

BEFORE THE
OREGON PUBLIC UTILITIES COMMISSION

WANTEL, INC. doing business as
ComSpanUSA *et al.*,

Complainants,

v.

QWEST CORPORATION, an Oregon
Corporation,

Respondent.

Docket No.

**WANTEL TELECOMMUNICATIONS
D/B/A COMSPANUSA'S COMPLAINT
FOR ENFORCEMENT OF
INTERCONNECTION AGREEMENT**

I. PARTIES

1. Wantel, Inc. (referred herein by the name it does business by "ComSpanUSA") is an Oregon Corporation with its principal offices located in Roseburg, Oregon. ComSpanUSA is a competitive local exchange company ("CLEC) and obtained its competitive registration from the Oregon Public Utilities Commission on August 20, 1999 under Order No. 99-507.

2. Qwest Corporation ("Qwest") is a telecommunications utility company with offices in Portland, Oregon.

II. FACTUAL ALLEGATION

3. ComSpanUSA and Qwest entered into an Interconnection Agreement dated November 16, 1999. The Interconnection Agreement provides for the purchase of resale services,

WANTEL TELECOMMUNICATIONS D/B/A COMSPANUSA'S
COMPLAINT FOR ENFORCEMENT OF INTERCONNECTION
AGREEMENT - Page 1

236983_1.DOC

ATER WYNNE LLP
LAWYERS
601 UNION STREET, SUITE 5450
SEATTLE, WASHINGTON 98101-2327
(206) 623-4711

Unbundled Network Elements (UNEs”) and certain combinations of UNEs. The Interconnection Agreement has been amended twice. The first amendment provided for the purchase of dark fiber, and the second amendment provided for the purchase terms for a Single Point of Presence.

4. This complaint seeks to enforce the terms of the Interconnection Agreement between the parties regarding the improper charges Qwest is seeking to impose on ComSpanUSA for Nonrecurring Charges related to Local Interconnection Service trunks (“LIS Trunks”). *See* Attached Sections of the Interconnection Agreement in Dispute between ComSpanUSA and Qwest, Exhibit 1.

5. This dispute between the parties arose in the context of refund hearings conducted by the Oregon Public Utilities Commission (the “Commission”) pursuant to Docket Nos. UT 138/139. During the refund proceeding Qwest claimed that ComSpanUSA had not paid for certain Nonrecurring Charges related to orders for LIS trunks placed in February, 2001.

6. Qwest has acknowledged that the issue of payment for LIS Trunks is not properly part of the refund issues addressed in to Docket Nos. UT 138/139. *See* Exhibit 2, Duarte Letter to ComSpanUSA and attorney Lisa Rackner.

7. Qwest is attempting to collect Nonrecurring Charges for LIS Trunks. These charges were incurred in February, 2001. As such, by the terms of the Interconnection Agreement, they are no longer collectable. Specifically, the Interconnection Agreement between Qwest and ComSpanUSA states as follows:

All transactions under this Agreement which are over 24 months old will be considered *accepted* and no longer subject to Audit.

See Interconnection Agreement, Section XXIV(G). By the clear terms of the Interconnection Agreement, Qwest is prohibited from collecting any charges, and these charges are deemed

“accepted”, and ComSpanUSA should not be required to pay the LIS Trunk charges Qwest is demanding it pay.

8. The Interconnection Agreement, in Section XXXIV (N) States as follows:

This Agreement constitutes the *entire agreement* between the Parties and supercedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

This Section makes clear that the parties intended that the ICA would govern all actions between them.

9. ComSpanUSA has conferred with Qwest on numerous occasions to try and resolve the dispute. Attached in Exhibit 3 is correspondence between the parties reflecting discussions about the dispute. Attached is Exhibit 4, a copy of the written notice to Qwest that ComSpanUSA intended to file this complaint pursuant to ORS 860-016-0050. This notice makes clear that ComSpanUSA has tried to resolve this dispute prior to filing this complaint. A complete copy of the Interconnection Agreement is attached to the complaint as Exhibit 5.

III. RELIEF REQUESTED

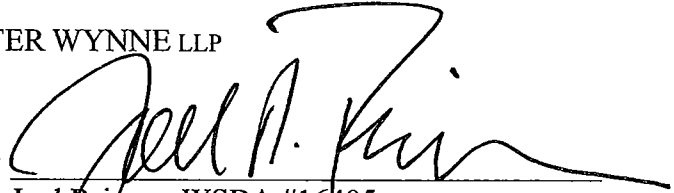
10. ComSpanUSA requests the Commission to enforce the Interconnection Agreement by limiting the ability of Qwest to obtain fees for LIS Trunk charges beyond a 24 month period, as required in Section XXIV(G).

11. To the extent allowed by the Interconnection Agreement, ComSpanUSA also requests reimbursement for fees and costs related to enforcement of the agreement.

RESPECTFULLY SUBMITTED this 22nd day of April, 2004.

ATER WYNNE LLP

By



Joel Paisner, WSBA #16405
601 Union Street, Suite 5450
Seattle, Washington 98101-2327
Tel: (206) 623-4711
Fax: (206) 467-8406
Email: jrp@aterwynne.com

Attorneys for ComSpanUSA

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of April, 2004, served the true and correct original, along with five (5) copies, of the foregoing document upon the OPUC, via the methods noted below, properly addressed as follows:

Oregon Public Utility Commission	<input type="checkbox"/>	Hand Delivered
Administrative Hearings Division	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
550 Capitol Street NE, Suite 215	<input checked="" type="checkbox"/>	Overnight Mail
Salem, OR 97301	<input type="checkbox"/>	Facsimile
Fax: (503) 378-6163	<input type="checkbox"/>	Email mailto:Carol.Hulse@state.or.us

I hereby certify that I have this 22nd day of April, 2004, served a true and correct copy of the foregoing document upon parties of record, via the methods noted below, properly addressed as follows:

Qwest Corporation	<input type="checkbox"/>	Hand Delivered
Director – Interconnection Compliance	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
1801 California, Rm 2410	<input checked="" type="checkbox"/>	Overnight Mail
Denver, CO 80202	<input type="checkbox"/>	Facsimile

Qwest Corporation Law Dept.	<input type="checkbox"/>	Hand Delivered
General Counsel – Interconnection	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
1801 California, Suite 5100	<input checked="" type="checkbox"/>	Overnight Mail
Denver, CO 80202	<input type="checkbox"/>	Facsimile

CT Corporation System	<input type="checkbox"/>	Hand Delivered
388 State St., Suite 420	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
Salem, OR 97301	<input checked="" type="checkbox"/>	Overnight Mail
Fax: (503) 566-9181	<input type="checkbox"/>	Facsimile

Alex M. Duarte	<input type="checkbox"/>	Hand Delivered
Qwest Corporation	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
421 SW Oak St., Ste. 810	<input checked="" type="checkbox"/>	Overnight Mail
Portland, OR 97204	<input type="checkbox"/>	Facsimile
Fax: (503) 242-8589		

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 22nd day of April, 2004.



Karen M. Liss

Exhibit 1

WANTEL TELECOMMUNICATIONS, INC.

AND

U S WEST COMMUNICATIONS, INC.

**INTERCONNECTION
AGREEMENT**

FOR THE STATE OF OREGON

CDS-991111-0287

...es that the other Party is not requesting, negotiating or processing any NIUER in good faith, or disputes a determination, or quoted price or cost, it may seek arbitration or mediation under §252 of the Act. Wantel is not required to use this section as the exclusive method of seeking access to interconnection or Network Elements.

