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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

In the Matter of the Complaint of
Umpqua Indian Development Corporation
(UIDC), Telecommunications Division, a
federally chartered corporation, dba RIO
COMMUNICATIONS, INC.,

Complainant,

vs.

PRIME TIME VENTURES LLC, dba,
INFOSTRUCTURE,

Respondent.

UM 1270

ANSWER AND AFFIRMATIVE
DEFENSES

For its answer to complainant's Complaint, Respondent Prime Time Ventures LLC,
dba InfoStructure, admits, denies and alleges as follows:

1.

Respondent denies each and every allegation of the Complaint except those
allegations expressly admitted or otherwise qualified herein.

2.

Answering paragraph 1, respondent denies the allegations contained therein.

3.

Answering paragraphs 2 and 3, respondent admits the allegations contained therein,
with the exception that respondent's headquarters are located at 288 S. Pacific Highway,
Talent, Oregon, 97540.

1 4.
2 Answering paragraphs 4, 5 and 6, respondent admits the allegations contained therein.

3 5.
4 Answering paragraph 7, respondent admits that the Oregon Public Utility Commission
5 (“the Commission”) has authority to administer federal rules relating to unauthorized carrier
6 change rules and remedies, but denies that the Commission has jurisdiction over this matter
7 because it does not involve telecommunications exchange or toll service as required by the
8 provisions of 47 USC § 258. The allegations set forth in complainant’s Complaint pertain
9 solely to DSL service, which the Federal Communications Commission (“FCC”) has
10 described as “informational service”, as opposed to “telecommunications service” and which
11 is therefore outside the scope of 47 USC § 258.

12 6.
13 Answering paragraph 8, respondent has insufficient information as to the truth or
14 falsity of the allegations contained therein and, therefore, denies the same except respondent
15 states that upon respondent’s information and belief, Mellelo’s employee Katie Goodson was
16 the acting manager of the Mellelo’s location at 229 W. Main Street at all relevant times.

17 7.
18 Answering paragraph 9, respondent has insufficient information as to the truth or
19 falsity of the allegations set forth therein and therefore denies the same.

20 8.
21 Answering paragraph 10, respondent denies that Jeff Rhoden arrived at Mellelo’s
22 West Main location on February 14, 2006 and represented that he was there to install service,
23 or that any employee of Mellelo’s told Jeff Rhoden on that date that InfoStructure was not
24 authorized to install any service and should not proceed. Respondent does admit that one of
25 its employees did arrive at Mellelo’s West Main location on February 14, 2006 for an
26 appointment with Katie Goodson.

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9.

Answering paragraph 11, respondent admits that Jeff Rhoden did contact Cherie Frick on February 15, 2006, but denies that Ms. Frick told him not to proceed with the installation. Instead, Ms. Frick informed Mr. Rhoden during that conversation that she would prefer to have DSL service reinstalled, and respondent then sent a tech to perform the install that same date. Respondent further denies that neither Ms. Frick nor any other employee gave respondent permission to proceed with the install, since Ms. Frick communicated that intent to Mr. Rhoden over the phone and because Katie Goodson, a manager with at least apparent authority, had given permission previously.

10.

Answering paragraph 12, respondent has insufficient information as to the truth or falsity of the allegations set forth therein and therefore denies the same.

11.

Answering paragraph 13, respondent admits that respondent removed RIO's modem from service and placed it on a shelf in a storage room, admits that it substituted its own modem and connected it to a wireless router, although respondent's technician was informed by Katie Goodson that the router belonged to Mellelo's, and denies that it disconnected the wires connecting RIO's Mellelo circuit to Qwest's central office, since it was Qwest that is responsible for completing that step.

12.

Answering paragraph 14, respondent denies that Mellelo's had not authorized the change of service request.

13.

Answering paragraph 15, respondent provided Qwest with a valid Letter of Agency, signed by Katie Goodson, the store manager of Mellelo's West Main location. Respondent informed Qwest that it would not contest having Mellelo's service go back to RIO because

1 it did not want to have a business relationship with Ms. Frick.

2 **RESPONDENT'S AFFIRMATIVE DEFENSES**

3 **FAILURE TO STATE CLAIM**

4 14.

