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4 **BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

5 **ARB 747**

6
7 In the Matter of BEAVER CREEK
8 COOPERATIVE TELEPHONE COMPANY'S
9 Petition for Arbitration of the Terms, Conditions
10 and Prices for Interconnection and Related
11 Arrangements with QWEST CORPORATION

12 QWEST'S REPLY BRIEF

13 Qwest Corporation ("Qwest") respectfully submits this reply brief, responding to Beaver
14 Creek's opening brief filed September 8, 2006. For the Arbitrator's convenience, Qwest responds
15 to the issues in the order in which Beaver Creek raised them in its opening brief.

16 **I. INTRODUCTION AND SUMMARY**

17 In its opening brief, Beaver Creek has again changed the order and priority of the issues it
18 has raised in this arbitration, now arguing that the form of compensation for transporting and
19 terminating traffic is the primary issue *and* has a bearing on the resolution of other issues.
20 Beaver Creek advocates for bill-and-keep, yet it makes no showing that the traffic exchanged
21 between the parties to the ICA is in rough balance and is expected to remain so. Beaver Creek
22 goes so far as to argue that the question of the balance of traffic is not relevant, which is
23 consistent with Beaver Creek's advocacy in the case to date, in which it did not address the
24 balance of traffic in its petition or testimony.

25 Balance of traffic, however, is required under the FCC's rules for the Commission to
26 order bill-and-keep. When Beaver Creek finally acknowledges this, it asserts that it is Qwest's
burden to show that traffic is not in balance, which stands the law and common procedural rules
on their head. Further, without producing any evidence, Beaver Creek asks the Commission

1 simply to presume that traffic is in balance. The Commission should not make any such
2 presumption. If the Commission were to make such a presumption, Qwest would have the right
3 to rebut it. Beaver Creek, however, has made it impossible for Qwest to rebut such a
4 presumption because Beaver Creek routes its traffic in a manner that prevents Qwest from
5 measuring Beaver Creek's CLEC traffic separately from its ILEC traffic. Beaver Creek also has
6 failed to produce any information in discovery that would enable Qwest to rebut such a
7 presumption. For all of these reasons, the Arbitrator should order that transport and termination
8 of traffic be subject to reciprocal compensation.

9 Beaver Creek's positions on the remaining issues are similarly unsupported. Beaver
10 Creek's primary proposal for routing traffic – in which it would be allowed to maintain its
11 current practice of combining its ILEC and CLEC traffic for delivery to Qwest over Beaver
12 Creek's ILEC trunks (which is contrary to its current ICA) – is inconsistent with a reciprocal
13 compensation regime because it would not permit Qwest to measure and bill for transporting and
14 terminating traffic. Beaver Creek's alternative proposal – that Qwest separate local traffic it
15 originates from traffic it transits – would be very expensive to implement, would do nothing to
16 enable Beaver Creek to bill other CLECs for terminating their traffic, and would promote an
17 inefficient use of Qwest's network. Beaver Creek's additional proposal that Qwest separate third
18 parties' local and toll traffic – which CLECs deliver to a single point of interconnection on
19 Qwest's network, consistent with their legal rights – is technically infeasible to accomplish and,
20 even if it could be accomplished, would not improve Beaver Creek's ability to bill access
21 charges.

22 Beaver Creek's arguments with respect to its ability to provide transit service and to
23 charge for tandem switching suffer from its ignoring the actual language that Qwest has
24 proposed for the ICA. A review of Qwest's proposed language indicates that the harms that
25 Beaver Creek rails against are simply not present. Contrary to Beaver Creek's protestations,
26 Qwest's proposed language would not require a separate agreement for Beaver Creek to provide

1 transit service. Beaver Creek's position on phantom traffic (*i.e.*, its desire for free call records) is
2 based on an erroneous allegation that Qwest improperly created the problem in the first place.
3 Finally, Beaver Creek's position on the change in law clause is weak and unpersuasive.

4 For all of these reasons, the Arbitrator and the Commission should order the parties to
5 execute the "final offer" ICA that Qwest submitted as Exhibit 1 to its opening brief.

