of law. However, that is not consistent with an examination of the Qwest proposed language. Qwest's proposed section 2.2 provides as follows:

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.

Thus, it is entirely within the control of the party seeking to implement the change of law to begin the process to implement dispute resolution. In addition, the point that Beaver Creek makes regarding the effective date of the change of law is also dealt with in the following Qwest proposed language:

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 short, Qwest's position protects the interests that Beaver Creek seeks to deal with in its proposal, while it ensures that no disputes regarding the changes of law occur prior to an amendment being implemented. Thus, Qwest submits that the Commission should adopt Qwest's proposed language on this issue.

Issue 2: Routing and Trunking Issues (§§ 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, 7.2.2.9.6, 7.2.2.9.6.1, 7.3.1)

As Beaver Creek states, the issue regarding routing and trunking is dispersed over several separate sections of the ICA, but it is really expressed as one concept. Beaver Creek takes the position that all traffic types (intraLATA toll/Exchange Access, Extended Area Service ("EAS")/Local/Exchange Access and Transit) should be split onto separate trunk groups between Qwest and Beaver Creek, with no mixing of the different traffic types. Beaver Creek also claims Qwest takes the position that Beaver Creek can only deliver traffic which it originates over its interconnection trunking with Qwest. Beaver Creek's summary statements suggest that this is a simple process for Qwest to undertake, and that it would virtually solve "phantom traffic" problems. However, Beaver Creek fails to acknowledge the extreme difficulty of separating traffic, even to the point of being arguably technically infeasible. In addition, Beaver Creek has mischaracterized Qwest's position regarding the traffic that Beaver Creek can send to Qwest.

In order to separate traffic as Beaver Creek has requested, Qwest would need to either (1) change massive amounts of translations in its switches to separate this traffic or (2) require all carriers connected to Qwest's network to separately trunk traffic. Implementation of this proposal would require massive investment on Qwest's part. It would also result in inefficient use of trunking facilities to carry all of the separate traffic types, and thus it is simply unnecessary. As further discussed below, Qwest offers to provide records for traffic transiting Qwest's network, although it does seek to recover its costs in providing such records, which Beaver Creek believes

should be provided for free. In addition, Qwest affirmatively represents that it passes to terminating carriers all call detail information, unaltered, that it receives when traffic is transiting Qwest's network, and that it properly signals traffic that originates from its end-user customers. Thus, requiring separate trunking would do nothing to gain greater clarity regarding the source of certain traffic that Beaver Creek may be unable to identify.

Alternatively, Qwest's proposed language accomplishes the same goal of identification of traffic. This is especially so because Qwest properly signals its originating traffic, passes through all signaling information it receives from originating carriers, unaltered, and provides the ability to purchase transiting records (which would then allow Beaver Creek to bill the originator of the traffic). Moreover, in order to accommodate Beaver Creek to the maximum extent possible, Qwest has offered to separately trunk Jointly Provided Switched Access ("JPSA") traffic to Beaver Creek. The reason for this illustrates the infeasibility of Beaver Creek's request.

JPSA traffic comes to Qwest from interexchange carriers ("IXCs") through "Feature Group D" facilities that IXCs purchase to Qwest's access tandems, according to Qwest's tariffs. Thus, that traffic already enters Qwest's network through separate facilities, and is not intermingled with local traffic from the same carrier. In addition, the Feature Group D billing systems are already prepared for Qwest's generating of JPSA records; thus, keeping the traffic separate is feasible without a high degree of difficulty. Accordingly, Qwest is able to separately trunk this traffic to Beaver Creek. However, the other types of traffic come to Qwest in an intermingled manner, coming to local tandem switches, end offices, and even access tandem

switches, with certain CLECs or CMRS carriers utilizing an Single Point of Presence (“SPOP”) architecture.<sup>2</sup> Thus, it would be extremely difficult for Qwest to separately trunk this traffic.

Beaver Creek has not offered any proposal for compensation to Qwest for this enormous potential investment that it requests of Qwest. Moreover, its proposed language provides no greater protection for Beaver Creek, and thus the Commission should reject it. Qwest has also clarified that traffic from IXCs, which would be JPSA traffic, shall not be intentionally routed through local tandems, for the same reasons that it has offered the separate trunking.

Beaver Creek also claims that Qwest requires it to separately trunk its traffic. (Petition, p. 3.) However, that is simply incorrect. Qwest does not require separate trunking; rather, it merely has certain requirements outlined in the ICA for other traffic that Beaver Creek sends to Qwest. For example, as discussed below, Qwest agrees that Beaver Creek may send transit traffic, but it must also meet certain reasonable requirements. Thus, Qwest does not understand the contention (Petition, p. 3) that Qwest requires separate trunks for the separate traffic.

