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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

Bigdam.net, LTD.

Complainant,

vs.

Grant County Public Utility District 2

Respondent.

Docket No.: UT-051742

ANSWER OF PUBLIC UTILITY
DISTRICT NO. 2 OF GRANT
COUNTY TO COMPLAINT OF
BIGDAM.NET

I. Introduction

1. Public Utility District No.2 of Grant County, WA ("District"), PO BOX 878, 30 C St. SW, Ephrata, Wa, 98823 by and through its attorneys, Michael W. Smith and Ray A. Foianini of Foianini Law Offices, PO BOX 908, 120 First Ave. NW, Ephrata Wa, 98823 and pursuant to WAC 480-07-370(1)(c) answers the Complaint of Bigdam.net in the above captioned proceeding.

II. Answer

2. Unless specifically admitted in this section, the District denies each and every allegation in the complaint. As the Complainant's complaint did not provide numbered paragraphs, in order to avoid any confusion, the Complainant's paragraphs are provided below, followed by the District's Answer.

ANSWER OF PUBLIC UTILITY DISTRICT
NO.2 OF GRANT COUNTY TO
COMPLAINT OF BIGDAM.NET

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Paragraph 1.

Under the terms of RCW 54.16.340 and RCW 80.04.110, I, Alan Cain, as owner of Terra Byte Systems and bigdam.net, and Internet Service Provider (ISP), and having, on or before October 1, 2005, duly notified the Grant County Public Utility District Number 2 of Ephrata, Washington of my intention to file a petition with the Washington State Utilities and Transportation Commission for a review of its rates pertaining to telecommunications, do hereby file on behalf of bigdam.net and the class of business or commercial users of the Zipp™ fiber network, this petition to the Washington State Utilities and Transportation Commission to review rates, terms and conditions of wholesale telecommunications service applied to bigdam.net, business users on the Zipp™ network, and other ISPs by the Grant County Public Utility District Number 2 (the "District").

3. **Answer to Paragraph 1.** The District responds that per RCW 54.16.340, a person or entity that has requested wholesale telecommunications services from a public utility district may petition the commission. The District denies that Bigdam.net may make a petition on behalf of any group or class it characterizes as business or commercial users. To the extent this paragraph requests the Commission to review rates, terms, and conditions of wholesale telecommunications service applied to Bigdam.net by the District pursuant to RCW 54.16.340 and RCW 80.04.110, the paragraph is generally a conclusion of law to which no response is required. To the extent a further response is required, the District otherwise admits that Alan Cain is the owner of Terra Byte Systems and bigdam.net based on the verified complaint. The District also admits that Complainant notified the District of his intent to file a petition.

Paragraph 2.

The District is authorized under the terms of RCW 54.16.330 to provide wholesale telecommunications service provided that it ensures: "that rates, terms, and conditions for such services are not unduly or unreasonably discriminatory or preferential. Rates, terms, and conditions are discriminatory or preferential when a public utility district offering rates, terms and conditions to an entity for wholesale telecommunications services does not offer substantially similar rates, terms, and conditions to all other entities seeking substantially similar services."

4. **Answer to Paragraph 2.** The District admits the allegation of the second paragraph that it is authorized pursuant to RCW 54.16.330 to provide wholesale telecommunications services. The District admits that Bigdam.net has correctly quoted the section of RCW 54.16.330 and the statute otherwise speaks for itself.

Paragraph 3.

I believe that the rate schedule 100 used for the purposes of charging ISPs for services and bandwidth is discriminatory in creating the two classes of service “residential” and “commercial.”

5. **Answer to Paragraph 3.** To the extent the allegation of the third paragraph constitutes a legal conclusion no response is required. To the extent further response is required the District denies the allegation in the third paragraph that the District’s rate schedule 100 is discriminatory and that it creates two classes of service. The District responds further that its rate schedule charges for residential Internet service and commercial Internet service as specified in the District’s response to the Complainant’s fourth paragraph below.

Paragraph 4.

In the billing system of the Zipp network as charges to ISPs there are two categories of services provided to subscribers for Internet:

Residential Internet Service Per Subscriber, at \$22.50 per month, and
Commercial Internet Service Per Subscriber, at \$30.00 per month.

6. **Answer to Paragraph 4.** The District admits the allegation in the fourth paragraph to the extent that the District’s rate schedule as charged to service providers charges Residential Internet Service per Subscriber a \$22.50 monthly charge, and Commercial Internet Service per Subscriber a \$30.00 monthly charge. To the extent not expressly admitted above, the District denies the remaining allegations of the fourth paragraph.

