

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

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

Complainants,

v.

QWEST CORPORATION,

Respondent.

**QWEST'S RESPONSE AND ANSWER
TO WANTEL'S COMPLAINT FOR
ENFORCEMENT OF
INTERCONNECTION AGREEMENT**

Respondent Qwest Corporation ("Qwest") respectfully submits its response to the complaint for enforcement of interconnection agreement filed by Wantel, Inc., doing business as ComSpanUSA ("Wantel").

BACKGROUND

1. In the process of calculating refunds to competitive providers (CLECs) as a result of the Commission's orders in the UT 138/139 cost docket, Qwest discovered that certain nonrecurring charges (NRCs) for Local Interconnection Services (LIS) facilities (Direct Trunk Transport (DTT) facilities) had not been charged, and thus not paid, by numerous CLECs, including Wantel. Often, back-billing of charges for services previously incurred is governed by the parties' interconnection agreement. However, the interconnection agreement between Wantel and Qwest does not have any specific provisions regarding back-billing, and thus nothing in the interconnection agreement prohibits back-billing.

2. Accordingly, since the parties' interconnection agreement does not prohibit back-billing, Qwest charged (back-billed) the CLECs up to three years of such charges for these previously-unbilled facilities. Qwest limited the back-billed to only three years pursuant to the

Commission's administrative rule, OAR 860-021-0135, which permits Qwest to back-bill a customer up to three years if an underbilling occurs if the date of the error can be fixed.

3. A number of CLECs, including Wantel, objected to Qwest's back-billing of such charges, and argued Qwest was not entitled to do so. (See e.g., "Exhibit 1" to Exhibit 4 of Wantel's complaint.) Qwest has disagreed, and advised these CLECs of its position. (See Exhibit A to Wantel's complaint.) After eight months since the disputes arose, Wantel is the only CLEC that has filed a formal complaint with the Commission about these disputes.

4. Specifically, on October 27, 2003, Wantel, through its attorney, Lisa Rackner of the Ater Wynne firm that represents Wantel in this complaint, wrote to Qwest's counsel to object to Qwest's back-billing of such DTT charges. In that letter, which is attached as "Exhibit 1" to Exhibit 4 of Wantel's complaint, Wantel argued that Qwest is not entitled to back-bill for these facilities. Wantel generally argued this was not a UT 138 refund or true-up, and thus Qwest was not entitled to back-bill these amounts. Nowhere in that October 27, 2003 letter, however, did Wantel ever argue or suggest that the two-year "audit" provision (Section XXIV) in its interconnection agreement with Qwest applied to this dispute, or that Section XXXIV applied.

5. Qwest then responded to Wantel's October 27, 2003 letter on November 13, 2003. (See Exhibit 2 to Wantel's complaint.) In that letter, Qwest explained that in the process of calculating the UT 138 refund, Qwest's billing group determined that the subject LIS trunks (DTT facilities) had been zero rated (i.e., had not been billed). Thus, Qwest corrected the underbilling of the Wantel account by back-billing the LIS trunk charges. Qwest advised Wantel that since Qwest had not previously billed for the charges, but were for facilities which Qwest installed and which Wantel in fact received, Qwest was entitled, under both the interconnection

agreement with ComSpan and the Oregon Administrative Rules, to correct that underbilling.

(See Exhibit 2 to Wantel's complaint.)

6. In its November 13, 2003 response, Qwest further advised Wantel that Wantel's apparent argument that Qwest somehow cannot correct the underbilling would essentially mean that Wantel would receive the benefit of these interconnection facilities, but would not pay for them. In fact, Wantel does not deny Qwest installed the facilities, and that Wantel received the benefit of facilities. Qwest further noted in its November 13, 2003 response that this is clearly inappropriate, and is a reason the Commission has overbilling and underbilling rules (OAR 860-021-0135). Qwest further noted there is nothing in the interconnection agreement between Wantel and Qwest that would prohibit such underbilling correction (and that if the situation were the opposite, and thus Wantel had discovered a Qwest *overbilling*, Wantel would have vigorously demanded the correction of the overbilling). (See Exhibit 2 to Wantel's complaint.)