XXIV. AUDIT PROCESS

"Audit" shall mean the comprehensive review of:

- A. data used in the billing process for services performed and facilities provided under this Agreement; and
- B. data relevant to provisioning and maintenance for services performed or facilities provided by either of the Parties for itself or others that are similar to the services performed or facilities provided under this Agreement for interconnection or access to unbundled elements.

The data referred to in subsection (B), above, shall be relevant to any performance standards that are adopted in connection with this Agreement, through negotiation, arbitration or otherwise.

This Audit shall take place under the following conditions:

- A. Either Party may request to perform an Audit.
- B. The Audit shall occur upon 30 business days written notice by the requesting Party to the non-requesting Party.
- C. The Audit shall occur during normal business hours.
- D. There shall be no more than one Audit requested by each Party under this Agreement in any 12-month period.
- E. The requesting Party may review the non-requesting Party's records, books and documents, as may reasonably contain information relevant to the operation of this Agreement.
- F. The location of the Audit shall be the location where the requested records, books and documents are retained in the normal course of business.
- G. { All transactions under this Agreement which are over 24 months old will be considered accepted and no longer subject to Audit.
- H. Each Party shall bear its own expenses occasioned by the Audit, provided that the expense of any special data collection shall be born by the requesting Party.

status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

J. Referenced Documents

All references to Sections, Exhibits, and Schedules shall be deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Whenever any provision of this Agreement refers to a technical reference, technical publication, Wantel practice, USWC practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) or such document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) or each document incorporated by reference in such a technical reference, technical publication, Wantel practice, USWC practice, or publication of industry standards (unless Wantel elects otherwise). Should there be any inconsistency between or among publications or standards, Wantel shall elect which requirement shall apply.

K. Publicity and Advertising

Neither party shall publish or use any advertising, sales promotions or other publicity materials that use the other party's logo, trademarks or service marks without the prior written approval of the other party.

L. Executed in Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

M. Headings of No Force or Effect

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

N. Entire Agreement

This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

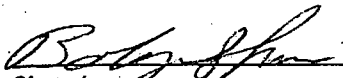
provision, but the same shall, nevertheless, be and remain in full force and effect.

KK. No Third Party Beneficiaries

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

Wantel Telecommunications, Inc.


Signature

Bob J Shivers
Name Printed/Typed

C.E.O.
Title

11-16-99
Date

U S WEST Communications, Inc. *


Signature

Kathy Fleming
Name Printed/Typed

V.P. - Interconnection
Title

11/19 /99
Date

- Signed as ordered by the Arbitrator/Commission in Docket ARB 1. Signature does not indicate agreement with all aspects of the Arbitrator's/Commission's decision, nor does it waive any of either party's rights to seek judicial or administrative review of all or part of the agreement, or to reform the agreement as the result of successful judicial or administrative review.

* This Agreement is made pursuant to Section 252 (i) of the Act and is premised upon the Interconnection Agreement between MFS Intelenet, Inc. and U S WEST Communications, Inc. (the "Underlying Agreement"). The Underlying Agreement was approved by the Commission on August 21, 1997.

With respect to this Agreement, the Parties understand and agree:

- i) The Parties shall request the Commission to expedite its review and approval of this Agreement.
- ii) Notwithstanding the mutual commitments set forth herein, the Parties are entering into this Agreement without prejudice to any positions they have taken previously, or may take in the

Exhibit 2

Qwest
421 SW Oak Street
Suite 810
Portland, Oregon 97204
Telephone: 503-242-5623
Facsimile: 503-242-8589
Alex.Duarte@qwest.com



Alex M. Duarte
Corporate Counsel

VIA FACSIMILE AND U. S. MAIL

November 13, 2003

Lisa Rackner, Esq.
Ater Wynne LLP
222 SW Columbia
Portland, OR 97201-6618

Re: ComSpan (Wantel)/Qwest DTT Billing Issue- Response to 10/27/03 Letter

Dear Lisa:

I have received your October 27, 2003 letter on behalf of your client, ComSpan USA (fka Wantel) ("ComSpan"), about certain billing disputes regarding previously unbilled nonrecurring charges (NRCs) for Local Interconnection Services (LIS) trunks that Qwest has previously provided to ComSpan. We understand that the amount at issue is \$24,604.51. If you do not believe that this is the amount in dispute, please advise us as soon as possible.

As you know from our recent discussions with you, we agree that this dispute is not really a "UT 138 refund issue." This is so because, as we explained, it was merely in the process of calculating the UT 138 refund that we became aware these LIS trunks had been "zero (0) rated" (i.e., not billed) for at least three years.¹ Thus, in calculating the UT 138 refund, the billing group assumed that the refund included a "true-up" for LIS trunks that had not been billed (i.e., that had been zero rated). However, we have now confirmed (and thus agree with you) that the UT 138 refund and the LIS trunk zero rating/back-billing adjustment are two completely different issues. That is, the only connection between the two issues is that Qwest's billing department corrected the billing for LIS trunks *in the process of calculating the UT 138 refund*. Clearly, this is not a UT 138 issue, but merely an issue that resulted from Qwest's inadvertent failure to bill for LIS trunks, and its correction of same in the process of calculating the UT 138 refund.²

¹ Our understanding is that the zero-rating had been with respect to four different USOCs (Uniform Service Order Codes) for Direct Trunk Transport (DTT) facilities. These four USOCs were NR6UE, NR6UF, NR6UG, and NR6UH (installation of DS1 and DS3 DTT (first line, and additional lines)). If this is not your understanding, or if your dispute pertains to other USOCs/facilities, please let us know as soon as possible.

² That said, we disagree that Qwest would not otherwise have the right to "true-up" for rates that had actually increased as a result of the UT 138 order. First, the plain meaning (and common sense application) of the Commission's "subject to refund" order applies bilaterally, and not unilaterally. As such, Qwest would be obligated

In any event, we agree with you that Qwest had nonrecurring charges for LIS trunks in place at the time that ComSpan ordered such services.³ We further agree with you that the Commission has reduced those rates, and that to the extent that Qwest had assessed the old rates on ComSpan, the UT 138 refund process would be used to refund the difference between those rates. However, that is not the situation at issue. As stated, here Qwest did *not bill* for the services, and it is entitled, under both the interconnection agreement with ComSpan and the Oregon Administrative Rules, to correct that underbilling.⁴

Moreover, your argument that Qwest somehow cannot correct the underbilling essentially means you believe it is acceptable for ComSpan to receive the benefit of these interconnection facilities, but *not pay for them*. This is clearly inappropriate, and is a reason the Commission has its overbilling and underbilling rules (OAR 860-021-0135). Further still, there is nothing in the interconnection agreement between ComSpan and Qwest that would prohibit such underbilling correction. Finally, we have no doubt that if the situation were the opposite, and ComSpan had discovered a Qwest *overbilling*, it would vigorously demand the correction of the overbilling.

We also agree that whether Qwest is permitted to assess any NRCs on LIS trunks, and whether Qwest is permitted to back-bill for previously-unbilled services, are subject to ComSpan's interconnection agreement with Qwest, *to the extent that the interconnection agreement specifically addresses such issues*. If the interconnection agreement does not specifically address these issues, which appears to be the case with ComSpan's agreement with Qwest, then OAR 860-021-0135 applies to the underbilling at issue. There is nothing in the interconnection agreement that would prohibit Qwest from correcting an underbilling (or for ComSpan to ask to correct an overbilling). We further agree that "these are not matters to be resolved in [UT] 138/139."

