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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

IC 13

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

**UNIVERSAL
TELECOMMUNICATIONS, INC.’S
RESPONSE TO QWEST
CORPORATION’S REQUEST FOR
PREHEARING CONFERENCE**

Universal Telecommunications, Inc. (“Universal”) submitted a compliance filing on September 4, 2007, pursuant to Paragraph 4 of the Commission’s Order No. 07-366 in docket IC 13. In the compliance filing, Universal disclosed a pending sale of Universal’s managed modem business to a purchasing party, the identity of which Universal could not disclose prior to executing a written agreement with the purchasing party.

On September 5, 2007, Qwest Corporation (“Qwest”) moved for a prehearing conference regarding the compliance filing, alleging that Universal appeared to be entering into a “sham transaction” with another entity, 10D Telecom, Inc. (“10D”). 10D has an application pending before the Commission in docket CP 1378. As a result, Judge Arlow scheduled a telephone conference in both docket IC-13 and docket CP 1378.


1 On September 7, 2007, Universal executed a written agreement for the sale of its
2 managed modem business. A true copy of the fully executed agreement and the non-disclosure
3 agreement that prohibited disclosure prior to execution is attached hereto.¹ As a result, Universal
4 now is permitted to reveal to the Commission the identity of the purchasing party, GlobalPOPs,
5 Inc. GlobalPOPs is an unregulated entity unaffiliated with Universal, 10D Telecom, Inc. or their
6 principals. Contrary to Qwest's implicit allegation, the sale of Universal's managed modem
7 business to GlobalPOPs is a legitimate arm's-length transaction with an unaffiliated entity and
8 bears no relation whatsoever to 10D or docket CP 1378.
9

10 Although a prehearing conference in docket IC-13 may be necessary for the Commission
11 to gather additional information about the transaction in order to assess Universal's request for a
12 continuance of the stay order, there is no relationship between docket IC-13 and docket CP 1378.
13 It would therefore be inappropriate for any prehearing conference also to be made a part of
14 docket CP 1378.
15

16 Based on the foregoing, Universal respectfully requests that the prehearing conference set
17 for September 11, 2007, be limited to matters properly before this Commission in docket IC-13.
18

19 DATED this 7th day of September, 2007.

20 DAVIS WRIGHT TREMAINE LLP

21 By 
22 Kelly L. Harpster, OSB #06347
23 1300 SW 5th Avenue, Suite 2300
24 Portland, OR 97201
25 Phone: 503-778-5318, Fax: 503-778-5299
26 Email: kellyharpster@dwt.com
Of Attorneys for Universal Telecommunications, Inc.

¹ Highly confidential and protected business information relating solely to pricing has been redacted in the written agreement.

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is made as of September 7 2007, by and between Universal Telecom, Inc. DBA USPOPs, an Oregon corporation ("Seller"), and GlobalPOPs, Inc., a Pennsylvania corporation ("Buyer").

RECITALS

WHEREAS, Seller is currently providing wholesale dial-up and managed modems operations in various markets in Oregon and Washington (the "Services").

WHEREAS, as of the Date of this Agreement, Seller provides said Services to the Customers specifically set forth in Exhibit A, which is attached hereto and incorporated herein by reference;

WHEREAS, Seller no longer desires to provide said Services;

WHEREAS, Buyer currently provides wholesale dial-up and managed modems operations in various markets throughout the United State and desires to acquire, as its own, said Customers from Seller;

WHEREAS, pursuant to this Agreement, Seller agrees to transfer to Buyer said Customers as well as provide support, and other services, either to said Customers or to Buyer, as the case may be, and to transfer to Buyer certain assets relative to the Business, Customers and Services, all of which are more specifically set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the parties hereby agree as follows:

1 **Incorporation of Recitals.** The Parties to this Agreement hereby reaffirm all of the foregoing recitals as being true correct and incorporate the same herein as if set forth again at length.

2 **Definitions.** As used in this Agreement, the following capitalized terms shall have the meanings set forth below:

"Activation Date": The date on which Buyer accepts and activates a Customer or combination of Customers on its network, which process shall include, but shall not be limited to, successfully porting said Customers' numbers to Buyer's Network or to a third party carrier designated by Buyer. After the Closing Date Buyer and Seller shall designate a mutually acceptable Activation Date for each Customer and work together to facilitate a smooth transition on the agreed upon Activation Date. The Activation Date may be a different date for each Customer and some Customers may have more than one Activation Date. In no event shall Buyer's and Seller's mutual designation of an

Activation Date for a Customer be considered an acceptance of such Customer as a Transferred Customer.

"Agreement": This Agreement and all Exhibits attached hereto.

"Assets": As defined in Section 3.

"Business": The business, operations and activities of Seller relating only to providing the Services, as defined in the Recitals above, to the Customers as defined in this Section below.

