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Carla M. Butler
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November 23, 2005

Frances Nichols Anglin
Oregon Public Utility Commission
550 Capitol St., NE
Suite 215
Salem, OR 97301

Re: ARB 671

Dear Ms. Nichols Anglin:

Enclosed for filing please find an original and (5) copies of Qwest Corporation's Response to Universal's Motion to Compel, along with a certificate of service.

If you have any question, please give me a call.

Sincerely,

Carla M. Butler

CMB:
Enclosures
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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

ARB 671

In the Matter of the Petition of QWEST CORPORATION for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with UNIVERSAL TELECOMMUNICATIONS, INC.	))))))	**QWEST'S RESPONSE TO UNIVERSAL'S MOTION TO COMPEL**

Petitioner Qwest Corporation ("Qwest") hereby responds to the motion to compel that respondent Universal Telecommunications, Inc. ("Universal") filed on November 9, 2005. For the reasons that follow, Qwest respectfully submits that the Commission should deny Universal's motion in its entirety.

BACKGROUND

On October 25, 2005, Universal served 28 data requests (not counting subparts) on Qwest in this proceeding. Despite that OAR 860-014-0030 gives parties ten (10) Commission days to respond, Qwest agreed to expedite the responses, and thus responded in five Commission days, on November 1, 2005. Qwest fully responded to all but two data requests (the two requests at issue here). However, Qwest objected to the two irrelevant and unduly burdensome data requests that would have required Qwest to perform a special study, as well as to conduct legal research for Universal, about publicly-available information regarding two specific provisions (of *hundreds* in a typical interconnection agreement) in *thousands* of interconnection agreements that Qwest has entered into with hundreds of CLECs, over almost *10 years*, in *14 states.*

Universal's motion to compel seeks such irrelevant and unduly burdensome information despite that the Commission does not require special studies in discovery. Universal also does so despite that the information, while voluminous, is *publicly available* information that Universal, with its Washington, D.C. national counsel specializing in telecommunications law, could obtain

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just as easily as Qwest. Moreover, Universal *admits* that the information is publicly available, and that it is *already doing such research.* However, it desperately attempts to raise the so-called "unfiled agreements" proceeding (docket UM 1168) as a justification why it needs Qwest to compile special study "lists" in order to "allow Universal to complete its research of public records to determine if such documents exist." Universal does so despite that it, and its counsel, *already possess all of the agreements* at issue in docket UM 1168 (including the more than 55 agreements that the Commission agreed were not interconnection agreements that were required to be filed in the first place), and it has consent to review them here. Thus, there is absolutely no merit to Universal's motion to compel. It also goes without saying that its bizarre requests for costs, including attorneys' fees, is likewise lacking in merit.

In short, Qwest has objected to only two of Universal's 28 data requests (nos. 20 and 21) for various reasons. First and foremost, they are grossly overbroad and unduly burdensome. Universal has not tailored its requests to obtain the information it claims it needs to prove the point it evidently wishes to make. Rather, it has engaged in a fishing expedition in the apparent hope of forcing Qwest to prepare a special study compilation list, after reviewing hundreds of state commission orders, in 14 states, over almost 10 years, in order to determine if there is anything in these orders that "possibl[y]" or "conceivabl[y]" may relate to the two contract provisions that Universal advocates. (Motion, p. 6.) Qwest, however, is not required to conduct Universal's own legal research on these issues. Finally, in a good faith attempt to avoid the time, effort and resources of this motion for the Commission and the parties, Qwest has offered to provide the non-public information that Universal has claimed justifies these two requests, but Universal has rejected Qwest's offer. It is against this backdrop that the Commission should evaluate Universal's motion to compel.

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ARGUMENT

In its motion to compel, Universal requests that this Commission require Qwest to answer two data requests (nos. 20 and 21) that are not only irrelevant to the issues regarding the Oregon interconnection agreement that the Commission is arbitrating, but are also extremely burdensome to answer. Indeed, the requests would require Qwest to prepare a special study, and they involve legal research of publicly-available information that Universal can conduct itself (and that it admits it is already conducting). For the reasons that follow, the Commission should deny Universal's motion to compel in its entirety.

I. STANDARD OF REVIEW

In its motion, Universal cites several cases relating to discovery standards, including Universal's contention that "Qwest, as the party objecting to the discovery request, has the burden of showing why the request might not be relevant or reasonably calculated to lead to the discovery of relevant evidence." (Motion, p. 5.) Qwest does not challenge Universal's general statements of discovery standards. However, Universal also cites a case (*Seaward Yacht Sales, Ltd. v. Murray Chris-Craft Cruiser's, Inc.*, 1998 U.S. Dist. LEXIS 5266 at *6 (D. Or. 1998)) for the proposition that "[t]he fact that [a discovery request] may be *somewhat* burdensome and expensive is *not ordinarily* a reason to deny discovery which is *otherwise appropriate*." (Motion, p. 5 (emphasis added).)

First, apart from the various qualifiers (which the *Seaward* court mentioned a request being only "somewhat" burdensome, such *somewhat* burdensome request is "not ordinarily" a reason to deny discovery, and that the request must be "otherwise appropriate"), the case must be viewed in its context. The *Seaward* case, however, did not involve a special study. In fact, the documents at issue there were "merely the remainder of documents, portions of which have already been produced, as well as documents which have already been identified in depositions."

Qwest
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Seaward, 1998 U.S. Dist. LEXIS 5266 at *6. That is not the issue here. In this case, Qwest has responded to all but two data requests that Universal propounded, in only five business days no less, and has not sought to deny Universal the opportunity to obtain documents "which have already been produced" or "documents which have already been identified in depositions." Instead, Qwest has merely challenged the overbreadth and undue burden of only the two Universal's data requests at issue.

Two Ninth Circuit cases are far more relevant to the issues raised in Universal's motion. Both held that the party seeking discovery has the burden of demonstrating that the burdens of discovery would be minimal and that the benefits outweigh the potential burdens. In *Sorosky v. Burroughs Corp*., 826 F.2d 794 (9th Cir. 1987), the plaintiff (a terminated employee) sought the production of documents relating to the defendant's policies for discharging employees, the reasons it closed certain facilities, and other information. The defendant produced documents related to the two facilities in which the plaintiff worked, but refused to provide "documents related to its other facilities worldwide" on the grounds that it would be irrelevant and unnecessarily burdensome. The district court denied a motion to compel, which the Ninth Circuit upheld, stating:

> Sorosky's lawsuit was focused on his employment, which occurred only at Santa Barbara and Pasadena. Without a more specific showing that the burdens of production would be minimal and that the requested documents would lead to relevant evidence, we cannot say the district court abused its discretion . . . ." 826 F.2d at 805.

The issue in *Sorosky* is similar to the issue here. The issues before the Commission in this docket relate to an interconnection agreement between Universal and Qwest *in Oregon*. Yet, in both of the requests at issue, Universal seeks information related to two particular contract provisions (of the hundreds typically found in section 252 interconnection agreements) in

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literally *thousands of interconnection agreements* that Qwest has entered into, with *hundreds of CLECs*, throughout *14 states*, and over the past almost *10 years*.

