

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

CP 1243

In the Matter of)	
)	
ASSOCIATED COOPERATIVE)	
TELECOMMUNICATIONS, INC.)	ORDER
)	
Application for a Certificate of Authority to)	
Provide Telecommunications Service in Oregon)	
and Classification as a Competitive Provider.)	

DISPOSITION: APPLICATION GRANTED

Note: By issuing this certificate, the Commission makes no endorsement or certification regarding the certificate holder's rates or service.

The Application

On July 8, 2004, Associated Cooperative Telecommunications, Inc., (Applicant or ACT) filed an application for certification to provide telecommunications service in Oregon as a competitive provider.

ACT is registered with the Secretary of State as a cooperative corporation under ORS Chapter 62. ACT is not a cooperative corporation under ORS 759.025. Applicant is not requesting authority to provide telecommunications service under ORS 759.025.

Applicant proposes to provide intraexchange (local exchange) switched service (i.e., local dial tone) and non-switched, private line service (dedicated transmission service) within all exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B to this order.

Applicant also proposes to provide interexchange switched service (toll) and non-switched, private line service (dedicated transmission service) statewide in Oregon. Applicant indicates that it intends to construct facilities and operate as a facilities-based provider, and operate as a reseller, for intraexchange and interexchange service. Applicant may purchase network elements and finished services for resale only from other certified carriers.

Applicant will directly provide operator services as defined in OAR 860-032-0001, but will not be an 'operator service provider' as defined in ORS 759.690(1)(d).

Procedural History

The Commission served notice of the application on July 14, 2004. Clear Creek Mutual Telephone Company (Clear Creek) filed a protest on July 27, 2004, and Qwest Corporation (Qwest) filed a protest on August 2, 2004.

Clear Creek alleged that Applicant, ACT, is affiliated with Beaver Creek Cooperative Telephone Company (Beaver Creek) and failed to disclose the affiliation. Beaver Creek is the incumbent local exchange carrier (ILEC) serving the Beaver Creek Exchange. Clear Creek requested that the Commission require ACT to obtain Commission approval before ACT transfers any authority to Beaver Creek. Clear Creek also requested that the Commission include the issues raised in docket CP 1181 as part of this proceeding. Docket CP 1181 was an earlier application from Beaver Creek for a certificate of authority. That application was withdrawn, and the docket closed. *See* Order No. 04-224, docket CP 1181, dated April 27, 2004.

In its protest Qwest agreed with many of the reasons advanced in the protest from Clear Creek. Qwest also alleged that ACT is affiliated with Beaver Creek and the Applicant did not disclose the affiliation. Qwest agreed with Clear Creek that ACT should not transfer any authority to Beaver Creek without Commission approval. In addition, Qwest requested that any order granting ACT's application should state that Qwest is not required to be the Designated (Default) Toll Carrier for ACT's (and any other CLEC's) toll traffic or toll customers.

On July 8, 2004, Beaver Creek filed an application for a certificate of authority as a competitive provider, docketed CP 1242. That application will be investigated separately from this proceeding.

A Prehearing Conference was held August 31, 2004, at which the participants identified issues and established a procedural schedule.

On October 4, 2004, ACT and Beaver Creek filed a request for the dockets CP 1242 and CP 1243 be held in abeyance pending the outcome of two other dockets, UCB 18 and UM 1140. On October 5, 2004, the Hearings Officer suspended the cases for a period of 60 days at which time the parties were to file a status report. None was filed.

On December 1, 2004, the Hearings Officer requested a status report within ten days. Applicant filed a report on December 8, 2004, requesting further abeyance. The delay was granted on December 9, 2004, for an additional 60 days.

On January 25, 2005, Applicant filed a request for suspension of the docket CP 1243 until May 31, 2005. On January 28, 2005, the Hearings Officer granted a suspension until March 29, 2005.

On April 1, 2005, Applicant filed a procedural schedule. A Prehearing Conference was held on April 20, 2005, at which time a new schedule was set. A settlement conference was held on May 31, 2005. The parties felt they could reach agreement and set timeframes for distributing a draft order. The draft order circulated on June 8, 2005, with responses received from ACT and all parties as required by June 15, 2005. On June 30, 2005, Staff notified the Hearings Officer that the parties had reached agreement regarding the proposed order. On July 1, 2005, Staff submitted a proposed order for a certificate of authority to be issued to Associated Cooperative Telecommunications, Inc. containing conditions on the certificate. No exceptions or comments were filed regarding the proposed order.

