

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

CP 1242
CP 131
CP 277

In the Matter of)	
)	
BEAVER CREEK COOPERATIVE)	ORDER
TELEPHONE COMPANY)	
)	
Application for a Certificate of Authority to)	
Provide Telecommunications Service in Oregon)	
and Classification as a Competitive)	
Telecommunications Provider.)	

DISPOSITION: DOCKET CP 1242, APPLICATION GRANTED;
DOCKET CP 131, ORDER NO. 96-248,
DOCKET CP 277, ORDER NO. 99-763,
CERTIFICATES OF AUTHORITY CANCELED

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

On July 8, 2004, Beaver Creek Cooperative Telephone Company (Applicant or Beaver Creek) filed an application for certification to provide telecommunications service in Oregon as a competitive provider.

Applicant proposes to provide local exchange (intraexchange) switched service (*i.e.*, local dial tone) within all exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B, to this order. Applicant also proposes to provide nonswitched, 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, as well as operate as a reseller. Applicant will provide toll service only as a reseller. Applicant may purchase network elements and finished services for resale only from other certified carriers.

Applicant is a cooperative corporation. Pursuant to ORS 759.025(2), it currently has authority as an incumbent local exchange carrier (ILEC) in the Beaver Creek exchange to provide local exchange service, interexchange service, and extended area service. *See* Order No. 88-261. Applicant currently has a certificate of authority as a competitive local exchange company (CLEC) to provide competitive local telecommunications service in the Oregon City exchange. *See* CP 131, Order No. 96-248. In addition, Applicant has authority to provide competitive long distance telecommunications service in the Oregon City and Beaver Creek exchanges. *See* CP 277, Order No. 99-763. This application before us now requests the same authority plus authority to provide service throughout the state. Therefore, this certificate of authority replaces the two current certificates on file, and the Commission will cancel the authority granted by Order No. 96-248 and Order No. 99-763.

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

This application was filed on the same date as an application was filed by Associated Cooperative Telecommunications, Inc. (ACT), for a certificate of authority to provide telecommunications service in Oregon and classification as a competitive telecommunications provider.¹ The Commission served notice of both applications on July 14, 2004.

On July 27, 2004, Clear Creek Mutual Telephone Company (Clear Creek) filed a protest. Regarding this application, Clear Creek argued that the Commission should investigate the illegal use by Beaver Creek of Clear Creek's network interface devices and the improper use by Beaver Creek of numbering resources in the Redland and Oregon City exchanges. Clear Creek also recommended that the Commission consider whether it is in the public interest to grant Beaver Creek additional authority, if Beaver Creek has violated any conditions in its current certificates of authority or other provisions of applicable law. If the Commission were to grant Beaver Creek's application, Clear Creek asserted that the Commission should apply the standard conditions attached to any certificate, impose additional conditions tailored to Beaver Creek, and investigate Beaver Creek as necessary to ensure its compliance with applicable law.

On August 2, 2004, Qwest Corporation (Qwest) also submitted a protest, joining Clear Creek's filing and submitting additional grounds for protest. In particular, Qwest expressed concern that Beaver Creek had admittedly violated its current certificate of authority by violating the telephone numbering resource requirements in the Oregon City exchange. In addition, Qwest argues that, even though Beaver Creek has been an

¹ Initially, the applications were processed together, but the investigation into the ACT application was completed. *See* CP 1243, Order No. 05-911.

active competitive provider in Oregon City for years, it still has not properly interconnected with Qwest or complied with the terms of its interconnection agreement with Qwest. Also, Qwest requested that any order granting Beaver Creek's application should state that Qwest is not required to be the Designated (Default) Toll Carrier (DXC) for Beaver Creek's toll traffic or toll customers. Further, Qwest asserted that mechanisms should be put in place to ensure that Beaver Creek maintain separate accounts between its CLEC and ILEC operations.

A prehearing conference was held on August 31, 2004, at which the parties identified issues and established a procedural schedule. On October 4, 2004, Applicant submitted a request to hold dockets CP 1242 and CP 1243 in abeyance pending the outcome of two other dockets, UCB 18 and UM 1140. On October 5, 2004, the Administrative Law Judge (ALJ) suspended the cases for a period of 60 days at which time the Applicant was to file a status report. No report was filed. On December 1, 2004, the ALJ requested a status report within ten days. Applicant filed a report on December 8, 2004, requesting further abeyance. The ALJ granted a 60-day extension to January 28, 2005. On January 25, 2005, Applicant requested to continue the suspension of the docket until May 31, 2005. On January 28, 2005, the ALJ granted an extension to March 29, 2005. Applicant submitted a new procedural schedule on April 1, 2005, and ACT's application was resolved. *See* CP 1243, Order No. 05-911.

