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July 26, 2004

**VIA FIRST CLASS MAIL**

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

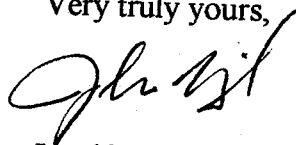
RE: *In the Matter of the Application of Beaver Creek Cooperative Telephone Company for a Certificate of Authority to Provide Telecommunications Service in Oregon and Classification as a Competitive Telecommunications Provider – CP 1242*

Dear Ms. Barnes:

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

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,



Jennifer L. Niegel

Enclosures

cc: CP 1242 Service List

1  
2  
3  
4 **BEFORE THE PUBLIC UTILITY COMMISSION**

5 **OF OREGON**

6 CP 1242

7  
8 In the Matter of the Application of BEAVER ) PROTEST OF CLEAR CREEK MUTUAL  
9 CREEK COOPERATIVE TELEPHONE ) TELEPHONE COMPANY  
10 COMPANY for Certificate of Authority to )  
Provide Telecommunications Service in )  
Oregon and Classification as a Competitive )  
Telecommunications Provider )

11  
12 Clear Creek Mutual Telephone Company ("Clear Creek") submits this Protest to the  
13 application of Beaver Creek Cooperative Telephone Company ("BCT").

14 For the reasons set forth below, pursuant to ORS 759.020(5) and ORS 759.050(2)(c),  
15 Clear Creek requests that the Oregon Public Utility Commission (the "Commission"): (1)  
16 investigate the provision of telecommunications service by BCT without a certificate of  
17 authority, the illegal use by BCT of Clear Creek's network interface devices and the improper  
18 use by BCT of numbering resources in the Redland and Oregon City exchanges; (2) consider  
19 whether it is in the public interest for the Commission to grant to BCT the additional authority it  
20 seeks in this docket if the evidence shows that BCT is violating one or more conditions of its  
21 current certificates of authority or applicable law; (3) apply the standard 14 conditions for the  
22 granting of an application to provide telecommunications services as a competitive local  
exchange carrier ("CLEC") as set forth in recently issued certificates of authority for similarly

1 situated applicants to clarify the requirements to which BCT is subject; (4) impose additional  
2 reasonable conditions specifically upon the authority of BCT to provide competitive  
3 telecommunications service; and (5) take such other action or investigation as the Commission  
4 deems necessary to ensure BCT's compliance with applicable law.

5 **I.**  
6 **PARTIES**

7 BCT is a cooperative corporation and the incumbent local exchange carrier ("ILEC") for  
8 the Beaver creek exchange. BCT's business address is 15223 S. Henrici Rd., Oregon City, OR  
9 97045.

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

13 **II.**  
14 **BACKGROUND**

15 On July 8, 2004, BCT filed with the Commission an application for a certificate of  
16 authority to provide telecommunications service in Oregon. BCT seeks authority to provide  
17 intraexchange (local exchange) services and interexchange carrier access service statewide in  
18 Oregon. The Commission served notice of the application on July 14, 2004.

19 Pursuant to ORS 759.025(2), BCT currently has authority to provide local exchange  
20 service, interexchange carrier access and extended area service in the Beaver creek exchange.  
21 See Order No. 88-261. Pursuant to ORS 759.020 and ORS 759.050, BCT also has authority to  
22 provide local exchange service as a CLEC in the Oregon City exchange. See Order No. 96-248.

1 BCT also has authority to provide interexchange toll service as a competitive provider in both  
2 the Beavercreek and Oregon City exchanges, with conditions. See Order No. 99-763. BCT has  
3 been designated by the Commission as a rural Eligible Telecommunications Carrier ("ETC")  
4 qualified to receive federal Universal Service Fund ("USF") support. See Order No. 03-551.