In closing, please advise us if ComSpan has actually paid the newly-billed LIS trunks that had not been previously-billed, or whether it has withheld the amounts at issue in dispute.

to refund a charge where its final approved rate was *lower* than its interim rate. Conversely, the CLEC would be obligated to refund a rate where the final approved rate was *higher* than the interim rate. That is certainly the standard in the telecommunications industry. Moreover, your position would mean that CLECs would benefit from rates that were decreased, but would not be liable for rates that were increased. Clearly, that is not a fair or equitable (or common sense) result. Finally, as stated, this is a moot issue in any event because this is not a situation in which the Commission-approved rate is higher than the interim rate billed; rather, it is a situation in which Qwest did not bill for these facilities. Accordingly, since this is not the result of the refund, but rather, from Qwest's lack of billing in the past, Qwest does not believe the UT 138 refund-dispute resolution procedures apply here.

³ As stated, we understand the facilities are DTT, and not unbundled dedicated interoffice transport (UDIT), as you indicate in your letter. (See fn. 1.) If this is incorrect, please let us know as soon as possible.

⁴ We do acknowledge that because this was an underbilling correction, and not really a "true-up" (ComSpan refund) situation, interest should not have been applied. (We understand that of the \$24,604.61 that we believe is in dispute, \$3,757.34 represented interest. Thus, Qwest agrees to eliminate the \$3,757.34 interest portion.)

Exhibit 3

From: Lisa Rackner
To: Duarte, Alex
Date: 11/4/03 4:36PM
Subject: RE: ComspanUSA

Alex: Thanks for your help on this. However, I am not certain I understand your second comment. Are you suggesting that ComSpan should have worked through the Wholesale account reps on the refund issue we have raised?

Lisa Rackner
Ater Wynne, LLP
222 SW Columbia
Suite 1800
Portland, OR 97201
Phone: (503) 226-8693
Fax: (503) 226-0079

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>>> "Duarte, Alex" <Alex.Duarte@qwest.com> 11/04/03 04:33PM >>>
Lisa-

Thanks for the email. I will instruct Qwest's Wholesale department not to disconnect anything while this dispute is pending. However, I also kindly request that your client work through its Wholesale account representatives on any disputes in the normal course of business regarding billing issues. Thanks. Alex

Alex M. Duarte
Corporate Counsel
Qwest
421 SW Oak Street, Suite 810
Portland, OR 97204
503-242-5623
503-242-8589 (fax)
Alex.Duarte@qwest.com

-----Original Message-----

From: Lisa Rackner [<mailto:lfr@aterwynne.com>]
Sent: Tuesday, November 04, 2003 3:50 PM
To: aduarte@notes.uswc.uswest.com
Cc: Debbie.hankins@comspanusa.net; john.stadter@comspanusa.net
Subject: ComspanUSA

Alex:

Last week I sent you a letter on behalf of my client, ComSpan, in which I stated that ComSpan was protesting the LIS trunk NRCs that Qwest had netted out against ComSpan's 138/139 refund. Today, ComSpan sent me a copy of a letter from Qwest in which Qwest has threatened to disconnect ComSpan's service for failure to pay these LIS trunk charges. (The

letter also states that other sums have not been paid, but my client assure me that those other sums have in fact been paid.)

Based upon the date of Qwest's disconnection letter, I suspect that at the time it was written, the writer had not been notified that ComSpan was disputing the relevant amounts. I would ask that you clarify the situation send assurances to both me and ComSpan that Qwest will not proceed with any disconnection actions.

I am having my assistant fax you a copy of the disconnection letter. It was sent by Norma Helentjaris.

Please call me immediately if you have any questions.

Lisa Rackner
Ater Wynne, LLP
222 SW Columbia
Suite 1800
Portland, OR 97201
Phone: (503) 226-8693
Fax: (503) 226-0079

This e-mail contains information from the law firm of Ater Wynne LLP which may be confidential and/or legally privileged. This message is intended for the individual or entity named above. If you are not the intended recipient, please do not read, copy, use, or disclose this communication to others; also, please notify the sender by replying to this message and then delete it from your system. Thank you.

CC: Debbie.hankins@comspanusa.net; John Stadter

Exhibit 4

January 28, 2004

Director-Interconnection Compliance
Qwest Corporation – f/k/a US West Communications, Inc.
1801 California, Room 2410
Denver, Colorado 80202

General Counsel - Interconnection
Qwest Corporation – f/k/a US West Communications, Inc.
1801 California, Suite 5100
Denver, Colorado 80202

Alex M. Duarte
Corporate Counsel
Qwest Corporation
421 Oak Street, Suite 810
Portland, Oregon 97204

**Re: ComSpanUSA's 10 day Notice of Intent to File Complaint to Enforce
Interconnection Agreement**

Dear Qwest:

We are writing to provide you 10 days Notice of Intent to File a Complaint to Enforce the Interconnection Agreement ("ICA") between our client, Wantel Incorporated d/b/a ComSpanUSA ("ComSpan"), and Qwest Corporation. This notice is sent to you pursuant to OAR 860-016-0050(3). The dispute arises out of an attempt by Qwest Corporation ("Qwest") to collect previously-unbilled nonrecurring charges for Local Interconnection Service trunks ("LIS Trunks").

Initially, Qwest attempted to collect the nonrecurring charges for the LIS Trucks through a "true-up" process authorized by the Oregon Public Utility Commission's (the "Commission") orders in Docket No. UT 138/139. See Exhibit 1, Rackner Letter to Qwest. After discussions and correspondence between respective counsel, the parties have agreed that the UT 138/139 Docket is not the proper proceeding to resolve the billing dispute for LIS Trunks. See Exhibit 2, Duarte Letter to ComSpan and Rackner.

Qwest is attempting to collect certain nonrecurring charges for LIS Trunks. These charges were incurred in February, 2001. Qwest claims that the ICA is silent regarding whether it is permitted to "back-bill" for charges that are nearly 3 years old. As such, Qwest contends it can impose general rules that govern residential customer transactions. See Exhibit 2, citing OAR 860-021-0135.

S E A T T L E

P O R T L A N D

Qwest Corporation
January 28, 2004
Page 2

Qwest's contention is not supported by the ICA. There is no question that the ICA is the sole document governing the dispute between ComSpan and Qwest. Section XXXIV (N) States as follows:

This Agreement constitutes the entire agreement between the Parties and supercedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

This Section makes clear that the parties intended that the ICA would govern all actions between them. Qwest's attempts to graft onto this agreement rules arising under OAR 860-021-0135 are misplaced. Those rules do not apply in commercial settings where the parties have an operative ICA in place.

The ICA bars the collection of nonrecurring fees for the LIS Trunks. The ICA specifically incorporates an audit process in Section XXIV. That audit process is the avenue in which the parties may review billing questions. An audit is defined as a "...comprehensive review of... data used in the billing process for services performed and facilities provided under this Agreement..." See Section XXIV. Any review of the nonrecurring charges for LIS Trunks falls under this definition, as it constitutes a complete review of facilities provided to ComSpan by Qwest. Further, this same section states as follows:

All transactions under this Agreement which are over 24 months old will be considered *accepted* and no longer subject to Audit.

See Section XXIV (G) (emphasis added). To the extent Qwest is attempting to audit and review charges that are beyond 24 months old, the parties have agreed that those charges are "accepted." The ICA provides for a 24-month time bar in order to promote efficiency and finality for charges. It forces the parties to address billing disputes immediately within a reasonable period of time. Section XXIV applies equally to ComSpan in seeking refunds for overpayments it may have made on items covered in the ICA, as it does for Qwest's under-billing.

