

Law Office of  
Richard A. Finnigan  
2112 Black Lake Blvd. SW  
Olympia, Washington 98512  
Fax (360) 753-6862

Richard A. Finnigan  
(360) 956-7001  
rickfinn@localaccess.com

Kathy McCrary, Paralegal  
(360) 753-7012  
kathym@localaccess.com

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September 22, 2006

**VIA ELECTRONIC MAIL AND U.S. MAIL**

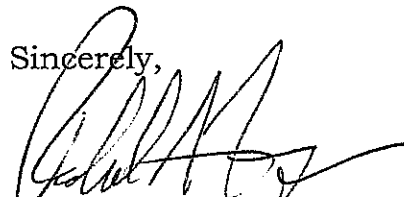
Filing Center  
Oregon Public Utility Commission  
550 Capitol Street NE, Ste 215  
Salem, OR 97301-2551

Re: ARB 747

Dear Sir/Madam:

Enclosed are the original and five copies of the Reply Brief of Beaver Creek Cooperative Telephone Company and the Certificate of Service.

Sincerely,



RICHARD A. FINNIGAN

RAF/km  
Enclosures

cc: Service List (w/encl., via U.S. mail and e-mail)  
Tom Linstrom (w/encl., via U.S. mail and e-mail)

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**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

ARB 747

In the Matter of the Petition for Arbitration of  
an Interconnection Agreement Pursuant to  
Sections 251 and 252 of the Communications  
Act of 1934 as amended by the  
Telecommunications Act of 1996 (47 U.S.C.  
§251 and 252) Between Beaver Creek  
Cooperative Telephone Company and Qwest  
Corporation

REPLY BRIEF OF BEAVER CREEK  
COOPERATIVE TELEPHONE COMPANY

REPLY BRIEF OF BEAVER CREEK  
COOPERATIVE TELEPHONE COMPANY - 1

Law Office of  
Richard A. Finnigan  
2112 Black Lake Blvd. SW  
Olympia, WA 98512  
(360) 956-7001

1 Beaver Creek Cooperative Telephone Company ("BCT") hereby respectfully submits its  
2 Reply Brief in this matter.

3  
4

I. INTRODUCTION

5 A. Course of Negotiations.

6 BCT entered these negotiations with Qwest with two goals:

- 7 (1) To obtain equality of treatment in the routing of traffic; and  
8 (2) To have a clear understanding of how Qwest would interpret the language of the  
9 interconnection agreement in certain critical areas.

10 The negotiations that took place between Qwest and BCT were far ranging, took much  
11 longer than the one hundred thirty-five day pre-arbitration period contemplated by Section 252 and  
12 were largely productive. An impressive list of issues were resolved.

13 In general, there was a good, constructive dialogue between Qwest and BCT. However,  
14 there were some areas where Qwest either could not or would not explain its interpretation of the  
15 proposed language for the interconnection agreement. This issue will be discussed in more detail  
16 below. In any event, the parties were left with five areas of disagreement or at least a lack of  
17 understanding between the parties as to the other party's position.

18 B. Qwest Mischaracterizes BCT's Position.

19 Qwest begins its Opening Brief by mischaracterizing BCT's position as follows: "Beaver  
20 Creek's<sup>1</sup> positions in this arbitration are motivated by one urgent theme: its desire that its  
21 competitive operations in the Oregon City exchange interact with Qwest in the same manner as its  
22 historical incumbent operations in the Beavercreek exchange."<sup>2</sup> That is not the case. That is not

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24 <sup>1</sup> As Qwest is fully aware, BCT prefers to be identified as "BCT," not "Beaver Creek."  
25 <sup>2</sup> Qwest Opening Brief at page 1.

1 BCT's motivation.

2 Qwest then goes on to describe a series of historical disputes between BCT and Qwest that  
3 have come before the Commission and other instances in which BCT has sought particular  
4 outcomes from Commission proceedings.<sup>3</sup> Qwest uses all of this to argue that it must be BCT's  
5 motivation in this arbitration to have its CLEC operations treated identically with BCT's ILEC  
6 operations.

7 It is true that BCT has raised certain issues with the Commission in the past. For example,  
8 one cited by Qwest is BCT's position that it did not need to have a written interconnection  
9 agreement to procure local number portability (LNP) from Qwest pursuant to 47 U.S.C. §251(b)(2).  
10 This was in Docket IC 3. The Commission ruled that an interconnection agreement was needed.  
11 Notably, the FCC has since ruled that an interconnection agreement is not required for many  
12 Section 251(b) obligations, and specifically not required for number portability. In the Matter of  
13 Telephone Number Portability, CC Docket No. 95-116, Memorandum Opinion and Order and  
14 Further Notice of Proposed Rulemaking, FCC 03-284 (Released Nov. 10, 2003) (see, in particular  
15 the discussion beginning at paragraph 31). However, BCT has not sought to overturn the  
16 Commission's ruling on this subject.

17 The reason that BCT brings this example up is that BCT fully understands and believes it is  
18 fully abiding by the Commission's past orders. The Commission has stated that there are certain  
19 differences between CLEC and ILEC operations and those must be incorporated into BCT's  
20 operations. BCT believes it has done so.

21 Although it is true that BCT would prefer to treat its ILEC and CLEC operations the same  
22 since all customers are members of the BCT cooperative, it understands that it cannot do so and  
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25 <sup>3</sup> Qwest Opening Brief at pages 6-8.

1 does not do so. If the differences can be minimized, as Mr. Linstrom testified, that is beneficial.  
2 There are some areas that the differences must exist. There are other areas where there is no valid  
3 reason to maintain the distinctions.<sup>4</sup>

4 To the extent that there are differences that are required to be observed by BCT's operations  
5 in the Oregon City exchange, BCT believes it is doing so. Qwest's efforts to color BCT's position  
6 in this proceeding by rehashing old dockets as a means of mischaracterizing BCT's position should  
7 be ignored.

