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**BEFORE THE
PUBLIC UTILITY COMMISSION
OF OREGON**

WANTEL, INC., d/b/a ComSpan USA, *et al.*,

Complainant,

v.

QWEST CORPORATION,

Respondent.

Docket No. IC 8

**WANTEL'S BRIEF REGARDING THE
IMPACT OF THE FEDERAL DISTRICT
COURT'S DECISION IN *QWEST CORP.
v. UNIVERSAL TELECOM, INC.***

I. INTRODUCTION

Wantel Telecommunications, Inc., d/b/a ComSpan USA. ("Wantel"), by and through its attorneys of record, Ater Wynne LLP, hereby submits this brief regarding the impact of the December 15, 2004 Opinion and Order issued by the United States District Court for the District Court of Oregon in *Qwest Corporation v. Universal Telecom, Inc.*¹ on the legal issues presented in this complaint proceeding.

¹ *Qwest Corporation v. Universal Telecom, Inc, dba US POPS, fka Universal Telecommunications, Inc.*, mimeo Opinion and Order issued December 15, 2004 (OR Fed. Dist. Ct. CV-04-6047-AA) (hereinafter "*Qwest v. Universal*").

1 Wantel concurs in the briefing and arguments submitted by Pac-West in the companion
2 docket, IC 9, regarding the legal questions raised in the April 27, 2005 telephone status
3 conference. However, because Wantel does not provide VNXX services, issue 4 regarding the
4 question of whether VNXX traffic should be included in the calculation of the RUF for
5 determining DTT MRCs and NRCs does not apply in this docket, and Wantel takes no position
6 with regard to it.
7

8 In considering the legal questions relating to the impact of the decision in *Qwest v.*
9 *Universal*, it is important to note that, like the situation with Pac-West in IC-9, Universal
10 Telecom, Inc. and Wantel do not have identical interconnection agreements with Qwest
11 Corporation (“Qwest”). While Universal Telecom, Inc. and Wantel opted into the same base
12 interconnection agreement (“MFS Agreement”), Wantel and Qwest subsequently amended their
13 interconnection agreement to incorporate terms and conditions to include “ISP-bound traffic” as
14 a result of the FCC’s *ISP Remand Order*². This ISP Amendment is the 14th Amendment to the
15 Wantel/Qwest interconnection agreement. It is in all essential respects identical to the ISP
16 Amendment entered into between Pac-West and Qwest. Universal Telecom, Inc. and Qwest did
17 not similarly amend their interconnection agreement. In addition, there are physical differences
18 with respect to traffic volumes and patterns, and the underlying networks of Wantel and
19 Universal.
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24 ² Order and Report and Order, *In the Matter of the Implementation of the Local Competition Provisions in the*
25 *Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, CC Dkt. Nos. 96098 and 99-68,
26 FCC 01-131, 2011 (rel. April 27, 2001) *remanded, WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002)(“*ISP*
Remand Order”).

1 Moreover, the RUF provisions in the Universal Telecom, Inc. interconnection agreement
2 and the Pac-West interconnection agreement are identical to the RUF provisions in the Wantel
3 interconnection agreement. Thus, the same analysis applied by the federal district court in
4 concluding that ISP-bound traffic should be included in calculating the RUF for DTT MRCs
5 under the Universal Telecom interconnection agreement should lead to the same conclusion
6 about how to calculate the RUF for DTT MRCs under the Wantel and Pac-West interconnection
7 agreements. And, as pointed out by Pac-West, the court's rationale should also lead to the same
8 conclusion about the calculation of DTT NRCs; namely, that ISP-bound traffic should be
9 included in calculating each provider's relative use of the DTT facilities in the busy hour. The
10 NRCs to be paid for DTT facilities should be reduced to reflect Qwest's use of these two-way
11 facilities in the busy hour. As pointed out by Pac-West, the principle embodied in the RUF
12 language in the respective interconnection agreements, which in turn reflect the FCC's rules, is
13 that each carrier pays for the cost of the facility used to connect calls originated by its customers.
14 DTT non-recurring installation costs are "costs for the facility", and cannot be charged to the
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II. CONCLUSION

As argued by Pac-West in its briefing, which is adopted by Wantel, the only binding ruling in *Qwest v. Universal* is the court's holding that ISP-bound traffic should be included in calculating the RUF for purposes of determining DTT MRCs. The court's procedural ruling regarding DTT NRCs, on the other hand, is based exclusively on the fact that Universal Telecom, Inc. failed to address the issue. The DTT NRC holding was not based on the merits and is not binding in this proceeding. However, the rationale underlying the court's decision regarding inclusion of ISP-bound traffic in the RUF for purposes of determining DTT MRCs, applies equally to the issue of calculating DTT NRCs, and this Commission should follow that reasoning here.

RESPECTFULLY SUBMITTED this 11th day of May, 2005.

ATER WYNNE, LLP

By 

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Attorneys for Wantel

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I have this 11th day of May, 2005, served the true and correct
3 original, along with the correct number of copies, of the foregoing document upon the PUC, via
4 the method(s) noted below, properly addressed as follows:

5 Carol Hulse _____ Hand Delivered
6 Oregon Public Utility Commission _____ U.S. Mail (first-class, postage prepaid)
7 550 Capitol Street NE, Suite 215 x Overnight Mail (UPS)
8 PO Box 2148 _____ Facsimile (503) 373-7752
9 Salem OR 97308-2148 X Email (Carol.Hulse@state.or.us)

10 I hereby certify that I have this 11th day of May, 2005, served a true and correct copy of
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13 ***On Behalf Of Qwest:***

14 Alex M. Duarte _____ Hand Delivered
15 Qwest Corporation x U.S. Mail (first-class, postage prepaid)
16 Suite 810 _____ Overnight Mail (UPS)
17 421 SW Oak Street _____ Facsimile (503) 242-8589
18 Portland OR 97204 X Email (alex.duarte@qwest.com)

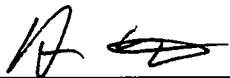
19 *Confidentiality Status: Public*

20 ***On Behalf Of Pac-West:***

21 Mark P. Trincherro _____ Hand Delivered
22 Davis Wright Tremaine LLP x U.S. Mail (first-class, postage prepaid)
23 1300 SW Fifth Avenue, Suite 2300 _____ Overnight Mail (UPS)
24 Portland OR 97201-5682 _____ Facsimile (503) 778-5299
25 *Confidentiality Status: Public* X Email (marktrincherro@dwt.com)

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

DATED this 11th day of May, 2005, at Seattle, Washington.



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RESPECTFULLY SUBMITTED this 11th day of May, 2005.

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