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February 13, 2006

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 Request For Clarification of Arbitrator's Decision and Request for Issuance of Standard Protective Order, along with a certificate of service.

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

Sincerely,

A handwritten signature in blue ink that reads "Carla".

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 CORPORATION'S REQUEST FOR CLARIFICATION OF ARBITRATOR'S DECISION AND REQUEST FOR ISSUANCE OF STANDARD PROTECTIVE ORDER

## **REQUEST FOR CLARIFICATION**

Petitioner Qwest Corporation (“Qwest”) hereby requests clarification of the Arbitrator’s Decision issued on February 2, 2006 (as amended on February 6, 2006) by Judge Allan J. Arlow, Administrative Law Judge (“Arbitrator”) for the Public Utility Commission of Oregon (“Commission”). In particular, for the reasons set forth below, Qwest respectfully seeks clarification of that portion of the decision related to Issue 1, in which the arbitrator states that “the RUF for LIS entrance and DTT facilities is 50-50.” Arbitrator’s Decision, at p. 7.<sup>1</sup>

In addition, on page 6, reference is made to the fact that the FCC capped the rate for traffic subject to the *ISP Remand Order* at “a \$0.007 MOU rate.” The correct rate is actually \$0.0007 per MOU. Qwest assumes this is merely a typographical error and that the intent was to recite a rate of \$0.0007 per MOU. Qwest requests that the final order reflect that correction.

Qwest also requests the issuance of the Commission’s Staff protective order and that the attachment to this request for clarification be treated as confidential under that protective order.

## **DISCUSSION**

### **I. BACKGROUND**

The issue of financial responsibility for LIS entrance and DTT facilities used to transport ISP traffic on Qwest’s network to Universal Telecommunications, Inc. (“Universal”) is a significant issue in this arbitration. As Qwest understands the Arbitrator’s Decision, the Arbitrator ruled that (1) Qwest has no obligation to exchange VNXX-routed ISP traffic and (2) Universal bears the financial responsibility for LIS entrance and DTT facilities for non-VNXX ISP traffic. Qwest’s request for clarification stems from the fact that, while adopting the language that Qwest proposed on the RUF, the Arbitrator stated that “the amount of telecommunications traffic flowing from each network to the other is presumptively in exact balance at zero. Therefore, the RUF for LIS entrance and DTT facilities is 50-50. The Qwest-

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<sup>1</sup> “RUF” is “relative use factor,” “LIS” is “local interconnection service,” and “DTT” is “direct trunked transport.”

proposed language is adopted.” Arbitrator’s Decision, at p. 7. Specifically, the Arbitrator’s statement that the RUF for telecommunications traffic is set at 50-50 is inconsistent with the Qwest-proposed language adopted in the decision. Clarification of this issue will help avoid future misunderstandings between the parties to the interconnection agreement.

## **II. QWEST’S RUF CONTRACT LANGUAGE**

This issue can easily be resolved by reference to the language that Qwest proposed and that the Arbitrator adopted. There are two RUF provisions in Qwest’s language, one relating to entrance facilities (paragraph 7.3.1.1.3.1) and the other to DTT facilities (paragraph 7.3.2.2.1). Other than the fact that one provision refers to entrance facilities and the other refers to DTT facilities, they are identical. Paragraph 7.3.2.2.1 (the entrance facility RUF provision) states:

7.3.1.1.3.1 The provider of the LIS two-way Entrance Facility (EF) will initially share the cost of the LIS two-way EF by assuming an initial relative use factor (RUF) of fifty percent (50%) for a minimum of one (1) quarter if the Parties have not exchanged LIS traffic previously. The nominal charge to the other Party for the use of the EF, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other Party will be according to this initial relative use factor for a minimum of one (1) quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor, based upon actual minutes of use data for non-ISP-bound traffic to substantiate a change in that factor. If CLEC’s End User Customers are assigned NPA-NXXs associated with a rate center different from the rate center where the End User Customers are physically located, traffic that does not originate and terminate within the same Qwest local calling area (as approved by the Commission), regardless of the called and calling NPA-NXXs involving those End User Customers, is referred to as “VNXX traffic.” *For purposes of determining the relative use factor, the terminating carrier is responsible for ISP-bound traffic and for VNXX traffic.* If either Party demonstrates with traffic data that actual minutes of use during the previous quarter justifies a new relative use factor, that Party will send a notice to the other Party. *The new factor will be calculated based upon Exhibit H.* Once the Parties finalize a new factor, bill reductions and payments will apply going forward from the date the original notice was sent. ISP-bound traffic or traffic delivered to Enhanced Service providers is interstate in nature. Qwest has never agreed to exchange VNXX traffic with CLEC. (Emphasis added.)

