

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 8, 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 Opening 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

OPENING BRIEF OF BEAVER CREEK  
COOPERATIVE TELEPHONE COMPANY

OPENING 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") submits its Opening Brief on the  
2 issues in this docket. The order in which the issues will be addressed in this Opening Brief is as  
3 follows:

- 4 • The first issue will be the form of reciprocal compensation.
- 5 • The second issue will be the routing and trunking of traffic.
- 6 • The third issue will be the transport of third party (transit) traffic and treatment of  
7 BCT's switch as a tandem switch.
- 8 • The fourth issue is handling of phantom traffic.
- 9 • The fifth issue is the form of the change of law provision.

10 This order of presentation is slightly different than the order in which the issues appear in the  
11 testimony. However, this order of issues makes more logical sense since resolution of the form of  
12 reciprocal compensation will have a bearing on some of the issues related to routing and trunking of  
13 traffic.

14 I. The Form of Reciprocal Compensation in this Proceeding Should be Bill and Keep.

15 BCT's position in this matter is that the form of reciprocal compensation should be bill and  
16 keep. Qwest Corporation ("Qwest") argues for a per-minute charge form of reciprocal  
17 compensation. Qwest's primary argument in support of this issue appears to be that it is not known  
18 whether the traffic that is exchanged between BCT's Oregon City operations and Qwest is in  
19 balance and, absent knowing that the traffic is in balance, a per-minute charge should apply.<sup>1</sup>  
20 Qwest's arguments fail for several reasons.

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<sup>1</sup> Qwest/3, Freeberg/9.

1           A.     Qwest Routinely Offers Bill and Keep Arrangement to CLECs in Oregon.

2           In this docket, Qwest appears to argue that a per-minute reciprocal compensation charge is  
3 the preferred form of interconnection. Qwest insinuates that this form of compensation is favored  
4 under law.<sup>2</sup>

5           However, Qwest's arguments are incorrect. There is nothing in statute, rule or FCC order  
6 that supports the contention that a per-minute form of reciprocal compensation is the preferred form  
7 of reciprocal compensation for interconnection agreements. What Qwest's witnesses fail to point  
8 out is that under the FCC's rules, the Commission is entitled to presume that the traffic is in balance  
9 and is expected to remain so unless the party challenging the concept rebuts the presumption. As  
10 set out in 47 U.S.C. § 51.713(c):

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

15 Thus, Qwest needs to demonstrate that the traffic is not in balance. All the record shows is that the  
16 parties do not know whether it is in balance or not because of porting and other measurement issues,  
17 such as Qwest commingling CLEC traffic with its own traffic.

18           Furthermore, as pointed out in Mr. Linstrom's testimony, Qwest routinely offers bill and  
19 keep arrangements as the form of reciprocal compensation in Oregon. In Mr. Linstrom's testimony,  
20 he lists several bill and keep agreements in Oregon that were found after a very short review of the  
21 filed agreements.<sup>3</sup>

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24 <sup>2</sup> Qwest/3, Freeberg/10-11.

25 <sup>3</sup> BCT/8, Linstrom/15.

1 Qwest seems to argue that it has a legal "right" to insist on per-minute compensation for use  
2 of its network.<sup>4</sup> However, Qwest actually has it backwards. BCT has the legal right under FCC  
3 rules to opt into any of the existing bill and keep arrangements.<sup>5</sup> On the "opt-in," Qwest would be  
4 required to honor the bill and keep arrangement.<sup>6</sup>

5 It is important to note, in addition, that Qwest has entered into a bill and keep arrangement  
6 with its own affiliate, Qwest Communications Corporation. ARB 616. Qwest has offered bill and  
7 keep to another incumbent local exchange carrier (ILEC) that has what is known in the industry as  
8 an "edge out" operation. See, ARB 351 involving Gervais Telephone Company. In many ways, the  
9 Gervais operation can be seen as analogous to what BCT is doing. If bill and keep is available as a  
10 common form of reciprocal compensation for interconnection agreements in Oregon, it ought to be  
11 available for BCT. If bill and keep is acceptable for Qwest's relationships with its affiliate, it ought  
12 to be acceptable for BCT. If Qwest offers bill and keep to other ILECs doing the "edge out" form  
13 of competitive local exchange carrier (CLEC) operations, it ought to be available for BCT's CLEC  
14 operations.

