Qwest
421 Southwest Oak Street
Suite 810
Portland, Oregon 97204
Telephone: 503-242-5420
Facsimile: 503-242-8589
e-mail: carla.butler@qwest.com

Carla M. Butler
Lead Paralegal

July 23, 2007

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

Re: IC 13

Dear Ms. Nichols Anglin:

Enclosed for filing in the above entitled matter please find an original and (5) copies of Qwest Corporation's Answer to Universal Telecommunications, Inc.'s Complaint for Enforcement of Interconnection Agreement, and Counterclaim of Qwest Corporation Against Universal Telecommunications, Inc., along with a certificate of service.

Because a Prehearing Conference is scheduled before Judge Arlow today, at 2:30 p.m., Qwest is at this time only filing its Answer. This will allow Judge Arlow time to review the brief before this afternoon's conference call. Subsequently in a few hours, the Supporting Affidavit of Nancy Batz (with attachments) will be filed via a separate eFiling.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Carla M. Butler

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

IC 13

Universal Telecommunications, Inc., Plaintiff, v. Qwest Corporation, Defendant	**QWEST CORPORATION'S ANSWER TO UNIVERSAL TELECOMMUNICATIONS, INC'S COMPLAINT FOR ENFORCEMENT OF INTERCONNECTION AGREEMENT** **COUNTERCLAIM OF QWEST CORPORATION AGAINST UNIVERSAL TELECOMMUNICATION, INC.**

Pursuant to OAR 860-013-0025, Qwest Corporation ("Qwest") hereby answers the Complaint for Enforcement of Interconnection Agreement ("Complaint") that Universal Telecommunication, Inc. ("Universal") filed on or about July 16, 2007, and hereby admits, denies, and affirmatively alleges as follows. For the sake of clarity, the paragraph numbers used herein shall track the paragraph numbers in Universal's Complaint. Qwest also responds to a few points raised in Universal's Motion.

I. INTRODUCTORY COMMENTS

It is unusual to begin an answer to a complaint with introductory comments. However, given the unusual circumstances of this case, and the *expedited nature* of this proceeding, Qwest believes that it is important to place the issues in this docket in the context of the clear policies of the Commission, the FCC, and the federal courts on the question of proper recovery of costs.

The issues here relate directly to the question whether one carrier (Universal) should be allowed the free use of the network of another carrier (Qwest). Universal is solely in the business of providing service to Internet Service Providers ("ISPs") that allows them to gather traffic from customers (many of whom also happen to be Qwest local exchange customers)

throughout Oregon. In order to provide that service, Universal, which has no network of its own, no local exchange customers (and only about five employees), must use Qwest's network to gather traffic from many different locations in Oregon. Universal uses the local exchange network of Qwest (and presumably other LECs) and it uses the transport facilities that carry traffic from those local exchanges to central locations where the traffic is handed off from Qwest to Universal.

The question that the Commission answered in its orders in docket ARB 671 is that Universal is financially responsible to compensate Qwest for the use of Qwest's transport facilities that are essential to Universal's ability to provide its service to ISPs. Since August 22, 2006, when the current interconnection agreement ("ICA") became effective, Qwest has worked assiduously, following the terms of the approved ICA, to bill and collect from Universal the charges for Universal's use of Qwest-provided transport facilities (direct trunked transport, entrance facilities, and multiplexing), used by Universal for ISP and Virtual NXX ("VNXX") traffic. Now, eleven months later, Universal has *not*, as required by the ICA, voluntarily paid Qwest a single cent for the direct trunked transport, entrance facilities and multiplexing charges related to the use of those facilities other than minimal charges billed by Qwest in September and October 2006. Until it filed its Complaint on July 16, 2007, the *sole basis* for Universal's refusal to pay was its claim that it had no obligation to do so because it had appealed the Commission's order in docket ARB 671 to federal court. Now, in a belated effort to avoid the consequences of the ICA, Universal has attempted to create new billing disputes, none of which have substance. The current net balance owed to Qwest by Universal is now in excess of $300,000.