5 BCT previously filed an application for authority to provide telecommunications service  
6 statewide in Oregon. See docket CP 1181. In that docket, Clear Creek filed a protest alleging,  
7 among other things, that BCT was not complying with the numbering guidelines and was  
8 possibly providing telecommunications service in the Redland exchange without a certificate of  
9 authority. When it appeared that a staff audit was imminent, BCT voluntarily withdrew its  
10 application. Subsequently, Clear Creek filed a complaint alleging that BCT was indeed  
11 providing telecommunications service in the Redland exchange without a certificate of authority.  
12 See docket UM 1142. In that docket, the parties agreed that BCT could continue providing  
13 service to certain customers within the Redland exchange until the application is resolved,  
14 withdrawn by BCT or otherwise terminated.

15 **III.**

16 **BCT IS PROVIDING SERVICE IN CLEAR CREEK'S TERRITORY**

17 **WITHOUT A CERTIFICATE OF AUTHORITY**

18 **IN VIOLATION OF ORS 759.020(1)**

19 On March 24, 2004, one of Clear Creek's customers, Charles Sliger called and asked to  
20 disconnect all three of his telephone lines: (503) 631-4181, (503) 631-4182 and a non-published  
21 number. Mr. Sliger resides at 23630 S Leisure Lane, Beavercreek, OR 97004, in the Leisure  
22

1 Woods subdivision, which is within Clear Creek's allocated territory as designated in docket UM  
2 196, Order No. 88-625.

3 Clear Creek's customer service representative asked Mr. Sliger if he would like to take  
4 advantage of Clear Creek's free referral service, whereby calls to the disconnected numbers are  
5 directed to a recorded message that provides the customer's new telephone number. Mr. Sliger  
6 told the customer service representative that his new telephone number was (503) 632-4181.  
7 BCT is the only provider authorized to use the 632 prefix, which has been assigned to its  
8 incumbent local exchange, Beavercreek. When the customer service representative asked Mr.  
9 Sliger for his forwarding address for the purpose of distributing patronage in the future, he  
10 indicated that he was not moving.

11 Later that day, the customer service representative called Mr. Sliger at (503) 632-4181 to  
12 confirm why he was disconnecting service. Mr. Sliger answered the call to (503) 632-4181 and  
13 said he was disconnecting because Clear Creek did not provide cable modem service to his  
14 residence. The customer service representative explained that Clear Creek offered digital  
15 subscriber line service in that area instead and asked whether Clear Creek could provide this or  
16 any other service to Mr. Sliger, however, Mr. Sliger declined such offers. For the above reasons,  
17 it is clear that Mr. Sliger is receiving local exchange service from BCT at his residence, which is  
18 within Clear Creek's allocated territory, and that BCT is without authority to do so.

19 Clear Creek's technician has inspected Clear Creek's network interface device at Mr.  
20 Sliger's residence, which is within Clear Creek's allocated territory, and has confirmed that  
21 Clear Creek's drop has been cut at Clear Creek's network interface device and that BCT's drop  
22 has been unlawfully connected to Clear Creek's network interface device.

1 BCT is providing local exchange service to one other former Clear Creek customer and  
2 resident of the Leisure Woods subdivision in the Redland exchange: Michelle Lipka, 23732  
3 Leisure Lane, Beavercreek, OR 97004. According to directory assistance, she is using (503)  
4 632-1973 for her residential telephone service. According to the voice mail message on (503)  
5 631-2974, the last of five lines still being provided by Clear Creek, her primary incoming  
6 telephone line for her business located at the same address is (503) 632-8606.

7 ORS 759.020(1) provides that “[n]o person, corporation, company, association of  
8 individuals or their lessees, trustees, or receivers shall provide intrastate telecommunications  
9 service on a for-hire basis without a certificate of authority issued by the Public Utility  
10 Commission under this section.” Since BCT does not have a certificate of authority to serve as a  
11 competitive telecommunications service provider within Clear Creek’s territory, it is without  
12 authority to provide such local exchange service.

