



# Oregon

Theodore R. Kulongoski, Governor

## Public Utility Commission

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April 22, 2005

OREGON PUBLIC UTILITY COMMISSION  
ATTENTION: FILING CENTER  
PO BOX 2148  
SALEM OR 97308-2148

RE: **OPUC Docket No. 1168** - In the Matter of PUBLIC UTILITY COMMISSION OF OREGON STAFF  
Investigation into Qwest Corporation (and possibly other parties)'s failure to file interconnection  
agreements for Commission approval under Section 252(a)(1) of the Telecommunications Act

Enclosed for filing in the above-captioned docket is the Public Utility Commission's UM 1168 Staff  
Testimony. This document is being filed by electronic mail with the PUC Filing Center.

*Judy Ogilvie*

Judy Ogilvie  
Regulatory Operations Division  
Filing on Behalf of Public Utility Commission Staff  
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**PUBLIC UTILITY COMMISSION  
OF OREGON**

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**UM 1168**

**STAFF TESTIMONY**

**OF**

**DAVID BOOTH**

**In the Matter of  
PUBLIC UTILITY COMMISSION OF OREGON STAFF  
Investigation into Qwest Corporation (and possibly  
other parties)'s failure to file interconnection  
agreements for Commission approval under  
Section 252(a)(1) of the Telecommunications Act**

**April 22, 2005**

CASE: UM 1168  
WITNESS: David Booth

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 1**

**Direct Testimony**

**April 22, 2005**

1 **Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS**  
2 **ADDRESS.**

3 A. My name is David Booth. I am Program Manager of the Competitive Issues  
4 Section in the Telecommunications Division, Public Utility Commission of  
5 Oregon (Commission). My business address is 550 Capitol Street NE  
6 Suite 215, Salem, Oregon 97301-2551.

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**  
8 **EXPERIENCE.**

9 A. My Witness Qualification Statement is found in Exhibit Staff/2.

10 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

11 A. The purpose of my testimony is to explain and support the Stipulation and  
12 Agreement (Stipulation) in docket UM 1168 between Qwest Corporation  
13 (Qwest) and the staff of the Public Utility Commission of Oregon (Staff). The  
14 Stipulation resolves disputed issues between Qwest and Staff. Qwest filed the  
15 Stipulation in this docket on February 4, 2005. I have provided a copy of the  
16 signed Stipulation as Exhibit Staff/4.

17 **Q. SUMMARIZE YOUR RECOMMENDATION.**

18 A. I recommend the Commission adopt the stipulation. In so doing, the  
19 Commission should find that Qwest failed in 29 instances to obey the filing  
20 requirements of OAR 860-016-0020(3). The Commission should seek court-  
21 imposed penalties on Qwest under ORS 759.990(6) in the amount of  
22 \$1,050,000 as set forth in the Stipulation.

23 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

1 A. My testimony is organized as follows:

2	Failure to File Agreements, .....	3
3	Investigations in Other States, .....	10
4	Oregon Investigation, .....	14
5	The Stipulation, .....	23
6	Conclusion and Recommendation, .....	30

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**FAILURE TO FILE AGREEMENTS**

**Q. ARE CARRIERS REQUIRED TO FILE INTERCONNECTION AGREEMENTS WITH STATE COMMISSIONS FOR APPROVAL?**

A. Yes. Section 252(a) of the Telecommunications Act of 1996 (the Act) requires incumbent local exchange carriers (ILECs) and their competitors (CLECs) to file interconnection agreements with state commissions. Agreements subject to filing are those that “result from a request for interconnection, services, or network elements pursuant to section 251.” States are to approve or reject these agreements according to the timelines and standards set forth in Section 252(e) of the Act.

The Commission adopted administrative rule OAR 860-016-0020(3) to require the filing of interconnection agreements mandated by the Act.

OAR 860-016-0020(3) provides as follows, “After the parties reach agreement under Section 252(a) of the Act, they must file an application with the Commission seeking approval of the agreement, or for approval of an amendment to an approved agreement on file with the Commission.”

**Q. DID QWEST FAIL TO FILE INTERCONNECTION AGREEMENTS AS REQUIRED BY OAR 860-016-0020(3)?**

A. Yes. Qwest entered into a series of agreements with selected CLECs that neither Qwest nor the CLECs filed for approval as required by OAR 860-016-0020(3). In some instances, these unfiled agreements provided favorable rates, terms, and conditions to the CLEC parties.

1 **Q. HOW DID YOU FIRST LEARN THERE WERE UNFILED AGREEMENTS**  
2 **BETWEEN QWEST AND SOME CLECS?**

3 A. The unfiled agreements issue first came to my attention In February 2002. On  
4 February 14, 2002, the Minnesota Department of Commerce (MDC) filed a  
5 complaint against Qwest with the Minnesota Public Utility Commission  
6 (MPUC). The complaint alleged that Qwest had entered into interconnection  
7 agreements with CLECs that should have been but were not filed with the  
8 MPUC under Section 252(a) of the Act. Based on the Minnesota complaint, I  
9 began an informal Staff investigation for Oregon in March 2002. On  
10 March 21, 2002, I sent Qwest a letter asking it to provide copies of any unfiled  
11 agreements between Qwest and CLECs for the state of Oregon. Qwest initially  
12 provided 73 agreements. The number subsequently grew to a total of 89  
13 agreements.

14 **Q. HOW DID QWEST RESPOND TO THE MINNESOTA COMPLAINT?**

15 A. Qwest initially argued that none of the agreements in question needed to be  
16 filed with state commissions for approval based on the company's  
17 understanding of Section 252(a)(1). On April 23, 2002, Qwest filed a petition  
18 for declaratory ruling with the Federal Communications Commission (FCC)  
19 asking for an interpretation of Section 252(a)(1) of the Act. Section 252(a)(1)  
20 states:

21 Upon receiving a request for interconnection, services, or network  
22 elements pursuant to section 251, an incumbent local exchange carrier  
23 may negotiate and enter into a binding agreement with the requesting  
24 telecommunications carrier or carriers without regard to the standards  
25 set forth in subsections (b) and (c) of section 251. The agreement

1 shall include a detailed schedule of itemized charges for  
2 interconnection and each service or network element included in the  
3 agreement. The agreement, including any interconnection agreement  
4 negotiated before the date of enactment of the Telecommunications  
5 Act of 1996, shall be submitted to the State commission under  
6 subsection (e) of this section.

7 **Q. WHAT WAS THE FCC'S RESPONSE?**

8 A. The FCC issued a declaratory ruling October 4, 2002, in FCC 02-265,  
9 WC Docket No. 02-89. For the most part, the FCC rejected as much too  
10 narrow Qwest's interpretation of what agreements did or did not need to be  
11 filed. The FCC stated, "we find that an agreement that creates an *ongoing*  
12 obligation pertaining to resale, number portability, dialing parity, access to  
13 rights-of-way, reciprocal compensation, interconnection, unbundled network  
14 elements, or collocation is an interconnection agreement that must be filed  
15 pursuant to Section 252(a)(1)." [Emphasis in original] See FCC 02-276,  
16 page 5.

17 **Q. DID ANY OF THE OREGON UNFILED AGREEMENTS CREATE AN**  
18 **ONGOING OBLIGATION FOR THE SECTION 251 SERVICES LISTED IN**  
19 **THE FCC DECLARATORY RULING?**

20 A. Yes.

21 **Q. DID QWEST EVENTUALLY FILE ANY OF THE PREVIOUSLY UNFILED**  
22 **OREGON AGREEMENTS FOR APPROVAL PURSUANT TO**  
23 **OAR 860-016-0020(3)?**

24 A. Yes. On or about September 4, 2002, just before the FCC's declaratory ruling,  
25 Qwest filed for Commission approval sixteen of the eighty-nine previously



1 unfiled agreements. All sixteen were filed as amendments to agreements  
2 previously approved by the Commission. The Commission approved all  
3 sixteen amendments on or about November 15, 2002. Qwest subsequently  
4 filed, and the Commission subsequently approved, additional amendments of  
5 this type. To the best of Staff's knowledge, Qwest has now brought itself into  
6 compliance by filing all previously unfiled agreements that are still effective and  
7 should have been filed as required by OAR 860-016-0020(3). Qwest did not  
8 file the agreements timely. The company filed these agreements only after its  
9 filing practices came under regulatory scrutiny. Nevertheless, the company did  
10 eventually make the filings.

11 **Q. DO YOU KNOW WHY QWEST FAILED TO FILE CERTAIN AGREEMENTS**  
12 **AS REQUIRED BY OAR 860-016-0020(3)?**

13 A. I do not know for sure. In some instances, it appears that Qwest genuinely did  
14 not understand the filing requirements. In other instances, it appears that  
15 Qwest knew the agreements contained provisions that should be filed with  
16 state commissions, but ignored the filing requirements.

17 **Q. WHY WOULD QWEST IGNORE THE FILING REQUIREMENTS?**

18 A. In my judgment, Qwest ignored the filing requirements because the company  
19 did not want to disclose that it was providing favorable interconnection-related  
20 terms only to certain CLECs. The company preferred to keep secret the  
21 existence of more favorable terms because, once disclosed, other CLECs  
22 would insist on the same. In addition, by secretly offering more favorable

1 interconnection-related terms to certain CLECs, Qwest was attempting to  
2 encourage these CLECs to cooperate on two major Qwest initiatives.

3 **Q. WHAT INITIATIVES?**

4 A. Qwest entered into most of the agreements that are at issue in this docket  
5 around the time that the company was managing two major events. One was  
6 the pending merger of Qwest Communications International, Inc. (QC) with  
7 U S WEST, Inc. (U S WEST). The other was Qwest's efforts to gain state  
8 endorsement and FCC approval for interLATA authority under Section 271 of  
9 the Act.

