

54839

BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

Vol. M85 Page 17497

## CORRECTION ORDER

In the Matter of Request for  
Conditional Use Permit No. 35-85  
for MCI Telecommunications Corp.

) Klamath County Planning  
)  
) Findings of Fact and Order

A hearing was held on this matter on September 19, 1985,  
pursuant to notice given in conformity with Ordinance No. 45.2,  
Klamath County, before the Klamath County Hearings Officer, Brad  
Aspell. The applicant was represented by Kenneth E. Bakken. The  
Klamath County Planning Department was represented by Claudia  
Stine. The Hearings Reporter was Janet Libercajt.

Evidence was presented on behalf of the Department and on  
behalf of the applicant. There was one adjacent property owner  
present.

The following Exhibits were offered, received, and made a  
part of the record:

Klamath County Exhibit A, Staff Report

Klamath County Exhibit B, Plot Plan

Klamath County Exhibit C, Assessor's Map

Klamath County Exhibit D, Pictures

The Hearing was then closed, and based upon the evidence  
submitted at the hearing, the Hearings Officer made the following  
Findings of Fact:

FINDINGS OF FACT:

1. The subject property is owned by Joseph B. Thompson and  
under lease to MCI Telecommunications Corporation, 201 Spear  
Street, 8th Floor, San Francisco, CA 94105. The property is  
located in the W $\frac{1}{2}$ , W $\frac{1}{2}$  of Section 23, Township 40 South, Range 11  
E.W.M., Klamath County, Oregon, and is known for assessment pur-  
poses as Tax Lot 40-11-5900. The parcel is 190 acres in size

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1 although that portion on which the Conditional Use Permit applies  
2 is substantially smaller. The property is located near Dodds  
3 Hollow Subdivision and access is gained via Harphold Road. The  
4 property is designated as Forestry (F) in the Comprehensive Land  
5 Use Plan, and zoned Forest Range (F/R). The 190 acre parcel is  
6 rectangular in shape with dimensions of approximately  $\frac{1}{4}$  mile by  
7 1 mile. Vegetation consists of sagebrush, native grasses,  
8 juniper and some timber. Topography is generally of rolling  
9 hills. The property drains naturally. The Soil Conservation  
10 Service rates the property primarily as Type 7 soil, however, it  
11 does include some Type 3 soil. The property, although in forestry  
12 zone, has no timbersite productivity rating. Surrounding property  
13 is shown by reference to Exhibit "C". The majority of the prop-  
14 erty is designated under the Comprehensive Land Use Plan as  
15 Forestry and under the zoning Ordinance as Forestry/Range. The  
16 property is traversed by the Bonneville Power Authority, Medford-  
17 Malin Electrical Transmission Line. The specific site for which  
18 the Conditional Use Permit applies is a 115 foot by 100 foot  
19 rectangular parcel, the general location of which is at the peak  
20 of a small hill shown in applicant's Exhibit "B", a site map.  
21 2. Applicant seeks the Conditional Use Permit to erect a  
22 junction/repeater telecommunications facility including one 140  
23 foot tower, six 12 foot tall parabolic antenna, two 11 by 18 foot  
24 equipment buildings, one 8 by 10 foot building housing the  
25 generator, and a 40 by 60 foot administrative facility, and two  
26 1000 gallon LPG tanks for emergency propane power, all of which  
27 will be enclosed within a chain link fence.  
28 3. Access to the property is gained off Harphold Road, an

1 existing County paved road. Applicant recognizes that Klamath  
2 County will not improve the road from Harphold Road to the site  
3 at this time above the present standards, but that applicant may  
4 in fact choose to do so.

5 4. The property lies within the Klamath County School  
6 District, sewage is by individual septic tank, and water provided  
7 by individual wells. The property is served by Klamath County  
8 Fire District No. 1. The property is within the service area of  
9 Pacific Power & Light Company, although it is not presently  
10 served by the utility. Applicant recognizes that it may be re-  
11 quired to extend electrical power to the subject site at its  
12 cost.

13 5. The property is located outside of the Urban Growth  
14 Boundary and lies within a medium-low density deer winter range,  
15 and is subject to provisions of Article 83 of the Klamath County  
16 Land Development Code. Notice has been given to the Oregon  
17 Department of Fish & Wildlife and under Section 83.003 (3) (c),  
18 and no recommendations have been received.

