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Carla M. Butler
Sr. Paralegal

October 21, 2005

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

Re: ARB 671

Dear Ms. Nichols Anglin:

Enclosed for filing please find an original and (5) copies of Qwest Corporation's Statement of Facts, along with a certificate of service.

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

Sincerely,

Carla M. Butler

CMB:
Enclosures
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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

ARB 671

In the Matter of the Petition of QWEST CORPORATION for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with UNIVERSAL TELECOMMUNICATIONS, INC.	QWEST CORPORATION'S STATEMENT OF FACTS

INTRODUCTION

Pursuant to the Prehearing Conference Report entered by Administrative Law Judge Allan J. Arlow on September 16, 2005 in this docket, Qwest Corporation ("Qwest") hereby files its Statement of Facts, along with supporting information from material in the record in *Qwest Corporation v. Universal Telecommunication, Inc.* ("*Qwest v. Universal*"), Civil No. 04-6047-AA, including discovery responses, excerpts from depositions, affidavits, exhibits, and other pleadings filed by the parties. Certain factual statements that Qwest believes are uncontested are not supported by independent evidence.

Based on the record in that matter, Qwest hereby represents that the following presents a fair and accurate portrayal of methods of operation of Qwest and Universal.

General Information

1. Qwest is an incumbent local exchange carrier ("ILEC") in Oregon under the Federal Telecommunications Act of 1996 ("the Act"). (Affidavit of Jeffry Martin, President of Universal, ¶ 7, attached hereto as Exhibit A.) Qwest and its predecessors Pacific Northwest Bell and U S WEST Communications have provided a variety of services in Oregon for many years.

2. Universal Telecom, Inc. ("Universal") is a competitive local exchange carrier ("CLEC") operating in Oregon pursuant to a Certificate of Authority issued by

this Commission on April 9, 1999 in docket CP 578 (Order No. 99-252). (Universal's Certificate of Authority is attached as Exhibit B.) Universal and Qwest have been interconnected for the exchange of traffic in Oregon since early 2000. (Exhibit A, ¶ 45.)

3. Qwest and Universal are currently parties to an interconnection agreement ("ICA") that this Commission approved in docket ARB 157. The agreement between Qwest and Universal was not negotiated; instead pursuant to federal law, Universal adopted an agreement that Qwest had previously entered into with Metropolitan Fiber Systems ("MFS") after arbitration before the Commission in docket ARB 1 ("MFS agreement"). Thus, the MFS agreement became the interconnection agreement between Universal and U S WEST Communications (now Qwest). On September 22, 1999, the Commission had entered an order approving the agreement. The Universal/U S WEST Communications agreement included a different "Term of Agreement" provision than that which was in the MFS agreement. The Commission has since ruled that the agreement it approved in docket ARB 157 was the MFS agreement and that the "Term of Agreement" provision approved was that contained in the MFS agreement. (The foregoing information is recounted by the Commission in Order Nos. 05-088 and 05-206 in docket ARB 589, copies of which are attached as Exhibits C and D.)

Qwest's Method of Operation

4. Qwest provides a wide range of retail services (e.g. local exchange, long distance, and private line) to customers in Oregon. (See Qwest's tariffs on file with the Commission).

5. Qwest also provides a variety of wholesale services to CLECs in Oregon, including interconnection, unbundled network elements, and other services required by section 251 of the Telecommunications Act of 1996 ("Act"). It provides these services

pursuant to interconnection agreements that are reviewed and approved by the Commission.

6. Qwest has invested in an extensive network to provide retail and wholesale services to customers in Oregon. For example, Qwest serves in excess of one million access lines, operates numerous end office and tandem switches, and maintains an extensive network of interoffice facilities to connect its switches to each other and to interconnect with other providers, including CLECs like Universal.

Universal's Managed Modem service

7. Universal is based in Corvallis, Oregon. (Exhibit A, ¶ 2.) It has six full-time employees. (Deposition of Jeffry Martin, excerpts of which are attached hereto as Exhibit E, at p. 24.)

8. Universal does not provide basic local exchange service to any customers in Oregon. (Exhibit C, at p. 28.)

9. Universal's primary service in Oregon is a service entitled "Managed Modem Service" through which it provides dial-up service to Internet Service Providers ("ISPs"). (Exhibit E, at p. 34, see also *id.* at 28.)

10. Universal maintains two points of presence ("POPs") in the state of Oregon, one in Portland and one in Eugene. (Exhibit A, ¶ 35.)