The second Ninth Circuit case, *Nugget Hydroelectric v. Pacific Gas & Electric*, 981 F.2d 429 (9th Cir. 1992), reaffirmed the standard articulated in *Sorosky*. The plaintiff had sought broad discovery regarding the defendant's relationships with private power suppliers. The Ninth Circuit upheld the magistrate judge's refusal to order discovery, stating:

> The magistrate's conclusion the Nugget's request was unnecessarily burdensome and overly broad is based on *Nugget's failure* to make a 'specific showing that the burdens of production would be minimal and that the requested documents would lead to relevant evidence.'" 981 F.2d at 439, quoting *Sorosky v. Burroughs Corp.*

These cases stand for the clear proposition that a party requesting broad discovery, as Universal is in this case with the two data requests at issue, must show that the burdens of production are minimal, and that such minimal burdens will lead to the discovery of relevant evidence. As discussed hereafter, the overbreadth and undue burden of Universal's two data requests here are extreme and its justifications fail to meet the foregoing standard. Accordingly, as the moving party here, and having issued two overly broad, unduly burdensome and irrelevant (or marginally relevant) data requests, it is *Universal* that has a heavy burden of proof to prevail on its motion.

II. THE INFORMATION THAT UNIVERSAL SEEKS IS NOT DISCOVERABLE

A. The information sought is not relevant to the agreement at issue in Oregon

Preliminarily, although relevance may be broadly construed, discovery of irrelevant information is not required. Here, the information that Universal seeks is wholly irrelevant to the issues that the Commission must decide in arbitrating a new interconnection agreement between Qwest and Universal for the state of Oregon.

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For example, how another state commission may have ruled on these issues or this language under different circumstances, or different state interconnection policies, requirements and precedent, or under potentially different prevailing law (especially during an ever-changing 10-year time frame), or possibly under different procedural scenarios (e.g., interpretation of old or existing language versus arbitration of new language for a new agreement), is all irrelevant to the issues here. The issues here pertain to the contract language that this Commission concludes is appropriate, based on *current* federal and state law, and sound public policy, for a new interconnection agreement.[1] Again, even if the information were marginally relevant, which Qwest does not believe it is, such marginal relevance would need to be weighed in relation to the requests' overbreadth and undue burden.[2] This is especially so given that the requests would require Qwest to perform a special study audit, as Qwest discusses below, and that they seek public information about states other than Oregon. When weighed against Universal's rationale ("it is *possible* that Universal's own research of public records in Oregon, and elsewhere, would not uncover all relevant agreements or orders" and "it is *conceivable* . . . that such agreement or

[1] Universal seems to argue that because Qwest claims its positions are supported by state and federal law, any order (in another state) to pay reciprocal compensation or the RUF "would substantially undermine its claim," and thus "there is no reason Qwest would agree [or be ordered] to accept financial responsibility [for ISP traffic reciprocal compensation or for ISP traffic RUF] under interconnection agreements with other CLECs." (Motion, pp. 5-6.) However, the mere fact that Qwest advocates a position does not mean that it is required to perform a special study audit to compile a list of agreements and orders in other states where its position may not have prevailed. In essence, Universal seeks Qwest to perform Universal's own legal research for it, as Qwest describes in section II.C., *infra*. Further, the fact that Qwest argues that its positions are supported by *current* federal and state law does not make the requests for information about contrary orders relevant.

[2] *Manzo v. Daniel*, 872 F.2d 429, 1989 WL 30456, at p. *2 (9th Cir. 1989) ("The requirement of Rule 26(b)(1) that the material sought in discovery be 'relevant' should be firmly applied, and the district courts should not neglect their power to restrict discovery where justice requires [protection for] a party or person from annoyance, embarrassment, oppression, or undue burden or expense ...' Rule 26(c). With this authority at hand, judges should not hesitate to exercise appropriate control over the discovery process.") (quoting *Herbert v. Lando*, 441 U.S. 153, 177 (1979)); *In re Multi-Piece Rim Products Liability Litigation*, 653 F.2d 671, 679 (D.C. Cir. 1981) ("The trial court's discretion extends to determining the relevance of discovery requests, assessing their oppressiveness, and weighing these factors in deciding whether discovery should be compelled.") (citations omitted.).

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order exists or *could exist*, but is not on file with the appropriate State PUC" [Motion, p. 6 (emphasis added)]), Universal woefully fails to meet that burden.

B. <u>The requests are overbroad, unduly burdensome, and require a special study</u>

Further, as Qwest has advised Universal, the two data requests are overly broad and unduly burdensome, especially because the "lists" that Universal seeks would require a special study, which Qwest is not obligated to perform. The requests are overly broad and unduly burdensome *on their face* because Universal seeks voluminous detailed information regarding state commission orders and interconnection agreements, in *14 states*, and for almost *10 years*, regarding two specific interconnection agreement provisions (of the *hundreds* of provisions that are typically in such agreements).[3]

More importantly, Qwest does not possess the information that Universal seeks, and thus it would be required to perform a *special study* audit in order to compile the voluminous detailed list that Universal seeks. It is well-settled in discovery practice before this Commission that a party is not required to prepare a special study for another party.[4]

Finally, separate and apart from the fact that a special study would be required, and that the data requests seek publicly-available information (as discussed below), the information seeks overly broad and unduly burdensome information *outside of Oregon*, and in 13 other states, no less. Qwest's experience is that this Commission has been understandably reluctant to require a party to respond to overly broad discovery beyond information for Oregon.

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[3] As an ILEC with section 252 obligations under the Telecommunications Act of 1996, Qwest has entered into thousands of interconnection agreements in its 14-state region, and hundreds in Oregon. Indeed, in Oregon today, Qwest is a party to 164 interconnection agreements.

[4] The Commission's discovery guidelines provide:

> *A party will not be required to develop information or prepare a study for another party*, unless: (a) the capability to prepare the study is possessed uniquely by the party from whom discovery is sought (such as a run of a party's computer program with different variables); (b) *the discovery request is not unduly burdensome*; and (c) the information sought has a *high degree of relevance* to the issues in the proceeding. (Emphasis added.)

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Portland, OR 97204

For example, just recently in an interconnection arbitration between Level 3 and Qwest (docket ARB 665) like this one, Level 3 filed a motion to compel against Qwest regarding certain data requests, including five data requests in which Level 3 sought information on various subjects beyond Oregon, on a 14-state basis. In each instance, Qwest had objected to the requests on grounds that they sought information outside of Oregon. In ruling on the motion to compel, Administrative Law Judge Sam Petrillo ruled in each instance that Qwest was *not* obligated to respond with information related to states other than Oregon. (See Exhibit A, Transcript of August 25, 2005 hearing in docket ARB 665, pp. 4-5 (ALJ Ruling denying Level 3 motion to compel further responses to data requests nos. 6(e), 13, 17, and 19-20).) The ALJ also required Level 3 to conduct its own research about publicly-available information. (*Id*., p. 9 (denying request no. 51) ("I find that Qwest's response is sufficient because the FCC Rules are readily available for anyone to look at, including Level 3.")[5]

For all of these reasons, Qwest respectfully submits that the data requests at issue are overly broad and unduly burdensome, seek information outside of Oregon, and more importantly, would request Qwest to perform a special study. Thus, the Commission should deny Universal's motion to compel in its entirety.

C. The data requests seek public information that is equally available to Universal and that would require Qwest to do Universal's own legal research

Further, the two data requests seek public information regarding state commission orders and interconnection agreements that is equally available to Universal. Thus, this is publicly-available information which Universal can obtain itself, and which it admits it is already *in the process of obtaining*. (See e.g., Universal Motion, at p. 6 (production of the required list "would

[5] *See also* Exhibit A, at p. 7, where Judge Petrillo denied Level 3's motion with regard to request 45 on the ground that "the request is unduly burdensome because, as Qwest indicates, the information is not available in a central repository."