10 **Q. WHAT IS THE CONNECTION BETWEEN THE MERGER AND THE**  
11 **UNFILED AGREEMENTS?**

12 A. The merger was announced in June 1999 and completed in June 2000. In  
13 order to complete the merger, the companies needed approval from numerous  
14 state commissions. It appears that QC and U S WEST were concerned that  
15 some of U S WEST's competitors would delay or derail the merger by opposing  
16 it in state proceedings. U S WEST set out to improve its relations with the  
17 CLECs, in part by settling various billing disputes. U S WEST also became  
18 more receptive to demands from some of its major CLEC competitors for more  
19 favorable interconnection-related terms. Qwest and its CLEC partners kept  
20 these agreements confidential, even though many of them modified existing  
21 interconnection agreements approved by state commissions pursuant to  
22 Section 252 of the Act. Some of these confidential agreements included

1 provisions in which the CLEC parties explicitly agreed they would not oppose  
2 the merger in state proceedings.

3 **Q. WHAT IS THE CONNECTION BETWEEN SECTION 271 APPROVAL AND**  
4 **THE UNFILED AGREEMENTS?**

5 A. Qwest (then U S WEST) began in earnest seeking Section 271 approval early  
6 in the first quarter of the year 2000. Although the FCC approves or  
7 disapproves Section 271 applications, the process of gaining Section 271  
8 approval from the FCC starts in the states. In state proceedings, a Bell  
9 Operating Company such as Qwest must convince each state commission that  
10 it has irreversibly opened its local service markets to competition. Each state  
11 commission then makes a recommendation to the FCC. Early on, the FCC  
12 made it clear that it would be unlikely to grant Section 271 approval for a state  
13 unless the state commission made a positive recommendation.

14 Qwest first gained Section 271 approval from the FCC in December  
15 2002. The approval covered nine states (Colorado, Idaho, Iowa, Montana,  
16 Nebraska, North Dakota, Utah, Washington, and Wyoming). The FCC  
17 approved Qwest's Section 271 authority for Oregon in April 2003, together with  
18 New Mexico and South Dakota. Approval for Minnesota followed in June 2003,  
19 and finally for Arizona in December 2003.

20 Qwest's unfiled agreements became an issue late in the Section 271  
21 approval process. AT&T raised the issue in state proceedings and before the  
22 FCC to show that Qwest had compromised the Section 271 record by entering  
23 into secret agreements with competitors, who in turn agreed not to oppose

1 Qwest's Section 271 application. In addition, AT&T argued that Qwest's secret  
2 agreements with competitors were evidence of Qwest's discriminatory  
3 practices, and that such practices were not consistent with the requirement that  
4 Qwest irreversibly open its local service markets to competition. AT&T pointed  
5 to provisions in some agreements where the CLEC agreed not to oppose  
6 Qwest's Section 271 application in exchange for more favorable treatment.

7 The FCC acknowledged that Qwest's unfiled agreements were  
8 troubling, but approved Qwest's Section 271 applications anyway. The state  
9 commissions, including the Oregon Commission, and the FCC concluded that  
10 Section 271 approval was appropriate despite Qwest's practices because  
11 Qwest's illegal behavior was in the past, subject to ongoing investigations at  
12 the FCC and in the states, and Qwest had demonstrated its continuing  
13 commitment to irreversibly open its local service markets to competition.

14 The FCC continued to investigate Qwest's unfiled agreements. On  
15 March 12, 2004, the FCC released a Notice of Apparent Liability for Forfeiture  
16 (i.e., fine) against Qwest for its failure to timely file agreements in the context of  
17 the Minnesota and Arizona Section 271 proceedings. The FCC imposed a  
18 forfeiture of \$9 million, which Qwest did not appeal.

**INVESTIGATIONS IN OTHER STATES****Q. HAVE OTHER STATES IN QWEST'S REGION INVESTIGATED THE UNFILED AGREEMENTS ISSUE?**

A. Yes. Five of the 13 other states in Qwest's region have been especially active on this issue: Arizona, Colorado, Iowa, Minnesota, and Washington.

**Q. WHAT HAPPENED IN ARIZONA?**

A. In April 2004, the Arizona Corporation Commission (ACC) imposed sanctions on Qwest related to unfiled agreements totaling \$20.4 million. Of that amount, \$11.6 million is required payments or credits to a specific list of CLECs, and \$8.8 million is administrative penalties. Qwest must pay the latter amount to the state general fund. The ACC found that Qwest had willfully and intentionally violated state and federal regulations requiring state approval of interconnection agreements.

**Q. WHAT HAPPENED IN COLORADO?**

A. The Colorado Public Utilities Commission (CPUC) opened an investigation of Qwest's unfiled agreements in October 2002. The CPUC is still investigating the matter. The CPUC staff filed initial comments in February 2004. The staff testimony reviewed various remedies that the CPUC might consider. The CPUC can seek fines of up to \$2,000 per offense in state district court. Each day's continuance of a violation constitutes a separate offense. The CPUC has authority to order reparations to parties that were harmed by the unfiled agreements. In April 2004, Qwest and the Colorado Office of Consumer Counsel (OCC) announced a settlement under which Qwest agreed to pay

1           \$7.5 million to the Colorado Low Income Assistance Program and other  
2           causes. Qwest also agreed to provide limited bill credits to qualifying CLECs.

3           In December 2004, the Administrative Law Judge (ALJ) recommended  
4           rejection of the settlement agreement between OCC and Qwest. The ALJ  
5           agreed with the CPUC staff that the CPUC should open a new “show cause”  
6           proceeding to consider penalties against Qwest and the CLEC parties to the  
7           unfiled agreements. In addition, the ALJ indicated that the new “show cause”  
8           proceeding would give CLECs that were not party to the unfiled agreements an  
9           opportunity to establish actual harm and damages. To date, the CPUC has not  
10          issued an order on the ALJ’s recommendations.

11       **Q. WHAT HAPPENED IN IOWA?**

12       A. In February 2002, AT&T filed a complaint against Qwest regarding unfiled  
13       agreements for interconnection services. The Iowa Utilities Board (IUB) found  
14       in May 2002 that Qwest should have filed three interconnection agreements for  
15       state approval. Qwest subsequently filed the agreements. The IUB did not  
16       order Qwest to pay fines or penalties.

17       **Q. WHAT HAPPENED IN MINNESOTA?**

18       A. The Minnesota Department of Commerce (MDC) filed a complaint with the  
19       Minnesota Public Utility Commission (MPUC) in February 2002. The complaint  
20       alleged that the company had entered into eleven interconnection agreements  
21       that neither party had filed with the MPUC under Section 252(a)(1). The MDC  
22       later added a 12<sup>th</sup> agreement to the complaint. In November 2002, the MPUC  
23       found that Qwest knowingly and intentionally violated federal and state law with

1 regard to 26 contract provisions, and established a comment period to address  
2 possible remedies.

3 The MPUC issued its final order assessing penalties on May 21, 2003.  
4 The order directed Qwest to pay \$26 million in fines and grant competitors  
5 relief in the form of retroactive 10 percent discounts over 18 months on specific  
6 interconnection services. Eschelon Telecom and McLeod USA were excluded  
7 from receiving the discounts. Qwest appealed the MPUC order in federal  
8 court. On August 25, 2004, the United States District Court for the District of  
9 Minnesota upheld the \$26 million in fines but found that the MPUC lacked  
10 authority to grant relief and vacated the portion of the MPUC's order granting  
11 10 percent discounts.

12 **Q. WHAT HAPPENED IN WASHINGTON?**

13 A. In August 2003, the Washington Utilities and Transportation Commission  
14 (WUTC) opened a complaint docket against Qwest and thirteen CLECs  
15 regarding unfiled interconnection agreements. The WUTC staff filed testimony  
16 in June 2004, which detailed alleged violations of federal and state law.

17 On February 8, 2005, the WUTC approved a settlement agreement  
18 between Qwest and the WUTC staff in which Qwest agreed, among other  
19 things, to pay a penalty of \$7.8 million. In the settlement agreement, Qwest  
20 admitted that "it violated Sec. 252 by failing to file, in a timely manner, [24  
21 agreements] for review ...."

22 Prior to approving the Qwest settlement, the WUTC had already  
23 approved settlement agreements between the WUTC staff and ten CLEC

1 parties to unfiled agreements for relatively small monetary penalties. Two  
2 CLECs agreed to a penalty of \$25,000, one CLEC agreed to a penalty of  
3 \$6,000, the other seven agreed to penalties ranging from \$1,000 to \$3,000.  
4 The total of penalty for the ten CLECs combined was \$68,000. The WUTC  
5 agreed to dismiss complaints against three other CLECs.



**OREGON INVESTIGATION****Q. HOW DID OREGON APPROACH THE UNFILED AGREEMENTS ISSUE?**

A. Oregon started with an informal Staff investigation focused on Qwest. On March 21, 2002, I sent Qwest a letter requesting that the company provide for the state of Oregon, "every contract, memorandum of understanding, or other written agreement between Qwest Corporation and a competitive local exchange carrier (CLEC) entered into on or after January 1, 2000, that has not been filed with the Public Utility Commission of Oregon (PUC)." In response, Qwest provided an initial group of 73 agreements. Subsequently, Qwest volunteered 16 additional agreements for Staff's review, for a total of 89 agreements. Qwest cooperated with Staff' throughout this process.

