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Carla M. Butler
Lead Paralegal

September 17, 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 two (2) copies of Qwest's Comments Regarding the Lifting of the Temporary Stay, Qwest's Request that the Commission (1) Lift the Stay, or, in the Alternative, (2) Require Universal to Disclose the Sales Price of Its Sale and Require a Sufficient Portion of the Sales Price to be Deposited with the Commission Pending Resolution, along with a certificate of service.

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

Sincerely,

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

Carla M. Butler

CMB:

Enclosure

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

IC 13

UNIVERSAL TELECOMMUNICATIONS, INC.,

Plaintiff,

v.

QWEST CORPORATION,

Defendant.

**QWEST’S COMMENTS REGARDING
THE LIFTING OF THE TEMPORARY
STAY**

**QWEST’S REQUEST THAT THE
COMMISSION**

**(1) LIFT THE STAY, OR, IN THE
ALTERNATIVE,**

**(2) REQUIRE UNIVERSAL TO
DISCLOSE THE SALES PRICE OF ITS
SALE AND REQUIRE A SUFFICIENT
PORTION OF THE SALES PRICE TO BE
DEPOSITED WITH THE COMMISSION
PENDING RESOLUTION**

**PROPOSED ORDER/ORDERING
CLAUSES**

Pursuant to Administrative Law Judge Allan Arlow’s ruling at the September 11, 2007 prehearing conference, defendant Qwest Corporation (“Qwest”) hereby comments on the question whether the Commission’s temporary stay as ordered in Order No. 07-366, in which the Commission held in abeyance plaintiff Universal Telecommunications, Inc.’s (“Universal’s”) motion for temporary emergency relief and prohibited Qwest from disconnecting Universal’s services for non-payment of services and facilities until such time as the Commission indicates, should be lifted. In support of the relief requested herein, Qwest hereby files the Second Supplemental Affidavit of Nancy J. Batz.

In light of Universal’s recent disclosures in its Commission-ordered “compliance filing” on September 4, 2007 that Universal is in the process of selling its managed modem business to a third party (later identified as GlobalPOPs, Inc.), Qwest provides additional comments. In

addition, based on the record in this matter to date, and the accompanying supplemental Affidavit of Nancy J. Batz, Qwest requests that the Commission either immediately lift the temporary stay in Order No. 07-366 (thus allowing Qwest to immediately disconnect service to Universal), or, alternatively, enter an order requiring Universal to deposit \$384,006.58 of the sales proceeds with the Commission, or with a third-party escrow agent as the Commission may direct, pending resolution of the disputes in this complaint.¹

FACTUAL AND PROCEDURAL BACKGROUND

Before turning to Qwest's comments and requests, and in order to place those comments and requests in their proper context, it is important to review a few key facts. A detailed history of events and communications between the parties is set forth in "Qwest's Answer to Universal Telecommunications Inc's Complaint for Enforcement of Interconnection Agreement" filed on July 23, 2007, the non-confidential affidavit of Nancy Batz filed on that same date, and "Qwest's Response to Commission Questions" ("Qwest Response") filed on July 25, 2007. Those comments and Ms. Batz's non-confidential affidavit of July 23, 2007 are incorporated herein by this reference. In addition to those detailed facts, the following specific facts bear repeating, or are new facts that bear on the matters currently at issue in this complaint.

1. In August 2006, the current interconnection agreement ("ICA") between Qwest and Universal became effective pursuant to the Commission's Order No. 06-484 in docket ARB 671 (interconnection arbitration between Qwest and Universal). See also Order No. 06-190 (adopting the Arbitrator's Decision as modified). That ICA limits terminating compensation to traffic that originates and is delivered to ISP modems located in the same local calling area ("LCA"). The ICA also requires Universal to pay

¹ This amount includes late payment charges allowed by the ICA, plus statutory interest (9 percent per annum) to which Qwest would be entitled under Oregon law. See ORS 82.010.

for Local Interconnection Services (“LIS”) transport for all Internet Service Provider (“ISP”) traffic, consistent with the Commission’s policy on this issue as reflected in several other decisions (one of which (Order No. 01-801 in docket ARB 332) was appealed and affirmed by a federal district court). Finally, the Commission in its Order No. 06-190 mandated the insertion of language that ***bans the exchange of VNXX (Virtual NXX) traffic***. Order No. 06-190, p. 7; Arbitrator’s Decision, p. 10. Accordingly, the ICA that the Commission approved in Order No. 06-484 contains language that prohibits the exchange of VNXX traffic.

2. Universal has appealed Order Nos. 06-190 and 06-484 from docket ARB 671 to federal district court. The matter has been fully briefed and oral argument will be held on Tuesday, September 18, 2007.

3. In the 13 months since the current ICA became effective, Qwest has billed Universal each month for transport pursuant to the terms of the ICA. Universal, however, has refused to pay any amount whatsoever, for such transport in Oregon on the *sole ground* that it has appealed the Commission’s orders to federal court. Last month, however, counsel for Universal represented on the record to the Commission that Universal’s complaint in this matter is not based in any manner on the appeal.

4. In any event, it was not until July 2007, with the filing of its complaint, that Universal, ***for the first time***, made ***any*** claim that it had ***other*** grounds for disputing the bills that Qwest had been rendering for nearly a year. (Qwest Response, p. 4, ¶ 8.)

5. As noted in Qwest’s Response on July 25, 2007, Universal now also claims that Qwest should have, at its own discretion, disconnected trunks that were unnecessary due to allegedly “unused capacity.” Universal makes such claims despite

the fact that Universal could have requested the disconnections itself, and the fact that the standard procedure used by the industry is for CLECs to make such adjustments to the LIS facilities that CLECs order and that Qwest provides. (Qwest Response, pp. 12-14.)

6. Thus, Universal made an unquantified and unsupported claim that the Relative Use Factor (“RUF”) should somehow be calculated based on “capacity.” Qwest clearly demonstrated, however, as a matter of law, that there is no basis for such a conclusion under the ICA. (See Qwest Response, pp. 8, 11-12.)

7. Universal also only recently made a claim that it had been billed an incorrect rate for the small amount of traffic that it terminates to Qwest. Qwest acknowledged that it had billed an incorrect rate, although it involved a very nominal amount, and Universal’s July 16, 2007 complaint was the very first time that Universal had ever notified Qwest about this incorrect rate, ignoring the standard dispute resolution process. (See Qwest Response, p. 9.) In recognition of its error and staying in compliance with the ICA, Qwest has now issued a credit in the amount of \$21.63. (See Batz Second Supplemental Affidavit, ¶ 14.)

8. Finally, Universal claimed for the first time in Universal principal Jeffrey Martin’s affidavit filed with Universal’s July 16, 2007 complaint that Universal had not been paid \$88,200 in terminating compensation for primarily retroactive 2006 and 2007 usage. Ms. Batz then analyzed these retroactive bills (which were first received by Qwest in July 2007) for those amounts, and determined that approximately \$23,700 was legitimately owed to Universal, and thus Qwest has issued credits in that amount. (See Batz Second Supplemental Affidavit, ¶ 13.)