"Claim": Any claim, demand, cause of action, suit, proceeding, arbitration, hearing or investigation.

"Closing": The Parties' execution of this Agreement, and the consummation of the purchase and sale of the Assets described in Section 13 herein.

"Closing Date": The date which is first affixed above.

"Contract": Any written document constituting a legally binding contract, agreement, lease, license, commitment, arrangement, purchase or sale order, or undertaking.

"Customers": The individuals and/or entities to whom the Seller is providing the Services, as specifically listed in Exhibit A this Agreement.

"Encumbrance": Any security interest, mortgage, lien, charge, option, easement, license, adverse claim or restriction of any kind, including, but not limited to, any restriction on the use, transfer, voting, receipt of income or other exercise of any attributes of ownership.

"Excluded Assets": Any Asset of Seller not specifically listed and transferred to Buyer pursuant to Section 3 of this Agreement.

"Governmental Body": Any federal, state or other court or governmental body, any subdivision, agency, commission or authority thereof, or any quasi-governmental or private body exercising any regulatory or taxing authority there under, domestic or foreign.

"Judgment": Any judgment, order, award, writ, injunction or decree of any Governmental Body or arbitrator.

"Loss": Any loss, damage, Judgment, debt, liability, obligation, fine, penalty, cost or expense (including, but not limited to, reasonable legal and accounting fee or expense).

“Services”: Those services more specifically defined in the Recitals above.

“Transferred Customer”: Those Customers which Buyer accepts as its own customer and activates on its network, which process shall include, but shall not be limited to, successfully porting said Customers’ numbers to Buyer’s Network or to a third party carrier designated by Buyer. It is acknowledged by the Parties that there is a possibility that not all Customers will become Transferred Customers

3. Transfer of Assets. Subject to the terms and conditions of this Agreement, on the Closing Date, Seller shall sell, transfer, convey, assign and deliver (collectively, “transfer”), or cause to be transferred, to Buyer, free and clear of all Encumbrances, and Buyer shall purchase and acquire, all of Seller’s books and records (including all discs, tapes and other media-storage data and information) relating primarily or exclusively to the Business, the Services and the Customers.

4. Transfer of Customers. Subject to the terms and conditions of this Agreement, on the Activation Date designated for each Customer or Combination of Customers, Seller shall transfer and assign to Buyer and Buyer shall purchase all rights and benefits to such Customers. It is acknowledged by both parties that it will be impossible, impracticable, or detrimental for Buyer to transfer certain Customers listed on Exhibit A to Buyer’s Network. As such, Buyer may, in its sole discretion, reject the transfer of any Customer listed on Exhibit A and Seller shall not be compensated by Buyer for such Customers.

5. Customer’s Numbers. Subject to the terms and conditions of this Agreement, on the respective Activation Date, and simultaneous to the transfer of the Customers described in Section 4 above, Seller shall assign to Buyer the Customer’s Numbers and transfer the same to Buyer’s Network or to a third party carrier designated by Buyer to provide the Services.

6. Transfer Date/Obligations. Seller shall continue to make the Service available to the Customers until the expiration of each designated Activation Date for such Customer and as a result shall be entitled to collect the full revenue that Seller charges each Customer prior to such Customer’s activation on Buyer’s Network. In no event shall Buyer have any liabilities to Seller or its Customers, or any third party resulting from Seller’s termination of services to any Customer prior to such Customer’s activation on Buyer’s Network or resulting from those Customers who do not become Transferred Customers hereunder.

7. Seller’s Agreements. It is agreed by the Parties herein that Seller is not assigning to Buyer nor is Buyer assuming the rights, obligations or liabilities contained in any Contract or Agreement, whether expressed or implied, between Seller and any of the Seller’s Customers, Seller’s third party carriers or vendors, and/or other third parties. Seller shall indemnify and hold Buyer harmless from and against any and all claims and/or Judgments arising out of the any Loss, liabilities or obligation of Seller relative to such agreements and contracts.

8. **Excluded Assets.** Seller and Buyer expressly understand and agree that Seller is not transferring to Buyer, pursuant to this Agreement, any assets or rights of Seller other than the Assets described in Section 3 above (all such other assets and rights being the "Excluded Assets").

9. **Assumption of Liabilities.** Seller and Buyer expressly understand and agree that Buyer is not assuming any liabilities or obligations of Seller, including but not limited to unearned revenue of Seller, and Seller shall indemnify and hold Buyer harmless from and against any and all claims and/or Judgments arising out of the any Loss, liabilities or obligation of Seller what so ever. Conversely, Buyer shall not assume any accounts receivable of Seller.

10. **Instruments of Sale and Transfer.** On or after the Closing Date, Seller shall deliver to Buyer and Buyer shall deliver to Seller, as the case may be, such instruments of sale and assignment as shall, in the reasonable judgment of Buyer and Seller, be effective to vest in Buyer on the Closing Date all of Seller's right, title and interest in and to the Assets and Customers. Seller shall take all reasonable additional steps as may be necessary to put Buyer in possession and operating control of the Assets at the Closing.