8 In this proceeding, Qwest has also stated that it believes that BCT is not operating in  
9 compliance with the existing interconnection agreement,<sup>5</sup> going so far as describing BCT to be in  
10 "breach" of its agreement.<sup>6</sup> BCT has stated in writing to Qwest on many occasions that BCT  
11 believes that it is operating in compliance with the interconnection agreement as BCT reads that  
12 agreement. This is the very reason that one of the goals that BCT had in the negotiations was to  
13 have a clear understanding of how Qwest would interpret key passages in the proposed agreement.  
14 In any event, if Qwest believed that BCT was operating in violation of the existing interconnection  
15 agreement, its remedy was to file a complaint with the Commission. Qwest did not file such a  
16 complaint. It is inappropriate for Qwest to use vague and un-pursued allegations to mischaracterize  
17 BCT's motivations and operations. In addition, it is totally inappropriate to characterize BCT's  
18 actions as a breach of an agreement where Qwest has not pursued the issue.

19 C. SGAT-Based Theories Should Not Be Given Weight.

20 Throughout its Opening Brief, Qwest argues that because the language it favors is premised  
21 on, or identical to, its Oregon SGAT, Qwest's position should be favored by the Commission.<sup>7</sup>

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23 <sup>4</sup> BCT/1, Linstrom/5-6.

24 <sup>5</sup> Qwest Opening Brief at pages 9-10.

24 <sup>6</sup> Qwest Opening Brief at page 21.

25 <sup>7</sup> See, e.g., Qwest Opening Brief at pages 4-5.

1 BCT appreciates the amount of time and effort that went into the development of the Oregon  
2 SGAT. However, the purpose of Section 252 is to allow parties to negotiate on issues that are  
3 relevant and specific to those parties. The SGAT constitutes a good baseline or starting point.  
4 However, SGAT language should not be treated as having any greater favor in an arbitration  
5 between two parties. To do so would render the negotiation process contemplated by Section  
6 251(c) and Section 252 largely meaningless. It would also mean that Qwest would enter  
7 negotiations unwilling to make modifications to language in the SGAT knowing that it can always  
8 fall back to the arbitration process with the presumption that the SGAT language will prevail. That  
9 is not a good means for encouraging negotiations between the parties.

10 D. Qwest's Alternative for Treatment of BCT's ILEC Operations is Inappropriate.

11 In Qwest's Opening Brief, Qwest again raises the concept of moving BCT's ILEC  
12 operations under the interconnection agreement proposed by Qwest.<sup>8</sup> As Mr. Linstrom explained in  
13 his testimony, that option was explored in negotiations.<sup>9</sup> However, when it became apparent that  
14 Qwest's view would be that the ILEC traffic would be subject to additional charges for trunking and  
15 transport that do not exist today, BCT told Qwest that the concept as inappropriate. Further, BCT's  
16 position is that the Commission does not have the legal authority to compel BCT to place its ILEC  
17 operations under the interconnection agreement.

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24 <sup>8</sup> Qwest Opening Brief at page 4.  
25 <sup>9</sup> See, BCT/8, Linstrom/8.

1 II. BCT'S REPLY AS TO QWEST'S ARGUMENTS ON THE FIVE OPEN ISSUES

2 A. Bill and Keep Should Be Adopted as a Form of Reciprocal Compensation.

3 There are several reasons which support the adoption of bill and keep as the form of  
4 reciprocal compensation for this interconnection agreement.<sup>10</sup>

5 (1) Reason One: Bill and Keep Promotes Efficient Trunking.

6 As noted at the outset, one of BCT's goals is to obtain equality of treatment in the routing of  
7 traffic. This can be done in one of two ways. Under one alternative, all traffic can go over one  
8 trunk group when it is delivered by BCT to Qwest and from Qwest to BCT. This means that  
9 Qwest's ILEC and the CLEC traffic transported by Qwest that terminates to BCT can be on one  
10 trunk group and BCT's CLEC traffic from the Oregon City exchange and ILEC traffic from the  
11 Beaver Creek exchange can be on one trunk group.

12 The other means to obtain equality of treatment is to require segregation of traffic by both  
13 BCT and Qwest. Under this scenario, BCT would route its Oregon City originated traffic over one  
14 trunk group and its Beaver Creek exchange originated traffic over a second trunk group to Qwest. In  
15 return, Qwest would originate its ILEC traffic over one trunk group and carry CLEC originated  
16 transit traffic over a second trunk group.

17 BCT is mindful that Qwest's position is that it is much easier for Qwest to assess per minute  
18 reciprocal compensation for CLEC originated traffic that terminates to Qwest if there are separate  
19 trunk groups in place that differentiate between ILEC and CLEC traffic.<sup>11</sup> If the form of reciprocal  
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22 <sup>10</sup> As a side issue, Qwest argues that BCT has for the first time argued that ISP-bound traffic should be bill and keep and  
23 did not bring that position forward in negotiations. Qwest Opening Brief at page 23. That is absolutely, flat out, untrue.  
24 BCT's position in the negotiations was that all local traffic should be bill and keep. It is true that during the  
25 negotiations there was not much focus on ISP-bound traffic. However, Qwest should not mischaracterize BCT's  
26 position.

<sup>11</sup> As discussed below, the same is true on BCT's end for traffic terminating to it. To be able to measure Qwest traffic  
for billing purposes, CLEC transit traffic carried by Qwest would need to be on a separate trunk group.

1 compensation is bill and keep instead of a per-minute compensation, then the need for separate  
2 trunk groups goes away.

3 All parties agree that combining traffic on as few trunk groups as possible aids in the  
4 efficiency of trunking. This reduces cost to both parties. Thus, if bill and keep is used, trunking  
5 efficiency can be maximized.

6 (2) Reason 2: Bill and Keep is the Best Form of Reciprocal Compensation According to  
7 Qwest.

8 A second reason for using bill and keep is that it is consistent with Qwest's stated desired  
9 outcome and Qwest's arguments that bill and keep promotes efficient competition. These are the  
10 arguments Qwest has made to the FCC. Qwest described bill and keep as the best form of  
11 intercarrier compensation. Qwest argued bill and keep promotes efficient competition.<sup>12</sup>

12 Qwest has argued in its Opening Brief that its arguments to the FCC on this matter were  
13 predicated on being able to increase SLC charges.<sup>13</sup> What Qwest does not explain to the  
14 Commission is that the increase in SLC charges is meant as a substitute for access charges for  
15 toll/access traffic. The increased SLC argument has nothing to do with local/EAS traffic under  
16 Section 251(b)(5) and the ability to assess reciprocal compensation for the exchange of competitive  
17 traffic. Thus, Qwest is misleading when it asserts that Qwest's arguments on the use of bill and  
18 keep in the setting of 251(b) obligations are predicated on SLC increases.

