

ORDER NO.00-420

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UA 87

In the Matter of the Application of PINE)
TELEPHONE SYSTEM, INC., for)
Allocation of Exclusively Served Territory.)

ORDER

**DISPOSITION: APPLICATION FOR ALLOCATION OF
EXCLUSIVELY SERVED TERRITORY GRANTED**

On April 27, 2000, Pine Telephone Systems, Inc. (Pine Telephone), filed an application with the Commission requesting an order pursuant to ORS 759.535 and OAR 860-034-0470, allocating rights to exclusively served territory. The Commission served notice of the application on May 12, 2000. Notice of the application was published in the Baker City Herald on May 19 and 26, 2000. The notices informed the public that any affected party may request a hearing on this matter within 30 days of the notice. No one requested a hearing.

Pine Telephone is a small telephone utility with headquarters in Halfway, Oregon. Pine Telephone has applied to serve an area called Stices Gulch, about 13 miles south of Baker City (the Stices Gulch Area). The area consists of about 25 families living along Stices Gulch and Tamarack Roads. Appendix A to this order contains a metes and bounds description of the Stices Gulch Area. The Stices Gulch Area will become part of Pine Telephone's Granite Exchange. Appendix A also contains a metes and bounds description of the current Granite Exchange. Staff has verified the accuracy of these descriptions.

There is no wireline telephone service currently in Stices Gulch. The cost to build facilities into and within the area has made service uneconomic for any carrier to provide service without subsidies and low cost loans. Some people in the Stices Gulch Area have cellular service.

Pine Telephone conducted studies to determine the feasibility of providing service to Stices Gulch. Pine Telephone commissioned a detailed engineering study that estimated the cost of constructing facilities to provide all one party service to the Stices

Gulch area at about \$300,000. The plan includes a remote terminal in Stices Gulch and a fiber cable feeder from Pine Telephone's central office in Granite, Oregon, which connects to U S WEST Communications, Inc.'s (USWC) central office in Sumpter.

Pine Telephone has concluded that the existing cost recovery mechanisms, including access charges, OCAF, federal universal service support, and local rates are adequate to support the construction of facilities in Stices Gulch. Rates for residential and business service in the Granite Exchange are \$10 and \$15, respectively. The local calling area for the Granite Exchange will be expanded to include Stices Gulch. There will be no line extension charges to the people of Stices Gulch for construction of the facilities.

Pine Telephone proposes to have toll service rather than Extended Area Service (EAS) between the Granite Exchange and USWC's Sumpter and Baker Exchanges. If USWC were to serve the Stices Gulch Area, customers there would have EAS to the Sumpter Exchange, and calls within the Baker Exchange would be local calls.

ORS 759.235 prohibits mandatory measured local exchange telephone service. ORS 759.235(4) prohibits the Commission from allowing a utility to subdivide an exchange and force customers to pay measured rates for calls that were at one time local calls within an exchange. Commission Staff sought legal advice from the Attorney General's office on whether Pine Telephone would be allowed to impose toll charges on calls from the Granite Exchange to the Sumpter or Baker Exchanges. The Assistant Attorney General advised that because there were no existing customers in the area, Pine Telephone's proposal to impose toll charges did not violate ORS 759.235(4). In two similar cases, Dockets UA 72 and 73, Pine Telephone acquired part of USWC's Sumpter Exchange, created the Granite Exchange, and provided service to Granite. See Orders No. 99-463 and 99-464. In those cases, Pine Telephone also proposed to impose toll charges on calls from the Granite Exchange to the Sumpter and Baker Exchanges.

Staff notes that Pine Telephone's request is for an order granting them the exclusive right to provide service in the Stices Gulch Area. Staff points out that Section 253 of the Telecommunications Act of 1996 preempts state commissions from granting exclusive franchises to provide telecommunications services. Although Staff recommends that the Commission allocate the Stices Gulch Area to Pine Telephone, Staff observes that the Commission could authorize another carrier to provide service in the area pursuant to ORS 759.020 and 759.050.

Based on the evidence in the record, we conclude that Pine Telephone's application to serve the Stices Gulch Area should be approved. We are satisfied that Pine Telephone's proposal to impose toll charges does not violate ORS 759.235(4), because there are no existing customers in the Stices Gulch Area. Pine Telephone may serve the Stices Gulch Area, although as Staff notes, we could authorize another carrier to provide

service in the area. We grant Pine Telephone's application subject to the limitations on Commission authority to grant exclusive franchises imposed by Section 253 of the Telecommunications Act of 1996.

Pine Telephone should file a revised map of its Granite Exchange to reflect the addition of the Stices Gulch Area.

ORDER

IT IS ORDERED that:

1. Pine Telephone's application for authority to provide telecommunications services in the unserved territory specified in Appendix A of this order is granted.
2. Within 30 days of the date of this order, Pine Telephone shall file a revised tariff map of the Granite Exchange.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
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.