11. **Further Assurances.** From time to time following the Closing, Buyer and Seller shall execute and deliver, or cause to be executed and delivered, to the other such additional instruments of conveyance and transfer as such party may reasonably request or as may be otherwise necessary or desirable to carry out the purposes of this Agreement.

12. **Purchase Price.** In consideration of the Seller's performance hereunder, Buyer shall pay Seller [REDACTED] from the Transferred Customers, during the initial month of service provided by Buyer to said Transferred Customers, multiplied one hundred fifty percent (150%). Buyer shall calculate said [REDACTED] on an accrual basis for each Transferred Customer using Generally Accepted Accounting Principles (GAAP). Buyer shall pay any amounts owed to Seller hereunder within forty five (45) days of the Activation Date of such Transferred Customer. As a showing of good faith, Buyer shall advance Seller [REDACTED] ("Advanced Amount"), which the Parties agree is an estimated amount that [REDACTED] that Buyer may realize from the Transferred Customers at the end of the aforementioned initial month. The Parties agree that the Advanced Amount shall be a credit against the actual total Purchase Price and shall reduce the Purchase Price by the same amount. Buyer shall pay the difference of the Purchase Price and the Advanced Amount within the time frame specified herein. In the event the Advance Amount exceeds the total calculated Purchase Price, Seller shall refund the difference to Buyer within thirty (30) days of Buyer giving Seller written notice of such deficit.

13. Closing. Subject to the terms and conditions of this Agreement, the Closing shall take place upon each Party's receipt of this fully executed Agreement via email, receipt confirmation requested.

14. Representations and Warranties of Seller. To induce Buyer to enter into and to perform this Agreement, Seller represents and warrants to Buyer (which representations and warranties shall survive the Closing) all as follows in this Section:

(a) Seller is a Corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation. Seller has all requisite corporate power and authority to own, operate and lease the Assets and to carry on the Business as now being conducted.

(b) Seller has full corporate power and authority to execute and deliver this Agreement and any Transaction Documents and perform its obligations hereunder. The execution and delivery by Seller of this Agreement and any Transaction Documents, the performance by Seller of its obligations hereunder and the consummation by Seller of the transactions contemplated hereby have been duly authorized by all necessary corporate action. This Agreement constitutes a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, and the terms of any Transaction Documents.

(c) No consent, approval or authorization of, or declaration, filing or registration with, any Governmental Body is required for the execution, delivery and performance by Seller of this Agreement and any Transaction Documents, and for the consummation by Seller of the transactions contemplated hereby. No consent, approval or authorization of any third party is required for the execution, delivery and performance by Seller of this Agreement and any Transaction Documents and the consummation by Seller of the transactions contemplated hereby.

(d) Except for the disclosures contained on Attachment A hereto, there are no Claims pending or, to Seller's knowledge, threatened against Seller with respect to the operation of the Assets or Customers, before or by any Governmental Body or nongovernmental department, commission, board, bureau, agency or instrumentality or any other person or entity. Except for the disclosures contained on Attachment A hereto, there are no outstanding or unsatisfied judgments, orders, decrees or stipulations to which Seller, with respect to the operation its business, is a party, that involve the transactions contemplated herein or that would alone or in the aggregate have a material adverse effect on the said Transaction.

(e) Except for the disclosures contained on Attachment A hereto, Seller is and has been in compliance with all laws, statutes, rules, ordinances and regulations promulgated by any Governmental Body and all Judgments applicable to the ownership or operation of the Assets and the conduct of its Business. Seller

has not received any notice of any alleged violation (whether past or present and whether remedied or not), nor is Seller aware of any basis for any claim of any such violation, of any such law, statute, rule, ordinance, regulation or Judgment.

(f) Neither the execution and delivery by Seller of this Agreement or any Transaction Documents, the performance by Seller of its obligations hereunder, nor the consummation of the transactions contemplated hereby will (a) violate, conflict with or result in any breach of any provision of Seller's articles of organization or operating documents; or (b) violate, conflict with, result in any breach of, or constitute a default (or an event that, with notice or lapse of time or both, would constitute a default) under any Contract or Judgment to which Seller is party or by which it is bound; or (c) violate any applicable law, statute, rule, ordinance or regulation of any Governmental Body.

(g) That all Assets transferred hereunder do not infringe any patent, copyright, trademark, trade secret or other intellectual property right of any third party nor shall the transfer hereunder or Buyer's use or ownership thereof violate the same.

(h) That, except as set forth in this Agreement and the attached Exhibits, said Assets are free and clear of any adverse liens, security interests, claims, encumbrances or restrictive covenants of any kind.