Based on the record in this matter, and the Commission's own records, the Commission makes the following:

FINDINGS AND CONCLUSIONS

Applicable Law

Two statutory provisions apply to this application. First, ORS 759.020 governs Applicant's request to provide telecommunications as a competitive provider. Under ORS 759.020(5), the Commission shall classify Applicant as a competitive provider if Applicant demonstrates that its services are subject to competition, or that its customers or those proposed to become customers have reasonably available alternatives. In making this determination, the Commission must consider the extent to which services are available from alternative providers that are functionally equivalent or substitutable at comparable rates, terms and conditions, existing economic or regulatory barriers to entry, and any other factors deemed relevant.

Second, ORS 759.050 governs Applicant's request to provide local exchange telecommunications service. Under ORS 759.050(2)(a), the Commission may authorize Applicant to provide local exchange service within the local exchange of a telecommunications utility if the Commission determines such authorization would be in the public interest. In making this determination, the Commission must consider the extent to which services are available from alternative providers, the effect on rates for local exchange service customers, the effect on competition and availability of innovative telecommunications service in the requested service area, and any other facts the Commission considers relevant. *See* Order No. 96-021.

Relationship Between Applicant (ACT), Broadband Cable Telecommunications, LLC (Broadband Cable) and Beaver Creek Cooperative Telephone Company (Beaver Creek)

The application from ACT was filed by Mr. Tom A. Linstrom. Mr. Linstrom is the Organizer of, Registered Agent for, and Registered President of ACT. Mr. Linstrom is also the CEO/President of Beaver Creek. Mr. Paul Hauer is the Registered Secretary of ACT. Mr. Hauer is also Vice President of Finance/Administration for Beaver Creek. Broadband Cable is in the process of being purchased by ACT and Telsystems West, Inc., a direct subsidiary of Beaver Creek. The address that ACT provided on its application and that is registered with the Secretary of State, Corporation Division, is the same as Beaver Creek's on Henrici Road in Oregon City.

In docket CP 1223, Clear Creek alleged there is an affiliation between Broadband Cable and Beaver Creek. On inquiry by Commission staff, Paul Safronchik confirmed there is a close association between Broadband Cable and Beaver Creek. Broadband Cable has three organizers: Paul R. Safronchik, Tom A. Linstrom, and Paul E. Hauer. Mr. Safronchik is an owner of and the manager of Broadband Cable. He provides consulting services to Beaver Creek. Mr. Linstrom is the President of Beaver Creek, President of ACT, Registered Agent of ACT, and is a consultant to all three companies. Mr. Hauer is Vice-President of Finance/Administration of Beaver Creek, Secretary of ACT, and may also provide consulting services to all three entities.

The Commission will not, at this time, make a determination whether ACT, Beaver Creek, and Broadband Cable are affiliated based on commonality of ownership, directors or officers, or based on substantial influence. However, there is a close association between ACT, Beaver Creek, and Broadband Cable, and because of that close association it is in the public interest for the Commission to add a special condition to this certificate. See Condition 11 below.

Transfer of Authority

Both Clear Creek and Qwest expressed concern that ACT might transfer ownership or control to Beaver Creek. A competitive provider may not transfer its authority to another entity without Commission approval. See OAR 860-032-0005. Mr. Linstrom informally advised Commission staff that he intends for other companies, primarily telephone cooperatives, to participate in the ownership of ACT. Applicant's name, Associated Cooperative Telecommunications, reflects Mr. Linstrom's intention. Subsequently, Mr. Linstrom informally advised Commission staff that his plans had changed, and that ACT will provide service to end user customers who will be members as well as owners. It is uncertain how ACT will operate. Because it is possible that other telecommunications companies may participate in the ownership of ACT, the Commission believes it is in the public interest to impose a special notification condition on Applicant. See Condition 10 below.

Designated Carrier

Qwest requested the Commission state that it is not required to be the Designated (or default) Toll Carrier (DXC) for ACT's (and any other CLEC's) toll traffic or toll customers. In docket UM 384, Order No. 93-1133, at Attachment page 8 of 19, Part II, the Commission defined a Designated Carrier as follows:

"Designated Carrier" (DXC) means a telecommunications utility having the obligation to carry all intraLATA message toll which originates from LEC exchanges except in those cases where the LEC is certified as a Primary Toll Carrier (PTC), or where the customer has, through dialing, selected an IXC or PTC. U S WEST Communications (USWC) [now Qwest Corporation] is the DXC. Nothing in the designation of USWC as the DXC is intended to or shall limit the right of any IXC or PTC to participate in the Oregon intraLATA toll market. It is the responsibility of the DXC to:

- (a) Design and develop intraLATA message toll service rates in compliance with OPUC orders and regulations.
- (b) Design and develop its intrastate intraLATA interexchange network in cooperation with each LEC's local exchange access network. Each party will use reasonable efforts to avoid imposing undue hardship or costs for the interconnection of such networks.

