



**Qwest**

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**Alex M. Duarte**

Corporate Counsel

October 4, 2007

Administrative Law Judge Allan Arlow  
Oregon Public Utility Commission  
550 Capitol St, N.E.  
Suite 215  
Salem, OR 97301

Re: IC 13—Supplemental Letter of Qwest Corporation

Dear Judge Arlow:

Recent events compel Qwest Corporation (“Qwest”) to disclose matters to the Commission that Qwest learned yesterday from counsel for Universal Telecom (“Universal”).

In light of the past events and disclosures in this docket, it is clear that Universal has withheld material information from the Commission and Qwest. In withholding this information, Universal has made a mockery of this proceeding. In light of this information (which is explained below), Qwest hereby requests that the Commission issue an order immediately lifting the current stay and ordering that Qwest may immediately disconnect all of the services that Qwest provides to Universal consistent with the terms of the approved interconnection agreement (“ICA”) between Qwest and Universal, and with any associated tariffs.

Yesterday afternoon Qwest gave a 24-hour ex parte good faith notice to Universal’s counsel that Qwest intended to seek provisional remedies in federal court today to secure the revenues from Universal’s sale to GlobalPOPs (and, if possible, to secure other assets as well). Qwest preceded an e-mail that it sent to Universal’s counsel with a voicemail to John Dodge, Universal’s lead counsel on this matter.<sup>1</sup> Counsel followed up with an e-mail (Exhibit A)

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<sup>1</sup> Given Universal’s challenge to the Commission’s power to provide such provisional relief in Universal’s September 19, 2007 reply brief, Qwest felt that prudence dictated that Qwest seek such remedies in federal court as well.

describing Universal's arrangement with its lender in more detail. In essence, Universal's counsel stated that the money paid by GlobalPOPs will go directly to Universal's lenders and is not available to Universal's other creditors. Qwest has not had an opportunity to evaluate the truth of Universal's statements, but for purposes of this letter, accepts them as true.

In response to Qwest's notice that it intended to seek a temporary restraining order and other provisional relief in federal court, counsel for Universal informed Qwest (via voicemail<sup>2</sup>) for the first time that a bank already has a security interest in the proceeds of the sale and "all assets" of Universal. Counsel also disclosed that an agreement exists that requires that the sales proceeds be "directed right to the bank." Counsel disclosed that the bank "has a lien on all assets in an amount 2 ½ times the amount of the sale . . . ."

On September 17, 2007, Qwest filed Comments with the Commission, wherein it specifically requested that the Commission issue an order (1) requiring that Universal disclose the dollar amount that Universal would realize from the sale and (2) ordering that the sales proceeds be paid over to the Commission pending resolution of the billing dispute (in effect creating a form of security interest in the proceeds).

It is amazing that having been fully advised of the relief requested by Qwest in Qwest's September 17 brief, Universal, in its reply brief dated September 19, 2007, failed to disclose the fact that Qwest's request for relief was preempted by Universal's contractual relationship with a bank. Instead, Universal argued about the importance of protecting the 27 ISPs and the end-user dial-up customers served by those ISPs, asserted factual issues about how many circuits had actually been disconnected, and argued that the Commission lacks the authority to grant the relief requested by Qwest.

Instead of candidly admitting that the entire proceeds (and a lot more) are already secured, Universal, in a footnote, misleadingly states: "Universal cannot represent that it can make full payment to Qwest or any other secured creditor." (Universal Reply, fn. 2). This statement not only withholds material information, but it is also actively misleading. If, as Universal now states, the entire sales proceeds and all other assets are secured, and the amounts owed far exceed the value of the assets in total, then the implicit suggestion in the quoted material that unsecured creditors might be paid at least something represents an active and knowing effort to mislead Qwest and the Commission. Under the circumstances, Universal's failure to disclose that the sales proceeds are fully secured is a knowing and material omission.

One can only speculate on Universal's lack of candor on this issue, but one obvious explanation suggests itself. In order to complete its sale to GlobalPOPs, it was essential that Universal not have its service disrupted. That goal, however, would have been frustrated by full disclosure that Qwest, an unsecured creditor, stands no chance of recovery of past due amounts,

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<sup>2</sup> Exhibit B is the transcript of the voice mail that two attorneys, Mr. Dodge and Mr. Newell, left with Scott Kaplan, an attorney at Stoel Rives, lead counsel on the action Qwest intended to file in federal court today (October 4, 2007).

nor does Qwest have any realistic opportunity to recover any of the additional \$15,000 to \$20,000 in bad debt that continues to accrue each month<sup>3</sup>. In other words, Universal has actively misled Qwest and the Commission in order to continue to obtain service it has no other means of paying for.