The parties have attempted to resolve this dispute between them to no avail. It is for this reason that ComSpan seeks to enforce the above-referenced sections to the ICA. ComSpan will not be seeking temporary injunctive relief.

Very truly yours,

ATER WYNNE LLP



Joel Paisner

cc: John Stadter, CEO ComSpanUSA

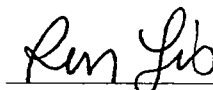
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **COMPLAINT TO ENFORCE THE INTERCONNECTION AGREEMENT BETWEEN QWEST CORPORATION AND WANTEL TELECOMMUNICATIONS, INC.** was served via the methods indicated on the following parties on the date stated below:

Qwest Corporation	<input type="checkbox"/>	Hand Delivered
Director – Interconnection Compliance	<input checked="" type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
1801 California, Rm 2410	<input type="checkbox"/>	Overnight Mail
Denver, CO 80202	<input type="checkbox"/>	Facsimile
Qwest Corporation Law Dept.	<input type="checkbox"/>	Hand Delivered
General Counsel – Interconnection	<input checked="" type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
1801 California, Suite 5100	<input type="checkbox"/>	Overnight Mail
Denver, CO 80202	<input type="checkbox"/>	Facsimile
CT Corporation System	<input type="checkbox"/>	Hand Delivered
388 State St., Suite 420	<input checked="" type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
Salem, OR 97301	<input type="checkbox"/>	Overnight Mail
Fax: (503) 566-9181	<input checked="" type="checkbox"/>	Facsimile
Alex M. Duarte	<input type="checkbox"/>	Hand Delivered
Qwest Corporation	<input checked="" type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
421 SW Oak St., Ste. 810	<input type="checkbox"/>	Overnight Mail
Portland, OR 97204	<input checked="" type="checkbox"/>	Facsimile
Fax: (503) 242-8589		
Oregon Public Utility Commission	<input type="checkbox"/>	Hand Delivered
Administrative Hearings Division	<input checked="" type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
PO Box 2148	<input type="checkbox"/>	Overnight Mail
Salem, OR 97308-2148	<input checked="" type="checkbox"/>	Facsimile
Fax: (503) 378-6163		

DATED: January 28, 2004

ATER WYNNE LLP



Karen M. Lis

Exhibit 1

October 27, 2003

VIA U.S. MAIL

Alex M. Duarte
Senior Attorney, Policy & Law Department
Qwest Corporation
421 SW Oak Street
Portland, OR 97204

Re: UT 138/139 Refunds

Dear Mr. Duarte:

I am writing on behalf of our client, ComSpan USA (fka Wantel, Inc.) (hereinafter "ComSpan") regarding Qwest's calculation of the refund due to ComSpan pursuant to the orders of the Oregon Public Utilities Commission ("Commission") in Docket Nos. UT 138/139. Based upon a review of its bills, and Qwest's responses to inquiries made by ComSpan representatives, ComSpan believes that Qwest has netted out against its refund previously- unbilled nonrecurring charges for Local Interconnection Service ("LIS") trunks. It appears from Qwest's responses to ComSpan's inquiries that Qwest believes that this netting represents a "true-up" authorized by the Commission's orders in UT 138/139.

ComSpan objects to the LIS trunk charges and Qwest's attempt to net them against ComSpan's refund. There is nothing in the Commission's orders in UT 138/139, or in any other proceeding, allowing Qwest to use the 138/139 refund process to "true-up" charges that may have increased through the UT 138/139 proceeding. On the contrary, in April of 1997, when the Commission allowed Qwest's proposed nonrecurring charges to go into effect, it did so subject to refund, and not subject to "true-up."

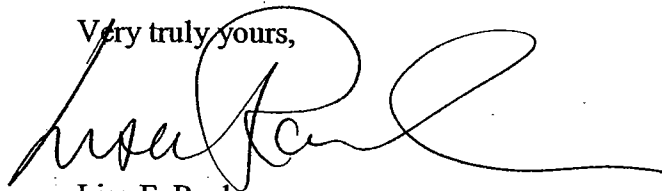
Qwest did have a nonrecurring charge for unbundled dedicated interoffice transport ("UDIT") rate in place at the time ComSpan may have ordered that service. That rate has been reduced by the Commission in this docket. To the extent that Qwest assessed the old rate on carriers, the UT 138/139 refund process should be used to refund the difference between those rates. Instead, Qwest is applying the new lower UDIT NRC to LIS trunks for which it had not previously applied any NRC. Thus, it appears that Qwest is attempting to use the refund process to correct what it now perceives as past deficiencies in its billing practices.

Alex M. Duarte
October 27, 2003
Page 2

ComSpan objects to this improper use of the refund process. Questions as to (1) whether Qwest is permitted to assess any NRCs on LIS trunks, and (2) whether Qwest is permitted to back-bill for previously unbilled services, are subject ComSpan's interconnection agreement with Qwest. These are not matters to be resolved in 138/139.

In the event that this dispute is not resolved within 10 days from the date of this letter, ComSpan intends to file a complaint with the Commission.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Lisa F. Rackner', with a large, stylized flourish extending to the right.

Lisa F. Rackner

Exhibit 2

Qwest
421 SW Oak Street
Suite 810
Portland, Oregon 97204
Telephone: 503-242-5623
Facsimile: 503-242-8589
Alex.Duarte@qwest.com



Alex M. Duarte
Corporate Counsel

VIA FACSIMILE AND U. S. MAIL

November 13, 2003

Lisa Rackner, Esq.
Ater Wynne LLP
222 SW Columbia
Portland, OR 97201-6618

Re: ComSpan (Wantel)/Qwest DTT Billing Issue- Response to 10/27/03 Letter

Dear Lisa:

I have received your October 27, 2003 letter on behalf of your client, ComSpan USA (fka Wantel) ("ComSpan"), about certain billing disputes regarding previously unbilled nonrecurring charges (NRCs) for Local Interconnection Services (LIS) trunks that Qwest has previously provided to ComSpan. We understand that the amount at issue is \$24,604.51. If you do not believe that this is the amount in dispute, please advise us as soon as possible.

As you know from our recent discussions with you, we agree that this dispute is not really a "UT 138 refund issue." This is so because, as we explained, it was merely in the process of calculating the UT 138 refund that we became aware these LIS trunks had been "zero (0) rated" (i.e., not billed) for at least three years.¹ Thus, in calculating the UT 138 refund, the billing group assumed that the refund included a "true-up" for LIS trunks that had not been billed (i.e., that had been zero rated). However, we have now confirmed (and thus agree with you) that the UT 138 refund and the LIS trunk zero rating/back-billing adjustment are two completely different issues. That is, the only connection between the two issues is that Qwest's billing department corrected the billing for LIS trunks *in the process of calculating the UT 138 refund*. Clearly, this is not a UT 138 issue, but merely an issue that resulted from Qwest's inadvertent failure to bill for LIS trunks, and its correction of same in the process of calculating the UT 138 refund.²

¹ Our understanding is that the zero-rating had been with respect to four different USOCs (Uniform Service Order Codes) for Direct Trunk Transport (DTT) facilities. These four USOCs were NR6UE, NR6UF, NR6UG, and NR6UH (installation of DS1 and DS3 DTT (first line, and additional lines)). If this is not your understanding, or if your dispute pertains to other USOCs/facilities, please let us know as soon as possible.