19 Qwest also argues that it is unlikely that the FCC will adopt its position.<sup>14</sup> By bringing up  
20 this point, presumably, Qwest is arguing that its position before the FCC on bill and keep should be  
21 ignored. This is an interesting way to characterize Qwest's own advocacy.

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24 <sup>12</sup> BCT/9, Linstrom/2-5.

<sup>13</sup> Qwest Opening Brief at page 22.

<sup>14</sup> Qwest Opening Brief at page 22.



1 The reason BCT brought Qwest's position on bill and keep to the Commission's attention is  
2 that in its testimony in this proceeding, Qwest seemed to argue that a per minute form of reciprocal  
3 compensation was preferred and that bill and keep is not. Yet, in other forums i.e., the FCC, Qwest  
4 is arguing that bill and keep is the best form of reciprocal compensation because it promotes  
5 efficient competition. These positions seem to be contrary to one another.

6 (3) Reason 3: Bill and Keep is Commonly Used in Qwest Interconnection Agreements.

7 Another reason for adopting bill and keep is that Qwest has entered into several bill and  
8 keep agreements in Oregon with other carriers, including with its own affiliate. In its Opening  
9 Brief, Qwest argues that it has entered into such bill and keep agreements only where traffic is in  
10 relative balance.<sup>15</sup> However, that is not true. The terms of the agreements that use bill and keep  
11 demonstrate that is not the case. Many of the bill and keep agreements strongly infer that because  
12 the parties do not know if the traffic is in balance, they will use bill and keep. For example, in ARB  
13 616, the agreement between Qwest and its affiliate Qwest Communications Corporation, the  
14 language  
15 reads as follows:

16 7.3.4.1 End Office Switch Call Termination

17 7.3.4.1.1 The Parties agree that, because this state is a new market for CLEC,  
18 end office call termination compensation for Exchange Service (EAS/Local) traffic  
19 shall be based upon the bill and keep compensation mechanism, whereby neither  
20 Party charges the other Party reciprocal compensation for the termination of  
21 EAS/Local traffic originated by the other Party. Bill and keep shall govern  
22 compensation for such traffic exchanged by the Parties in this state until the earlier  
23 of: (1) the expiration of this agreement, or (2) further action by the Federal  
24 Communications Commission, or a court of competent jurisdiction, vacates,  
25 replaces, modifies, or supersedes the applicable rules adopted in Order on Remand  
26 and Report and Order, CC Docket Nos. 96-98, 99-68, FCC 01-131 (rel. Apr. 27,  
2001).

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24 <sup>15</sup> Qwest Opening Brief at page 21.

1 What is remarkable about this language is that traffic need not ever be in balance. The concept of  
2 balanced traffic does not enter into the equation. Similar language exists in other Qwest bill and  
3 keep agreements (see the list in Mr. Linstrom's Testimony at BCT/8, Linstrom/15). Where is the  
4 requirement for balanced traffic Qwest relies on in this proceeding?  
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6 Further, as pointed out in BCT's Opening Brief, there are agreements where there is no  
7 qualification on the traffic, the reference to whether traffic is known to be in balance or not known  
8 to be in balance does not exist. It is just a flat agreement to use bill and keep.<sup>16</sup>

9 (4) Reason 4: The Commission May Presume Traffic is Balanced and Use Bill and  
10 Keep.

11 Another reason for using bill and keep, is that the Commission is entitled to presume that the  
12 traffic is in balance and use bill and keep. Qwest admits as much in its Opening Brief that the  
13 Commission has this authority under 47 C.F.R. §51.713(c).<sup>17</sup> Qwest then notes that it should have  
14 the opportunity to rebut this presumption.

15 In this proceeding, Qwest witnesses speculate that the traffic may not be in balance, but  
16 offer no proof that it is not in balance. Qwest has had an opportunity to rebut the premise that the  
17 traffic is not in balance in this proceeding and has failed to do so.

18 There are a number of reasons why it is difficult to determine whether traffic is or is not in  
19 balance. For example, BCT knows the total volume of traffic that it originates and delivers to  
20 Qwest. BCT also knows the total volume of traffic that BCT receives. However, it is difficult to  
21 identify what carrier is ultimately receiving or sending the traffic due to LNP. For example, traffic  
22 that BCT originates that looks like it is destined to a Qwest customer based on the called number,

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24 <sup>16</sup> Keep in mind that Qwest has told the FCC that bill and keep is best when traffic is not in balance. BCT/10,  
Linstrom/6-7.

1 may, in fact, be terminated to a third party carrier who has ported what looks like a Qwest number.  
2 Likewise, traffic that is terminated to BCT that looks like it originated from a Qwest customer, may,  
3 in fact, be originated by a customer of a third party carrier who has ported the Qwest number.  
4 Given the complexities of the measurement and identification of such traffic, it is reasonable for the  
5 Commission to adopt a presumption that the traffic is roughly in balance and that bill and keep  
6 should be used.

7 (5) Reason 5: Qwest is Routing Combined Traffic to BCT.

8 Qwest is routing "CLEC-like" traffic over the same trunk groups that it routes its own ILEC  
9 traffic for termination by BCT. It is interesting that Qwest goes through a litany of cases that have  
10 involved BCT before the Commission, but relegates UA 55 to footnotes.<sup>18</sup> On the other hand,  
11 Qwest makes the statement that it does not commingle CLEC originated traffic for its own  
12 operations with ILEC originated traffic.<sup>19</sup> In making this statement, Qwest relies on a very  
13 technical reading of past Commission orders, and ignores the fact that it is originating traffic that  
14 looks a lot like it is CLEC traffic and putting it on the same trunk group with its ILEC traffic.

15 In UA 55, it was determined that Qwest is serving customers that are in the Beaver creek  
16 exchange. Qwest is not an ILEC in the Beaver creek exchange, and in UA 55, the Commission  
17 declined Qwest's request that Qwest be classified as an ILEC for the Beaver creek exchange.<sup>20</sup>  
18 Despite Qwest's protestations in its Opening Brief to the contrary that ARB 445 and other  
19 proceedings continue to hold that Qwest is an ILEC in the Beaver creek exchange, in UA 55 Qwest  
20 asked the Commission to rule that Qwest is an ILEC in the Beaver creek exchange. The  
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22 <sup>17</sup> Qwest Opening Brief at page 20.

23 <sup>18</sup> Qwest Opening Brief at footnotes 2 and 4.

24 <sup>19</sup> Qwest Opening Brief at page 14.