For a little over two years, Qwest and Staff conducted informal discussions about the Oregon unfiled agreements. Staff's goal was to fully understand the scope of the issue, and to determine whether it would be possible to resolve the matter by stipulated agreement with Qwest. In August 2004, Qwest and Staff were close enough to agreement that Staff decided to ask the Commission to open a formal investigation. Staff envisioned a formal investigation as the venue in which the Commission would publicly consider and approve a stipulated agreement if achieved. If not, the docket would be used to complete a contested case investigation, with likely CLEC participation.

At the Commission's September 7, 2004, public meeting, Staff recommended the Commission open a docket to investigate whether Qwest Corporation and possibly other carriers failed to file interconnection

1 agreements for Commission approval under Section 252(a)(1) of the  
2 Telecommunications Act, and if so, to determine the appropriate remedies  
3 including penalties. The Commission adopted the Staff recommendation, and  
4 opened the present docket UM 1168.

5 The first prehearing conference in UM 1168 was October 26, 2004.  
6 Earlier, on September 2, 2004, Staff sent a letter to all Oregon-certified CLECs  
7 informing them that Qwest and Staff had conducted informal discussions  
8 regarding the unfiled agreements issue. The letter indicated that Staff and  
9 Qwest were near the point of entering into negotiation of a stipulated  
10 agreement. The letter invited CLECs to attend an informal meeting on  
11 September 30, 2004, to learn more about a possible stipulation between Staff  
12 and Qwest. The meeting also provided an opportunity for Staff and Qwest to  
13 hear any CLEC concerns before proceeding with negotiations.

14 **Q. YOU MENTION INFORMAL DISCUSSIONS BETWEEN STAFF AND**  
15 **QWEST PRIOR TO DOCKET UM 1168. HOW DID STAFF AND QWEST**  
16 **CONDUCT THESE DISCUSSIONS?**

17 A. Two Staff members, Celeste Hari and I, met with two Qwest representatives,  
18 Don Mason and Alex Duarte, in a series of sessions that considered in detail  
19 each of the 89 agreements provided by Qwest. The participants jointly  
20 reviewed each agreement first to determine whether it was subject to the filing  
21 requirements in OAR 860-016-0020(3). In making this determination, the  
22 participants agreed to rely on the FCC's declaratory ruling. In other words, the  
23 review looked at the following question: Does this agreement include at least

1 one provision that creates an ongoing obligation between Qwest and the CLEC  
2 party which pertains to resale, number portability, dialing parity, access to  
3 rights-of-way, reciprocal compensation, interconnection, unbundled network  
4 elements, or collocation? In the end, the participants agreed that for purposes  
5 of settlement 32 of the 89 agreements provided by Qwest were subject to the  
6 filing requirements and should have been filed with the Commission for  
7 approval soon after they were signed.

8 Conversely, the participants agreed that 57 agreements need not have  
9 been filed with the Commission for approval under OAR 860-016-0020(3).  
10 Most of the latter agreements were settlements of past billing disputes which  
11 did not create ongoing obligations. In some cases, the agreements were  
12 between a CLEC and a Qwest affiliate, and did not create obligations for  
13 Qwest. A few, upon close inspection, actually did not involve the state of  
14 Oregon.

15 **Q. QWEST AGREED WITH STAFF THAT, FOR SETTLEMENT PURPOSES**  
16 **ONLY, QWEST FAILED TO FILE 32 AGREEMENTS AS REQUIRED BY**  
17 **OAR 860-016-0020(3). DID QWEST AND STAFF CONSIDER POSSIBLE**  
18 **CONSEQUENCES FOR QWEST'S FAILURE TO TIMELY FILE THESE**  
19 **AGREEMENTS?**

20 A. Yes. Qwest and Staff discussed what authority the Commission may rely on to  
21 assess penalties on Qwest. The Department of Justice (DOJ) agreed to  
22 provide guidance by preparing an informal opinion memorandum on the matter  
23 for the Commission. I have included the DOJ memorandum as Exhibit Staff/3.

1 This document has been publicly disclosed and is not privileged attorney-client  
2 communication. Staff made the memorandum available to the UM 1168 parties  
3 as a non-confidential document in September 2004.

4 **Q. PLEASE SUMMARIZE THE DEPARTMENT OF JUSTICE'S ADVICE.**

5 A. The DOJ informal opinion memorandum advised the Commission that the  
6 penalty provisions of ORS 759.990 control the PUC's actions in response to  
7 Qwest's failure. In the given circumstances, neither ORS 759.990 nor any  
8 other statute provides the PUC with authority to direct payment or a penalty to  
9 one or more CLECs. The DOJ concluded that the relevant sections of ORS  
10 759.990 are ORS 759.990(6) and (8), which provide:

11 (6) A telecommunications carrier, as defined in ORS 759.400, shall  
12 forfeit a sum of not less than \$100 nor more than \$50,000 for each  
13 time that the carrier:

14 (a) Violates any statute administered by the Public Utility  
15 Commission;

16 (b) Commits any prohibited act, or fails to perform any duty  
17 enjoined upon the carrier by the commission;

18 (c) Fails to obey any lawful requirement or order made by the  
19 commission; or

20 (d) Fails to obey any judgment made by any court upon the  
21 application of the commission.

22

23 (8) Except when provided by law that a penalty, fine, forfeiture or other  
24 sum be paid to the aggrieved party, all penalties, fines, forfeitures or  
25 other sums collected or paid under subsection (6) of this section shall  
26 be paid into the General Fund and credited to the Public Utility  
27 Commission Account.

28 **Q. DOES THE COMMISSION HAVE INDEPENDENT FINING AUTHORITY**  
29 **UNDER ORS 759.990?**

1 A. No. The DOJ advised Staff that ORS 759.990, when viewed as whole, does  
2 not grant the Commission independent authority to impose forfeiture under  
3 ORS 759.990(6). The courts must impose any forfeiture.

4 **Q. DID INFORMAL DISCUSSIONS BETWEEN STAFF AND QWEST**  
5 **PROCEED WITH THE ABOVE UNDERSTANDING?**

6 A. Yes. Qwest and Staff understood that if settlement could be achieved it would  
7 be within the constraints of ORS 759.990. A key consideration was the  
8 statutory requirement that fines be limited to a maximum of \$50,000 and a  
9 minimum of \$100, for each time that the carrier fails to obey a lawful  
10 requirement of the Commission. With that in mind, the first matter to decide  
11 was how to count the number of times Qwest allegedly failed to obey the filing  
12 requirement of OAR 860-016-0020(3).

13 For purposes of exploring possible agreement, Staff and Qwest agreed  
14 at the outset that they would count the number of times Qwest failed to obey  
15 OAR 860-016-0020(3) by looking at each agreement in its entirety, rather than  
16 considering each provision within the agreement separately. Subsequently,  
17 Staff and Qwest agreed it was reasonable in a few cases to count as a single  
18 instance of failure to obey the filing requirements a pair of very closely related  
19 agreements. In other words, in a few cases two agreements together were  
20 counted as one instance of failure to file.

21 Staff and Qwest identified 32 agreements that Qwest did not file as  
22 required. Of these, Staff and Qwest identified three pairs of closely related  
23 agreements that, for purposes of settlement, warranted treatment as single

1 instances of failure to file. In the end, Qwest and Staff agreed, for purposes of  
2 settlement, to a total of 29 instances where Qwest failed to file agreements as  
3 required by OAR 860-016-0020(3).

4 **Q. DID STAFF AND QWEST EVALUATE THE SEVERITY OF EACH**  
5 **INSTANCE OF FAILURE TO FILE?**

6 A. Yes. For settlement purposes, Staff and Qwest agreed to classify each  
7 instance of failure to file as either minor or major.

8 **Q. HOW DID STAFF DECIDE WHETHER AN AGREEMENT, OR PAIR OF**  
9 **AGREEMENTS, SHOULD BE CLASSIFIED AS MINOR OR MAJOR?**

10 A. Staff classified an instance of failure to file as minor if in Staff's judgment a  
11 reasonable person would conclude that Qwest's failure to file was not for a  
12 discriminatory purpose – i.e., to favor one CLEC over others. Staff classified  
13 an instance of failure to file as major if in Staff's judgment a reasonable person  
14 would conclude that Qwest had engaged in active discrimination by selectively  
15 offering to some CLECs more favorable rates, terms, or conditions for  
16 interconnection-related services. Qwest may have used a different rationale,  
17 but in the end Qwest and Staff managed to agree on the appropriate  
18 classification of each instance of failure to file an agreement, or pair of  
19 agreements.

20 **Q. PLEASE PROVIDE AN EXAMPLE OF AN AGREEMENT THAT THE**  
21 **PARTIES CLASSIFIED AS MAJOR.**

1 A. A good example is an agreement that Qwest entered into with a CLEC early in  
2 the year 2000. Neither Qwest nor the CLEC filed the agreement with the  
3 Commission for approval.

4 In this agreement, Qwest and the CLEC agreed that the terms were  
5 "confidential, contain trade secret information, and shall not be disclosed  
6 unless pursuant to a lawful Order compelling such disclosure." The effect of  
7 this provision was to preclude either party from filing the contract as an  
8 interconnection agreement with the Commission for approval under OAR 860-  
9 016-0020(3). As a result, other CLECs not party to this confidential agreement  
10 were unable to adopt or negotiate the same or similar terms. This was  
11 discriminatory.

12 As part of this agreement, the CLEC agreed to "drop its opposition to  
13 the proposed merger..." In exchange, Qwest agreed to provide four ongoing  
14 interconnection-related concessions to the CLEC. Each of these concessions  
15 created more favorable terms for the CLEC than Qwest and the CLEC had  
16 agreed to in the interconnection agreement the Commission had approved  
17 under OAR 860-016-0020 and Section 252.

