

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1140

In the Matter of)	
)	
BEAVER CREEK COOPERATIVE)	
TELEPHONE COMPANY)	ORDER
)	
Request to Consolidate the Beaver)	
Creek Rate Center with the Clackamas)	
Rate Center.)	

DISPOSITION: PETITION FOR RATE CENTER CONSOLIDATION DENIED

Procedural History

On March 25, 2004, Beaver Creek Cooperative Telephone Company (Beaver Creek or BCT) filed a letter requesting that the Public Utility Commission of Oregon (Commission) issue an order consolidating the Beaver Creek rate center with the Clackamas rate center. The Beaver Creek rate center includes the Beaver Creek exchange. The Clackamas rate center includes the Oregon City, Oak Grove-Milwaukie and Lake Oswego exchanges. BCT asserts that rate center consolidation (a) has the potential to result in number conservation; (b) will allow BCT to operate more efficiently; (c) will facilitate number assignment between rate centers; and (d) will not affect toll rates or interexchange carrier access rates.

On July 29, 2004, BCT notified the Commission that it could not reach agreement with Qwest Corporation (Qwest) regarding the proposed rate center consolidation. BCT requested that the Commission convene a prehearing conference regarding the matter.

On August 9, 2004, Qwest filed a motion requesting that the Commission deny BCT's request and close the docket. Qwest alleged that BCT's request was deficient because it did not comply with Commission rules. It further alleged that consolidating the BCT and Clackamas rate centers (a) would not conserve telephone number resources or allay concerns about number assignment; and (b) would impose substantial costs and burdens on other carriers.

On August 11, 2004, the presiding Administrative Law Judge (ALJ) convened a telephone prehearing conference. The ALJ determined that BCT's request

should be denominated as a petition filed pursuant to OAR 860-013-0020, and established a tentative procedural schedule pending disposition of Qwest's motion.¹

On August 26, 2004, BCT filed a response denying the allegations set forth in Qwest's motion. Qwest replied on September 2, 2004.

On October 8, 2004, Clear Creek Mutual Telephone Company (Clear Creek) filed a petition to intervene.

The procedural schedule adopted at the first conference called for the parties to confer and file an issues list by October 11, 2004. On that date, the parties notified the ALJ that they could not to agree on the issues. The parties subsequently filed separate issue lists.

On October 25, 2004, the ALJ convened a second conference. At the conference, (a) the ALJ declined to adopt Qwest's motion to close the docket; (b) the parties agreed to adopt a revised issues list developed by the ALJ, and; (c) Clear Creek's petition to intervene was granted.

On December 1, 2004, BCT filed testimony in support of its petition. Qwest filed responsive testimony on January 6, 2005. Clear Creek did not submit testimony.

On January 27, 2005, an evidentiary hearing was held in Salem, Oregon. Qwest and Beaver Creek filed opening post-hearing briefs on March 17, 2005, and March 18, 2005, respectively, and reply briefs on April 18, 2005, and April 15, 2005, respectively.

Background

A rate center is a point within a local exchange area or group of contiguous local exchange areas, whose geographic coordinates are used to measure distances for long distance toll calls. In Oregon, most local exchanges have one central office which is the rate center for that exchange. If a local exchange has multiple central offices, it may have multiple rate centers.²

Section 251(e) of the Communications Act of 1934, as amended, grants the Federal Communications Commission (FCC) plenary jurisdiction over the North American Numbering Plan (NANP) and related telephone numbering issues in the United States. In 2000, the FCC issued a series of orders in its *Numbering Resource Optimization* proceeding in response to the rapid growth of telecommunications

¹ The ALJ permitted BCT to file a statement of authorities in support of its petition in accordance with OAR 860-013-0020(2). BCT submitted the required statement on August 23, 2004.

² See, Docket UM 953, Order No. 00-478, Appendix at 1.

competition and the proliferation of new telecommunications services.³ At the time those orders were issued, the NANP was in a state of “near crisis” because of the rapid depletion of numbering resources and the potential for many area codes throughout the nation to be exhausted within the year.⁴ In Oregon, the 503 area code⁵ was expected to exhaust in 2002.⁶ In response to the urgent need to conserve numbering resources, the FCC considered implementing several measures, including rate center consolidation, “thousands block” number pooling, sequential number assignment and other number resource reclamation requirements.⁷

Rate center consolidation involves consolidating or combining existing rate centers to create a larger geographic area in which individual NXX codes⁸ can be used. Since many carriers, such as competitive local exchange carriers (CLECs), require NXX codes in most or all rate centers in an area code in order to establish a competitive “footprint,” establishing larger rate centers has significant potential to reduce the demand for NXX codes.⁹ According to the *First Report and Order*:

Rate center consolidation is the combining or aggregating of several existing rate centers into fewer rate centers. Rate center consolidation serves as a numbering optimization measure by enabling carriers to use fewer NXX codes to provide service throughout a region, thereby reducing the

³ *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket 99-200, FCC Order 00-104, 15 FCC Rcd 7574 (rel. Mar. 31, 2000) (*First Report and Order*); Common Carrier Bureau Order, CC Docket No. 96-98, 99-200, DA 00-1616 (rel. July 20, 2000) (*Delegation Order*); Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200; FCC 00-429 (rel. Dec. 29, 2000) (*Second Report and Order*);

⁴ *First Report and Order* at paras. 2-3, 6.

⁵ Under NANP, the United States and Canada are divided into Numbering Plan Areas (NPAs). The NPA, or area code, is represented by the first three digits of a ten-digit telephone number. *First Report and Order* at para. 1, fn. 2.

⁶ *Delegation Order* at para. 43. Even with the approved 971 area code “overlay,” number exhaustion was anticipated in 2007.

⁷ *First Report and Order* at para. 5.

⁸ The second three digits of a ten-digit telephone number are used to identify central offices within a NPA, and are called central office codes, or NXXs. Central office codes are used for routing calls and for rating and billing calls. Typically, wireline carriers obtain a central office code for each rate center in which they provide service in a given area code. All public network facilities and private network facilities are designed and programmed to be consistent with the NANP scheme. *Id.* at para. 2, fn. 4.