In its orders in this matter and in its recent orders in ARB 665 (the Qwest/Level 3 arbitration), the Commission has spoken on these issues related to ISP traffic. So has the FCC, which concluded in its *ISP Remand Order*[1] that:

> [W]e suggest that, given the opportunity, carriers always will prefer to recover their costs from other carriers rather than their own end-users in order to gain competitive advantage. Thus carriers have every incentive to compete, not on basis of quality and efficiency, but on the basis of their ability to shift costs to other carriers, a troubling distortion that prevents market forces from distributing limited investment resources to their most efficient uses. *ISP Remand Order*, ¶ 4.
>
> In sum, our goal in this Order is decreased reliance by carriers upon carrier-to-carrier payments and an increased reliance upon recovery of costs from end-users, consistent with the tentative conclusion in the NPRM that bill and keep is the appropriate intercarrier compensation mechanism for ISP-bound traffic. *Id.*, ¶ 7.
>
> There is no public policy rationale to support a subsidy running from all users of basic telephone service to those end-users who employ dial-up Internet access. *Id.*, ¶ 87.

Federal circuit courts have likewise spoken on whether CLECs should be allowed to shift costs to other carriers instead of to their own customers; that is, whether they should be allowed to shift the costs of origination and transport to Qwest and/or ratepayers generally, including individuals who do not use dial-up service instead of to those customers who use the dial-up services of ISPs served by Universal. Universal's effort to avoid paying anything for the use of Qwest's network for ISP traffic and, at the same time, receive revenue from Qwest for terminating some of that traffic, must be considered in the light of the pointed language of the Second Circuit in *Global NAPs v. Verizon New England,* 454 F.3d 91, 103 (2nd Cir. 2006) ("*Global NAPs II*"):

> [W]here a company does not own the infrastructure and is not willing to pay for using another company's infrastructure, we see no reason for judicial intervention. Congress opened up the local telephone markets to promote competition, *not to provide*

[1] Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*").

> *opportunities for entrepreneurs unwilling to pay the cost of doing business.* (Emphasis added.)

While speaking in the specific context of VNXX, the *Global NAPs II* court recognized that CLECs have every incentive to "game" the system: "But the FCC has been consistent and explicit that it will not permit CLECs to *game the system* and take advantage of the ILECs in a purported quest to compete. (*Id.*, emphasis added.)

Those are precisely the things that Universal is attempting to do in this case. Because Universal has no network of its own, it wishes to use Qwest's infrastructure, but is unwilling to the pay of the cost of doing so, and is attempting to game the system and the Commission in order to accomplish that goal. That is precisely the issue confronting the Commission here.

II. ACCOMPANYING AFFIDAVITS

Attached hereto are two affidavits from Nancy Batz, Qwest's Senior Access Manager in the Wholesale Carrier Relations Department. The first contains only non-confidential information. To avoid intermingling confidential and non-confidential information in the same affidavit, with its attendant redaction issues, Qwest decided that it would be prudent to provide a brief second, separate affidavit that contains confidential information. Those affidavits support the factual allegations set forth herein.

III. PARTIES

1. Qwest admits the allegations of paragraph 1 of Universal's Complaint.

2. Qwest admits the allegations of paragraph 2 of Universal's Complaint.

IV. RESPONSE TO FACTUAL ALLEGATIONS

3. Qwest admits the allegations of paragraph 3 of Universal's Complaint. However, in order to provide a more complete history of the recent arbitration proceeding (docket ARB 671), Qwest affirmatively alleges that, pursuant to agreement, docket ARB 671 was conducted

without formal hearing, the parties submitting their testimony, exhibits, and briefs in writing. On February 2, 2006, Judge Allan Arlow issued his Arbitrator's Decision and on April 19, 2006, the Commission issued Order No. 06-190, entitled "Arbitrator's Decision Adopted as Modified." That order became the basis for the filing of an interconnection agreement ("ICA"), which was executed by representatives of Qwest and Universal and filed on July 25, 2006. Thereafter, on August 22, 2006, the Commission entered Order No. 06-484, entitled "Interconnection Agreement Approved." Thus, the current ICA between Qwest and Universal became legally effective and binding on the parties on August 22, 2006. The Commission stated in Order No. 06-484 that the ICA filed in accordance with Order No. 06-190 "comports with the requirements of the Act; the Federal Communications Rules, where applicable; and relevant state laws and regulations, and should be approved." Order No. 06-484, at p. 2.