18 First, Qwest agreed to implement certain service quality  
19 measurements to assess the quality of Qwest's interconnection-related  
20 services to this particular CLEC. At the time, the approved interconnection  
21 agreement between Qwest and the CLEC for Oregon did not include service  
22 quality measurements for interconnection-related services. At the time, service  
23 quality measurements of this kind were not available in any Qwest

1 interconnection agreement for Oregon approved under OAR 860-016-0020 and  
2 Section 252.

3 Second, Qwest agreed to provide "reciprocal compensation for  
4 terminating internet traffic .... at the most favorable rates and terms contained  
5 in an agreement executed to date by USWC." This "most favorable rate"  
6 provision is highly unusual, and was not available at the time in any Qwest  
7 interconnection agreement for Oregon approved under OAR 860-016-0020 and  
8 Section 252.

9 Third, Qwest agreed to assign a named Qwest employee to locate at  
10 the CLEC's facilities as a "Coach" for a period of at least six months to assist  
11 the CLEC's employees with ordering Qwest interconnection-related services.  
12 Qwest agreed that the CLEC must approve the assignment of any substitute  
13 Qwest employee. Qwest also agreed to establish "at an appropriate time" a  
14 dedicated provisioning team of Qwest employees to work with the Coach on-  
15 site at the CLEC's offices. This level of assistance from Qwest with  
16 provisioning was highly unusual, and was not available at the time in any  
17 Qwest interconnection agreement for Oregon approved under OAR 860-016-  
18 0020 and Section 252.

19 In the fourth concession, Qwest agreed to an alternative dispute  
20 resolution procedure "in addition to the dispute resolution mechanism provided  
21 under the Interconnection Agreement..." The alternative procedure was faster,  
22 and more favorable to the CLEC than was available at the time in the parties  
23 approved interconnection agreement, and more favorable than was available at



1 the time in any Qwest interconnection agreement for Oregon approved under  
2 OAR 860-016-0020 and Section 252.

3 **Q. AT THIS POINT, HAD QWEST AND STAFF ASSIGNED DOLLAR**  
4 **AMOUNTS TO MINOR AND MAJOR INSTANCES OF FAILURE TO FILE?**

5 A. No. Dollar amounts were discussed in the final stages of informal discussions,  
6 only after Staff and Qwest were near a final understanding as to the total  
7 number of instances of failure to file, and which instances were minor or major.

8 **Q. WHAT DOLLAR AMOUNTS DID STAFF AND QWEST AGREE TO AS THE**  
9 **BASIS FOR REACHING AGREEMENT?**

10 A. Following difficult negotiations, Qwest agreed to Staff's proposal that a  
11 stipulated agreement, if achieved, would be based on a penalty of \$50,000 for  
12 a major instance of failure to file, and \$25,000 for a minor instance. The  
13 maximum penalty under ORS 759.990(6) is \$50,000 for each time that the  
14 carrier fails to obey any lawful requirement or order made by the Commission.

**THE STIPULATION****Q. WHEN DID STAFF AND QWEST BEGIN TO NEGOTIATE A FORMAL STIPULATED AGREEMENT?**

A. Formal negotiations began once the Commission had identified parties in docket UM 1168, on or about October 26, 2004. Staff and Qwest exchanged drafts in December 2004 and January 2005. Copies of these drafts and exchanges of related e-mail were provided to the UM 1168 parties. Qwest signed the final stipulation document on February 1, 2005. Staff signed February 2, 2005. Qwest filed the Stipulation in docket UM 1168 on February 4, 2005, and served a copy on all parties. I have included the Stipulation in my testimony as Exhibit Staff/4.

**Q. PLEASE DESCRIBE THE STIPULATION.**

A. The Stipulation is in two sections. The "Recitals" section summarizes the basic history of the unfiled agreements investigation in Oregon. The "Stipulation" section sets forth in ten paragraphs the substantive and procedural understandings of Staff and Qwest.

**Q. WHAT IS YOUR UNDERSTANDING AND RECOMMENDATION REGARDING THE "RECITALS" SECTION?**

A. I am satisfied that this section accurately summarizes the history of this case. The Commission may rely on the representations of the parties in this regard.

**Q. WHAT IS STAFF'S UNDERSTANDING AND RECOMMENDATION REGARDING PARAGRAPH 1 IN THE "STIPULATION" SECTION?**

1 A. Qwest and Staff agree in Paragraph 1 that Qwest will make a monetary  
2 payment of \$1,050,000 to the General Fund, pursuant to ORS 759.990(8),  
3 contingent upon: (1) Commission approval of the Stipulation, (2) the  
4 Commission closing docket UM 1168 without increasing the amount of the  
5 payment or ordering Qwest to provide monetary or other relief to any CLEC as  
6 a result of alleged violations, and (3) approval of the stipulation by Marion  
7 County Circuit Court. Qwest commits to pay \$1,050,000 30 days after the time  
8 for any appeal has been exhausted.

9 I recommend the Commission adopt the provisions of this paragraph.  
10 The amount to be paid by Qwest and the contingencies placed upon the  
11 company's payment are reasonable, in the public interest, and consistent with  
12 Oregon law.

13 **Q. WHAT IS STAFF'S UNDERSTANDING AND RECOMMENDATION**  
14 **REGARDING PARAGRAPH 2?**

15 A. In this paragraph, Qwest and Staff address how Qwest's monetary payment  
16 should be calculated. The parties stipulate to 29 instances where Qwest failed  
17 to obey the filing requirements of OAR 860-016-0020(3). For 13 of these  
18 instances, the parties agree to a monetary payment by Qwest of \$50,000 each,  
19 for a total of \$650,000. For 16 instances, the parties agree to a monetary  
20 payment by Qwest of \$25,000 each, for a total of \$400,000. Combined, the  
21 total payment is \$1,050,000. Exhibit A to the Stipulation lists 32 agreements.  
22 Exhibit A also shows that in three cases Staff and Qwest agree to count a pair  
23 of agreements as a single instance of failure to obey the filing requirements.

1 This means that six agreements were reduced to three instances of failure to  
2 file. All three instances were minor. As a result, 32 agreements are listed, but  
3 there are only 29 instances of failure to obey the filing requirements.

4 I recommend the Commission adopt the provisions of this paragraph.  
5 It commits Qwest to pay, subject to reasonable contingencies, the maximum  
6 allowable forfeiture under ORS 759.990(6) for each of 13 instances where  
7 Qwest's failure to obey the filing requirements were in Staff's view most  
8 troubling. For the 16 less serious instances of failure to obey the filing  
9 requirements, a 50 percent reduction below the maximum allowed forfeiture  
10 appropriately recognizes that in these cases Qwest's actions were  
11 unacceptable, but apparently did not represent an attempt to discriminate.

12 **Q. WHAT IS STAFF'S UNDERSTANDING AND RECOMMENDATION**  
13 **REGARDING PARAGRAPH 3?**

14 A. This paragraph commits Qwest to ensure that the company files for  
15 Commission approval all of the unfiled agreements that are still in effect. Staff  
16 believes that Qwest has already met this requirement based on Staff's best  
17 efforts to ascertain whether each agreement is still effective. However, it is still  
18 possible that interpretation of an agreement's termination date will change. If  
19 that should happen, Qwest would be obligated to file the agreement for  
20 approval. This provision covers that possibility.

21 I recommend the Commission adopt the provisions of this paragraph.  
22 As a safeguard, Qwest should be obligated to ensure that it files every unfiled  
23 agreement that is still in effect.

1 **Q. WHAT IS STAFF'S UNDERSTANDING AND RECOMMENDATION**  
2 **REGARDING PARAGRAPH 4?**

3 A. This paragraph commits Qwest, for a three-year period, to submit for Staff  
4 review all of the wholesale CLEC contracts containing ongoing terms which  
5 Qwest concludes need not be filed for Commission approval. The purpose of  
6 this paragraph is to ensure ongoing compliance with the filing requirements of  
7 OAR 860-016-0020(3).

8 I recommend the Commission adopt the provisions of this paragraph.  
9 It provides a safeguard that Qwest will not backslide, at least for the near term.

10 **Q. WHAT IS STAFF'S UNDERSTANDING AND RECOMMENDATION**  
11 **REGARDING PARAGRAPH 5?**

12 A. In this paragraph, Staff and Qwest agree to disagree about any admission by  
13 Qwest that it violated Section 252 and OAR 860-016-0020(3). In Staff's view,  
14 the facts outlined in the Stipulation demonstrate that in 29 instances Qwest  
15 failed to file agreements as required by Commission rule and federal law.  
16 Qwest has stipulated that it will pay over \$1 million in penalties for the actions  
17 outlined in the Stipulation. As discussed above, Qwest has admitted in the  
18 State of Washington that it violated Section 252 of the Act.

19 Staff understands that Qwest is reluctant to admit liability. However, in  
20 order to invoke penalties available pursuant to ORS 759.990(6)(c), at a  
21 minimum Staff believes that the Commission is required to find that Qwest  
22 failed to obey OAR 860-016-0020(3), a lawful requirement made by the  
23 Commission. Further, in order to justify the stipulated monetary penalty of

1 \$1,050,000, the Commission needs to find that Qwest failed to obey OAR 860-  
2 016-0020(3) in 29 instances. The Stipulation, together with Staff's testimony,  
3 provides sufficient basis for such a finding.