(i) That it has no knowledge, or basis for knowledge, that any Customer or combination of Customers (related or unrelated) who account for more than fifteen percent (15%) of the aggregate volume of gross revenue of Seller's Business, as of the date of this agreement, has terminated or is expected to terminate its relationship with the Seller.

15. Representations and Warranties of Buyer. To induce Seller to enter into this Agreement, Buyer represents and warrants to Seller (which representations and warranties shall survive the Closing) all as follows in this Section:

(a) Buyer is a corporation duly organized and validly existing under the laws of the Commonwealth of Pennsylvania. Buyer has all requisite power and authority to carry on its business as it is now conducted.

(b) Buyer has full corporate power and authority to execute and deliver this Agreement and any Transaction Documents and perform its obligations hereunder. The execution and delivery by Buyer of this Agreement and any Transaction Documents, the performance by Buyer of its obligations hereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action. This Agreement constitutes a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, and the terms of any Transaction Documents.

(c) Neither the execution and delivery by Buyer of this Agreement or any Transaction Documents, the performance by Buyer of its obligations hereunder, nor the consummation of the transactions contemplated hereby or thereby will (a) violate, conflict with or result in any breach of any provision of Buyer's articles of incorporation or bylaws; or (b) violate, conflict with, result in any breach of, or constitute a default (or an event that, with notice or lapse of time or both, would constitute a default) under any Contract or Judgment to which Buyer is party or by which it is bound; or (c) violate any applicable law, statute, rule, ordinance or regulation of any Governmental Body.

(d) There are no Claims pending or, to the knowledge of Buyer, threatened against Buyer, before or by any Governmental Body or nongovernmental department, commission, board, bureau, agency or instrumentality, or any other person, and there are no outstanding or unsatisfied Judgments or stipulations to which Buyer is a party that involve the transactions contemplated herein.

16. Access. Seller shall (i) give Buyer and its accounting, legal, business, engineering, intellectual property and other authorized representatives and advisors full access, during normal business hours, to the Assets, (ii) furnish Buyer and its authorized representatives and advisors with all documents and information relating to the Assets and the Business as may be reasonably requested by Buyer and its authorized representatives and advisors, (iii) permit Buyer and its authorized representatives and advisors to review all books, records and Contracts relating to the Assets and Seller's Business as may be reasonably requested by Buyer and its authorized representatives and advisors, and make copies thereof, (iv) furnish Buyer and its authorized representatives and advisors with data and other information with respect to the Assets and the Business as may be reasonably requested by Buyer and its authorized representatives and advisors, and discuss with Buyer and its authorized representatives and advisors the affairs of Seller's Business, (v) fully cooperate with Buyer and its authorized representatives and advisors in their investigation and examination of the Assets. Seller represents and warrants that all information provided to Buyer by Seller hereunder is true and accurate as of the date said information is provided. No investigation, or receipt of information provided by or on behalf of Seller or review thereof by Buyer or its representatives or advisors shall diminish or obviate, or relieve Seller from, or affect Buyer's ability or right to rely on, any of the representations, warranties, covenants and agreements of Seller contained in this Agreement and any Transaction Documents.

17. Conduct of Business Prior to the Activation Date. Except for actions taken with the prior written consent of Buyer, from the date of this Agreement until the final Activation Date, Seller shall conduct the Business in the ordinary course consistent with Seller's past practice during the Second Quarter of 2007, and Seller shall:

(a) Comply with all Judgments, all laws, statutes, rules, ordinances and regulations promulgated by any Governmental Body and all Permits applicable to the Customers, the conduct of the Business or the ownership or operation of the Assets consistent with Seller's rights under applicable state and federal law, and maintain, and prosecute applications for, such permits and maintain responsibility for all Taxes, assessments and other charges applicable thereto;

(b) Not take any action, or omit to take any action, that would result in any of Seller's representations and warranties made herein being inaccurate at the time of such action or omission as if made at and as of such time.

18. Covenants to Satisfy Conditions. Each party shall proceed with all reasonable diligence and use its best efforts to satisfy or cause to be satisfied all of the conditions and obligations of such Party to complete the transaction contemplated herein.

19. Conditions Precedent to Obligations of Buyer. The obligation of Buyer to complete the Transaction contemplated herein shall be subject to the satisfaction of each of the following conditions, any one or more of which may be waived by Buyer:

(a) As of the final Activation Date, there shall not be any Claim or Judgment of any nature or type threatened, pending or made by or before any Governmental Body that questions or challenges the lawfulness of the transactions contemplated by this Agreement or any Transaction Documents under any law or regulation, or seeks to delay, restrain or prevent such transactions;

(b) From the date of this Agreement to final Activation Date, there shall not have been any material adverse change in the Assets or Customer list, and Seller shall have no knowledge of any such change which is threatened;

(a) The representations and warranties of Seller made in this Agreement or in any Transaction Documents or any certificate furnished pursuant hereto shall be true, complete and correct on and as of the final Activation Date with the same force and effect as though made on and as of the final Activation Date; and

(b) Seller shall have performed and complied with the covenants and agreements required by this Agreement to be performed and complied with by it on or prior to the final Activation Date.