Paragraph 5

Fiber customers are divided in the billing system at GCPUD as businesses or as residential, and also are identified by yellow pages listings, and by identification as a business by the ISPs. The services rendered by the GCPUG to the two groups – residential and commercial – are identical.

7. **Answer to Paragraph 5.** To the degree the allegation states or infers that the District's customers are residential or commercial end-users, the District denies the inference. The District admits that its billing lists monthly charges for Commercial Internet Service and Residential Internet Service. The District further admits that service providers notify the District which of its subscribers are residential subscribers and which commercial. The District further responds that it may corroborate this using the yellow pages. The District responds further that it provides advance notifications to service providers for planned maintenance outages which may affect a specific business end-user. To the extent not expressly admitted above, the District denies the remaining allegations of the fifth paragraph.

Paragraph 6.

The pricing is not.

8. **Answer to Paragraph 6.** The District denies the allegation in the sixth paragraph to the degree it states or infers that the District does not provide identical pricing to all its service provider customers. The District admits the allegation to the extent that the District charges per subscriber rates as previously stated in paragraph 6 in response to Complainant's paragraph 4 above. To the extent not expressly admitted above, the District denies the remaining allegations of the sixth paragraph.

Paragraph 7.

There is no substantive difference between commercial and residential users. They do not in practice receive any appreciable benefit as a member of that class except to pay more money.

9. **Answer to Paragraph 7.** The District denies the allegations in the seventh paragraph.

Paragraph 8

I sat in meetings with the PUD, in conjunction with the other ISPs, where we discussed pricing strategies, and agreed that business customers could be charged more, if they received compensatory benefit. I was assured that indeed there would be benefits to the class.

10. **Answer to Paragraph 8.** The District admits that District personnel met with representatives of service providers, discussed pricing strategies and that the service providers agreed that business customers could be charged as later specified in the District's rate schedule. The District further responds that District personnel stated that the District would provide advance notifications where possible to service providers for planned maintenance outages which may affect a specific business end-user. To the extent not expressly admitted above, the District denies the remaining allegations of the eighth paragraph.

Paragraph 9. Discussed in those meetings were priority repair services, advance notice for network maintenance, special monitoring for down status, and other benefits.

11. **Answer to Paragraph 9.** The District admits the allegation that general discussions took place in which one topic discussed was advance notice for network maintenance. District employees have no recollection of discussions of the other listed topics and therefore based on information and belief the District denies any such discussion took place.

Paragraph 10.

One justification made was there would be "special notice" given to ISPs to provide enhanced services to business customers. There are no "special

notifications” informing us of any potential impacts to businesses, except regular maintenance announcements that affect the network as a whole.

12. **Answer to Paragraph 10.** The District admits that it provides notice to service providers for maintenance that affects the entire network. The District responds further that advance notices are provided as stated in paragraphs 7 and 10 which respond to Complainant’s paragraphs 5 and 8. The District otherwise denies the allegations in the tenth paragraph.

Paragraph 11.

However, and often, maintenance occurs at a different time than initially stated, which certainly negates the ameliorative effects of prior notice. I understand the necessity for changes in times of actions, but the point of this comment is to illustrate the lack of business sensitive communications that would allow for business interruption planning, and justify higher rates.

13. **Answer to Paragraph 11.** The District denies the allegations in the eleventh paragraph that often maintenance occurs at a time different than initially stated. The District further responds that it provides advance notices as described in the District’s answers above. The District otherwise denies the allegations in the eleventh paragraph.

Paragraph 12

That would be an example of a benefit to the class of users, offering the business customer an enhanced value for the charge.

14. **Answer to Paragraph 12.** It is not clear to the District what Complainant intends as the antecedent to “that.” Assuming the sentence is stating that business sensitive communication would be a benefit to a class of users, the District denies the inference that its rate schedule is unduly discriminatory or preferential. The balance of Complainant’s assertions are a reference to a proposed strategy or illustration that is not relevant to the allegations of the claim nor does it constitute a factual allegation. Thus no response appears necessary.

Paragraph 13

The network has not had the capacity to separate out and monitor classes of users such as business owners for special monitoring, which would be one justification. One staff member suggested they might monitor the hubs (neighborhood scale routers) which had businesses more actively, but that would have been before the current network operations center was downsized, and given that most of the hubs have businesses in them, the effectiveness of that strategy is rather questionable.

15. **Answer to Paragraph 13.** The District denies the allegation in the thirteenth paragraph that the network does not have the capacity to separate out and monitor classes of users such as businesses for special monitoring. The District also denies proposing to service providers to monitor the hubs. The balance of Complainant’s assertions are sufficiently vague that the District cannot provide a meaningful response. In addition, they reference a proposed strategy that does not appear relevant thus the District provides no additional response.