6 **II. DISCUSSION**

7 **A. Beaver Creek Has Not Established the Basis for Bill-and-Keep**

8 Throughout this proceeding, Beaver Creek has taken the position that the balance of
9 traffic is not relevant to its request that the transportation and termination of traffic be on a bill-
10 and-keep basis. In its Petition, Beaver Creek stated only that its position is that "the costs and
11 expenses associated with establishing and tracking traffic for reciprocal compensation purposes
12 are not worth the revenues that might be produced." Petition at 4. In its testimony, Beaver
13 Creek provided two more reasons: that Qwest and Beaver Creek-ILEC have historically
14 exchanged non-competitive traffic on a bill-and-keep basis and that Qwest has offered bill-and-
15 keep to other CLECs. BCT/1, Linstrom/12.

16 Further, in its opening brief, Beaver Creek asserts that "traffic need not be 'in balance' for
17 bill and keep to apply." Beaver Creek's Opening Brief at 4. As support for this proposition,
18 Beaver Creek cites only to Qwest's advocacy before the FCC in its intercarrier compensation
19 proceeding. *Id.* at 4-5. Although Qwest wishes that its advocacy (of which Beaver Creek cites
20 only a portion) were the law, it is not.

21 47 C.F.R. § 51.713(b) permits the Commission to impose bill-and-keep arrangements if it
22 "determines that the amount of telecommunications traffic from one network to the other is
23 roughly balanced with the amount of telecommunications traffic flowing in the opposite
24 direction, and is expected to remain so" Thus, a finding that traffic is roughly balanced and
25 is expected to remain so *is* required for the Commission to order bill-and-keep.

1 As the petitioner in this proceeding, Beaver Creek has the burden to establish its claim.
2 Beaver Creek has it exactly backwards when it states that "Qwest needs to demonstrate that the
3 traffic is not in balance." Beaver Creek's Opening Brief at 3. As the petitioner and proponent of
4 bill-and-keep, Beaver Creek-CLEC has the burden to prove that the volume of local traffic from
5 its network (*i.e.*, from its competitive, Oregon City customers) to Qwest's customers is roughly
6 balanced with the traffic flowing in the opposite direction and is expected to remain so. *See Re*
7 *TCG Kansas City, Inc.*, 2000 WL 1725033, *9 (Kan. S.C.C.)("TCG as the proponent of bill and
8 keep has the burden of proof. TCG's opinion testimony does not provide sufficient evidence on
9 which to base a determination that the traffic originated using unbundled switching is in balance,
10 let alone that it is expected to remain so.")¹ Beaver Creek has not even attempted to make this
11 showing in this proceeding.

12 For the first time in its post-hearing brief, Beaver Creek urges the Commission to apply a
13 presumption under 47 C.F.R. § 51.713(c)² that traffic is roughly balanced. Even if Beaver Creek
14 were permitted to raise the issue of traffic balance at this stage of the proceeding, without
15 producing any evidence on the subject, 47 C.F.R. § 51.713(c) simply states that a state
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17 ¹ This Commission's decision in *Re Electric Lightwave, Inc.*, Order No. 99-218, Appendix A
18 (Arbitrator's Decision) is also instructive. There, the ILEC, GTE, requested that the Arbitrator order bill-
19 and-keep for ISP traffic. The Arbitrator rejected that request, noting "[s]ince [there] is no evidence in the
20 record concerning the traffic between ELI and GTE, there is no basis upon which to conclude that ISP
21 traffic between those carriers will be in [*sic*] roughly in balance. Nor is it appropriate in this case to
22 presume that traffic will be in balance." *Id.* at 12. The Arbitrator there also distinguished the decision in
23 Docket ARB 2, where the Commission ordered bill-and-keep, because in that case "the record was
24 sufficient to persuade the Commission that traffic was likely to be in balance." *Id.* The fact that the ELI
25 case involved ISP traffic is not significant, because the Arbitrator and the Commission had decided to
26 treat ISP traffic like local traffic. *Id.* at 2-3, 11. Thus, the Commission has required the proponent of bill-
and-keep to establish that traffic is roughly in balance, and should hold Beaver Creek to that burden in
this case.

24 ² 47 C.F.R. § 51.713(c) provides:

25 Nothing in this section precludes a state commission from presuming that the
26 amount of telecommunications traffic from one network to the other is roughly
balanced with the amount of telecommunications traffic flowing in the opposite
direction and is expected to remain so, unless a party rebuts such a presumption.

