

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB 747

In the Matter of BEAVER CREEK)	
COOPERATIVE TELEPHONE)	
COMPANY's Petition for Arbitration)	ORDER
of the terms, conditions, and prices for)	
interconnection and related arrangements)	
with QWEST CORPORATION.)	

DISPOSITION: RECONSIDERATION DENIED; INTER-
CONNECTION AGREEMENT APPROVED

Procedural Background. On November 20, 2006, the Commission entered Order No. 06-637 (Order) adopting, with modifications, the Arbitrator's Decision issued October 20, 2006. On December 6, 2006, Beaver Creek Cooperative Telephone Company (BCT) filed a Petition for Extension of Time to Comply with Order. On December 19, 2006, Qwest Corporation (Qwest) filed a Response in opposition to the BCT Petition. On December 21, 2006, Qwest submitted an Interconnection Agreement, in compliance with the second ordering paragraph of the Order.

On November 27, 2006, BCT filed a Notice of Adoption Adopting the Terms of an Interconnection Agreement between Ymax Communications (Ymax) and Qwest Corporation, which was previously approved in ARB 756 (Adoption Notice). The Adoption Notice was docketed as ARB 780. On December 27, 2006, BCT filed a letter concurring with Qwest's statement that BCT had not signed the Interconnection Agreement, not because it refused to sign but because "BCT believes it is appropriate to determine whether BCT's opt-in to the Ymax agreement...is appropriate.... BCT also notes that it is working on a petition for reconsideration in ARB 747."

On January 17, 2007, BCT filed an Application for Reconsideration or Rehearing pursuant to ORS 756.561 and OAR 860-014-0095 (Application) and Motion to Request Withdrawal of Order as Moot pursuant to OAR 860-013-0031 (Motion). BCT also contingently requested an extension of time to comply with the Commission's Order pursuant to OAR 860-014-0093 (Request) if its Motion is denied.

On January 29, 2007, the Commission issued Order No. 07-033 in Docket ARB 780 denying BCT's Notice of Adoption of the Interconnection Agreement between Ymax Communications Corp. and Qwest Corporation.¹

On February 1, 2006, Qwest Corporation filed a Response to Beaver Creek Cooperative Telephone Company's Application for Reconsideration or Rehearing and Motions to Request Withdrawal of Order as Moot and for Extension of Time to Comply With Order (Response).

In light of the Commission's actions in Order No. 07-033, we deny the BCT Motion as moot and address the Application and Request below.

STANDARDS OF REVIEW

Requirements for an Application for Rehearing. OAR 860-014-0095(2) requires that the application specify "(a) The portion of the challenged order which the applicant contends is erroneous or incomplete; (b) The portion of the record, laws, rules, or policy of the Commission relied upon to support the application; (c) The change in the order which the Commission is requested to make; (d) How the applicant's requested changes in the order will alter the outcome; and (e) One or more of the grounds for rehearing or reconsideration set forth under section (3) of this rule."

The BCT Application. BCT contends that the Order is erroneous and incomplete with respect to the discussion of the routing of traffic and the use of bill and keep as a form of reciprocal compensation.² In its analysis, BCT refers to the Arbitrator's Decision at pages 5-10, the Commission's Order at pages 5-7 and portions of Qwest and BCT testimony.³ BCT asserts that the change would alter the outcome by requiring Qwest and BCT to either both, or neither be, allowed to route traffic on a single trunk group rather than allowing Qwest to do so but refusing to allow BCT to do so and by establishing bill and keep as the method of compensation.⁴ BCT relies on OAR 860-014-0095(3)(c), an error of law or fact which is essential to the decision and OAR 860-014-0095(3)(d), that good cause exists for further examination of a matter essential to the decision.⁵ The BCT Application has met the requirements of OAR 860-014-0095(2) and is therefore not rejected on procedural grounds.

Requirements for Granting Rehearing or Reconsideration. OAR 860-014-0095(3) provides that "The Commission may grant an application for rehearing or reconsideration if the applicant shows that there is: (a) New evidence which is essential to

¹ The Commission concluded that BCT's Notice of Adoption was not filed in good faith. Rather, it was a collateral attack on the decision rendered in ARB 747 after binding arbitration had already been invoked as a remedy. The Commission therefore rejected the Notice of Adoption.