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in turn allow Universal to *complete its research of public records* to determine *if* or where such documents exist" (emphasis added)).) The Commission should not require Qwest to provide publicly-available information which Universal itself can seek, and is in fact already seeking.[6]

Further still, the two data requests seek Qwest to conduct Universal's own legal research. That is, Universal and its counsel can easily conduct computerized legal research about state commission orders regarding the two contract provisions at issue. This is especially so since such commission orders would undoubtedly use key words such as "reciprocal compensation," "ISP traffic," "relative use factor" and "RUF," and Universal's counsel is more than capable of conducting such computerized research if it really deems the information so important. Again, Universal admits that it is already conducting its own legal research. (See e.g., Motion, at p. 6.)[7]

D. Qwest has offered to provide any otherwise non-public information

Finally, as justification for allegedly needing the special study list that Universal seeks, Universal argues that it is unable to "complete its research" of publicly-available orders and

[6] Universal argues that "Qwest's objection based on its statement that the Requests seek information included in the public record, is not a valid, legal basis for objection." (Motion, p. 5.) However, it cites no authority for that proposition.

Later, Universal cites to *State of Oregon v. Whitmire*, 151 Or. App. 192, 195 (1997) for the proposition that "if information is contained in the public record, it would not be 'difficult or time-consuming' for Qwest to obtain the required information." (Motion, p. 6.) However, that case simply does not apply here. Specifically, *Whitmire* was a criminal case involving the court of appeal's reversal of the circuit court's dismissal of an indictment due to the prosecutor's failure to submit a certified copy of the defendant's previous conviction order (to prove he was a convicted felon) from the court that had convicted him (instead of from the Oregon Corrections Division). The court merely held that since the defendant's previous conviction was a matter of public record, the circuit court abused its discretion in dismissing the indictment because it was "not a difficult or time-consuming thing" to have allowed the prosecutor to obtain a certified copy of the conviction order from the convicting court. That decision does not stand for the proposition that because the requested information is contained in the public record, Qwest is obligated to obtain the information that Universal seeks (and that Universal can obtain, and is obtaining, itself).

[7] Finally, Universal seems to imply that because Qwest cited to "several state PUC decisions that it claims support its legal arguments" (Motion, p. 4), Qwest is somehow obligated to conduct Universal's own research about possibly contrary decisions. Merely citing decisions from other state commissions does not open Qwest to an obligation to examine every agreement or order in fourteen states. Moreover, Qwest did not cite any of the cases as binding on the Commission. Each citation merely reported the particular state commission's views of either the application of federal law or the underlying federal policy on ISP traffic. Citing these decisions for their underlying logic does not open Qwest to the need to perform a full-scale review of thousands of ICAs in fourteen states for Universal's benefit. Finally, as a matter of fact, Qwest did not even cite any state commission decisions in Qwest cases on the reciprocal compensation issue, but relied strictly on an analysis of current federal and Oregon law.

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Portland, OR 97204

agreements because Qwest did not file certain "interconnection" [wholesale] agreements with state commissions. Universal cites to the so-called "unfiled agreements" in the docket UM 1168 proceedings as its reasons. (See Motion, pp. 5-6.)

However, as Qwest has reminded Universal, *Universal already possesses all of the agreements at issue* in docket UM 1168 (the majority of which the Commission agreed were not "interconnection agreements" that were required to be filed under section 252). This is so because Universal intervened in docket UM 1168, and thereafter requested the agreements, which Qwest produced. (See Exhibit B, Qwest emails of 11/10/05, 11/11/05 and 11/14/05.)

Moreover, in order to avoid the Commission having to address the motion to compel, and to avoid any claims that Universal could not use the agreements in docket UM 1168 because Qwest had produced them confidentially under a protective order in another matter, Qwest consented to Universal reviewing the agreements in this docket for the limited purpose of determining whether these otherwise non-public agreements contained any relevant information regarding the two contract provisions at issue. (Exhibit B, Qwest email of 11/10/05.) These agreements essentially would be the "missing" non-public information that Universal evidently claims it needs before it can "complete its research" of state commission orders and interconnection agreements. Universal, however, has rejected this offer.

III. The request for sanctions is completely without merit and is extraordinary

Finally, in an example of incredible overreaching, simply because the parties have a discovery dispute about only two of 28 data requests (which two data requests are extremely objectionable for the reasons set forth above), Universal seeks sanctions, including attorneys' fees. Universal apparently does so because Qwest did not perform a special study audit and compile the lists that Universal seeks. The request for sanctions is utterly without merit.

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First, the two data requests are extremely objectionable for the reasons set forth above. Qwest will not repeat its substantive arguments, other than to say that the motion to compel is without merit, let alone a request for sanctions.

Second, even if the Commission were to grant any part of the motion, it would not mean that sanctions would be appropriate. Otherwise, the Commission would be awarding sanctions every time a party lost on a motion to compel, and this would have the unwanted effect of encouraging requests for sanctions and procedural gamesmanship, which fortunately has not been a problem in discovery disputes before this Commission to date. Sanctions are only appropriate for the most egregious failures to respond to or abide by discovery obligations, and not simply because one party believed it was forced to request the Commission's intervention by filing a motion to compel.

Third, Qwest has made numerous good faith attempts to resolve the issues, and thus spare the Commission, the ALJ, and the parties themselves, from having to expend the time, effort and resources to address and decide the motion. (See Exhibit B.) Universal has rejected all of Qwest's good faith efforts, however. (*Id.*)

Finally, Qwest is not aware of the Commission ever awarding sanctions in a discovery dispute. Indeed, Qwest cannot recall the last time a party even requested sanctions in a motion to compel. Qwest respectfully submits that it would be extraordinary for the Commission to award sanctions, and especially attorneys' fees, merely because the parties had legitimate disputes about two unduly burdensome data requests.

Accordingly, Universal's request for sanctions is extraordinary, against sound Commission policy and practice, and utterly without merit, and this is so even if the Commission were to grant any part of Universal's motion. Qwest respectfully submits the Commission should deny the request for sanctions.

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CONCLUSION

For the reasons above, petitioner Qwest requests that the Commission deny Universal's motion to compel discovery in its entirety, including its extraordinary request for sanctions.

DATED this 23rd day of November, 2005.

Respectfully submitted,

QWEST CORPORATION

By: _____

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Attorneys for Qwest Corporation

Exhibit A

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 665

In the Matter of	)
	)
LEVEL 3 COMMUNICATIONS, LLC	)
	)
Petition for Arbitration	)
Pursuant to Section 252(b) of	)
the Communication Act of 1934.	)

TRANSCRIPT OF TELEPHONE CONFERENCE

BE IT REMEMBERED that the above-entitled matter came on regularly for a Telephone Conference before SAMUEL J. PETRILLO, Administrative Law Judge, Public Utility Commission, on August 25, 2005.

APPEARANCES

Alex Duarte, Attorney at Law,
Tom Dethlefs, Attorney at Law,
Appearing in behalf of Qwest

Sarah Wallace, Attorney at Law,
Eric Cecil, Attorney at Law,
Appearing in Behalf of Level 3

TELEPHONE CONFERENCE

August 25, 2005

THE COURT: Good afternoon. It's Thursday, August 25th, 2005. It's shortly after 2 o'clock. This is the time and place for the telephone conference in Docket ARB 665, which is a Petition of Level 3 for Arbitration pursuant to the Telecommunications Act of 1999 -- 1996, excuse me, with Qwest Corporation.