1 commission is not precluded from making such a presumption; it does not require a commission
2 to make such a presumption. Qwest is not aware of this Commission's applying such a
3 presumption over a party's objection. Indeed, the Commission has already ruled in an
4 arbitration between Beaver Creek and Qwest that "[b]ill and keep is an acceptable substitute for
5 reciprocal compensation *if both parties agree to it.*" Order No. 02-148, Appendix A (Arbitrator's
6 Decision) at 6 (emphasis added). The Commission should not make any presumption of traffic
7 balance in this case.

8 Even if the Commission were to consider making such a presumption,
9 47 C.F.R. § 51.713(c) expressly permits a party to rebut such a presumption. The Commission
10 should refuse to apply a presumption in this case because Beaver Creek has made it impossible
11 for Qwest to rebut any such presumption. Qwest can measure the volume of local traffic that its
12 customers originate to Beaver Creek's Oregon City customers. Beaver Creek, however, has
13 prevented Qwest from measuring the traffic that Beaver Creek-CLEC sends in the opposite
14 direction. By sending all of its CLEC traffic to Qwest over Beaver Creek's ILEC trunks, Beaver
15 Creek has made it impossible for Qwest to separately measure the traffic Beaver Creek's CLEC
16 customers originate. Qwest/5, Cederberg/10-11. Moreover, Qwest asked Beaver Creek in
17 discovery to identify separately the volume of local traffic originated by its CLEC and ILEC
18 customers and Beaver Creek responded that is "unable to respond to those requests." Qwest/4,
19 Freeberg/1 and 3.

20 Beaver Creek argues, without citation, "that the parties do not know whether [traffic] is in
21 balance or not because of porting and other measurement issues, such as Qwest commingling
22 CLEC traffic with its own traffic." Beaver Creek's Opening Brief at 3. In fact, the *only* reasons
23 that the record does not show whether traffic is in balance is that Beaver Creek has refused to
24 make such a measurement, and has prevented Qwest from making such a measurement by how
25 Beaver Creek has routed its traffic to Qwest: over its existing ILEC trunks, in violation of the
26 parties' existing ICA. The absence of evidence is not due to Qwest's commingling CLEC traffic

1 with its own traffic; Qwest is still able to measure the traffic its customers originate. Qwest/5,
2 Cederberg/10. Moreover, Qwest has reason to believe that the traffic exchanged is not in
3 balance, because the traffic that Qwest exchanges with both Beaver Creek's ILEC and CLEC
4 operations, measured together, is not in balance. Qwest/1, Freeberg/15. Under these
5 circumstances, the Commission should refuse to make a presumption that the traffic is in
6 balance, and should deny Beaver Creek's request for bill-and-keep.

7 Beaver Creek argues that it has the right under FCC rules "to opt into any of the existing
8 bill and keep arrangements." Beaver Creek's Opening Brief at 4. In fact, under current law,
9 Beaver Creek has the right only to adopt an entire approved agreement.³ In any event, Beaver
10 Creek has not requested to opt in to either an existing agreement or an individual arrangement
11 within an adopted agreement, even if it had the right to do that. The Commission's rules
12 recognize a CLEC's right to adopt an existing agreement, pursuant to 47 U.S.C. § 252(i) and 47
13 C.F.R. § 51.809. OAR 860-016-0025. The Commission's rules specify the procedures for
14 adopting an existing agreement, including the ability of a carrier to object. *Id.* Beaver Creek has
15 not pursued the established procedure to opt in to any existing agreement. Even at this stage,
16 Beaver Creek has not even identified what agreement it would opt in to. Rather, Beaver Creek
17 has chosen to arbitrate several terms of an ICA, in addition to bill-and-keep. Beaver Creek's
18 argument based on its claimed right to opt in to an existing agreement or arrangement should be
19 ignored because that is not what Beaver Creek has chosen to do and because Beaver Creek no
20 longer has the right to opt in to only an arrangement.

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24 ³ Beaver Creek apparently relies upon the previous version of 47 C.F.R. § 51.809, which allowed
25 CLECs to "pick-and-choose" individual arrangements from approved ICAs. The FCC revised that rule in
26 2004, and the current version of that rule permits a CLEC only to adopt an entire agreement, not to pick
and choose provisions from existing agreements. The Ninth Circuit recently upheld the revised rule in
New Edge Network, Inc. v. Federal Communications Commission, __ F.3d __, 2006 WL 2473472 (9th
Cir. 2006).

