

THE LAW OFFICE OF  
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Jerry K Boyd  
*Of Counsel*  
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July 28, 2005

SENT BY FACSIMILE AND UNITED STATES MAIL

Executive Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive, S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

**Re: Docket No. UT-053040  
Public Utility District No. 1 of Pend Oreille County v.  
Pend Oreille Telephone Company**

Dear Ms. Washburn:

Enclosed, for filing, are an original and nineteen (19) copies of:

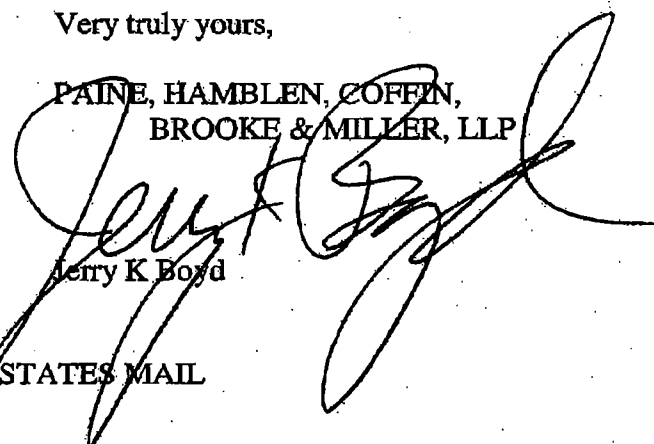
- 1. Notice of Appearance.
- 2. Motion for Waiver or Extension or Enlargement of Time.
- 2. Motion for Permission to File Reply and Reply.

The motions and reply are self-explanatory.

Very truly yours,

PAINE, HAMBLEN, COFFIN,  
BROOKE & MILLER, LLP

Jerry K Boyd



JKB:dlp

cc: Richard A. Finnigan

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Robert D. Geddes

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BEFORE THE WASHINGTON UTILITIES  
AND TRANSPORTATION COMMISSION

PEND OREILLE COUNTY PUBLIC  
UTILITY DISTRICT NO. 1

Complainant,

vs.

PEND OREILLE TELEPHONE COMPANY

Respondent.

No. UT-053040

**NOTICE OF APPEARANCE**

TO: Washington Utilities and Transportation Commission

AND TO: Pend Oreille Telephone Company, by and through its attorney, Richard A. Finnigan

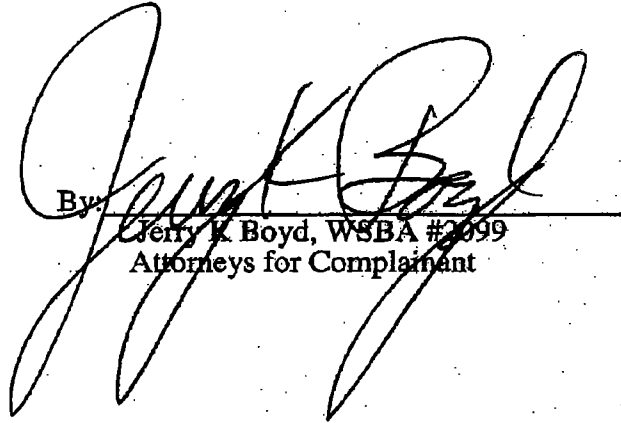
YOU WILL PLEASE TAKE NOTICE that the Complainant **PEND OREILLE COUNTY PUBLIC UTILITY DISTRICT NO. 1** appears herein by and through its attorneys, Paine, Hamblen, Coffin, Brooke & Miller LLP, by Jerry K Boyd, and requests that all further pleadings and papers, except process, be served upon the undersigned attorneys at the address below.

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Jerry K Boyd  
[jerry.boy@painehamblen.com](mailto:jerry.boy@painehamblen.com)  
Paine, Hamblen, Coffin, Brooke & Miller, LLP  
717 W. Sprague, Suite 1200  
Spokane, WA 99201  
(509) 455-5000  
FAX - 509-838-0007

Dated this 28<sup>th</sup> day of July, 2005.