² Application, p. 3.

³ *Id.*, pp. 5-10.

⁴ *Id.*, p. 4.

⁵ *Id.*, pp. 4-5.

the decision and which was unavailable and not reasonably discoverable before issuance of the order; (b) A change in the law or agency policy since the date the order was issued, relating to a matter essential to the decision; (c) An error of law or fact in the order which is essential to the decision; or (d) Good cause for further examination of a matter essential to the decision.” BCT does not attempt to make a showing under (a) new evidence; or (b) change of law or policy in seeking rehearing or reconsideration, but confines its argument to the latter two grounds: (c) error of law or fact and (d) good cause for further examination. We measure each issue raised by BCT against these two standards.

DISCUSSION

Issue 1. Routing of BCT’s CLEC Traffic. BCT claims that, by requiring it to route all of its Oregon City (i.e., CLEC) originating traffic over LIS trunks and separate that traffic from its Beavercreek (i.e., ILEC) originating traffic, “the Commission is imposing duty on BCT that is not imposed on Qwest.... Qwest can use the LIS trunks to route traffic that originates not just from Qwest, but also from other CLECs...and route all of that traffic over one set of trunk groups to BCT.”⁶ BCT claims that the Commission’s analysis of the issue is faulty because it fails to take into account that “allowing Qwest to route multiple categories of traffic over the single LIS group places greater costs on BCT and makes it difficult for BCT to bill Qwest for that traffic originated by Qwest and terminated to BCT’s competitive operations in Oregon City. This difficulty arises because Qwest’s traffic is commingled or hidden among volumes of traffic from other carriers.”⁷

Qwest responds that there is no error of law or fact or good cause to reverse the Commission’s Order on the routing of traffic. The record “was replete with evidence that BCT must separately route its CLEC traffic to Qwest over LIS trunks in order for Qwest to measure and bill BCT for Qwest’s transporting, transiting and terminating of such traffic for purposes of reciprocal compensation.... Likewise, the Arbitrator and Commission correctly found that Qwest has amply demonstrated that its own routing of traffic is in compliance with the Commission’s rules...and that Qwest follows common and accepted practices with respect to the transport of local, toll, CLEC and Commercial Mobile Radio Service traffic.”⁸

Discussion. The arguments that BCT raises have been examined and rejected by the Commission and the Arbitrator previously. BCT does not cite a single ruling by either the FCC or any state commission supporting its position on this issue. The comparisons raised by BCT have been previously demonstrated to be inapposite. We have discussed at length why BCT must separately route its CLEC traffic to Qwest over LIS trunks in order for Qwest to measure and bill BCT for Qwest’s transporting,

⁶ *Id.*, p. 5.

⁷ *Id.*, p. 6.

⁸ Response, p. 3.

transiting and terminating of such traffic for purposes of reciprocal compensation.⁹ We again reject BCT's argument for the reasons set forth in our Order and in the Arbitrator's Decision.

Issue 2: Bill and Keep as the Means of Reciprocal Compensation.

BCT claims that "the Commission erred in not adopting bill and keep as the form of reciprocal compensation and insufficiently explained why it accepted the Arbitrator's Decision on this point.... [B]oth the Commission and the Arbitrator did not sufficiently analyze the record in this case regarding bill and keep provisions."¹⁰ BCT asserts the Commission erred because it required that traffic must be proven to be in balance as a precondition to bill and keep and that the Commission erroneously relied on a Qwest theory that lacked legal basis.¹¹

Next BCT argues that its improper behavior under a prior Interconnection Agreement (the refusal to use LIS trunks as required by that agreement) "is not a legally sufficient reason for not adopting bill and keep as a form of reciprocal compensation. The issue before the Commission is not BCT's alleged behavior in the past."¹²

BCT also argues that the Commission failed to adequately explain why other carriers could use bill and keep, but BCT could not, in light of federal obligation upon an incumbent carrier to offer interconnection under "the same rates, terms and conditions" as provided to other carriers. The Commission, BCT claims, did not address this discriminatory treatment.¹³