7. Finally, Qwest noted in its November 13, 2003 response that because the interconnection agreement between Wantel and Qwest does not specifically address back-billings (unlike some interconnection agreements), the Commission's administrative rule, OAR 860-021-0135, applies to the underbilling at issue. Qwest did agree, however, that because this was an underbilling correction, and not a "true-up" situation, interest should not have been applied, and thus Qwest agreed to eliminate any interest. (See Exhibit 2 to Wantel's complaint.)

8. Wantel's present attorney then responded two-and-a-half months later on January 28, 2004 with a ten-day notice letter pursuant to OAR 860-016-0050(3) that it intended to file a complaint to enforce the interconnection agreement. (See Exhibit 4 to Wantel's complaint.) Almost three months later, Wantel filed this complaint.

ANSWER TO COMPLAINT

9. Qwest answers the specific paragraphs of Wantel's complaint as follows:

10. Qwest has no information about the allegations in paragraph 1 of Wantel's complaint, and thus is unable to admit or deny such allegations.

11. Qwest admits the allegations in paragraph 2 of Wantel's complaint it is deemed a "telecommunications utility" in the state of Oregon and that it has offices in Portland, Oregon.

12. Qwest does not deny the allegations in paragraph 3 of Wantel's complaint, but Qwest alleges that the parties' interconnection agreement speaks for itself and is the best evidence of what is contained in such interconnection agreement.

13. Qwest has no information about the allegations in paragraph 4 of Wantel's complaint, and thus is unable to admit or deny such allegations.

14. Qwest denies the allegations in paragraph 5 of Wantel's complaint that "this dispute arose in the context of refund hearings conducted by the Oregon Public Utilities [sic] Commission . . . pursuant to Docket Nos. UT 138/139," as there were no "refund hearings" conducted by the Commission in UT 138/139. Qwest also denies that there was a "refund proceeding." However, Qwest admits that in the process of making refunds and true-ups based on the rates ordered by the Commission in UT 138/139, Qwest claimed (and still claims) that Wantel has not paid for certain NRCs related to orders for LIS trunks. Nevertheless, Qwest does not agree that such charges were all for trunks installed in February 2001. For example, there are at least \$5,053.22 at issue for installations that were processed after February 2001.

15. Qwest does not deny the allegations in paragraph 6 of Wantel's complaint, but Qwest alleges that Qwest's attorney's letter of November 13, 2003 speaks for itself and is the best evidence of Qwest's position on this issue.

16. Qwest admits the allegations in paragraph 7 of Wantel's complaint that it is attempting to collect NRCs for LIS Trunks from Wantel, but denies that all charges were incurred in February 2001, and further denies that they are no longer collectable, and further denies that Section XXIV(G) applies to this situation. Section XXIV(G) pertains to "audits," as defined in Section XXIV, which does not apply because there was no such audit. Qwest further alleges that when read in context, it is obvious that the whole "audit" section applies to a situation where Qwest has discovered a billing error *solely* based on its having exercised its right to request records from the CLEC in an "audit." That is clearly not what happened here.

17. Qwest denies the allegation in paragraph 8 of Wantel's complaint that Section XXXIV(N) does not allow back-billing under the agreement. Section XXXIV(N) is merely the unremarkable boilerplate *contract integration* provision that provides that the parties' agreement is encompassed in the agreement, and thus supercedes all *prior* oral or written agreements, statements, negotiations, understandings proposals and undertakings. It has no effect on subsequent back-billing disputes, or whether Qwest could back-bill for an underbilling (or alternatively, whether Wantel could demand an adjustment for an overbilling). Moreover, if Wantel were correct (which it is not), then Qwest *would not owe any refunds* to Wantel, because there is *nothing in the agreement itself* providing that Wantel is entitled to the UT 138 refund, or to any cost docket refund. In fact, according to Wantel's interpretation, Qwest would not be required to do anything, such as comply with Commission rules or orders, if such matters are not specifically addressed in the agreement. In short, Wantel's interpretation is neither lawful nor reasonable, and would lead to inequitable and absurd results.