My name is Sam Petrillo. I'm the Administrative Law Judge assigned to preside over this matter, arbitrate this case. We have appearances today on behalf of Qwest by Alex Duarte and Tom Dethlefs, appearing by telephone. And appearing here in person in Salem on behalf of Level 3 we have Sarah Wallace and Eric Cecil.

The purpose of the conference today is to address Level 3's Motion to Compel Discovery. And I had originally contemplated that because of the number of items in dispute that we would go through them one by one, and perhaps would require clarification or argument from the parties regarding some or all of these items in dispute. But because the parties did such a commendable job with their filings, which I found to be quite comprehensive, it pretty much, in my mind at least, eliminates the need for that approach, and, as a result, I'm prepared to make my ruling now. I've read all the

materials and I think that's the approach that makes the most sense under the circumstances.

What we need to do here is really to save time, which is in short supply, since the hearing is scheduled to begin in less than four weeks, so my ruling will address each of the items in dispute. I'll try to go through them as quickly as possible and hopefully we'll be able to end the conference fairly expeditiously.

Before I begin, though, have any of the items in dispute been resolved since I received the last filing in this case?

MS. WALLACE: No, Your Honor. I've actually received some of the responses that Qwest did.

THE COURT: Great. Are there any other preliminary matters before I go to my ruling?

(No response.)

THE COURT: It appears there are none. So I'm basically going to read through this, and you'll have to forgive me for that, but I've prepared this. And, as I said, I think this is the most expeditious approach for us to take under the circumstances.

I'm going to begin with the data requests, and then I'll go to the request for admission.

Beginning with Data Request No. 3, I'm going to require Qwest to respond to that. I think it's relevant to

the issue of nondiscriminatory access. Qwest has argued that the Commission has already decided this issue. I've gone through the relevant materials that it cited, and I don't really agree with that. I think the matter may be pending. Certainly it has been raised in IC-12, but the issue has not been decided finally by the Commission yet.

There is an allegation by Qwest with respect to that interrogatory that it's burdensome because it seeks national information. I think there's a bit of confusion on that point. My understanding is that the request is limited to Oregon; is that correct?

MS. WALLACE: Yes.

THE COURT: Okay. With respect to Qwest's trade secret claim regarding the number of customers, I believe that Qwest is adequately protected by the protective order, so that's my ruling on No. 3.

On No. 6(b), I'm also going to require Qwest to respond. Like request No. 3, I think it's relevant to the issue of nondiscriminatory access, and I believe it may lead to the production of relevant evidence. Again, information relating to Qwest's customers is protected by the existing protective order.

Same decision in item 6(e). Qwest shall respond. I believe Qwest actually concedes that that information may be relevant. But I do find that to the extent that it seeks

information for services outside of the State of Oregon, that it's overbroad and burdensome, so I'm going to limit it to the State of Oregon.

With respect to No. 13, which involves the co-mingling of local and toll traffic on single trunk routes by Qwest on a nationwide basis, I find that that request is overbroad and unduly burdensome insofar as it seeks information regarding matters outside of Oregon. So I find that Qwest should respond with information limited to Oregon.

On Items 14 and 16, I find that those requests are overbroad and unduly burdensome, and that no response is required.

On No. 17, I think -- I find that the request is overbroad and unduly burdensome insofar as it seeks information outside of Oregon, and Qwest shall respond with information limited to Oregon. In other words, it needs to list all the CLECs with whom it commingles traffic on a single trunk route, and the month and the year when Qwest started to combine that traffic. Again, limited to Oregon.

With respect to No. 19, the same ruling. I believe that it is overbroad and unduly burdensome insofar as it seeks information outside of Oregon. Qwest shall respond with information limited to its Oregon operations and inter-connection agreements it has with CLECs in Oregon.

No. 20, same decision.

I believe No. 21 has been resolved.

With respect to No. 44 -- I'm taking these out of order because that was the way they were listed in the filings, so you'll -- please forgive me for that.

I don't believe a response is required to No. 44 because I believe that the question is ambiguous, and that's based upon the statement by Qwest that PLU and similar factors are applied to overall traffic volumes, and not used to determine the rating or jurisdiction of individual calls.

With respect to No. 22, again, I find no response is required. I believe the question is overbroad, and I also believe that Level 3 has equal access to the information sought. In addition, I believe that the term Transit Traffic is ambiguous because it's potentially susceptible to different interpretations.

With respect to Items 24, 25, 28(b) and 33, regarding FX and FX-like services, in that case a Qwest response was limited to stating that those services had been grandfathered in Oregon. I believe that's not responsive to the question, and that Qwest should supplement its response with more information regarding those services.

With respect to Item 28(b), in particular, Qwest states that the reference to local and toll is ambiguous. I really don't agree with that. Those are commonly understood terms. And if Qwest wants to insure that there's no

misunderstanding with respect to them, they can define those terms in its response. And I refer Qwest back to request No. 13 where Level 3, in fact, indicated that if there was any uncertainty regarding those two terms, Qwest should, in fact, do that.

With respect to issue number -- or request No. 43, that would be the number of physical POI's in Oregon between Qwest and CLECs, I believe Qwest should respond to this inquiry. I believe it's relevant to I think it's issue 1 and not unreasonable.

With respect to Item No. 45, I do not believe a response is required to that. I think that the request is unduly burdensome because, as Qwest indicates, the information is not available in a central repository.

Okay. That's -- as I understand it, that's all of the data requests in dispute. Now I'm going to move on to the request for admission.

In summary, I find that Qwest is not required to respond to the requests for admission in dispute, except in the two instances that I mentioned below. I am, however, going to go through them all so the parties understand what my rulings are. Again, my rulings are not in order because I'm following the approach that the parties used in their comments.

With respect to -- again, with respect to all of

these, I'm finding that Qwest has provided sufficient information in either its response or its supplemental response. I'm going to give you a little bit more detail now.

With respect to No. 20, Qwest indicates that the requested information is available on its website; however -- and this is one of the instances where I'm going to require further response -- I believe that Qwest should provide a comparison between the base rates for one flex of VOIP and the base rate for choice home -- for its choice home-plus package.

With respect to Item No. 26, I believe that Qwest has provided sufficient response, and that, if necessary, Level 3 can explore that matter further at hearing.

With respect to No. 27, I agree that Qwest is unable to answer more fully for the reasons specified in its supplemental response. I agree with Qwest that the question presumes that Qwest will be able to use multiple entities -- it uses multiple entities to provide service in its 14-state region, and also that the service is provided in authorized regions, which is not the case in all states.

With respect to No. 31, I agree with Qwest that the question involves too many variables for Qwest to try to predict all of the probable outcomes. And, also, that the question, the request, represents one possible outcome that might occur. So, in that case, as with the others, I find that Qwest's response is sufficient.

With respect to No. 36, I interpret Qwest's response to deny the request for the reasons that are specified in the response. The same is true for Item No. 41. Qwest has effectively denied the request for the reasons specified.

With respect to No. 51, I find that Qwest's response is sufficient because the FCC rules are readily available for anyone to look at, including Level 3.