As the Commission may know, Beaver Creek has separate ILEC and CLEC operations. ILEC and CLEC operations have separate regulatory structures, as ILECs utilize arrangements that predate the Act.<sup>3</sup> Beaver Creek could, if it were to desire it, have both of its ILEC and its CLEC operations under a Section 251 ICA. However, Beaver Creek has stated it does not want

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<sup>2</sup> SPOP is a Local Interconnection Service (LIS) interconnection trunking option that allows a requesting CLEC to establish one physical point of presence within a LATA in Qwest’s territory and thus exchange traffic with Qwest at that single point.

<sup>3</sup> The National Exchange Carrier Association (“NECA”) North American Company Code Assignment Procedures require different types of carriers (e.g., ILECs, CLECs, IXCs, wireless providers, etc.) to have separate Operating Company Numbers (“OCNs”) for each of their operations. See NECA North American Company Code Assignment Procedures, § 3.1. Indeed, in Order No. 05-704 in docket UM 1140 (in which the Commission denied Beaver Creek’s petition for consolidation of the Clackamas and Beavercreek rate centers), the Commission noted that “it seems clear to us that some means should be undertaken to accurately distinguish BCT’s [Beaver Creek’s] [ILEC and CLEC] operations.” Order No. 05-704, p. 18. The Commission further stated: “BCT would be well advised to review this matter with the administrator of the LERG [Local Exchange Routing Guide].” *Id.* There is no reference in the Petition to Beaver Creek having reviewed this matter with the administrator of the LERG.

the compensation structure for facilities to apply to its ILEC operations, as the legacy arrangements do not require compensation for local/EAS facility usage. Thus, Beaver Creek has chosen to keep its operations under separate arrangements, but that is its choice, not Qwest's.

In sum, Beaver Creek's proposed language borders on technical infeasibility, and just as importantly, such proposed language would require significant investment by Qwest and would result in inefficient use of facilities. Qwest's proposed language, on the other hand, retains Qwest's longstanding network architecture, while still providing the protection that Beaver Creek seeks. As discussed below, Beaver Creek's concerns primarily appear to be that it must pay for transiting records. However, Qwest is permitted to recover its costs of providing transiting records, and has been doing so under ICAs that the Commission has approved. Thus, there is no basis for the Commission to accommodate Beaver Creek's request, and therefore, Qwest submits that the Commission should adopt Qwest's proposed language on this issue, and that it should reject Beaver Creek's proposed language.

Issue 3: Form of Compensation (§§ 7.3.1.1.3.1, 7.3.2.2.1, 7.3.4.1.1, 7.3.4.1.4, 7.3.6)

For the issue regarding the form of compensation for the exchange of traffic, Beaver Creek states that it prefers a "bill and keep" arrangement. Qwest did propose a bill and keep arrangement, but Beaver Creek did not accept Qwest's proposal, and thus Qwest withdrew it. Qwest's fundamental concern is that it is unable to evaluate whether bill and keep is an appropriate arrangement for the exchange of traffic between Qwest and Beaver Creek.

The main problem here is that Beaver Creek has consistently refused to send its CLEC traffic to Qwest over the existing interconnection trunking established in compliance with the parties' current ICA. As a result, although Beaver Creek has represented to Qwest that traffic between the parties is in "balance," it is simply unclear whether Qwest and Beaver Creek's CLEC



operations have an even exchange of traffic. Qwest's proposed language, on the other hand, is the standard language which the Commission has approved in numerous ICAs in the past and which has been utilized by many CLECs in Oregon. Further, although Beaver Creek claims that the "costs and expenses" of establishing billing for this traffic is "not worth the revenues that might be produced" (Petition, p. 3), that is necessarily a decision that is solely up to Beaver Creek for the billing of traffic that it may seek.

Further still, Qwest already has processes in place to bill for traffic terminated to its network, and Beaver Creek needs to comply with its ICA and thus properly terminate traffic to Qwest's network. Beaver Creek's proposed language, however, appears to be nothing more than its attempt to continue to send its CLEC traffic to Qwest without compensating Qwest for the termination of such traffic. Qwest, however, is entitled to receive compensation for traffic terminated to its end-user customers under Section 251 of the Act, but Beaver Creek's routing practices have left Qwest unable to determine whether such traffic would really be in balance.