9. Thereafter, Judge Arlow convened a telephone conference on August 1, 2007, wherein he sought information as to whether Universal continues to send VNXX traffic to Qwest, in direct violation of the ICA. On August 2, 2007, Universal's counsel informed Judge Arlow by email that Universal continues to engage in VNXX traffic. On the same date, Qwest confirmed that fact by pleading.

10. On August 22, 2007, the Commission issued its Order No. 07-366 ("Order") in this complaint docket. The Order dismissed Universal's complaint, but held in abeyance Universal's motion for temporary emergency relief, and thus prohibited Qwest from disconnecting Universal's services for non-payment of services and facilities until such time as the Commission indicates, pending a compliance filing by Universal regarding Universal's plans to comply with the Commission's orders prohibiting VNXX traffic or to protect its customers and end-users from service disruptions. Nevertheless, in the Order, the Commission ruled that (1) Universal has been in *willful violation* of the Commission's orders regarding VNXX traffic, (2) Universal has engaged in *improper conduct* in violating the Commission's legal orders, (3) Universal has "unclean hands," and (4) Universal's justification of its knowing and willful violation of the Commission order for almost a year, based on its belief that the Commission's order in docket ARB 671 was in error, constitutes "serious misconduct." Order, p. 6. The Commission in its Order further noted that Universal's VNXX arrangements "deprive Qwest of revenues for the transport of interexchange toll traffic" and that Qwest may be able to prove that it has suffered actual injury as a result. Order, pp. 6-7. Finally, the Commission in its Order stated that after receiving Universal's compliance filing, "the Commission will expeditiously determine what final action is appropriate to *protect the financial interest of*

Qwest” (while also protecting third party customers and ISP end-users). Order, p. 7.
(Emphasis added.)

11. On September 4, 2007, Universal filed a pleading that it somehow portrayed as its “compliance filing.” In that filing, Universal notified the Commission that it is in the process of selling its assets to a third party. However, nothing in the filing addressed the core issue, that being the amounts that Universal owes to Qwest, or discussed a plan to assure that Qwest would be properly compensated or financially protected for the services Qwest has provisioned for Universal, based on Universal’s orders for service, in good faith pursuant to the ICA. Moreover, other than a bare allegation, nothing in the “compliance filing” provided any assurance that Universal (or the buyer) would discontinue the prohibited exchange of VNXX traffic in Oregon.

12. On September 5, 2007, Qwest filed a letter objecting to Universal’s compliance filing, and raising its concerns that Universal continues to request the Commission to continue the stay (and thus prohibit Qwest from disconnecting services for non-payment), while Universal owes Qwest more than \$300,000. Qwest further raised its concerns that this was nothing more than yet another Universal delay tactic, and that Universal was attempting to deny Qwest the remedy of being paid for the services that Qwest has provided to Universal, and that if Universal were allowed to consummate the sale to the (then-unnamed) third party, Qwest would be “left holding the bag” (and thus would never be paid for the services it has provided). Accordingly, Qwest requested that Judge Arlow hold an immediate prehearing conference to discuss the impending sale and steps to protect Qwest from further financial harm.

13. In the meantime, and in response to the growing concern that the continuing monthly amount billed by Qwest to Universal was in jeopardy, Qwest has allowed Universal to disconnect approximately 43 percent of the LIS trunks. However, based on current estimates, the billing for LIS trunks and other services remaining in service will continue to exceed the terminating compensation amounts that Qwest continues to credit by approximately \$15,000 per month. (Batz Second Supplemental Affidavit, ¶¶ 7-10.) Thus, if Universal continues in business and refuses to pay for the very services it is consuming, Qwest will continue to be harmed by an additional \$15,000 per month.

14. As of September 13, 2007, the net amount that Universal owes to Qwest under the new ICA (taking into account the two credits discussed above and the terminating compensation that Qwest has been crediting in lieu of a payment since May 2007) is **\$384,006.58** (which includes late payment fees of \$15,549.96 for accounts 503 L08-1126 126 and 503 L08-1127 127). (See Batz Second Supplemental Affidavit, ¶ 9.) Even assuming the validity of the only facially-colorable claim (the Universal claim for \$88,200, which is now \$64,479.31 in light of credits that Qwest has already made, and of which \$52,983.49 has been demonstrated to be predominantly duplicate billing (see Batz Second Supplemental Affidavit, ¶¶ 13, 13a.)), the amount currently owed would be at least **\$372,483.66**.

15. On September 7, 2007, Universal responded to Qwest's request for a prehearing conference by filing a pleading and attaching an "Asset Purchase Agreement" between Universal and the buyer, GlobalPOPs, Inc. The sales price was redacted from

the agreement, however, as Universal cited the proprietary nature of the parties, yet completely ignored the mounting and directly associated payment liability to Qwest.

16. On September 11, 2007, pursuant to notice, a prehearing conference was held, at which time Universal's counsel disclosed that Universal could not pay the outstanding bills to Qwest, and in which Universal refused to disclose the amount of the sales price for Universal's business. Judge Arlow asked parties to file briefs on the issue whether the Commission should lift the stay from Order No. 07-366 (i.e., whether Qwest should have the right to disconnect services for non-payment).

THE COMMISSION SHOULD IMMEDIATELY LIFT THE TEMPORARY STAY

The record amply demonstrates that Qwest has followed all pertinent procedures under the ICA so that it may now, upon the lifting of the temporary stay, immediately commence disconnection of services that it has provided to Universal, but for which Universal has refused to pay for 13 months. The current net amount owed is **\$384,006.58** (Batz Second Supplemental Affidavit, ¶ 9), of which at least **\$372,483.66** cannot reasonably be claimed to be in dispute. Yet, despite owing these amounts, Universal demands the right to maintain operations, but clearly and utterly refuses to provide Qwest any payment, or any other any form of security or assurance that Qwest will be made whole in the event that Universal does not prevail in its complaint.

Despite the fact that Qwest has tried to address the mounting financial risk and has now allowed Universal to disconnect trunks, the Commission allowing Universal to continue operations, but without likewise requiring it to pay Qwest, or to post an amount in a security or escrow arrangement, would directly cause Qwest to continue to suffer immediate and irrevocable financial harm in the form of an ever-increasing amount owed by Universal to Qwest. Under the

terms of the ICA (e.g., §5.4.3), Qwest has a right to terminate services to Universal. Thus, the Commission should immediately lift the temporary stay and allow Qwest to terminate services.

QWEST'S ALTERNATIVE REQUESTS FOR RELIEF

It was painfully obvious from the prehearing conference on September 11, 2007 that Universal has absolutely no concern whatsoever about its unpaid bills to Qwest, and that Universal has no current ability to pay Qwest the money that it owes Qwest. Moreover, Universal has defiantly and steadfastly refused to provide any form of security to Qwest, which is an allowable term in the ICA. Further still, despite the fact that Universal would not even have a business in the absence of the services that Qwest has been *required to provide*, and has provided, to Universal (and thus that Universal would otherwise have nothing to sell to GlobalPOPs), Universal refuses to even disclose the amount of the proceeds that it will receive from GlobalPOPs for the sale of its assets. Given that Universal's counsel has candidly admitted that Universal has no other assets with which to compensate Qwest, and that Universal will likely become a "shell corporation," Qwest's only hope for payment of any kind will clearly have to come from the sale proceeds that Universal receives from GlobalPOPs.