4. With one exception, Qwest admits the allegations of paragraph 4 of Universal's Complaint. It is unclear precisely what Universal means when it says that the ICA prepared by Qwest "*purportedly* reflected the Commission's resolution of the issues." (Emphasis added.) Qwest affirmatively alleges it prepared the compliant ICA, and that it sent it to counsel for Universal for review, with a request that Universal execute the ICA prior to filing. As Universal acknowledges, Mr. Martin, its President, executed the ICA on behalf of Universal on July 17, 2006, prior to its filing with the Commission. To the extent that Universal's use of the word "purportedly" is an implicit indication that the currently-effective ICA does not properly reflect the Commission's resolution of the issues in docket ARB 671, Universal was given full opportunity to review the ICA and to refuse to execute it if it concluded, based on its review, that the ICA did not accurately reflect the Commission's decisions. Universal, however, raised no objection and executed the ICA, whereupon the Commission approved it in Order No. 06-484.

5. Qwest admits that paragraph 5 of Universal's Complaint contains language from the current ICA, but affirmatively states that Universal's quotation of sections from the ICA is incomplete and appears to attempt to mislead one away from the key language that drives the most significant part of this dispute. Although Universal's complaint appears to quote the entirety of section 7.3.2.2.1 of the ICA, Universal actually provides only a partial quotation from that section. It omits other language directly pertinent to the application of the relative use factor ("RUF") and the obligations of the parties to the ICA. The remainder of section 7.3.2.2.1 states:

> If CLEC's End User Customers are assigned NPA-NXXs associated with a rate center other than 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 is interstate in nature. Qwest and CLEC shall not exchange VNXX traffic. (Emphasis added.)

In addition to omitting this language from section 7.3.2.2.1, Universal ignored the application of Exhibit H—entitled "Calculation of the Relative Use Factor (RUF)—to the ICA (a copy of which is attached hereto as Attachment A). Exhibit H clearly defines minutes that are Qwest's responsibility and minutes that are the responsibility of the CLEC (Universal). Among other things, Exhibit H clearly includes the following as minutes that are the CLEC's responsibility in calculating the RUF:

- All ISP-bound and VNXX MOU that Qwest sends to CLEC
- All VNXX MOU that transits Qwest network and is terminated to CLEC

The formula represented by Exhibit H develops a composite RUF based on the language in section 7.3.2.2.1 quoted by Universal *and* the language from that section that Universal omitted.

As noted in the confidential affidavit of Nancy Batz, the results using the methodology embodied in Exhibit H are the same as developing a weighted average RUF reflecting (1) non-ISP-bound traffic applicable to 1% of the total traffic exchanged with Universal (which Universal claims to be 42% Universal / 58% Qwest) and (2) ISP-bound/VNXX traffic applicable to 99% of the total traffic exchanged with Universal (which is 100% Universal/ 0% Qwest). Thus, Universal's request that the Commission impose a RUF of 42% Universal / 58% Qwest for direct trunked transport ("DTT") in its Request for Relief (paragraph 18) is inconsistent with section 7.3.2.2.1 and Exhibit H for DTT. Although Universal makes no mention of entrance facilities ("EF"), the RUF for EF is governed by section 7.3.1.1.3.1 of the ICA, and is identical to section 7.3.2.2.1—thus, to the extent that Universal's request for relief could be construed as requesting a RUF of 42% Universal / 58% Qwest for EF, its request is inconsistent with section 7.3.1.1.3.1 and Exhibit H for EF. Both sections 7.3.2.2.1 and 7.3.1.1.3.1 state that the terminating party is responsible for 100% of the ISP-bound and VNXX traffic for purposes of calculating the RUF. Qwest thus affirmatively alleges that its calculation of the RUF, as set forth in Qwest's correspondence with Universal, is in full compliance with the ICA for both DTT and EF. (See Attachments A-D, G and J to the non-confidential affidavit of Nancy Batz; see Attachment A to confidential affidavit of Nancy Batz.)

6. Qwest admits that the material quoted in paragraph 6 of Universal's Complaint appears in Order No. 06-190.

7. Qwest admits the allegations of paragraph 7 of the Complaint, but affirmatively alleges that the parties have engaged in extensive correspondence not disclosed by Universal's Complaint that is relevant to this matter. With regard to the letter referred to in paragraph 7 of the Complaint, Qwest acknowledges that its employee Nancy Batz sent Universal (Jeff Martin) a

certified letter and email proposing relative use factors of 99% Universal and 1% Qwest based on June 2006 through August 2006 traffic usage pursuant to the terms of sections 7.3.1.1.3.1 and 7.3.2.2.1 and Exhibit H of the current ICA. Accompanying the letter was a confidential and proprietary worksheet with supporting documentation regarding the development of the factors. A copy of that letter and confidential worksheet is Attachment A to the confidential affidavit of Nancy Batz. In the letter, Qwest requested Universal's concurrence with the factors, or in the alternative, Universal's proposed relative use factors for the same time period, including supporting documentation. In addition to that letter, the following relevant correspondence has been exchanged by the parties:

a. On November 10, 2006, Universal replied to Qwest that during the *pendency of Universal's appeal* of the Commission's decision in docket ARB 671 to federal court, "Universal declines to adopt any position on an interconnection issue, including relative use, that could imperil the company's legal or equitable rights. Consequently, Universal respectfully suggests that the parties continue exchanging traffic as has been their practice *since 2000*." (Emphasis added.) The RUF in place at that time (reflecting the terms of the prior ICA that ceased to be effective on August 22, 2006) was 100% Qwest, 0% Universal. This letter is Attachment B to the non-confidential affidavit of Nancy Batz.

b. On December 1, 2006, Qwest replied to Universal that Qwest could not agree to Universal's November 10, 2006 proposal. Qwest reiterated its proposal and advised Universal that "in the absence of a response to Qwest's relative use proposal from Universal Telecom by December 15, 2006 that is based on the terms of the interconnection agreement (i.e., either a concurrence or alternate proposal using data for

the same June 2006 through August 2006 time frame), Qwest will begin implementation of its proposed relative use factors." This letter is Attachment C to the non-confidential affidavit of Nancy Batz.

c. On December 14, 2006, Universal responded to Qwest's relative use factor proposal and formally disputing Qwest's November and December 2006 facility charges "because the *legal justification* for these charges is in *dispute*. As you know, the question of the *lawfulness* of Qwest's proposed charges is one issue now *pending before the federal district court* in Oregon in Case No. 06-6222-HO. Therefore, there is no basis for Qwest to assess such charges at this time, and Universal requests that Qwest cease and desist from assessing additional charges in the future." (Emphasis added.) This letter is Attachment D to the non-confidential affidavit of Nancy Batz.

d. On December 20, 2006, Qwest sent a letter to Universal (1) reminding Universal that the agreement is in effect and binding on both parties and had not been stayed, (2) stating Qwest's position that the basis for Universal's disputes was not appropriate under the ICA, and (3) asking that within 15 days, Universal provide Qwest justification for its non-payment of Qwest's charges. This letter is Attachment F to the non-confidential affidavit of Nancy Batz.

e. On December 27, 2006, John Dodge, Universal's counsel, sent an email to Qwest's outside counsel, Ted Smith, suggesting an informal resolution whereby Qwest would assess its relative factor calculations, but *wait* for final, favorable judgment from the court before collecting the related charges. This e-mail is Attachment G to the non-confidential affidavit of Nancy Batz.

f. On January 2, 2007, Mr. Smith advised Universal that Qwest did not agree with Universal counsel Mr. Dodge's proposed resolution and added a comment stating that the ICA is in effect. Further, Mr. Smith stated that Qwest was "not threatening disconnect at this time. Any action of that type would be pursuant to the terms of the ICA." This e-mail is Attachment H to the non-confidential affidavit of Nancy Batz.

g. On January 9, 2007, Universal counsel Mr. Dodge replied to Qwest's December 20, 2006 letter by asserting that section 5.4 of the ICA does not limit disputes to only "factual" ones (in effect that section 5.4 also encompasses "legal" disputes that are on appeal) and stating that Section 5.18, Dispute Resolution, addresses "*any* claim, controversy or dispute between the Parties" (which in effect meant that so long as Universal disputed the legal sufficiency of the ICA (and the Commission's decisions), Universal did not need to pay these charges). This letter is Attachment I to the non-confidential affidavit of Nancy Batz.

h. On January 24, 2007, Mr. Smith replied to Mr. Dodge that Qwest disagreed with Universal's interpretation of Section 5.18 of the ICA and stated that "the Dispute Resolution provision applies when the Parties disagree as to the proper application of the *approved terms of the agreement*." (Emphasis added.) Mr. Smith further advised Mr. Dodge that in the absence of any factual information from Universal regarding the RUF, Qwest intended to implement the RUF provisions as set forth in the ICA. This letter is Attachment J to the non-confidential affidavit of Nancy Batz.

