

ORDER NO. 04-412

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1142

CLEAR CREEK MUTUAL TELEPHONE)
COMPANY,)
Complainant,)
v.)
BEAVER CREEK COOPERATIVE)
TELEPHONE COMPANY,)
Defendant.)

ORDER

DISPOSITION: STIPULATED MOTION GRANTED

Beaver Creek Cooperative Telephone Company (Beaver Creek) and Clear Creek Mutual Telephone Company (Clear Creek) are cooperatives as defined by state law. *See* ORS 759.025(2); *see generally* ORS Chapter 62. State law bars provision of intrastate telecommunications service without a certificate of authority. *See* ORS 759.020(1).

Clear Creek has authority to provide intraexchange (local exchange) telecommunications service as an incumbent local exchange carrier in the Redland exchange. *See* Order No. 88-625, UM 196 (June 15, 1988).

Beaver Creek has authority to provide intraexchange (local exchange) telecommunications service as an incumbent local exchange carrier in the Beaver Creek exchange. *See* Order No. 88-261, UM 177 (March 10, 1988). Beaver Creek also has authority to provide intraexchange telecommunications service as a “competitive local exchange carrier” (CLEC) only in the Oregon City exchange. *See* Order No. 96-248, CP 131 (Sept 23, 1996).

The two companies share a boundary line separating the Beaver Creek and Redland exchanges in Clackamas County. The two companies have approved maps on file with the Commission, which show and define the two exchanges.

Clear Creek filed a complaint against Beaver Creek on April 15, 2004. The complaint alleges that Beaver Creek is providing intraexchange switched (dial tone)

telecommunications service to customers located within the Redland exchange, without a certificate of authority to provide such service.

On May 14, 2004, Qwest Corporation filed a Petition to Intervene in the case. The Petition was conditionally granted on May 19, 2004, and granted in final on June 4, 2004.

Beaver Creek filed a response to the complaint requesting that the docket be stayed or cancelled. The Administrative Law Judge interpreted the filing as a motion to dismiss or suspend the docket. The motion was denied on June 4, 2004.

A prehearing conference was held on June 4, 2004. All parties were present. During off-the-record discussions, the parties agreed to attempt to resolve the dispute.

After the prehearing conference, three additional parties filed petitions to intervene: Michele Lipka; lipka.com, inc.; and Charles L. Sliger (collectively, "Potential Intervenors").¹ The Potential Intervenors assert, in relevant part, that they live in the Redland exchange but are currently receiving service (local and/or broadband) from Beaver Creek and desire to continue to do so. The Potential Intervenors receive service from Beaver Creek in the Redland Exchange.

On July 8, 2004, Beaver Creek filed an application with the Commission for certification to operate as a competitive provider (CLEC) on a statewide basis, including the Redland Exchange. The Application is docketed as CP 1242.

On July 13, 2004, the parties filed a Stipulated Motion to settle this complaint. The parties have agreed to settle this dispute according to the following terms: Beaver Creek will cease and desist from providing intraexchange switched (dial tone) telecommunications service in the Redland Exchange. Beaver Creek may continue to provide local dial tone telecommunications service to the Potential Intervenors until such time that Beaver Creek's Application in CP 1242 is either resolved by the Commission, withdrawn by Beaver Creek, or otherwise terminated.² Beaver Creek agrees that, should it not be granted authority to provide local dial tone service in the Redland Exchange at the conclusion of CP 1242, it will terminate service to the Potential Intervenors within 30 days of the resolution of that docket. Beaver Creek further agrees that, within 30 days of this order, it will cease and desist from providing dial tone service to any other customer it currently serves in the Redland Exchange.

¹ These petitions to intervene are rendered moot by this order, and, consequently, need not be further addressed.

² The Commission does not assert jurisdiction over broadband service to the Internet. The parties agree that the Commission cannot prevent Beaver Creek from continuing to provide broadband service to its customers, including the Potential Intervenors, in the Redland Exchange. The Commission makes no commitment in this Order whether it will allow Lipka, lipka.com, and Sliger to retain their "632" prefix should it grant Beaver Creek the authority it seeks in CP 1242. That issue will be addressed in CP 1242.

CONCLUSIONS

Having reviewed the matter, we make the following findings of fact:

1. Beaver Creek is providing intraexchange switched (dial tone) telecommunications service in the Redland Exchange, including service to Michele Lipka; lipka.com, inc.; and Charles L. Sliger.
2. The authority granted to Beaver Creek by Order No. 88-261, UM 177, and Order No. 96-248, CP 131 does not include authority to provide intraexchange switched telecommunications service in the Redland exchange.
3. Intraexchange switched (dial tone) service is an intrastate telecommunications service.

Under the terms of the stipulated motion, Beaver Creek agrees not to provide intraexchange telecommunications service in the Redland Exchange without a certificate of authority issued by the Commission. Beaver Creek may, however, continue to provide local dial tone telecommunications service to the Potential Intervenors until Beaver Creek's Application in CP 1242 is resolved. We find this and other terms of the stipulation reasonable. Accordingly, the stipulated motion is granted.

Finally, we note that all parties to the case signed the stipulated motion, which was supported by a proposed order that formed the basis for this order. Due to these facts, we find good cause to waive the 20-day time period in which a party may file an objection to a stipulation set forth in OAR 860-014-0085(5), as well as the requirement for stipulations to be supported by an explanatory brief or testimony.

ORDER

IT IS ORDERED that:

1. Beaver Creek Cooperative Telephone Company (Beaver Creek) shall cease and desist from providing intraexchange switched (dial tone) telecommunications service to the customers currently being served within the Redland exchange, within 30 days of this Order. However, Beaver Creek may continue to provide such service to Michele Lipka, lipka.com, inc., and Charles L. Sliger until the Commission issues an order resolving Beaver Creek's application to be a CLEC on statewide basis (docketed as CP 1242) or until the docket is otherwise terminated.

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2. Beaver Creek shall cease and desist providing intraexchange switched telecommunications service to Michele Lipka, lipka.com, inc. and Charles L. Sliger within 30 days of the resolution or termination of CP 1242 if Beaver Creek does not obtain authority to provide service in the Redland Exchange upon resolution or termination of the docket.
3. Beaver Creek shall not provide intraexchange telecommunications service to any other person located in the Redland exchange until Beaver Creek has applied for, and the Commission has issued, a certificate of authority for the company to do so.

Made, entered, and effective _____.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.