² That said, we disagree that Qwest would not otherwise have the right to "true-up" for rates that had actually increased as a result of the UT 138 order. First, the plain meaning (and common sense application) of the Commission's "subject to refund" order applies bilaterally, and not unilaterally. As such, Qwest would be obligated

In any event, we agree with you that Qwest had nonrecurring charges for LIS trunks in place at the time that ComSpan ordered such services.³ We further agree with you that the Commission has reduced those rates, and that to the extent that Qwest had assessed the old rates on ComSpan, the UT 138 refund process would be used to refund the difference between those rates. However, that is not the situation at issue. As stated, here Qwest did *not bill* for the services, and it is entitled, under both the interconnection agreement with ComSpan and the Oregon Administrative Rules, to correct that underbilling.⁴

Moreover, your argument that Qwest somehow cannot correct the underbilling essentially means you believe it is acceptable for ComSpan to receive the benefit of these interconnection facilities, but *not pay for them*. This is clearly inappropriate, and is a reason the Commission has its overbilling and underbilling rules (OAR 860-021-0135). Further still, there is nothing in the interconnection agreement between ComSpan and Qwest that would prohibit such underbilling correction. Finally, we have no doubt that if the situation were the opposite, and ComSpan had discovered a Qwest *overbilling*, it would vigorously demand the correction of the overbilling.

We also agree that whether Qwest is permitted to assess any NRCs on LIS trunks, and whether Qwest is permitted to back-bill for previously-unbilled services, are subject to ComSpan's interconnection agreement with Qwest, *to the extent that the interconnection agreement specifically addresses such issues*. If the interconnection agreement does not specifically address these issues, which appears to be the case with ComSpan's agreement with Qwest, then OAR 860-021-0135 applies to the underbilling at issue. There is nothing in the interconnection agreement that would prohibit Qwest from correcting an underbilling (or for ComSpan to ask to correct an overbilling). We further agree that "these are not matters to be resolved in [UT] 138/139."

In closing, please advise us if ComSpan has actually paid the newly-billed LIS trunks that had not been previously-billed, or whether it has withheld the amounts at issue in dispute.

to refund a charge where its final approved rate was *lower* than its interim rate. Conversely, the CLEC would be obligated to refund a rate where the final approved rate was *higher* than the interim rate. That is certainly the standard in the telecommunications industry. Moreover, your position would mean that CLECs would benefit from rates that were decreased, but would not be liable for rates that were increased. Clearly, that is not a fair or equitable (or common sense) result. Finally, as stated, this is a moot issue in any event because this is not a situation in which the Commission-approved rate is higher than the interim rate billed; rather, it is a situation in which Qwest did not bill for these facilities. Accordingly, since this is not the result of the refund, but rather, from Qwest's lack of billing in the past, Qwest does not believe the UT 138 refund-dispute resolution procedures apply here.

³ As stated, we understand the facilities are DTT, and not unbundled dedicated interoffice transport (UDIT), as you indicate in your letter. (See fn. 1.) If this is incorrect, please let us know as soon as possible.

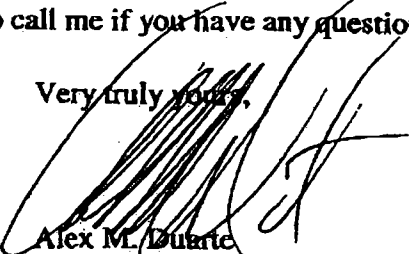
⁴ We do acknowledge that because this was an underbilling correction, and not really a "true-up" (ComSpan refund) situation, interest should not have been applied. (We understand that of the \$24,604.61 that we believe is in dispute, \$3,757.34 represented interest. Thus, Qwest agrees to eliminate the \$3,757.34 interest portion.)

Letter to Lisa Rackner, Esq.
November 13, 2003
Page 3

Thank you for your attention to these matters. We expect that ComSpan will work with its account counterparts in Qwest's Wholesale department to accurately adjust the bills to reflect the appropriate billing for the LIS trunks that Qwest has provided to ComSpan since at least 2000 in Oregon. Of course, the interconnection agreement requires business-to-business discussions in any event. Qwest believes that such required business-to-business processes should be employed in an attempt to avoid needless and costly litigation.

In the meantime, please feel free to call me if you have any questions about these issues.

Very truly yours,



Alex M. Duarte

cc Don Mason

BEFORE THE
OREGON PUBLIC UTILITIES COMMISSION

WANTEL, INC. doing business as ComSpanUSA <i>et al.</i> ,	Docket No.
Complainants,	AFFIDAVIT OF JOEL PAISNER IN SUPPORT OF WANTEL TELECOMMUNICATIONS D/B/A COMSPANUSA'S COMPLAINT FOR ENFORCEMENT OF INTERCONNECTION AGREEMENT
v.	
QWEST CORPORATION, an Oregon Corporation,	
Respondent.	

STATE OF Washington)
) ss.
County of King)

I, Joel Paisner, being first duly sworn, depose and say:

1. I am an attorney with the law firm of Ater Wynne LLP and represent Wantel Telecommunications, d/b/a ComSpanUSA. I make this affidavit on my personal knowledge.
2. A true and correct copy of the Interconnection Agreement between ComSpanUSA and Qwest Corporation ("Qwest") dated November 16, 1999 is attached as Exhibit 5 to the complaint.

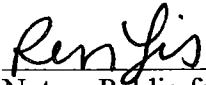
3. A true and correct copy of the 10 day Notice to Qwest that ComSpanUSA sent pursuant to ORS 860-016-0050 is attached to the complaint as Exhibit 4.

DATED this 22nd day of April, 2004.

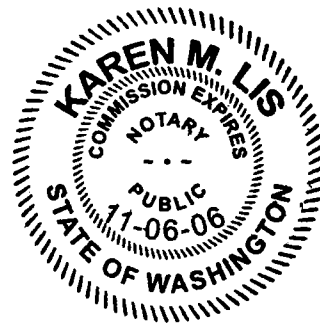


Joel Paisner

SUBSCRIBED AND SWORN TO before me this 22nd day of April, 2004.



Notary Public for Washington
My Commission expires: 11-6-06



CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of April, 2004, served the true and correct original, along with five (5) copies, of the foregoing document upon the OPUC, via the methods noted below, properly addressed as follows:

Oregon Public Utility Commission	<input type="checkbox"/>	Hand Delivered
Administrative Hearings Division	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
550 Capitol Street NE, Suite 215	<input checked="" type="checkbox"/>	Overnight Mail
Salem, OR 97301	<input type="checkbox"/>	Facsimile
	<input type="checkbox"/>	Email mailto:Carol.Hulse@state.or.us
Fax: (503) 378-6163		

I hereby certify that I have this 22nd day of April, 2004, served a true and correct copy of the foregoing document upon parties of record, via the methods noted below, properly addressed as follows:

Qwest Corporation	<input type="checkbox"/>	Hand Delivered
Director – Interconnection Compliance	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
1801 California, Rm 2410	<input checked="" type="checkbox"/>	Overnight Mail
Denver, CO 80202	<input type="checkbox"/>	Facsimile

Qwest Corporation Law Dept.	<input type="checkbox"/>	Hand Delivered
General Counsel – Interconnection	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
1801 California, Suite 5100	<input checked="" type="checkbox"/>	Overnight Mail
Denver, CO 80202	<input type="checkbox"/>	Facsimile

CT Corporation System	<input type="checkbox"/>	Hand Delivered
388 State St., Suite 420	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
Salem, OR 97301	<input checked="" type="checkbox"/>	Overnight Mail

Fax: (503) 566-9181	<input type="checkbox"/>	Facsimile
---------------------	--------------------------	-----------

Alex M. Duarte	<input type="checkbox"/>	Hand Delivered
Qwest Corporation	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
421 SW Oak St., Ste. 810	<input checked="" type="checkbox"/>	Overnight Mail
Portland, OR 97204	<input type="checkbox"/>	Facsimile
Fax: (503) 242-8589	<input type="checkbox"/>	Facsimile

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 22nd day of April, 2004.