25 <sup>20</sup> In the Matter of US WEST TELECOMMUNICATIONS, INC. (Qwest Corporation) Application for an Order  
Transferring Right to Exclusively Served Territory, Fairway Downs, Oregon City, to Beaver Creek Telephone  
Company, Order No. 04-225 (April 27, 2004) at page 16.

1 Commission expressly declined to do so.<sup>21</sup> The manner in which Qwest continues to cling to an  
2 overly technical argument about its status in the Beavercreek exchange sheds light on the highly  
3 technical arguments Qwest advances on how to read interconnection agreements; it is Qwest's way  
4 or no way.

5 The only way that the traffic can get to BCT when one of the Qwest customers in the  
6 Beavercreek exchange calls a BCT customer in the Beavercreek exchange, is for that traffic to be  
7 routed through Qwest's Oregon City switch and then be delivered to BCT on the same trunk groups  
8 that deliver Oregon City originated traffic to BCT.

9 In UA 55, the Commission placed Qwest in limbo between ILEC and CLEC as far as  
10 treatment of Qwest customers in the Beavercreek exchange. The Commission declined Qwest's  
11 request that it be classified an ILEC for the Beavercreek exchange. The Commission did not  
12 classify Qwest, directly, as a CLEC, but indicated that if Qwest were to serve customers in the  
13 Beavercreek exchange after April of 2007, it would do so only as a CLEC. Clearly, the traffic is  
14 "CLEC-like" since it is traffic that originates from Qwest's service outside of the exchanges for  
15 which Qwest is designated as an ILEC. Further, Qwest's deadline for its Beavercreek exchange  
16 operations is fast approaching, and BCT has received no indication that Qwest intends to abandon  
17 those customers.

18 (6) Reason 6: BCT Proposes to Provide the Majority of Transport.

19 Another of Qwest's arguments is that the bill and keep method of reciprocal compensation  
20 should not be used since the transit mileage is not in balance.<sup>22</sup> However, BCT is on record as  
21 desiring to move its point of interconnection to the Pittock Building, which would mean that BCT,  
22 not Qwest would have the majority of the transit mileage. BCT has stated that it will still propose

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24 <sup>21</sup> Ibid. See, also, discussion at footnote 2 of Order No. 04-225.

25 <sup>22</sup> Qwest Opening Brief at page 20.

1 bill and keep if that move can be made.<sup>23</sup> There is no basis for Qwest's argument that bill and keep  
2 should not be used because of a difference in transit mileage.

3 For the reasons set out above, BCT's proposal on reciprocal compensation should be  
4 adopted.

5 B. Routing of Traffic.

6 There are two routing issues. One is local traffic. The second is access traffic.

7 (1) Routing Local Traffic.

8 If separate trunk groups are not needed for reciprocal compensation because a bill and keep  
9 form of reciprocal compensation is used, then all local/EAS traffic can be combined on a single  
10 trunk group. This is the preferred approach since it maximizes trunking efficiencies.

11 What would not be an acceptable outcome is for BCT to be told that it must separate its  
12 traffic that originates in the Oregon City exchange on one trunk group and its traffic that originates  
13 in the Beavercreek exchange on another trunk group, unless Qwest is told that it must place its  
14 Qwest originated traffic on one trunk group and its transit traffic for third party CLECs on a  
15 separate trunk group.

16 The only possible reason to use separate trunk groups is to assist in the measurement of  
17 traffic for per minute form of reciprocal compensation. Qwest has previously argued that the use of  
18 separate trunk groups will allow it to bill BCT for traffic that originates in the Oregon City  
19 exchange that is terminated by Qwest.<sup>24</sup> If a per minute reciprocal compensation is adopted, then  
20 for the same reasons that Qwest says it needs to have traffic separated, BCT will need to have traffic  
21 separated onto separate trunk groups. This is because that under Qwest's proposal for per minute  
22 compensation, BCT would be able to assess Qwest for Qwest originated traffic. However, because

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24 <sup>23</sup> BCT/8, Linstrom/27.

25 <sup>24</sup> Qwest Opening Brief at page 13.

1 of porting issues, BCT cannot identify the traffic that originates from Qwest as opposed to traffic  
2 that originates from third party CLECs. Thus, Qwest would need to isolate its originating traffic on  
3 one set of trunk groups and put traffic it carries for third party carriers on a separate set of trunk  
4 groups for termination to BCT's Oregon City customers.

5 All of this seems to be terribly inefficient. This can all be avoided by adoption of a bill and  
6 keep form of reciprocal compensation and allow consolidation of trunk groups.

7 (2) Routing Access Traffic.

8 There is access traffic being delivered to BCT over local/EAS trunks. There is also  
9 local/EAS traffic being delivered to BCT over access trunks. BCT's original position was that a  
10 trunking solution should be put in place to resolve these issues. As will be explained in more detail  
11 under the Phantom Traffic section, below, upon further investigation during the course of this  
12 docket, BCT believes that there are difficulties at the present time with trunking solutions and it  
13 would not be reasonable to demand that Qwest implement those solutions at the present time.  
14 Instead, BCT believes it should be the goal of all parties under the interconnection agreement to  
15 route access traffic over access trunks to the fullest extent possible. To this end, BCT has proposed  
16 language to encourage the parties to do so. The specific language BCT proposes is discussed in  
17 Section III, below.

18 C. Transiting Traffic.

19 There are two issues involved in transiting traffic. One is where BCT would operate as the  
20 transit provider. The second is the scenario under which BCT would purchase transit services from  
21 a third party.

22 (1) BCT as a Transiting Provider.

23 The issue on BCT providing transiting services centers upon treatment of BCT's switch as a  
24 tandem switch. Under the language that Qwest proposes, and as Qwest well knows, the practical  
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1 effect would be to prohibit BCT from being a transit traffic provider. This is because Qwest is  
2 proposing language that requires BCT's switch to serve the same geographical area as Qwest, but at  
3 the same time Qwest is making it financially impossible for BCT to meet that condition.

4 Qwest states in its Opening Brief that it has not and would never oppose BCT's move of its  
5 point of interconnection (POI) to the Pittock Building for BCT's CLEC operations.<sup>25</sup> Qwest stated  
6 it is merely opposing BCT's move of its POI for BCT's ILEC operations. Qwest knows full well  
7 that having one POI for CLEC operations and a second POI for ILEC operations is inefficient,  
8 wasteful and would mean that BCT probably would not be able to move its POI to the Pittock  
9 Building and thus, not be able to serve a geographic area that is expansive in scope as Qwest serves.  
10 It is also a means for Qwest to preserve the transiting market to itself and prevent another carrier  
11 from entering that market.