15 B. Traffic Need Not be "In Balance" for Bill and Keep to Apply.

16 In its testimony, Qwest argues that traffic should be in balance for bill and keep to apply.<sup>7</sup>  
17 Qwest appears to argue that because it is not known whether traffic is in balance, then the  
18 presumption is that the traffic is not in balance and a per minute form of compensation should  
19 apply. These arguments fail for several reasons.

20 Most importantly, Qwest's position is entirely inconsistent with the position it has advanced  
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23 <sup>4</sup> Qwest/3, Freeberg/9-11.

<sup>5</sup> 47 C.F.R. §51.809.

24 <sup>6</sup> That process would resolve the issue as to the form of reciprocal compensation. However, there are other issues that  
are involved in this case, and an opt-in approach would leave those issues unresolved.

25 <sup>7</sup> See, e.g., Qwest/3, Freeberg/10.

1 at the federal level. As will be discussed below, Qwest has been a very strong advocate of bill and  
2 keep form of compensation as the most beneficial form of intercarrier compensation. Qwest has  
3 addressed arguments that bill and keep should be used only when traffic is in balance. Just over a  
4 year ago, Qwest filed reply comments with the FCC in which Qwest stated that bill and keep "is  
5 optimal even where traffic is not balanced."<sup>8</sup> In fact, Qwest argued to the FCC that a per-minute  
6 charge form of reciprocal compensation is not appropriate where there is unbalanced traffic. Qwest  
7 states "In fact, such [unbalanced] traffic should not and cannot be deemed eligible for 'reciprocal  
8 compensation' in the first place because there is nothing reciprocal about it." Qwest argues that  
9 where there is unbalanced traffic there is the greatest potential for arbitrage and, therefore, bill and  
10 keep should be used.<sup>9</sup> Qwest's own arguments to the FCC fully support the outcome that BCT  
11 seeks in this docket, that bill and keep is the appropriate form of intercarrier compensation.

12 Further, while it might be expected that Qwest will point to language in some of the Oregon  
13 bill and keep agreements that suggest that bill and keep is used when an entity is in a start up mode,  
14 that is not the only time that bill and keep is used in Oregon. For example, the Comm Partners LLC  
15 agreement in ARB 674 contains no qualifying language. It states clearly and succinctly that all  
16 traffic will be exchanged on a bill and keep basis. See, Section 7.3.4.1 of that agreement, "CLEC  
17 and Qwest will exchange Exchange Service and VoIP traffic on a bill and keep basis."

18 In addition, while some of the agreements contain language that suggest that bill and keep is  
19 put in place because the entity is starting operations in Oregon and it is not known whether traffic is  
20 or is not in balance, some of those agreements have been in place for four or five years. There is no  
21 indication of Qwest ever going back to revisit the traffic for any of those entities. For example, as  
22 stated in Mr. Linstrom's testimony, BCT was a major stockholder of Western Independent Network

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24 <sup>8</sup> See, BCT/10, Linstrom/6.

25 <sup>9</sup> See, Qwest Reply Comments at p. 26 as contained in BCT/10, Linstrom/7.

1 (ARB 452). BCT would, thus, have been aware if the bill and keep in the interconnection  
2 agreement had ever been revisited.

3 It should also be noted that Qwest's presumption in these agreements is that where traffic  
4 patterns are not known, bill and keep is appropriate. That is opposite from the position taken in this  
5 proceeding that if traffic balance is not known, then a per-minute calculation should be used.