⁹ *Delegation Order* at para. 59; Exhibit BCT/6.

demand for NXX codes, improving number utilization, and prolonging the life of an area code.¹⁰

The FCC has recognized that rate centers “are generally creations of the incumbent local exchange carriers and are designed to facilitate billing and routing of local calls.”¹¹ Also, since rate center consolidation involves matters relating to local calling scopes and local call rating, it falls within the regulatory authority of state utility commissions.¹²

The FCC has also recognized that rate center consolidation is an important tool for conserving numbering resources. Paragraphs 147 and 148 of the *First Report and Order* state:

The Commission has stated repeatedly that states have authority to consolidate rate centers. Indeed, we have conveyed the importance of rate center consolidation and encouraged states to consolidate rate centers wherever possible. We believe that consolidating rate centers prior to implementing thousands-block number pooling and area code relief will increase the efficiency of these measures, because carriers will need fewer initial and growth numbering resources to provide service in a given area. In the *First Report and Order*, we declined to mandate rate center consolidation as a precursor to the national rollout of thousands-block number pooling, which some commenters had supported to encourage rate center consolidation. We nevertheless encourage states to consider and implement rate center consolidation on their own. Particularly, we encourage states to explore rate center consolidation opportunities in areas where contiguous calling areas have identical or substantially similar rating schemes. Rate center consolidation in these areas is least likely to have a significant impact on carrier revenues, because minimal realignment of local, extended, and toll calling boundaries would be necessary.

We are mindful that rate center consolidation may be a difficult option for many states and carriers, especially incumbent local exchange carriers, because of the historic

¹⁰ *Notice of Proposed Rulemaking*, FCC Docket 99-122, ¶ 113; see also, Exhibit Qwest/2, Whaley/3.

¹¹ *Delegation Order* at para. 59; Exhibit BCT/6.

¹² *Id.* Qwest and BCT agree that the Commission does not require any delegation of authority from the FCC to authorize the rate center consolidation proposed by BCT.

connection between rate centers and the billing, as well as routing, of calls. Rate center consolidation determines which calls are local versus toll, and thus consolidation may deprive some carriers of toll revenue. We therefore seek comment on ways of severing the connection between number assignment and call rating and routing. We also seek comment from the industry and state commissions on past and present rate center consolidation efforts, including information on the impact rate center consolidation has had on numbering optimization. Finally, we seek analysis of the benefits and costs of rate center consolidation in the 100 largest MSAs in the country, where we believe it would have the most significant effect. We believe that metropolitan regions are optimal candidates for rate center consolidation because they tend to involve more competing LECs and a higher demand for number resources.

In fulfilling its statutory mandate over the NANP and numbering resources, the FCC identified two primary issues:

One is to ensure that the limited numbering resources of the NANP are used efficiently, to protect customers from the expense and inconvenience that result from the implementation of new area codes, some of which can be avoided if numbering resources are used more efficiently, and to forestall the enormous expense that will be incurred in expanding the NANP. The other goal is to ensure that all carriers have the numbering resources they need to compete in the rapidly growing telecommunications marketplace.¹³

Qwest and BCT. Qwest provides incumbent local exchange carrier (ILEC) service in various locations throughout Oregon, including the Oregon City exchange in the Clackamas rate center.¹⁴ BCT provides ILEC service only within the Beaver Creek exchange. In addition, BCT provides CLEC service within the Oregon City exchange pursuant to an interconnection agreement with Qwest. BCT has been assigned the 503/632 NPA/NXX for its ILEC operations in the Beaver Creek exchange and the 503/518 NPA/NXX for its CLEC operations in the Oregon City exchange.¹⁵

¹³ *First Report and Order* at para. 1.

¹⁴ As noted above, the Beaver Creek exchange is the only exchange area in the Beaver Creek rate center. The Clackamas rate center includes the Oregon City, Oak Grove-Milwaukie and Lake Oswego exchanges.

¹⁵ Exhibit Qwest/4, Batz/6.

FINDINGS

Issue No. 1—Number Conservation

(a) Will consolidation of the Beavercreek rate center with the Clackamas rate center result in number conservation?

(b) Is there a need for number conservation?

(c) If rate center consolidation will result in number conservation, will it significantly extend the life of the relevant area codes?

BCT Position – Issue No. 1. BCT recognizes that the demand for numbering resources has slackened in recent years as a result of the collapse in the technology sector and the overall decline in the number of competitors.¹⁶ Notwithstanding this fact, BCT maintains that the proposed rate center consolidation may benefit number conservation in two ways. The first is that it will allow companies currently operating in the Clackamas rate center to expand their operations into the Beavercreek exchange without obtaining new numbering resources.¹⁷ Second, BCT projects that the 503/518 NXX code assigned to its CLEC operations in the Oregon City exchange portion of the Clackamas rate center will be exhausted in three to five years.¹⁸ BCT has only recently begun a strong sales effort within the Oregon City exchange, having first concentrated on building facilities.¹⁹ Based upon these projections, BCT states that rate center consolidation will enable it to use the 503/632 NXX (currently assigned to its ILEC operation) to meet numbering demands without obtaining additional numbering resources.²⁰

Although BCT acknowledges that rate center consolidation has been discussed in the context of number conservation²¹ and that the conservation benefits derived from the proposed consolidation may be marginal,²² it emphasizes that there is no federal or state requirement quantifying the amount of number conservation that must occur before consolidation is authorized.²³ Indeed, BCT maintains that rate center is a

¹⁶ Exhibit BCT/1, Linstrom/4.

¹⁷ *Id.* at 5. BCT notes that ten CLECs hold NXX codes for the Clackamas rate center. BCT Op. Br. at 6, fn. 14.

¹⁸ Tr. 13, 18, 20; Exhibit Qwest/9.

¹⁹ *Id.*

²⁰ Exhibit BCT/1, Linstrom/5.

²¹ BCT Op. Br. at 8.

²² *Id.* at 10.

matter of state discretion and may be authorized without any number conservation benefits whatsoever.²⁴

Qwest Position – Issue No. 1. Qwest states that number conservation should be an ongoing effort by all telecommunications carriers and regulators, and agrees that rate center consolidation is a valuable means of optimizing numbering resources. It contends, however, that BCT’s petition should be denied at this time because there are no genuine number resource conservation concerns warranting rate center consolidation.