By filing this action, and pursuant to the fact that it is a certificated CLEC in Oregon, Universal has conceded it is subject to the Commission's jurisdiction in this matter. See also, e.g., ORS 756.040 (Commission's general powers), 756.060 (Commission authority to adopt rules and regulations); 756.180 (Commission authority in enforcing laws); 756.500 (Commission complaint authority); 756.515 (investigations on Commission's own motion), 756.538 (Commission taking depositions); 756.543 (Commission issuing subpoenas); 759.549 (self-incrimination); 756.555 (Commission powers at hearings); 756.990 (penalties for violations of Commission orders or rules); 759.036 (Commission regulation of telecommunications services);

759.990 (penalties for telecommunications carrier violations of Commission orders or rules). See also, e.g., OAR 860-014-0070 (Commission or Administrative Law Judge can seek discovery of any party). Qwest has not contested the jurisdiction of the Commission over this matter, including the Commission's broad power and authority to issue what has, in effect, been a preliminary injunction (in the form of the temporary stay that remains in effect). Moreover, by requesting a stay and by otherwise submitting itself to this Commission's jurisdiction, Universal has conceded that the Commission has the broad power and authority to fashion a remedy in this matter that includes relief in the nature of injunctive or other equitable relief.

In addition to the parties' concession of jurisdiction, pursuant to the Commission's administrative rules, including Chapter 16, "Mediation and Arbitration under the 1996 Telecommunications Act" (OAR 860-016-0000, *et seq.*), the Commission has jurisdiction over this matter. In particular, OAR 860-016-0050 grants the Commission with specific jurisdiction to resolve disputes related to the enforcement of ICAs, including the power to consider such complaints on an expedited basis.

Finally, there is no question that the Commission has the authority to grant the alternative injunctive relief that Qwest seeks. After all, there is no dispute that the Commission has the authority to enter a stay, as well as the authority to lift the stay to allow Qwest to disconnect services for nonpayment. Likewise, just as the Commission can allow Qwest to disconnect services, it can *condition* the lifting of the stay by prohibiting the disconnection *if* Universal pays to the Commission (or a Commission-approved third-party escrow agent) the moneys at issue (or otherwise gives Qwest a security interest in the proceeds of the sale), pending resolution of the complaint. In other words, the alternative relief that Qwest seeks here is more favorable to Universal than Qwest's request for an unconditional lifting of the stay because it gives Universal

the ability to stave off disconnection by escrowing the amounts at issue, or giving Qwest a security interest in the sale to GlobalPOPs, pending resolution of the issues in the complaint.

Accordingly, in light of the foregoing facts, and in light of the Commission's powers set forth above, Qwest hereby requests the following relief:

1. The Commission should order Universal to immediately provide an unredacted version of paragraph 12 of the Asset Purchase Agreement dated September 7, 2007 to the Commission and to Qwest, pursuant to the protective order in this case.²

2. If the amount of the sales price is greater than \$384,006.58 (the amount that Qwest alleges that Universal currently owes to Qwest), the Commission should order Universal to require the buyer, GlobalPOPs, Inc., to send all such payments, up to the initial amount of \$384,006.58, payable to the "Oregon Public Utility Commission," care of Judge Allan Arlow, which would then hold such funds in an account or third-party escrow arrangement, pending resolution of the claims in this complaint, at which time the Commission would disburse the funds to Universal and/or Qwest pursuant to the order of the Commission. This amount will continue to grow and subsequent monthly installments should be placed into the account, through November 30, 2007.

3. If the amount of the sales price is less than \$384,006.58 (the amount that Qwest alleges Universal currently owes to Qwest), the Commission should order Universal to require the buyer, GlobalPOPs, Inc., to send all such payments, payable to the "Oregon Public Utility Commission," care of Judge Allan Arlow, which would hold such funds in an account pending resolution of the claims in this complaint, at which time

² OAR 860-014-0070(1) allows the Commission or an Administrative Law Judge to seek discovery from a party. In light of the expedited nature of this proceeding, Qwest requests that the Commission or Judge Arlow order Universal to provide the redacted information. Moreover, there is already a protective order in this case to protect confidential information and to limit such information to the appropriate individuals. See Order No. 07-321.

the Commission would disburse them to Universal and/or Qwest pursuant to the order of the Commission.

4. In the event the sale does not close by November 30, 2007, the Commission should allow Qwest to immediately disconnect services to Universal.

5. The Commission should resolve the claims in this complaint on an expedited basis, and should immediately set and expedited schedule to do so.

In support of this alternative request, and based on the authority cited above, and Universal's concession of jurisdiction, it is clear that the Commission, pursuant to the broad powers and authority that the Legislature has vested in the Commission, as well as its own rules, has the authority to render such equitable relief. Further, the facts demonstrate that if the proceeds from the sale of the assets of Universal to GlobalPOPs are not available to pay amounts owed to Qwest under the ICA, then, based on Universal's counsel's admissions on September 11th, Qwest would have little or no likelihood of ever being paid, and thus would truly be "left holding the bag," while Universal's principals or shareholders would be able to improperly retain the proceeds of the sale for their sole benefit.

Universal's hands are not clean in this matter, as this Commission made very clear in its Order No. 07-366. Order, p. 6. The record thus far undisputedly demonstrates that for almost a year, Universal had refused to pay Qwest any amounts due in Oregon for the facility-related charges, *solely* on the ground that it was appealing the Commission's arbitration decisions in docket ARB 671 (a ground that Universal's counsel has now disavowed, but which ground the Commission recently found to constitute *serious misconduct*). Order, p. 6. The undisputed facts also show that *only* when Qwest was nearing the end of the process leading to disconnection (as required by the ICA), and only about a month before filing its complaint, did Universal finally

raise other issues. Even then, however, most of these “issues” were issues which Universal could have raised months before, if they were truly in good faith, and, in some cases, these issues proved to be nothing more than duplicate billings. Further still, in open defiance of the ICA and the Commission’s order, Universal has continued to engage in VNXX traffic, and to misuse Qwest’s facilities to exchange such traffic. And now, when Universal has finally found a buyer to sell its customers and assets to, and thereby somehow claims it will cease its year-long violations of the Commission’s orders, Universal seeks to improperly deprive Qwest of the amounts that it owes to Qwest.