A prehearing conference for this application alone was held on October 27, 2005, and a new schedule was set. Staff submitted a status report as required on January 11, 2006, and informed the ALJ that the parties would meet again on January 20 to further discuss settlement. A final settlement meeting was held on January 20, 2006, at which time the parties reached agreement on all remaining issues and set a date for distributing a draft order. Staff submitted another status report on January 23, 2006, and informed the ALJ that the parties had reached a settlement in principle on all issues.

On February 9, 2006, Staff submitted a proposed order for a certificate of authority to be issued to Beaver Creek. No exceptions or comments were filed regarding the proposed order

APPLICABLE LAW

Two statutory provisions apply to this application. First, ORS 759.020 governs Applicant's request to provide telecommunications service 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.

Based on the record in this matter, the Commission makes the following:

FINDINGS AND CONCLUSIONS

Parties' Protests

First, we address the protests raised by Clear Creek and Qwest. We note that a proposed order was circulated to the parties, and they were given an opportunity to object. No objections were raised to the final order circulated, therefore, any issue not resolved below is deemed waived by the parties.

Designated Carrier

Qwest requested the Commission state that it is not required to be the DXC for Beaver Creek's CLEC (and any other CLEC's) toll traffic or toll customers. The Commission defined a DXC 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.

UM 384, Order No. 93-1133, Attachment at 8.

When Order No. 93-1133 was issued in August 1993, there were no CLECs yet. CLECs were not authorized to provide competitive switched local exchange service in Oregon until January 12, 1996. *See* CP 1, CP 14, CP 15, Order No. 96-021. In reality, USWC was the de facto DXC throughout the state for years, and its successor, Qwest, is still 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 in Appendix A, at pages 4-15. The stipulation includes a revised definition of "Designated Carrier." *See* Order No. 03-294, Appendix A at 3, n 5. The revised definition replaces "LEC" with "ILEC" throughout. This change, adopted by the Commission, clarifies that Qwest is the DXC only in exchanges in which Qwest is the ILEC.

Applicant requested certification as a CLEC. 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. The CLEC bears the responsibility of arranging toll services for its customers.

Relationship Between Applicant, Broadband Cable, and ACT

Broadband Cable Telecommunications, LLC (Broadband Cable) notified the Commission on December 30, 2005, that the company had been purchased by Telsystems West, Inc., a direct subsidiary of Beaver Creek. Therefore Beaver Creek and Broadband Cable are affiliates under OAR 860-032-0001(1).

Beaver Creek's application in this docket was filed by Tom A. Linstrom. Mr. Linstrom is the CEO/President of Beaver Creek, and Paul Hauer is Vice President of Finance/Administration for Beaver Creek. Mr. Linstrom is also the Organizer of, Registered Agent for, and Registered President of ACT. Mr. Hauer is the registered Secretary of ACT. In docket CP 1243, it was determined that there is a close association between ACT and Beaver Creek. The Commission will not, at this time, make a determination whether ACT

and Beaver Creek are affiliated based on commonality of ownership, directors or officers, or based on substantial influence.

In recognition of the affiliation between Applicant and Broadband Cable, and the strong relationship between Applicant and ACT, it is in the public interest for the Commission to add special conditions to this certificate.

Provisions Resolving Parties' Protests

As part of the settlement, parties agreed to include the following statements of understanding:

1. With respect to Condition 1 below, if a certified carrier engages in access bypass, Applicant will initiate discussions with the identified carrier in an effort to resolve the issue. If not resolvable, the issue will be brought before the Commission for resolution. Applicant will not block traffic in an effort to resolve the dispute prior to Commission resolution.

2. With regard to Condition 10 below, Applicant understands that under section 251(c) of the 1996 Telecommunications Act, it cannot discriminate among certified carriers, and believes that it should be able to operate under the same guidelines as any other carrier and have the ability to use its network to the best of its ability.

Designation as a Competitive Provider under ORS 759.020

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 Communications, MCI Communications, United Telephone Company, dba Sprint (Sprint), Qwest, Verizon Northwest, Inc., 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. For these reasons, we grant the portion of the application under ORS 759.020, subject to the conditions set forth below.

Certification to Provide Local Exchange Telecommunications Service under ORS 759.050

Public Interest

In determining whether this application is in the public interest, we take notice of our previous 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, we conclude

that it is in the public interest to grant the application of Beaver Creek, 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, codified as 47 USC §§ 251 and 252, with regard to the telecommunications utilities and cooperative corporations in this docket. For these reasons, we grant the portion of the application under ORS 759.050, subject to the conditions set forth below.

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 Flexibility

Dedicated 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* UM 381, Order No. 93-1850.

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. Pursuant to ORS 759.050(5), the Commission established procedures whereby telecommunications utilities would be granted pricing flexibility for local exchange switched services. *See* Order No. 96-021 at 82. 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.

Conditions of the Certificate

The Commission is authorized to attach conditions to a certification to be a competitive telecommunications services provider under ORS 759.020(5) and ORS 759.050(2)(c). 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 the 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.