With respect to No. 53, I believe that Qwest should respond. The objection that it made and I believe this is -- this is the only thing I could find, anyway -- the objection is that there's no reference to, quote, unquote, "this service in the" -- that the request refers to, quote, unquote, "this service," in that that is vague and ambiguous. But, as I read the request, it makes no mention of this service. It refers to, I believe, dial-up Internet service. So, because of that, I find that Qwest should respond.

With respect to Item No. 54, I agree with Qwest that the references to traditional local exchange carriers and, quote, unquote, "sizable base" are ambiguous. And, if necessary, Level 3 can explore these further at hearing.

With respect to Item No. 55, I find that the question involves too many variables for Qwest to try to predict all the probable outcomes, and that the request in itself represents one possible outcome, as Qwest has

indicated.

With respect to No. 57, I agree with Qwest that the core forbearance order issued by the FCC speaks for itself.

With respect to Item No. 58, again, I agree with Qwest that the question involves too many variables for Qwest to try to predict all the outcomes, and that the request represents one of those possible outcomes.

With respect to No. 50, the question is compound. And, in addition, I believe Qwest has denied the request in its response.

With respect to Items No. 10 through 13, Qwest has denied the request in its response and, in addition, the federal tariffs speak for themselves.

With respect to Item No. 42, Qwest has denied that response, as well, for the reasons specified in its response. And I refer you back to Item No. 36.

Those, I believe, are all of the requests for admission. Have I missed anything?

(No audible response.)

THE COURT: Okay. That's my ruling. If anyone wants to review that further, I'll have tapes available that you can take with you and either transcribe on your own or perhaps we can have it transcribed. I'll have you talk to my legal secretary, Frances Nichols, about that and we'll decide what procedure to follow in the event you'd like a transcript.

Let's talk about a time for response.

MS. WALLACE: Your Honor, may I ask for one clarification?

THE COURT: Yes.

MS. WALLACE: In Request No. 21 --

THE COURT: Yes.

MS. WALLACE: -- and Qwest had offered to answer so long as it was limited to Oregon, and I'm assuming you're agreeing with them --

THE COURT: Yes.

MS. WALLACE: -- and requiring a response?

THE COURT: Yes. Thank you.

Time to respond. Do we have a proposal?

MS. WALLACE: We propose August 31st in our reply brief, in order to try to get this (indiscernible).

THE COURT: And the reply testimony is due on the 6th?

MS. WALLACE: Yes.

THE COURT: Okay. Mr. Duarte, Mr. Dethlefs, are you there?

MR. DETHLEFS: This is Tom Dethlefs. I'm going to give it to the interrogatory coordinator right now. I've been taking notes.

THE COURT: Okay.

MR. DETHLEFS: And we'll try to turn these around

as quickly as possible. The 31st, that's a Tuesday? Is that --

MS. WALLACE: It's Wednesday, I believe.

MR. DETHELFS: That's Wednesday?

THE COURT: Hold on. I can tell you right away. It's Wednesday.

MR. DETHLEFS: It's Wednesday? I think we ought to be able to finish the responses by Wednesday.

THE COURT: Okay. Let's set the response date for Wednesday. And if there are any difficulties, you can contact my legal secretary, who can get a hold of me. I'm tentatively scheduled to be out of town next week because I'm transporting one of my children to graduate school, but I'm available by cell phone, so if we have any issues, you can contact me.

We had briefly discussed the possibility of scheduling revisions. Are we still on schedule?

MS. WALLACE: Yes. We think we are. It is somewhat dependent on them getting their response to us.

THE COURT: Okay. Well, I'll assume that we're just going to proceed with the existing schedule until I hear otherwise from the parties.

Are there any additional matters that we need to take up today?

MS. WALLACE: No, Your Honor.

THE COURT: It appears there are none.

Thank you, very much for your time. The conference is adjourned.

MR. DETHLEFS: Thank you, Your Honor.

MS. WALLACE: Thank you.

(Conclusion of telephone conference.)

- - -

CERTIFICATE OF TRANSCRIBER

I, Janis R. Brown, Court Transcriber, do hereby certify that I personally transcribed the proceedings occurring in the transcript appended hereto; that said proceedings were recorded by audio cassette tapes; that I thereafter reduced said cassette tapes to typewriting, and the foregoing and hereto attached pages of typewritten matter, numbered 1 through 13, constitute a full, true and accurate record of the requested portions of such proceedings, to the best of my skill and ability.

Dated this 21st day of November, 2005, at Aloha, Oregon.

Janis R. Brown
Court Transcriber

-----Original Message-----
From: Duarte, Alex [mailto:Alex.Duarte@qwest.com]
Sent: Wednesday, November 16, 2005 6:48 PM
To: John Dodge
Cc: Smith, Ted; K.C. Halm
Subject: RE: Exhibits Question

EXHIBIT B

John-

Thanks for the email. It looks like you will go forward with the motion, and thus we will continue preparing our response.

I don't want to beat a dead horse (especially about the fact this involves a special study, which is not as easy as you might think), but you do make a couple of new points that KC had not made, and just to complete the record, I will respond.

Regarding your concern that your public research may not turn up agreements in Oregon, Minnesota and elsewhere, and about PUC databases that are not 100% reliable, or that an ICA attached to a filing might not be accessible, obviously, one can always argue there just may possibly be something out there that we cannot obtain. Clearly, the mere possibility that such a document may exist is not a reason for Qwest to do a special study. This also erroneously assumes that Qwest is somehow obligated to provide Minnesota and other states' filings, and that the agreements filed in Minnesota and elsewhere are not similar to the ones filed in Oregon, which you already possess. Of course, there is no concern about anything not filed in Oregon because the ICAs were all filed, and you even have the ones that never even had to be filed. You are of course welcome to review those to let the Commission and Qwest know whether there is anything related to the provisions.

Further, with respect to the deposition of Linda Downey, obviously, I was not there. However, my understanding is that Ms. Downey did a search of those Oregon ICAs that had the ISP Amendment because of the issues in that case, and thus knew of certain CLECs who, unlike Universal, had entered into that amendment. Her two affidavits only addressed that issue and the facts she provided in them were limited to Oregon. That is a far cry from what Universal seeks here, and of course, the mere fact she may have done that investigation (which is public information) in preparation for her deposition does not mean that Qwest is somehow obligated to do a special study for Universal. The fact that you may have asked her for some general information on other issues and she gave you a general answer is very different than the kind of special study being sought here.

That also gets to my third point in which you somehow assume that merely because we cited to certain non-Oregon decisions, we have some type of obligation to conduct legal research, and a special study, of orders that presumably are not favorable to Qwest and that presumably favor Universal's position. I am not aware of any obligation that Qwest is required to do that for Universal.

So, while I appreciate the time that KC and you have spent on considering our request that Universal withdraw the

motion, we will proceed with the assumption that a response is required. Of course, if Universal does change its mind, we would greatly appreciate the professional courtesy of your advising us of such at your earliest convenience.

Thanks. Alex

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Alex.Duarte@qwest.com

From: John Dodge [mailto:JDodge@crblaw.com]
Sent: Wednesday, November 16, 2005 9:39 AM
To: Duarte, Alex
Cc: Smith, Ted; K.C. Halm
Subject: RE: Exhibits Question

Alex ~

Thanks for the thoughts on discovery responses. I'll attach only those responses which we cite.