4 I recommend the Commission make the finding required by ORS  
5 759.990(6)(c).

6 **Q. WHAT IS STAFF'S UNDERSTANDING AND RECOMMENDATION**  
7 **REGARDING PARAGRAPH 6?**

8 A. This paragraph supplements Paragraph 1. In Paragraph 1, Qwest and Staff  
9 agree that Qwest will make a monetary payment of \$1,050,000 contingent  
10 upon: (1) Commission approval of the Stipulation, (2) the Commission closing  
11 docket UM 1168 without increasing the amount of the payment or ordering  
12 Qwest to provide monetary or other relief to any CLEC as a result of alleged  
13 violations, and (3) approval of the stipulation by Marion County Circuit Court.  
14 Qwest commits to pay \$1,050,000 30 days after the time for any appeal has  
15 been exhausted. Paragraph 6 makes the same three points in somewhat  
16 greater detail.

17 I recommend the Commission adopt the provisions of this paragraph.  
18 The contingencies placed upon the company's payment are reasonable, in the  
19 public interest, and consistent with Oregon law.

20 **Q. WHAT IS STAFF'S UNDERSTANDING AND RECOMMENDATION**  
21 **REGARDING PARAGRAPH 7?**

22 A. In this paragraph, Staff and Qwest agree that the Stipulation is contingent on a  
23 Commission order approving the Stipulation as a full and complete resolution

1 of all matters in this docket, UM 1168. Staff and Qwest further agree that if the  
2 Commission does not so order, both parties reserve their right to withdraw from  
3 the Stipulation, and litigate the unfiled agreement issue in UM 1168.

4 I recommend the Commission adopt the provisions of this paragraph.  
5 The Stipulation is reasonable, in the public interest, and consistent with Oregon  
6 law. The Commission should adopt the Stipulation as a full and complete  
7 resolution of all matters in docket UM 1168, find that Qwest failed to obey OAR  
8 860-016-0020(3), a lawful requirement made by the Commission, and then  
9 seek approval of the Stipulation from the Marion County Circuit Court in order  
10 to impose the stipulated monetary penalties.

11 **Q. WHAT IS STAFF'S UNDERSTANDING AND RECOMMENDATION**  
12 **REGARDING PARAGRAPH 8?**

13 A. This paragraph clarifies that neither Staff nor Qwest intend this Stipulation to  
14 affect the rights of CLECs to seek recovery of alleged damages outside of  
15 docket UM 1168. For example, the Stipulation is not intended to restrict any  
16 CLEC's right to file a complaint under ORS 759.445, also known as the  
17 "prohibited acts" statute. Staff sees docket UM 1168 as a matter of  
18 Commission enforcement of its own rules and regulations concerning approval  
19 of interconnection agreements. Staff has concluded that the Stipulation will  
20 fulfill that purpose, once the Commission and the Courts approve it.  
21 Enforcement action by the Commission in docket UM 1168 does not preclude  
22 CLEC claims against Qwest, or CLEC claims against other CLECs for that  
23 matter.

1 I recommend the Commission adopt the provisions of this paragraph  
2 as reasonable, in the public interest, and consistent with Oregon law.

3 **Q. WHAT IS STAFF'S UNDERSTANDING AND RECOMMENDATION**  
4 **REGARDING PARAGRAPH 9?**

5 A. In this paragraph, Staff and Qwest agree to provisions that are standard for  
6 stipulation agreements. First, the parties agree that the Stipulation is an  
7 integrated document to be adopted in its entirety. Second, if the Commission  
8 or Circuit Court rejects all or any part of the Stipulation, or materially adds to or  
9 changes any of its terms, each party reserves the right to withdraw from the  
10 Stipulation. Third, in the event a party withdraws, neither party will bound by  
11 the Stipulation and no terms of the Stipulation may be cited or used against  
12 either party in connection with any case or proceeding, or otherwise.

13 I recommend the Commission adopt the provisions of this paragraph  
14 as reasonable, in the public interest, and consistent with Oregon law.

15 **Q. WHAT IS STAFF'S UNDERSTANDING AND RECOMMENDATION**  
16 **REGARDING PARAGRAPH 10?**

17 A. This paragraph also has standard provisions for stipulation agreements. Staff  
18 and Qwest agree that neither party, by entering into the Stipulation, admits or  
19 denies any fact or legal position at issue.

20 I recommend the Commission adopt the provisions of this paragraph  
21 as reasonable, in the public interest, and consistent with Oregon law.



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**CONCLUSION AND RECOMMENDATION**

**Q. IN SUMMARY, WHAT DO YOU RECOMMEND THE COMMISSION DO IN THIS DOCKET?**

A. I recommend the Commission adopt the Stipulation between Staff and Qwest in docket UM 1168 in its entirety, and without material alteration, as the full and complete resolution of all issues in the docket. Further, I recommend that the Commission find that Qwest in 29 instances failed to obey OAR 860-016-0020(3), a lawful requirement made by the Commission. Finally, pursuant to ORS 759.990(6)(c), I recommend that the Commission seek approval of the Stipulation from the Marion County Circuit Court in order to impose the stipulated monetary penalties for the 29 violations of law discussed in my testimony.

**Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

A. Yes.

CASE: UM 1168  
WITNESS: Booth

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 2**

**Witness Qualification Statement**

**April 22, 2005**

**WITNESS QUALIFICATION STATEMENT**

NAME: David Booth  
EMPLOYER: Public Utility Commission of Oregon  
TITLE Program Manager, Competitive Issues  
ADDRESS: 550 Capitol St NE Suite 215  
Salem, Oregon 97301-2551

**ACADEMIC DEGREES:**

- Ph.D. University of Washington, Seattle, Washington, 1979  
Major: Sociology
- M.A. University of Washington, Seattle, Washington, 1970  
Major: Sociology
- B.A. University of Washington, Seattle, Washington, 1966  
Major: Sociology

**PROFESSIONAL EXPERIENCE:**

- Public Utility Commission of Oregon, 1997 to present  
Position: Program Manager, Competitive Issues  
Primary Responsibilities:
  - Interconnection agreements ,carrier-to-carrier complaints/disputes
  - Carrier certification
  - Eligible telecommunications carrier (ETC) designation
  
- Public Utility Commission of Oregon, 1993 to 1997  
Position: Program Manager, Telecommunications Rates  
Primary Responsibilities:
  - Telecommunications utility local and toll tariff filings
  - Telecommunications utility rate spread and rate design
  - Extended area service (EAS) issues
  - Rate case coordination
  
- Public Utility Commission of Oregon, 1985 to 1993  
Position: Various (Research Assistant, Telecommunications Analyst,  
Senior Telecommunications Analyst)  
Primary Responsibilities:
  - Telecommunications utility tariff filing review
  - Extended area service (EAS) policy and implementation
  - Rate case coordination

CASE: UM 1168  
WITNESS: David Booth

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 3**

**Department of Justice  
Informal Opinion Memorandum**

**April 22, 2005**

HARDY MYERS  
Attorney General



PETER D. SHEPHERD  
Deputy Attorney General

DEPARTMENT OF JUSTICE  
GENERAL COUNSEL DIVISION

MEMORANDUM

DATE: August 19, 2004

TO: Lee Beyer  
Chairperson  
Public Utility Commission

FROM: Joseph T. McNaught, Deputy Division Administrator  
Michael T. Weirich, Senior Assistant Attorney General *MTW*

Re: Payment of Proceeds from Settlement of Penalty Action to CLECs  
Claim under ORS 759.990(6)  
DOJ File No. 860105/860105

A. Question Presented

Qwest failed to file interconnection agreements with the Public Utility Commission ("PUC") as required by OAR 860-016-0020(3). It may be willing to enter into a settlement agreement in advance of the PUC commencing a penalty proceeding against it under ORS 759.990(6). You have asked whether the PUC has authority to require Qwest, as part of such a settlement, to pay money directly to competitive local exchange carriers (CLEC) on the basis of the CLECs having been damaged by Qwest's failure to file.

B. Short Answer

The penalty provisions of ORS 759.990 control the PUC's actions in response to Qwest's failure. In the given circumstances, neither that statute nor any other provides the PUC with authority to direct payment of a penalty to one or more CLECs.

C. Discussion

1. Violations of OAR 860-016-0020(3)

OAR 860-016-0020(3) regulates the filing and approval of telecommunications interconnection agreements.<sup>1</sup> A federal law, not a state statute, requires that such agreements be

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<sup>1</sup> OAR 860-016-0020(3) provides:

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August 19, 2004  
Page 2

submitted to the PUC for approval. *See* 47 U.S.C. § 252(e)(1). OAR 860-016-0020 cites ORS chapters 183 and 756 as the PUC's authority for the rule. The rule does not purport to be based upon the PUC's ratemaking authority for telecommunications utilities in ORS chapter 759.

Subsections (6) and (8) of ORS 759.990 establish the PUC's authority to act in response to a telecommunications carrier's violation of ORS 860-016-0020(3). Subsection (6) establishes penalties for the PUC to assess against a telecommunications carrier for violation of a "lawful requirement" of the PUC.<sup>2</sup> Subsection (8) limits the PUC's authority to dispose of penalties "collected or paid" under subsection (6):

Except when provided by law that a penalty, fine, forfeiture or other sum be paid to the aggrieved party, all penalties, fines, forfeitures or other sums collected or paid under subsection (6) of this section shall be paid into the General Fund and credited to the Public Utility Commission Account.

ORS 759.990(8).

We have identified no state law that provides for money to be paid to a CLEC aggrieved as a result of a telecommunications carrier's failure to file its interconnection agreements. Therefore, unless the PUC has authority that supercedes the restrictions of ORS 759.990(8), it may not enter into a settlement that provides for Qwest to make payments to one or more CLECs.<sup>3</sup>

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After the parties reach agreement under Section 252(a) of the Act, they shall file an application with the Commission seeking approval of the agreement, or for approval of an amendment to an approved agreement on file with the Commission. The application shall include an original plus three copies of the negotiated agreement and a completed Carrier-to-Carrier Agreement Checklist. A copy of the checklist is available on the Commission's Internet website. The parties may also include any other supporting information with their application.