11. In his affidavit of June 25, 2004, Jeffry Martin, Universal's President, described Universal's Managed Modem Service as follows:

> "10. In a typical dial-up arrangement, an end user customer's computer modem uses a normal telephone line to dial a normal telephone call to a telephone number that has been assigned to the ISP for the purpose of receiving such calls.
>
> 11. Universal's "managed modem service" offers a variation on this arrangement. Under Universal's "managed modem service," end user customers'

computer modems initiate local telephone calls that travel over Qwest's network to Universal, where Universal converts the call into Internet Protocol and delivers them—as instructed by the consumers' computer—to different Internet locations, features, and capabilities (email service; ecommerce sites such as Amazon.com or eBay; or online services such a Yahoo or America Online, *etc*).

12. The local telephone numbers called by end user customers are assigned to Universal by virtue of its status as a CLEC, and Universal in turn uses those local numbers to support its ISP customers' local needs.

13. The ISPs market themselves to end user customers and advise them of the local telephone numbers to use to access the Internet.

14. In order to gain access to the Internet, Oregon residents place telephone calls, using a computer modem, to the Universal Telecom local access numbers.

15. The majority of those persons are subscribers of local telephone service from Qwest, and therefore use Qwest's local telephone network when placing a call to gain dial-up access to an ISP.

16. When a Qwest subscriber makes a dial-up modem call to Universal's ISP subscriber the following will occur:

a. The call starts, or 'originates' on Qwest's network, and Qwest delivers the call to an agreed upon point of interconnection ('POI') with Universal.

b. At the POI Universal picks up the call and assumes responsibility for transporting and delivering the call to the Internet.

c. Thus, Universal takes the call on its network and carries, or 'terminates' the call to its ultimate point, the Internet." (Exhibit A, ¶¶ 10-16.)

12. By virtue of its status as a certified CLEC, Universal is able to obtain blocks of local telephone numbers throughout Oregon from North American Numbering Plan Administrator ("NANPA"). (Exhibit E, at pp. 46-49.)

13. On its website, Universal characterizes itself as "a complete single vendor provider to regional ISPs," and that its ISP customers will "benefit by expanding their 'footprint' throughout the path of our network without having to incur exorbitant capital

and management costs associated with building their own facilities." (Exhibit F, at pp. 1; Exhibit F was an exhibit to the June 25, 2004 affidavit of Qwest employee Nancy J. Batz.)

14. Universal's President Jeffry Martin stated Universal's goal at its inception was to "operate in the back end, help them [ISPs] with their Internet access and modems, ..." (Exhibit E, at p. 35.) Thus, if ISPs "buy that service from [Universal], then they can have fewer phones, less equipment, less bandwidth, they don't have to manage that equipment, and we provide that service for them and they avoid those costs." (*Id*., p. 39.)

15. Universal's website characterizes its "Managed Modem" service plans as allowing customers to "[s]ave time on buying and maintaining your modems, access servers and network bandwidth . . . . We give you the opportunity to create more value in your business by freeing up working capital that you can use for expanding into new markets . . . ." (Exhibit F, at 8.) Universal's Chairman has stated that "[t]o our ISP customers, we do consider ourselves to be more of a wholesale type provider." (Deposition of Stephen Roderick, attached hereto as Exhibit G, at p. 123.)

16. Universal is not an ISP. (Exhibit E, at p. 49.)

17. Attached hereto as Exhibit H is a document prepared by Universal entitled "Simplified Network Configuration for Single Point of Interconnection Between Qwest and Universal in LATA 672 (Portland.)"[1] It is a generally accurate, high-level view of the interconnection between Qwest and Universal, although several specific details are oversimplified, a fact acknowledged by Universal. (Exhibit G, at pp. 121-22.)

[1] Exhibit H was attached as Exhibit A to the Affidavit of Jeffry Martin of June 25, 2004.

a. On the Qwest side of the point of interconnection ("POI"), the placement of switches is oversimplified. In most cases, the traffic from the end user first goes to a local end office switch, then over facilities (via a service known as Direct Trunked Transport or "DTT") to an end office near the Universal POPs in Portland and Eugene. (Qwest/1, Batz/3-5.) In some cases, the traffic may also be routed to a tandem switch before being routed to the end office near the Universal POPs. (*Id.* at p. 4.) In some cases, multiplexing equipment, usually located in the end office near the Universal POP, may be used. (*Id.* at p. 5.) Finally, the type of facility that connects the end office near the Universal POP to the POI is known as an Entrance Facility of "EF." (*Id*..)

b. On the Universal side of the POI, the diagram is generally accurate with the exception that the equipment listed under the heading "Universal Modem and Router" is oversimplified. As set forth on Exhibit I (discussed in more detail in paragraph 18, below), equipment in addition to modems and routers are also included in that section of the diagram, including modems, routers, radius servers, DNS servers, and caching servers, all of which are used by Universal to provide Internet functionalities for its ISP customers.