Qwest notes that the FCC has addressed rate center consolidation only in situations where there have been concerns over the availability of numbering resources. Accordingly, before granting BCT’s petition, this Commission should determine if (a) there is an actual need to conserve telephone numbers in the Beaver creek and Clackamas rate centers, and (b), if so, the extent to which consolidation will conserve numbering resources. In addition, the Commission should consider whether other number conservation measures would be more appropriate under the circumstances.

According to Qwest Witness Michael Whaley, neither of the two area codes relevant to BCT’s petition – the 503 area code and the 971 “overlay” area code -- are in jeopardy of being exhausted in the near future. Estimates published by the NANP Administrator disclose that telephone numbers in the 503 area code will not be exhausted until approximately 2011, and that numbers in the 971 area code will not be exhausted until approximately 2026. Mr. Whaley asserts that the Commission resolved any potential number exhaust problem in 1999 when it ordered the overlay of the original 503 area code with the new 971 area code.²⁵

Mr. Whaley also testified that consolidating the Beaver creek and Clackamas rate centers will not produce significant number conservation in any event. To have any real impact on number conservation, full codes or large quantities of “thousands blocks” of numbers would have to be returned to the NANP Administrator or the Pooling Administrator (PA). Mr. Whaley explained that consolidating the Beaver creek and Clackamas rate centers will have little or no effect on number conservation because there are not enough telephone numbers that can be given back to NANPA or the PA to have much, if any, impact on the life of the area codes.²⁶

²³ BCT points out that the Commission did not attempt to quantify number conservation benefits when it ordered rate center consolidation in Docket UM 953. *See*, Order No. 00-478. It further emphasizes that the FCC has encouraged rate center consolidation where local calling areas are identical, as they are here. *First Report and Order* at para. 147, *supra*. *See also*, Exhibit BCT/8.

²⁴ BCT Reply Br. at 8-9.

²⁵ *See*, Order No. 99-286, OPUC docket UM 924; Exhibit Qwest/2, Whaley/8.

²⁶ Exhibit Qwest/2, Whaley/8-9.

Qwest maintains that there are measures other than rate center consolidation that would result in number conservation, if number conservation were in fact necessary. For example, BCT could engage in number pooling, wherein carriers return unused blocks of numbers, or lightly “contaminated” blocks,²⁷ back to the PA for assignment to other carriers. Number pooling also allows new carriers to obtain blocks of numbers in a rate center without having to obtain or open a full NXX code.²⁸ Qwest points out that although BCT has expressed a willingness to engage in number pooling, it has yet to do so.²⁹ Furthermore, Beaver Creek has used only [confidential number] of the telephone numbers in the 503/518 NPA/NXX, and only [confidential number] of the ten “thousands blocks” in that NXX code have been contaminated.³⁰ Qwest contends that BCT should be required to engage in number pooling before the Commission implements rate center consolidation.

Qwest also contends that BCT should be required to engage in sequential number assignment before rate center consolidation is considered. Carriers conserve telephone numbers under this approach by sequentially assigning numbers to customers from a thousands block before a new block is opened. Sequential number assignment maintains the integrity of unused blocks which can then be donated to the Pooling Administrator for use by other carriers. Qwest points out that BCT does not currently engage in sequential number assignment,³¹ notwithstanding FCC rules requiring it to do so.³² Qwest also asserts that BCT is not complying with FCC requirements limiting carriers to a six-month inventory of telephone numbers.³³

²⁷ A contaminated block is one where more than 10% of the 1000 numbers are being used. A lightly contaminated block is one where less than 10% of the numbers are being used. Unused and lightly contaminated blocks may be returned to PA for use by other carriers. *Id.*

²⁸ *Id.* at 9.

²⁹ Exhibit Beaver Creek/1, Linstrom/11. Qwest notes that it has already deployed number pooling functionality in its switches in anticipation that pooling would be required in every switch in every rate center. Qwest is currently pooling in the Clackamas rate center and has donated more than 125 thousands blocks for use by other carriers desiring to serve in the area. Exhibit Qwest/2, Whaley/9-10.

³⁰ This information is set forth in Confidential Appendix A to this order. See also, Exhibit Qwest/8 (confidential); Exhibit Qwest/5, Batz/3 (confidential); Tr. 13-17 (confidential).

³¹ Tr. 17, Qwest Op. Br. at 13-14.

³² Qwest cites 47 C.F.R. 52.15(j), which provides:

(j) *Sequential number assignment.*

(1) All service providers shall assign all available telephone numbers within an opened thousands-block before assigning telephone numbers from an uncontaminated thousands-block, unless the available numbers in the opened thousands-block are not sufficient to meet a specific customer request. This requirement shall apply to a service provider’s existing numbering resources as well as any new numbering resources it obtains in the future.

(2) A service provider that opens an uncontaminated thousands-block prior to assigning all available telephone numbers within an opened thousands-block should be prepared to demonstrate to the state commission:

As a final matter, Qwest challenges BCT's prediction that it will exhaust the telephone numbers in the 503/518 NXX within three to five years. Qwest contends that BCT's projections are belied by the fact that there is a very low utilization of telephone numbers in the 503/518 NXX despite the fact that BCT has been certified as a CLEC for nearly eight years.³⁴ Before seeking additional numbering resources or rate center consolidation, BCT should be required to wait until utilization surpasses the 75 percent level in accordance with the national threshold specified by the FCC.³⁵

Commission Resolution – Issue No. 1. The record in this case supports Qwest's assertion that there are no significant number conservation concerns that necessitate consolidating the Beavercreek and Clackamas rate centers at this time. Estimates published by the NANP Administrator disclose that, in the geographical area at issue, the telephone numbers in the 503 area code will not be exhausted until approximately 2011, and the numbers in the 971 overlay code will not be exhausted until approximately 2026. In other words, there is no danger of a shortage of available telephone numbers in these area codes for several years.³⁶

Likewise, the evidence presented by BCT does not disclose any imminent danger of number exhaustion for either the 503/518 NXX code or the 503/632 NXX code. Utilization of the 503/518 NXX code is extremely low at this time. Although

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- (i) A genuine request from a customer detailing the specific need for telephone numbers; and
 - (ii) The service provider's inability to meet the specific customer request for telephone numbers from the available numbers within the service provider's opened thousands-blocks.
 - (3) Upon a finding by a state commission that a service provider inappropriately assigned telephone numbers from an uncontaminated thousands-block, the NANPA or the Pooling Administrator shall suspend assignment or allocation of any additional numbering resources to that service provider in the applicable NPA until the service provider demonstrates that it does not have sufficient numbering resources to meet a specific customer request.