<sup>2</sup> ORS 759.990(6) provides:

A telecommunications carrier, as defined in ORS 759.400, shall forfeit a sum of not less than \$ 100 nor more than \$50,000 for each time that the carrier:

- (a) Violates any statute administered by the Public Utility Commission;
- (b) Commits any prohibited act, or fails to perform any duty enjoined upon the carrier by the commission;
- (c) Fails to obey any lawful requirement or order made by the commission; or
- (d) Fails to obey any judgment made by any court upon the application of the commission.

This memorandum assumes, but does not decide, that an action under ORS 759.990(6) is appropriate in this circumstance. It expressly does not analyze (1) whether the procedures described in ORS 759.455 apply to this matter; or (2) whether ORS 759.990(6) applies to an action by a telecommunications carrier acting in its wholesaler role in situations other than those addressed in ORS 759.455.

<sup>3</sup> Commissions in some states have express statutory authority to impose remedies other than civil penalties for violations of their rules. In a recent Colorado case, the Colorado PUC's selection of a reparations remedy instead of a civil penalty remedy was challenged. *Archibold v. Public Utilities Commission*, 58 P3d 1031 (Colo. 2002). Reparations for customers are expressly permitted by a Colorado statute. Since the statutes did not obligate the

Lee Beyer  
August 19, 2004  
Page 3

## 2. Scope of PUC Authority

The PUC is a statutorily created state agency. *See* ORS 756.014(1). It has only those powers expressly granted it by the legislature and such implied powers as are necessary to carry out the powers that are expressly granted. *Ochoco Const. v. DLCD*, 295 Or 422, 667 P2d 499 (1983); *Warren v. Marion County et al.*, 222 Or 307, 353 P2d 257 (1960). The commission may not expand its authority beyond that granted by the terms of its statutes. *See Gates v. Public Service Commission*, 86 Or 442, 453, 168 P. 939 (1917) (“the commission has only such authority as the lawmakers have seen fit to confer upon it”).

ORS 756.040(1) provides that the PUC was created to represent utility customers and the public in all matters concerning utility rates, valuations, and service within the PUC’s jurisdiction. To aid it in carrying out these duties, the legislature delegated to the PUC the power to “supervise and regulate every public utility and telecommunications utility in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction.” ORS 756.040(2). The Oregon courts have stated that, in cases involving the setting of utility rates, ORS 756.040 grants the commission “the broadest authority – commensurate with that of the legislature itself” to carry out its regulatory duties. *Pacific N.W. Bell v. Sabin*, 21 Or App 200, 214, 534 P2d 984 (1975). *See also American Can Co. v. Davis*, 28 Or App 207, 221, 559 P2d 898, *rev den* 278 Or 393 (1977); *Cascade Natural Gas Corp. v. Davis*, 28 Or App 621, 560 P2d 301, *rev den* 279 Or 1 (1977). In addition, ORS 756.060 empowers the commission to adopt “reasonable and proper” rules “relative to all statutes administered” by it.

However, in more recent decisions, the courts have taken a more limited view of the scope of the commission's powers under ORS 756.040 and 756.060. In *Pacific Northwest Bell v. Davis*, 43 Or App 999, 608 P2d 547, *rev den* 289 Or 107 (1980), the court considered the validity of the commission's “tag-line” rule. This rule required all investor-owned public utilities to include a statement in all advertisements stating whether the advertisement was paid for by either customers or stockholders. The commission argued that the rule was valid under the broad grants of authority provided by ORS 756.040 and 756.060. In considering this issue, the court observed that “an administrative agency must, when its rulemaking power is challenged, show that its regulation falls within a clearly defined statutory grant of authority. *PNB*, 43 Or App at 1006-1007. The court then struck down the “tag-line rule because ORS 756.040 and 756.060 did not constitute a “clearly defined statutory grant of authority” for its enactment. *Id.* at 1007 quoting *Ore. Newspaper Pub. v. Peterson*, 244 Or 116, 123, 415 P2d 21 (1966).

In *Pacific Northwest Bell Telephone Co. v. Eachus*, 135 Ore. App. 41, 898 P2d 774, *rev den* 322 Or 193, 903 P2d 886 (1995), the PUC conducted an “own motion” proceeding in which it concluded that a utility's existing rates were generating excessive revenue. It ordered the utility to reduce its rates effective at the beginning of 1990. CUB sought to have the existing rates declared “interim” and, therefore, subject to customer refunds from the time the proceeding was initiated approximately one year before the order requiring the rate reduction was entered. The PUC concluded that it lacked authority to do this. The Oregon Court of Appeals agreed,

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Colorado PUC to collect civil penalties for every violation of its rules and the reparations remedy was not unlawful, unjust or unsupported by the record, the Colorado Supreme Court upheld the Colorado commission’s action.

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August 19, 2004  
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stating:

ORS 756.040(1) authorizes PUC to protect ratepayers and the public "from unjust exactions and practices and to obtain for them adequate service at fair and reasonable rates." ORS 756.040(2) vests powers in the commission "to do all things necessary and convenient" in the exercise of its jurisdiction. CUB contends that within those broad grants of authority to oversee ratemaking, the legislature has given to PUC the power to issue an order declaring existing rates to be interim.

\* \* \*

We agree that the text of those statutes [is] broad enough to permit the type of order that CUB seeks. However, other provisions of the public utility statutes show that PUC's authority to declare rates to be interim and subject to refund is circumscribed.

*PNWB*, 135 Or. App at 48-49. The court concluded that, notwithstanding the broad and general grant of ratemaking authority under ORS 756.040, the specific statutes dealing with the process for establishing and changing rates, e.g., ORS 759.205, precluded PUC from taking the action that CUB desired. *PNWB*, 135 Or App at 49-50.

Finally, in *Citizens' Util. Bd. v. PUC*, 154 Ore. App. 702, 716-717, 962 P2d 744 (1998) *rev granted* 328 Or 464, 987 P2d 513 (1999), *rev dismissed* 335 Or 91, 58 P3d 822 (2002), the court similarly ruled that the PUC's broad authority under ORS 756.040 did not enable it to approve rates that are contrary to other statutory limitations. This case involved a return component on PGE's investment in the Trojan nuclear power plant. The court found that ORS 757.140(2) and ORS 757.355 preclude the PUC from allowing rates that include a rate of return on capital assets that are not currently used for the provision of utility services. Like the specific statutes that "circumscribed" PUC's authority in *PNWB*, the court decided that these specific statutes overrode the general grants of authority to the PUC in ORS 756.040 and its other general statutes. *CUB*, 154 Or App at 716.

### 3. Conclusion

Although the PUC has broad regulatory power under ORS 756.040, a court likely would conclude that the legislature, through enactment of ORS 759.990, has circumscribed that power with respect to responding to violations of OAR 860-016-0020(3). The PUC may seek penalties for such violations, but the penalties must be deposited in the General Fund, and an alternative remedy is not clearly authorized.

This does not mean, however, that the PUC's sole remedy in every instance that a telecommunications utility violates a PUC legal requirement or fails to meet the PUC's standards is a penalty action and deposit in the General Fund. In cases where the PUC can point to other specific sources of authority for an alternative action, the PUC likely can fashion regulatory remedies alternatives to those authorized under ORS 759.990(6) and (8).



CASE: UM 1168  
WITNESS: David Booth

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 4**

**Stipulation and Agreement**

**April 22, 2005**

**STIPULATION AND AGREEMENT**

THIS STIPULATION AND AGREEMENT ("Stipulation"), dated ~~January~~ <sup>February</sup> 2, 2005, is entered into between QWEST CORPORATION ("Qwest") and STAFF of the PUBLIC UTILITY COMMISSION OF OREGON ("Staff") (collectively "Parties").

**RECITALS**

WHEREAS, section 252 of the Telecommunications Act of 1996 (Section 252) requires incumbent local exchange carriers ("ILECs") like Qwest and competitive local exchange carriers ("CLECs") to file interconnection agreements with state public utility commissions, which are to approve or reject these agreements according to the timelines and standards as set forth in Section 252(e) of the Act;

WHEREAS, on March 11, 2002, Qwest provided the Commission with background information regarding a complaint that the Minnesota Department of Commerce had filed against Qwest with the Minnesota Public Utilities Commission on February 14, 2002 that alleged that Qwest had entered into a number of interconnection agreements that should have been filed, but were not filed, with the Minnesota Commission under Section 252(a)(1), as well as Qwest's position regarding the complaint, and provided copies of pleadings and the agreements at issue;

WHEREAS, Staff began an investigation on March 21, 2002 about Qwest's possible failure to comply with the Section 252(a) filing requirements in Oregon by requesting "every contract, memorandum of understanding, or other written [wholesale] agreement between [Qwest and a CLEC] entered into on or after January 1, 2000, that has not been filed with the [Commission];"

WHEREAS, on April 19, 2002, Qwest responded to Staff's March 21, 2002 letter and provided copies of approximately 73 wholesale agreements with Oregon CLECs that Qwest had not filed with the Commission for approval, but which Qwest did not believe were required to be filed with the Commission, and provided several more agreements thereafter through 2004, for a total of 89 agreements;

WHEREAS, on April 23, 2002, Qwest filed a petition for declaratory ruling with the FCC asking for an interpretation of Section 252(a)(1) filing requirements;

WHEREAS, the FCC issued an order (No. 02-276, in WC docket 02-89) on October 4, 2002, granting in part and denying in part Qwest's petition, and ruling, *inter alia*, that "we find that an agreement that creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to Section 252(a)(1)," but that "settlement agreements that simply provide for 'backward-looking consideration' (e.g., the settlement of a dispute in consideration for a cash payment or the cancellation of an unpaid bill) need not be filed" (i.e., "settlement contracts that do not affect an incumbent LEC's ongoing obligation relating to section 251 need not be filed"), and that "order and contract forms" to request service, and agreements executed in connection with bankruptcy proceedings, do not need to be filed;