Throughout this entire 13-month process, Qwest has acted in good faith and has followed the terms of the ICA, has at every turn corrected any billing errors, has participated in and put forth proposals in business-based dispute resolution discussions per the ICA, and has recognized the growing risk to the collectability of the revenues due from Universal under the ICA (by recently voluntarily allowing Universal to disconnect circuits it does not need). However, the end result of all of Qwest’s good faith and of its following of the rules is that it has financial exposure which currently exceeds \$380,000, and which has the potential of growing by \$15,000 per month. All the while, Universal has constantly changed its story, creating the very delay that allowed the balances due Qwest to grow unpaid and unresolved, and then refused to take any responsibility for its actions or to provide to Qwest any alternatives to address the growing unpaid balances. Universal then somehow tries to make the sale of its assets to a third party, at the eleventh hour, while leaving a shell of a business, and expecting Qwest to simply “write off” the Universal balances as unrecoverable, as the only solution. Glaring in its approach, however, Universal likewise turns its head and says nothing about the fact that it was in willful violation of

the very order rendered upon it by this Commission, and thus apparently expects the Commission to walk away – being ignored as well.

Accordingly, the foregoing alternative relief will allow the parties to continue to operate in the short-term as they have, while giving Qwest at least some assurance that some of its bills will be paid in the future. The highest injustice that could occur here would be for GlobalPOPs to pay the sales price to Universal, and then for Universal to distribute such proceeds to its shareholders (or more likely to its principals), while Qwest and the State of Oregon are left holding the bag, and then for Universal to become either defunct, liquidated or a shell corporation. The Second Circuit has provided some pointed policy guidance on this subject:

[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 opportunities for entrepreneurs unwilling to pay the cost of doing business.

[VNXX] would likely place a burden on Verizon's customers, a result that would violate the FCC's longstanding policy of preventing regulatory arbitrage. Telecommunications regulations are complex and often appear contradictory. 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. Global NAPs v. Verizon New England, 454 F.3d 91, 103. (Emphasis added.)

The same holds true here. If the Commission does not allow Qwest the opportunity to immediately disconnect services, or alternatively, if the Commission does not grant Qwest's alternative request for relief, the negative results that the Second Circuit described will be very real in this case.

PROPOSED ORDER/ORDERING CLAUSES

Finally, Judge Arlow requested that the parties draft a proposed order. Unlike courts, which often ask parties to draft one-page *pro forma* proposed orders, the Commission in its

orders typically details the pertinent history and procedural background of a case, summarizes the parties' position, discusses the law and its ruling, and then sets forth its ordering clauses. Accordingly, because Qwest assumes that the Commission will want to draft its own order, with the pertinent background, and pertinent discussion of the parties' positions and the relevant law and rulings, but is simply looking to the parties to draft their *proposed relief*, Qwest hereby submits the following proposed *ordering clauses*. These proposed ordering clauses are based on Qwest's alternative requests for relief, and are set forth as follows:

ORDER

IT IS ORDERED that:

1. Universal shall immediately provide an unredacted version of paragraph 12 of the Asset Purchase Agreement dated September 7, 2007 to the Commission and to Qwest, pursuant to the protective order in this case.
2. The Commission's stay of Qwest's right to disconnect Universal's services as set forth in Commission Order No. 07-366 on August 22, 2007, page 8, Ordering Clause 5, is hereby rescinded, and thus Qwest retains the right to disconnect Universal's services as allowed by law and the parties' current interconnection agreement.
3. The Commission's order herein will take effect within three (3) business days of this Order unless a court of competent jurisdiction rules otherwise.
4. The Commission shall resolve the claims in this complaint on an expedited basis, and shall immediately set an expedited schedule to do so.

Alternatively, Qwest submits the following (alternative) proposed ordering clauses:

ORDER

IT IS ORDERED that:

1. Universal shall immediately provide an unredacted version of paragraph 12 of the Asset Purchase Agreement dated September 7, 2007 to the Commission and to Qwest, pursuant to the protective order in this case.

2. If the amount of the sales price is greater than \$384,006.58, Universal shall require the buyer, GlobalPOPs, Inc., to send all such payments, up to the initial amount of \$384,006.58, payable to the "Oregon Public Utility Commission," care of Judge Allan Arlow, and the Commission will hold such funds in an account or third-party escrow arrangement, pending resolution of the claims in this complaint, at which time the Commission shall disburse the funds to Universal and/or Qwest pursuant to the order of the Commission after the complaint has been resolved. Because this amount will likely continue to grow, subsequent monthly installments shall be placed into the account, through November 30, 2007.
3. If the amount of the sales price is less than \$384,006.58, Universal shall require the buyer, GlobalPOPs, Inc., to send all such payments, payable to the "Oregon Public Utility Commission," care of Judge Allan Arlow, and the Commission will hold such funds in an account pending resolution of the claims in this complaint, at which time the Commission shall disburse them to Universal and/or Qwest pursuant to the order of the Commission after the complaint has been resolved.
4. In the event the sale does not close by November 30, 2007, Qwest shall have the right to immediately disconnect services to Universal as allowed by law and the parties' current interconnection agreement.
5. The Commission shall resolve the claims in this complaint on an expedited basis, and shall immediately set an expedited schedule to do so.

DATED: September 17, 2007

Respectfully submitted,



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Pro Hac Vice Application In Process
Attorneys for Qwest Corporation

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

IC 13

Universal Telecommunications, Inc.,

Plaintiff,

v.

Qwest Corporation,

Defendant

**SECOND SUPPLEMENTAL AFFIDAVIT
OF NANCY J. BATZ**

STATE OF OREGON)
): ss
COUNTY OF MULTNOMAH)

I, Nancy J. Batz, being first duly sworn, depose and state as follows:

1. I am a Senior Access Manager in the Wholesale Carrier Relations Department of Qwest Corporation (“Qwest”). My business address is 421 SW Oak Street, Room 8S16, Portland, Oregon 97204. My current job responsibilities include (a) providing account and access management services to independent telephone companies in Oregon, and (b) providing access management services to 24 competitive local exchange carriers (“CLECs”), including Universal Telecom, Inc. (Universal). I have personal knowledge of the facts set forth below, unless otherwise stated.

2. I received a Bachelor of Arts degree from Willamette University in 1976 and a Master of Business Administration from the University of Oregon in 1978 and have been employed in the telecommunications industry in Oregon for almost 30 years. In 1978, I joined Pacific Northwest Bell, where I held a variety of staff positions in several different departments, including Customer Services, Business Services, and Operator Services. At the Bell System

Divestiture in 1983, I transferred to AT&T, where I was a Financial Administration Manager for Operator Services. I returned to Pacific Northwest Bell in 1985 and became a member of the Switched Access Product Management team. In 1987, I accepted my current position as Senior Access Manager in the Wholesale Department of what is now Qwest.

3. As part of my duties as Senior Access Manager, I am responsible for reviewing reciprocal compensation bills submitted to Qwest by several CLECs, including Universal. My related duties include (a) analyzing CLEC billed usage and charges in comparison to Qwest's traffic measurements; (b) issuing payment requests and/or dispute letters in order to ensure accurate compensation to the CLECs for local/EAS traffic, internet service provider (ISP-bound) traffic, and/or switched access traffic in compliance with each CLEC's respective interconnection agreement and applicable state or federal rules; (c) negotiating relative use factors ("RUFs") to be applied to the carriers' facility charges under specific interconnection agreements; and (d) providing analysis, research, and other support to Qwest management to assist in dispute resolution.