³³ 47 C.F.R. 52.15(g)(3)(B)(iii) provides that "all service providers shall maintain no more than a six-month inventory of telephone numbers in each rate center or service area in which it provides telecommunications service."

³⁴ Exhibit Qwest/9, Attachment A (confidential); Tr. 13-15 (confidential).

³⁵ In support of this argument, Qwest cites 47 C.F.R. 52.15(h), which provides:
(h) *National utilization threshold.*

All applicants for growth numbering resources shall achieve a 60% utilization threshold, calculated in accordance with paragraph (g)(3)(ii) of this section, for the rate center in which they are requesting growth numbering resources. This 60% utilization threshold shall increase by 5% on June 30, 2002, and annually thereafter until the utilization threshold reaches 75%.

³⁶ Even BCT describes the need for number conservation as "at least marginal." BCT Reply Br. at 10.

utilization of the 503/632 NXX code is greater, it is still significantly less than the 75 percent national threshold established by the FCC for applicants requesting additional numbering resources.³⁷

Although BCT contends that its efforts to expand its competitive operations will exhaust the 503/518 NXX within the next three-five years, BCT's projections were not supported by any studies or other documentation. Moreover, as Qwest points out, BCT's projections are extremely optimistic given its current utilization of the 503/518 NXX code.

The Commission is also persuaded by the testimony of Qwest Witness Michael Whaley³⁸ that the proposed rate center consolidation will have little or no effect on number conservation. It is intuitive that, to have any significant impact on number conservation, full codes or large quantities of thousands blocks of numbers would have to be returned to the NANP Administrator or the Pooling Administrator.³⁹ As Mr. Whaley explained, however, consolidating the Beaver Creek and Clackamas rate centers will not yield enough telephone numbers to significantly extend the life of the relevant area codes.

BCT asserts that rate center consolidation has been "used at times that predate number conservation" and that "rate centers have been consolidated in the past without consideration of number conservation."⁴⁰ Insofar as we can ascertain, however, the FCC and this Commission have considered rate center consolidation only in circumstances where there has been a threat of telephone number exhaustion. Indeed, we have acknowledged that "the purpose of [rate center] consolidation is to conserve the assignment of . . . NXX codes."⁴¹ Even if we were to accept BCT's argument that rate center consolidation should be considered in the absence of a need for number conservation, the record discloses that consolidating the Beaver Creek and Clackamas rate centers would create number assignment concerns and impose additional costs upon Qwest. See discussion of Issue Nos. 3 and 4, below.

³⁷ Although BCT's petition is technically not a request for additional numbering resources, it seeks to free up additional numbers for BCT's use through the consolidation process. Accordingly, the 75 percent national utilization threshold is a reasonable proxy for assessing a company's need for numbers.

³⁸ Mr. Whaley has extensive experience with numbering issues, including serving as Co-Chair of the North American Numbering Council (NANC) Number Resource Optimization working group, membership in NANC's Future of Numbering working group, and other positions relating to numbering resource optimization. See, Exhibit Qwest/2, Whaley/2

³⁹ Exhibit Qwest/2, Whaley/8-9.

⁴⁰ BCT did not provide any citations to support these statements. BCT Reply Br. at 8-9.

⁴¹ Docket UM 953, Order No. 00-478, Appendix A at 2.

Issue No. 2 – Impact on Competition

(a) Will consolidation of the Beavercreek rate center and Clackamas rate centers have a significant, beneficial impact on local competition?

(b) Do carriers providing service in the Beavercreek rate center or the Clackamas rate center require additional numbering resources in order to effectively compete now or in the foreseeable future?

(c) What other impacts upon competition, if any, will result from consolidating the Beavercreek rate center with the Clackamas rate center?

BCT Position – Issue No. 2. BCT maintains that consolidating the Beavercreek and Clackamas rate centers will “have some benefit for competition.”⁴² Specifically, it asserts that consolidation will allow CLECs operating in the Clackamas rate center to use existing numbering resources to compete with BCT in the Beavercreek exchange once it becomes part of the Clackamas rate center. As a result, the need to obtain new numbering resources would not pose an obstacle to CLECs seeking to compete in the expanded area. BCT observes that even Qwest acknowledges that the availability of numbering resources will reduce barriers to competition.⁴³

Although there may only be a minimal level of number porting in the Beavercreek exchange at present, BCT expects that activity to continue to grow.⁴⁴ In addition, BCT anticipates that it will face more competition as rules governing federal and state universal fund support are clarified for eligible telecommunications carriers.⁴⁵

BCT further opines that Qwest may be among the CLECs who stand to benefit from rate center consolidation. Pursuant to Order No. 04-225 entered in docket UA 55, Qwest has less than three years to decide whether it will continue serving customers located in the Beavercreek exchange.⁴⁶ If Qwest decides to continue providing service to those customers, it must do so as a CLEC and will require additional numbering resources.

⁴² BCT Op. Br. at 6.

⁴³ Tr. 97.

⁴⁴ Exhibit Qwest/6A; BCT Op. Br. at 7.

⁴⁵ BCT Op. Br. at 7.

⁴⁶ In 1997, the Commission approved a transfer of allocated service territory from Qwest’s Oregon City exchange to BCT’s Beavercreek exchange. When it was discovered that Qwest customers were located in the transferred territory, BCT and Qwest entered into an agreement allowing Qwest to continue serving those customers. When a disagreement subsequently arose, the Commission determined that Qwest could continue providing service in the Beavercreek exchange for a three-year transition period. After that time, Qwest may only provide service in that exchange as a CLEC. See, Order No. 04-225, entered April 27, 2004.