Finally, BCT claims that Qwest has taken contradictory positions before the FCC.¹⁴

Discussion. BCT misstates findings and conclusions of the Commission's Order and the Arbitrator's Decision it adopted. The Arbitrator clearly ruled that the federal language permits but does not require state commissions to order bill and keep and that 47 CFR §51.711(c) provides the Commission with the flexibility to presume whether or not the traffic is in balance. The Arbitrator examined the facts of the case, including the acknowledgement by BCT's witness that BCT was not observing the terms of its current Interconnection Agreement with respect to sending the traffic in question over the appropriate trunks. BCT's actions made it impossible to measure the traffic and provide Qwest with the opportunity to rebut a presumption of balance under any subsequent agreement. It was for this reason that the Arbitrator concluded that this was

⁹ Order, pp. 6-7, Arbitrator's Decision, pp. 7-9.

¹⁰ Application, p. 7.

¹¹ Application, p. 7-8.

¹² *Id.*, p. 10.

¹³ *Id.*, pp. 12.

¹⁴ *Id.*, p. 12.

not an appropriate instance in which to presume traffic was in balance.¹⁵ Finally, BCT argues that Qwest has made inconsistent arguments before the FCC. Qwest's comments in another case before another agency are irrelevant to our decision. BCT cites no cases reaching conclusions different from those found in this case. Neither has it demonstrated legal error. The Application of BCT has merely restated prior arguments that we have examined and rejected.

CONCLUSIONS OF LAW

For the reasons discussed above, we find that BCT has failed to make a satisfactory showing of either (c) error of law or fact essential to the decision or (d) the existence of good cause for further examination of a matter essential to the decision. The Application for Reconsideration or Rehearing is denied.

The Interconnection Agreement. On December 21, 2006, Qwest submitted an Interconnection Agreement, in compliance with the second ordering paragraph of the Order. Section 252(e)(1) of the Telecommunications Act of 1996 (the Act) requires that any Interconnection Agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. Section 252(e)(2)(B) provides that the State commission may reject the Agreement (or any portion thereof) adopted by arbitration only "if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section."

Commission Decision. The Commission concludes that the Agreement comports with the requirements of the Act; the Federal Communications Rules, where applicable; and relevant state laws and regulations, and should be approved.

Request for Extension of Time to Comply. BCT states that "[t]he parties are currently operating under an existing interconnection agreement. There is no significant need for immediate action to adopt any particular interconnection agreement in this docket." BCT therefore asks "that the time for compliance be extended until thirty days after such further order of the Commission is entered."¹⁶

We disagree. BCT has acknowledged that it is not complying with the existing agreement. A new agreement has been timely filed by Qwest and reviewed by the Commission for compliance with our Order. No purpose will be served by further delay.

¹⁵ Order, p. 5, Arbitrator's Decision, p. 10: "If BCC traffic were routed over its LIS trunks, it would be easy to determine whether or not the traffic was in balance, but BCT refuses to do so. Qwest has expressed a willingness to adopt a compensation scheme if such rough balance is found."

¹⁶ Application., pp. 15-16.

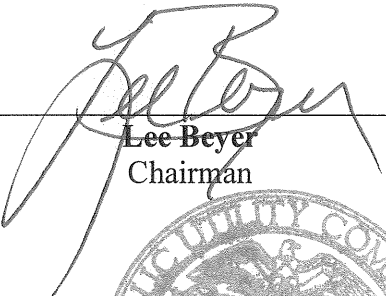
ORDER

IT IS ORDERED that:

1. The Application for Reconsideration or Rehearing is DENIED.
2. The Motion to Request Withdrawal of Order as Moot is DISMISSED AS MOOT.
3. The Interconnection Agreement between Qwest Corporation and Beaver Creek Cooperative Telephone Company is APPROVED.
4. The Motion Requesting Extension of Time to Comply is DENIED.

FEB 27 2007

Made, entered and effective _____.



Lee Beyer
Chairman





Ray Baum
Commissioner



John Savage
Commissioner

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.