1 Citing two other Qwest ICAs, Beaver Creek argues that if bill-and-keep is available to
2 those other carriers, it should be available to Beaver Creek as well. Beaver Creek's Opening
3 Brief at 4. Because Beaver Creek is not exercising its right to opt in to either of those
4 agreements, they are of no probative value in this case. Moreover, neither Beaver Creek's brief
5 nor the orders in those cases reveal whether the traffic between those parties was in rough
6 balance and expected to remain so. Beaver Creek argues that ARB 351, involving Gervais
7 Telephone Company, is relevant because Gervais's CLEC operation is similar to Beaver Creek's.
8 *Id.* There is no evidence in this record, nor anything in the ARB 351 orders, to support that
9 statement. Even if there were, Gervais opted into an existing agreement, and did not arbitrate its
10 right to bill-and-keep. *See* Order No. 06-088 at 1. Because Beaver Creek is not seeking to opt in
11 to an existing agreement, these other agreements are not relevant.

12 Qwest also believes that bill-and-keep for direct trunked transport ("DTT") is
13 inappropriate in the ICA with Beaver Creek because Qwest currently provides the majority of the
14 transport between the parties' switches and is entitled to compensation for that service where the
15 traffic is not balanced. Qwest/1, Freeberg/14-17. Beaver Creek asserts that Qwest "cannot"
16 make this argument "while at the same time opposing BCT's request to move its point of
17 presence to the Pittock Building which would result in BCT having most of the transport."
18 Beaver Creek's Opening Brief at 7. As discussed in Qwest's Opening Brief at 26, Qwest has
19 objected to Beaver Creek's moving its *ILEC* point of interconnection ("POI"), but does not, and
20 cannot, object to Beaver Creek's moving its CLEC POI. Beaver Creek's argument is entitled to
21 no weight.

22 Beaver Creek relies upon Qwest's FCC advocacy for the proposition that "traffic need not
23 be 'in balance' for bill-and-keep to apply." Beaver Creek's Opening Brief at 4. As discussed in
24 Qwest's Opening Brief at 22, Qwest's advocacy before the FCC has no relevance to the
25 Commission's decision in this proceeding, which must be based on the current state of the law,
26 not one aspect of Qwest's advocacy. The current law is set forth in the FCC's rules. As quoted

1 above, 47 C.F.R. § 51.713(b) permits the Commission to impose bill-and-keep arrangements
2 only if it "determines that the amount of telecommunications traffic from one network to the
3 other is roughly balanced with the amount of telecommunications traffic flowing in the opposite
4 direction, and is expected to remain so"

5 Qwest's advocacy before the FCC cannot be applied in this proceeding. Qwest
6 acknowledges that it has advocated before the FCC for the adoption of bill-and-keep, but Beaver
7 Creek takes Qwest's statements entirely out of context. Qwest's advocacy applies to all forms of
8 intercarrier compensation, not just the exchange of local traffic between a CLEC and an ILEC.
9 Most significantly, Qwest advocates for an increase in the Subscriber Line Charge to offset the
10 revenue that would be lost from adoption of a bill-and-keep regime. Requiring bill-and-keep in
11 the ICA with Beaver Creek without some form of offsetting compensation would, in fact, be
12 inconsistent with Qwest's FCC advocacy. In addition, the FCC has not completed that
13 proceeding. Qwest is in the minority with its advocacy of bill-and-keep and it is doubtful
14 whether Qwest's position will be adopted. It would be inappropriate to order bill-and-keep in
15 this ICA based on Qwest's FCC advocacy where none of the compensating elements of Qwest's
16 advocacy have been implemented and Qwest continues to operate in a largely reciprocal
17 compensation world. *See* 47 U.S.C. § 271(c)(2)(B)(xiii).

18 In sum, Beaver Creek has not sustained its burden to establish that traffic is in rough
19 balance and expected to remain so, as required to justify the Commission's ordering bill-and-
20 keep for the transport and termination of Beaver Creek's competitive traffic. The Arbitrator
21 should not indulge Beaver Creek's request that the Commission simply presume that traffic is
22 balanced, because Beaver Creek has both made it impossible for Qwest to rebut this presumption
23 by routing its traffic in such a manner that prevents Qwest from measuring Beaver Creek's CLEC
24 traffic separately from its ILEC traffic, and failed to produce any information in discovery that
25 would enable Qwest to rebut such a presumption. For all these reasons, the Arbitrator and the
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1 Commission should order that termination and transport of traffic is subject to reciprocal
2 compensation, not bill-and-keep.