i. In addition to all of this correspondence, Qwest and Universal have exchanged regular letters regarding billings with either Ms. Batz of Qwest or with Qwest's billing department. At the same time, Ms. Batz and others in Qwest's billing

organization have communicated with Universal. In light of Universal counsel Mark Trinchero's representations during the July 19, 2007 procedural conference call that Universal's disputes are unrelated to the appeal and do not reflect a challenge to the underlying ICA, Qwest refers the Commission to Universal's letters described in sub-paragraphs a, c, and g above and to the series of letters attached to Ms. Batz's non-confidential affidavit, all of which identify the dispute in this matter as relating to the appeal of the Commission's decision and not to specific disputes related to the proper application of the current ICA. See Attachments B, D, E, L, N, P, R, and W to the non-confidential affidavit of Nancy Batz. It should be noted that Attachment W is dated July 16, 2007 (one week ago), and even in that document the only basis for the dispute is the appeal to federal court challenging the ICA.

8. Qwest denies the allegations of paragraph 8 of Universal's Complaint, and affirmatively alleges that the traffic usage data upon which Qwest based its proposed RUFs includes multiple types of traffic (including transit ISP traffic, non-transit ISP traffic, non-ISP traffic, VNXX traffic, exchange access traffic, and jointly-provided switched access traffic). Exhibit H clearly identifies the types of traffic that are to be included in the RUF calculation. Qwest denies its calculations inappropriately includes traffic other than "non-ISP-bound" traffic, and affirmatively alleges that its calculations are fully consistent with the terms of the ICA.

9. Qwest denies the allegations of paragraph 9 of Universal's Complaint. Qwest affirmatively alleges it would be entirely inconsistent with the clear terms of the ICA to develop a RUF that would reflect only "non-ISP-bound" traffic. Not only would such a RUF be inconsistent with the ICA, it would result in flatly ignoring 99% of the total traffic exchanged between Qwest and Universal (i.e., VNXX and ISP traffic). Universal's position is inconsistent

with the terms of the ICA in that it ignores the sections of the ICA (discussed above in paragraph 5) that state that, for purposes of calculating the RUF, the *terminating carrier* is responsible for VNXX and ISP traffic. Regarding Universal's 42% / 58% RUF, Qwest has no information on how Universal's calculated the RUFs because Universal has not provided any information to Qwest to substantiate its calculations. As noted in paragraph 57 of Ms. Batz's non-confidential affidavit, Qwest cannot replicate those RUF factors using its March – May 2007 data.

10. Qwest denies the conclusion of paragraph 10 of Universal's complaint that "[t]he RUF must be calculated to reflect the actual percentage of the DTT facilities that are being utilized." Qwest affirmatively alleges that Qwest's proposed RUF applies to the EF and DTT recurring charges for the EF and DTT facilities that Qwest placed into service at Universal's request. While Universal typically objects to claims that it "orders" these facilities, the fact is that under both the current and former ICAs, such facilities are placed into service only after Qwest receives an order from Universal, or any other CLEC. Once these facilities are installed, they are utilized for the exchange of traffic between Qwest and Universal, and Qwest has no opportunity to utilize those facilities for any other purpose. Universal's assertion that it be responsible to pay only for a portion of the "capacity" of the facilities is not consistent with the ICA and is inconsistent with the manner in which RUFs are applied between Qwest and all other carriers (and therefore, to allow Universal to base its financial responsibility on capacity test would be unlawfully discriminatory in favor of Universal). Allowing Universal to base its financial responsibility on capacity test would also be highly inequitable to Qwest because Universal would always have the benefits of the certainty of adequate facilities (facilities that it ordered) to deliver ISP traffic to its ISP customers, but without the corresponding responsibility to pay the costs associated with all of those facilities. Qwest, on the other hand, would be

required to provide dedicated facilities to Universal, but would only be able to recover a portion (perhaps a very small portion) of the charges established by the Commission for those services. It is notable that Universal provides no citation to the ICA for its novel theory that the RUF applies only to a portion of the "capacity" of the facilities that are being utilized. If this issue had been such a concern to Universal, it clearly had the opportunity to raise it in docket ARB 671, but it never did. Finally, an unstated assumption of the allegations of paragraph 10 is that Universal has no responsibility to monitor usage in relation to the capacity of services that it ordered—such an assumption is wrong and wrongfully suggests that Qwest should manage services that Universal ordered.

11. With regard to the allegations of paragraph 11 of Universal's Complaint, Qwest acknowledges that on Exhibit J to the ICA, Universal chose to exchange all compensable traffic at the per minute of use ("MOU") rate established in the *ISP Remand Order*, currently $0.0007.