12 It is unfair for Qwest to prevent BCT from expanding its geographical scope of operations  
13 while at the same time Qwest proposes language that would require BCT to expand its scope of  
14 operations to be treated as a tandem switch for purposes of the interconnection agreement and  
15 provide transiting services.

16 (2) BCT as a Transiting Customer.

17 The other issue on transiting traffic is where BCT would contract with a third party to  
18 transport BCT's traffic. If BCT can move its POI to the Pittock Building, this situation is not likely  
19 to occur.

20 More to the point, during the course of negotiations, BCT asked questions about how the  
21 language related to use of third party transit providers would be interpreted. BCT understood the  
22 response given during the negotiations to be far different than what Qwest has stated in this  
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24 <sup>25</sup> Qwest Opening Brief at page 26.

1 arbitration on how the language will be interpreted. Based on Qwest's position as explained during  
2 the course of the arbitration, BCT believes that most of this portion of the issue will go away.

3 D. Phantom Traffic.

4 Qwest continues to try to foster the misconception that BCT wants to charge Qwest for  
5 traffic originated by third parties that Qwest delivers to BCT. As BCT has stated, that is not the  
6 case. That issue has been resolved in UCB 18, and BCT is not advancing a position that it should  
7 be entitled to charge Qwest access for calls that Qwest delivers to BCT that  
8 originated by a third party.

9 BCT had originally proposed two possible solutions for this issue. One was a trunking  
10 solution and the second was delivery of call records solution.

11 Initially, BCT believed that a technically feasible, and relatively inexpensive, trunking  
12 methodology could be used based upon the trunk numbers assigned to the trunks that carry traffic  
13 that reaches Qwest from various originating carriers. However, after further investigation, BCT  
14 determined that there are still difficulties with that methodology and did not pursue it further in the  
15 testimony in this proceeding. BCT agrees that there are some difficulties in a trunking solution and  
16 is no longer proposing the trunking solution concept as the solution for this interconnection  
17 agreement.

18 Instead, BCT is proposing that Qwest provide call detail records without charge. The  
19 rationale for this approach is that Qwest is, at the very least, contributing to the problem of  
20 unidentified or phantom traffic through its Single Point of Presence (SPOP) product under which  
21 CLECs and others compensate Qwest for the delivery of traffic. Under the SPOP, a CLEC can  
22 deliver all of its traffic – access and local – to the same switch for termination. This Qwest product  
23 substantially increases the chances for phantom traffic.



1 In its Opening Brief, Qwest argues that having to provide the call detail records to BCT  
2 would lead to the possibility of further dispute and could potentially cost Qwest large sums of  
3 money if required to do this for all CLECs.<sup>26</sup>

4 The argument about opportunity for disputes over call detail records is not credible. As  
5 Qwest notes, it does offer those call detail records for a fee today. BCT is asking for no more than  
6 the records Qwest would otherwise deliver.

7 As to the argument that Qwest would face the potential of having to do the same for other  
8 companies, there are two responses. First, those companies would need to be at the end of their  
9 existing interconnection agreement with Qwest and choose to opt into the BCT agreement in its  
10 entirety. That cannot be presumed to be a likely outcome.

11 Second, Qwest does not identify what those costs might be. As noted in BCT's testimony,  
12 Verizon currently provides those call detail records without a fee.<sup>27</sup> Given the size of Verizon's  
13 operations nationwide, the cost to provide call detail records cannot be that high. Otherwise  
14 Verizon would have started trying to charge for those records as well.

15 It also should be noted that Qwest argues that it would not cost BCT very much to purchase  
16 those records. That argument removes the credibility of the argument that it would cost Qwest a lot  
17 of money to provide the records. Assuming that there is a profit built into Qwest's charges, the  
18 actual costs to Qwest appear to be quite minimal.

19 Again, this is an issue that Qwest has at least created the means for which phantom traffic  
20 can flourish. BCT is not ascribing to Qwest any complicity with those carriers that are deliberately  
21 trying to bypass access. However, Qwest has the information that would allow BCT to try to  
22 address the situation; Qwest is receiving payment from those CLECs for carrying the traffic to BCT

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24 <sup>26</sup> Qwest Opening Brief at page 30.

25 <sup>27</sup> BCT/8, Linstrom/27.

1 for termination; and Qwest is now saying that it will only tell BCT who those carriers are and what  
2 their traffic is if BCT pays Qwest for that privilege, even where the carriers are bypassing access  
3 charges. That just does not seem right.

4 BCT has tried to get Qwest's cooperation in addressing cases of suspected bypass.<sup>28</sup> For  
5 reasons known only to Qwest, Qwest has refused to cooperate. The delivery of records as proposed  
6 by BCT will allow BCT to proceed on its own to address those situations where it feels a third party  
7 carrier is avoiding access charges.

8 E. Choice of Law.

9 As noted in BCT's Opening Brief, this is a minor issue. BCT has never argued that Qwest's  
10 position on this issue does not have some merit. BCT's position is that having change of laws be  
11 self-executing as of the time the change occurs has some value.

12  
13 III. SPECIFIC LANGUAGE ISSUES

14 A. Introductory Comment.

15 At page 3 of Qwest's Opening Brief, Qwest points out that there appear to be some  
16 problems about the form of the interconnection agreement that BCT submitted as Appendix A with  
17 its Petition for Arbitration. This came as news to BCT. The undersigned immediately conducted an  
18 investigation of the files, both written and electronic, as they relate to this matter. The Word  
19 version of the interconnection agreement that was used to prepare the Petition for Arbitration was  
20 the Word version (both .doc and .rtf) that were transmitted to the undersigned by Qwest, without  
21 any alterations. The Petition for Arbitration was written in reference to that Word version of  
22 interconnection agreement and clearly contemplated that the positions of the parties would be as set  
23

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24  
25 <sup>28</sup> BCT/8, Linstrom/25.

