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August 1, 2007

Electronically and via UPS Overnight

Frances Nichols
Public Utility Commission of Oregon
550 Capitol Street NE
Suite 215
Salem, OR 97301-2551

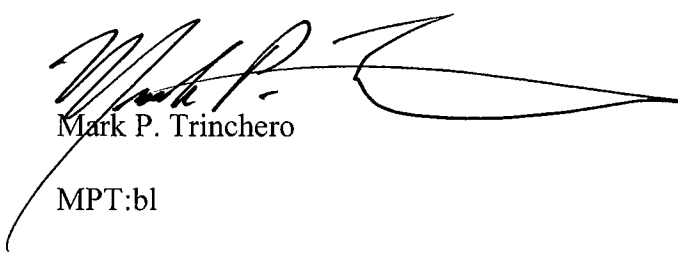
Re: Docket IC 13

Dear Ms. Nichols:

Attached for filing in Docket No. IC 13 is Universal Telecommunications, Inc.'s Reply to the Answer filed by Qwest Corporation. The original plus one copy will be sent via UPS Overnight.

Very truly yours,

Davis Wright Tremaine LLP


Mark P. Trincherro

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

IC 13

Universal Telecommunications, Inc.,
Plaintiff,
v.
Qwest Corporation,
Defendant.

**UNIVERSAL
TELECOMMUNICATIONS, INC.'S
REPLY**

Pursuant to OAR 860-016-0050(6), Universal Telecommunications, Inc. ("Universal") submits the following Reply to the Answer filed by Qwest Corporation ("Qwest").

Based upon Universal's Complaint, Qwest's Answer, and the affidavits filed herein, there are at least two issues involving both factual and legal disputes that the Commission must resolve. The third issue raised by the Complaint, that Qwest has been assessing reciprocal compensation at a higher rate than that provided under the Interconnection Agreement ("ICA"), has now been conceded by Qwest.

The first issue the Commission must resolve is the proper calculation of the Relative Use Factor ("RUF") under the ICA. Qwest has proposed an RUF of 99% Universal and 1% Qwest, based on Qwest's traffic study for June 2006 through August 2006. The traffic usage data

1 includes traffic other than “non-ISP-bound” traffic, which Universal contends is in violation of
2 the ICA. Complaint ¶ 8. Qwest denies that its RUF calculation inappropriately includes traffic
3 other than “non-ISP-bound” traffic. Answer ¶ 8. Universal contends that, when calculated
4 properly, the RUF should be 42% Universal and 58% Qwest. Complaint ¶ 9. To resolve this
5 dispute, the Commission must interpret the relevant provisions of the ICA as a matter of law.
6 The Commission must also hear evidence to resolve the factual disputes over the accuracy and
7 scope of the traffic usage data and, in particular, to arrive at an appropriate RUF calculation
8 based upon evidence showing the types of traffic, the amount of traffic, and the proper
9 interpretation of the ICA.
10

11 The second issue the Commission must resolve is whether the ICA permits Qwest to
12 charge Universal for unused circuits, and, if so, what RUF applies to the unused circuits. It is
13 undisputed that Qwest has charged Universal for unused capacity on the Direct Trunk Transport
14 facilities. Complaint ¶ 10; Answer ¶ 10. Under the ICA, the RUF must be calculated to reflect
15 the actual percentage of the facilities being used. Qwest argues that once Universal orders a
16 facility, Qwest may apply the same 99% Universal and 1% Qwest RUF that it applies to fully
17 utilized facilities. Answer ¶ 10. Both Universal and Qwest assert that the other party’s
18 interpretation of the ICA leads to inequitable results. To resolve this dispute, the Commission
19 must interpret the relevant provisions of the ICA to determine the parties’ rights and obligations
20 under the Agreement and must make factual findings about the amount owing to Qwest, if any,
21 under the appropriate RUF for unused circuits.
22
23

24 A related issue the Commission must decide is which party has an obligation under the
25 ICA to disconnect facilities once the parties agree that there is excess capacity on Qwest’s side of
26

1 the point of interconnection. At a planning meeting held on February 15, 2007, Qwest notified
2 Universal of substantial excess capacity, but Qwest has failed to disconnect these circuits.
3 Furthermore, as described in Universal's Motion for Temporary Emergency Relief and
4 Memorandum in support thereof, Qwest has refused disconnection orders placed by Universal
5 because Qwest has placed a hold on all service order activity by Universal. Resolution of the
6 issue requires the Commission to hear evidence and make both legal and factual findings about
7 the parties' obligations under the ICA, whether Qwest should have disconnected unused circuits
8 at any time after February 15, 2007, the date after which Qwest should be barred from charging
9 for unused circuits it failed or refused to disconnect, and the amount, if any, owing to Qwest after
10 appropriate credits are made.
11

12 Because there are genuine issues of law and disputed fact that must be determined by the
13 Commission in order to resolve this dispute, Universal requests that the Commission set a date
14 for a prehearing conference to discuss the appropriate schedule for discovery, testimony,
15 hearings and briefing, as needed.
16

17 Should the Commission resolve this dispute in Qwest's favor, or if the Commission
18 denies Universal's Motion for Temporary Emergency Relief, Universal further requests that the
19 Commission issue an order prohibiting Qwest from disconnecting services for 91 days from the
20 date of the final order. Pursuant to the ICA, Qwest is prohibited from disconnecting services for
21 two billing cycles from the date of the order. Section 5.4.4.1 of the ICA provides in pertinent part
22 that:
23

24 If the disputed charges have been withheld and the dispute is resolved in favor of
25 the Billing Party, the withholding Party shall pay the disputed amount and
26 applicable late payment charges *no later than the second Bill Date following the
resolution.*

1 Universal is entitled to the grace period provided in Section 5.4.4.1 to pay any disputed amount
2 resolved in Qwest's favor, and any order from the Commission permitting disconnection by
3 Qwest should at least include the minimum grace period provided by the ICA. However,
4 because possible disconnection would impact thousands of customers, including Qwest's own
5 customers, the Commission should allow Universal time to provide the required 90-day notice to
6 its customers pursuant to OAR 860-032-0020 in the event Universal is compelled to abandon
7 service.
8

9
10 **CONCLUSION**

11 Based upon the foregoing, Universal requests that the Commission set a date certain for a
12 prehearing conference in this matter. Universal further requests that if the dispute is ultimately
13 resolved in Qwest's favor or if Universal's Motion for Temporary Emergency Relief is denied,
14 that the Commission prohibit Qwest from disconnecting services for 91 days.
15

16 DATED this 1st day of August, 2007.

17 DAVIS WRIGHT TREMAINE LLP

18 By 

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Of Attorneys for Universal Telecommunications, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of August, 2007, Universal Telecommunications, Inc.'s Reply to the Answer filed by Qwest Corporation was sent via UPS overnight mail to the Oregon Public Utility Commission.

A copy of the filing was sent via U.S. Mail and email to the service list below.

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By: Barbara Lasswell
Barbara Lasswell for Mark P. Trinchero