12. Qwest admits the allegations of paragraph 12 of Universal's Complaint and acknowledges that Qwest has incorrectly billed Universal the Oregon section 251(b)(5) rate of $.0013301 for the small amount of local/EAS traffic sent by Universal to Qwest. Based on Qwest's analysis of the traffic, however, the total overbilling by Qwest in the eleven months since August 22, 2006 is a total of approximately $500. As paragraph 60 of Ms. Batz's non-confidential affidavit states, Qwest was unaware of this problem until Universal filed its Complaint and has made system updates to reflect the proper rate of $0.0007 per minute as Universal selected in Exhibit J to the ICA. As soon as Qwest has determined the precise amount of the overbilling, it will issue a credit to Universal.

13. As noted in its response in paragraph 7.c above, Qwest admits that Universal sent a December 14, 2007 letter to Qwest disputing transport charges billed by Qwest. Qwest also

admits that a variety of letters have been exchanged (see the voluminous attachments to Ms. Batz's affidavits for copies of most of them) and that two conference calls (on June 15, 2007 and July 2, 2007) have taken place, and that the parties have not resolved their disputes. Qwest affirmatively alleges, however, that until last month the basis for Universal's dispute was not, and has not been, based on a dispute about the application of the current ICA, but had been *explicitly* and *solely* based on Universal's claim it had no obligation to pay for transport pending its appeal in federal court. The letters attached to Ms. Batz's affidavits clearly bear this out.

14. With regard to paragraph 14 of Universal's Complaint, Qwest admits that on July 3, 2007, it sent a letter to Universal seeking full payment and stating that, in the absence of payment, it intended to disconnect services effective July 23, 2007. A copy of that letter is Attachment V to the non-confidential affidavit of Nancy Batz. Qwest admits the allegation of the second sentence of paragraph of Universal's Complaint. However, Qwest disagrees with Universal's characterization that the amounts due are properly "disputed" under the ICA. Qwest affirmatively alleges that, with the exception of the approximate $500 amount discussed in paragraph 12, its charges are consistent with the terms of the ICA. Qwest admits it sent a collections letter to Universal on July 3, 2007, noting that Qwest had met in good faith negotiations as requested. Further, Qwest alleges that in a conference call between Qwest and Universal dated July 2, 2007, Universal rejected Qwest's offer of a payment plan and also declined Qwest's offer to assist Universal regarding potential opportunities to reduce future Qwest's charges through a reduction in the quantity of facilities billed by Qwest. Qwest demanded payment for the total past due balance of $278,387.17 and initiated a hold on all ASR and/or LSR service order activity on July 5, 2007. To the extent that Universal's allegations can be taken as indicating that it was somehow surprised with the substance of Qwest's July 3, 2007

letter, Qwest's letters of April 6, 2007, May 7, 2007 and May 23, 2007 (Attachments M, O and Q to Ms. Batz's non-confidential affidavit) specifically mentioned the possibility of suspension of all service order activity and disconnection of services. Upon a suspension of service order activity, Qwest also conditioned its continued provision of services to Universal on its receipt of a security deposit of $94,500.

15. Qwest admits the allegations of paragraph 15 of Universal's Complaint insofar as it relates to the letter mailed by Universal. The statutory references are legal in nature and thus do not require response.

16. With regard to the allegations of paragraph 16 of Universal's Complaint, Qwest denies that a joint planning meeting occurred on August 30, 2006. While one was scheduled for that date, the Universal representatives failed to join the call. (See paragraph 61 and Attachment MM to the non-confidential affidavit of Nancy Batz.) Qwest admits that such a meeting took place between Qwest (represented by Renae Samuels) and representatives of Universal on or about February 15, 2007, at which time network issues, including the possible disconnection of excess trunks, were discussed. Qwest affirmatively alleges that Universal representatives stated during that call that Universal would initiate orders to disconnect unneeded trunks. Qwest denies it had the obligation to disconnect trunks ordered by Universal and, particularly in light of the statements of Universal's representatives, it would have been entirely inappropriate for Qwest to do so. Furthermore, Qwest alleges its practice with other CLECs is that orders to disconnect unneeded trunks are initiated by CLEC and not by Qwest. Most CLECs, quite rightly, view it as their prerogative to manage the trunks they have ordered and would object strenuously to Qwest's unilateral disconnections of trunks based on a perception of excess capacity.