19 6. This application is subject to Section 83.005 (Condi-  
20 tional Use Permit, Significant Resource Area), Article 44 of the  
21 Land Development Code, and Section 51.021(C)(1) and 51.021(D).

22 7. The Hearings Officer finds from a review of Exhibit "D"  
23 from the staff report and testimony of the applicant that the  
24 land in question is not presently forested and is generally un-  
25 suitable for timber management and is not needed for other forest  
26 uses as it is generally range land. Accordingly, the Hearings  
27 Officer finds under 51.021(C)(1) the property is suitable for  
28 communications structures.

1 8. Conditional Use Permit criteria set forth in the Land  
2 Development Code Section 51.021(D) provides as follows:  
3 NON-FOREST USES

4 1. The non-forest uses conditionally permitted above shall  
5 be subject to review in accordance with the following criteria.  
6 The review authority must find that each such use:

- 7 1. is compatible with forest uses;
- 8 2. does not interfere seriously with the accepted  
9 forestry practices on adjacent lands devoted to  
10 forest use, and does not significantly increase the  
11 cost of forestry operations on such lands;
- 12 3. does not materially alter the stability of the  
13 overall land use pattern of the area;
- 14 4. is situated on generally unsuitable land for the  
15 production of forest crops and livestock. considering  
16 the terrain, adverse soil or land conditions,  
17 drainage and flooding, vegetation, location and size  
18 of tract;
- 19 5. considers forest site productivity, minimizes the  
20 loss of productive forest lands, and is limited in  
21 size to the area suitable and appropriate to the  
22 needs of the proposed use;
- 23 6. meets the standards relating to the availability  
24 of fire protection as set forth in Article 69 of  
25 this Code and other rural services and will not  
26 overtax those services, and;
- 27 7. complies with such other conditions as the review  
28 authority considers necessary to protect forest use.

1 9. In this regard the Hearings Officer specifically finds:

2 A. The communications structure is not incompatible  
3 with forest uses and indeed the subject property is not  
4 presently in forest production of use;

5 B. The location of the facility constitutes approxi-  
6 mately  $\frac{1}{4}$  acre and will not interfere seriously with any  
7 accepted forestry practices. While the applicant will be  
8 constructing a  $\frac{1}{4}$  mile transmission line, which provides  
9 power to the site, and creating a graveled roadway to serve  
10 the receiver station, forest practices will not be adversely  
11 impacted and in fact will probably be enhanced by improved  
12 ability to provide fire suppression and access to the  
13 property for planting. The use will not alter the stability  
14 of the overall land use pattern in the area and it will not  
15 generate demand for public services, bring substantially  
16 more people into the area, or cause a demand for other re-  
17 lated improvements. The land is situated on Type 7 soil  
18 and at the top of a small hill. The location generally  
19 minimizes any adverse effect on forest productions. As no  
20 forest site productivity has been established, the Hearings  
21 Officer finds it to be low. The property is served by  
22 Klamath Falls Fire District No. 1 and hence has fire  
23 protection. Further the Hearings Officer finds that the  
24 intended use does not create any substantial fire danger or  
25 risk and otherwise no rural services will be demanded by  
26 the improvement.

27 C. Article 44, Section 44.030, Review Criteria has  
28 been met. The Hearings Officer finds:

1 1. The use is conditionally permitted in the  
2 Forest/Range (F/R) zone.

3 2. That the application is in conformance with the  
4 Klamath County Comprehensive Plan set forth above.

5 3. The proposed development will not have signif-  
6 icant adverse effects on appropriate development or  
7 use of abutting properties based on the included  
8 findings and further upon the fact that Phil Rand,  
9 Klamath County Airport Manager, indicates that while  
10 the application would be subject to FAA approval he  
11 can ascertain no reason why, with the towers  
12 appropriately lighted, the application would not be  
13 approved; and to the fact that while notice of the  
14 application has been given, no adjacent property  
15 owners objected to the application.

16 D. While the property is marginally situated within a  
17 significant resource overlay zone, the Hearings Officer  
18 finds from the notice given and from the lack of response  
19 from the Oregon Fish & Wildlife Department that the  
20 Department has no objection to the application.