3 **B. Routing and Trunking**

4 **1. Beaver Creek Should Be Required To Separate its ILEC- and CLEC-**
5 **Originated Traffic**

6 Beaver Creek wants the Commission to sanction its current practice of sending to Qwest
7 traffic originated by both Beaver Creek's ILEC and CLEC customers over the same trunk groups
8 that Beaver Creek-ILEC has historically used to exchange traffic with Qwest (which practice is
9 contrary to Beaver Creek's current ICA with Qwest). Beaver Creek's primary argument in
10 support of this arrangement is that it is "logically consistent with a bill and keep environment."
11 Beaver Creek's Opening Brief at 8. Qwest believes the Arbitrator should reject Beaver Creek's
12 request for bill-and-keep, for the reasons previously discussed. If the Arbitrator does reject bill-
13 and-keep, then Beaver Creek must be required to send its CLEC-originated traffic over separate
14 trunks from its ILEC-originated traffic, so that Qwest may track and bill for transporting and
15 terminating such calls. Qwest/5, Cederberg/10-11.

16 Beaver Creek argues that if Qwest combines other CLECs' traffic with Qwest-originated
17 traffic over the same trunks, then Beaver Creek should be allowed to combine its ILEC- and
18 CLEC-originated traffic over the same trunks, so there is "equality of treatment." Beaver Creek's
19 Opening Brief at 8. Alternatively, Beaver Creek argues that if it is required to separate its own
20 ILEC- and CLEC-originated traffic, then "equality of treatment" requires Qwest to separate its
21 ILEC-originated traffic from third-party CLEC traffic that Qwest transits to Beaver Creek. *Id.*
22 There is no merit to either of Beaver Creek's alternative positions.

23 Qwest's proposed ICA language would allow both parties to combine on the same trunk
24 groups traffic their customers originate with traffic for which they serve as a transit carrier.
25 Section 7.2.2.9.3.1. Unless the Commission accepts Qwest's proposal that both Beaver Creek's
26 ILEC and CLEC operations be conducted under the ICA at issue in this case, the only Beaver

1 Creek-originated traffic at issue is its CLEC traffic. Qwest's proposed language would treat both
2 parties equally in allowing them to combine traffic originated by their customers (*i.e.*, Beaver
3 Creek-CLEC and Qwest-ILEC customers) with third-party CLEC traffic for which they serve as
4 a transit carrier. Thus, Qwest's proposed language does treat the parties to the ICA equally.

5 Beaver Creek offers no rationale for its alternative position, that if Beaver Creek is
6 required to separate its own ILEC-originated traffic from its own CLEC-originated traffic, then
7 Qwest should be required to separate its ILEC-originated traffic from third-party CLECs' traffic
8 for delivery to Beaver Creek. Achieving such separation would be extremely labor-intensive for
9 Qwest and, consequently, very costly to implement and maintain. Qwest/5, Cederberg/11-12.
10 Moreover, such separation would do nothing to advance Beaver Creek's ability to bill other
11 carriers for terminating their calls; rather, it would result in an inefficient use of facilities.
12 Qwest/2, Cederberg/13-14; Qwest/5, Cederberg/12-13. The Commission should reject Beaver
13 Creek's proposals and allow the parties to the ICA (that is, Qwest and Beaver Creek-CLEC) to
14 combine traffic they originate with traffic for which they serve as transit carrier. The
15 Commission should, however, reject Beaver Creek's proposal that it be allowed to combine its
16 CLEC traffic with its ILEC traffic for delivery to Qwest over Beaver Creek's ILEC trunks.