20. Conditions Precedent to Obligations of Seller. The obligation of Seller to sell the Assets to Buyer at the Closing shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any one or more of which may be waived by Seller:

(a) As of the final Activation Date, there shall not be any Claim or Judgment of any nature or type threatened, pending or made by or before any Governmental Body that questions or challenges the lawfulness of the transactions contemplated

by this Agreement or the Transaction Documents under any law or regulation or seeks to delay, restrain or prevent such transactions;

(b) The representations and warranties of Buyer made in this Agreement or in the Transaction Documents or any certificate furnished pursuant hereto or thereto shall be true, complete and correct on and as of final Activation Date with the same force and effect as though made on and as of the final Activation Date; and

(c) Buyer shall have performed and complied with the covenants and agreements required by this Agreement to be performed and complied with by it on or prior to the final Activation Date.

21. Transaction Costs. Each party shall be responsible for its own costs and expenses incurred in connection with the preparation, negotiation and delivery of this Agreement and any Transaction Documents, including, without limitation, attorneys' and accountants' fees and expenses.

22. Non-Competition. The Buyer and the Seller agree that the Consideration provided for in Section 12 above was fixed on the basis that the Transaction contemplated herein would provide the Buyer with the full benefit and good will of the Seller as it existed on the Closing Date and as it relates to its Business. The Seller acknowledges that it is proper for the Buyer to have assurance that the value of the Transaction herein will not be diminished by acts of the Seller after the Closing Date. Accordingly, the Seller covenants and agrees that, commencing on the Closing Date and continuing for a period of three (3) years, it will not (i) directly or indirectly compete with, or own, manage, operate, or control or participate in the ownership, management, operation, or control of, or provide consulting services to, any business, firm, corporation, partnership, person, proprietorship, or other entity that is conducting any business that competes with the Business, or (ii) solicit, interfere with, or endeavor to entice away from the Buyer, on behalf of itself, any person, partnership, corporation, or other entity, any customer of the Buyer including the Transferred Customers.

23. Customer's Non-Payment to Seller. In the event that a Transferred Customer has not paid Seller any outstanding balance that said Transferred Customer owes Seller for Services provided prior to the Activation Date, Buyer shall reasonably assist Seller in the collection of such outstanding balance. In the event that the Transferred Customer has not fully paid any and all outstanding balance to Seller prior to the expiration of the second month following the Activation Date of said Transferred Customer, then Buyer shall terminate its provision of Services to said Transferred Customer in accordance with Buyer's then applicable Terms of Service.

24. Survival. All representations and warranties of Seller and Buyer contained in this Agreement or in any Transaction Documents shall survive the final Activation Date for a period of twelve (12) months after the Closing, and shall not be deemed waived or otherwise affected by any investigation made or any knowledge acquired with respect thereto. The covenants and agreements of Seller and Buyer

contained in this Agreement or in any Transaction Documents shall survive the Closing and shall continue until all obligations with respect thereto shall have been performed or satisfied or shall have been terminated in accordance with their terms.

25. Indemnification by Seller. From and after the Closing Date, Seller shall indemnify and hold Buyer and its affiliates harmless from and against, and shall reimburse Buyer and its affiliates for, any and all Losses arising out of or in connection with:

- (a) Any inaccuracy in any representation or warranty made by Seller in this Agreement or in the Transaction Documents or in any certificate delivered pursuant hereto or thereto;
- (b) Any failure by Seller to perform or comply with any covenant or agreement in this Agreement or in the Transaction Documents;
- (c) Any claim by any person or entity for brokerage or finder's fees or commissions; or similar payments based upon any agreement or understanding alleged to have been made by such person or entity directly or indirectly with Seller or any of its officers, directors or employees in connection with any of the transactions contemplated by this Agreement or any Transaction Documents;
- (d) The ownership or use of the Assets and Seller's provision of Service to each Transferred Customer on or prior to the Activation Date of each said Transferred Customer; or
- (e) Any Claim relating to items or the business of Seller or its affiliates not acquired by Buyer hereunder, or any Liabilities of Seller or its affiliates.