Qwest Position – Issue No. 2. Qwest asserts that competitive carriers currently operating in the Clackamas rate center do not appear to have a strong interest in competing in the Beaver Creek rate center. For example, only two wireless carriers have requested local number portability from BCT,⁴⁷ and no telecommunications provider has requested thousands-block number pooling of the 503/632 NXX in the Beaver Creek rate center.⁴⁸ Qwest also emphasizes that no wireline telecommunications provider has requested negotiations with BCT in its ILEC capacity for an interconnection agreement pursuant to sections 251 and 252 of the Telecommunications Act of 1996.

Qwest also takes issue with BCT's assertion that rate center consolidation will enhance its ability to compete in areas beyond the Clackamas rate center by allowing it to assign telephone numbers from both the 503/518 and 503/632 NXXs.⁴⁹ Given BCT's limited utilization of telephone numbers in the Clackamas rate center, Qwest questions whether BCT has a need for additional telephone numbers to serve new customers.⁵⁰

Qwest suggests that the character of the Beaver Creek rate center makes it less attractive to competition from other carriers.⁵¹ The area is comprised largely of rural residential homes, including farmland, with little business development. The Beaver Creek rate center also lies almost completely outside the current Portland metropolitan urban growth boundary, thus limiting future growth of high-density development. Qwest opines that these characteristics may be the reason why BCT expanded its operations beyond the Beaver Creek rate center into Qwest's neighboring Oregon City exchange, where greater growth opportunities may exist.⁵²

With respect to the customers currently served in the Beaver Creek exchange, Qwest states it has not made a decision to continue providing service as a CLEC when the transition period expires in 2007.⁵³ It contends that BCT's statements with respect to this issue are speculative and require Qwest to "prove a negative."⁵⁴

⁴⁷ Qwest notes that these portability requests were made on a "limited basis." Exhibit Qwest/4, Batz/3; Exhibit Qwest/6, Batz/4, Response No. 3; Exhibit Qwest/6A; Tr. at 92-93.

⁴⁸ Exhibit Qwest/6, Batz/3, Response No. 2.

⁴⁹ Exhibit Beaver Creek/1, Linstrom/5. Qwest notes that BCT's argument assumes approval of its pending application in docket CP 1242 to compete outside the Oregon City exchange. Qwest *Op. Br.* at 14, fn. 10.

⁵⁰ Qwest *Op. Br.* at 15; Exhibit Qwest/4, Batz/3; Exhibit Qwest/5, Response Nos. 7 and 8 (Confidential); Exhibit Qwest/8; Exhibit Qwest/9.

⁵¹ Qwest notes that it is the only wireline local exchange carrier identified by BCT as operating within the Beaver Creek exchange. Exhibit Qwest/6, Batz/5, Response No. 4.

⁵² Exhibit Qwest/4, Batz/4.

⁵³ Exhibit Qwest/1, Mason/7.

⁵⁴ Qwest Reply Br. at 11.

Commission Resolution – Issue No. 2. As noted above, BCT argues that rate center consolidation may be authorized in the absence of a need for number conservation where other benefits -- such as improved competition -- result. While we have not had occasion to address this issue, the FCC has acknowledged that rate center consolidation may enhance competition by increasing the availability of numbering resources necessary to compete in the telecommunications marketplace.⁵⁵ In other words, the competitive benefits derived from the consolidation process are directly linked to increased availability of numbering resources. Notwithstanding BCT's assertion, we are unaware of any situation where rate center consolidation has been implemented for reasons unrelated to number conservation.

In any event, the record in this case does not support BCT's claim that consolidating the Beaver Creek and Clackamas rate centers will benefit competition in a meaningful way. Although combining the two rate centers would allow competitors in the Clackamas exchange to use their existing numbers in the Beaver Creek exchange, BCT has not demonstrated that competitors consider this opportunity to be a significant benefit from a competitive standpoint.⁵⁶ On the contrary, the evidence presented by Qwest suggests that competitors have little interest in competing in the Beaver Creek rate center at the present time.⁵⁷

We also concur with Qwest that there is no point in speculating whether the company will continue serving customers in the Beaver Creek exchange once the transition period authorized in docket UA 55 expires. As Qwest points out, two years is a very long time in the telecommunications industry and many things are subject to change. Furthermore, even if Qwest decides to continue providing service as a CLEC in the Beaver Creek exchange, the record in this case indicates that it is very unlikely that there will be any shortage of numbering resources.

⁵⁵ See, e.g., *First Report and Order* at para. 1, *supra*.

⁵⁶ We observe that no competitive carriers participated in this docket in support of the proposed rate center consolidation.

⁵⁷ In its opening brief at 8-10, BCT observes that the FCC's recent decision in *Vonage Holdings* regarding Voice over Internet Protocol (VoIP) service may have implications regarding the future use of numbering resources. BCT interprets the FCC to say that (a) future competition may not be bound by technical number assignment issues, and (b) VoIP services may stimulate an increased demand for numbering resources. The Commission agrees that the *Vonage Holdings* case may have significant implications for the future of the telecommunications industry. As BCT acknowledges, however, the decision does not offer any clear guidance on the substantive issues presented in this docket. *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267 (Rel. Nov. 12, 2004).

Issue No. 3 – Number Assignment

(a) If the Beavercreek and Clackamas rate centers are consolidated, will BCT be able to assign numbers to its ILEC customers using its CLEC prefix, or alternatively, assign numbers to CLEC customers using its ILEC prefix?

(b) Are there legal, technical or other considerations that prevent BCT from using its CLEC prefix for its ILEC customers, or its ILEC prefix for its CLEC customers? For example, would such “comingling” of prefixes by BCT allow the traffic originating and terminating from BCT, the CLEC, to be distinguished from BCT, the ILEC, for traffic routing and compensation purposes?

Qwest Position – Issue No. 3. As noted above, BCT uses the 503/632 NXX for its ILEC operations in the Beavercreek exchange and the 503/518 NXX for its CLEC operations in the Oregon City exchange. Thus, traffic originating from or terminating to the 503/632 NXX is associated with BCT’s ILEC operations, whereas traffic originating from or terminating to a 503/518 NXX is associated with BCT’s CLEC operations.

