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August 13, 2007

VIA ELECTRONIC FILING AND FEDERAL EXPRESS

Ms. Frances Nichols Anglin
Public Utility Commission of Oregon
550 Capitol Street N.E. Suite 215
Salem, Oregon 97301-2551

Re: In the Matter of the Application of 10D Telecom, Inc. for a Certificate of
 Authority to Provide Telecommunications Service in Oregon and
 Classification as a Competitive Telecommunications Provider.
 CP 1378

Dear Ms. Nichols Anglin:

Enclosed for filing in the above-captioned matter please find an original copy of the Response of 10D Telecom, Inc. to the Protest of Qwest Corporation. Copies of the same will be electronically filed and served on the parties electronically.

Please direct any questions regarding this matter to the undersigned. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'K.C. Halm', written over a printed name.

K.C. Halm

Enclosures

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON
CP 1378**

In the Matter of the Application of
10D Telecom, Inc. for a Certificate
of Authority to Provide Telecommunications
Service in Oregon and Classification as a
Competitive Telecommunications Provider

RESPONSE OF 10D TELECOM, INC. TO
PROTEST OF QWEST CORPORATION

Pursuant to the Commission's scheduling calendar in the above-referenced docket, 10D Telecom, Inc. ("10D Telecom" or "10D"), hereby submits this response to the protest ("Protest") filed by Qwest Corporation ("Qwest") in this proceeding.

I. Introduction

The Commission should deny Qwest's highly unusual Protest because it is not supported by any evidence that provides a basis to deny the application. Moreover, the Protest does not meet the standards set forth under Oregon law and rests wholly on mere speculation and conjecture concerning alleged harms to Qwest if 10D's application were granted. Thus, Qwest's Protest is a seemingly transparent attempt to derail the otherwise routine application process utilized by this Commission to certify thousands of applicants over the course of the last ten years.

10D Telecom responds to each of Qwest's points in its Protest in Section II below. In Section III, below, 10D demonstrates that Qwest has failed to satisfy the Commission's criteria for filing a valid protest because the Protest rests on nothing more than speculation and

conjecture, rather than evidence of actual harm to Qwest. In addition, the Protest does not meet Commission criteria for such filings because it would unreasonably broaden the issues in this proceeding in a manner specifically prohibited under Commission regulations.

II. Response to Specific Qwest “Concerns”

Qwest offers several vague “concerns” about 10D’s application, which are addressed in turn below. Although 10D addresses each of these “concerns” below, it bears repeating that none of these so-called concerns address the specific criteria governing grant of the application to 10D Telecom. These “concerns” are wholly unrelated to the question of whether grant of the application meets the criteria set forth under the Commission’s regulations and Oregon law.

If Qwest had any specific evidence demonstrating that grant of this application is not in the public interest, it should have (and presumably would have) presented such evidence to the Commission. Absent such evidence, Qwest’s “concerns” are not a basis for the Commission to deny this application.

A. Affiliated Entities

First, Qwest states that it is “concerned” about the fact that 10D is affiliated with Universal Telecom, Inc., another competitive telecommunications provider in Oregon. *Protest* at 2. Qwest speculates that Universal may attempt to use a new corporate entity (10D) to “somehow avoid paying to Qwest” amounts that Universal *allegedly*¹ owes to Qwest. *Id.* Qwest also suggests that certification by 10D will allow Universal to avoid the current interconnection agreement between Qwest and Universal. *Id.*

¹ As this Commission well knows, Universal Telecom has appealed the Commission’s decision in ARB 671, including the decision that Universal is financially responsible for transport facilities that Qwest uses to deliver its traffic to Universal. That appeal is pending before the Federal District Court of Oregon. *Universal Telecom, Inc. v. Oregon Public Utilities Commission*, CV-06-6222-HO (pending).

As to the question of affiliation, 10D does not dispute that it is owned and controlled by Stephen Roderick, who also maintains a financial interest in Universal Telecom. Indeed, 10D's application specifically identifies Universal Telecom as an "affiliated entity" (as that term is defined under Oregon law), and Mr. Roderick's position relative to each company. However, although Mr. Roderick retains some ownership of the two companies, 10D is a separate business entity, and other than Mr. Roderick has no other shareholders in common with Universal. 10D currently utilizes services and facilities provided by a number of different carriers that 10D has no affiliation with, other than normal arm's length contractual relationships.

But such information goes far beyond that which is necessary for this Commission to make a determination to grant the certification requested in 10D's application. And, more significantly, there is absolutely no evidence that Universal is "using" 10D in the manner Qwest suggests. That is, Universal is not using 10D to attempt to avoid alleged payments owed to Qwest. Nor does Qwest offer any evidence that Universal is "using" 10D to somehow avoid its obligations under the interconnection agreement between Universal and Qwest.

B. Existing Operations

Second, Qwest states that it "finds it odd" that 10D has brought this application at this time since it appears that 10D has "already been operating since at least 2006." *Protest* at 2. Qwest offers no evidence of the "operations" it refers to in its Protest, thereby making it difficult for 10D to meaningfully respond to the vague assertion. Nevertheless, and for the sake of developing a complete record, 10D assumes that Qwest is referring to 10D's provision of Voice over Internet Protocol ("VoIP") services.