 Karen M. Lis

BEFORE THE
OREGON PUBLIC UTILITIES COMMISSION

WANTEL, INC. doing business as
ComSpanUSA *et al.*,

Complainants,

v.

QWEST CORPORATION, an Oregon
Corporation,

Respondent.

Docket No.

**AFFIDAVIT OF JOHN STADTER IN
SUPPORT OF WANTEL
TELECOMMUNICATIONS D/B/A
COMSPANUSA'S COMPLAINT FOR
ENFORCEMENT OF
INTERCONNECTION AGREEMENT
[REDACTED VERSION]**

STATE OF OREGON)
) ss.
County of Douglas)

I, John Stadter, being first duly sworn, depose and say:

1. I am the Chief Executive Officer of Wantel Telecommunications, d/b/a ComSpanUSA. I make this affidavit on my personal knowledge.

2. ComSpanUSA entered into an Interconnection Agreement with Qwest Corporation ("Qwest") dated November 16, 1999. As part of this Interconnection Agreement, both parties agreed that any billing disputes over 24 months old would be considered "accepted" by the parties, and not considered due and owing.

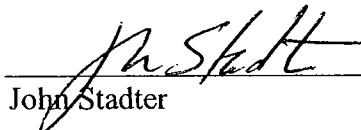
3. The dispute that forms the basis for this Complaint arose when Qwest, as part of the Oregon Public Utility Commission's ("OPUC") UT 138/139 refund process, claimed that in order to "true-up" amounts, our company would have to pay Qwest \$24,604.51. See attached November 13, 2003 letter, Exhibit 1.

4. Eventually Qwest agreed that the UT 138/139 refund process was not the appropriate place in which to collect the amounts it asserts are due.

5. Qwest continues to claim it is owed \$24,604.51. This amount is based on Qwest's claim that ComSpanUSA owes nonrecurring charges for Local Interconnection Service trunks ("LIS Trunks"). These charges were initially incurred in February, 2001. See Exhibit 2, the spreadsheet provided by Qwest showing the nonrecurring charges for the LIS Trunks. Incidentally, it appears that the initial amount of the nonrecurring charges for the LIS Trunks was \$15,794.05, and the total amount claimed now is for interest.

6. Attached to this affidavit is a series of emails my company received from Qwest describing the amounts due. See Exhibit 3, a true and correct copy of the email sent to CommSpanUSA. As you can see, the original date when we were notified that the nonrecurring fees for the LIS Trunks were due was on October 1, 2003.

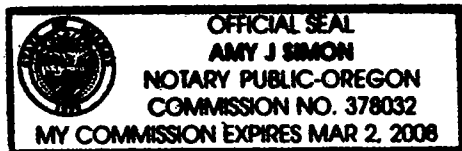
DATED this 20 day of April, 2004.



John Stadter

SUBSCRIBED AND SWORN TO before me this 20 day of April, 2004.

Amy Simon
Notary Public for Oregon
My Commission expires: 3-208



CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of April, 2004, served the true and correct original, along with five (5) copies, of the foregoing document upon the OPUC, via the methods noted below, properly addressed as follows:

Oregon Public Utility Commission
Administrative Hearings Division
550 Capitol Street NE, Suite 215
Salem, OR 97301

Fax: (503) 378-6163

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail
 Facsimile
 Email Cheryl.Walker@state.or.us

I hereby certify that I have this 26th day of April, 2004, served a true and correct copy of the foregoing document upon parties of record, via the methods noted below, properly addressed as follows:

Alex M. Duarte
Qwest Corporation
421 SW Oak St., Ste. 810
Portland, OR 97204
Fax: (503) 242-8589

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail
 Facsimile
 Email aduarte@qwest.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 26th day of April, 2004.



Karen M. Lis

Exhibit 1

Qwest
421 SW Oak Street
Suite 810
Portland, Oregon 97204
Telephone: 503-242-5623
Facsimile: 503-242-8589
Alex.Duarte@qwest.com



Alex M. Duarte
Corporate Counsel

VIA FACSIMILE AND U. S. MAIL

November 13, 2003

Lisa Rackner, Esq.
Ater Wynne LLP
222 SW Columbia
Portland, OR 97201-6618

Re: ComSpan (Wantel)/Qwest DTT Billing Issue- Response to 10/27/03 Letter

Dear Lisa:

I have received your October 27, 2003 letter on behalf of your client, ComSpan USA (fka Wantel) ("ComSpan"), about certain billing disputes regarding previously unbilled nonrecurring charges (NRCs) for Local Interconnection Services (LIS) trunks that Qwest has previously provided to ComSpan. We understand that the amount at issue is \$24,604.51. If you do not believe that this is the amount in dispute, please advise us as soon as possible.

As you know from our recent discussions with you, we agree that this dispute is not really a "UT 138 refund issue." This is so because, as we explained, it was merely in the process of calculating the UT 138 refund that we became aware these LIS trunks had been "zero (0) rated" (i.e., not billed) for at least three years.¹ Thus, in calculating the UT 138 refund, the billing group assumed that the refund included a "true-up" for LIS trunks that had not been billed (i.e., that had been zero rated). However, we have now confirmed (and thus agree with you) that the UT 138 refund and the LIS trunk zero rating/back-billing adjustment are two completely different issues. That is, the only connection between the two issues is that Qwest's billing department corrected the billing for LIS trunks *in the process of calculating the UT 138 refund*. Clearly, this is not a UT 138 issue, but merely an issue that resulted from Qwest's inadvertent failure to bill for LIS trunks, and its correction of same in the process of calculating the UT 138 refund.²

¹ Our understanding is that the zero-rating had been with respect to four different USOCs (Uniform Service Order Codes) for Direct Trunk Transport (DTT) facilities. These four USOCs were NR6UE, NR6UF, NR6UG, and NR6UH (installation of DS1 and DS3 DTT (first line, and additional lines)). If this is not your understanding, or if your dispute pertains to other USOCs/facilities, please let us know as soon as possible.

² That said, we disagree that Qwest would not otherwise have the right to "true-up" for rates that had actually increased as a result of the UT 138 order. First, the plain meaning (and common sense application) of the Commission's "subject to refund" order applies bilaterally, and not unilaterally. As such, Qwest would be obligated

In any event, we agree with you that Qwest had nonrecurring charges for LIS trunks in place at the time that ComSpan ordered such services.³ We further agree with you that the Commission has reduced those rates, and that to the extent that Qwest had assessed the old rates on ComSpan, the UT 138 refund process would be used to refund the difference between those rates. However, that is not the situation at issue. As stated, here Qwest did *not bill* for the services, and it is entitled, under both the interconnection agreement with ComSpan and the Oregon Administrative Rules, to correct that underbilling.⁴

Moreover, your argument that Qwest somehow cannot correct the underbilling essentially means you believe it is acceptable for ComSpan to receive the benefit of these interconnection facilities, but *not pay for them*. This is clearly inappropriate, and is a reason the Commission has its overbilling and underbilling rules (OAR 860-021-0135). Further still, there is nothing in the interconnection agreement between ComSpan and Qwest that would prohibit such underbilling correction. Finally, we have no doubt that if the situation were the opposite, and ComSpan had discovered a Qwest *overbilling*, it would vigorously demand the correction of the overbilling.