Qwest emphasizes that it is important to be able to distinguish between BCT’s ILEC and CLEC traffic because compensation arrangements differ between the two operations. Compensation for local and EAS traffic exchanged between Qwest and BCT’s ILEC operations is based upon bill and keep arrangements. On the other hand, traffic exchanged between Qwest and Beaver Creek’s CLEC operations is subject to reciprocal compensation based upon each minute of use.⁵⁸

Qwest acknowledges that consolidating the Beavercreek and Clackamas rate centers would permit BCT to utilize its 503/518 and 503/632 NXXs throughout the consolidated territory.⁵⁹ At the same time, Qwest points out that “the only difference today between BCT, the ILEC, and BCT the CLEC, is that BCT has different NPA/NXX assigned to the two rate centers where its ILEC and CLEC entities operate.”⁶⁰ If BCT “commingles” its NXXs in the manner described above, Qwest contends that it will be unable to distinguish traffic originating from or terminating to BCT’s CLEC operations from traffic originating from or terminating to BCT’s ILEC operations.⁶¹

⁵⁸ Exhibit Qwest/4, Batz/6-7.

⁵⁹ In other words, BCT could assign its 503/518 CLEC prefix to its ILEC customers and its 503/632 ILEC prefix to its CLEC customers. Qwest observes that current ATIS (Alliance for Telecommunications Industry Solutions) Central Office (CO) Code (NXX) Assignment Guidelines assume that “from a wireline perspective that CO codes/blocks allocated to a wireline service provider are to be utilized to provide service to a customer’s premise physically located in the same rate center that the CO codes/blocks are assigned.” Exhibit Qwest/4, Batz/5. In addition, the Commission has determined that CLECs may utilize an NXX code in an “exchange or rate center, whichever is larger.” Order No. 00-478 at 1.

⁶⁰ Exhibit Qwest/3, Linse/3.

⁶¹ Exhibit Qwest/4, Batz/6

Qwest further contends that rate center consolidation would cause problems identifying and routing traffic. In order for Qwest and other carriers to properly route traffic to BCT's ILEC and CLEC operations, respectively, it is necessary for BCT to accurately identify each operation by its NXX in the Local Exchange Routing Guide (LERG).⁶² Qwest asserts BCT has failed to correctly populate information in the LERG because it identifies itself as an "ILEC" for both the 503/632 and 503/518 NXXs. As a result, the only distinction that can be made between traffic exchanged with BCT, the ILEC, and traffic exchanged with BCT, the CLEC, is that BCT's NPA/NXXs are assigned to different rate centers. Consolidating the Beaver Creek and Clackamas rate centers would eliminate that distinction, and impair the ability of Qwest and other carriers to correctly route traffic to BCT's ILEC and CLEC operations.⁶³

In addition, Qwest maintains that separate trunk groups should be used to properly route and record traffic to and from BCT's ILEC and CLEC operations.⁶⁴ Qwest maintains that if BCT is allowed to combine its CLEC traffic with its ILEC traffic on the same trunks,⁶⁵ Qwest will not be able to segregate the local/EAS traffic routed to Qwest from BCT's CLEC operations from the local/EAS traffic routed to Qwest by Beaver Creek's ILEC operations. Combining ILEC and CLEC traffic over a common trunk group creates problems for Qwest because its recording capability captures all traffic, and does not separately identify ILEC traffic and CLEC traffic.⁶⁶

Qwest emphasizes that it should not have to implement alternative approaches in order to identify BCT's ILEC and CLEC traffic for routing and compensation purposes. BCT's proposal that Qwest utilize ratios, measuring devices or new database solutions to distinguish ILEC from CLEC traffic would essentially require Qwest to fashion a special single-company solution merely to accommodate BCT. Qwest maintains that such special treatment is both impractical and discriminatory *vis-à-vis* other carriers that also have ILEC and CLEC operations.⁶⁷

⁶² According to Qwest, carriers are required to populate the LERG database for each NXX. Nine reporting categories are specified for different types of carrier, including ILECs, CLECs, Interexchange carriers, Cellular carriers, etc. Qwest asserts that BCT identifies itself in the LERG database only as company code "Type 1" (ILEC) for both the 503/632 and 503/518 NPA/NXXs. In other words, BCT does not indicate that it is also a CLEC (Type 7) for the 503/518 NPA/NXX. Qwest Op. Br. at 18, fn. 14.

⁶³ Exhibit Qwest/3, Linse/3-4.

⁶⁴ Qwest argues that BCT should establish correct routing instructions in the LERG and utilize separate trunking regardless of the proposed rate center consolidation. Exhibit Qwest/3, Linse/4.

⁶⁵ For example, if Beaver Creek were to deliver both ILEC and CLEC traffic over its ILEC trunking. Exhibit Qwest/3, Linse/6.

⁶⁶ In order to distinguish between CLEC and ILEC trunk groups, Qwest uses modifiers on the trunk groups assigned to CLECs. This allows Qwest to record traffic on the CLEC trunk group so that it can be billed for reciprocal compensation purposes. If no modifier is placed on a trunk group, Qwest assumes the trunk is used for ILEC traffic. *Id.* at 6-7; Tr. 79-82.

⁶⁷ Exhibit Qwest/4, Batz/8-10.

BCT Position – Issue No. 3. BCT disputes Qwest’s claim that rate center consolidation and the comingling of the 503/518 and 503/632 NXXs will create problems for Qwest in identifying traffic for routing or compensation purposes.

BCT contends that rate center consolidation will not have any impact on the routing of traffic. It emphasizes that the switches and trunks currently used to exchange traffic with Qwest will remain unchanged if consolidation occurs. BCT also claims that Qwest will not experience any adverse consequences routing local or EAS traffic simply because both the 503/518 NXX and the 503/632 NXX are assigned in the LERG to the same switch.⁶⁸ It points out that LERG’s own instructions clearly indicate that it is not to be used for local or EAS routing.⁶⁹ BCT further emphasizes that, for purposes of the LERG, there is no requirement that an incumbent carrier create a separate CLEC affiliate or maintain a different Operating Company Number for its competitive operations.