A LEC is a local exchange carrier. When Order No. 93-1133 was issued in August 1993 there were only incumbent LECs (ILECs) and no competitive LECs (CLECs). CLECs were not authorized to provide competitive switched local exchange service in Oregon until January 12, 1996, by Order No. 96-021, dockets CP 1, CP 14, and CP 15. In reality, USWC was the de facto DXC throughout the state for years, and Qwest still is the DXC in much of Oregon.

The Commission subsequently reopened docket UM 384, and on May 14, 2003, issued Order No. 03-294. In that order, the Commission adopted a stipulation attached to the order as Appendix A. The stipulation includes a revised definition of "Designated Carrier" or DXC. See Order No. 03-294, Appendix A, page 3 of 15. The revised definition replaces "LEC" with "ILEC" throughout. This change, adopted by the Commission, clarifies that Qwest is the designated carrier, or DXC, only in ILEC exchanges, not CLEC exchanges. Applicant requested certification as a CLEC. Applicant is not an ILEC in any exchange. In light of the revised definition of "Designated Carrier" adopted by the Commission in Order No. 03-294, Qwest's concerns about being required to operate as a DXC for Applicant's intraLATA toll customers are moot.

DXC obligations only apply when the intraLATA toll customer is also the local exchange customer of the ILEC, within that ILEC's local exchange. DXC obligations

do not apply when customers choose a CLEC as their local exchange provider, whether or not the CLEC happens to be an ILEC in another exchange. A DXC is permitted, but not required to provide intraLATA switched service to a customer of a CLEC. It is the CLEC's responsibility to arrange toll services for its customers.

Issues from Docket CP 1181

In its protest Clear Creek requested that the issues raised in docket CP 1181 be made a part of this proceeding. In docket CP 1181 Beaver Creek applied for authority as a competitive provider throughout Oregon. Several issues were raised regarding Beaver Creek's assignment of telephone numbers, allocation of costs related to number assignments, and serving customers in Clear Creek's exchange. Beaver Creek withdrew its application in CP 1181, and the docket was closed. Recently, Beaver Creek filed another, similar application, docketed CP 1242. Those issues are not addressed in this order.

Designation as a Competitive Provider

The application before us requests authority as a competitive telecommunications provider only. Nothing in this order shall be interpreted as giving ACT authority to provide telecommunications service in any capacity other than as a competitive telecommunications provider.

Applicant has met the requirements for classification as a competitive telecommunications service provider. Applicant's customers or those proposed to become customers have reasonably available alternatives. The incumbent telecommunications utilities and cooperative corporations listed in the appendices provide the same or similar local exchange services in the local service area requested by Applicant. AT&T, MCI, Sprint Communications, Qwest, Verizon, and others provide interexchange telecommunications service in the service area requested by Applicant. Subscribers to Applicant's services can buy comparable services at comparable rates from other vendors. Economic and regulatory barriers to entry are relatively low.

Public Interest

With regard to the general factual conclusions relevant to this proceeding, the Commission adopts the Commission's findings in Order No. 93-1850 and Order No. 96-021. Based on a review of those findings, as well as information contained in the application, the Commission concludes that it is in the public interest to grant the application of Associated Cooperative Telecommunications, Inc., to provide local exchange telecommunications service as a competitive telecommunications provider in exchanges of the telecommunications utilities and cooperative corporations listed in the appendices, as described in the application. Further, it is in the public interest to grant statewide interexchange authority as described in the application. This finding will have no bearing on any determination the Commission may be called upon to make under

sections 251 or 252 of the Telecommunications Act of 1996 (47 USC § 251, § 252) with regard to the telecommunications utilities and cooperative corporations in this docket.

Conditions of the Certificate

In Order No. 96-021, the Commission interpreted ORS 759.050 and established conditions applicable to competitive local exchange carriers. Also, other conditions are listed in administrative rules, including among others OAR 860-032-0007. Applicant, as a competitive provider, shall comply with the conditions adopted in Order No. 96-021, as well as all applicable laws, Commission rules, and orders related to provision of telecommunications service in Oregon.

Per ORS 759.050(2)(c) and Order No. 96-021, Applicant shall comply with the following conditions.