Pursuant to the relevant statutes 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 offer 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 911 telecommunications service provider to develop procedures to match Applicant's customer addresses to the E-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. 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. Applicant shall obtain a new NXX for each exchange or rate center for which it operates as a CLEC pursuant to the North American Numbering Plan for provisioning of local exchange (intraexchange) switched service. Applicant shall cease use of any NXX code in any exchange or rate center other than the exchange or rate center in which the NXX code is assigned in the North American Numbering Plan for provisioning of local exchange (intraexchange) switched service within 180 days of this order.

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 the Oregon Universal Service Fund.
- 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.
10. Where Applicant operates as an ILEC, Applicant shall not directly or indirectly enter into any arrangements with Broadband Cable Telecommunications, LLC (Broadband Cable), Associated Cooperative Telecommunications, Inc. (ACT), Telsystems West, Inc., or any other entity closely associated with Applicant which discriminate between or provide preferential treatment for Applicant in its competitive provider capacity or the above noted entities over other competitive providers in regards to rates, terms, or conditions for:

- a. The provision of access to Applicant'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.
11. Interconnection between Applicant in its competitive provider capacity, and Qwest Corporation (Qwest), Clear Creek Mutual Telephone Company (Clear Creek), or any other ILEC, will be established according to the terms and conditions of an interconnection agreement negotiated between Applicant in its competitive capacity, and Qwest, Clear Creek, or any other ILEC. In the absence of a negotiated agreement, Applicant will pursue an arbitrated agreement according to section 252 of the Telecommunications Act of 1996. Except as authorized by statute, rule or appropriate interconnection agreement, as a competitive provider, Applicant will not utilize interconnection arrangements of its ILEC operation, Broadband Cable, ACT, or any other company without appropriate modifications to the relevant interconnection agreement, subject to Commission approval.

In recognition of the provision of service by Beaver Creek without a certificate of authority to serve customers in Clear Creek's ILEC certificated area, only as permitted by Order No. 04-412, Beaver Creek shall initiate within 30 days of this order, negotiations with Clear Creek to establish the terms and conditions of an interconnection agreement between the parties.

12. Applicant, as either an ILEC or CLEC, shall not use the 503-632 or 503-518 prefixes to provide intraexchange switched telecommunications services to any customers in the Redland rate center. Applicant shall cease and desist providing intraexchange switched telecommunications service as an ILEC to Michele Lipka, lipka.com, inc., and Charles L. Sliger within 180 days of the order.

As required by FCC rules in 47 CFR §§ 64.1901 through 64.1903, Applicant will provide interexchange telecommunications service through a separate corporate division and use separate books of account. This Commission recognizes that

the FCC rules pertain to interstate telecommunications service. We also recognize that our jurisdiction is limited to intrastate service. However, as a practical business reality, Applicant, like most interexchange carriers, will provide both interstate and intrastate interexchange service using the same business operation, personnel, and facilities. This is so because customers make both intrastate and interstate calls. The following conditions clarify, and are intended to be consistent with, conditions placed previously on Applicant. *See* CP 277, Order No. 99-763. As stated above, the Commission is canceling the authority granted by Order No. 99-763. Therefore, the following are also conditions of this certificate of authority:

13. For interexchange telecommunications service, Applicant shall operate strictly as a reseller of other certified carriers, for the provision of toll service.
14. Applicant shall provide toll service subject to and in compliance with FCC rules in 47 CFR §§ 64.1901 through 64.1903, as adopted by the FCC in the Second Order on Reconsideration and Memorandum Opinion and Order, CC Docket No. 96-149 and CC Docket No. 96-61, released on June 30, 1999.

ORDER

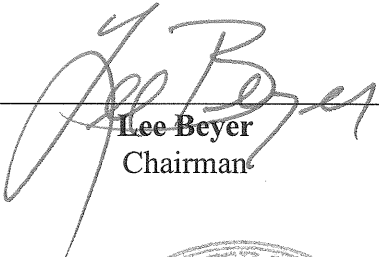
IT IS ORDERED that:

1. The application of Beaver Creek Cooperative Telephone Company is granted with conditions described in this order.
2. Applicant is designated 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 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 will govern the interconnection obligations between such parties for the provision of switched local services, unless otherwise

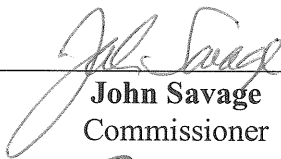
addressed by an interconnection agreement or subsequent Commission order.

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. The authority granted to Beaver Creek Cooperative Telephone Company, by CP 131, Order No. 96-248, and by CP 277, Order No. 99-763 is canceled.

Made, entered, and effective APR 03 2006.



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 by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

APPENDIX A

CP 1242
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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 1242

CP 131

CP 277

EXCHANGES ENCOMPASSED BY THE APPLICATION:

ALL EXCHANGES OF THE COOPERATIVE
CORPORATIONS LISTED BELOW

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.