

ORDER NO.

11 461

ENTERED

NOV 17 2011

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

CP 1510  
CP 358

In the Matter of

DIECA COMMUNICATIONS INC dba  
COVAD and COVAD  
COMMUNICATIONS COMPANY

ORDER

Application to Transfer a Certificate of  
Authority to Provide Telecommunications  
Service in Oregon as a Competitive Provider.

DISPOSITION: CP 1510, APPLICATION GRANTED; and  
DOCKET CP 358, ORDER NO. 97-424,  
CERTIFICATE OF AUTHORITY TRANSFERRED.

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

**The Application**

On September 21, 2011, DIECA Communications, Inc. dba Covad (DIECA) and Covad Communications Company (Covad CC) filed a joint application to transfer authority to provide telecommunications service in Oregon as a competitive provider. The application requests to transfer the authority of Covad CC, granted by Order No. 97-424, docket CP 358, to DIECA. The application was filed pursuant to OAR 860-032-0005. Covad CC is the transferor. DIECA is the transferee. Both entities together will be referred to as Joint Applicants. DIECA does not currently hold a certificate of authority. A corporate restructure whereby Covad CC merges into DIECA requires DIECA to obtain a certificate of authority to provide telecommunications service in its own name.

Covad CC is currently authorized 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.

Covad CC also is authorized to provide interexchange switched service (toll) and private line service (dedicated transmission service) statewide in Oregon. Covad CC operates as a facilities-based provider and as a reseller of intraexchange and interexchange service.

DIECA will not directly provide operator services as defined in OAR 860-032-0001 and will not be an 'operator service provider' as defined in ORS 759.690(1)(d). The Commission served notice of the application on September 28, 2011. No protests or requests to be made parties of the proceeding were filed.

Based on the record in this matter, 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 (intraexchange) 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.

### Designation as a Competitive 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, Sprint Communications, Qwest Corporation, Frontier Communications 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.

**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 DIECA Communications, 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 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 911 Controlling Office its customers' Automatic Number Identification telephone numbers so the lead 911 telecommunications service provider can deliver the 911 call

to the correct Public Safety Answering Point. Applicant shall work with each 911 district and lead 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 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.
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. 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.
8. Applicant, as transferee, shall be liable for all fees incurred and reports due by the transferor as of the effective date of this order.

### **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 Order No. 93-1850, docket UM 381.

Local Exchange 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. Frontier Communications Northwest, Inc. has complied with those procedural requirements for forty-three of its forty-four exchanges.

**ORDER**

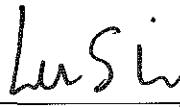
IT IS ORDERED that:

1. The joint application of DIECA Communications, Inc. dba Covad and Covad Communications Company to transfer the authority granted by Order No. 97-424, docket CP 358, from Covad to DIECA, is granted. DIECA Communications, Inc., is granted authority to provide intraexchange and interexchange service.
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 Covad Communications Company by Order No. 97-424 in docket CP 358 is canceled. Covad Communications Company no longer has authority to operate in Oregon as a competitive telecommunications provider.
8. This order is effective October 30, 2011.

Made, entered, and effective NOV 17 2011.



  
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**Lee Sparling**  
Director  
Utility Program

A party may request rehearing or reconsideration of this order under 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 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

APPENDIX A

CP 1510  
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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. dba CenturyLink  
CenturyTel of Oregon, Inc. dba CenturyLink  
Qwest Corporation dba CenturyLink  
United Telephone Company of the Northwest dba CenturyLink  
Frontier Communications 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  
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

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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.