1 out in the Appendix. When the Petition for Arbitration was filed with the Commission, all that  
2 happened was that the Word version of the interconnection agreement was converted to .pdf. There  
3 was no effort to alter the form of agreement or to accept redlined changes or otherwise. There was  
4 no effort to do anything other than try to submit to the Commission the last form of the draft  
5 interconnection agreement setting out the parties' positions. Based on an investigation, we have  
6 found that if documents are scanned into .pdf, the redlining and cross-outs are preserved. However,  
7 if Adobe software is used to convert a Word document to .pdf, the proposed changes are  
8 automatically accepted. This was unknown to us and unnoticed since all our file copies are the  
9 Word version.

10 In any event, there was no intent to mislead anyone. It does not appear that the form of the  
11 .pdf version of the Appendix caused any party any substantial difficulty in preparing for this case.

12 B. Overall Form of Agreement.

13 As noted at the start of this Reply Brief, the negotiations resulted in agreement on a  
14 substantial number of issues. In this section of the Reply Brief, BCT will identify the specific  
15 language that constitutes BCT's position on the unresolved issues. As noted above, and as will be  
16 identified below, there are areas where Qwest's explanation of the language during the negotiations  
17 was different than the explanation Qwest has provided in the scope of this arbitration. That  
18 additional articulation of Qwest's interpretation of the contract language has resulted in a further  
19 narrowing of the issues. In general, the form of agreement which is attached to Qwest's Opening  
20 Brief as Exhibit 1 and the accompanying attachments is acceptable. The specific exceptions are  
21 noted below.

1 C. Specific Language.

2 1. Interconnection Language for Reciprocal Compensation.

3 (a) Section 7.3.1.1.3.1 and 7.3.2.2.1:

4 To try to be consistent with bill and keep, BCT originally proposed that these two sections  
5 contain language that does not refer to Exhibit H, but uses a relative use factor of fifty percent for  
6 calculation of the costs for trunks. BCT took that position even though BCT's initial analysis  
7 showed that such an approach could, although it was not clear, increase BCT's costs. This approach  
8 appeared to be more consistent with bill and keep. Based on the arguments Qwest has presented in  
9 the arbitration, BCT is willing to accept the language as proposed by Qwest in its Exhibit 1 to its  
10 Opening Brief for Section 7.3.1.1.3.1 and 7.3.2.2.1.

11 (b) Section 7.3.4.1.1:

12 This is the key provision related to bill and keep. BCT is proposing that Section 7.3.4.1.1  
13 read as follows: "For purposes of this Agreement, and notwithstanding anything to the contrary that  
14 may exist in this Agreement, the Parties agree to use a bill-and-keep form of call termination rate."

15 (c) Section 7.3.4.1.4:

16 In reviewing the language proposed for this section, BCT can understand why Qwest might  
17 think BCT is attempting to assess Qwest access charges for access traffic that is delivered without  
18 records. That was not BCT's intent. BCT's intent was to draft the agreement in such a way that the  
19 parties had reason to route traffic as correctly as possible. BCT withdraws its proposal for Section  
20 7.3.4.1.4.

21 (d) Section 7.3.6.1 and Section 7.3.6.2:

22 The language proposed for Section 7.3.6.1 is consistent with bill and keep and the language  
23 should read as follows: "Intercarrier compensation for ISP-bound traffic exchanged between Qwest  
24 and CLEC will be bill-and-keep."  
25

1 The language in proposed Section 7.3.6.2 deals with the categorization of traffic. BCT  
2 deleted the language as surplusage if Section 7.3.6.1 uses bill and keep language.

3 2. Interconnection Language for Routing of Traffic.

4 (a) Section 7.2.2.1.2:

5 This section deals with the routing of intraLATA toll traffic. BCT understands the difficulty  
6 in handling traffic routing on a real time basis and has dropped its alternative position that separate  
7 trunk groups be installed. However, every effort should be made to route access traffic on access  
8 trunks and local traffic on local trunks. Therefore, BCT proposes that for Section 7.2.2.1.2, the  
9 language read as follows: "The Parties agree to use two-way trunk groups. Neither Party may  
10 intentionally route Exchange Access (IntraLATA Toll) traffic of any kind on trunks used for  
11 Exchange Service.

12 (b) Section 7.2.2.2.1:

13 During the course of negotiations, BCT took the position that this section should be  
14 modified so that it was clear that Exchange Access (IntraLATA Toll) traffic should not be routed on  
15 local/EAS trunks. Qwest has since clarified that this language is only applied to Exchange Access  
16 traffic and is designed (although inartfully) to convey the concept that when toll traffic to a  
17 particular end office reaches a particular volume, then direct trunking should be used. BCT has no  
18 problem with that concept and agrees that the concept promotes efficient trunking. Given Qwest's  
19 more recent explanation of how the language in Section 7.2.2.2.1 will be applied, BCT is no longer  
20 proposing an amendment to this section.

21 (c) Section 7.2.2.3.1:

22 This section deals with the routing of traffic, as discussed above. The concept that BCT has  
23 built into the language it is proposing is that the parties will use their best efforts to deliver access  
24 traffic over access trunks. The language used is Qwest's standard language with the following  
25

1 addition: "Neither Party intentionally shall deliver traffic from Interexchange Carriers through local  
2 or EAS tandems. Intentional delivery does not include inappropriately routed calls to either Party  
3 or include unqueried LNP calls." In full, Section 7.2.2.3.1 as proposed by BCT would read as  
4 follows:

5 Qwest will accept traffic originated by CLEC for termination to another CLEC, existing  
6 LEC, or wireless Carrier that is connected to Qwest's local and/or Access Tandem Switch.  
7 Qwest will also terminate traffic from these other Telecommunications Carriers to CLEC.  
8 For purposes of the Agreement, transit traffic does not include traffic carried by  
9 Interexchange Carriers. That traffic is defined as Jointly Provided Switched Access.  
10 Neither Party intentionally shall deliver traffic from Interexchange Carriers through local or  
11 EAS tandems. Intentional delivery does not include inappropriately routed calls to either  
12 party or include unqueried LNP calls. CLEC will accept traffic originated by Qwest for  
13 termination to another CLEC, existing LEC or wireless Carrier that is connected to CLEC's  
14 local or access tandem switch. While CLEC may provide transit service to Qwest, Qwest  
15 shall not be obligated to utilize transit services of CLEC and nothing in this Agreement shall  
16 be construed as a waiver of Qwest's right to seek direct interconnection to any  
17 Telecommunications Carriers that CLEC may provide transiting services between the  
18 Telecommunications Carrier and Qwest.