21 10. The Hearings Officer finds that the application complies  
22 with Klamath County Comprehensive Land Use Plan. Specifically  
23 the Hearings Officer finds thae following Goals inapplicable:  
24 Goal 8, Recreation Needs; Goal 10, Housing; Goal 13, Energy  
25 Conservation; and Goal 14, Urbanization.

26 The Hearings Officer finds that Goal 1, Citizen Involvement,  
27 has been met as notice has been provided by mail and was pub-  
28 lished in the Herald & News.

1 Goal 2, the Land Use Planning has likewise been met based  
2 upon the findings set forth in the paragraphs above and further  
3 upon the reason that recommendation of the Airport Manager,  
4 Oregon Fish & Wildlife Department and other affected public  
5 agencies has been sought.

6 Goal 3, has been met as the development is primarily on Type  
7 VII lands with the road granting access and egress across small  
8 portions of Type III soils.

9 Goal 4, Forest Lands has likewise been met as set forth in  
10 the provision 9B above.

11 Goal 5, appears inapplicable except as to natural resources  
12 being a significant resource overlay zone. For reasons set forth  
13 above in paragraph 5, the Hearings Officer finds that no adverse  
14 effect upon the winter range will result.

15 Goal 6, Resource Quality will be met in that the proposed  
16 transmission facility will not generate pollution.

17 Goal 7, Natural Disaster/Hazard area has been met as no  
18 significant natural hazard has been identified.

19 Goal 9, County Economy has been met as there will be some  
20 additional employment generated in the construction, maintenance,  
21 and operation of the facility.

22 Goal 11, Public Facilities and Services has likewise been  
23 met.

24 Applicant recognizes that it shall, at its own cost install  
25 the necessary roadway to the site and to provide electricity to  
26 the facility at its own cost.

27 Goal 12, Transportation will be met as the applicant intends  
28 to improve the access road from Harphold Road at its own cost and  
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1 expense.

2 Based upon the foregoing, the Hearings Officer issues the  
3 following Conclusions of Law:

4 CONCLUSIONS OF LAW:

5 1. The proposed use is conditionally permitted in the zone  
6 within which it is proposed to be located.

7 2. Location, size, design and operating characteristics of  
8 the proposed use are in conformance with the Klamath County  
9 Comprehensive Plan.

10 3. Location, size, design and characteristics will be  
11 compatible with and will not have a significant adverse affect on  
12 the appropriate development and use of abutting property or the  
13 surrounding area.

14 The granting of this Conditional Use Permit is consistent  
15 with the goals of the Land Conservation Development Commission.

16 4. The granting of this Conditional Use Permit is subject  
17 to the following conditions:

18 A. the applicant shall receive Federal Aviation  
19 Administration approval for the installation of any antennae  
20 required.

21 B. The applicant shall limit the construction of the  
22 subject property to the location and within the confines set  
23 forth in Exhibit "B".

24 C. All improvements shall be subject to application for  
25 and receipt of a permit from Klamath County Building  
26 Department.

27 The Hearings Officer, based upon the foregoing Conclusions  
28 of Law, accordingly orders as follows:



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1 That real property described as

2 "being generally located 1½ miles east of Dodds Hollow,  
3 and more particularly described as the W½, W½ of Section  
4 23, Township 40 South, Range 11 East, Klamath County,  
5 Oregon,"

6 is hereby conditionally granted a Conditional Use Permit in  
7 accordance with the terms of the Klamath County Zoning Ordinance  
8 No. 45.2, and, henceforth, will be allowed a communications  
9 structure in the FR zone.

10 Entered at Klamath Falls, Oregon, this 24th Day of  
11 October, 1985.

12 KLAMATH COUNTY HEARINGS OFFICER

13 Brad Aspell  
14 Brad Aspell, Hearings Officer

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of \_\_\_\_\_  
of October A.D., 19 85 at 12:04 o'clock P M., and duly recorded in Vol. M85 day  
of Deeds on Page 17497

FEE NONE

Ret: Commissioners' Journal

Evelyn Biehn  
By \_\_\_\_\_

County Clerk  
Phyllis Smith

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