26. Indemnification by Buyer. From and after the Closing Date, Buyer shall indemnify and hold harmless Seller and its affiliates from and against, and shall reimburse Seller and its affiliates for, any and all Losses arising out of or in connection with:

- (a) Any inaccuracy in any representation or warranty made by Buyer in this Agreement or in any Transaction Documents or in any certificate delivered pursuant hereto or thereto;
- (b) Any failure by Buyer to perform or comply with any covenant or agreement in this Agreement or any Transaction Documents;
- (c) Any Claim by any person or entity for brokerage or finders' fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by such person or entity directly or indirectly with Buyer or any of its officers, directors or employees in connection with any of the transactions contemplated by the Agreement or any Transaction Documents; or

(d) Actions and/or omissions by Buyer relative to the ownership or use of the Assets and Buyer's provision of Service to each Transferred Customer, after the Activation Date of said Transferred Customer.

27. Termination. This Agreement may be terminated before the Closing:

(a) By either Party by giving written notice to the other Party at any time, if the other Party has breached any representation, warranty, covenant or agreement contained in this Agreement; or

(b) By mutual written agreement of Seller and Buyer; and

28. Effect of Termination. In the event of the termination of this Agreement:

(a) each party shall return or destroy all documents containing confidential information of the other party (and, upon request, certify as to the destruction thereof), and (b) no party hereto shall have any liability or further obligation to the other party hereunder, except for obligations of confidentiality and non-use with respect to the other party's confidential information, which shall survive the termination of this Agreement, and except for liabilities or obligations relating to any breach by any party of any representation, warranty, covenant or agreement set forth herein.

29. Public Announcements. Each party agrees not to make any public announcement in regard to the transactions contemplated by this Agreement and the Transaction Documents without the other party's prior consent, except as may be required by law, in which case the parties shall use reasonable efforts to coordinate with each other with respect to the timing, form and content of such required disclosures.

30. Severability. If any court determines that any part or provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be given full force and effect and remain binding upon the parties. Furthermore the court shall have the power to replace the invalid or unenforceable part or provision with a provision that accomplishes, to the extent possible, the original business purpose of such part or provision in a valid and enforceable manner. Such replacement shall apply only with respect to the particular jurisdiction in which the adjudication is made.

31. Modification and Waiver. This Agreement may not be amended or modified in any manner, except by an instrument in writing signed by each of the parties hereto. The failure of any party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, or in any way affect the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be deemed to be a waiver of any other or subsequent breach.

32. Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be sent by email, receipt confirmation requested, or mailed postage prepaid by first-class certified or registered mail, or mailed by a nationally recognized express courier service, or hand-delivered, addressed as follows:

if to Buyer: Eight Penn Center West
Suite 101
Pittsburgh, PA 15276
PatS@GlobalPOPs.com

if to Seller: 1600 SW Western Blvd
Suite 290
Corvallis, OR 97333
steve@uspops.com

Either party may change the persons or addresses to which any notices or other communications to it should be addressed by notifying the other party as provided above. Any notice or other communication, if addressed and sent, mailed or delivered as provided above, shall be deemed given or received three days after the date of mailing as indicated on the certified or registered mail receipt, or on the next business day if mailed by express courier service, or on the date of delivery or transmission if hand-delivered or sent by email transmission, and receipt confirmation has been received.

33. Assignment. Neither Seller nor Buyer may assign any of its rights or obligations hereunder without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

34. Captions. The captions and headings used in this Agreement have been inserted for convenience of reference only and shall not be considered part of this Agreement or be used in the interpretation thereof.

35. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, representations and statements, whether oral, written, implied or expressed, relating to such subject matter.

36. No Third-Party Rights. Nothing in this Agreement is intended, nor shall be construed, to confer upon any person or entity other than Buyer and Seller (and only to the extent expressly provided herein, their respective affiliates) any right or remedy under or by reason of this Agreement.

37. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one agreement.

38. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania as though made and to be fully performed in that State.

IN WITNESS WHEREOF, the parties have caused this Asset Purchase Agreement to be duly executed by their respective representatives hereunto authorized as of the day and year first above written.

USPOPS, Inc.

By: 
Title: CEO

GLOBALPOPS, INC.

By: 
Title: President

ATTACHMENT A

Seller is a party to *Universal Telecom, Inc. v. The Oregon Public Utility Commission, et al.*, Case No. 06-6222-HO (filed Mar. 27, 2007) (D. Or.), which is an appeal from *In the Matter of Qwest Corporation's Petition for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with Universal Telecommunications, Inc.* ARB 671 (Apr. 19, 2006) (Or. Pub. Util. Comm'n). Seller is appealing several determinations of the Oregon Public Utility Commission ("Commission") which, if upheld by the federal district court, could have a material adverse impact on Seller's competitive local exchange carrier operations. The principal issues on appeal include (i) the VNXX issue further described below, (ii) the Commission's determination that dial-up, Internet Service Provider-bound communications traffic should not be included in the calculation of "relative use" for purposes of determining cost responsibility as between Seller and Qwest Corporation for shared facilities, and (ii) the Commission's determination that only telecommunications traffic that originates and terminates in the same local calling area is subject to reciprocal compensation.