BCT also discounts Qwest’s concerns regarding the ability to distinguish BCT’s ILEC traffic from its CLEC traffic for compensation purposes if rate center consolidation is authorized. BCT advances four arguments:

1. Qwest’s claim that the absence of separate trunking prevents it from distinguishing ILEC traffic from CLEC traffic is belied by the fact that BCT has delivered both competitive and incumbent traffic to Qwest over the same trunk group since approximately 1997. Qwest has failed to adequately explain why using common trunks will be a problem if rate center consolidation occurs.⁷⁰
2. Qwest’s arguments regarding the need for separate trunking no longer apply because separate trunk groups were installed in late 2004. Nevertheless, BCT continues to assert that separate trunks are inefficient and unnecessary.⁷¹
3. Qwest’s argument that carriers will be unable to segregate traffic for routing and compensation purposes is inconsistent with the position it took in a recent Colorado proceeding. According to BCT, Qwest argued in that case that it could route its competitive traffic over existing EAS trunks without causing confusion or other adverse consequences. BCT asserts that this inconsistency underscores Qwest’s anticompetitive behavior.⁷²

⁶⁸ BCT Op. Br. at 11.

⁶⁹ Exhibit BCT/9.

⁷⁰ BCT Op. Br. at 12.

⁷¹ *Id.*

⁷² Exhibit BCT/1, Linstrom/14-15; BCT Op. Br. at 12-13.

4. BCT maintains that there are relatively inexpensive ways to separate ILEC from CLEC traffic for compensation purposes, including the use of ratios, measuring devices and database solutions. BCT notes that the ratio method of segregating traffic is both simple and inexpensive and has been used for years in the telecommunications industry to separate interstate toll traffic from intrastate toll traffic.⁷³ BCT also emphasizes that measuring devices and database solutions could be used to distinguish ILEC from CLEC traffic. Qwest concedes that these methods are available, but has not determined how much they would cost to implement. BCT claims that Qwest's refusal to consider alternative methods demonstrates that it seeks to "impose inefficient costs on competitors" and "force competition into a single mode that suits its preferences."⁷⁴

Commission Resolution – Issue No. 3. Based on the evidence presented, the Commission finds that consolidating the Beaver Creek and Clackamas rate centers will create problems identifying traffic routed from BCT to Qwest for purposes of determining whether compensation is due. At present, the only distinction between traffic exchanged with BCT's ILEC operation and traffic exchanged with BCT's CLEC operation is that the NXX code associated with each operation is assigned to a different rate center.⁷⁵ If the Beaver Creek and Clackamas rate centers are consolidated, this distinction will be eliminated because BCT will be able to assign either the 503/518 NXX or the 503/632 NXX to both its ILEC customers and its CLEC customers interchangeably.⁷⁶ As a result, Qwest will be unable to rely on the NXX designation to accurately determine whether the traffic routed to it by BCT is competitive traffic eligible for reciprocal compensation or ILEC traffic subject to bill and keep arrangements.

The record discloses that the technology currently used by Qwest for recording traffic does not have the capability to segregate "comingled" traffic carried on the same trunk. BCT argues that this traffic identification problem could be resolved if Qwest agrees to use a ratio approach for purposes of distinguishing ILEC from CLEC traffic. However, this proposal would require Qwest to implement a methodology different from that used in its other interconnection agreements.⁷⁷ We agree with Qwest that it should not have to implement a single-company solution to accommodate BCT, particularly when the benefits otherwise derived from the proposed consolidation are *de minimis*. Moreover, even if we accept BCT's claim that using ratios is more cost effective for both carriers because it would eliminate the need for separate trunks, that is

⁷³ Exhibit BCT/1, Linstrom/16. BCT also notes that ratios are also used in Qwest interconnection agreements to separate local traffic from interexchange traffic. Typically, ratios are self-reported and subject to audit rights by the non-reporting carrier. BCT Op. Br. at 13-14.

⁷⁴ BCT Op. Br. at 15.

⁷⁵ Exhibit Qwest/4, Batz/6-7.

⁷⁶ See, e.g., Exhibit Qwest/3, Linse/3-4; Qwest Op. Br. at 18, fn. 15; Exhibit BCT/1, Linstrom/11-12.

⁷⁷ Exhibit Qwest/4, Batz/8.

a matter more properly dealt with in the context of the parties' existing interconnection agreement. A petition for rate center consolidation is not the appropriate mechanism for implementing changes in how traffic between interconnecting carriers is routed and identified.

For the same reasons, we are unpersuaded by BCT's suggestion that Qwest install measuring devices or implement database solutions to distinguish "comingled" traffic carried over the same trunk.⁷⁸ Although Qwest Witness Linse agreed that measurement equipment is available to distinguish traffic by NPA/NXX when carried over a common trunk group, he noted that Qwest would have to do additional "IT work" and purchase additional software upgrades to implement those processes.⁷⁹ Again, the marginal benefits realized from the proposed rate center consolidation do not justify requiring Qwest to incur costs that could be substantial.

Other arguments advanced by the parties regarding this issue are addressed below:

Local Exchange Routing Guide. Given the findings set forth above, it is unnecessary for the Commission to resolve the dispute regarding whether BCT has identified its CLEC operations in accordance with instructions in the LERG routing guide. At the same time, it is important that carriers populate the LERG with accurate data. To the extent that BCT includes the same designation in the LERG for both the 503/518 NXX assigned to its CLEC operation and the 503/632 NXX assigned to its ILEC operation, carriers such as Qwest cannot rely upon the LERG designation to determine if traffic is destined to BCT's ILEC or CLEC operation. BCT may be correct that it is not required to create a separate subsidiary to identify its CLEC operation,⁸⁰ but it seems clear to us that some means should be undertaken to accurately distinguish BCT's operations. BCT would be well advised to review this matter with the administrator of the LERG.

Separate Trunks. It is also unnecessary for the Commission to resolve issues relating to the need for separate trunking. The record indicates that Qwest and BCT have recently installed separate trunks.⁸¹ We presume that any future disputes regarding this issue will be addressed in accordance with procedures set forth in the parties' interconnection agreement.

Colorado Decision. BCT alleges that Qwest's insistence on the need for separate trunks to properly route and identify traffic should be discounted because it is

⁷⁸ BCT Op. Br. at 14.