As for our pending Motion to Compel, although I haven't been directly involved in the conversations between you and KC, I must confess I'm a little bit at a loss as to why our request for Qwest simply to list those instances in which it has experienced "alternate" RUF and recip comp treatment in all its states is burdensome. My sense was that such instances are quite limited, and the purpose of our questions 20 and 21 is to make sure that our research is complete.

Obviously we have concerns that our public research may not turn up documents given Qwest's "89 documents"-type history in Oregon, Minnesota and elsewhere, combined with our experience that PUC/PSC databases are not 100% reliable. Let's assume the following by way of example: 1. Qwest entered an ICA in a state outside Oregon that contains T&C's favorable to Universal's position on RUF and/or recip comp. 2. Qwest did not timely file that ICA with the relevant state commission. 3. Qwest later discloses the ICA at the direction of the relevant state commission.

We are concerned that the new proceeding may not place the ICA or ICA-related documents back into the database of agreements that should have been available previously. Instead, these documents will simply be attachments, often not available through traditional search methods, in the new proceeding.

I also got the sense from the deposition of Linda Downey in the civil case that Qwest has kept very close tabs on its ICAs with respect to RUF and recip comp. If memory serves, Linda was able to recall off the top of her head the RUF and recip comp T&C's for various CLECs across several Qwest states as those differed from Qwest's positions in that case. We're simply asking for a written list identifying all those differences in this case.

Finally, relevancy. Qwest has cited to state commission (and judicial) decisions other than Oregon to support its positions in ARB 671. In that circumstance, it seems reasonable me that decisions and ICAs that go against Qwest from other states are fair game.

We'll keep talking on this end about ways around this apparent impasse, but at this point my recommendation to my client would be to press forward with the Motion.

As always, I would appreciate any other thoughts you might like to share.

john

From: Duarte, Alex [mailto:Alex.Duarte@qwest.com]
Sent: Wednesday, November 16, 2005 11:58 AM
To: John Dodge
Cc: Smith, Ted; K.C. Halm
Subject: RE: Exhibits Question

John-

Sorry about the delay in responding. I think the ALJ would appreciate the latter- your attaching only those data requests that you comment upon instead of attaching all of them. Alex

P.S. In light of the ongoing emails about the motion to compel, and just so that I know where we stand in terms of my continuing to work on our response (i.e., in hopes if avoiding needless work if it can be avoided), is there any change in your position on our request that Universal withdraw the motion? Please let me know at your earliest convenience. Thanks.

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Alex.Duarte@qwest.com

From: John Dodge [mailto:JDodge@crblaw.com]
Sent: Tuesday, November 15, 2005 5:54 AM
To: Duarte, Alex
Cc: Smith, Ted; K.C. Halm
Subject: Exhibits Question

Alex ~

Good morning. I wanted to run one thing by you about attaching Qwest's discovery responses to Universal's final brief.

I don't believe we'll be citing to or relying on every single response. Nonetheless, our joint letter to ALJ Arlow could be interpreted that Universal is going to introduce all Qwest responses. I'm happy to introduce all with an explanation that we're not relying on them all, or attach only those that we cite.

In either case, I wanted to get Qwest's thoughts on which way to go, or to at least notify as to the choices.

Thanks.

john

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****
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****

-----Original Message-----
From: John Dodge [mailto:JDodge@crblaw.com]
Sent: Wednesday, November 16, 2005 10:39 AM
To: Duarte, Alex
Cc: Smith, Ted; K.C. Halm
Subject: RE: Exhibits Question

Alex ~

Thanks for the thoughts on discovery responses. I'll attach only those responses which we cite.

As for our pending Motion to Compel, although I haven't been directly involved in the conversations between you and KC, I must confess I'm a little bit at a loss as to why our request for Qwest simply to list those instances in which it has experienced "alternate" RUF and recip comp treatment in all its states is burdensome. My sense was that such instances are quite limited, and the purpose of our questions 20 and 21 is to make sure that our research is complete.

Obviously we have concerns that our public research may not turn up documents given Qwest's "89 documents"-type history in Oregon, Minnesota and elsewhere, combined with our experience that PUC/PSC databases are not 100% reliable. Let's assume the following by way of example: 1. Qwest entered an ICA in a state outside Oregon that contains T&C's favorable to Universal's position on RUF and/or recip comp. 2. Qwest did not timely file that ICA with the relevant state commission. 3. Qwest later discloses the ICA at the direction of the relevant state commission.

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Finally, relevancy. Qwest has cited to state commission (and judicial) decisions other than Oregon to support its positions in ARB 671. In that circumstance, it seems reasonable me that decisions and ICAs that go against Qwest from other states are fair game.

We'll keep talking on this end about ways around this apparent impasse, but at this point my recommendation to my client would be to press forward with the Motion.

As always, I would appreciate any other thoughts you might like to share.

john

From: Duarte, Alex [mailto:Alex.Duarte@qwest.com]
Sent: Wednesday, November 16, 2005 11:58 AM
To: John Dodge
Cc: Smith, Ted; K.C. Halm
Subject: RE: Exhibits Question

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P.S. In light of the ongoing emails about the motion to compel, and just so that I know where we stand in terms of my continuing to work on our response (i.e., in hopes if avoiding needless work if it can be avoided), is there any change in your position on our request that Universal withdraw the motion? Please let me know at your earliest convenience. Thanks.

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From: John Dodge [mailto:JDodge@crblaw.com]
Sent: Tuesday, November 15, 2005 5:54 AM
To: Duarte, Alex
Cc: Smith, Ted; K.C. Halm
Subject: Exhibits Question

Alex ~

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I don't believe we'll be citing to or relying on every single response. Nonetheless, our joint letter to ALJ Arlow could be interpreted that Universal is going to introduce all Qwest responses. I'm happy to introduce all with an explanation that we're not relying on them all, or attach only those that we cite.

In either case, I wanted to get Qwest's thoughts on which way to go, or to at least notify as to the choices.

Thanks.

john

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-----Original Message-----
From: Duarte, Alex [mailto:Alex.Duarte@qwest.com]
Sent: Tuesday, November 15, 2005 10:17 AM
To: K.C. Halm
Cc: Smith, Ted; Nancy Batz (E-mail); John Dodge; Gerie Voss
Subject: RE: Universal's Motion to Compel; ARB 671

KC-

Thank you for your email.

In answer to your first question, I was referring to the fact that Staff and Qwest agreed that the majority of the agreements were not section 252 agreements, and thus stipulated to the ones that should have been filed, and those that were not required to have been filed, and the Commission adopted the Staff/Qwest stipulation.

As to your second question, yes, these regional agreements included Oregon (as well as the other states), which is why Qwest provided the agreements to the Oregon Commission. Further, for the agreements that were deemed section 252 agreements, Qwest formally filed them under section 252 (in Oregon and the other states).

On your third point, you may have misunderstood Qwest's point. It is our position that we are not required to conduct a special study, or to do Universal's own research, and that the information you seek (whether in Oregon or elsewhere) is public information that Universal itself can research. Indeed, Universal has stated that it is conducting its own research, but claims that because Qwest did not file certain agreements, Universal needs such non-public information to "complete its research" (and presumably, that only Qwest possesses that information). Thus, to avoid the alleged inability of Universal to complete that research, we are willing to allow Universal to review these agreements. Since Universal can do its own research and analysis of what is in the 89 agreements, in order to satisfy itself whether there is anything in them that is even remotely related to the two provisions at issue here, Qwest has satisfied any alleged need by Universal for any purported non-public information that Universal might not otherwise have access to. In other words, Universal can review these 89 agreements itself, and do its own legal research of all public orders, to compile the list it is seeking. Obviously, I cannot tell you whether or not there might be responsive documents because it would take a voluminous special study, of almost 10 years of ICAs in 14 states, to answer the question and provide you with the list Universal seeks. Qwest is not willing to engage in that unduly burdensome undertaking for Universal, nor is it required to do so.

