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Alex M. Duarte
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September 5, 2007

Honorable Allan Arlow
Administrative Law Judge
Oregon Public Utility Commission
P. O. Box 2148
Salem, OR 97308-2148

Re: **IC 13**- Qwest's Request for Prehearing Conference re Universal's Compliance Filing

Dear Judge Arlow:

We received in today's regular mail Universal Telecom, Inc.'s ("Universal") Compliance Filing in Response to Order No. 07-366, which it evidently filed with the Commission yesterday (but not electronically as required by the Commission).

In its filing, Universal claims it will now somehow be in compliance with Commission Order No. 07-366 in docket ARB 671, because it has entered into a "written agreement in principle" with another (unnamed) provider (with whom it claims it has been in serious discussions for the "last sixty days") of the same services offered by Universal to acquire Universal's managed modem service business, operations and customer base. In a very troubling footnote, Universal claims that the transactional documents prevent Universal from identifying the "potential purchaser," and further, that the potential purchaser is not subject to Commission jurisdiction, nor are the services (the same services Universal engages in) subject to Commission jurisdiction, and that the potential purchaser does not interconnect as a CLEC. Finally, Universal alleges that it anticipates entering a written agreement with the purchaser by September 15, 2007, and anticipates transferring all customers by November 30, 2007.

Not surprisingly, however, not only does Universal fail to identify the potential purchaser (such as, whether, for example, it is 10D, the Universal affiliate that recently filed for a certificate of authority and to which Qwest has protested- see docket CP 1378), but it also completely fails to assure the Commission or Qwest that it will pay any of the amounts currently owed to Qwest, which significant amounts form the core basis for Qwest's intent to disconnect Universal services and facilities. Nevertheless, Universal then requests that the Commission *not permit Qwest to disconnect services* between the date of filing and the transfer of the customers to the purchasing party. Accordingly, Universal asks that the Commission continue the stay order in paragraph 5 of Order No. 07-366.

This is to advise Your Honor that Qwest is extremely concerned about and strongly objects to Universal's compliance filing, its business plans (including its refusal to identify the potential purchaser, or provide any substance or detail regarding the proposed transaction), and further, to Universal's request that Qwest not be allowed to disconnect services and facilities, despite the considerable amount of money (with the passage of time the net balance has grown to *more than \$300,000*) that Universal owes (and has owed) to Qwest. Given the circumstances here, and the history of Universal's actions, there can be little doubt that this eleventh-hour move

is merely the latest in Universal's long string of delay tactics and noncompliance with Commission orders and rules. This tactic is also one that solely seeks to deny Qwest the remedy of being paid the amounts that Universal owes Qwest, and to further deny the only leverage that Qwest has (disconnection) to force payment of the amounts that Qwest is rightfully owed. Indeed, Your Honor has previously recognized the concern of Qwest suffering financial loss because of the amounts that Universal owes Qwest, and has not paid, and now this filing blatantly ignores any intent of Universal to pay Qwest those amounts due.

Qwest is further very concerned that Universal may be attempting to pocket the amounts it may receive from the potential purchaser (assuming the purchaser is not its own affiliate, 10D), while essentially seeking to leave Qwest "holding the bag." Moreover, if the potential purchaser is in fact 10D (and the circumstances here certainly point to the possibility of something along those lines), such a transaction would raise other troubling issues, some of which Qwest noted in its protest in docket CP 1378 on July 27, 2007.¹

Qwest believes there are many questions that need to be answered immediately so that Qwest may protect itself financially, especially given the significant amounts that Universal continues to owe to Qwest. For example, these questions include what Universal's plans are to pay Qwest for the services to date. Further, since Universal seeks a further delay until November 30, 2007, Qwest seeks this Commission to force Universal to pay Qwest all amounts due during that transition period. With all due respect, it is Qwest's unwavering position that unless Universal pays its entire balance, the Commission should permit Qwest to immediately disconnect all services until Universal does pay, and further, that the Commission should reject 10D's application until Qwest has been fully paid.²

Qwest further believes the Commission has the authority, and duty, to further investigate the nature and circumstance of the proposed transaction with the "potential purchaser" to assure that this is a good faith, arms-length transaction and not merely a sham transaction as a way for Universal to avoid paying Qwest the amounts it owes to Qwest.³ Another question that arises is