13 Clear Creek filed a complaint regarding BCT’s provision of service in the Redland  
14 exchange without a certificate of authority to do so. See docket UM 1142. In that docket, the  
15 parties stipulated and agreed that BCT could continue to provide service to Michele Lipka,  
16 lipka.com, inc. and Charles L. Sliger until the Commission issues an order resolving BCT’s  
17 application to be a CLEC on statewide basis in this docket or until this docket is otherwise  
18 terminated. If BCT does not obtain authority to provide service in the Redland Exchange upon  
19 resolution or termination of this docket, BCT must cease and desist providing intraexchange  
20 switched telecommunications service to Michele Lipka, lipka.com, inc. and Charles L. Sliger  
21 within 30 days of the resolution or termination of this docket.

1 Clear Creek requests that the Commission consider whether it is appropriate to grant  
2 further authority to BCT when it is failing to abide by the terms of its current certificates of  
3 authority and applicable law.

4 **IV.**

5 **BCT IS ILLEGALLY USING CLEAR CREEK'S NETWORK INTERFACE DEVICES**  
6 **WITHOUT PERMISSION AND WITHOUT COMPENSATION**

7 As mentioned above, when Clear Creek's technician inspected Clear Creek's network  
8 interface device at Mr. Sliger's residence, which is within Clear Creek's allocated territory, the  
9 technician discovered that BCT's drop had been unlawfully connected to Clear Creek's network  
10 interface device. Clear Creek's network interface devices are installed on Clear Creek's side of  
11 the demarcation point and are, therefore, subject to the control of Clear Creek under 47 CFR §  
12 68.3. BCT does not have a certificate of authority to serve Clear Creek's territory as a CLEC  
13 and therefore does not have the right to make a bona fide request for interconnection or access to  
14 network elements on an unbundled basis. In point of fact, BCT neither made any bona fide  
15 request nor is BCT compensating Clear Creek for use of Clear Creek's network interface  
16 devices. Even if BCT were authorized as a CLEC in the Redland exchange and even if BCT had  
17 made a bona fide request, Clear Creek could have refused to provide interconnection or access to  
18 network elements on an unbundled basis because Clear Creek is a "rural telephone company"  
19 under 47 USC §§ 251(f).

20 Accordingly, Clear Creek requests that the Commission order BCT to cease and desist  
21 illegally using Clear Creek's network interface devices without Clear Creek's permission or  
22 compensation, investigate BCT's use of Clear Creek's network interface devices and impose

1 sanctions as appropriate. Further, Clear Creek asks that the Commission order BCT to  
2 compensate Clear Creek for the costs Clear Creek will incur to reconnect its network interface  
3 devices.

4 **V.**

5 **BCT IS NOT COMPLYING WITH THE NORTH AMERICAN NUMBERING PLAN**  
6 **ADMINISTRATION RULES AND RELATED STATE LAW**

7 BCT is using 632 numbers in the Redland and Oregon City exchanges in violation of the  
8 numbering guidelines and its current certificates of authority.

9 The North American Numbering Plan Administration ("NANPA") is responsible for  
10 assigning NXX or central office ("CO") codes. NANPA follows assignment guidelines  
11 developed by the Industry Numbering Committee ("INC"). These guidelines specify who is  
12 entitled to an assignment, how to apply, and what obligations the assignee must meet to retain  
13 the assignment. The guidelines were developed at the direction of the Federal Communications  
14 Commission ("FCC") pursuant to 47 C.F.R. § 52.15(d) to define the responsibilities of CO code  
15 holders. According to the Guidelines, "[i]t is assumed from a wireline perspective that CO  
16 codes/blocks allocated to a wireline service provider are to be utilized to provide service to a  
17 customer's premise physically located in the same rate center that the CO codes/blocks are  
18 assigned." INC 95-0407-008, Section 2.14.