17 Beaver Creek cites two anomalous situations as support for its position that its principle
18 of "equal treatment" should allow Beaver Creek to mix its ILEC-and CLEC-originated traffic
19 and send it to Qwest over the ILEC trunks. First, Beaver Creek states, without citation to the
20 record, that "Qwest sends traffic that is destined for BCT's Oregon City operations over trunk
21 groups that, under Qwest's theory, should receive only traffic destined for BCT's operations in
22 the Beaver creek exchange as an ILEC." Beaver Creek's Opening Brief at 8. Presumably, Beaver
23 Creek is referring to the circumstance explained in Qwest's rebuttal testimony, where Qwest was
24 routing some traffic destined for Beaver Creek's ILEC customers over the LIS trunks. Qwest/5,
25 Cederberg/7-8. This problem was created because Beaver Creek uses one Operating Company
26 Number ("OCN") for both its ILEC and CLEC operations. *Id.* Qwest fixed the problem by

1 creating unique translations to route traffic to Beaver Creek by NPA-NXX instead of by OCN.
2 *Id.* The fact that Qwest inadvertently routed some traffic incorrectly for a period of time in the
3 past, due to Beaver Creek's utilization of a common OCN for its ILEC and CLEC operations,
4 does not justify Beaver Creek's request to commingle its ILEC and CLEC traffic over its ILEC
5 trunks in the future. Granting Beaver Creek's request on this basis would punish Qwest for
6 fixing a problem that Beaver Creek itself created.

7 Second, Beaver Creek refers to the situation the Commission addressed in Docket UA 55
8 where "Qwest serves customers in the Beaver Creek exchange and delivers the traffic that
9 originates from those customers to BCT over the same trunks that carry Qwest's Oregon City
10 exchange traffic." Beaver Creek's Opening Brief at 8. This situation might be relevant to this
11 case if Qwest were serving those customers as a CLEC and if Beaver Creek-ILEC and Qwest-
12 CLEC had an ICA governing that traffic that required Qwest to send it over LIS trunks
13 separately from its ILEC operations. However, the Commission has ruled in other proceedings
14 that Qwest currently serves those few customers as an ILEC because of an historical mistake
15 when Beaver Creek-ILEC and Qwest reallocated certain territory, and that Qwest is not required
16 to enter an ICA with Beaver Creek for those customers' traffic. *See* discussion and citations in
17 Qwest's Opening Brief at 9, n.2 and 14, n.4. Since those customers are currently customers of
18 Qwest-ILEC, it is perfectly appropriate for Qwest to route their traffic over the same trunks that
19 carry Qwest's Oregon City traffic.

20 For the foregoing reasons, the Arbitrator and Commission should reject Beaver Creek's
21 alternative proposals for the routing of traffic and approve Qwest's proposed language for the
22 ICA.

23 **2. Qwest Should Not Be Required To Separate Third Parties' Local and**
24 **Toll Traffic**

25 The other routing and trunking issue Beaver Creek raises is the fact that Qwest's
26 proposed language would allow the parties to mix local and toll traffic over the same trunk

1 groups. Here, Beaver Creek had proposed that such mixing be prohibited. Qwest's proposed
2 language would minimize this occurrence by (1) Qwest's agreement that it will deliver its own
3 customers' intraLATA toll traffic to the access tandem, (2) Qwest's proposed language that
4 would permit Beaver Creek to request that Jointly Provided Switched Access be sent on a
5 separate trunk group, and (3) Qwest's commitment not to intentionally route traffic from IXCs
6 through local tandems. *See* Qwest's Opening Brief at 17-18. Given these measures, Beaver
7 Creek correctly recognizes that the mixing of local and toll traffic is caused by other CLECs who
8 choose to interconnect with Qwest at a single point of presence. Beaver Creek's Opening Brief
9 at 10.

10 Beaver Creek's proposed revisions to the ICA and its testimony sought to have Qwest
11 absolutely prohibited from mixing such traffic. Qwest showed in its testimony that this
12 separation is technically infeasible to achieve. Qwest/2, Cederberg/10-11. In its opening brief,
13 Beaver Creek concedes at least that the costs to achieve such separation are high, and appears to
14 have abandoned its position that Qwest should be required to separate these types of traffic.
15 Beaver Creek's Opening Brief at 10. Thus, the only position Beaver Creek advances in its
16 opening brief is that Qwest should provide to Beaver Creek, at no cost, records that would enable
17 Beaver Creek "to sort out the problem that Qwest has created in the first instance." *Id.*
18 Presumably, Beaver Creek would use those records to bill the appropriate parties for access
19 service. Beaver Creek's position is unfounded for several reasons.