We also agree that whether Qwest is permitted to assess any NRCs on LIS trunks, and whether Qwest is permitted to back-bill for previously-unbilled services, are subject to ComSpan's interconnection agreement with Qwest, *to the extent that the interconnection agreement specifically addresses such issues*. If the interconnection agreement does not specifically address these issues, which appears to be the case with ComSpan's agreement with Qwest, then OAR 860-021-0135 applies to the underbilling at issue. There is nothing in the interconnection agreement that would prohibit Qwest from correcting an underbilling (or for ComSpan to ask to correct an overbilling). We further agree that "these are not matters to be resolved in [UT] 138/139."

In closing, please advise us if ComSpan has actually paid the newly-billed LIS trunks that had not been previously-billed, or whether it has withheld the amounts at issue in dispute.

to refund a charge where its final approved rate was *lower* than its interim rate. Conversely, the CLEC would be obligated to refund a rate where the final approved rate was *higher* than the interim rate. That is certainly the standard in the telecommunications industry. Moreover, your position would mean that CLECs would benefit from rates that were decreased, but would not be liable for rates that were increased. Clearly, that is not a fair or equitable (or common sense) result. Finally, as stated, this is a moot issue in any event because this is not a situation in which the Commission-approved rate is higher than the interim rate billed; rather, it is a situation in which Qwest did not bill for these facilities. Accordingly, since this is not the result of the refund, but rather, from Qwest's lack of billing in the past, Qwest does not believe the UT 138 refund dispute resolution procedures apply here.

³ As stated, we understand the facilities are DTT, and not unbundled dedicated interoffice transport (UDIT), as you indicate in your letter. (See fn. 1.) If this is incorrect, please let us know as soon as possible.

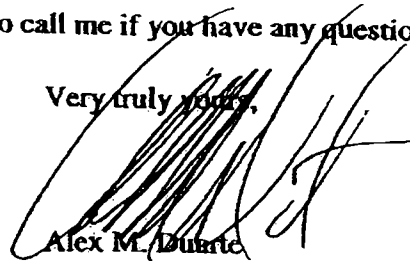
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Letter to Lisa Rackner, Esq.
November 13, 2003
Page 3

Thank you for your attention to these matters. We expect that ComSpan will work with its account counterparts in Qwest's Wholesale department to accurately adjust the bills to reflect the appropriate billing for the LIS trunks that Qwest has provided to ComSpan since at least 2000 in Oregon. Of course, the interconnection agreement requires business-to-business discussions in any event. Qwest believes that such required business-to-business processes should be employed in an attempt to avoid needless and costly litigation.

In the meantime, please feel free to call me if you have any questions about these issues.

Very truly yours,



Alex M. Duarte

cc Don Mason

Exhibit 2

From: "John Stadter" <john.stadter@comspanusa.net>
To: "Lisa Rackner" <lfr@aterwynne.com>
Date: 10/5/03 11:55AM
Subject: FW: LATE PAYMENTS

Lisa,

Here is a spreadsheet on the charges. As you will see it all relates to Feb 2001.

John Stadter
President & CEO
541 229 2102
541 672 9899

-----Original Message-----

From: Debbie Hankins [mailto:debbie.hankins@comspanusa.net]
Sent: Thursday, October 02, 2003 1:56 PM
To: 'John Stadter'
Subject: FW: LATE PAYMENTS

John

I received this from Norma about the 24,000 that they say we owe, thought you would like to see the spreadsheet showing where they came up with those figures.

-----Original Message-----

From: Norma Helentjaris [mailto:nhelent@qwest.com]
Sent: Thursday, October 02, 2003 12:04 PM
To: Debbie Hankins
Subject: RE: LATE PAYMENTS

Debbie,

Here is the spreadsheet we worked from for the Oregon Cost Docket debits.

(See attached file: WNLL-OR-CD 2003.xls)

"Debbie Hankins" <debbie.hankins@comspanusa.net> on 10/02/2003 08:27:53 AM

To: "Norma Helentjaris" <nhelent@qwest.com>
cc:

Subject: RE: LATE PAYMENTS

Norma

That would help so much if you could provide that spreadsheet. Thank you

-----Original Message-----

From: Norma Helentjaris [mailto:nhelent@qwest.com]
Sent: Thursday, October 02, 2003 7:57 AM
To: Debbie Hankins
Subject: RE: LATE PAYMENTS

Debbie,

I have ordered a duplicate of the 03097-OR 4/7/03 invoice to be sent to you . It will be overnighted and you should have it by the first of next week at the latest. I also could provide a spreadsheet for the Oregon Cost Docket that shows the trunk orders that the charges were based on if that would help.

Thank You
Norma Helentjaris
Qwest
515 558-1083

"Debbie Hankins" <debbie.hankins@comspanusa.net> on 10/01/2003 01:00:14 PM

To: "'Norma Helentjaris'" <nhelent@qwest.com>
cc:

Subject: RE: LATE PAYMENTS

Yes please resend me the bill for INV 03097-OR. Will let my boss know about the other.

-----Original Message-----

From: Norma Helentjaris [mailto:nhelent@qwest.com]
Sent: Wednesday, October 01, 2003 12:25 PM
To: Debbie Hankins
Subject: RE: LATE PAYMENTS

Debbie,

The \$24,604.00 on BAN 503 L04-0013 013 is for the Oregon Cost Docket. I will forward a separate E-Mail that I had sent on that amount earlier. If you do not plan to pay the amount right away then you need to file dispute with us as to why you do not think you should pay it. You said you didn't receive the INV 03097-OR 4-7-03 for \$1,255.71. Do you mean you didn't receive the bill? Do you need a duplicate sent. Let me know so that when can get these problems taken care of right away.

Thank You
Norma Helentjaris
Qwest
515 558-1083

"Debbie Hankins" <debbie.hankins@comspanusa.net> on 10/01/2003 11:08:48 AM

To: "Norma Helentjaris" <nhelent@qwest.com>

cc:

Subject: RE: LATE PAYMENTS

SEE BELOW FOR STATUS

-----Original Message-----

From: Norma Helentjaris [mailto:nhelent@qwest.com]

Sent: Wednesday, October 01, 2003 10:27 AM

To: debbie.hankins@comspanusa.net

Cc: dsevedg@qwest.com

Subject: LATE PAYMENTS

Debbie,

We still have 2 BANs with outstanding balances that need to be taken care of to prevent further collection action. The BANs and amounts past due are as follows:

BAN 503 L04-0013 013 INV 03219-OR 8/7/03 for \$24,604.00
WE PAID 1,575.83 WE ARE STILL RESEARCHING WHY THE LARGE EXPENSE.

BAN 503 L04-0013 013 INV 03097-OR 4/7/03 for \$ 1,255.71
THIS IS AN OLD ONE DON'T SHOW I RECEIVED.

BAN 503 L08-0002 002 INV 03188-OR 7/7/03 for \$ 2,107.25
THIS IS GETTING PAID THIS WEEK, SORRY FOR LETTING IT SLIP

Please let me know when we can expect payments for these past due balances. If the checks have already been sent I would need the draft numbers, amounts of the drafts, and dates they were sent so that I can check to see how they were processed.

Any questions just let me know.

