

**DUNCAN, TIGER & NIEGEL, P.C.**

GEORGE R. DUNCAN, SR.  
1897-1981

GEORGE R. DUNCAN, JR.  
Of Counsel  
[rich@staytonlaw.com](mailto:rich@staytonlaw.com)

ATTORNEYS AT LAW

582 E. Washington Street  
Post Office Box 248  
Stayton, Oregon 97383-0248  
Telephone: (503) 769-7741  
Fax: (503) 769-2461

JAMES D. TIGER  
[jim@staytonlaw.com](mailto:jim@staytonlaw.com)

JENNIFER L. NIEGEL  
[jennifer@staytonlaw.com](mailto:jennifer@staytonlaw.com)

May 7, 2004

**VIA HAND DELIVERY**

Lindsey Nunes  
Administrative Hearings Division  
Oregon Public Utility Commission  
550 Capitol Street NE, Suite 215  
PO Box 2148  
Salem OR 97308-2148

RE: *In the Matter of the Application of Broadband Cable Telecommunications, LLC (BCT)  
for a Certificate of Authority to Provide Telecommunications Service in Oregon and  
Classification as a Competitive Telecommunications Provider – CP 1223*

Dear Ms. Barnes:

Enclosed for filing in the above-mentioned docket please find an original and five copies of a Protest of Clear Creek Mutual Telephone Company.

Thank you in advance for your attention to this matter. Please do not hesitate to contact me if you have any questions or desire further information.

Very truly yours,

  
James D. Tiger

Enclosures

cc: CP 1223 Service List  
CP 1181 Service List



Of Attorneys For \_\_\_\_\_

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

CP 1223

In the Matter of the Application of	)	PROTEST OF CLEAR CREEK MUTUAL
BROADBAND CABLE	)	TELEPHONE COMPANY
TELECOMMUNICATIONS, LLC for	)	
Certificate of Authority to Provide	)	
Telecommunications Service in Oregon and	)	
Classification as a Competitive	)	
Telecommunications Provider	)	

Clear Creek Mutual Telephone Company ("Protestant") submits this Protest to the application of Broadband Cable Telecommunications, LLC ("BCT LLC").

For the reasons set forth below, pursuant to ORS 759.020(5) and ORS 759.050(2)(c), Protestant requests that the Oregon Public Utility Commission (the "Commission") set this matter for hearing and: (1) require BCT LLC to disclose its affiliated interests as defined under OAR 860-032-0001(1); (2) apply the conditions in the standard form of order to the BCT LLC's application; (3) impose additional reasonable conditions specifically upon the authority of BCT LLC to provide competitive telecommunications service, including prohibiting BCT LLC from transferring or assignment any certificate granted in this proceeding or any rights thereunder to its affiliated interests without further hearing and approval from the Commission; (4) make the issues raised in Docket CP 1181 a part of this proceeding; and (5) take such other action or



1 investigation as the Commission deems necessary to ensure BCT LLC's compliance with  
2 applicable law.

3 **I.**

4 **PARTIES**

5 BCT LLC is a recently formed Oregon limited liability company. BCT LLC's business  
6 address is 15651 NE Browndale Farm Road, Aurora, OR 97002, its telephone number is (503)  
7 678-3334 and its e-mail address is [sprtiman@aol.com](mailto:sprtiman@aol.com).

8 Protestant is a cooperative corporation and the incumbent local exchange carrier  
9 ("ILEC") for the Redland exchange. Protestant's business address is 18238 South Fischers Mill  
10 Road, Oregon City, Oregon 97045-9696, its telephone number is (503) 631-2101 and its e-mail  
11 address is [mmoore@clearcreek.coop](mailto:mmoore@clearcreek.coop).

12 **II.**

13 **BACKGROUND**

14 On April 21, 2004, BCT LLC filed with the Commission an application for certification  
15 to provide telecommunications service in Oregon as a competitive telecommunications provider.  
16 BCT LLC seeks authority to provide local exchange (intraexchange) switched service (i.e., local  
17 dial tone), local exchange (intraexchange) nonswitched, private line service (i.e., dedicated  
18 transmission service) and interexchange, nonswitched, private line service (i.e., dedicated  
19 transmission service) statewide in Oregon. The Commission served notice of the application on  
20 April 21, 2004. In its application, BCT LLC indicated that it was not now nor had it ever been  
21 affiliated with any provider of telecommunications service that serves Oregon. See Section 4 of  
22 the application.

1 **III.**

2 **BCT LLC FAILED TO DISCLOSE AFFILIATED INTERESTS**

3 Pursuant to OAR 860-032-0005(5)(e), an application for a new or amended certificate  
4 must contain the names of affiliated interests of the BCT LLC which are certified to provide or  
5 are actually providing telecommunications service in Oregon. OAR 860-032-0001(1) defines  
6 "affiliated interest" to include:

7 (a) Every corporation and person owning or holding directly or indirectly 5  
8 percent or more of the voting securities of such telecommunications provider;

9 (b) Every corporation and person in any chain of successive ownership of 5  
10 percent or more of voting securities of such telecommunications provider;

11 (c) Every corporation 5 percent or more of whose voting securities are owned by  
12 any person or corporation owning 5 percent or more of the voting securities of  
13 such telecommunications provider or by any person or corporation in any chain of  
14 successive ownership of five percent or more of voting securities of such  
15 telecommunications provider;

16 (d) Every person who is an officer or director of such telecommunications  
17 provider or of any corporation in any chain of successive ownership of 5 percent  
18 or more of voting securities of such telecommunications provider;

19 (e) Every corporation that has two or more officers or two or more directors in  
20 common with such telecommunications provider;

21 (f) Every corporation and person, 5 percent or more of which is directly or  
22 indirectly owned by a telecommunications provider;

(g) Every corporation or person who or which the Commission determines as a  
matter of fact, after investigation and hearing, actually is exercising any  
substantial influence over the policies and actions of such telecommunications  
provider, even though such influence is not based upon stockholdings,  
stockholders, directors, or officers to the extent specified in this section of this  
rule;

(h) Every person or corporation who or which the Commission determines as a  
matter of fact, after investigation and hearing, actually is exercising such  
substantial influence over the policies and actions of such telecommunications



1 provider in conjunction with one or more other corporations or persons with  
2 whom they are related by ownership or blood or by action in concert that together  
3 they are affiliated with such telecommunications provider within the meaning of  
4 this section even though no one of them alone is so affiliated.”