In ARB 671 the Commission ruled, *inter alia*, that Universal is in violation of its certificate of public convenience and necessity issued by the Commission by virtue of providing so-called "VNXX service." Universal has appealed this ruling to the federal district court on the grounds that the Commission lacks jurisdiction to make such a finding. If the federal district court dismisses or denies Universal's appeal, such action could have a material adverse impact on Seller's competitive local exchange carrier operations.

Seller is a party to *In the Matter of Universal Telecommunications, Inc. vs. Qwest Corporation, Complaint for Enforcement of Interconnection Agreement*, IC 13 (filed July 6, 2007) (Or. Pub. Util. Comm'n), which is a complaint against Qwest Corporation for threatening disconnection of certain interconnection facilities. Seller has raised several claims against Qwest Corporation which, if dismissed or denied by the Commission, could have a material adverse impact on Seller's competitive local exchange carrier operations. The principal claim raised in IC 13 is whether dial-up, Internet Service Provider-bound communications traffic should be included in the calculation of "relative use" for purposes of determining cost responsibility as between Seller and Qwest Corporation for shared facilities under the parties' current interconnection agreement.



Mutual Non-Disclosure Agreement

This Mutual Non-Disclosure Agreement ("Agreement") is by and between Universal Telecom, Inc., an Oregon Corporation, having its principal place of business at 1600 SW Western Suite #290, Corvallis OR 97333 ("First Party"), and GlobalPOPs _____ ("Second Party"), having its principal place of business at 325 Mt Lebanon Blvd Pittsburgh Pa 15234

1. Purpose: The First Party and Second Party wish to explore a business opportunity of mutual interest concerning each Party's business, operations, proprietary technology, and products. In connection with this opportunity certain trade secrets and business information proprietary to each Party and which each Party considers Confidential Information (as defined below) may be provided to one Party ("Promisor") by the other Party ("Discloser"). This Agreement is intended to allow both Parties to have open discussions regarding Confidential Information, while still affording complete protection of the Discloser's Confidential Information against disclosure or unauthorized use. Written agreements regarding authorized disclosures or use of the Discloser's Confidential Information may be entered into between the Parties in the future.

2. Definition: "Confidential Information" includes any and all Discloser's proprietary information relating to:

- (I) Discloser's proprietary technology and products, including without limitation, technical data, trade secrets, know-how, research, product plans, ideas or concepts, products, services, software, source code, inventions, patent applications, techniques, processes, developments, algorithms, formulas, technology, designs, schematics, drawings, engineering, and any and all hardware configuration information (collectively "Technical Information"), and;
- (II) Proprietary information relating to the Discloser's operations, business or financial plans or strategies including but not limited to customers (both existing and pending), customer lists, markets (both existing and pending), financial statements and projections, product pricing and marketing plans, financial or other strategic business plans or any other information (collectively "Business Information"), disclosed to Promisor by the Discloser, either directly or indirectly, in writing, verbally or by drawings or inspection of samples, equipment or facilities.

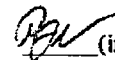
"Confidential Information" does not include any of the foregoing items which, at the time of the disclosure;

- (a.) is rightfully known to Promisor and is evidenced by written records of Promisor, or
- (b.) has become publicly known and made generally available through no wrongful act of Promisor, or
- (c.) has been rightfully received by Promisor from a third party who is authorized to make such disclosures.

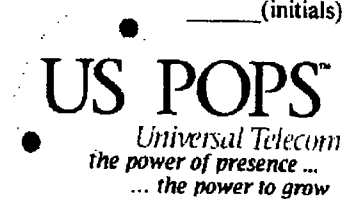
3. Non-Disclosure of Confidential Information: Promisor agrees not to use any Confidential Information disclosed by the Discloser for its own use or for any purpose except to carry out discussion concerning the undertaking of any business relationship between Promisor and the Discloser. Promisor will not disclose any Confidential Information belonging to Discloser to third parties or to any employee, contractors or agent of Promisor or if the Confidential Information has been independently developed by Promisor without use of Discloser's Confidential Information. This does not include those employees, contractors or agents who, in order to carry out the discussions of the contemplated business, are required to have access to the Confidential Information. Promisor will require all employees, agents and contractors, who have access to Discloser's Confidential Information, sign a nondisclosure agreement, which in content will be as restrictive as this Agreement and will, upon the request of the Discloser, promptly deliver to the Discloser, a written list of the names of all employees, agents or contractors who have access to Discloser's Confidential Information. Promisor agrees to take all reasonable measures to protect the secrecy of and to avoid the disclosure of or the unauthorized use of Discloser's Confidential Information to prevent it from falling into the public domain or into the possession of persons, other than those authorized hereunder to access Discloser's Confidential Information. Measures shall include the highest degree of care that Promisor utilizes to protect its own Confidential Information of a similar nature. Promisor agrees to notify the Discloser promptly, in writing, of any misuse or misappropriation (intentional or accidental) of Discloser's Confidential Information. The parties agree that Promisor may disclose Confidential Information of Discloser pursuant to an order from a governmental body of competent jurisdiction, provided that the party subject to the order gives prompt notice of any such order to Discloser.