Finally, I wanted to advise you that I just received yesterday afternoon a cassette tape from the Commission regarding a recent motion to compel ruling in an arbitration docket in which the CLEC (Level 3) sought, in five different requests, information regarding various subjects on a 14-state basis. In each instance, Qwest objected, and in each instance the ALJ Ruling was that Qwest was not obligated to respond with information related to states other than Oregon. The ALJ also required Level 3 to conduct its own research about publicly-available information. Because of the timing there, the ALJ stated, after he announced his rulings, that he would not issue a written ruling, but that if there were any questions, we could obtain a copy of the cassette tape and have it transcribed. After Universal filed its motion to compel last week, I requested a copy of that tape, and obtained a copy of it yesterday afternoon. That tape confirms

that the ALJ rejected each of the five Level 3 data requests that sought information outside of Oregon. Unfortunately, given that Universal apparently still refuses to withdraw the motion, we have no choice but to have it transcribed so that we can use it as an exhibit to our response.

In sum, it is unfortunate that Universal persists in forcing the Commission and the parties to expend more time and resources on this dispute, especially given that (1) the requests require a special study, which are not required in Oregon, (2) the requests require Qwest to do Universal's own research, which it is not required to do, (3) the requests seek public information, which Universal can obtain (and evidently is obtaining), and which Qwest is not obligated to obtain for Universal, (4) Qwest has offered the allegedly missing information that Universal might not otherwise be able to obtain publicly, (5) the Commission has been reluctant to require production of information about matters outside of Oregon, and (6) we have made numerous good faith attempts to persuade Universal to withdraw the motion, but to no avail. Accordingly, we once again request that Universal withdraw the motion. If Universal still refuses, we will, of course, file our response pointing out all of the above.

I look forward to hearing from you. Thank you for your anticipated cooperation. Alex

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From: K.C. Halm [mailto:KHalm@crblaw.com]
Sent: Monday, November 14, 2005 3:06 PM
To: Duarte, Alex
Cc: Smith, Ted; Nancy Batz (E-mail); John Dodge; Gerie Voss
Subject: RE: Universal's Motion to Compel; ARB 671

Alex,

With respect to your statement in the first paragraph when did the Oregon PUC agree that the majority of documents filed in UM 1168 were not interconnection agreements? I didn't see that statement in the final order, did they issue a supplemental order in that docket?

Also, in your second full paragraph you state that the documents filed with the OPUC are "regional" agreements. Does that mean they also applied in Oregon?

Finally, although I appreciate your efforts I must disagree that your proposal provides the information that Universal seeks in the disputed data requests. Again, the requests seek a list of states where these issues have come up for Qwest. Simply pointing Universal back to the 89 agreements Qwest failed to file is not responsive.

Thank you for your attention to this matter. We sincerely hope that Qwest will satisfy its obligation to produce any responsive material (***or*** simply tell us there are no responsive materials) and thus avoid the Commission and the parties having to expend any more time or resources on this issue.

K.C. Halm

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From: Duarte, Alex [mailto:Alex.Duarte@qwest.com]
Sent: Thursday, November 10, 2005 5:36 PM
To: K.C. Halm
Cc: Smith, Ted; Nancy Batz (E-mail); John Dodge; Gerie Voss
Subject: RE: Universal's Motion to Compel; ARB 671

KC-

Thank you for your email.

You do state our proposal correctly. However, I do want to clarify for the record that the 89 wholesale contracts that Qwest provided to the Oregon Commission and were later at issue in UM 1168 were not necessarily "interconnection agreements," because the Commission agreed the majority of them were not section 252 interconnection agreements. Moreover, of the ones that were considered section 252 agreements, they were filed with the Commission, and of course, you have all of them.

I also want to clarify your misunderstanding about the nature of the 89 agreements that Qwest provided to the Commission. If you review them, you will find that while the agreements were provided to the Oregon Commission, they were *not* "Oregon" agreements, but rather, were regional in nature (and thus were also provided to the other state commissions). Indeed, of the 80 agreements that Qwest initially provided to the Commission in 2002, when the issues of the non-filing of certain agreements first arose in Minnesota and throughout Qwest's 14-state region, the only "Oregon" contract was a "facility decommissioning" agreement for the decommissioning of a collocation space at the Portland Capitol wire center. The Commission, however, agreed this was *not* a section 252 interconnection agreement

that should have been filed. Subsequently, in 2003 and 2004, after Qwest had agreed with the Commission to provide to it *all wholesale agreements with CLECs*, even if Qwest did not believe they were section 252 agreements (and thus to avoid any further allegations of the non-filing of agreements), Qwest provided to the Commission nine additional agreements. These nine agreements included three "signaling" agreements and four "Directory Assistance/Operator Services" agreements to be performed in Oregon, and two settlement agreements of past disputes with two Oregon CLECs, which the Commission agreed were not section 252 agreements. These were the only other "Oregon agreements." Of course, Universal already has copies of all of these agreements.

Accordingly, your statement that our proposal to resolve the discovery dispute by "mak[ing] available the 89 unfiled ICAs ***in Oregon*** does not go to what ***other states*** in Qwest territory that these issues have arisen" is simply incorrect. (That assumes, of course, that the ALJ will even consider the broad request beyond Oregon (which our experience in Oregon indicates he is not likely to do, especially based on recent ALJ discovery rulings for regional (non-Oregon) information). That also assumes that a special study, which is really the heart of the dispute, would be required, which it clearly will not be.)

Finally, I am fully aware what "the discovery request, or the particular information sought by Universal" (in data request No. 20), seeks. However, as I mentioned, that request will require a special study, which is why a special study is really the heart of the dispute. Moreover, since you can safely assume Qwest would not voluntarily "agree" to pay reciprocal compensation for ISP traffic (and even if it did, it would be required to make that agreement available to other CLECs, thus making it public information), you are left with the issue whether Qwest may have been "**ordered** to pay reciprocal compensation for all ISP-bound traffic *since 1996*." That, of course, is by definition public information since state commission orders are public. Finally, as I mentioned, since you are already conducting your public research of such orders, but you claim you need the UM 1168 agreements (most of which were not publicly filed, since they were not required to be) to complete your research, and you in fact have them, and have permission to review them, there is absolutely no basis for Qwest to perform Universal's own research, or to compile a special study.

Accordingly, I trust I have explained how this proposal addresses Universal's request. Obviously, it is Universal's choice whether to proceed with the motion to compel or to withdraw it, but Qwest has clearly made a good faith proposal to provide the information that *Universal claims it needs to complete its own research*, but without Qwest being forced to perform or compile a special study. We therefore again request that Universal withdraw the motion under these circumstances.

Thank you for your attention to this matter. We sincerely hope that Universal will withdraw its motion to compel and thus avoid the Commission and the parties having to expend any more time or resources on it.

Alex

P.S. I am involved in a training meeting for the next hour to an hour and a half, but I will call you thereafter so that we can jointly call Judge Arlow to advise him of our agreement regarding the waiver of the evidentiary hearing and the filing of a closing brief in lieu of the hearing.