5 In its application, BCT LLC listed Paul Safronchik as its contact person. Mr. Safronchik  
6 is an employee and/or consultant providing exclusive services to Beaver Creek Cooperative  
7 Telephone Company (“BCT Co-op”) and/or companies in which BCT Co-op holds a majority  
8 ownership interest. BCT LLC failed to disclose these affiliated interests in its application as  
9 required by the rule set forth above.

10 A copy of the Articles of Organization which were filed by BCT LLC with  
11 the Oregon Corporation Division is attached hereto as Exhibit “A” and by this reference  
12 is incorporated herein. The Articles state that BCT LLC’s “organizers” are Mr.  
13 Safronchik, Tom Linstrom and Paul Hauer. Mr. Linstrom and Mr. Hauer are employees  
14 of BCT Co-op. Mr. Linstrom is the CEO/President of BCT Co-op and an officer of BCT  
15 Co-op. Mr. Hauer is the Vice President Finance/Administration of BCT Co-op. BCT  
16 LLC failed to disclose these affiliated interests in its application as required by the rule  
17 set forth above.

18 Protestant contends that BCT Co-op through Mr. Safronchik, Mr. Linstrom and  
19 Mr. Hauer constitutes an affiliated interest since it exercises substantial influence over the  
20 policies and actions of the BCT LLC. BCT LLC’s failure to disclose its affiliation with  
21 BCT Co-op and its employees and/or consultant leads the Protestant to believe that BCT  
22 LLC is intentionally trying to deceive the Commission and circumvent the normal  
application process. This seems particularly apparent when this application is viewed in  
conjunction with the recent withdrawal by BCT Co-op of its application for a certificate



1 in Docket CP 1181. In that proceeding, BCT filed for a certificate of authority to provide  
2 telecommunications service statewide in Oregon as a competitive telecommunications  
3 provider, but then later withdrew its application after several parties, including Protestant  
4 protested, and it appeared that a staff audit was impending.

5 **IV.**

6 **BCT LLC SHOULD NOT BE ALLOWED TO TRANSFER OR ASSIGN ANY**  
7 **CERTIFICATE GRANTED IN THIS PROCEEDING OR ANY RIGHTS THEREUNDER**  
8 **TO BCT CO-OP WITHOUT THE FURTHER APPROVAL OF THE COMMISSION**

9 BCT should have to obtain further approval from the Commission before BCT LLC  
10 transfers any certificate of authority granted in this proceeding or any rights thereunder to BCT  
11 Co-op. BCT LLC should not be allowed to obtain a certificate of authority and then transfer any  
12 rights or control of the limited liability company to BCT Co-op without separate authorization  
13 from the Commission.

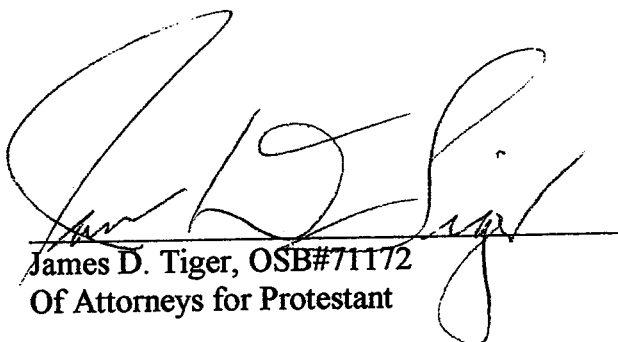
14 If BCT LLC intends to transfer the certificate or any rights thereunder to BCT Co-op, it  
15 should be required to disclose such intent and the issues previously raised in Docket CP 1181  
16 should be made a part of this proceeding. A copy of the Protest filed by Protestant in that  
17 proceeding is attached hereto as Exhibit "B" and by this reference is incorporated herein. A  
18 copy of the issues list in that proceeding is attached hereto as Exhibit "C" and by this reference is  
19 incorporated herein.

V.

CONCLUSION

For the reasons set forth above, Protestant requests that the Oregon Public Utility Commission set this matter for hearing and: (1) require BCT LLC to disclose its affiliated interests; (2) apply the conditions in the standard form of order to the BCT LLC's application; (3) impose additional reasonable conditions specifically upon the authority of BCT LLC to provide competitive telecommunications service to ensure that any certificate granted in this proceeding or any rights thereunder would not be transferred to BCT Co-op without further hearing and approval; (4) make the issues raised in Docket CP 1181 a part of this proceeding; and (5) take such other action or investigation as the Commission deems necessary to ensure BCT LLC's compliance with applicable law.

DATED: May 7, 2004.



James D. Tiger, OSB#71172  
Of Attorneys for Protestant

**Protestant**

Clear Creek Mutual Telephone Company  
Attn: Mitchell A. Moore  
18238 South Fischers Mill Road  
Oregon City, OR 97045-9696  
Telephone: (503) 631-2101  
Fax: (503) 631-2385  
Email: [mmoore@clearcreek.coop](mailto:mmoore@clearcreek.coop)

**Attorneys for Protestant**

James D. Tiger, OSB#71172  
Jennifer L. Niegel, OSB#99089  
Duncan, Tiger & Niegel, P.C.  
582 E. Washington Street

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Mutual Telephone Company  
CP 1223

Duncan, Tiger & Niegel, P.C.  
582 E. Washington St.  
PO Box 248  
Stayton, OR 97383-0248  
Telephone: (503) 769-7741  
Facsimile: (503) 769-2461

1 PO Box 248  
Stayton, OR 97383-0248  
2 Telephone: (503) 769-7741  
Fax: (503) 769-2461  
3 Email: [jim@staytonlaw.com](mailto:jim@staytonlaw.com)  
[jennifer@staytonlaw.com](mailto:jennifer@staytonlaw.com)

4  
5 Mark P. Trincherro  
Davis Wright Tremaine LLP  
1300 S.W. Fifth Avenue, Suite 2300  
6 Portland, OR 97201  
Telephone: (503) 778-5318  
7 Fax: (503) 778-5299  
Email: [marktrincherro@dwt.com](mailto:marktrincherro@dwt.com)

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Phone: (503) 986-2200  
Fax: (503) 378-4381

Articles of Organization—Limited Liability Company

Secretary of State  
Corporation Division  
255 Capitol St. NE, Suite 151  
Salem, OR 97310-1327  
FilingInOregon.com

FILED

APR 21 2004

OREGON  
SECRETARY OF STATE

REGISTRY NUMBER: 214946-95

In accordance with Oregon Revised Statute 192.410-192.490, the information on this application is public record. We must release this information to all parties upon request and it will be posted on our website.