¹ As Qwest mentions in more detail in its protest to the 10D application in docket CP 1378, Qwest is very troubled by the fact that 10D is owned by the same person (Steven Roderick) that owns Universal, as well as that 10D has petitioned for authority to provide service (and that 10D's application looks exactly like Universal's). Now that Universal has revealed its intent to sell its customer base and operations for its managed modem services, which appear to be all of the services that it provides, but without any substance or detail (and not even the identity of the purchaser), this Commission should likewise be very troubled by what appears to be either a sham transaction, or at best, a creative way for Universal to attempt to avoid complying with its financial obligations to Qwest.

² As the court in *Global NAPs v. Verizon New England (Global NAPs II)*, 454 F.3d 91, 103 (2nd Cir. 2006), stated:

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.

With all due respect, Qwest respectfully submits that Universal is simply trying to game the system and thus not allow Qwest to be paid more than \$300,000 that Universal owes to Qwest.

³ The Commission should not be swayed by the self-serving argument that the Commission's abandonment rules do not apply because the services at issue are "interstate" services under applicable FCC precedent. First, this Commission has already determined that VNXX traffic is intrastate traffic under this Commission's jurisdiction. Indeed, that is why the traffic was subject to Universal's own interconnection arbitration petition (docket ARB 671)

how the new entity plans to operate in the state, and specifically, how this other entity plans to originate and transport traffic from all Universal's current origination points in Oregon. Precisely how this can be done without using Qwest's local exchange and switching network, and its transport network, is baffling, to say the least, especially since Qwest is unaware of any other carrier that has overbuilt Qwest's network to that degree. Yet Universal alleges that the other entity has no plans to interconnect with Qwest.⁴

Accordingly, Qwest respectfully requests that Your Honor convene an immediate prehearing conference at Your Honor's earliest convenience to discuss further steps to protect Qwest from financial loss as a result of Universal's actions.⁵ Qwest further respectfully requests that Your Honor require Universal to appear for the prehearing conference with its principals, Steve Roderick and Jeffry Martin, so that they can answer all pertinent questions that Your Honor, and Qwest, may have about Universal's compliance filing and how they plan to resolve the amounts Universal owes to Qwest, or as Qwest requests, allow proceeding to immediate disconnection, if its response is inadequate.

Thank you for your attention to this matter.

Very truly yours,



Alex M. Duarte

cc: Mark Trincherro, Esq. (via email)
Jeffry Martin (via email)

and the Commission's Order No. 07-366, and why Universal filed the present complaint with this Commission. What is also especially troubling is the lack of substance or detail in Universal's "compliance filing."

Nor should the Commission be swayed by Universal's repeated resort to emotion by invoking the impacts on customers if Qwest disconnects the services it provides to Universal. Indeed, while this Commission is rightly concerned about, and thus considers, the impact on customers if the services to Universal were to be disconnected, Qwest notes that Universal itself claims that the new entity will not be regulated in any way by the Commission (including operating without the need to enter an interconnection agreement). If this is so, the Commission itself would not be in a position to protect such customers in the future in any event. It is clear, however, that Universal's invoking of the impact on customers is simply a smokescreen to convince the Commission not to allow Qwest to disconnect services that it provides to Universal, but for which Universal refuses to pay. The Commission should not allow Universal to hide behind its customers as an excuse not to pay for services Universal itself has ordered, and that Qwest has delivered pursuant to an approved interconnection agreement for which it expects to be paid.

⁴ As the *Global II* court further said (454 F.3d at 103):

But where 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.

⁵ Qwest notes that this letter does not constitute Qwest's formal response to Universal's compliance filing, but merely constitutes Qwest's request for an immediate prehearing conference, and the reasons for such a request.

CERTIFICATE OF SERVICE

IC 13

I hereby certify that on the 5th day of September, 2007, I served the foregoing **LETTER RE QWEST'S REQUEST FOR PREHEARING CONFERENCE RE UNIVERSAL'S COMPLIANCE FILING** 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:

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DATED this 5th day of August, 2007

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