PAINE, HAMBLEN, COFFIN,  
BROOKE & MILLER LLP

By   
Jerry K Boyd, WSBA #2999  
Attorneys for Complainant

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 28, 2005, I caused to be served a true and correct copy of the foregoing NOTICE OF APPEARANCE to the following by the method indicated below:

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RICHARD A. FINNIGAN  
ATTORNEY AT LAW  
2112 BLACK LAKE BLVD. SW  
OLYMPIA, WA 98512

EXECUTIVE SECRETARY  
WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION  
1300 S. EVERGREEN PARK DRIVE SW  
P.O. BOX 47250  
OLYMPIA, WA 98504-7250

  
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Diana L. Passmore

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BEFORE THE WASHINGTON UTILITIES  
AND TRANSPORTATION COMMISSION

PEND OREILLE COUNTY PUBLIC  
UTILITY DISTRICT NO. 1

Complainant,

vs.

PEND OREILLE TELEPHONE COMPANY

Respondent.

No. UT-053040

**MOTION FOR WAIVER OR  
EXTENSION OR ENLARGEMENT  
OF TIME TO FILE MOTION AND  
REPLY**

COMES NOW, Public Utility District No. 1 of Pend Oreille County District, by and through its undersigned attorneys, and moves the Commission for its Order waiving the time limit set forth in WAC 480-07-370(d) of Motion for Extension or Enlargement of Time to File Motion for Permission to Reply. The basis for the Motion for Waiver or Extension or Enlargement of Time is set forth hereafter.

A waiver may be required. WAC 480-07-385(3) requires that a Motion for Extension of Time must be filed five (5) business days before the deadline for an action. Here, the action is Motion for Permission to File Reply to Answer to Formal Complaint which was served by U.S. Mail. Under the Commission Rules, it would be impossible to meet the

1 deadline for filing a Motion for Extention of Time for Filing a Motion for Permission to File  
2 Reply established by the Commission in this case.

3 WAC 480-07-370(d)(ii) provides that a party wishing to respond to an Answer must  
4 file a motion requesting permission to reply within five (5) business days after the Answer is  
5 served. WAC 480-07-150(8) provides that service accrues when a pleading (here,  
6 Respondent's Answer) (is deposited in the United States Mail.  
7

8 In this proceeding, the Respondent certified that the Answer was deposited in the  
9 United States Mail on July 18, 2005. The combination of only five business days from the  
10 time of service being allowed to file a Motion for Permission to File a Reply and service  
11 being deemed complete when Respondent's Answer was deposited in the United States Mail  
12 allows a minimum of time for a Motion regarding a Reply to be filed.  
13

14 The Rules for Superior Court (CRb(e)) provides that when service is made by mail,  
15 three days are added to the prescribed period to do an act. Obviously, the rules of Superior  
16 Court conflict with the rules of the Commission; however, the Complainant does understand  
17 that the Commission has authority to establish its own rules. Nonetheless, if the three days  
18 were added to the date of mailing for service, service would have been deemed complete  
19 under the Superior Court rules on July 21. The foregoing is stated simply to show that the  
20 request of the District is not unreasonable.  
21

22 In addition, it should be noted that a preheating conference has been set for August 31,  
23 2005, approximately 34 days from the date of this Motion. This is stated simply to illustrate  
24 that no prejudice will occur by the enlargement of time for the complainant to file a motion  
25 for permission to file a reply.  
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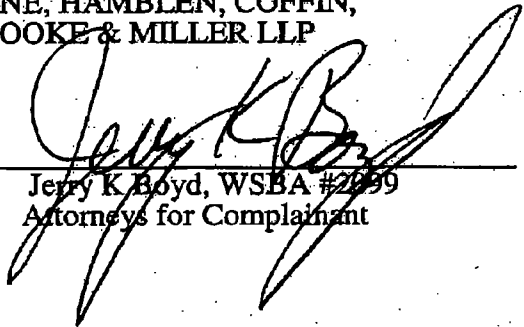
A copy of the District's Motion for Permission to File a Reply with a copy of the District's proposed Reply is transmitted herewith for reference.