Two conclusions from this language are important. First, it is clear that the terminating carrier (in this case, Universal) bears financial responsibility for all ISP-bound and VNXX traffic.

Second, this paragraph incorporates Exhibit H to Qwest’s proposed agreement by reference;

Exhibit H, which sets forth the detailed formula for the calculation of the RUF, states as follows:

## **“EXHIBIT H**

### **Calculation of the Relative Use Factor (RUF)**

#### **Minutes that are Qwest’s responsibility (A):**

- All EAS/Local 251(b)(5) Minutes of Use (MOU) that Qwest sends to CLEC
- All Qwest Exchange Access MOU that Qwest sends to CLEC
- EAS/Local 251(b)(5) traffic that transits Qwest network and is terminated to CLEC, for which Qwest receives compensation from the originating Carrier for performing the local transiting function
- All IntraLATA transit MOU that Qwest sends to CLEC
- All ISP-bound and FX MOU that CLEC sends to Qwest

#### **Minutes that are CLEC’s responsibility (B):**

- All EAS/Local 251(b)(5) MOU that CLEC sends to Qwest
- All Exchange Access MOU that CLEC sends to Qwest
- All EAS/Local 251(b)(5) traffic that CLEC sends to Qwest for termination on another Carrier’s network
- All IntraLATA transit MOU that CLEC to Qwest
- All Jointly Provided Switched Access (unless joint NECA 4 billing percentages have been filed) that Qwest sends to CLEC and that CLEC sends to Qwest
- All ISP-bound and VNXX MOU that Qwest sends to CLEC
- All VNXX MOU that transits Qwest network and is terminated to CLEC

**The mathematical equation for RUF is as follows:**

**Qwest (A) / (A+B) Rounded to nearest whole percentage**

**CLEC (B) / (A+B) Rounded to nearest whole percentage**

Data used for the calculation will be the average of the most recent three (3) months’ usage determined not to be an anomaly.”<sup>2</sup>

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<sup>2</sup> Both the RUF provisions and Exhibit H are taken from the Statement of Generally Available Terms (“SGAT”) on file with the Commission and were included in the Qwest-proposed interconnection agreement attached as Exhibit A to Qwest’s July 14, 2005 Petition for Arbitration.

### **III. THE ARBITRATOR'S DECISION APPROVES THE FORMULA IN EXHIBIT H**

By approving Qwest's proposed contract language, the Arbitrator's Decision approves the formula in Exhibit H as the means of calculating the RUF that apportions the relative financial responsibility of each party for the recurring charges for entrance and DTT facilities.

The formula is straight-forward, appropriately reflects all of the usage that is mutually exchanged on the entrance and DTT facilities, and appropriately apportions that usage between the Parties. The formula lists each type of traffic carried over those facilities and identifies the party that bears financial responsibility by traffic type. To calculate the RUF for each party, the aggregate amount of all types of traffic is added together; this figure becomes the denominator of the RUF calculation. The traffic that each carrier is responsible for becomes the numerator in the calculation of the portion of the RUF for which that carrier is responsible. Assume, for example, that for the relevant three-month period, there were a total of 100,000 minutes exchanged between the Parties and that, after applying the formula in Exhibit H, the traffic for which Universal is responsible is 90,000 minutes. In that case, the RUF calculation for Universal would be 90 percent (90,000/100,000). The other 10,000 minutes would be Qwest's responsibility, and its RUF calculation would be 10 percent (10,000/100,000). Thus, Universal would be financially responsible for 90 percent of the DTT and entrance facilities at the rates the Commission established, while Qwest would bear responsibility for the remaining 10 percent.

As noted in Exhibit H, the second to last type of traffic for which Universal is responsible is "All ISP-bound and VNXX MOU that Qwest sends to CLEC."<sup>3</sup> For purposes of calculating the RUF, therefore, all of these minutes are included in the calculation, but are assigned to Universal.<sup>4</sup>

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<sup>3</sup> There is a similar provision used in the RUF calculation for Qwest traffic (i.e. Qwest is responsible for "All ISP-bound and FX MOU that CLEC sends to Qwest").

