

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 SECOND
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 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.

10. The Interconnection Agreement provides for Direct Trunk Transport (“DTT”) facilities as a means of interconnecting Qwest’s and ComSpanUSA’s networks and for the mutual exchange of traffic between the carriers’ networks. Exhibit 5, Article V, Section D.2. Regarding compensation for DTT facilities, the Interconnection Agreement provides in pertinent part:

If the Parties elect to establish two-way direct trunk, the compensation for such jointly used ‘shared’ facilities shall be adjusted as follows. The nominal compensation shall be pursuant to the rates for direct trunk transport in Appendix A. The actual rate paid to the provide of the direct trunk facility shall be reduced to reflect the provider’s use of that facility. The adjustment in the direct trunk transport rate shall be a percentage that reflects the provider’s relative use (i.e., originating minutes of use) of the facility in the busy hour.

See Exhibit 5, Article V, Section D.2.d.

11. Qwest is attempting to assess upon and collect from ComSpanUSA DTT NRCs to which Qwest is not entitled under the Interconnection Agreement between the Parties. As quoted in Paragraph 10 above, the Interconnection Agreement requires that the “actual rate paid to the provider of the direct trunk facility shall be reduced to reflect the provider’s use of that facility” based upon the “provider’s relative use (i.e., originating minutes of use) of the facility in the busy hour.” Id. Qwest has not reduced the amount of relative use in the busy hour by any amount to reflect its use of the facilities. Under the Interconnection Agreement, therefore, Qwest is precluded from assessing ComSpanUSA any DTT NRCs beyond the amount reduced by its percentage of its relative use of those facilities in the busy hour. This amount will be proven at trial.

12. As alleged above in Paragraph 8, the Interconnection Agreement states that it is “the entire agreement between the Parties and supersedes all prior oral or written agreements...” See Exhibit 5, Article XXXIV (N). The compensation for DTT facilities is determined exclusively according to the Interconnection Agreement.

III. RELIEF REQUESTED

13. 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.

14. 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 30th day of August, 2004.

ATER WYNNE LLP

By 

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CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of August, 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 30th day of August, 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 30th day of August, 2004.



Karen M. Lis