**Remedy Requested**

The District respectfully requests the Commission waive the rules of the Commission (WAC 480-07-370(d)ii); and WAC 480-07-385(3)) and permit the District to file its Reply in this matter.

Dated this 28<sup>th</sup> day of July, 2005.

PAINE, HAMBLLEN, COFFIN,  
BROOKE & MILLER LLP

By:   
Jerry K. Boyd, WSBA #2699  
Attorneys for Complainant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 28, 2005, I caused to be served a true and correct copy of the foregoing **MOTION FOR WAIVER OR ENLARGEMENT OR EXTENSTION OF TIME TO FILE MOTION AND REPLY** to the following by the method indicated below:

- HAND DELIVERY
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**RICHARD A. FINNIGAN  
ATTORNEY AT LAW  
2112 BLACK LAKE BLVD. SW  
OLYMPIA, WA 98512**

**EXECUTIVE SECRETARY  
WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION  
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P.O. BOX 47250  
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Diana L. Passmore

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BEFORE THE WASHINGTON UTILITIES  
AND TRANSPORTATION COMMISSION

PEND OREILLE COUNTY PUBLIC  
UTILITY DISTRICT NO. 1

Complainant,

vs.

PEND OREILLE TELEPHONE COMPANY

Respondent.

No. UT-053040

**REPLY TO PEND OREILLE  
TELEPHONE COMPANY'S  
ANSWER TO FORMAL  
COMPLAINT**

TO: Washington Utilities and Transportation Commission

AND TO: Pend Oreille Telephone Company, by and through its attorney, Richard A. Finnigan

**Background**

Public Utility District No. 1 of the Pend Oreille County, Washington (hereafter "District"), by and through its undersigned attorney submits this Reply to the Answer and Affirmative Defenses filed by Pend Oreille Telephone Company (hereafter "POTC"). POTC's Answer was received by the District on July 20, 2005.

1. By letter, the District filed a letter complaint alleging conduct by POTC acted in a manner which the District believed to be prejudicial to the District and the public and contrary to law. The District requested an investigation by the Commission.

1 2. The only relief requested the by District is for an investigation to be conducted by the  
2 commission and its staff regarding the allegations contained in the District's complaint.  
3 However, if the Commission determines that the allegations made by the District are true, and  
4 that the District and/or the public were harmed by POTC and that POTC's acts were or are  
5 unlawful, then the District requested the Commission order POTC to cease and desist in its  
6 unlawful conduct and to interconnect with telecommunication company with which the  
7 District has agreements regarding cell phone service in the vicinity of Metaline Falls or Ione,  
8 Washington.

10 **3. REPLY TO POTC'S AFFIRMATIVE DEFENSES**

11 (a) In reply to POTC Affirmative Defense No. 1, the District admits that its  
12 complaint is based upon information provided by RCC Holdings, Inc. However, if the  
13 allegations made by the District are true, it appears that POTC has violated Washington law  
14 and, possibly, federal law (Federal Communications Act as amended and antitrust laws).

16 (b) In reply to POTC Affirmative Defense No. 2, the District has not requested  
17 service from POTC; however, the District has entered into an agreement with RCC Holdings,  
18 Inc. which requires an interconnection with POTC. POTC's alleged conduct has adversely  
19 affected cell phone services received by the District and the public in the Metaline Falls and  
20 Ione area due to the delays caused by, and the unreasonable demands made by, POTC which  
21 have adversely affected cell phone service in the northern part of Pend Oreille County. It is  
22 the District's understanding that POTC has refused to interconnect with RCC Holdings, Inc.  
23 so long as such interconnection would involve the telecommunications facilities and sources  
24 provided by the District. To the knowledge of the District, POTC's refusal continues.