17. With regard to the allegations of paragraph 17 of Universal's Complaint, for the reasons set forth in the previous paragraph, Qwest denies the obligation to issue orders to unilaterally disconnect trunks ordered by a CLEC that are not utilized. Furthermore, Qwest affirmatively alleges that Universal is just as capable of measuring trunk utilization as Qwest is and in managing its network and facilities ordered from other carriers. Therefore, if Universal believed in August 2006 (or even earlier) that it had ordered excess facilities, it had ample opportunity and every right to issue disconnect requests. The fact is that it has not been until the past few weeks prior to Universal's filing of its complaint that Universal has made any serious effort to disconnect services that were in place only as the result of orders for such services that Universal placed. Finally, as to the final sentence of Universal's allegations in paragraph 17, Universal was told in well in advance of the July 3, 2007 letter (see Attachments M, O, and Q, Qwest's April 6, 2007, May 7, 2007 and May 23, 2007 letters, to the non-confidential affidavit of Nancy Batz) that a failure to make a full payment to Qwest may result in a hold on ASR and/or LSR ordering activity, but Universal apparently chose to ignore that warning.

V. QWEST RESPONSE TO RELIEF REQUESTED

18. For the reasons set forth in paragraphs 5-11 above, Qwest denies that the request for relief in the first sentence is appropriate. The relief requested in the second sentence of paragraph 18 of Universal's Complaint should be denied in that, instead of complaining about the application the existing ICA, Universal proposes that the Commission amend the ICA to exclude ISP traffic from the RUF calculation. Such a request for relief is wholly improper, not only because the ICA has been appealed to federal district court, but because it is directly inconsistent with the Commission's stated intent in its orders in docket ARB 671 to make Universal, as it has with respect to many other CLECs in many other dockets, financially

responsible for the transport of ISP traffic. Granting Universal's request for relief would thus create unlawful discrimination in favor of Universal in violation of federal law.

19. For the reasons set forth in paragraph 10 above, the Commission should deny Universal's requested relief in paragraph 19 of its Complaint.

20. For the reasons set forth in paragraph 12 above, there is no need for the Commission to take action on the relief requested in paragraph 20 of Universal's Complaint, as Qwest is in the process of calculating a refund for its erroneous billing and will credit Universal for the approximate overbilling of $500.

21. For the reasons set forth herein, the Commission should deny Universal's requested relief in paragraph 21 of its Complaint. Qwest is unclear what specific relief Universal is seeking with regard to reciprocal compensation.

22. The Commission should deny Universal's requested relief in paragraph 22 of its Complaint.

23. The Commission should deny Universal's ambiguous request for relief in paragraph 23 of its Complaint.

VI. QWEST RESPONSE TO ADDITIONAL ALLEGATIONS IN UNIVERSAL'S MOTION FOR TEMPORARY EMERGENCY RELIEF

While allegations in a motion need not be responded to in an answer to a Complaint, in order to expedite this matter, Qwest hereby responds to the following non-duplicative allegations contained in Universal's Motion for Temporary Emergency Relief ("Universal Motion"):

24. On page 2 of the Universal Motion, Universal alleges that "Universal has . . . paid Qwest $88,200 for DTT and currently paying Qwest $20,000 per month for DTT." Universal's supporting citation is to paragraph 4 of Mr. Martin's affidavit—however, Mr. Martin's affidavit adds little of substance. Nevertheless, as paragraphs 34-42 and 54-55 of Ms. Batz's non-

confidential affidavit demonstrates, there is no substance to this claim. First, Universal does not disclose how it calculated the $88,200 amount, but it appears to include charges that Qwest only just recently received. For example, on June 29, 2007 (less than a month ago), Qwest received a billing from Universal of approximately $15,000 in retroactive adjustments related to reciprocal compensation billings for 2007. Any amounts to which Universal is entitled were not yet due, however, at the time Universal filed its complaint. Further, on July 13, 2007 (only ten days ago), Qwest received a billing from Universal of approximately $67,000 in retroactive adjustments related to reciprocal compensation billings for calendar year 2006. Again, any amounts to which Universal is entitled are not yet due. Finally, there appear to be disputes as to money that Qwest has withheld associated with a VNXX dispute in *Washington*. Qwest is reviewing these retroactive charges for reasonableness pursuant to the terms of Section 5.4.1: "Amounts payable under this Agreement are due and payable within thirty (30) calendar Days after the date of invoice, or within twenty (20) calendar Days after receipt of the invoice, whichever is later (payment due date)." Thus, to suggest, as Universal does, that Qwest has improperly withheld the payments, when Universal only just sent invoices to Qwest days ago, is inaccurate, if not highly irresponsible. Further, as Ms. Batz points out in paragraph 40 of her non-confidential affidavit, her early analysis demonstrates the likelihood that approximately 80% of the 2006 retroactive adjustments of $67,000 include a *duplicate billing* that Qwest addressed in December 2006. Finally, Universal's suggestion that it is "paying" Qwest approximately $20,000 per month for DTT is inaccurate to the extent that it suggests that Universal is paying Qwest anything. In fact, for the past two months, Qwest has applied a credit to the charges due to Qwest equal to the reciprocal compensation amount that Qwest owes Universal ($14,955.61 for April 2007 usage and $18,724.97 for May 2007 usage, for an average of nearly $17,000). To the