4. I have gained extensive experience dealing with CLECs in connection with the following issues: (a) the number of billed minutes of use; (b) classification of traffic (e.g., ISP vs. non-ISP, transit vs. non-transit, local vs. toll); (c) billed rates; (d) interpretation of interconnection agreement terms and applicable state and federal rules; (e) determination of the relative use factor ("RUF") to be applied to facility charges; and (f) determination of those facility charges that are subject to the RUF.

5. One of my responsibilities with regard to Universal is to maintain the official company file of correspondence related to RUF, billing, reciprocal compensation, and other similar issues. The documents attached hereto are taken from my paper and email files.

6. On July 23, 2007, I filed confidential and non-confidential affidavits wherein I provided the communications between the parties and updated the Commission on Qwest's responses to Universal's claims and summarized the amounts that Qwest claims is due from Universal under the current interconnection agreement ("ICA"). On July 25, 2007, I filed a Supplemental Affidavit clarifying one additional point. The purpose of this affidavit is to provide additional information that supplements my earlier affidavits.

AMOUNTS OWED BY UNIVERSAL TO QWEST

7. Qwest recently allowed Universal to disconnect a significant quantity of LIS trunks (43 percent were disconnected). These disconnections were not requested by Universal until primarily June and July, 2007. These disconnections have the effect of reducing Qwest's monthly billings to Universal for direct trunked transport, entrance facilities, and multiplexing. Further, as I noted in my earlier affidavits, since May, 2007, Qwest has been offsetting terminating compensation that it would owe to Universal against these unpaid bills. Thus, the monthly gap between amounts owed by Universal to Qwest and amounts Qwest owes to Universal has narrowed, but has not closed.

8. Using the most recent invoices issued by each company, there is an approximately \$15,000 imbalance in the current amounts due Qwest by Universal versus the amounts due Universal by Qwest (*i.e.*, Universal owes \$15,000 more to Qwest each month than Qwest owes to Universal). As of September 13, 2007, the monthly charges (excluding late payment fees) that Universal owes to Qwest is \$30,241.57. Of that amount, \$25,576.26 is associated with facility related charges for accounts 503 L08-1126 126 and 503 L08-1127 127. The most recent reciprocal compensation invoices that Qwest received from Universal were dated July 31, 2007 and were received by Qwest on or about August 10, 2007. The total charges were \$18,857.29 for which Qwest remitted a credit to its LIS BANs for \$15,358.83 associated with the Oregon

usage charges and disputed \$3,498.46 associated with the usage charges in the state of Washington. The net difference due Qwest is 14,882.74, or approximately \$15,000. (Attached hereto as Attachment A is an updated report of charges due Qwest as of September 13, 2007. The column labeled "Current Amount Due" reflects the current month's charges totaling \$30,241.57.)

9. As of September 13, 2007, the total amount of charges due Qwest by Universal is **\$384,006.58**, including \$15,549.96 for late payment charges for accounts 503 L08-1126 126 and 503 L08 1127 127. See the column in Attachment A labeled "Total Amount Due" for the charges exclusive of late payment charges. (Attachment B is a calculation of the late payment charges due to Qwest associated with the back due balances.)

10. Each day that Universal operates, the potential bad debt in the event that Universal is unable, or refuses, to pay increases. I participated in the prehearing conference on September 11, 2007 and I am aware of Universal's counsel's statement that Universal does not have the funds to pay Qwest's bills.

QWEST'S ACTIONS WITH REGARD TO UNIVERSAL'S \$88,200 CLAIM

11. In paragraph 54 of my July 23, 2007 non-confidential affidavit, I estimated the source of the \$88,200 (actually \$88,172.90) amount that Mr. Martin of Universal alleged was due from Qwest. That estimate included \$66,325.66 for retroactive and duplicate charges for 2006 Oregon minutes of use, \$15,294.24 for 2007 Oregon and Washington retroactive charges, and \$6,553.00 for disputed Washington charges.

12. I stated in my earlier affidavit that Qwest was reviewing these recent billings and that it appeared that some portion of them represented legitimate charges that Universal had not previously billed to Qwest.

13. Qwest has now reviewed these bills and responded to Universal. Qwest has credited Universal \$23,693.59 of that amount as legitimate, and has disputed the balance of the charges—\$64,479.31—as follows:

- a. With respect to the \$66,325.66 retroactive charges for 2006 Oregon minutes of use reflected in Universal's invoices that were received on or about July 13, 2007, on July 31, 2007, I sent Mr. Martin of Universal a letter advising him that Qwest (a) would be applying a total credit of \$13,342.17 to the charges due to Qwest from Universal for the LIS accounts, and (b) was disputing \$52,983.49 of the billed charges, "as Qwest has already remitted a payment to Universal for incremental 2006 usage and much of the usage billed on the invoices dated June 30, 2007 is duplicate of amounts previously billed." Universal's charges were reflect in its invoices #RC-2006-01-OR-B; #RC-2006-02-OR-B; #RC-2006-03-OR-B; #RC-2006-04-OR-B, #RC-2006-05-OR-B; #RC-2006-06-OR-B; #RC-2006-07-OR-B; #RC-2006-08-01-OR-B, #RC-2006-08-22-OR-B; #RC-2006-09-OR-B; #RC-2006-10-OR-B; #RC-2006-11-OR-B and #RC-2006-12-OR-B. (The July 31, 2007 cover letter (without attachment) is attached hereto as Attachment C.)
- b. With respect to the \$15,294.24 retroactive charges for 2007 Oregon and Washington minutes of use reflected in Universal's invoices that were received on or about June 29, 2007:
 1. On July 24, 2007, I sent Mr. Martin of Universal a letter advising that Qwest would be apply a total credit of \$10,351.42 to the charges due

Qwest from Universal for the LIS accounts associated with Universal's Oregon charges. Universal's charges were reflected in its invoices #RC-2007-01-OR-B; #RC-2007-02-OR-B; #RC-2007-03-OR-B; and #RC-2007-04-OR-B. (The July 24, 2007 letter is attached hereto as Attachment D.)

2. Also on July 24, 2007, I sent Mr. Martin a letter disputing \$4,942.82 of Universal's charges in Washington as VNXX traffic. Universal's charges were reflected in its invoices #RC-2007-01-WA-B, #RC-2007-02-WA-B; and #RC-2007-03-WA-B. (The July 24, 2007 letter is attached hereto as Attachment E.)

c. With respect to the \$6,553.00 for disputed Washington charges:

1. On May 25, 2007, I sent Mr. Martin a letter disputing \$3,129.23 of Universal's charges in Washington as VNXX traffic. Universal's charges were reflected in its invoice #RC-2007-04-WA. (The May 25, 2007 letter is attached hereto as Attachment F.)

2. Finally, on June 26, 2007, I sent Mr. Martin a letter disputing \$3,423.77 of Universal's charges in Washington as VNXX traffic. Universal's charges were reflected in its invoice #RC-2007-05-WA. (The June 26, 2007 letter is attached hereto as Attachment G.)