<sup>4</sup> One possible reason for confusion on this issue may be that the Parties (including Qwest) occasionally characterized the issue as whether ISP and VNXX traffic should be excluded from the RUF. Under Qwest's proposed language, the more accurate characterization of the issue is not whether the ISP and VNXX traffic is excluded from the RUF in its entirety, but instead is a clarification that ISP and VNXX traffic is assigned in the RUF calculation differently than most other originating traffic. Specifically, the ISP and VNXX traffic is excluded

If the Arbitrator's Decision to set the RUF for local traffic at 50-50 is based on the Qwest-proposed language which suggests that a 50-50 RUF be used as an initial RUF, that provision applies only where "the Parties have not exchanged LIS traffic previously." Given that Qwest and Universal have been exchanging LIS traffic for several years, more than sufficient historical data is available from which a RUF based on actual usage can be determined for the new interconnection agreement. Based on the Arbitrator's ruling that VNXX traffic shall not be exchanged, the RUF calculation excluding VNXX-related usage would be based on LIS usage exchanged within the Portland EAS region and the Eugene-Springfield local calling area. Qwest's calculation of the RUF, based on data for the fourth quarter of 2005, is attached hereto as Confidential Exhibit A.<sup>5</sup> Given the fact that virtually all traffic is one-way ISP traffic, that calculation would assign financial responsibility for [Confidential- XX percent] of the recurring charges for entrance and DTT facilities to Universal.

Thus, rather than a 50-50 RUF, the proper RUF under the agreement would allocate a much larger financial responsibility to Universal, to reflect the fact that virtually all of the traffic is ISP traffic. Because Exhibit H reflects the Arbitrator's Decision, Qwest respectfully submits that the reference to a 50-50 RUF in the Arbitrator's Decision should be stricken.

### **REQUEST FOR ISSUANCE OF STANDARD PROTECTIVE ORDER**

Qwest notes that there is currently no protective order in this docket. Qwest initially requested the issuance of a standard protective order in its July 14, 2005 petition. However, Presiding Administrative Law Judge Michael Grant issued a memorandum on July 18, 2005

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from one party's originating traffic and assigned in the RUF calculation to the terminating party (thus causing the terminating party to be financially responsible in the RUF for ISP and VNXX traffic).

If the RUF were not calculated in this manner, a total exclusion of ISP and VNXX traffic in the RUF calculation would result in both Parties inappropriately sharing the financial responsibility for entrance and DTT facilities based on the exchange on non-ISP and non-VNXX traffic, even though the sole purpose for the entrance and DTT facilities may be for the exchange of ISP and VNXX traffic, as is the case with Universal. If Qwest's filings in this matter contributed to confusion on this issue, Qwest apologizes to the Arbitrator and the Commission.

<sup>5</sup> For the reasons set forth below, Qwest requests that the Commission issue a standard protective order, which has never been previously issued, and thereafter treat Confidential Exhibit A as confidential and proprietary pursuant to such standard protective order.

stating that the request failed to provide sufficient information to support a finding of good cause for the issuance of a protective order. The memorandum stated that before a protective order might be issued, Qwest had to supplement its response by identifying what type of confidential information might be subject to discovery, and how the public release of such information could be harmful to Qwest or its customers.

On August 15, 2005, Qwest responded by noting that the Commission regularly issues standard protective orders upon parties' requests in contested Commission proceedings, but that, having said that, at present Qwest did not know with any specificity what confidential or proprietary information might be discovered or disclosed in this proceeding since discovery had not yet commenced. Accordingly, Qwest noted that since there was then no outstanding discovery, or other compelling need for a protective order at that time, Qwest would be willing to withdraw the request in its petition for a protective order until such time that the exchange or disclosure of confidential or proprietary information was necessary, at which time Qwest (or Universal) could then request a protective order. Thereafter, the parties did not request a protective order during the pendency of this docket. Nevertheless, given the confidential (and CLEC (Universal)-specific) traffic information in Qwest's attachment, Qwest respectfully requests that the Commission issue its standard protective order and that it treat Confidential Exhibit A as confidential and proprietary.



## CONCLUSION

Based on the foregoing, Qwest respectfully requests that the Commission clarify the Arbitrator's Decision by affirming the Arbitrator's adoption of the Qwest-proposed RUF language, but by also clarifying that the RUF calculation shall be made consistent with the formula set forth in Exhibit H of Qwest's proposed interconnection agreement. Further still, Qwest further requests that the final order reflect a correction of the ISP traffic rate to \$0.0007 per MOU instead of \$0.007.

Dated this 13th day of February, 2006

Respectfully submitted,



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*Admitted Pro Hac Vice*

Attorneys for Qwest Corporation

**CERTIFICATE OF SERVICE**

**ARB 671**

I hereby certify that on the 13<sup>th</sup> day of February 2006, I served the foregoing QWEST CORPORATION'S REQUEST FOR CLARIFICATION OF ARBITRATOR'S DECISION AND REQUEST FOR ISSUANCE OF STANDARD PROTECTIVE Order 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.

John C. Dodge  
Cole Raywid & Braverman LLP  
1919 Pennsylvania Ave. NW  
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Jeffrey Martin  
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1600 SW Western Blvd.  
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Ted D. Smith  
Stoel Rives LLP  
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Salt Lake City, UT 84111

DATED this 13<sup>th</sup> day of February, 2006.

**QWEST CORPORATION**



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