20 First, Beaver Creek states that Qwest has "created" this problem of CLECs delivering
21 mixed traffic at a single point of interconnection by offering a product called Single Point of
22 Presence or SPOP. *Id.* Nothing could be further from the truth. CLECs have a right to
23 interconnect at "any technically feasible point" in the ILEC's network. 47 U.S.C. § 251(c)(2)(B).
24 By offering SPOP, Qwest is simply complying with its legal obligations. Moreover, Qwest's
25 ICAs with these other CLECs provide that JPSA traffic shall not intentionally be routed through
26 local tandems. Qwest/2, Cederberg/20, lines 19-21. Second, Beaver Creek states that "EAS

1 traffic that is routed over the access tandem . . . imposes an additional cost to BCT to augment
2 trunk groups . . ." Beaver Creek's Opening Brief at 10. As shown in Qwest's opening brief at
3 26-27, transit traffic is Qwest's responsibility for purposes of calculating the relative use of
4 transport facilities, so Beaver Creek does not pay Qwest any more when such traffic is routed
5 through the access tandem. Third, even though CLECs may be misrouting toll traffic through
6 the local tandem when they use SPOP, there is still nothing about routing this toll traffic through
7 the local tandem that makes it any more difficult for Beaver Creek to bill IXCs when the calls do
8 not carry adequate identifying information, which is due to no fault of Qwest. Qwest/2,
9 Cederberg/19; Qwest/5, Cederberg/12-13.

10 Beaver Creek appears to have abandoned its position that the Arbitrator should require
11 Qwest to separate third parties' local and toll traffic, which Qwest has shown to be technically
12 infeasible. Beaver Creek has also failed to establish that Qwest should be required to provide
13 call records to Beaver Creek at no charge, especially when such records would cost Beaver
14 Creek-CLEC well under \$100 per month. *See* Qwest's Opening Brief at 30. The Arbitrator and
15 the Commission should approve Qwest's proposed language for the contract sections at issue.

16 **C. Transit Traffic and Tandem Switching**

17 The problem with Beaver Creek's position on its providing transit traffic is that Beaver
18 Creek simply does not focus on Qwest's proposed ICA language. Beaver Creek argues that
19 Qwest's proposed language would require Beaver Creek and Qwest to have a separate agreement
20 for Beaver Creek to provide transit service and that such a requirement creates an obstacle for
21 Beaver Creek to compete with Qwest to provide transit service. Beaver Creek's Opening Brief at
22 11-12. Beaver Creek is wrong.

23 Qwest's proposed language would not require Beaver Creek to have a separate agreement
24 to provide transit service. Indeed, Beaver Creek fails to point to any language proposed by
25 Qwest that would have that effect.

1 The language that Beaver Creek has put at issue is in section 7.3.1, where Beaver Creek
2 proposes to delete the following sentence: "Absent a separately negotiated agreement to the
3 contrary, the Parties will directly exchange traffic between their respective networks without the
4 use of third party transit providers." With this sentence, Qwest proposes that Beaver Creek and
5 Qwest enter into a separate agreement if Beaver Creek intends to exchange traffic with Qwest
6 indirectly, *via a third-party transit provider*. Neither this sentence, nor any other language in the
7 Qwest-proposed ICA, would require a separate agreement for *Beaver Creek* to provide transit
8 service.

9 The second issue Beaver Creek raises in its brief is its belief that Qwest's proposed
10 language would not permit Beaver Creek to provide transit service unless Beaver Creek's switch
11 serves a comparable geographic area to Qwest's tandem switch. Beaver Creek's Opening Brief at
12 12. Beaver Creek argues such language is inappropriate because Qwest is preventing Beaver
13 Creek from making such a showing by opposing Beaver Creek's moving its POI to Portland. *Id.*
14 at 11-13. Beaver Creek also disclaims that it "wants to charge a tandem switching charge for
15 traffic that terminates to BCT's customers in the Oregon City exchange." *Id.* Again, Beaver
16 Creek's arguments are not supported by a review of the contract language that Beaver Creek
17 challenges or by the evidence.

18 Qwest's proposed language does not inhibit Beaver Creek's ability to enter the
19 competitive market for transit service. Rather, Qwest's proposed language for section 7.2.1.2.4
20 applies only to Beaver Creek's provision of transit service *to Qwest*. The ICA does not apply to
21 Beaver Creek's provision of transit service to other parties, so there is no merit to Beaver Creek's
22 argument that Qwest is somehow attempting to keep Beaver Creek out of the market for
23 providing transit services. Moreover, contrary to Beaver Creek's argument, Qwest's proposed
24 language would permit Beaver Creek to provide transit service to Qwest if its switch physically
25 functions as a tandem switch regardless of its geographic reach. Qwest/3, Freeberg/19. Qwest
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1 simply seeks to confirm that Beaver Creek's switch actually functions as a tandem switch before
2 Beaver Creek can claim to provide transit service to Qwest. *See* Qwest's Opening Brief at 24.