19 (d) Section 7.2.2.9.3.1 and Section 7.2.2.9.3.2:

20 The language that Qwest is proposing for Section 7.2.2.9.3.1 is the same language that BCT  
21 is proposing for Section 7.2.2.9.3.1. Compare Exhibit 1 of Qwest's Opening Brief at page 65 with  
22 BCT/6, Linstrom/2. There apparently is no issue on this section.

23 The same appears to be true for Section 7.2.2.9.3.2.

24 To some extent, this is a little confusing since Qwest is apparently agreeing to the standard  
25 of not intentionally misrouting calls (sort of an inverse statement of the best effort standard) for  
26 these sections, but appears to be opposing similar language for other sections. For example, see the  
language for Section 7.2.2.3.1, discussed immediately above this section.

1 (e) Section 7.2.2.9.6 and Section 7.2.2.9.6.1:

2 These provisions deal with the routing of primarily local traffic and allows the delivery of  
3 local traffic through the access tandem. Qwest argues that this language simply gives BCT another  
4 delivery option.

5 Since BCT strongly opposes the routing of local traffic through the access tandem, a  
6 problem which is causing BCT substantial problems, it would be hypocritical of BCT to use such an  
7 option. For this reason, BCT proposed changes that would remove the option. Qwest should be  
8 indifferent as to whether the option is removed since it is BCT's choice to use it or not use it. Since  
9 BCT will route local/EAS traffic only through local trunks, these two sections may be deleted.

10 3. Transiting Traffic.

11 (a) Section 7.2.1.2.4 and Section 4.0 Definitions:

12 These provisions deal with BCT serving as a transiting provider. The issue centers around  
13 the definition of what constitutes a tandem switch for purposes of becoming a transiting provider.  
14 For the reasons set forth in the arguments above, BCT is proposing language that would delete the  
15 restrictions that Qwest seeks to impose on BCT's switch functioning as a tandem switch. BCT  
16 proposes that these sections read as follows:

17 Transit traffic is any traffic that originates from one Telecommunications Carrier's network,  
18 transits another Telecommunications Carrier's network, and terminates to yet another  
19 Telecommunications Carrier's network. For purposes of the Agreement, transit traffic does  
20 not include traffic carried by Interexchange Carriers. That traffic is defined as Jointly  
21 Provided Switched Access. Transit service is provided by Qwest, as a local and Access  
22 Tandem Switch provider, to CLEC to enable the completion of calls originated by or  
23 terminated to another Telecommunications Carrier (such as another CLEC, an existing LEC,  
24 or a wireless Carrier), which is connected to Qwest's local or Access Tandem Switches.  
25 CLEC may also provide transit service to Qwest.

1 Section 4.0 – DEFINITIONS:

2 “Access Tandem Switch” is a Switch used to connect End Office Switches to interexchange  
3 Carrier Switches. Qwest’s Access Tandem Switches are also used to connect and switch  
4 traffic between and among Central Office Switches within the same LATA.

5 “Tandem Office Switches” (or “Tandem Switches”) which are used to connect and switch  
6 trunk circuits between and among other End Office Switches. CLEC Switch(es) shall be  
7 considered Tandem Office Switch(es) to the extent such Switch(es) is a Tandem Switch as  
8 registered in the LERG.

9 (b) Section 7.3.1 and Section 7.3.2.1.2.

10 When these items were discussed during negotiation, BCT received an explanation that was  
11 different (at least to BCT’s understanding) than Qwest has put on the record in the arbitration. With  
12 the position of Qwest as stated in the record, BCT withdraws its proposed modifications to Sections  
13 7.3.1 and 7.3.2.1.2.

14 4. Phantom Traffic.

15 (a) Section 7.2.2.3.3:

16 The proposed language deals with the delivery of calling records for phantom traffic  
17 purposes. For the reasons expressed in the body of this Brief and in the Opening Brief, BCT  
18 proposes that this section read as follows:

19 The originating company is responsible for payment of appropriate rates to the transit  
20 company and to the terminating company. The Parties agree that it is each Party’s sole  
21 responsibility to seek to enter into traffic exchange agreements with third party  
22 Telecommunications Carriers prior to delivering traffic to be transited to third party  
23 Telecommunications Carriers. In the event one party originates traffic that transits the  
24 second Party’s network to reach a third party Telecommunications Carrier with whom the  
25 originating Party does not have a traffic exchange agreement, then the originating Party will  
26 indemnify, defend and hold harmless the second Party against any and all charges levied by  
such third party Telecommunications Carrier, including any termination charges related to  
such traffic and any attorneys fees and expenses. In the case of Exchange Access traffic  
where Qwest is the designated IntraLATA Toll provider for existing LECs, Qwest will be



1 responsible for payment of appropriate usage rates. If either Party delivers traffic to the  
2 other Party without providing sufficient call detail for billing purposes and, in the case of  
3 Jointly Provided Switched Access traffic, without an industry standard terminating access  
4 record, upon request of the terminating Party, the other Party will deliver all available call  
records, without charge, to assist the terminating Party in rendering an accurate bill for such  
terminating traffic.

5 The last sentence of this language is the addition that BCT is proposing to address phantom traffic  
6 through record delivery.

7 (b) Section 7.3.7.4:

8 Under Qwest's proposal, there would be a charge for records. This section contains the  
9 reference to that charge. Under BCT's proposal, this section would be deleted and the records  
10 would be provided without charge.

11 (c) Section 7.5.4, Section 7.6.1 and Section 7.6.3:

12 Nominally, this section applies only to jointly provided switched access. The only proposal  
13 by BCT is that the language recognize that there would not be a charge for records that are  
14 delivered related to phantom traffic. BCT would be willing to exchange these records on a bill and  
15 keep basis. However, there needs to, at the very least, be an exception stated in this agreement to be  
16 consistent with the concept that when traffic is delivered in a way that causes the terminating party  
17 to be unable to bill for such traffic, the records in the possession of the transiting carrier should be  
18 provided to the terminating carrier without charge. If BCT becomes the transiting carrier, as it  
19 desires to do, BCT would provide those records to Qwest without charge. Thus, BCT proposes that  
20 the language read as follows:  
21  
22

23 7.5.4 Except as otherwise set forth in this Agreement, a charge will apply for Category 11-  
24 01-XX records sent in an EMR mechanized format. These records are used to provide  
25 information necessary for each Party to bill the Interexchange Carrier for Jointly Provided

1 Switched Access Services and 8XX database queries. The charge for each billable record  
2 created and transmitted is listed in Exhibit A of this Agreement.