Finally, Beaver Creek has taken the position that a "bill and keep" arrangement somehow also applies to the Direct Trunked Transport ("DTT") needed to transport traffic to the different tandem switches within Qwest's network. However, Qwest's application of charges according to the Relative Use Factor ("RUF") has been repeatedly approved by the Commission in numerous ICAs during the past few years, and is separate from the "transport and termination" structure of reciprocal compensation that would be covered in a bill and keep arrangement. Unfortunately, however, Beaver Creek refuses to acknowledge this separate compensation arrangement for DTT according to the RUF.

Accordingly, Beaver Creek's "bill and keep" proposal is both a red herring and cannot be properly evaluated by Qwest because of Beaver Creek's routing practices. Qwest's proposed

language, on the other hand, permits both parties to be properly compensated in accordance with applicable law for the termination of traffic, and is consistent with past Commission decisions.

Issue 4: Transport of Third-Party (Transit) Traffic (and treatment of Beaver Creek's switch as a tandem switch) (§§ 7.2.1.2.4, 7.3.2.1.2, and definitions of "Access Tandem Switch" and "Tandem Office Switches" in § 4)

The fourth issue pertains to the transport of third-party traffic and the treatment of Beaver Creek's switch as a tandem switch. Beaver Creek, however, misstates the issue about its ability to use and provide transiting services. (Petition, pp. 4-5.) In fact, Qwest has never stated that it refuses to permit anything but direct connection between Beaver Creek and Qwest. Although Qwest prefers direct connections, the plain language of Qwest's proposed section 7.2.1.1 states that third-party transit providers may be used:

Unless otherwise agreed to by the Parties, via an amendment to this Agreement, the Parties will directly exchange traffic between their respective networks without the use of third party transit providers. (Emphasis added.)

This proposed language would simply require Beaver Creek to negotiate an appropriate amendment for the use of a third-party transit provider. Beaver Creek, however, has not offered any terms for the use of such third-party providers, and it is evidently requesting a blanket license to utilize any third-party provider. It is not unreasonable for Qwest to require that the parties negotiate these terms and conditions, as this is not a common occurrence, and Qwest would need to ensure that applicable standards are encompassed and that it is not placed in an adverse financial circumstance as a result.

Further, with respect to Beaver Creek's ability to provide transiting services to Qwest, Beaver Creek has again misrepresented Qwest's position. However, the plain language that Qwest has offered in section 7.2.1.2.4 provides as follows:

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.

This proposed language clearly shows that Qwest is amenable to Beaver Creek's provision of transiting services, so long as its switch functions as a tandem switch as defined in the ICA. That is the real issue between Qwest and Beaver Creek. The definition of "Tandem Office Switch," as Qwest proposes, includes the requirement that the switch serve a comparable geographic area as Qwest's Tandem Office Switch. This requirement was established by the FCC in determining whether tandem switching elements would be paid as part of reciprocal compensation, and thus this is an appropriate examination of a tandem switch.<sup>4</sup> Beaver Creek, however, has not claimed its switch serves a comparable geographic area; rather, it simply makes a summary statement that it should be allowed to provide transiting services. (Petition, p. 5.)

In short, Beaver Creek is not forbidden in any way from providing transiting services, so long as its switch is appropriately designated as a tandem switch. Thus, it is entirely up to Beaver Creek to ensure that its switch serves a comparable geographic area, as the FCC determined appropriate, and then Qwest would agree that Beaver Creek could appropriately provide transiting services. There really is no controversy, therefore, but in reality, Beaver Creek simply seeks to have its switch designated as a "tandem" switch, without any scrutiny. Accordingly, Qwest respectfully submits that Beaver Creek's position is not supported, and thus that the Commission should reject this approach and should adopt Qwest's proposed language.

Issue 5: Phantom Traffic (§§ 7.2.2.3.3, 7.2.2.9.3.1, 7.2.23.9.6.1, 7.3.7.4, 7.6.1, 7.6.3)

Finally, as with other issues, Beaver Creek has again mischaracterized the issue regarding phantom traffic. As discussed regarding Issue 3 above, Qwest has offered to provide transiting

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<sup>4</sup> See First Report and Order, FCC Local Competition docket, ¶ 1090. See also 47 C.F.R. § 51.711(a)(3) ("Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate").

records to Beaver Creek. Qwest further represents that it passes to terminating carriers any signaling information, unaltered, that it receives from originating carriers.

