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Alex M. Duarte
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October 9, 2007

Honorable Allan Arlow
Administrative Law Judge
Oregon Public Utility Commission
P. O. Box 2148
Salem, OR 97308-2148

Re: **IC 13**- Qwest's Reply and Request for Lifting of Stay or for Prehearing Conference

Dear Judge Arlow:

On Friday, October 5, 2007, Universal Telecom, Inc. ("Universal") responded to Qwest's October 4, 2007 letter regarding Qwest's disclosure of recent matters that it (Qwest) had learned the day before about Universal's transaction of selling its business and assets to a third party, GlobalPOPs. Qwest's letter related several new facts, obtained from Universal itself only after Qwest notified Universal of its intent to seek judicial relief. But instead of addressing the facts, Universal's October 4 letter is an emotional attack on Qwest that does not address the substantive issues in Qwest's letter.¹ Lost in Universal's letter is the fact that Qwest continues to provide services to Universal for which it is extremely unlikely to be compensated.

The reasons Qwest is writing this letter are two-fold. First, Qwest again respectfully requests that the Commission *immediately lift the current stay* issued in Order No. 07-366. Second, to the extent the Commission believes, based on Universal's letter, that Qwest has argued it could not have known about the security interests of Silicon Valley Bank (SVB) or Richard Roderick (presumably a relative of primary Universal principal and shareholder Steven Roderick), Qwest clarifies that it does *not* claim (and has not claimed) it did not know of the public UCC documents that Universal argues about.

Regarding SVB's security interest, it was not until Universal responded on October 3, 2007 to Qwest's notice that it would file a complaint and a petition for a temporary restraining order ("TRO") the next day that Qwest ever learned, *for the first time*, from Universal's counsel's voicemail message that a bank already has a security interest *in the proceeds of the sale* and in *all* of Universal's assets. That was also the first time that Qwest had learned that an

¹ Universal recent letter resorts to overheated rhetoric (e.g., using such terms as "unfounded bluster," "infamous," "grossly incompetent," "willfully imperceptive," "scandalous rhetoric," "ludicrous," "extort," "pathetic charade," "abusing," "repeated inflammatory accusations and threats," "polemic," "bullying tactics," "shrill literary bombast," "regulatory scrap heap," "bombastic accusation" and "fit of pique," among others, to describe Qwest's letter) instead of addressing the pertinent facts. Universal also argues that Qwest is somehow "constitutionally incapable of letting another party have the last word in any matter." The issue here is not who will have the last word, but whether Qwest has the right to inform the Commission of relevant facts that were recently disclosed to Qwest. Qwest believes it has that right and obligation to apprise the Commission of relevant facts.

“oral agreement” exists that requires the sales proceeds to be “directed right to the bank,” or that the bank “has a lien on all assets in an amount *2½ times the amount of the sale.*” (Emphasis added.)

Universal overemphasizes the existence of “Silicon Valley Bank’s financing statement [being] on file with the Oregon Secretary of State,” and that such information is “a matter of public record,” and could easily be ascertained with “minimal time and effort.” Universal misses Qwest’s point. As Your Honor can see from the documents attached to Universal’s letter, the UCC documents show only the *existence* of two security interests (to SVB and Mr. Roderick), but *not the amounts* secured by those interests. Nor, contrary to Universal’s inference, could a UCC search disclose the fact that SVB’s security interest is 2½ times the sales price between Universal and GlobalPOPs.² Qwest’s September 17th brief clearly made that an issue that Universal should have disclosed on September 19th, but did not. Accordingly, all of Universal’s arguments on pages 3 and 4 of its October 5th letter about the public nature of a UCC financing statement (including its reference to a 1988 North Carolina district court case) are irrelevant to Qwest’s fundamental point.

Further, Universal argues that Qwest did not ask “what is happening to the proceeds of the sale.” But the real issue is that once Qwest learned in early September that Universal was selling its business, it immediately expressed its concerns to the Commission that Qwest would not get paid for the considerable amount that Universal owes Qwest for services that Qwest has provided under the ICA since August 2006. Thus, whether the proceeds of the sale are going to Universal’s principals or shareholders (or even its affiliate, 10D Telecom), as Qwest once suspected, or to GlobalPOPs, or, as we now know, to SVB, is all irrelevant. The point is that Qwest now knows that Universal is selling the business and *someone* (now known to be SVB) has a security interest in all of the sale proceeds (and a lot more). Thus, for the first time, Qwest learned that it is unlikely to be paid anything, despite providing services for almost a year (essentially for free). Accordingly, Universal’s arguments about Qwest “not doing its due diligence” once again miss the point about Universal’s less than candid factual presentation to the Commission—it is worth remembering that it was Universal that initiated this complaint docket and sought a stay of Order No 07-366. In light of recent disclosures (including the information in Qwest’s recent letter), it is clear that Universal’s factual presentation to the Commission in seeking relief in this case omitted obviously relevant facts..

Universal makes much ado about Universal “volunteering” information about the sale to GlobalPOPs, or later, about its debt to SVB, or about providing documents regarding the transaction. However, Universal did so only because the Commission required a compliance statement about how Universal would cease violating the Commission’s orders, or because Qwest gave Universal notice of Qwest’s intent to file a complaint and petition for a TRO, and because Universal asked Qwest to hold off on the filing while it sent Qwest documents it claims would support the facts that Qwest has just learned in the past couple of business days.

² Of course, even if Qwest knew the amounts of the original loans in 2000 (which it does not), that would have little to do with what Universal might have owed to SVB or to Mr. Roderick today. More importantly, since Qwest did not know the amounts that would be passing hands from GlobalPOPs to SVB, it was impossible for it to know by mere virtue of a UCC statement whether that there will not be enough money for Qwest and other unsecured creditors to be paid.

Finally, Universal's letter ignores Qwest's concern that since Universal's December 2006 dispute of Qwest's transport charges, Universal has not paid Qwest a cent for Oregon's transport charges, or that Universal's refusal to do so was based on the fact it was appealing the Commission's arbitration orders, and thus, that the facts suggest that Universal was merely buying time to sell its business while having no intention of ever paying Qwest. That is really the crux of the matter. Thus, it is difficult for any reasonable person to conclude anything other than that Universal knew it had to sell its business, that it could not afford to pay Qwest for its services, but that Universal needed those Qwest services in order to keep its business alive to sell it. It is therefore obvious that Universal never had any intention to pay Qwest for those services. The consequence of all of this is that Universal has used Qwest's transport services for almost a year without payment, and Qwest has been unable to collect the revenue due, or to disconnect these services, and now, Universal wants the Commission to allow it to continue receive free service for another two months in order to allow it to finally consummate the sale of its business. If the present facts do not evidence a strategy of Universal using Qwest's services without any intent to pay, Qwest does not know what would.

Thank you for your attention to this matter. And as stated, Qwest respectfully submits that the Commission should **immediately lift the stay** from Order No. 07-366 in this docket.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Alex M. Duarte', written in a cursive style.

Alex M. Duarte

cc: John Dodge, Esq. (via email)

CERTIFICATE OF SERVICE

IC 13

I hereby certify that on the 9th day of October, 2007, I served the foregoing **QWEST'S LETTER TO THE HONORABLE ALLAN ARLOW** in the above-entitled docket on the following persons via U.S. Mail and electronic mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon, as well as submitting to the counsel listed below a courtesy electronic copy of same:

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DATED this 9th day of October, 2007.

QWEST CORPORATION



By: _____

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