QWEST'S ERRONEOUS BILLING FOR UNIVERSAL TO QWEST TRAFFIC

14. As a result of the Complaint, Qwest became aware for the very first time that it was erroneously billing Universal the wrong rate for the miniscule amount of traffic that originates with Universal and terminates with Qwest. In my July 23, 2007 non-confidential affidavit (paragraph 62), I noted that Qwest had incorrectly billed the wrong rate on the small

amount of traffic that Universal sends to Qwest for termination, that Qwest was investigating the amount that should be adjusted, and that an adjustment should be made. That process is complete, and Qwest has issued a total credit of \$21.63 on its accounts 503 L04-1126 126 and 503 L04-1127 127 to reflect a correction of the rate applied to this traffic (commonly referred to as "section 251(b)(5) traffic"). The rate was changed to \$0.0007 per minute of use to reflect Universal's election of option one from Exhibit J to the ICA. The adjustment applied to all usage billed since the August 22, 2006 effective date of the current ICA. The small amount of the credit indicates the essentially 100 percent one-way nature of Universal's traffic.

DATED this 17th day of September, 2007.

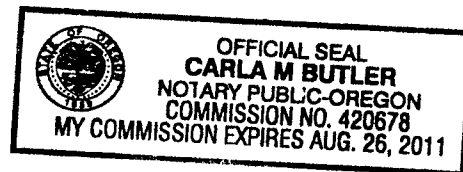
Nancy J. Batz
Nancy J. Batz

Subscribed and sworn to before me this 17th day of September, 2007.

Carla M Butler
NOTARY PUBLIC

Residing at Newberg, Oregon

My Commission expires: 8/26/2011



Parent Name	MCID	Acct Type	Acct Type ID	Billing Name	Account	Current Amount Due	31-60 Days	61-90 Days	> 90 Days	Total Amount Due	Disputed Amount	Treatable Amount	Paymts Since Last Bill Date	Adjmts Since Last Bill Date	Bill Date
TOTAL						\$30,241.57	\$18,023.97	\$52,142.19	\$268,048.89	\$368,456.62	\$77,583.12	\$260,631.93	\$.00	\$.00	
1 of 1															
September 13, 2007															
PROPRIETARY AND CONFIDENTIAL															
This application contains QC information and should not be shared with QCC/QLDC employees.															

Late Payment Charges Due Qwest by Universal										
L08 BANs										
Invoice Date	503L081126126	503L081127127	Total LIS L08 Charges	Credits Applied During 06/07	Credits Applied During 07/07	Credits Applied During 08/07	Cumulative Charges	At 9% Simple Interest		
11/5/2006	\$ 4,613.55	\$ 8,470.48	\$ 13,084.03				\$ 13,084.03			
12/5/2006	\$ 1,309.44	\$ 1,868.50	\$ 3,177.94				\$ 16,261.97	\$ 98.13		
1/5/2007	\$ 1,868.50	\$ 1,221.24	\$ 3,089.74				\$ 19,351.71	\$ 121.96		
2/5/2007	\$ 96,819.02	\$ 62,709.73	\$ 159,528.75				\$ 178,880.46	\$ 145.14		
3/5/2007	\$ 27,023.48	\$ 17,411.95	\$ 44,435.43				\$ 223,315.89	\$ 1,341.60		
4/5/2007	\$ 27,038.48	\$ 17,411.95	\$ 44,450.43				\$ 267,766.32	\$ 1,674.87		
5/5/2007	\$ 26,889.48	\$ 17,411.95	\$ 44,301.43				\$ 312,067.75	\$ 2,008.25		
6/5/2007	\$ 27,263.23	\$ 17,411.95	\$ 44,675.18				\$ 356,742.93	\$ 2,340.51		
7/5/2007	\$ 15,495.99	\$ 17,411.95	\$ 32,907.94	\$ (33,680.58)			\$ 355,970.29	\$ 2,675.57		
8/5/2007	\$ 9,855.23	\$ 3,716.04	\$ 13,571.27		\$ (39,654.63)		\$ 329,886.93	\$ 2,669.78		
9/5/2007	\$ 13,385.23	\$ 12,191.03	\$ 25,576.26			\$ (15,358.83)	\$ 340,104.36	\$ 2,474.15		
Total Late Payment Charge for the Qwest L08 BANs								\$ 15,549.96		
Section 5.4.8 from the ICA: The late payment charge for amounts that are billed under this Agreement shall be in accordance with Commission requirements.										
The statutory interest to which Qwest would be entitled under Oregon law is 9 percent per annum. See ORS 82.010.										

Nancy Batz
 Senior Access Manager
 Wholesale Carrier Relations
 421 SW Oak, Room 8S16
 Portland, Oregon 97204
 Phone: 503/242-6054
 Fax: 503/242-8558
 Email: Nancy.Batz@qwest.com



July 31, 2007

Jeffry R. Martin, President
 Universal Telecom, Inc.
 1600 S.W. Western Blvd., Suite #290
 Corvallis, Oregon 97333

Re: Universal Telecom's Invoices # RC-2006-01-OR-B; # RC-2006-02-OR-B;
 # RC-2006-03-OR-B; # RC-2006-04-OR-B; # RC-2006-05-OR-B; # RC-2006-06-OR-B;
 # RC-2006-07-OR-B; # RC-2006-08-01-OR-B; # RC-2006-08-22-OR-B; # RC-2006-09-OR-B;
 # RC-2006-10-OR-B; # RC-2006-11-OR-B and # RC-2006-12-OR-B

Dear Jeff:

As stated in Qwest's May 23, 2007 letter to you from Kathie Maki, Service Delivery Coordinator, until such time that Universal Telecom, Inc. (Universal) has remitted payment in full to Qwest for all past due balances, Qwest will be applying any monies due Universal as credits to the charges due Qwest for accounts 503 L08-1126 126 and 503 L08-1127 127. With respect to Universal's invoices dated June 30, 2007 and received by Qwest on or about July 13, 2007 (# RC-2006-01-OR-B; # RC-2006-02-OR-B; # RC-2006-03-OR-B; # RC-2006-04-OR-B; # RC-2006-05-OR-B; # RC-2006-06-OR-B; # RC-2006-07-OR-B; # RC-2006-08-01-OR-B; # RC-2006-08-22-OR-B; # RC-2006-09-OR-B; # RC-2006-10-OR-B; # RC-2006-11-OR-B and # RC-2006-12-OR-B), I have requested that a total credit of \$13,342.17 be applied to Qwest's Local Interconnection Service BANs for Universal as follows (this amount is consistent with my affidavit recently filed in Docket No. 1C 13):