4. Return of Materials: Any materials or documents, furnished by the Discloser to Promisor, will be promptly returned to the Discloser (accompanied by all copies of said documentation) after the business possibility has been concluded, rejected or, promptly, at the Discloser's request. No copies of the Discloser's Confidential Information shall be made unless approved, in writing, by the Discloser.

5. No License: Nothing in this Agreement shall be construed as granting any rights, to Promisor, under any patent or copyright, nor shall this Agreement be construed to grant Promisor any rights in or to the Discloser's Confidential Information, except for the limited right to review such Confidential Information solely for the purpose of determining the possibility of the proposed business relationship with the Discloser.

 (initials)
JRM

_____(initials)



Mutual Non-Disclosure Agreement

6. Term: The foregoing commitments of Promisor shall survive any termination of discussions between the Parties and shall continue as:

- (1) to matters involving "Business Information" for a period of three years following the date of this Agreement and
- (2) to Technical Information, until such Technical Information is no longer required to be protected as set forth in paragraph 2 of this Agreement.

7. Miscellaneous: This Agreement shall be binding upon and for the benefit of all the undersigned Parties, their successors and assigns, provided that Discloser's Confidential Information is not be disclosed by means of any assignment without the prior written consent of the Discloser. Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof. All information is provided "As Is", without any warranty, (expressed nor implied) as to its accuracy or completeness.

8. Governing Law: This Agreement shall be governed in and by, construed and enforced in strict accordance with the laws of the State of Oregon. The federal and state courts within the State of Oregon shall have exclusive jurisdiction to adjudicate any dispute arising regarding this Agreement or any dispute arising regarding disclosure by the Discloser of its Confidential Information to Promisor and the parties hereby consent to such jurisdiction.

9. Remedies: Promisor agrees that the obligations of Promisor provided herein are necessary and reasonable in order to protect the Discloser and its business. Promisor expressly agrees that monetary damages alone may be inadequate to compensate the Discloser for any breach of Promisor of its covenants and agreements set forth herein. Accordingly, Promisor agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to the Discloser and that, in addition to any and all available remedies under the law, in equity or otherwise, the Discloser shall be entitled to seek injunctive relief against the threatened or actual breach of this Agreement and/or the continuation of any such breach by Promisor without the necessity of proving actual damages.

10. Attorney Fees: If any party to enforce this Agreement files any suit or action or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover all reasonable attorney fees incurred during the course of preparation, prosecution or defense of such suit or action as fixed by the trial court. If any appeal is taken from the decision of the trial court, all reasonable attorney fees incurred as fixed by the appellate court.

11. Entire Agreement and Amendments: This Agreement supersedes all prior and contemporaneous Non Disclosure agreements, and contains the entire Non Disclosure agreement between the parties. No amendment, modification, termination, or waiver of any provision of this Agreement or consent to any departure from this Agreement shall be effective unless it is in writing and signed by a duly authorized representative of each party.

IN WITNESS WHEREOF, each party has executed this Agreement. The "effective date" of this Agreement for such purposes will be established by the date of the final signature on this Agreement Each person whose signature appears on this Agreement represents and warrants that they have the authority to bind the Party on whose behalf.

Patrick J. Sherlock
Signature

Patrick J. Sherlock
Printed Name

President
Title

6-27-07
Date

Jerry R. Martin
Signature

JERRY R. MARTIN
Printed Name

CEO
Title

6/29/07
Date

Two signed originals are to be executed, with one provided to the Second Party and one maintained in the permanent files of Universal Telecom, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of September, 2007, the following was sent via UPS overnight mail to the Oregon Public Utility Commission:

Universal Telecommunications, Inc.'s Motion to Admit John C. Dodge *Pro Hac Vice*
Affidavit of John C. Dodge in Support of Universal Telecommunications, Inc.'s Motion
to Admit *Pro Hac Vice*

Letter requesting substitution of counsel

Universal Telecommunications, Inc.'s Response to Qwest Corporation's Request for
Prehearing Conference (with attachments: Asset Purchase Agreement and Mutual Non-
Disclosure Agreement)

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

Alex M. Duarte Qwest Corporation 421 SW Oak St., Suite 810 Portland, OR 97204 alex.duarte@qwest.com	Ted D. Smith Stoel Rives LLP 201 S. Main, Suite 1100 Salt Lake City, UT 84111 tsmith@stoel.com
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DAVIS WRIGHT TREMAINE LLP

By: Barbara Lasswell
Barbara Lasswell for Mark P. Trincherro