c. As illustrated by Exhibit H, the Universal equipment and facilities within each of its two points of presence ("POPs") fall into four general categories: (1) the cable that links its equipment together; (2) a telecommunications switch; (3) a variety of Internet equipment by which Universal provides Managed Modem service on behalf of its ISP customers (modems, routers, radius servers, DNS servers, caching servers, etc.); and

(4) leased broadband circuits that provide Universal with the ability to access the Internet. (*See also* Exhibit E, pp.119-21; Exhibit G, pp. 96-97, 111-13, 124-25.)

d. In addition to the equipment described on Exhibit H, which are replicated in Portland and Eugene, the only other telecommunications circuits owned or leased by Universal are two leased circuits, one that connects Universal's Portland and Eugene POPs and another that connects its Eugene POP to Universal's office in Corvallis. (Exhibit G, at pp. 91-92, 124-25) Universal also has one frame relay circuit that may serve one customer. (*Id*. at p. 95-96; Exhibit E, at p. 122) Universal also maintains some monitoring equipment in Corvallis. (Exhibit E, at p. 71; Exhibit G, at pp.105-06.)

e. Thus, with the exception of the items described in the preceding subparagraph, Universal's Oregon network exists inside the two buildings that house its POPs.

18. Attached hereto as Exhibit I is a single page from the Universal website, with handwritten inserts to identify portions of the information that was illegible. Exhibit I was introduced as Exhibit 3 to the deposition of Mr. Martin. As noted, this exhibit more accurately represents the various types of Internet equipment located in Universal's Oregon POPs that are used to provide Internet functionality for Universal's ISP customers. According to Mr. Roderick, Universal's Chairman, Universal operates a full-range of modems, routers, switches, and servers at its POPs in Eugene and Portland that allow it to perform the functions that allow an end user to have access to the Internet. (Exhibit G, at 79-84, 96-97.) Among the equipment identified by Universal are modems,

proxy radius servers, caching servers, load-balancing switches, routers, and DNS (Domain Name System) servers. (*Id.*)

19. The traffic flow from Qwest to Universal is illustrated on Exhibit H:

a. Subject to the clarifications in paragraph 17 above, the lower left side of Exhibit H shows the means by which end user customers utilize Qwest local loops, local end office switching, transport facilities, and other Qwest switches that gather and deliver traffic to the Universal POI in Portland (shown in the upper left-hand corner as the "Point of Interconnection" in the Pittock Building). The LIS services that have been used for the functions on Qwest's side of the POI are direct trunked transport ("DTT"), entrance facilities ("EF"), and, in some instances, multiplexing.

b. Once the traffic is delivered to the POI, Universal routes it through its switch, then to the equipment labeled "Universal Modem & Router" on Exhibit H, which, as discussed above, is oversimplified. As illustrated on Exhibit I, the equipment located in that portion of the diagram on Exhibit H consists of modems, proxy radius servers, routers, load balancing switches, Domain Name System ("DNS") servers, and caching servers.

c. Thus, the equipment in this portion of Exhibit H is used to provide Internet functionalities for Universal's ISP customers pursuant to Universal's Managed Modem Service and that equipment is located at Universal's POPs in Portland and Eugene.

d. At the same locations, Universal connects to an Internet backbone service that allows Universal, on behalf of its ISP customers, to route calls to the Internet as instructed by the ISPs' end user customers.

e. As shown on Exhibit H, once a specific call passes through the POI from Qwest to Universal, Universal delivers the call to the Internet for the end users of Universal's ISP customers from its modems and other Internet equipment in its POPs in Portland and Eugene.

20. With Managed Modem Service, the only piece of equipment that an ISP customer must own is a radius server (Exhibit G, at pp. 62, 85), whose function is to perform the authentication process by which the ISP determines if the customer attempting to access the Internet is a valid customer of the ISP. (*Id*., at pp. 60-61.)

21. The court in *Qwest v. Universal* ruled on September 22, 2005, that calls to Universal's ISP customers are terminated at the modems in the two Universal POPs in Oregon. (Exhibit J is the slip opinion of the Court dated September 22, 2005.)

22. The Qwest end user customers that generate the traffic to the Internet are simultaneously customers of one of Universal's ISP customers, who provide the end-user customer with the local telephone numbers that they use to gain access to their ISP. (Exhibit A, ¶¶ 15-16.)