It was only when confronted with Qwest's notice that it would seek provisional relief in federal court that Universal came clean on that issue.

Universal has engaged in a successful campaign to avoid disconnection under the ICA. Universal first disputed Qwest's billings on the sole ground that it had appealed the decision in Docket ARB 671 to court. As Ms. Batz's affidavits attest, Qwest nonetheless diligently followed all of the steps required by the ICA to attempt to resolve any billing issues. When it became clear that the appeal was not a valid basis of dispute and in the face of impending disconnection, Universal then raised several "specific" grounds for dispute. One of them amounted to \$23, another a few thousand dollars. Qwest demonstrated, through legal argument and affidavit testimony, that the other two claims, as a matter of law, are not supported by the ICA.<sup>4</sup> The Commission concluded that Universal's hands are not clean in this matter, but nonetheless granted a temporary stay of disconnection. Following additional conferences with Judge Arlow, the parties were asked to file briefs on whether the stay should be lifted.

On September 17, 2007, Qwest, in good faith, suggested a means of assuring continued service by proposing that the proceeds of the GlobalPOPs sale be held by the Commission pending resolution of the billing disputes. On September 19, 2007, Universal made the various arguments discussed above. Glaringly missing from Universal's brief, however, was a disclosure that the relief Qwest was requesting was not possible because the sales proceeds and much more were otherwise secured (in fact, not only are the sales proceeds secured, they must be sent directly to the bank). Universal did not provide full and complete information to the Commission or to Qwest, and its failure to do so can only be interpreted as its effort to mislead Qwest and the Commission.<sup>5</sup>

Universal has known for months, if not years, that it would be unable to pay Qwest under the new ICA, that its assets were far outweighed by its liabilities. Universal thus engaged in a series of tactics designed to avoid paying Qwest anything until it could sell the business, and at least partially liquidate its debts to secured creditors. Part of those tactics have been the willful

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<sup>3</sup> The amount of the monthly incremental bad debt was ameliorated by Qwest's processing service orders on July 23, 2007 that disconnected numerous trunks.

<sup>4</sup> Universal's dispute based on utilized capacity has no foundation or basis from the interconnection agreement.

<sup>5</sup> Universal's delay tactics are a continuation of its long term effort to avoid payment for transport charges. Qwest initially sought a new ICA on July 16, 2004 in Docket ARB 589. It took Qwest until August 22, 2006 (in Docket ARB 671) to receive a new ICA that requires Universal to pay transport for ISP traffic as the Commission has required of other CLECs.

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failure to disclose to unsecured creditors like Qwest that they have no hope of recovering anything.

Yet, despite these now indisputable facts, Universal believes that Qwest has an obligation to continue to provide service and to increase its bad debt, while Universal continues to bill and pocket the monthly revenue it bills its customers right up to the very end of the transfer date. Qwest is not unmindful of the ISPs or their customers who would be impacted by disconnection. But the irony of this situation is that, if the stay remains in effect, Qwest will continue to add to its unpaid bad debt, while the bank, GlobalPOPs, and Universal will continue to benefit. In other words, Qwest gets nothing, but is in effect placed in the position of working for free for the bank, GlobalPOPs, and Universal.

In light of these facts, the only fair resolution of this case is to lift the stay and order that Qwest may immediately disconnect all of the services that Qwest provides to Universal consistent with the terms of the approved interconnection agreement ("ICA") between Qwest and Universal, and with any associated tariffs.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex M. Duarte', with a stylized, cursive script.

Alex M. Duarte

cc: Kelly Harpster, Esq.  
John Dodge, Esq.  
Jeffrey Martin, Universal Telecom, Inc.

**Smith, Ted**

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**From:** Dodge, John [JohnDodge@dwt.com]  
**Sent:** Wednesday, October 03, 2007 3:08 PM  
**To:** Kaplan, Scott; Trinchero, Mark  
**Cc:** Smith, Ted; Sargent, Brandy; Newell, Bob  
**Subject:** RE: Qwest v. Universal Telecom and GlobalPOPs

Scott --

This email will constitute our acknowledgement of receipt of your voice mail and email. Further, following up on our telephone conversation just now, I will memorialize certain facts regarding the Universal-GPOPs transaction.

To my knowledge, neither Qwest nor the Oregon PUC has asked to date how the proceeds of the sale of Universal Telecom, Inc.'s customer base would be handled. Here is the answer: Universal has two secured creditors, including Silicon Valley Bank and Richard Roderick. SVB is by far the larger of the two, and holds a lien on all of Universal's assets nearly two and one half times greater than the amount to be received from GPOPs. GPOPs has forwarded 50% of the purchase price to SVB, which is holding that money until such time as certain other conditions of the sale are satisfied, whereupon SVB will release "title" to the customers for transfer to GPOPs. GPOPs then will keep the 50% down payment, and will receive the remaining 50% of the purchase price paid by GPOPs. No shareholder, director, insider or any other third party will receive any amount from the sale to GPOPs.