For office use only

Please Type or Print Legibly in Black Ink. Attach Additional Sheet if Necessary.

1) NAME (Must contain the words "Limited Liability Company" or the abbreviations "LLC" or "L.L.C.")

Broadband Cable Telecommunications, LLC

2) DURATION (Please check one.)

Latest date upon which the Limited Liability Company is to dissolve is \_\_\_\_\_

Duration shall be perpetual.

3) NAME OF THE INITIAL REGISTERED AGENT

Paul R. Safronchik

4) ADDRESS OF THE INITIAL REGISTERED AGENT

(Must be an OREGON Street Address, which is identical to the registered agent's business office.)

15651 NE Browndale Farm Rd

Aurora, OR 97002

5) ADDRESS WHERE THE DIVISION MAY MAIL NOTICES

P.O. Box 427

Canby, OR 97013

6) NAME AND ADDRESS OF EACH ORGANIZER

Paul R. Safronchik

P.O. Box 427 Canby, OR 97013

Tom A. Linstrom

P.O. Box 602 Eagle Creek, OR 97022

Paul E. Hauer

12971 Frontier Pkwy Oregon City, OR 97045

7) IF THIS LIMITED LIABILITY COMPANY IS NOT MEMBER MANAGED, CHECK ONE BOX BELOW.

This limited liability company is managed by a single manager.

This limited liability company is managed by multiple manager(s).

8) IF RENDERING A PROFESSIONAL SERVICE OR SERVICES, DESCRIBE THE SERVICE(S) BEING RENDERED.

9) OPTIONAL PROVISIONS (Attach a separate sheet if necessary.)

10) EXECUTION (The title for each signer must be "Organizer.")

Signature

Printed Name

Paul R. Safronchik

Tom A. Linstrom

Paul E. Hauer

Title

Organizer

Organizer

Organizer

11) CONTACT NAME (To resolve questions with this filing.)

Paul Safronchik

DAYTIME PHONE NUMBER (Include area code.)

503 975-4926

**FEES**

Required Processing Fee \$50 - Confirmation Copy (Optional) \$5  
Processing Fees are nonrefundable.

Please make check payable to "Corporation Division."

NOTE:

Fees may be paid with VISA or MasterCard. The card number and expiration date should be submitted on a separate sheet for your protection.

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
CP 1181**

In the Matter of the Application of BEAVER ) PROTEST OF CLEAR CREEK MUTUAL  
CREEK COOPERATIVE TELEPHONE ) TELEPHONE COMPANY  
COMPANY for Certificate of Authority to )  
Provide Telecommunications Service in )  
Oregon and Classification as a Competitive )  
Telecommunications Provider )

Clear Creek Mutual Telephone Company ("Protestant") submits this Protest to the application of Beaver Creek Cooperative Telephone Company ("Applicant").

For the reasons set forth below, pursuant to ORS 759.020(5) and ORS 759.050(2)(c), Protestant requests that the Oregon Public Utility Commission (the "Commission"): (1) attach stipulations and conditions to the standard form of order granting an application to provide telecommunications services as a competitive local exchange carrier ("CLEC") to clarify the requirements to which Applicant and other similarly situated applicants are subject; (2) apply the conditions in the standard form of order to the Applicant's application; (3) impose additional reasonable conditions specifically upon the authority of Applicant to provide competitive telecommunications service; and (4) take such other action or investigation as the Commission deems necessary to ensure Applicant's compliance with applicable law.



1 **I.**

2 **PARTIES**

3 Applicant is a cooperative corporation and the incumbent local exchange carrier ("ILEC")  
4 for the Beavercreek exchange. Applicant's business address is 15223 S. Henrici Rd., Oregon  
5 City, OR 97045.

6 Protestant is a cooperative corporation and the ILEC for the Redland exchange.  
7 Protestant's business address is 18238 South Fischers Mill Road, Oregon City, Oregon 97045-  
8 9696, its telephone number is (503) 631-2101 and its e-mail address is  
9 mmoore@clearcreek.coop.

10 **II.**

11 **BACKGROUND**

12 On September 26, 2003, Applicant filed with the Commission an application for  
13 certification to provide telecommunications service in Oregon. Applicant seeks authority to  
14 provide intraexchange (local exchange) services and interexchange carrier access service  
15 statewide in Oregon. The Commission served notice of the Application on October 8, 2003.

16 Pursuant to ORS 759.025(2), Applicant currently has authority to provide local exchange  
17 service, interexchange carrier access and extended area service in the Beavercreek exchange.  
18 See Order No. 88-261. Pursuant to ORS 759.020 and ORS 759.050, Applicant also has authority  
19 to provide local exchange service as a CLEC in the Oregon City exchange. See Order No. 96-  
20 248. Applicant also has authority to provide interexchange toll service as a competitive provider  
21 in both the Beavercreek and Oregon City exchanges, with conditions. See Order No. 99-763.  
22 Applicant has been designated by the Commission as a rural Eligible Telecommunications

1 Carrier ("ETC") qualified to receive federal Universal Service Fund ("USF") support. See Order  
2 No. 03-551.

3 **III.**

4 **APPLICANT SHOULD COMPLY WITH THE NORTH AMERICAN NUMBERING**  
5 **PLAN ADMINISTRATION RULES AND RELATED STATE LAW**

6 As a condition of its certificate to provide telecommunications service as a CLEC,  
7 Applicant should be required to obtain new NXX codes for the rate centers in which it operates  
8 as a CLEC and restrict the use of the NXX codes it has already been assigned to the rate centers  
9 for which they were obtained. The language used in the previous order which granted Applicant  
10 authority to provide telecommunications service as a CLEC does not adequately describe the  
11 numbering requirements to which Applicant and other similarly situated applicants must adhere.  
12 See Order 96-248. Accordingly, Protestant requests that the standard form of order be utilized for  
13 this application and, in addition, that a stipulation be attached to prevent possibly erroneous use  
14 by Applicant of its NXX codes.. Protestant requests that the Commission consider investigating  
15 Applicant's present use of numbering resources to ensure compliance with applicable law and  
16 the need for the requested stipulation.