6 C. Qwest's Arguments to the FCC Prove BCT's Case for Bill and Keep.

7 For the last five years, Qwest has argued to the FCC that bill and keep is not only the  
8 preferred method of intercarrier compensation, it is the best method of intercarrier compensation.<sup>10</sup>  
9 As stated by Qwest, "Bill and Keep is the most economically rational intercarrier compensation  
10 system."<sup>11</sup>

11 Qwest has argued to the FCC as follows: "Bill and Keep therefore encourages the  
12 development of competition because, as stated above, carriers must compete in the market based  
13 upon their ability to serve customers efficiently, not through regulatory arbitrage."<sup>12</sup> It is BCT's  
14 goal to show customers that BCT is the choice they should make in the marketplace.

15 Qwest also argues that a per-minute form of compensation allows carriers to shift their cost  
16 to competitors. Qwest underscores this position on bill and keep by stating "There is, of course, a  
17 very powerful economic incentive to raise the costs of one's competitors where possible, especially  
18 if such cost shifting can result in increased revenues to the cost shifter."<sup>13</sup>

19 Qwest concludes its arguments on bill and keep by stating "In sum, bill and keep best meets  
20 the Commission's goals of promoting economic efficiency, being competitively and technologically  
21 neutral, providing regulatory certainty, eliminating arbitrage concerns, and requiring minimal  
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23 <sup>10</sup> See, BCT/9, Linstrom/2 and 5; see, also, BCT/11, Linstrom/1-33.

24 <sup>11</sup> Qwest's Comments at p. 19 as contained in BCT/9, Linstrom/2.

24 <sup>12</sup> BCT/9, Linstrom/4.

25 <sup>13</sup> BCT/9, Linstrom/3.

1 regulatory intervention.”<sup>14</sup> (Emphasis added.) Qwest’s own logic support the adoption of bill and  
2 keep in this docket. Qwest has told the FCC that bill and keep promotes competition. In this case,  
3 Qwest seeks a per-minute form of compensation, apparently to inhibit competition.

4 Qwest has told the FCC that a per-minute rate allows the carrier to shift its costs to its  
5 competitors. Qwest apparently is falling victim to what it describes as this “very powerful  
6 economic incentive to raise the costs of one’s competitors where possible, especially if such cost  
7 shifting can result in increased revenues to the cost shifter.” That appears to be the result that  
8 Qwest is urging in this case, that it be allowed to shift its costs to BCT and increase Qwest’s  
9 revenues at the same time.

10 Bill and keep is the correct form of reciprocal compensation for this docket.

11 D. Qwest’s Arguments Concerning Share of Transport Costs Should Not be Accepted.

12 The final argument that Qwest appears to assert on the bill and keep issue is that bill and  
13 keep is not appropriate where one party has more of the transport mileage than another party.<sup>15</sup>  
14 First of all, this argument seems to fly in the face of Qwest’s arguments to the FCC. Second, as  
15 pointed out in Mr. Linstrom’s testimony, BCT is seeking to move its point of presence to the Pittock  
16 Building, which would mean that BCT would have the lion’s share of the transport.<sup>16</sup> Qwest is  
17 opposing that move.

18 Qwest cannot have it both ways. Qwest cannot argue that bill and keep is not appropriate  
19 because Qwest has most of the transport while at the same time opposing BCT’s request to move its  
20 point of presence to the Pittock Building which would result in BCT having most of the transport.  
21 Under BCT’s proposal, BCT would have those transport costs on its own nickel, while still in a bill

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24 <sup>14</sup> BCT/9, Linstrom/5.  
25 <sup>15</sup> Qwest/1, Freeberg/15-17.  
<sup>16</sup> BCT/8, Linstrom/18.



1 and keep environment. The logic behind Qwest's argument simply does not exist.

2  
3 II. BCT's Position on the Routing and Trunking of Traffic is Logically Consistent with a Bill  
4 and Keep Environment.