3 7.6.1 Qwest and CLEC will exchange wireline network usage data traffic originated by a  
4 wireline Local Exchange Carrier (LEC) where the NXX resides in a wireline LEC Switch,  
5 transits Qwest's network, and terminates to CLEC's network. Each Party agrees to provide  
6 to the other this wireline network usage data when Qwest or CLEC acts as a transit provider  
7 currently or in the future. The Parties understand that this information is Carrier proprietary  
8 information under §222 of the Act and shall be used solely for the purposes of Billing the  
9 wireline LEC. CLEC will provide to Qwest information to be able to provide transit records  
10 on a mechanized basis when Technically Feasible. The information to be exchanged  
11 includes, but is not limited to: service center information, operating company number, and  
12 state jurisdiction. Qwest and CLEC agree to exchange Jointly Provided Switched Access  
13 Service network usage data as Category 11-01-XX.

14 7.6.3 A charge will apply for Category 11-01-XX records sent in an EMR mechanized  
15 format. These records are used to provide information necessary for each Party to bill the  
16 originating Carrier for transit when Technically Feasible. The charge for each billable  
17 record created and transmitted is listed in Exhibit A of this Agreement. There will be no  
18 charge for records related to intraMTA traffic.

19 Please note that there has been a minor modification of BCT's position as it relates to  
20 Section 7.6.1. Based upon Qwest's explanation of its interpretation of this section provided during  
21 the arbitration, BCT is no longer proposing a modification to the first sentence of the section. It  
22 should also be noted that the change in language for the last sentence in Section 7.6.1 is a highly  
23 technical one. The difference from Qwest here is that Exchange Access Traffic records are  
24 exchanged, at least in part, through the Data Distribution Center, which Qwest does not recognize  
25 with its language. The Data Distribution Center process does not necessarily begin and end with a  
26 Category 11-01-XX record, but the DDC process develops the information by which a Category 11-  
01-XX record can be produced. In an effort to be technically accurate, BCT is proposing the  
change in language.

1 5. Choice of Law.

2 As noted throughout the briefing, BCT does not have a strong position on this issue but  
3 believes its proposed language is somewhat preferable by incorporating the concept that the change  
4 of law occurs on the effective date of the change of law, not some later date through an amended  
5 agreement. BCT's proposal is as follows:  
6

7 2.2 The provisions in this Agreement are intended to be in compliance with and based on  
8 the existing state of the law, rules, regulations and interpretations thereof, including but not  
9 limited to state rules, regulations, and laws, as of March 11, 2005 (the Existing Rules).  
10 Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the  
11 interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the  
12 Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in  
13 this Agreement shall preclude or estop Qwest or CLEC from taking any position in any  
14 forum concerning the proper interpretation or effect of the Existing Rules or concerning  
15 whether the Existing Rules should be changed, vacated, dismissed, stayed or modified. To  
16 the extent that the Existing Rules are vacated, dismissed, stayed or materially changed or  
17 modified, then this Agreement shall be deemed amended to reflect such legally binding  
18 modification or change of the Existing Rules, effective with the date of such change. The  
19 Parties shall execute an amendment following such legally binding modification or change  
20 of the Existing Rules. Any failure to agree upon the terms of such amendment within sixty  
21 (60) Days or if the Parties shall have ceased to negotiate such new terms for a continuous  
22 period of fifteen (15) Days, it shall be resolved in accordance with the Dispute Resolution  
23 provision of this Agreement. It is expressly understood that this Agreement will be  
24 corrected, or if requested by CLEC, amended as set forth in this Section 2.2, to reflect the  
25 outcome of generic proceedings by the Commission for pricing, service standards, or other  
26 matters covered by this Agreement. Rates in Exhibit A will reflect legally binding decisions  
of the Commission and shall be applied on a prospective basis from the effective date of the  
legally binding Commission decision, unless otherwise ordered by the Commission. For  
purposes of this section, "legally binding" means that the legal ruling has not been stayed, no  
request for a stay is pending, and any deadline for requesting a stay designated by statute or  
regulation, has passed.

21 D. Final Offer.

22 BCT's "final offer" form of agreement is the same as Exhibit 1, and its Exhibits A through  
23 M that Qwest attached to its Opening Brief, with the exceptions noted in Sections C.1. through C.5.  
24  
25  
26

1 above and not accepting Qwest's "alternative" that BCT's ILEC traffic be subject to the  
2 interconnection agreement.

3  
4 IV. CONCLUSION

5 BCT respectfully requests the Commission adopt the form of interconnection agreement  
6 proposed by BCT as the appropriate agreement for this arbitration.  
7

8 Respectfully submitted this 22nd day of September, 2006.

9  
10 By: 

RICHARD A. FINNIGAN, OSB No. 96535  
Attorney for Beaver Creek Cooperative  
Telephone Company

CERTIFICATE OF SERVICE  
ARB 747

I hereby certify that I have served the attached Reply Brief of Beaver Creek Cooperative Telephone Company upon all parties of record in this proceeding by U.S. mail and electronic mail, pursuant to OAR 860-013-0070, to the following parties or attorneys of parties:

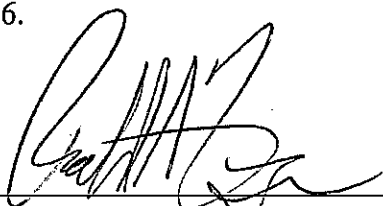
ALEX DUARTE  
QWEST CORPORATION  
421 SW OAK STREET, ROOM 810  
PORTLAND, OR 97204  
alex.duarte@qwest.com

LAWRENCE REICHMAN  
PERKINS COIE LLP  
1120 NW COUCH ST FL 10  
PORTLAND, OR 97209-4125  
lreichman@perkinscoie.com

I further certify that I have sent the attached Reply Brief of Beaver Creek Cooperative Telephone Company by e-mail and U.S. mail to the following:

FILING CENTER  
OREGON PUBLIC UTILITY  
COMMISSION  
550 CAPITOL STREET NE, STE 215  
SALEM, OR 97301  
puc.filingcenter@state.or.us

Dated this 22nd day of September, 2006.



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Richard A. Finnigan, OSB No. 96535  
Attorney for Beaver Creek  
Cooperative Telephone Company