⁷⁹ Tr. at 86-90.

⁸⁰ Qwest Witness Batz testified that carriers conducting both ILEC and CLEC operations typically create a separate company for the CLEC operation. Exhibit Qwest/4, Batz/8.

⁸¹ At the time of hearing, only Qwest was transporting traffic over those facilities. Tr. 83-84.

directly contrary to the position advocated by Qwest in a recent Colorado proceeding.⁸² BCT explains that Qwest sought to provide competitive service in the area of an incumbent provider and argued that it could route its competitive traffic over existing EAS trunks. BCT asserts that this inconsistency underscores Qwest's desire to create a roadblock to competition.⁸³

Our review discloses that the circumstances under consideration in the Colorado proceeding differ from those in this case. Among other things, Qwest was seeking to extend its ILEC service territory under Colorado law and advocated that traffic continue to be exchanged with the incumbent carrier under existing bill and keep arrangements. Here, on the other hand, Qwest maintains that separate trunks are necessary to properly identify ILEC and CLEC traffic that is generated by the same carrier, but subject to different compensation regimes. Thus, we disagree with BCT's claim that Qwest's position in this case is directly contrary to that asserted by the company in the Colorado proceeding.

Issue No. 4 – Costs/Burdens

(a) Will consolidation of the Beavercreek and Clackamas rate centers impose costs or burdens upon Qwest, other telecommunications service providers, or the public?

(b) Are there other measures that can be taken besides rate center consolidation that will result in number conservation without imposing costs or burdens?

BCT Position – Issue No. 4. BCT asserts that any costs associated with consolidating the Beavercreek and Clackamas rate centers will be minimal. Although carriers will be required to make a change to the LERG, these types of updates routinely occur on a monthly basis.⁸⁴ BCT explains that (a) no routing changes will occur as a result of consolidation; (b) existing EAS networks will be unaffected, and; (c) interexchange carriers will not see any difference in the access charges paid to BCT. In addition, customers will experience an increase in rates, regardless of whether they are served by BCT, Qwest or another carrier in the Portland Metropolitan EAS area.⁸⁵

⁸² BCT Op. Br. at 12-13. See, also *In the Matter of the Application of Qwest Corporation for Approval of its Revised Exchange Area Map for the Denver Metro Exchange Area Aurora Zone and the Declaration of Qwest Corporation of its Intent to Serve Within the Territory of Eastern Slope Rural Telephone Association, Inc., a Rural Telecommunications Provider*, Docket No. 04A-254T (“Eastern Slope”).

⁸³ Exhibit BCT/1, Linstrom/14-15.

⁸⁴ *Id.* at 9.

⁸⁵ *Id.* at 10.

Qwest Position – Issue No. 4. As noted above, Qwest’s billing systems do not accommodate using the ratio approach suggested by BCT to segregate ILEC from CLEC traffic. As a result, Qwest would have to modify its systems or issue manual adjustments if BCT’s proposal is adopted.⁸⁶ If BCT’s alternative proposal – installation of new measurement equipment -- is adopted, Qwest would have to incur additional costs to purchase additional software and make database upgrades.⁸⁷ Qwest contends that there is no reason for it to incur such costs because the proposed rate center consolidation will not produce any benefits. In addition, it argues that there are measures besides rate center consolidation that will conserve numbering resources without imposing costs or burdens on other carriers.

Commission Resolution – Issue No. 4. As mentioned in our discussion of Issue No. 3, rate center consolidation will cause Qwest to incur additional costs to segregate “comingled” traffic. Although the magnitude of those costs has not been determined, we agree that the benefit associated with consolidating the Beaver Creek and Clackamas rate centers is minimal and does not justify causing Qwest to incur any added expense.

In our discussion of Issue No. 1, we concluded that there are no number resource concerns warranting rate center consolidation. Even if there were a shortage of numbering resources, BCT could implement measures other than rate center consolidation that would not impose costs or burdens upon other carriers. For example, the record shows that BCT does not engage in sequential number assignment and has maintained number inventories well beyond the six-month limit allowed by FCC rules.⁸⁸ Both of these measures are easily accomplished and optimize numbering resources without impacting other carriers.

CONCLUSIONS

Based on the evidence presented in the record, the Commission concludes that the proposed consolidation of the Beaver Creek and Clackamas rate centers (a) is not required to conserve numbering resources; (b) will not significantly extend the life of the relevant area codes; (c) will not have an appreciable impact upon competition; (d) will cause traffic identification problems; and (d) will impose additional costs upon Qwest. Accordingly, we find that the petition should be denied.

⁸⁶ Exhibit Qwest/4, Batz/8-9.

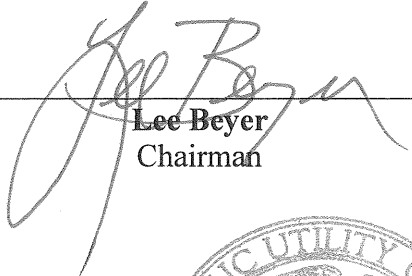
⁸⁷ Mr. Linse declined to speculate regarding the magnitude of those costs, but stated that he “wouldn’t expect it would be very cheap, because of the IT expenses involved.” Tr. 90.

⁸⁸ Tr. 17. See discussion at pp. 8-9.

ORDER

IT IS THEREFORE ORDERED that the petition filed by Beaver Creek Telephone Company to consolidate the Beavercreek and Clackamas rate centers is denied.

Made, entered, and effective MAY 20 2005 .



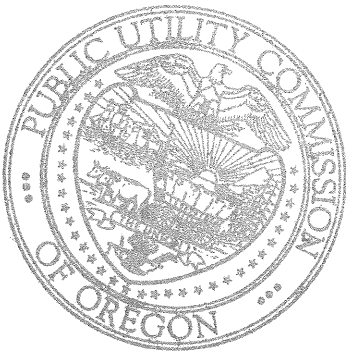
Lee Beyer
Chairman



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.

ORDER NO. 05-704

CONFIDENTIAL APPENDIX A IS AVAILABLE PURSUANT TO THE TERMS OF
PROTECTIVE ORDER 05-008 ISSUED IN THIS PROCEEDING.