1 (c) In reply to POTC Affirmative Defense No. 3, although the District is not a  
2 "telecommunications company" the District is a municipal corporation under Washington law  
3 which is authorized to construct, own and operate telecommunications facilities and is  
4 authorized to provide wholesale telecommunications service. RCW 54.04.020 and RCW  
5 54.16.330.

6  
7 The matter before the Commission is whether POTC has acted unlawfully in a manner which  
8 has caused delay and additional costs to be incurred by the District and the public with respect  
9 to cell phone service in the vicinity of Metaline Falls and Ione, Washington.

10 (d) In reply to POTC Affirmative Defense No. 4, the District again requests an  
11 investigation by the Commission into whether POTC's conduct is unlawful or contrary to  
12 public interest.

13  
14 (e) In reply to POTC Affirmative Defense No. 5, the District again requests an  
15 investigation by the Commission concerning the conduct of POTC as it relates to its  
16 relationship with RCC Holdings, Inc. and whether such conduct was in violation of law and  
17 contrary to the public interest.

18 (f) In reply to POTC Affirmative Defense No. 6, the District has standing to assert  
19 a complaint on the basis that it has been adversely affected by the delay in the provision of  
20 cell phone service in the north end of Pend Oreille County through RCC Holdings, Inc. and  
21 the District's facilities.

22  
23 (g) In reply to POTC Affirmative Defense No. 7, the District has entered into a  
24 contract with RCC Holdings, Inc. to facilitate the provision of cell phone service in the north  
25 end of Pend Oreille County, Washington. The delay in the availability of cell phone service  
26 provided by RCC Holdings, Inc. has adversely affected the District. The District has  
27

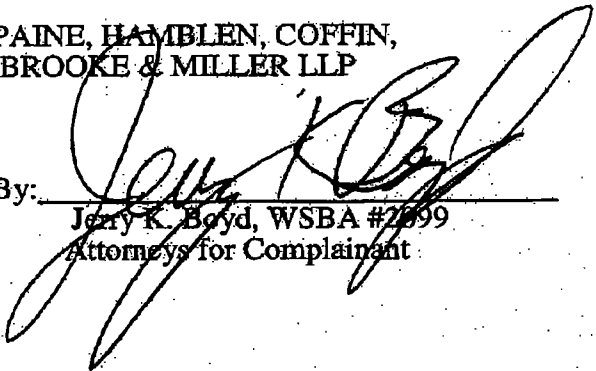
1 standing. The District denies that the Doctrine of Estoppel or the Doctrine of Unclean Hands  
2 applies to the complaint submitted by the District.

3 **Relief Requested**

4 Again, the District respectfully requests an investigation by the Commission into the  
5 conduct of POTC with respect to providing an interconnection to RCC Holdings, Inc. and its  
6 refusal to provide such interconnection through the facilities of the District in the towns or  
7 cities of Metaline Falls and Ione. If, based on such investigation, the Commission determines  
8 that POTC has acted unlawfully or contrary to the public interest, the District requests that the  
9 Commission take such further action as it deems necessary and appropriate to facilitate cell  
10 phone service in the north end of Pend Oreille County in a manner which is sufficient,  
11 convenient and economical in the public interest.  
12

13  
14 Dated this 25<sup>th</sup> day of July, 2005.

15 PAINE, HAMBLEN, COFFIN,  
16 BROOKE & MILLER LLP

17  
18 By:   
19 Jerry K. Boyd, WSBA #2899  
20 Attorneys for Complainant


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 28, 2005, I caused to be served a true and correct copy of the foregoing **REPLY TO PEND OREILLE TELEPHONE COMPANY'S FORMAL COMPLAINT** to the following by the method indicated below:

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