17 The North American Numbering Plan Administration ("NANPA") is responsible for  
18 assigning NXX or central office ("CO") codes. NANPA follows assignment guidelines  
19 developed by the Industry Numbering Committee ("INC"). These guidelines specify who is  
20 entitled to an assignment, how to apply, and what obligations the assignee must meet to retain  
21 the assignment. The guidelines were developed at the direction of the Federal Communications  
22 Commission ("FCC") pursuant to 47 C.F.R. § 52.15(d) to define the responsibilities of CO code



1 holders. According to the Guidelines, “[i]t is assumed from a wireline perspective that CO  
2 codes/blocks allocated to a wireline service provider are to be utilized to provide service to a  
3 customer’s premise physically located in the same rate center that the CO codes/blocks are  
4 assigned.” INC 95-0407-008, Section 2.14.

5 An applicant must apply to NANPA and obtain numbering resources for the exchanges in  
6 which it intends to offer competitive voice service prior to offering such service. All “Part 1”  
7 applications submitted to NANPA for numbering resources must include among other items, the  
8 name of the rate center that will be served by the NXX and evidence that the “applicant is  
9 authorized to provide service in the area for which numbering resources are being requested.” 47  
10 C.F.R. § 52.15(g)(2). “Specifically, carriers must provide, as part of their applications for initial  
11 numbering resources, evidence (e.g., state commission order or state certificate to operate as a  
12 carrier) demonstrating that they are licensed and/or certified to provide service in the area in  
13 which they seek numbering resource.” FCC 00-104 ¶97.

14 Applicant is presently authorized by the Commission to provide telecommunications  
15 service only in the Beavercreek and Oregon City exchanges. In Order No. 96-248, Applicant  
16 specifically agreed to “limit each of its NXX codes to a given exchange and establish rate centers  
17 in those exchanges that are proximate to the existing LEC rate centers.” In Order No. 99-763,  
18 the Commission made clear that “[t]he prefix for BCT customers in the Beavercreek exchange is  
19 632, while 518 is the prefix for BCT customers geographically located in the Oregon City  
20 exchange, where BCT operates as a CLEC.” However, the Beavercreek/Oregon City 2003  
21 Telephone Directory published by Applicant includes listings which indicate Applicant may be  
22 dispensing telephone numbers to addresses outside the exchange boundary to which the prefix

1 was assigned, possibly in violation of the INC guidelines and Order No. 96-248. While the  
2 language in the standard form of order may normally be adequate, Applicant's interpretation of  
3 the language may be contrary to the Commission's. The language may need to be supplemented  
4 to be more specific in this case, therefore, to ensure Applicant's compliance with applicable law.

5 In addition, on or about September 12, 2003, and prior to applying for a certificate of  
6 authority as a competitive provider, Applicant placed copper cable in the Redland exchange and  
7 indicated an intent to offer voice service on this facility. Applicant is not presently authorized to  
8 provide telecommunications service in the Redland exchange as a CLEC. If Applicant offers  
9 voice service prior to the receipt of its certificate of authority, it will be in violation of not only  
10 the numbering guidelines, but also ORS 759.020(1) and OAR 860-032-0010(4) which prohibit  
11 Applicant from providing telecommunication service without a certificate of authority issued by  
12 the Commission.

13 To ensure proper assignment in compliance with applicable law and Applicant's tariff,  
14 Protestant requests that the Commission investigate Applicant's present use of numbering  
15 resources. Under Federal law, the Commission has the authority to access a service provider's  
16 applications for numbering resources. See 47 C.F.R. § 52.15(g)(5). Therefore, the Commission  
17 may request copies of all "Part 1" applications from the Applicant to determine if the Applicant  
18 has complied with the assignment, reporting and numbering resource application requirements of  
19 NANPA. If the Applicant fails to comply with the Commission's request for numbering  
20 resource application materials, the Commission has the authority to deny further numbering  
21 resources to the Applicant. Alternatively, the Commission has the authority to perform a "for  
22



1 cause" audit to verify that Applicant has complied with Commission regulations and the  
2 numbering guidelines. See 47 CFR § 52.15(k).

3 For the reasons set forth above, Protestant urges the Commission to investigate  
4 Applicant's use of numbering resources and, if appropriate, attach conditions to the standard  
5 form of order to stipulate that Applicant: (1) is prohibited from using a prefix in any rate center  
6 other than the rate center to which the prefix is assigned and reassign any telephone numbers  
7 which have been assigned in violation of this condition unless supported by a valid  
8 interexchange service listed in the Beaver Creek tariff; and (2) is required to obtain a new prefix  
9 for each rate center in which it operates as a CLEC pursuant to the numbering guidelines.

10 **IV.**

11 **APPLICANT SHOULD COMPLY WITH APPLICABLE LAW REGARDING**  
12 **DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER**

13 Applicant has been designated by the Commission as an ETC and is therefore eligible to  
14 receive federal and state USF support. See Order No. 97-481. Order No. 03-551 is the latest  
15 annual confirmation of this designation.

16 Protestant requests that a stipulation be expressly attached to the standard form of order  
17 to specifically state that Applicant's ETC designation applies only to the Beavercreek exchange  
18 area unless and until in a separate proceeding it is designated as an ETC in the other exchange  
19 areas.

20 In areas served by rural ILECs, the Commission may designate more than one common  
21 carrier as an ETC in a specific service area only if the carrier offers and advertises services  
22 supported by the federal USF support mechanism throughout the service area and the

1 Commission finds that the designation is in the public interest. 47 U.S.C. § 214(e)(2). A  
2 common carrier that has been designated by the Commission as an ETC for a service area is  
3 eligible to receive federal USF support. 47 U.S.C. § 214(e)(1). In the case of an area served by  
4 a rural telephone company, "service area" means the company's "study area" unless and until a  
5 different definition is established by the Federal Communications Commission and the States.  
6 47 U.S.C. § 214(e)(5).