23. Universal offers nine separate plans for ISPs in Oregon, ranging from being able to originate traffic small geographic areas to some covering most the populated areas of Oregon. (Exhibit F, at pp. 6, 8.)

24. Some of Universal's ISP customers subscribe to the plan that gives them access to the entire portion of Oregon served by Universal. (Exhibit E, at pp. 126-27.)

25. As of August 2004, Universal had obtained local telephone numbers in 17 separate local calling areas in Qwest's serving territory from which traffic was being generated, including the Portland EAS Region and the Eugene-Springfield local calling area. (Exhibit K, Redacted Affidavit of Nancy J. Batz dated August 30, 2004, ¶¶ 7.a to 7.d; Qwest/1, Batz/6.) Thus, Universal had obtained local telephone numbers in 15 local calling areas that were not part of either the Portland EAS Region and the Eugene-Springfield local calling area. (*Id*.)

26. Based on a current analysis of Universal's assigned prefixes, the data set forth in paragraph 25 is still correct. (Qwest/1, Batz/6-7.)

27. Therefore, all traffic from those 15 local calling areas terminates in either Eugene or Portland, and thus such traffic does not originate or terminate in the same local calling area. (Qwest/1, Batz/7.) Historically, approximately 70 percent of the traffic delivered to Universal originates in local calling areas other than the Portland EAS region and the Eugene-Springfield local calling area. (Qwest/1, Batz/6.)

28. With only insignificant and immaterial exceptions, all traffic exchanged between Qwest and Universal is ISP traffic originated on Qwest's side of the POI and terminated on Universal's side of the POI. (Qwest/1, Batz/7.) Based on an analysis of data from September 2004 through September 2005, 99.997 percent of all traffic between Qwest and Universal originates on Qwest side of the POI and is delivered to Universal (although some of that traffic originates from non-Qwest customers). (*Id.*) In the past 13 months, Qwest has delivered in excess of 1 billion minutes of traffic to Universal in Oregon. (*Id.*)

DATED: October 21, 2005

Respectfully submitted,

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Attorneys for Qwest Corporation

Exhibits to Qwest Statement of Facts
(October 21, 2005)

Exhibit A	Affidavit of Jeffry Martin [President of Universal] in Support of Motion for Summary Judgment filed by Universal in Case No. 04-CV-6047-AA (June 25, 2004).
Exhibit B	Universal Telecommunications, Inc. Certificate of Authority (OPUC Order No. 99-252, April 9, 1999).
Exhibit C	Order No. 05-088 in ARB 589 (February 9, 2005).
Exhibit D	Order No. 05-206 in ARB 589 (May 3, 2005).
Exhibit E	Excerpts from the Deposition of Jeffry Martin (July 27, 2004).
Exhibit F	Universal website material.
Exhibit G.	Excerpts from the Deposition of Stephen Roderick [Chairman of Universal] (July 28, 2004).
Exhibit H	Simplified Network Configuration for Single Point of Interconnection Between Qwest and Universal in LATA 672 (Portland) (prepared by Universal).
Exhibit I	Page from Universal Website material.
Exhibit J	Slip Opinion in Qwest v. Universal dated September 22, 2005.
Exhibit K	Redacted Affidavit of Nancy J. Batz (August 30, 2004) (confidential information has been redacted from the affidavit attached hereto).

Exhibit A

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Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

QWEST CORPORATION, a Colorado corporation,

Plaintiff / Counter Defendant,

v.

UNIVERSAL TELECOM, INC., dba US POPS, formerly known as UNIVERSAL TELECOMMUNICATIONS, INC., an Oregon corporation,

Defendant / Counter Plaintiff.

Case No. 04-CV-6047-AA

AFFIDAVIT OF JEFFRY MARTIN IN SUPPORT OF SUMMARY JUDGMENT MOTION OF UNIVERSAL TELECOM, INC.

LUVAAS / COBB ATTORNEYS AT LAW
777 High Street, Suite 300
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STATE OF OREGON)
) ss.
COUNTY OF BENTON)

AFFIDAVIT OF JEFFRY MARTIN

I, JEFFRY MARTIN, being first duly sworn, depose and state:

1. I am an employee of Universal Telecom, Inc. ("Universal"). I am submitting this declaration in support of Universal's Motion for Summary Judgment and supporting materials. I have personal knowledge of the following facts and am competent to testify thereto.

2. I am the President of Universal. My business address is 1600 SW Western Boulevard, Suite 290, Corvallis, Oregon 97333.

3. As President, I have knowledge of all of Universal's facilities and contracts, including Universal's facilities and contracts throughout the State of Oregon.

4. Universal is a corporation organized under the laws of the State of Oregon, whose principle place of business is 1600 SW Western Boulevard, Suite 240, Corvallis, Oregon 97333.