19 An applicant must apply to NANPA and obtain numbering resources for the exchanges in  
20 which it intends to offer competitive voice service prior to offering such service. All "Part 1"  
21 applications submitted to NANPA for numbering resources must include among other items, the  
22 name of the rate center that will be served by the NXX and evidence that the "applicant is



1 authorized to provide service in the area for which numbering resources are being requested.” 47  
2 C.F.R. § 52.15(g)(2). “Specifically, carriers must provide, as part of their applications for initial  
3 numbering resources, evidence (e.g., state commission order or state certificate to operate as a  
4 carrier) demonstrating that they are licensed and/or certified to provide service in the area in  
5 which they seek numbering resource.” FCC 00-104 ¶97.

6 BCT is presently authorized by the Commission to provide telecommunications service  
7 only in the Beavercreek and Oregon City exchanges. In Order No. 96-248, BCT specifically  
8 agreed to “limit each of its NXX codes to a given exchange and establish rate centers in those  
9 exchanges that are proximate to the existing LEC rate centers.” In Order No. 99-763, the  
10 Commission made clear that “[t]he prefix for BCT customers in the Beavercreek exchange is  
11 632, while 518 is the prefix for BCT customers geographically located in the Oregon City  
12 exchange, where BCT operates as a CLEC.” However, the Beavercreek/Oregon City 2003  
13 Telephone Directory published by BCT includes listings which indicate BCT may be dispensing  
14 telephone numbers to addresses outside the exchange boundary to which the prefix was assigned,  
15 possibly in violation of the INC guidelines and Order No. 96-248. Further, as described above,  
16 BCT has assigned 632 numbers to the customers to whom it is providing telecommunications in  
17 the Redland exchange.

18 Under Federal law, the Commission has the authority to access a service provider’s  
19 applications for numbering resources. See 47 C.F.R. § 52.15(g)(5). Therefore, the Commission  
20 may request copies of all “Part 1” applications from the BCT to determine if BCT has complied  
21 with the assignment, reporting and numbering resource application requirements of NANPA. If  
22 BCT fails to comply with the Commission’s request for numbering resource application

1 materials, the Commission has the authority to deny further numbering resources to BCT.  
2 Alternatively, the Commission has the authority to perform a "for cause" audit to verify that BCT  
3 has complied with Commission regulations and the numbering guidelines. See 47 CFR §  
4 52.15(k).

5 Clear Creek urges the Commission to investigate BCT's misuse of numbering resources  
6 and, if appropriate, impose additional conditions to the standard form of order to clarify that  
7 BCT: (1) is prohibited from using a prefix in any rate center other than the rate center to which  
8 the prefix is assigned and reassign any telephone numbers which have been assigned in violation  
9 of this condition unless supported by a valid interexchange service listed in the BCT tariff; and  
10 (2) is required to obtain a new prefix for each rate center in which it operates as a CLEC  
11 pursuant to the numbering guidelines.

12 While Clear Creek realizes that BCT has filed a request to consolidate the Beaver Creek  
13 rate center with the Clackamas rate center in docket UM 1140, Clear Creek understands that  
14 Qwest Corporation, Inc. is not amenable to this consolidation and, therefore, that consolidation is  
15 not likely to occur. Accordingly, BCT's misuse of numbering resources will not be resolved in  
16 docket UM 1140 and should be addressed in this docket.

17 **VI.**

18 **BCT SHOULD BE REQUIRED TO COMPLY WITH APPLICABLE LAW**  
19 **REGARDING DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS**  
20 **CARRIER**

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

4 In areas served by rural ILECs, the Commission may designate more than one common  
5 carrier as an ETC in a specific service area only if the carrier offers and advertises services  
6 supported by the federal USF support mechanism throughout the service area and the  
7 Commission finds that the designation is in the public interest. 47 U.S.C. § 214(e)(2). A  
8 common carrier that has been designated by the Commission as an ETC for a service area is  
9 eligible to receive federal USF support. 47 U.S.C. § 214(e)(1). In the case of an area served by  
10 a rural telephone company, "service area" means the company's "study area" unless and until a  
11 different definition is established by the Federal Communications Commission and the States.  
12 47 U.S.C. § 214(e)(5).