Beaver Creek's concerns, however, are essentially two-fold. First, Beaver Creek apparently does not wish to compensate Qwest for Qwest's generation and provision of transiting records. Second, Beaver Creek apparently wishes to make Qwest responsible for correctly routing traffic that Beaver Creek believes may be misrouted, which, in essence, would turn Qwest into some sort of "traffic cop" for all traffic.

As previously discussed, Qwest's proposed language provides the ability to appropriately track traffic terminating to Beaver Creek, and Qwest affirms its commitment to assist in resolving traffic routing issues, as well as to pass through to terminating carriers any signaling information, unaltered, that it receives from originating carriers. However, it is simply not appropriate that Qwest be made "responsible" for traffic that it does not originate.<sup>5</sup> Originating carriers are responsible for the traffic that they originate, and Beaver Creek is able to initiate interconnection negotiations with such originating parties to establish appropriate arrangements for the termination of traffic to Beaver Creek (whether it be direct from the originators or by transiting through Qwest). However, Beaver Creek's proposed language, as with other of its proposals, simply appears to be a summary position to absolve it of any responsibility for resolving traffic issues, and thus is without support.

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<sup>5</sup> This Commission has already ruled, in a complaint proceeding that Beaver Creek brought against Qwest regarding non-Qwest originated traffic that transits Qwest and is delivered to Beaver Creek, that Qwest as a transit carrier is not obligated to compensate Beaver Creek for such non-Qwest originated traffic. See ALJ Ruling (May 13, 2005), docket UCB 18, pp. 9-10.

## PROPOSED CONDITIONS

The proposed conditions that Qwest recommends are contained in its proposed contract language in the Proposed ICA attached as Appendix A to Beaver Creek's Petition.

### PROPOSED SCHEDULE FOR IMPLEMENTING THE TERMS AND CONDITIONS IMPOSED IN THE ARBITRATION

Qwest recommends that upon resolution of the disputes set forth in the Petition and this response, the Commission direct the parties to finalize the Proposed ICA to conform to the Commission's order and to file it within 30 days of the order.

### RECOMMENDATION AS TO INFORMATION THAT SHOULD BE REQUESTED FROM BEAVER CREEK BY THE ARBITRATOR PURSUANT TO SECTION 252(b)(4)(B)

Qwest has no specific recommendation at this time as to information that should be requested from Beaver Creek by the Arbitrator pursuant to Section 252(b)(4)(B). Qwest anticipates that the parties will engage in discovery concerning matters that the parties believe should be brought to the Arbitrator's attention.

### PROPOSED INTERCONNECTION AGREEMENT

It is Qwest's understanding that the Proposed ICA attached as Appendix A to Beaver Creek's Petition is an unmodified copy of the document that Qwest has maintained throughout the parties' negotiations, which Qwest provided to Beaver Creek on or about May 2, 2006 so that Beaver Creek could attach it to the Petition. Based on this understanding, Qwest believes that Appendix A accurately describes the parties' competing language proposals as of the time that Qwest provided it to Beaver Creek. However, in the event it is not, Qwest reserves the right to submit revised language for the Proposed ICA to accurately set forth its positions. Qwest further reserves the right to correct errors or reflect any changes in existing law during the pendency of this arbitration that may affect the appropriate terms and conditions of the parties' relationship.

DOCUMENTATION RELEVANT TO THE DISPUTE

Beaver Creek has appended the Proposed ICA as Appendix A to its Petition. As set forth above, this document captures the agreed-upon agreement language and the disputed language that is before the Commission for resolution. Qwest will provide additional documentation relevant to Qwest's positions concerning the disputed issues in accordance with the procedural schedule, the prehearing rulings, and the Commission rules governing this arbitration proceeding.

REQUEST FOR A PROTECTIVE ORDER

Qwest believes the issuance of a protective order would be appropriate to protect any privileged, confidential, and/or trade secret information that the parties may need to exchange.

CONCLUSION AND REQUEST FOR RELIEF

Qwest urges the Commission to enter an order adopting Qwest's proposed language on all disputed issues.

DATED: May 30, 2006

Respectfully submitted,



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Attorney for Qwest Corporation

**CERTIFICATE OF SERVICE**

**ARB 747**

I hereby certify that on the 30<sup>th</sup> day of May 2006, I served the foregoing **QWEST CORPORATION'S RESPONSE TO BEAVER CREEK COOPERATIVE TELEPHONE CO.'S PETITION FOR ARBITRATION** in the above entitled docket on the following persons via U.S. Mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

Richard Finnigan  
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DATED this 30<sup>th</sup> day of May, 2006.

**QWEST CORPORATION**



By: \_\_\_\_\_

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