As this Commission well knows, the FCC ruled in the *Vonage Order*² that over the top VoIP services are interstate services subject to the FCC's exclusive jurisdiction. The fact is, under the FCC's *Vonage Order*, VoIP service providers are not subject to state commission regulation, *unless* such providers willingly submit themselves to state regulation. Therefore, the fact that 10D Telecom may have offered VoIP services without Commission certification prior to this time does not raise any question of impropriety at all. That is specifically what many VoIP service providers are doing in Oregon right now.³

Nor is it unusual that 10D is willingly seeking certification from the Commission at this time. Its decision to do so now represents a determination to obtain competitive provider status for a number of legal and operational reasons, and is consistent with the approach taken by still other providers in the market that provide local phone service in Oregon over VoIP platforms.⁴

C. Transfer or Assignment of CLEC Certificate or Customers

Finally, Qwest also asks the Commission to "be vary wary" about 10D's application, and to prohibit 10D from transferring or assigning any CLEC certificate granted in this proceeding. *Protest at 2.* Qwest also states that the Commission should also state that no customers can be transferred between Universal and 10D without Commission approval. *Id.*

These requests go far beyond the scope of this proceeding and are wholly unrelated to the scope of the application before the Commission. 10D's application simply seeks certification as a competitive telecommunications provider under Oregon law. There is no mention in the application of transferring or assigning any CLEC certificate that may be granted; nor does 10D ask the Commission for authority to transfer any customers. These issues are not raised by the

² *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404, ¶ 20 (2004) ("Vonage Order").

³ VoIP companies like Vonage, Skype, Lingo, etc. are all providers *not* certificated in Oregon.

⁴ For example, cable telephony providers Charter Communications and Comcast Communications each have certificated entities in Oregon.

application, have not been introduced by 10D at any point, and represent nothing but pure speculation on Qwest's part. There is, therefore, no basis or reason for the Commission to act in the manner requested by Qwest –such action is both unnecessary and well beyond the scope of this proceeding.

III. Qwest's Protest Does Not Satisfy the Criteria to be Heard

Other than its vague "concerns" of the alleged harm that "may" occur if the application is granted, Qwest offers no support that its Protest is based upon any substantive evidence. But a protest to an application must be based on more than mere unspecified and unsupported concerns. Indeed, the Commission's own rules recognize that a protest must be fairly grounded in concrete evidence of actual harm. Specifically, under O.A.R. 860-032-0005(7)(c), the Commission may require a person filing a protest to: (1) show that the protestant "*is affected*" by the application (emphasis added); and, (2) that its appearance and participation "will not unreasonably broaden the issues or burden the record."⁵

Under this standard Qwest's Protest clearly fails. First, Qwest fails to provide any *factual* basis to support the conclusion that Qwest is, in fact, affected by the application. All that Qwest offers on this point is conjecture and speculation that grant of the application *may* affect Qwest. Indeed, in that section of the Protest that attempts to explain the manner in which the application will affect Qwest's interests, the best that Qwest can say is that the "application will *likely* affect Qwest's economic interests"; Protest at 3, and that there is the "*potential* for 10D and/or Universal to conduct activity that would unfairly ... harm Qwest's economic interests." *Id.* (emphasis added). As noted above, these speculative statements are not supported by any actual evidence. As such, they do not and cannot demonstrate that Qwest's interests are, in fact, affected by the application.

⁵ O.A.R. 860-032-0005(7)(c).

Second, Qwest's Protest also raises a series of speculative statements about matters wholly unrelated to criteria by which this application must be judged. In that way the Protest demonstrates that Qwest's participation in this proceeding *will* unreasonably broaden the issues and burden the record, by requiring the Commission to consider issues and allegations that have nothing to do with whether grant of the application meets the criteria set forth under Oregon law. Broadening the issues and burdening the record in this way is precisely what O.A.R. 860-032-0005(7)(c) seeks to guard against. Thus, for these reasons, Qwest's Protest is not consistent with the standards set forth under Oregon law.

Because consideration of the Protest would unfairly burden 10D, and the Commission, if it were considered, the Commission should specifically apply the criteria set forth under O.A.R. 860-032-0005(7)(c). Under the standard set forth under that rule, the Commission must deny the Protest and act upon the application in the same manner that it has done for thousands of other similarly situated applicants.⁶

IV. Conclusion

Qwest's Protest should be denied because Qwest has not met its burden of proof to demonstrate why the Commission should not grant the application requested by 10D Telecom. Indeed, all that Qwest offers in its Protest document is a series of vague, unsupported assertions about the alleged harm that may fall upon Qwest if the application is granted. Notably, Qwest offers *no factual* evidence or argument that grant of 10D's application is not in the public interest, or otherwise does not meet the criteria set forth in applicable statutes and regulations governing the Commission's consideration of the application. Moreover, Qwest fails to explain

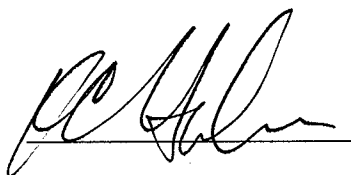
⁶ Although 10D need not rely on its federal law rights here (because Qwest's Protest so clearly fails as a matter of Oregon law), 10D specifically notes that 47 U.S.C. § 253(a) provides that no state legal requirement "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 10D plans on providing either or both intrastate and interstate telecommunications service.

whether its appearance and participation will unreasonably “broaden the issues” or “burden the record” in this proceeding.

Accordingly, because Qwest has failed to meet its burden of demonstrating that 10D has not satisfied the Commission’s application requirements, or that the application is not otherwise in the public interest, the Commission should deny Qwest’s Protest and grant the application requested by 10D.

Respectfully submitted,

10D Telecom, Inc.

A handwritten signature in black ink, appearing to read 'K.C. Halm', written over a horizontal line.

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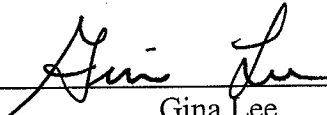
Dated: August 13, 2007

CERTIFICATE OF SERVICE

I, Gina Lee, hereby certify that on 13th day of August 2007, I caused copies of forgoing Response of 10D Telecom, Inc. to Protest of Qwest Corporation to be sent by first class mail to the following parties:

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