7 Applicant intends to operate its CLEC operation within the cooperative rather than in a  
8 separate subsidiary. On previous occasions before the Commission, Applicant has asserted that  
9 wherever it operates as a cooperative, it is operating as an ILEC. Similarly, Applicant could  
10 argue that wherever it operates as a cooperative, it is operating as an ETC. Therefore, it is  
11 important that the Commission address this issue at this time and in this case to deter subsequent  
12 disputes. Further, the Commission should express that there is nothing in the granting of any  
13 CLEC certificate of authority or the operation by the Applicant of its CLEC venture within a  
14 cooperative corporation structure that extends the ETC designation beyond the Applicant's study  
15 area as provided by Order No. 97-481.

16 Protestant requests that the Commission not only reiterate that Applicant's ETC  
17 designation is limited to its study area pursuant to Order No. 97-481, but also stipulate that it  
18 shall remain limited to its study area unless and until the Commission conducts a hearing,  
19 investigates the public policy issues and finds that the designation of Applicant as an ETC in  
20 other exchanges is in the public interest and further that nothing in Applicant's cooperative form  
21 of corporate structure or Applicants' offering of CLEC services within the cooperative  
22 corporation in and of itself shall change the ETC designation made in Order 97-481.

V.

**APPLICANT SHOULD COMPLY WITH INTERCONNECTION REQUIREMENTS**

Protestant requests that a condition be attached to the standard form of order be modified to more specifically describe Applicant's obligation to interconnect pursuant to 47 U.S.C. §§ 251 and 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act").

Applicant has previously refused to negotiate and enter into interconnection agreements with other companies pursuant to 47 U.S.C. §§ 251 and 252 of the Act, arguing that the provisions of Sections 251 and 252 of the Act do not apply to Applicant and that the Act does not require interconnection agreements for the services listed in Section 251(b)(1)-(5), and challenging the Commission's authority to arbitrate rates, terms and conditions of such agreements. See Arbitrator's Decision in ARB 365 and Order No. 00-440 as amended by Order No. 00-711. Applicant should be required to comply with the requirements of 47 U.S.C. §§ 251 and 252 of the Act.

Therefore, Protestant urges the Commission to add a stipulation to its standard form of order to describe in more detail Applicant's obligation to enter into interconnection agreements and to specify that Applicant is not excused from the obligation to negotiate terms and conditions of interconnection under the Act.

VI.

**APPLICANT SHOULD COMPLY WITH APPLICABLE LAW REGARDING  
COST ALLOCATION**



1 Applicant operates its CLEC through its cooperative, rather than through a separate  
2 subsidiary. Therefore, it is difficult to determine what costs are being shifted out of the regulated  
3 rate base for competitive activities as required by the Telecommunications Act of 1996.

4 Section 254(k) of the Telecommunications Act of 1996 provides:

5 "A telecommunications carrier may not use services that are not  
6 competitive to subsidize services that are subject to competition.  
7 The Commission, with respect to interstate services, and the States,  
8 with respect to intrastate services, shall establish any necessary cost  
9 allocation rules, accounting safeguards, and guidelines to ensure  
10 that services included in the definition of universal service bear no  
11 more than a reasonable share of the joint and common costs of  
12 facilities used to provide those services.

13 Protestant wants to ensure that Applicant does not include its CLEC loops or CLEC costs  
14 in the information that it provides to the Universal Service Administrative Company ("USAC")  
15 or receive USF support for its CLEC loops. The Commission, therefore, should require  
16 Applicant to comply with applicable law regarding cost allocation.

17 Protestant understands that the Commission may be addressing this issue in UM 1112 and  
18 defers to the Commission to whether it should further address this issue in this proceeding.

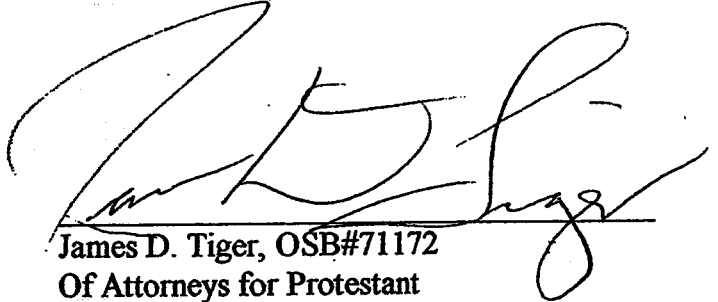
## 19 VII.

### 20 CONCLUSION

21 For the reasons set forth above, Protestant requests that the Oregon Public Utility  
22 Commission (the "Commission"): (1) stipulate additional conditions to the standard form of  
order granting an application to provide telecommunications services as a competitive local  
exchange carrier ("CLEC") to clarify the requirements to which Applicant and other similarly  
situated applicants are subject; (2) apply the conditions in the standard form of order to the  
Applicant's application; (3) impose additional reasonable conditions specifically upon the

1 authority of Applicant to provide competitive telecommunications service; and (4) take such  
2 other action or investigation as the Commission deems necessary to ensure Applicant's  
3 compliance with applicable law.

4 DATED: October 24, 2003.



James D. Tiger, OSB#71172  
Of Attorneys for Protestant

8 **Protestant**

9 Clear Creek Mutual Telephone Company  
10 Attn: Mitchell A. Moore  
11 18238 South Fischers Mill Road  
12 Oregon City, OR 97045-9696  
Telephone: (503) 631-2101  
Fax: (503) 631-2385  
Email: [mmoore@clearcreek.coop](mailto:mmoore@clearcreek.coop)

13 **Attorneys for Protestant**

14 James D. Tiger, OSB#71172  
15 Duncan, Tiger & Niegel, P.C.  
16 582 E. Washington Street  
17 PO Box 248  
18 Stayton, OR 97383-0248  
19 Telephone: (503) 769-7741  
20 Fax: (503) 769-2461  
21 Email: [jim@staytonlaw.com](mailto:jim@staytonlaw.com)  
22

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on October 24, 2003, I served the foregoing Protest of Clear Creek  
3 Mutual Telephone Company upon all parties of record in this proceeding by causing a full, true  
4 and correct copy thereof to be sent by mail in a sealed, first-class postage-prepaid envelope  
5 deposited with the United States Postal Service at Stayton, Oregon to the following parties:

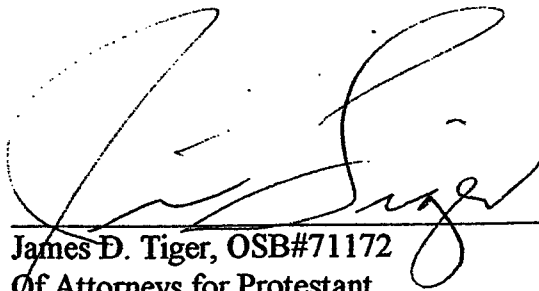
6 Beaver Creek Cooperative Telephone Co.  
15223 S. Henrici Rd.  
7 Oregon City, OR 97045