extent that Universal considers that a "payment" (which Qwest disputes), it is certainly an involuntary one. As paragraph 42 of Ms. Batz's non-confidential affidavit points out, since Qwest received its first dispute of its charges from Universal (associated with the November 2006 and December 2006 invoices), Qwest has received no payments whatsoever from Universal for the facility related charges.

25. On page 3 of the Universal Motion, Universal states that "[t]he ICA does not permit Qwest to disconnect service for non-payment of amounts due under the ICA." As these are likely to be issues that will be briefed, Qwest will merely deny the validity of these statements and note that sections 5.4.2 and 5.4.3 of the ICA specifically justify suspension of ordering and disconnection of services.

26. On page 4 of the Universal Motion, Universal states: "[E]ven as to a default for non-payment of undisputed amounts, the proper recourse for Qwest is to avail itself of the Dispute Resolution procedures set forth in Section 5.18 of the ICA." That is the preferred, but not exclusive remedy for all disputes between Qwest and the CLEC arising out of the ICA or its breach, and that is precisely the process that Qwest has participated in Dispute Resolution with Universal at Universal's request. However, the parties were unable to reach an agreement.

VII. COUNTERCLAIM

27. Qwest hereby incorporates herein the factual allegations it has made in paragraphs 1-26 and in the affidavits of Ms. Batz, and on the basis of those allegations, Qwest hereby requests that the Commission deny each of Universal's requests for relief and that, in the alternative, the Commission order (1) Universal to pay all past due amounts owed for DTT, EF, and Multiplexing owed by Universal under the ICA, and (2) in the event Universal fails to do so, to allow Qwest to exercise all remedies under the ICA, including suspension of service order activity and disconnection of services.

DATED: July 23, 2007

Respectfully submitted,

Alex M. Duarte, OSB No. 02045
Qwest
421 SW Oak Street, Room 810
Portland, Oregon 97204
503-242-5623
503-242-8589 (facsimile)
Alex.Duarte@qwest.com

and

Ted D. Smith, Utah Bar No. 3017
STOEL RIVES LLP
201 South Main St. Suite 1100
Salt Lake City, UT 84111
801-328-3131
801-578-6999
tsmith@stoel.com
Admitted Pro Hac Vice

Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

IC 13

I hereby certify that on the 23rd day of July, 2007, I served the foregoing **QWEST CORPORATION'S ANSWER TO UNIVERSAL TELECOMMUNICATIONS, INC.'S COMPLAINT FOR ENFORCEMENT OF INTERCONNECTION AGREEMENT** and **COUNTERCLAIM OF QWEST CORPORATION AGAINST UNIVERSAL TELECOMMUNICATION, INC.** in the above-entitled docket on the following persons via U.S. Mail and electronic mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon, as well as submitting to the counsel listed below a courtesy electronic copy of same:

Mark Trinchero
Davis Wright Tremaine LLP
1300 S.W. Fifth Ave., Suite 2300
Portland, OR 97201
marktrinchero@dwt.com

Jeffry Martin
Universal Telecom, Inc.
1600 SW Western Blvd., Suite 290
Corvallis, OR 97333
martinj@uspops.com

DATED this 23rd day of July, 2007

QWEST CORPORATION

By: _____
Alex M. Duarte OSB No. 02045
421 SW Oak Street, Suite 810
Portland, OR 97204
Telephone: 503-242-5623
Facsimile: 503-242-8589
e-mail: alex.duarte@qwest.com

Attorney for Qwest Corporation