Thank you

Norma Helentjaris

Qwest

515 558-1083

Qwest Non-recurring
LIS Charges
Spreadsheet Redacted
Pages 1-2

Qwest Compound
Interest Spreadsheet
Redacted
Pages 1-8

Exhibit 3

From: "John Stadter" <john.stadter@comspanusa.net>
To: "Lisa Rackner" <lfr@aterwynne.com>
Date: 10/5/03 11:55AM
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President & CEO
541 229 2102
541 672 9899

-----Original Message-----

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cc:

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Thank You
Norma Helentjaris
Qwest
515 558-1083

"Debbie Hankins" <debbie.hankins@comspanusa.net> on 10/01/2003 01:00:14 PM

To: "Norma Helentjaris" <nhelent@qwest.com>
cc:

Subject: RE: LATE PAYMENTS

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-----Original Message-----

From: Norma Helentjaris [mailto:nhelent@qwest.com]
Sent: Wednesday, October 01, 2003 12:25 PM
To: Debbie Hankins
Subject: RE: LATE PAYMENTS

Debbie,

The \$24,604.00 on BAN 503 L04-0013 013 is for the Oregon Cost Docket. I will forward a separate E-Mail that I had sent on that amount earlier. If you do not plan to pay the amount right away then you need to file dispute with us as to why you do not think you should pay it. You said you didn't receive the INV 03097-OR 4-7-03 for \$1,255.71. Do you mean you didn't receive the bill? Do you need a duplicate sent. Let me know so that when can get these problems taken care of right away.

Thank You
Norma Helentjaris
Qwest
515 558-1083

"Debbie Hankins" <debbie.hankins@comspanusa.net> on 10/01/2003 11:08:48 AM

To: "Norma Helentjaris" <nhelent@qwest.com>
cc:

Subject: RE: LATE PAYMENTS

SEE BELOW FOR STATUS

-----Original Message-----

From: Norma Helentjaris [mailto:nhelent@qwest.com]
Sent: Wednesday, October 01, 2003 10:27 AM
To: debbie.hankins@comspanusa.net
Cc: dsevedg@qwest.com
Subject: LATE PAYMENTS

Debbie,

We still have 2 BANs with outstanding balances that need to be taken care of to prevent further collection action. The BANs and amounts past due are as follows:

BAN 503 L04-0013 013 INV 03219-OR 8/7/03 for \$24,604.00
WE PAID 1,575.83 WE ARE STILL RESEARCHING WHY THE LARGE EXPENSE.

BAN 503 L04-0013 013 INV 03097-OR 4/7/03 for \$ 1,255.71
THIS IS AN OLD ONE DON'T SHOW I RECEIVED.

BAN 503 L08-0002 002 INV 03188-OR 7/7/03 for \$ 2,107.25
THIS IS GETTING PAID THIS WEEK, SORRY FOR LETTING IT SLIP

Please let me know when we can expect payments for these past due balances. If the checks have already been sent I would need the draft numbers, amounts of the drafts, and dates they were sent so that I can check to see how they were processed.

Any questions just let me know.

Thank you
Norma Helentjaris
Qwest
515 558-1083

Agreement has been amended twice. The first amendment provided for the purchase of dark fiber, and the second amendment provided for the purchase terms for a Single Point of Presence.

4. The issue before the Oregon Public Utility Commission (the "Commission") solely relates to the improper charges Qwest is seeking to impose on ComSpanUSA for Nonrecurring Charges related to Local Interconnection Service trunks ("LIS Trunks"). Exhibit 1 of the Complaint has copies of the relevant sections of the Interconnection Agreement that are in dispute.

5. This dispute between the parties arose in the context of refund hearings conducted by the Commission pursuant to Docket Nos. UT 138/139. During the refund proceeding Qwest reviewed its billings, and, for the first time, claimed that ComSpanUSA had not paid for certain Nonrecurring Charges related to orders for LIS trunks placed in February, 2001.

6. Qwest has acknowledged that the issue of payment for LIS Trunks is not properly part of the refund issues addressed in to Docket Nos. UT 138/139. See Exhibit 2 of the Complaint, Duarte Letter to ComSpanUSA and attorney Lisa Rackner.

7. Qwest is attempting to collect Nonrecurring Charges for LIS Trunks. These charges were incurred in February, 2001. Specifically, the Interconnection Agreement between Qwest and ComSpanUSA states as follows:

All transactions under this Agreement which are over 24 months old will be considered *accepted* and no longer subject to Audit.

See Interconnection Agreement, Section XXIV(G). By the clear terms of the Interconnection Agreement, any transactions between the parties that are over 24 months old are *accepted* and, ComSpanUSA should not be required to pay the LIS Trunk charges Qwest is demanding it pay.

Qwest claims that this provision only relates to audits. That interpretation is cramped. It ignores

the meaning of “Audit” in the Interconnection Agreement. An audit is a “comprehensive review of (A) data used in the billing process for services performed and facilities provided under this Agreement.” *See* Interconnection Agreement Section XXIV(A). In other words, an audit is a review of past bills. That is the issue at stake between the parties – may Qwest bill for charges that occurred beyond the 24 month period. It is clear that the Nonrecurring LIS Trunk charges were discovered by Qwest in its “audit” Docket Nos. UT 138/139.

8. The Interconnection Agreement, in Section XXXIV (N) States as follows:

This Agreement constitutes the *entire agreement* between the Parties and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

This Section makes clear that the parties intended that the Interconnection Agreement would govern all actions between them.

9. ComSpanUSA has conferred with Qwest on numerous occasions to try and resolve the dispute. Attached in Exhibit 3 is correspondence between the parties reflecting discussions about the dispute. Attached is Exhibit 4, a copy of the written notice to Qwest that ComSpanUSA intended to file this complaint pursuant to ORS 860-016-0050. This notice makes clear that ComSpanUSA has tried to resolve this dispute prior to filing this complaint. A complete copy of the Interconnection Agreement is attached to the complaint as Exhibit 5.

III. RELIEF REQUESTED

10. ComSpanUSA requests that the Commission enforce the Interconnection Agreement by limiting the ability of Qwest to obtain fees for LIS Trunk charges beyond a 24

month period, as required in Section XXIV(G), and further find that such Nonrecurring Fees for the LIS Trunks are inapplicable.

11. To the extent allowed by the Interconnection Agreement, ComSpanUSA also requests reimbursement for fees and costs related to enforcement of the agreement.

RESPECTFULLY SUBMITTED this 23rd day of April, 2004.

ATER WYNNE LLP

By 

Joel Paisner, WSBA #16405
601 Union Street, Suite 5450
Seattle, Washington 98101-2327
Tel: (206) 623-4711
Fax: (206) 467-8406
Email: jrp@aterwynne.com

Attorneys for ComSpanUSA

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of April, 2004, served the true and correct original, along with five (5) copies, of the foregoing document upon the OPUC, via the methods noted below, properly addressed as follows:

Oregon Public Utility Commission
Administrative Hearings Division
550 Capitol Street NE, Suite 215
Salem, OR 97301
Fax: (503) 378-6163

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail
 Facsimile: (503) 378-6163
 Email Carol.Hulse@state.or.us

I hereby certify that I have this 23rd day of April, 2004, served a true and correct copy of the foregoing document upon parties of record, via the methods noted below, properly addressed as follows:

Qwest Corporation
Director – Interconnection Compliance
1801 California, Rm 2410
Denver, CO 80202

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail
 Facsimile

Qwest Corporation Law Dept.
General Counsel – Interconnection
1801 California, Suite 5100
Denver, CO 80202

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail
 Facsimile

CT Corporation System
388 State St., Suite 420
Salem, OR 97301
Fax: (503) 566-9181

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail
 Facsimile (503) 566-9181

Alex M. Duarte
Qwest Corporation
421 SW Oak St., Ste. 810
Portland, OR 97204
Fax: (503) 242-8589

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail
 Facsimile (503) 242-8589

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 23rd day of April, 2004.


Susan Arellano