8 Paul Hauer  
Beaver Creek Cooperative Telephone Co.  
9 15223 S. Henrici Rd.  
Oregon City, OR 97045

10 Tom A. Linstrom  
11 Beaver Creek Cooperative Telephone Co.  
15223 S. Henrici Rd.  
12 Oregon City, OR 97045

13 Michael T. Weirich  
14 Department of Justice  
1162 Court Street NE  
Salem, OR 97301-4096

15 DATED: October 24, 2003.

16  
17  
18   
James D. Tiger, OSB#71172  
Of Attorneys for Protestant



**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

CP 1181

In the Matter of )

BEAVER CREEK COOPERATIVE )  
TELEPHONE COMPANY )

RULING

Application for a Certificate of Authority )  
to Provide Telecommunications Service in )  
Oregon and Classification as a Competitive )  
Telecommunications Provider. )

**DISPOSITION: ISSUES LIST ESTABLISHED**

**Background.** Beaver Creek Cooperative Telephone Company (Beaver Creek or BCT) filed an application for a Certificate of Authority to Provide Telecommunications Service in Oregon (Application) that was protested by Clear Creek Mutual Telephone Company (Clear Creek). A prehearing conference was held in this proceeding on December 12, 2003. Administrative Law Judge Grant issued a Prehearing Conference Memorandum on December 15, 2003, that adopted a schedule for the proceeding.

Pursuant to this schedule, parties were required to file proposed issues lists by January 13, 2004. Public Utility Commission of Oregon (Commission) Staff (Staff), Beaver Creek and Clear Creek submitted proposed Issue Lists.

The schedule allowed parties to file comments and/or objections to proposed issue lists by February 13, 2004. Qwest Corporation (Qwest) filed comments that included a list of proposed issues and explained that the proposed issues lists filed by other parties did not address the issues raised by Qwest originally in comments filed on October 28, 2003. Staff filed comments on the proposed issue lists of Beaver Creek and Clear Creek. Beaver Creek filed comments on Staff's proposed issue lists and objections to the proposed issues list of Clear Creek.

The schedule also allowed parties to file responses to the comments and/or objections of other parties by February 24, 2004. Staff and Clear Creek filed responses

by this date. Beaver Creek responded in turn by February 24, 2004 to the response of Clear Creek.

**Discussion.** Parties proposed a total of eleven (11) separate issues with one issue having multiple sub-issues. Parties raised objections or issues with regard to all but three (3) of these proposed issues. As consensus was not reached regarding the list of issues to be addressed in this docket, each proposed issue is discussed below and seven (7) of the proposed issues are adopted at this time. For the convenience of the parties, a list of adopted issues to be addressed in this proceeding is set forth in Appendix A.

**Issue 1.** Beaver Creek proposed the following general issue:

Should Beaver Creek Cooperative receive a Certificate of Authority to expand its authority to provide telecommunications services throughout the State of Oregon?

Clear Creek indicated that it did not object to this proposed issue so long as it was not the only issue in the proceeding. As provided within this ruling, the issues list for this proceeding shall include several issues in addition to this proposed issue. No other party objected to or otherwise commented on this issue. Proposed Issue 1 is adopted.

**Issue 2.** Staff and Clear Creek proposed the following issue:

“Has Beaver Creek complied with the conditions of its certificate of authority (issued in PUC Docket No. CP 131)? See Order No. 96-248, docket CP 131.”

Staff did not limit the scope of proposed inquiry to particular conditions, but indicated that it expects to focus inquiry on Condition 12 set forth in Order No. 96-248, issued in Docket CP 131:

Condition 12: “Applicant agrees to limit each of its NXX codes to a given exchange and establish rate centers in those exchanges that are proximate to the existing LEC rate centers.”<sup>1</sup>

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<sup>1</sup> Staff noted the following: “The Commission later determined that assignment of NXX codes for carriers would be constrained by: When Applicant is assigned one or more NXX codes, Applicant shall limit each of its NXX codes to a single local exchange or rate center, whichever is larger, and shall establish a toll rate center in each exchange or rate center proximate to that established by the telecommunications utility or cooperative corporation serving the exchange or rate center.”

Staff also indicated particular interest in reviewing compliance with Conditions 6, 10, 11, and 13 set forth in Order No. 96-248, issued in Docket CP 131:

Condition 6: "Applicant, USWC [US WEST Communications, Inc. now Qwest], and GTE [GTE Northwest, Inc. now Verizon, Inc.] agree to terminate all intrastate traffic originating on one another's network. Applicant agrees to contribute to the Oregon Customer Access Fund and to comply with the provisions of the Oregon Customer Access Plan to the extent described in Staff/1, Turner 4 of "Attachment D" to the Partial Stipulation incorporated in Order No. 96-021 as Appendix D. A copy of Attachment D is attached hereto with its original exhibit marking as Staff/1, Turner/4. Applicant agrees to contribute to the OCAF using OCAF rates approved by the Commission on intrastate terminating carrier common line access minutes or their equivalent."

Condition 10: "Applicant, GTE, and USWC agree that existing local exchange boundaries and EAS routes apply to Applicant as well as USWC and GTE for the purpose of distinguishing between local and toll calling and for intercompany compensation in accordance with the Commission's Findings and Decision at pages 64 through 65 of Order No. 96-021."

Condition 11: "Applicant agrees to comply with universal service requirements in accordance with the Commission's Findings and Decision at page 58 of Order No. 96-021."

Condition 13: "Unless otherwise provided pursuant to an interconnection agreement adopted by the Commission pursuant to Section 252 of the Telecommunications Act of 1996, Applicant, USWC, and GTE agree to interconnect on the same terms and conditions that LECs have used to interconnect their telecommunications networks in accordance with the Commission's Findings and Decisions at pages 68 and 69 of Order No. 96-021."

Beaver Creek commented that it does not object to this issue to the extent that investigation of the issue is consistent with Commission's jurisdiction. Proposed Issue 2 is adopted with investigation to be conducted consistent with the jurisdiction of the Commission.