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503-242-8589 (facsimile)
Alex.Duarte@qwest.com

From: K.C. Halm [mailto:KHalm@crblaw.com]
Sent: Thursday, November 10, 2005 1:00 PM
To: Duarte, Alex
Cc: Smith, Ted; Nancy Batz (E-mail); John Dodge; Gerie Voss
Subject: RE: Universal's Motion to Compel; ARB 671

Alex -

Thank you for your response on this issue. I appreciate your thoughts on the relative merits (including the "foolish" parts) of our motion, and your free advice as to what the OPUC will and won't do. I am writing to request clarification on what you describe as a proposed resolution to provide Universal what it needs without proceeding to the motion. If we can work this out informally, that is certainly the preferred outcome.

If I understand your message, your proposal is as follows: Qwest will give its consent to Universal to review the 89 ICAs not filed with the OPUC, but subsequently provided in Docket UM 1168, to determine whether or not any of those agreements fall within the ambit of Universal's Data Request Nos. 20 & 21. Please let me know if I have restated your proposal correctly so that we can assess its merits.

If we understand this correctly, the upshot of this is that you will agree to allow Universal review documents already in its possession? While we don't discount any offer of compromise from Qwest this does not appear to respond to the discovery request, or the particular information sought by Universal. As you may recall, Universal asked Qwest to:

"Identify any State where Qwest is the incumbent LEC and Qwest has agreed or been ordered to pay reciprocal compensation on all ISP-bound traffic since 1996." See Universal DR 20.

Of course, we also asked for additional information concerning dockets, dates, etc. But, at its heart, what we ask for is those states where this has happened. Your offer to make available the 89 unfiled ICAs ***in Oregon*** does not go to what ***other states*** in Qwest territory that these issues have arisen. Therefore, I don't see this proposal as really resolving anything. Please let me know whether we've misconstrued your offer or whether you can explain how this proposal addresses Universal's request.

Thank you,

K.C. Halm

Cole, Raywid & Braverman, LLP

202.828.9887

kc.halm@crblaw.com

From: Duarte, Alex [mailto:Alex.Duarte@qwest.com]
Sent: Wednesday, November 09, 2005 5:34 PM
To: K.C. Halm
Cc: Smith, Ted; Nancy Batz (E-mail)
Subject: RE: Universal's Motion to Compel; ARB 671

KC-

I have reviewed Universal's motion to compel. While I am sure Qwest and Universal disagree about its merit, or lack thereof, I do want to point out a few things that you may or may not be aware of, and to propose a resolution that would provide Universal what it claims it needs without proceeding with the motion.

First, the OPUC does not require parties to develop information or prepare special studies for another party. Although you state that "Universal **only seeks a list** of agreements or orders reflecting such obligations," you don't deny (nor can you) that this list compilation would require Qwest to conduct a special study. Indeed, that special study would pertain to *thousands of ICAs and commission orders*, regarding two particular ICA provisions (of *hundreds* typically found in ICAs), in ICAs with *hundreds of CLECs*, throughout *14 states*, covering a period now approaching *10 years*. Since Qwest does not already have such a list of agreements and orders, and no easy way to obtain the information, this is the definition of a special study.

Second, my experience in almost five years in Oregon is that Oregon ALJs are very reluctant to order wide-ranging discovery of orders and other material in states other than Oregon, especially information throughout Qwest's 14-state region. Indeed, my experience is that Oregon ALJs take the approach that what is at issue is how Qwest and CLECs operate *in Oregon*, and that clearly, different states may (and typically do) have different laws, regulations, approaches and philosophies. I simply cannot recall any discovery order in which the Commission required Qwest to produce out of state or regional material (and here, as I mentioned, the requests would require a special study, which the Commission has never ordered Qwest to do).

Third, you admit the information you request is public information, and that Universal is conducting its "*own research of public records* in Oregon, and elsewhere," and that in order to "allow Universal to *complete its research of public records* to determine if or where such documents exist," Universal needs the list because such agreements or orders *may not be on file* with the Commission. You justify this argument by citing to the so-called "unfiled agreements" docket (UM 1168) as the reason why it is "possible" or "conceivable" that Universal could not be able to obtain such documents. However, as you well know, Universal, and your law firm, already possess *all of the agreements* at issue in docket UM 1168 (the majority of which the Commission agreed never had to be filed in the first place). If you want to review those approximately 89 agreements, in order to complete your public research, you are welcome to do that. In the event there is any concern about the fact that those agreements were produced in a different docket, confidentially under a protective order, Qwest is willing to give consent to you to review such agreements in this docket for the limited purpose of completing your research on these two provisions. That should take care of your stated concern that a public search of these agreements and orders may not uncover such documents or "unfiled agreements".

Finally, FYI, and with all due respect, the request for attorneys fees is just plain foolish, and is sure to annoy the ALJ. Leaving aside that Qwest believes the motion to compel is without merit, and that even if the ALJ were to grant a portion of it, there are at a minimum legitimate disputes regarding the discovery (both of which the parties are free to disagree about), I can tell you that Oregon ALJs have never sanctioned Qwest for a motion to compel. Further, although I have obviously not done the research, I dare surmise that Oregon ALJs have never sanctioned any party for a discovery dispute, even where parties have taken unreasonable positions. Although requests for sanctions may be standard operating procedure in DC or elsewhere on the East Coast (and California as well, based on my 14 years of civil litigation experience there), and may even be occasionally granted there, such claims simply do not play well here. A sanctions claim certainly won't play well in a case where Qwest responded to 26 of 28 data requests and raised legitimate objections to the other two. Indeed, that is why we simply don't see experienced Oregon counsel seeking monetary sanctions in discovery disputes. We will, of course, oppose the request, and will highlight these facts, if we are forced to respond to the motion.

In any event, as I mentioned, given that Qwest consents to your review of the 89 agreements we produced to you in docket UM 1168 for the limited purpose of completing your public research on these two ICA provisions, there is no need for the motion to compel to go forward. If, however, we are required to respond to the motion, we will be left with no alternative but to advise the ALJ that we offered to informally resolve the matter in this manner, and thus avoid him having to address this dispute, but that Universal rejected the offer.

Thanks, and I look forward to hearing from you in the near future.

Alex M. Duarte

Corporate Counsel

Qwest

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Alex.Duarte@qwest.com

-----Original Message-----
From: K.C. Halm [mailto:KHalm@crblaw.com]
Sent: Wednesday, November 09, 2005 7:34 AM
To: Duarte, Alex; Smith, Ted; Nancy Batz (E-mail)
Cc: John Dodge; Gerie Voss; martinj@uspops.com
Subject: Universal's Motion to Compel; ARB 671

<<Universal's Motion to Compel.pdf>>

Alex / Ted -

Attached please find Universal Telecom's Motion to Compel the production of responses to Data Requests No. 20 and 21 in ARB 671.

Per my e-mail last night, we remain available to talk further about an informal resolution of this dispute.

Thank you,

K.C. Halm

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CERTIFICATE OF SERVICE

ARB 671

I hereby certify that on the 23rd day of November 2005, I served the foregoing **QWEST CORPORATION'S RESPONSE TO UNIVERSAL'S MOTION TO COMPEL** in the above entitled docket on the following persons via U.S. 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.

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DATED this 23rd day of November, 2005.

QWEST CORPORATION

By: _____

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