Paragraph 14

The notion that one group should be charged more than another for no reason that is measurable is hard to justify to my clients, and I feel it is discriminatory.

16. **Answer to Paragraph 14.** To the degree the fourteenth paragraph infers that the District’s rate schedule charges service providers rates that are unduly or unreasonably discriminatory or preferential, the District denies the inference. The District denies the remaining allegations in the fourteenth paragraph.

Paragraph 15

Commissioner Allred said in a public commission meeting that it was sufficient reason to charge businesses more “because they could afford it.”

17. **Answer to Paragraph 15.** The District denies the allegation in the fifteenth paragraph.

Paragraph 16

The District is authorized under the terms of RCW 54.16.330 to provide wholesale telecommunications service provided that it ensures that: “that rates,

terms and conditions for such services are not unduly or unreasonably discriminatory or preferential. Rates, terms, and Conditions are discriminatory or preferential when a public utility district offering rates, terms, and conditions to an entity for wholesale telecommunications services does not offer substantially similar rates, terms, and conditions to all other entities seeking substantially similar services.”

18. **Answer to Paragraph 16.** The District admits the allegation of the sixteenth paragraph that it is authorized pursuant to RCW 54.16.330 to provide wholesale telecommunications services. The District admits that Bigdam.net has essentially correctly quoted the section of RCW 54.16.330 and the statute otherwise speaks for itself.

Paragraph 17

By charging substantially more to the group of users identified as business users for telecommunications purposes, as opposed to power purposes, simply on the basis of having “businesses” with no benefit accrued to that class is discriminatory and preferential. The inference that a business has more money to pay for what is essentially the same service is disturbing in its intrinsic unfairness.

19. **Answer to Paragraph 17.** To the extent the allegation of the seventeenth paragraph constitutes a legal conclusion no response is required. To the extent further response is required the District denies the allegation in the seventeenth paragraph.

Paragraph 18

The telephone industry, for example, gives different services to users of different classifications; for example, business users have special listings in directories, and have billing specialists and separate assistance programs, amongst other tangible benefits.

20. **Answer to Paragraph 18.** To the extent Complainant intends the eighteenth paragraph to infer that the District’s rate schedule is unduly or unreasonably discriminatory or preferential, the District denies this inference. Otherwise Complainant’s assertions in the eighteenth paragraph are not relevant, do not contain allegations against the District, and no reply to the specific statements appears necessary.

Paragraph 19

That differentiation is one of many ways by how “traditional” telephone companies justify different rate structures for different classes of customers. DSL customers can buy different bandwidths of service, with different Quality of Service (QoS) agreements, and with service level agreements (SLA). The difference in rates reflects concrete benefits, added by increased levels of service, and kinds of service.

21. **Answer to Paragraph 19.** To the extent Complainant intends the nineteenth paragraph to infer that the District’s rate schedule is unduly or unreasonably discriminatory or preferential, the District denies this inference. Otherwise Complainant’s assertions in the nineteenth paragraph are not relevant, do not contain allegations against the District, and no reply to the specific statements appears necessary.

Paragraph 20

The PUD has repeatedly refused to enter into any QoS or SLA agreements with any of the ISPs with whom I am familiar, and yet they have stated in public meetings “there are unwritten “understandings” about service level agreements”. (Director Dawn Woodward, in a meeting in June, 2005)

22. **Answer to Paragraph 20.** The District admits the allegation in the twentieth paragraph that it has not entered into service level agreements or quality of service agreements with service providers. The District denies the remaining allegations in the twentieth paragraph to the degree not specifically admitted above.

Paragraph 21

The GCPUD’s official policies for customer service are “best effort”, which does little to differentiate a commercial class from a residential class. That there are unwritten service agreements that “any ISP could have by asking” (if you know to ask) seems hostile to the excluded ISPs by limiting any real kinds of commercial services that can be offered, which are time or date type sensitive.

23. **Answer to Paragraph 21.** The District responds that its Customer service policies state that “the District will attempt to provide, but does not guarantee, a regular and uninterrupted supply of service.” The District otherwise denies the allegations in the twenty-first paragraph.

Paragraph 22

The recent report that the network is set to strip Voice over Internet Protocol headers off the packets to de-prioritize them would certainly interfere in offering VoIP services to businesses – another example of the kind of benefit that would create valid differences in classes of users.