**Issue 3.** Staff and Clear Creek propose the following issue:

“If the evidence shows BCT has violated one or more conditions of its certificate of authority, would it be in the public interest for the Commission to grant the additional authority BCT seeks in this case?”

Again, Beaver Creek states that it does not object to this issue to the extent that investigation of the issue is consistent with Commission’s jurisdiction. Proposed Issue 3 is adopted with investigation to be conducted consistent with the jurisdiction of the Commission.

**Issue 4.** Clear Creek proposes the following issue:

“In the alternative, is it in the public interest for the Commission to impose additional conditions if it grants further authority to BCT?”

No party objected to, or otherwise commented on, this issue. Proposed Issue 4 is adopted.

**Issue 5.** Qwest proposes the following issue:

“Should Qwest not be required to be the Primary Toll Carrier or Designated Carrier of intraLATA, intrastate calls originated from the Applicant’s CLEC customers, for Beaver Creek’s customers throughout the state of Oregon, consistent with the Commission’s Order No. 96-248 (CP 131), as well as Order Nos. 99-782 (CP 692) and 00-051 (CP 731)?”

No party objected to, or otherwise commented on, this issue. Proposed Issue 5 is adopted.

**Issue 6.** Qwest also proposed the following issue:

“Should the Commission expressly state in its order that Beaver Creek must operate under the rules applicable to all competitive providers when it operates as a competitive provider, and that it cannot operate under the rules applicable to cooperative telephone companies when it operates as a competitive provider?”

No party objected to, or otherwise commented on, this issue. Proposed Issue 6 is adopted.



**Issue 7.** Qwest proposed the following multi-part issue:

“Should the Commission apply its standard conditions for the granting of an application to provide telecommunications services as a competitive provider, and as set forth in its recently issued certificates of authority to similarly-situated applicants? Specifically, Beaver Creek’s Certificate of Authority in docket CP 131, Order No. 96-248, includes only three of the now standard 14 conditions. In other words, should the Commission’s order include the following standard conditions:

- (a) the termination of all intrastate traffic originating on the networks of other telecommunications utilities, competitive providers and cooperative corporations (Condition 1);
- (b) contribution to the Oregon Customer Access Fund (OCAF) (Condition 2) (Qwest recognizes that OCAF became moot in August 2003);
- (c) compliance with the Oregon Exchange Carrier Association’s (OECA) needs (Condition 3);
- (d) offering of E-911 service (Condition 4);
- (e) submission to the Commission of traffic studies regarding traffic exchanged with telecommunications service providers (Condition 6);
- (f) adherence to local exchange boundaries and to Extended Area Service (EAS) routes (condition 7);
- (g) limits of NXX codes (Condition 8);
- (h) compliance with universal service requirements (Condition 9);
- (i) compliance with interconnection obligations between parties and interconnection agreements (Condition 10);
- (j) payment of the annual fee to the Commission based on gross retail intrastate revenues for the following calendar year (Condition 12); and
- (k) ensuring that the Residential Service Protection Fund surcharge is remitted to the Commission (Condition 13).”

Staff proposed a slight modification of Issue 7(j) to read as follows:

- (j) “payment of the annual fee to the Commission based on gross retail intrastate revenue for Beaver Creek Cooperative Telephone Company’s operations as a

competitive provider for the preceding calendar year (Condition 12).”

Staff represents that the modified language is consistent with applicable law and clarifies that the Commission’s annual fee is not derived from Beaver Creek’s cooperative operations when it operates as an incumbent local exchange carrier. Staff’s proposed changes were not objected to by any other parties. Issue 7 and all of its subparts, including 7(j) with the modifications proposed by Staff, are adopted.

**Issues 8, 9, 10 and 11:** Clear Creek proposed the following issues:

Issue 8: “Has BCT violated the numbering guidelines assignment guidelines developed by the Industry Numbering Committee (INC)?”

Issue 9: “Has BCT violated Order No. 97-481 by treating its competitive operation which provides service outside its study area as an eligible telecommunications carrier [ETC]?”

Issue 10: “Has BCT violated federal cost allocation laws applicable to telecommunications cooperatives that provide both regulated and nonregulated services? *See* Section 254(k) of the Telecommunications Act of 1996.”

Issue 11: “Has BCT violated state cost allocation laws applicable to cooperatives that provide both regulated and nonregulated services? *See* OAR 860-034-0740?”

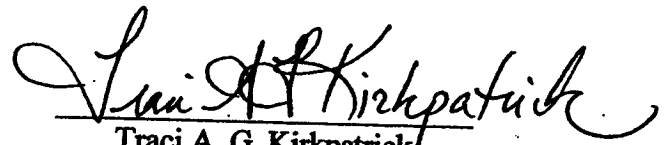
Beaver Creek objected to all four proposed issues on the grounds that investigation of these issues would expand the docket beyond its appropriate scope to duplicate the purposes of other proceedings before the Commission in the recent past or the near future. Staff did not oppose any of the issues, but indicated that it may not investigate Issues 8, 9 and 10 to the extent federal law was primarily involved. Staff indicated that it intended to investigate Issue 11 as it clearly involved state law.

Clear Creek discussed the nature of its concerns underlying the four proposed issues in its protest to Beaver Creek’s application. Clear Creek indicated that its concerns with regard to numbering issues, the underlying subject matter of Issue 8, are whether Beaver Creek is complying with the current conditions to its certificates of authority relating to NXX codes or whether additional conditional language is needed. With regard to Issue 9, Clear Creek specified that its concerns relate to Beaver Creek’s future compliance with universal service law applicable to its designation as an ETC. Clear Creek further explained that concerns regarding cost allocation raised in Issues 10 and 11 related also to compliance with applicable universal service law.

The concerns underlying Issues 8, 9, 10 and 11 appear to be able to be addressed within the parameters of Commission jurisdiction in context of a general investigation of Beaver Creek's past and future compliance with certificate of authority conditions pursuant to adopted Issues 2 and 7. Therefore, I decline to make proposed Issues 8, 9, 10 and 11 separate issues, but put the parties on notice of the nature of Clear Creek's interests.

**Ruling.** The Issues List in this proceeding shall be composed of Issues 1 through 7 as set forth in Appendix A.

Dated this 22nd day of March, 2004, at Salem, Oregon.