3 Also, while Beaver Creek disclaims its intention to charge Qwest a tandem switching
4 charge for terminating traffic to Beaver Creek's Oregon City customers, that option would be
5 available to Beaver Creek under the undisputed language in the ICA, if Beaver Creek's switch is
6 considered a Tandem Office Switch as defined in section 4. The FCC's rules support Qwest's
7 position that if Beaver Creek's switch serves a geographic area comparable to Qwest's tandem
8 switch, Beaver Creek may charge for tandem switching. *See* Qwest's Opening Brief at 25. In
9 addition, Qwest is not preventing Beaver Creek from making this showing since Qwest would
10 not oppose a move of Beaver Creek-CLEC's POI with Qwest. *Id.* at 26. The Arbitrator and the
11 Commission should adopt Qwest's proposed language for these disputed issues.

12 **D. Phantom Traffic**

13 Beaver Creek largely discusses this issue under the heading concerning the routing of
14 traffic. Here, Beaver Creek argues that because Qwest has "created" the problem of phantom
15 traffic, it should provide call detail records to Beaver Creek for free. Beaver Creek's Opening
16 Brief at 13. Again, Beaver Creek is wrong. Phantom traffic is not created by improper call
17 routing. Qwest/1, Freeberg/39. Additionally, even if it were, Qwest cannot be held accountable
18 for CLECs' delivery of toll calls to the local tandem on the basis that Qwest offers access to its
19 network at any technically feasible point, because this serves only to fulfill Qwest's obligations
20 under federal law.

21 As discussed in Qwest's testimony and opening brief, Qwest is entitled to be
22 compensated for the work of generating, collating, and providing these records to Beaver Creek.
23 *See* Qwest's Opening Brief at 29-30. Moreover, the cost to Beaver Creek of obtaining such
24 records would not be large, while the impact on Qwest of being required to provide such records
25 for free to all other carriers would be significant. *Id.* Qwest certainly has done nothing wrong
26 that would justify the Commission's requiring Qwest to provide Beaver Creek such records for

1 free. Qwest/3, Freeberg/31. Qwest is willing to pay Beaver Creek a comparable rate should
2 Qwest request such records from Beaver Creek.

3 **E. Change of Law**

4 Beaver Creek believes that its position on change of law is only "slightly preferable" to
5 Qwest's. Beaver Creek's Opening Brief at 13. Beaver Creek, however, mischaracterizes its own
6 position when it implies that only Qwest's proposal would require written amendments to the
7 ICA to reflect changes of law. *Id.* While it is correct that Beaver Creek would have changes of
8 law be self-executing, Beaver Creek's proposed language would also require written amendments
9 to be put into place, albeit after the changes in law are implemented. BCT/7. Linstrom/1. Since
10 both parties agree that written amendments should be agreed to for changes in law, Qwest
11 believes that it would promote certainty and limit disputes if such amendments are agreed to
12 *before* the parties independently implement changes in law. Qwest's proposed language for
13 expedited dispute resolution minimizes the impact of any delay in negotiating contract
14 amendments, and Qwest's option for the parties to choose to live out existing agreements despite
15 a change in law is also preferable. The Arbitrator and the Commission should adopt Qwest's
16 proposed language.

1 **III. CONCLUSION**

2 Based upon the testimony submitted by Qwest and the arguments set forth in Qwest's
3 opening brief and this reply brief, Qwest respectfully requests that the Arbitrator and the
4 Commission approve the language proposed by Qwest for the ICA.

5 DATED: September 22, 2006.

6 **PERKINS COIE LLP**

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1 **CERTIFICATE OF SERVICE**

2 I certify that I have this day served QWEST'S REPLY BRIEF and its accompanying
3 EXHIBIT 1 by causing a copy to be sent via electronic mail and U.S. mail to:

4 Richard A. Finnigan Alex M. Duarte
5 Law Office of Richard A. Corporate Counsel
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8 DATED: September 22, 2006.

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