5 For its FIRST AFFIRMATIVE DEFENSE, respondent states that the allegations set
6 forth in complainant's Complaint pertain solely to DSL service, which the Federal
7 Communications Commission ("FCC") has described as "informational service", as opposed
8 to "telecommunications service", and which is therefore outside the scope of 47 USC § 258.
9 Accordingly, complainant's Complaint fails to state a claim for which relief may be granted.

10 15.

11 For its SECOND AFFIRMATIVE DEFENSE, respondent states that even assuming
12 that DSL service were included within the scope of 47 USC § 258, which it is not,
13 respondent had a valid Letter of Agency, signed by a Mellelo's employee with at least
14 apparent authority, to change the DSL service from complainant to respondent. A copy of
15 that Letter of Agency is attached hereto as Exhibit "1". Accordingly, complainant's
16 Complaint fails to state a claim for which relief may be granted.

17 16.

18 For its THIRD AFFIRMATIVE DEFENSE, respondent states that even assuming that
19 DSL service were included within the scope of 47 USC § 258, which it is not, and that
20 respondent did not have a valid Letter of Agency, which it did, complainant's allegations still
21 fail to state a valid claim for relief, since 47 USC § 258 requires that a telecommunications
22 carrier must collect "charges for telephone exchange service or telephone toll service" in
23 order for liability to attach. Respondent did not collect any charges whatsoever from
24 Mellelo's, let alone any charges for telephone exchange service or telephone toll service.

25 WHEREFORE, having fully answered complainant's Complaint, respondent requests
26 that this Complaint be dismissed with prejudice and that respondent recover its representation

1 costs herein.

2 DATED: July 31, 2006.



3
4 Thaddeus G. Pauck, OSB #98318
5 BROPHY, MILLS, SCHMOR
6 GERKING, BROPHY & PARADIS, LLP
7 Of Attorneys for Respondent

8 P.O. Box 128
9 Medford, OR 97501
10 Telephone: (541) 772-7123
11 Fax No.: (541) 772-7249

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LETTER OF AGENCY FORM

We're the One!

Letter of Agency

To: All concerned local exchange companies, Qwest Communications, other common Carriers, reseller's and all equipment vendors.

From: MEXICO COFFEE RE: S.LSEV. 71972-6
279 W. MAIN DSL CIRCUIT - EFFECTIVE 2/6/06

We have authorized Prime Time Ventures LLC, dba Infostructure to negotiate on our behalf for long distance rates, obtain information from the local exchange carrier relative to any aspect of our phone systems or billing, and to obtain other related information from any company presently providing telecommunications services to this organization.

Please be advised that we have authorized Prime Time Ventures, LLC dba Infostructure as our agent in matters pertaining to communications services. We have authorized Prime Time Ventures, LLC dba Infostructure to issue necessary orders and coordinate all matters relating to the local and long distance telephone service required by our company.

This does not preclude the undersigned from acting on our own behalf in matters pertaining to telephone services.

Any company or person may contact Prime Time Ventures, LLC dba Infostructure on all matters pertaining to the ordering and provisioning of long distance or other telecommunications services. This letter will remain in effect until further notice.

For further information, please contact Prime Time Ventures, LLC dba Infostructure at:
541-488-1962
611 Siskiyou Blvd. Suite 2
Ashland, OR 97520

Signature: Katie L. Goodson

Printed Name: Katie L. Goodson

Date: 2-17-06

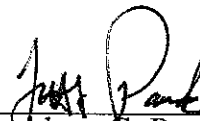
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a true copy of the **ANSWER AND AFFIRMATIVE**
3 **DEFENSES** upon the following persons designated on the official service list:

4 Lisa F. Rackner
5 Ater Wynne LLP
6 222 SW Columbia Street, Ste. 1800
7 Portland, OR 97201-6618
8 **of Attorneys for Complainant**

9 by **mailing** it in a sealed envelope, with postage paid, addressed to each said
10 person at the address set forth above on the date set forth below.

11 Dated this 31 day of July, 2006.

12 
13 _____
14 Thaddeus G. Pauck, OSB #98318
15 BROPHY, MILLS, SCHMOR,
16 GERKING, BROPHY & PARADIS, LLP
17 Of Attorneys for Respondent