Invoice	BAN 503 L08-1126 126	BAN 503 L08-1127 127
RC-2006-01-OR-B	\$ 445.12	(\$ 0.06)
RC-2006-02-OR-B	(\$ 17.23)	(\$ 0.12)
RC-2006-03-OR-B	(\$ 9.08)	(\$ 0.07)
RC-2006-04-OR-B	(\$ 3.31)	(\$ 0.16)
RC-2006-05-OR-B	\$ 310.37	\$ 8.82
RC-2006-06-OR-B	\$ 887.15	\$ 3.31
RC-2006-07-OR-B	\$ 1,959.67	\$ 5.43
RC-2006-08-01-OR-B	\$ 3,114.41	\$ 3.17
RC-2006-08-22-OR-B	\$ 56.46	\$ 0.50
RC-2006-09-OR-B	\$ 2,781.51	\$ 1.90
RC-2006-10-OR-B	\$ 2,091.98	\$ 2.25
RC-2006-11-OR-B	\$ 540.70	\$ 4.14
RC-2006-12-OR-B	\$ 1,149.03	\$ 6.28
Thirteen Invoice Total	\$13,306.78	\$ 35.39

Qwest is disputing \$ 52,983.49 of the billed charges associated these invoices as Qwest has already remitted a payment to Universal for incremental 2006 usage and much of the usage billed

on the invoices dated June 30, 2007 is duplicate of amounts previously billed. On November 22, 2006 Universal issued invoices to Qwest for incremental 2005 and 2006 usage claiming that Universal's rating software had been underbilling reciprocal compensation. And, on December 6, 2006, I sent you a letter advising that Qwest would be issuing Universal a payment for \$62,740.96 associated with the invoices attached to Universal's November 22, 2006 letter. Please refer to the attached spreadsheet comparing the November 2006 billed usage with the billed usage from the invoices dated June 30, 2007 (and received by Qwest on or about July 13, 2007). You'll note that the billed usage is often identical by trunk group or that there are only slight inconsequential variations. Given that Qwest has already remitted a payment for incremental billed 2006 (and 2005) usage in December 2006, Qwest is remitting payment based on the net difference between the invoices dated June 30, 2007 and those accompanying your letter of November 22, 2006.

In addition, it should be noted that when comparing the sum of all of Universal's billed usage by month, i.e. a sum of the usage from the original invoice, the November 22, 2006 invoice and the invoice dated June 30, 2007, with Qwest's tracking for the same month for the same trunk group, the percent difference supports Qwest's conclusion that Universal has billed for the same usage twice.

Given that the issues with regard to the billing in question relate to 2006, Qwest reserve all rights under the current and previous interconnection agreements to confirm that any compensation associated with Universal's invoices for incremental 2006 usage is consistent with the provisions of those agreements.

Sincerely,


Nancy Batz

Attachment

Nancy Batz
 Senior Access Manager
 Wholesale Carrier Relations
 421 SW Oak, Room 8S16
 Portland, Oregon 97204
 Phone: 503/242-6054
 Fax: 503/242-8558
 Email: Nancy.Batz@qwest.com



July 24, 2007

Jeffry R. Martin, President
 Universal Telecom, Inc.
 1600 S.W. Western Blvd., Suite #290
 Corvallis, Oregon 97333

Re: Universal Telecom's Invoices # RC-2007-01-OR-B; # RC-2007-02-OR-B;
 # RC-2007-03-OR-B; and # RC-2007-04-OR-B

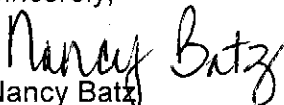
Dear Jeff:

As stated in Qwest's May 23, 2007 letter to you from Kathie Maki, Service Delivery Coordinator, until such time that Universal Telecom, Inc. (Universal) has remitted payment in full to Qwest for all past due balances, Qwest will be applying any monies due Universal as credits to the charges due Qwest for accounts 503 L08-1126 126 and 503 L08-1127 127. With respect to Universal's invoices # RC-2007-01-OR-B; # RC-2007-02-OR-B; # RC-2007-03-OR-B; and # RC-2007-04-OR-B, I have requested that a total credit of \$10,351.42 be applied to Qwest's Local Interconnection Service BANs for Universal as follows:

Invoice	BAN 503 L08-1126 126	BAN 503 L08-1127 127
RC-2007-01-OR-B	\$ 415.09	\$ 650.88
RC-2007-02-OR-B	\$1,165.34	\$ 879.42
RC-2007-03-OR-B	\$1,684.76	\$ 356.37
RC-2007-04-OR-B	\$4,865.40	\$ 334.16
Four Invoice Total	\$8,130.59	\$2,220.83

Qwest reserve all rights under the interconnection agreement to confirm that any compensation associated with Universal's invoices for incremental January through April 2007 usage is consistent with the provisions of that agreement.

Sincerely,


 Nancy Batz

Nancy Batz
Senior Access Manager
Wholesale Carrier Relations
421 SW Oak, Room 8S16
Portland, Oregon 97204
Phone: 503/242-6054
Fax: 503/242-8558
Email: Nancy.Batz@qwest.com



July 24, 2007

Jeffrey R. Martin, President
Universal Telecom, Inc.
1600 S.W. Western Blvd., Suite #290
Corvallis, Oregon 97333

Re: Notice of Dispute - Universal Telecom's Invoice #RC-2007-01-WA-B, #RC-2007-02-WA-B; and #RC-2007-03-WA-B

Dear Jeff:

Qwest Corporation ("Qwest") has received invoices #RC-2007-01-WA-B, #RC-2007-02-WA-B; and #RC-2007-03-WA-B from Universal Telecom ("CLEC") for incremental terminating intercarrier compensation under the interconnection agreement ("ICA") between CLEC and Qwest in the State of Washington. Qwest has reviewed these invoices and determined that some or all of the billings are for what Qwest refers to as VNXX Traffic, where the termination point of the call is in a different local calling area than the originating point, but due to an inappropriate use of local telephone numbering resources, it appears to be a local call.

Qwest is not required to pay terminating compensation for VNXX traffic, as there is no support in the ICA for that payment. CLEC may claim (as many entities have claimed in the past) that this VNXX traffic is compensable as ISP-Bound traffic, as defined by the ICA. However, federal law does not support this reasoning. As most recently stated by the United States District Court for the Western District of Washington, as a matter of federal law, the *ISP Remand Order* issued by the Federal Communications Commission applies only to *local ISP traffic*. *Qwest Corporation v. Washington State Utilities and Transp. Comm'n*, ___ F.Supp.2d ___, 2007 WL 1071956 (W.D. Wa. 2007).

As a result, Qwest's longstanding position that this type of traffic exchange was neither encompassed nor envisioned by the ICA or other interconnection agreements with other entities has been endorsed, and Qwest disputes payment of any amounts for terminating intercarrier compensation to CLEC for VNXX traffic within the State of Washington. Qwest will therefore withhold all amounts that it has determined to be attempts to collect terminating intercarrier compensation for VNXX traffic, i.e. the \$1,623.66 billed by Universal with its invoice #RC-2007-01-WA-B, the \$2,302.87 billed by Universal with its invoice #RC-2007-02-WA-B, and the \$1,016.29 billed by Universal with its invoice #RC-2007-03-WA-B. If CLEC is able to show that traffic that Qwest has classified as VNXX traffic is actually terminated in the same local calling area as the origination point of the call, Qwest will work cooperatively with CLEC to resolve the issue.