24. **Answer to Paragraph 22.** To the extent Complainant intends the twenty-second paragraph to infer that the District’s rate schedule is unduly or unreasonably discriminatory or preferential, the District denies this inference. The District responds that all traffic from the service provider interfaces are stripped of their QoS headers which include VOIP. The District further responds that the public internet ignores QoS headers. The last phrase of Complainant’s assertions is a reference to an example or illustration that is not relevant to the allegations of the claim nor does it constitute a factual allegation. Thus no response appears necessary. The District denies the remaining allegations of the twenty-second paragraph not admitted or addressed above.

Paragraph 23

A best effort network by implication does not allow the differentiation of multiple classes of customers based on a non-differentiated network offering, and the offering made at the gateways to a residential customer is the same as that offered to the commercial customer.

25. **Answer to Paragraph 23.** To the extent Complainant intends the twenty-third paragraph to infer that the District’s rate schedule is unduly or unreasonably discriminatory or preferential, the District denies this inference. The Complainant’s assertions in the twenty-third paragraph appear to be a description of “a best effort network” that is not relevant to the allegations of the claim nor does it constitute a factual allegation against the District, thus no response appears necessary.

Paragraph 24

Keep in mind, too, that the end user – the business – is actually the ISP customers, and as such, the PUD has no business in defining classes anyway, because they are not the provider. The ISPs are the providers.

26. **Answer to Paragraph 24.** The District admits the allegation in the twenty-fourth paragraph to the extent that it alleges the end user is the ISP's customer. Additionally, the final sentence of the twenty-fourth paragraph is vague and unintelligible. To the extent it means that ISPs are service providers the District admits the allegation. Otherwise, the District denies the remaining allegations of the twenty-fourth paragraph to the degree not expressly admitted or addressed above.

Paragraph 25

The PUD is specifically enjoined from being the provider to the end user; the ability to set categories as to what specific and undistinguishable category end users belong to is thus not their purview. The categorization of Zipp™ gateway customers into different classes is an ISP to customer issue.

27. **Answer to Paragraph 25.** To the extent the allegation of the twenty-fifth paragraph constitutes a legal conclusion no response is required. The District admits that pursuant to RCW 54.16.330, it is not authorized to provide telecommunication services to end-users. The District denies the remainder of the allegation to the extent not expressly admitted above.

Paragraph 26

I ask that you examine the policies of the Grant County Public Utilities in this matter.

28. **26th Paragraph.** To the extent this paragraph requests the Commission to review the rates, terms and conditions of the District pursuant to RCW 54.16.340 the paragraph is generally a conclusion of law or a request to which no response is required.

III. Affirmative Defenses

1. The District's rate schedule does not provide rates, terms and conditions which are unduly or unreasonably discriminatory or preferential.
2. Per RCW 80.04.330 provides that a district's rates, terms, and conditions are discriminatory or preferential when a public utility district offering rates, terms, and conditions to an entity for wholesale telecommunications services does not offer substantially similar rates, terms, and conditions to all other entities seeking substantially similar services. The District offers the same rates, terms, and conditions to all entities seeking wholesale telecommunications services from the District and therefore the District does not provide rates, terms and conditions that are unduly or unreasonably discriminatory or preferential.
3. Generally, the UTC has no jurisdiction over the District per RCW 54.04.045 and RCW 54.16.040. However, the UTC has limited jurisdiction over the District relating to wholesale telecommunications services pursuant to RCW 54.16.340. The Commission review is limited to determining whether a district is providing discriminatory or preferential rates, terms, and conditions. Per RCW 54.16.340, if the Commission determines that rates are discriminatory "it shall issue a final order finding noncompliance with this section and setting forth the specific areas of apparent noncompliance." To the degree Bigdam.net's complaint seeks any relief other than a finding that rates are unduly or unreasonably discriminatory or preferential, the UTC is without statutory authority to provide such relief.

4. The District reserves the right to assert any additional affirmative defenses or special defenses that may become known through discovery or further proceedings in this matter or as may be otherwise appropriate.

IV. Relief Requested

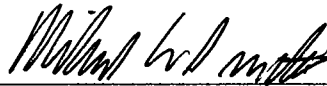
Based upon the foregoing answer and defenses, The District requests the following relief.

- A. An order denying Bigdam.net's request for review of the District's rates, terms and conditions.
- B. An order dismissing Bigdam.net's Complaint with prejudice.
- C. An order finding that the District's rates, terms and conditions are not unreasonably discriminatory or preferential.
- D. Such other further relief as may be within the Commission's jurisdiction and to which the Commission deems appropriate.

Submitted this 5th day of December 2005.

Public Utility District No. 2 of Grant County

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