WHEREAS, on or about September 4, 2002, Qwest filed for Commission approval 16 agreements with Oregon CLECs, all of which Qwest had already provided to Staff as part of Staff's investigation, but had not formally filed for approval, and which were still in effect (i.e., not expired or superseded);

WHEREAS, the Commission approved all 16 agreements on or about November 15, 2002;

WHEREAS, on August 30, 2004, Staff recommended that the Commission open a docket to investigate the possible failure of Qwest and other parties (CLECs) to file interconnection agreements for Commission approval under Section 252(a)(1) of the Act, and to determine appropriate penalties under ORS 759.990 for any failures to file such agreements;

WHEREAS, on September 7, 2004, the Commission adopted the Staff's August 30, 2004 recommendation to open a docket, and thus opened docket UM 1168;

WHEREAS, Qwest and Staff have engaged in informal discussions about these unfilled agreements aimed at reaching a stipulated agreement regarding a monetary payment to resolve these investigation issues;

WHEREAS, the Oregon Department of Justice has advised Staff that assessment of penalties against Qwest and possibly other parties (CLECs) is governed by ORS 759.990, which provides for penalties of not less than \$100 nor more than \$50,000, for each time that a carrier does one of four enumerated prohibitions;

WHEREAS, the Commission does not have independent authority to impose the fines provided for in ORS 759.990(6), as only a court can do so, and further, the Commission does not have authority to order the payment of money directly to CLECs on the basis of any allegations that CLECs having been damaged by Qwest's and CLECs' failure to file; and

WHEREAS, Qwest and Staff have reached a Stipulation regarding monetary amounts to be paid by Qwest to resolve the investigations of these unfilled agreements issues, and to resolve docket UM 1168 fully and completely upon Commission approval.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, Qwest and Staff agree as follows:

### **STIPULATION**

#### **1. Payment to General Fund and credited to Commission per ORS 759.990(8)**

Qwest and Staff agree that Qwest will make a monetary payment of \$1,050,000 to the Oregon General Fund, and to be credited to the Commission's account, pursuant to ORS 759.990(8). This Stipulation to pay such amount is contingent on the Commission approving the Stipulation and closing the UM 1168 docket, without increasing the amount of the payment or requiring the payment by Qwest of any "credits," "reparations," "damages" or any other relief (monetary or otherwise) to any CLEC as a result of Qwest's or the CLECs' alleged violations of Section 252 and OAR 860-016-0020(3). Further, this Stipulation to pay such amount is also contingent on the Stipulation being approved by the Marion County Circuit Court, subject to the

provisions contained in paragraph 4 of this Stipulation. The Parties agree that Qwest will pay this amount 30 days after the time for any appeal has been exhausted.

**2. Calculation of Monetary Amount**

Qwest and Staff agree, for purposes of compromise of their respective positions and for the Stipulation only, and not to be used otherwise as precedent or evidence in any other proceeding (except that the parties agree the Stipulation will be submitted by the Commission to the Marion County Circuit Court in order to obtain a judgment consistent with this Stipulation), that they have calculated the \$1,050,000 based on an agreement, for purposes of this Stipulation only, that 32 of the 89 agreements which Qwest provided to Staff should have been filed, in 29 separate filings, shortly after the execution of such agreements. Qwest and Staff have also agreed, for purposes of compromise of their respective positions and for the Stipulation only, and not to be used otherwise as precedent or evidence in any other proceeding (except that the parties agree the Stipulation will be submitted by the Commission to the Marion County Circuit Court in order to obtain a judgment consistent with this Stipulation), that the agreed monetary amount for 13 such required filings was \$50,000 each, and that the agreed monetary amount for 16 such required filings was \$25,000 each, for a total monetary amount of \$1,050,000. A chart identifying the 32 agreements at issue is attached to this Stipulation, marked as Exhibit A, and is incorporated by this reference.

**3. Agreement to File all previously unfiled Agreements that are still in Effect**

Qwest agrees to file for approval all agreements that the parties agree Qwest should have filed under Section 252(a)(1) and OAR 860-016-0020, excluding contracts that are no longer effective or that Qwest has already filed for approval. To the best of Qwest's knowledge, Qwest has already filed all previously unfiled agreements that the parties agree Qwest should have filed under Section 252(a)(1) and OAR 860-016-0020 and that are still effective.

**4. Submission of Contracts for Staff Review**

Qwest agrees that it will submit for Staff review all wholesale contracts with competitive local exchange carriers containing on-going terms that Qwest determines it need not file for approval under Section 252(a)(1) and OAR 860-016-0020. Qwest agrees to do so for a period of three years from the date that this Stipulation is executed by both parties. If Staff disagrees with Qwest about the need to file any particular agreement, Staff agrees to advise Qwest with its reasons why Staff believes Qwest should file the contract for approval. Qwest's agreement to submit these contracts to Staff for Staff's review is without waiver of any legal position it may have about the lack of a filing requirement for any particular contract.

**5. No Admission of Liability or Precedential Effect**

Staff believes the evidence it has gathered in this proceeding is sufficient to support a finding that Qwest violated Section 252 and OAR 860-016-0020(3) by failing to file certain interconnection agreements in a timely manner with the Commission for its review. Qwest, however, does not believe there has been any evidence of any such violations, in part because there has been no evidence submitted in docket UM 1168. Nonetheless, and notwithstanding Staff's and Qwest's views of the issues in the docket, the Parties agree that the agreements reached in this Stipulation are not admissions by either party regarding the merits of their

respective legal positions, including that they are not admissions by Qwest that it violated Section 252(a)(1) of the Act, or admissions by Staff that Qwest complied with its obligations under Section 252(a)(1). In particular, this Stipulation does not constitute an agreement or acquiescence by any party to the method or theories used by any party in deciding to enter this Stipulation. Although the parties agree there is no admission of liability or precedential effect in this Stipulation as described in paragraphs 2 and 5 above, Qwest and Staff further agree that once this Stipulation becomes final, it will become a public document. Thus, a CLEC may use the publicly-available Stipulation in any subsequent proceeding against Qwest for any alleged damages in any appropriate forum consistent with and subject to the terms of the Stipulation and subject to the rules of evidence and admissibility of such forum.

**6. Stipulation Contingent on Commission and Court Approval**

Qwest and Staff agree that they will seek approval from the Commission of this Stipulation, and that if the Commission does not approve the Stipulation, or modifies it in any material way, or if the Commission expands the scope or issues of docket UM 1168 to include possible alleged “credits,” “damages,” “reparations” or any other relief (monetary or otherwise) to CLECs, the Parties reserve their rights to withdraw from the Stipulation and litigate the issues in docket UM 1168. Qwest and Staff further agree that if the Commission approves the Stipulation, and does not expand the UM 1168 docket beyond the issues in this Stipulation, the Commission will need to seek approval of the Stipulation from the Marion County Circuit Court (“Circuit Court”) in order to impose the monetary penalties. Qwest and Staff further agree that if the Circuit Court does not approve the Stipulation, or modifies it in any material way, the Parties reserve their rights to withdraw from the Stipulation and litigate the issues in docket UM 1168. Finally, Qwest and Staff agree that if the Circuit Court approves the Stipulation, without any additional conditions, but any intervenor files an appeal of such approval, Qwest is not obligated to pay the monetary amount unless and until all appeals of the Circuit Court’s approval have been exhausted, and thereafter, will not need to pay such amount until 30 days after the time for any appeal has been exhausted.

**7. Stipulation Contingent on Commission order of complete resolution of UM 1168**

Qwest and Staff further agree that this Stipulation is contingent on a Commission order that provides that approval of the Stipulation shall be a full and complete resolution of all matters in docket UM 1168. Qwest and Staff further agree that if a Commission order does not provide that approval of the Stipulation results in a full and complete resolution of all matters in docket UM 1168, the Parties reserve their rights to withdraw from this Stipulation, and thus reserve their rights to litigate the issues in docket UM 1168.

**8. Individual CLEC Rights Not Affected**

The promises or provisions in this Stipulation are not intended to create any specific rights or remedies for any CLEC, or to expand or contract any CLEC’s rights in any way, and may not be enforced except by the Circuit Court, the Commission, its Staff or Qwest. Qwest and Staff further agree that nothing in this Stipulation precludes a CLEC from filing any appropriate action against Qwest or any CLEC in any appropriate forum for any alleged damages as a result of any alleged failures to file interconnection agreements.

**9. Integrated Document**

The Parties recommend that the Commission and Circuit Court adopt this Stipulation in its entirety. The Parties have negotiated this Stipulation as an integrated document. Accordingly, if the Commission or Circuit Court in any order or decision rejects all or any part of this Stipulation, or materially adds to or changes any of its terms, each party reserves the right to withdraw from the Stipulation upon written notice to the Commission or Circuit Court and Qwest within fifteen (15) days of receiving notice of any such action by the Commission or the Circuit Court. In the event of such withdrawal, neither party will be bound by any provision of the Stipulation, and no such term may be cited or used against any party in connection with any case or proceeding, or otherwise.

**10. No Waiver**

Qwest and Staff have entered this Stipulation to resolve disputed issues, and neither party admits or denies any fact or legal position at issue.

IT IS SO AGREED.