Qwest also does not waive, and specifically reserves, any rights, claims or actions it may have against CLEC for any amounts previously paid by Qwest to CLEC for VNXX traffic. If necessary, Qwest will communicate further with CLEC regarding any applicable refunds. If CLEC has any questions regarding this notice, please feel free to contact Dan Hult, Director – Carrier Relations, at 402-422-4198 or at dan.hult@qwest.com.

Sincerely,


Nancy Batz

Nancy Batz
Senior Access Manager
Wholesale Carrier Relations
421 SW Oak, Room 8S16
Portland, Oregon 97204
Phone: 503/242-8054
Fax: 503/242-8558
Email: Nancy.Batz@qwest.com



May 25, 2007

Jeffrey R. Martin, President
Universal Telecom, Inc.
1600 S.W. Western Blvd., Suite #290
Corvallis, Oregon 97333

Re: Notice of Dispute - Universal Telecom's Invoice #RC-2007-04-WA

Dear Jeff:


Qwest Corporation ("Qwest") has received invoice #RC-2007-04-WA from Universal Telecom ("CLEC") for terminating intercarrier compensation under the interconnection agreement ("ICA") between CLEC and Qwest in the State of Washington. Qwest has reviewed the invoice and determined that some or all of the billings are for what Qwest refers to as VNXX Traffic, where the termination point of the call is in a different local calling area than the originating point, but due to an inappropriate use of local telephone numbering resources, it appears to be a local call.

Qwest is not required to pay terminating compensation for VNXX traffic, as there is no support in the ICA for that payment. CLEC may claim (as many entities have claimed in the past) that this VNXX traffic is compensable as ISP-Bound traffic, as defined by the ICA. However, federal law does not support this reasoning. As most recently stated by the United States District Court for the Western District of Washington, as a matter of federal law, the *ISP Remand Order* issued by the Federal Communications Commission applies only to *local ISP traffic*. *Qwest Corporation v. Washington State Utilities and Transp. Comm'n*, ___ F.Supp.2d ___, 2007 WL 1071956 (W.D. Wa. 2007).

As a result, Qwest's longstanding position that this type of traffic exchange was neither encompassed nor envisioned by the ICA or other interconnection agreements with other entities has been endorsed, and Qwest disputes payment of any amounts for terminating intercarrier compensation to CLEC for VNXX traffic within the State of Washington. Qwest will therefore withhold all amounts that it has determined to be attempts to collect terminating intercarrier compensation for VNXX traffic, i.e. the \$3,129.23 billed by Universal with its invoice #RC-2007-04-WA. If CLEC is able to show that traffic that Qwest has classified as VNXX traffic is actually terminated in the same local calling area as the origination point of the call, Qwest will work cooperatively with CLEC to resolve the issue.

Qwest also does not waive, and specifically reserves, any rights, claims or actions it may have against CLEC for any amounts previously paid by Qwest to CLEC for VNXX traffic. If necessary, Qwest will communicate further with CLEC regarding any applicable refunds. If CLEC has any questions regarding this notice, please feel free to contact Dan Hult, Director - Carrier Relations, at 402-422-4198 or at dan.hult@qwest.com.

Sincerely,


Nancy Batz

Nancy Batz
Senior Access Manager
Wholesale Carrier Relations
421 SW Oak, Room 8S16
Portland, Oregon 97204
Phone: 503/242-6054
Fax: 503/242-8558
Email: Nancy.Batz@qwest.com



June 26, 2007

Jeffry R. Martin, President
Universal Telecom, Inc.
1600 S.W. Western Blvd., Suite #290
Corvallis, Oregon 97333

Re: Notice of Dispute - Universal Telecom's Invoice #RC-2007-05-WA

Dear Jeff:

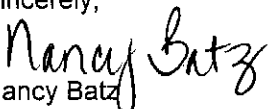
Qwest Corporation ("Qwest") has received invoice #RC-2007-05-WA from Universal Telecom ("CLEC") for terminating intercarrier compensation under the interconnection agreement ("ICA") between CLEC and Qwest in the State of Washington. Qwest has reviewed the invoice and determined that some or all of the billings are for what Qwest refers to as VNXX Traffic, where the termination point of the call is in a different local calling area than the originating point, but due to an inappropriate use of local telephone numbering resources, it appears to be a local call.

Qwest is not required to pay terminating compensation for VNXX traffic, as there is no support in the ICA for that payment. CLEC may claim (as many entities have claimed in the past) that this VNXX traffic is compensable as ISP-Bound traffic, as defined by the ICA. However, federal law does not support this reasoning. As most recently stated by the United States District Court for the Western District of Washington, as a matter of federal law, the *ISP Remand Order* issued by the Federal Communications Commission applies only to *local ISP traffic*. *Qwest Corporation v. Washington State Utilities and Transp. Comm'n*, ___ F.Supp.2d ___, 2007 WL 1071956 (W.D. Wa. 2007).

As a result, Qwest's longstanding position that this type of traffic exchange was neither encompassed nor envisioned by the ICA or other interconnection agreements with other entities has been endorsed, and Qwest disputes payment of any amounts for terminating intercarrier compensation to CLEC for VNXX traffic within the State of Washington. Qwest will therefore withhold all amounts that it has determined to be attempts to collect terminating intercarrier compensation for VNXX traffic, i.e. the \$3,423.77 billed by Universal with its invoice #RC-2007-05-WA. If CLEC is able to show that traffic that Qwest has classified as VNXX traffic is actually terminated in the same local calling area as the origination point of the call, Qwest will work cooperatively with CLEC to resolve the issue.

Qwest also does not waive, and specifically reserves, any rights, claims or actions it may have against CLEC for any amounts previously paid by Qwest to CLEC for VNXX traffic. If necessary, Qwest will communicate further with CLEC regarding any applicable refunds. If CLEC has any questions regarding this notice, please feel free to contact Dan Hult, Director - Carrier Relations, at 402-422-4198 or at dan.hult@qwest.com.

Sincerely,


Nancy Batz

CERTIFICATE OF SERVICE

IC 13

I hereby certify that on the 17th day of August, 2007, I served the foregoing **QWEST'S COMMENTS REGARDING THE LIFTING OF THE TEMPORARY STAY QWEST'S REQUEST THAT THE COMMISSION (1) LIFT THE STAY, OR, IN THE ALTERNATIVE, (2) REQUIRE UNIVERSAL TO DISCLOSE THE SALES PRICE OF ITS SALE AND REQUIRE A SUFFICIENT PORTION OF THE SALES PRICE TO BE DEPOSITED WITH THE COMMISSION PENDING RESOLUTION** 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:

Kelly L. Harpster
Davis Wright Tremaine LLP
1300 S.W. Fifth Ave.,
Suite 2300
Portland, OR 97201
kellyharpster@dwt.com

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

John Dodge
Davis Wright Tremaine LLP
1919 Pennsylvania Ave., NW
Suite 200
Washington, DC 20006-3458
johndodge@dwt.com

DATED this 17th day of August, 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