5 A. Traffic Should Be On One Trunk Group.

6 BCT's position is that it should be in a position of equality of treatment with Qwest. Today,  
7 Qwest sends CLEC originated traffic and Qwest's own originating traffic to BCT over the same  
8 trunk groups. Qwest sends traffic that is destined for BCT's Oregon City operations over trunk  
9 groups that, under Qwest's theory, should receive only traffic destined for BCT's operations in the  
10 Beaver creek exchange as an ILEC. In addition, as the Commission knows from UA 55 (Reopened),  
11 Qwest serves customers in the Beaver creek exchange and delivers the traffic that originates from  
12 those customers to BCT over the same trunks that carry Qwest's Oregon City exchange traffic. On  
13 the other hand, Qwest is arguing that BCT must segregate its traffic so that traffic originating from  
14 its CLEC operations in the Oregon City exchange has to be put on trunk groups that are separate  
15 from traffic from BCT's ILEC operations in the Beaver creek exchange. In this setting, the equality  
16 of treatment would be to require either (1) both parties to put traffic originating from CLEC and  
17 ILEC operations on one trunk group or (2) require the parties to separate CLEC originated traffic  
18 onto one trunk group and ILEC originated traffic onto another trunk group. The first choice - use of  
19 one trunk group is BCT's preferred choice since it promotes efficient use of trunks.

20 One of the arguments that has been advanced in the past is that BCT's Oregon City traffic  
21 must be segregated from the Beaver creek exchange traffic in order for Qwest to know how to  
22 charge BCT for the CLEC type of traffic originated in the Oregon City exchange. If bill and keep is  
23 the adopted form of intercarrier compensation for this agreement for the termination of local traffic,  
24 that argument goes away completely.

1 In addition, it should be noted that Qwest makes strong arguments that where BCT is  
2 complaining about jurisdictionally mixed traffic and being unable to bill correctly, rather than use of  
3 separate trunk groups, Qwest argues that it will simply provide the records to BCT for a fee.<sup>17</sup>  
4 Qwest argues in their context that trying to segregate traffic would lead to costs imposed on Qwest  
5 and inefficiencies in trunking.<sup>18</sup> Thus, they argue that use of billing records that are delivered for a  
6 fee is a far better method and would impose only minimal costs on BCT.<sup>19</sup> Why should Qwest be  
7 allowed to avoid trunking charges and, in order for BCT to bill for traffic, have to pay Qwest for the  
8 records on the one hand, and BCT be required to bear the costs of inefficient trunking on the other  
9 hand. It makes no logical sense.

10 If bill and keep is adopted, as noted above, the need for separate trunking goes away and  
11 trunking can become more efficient. In addition, given Qwest's position on records, the more  
12 appropriate result is that if there is some need for Qwest to have records related to traffic originating  
13 from the Oregon City exchange, it can obtain those records from BCT at a cost. These are the same  
14 costs that Qwest hopes to impose on BCT. BCT has stated in the record in this docket that it is  
15 willing to provide records to Qwest.<sup>20</sup> This result produces equality of treatment.

16 For the routing of local and EAS traffic, BCT suggests that the Commission adopt a bill and  
17 keep environment and such an environment allow the parties to route CLEC originated and ILEC  
18 originated traffic over the same trunk groups. That promotes trunking efficiency for all parties.

19 B. Jurisdictionally Mixed Traffic – a Proposed Records-Based Solution.

20 The other trunking and routing issue is jurisdictionally mixed traffic. By this, it is meant  
21 that toll traffic is routed to BCT over EAS trunks and EAS traffic is routed to BCT over access  
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23 <sup>17</sup> Qwest/3, Freeberg/27-28.

24 <sup>18</sup> See, generally, Qwest/5, Cederberg/8-15.

24 <sup>19</sup> Qwest/3, Freeberg/27-28.