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

1 Clear Creek requests that a condition be added to the standard form of order to  
2 specifically state that BCT's ETC designation applies only to its study area (i.e., the Beaver creek  
3 exchange area) unless and until the Commission conducts a hearing, investigates the public  
4 policy issues and finds that the designation of BCT as an ETC in other exchanges is in the public  
5 interest. Clear Creek further requests that the Commission specify that nothing in BCT's  
6 cooperative form of corporate structure or BCT's offering of CLEC services within the  
7 cooperative corporation in and of itself shall change the ETC designation made in Order 97-481.

8 **VII.**

9 **BCT SHOULD BE REQUIRED TO COMPLY WITH APPLICABLE LAW**

10 **REGARDING COST ALLOCATION**

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

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

15 "A telecommunications carrier may not use services that are not  
16 competitive to subsidize services that are subject to competition.  
17 The Commission, with respect to interstate services, and the States,  
18 with respect to intrastate services, shall establish any necessary cost  
19 allocation rules, accounting safeguards, and guidelines to ensure  
20 that services included in the definition of universal service bear no  
21 more than a reasonable share of the joint and common costs of  
22 facilities used to provide those services.

23 Clear Creek wants to ensure that BCT does not include its CLEC loops or CLEC costs in  
24 the information that it provides to the Universal Service Administrative Company ("USAC") or  
25 receive USF support for its CLEC loops. The Commission, therefore, should add a condition to

1 the standard form of order to required BCT to comply with applicable law regarding cost  
2 allocation.

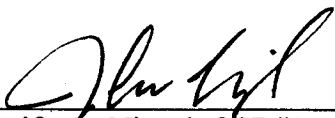
3 Clear Creek understands that the Commission did not address this issue in docket UM  
4 1112 because BCT decided to file revised tariff sheets. Therefore, it is appropriate for the  
5 Commission to address this matter in this docket.

### 6 VIII.

### 7 CONCLUSION

8 For the reasons set forth above, Clear Creek requests that the Commission: (1) investigate the  
9 provision of telecommunications service by BCT without a certificate of authority, the illegal use  
10 by BCT of Clear Creek's network interface devices and the improper use by BCT of numbering  
11 resources in the Redland and Oregon City exchanges; (2) consider whether it is in the public  
12 interest for the Commission to grant to BCT the additional authority it seeks in this docket if the  
13 evidence shows that BCT is violating one or more conditions of its certificate of authority or  
14 applicable law; (3) apply the standard 14 conditions for the granting of an application to provide  
15 telecommunications services as a competitive local exchange carrier ("CLEC") as set forth in  
16 recently issued certificates of authority for similarly situated applicants to clarify the  
17 requirements to which BCT is subject; (4) impose additional reasonable conditions specifically  
18 upon the authority of BCT to provide competitive telecommunications service; and (5) take such  
19 other action as the Commission deems necessary to ensure BCT's compliance with applicable  
20 law.

21 DATED: July 26, 2004.  
22

  
Jennifer L. Niegel, OSB#99089  
Of Attorneys for Clear Creek

1  
2  
3 **Clear Creek**

Clear Creek Mutual Telephone Company  
4 Attn: Mitchell A. Moore  
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1 **CERTIFICATE OF SERVICE**


2 I hereby certify that on July 26, 2004, I served the foregoing Protest of Clear Creek  
3 Mutual Telephone Company upon all parties of record in this docket CP 1242 by causing a full,  
4 true 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.  
7 15223 S. Henrici Rd.  
8 Oregon City, OR 97045

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

13 Michael T. Weirich  
14 Department of Justice  
15 1162 Court Street NE  
16 Salem, OR 97301-4096

17 DATED: July 26, 2004.

18   
19 \_\_\_\_\_  
20 Jennifer L. Niegel, OSB#99089  
21 Of Attorneys for Clear Creek  
22