18. Qwest further denies the allegations in paragraph 9 of Wantel's complaint that Wantel "has conferred with Qwest on numerous occasions to try and [sic] resolve the dispute."

Qwest admits that the exhibits referenced in paragraph 9 of Wantel's complaint are true and correct copies of what they purport to be, and that they speak for themselves and are the best evidence of the issues addressed in such documents.

19. Qwest denies that Wantel is entitled to the relief requested in paragraph 10 of its complaint.

20. Qwest denies that Wantel is entitled to the relief requested in paragraph 11 of its complaint. Qwest specifically denies that Wantel is entitled to any costs or fees in the event that it prevails in whole or in part in its complaint, and further notes that Wantel fails to cite to any law or provision in the interconnection agreement that allows for reimbursement of costs or fees.

AFFIRMATIVE DEFENSES

21. Wantel's complaint fails to state a claim or cause of action against Qwest.

22. Wantel's complaint is barred because Qwest has the right to back-bill for up to three years pursuant to OAR 860-021-00135.

23. Wantel's complaint is barred by the equitable doctrines of unclean hands, laches, waiver and estoppel.

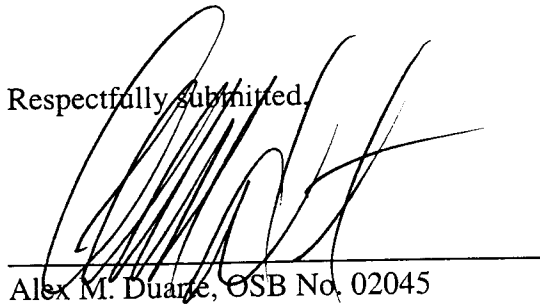
24. Wantel's complaint is barred by the doctrine of quantum meruit in that it has received the benefit of the facilities that Qwest has installed but has not paid for them.

RELIEF REQUESTED

25. WHEREFORE, Qwest respectfully requests the Commission dismiss or deny Wantel's complaint, and that Wantel take nothing from its complaint. Qwest further respectfully requests the Commission find that Wantel is obligated to pay the amounts in dispute for the Qwest nonrecurring charges for LIS Trunk facilities that Qwest installed and for which Wantel received the benefit.

DATED: May 6, 2004

Respectfully submitted,



Alex M. Duarte, OSB No. 02045
Qwest Corporation
421 SW Oak Street, Suite 810
Portland, Oregon 97204
(503) 242-5623
(503) 242-8589 (facsimile)

Attorney for Qwest Corporation

CERTIFICATE OF SERVICE

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I hereby certify that on the 6th day of May 2004, I served the foregoing **QWEST CORPORATION'S RESPONSE AND ANSWER TO WANTEL'S COMPLAINT FOR ENFORCEMENT OF INTERCONNECTION AGREEMENT** in the above entitled docket on the following persons via U.S. Mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

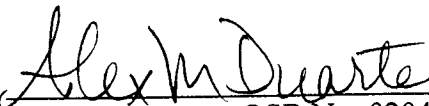
Alex M Duarte
Qwest Corporation
421 Sw Oak St., Ste 810
Portland, OR 97204

Joel Paisner
Ater Wynne LLP
601 Union St Ste 5450
Seattle, WA 98101-2327

Lisa F Rackner
Ater Wynne LLP
222 SW Columbia St., Ste 1800
Portland, OR 97201-6618

DATED this 6th day of May, 2004.

QWEST CORPORATION

By: 
ALEX M. DUARTE, OSB No. 02045
421 SW Oak Street, Suite 810
Portland, OR 97204
Telephone: 503-242-5623
Facsimile: 503-242-8589
e-mail: alex.duarte@qwest.com
Attorney for Qwest Corporation