

[Service Date: May 14, 2004]

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 AMENDED
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,

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.

10. Qwest has attempted to collect from ComSpanUSA certain Nonrecurring Charges. Those charges are not authorized by the Interconnection Agreement between the parties. Qwest has made no attempt to specify where such Nonrecurring Charges are authorized by the Commission.

III. RELIEF REQUESTED

11. 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). In the event that Qwest is not authorized to impose the

Nonrecurring Charges, ComSpanUSA requests that Qwest be prohibited from collecting such fees.

12. 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 14th day of May, 2004.

ATER WYNNE LLP

By 

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Attorneys for ComSpanUSA

CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of May, 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 Carol.Hulse@state.or.us

I hereby certify that I have this 14th day of May, 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

Samuel J. Petrillo
Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
Salem, OR 97301

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

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

DATED this 14th day of May, 2004.



Karen M. Lis

Attachment 1

ComSpanUSA hereby incorporates all attachments of the original Complaint filed with the Oregon Public Utilities Commission served on April 22, 2004.