1. Applicant shall terminate all intrastate traffic originating on the networks of other telecommunications providers that have been issued a certificate of authority by the Commission.
2. Applicant shall make quarterly contributions to the Oregon Universal Service fund based on a Commission approved schedule and surcharge percentage assessed on all retail intrastate telecommunications services sold in Oregon, pursuant to ORS 759.425. If Applicant bills the surcharge to its end users, Applicant shall show the charges as a separate line item on the bill with the words "Oregon Universal Service Surcharge ____%".
3. Applicant shall provide E-911 service. Applicant has primary responsibility to work with the E-911 agencies to ensure that all users of its services have access to the emergency system. Applicant will deliver or arrange to have delivered to the correct E-911 Controlling Office its customers' Automatic Number Identification telephone numbers so the lead E-911 telecommunications service provider can deliver the E-911 call to the correct Public Safety Answering Point. Applicant shall work with each E-911 district and lead E-911 telecommunications service provider to develop procedures to match Applicant's customer addresses to the 911 district's Master Street Address Guide in order to obtain the correct Emergency Service Number (ESN) for each address. Applicant shall provide the lead E-911 telecommunications service provider with daily updates of new customers, moves, and changes with the correct ESN for each.
4. For purposes of distinguishing between local and toll calling, Applicant shall adhere to local exchange boundaries and Extended

Area Service (EAS) routes established by the Commission. Applicant shall not establish an EAS route from a given local exchange beyond the EAS area for that exchange.

5. Applicant shall obtain NXX codes, including assigned number blocks, from the North American Numbering Plan Administrator for provision of local exchange (intraexchange) switched service. When Applicant is assigned one or more NXX codes, Applicant shall limit each of its NXX codes to a single local exchange or rate center, whichever is larger, and shall establish a toll rate center in each exchange or rate center proximate to that established by the telecommunications utility or cooperative corporation serving the exchange or rate center. Applicant shall update the Local Exchange Routing Guide (LERG) so that traffic is routed to each of Applicant's assigned NXX codes in accordance with industry standards and conventions, as well as applicable interconnection agreements and tariffs of connecting carriers.
6. Applicant shall pay an annual fee to the Commission pursuant to ORS 756.310 and 756.320 and OAR 860-032-0095. The minimum annual fee is \$100. Applicant is required to pay the fee for the preceding calendar year by April 1.
7. Applicant shall file all reports with OUSF.
8. Pursuant to Oregon Laws 1987, Chapter 290, sections 2-8, and to OAR Chapter 860, Division 033, Applicant shall ensure that the Residential Service Protection Fund surcharge is remitted to the Commission. This surcharge is assessed against each retail subscriber at a rate that is set annually by the Commission.
9. Applicant shall ensure that lines serving Applicant's customers will not be reported as lines eligible for federal or Oregon universal service support until Applicant is designated a carrier eligible to receive universal support.

The Commission recognizes the close association between Applicant, Broadband Cable, and Beaver Creek. In recognition of the close association between the three companies, and the potential for Beaver Creek and Broadband Cable to favor Applicant over other competitive providers, Applicant shall comply with the following conditions.

10. Applicant agrees to notify the Commission and all parties to this proceeding, docket CP 1243, of any change of interest in, or ownership

of Associated Cooperative Telecommunications, Inc., within ten days of any such change. Applicant shall acknowledge that it is required to comply with all relevant rules pertaining to its certificate of authority and operations in Oregon.

11. Applicant shall not directly or indirectly enter into arrangements with Beaver Creek, Broadband Cable, Telsystems West, Inc. or any other entity closely associated with Beaver Creek, which discriminate between, or provide preferential treatment for, Applicant over other competitive providers in regards to rates, terms, or conditions for:
 - a. The provision of access to Beaver Creek's local exchange network;
 - b. The provision of unbundled network elements, or provision of other network elements, or services for resale;
 - c. The provision of customer billing, collection, verification and credit card information, and related services; or
 - d. The provision of other products and services such as shared or joint use of facilities and equipment, customer dialing codes, local number portability, maintenance, testing and repair services, market promotions and advertised services, network information, and customer and market information.

12. Interconnection between Applicant and Qwest, or any other ILEC including Beaver Creek, will be established according to the terms and conditions of an interconnection agreement negotiated between ACT and Qwest or the ILEC. In the absence of a negotiated agreement, ACT will pursue an arbitrated agreement according to Section 252 of the Telecommunications Act of 1996. ACT will not utilize interconnection arrangements of Beaver Creek, Broadband Cable, or any other company without prior approval of Qwest or the ILEC, and without appropriate modifications to the relevant interconnection agreement, subject to Commission approval.