25 <sup>20</sup> BCT/8, Linstrom/27.

1 trunks. BCT does not route EAS traffic over access trunks nor does it route toll traffic over EAS  
2 trunks.

3           The problem apparently comes about because Qwest has a CLEC product known as the  
4 Single Point of Presence or SPOP. Under this product, a CLEC can deliver all jurisdictionally  
5 mixed traffic to a single point. This is most often the access tandem. Under this product, Qwest  
6 receives compensation for transporting the traffic originated by the CLEC. For EAS traffic that is  
7 routed over the access tandem, this imposes an additional cost to BCT to augment trunk groups that  
8 allow the traffic to be able to be terminated. The additional toll/access trunk groups are not needed  
9 for toll traffic. They are put in place to handle EAS traffic. It also causes BCT a tremendous  
10 amount of time and effort to sort traffic to determine what can be billed and what cannot be billed.

11           In an ideal world, Qwest would put local/EAS traffic over one trunk group and toll/access  
12 over a separate trunk group. BCT believes this can be done. The arguments advanced by Qwest  
13 boil down to the point that the cost of doing such traffic separation in today's environment are high.  
14 BCT agrees that is probably the case.

15           Qwest's position is that the way to solve this issue is not to go to the cost of separate  
16 trunking, but for BCT to pay Qwest for the records to allow BCT to determine which traffic is or is  
17 not appropriate to be billed for access. BCT's position is that because Qwest has created a situation  
18 in which it economically benefits from the transport of jurisdictionally mixed traffic and is  
19 imposing the costs of that economic benefit on BCT, Qwest should not reap a further economic  
20 benefit by profiting from the delivery of records that would allow BCT to sort out the problem that  
21 Qwest has created in the first instance. The records should be provided without a charge. That  
22 would allow Qwest to continue to use the trunking that BCT has to pay for, in part, to Qwest's  
23 economic benefit under its SPOP product while at least minimizing the additional costs imposed on  
24 BCT.

1 The same result should be true for traffic that is toll in nature that is delivered to BCT over  
2 EAS trunks. In the ideal world, the traffic would be segregated. In this more convoluted world  
3 where Qwest sits in the middle to economically benefit in a transport roll, Qwest should provide the  
4 records free of charge for those parties to whom it is routing jurisdictionally mixed traffic.

5  
6 III. Transport of Third Party (Transit) Traffic and Treatment of BCT's Switch as a Tandem  
7 Switch.

8 The issue here is one of interpretation. BCT and Qwest agree that BCT should be able to  
9 serve as a transit traffic provider. Qwest takes the position that it is not trying to prevent BCT from  
10 serving as a transit provider. However, Qwest insists that there should be a separate agreement put  
11 in place for transit traffic. Qwest further insists that the only way that BCT's switch should be  
12 treated as a tandem (and hence engage in transiting of traffic) is if it serves the same geographic  
13 region as Qwest. Yet, Qwest also opposes BCT's move of its point of interconnection to the Pittock  
14 Building so its switch could serve the same geographic area as Qwest.

15 BCT's position is that all of the qualifications advanced by Qwest effectively prevent BCT  
16 from engaging in the transit business and that those obstacles should be removed by the language  
17 BCT proposes for this interconnection agreement.

18 Qwest and BCT agree on a theoretical premise: BCT may function as a transit provider.  
19 However, Qwest's first position is that there should be an agreement separate and apart from the  
20 current interconnection agreement that describes how BCT will transit traffic. BCT sees no good  
21 reason for such a separate agreement. A requirement to negotiate such an agreement would delay  
22 BCT's entry into the transiting traffic market. The only conceivable circumstance under which  
23 Qwest's argument that BCT would need to have a separate agreement with Qwest is if for some  
24 reason BCT is in a bill and keep environment for its own traffic and is transiting traffic for another