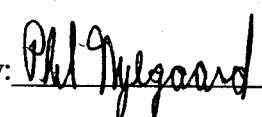
QWEST CORPORATION

By: 

Its: VP - Wholesale

Date: 2-1-05

STAFF OF THE PUBLIC UTILITY  
COMMISSION

By: 

Its: Administrator, Telecommunications Division

Date: 2/2/05

UM 1168

**LIST OF 32 AGREEMENTS WHICH STAFF AND QWEST AGREE SHOULD HAVE BEEN FILED  
(FOR PURPOSES OF STIPULATION/MOU)**

CLEC	Title of Agreement	Date	ARB No.	Stipulated Amount	Filing Date
Advanced TelCom Group, Inc. (now Ionex)	Confidential Settlement Agreement	6/30/2000	not filed	\$50,000	not filed
Advanced TelCom Group, Inc.	Amended Confidential Settlement Agreement	03/15/2001	not filed	\$50,000	not filed
Advanced TelCom Group, Inc.	Agreement for Migration of Services	02/08/2002	not filed	\$25,000	not filed
Electric Lightwave, Inc.	Confidential Billing Settlement Agreement and Release	12/30/1999	not filed	\$50,000	not filed
Electric Lightwave, Inc.	Amendment No. 1 to the Confidential Billing Settlement Agreement and Release of 12/30/1999	06/21/2000	not filed	\$25,000 (combined with ELI contract below)	not filed
Electric Lightwave, Inc.	Second Amendment to the Confidential Billing Settlement Agreement and Release of 12/30/1999	04/30/2001	not filed	\$25,000 (combined with ELI contract above)	not filed
Electric Lightwave, Inc.	Third Amendment to the Confidential Billing Settlement Agreement and Release of 12/30/1999	07/19/2001	not filed	\$25,000	not filed
Ernest Communications, Inc.	Confidential Settlement Agreement and Release	09/17/2001	105(3)	\$25,000	10/3/02
Fairpoint Communications Solutions Corp.	Confidential Billing Settlement Agreement	09/04/2001	192(6)	\$25,000	10/3/02

CLEC	Title of Agreement	Date	ARB No.	Stipulated Amount	Filing Date
McLeod USA	Confidential Billing Settlement Agreement	04/28/2000	302(9)(10)	\$25,000	10/3/02
McLeod USA	Purchase Agreement	10/02/2000	302(11)	\$50,000	10/3/02
MCI WorldCom Network Service, Inc.	Business Escalation Agreement	06/29/2001	1(6)	\$25,000	10/3/02
MCI WorldCom Network Services, Inc.	Confidential Billing Settlement Agreement	06/29/2001	1(7)	\$50,000	10/3/02
Teleport Communications Group, dba AT&T Local	Confidential Billing Settlement Agreement and Release	03/13/2000	not filed	\$50,000	not filed
XO -Nextlink Communications, Inc.	Confidential Billing Settlement Agreement	05/12/2000	not filed	\$50,000	not filed
XO Subs and XO Communications, Inc.	Confidential Billing Settlement Agreement – QC	12/31/2001	142(4)	\$25,000	9/4/02
ATI (Eschelon)	Confidential/Trade Secret Stipulation Between ATI and U S WEST	02/28/2000	not filed	\$50,000	not filed
Eschelon Telecom	Trial Agreement	07/21/2000	not filed	\$50,000	not filed
Eschelon	Confidential Agreement (escalation procedures)	11/15/2000	not filed	\$50,000	not filed
Eschelon	Confidential Amendment to Confidential/Trade Secret Stipulation	11/15/2000	not filed	\$50,000	not filed
Eschelon	Confidential Qwest Letter Regarding Status of Switched Access Minute Reporting Implementation Plan	07/03/2001	not filed	\$25,000	not filed
Eschelon	Implementation Plan	07/31/2001	not filed	\$50,000	not filed
Covad	U S WEST Service Level Agreement – Unbundled Loop Services	04/19/2000	96(3)(4)	\$50,000	10/3/02



CLEC	Title of Agreement	Date	ARB No.	Stipulated Amount	Filing Date
McLeod USA	Confidential Letter Agreement (escalation)	10/26/2000	302(11)	\$25,000	10/3/02
Electric Lightwave, Inc.	Binding Letter Agreement (1)	07/19/2001	not filed	\$25,000	not filed
CDS Networks, Inc.	Internetwork Calling Name Delivery Service, Internetwork Calling Name Delivery Service Agreement	03/31/2002	80(3)	\$25,000	1/10/03
U S WEST Wireless, LLC	Transient Interim Signaling Capability Service Agreement	03/02/1998	50(2)	\$25,000	1/15/03
Allegiance Telecom of Oregon, Inc.	Internetwork Calling Name Delivery Service, Internetwork Calling Name Delivery Service Agreement	02/08/2001	276(6)	\$25,000	1/10/03
Frontier Local Services, Inc. (now known as Global Crossing)	Directory Assistance Agreement	07/31/98	52(7)	\$25,000 (combined with Frontier contract below)	6/15/04
Frontier Local Services, Inc. (now known as Global Crossing)	Operator Services Agreement	07/31/98	52(6)	\$25,000 (combined with Frontier contract above)	6/15/04
American Telephone Technology (now known as Eschelon)	Directory Assistance Agreement	02/16/00	199(16)	\$25,000 (combined with Eschelon below)	6/15/04

<b>CLEC</b>	<b>Title of Agreement</b>	<b>Date</b>	<b>ARB No.</b>	<b>Stipulated Amount</b>	<b>Filing Date</b>
American Telephone Technology (now known as Eschelon)	Operator Services Agreement	02/16/00	199(17)	\$25,000 (combined with Eschelon above)	6/15/04

**UM 1168  
Service List (Parties)**

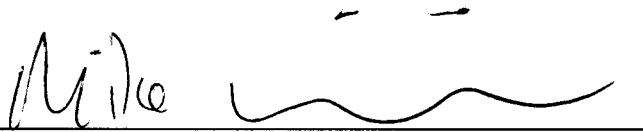
<p>DENNIS AHLERS ESCHELON TELECOM OF OREGON INC 730 SECOND AVE S STE 900 MINNEAPOLIS MN 55402-2489 ddahlers@eschelon.com</p>	<p>CHARLES L BEST ELECTRIC LIGHTWAVE LLC PO BOX 8905 VANCOUVER WA 98668-8905 cbest@eli.net</p>
<p>DAVE BOOTH -- <b>CONFIDENTIAL</b> PUBLIC UTILITY COMMISSION PO BOX 2148 SALEM OR 97308-2148 dave.booth@state.or.us</p>	<p>JOSEPH D CHICOINE ELECTRIC LIGHTWAVE LLC PO BOX 340 ELK GROVE CA 95759 jchicoi@czn.com</p>
<p>ALEX M DUARTE QWEST CORPORATION 421 SW OAK ST STE 810 PORTLAND OR 97204 alex.duarte@qwest.com</p>	<p>K C HALM -- <b>CONFIDENTIAL</b> COLE RAYWID &amp; BRAVERMAN LLP 1919 PENNSYLVANIA AVE NW 2ND FL WASHINGTON DC 20006-3458 kc.halm@crblaw.com</p>
<p>KAREN J JOHNSON -- <b>CONFIDENTIAL</b> INTEGRA TELECOM OF OREGON INC 1201 NE LLOYD BLVD STE 500 PORTLAND OR 97232 karen.johnson@integratelecom.com</p>	<p>JEFFRY MARTIN -- <b>CONFIDENTIAL</b> UNIVERSAL TELECOM INC 1600 SW WESTERN BLVD STE 290 CORVALLIS OR 97333 martinj@uspops.com</p>
<p>LISA F RACKNER -- <b>CONFIDENTIAL</b> ATER WYNNE LLP 222 SW COLUMBIA ST STE 1800 PORTLAND OR 97201-6618 lfr@aterwynne.com</p>	<p>LAWRENCE REICHMAN PERKINS COIE LLP 1120 NW COUCH ST - 10 FL PORTLAND OR 97209-4128 lreichman@perkinscoie.com</p>
<p>BRAD SCHAFFER -- <b>CONFIDENTIAL</b> RIO COMMUNICATIONS INC 520 SE SPRUCE ST ROSEBURG OR 97470-3134 brad@rio.com</p>	<p>GREGORY SCOTT -- <b>CONFIDENTIAL</b> INTEGRA TELECOM OF OREGON INC 1201 NE LLOYD BLVD STE 500 PORTLAND OR 97232 greg.scott@integratelecom.com</p>
<p>KAREN S SHORESMAN FRAME -- <b>CONFIDENTIAL</b> COVAD COMMUNICATIONS CO 7901 LOWRY BLVD DENVER CO 80230 kframe@covad.com</p>	<p>MARK P TRINCHERO -- <b>CONFIDENTIAL</b> DAVIS WRIGHT TREMAINE LLP 1300 SW FIFTH AVE STE 2300 PORTLAND OR 97201-5682 marktrinchero@dwt.com</p>
<p>MICHAEL T WEIRICH -- <b>CONFIDENTIAL</b> DEPARTMENT OF JUSTICE REGULATED UTILITY &amp; BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 michael.weirich@state.or.us</p>	

# CERTIFICATE OF SERVICE

UM 1168

I certify that I have this day served the foregoing document upon all parties of record in this proceeding by delivering a copy in person or by mailing a copy properly addressed with first class postage prepaid, or by electronic mail pursuant to OAR 860-13-0070, to all parties or attorneys of parties.

Dated at Salem, Oregon, this 22nd day of April, 2005.

A handwritten signature in cursive script, appearing to read "Mike Weirich", is written above a horizontal line.

Mike Weirich  
Assistant Attorney General  
Of Attorneys for Public Utility Commission's Staff  
1162 Court St NE  
Salem, Oregon 97301  
Telephone: (503) 378-6322