Traci A. G. Kirkpatrick  
Administrative Law Judge

## APPENDIX A:

### ADOPTED ISSUES LIST

1. Should Beaver Creek Cooperative receive a Certificate of Authority to expand its authority to provide telecommunications services throughout the State of Oregon?
2. Has Beaver Creek complied with the conditions of its certificate of authority (issued in PUC Docket No. CP 131)? *See* Order No. 96-248, docket CP 131.
3. If the evidence shows BCT has violated one or more conditions of its certificate of authority, would it be in the public interest for the Commission to grant the additional authority BCT seeks in this case?
4. In the alternative, is it in the public interest for the Commission to impose additional conditions if it grants further authority to BCT?
5. Should Qwest not be required to be the Primary Toll Carrier or Designated Carrier of intraLATA, intrastate calls originated from the Applicant's CLEC customers, for Beaver Creek's customers throughout the state of Oregon, consistent with the Commission's Order No. 96-248 (CP 131), as well as Order Nos. 99-782 (CP 692) and 00-051 (CP 731)?
6. Should the Commission expressly state in its order that Beaver Creek must operate under the rules applicable to all competitive providers when it operates as a competitive provider, and that it cannot operate under the rules applicable to cooperative telephone companies when it operates as a competitive provider?
7. Should the Commission apply its standard conditions for the granting of an application to provide telecommunications services as a competitive provider, and as set forth in its recently issued certificates of authority to similarly-situated applicants? Specifically, Beaver Creek's Certificate of Authority in docket CP 131, Order No. 96-248, includes only three of the now standard 14 conditions. In other words, should the Commission's order include the following standard conditions:
  - (a) the termination of all intrastate traffic originating on the networks of other telecommunications utilities, competitive providers and cooperative corporations (Condition 1);



- (b) contribution to the Oregon Customer Access Fund (OCAF) (Condition 2) (Qwest recognizes that OCAF became moot in August 2003);
- (c) compliance with the Oregon Exchange Carrier Association's (OECA) needs (Condition 3);
- (d) offering of E-911 service (Condition 4);
- (e) submission to the Commission of traffic studies regarding traffic exchanged with telecommunications service providers (Condition 6);
- (f) adherence to local exchange boundaries and to Extended Area Service (EAS) routes (condition 7);
- (g) limits of NXX codes (Condition 8);
- (h) compliance with universal service requirements (Condition 9);
- (i) compliance with interconnection obligations between parties and interconnection agreements (Condition 10);
- (j) payment of the annual fee to the Commission based on gross retail intrastate revenue for Beaver Creek Cooperative Telephone Company's operations as a competitive provider for the preceding calendar year (Condition 12); and
- (k) ensuring that the Residential Service Protection Fund surcharge is remitted to the Commission (Condition 13).

**CERTIFICATE OF SERVICE**

I hereby certify that on May 7, 2004, I served the foregoing Protest of Clear Creek Mutual Telephone Company by causing a full, true and correct copy thereof to be sent by mail in a sealed, first-class postage-prepaid envelope deposited with the United States Postal Service at Stayton, Oregon to the CP 1223 Service List as well as to the persons who were listed on the CP 1181 Service List:

JIM DEASON  
CABLE HUSTON BENEDICT  
HAAGENSEN & LLOYD LLP  
1001 SW FIFTH AVE STE 2000  
PORTLAND OR 97204-1136  
[jdeason@chbh.com](mailto:jdeason@chbh.com)

ALEX M DUARTE  
QWEST CORPORATION  
421 SW OAK ST STE 810  
PORTLAND OR 97204  
[alex.duarte@qwest.com](mailto:alex.duarte@qwest.com)

DON LAWRENCE  
STAYTON COOPERATIVE  
TELEPHONE COMPANY  
PO BOX 477  
STAYTON, OR 97383  
[donl@wvi.com](mailto:donl@wvi.com)

TOM A. LINSTROM  
BEAVER CREEK COOPERATIVE  
TELEPHONE CO  
15223 S HENRICI RD  
OREGON CITY OR 97045  
[tlinstrom@bctelco.com](mailto:tlinstrom@bctelco.com)

MITCHELL MOORE  
CLEAR CREEK MUTUAL  
TELEPHONE CO  
18238 S FISCHERS MILL RD  
OREGON CITY OR 97045-9696  
[mmoore@clearcreek.coop](mailto:mmoore@clearcreek.coop)

LAWRENCE REICHMAN  
PERKINS COIE LLP  
1120 NW COUCH ST - 10 FL  
PORTLAND OR 97209-4128  
[lreichman@perkinscoie.com](mailto:lreichman@perkinscoie.com)

MARK P. TRINCHERO  
DAVIS WRIGHT TREMAINE LLP  
1300 SW FIFTH AVE STE 2300  
PORTLAND, OR 97201-5682  
[marktrincherodwt.com](mailto:marktrincherodwt.com)

MICHAEL WEIRICH  
DEPARTMENT OF JUSTICE  
1162 COURT ST NE  
SALEM OR 97301-4096  
[michael.weirich@state.or.us](mailto:michael.weirich@state.or.us)


BRANT WOLF  
OREGON TELECOMMUNICATIONS  
ASSN  
707 13TH ST SE STE 280  
SALEM OR 97301-4036  
[bwolf@ota-telecom.org](mailto:bwolf@ota-telecom.org)

TOM HARRIS  
PUBLIC UTILITY COMMISSION  
PO BOX 2148  
SALEM OR 97308-2148  
[tom.harris@state.or.us](mailto:tom.harris@state.or.us)

1 BROADBAND CABLE  
2 TELECOMMUNICATIONS, LLC  
3 15651 NE BROWDALE FARM  
4 ROAD  
5 AURORA OR 97002

PAUL SAFRONCHIK  
BROADBAND CABLE  
TELECOMMUNICATIONS, LLC  
PO BOX 427  
CANBY OR 97013  
sprtiman@aol.com

6 DATED: May 7, 2004.

7   
8 James D. Tiger, OSB#71172  
9 Of Attorneys for Clear Creek Mutual  
10 Telephone Company

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12  
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14  
15  
16  
17  
18  
19  
20  
21  
22  
Duncan, Tiger & Niegel, P.C.  
582 E. Washington St.  
PO Box 248  
Stayton, OR 97383-0248  
Telephone: (503) 769-7741  
Facsimile: (503) 769-2461