Competitive Zones

All exchanges of the telecommunications utilities and cooperative corporations listed in the appendices to this order are designated competitive zones pursuant to ORS 759.050(2)(b).

Pricing FlexibilityDedicated Transmission Service

The telecommunications utilities listed in Appendix A are granted pricing flexibility for dedicated transmission service in their respective exchanges by this order. *See* Order No. 93-1850, docket UM 381.

Local Exchange Switched Service

Cooperative telephone companies are generally not regulated by the Commission for local exchange services, and therefore already have pricing flexibility. Any telecommunications utility exempt under ORS 759.040, listed in Appendix A, has pricing flexibility for local exchange service. By Order No. 96-021, at page 82, pursuant to ORS 759.050(5), the Commission established procedures whereby telecommunications utilities would be granted pricing flexibility for local exchange switched services. Qwest has complied with those procedural requirements for all of its exchanges. Verizon has complied with those procedural requirements for 40 of its 44 exchanges.

ORDER

IT IS ORDERED that:

1. The application of Associated Cooperative Telecommunications, Inc., is granted with conditions described in this order.
2. Applicant is designated only as a competitive telecommunications provider for intraexchange service in the local exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B. In addition, Applicant is designated only as a competitive telecommunications provider for interexchange service statewide in Oregon.
3. The local exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B are designated as competitive zones.
4. Any obligation regarding interconnection between Applicant and the telecommunications utilities and cooperative corporations listed in Appendices A and B shall be governed by the provisions of the Telecommunications Act of 1996 (the Act). Commission Order No. 96-021 governs the interconnection obligations between such parties for the provision of switched local services, unless otherwise

addressed by an interconnection agreement or subsequent Commission order.

5. No finding contained in this order shall have any bearing on any determination the Commission may be called upon to make under sections 251 or 252 of the Act with regard to the telecommunications utilities and cooperative corporations listed in the appendices to this order.
6. The telecommunications utilities listed in Appendix A shall receive pricing flexibility on an exchange-by-exchange basis as set forth in this order.

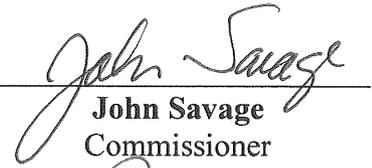
7. Qwest is not required to be the Designated Carrier (DXC) for intraLATA message toll service for customers of Applicant, Associated Cooperative Telecommunications, Inc.

Made, entered, and effective AUG 12 2005 .

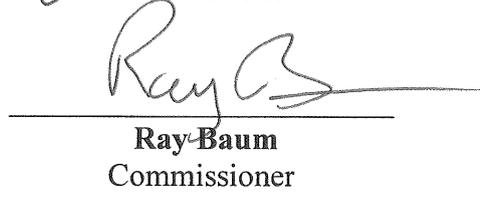


Lee Beyer
Chairman





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.

APPENDIX A

CP 1243

EXCHANGES ENCOMPASSED BY THE APPLICATION:

ALL EXCHANGES OF THE TELECOMMUNICATIONS
UTILITIES LISTED BELOW

Telecommunications Utilities Not Exempt Pursuant to ORS 759.040

CenturyTel of Eastern Oregon, Inc.
CenturyTel of Oregon, Inc.
Qwest Corporation
United Telephone Company of the Northwest, dba Sprint
Verizon Northwest Inc.

Telecommunications Utilities Exempt Pursuant to ORS 759.040

Asotin Telephone Company
Cascade Utilities, Inc.
Citizens Telecommunications Company of Oregon
Eagle Telephone System, Inc.
Helix Telephone Company
Home Telephone Company
Malheur Home Telephone Company
Midvale Telephone Exchange
Monroe Telephone Company
Mt. Angel Telephone Company
Nehalem Telecommunications, Inc.
North-State Telephone Company
Oregon Telephone Corporation
Oregon-Idaho Utilities, Inc.
People's Telephone Company
Pine Telephone System, Inc.
Roome Telecommunications, Inc.
Trans-Cascades Telephone Company

APPENDIX B

CP 1243

EXCHANGES ENCOMPASSED BY THE APPLICATION:

ALL EXCHANGES OF THE COOPERATIVE
CORPORATIONS LISTED BELOW

Beaver Creek Cooperative Telephone Company
Canby Telephone Association
Clear Creek Mutual Telephone
Colton Telephone Company
Gervais Telephone Company
Molalla Telephone Company
Monitor Cooperative Telephone Co.
Pioneer Telephone Cooperative
Scio Mutual Telephone Association
St. Paul Cooperative Telephone Association
Stayton Cooperative Telephone Co.