1 CLEC that has a per-minute form of reciprocal compensation for Qwest. Under that arrangement,  
2 Qwest would need to have some assurance that it can bill the originating CLEC for the traffic that  
3 BCT transits. However, the solution is not another agreement. In fact, the solution is within the  
4 form of the proposed interconnection agreement. That is, if Qwest needs records for traffic that  
5 BCT originates, BCT will provide those records to Qwest for a charge. That is the same solution  
6 that Qwest proposes when Qwest transits traffic.<sup>21</sup>

7 There is no need for a separate agreement. Qwest's condition on BCT getting into the  
8 transiting business is just an obstacle to BCT competing for Qwest for transiting traffic.

9 The other issue raised by Qwest is that the only way BCT's switch can be treated as a  
10 tandem and, thus, haul transiting traffic is if it serves the same geographic area as Qwest's switch.  
11 Qwest seems to think that BCT's motive for seeking to have its switch treated as a tandem is that  
12 BCT wants to charge a tandem switching charge for traffic that terminates to BCT's customers in  
13 the Oregon City exchange. However, that is not the case. As Mr. Linstrom clearly stated in his  
14 testimony, BCT would not charge Qwest for such traffic.<sup>22</sup>

15 Qwest does not deny that BCT's switch has the functionality to serve as a tandem switch.  
16 What Qwest argues is that it may not serve the same geographic area. However, BCT has sought to  
17 move its point of presence to the Pittock Building so that its switch can serve the same geographic  
18 area and Qwest has opposed that move. This means Qwest has created its own means for ensuring  
19 that BCT never gets into the transiting market. It is hypocritical for Qwest to argue that BCT's  
20 switch must serve the same geographic area as Qwest's switch to be a tandem when Qwest is  
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24 <sup>21</sup> Actually, if BCT can receive the records it needs from Qwest without a charge, BCT would not charge Qwest for  
these transiting records either.

25 <sup>22</sup> BCT/8, Linstrom/27.

1 making it physically impossible for BCT's switch to serve that same geographic area.

2  
3 IV. BCT's Proposal on Phantom Traffic Should be Adopted.

4 The issue of phantom traffic is one that Qwest has, in essence, created through its SPOP  
5 product. Access traffic is being delivered over EAS/local trunks. EAS/local traffic is being routed  
6 over access trunks.


7 Qwest opposes having to separate the traffic onto separate trunk groups. Qwest argues that  
8 the solution is for BCT to purchase records from Qwest. BCT's proposal would be that the records  
9 be exchanged without charge between the companies as the most efficient means of addressing  
10 phantom traffic.

11  
12 V. The Change of Law Provision.

13 This is a minor issue. BCT's proposal would have changes of law be self-executing.  
14 Qwest's proposal would require the development and execution of amendments to the  
15 interconnection agreement. BCT believes that Qwest's proposal is slow, inefficient and could lead  
16 to regulatory disputes. Qwest argues that their proposal provides clarity and assurance as to when  
17 the change of law takes effect.

18 BCT believes both sides have merit. BCT does not have a very strong position on this issue,  
19 but believes that its position is slightly preferable to Qwest's position.

20 Respectfully submitted this 8th day of September, 2006.

21  
22 By:   
23 RICHARD A. FINNIGAN, OSB No. 96535  
24 Attorney for Beaver Creek Cooperative  
25 Telephone Company

CERTIFICATE OF SERVICE  
ARB 747

I hereby certify that I have served the attached Opening 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:

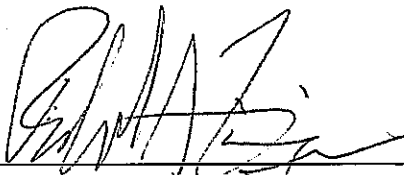
ALEX DUARTE  
QWEST CORPORATION  
421 SW OAK STREET, ROOM 810  
PORTLAND, OR 97204  
alex.duarte@qwest.com

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 Opening 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 8th day of September, 2006.

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