Finally, as promised, I will transmit your request to my client that we disclose the purchase price negotiated with GPOPs, and the amount of the SVB lien. As we discussed, if these data are disclosed to Qwest, we would do so only pursuant to a protective order or confidentiality agreement.

Please let me know of any additional questions.

Sincerely,

John

John Dodge | Davis Wright Tremaine LLP  
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| Seattle | Shanghai | Washington, D.C.

Circular 230 - To comply with IRS rules, we must inform you that this message (including any attachment) if it contains advice relating to federal taxes, was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties that may be imposed under federal tax law. Under these rules, a taxpayer may rely on professional advice to avoid federal tax penalties only if that advice is reflected in a comprehensive tax opinion that conforms to stringent requirements under federal law.

-----Original Message-----  
From: Kaplan, Scott [mailto:SJKAPLAN@stoel.com]

Sent: Wednesday, October 03, 2007 12:29 PM  
To: Trincherro, Mark; Dodge, John  
Cc: Smith, Ted; Sargent, Brandy  
Subject: Qwest v. Universal Telecom and GlobalPOPs  
Importance: High

Gentlemen:

This to confirm the conversation message I left on Mr. Dodge's voice-mail at 9:05 PDT the morning. I gave you notice that tomorrow afternoon, October 4, 2007, or as soon thereafter as Qwest can be heard, Qwest will be seeking a temporary restraining order against your client, Universal Telecom, in the United States District Court for the District of Oregon, located at 1000 S.W. Third Avenue, Portland, Oregon. We will provide you with specifics about the hearing time and assigned judge when we get them.

The TRO will seek to restrain Universal's transfer of assets to GlobalPOPs and prevent payments by Universal to insiders or others outside the ordinary course. Qwest will also seek an order to show cause why Universal and Global should not appear for preliminary injunction hearing and a hearing on motions to attach Qwest's real property and for the appointment of a receiver pending payment of Qwest's outstanding bills.

Please note that I also tried to contact Joel Devore, who I understand is Universal's local counsel, and was told he was out of the office because of a family emergency.

Please let us know if you have any questions. Please also confirm your receipt of this communication. Thank you.

Scott J. Kaplan  
Stoel Rives LLP  
900 S.W. Fifth Avenue #2600  
Portland, OR 97204  
(503)294-9186 Telephone  
(503)220-2480 Facsimile



## MEMORANDUM

October 3, 2007

TO: FILE

FROM: SCOTT KAPLAN

CLIENT: Qwest

MATTER: v. Universal Telecom - Response to SJK Email

RE: Voicemail Message from Bob Newell and John Dodge, October 3, 2007

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BOB NEWELL: Scott, it's Bob Newell at Davis Wright. I am calling you on your email about Qwest and Universal Telecom. Could you give me a call about that. I've been brought in as the litigator and obviously we'd like to see the complaint, your motion and whatever else. But John Dodge is on the line too, who knows something about this, and John can kind of lay out--just briefly here for you--why we think that this is probably is going to be a waste of time.. [Bob introducing John Dodge]

BOB NEWELL: John are you there?

JOHN DODGE: I am here.

BOB NEWELL: Can you just lay for Scott--we got his voicemail. Let him know kind of the factual basis why these funds are all going elsewhere?

JOHN DODGE: Yeah. Hi Scott. I am John Dodge here in DC. I've worked with and against Ted Smith, who I admire as a good person and able attorney and I enjoy meeting you by voicemail. I think there may be some confusion on your side as to the distribution of proceeds from the sale of Universal's customer base to GlobalPops. The bottom line is that there are two secured creditors ahead of everybody along with some priority claims. The primary secured creditor has a lien on all assets in an amount of 2 1/2 times of the amount of the sale, and the proceeds from the sale by prior agreement between Universal and that creditor (a bank...Silicon Valley Bank in Portland). The money will be directed right to the bank. It won't be going to Universal's shareholders, directors, principals, or any other third party. So, we are a little confused about the need for a filing by you tomorrow and wanted to talk through it. Bob.

BOB NEWELL: Yeah, so Scott if you could just give me a call. My number is 778-5234, and if and when you are able to do that I'll tie in John or whoever else needs to be involved to discuss

it and maybe get you what you need to satisfy your client that nothing funny is going on here.  
Again: 778-5234. Thanks and lot.

JOHN DOGE: Thank you, Bob.

BOB NEWELL: Thanks.

EOM (TRANSCRIBED BY JULIE WEIKEL 10/3/07)