5. Universal is authorized by the Oregon Pubic Utility Commission ("PUC") to provide local exchange and specialized communications services in Oregon. As such, Universal operates as a competitive local exchange carrier ("CLEC") in Oregon.

6. Universal provides telecommunications services for Internet Service Providers ("ISPs") in Oregon.

7. Qwest Corporation ("Qwest") is the incumbent local telephone company in most of the western United States, including Oregon. Qwest operates as the incumbent local exchange carrier ("ILEC") in much of Oregon, including those areas in which Universal offers service.

8. Among its several service offerings, Universal offers a service known as "managed modem service." Managed modem service provides, amongst other things, ISPs a service that allows the ISP to offer Oregon residents local "dial-up" access to the Internet.

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9. Although ISPs' various services can include email, web browsing, information retrieval and storage, instant messaging, *etc.*, Universal does not provide these services to its ISPs' end user customers. Rather, Universal only provides local "dial-up" access to the Internet for its ISPs' end user customers.

10. In a typical dial-up arrangement, an end user customer's computer modem uses a normal telephone line to dial a normal telephone call to a telephone number that has been assigned to an ISP's equipment for the purpose of receiving such calls.

11. Universal's "managed modem service" offers a variation on this arrangement. Under Universal's "managed modem service," end user customers' computer modems initiate local telephone calls that travel over Qwest's network to Universal, where Universal converts the calls into Internet Protocol and delivers them—as instructed by the consumer's computer—to different Internet locations, features, and capabilities (email servers; ecommerce sites such as Amazon.com or eBay; or online services such as Yahoo or America Online *etc.*).

12. The local telephone numbers called by end user customers are assigned to Universal by virtue of its status as a CLEC, and Universal in turn uses those local numbers to support its ISP customers' local access needs.

13. The ISPs market themselves to end user customers and advise them of the local telephone numbers to call to access the Internet.

14. In order to gain access to the Internet, Oregon residents place telephone calls, using a computer modem, to the Universal Telecom local access numbers.

15. The majority of these persons are subscribers of local telephone service from Qwest, and therefore use Qwest's local telephone network when placing a call to gain dial-up access to an ISP.

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16. When a Qwest subscriber makes a dial-up modem call to Universal's ISP subscriber the following will occur:

    a. The call starts, or "originates" on Qwest's network, and Qwest delivers the call to an agreed upon point of interconnection ("POI") with Universal.

    b. At the POI Universal picks up the calls and assumes responsibility for transporting and delivering the call to the Internet.

    c. Thus, Universal takes the calls on to its network and carries, or "terminates" the call to its ultimate point of destination, the Internet.

17. Attached as Exhibit A to this Affidavit is a diagram that illustrates the manner in which this traffic flows from Qwest's network to Universal's network. This diagram presents an accurate graphic representation of the manner in which traffic flows between Qwest and Universal's interconnected networks.

18. The traffic pattern described above illustrates the typical flow of all traffic that travels between Qwest's network and Universal's network.

19. Indeed, that traffic pattern applies to all of the traffic at issue in this case. In other words, all of the traffic at issue in this case originates on Qwest's side of the POI, and terminates on Universal's side of the POI.

20. This reflects the fact that Qwest and Universal serve two different groups of telecommunications end users. Qwest primarily serves residences and businesses, while Universal primarily serves ISPs.

21. Qwest's residential and business subscribers generate a significant number of calls to dial-up ISPs. Conversely, Universal's ISP customers do not originate calls, but instead only receive calls.

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22. Thus, none of the traffic at issue in this proceeding originates on Universal's side of the POI.

23. The terms and conditions of interconnection between Qwest and Universal are established under an "interconnection agreement" (the "Agreement"), which was approved by the Oregon Public Utility Commission ("PUC"). (A true and correct copy of the Agreement is attached to Qwest's Complaint as Exhibit 1.).

24. The terms of the Agreement are identical to an interconnection agreement between US West Communications, Inc. (now known as Qwest) and another Oregon CLEC, MFS Intelenet, Inc.

25. The terms are identical because Universal "adopted" the terms of the MFS agreement, which was approved by the Oregon PUC in 1997.

26. The Agreement between Qwest and Universal was executed by both parties in April and May of 1999. The Oregon PUC approved the Agreement in September of 1999.

27. Prior to approval by the Oregon PUC in September, 1999, but after Universal signed the Agreement, Qwest attempted to unilaterally alter a material term of the Agreement.

28. Universal delivered to Qwest a signed copy of the adopted Qwest-MFS agreement on approximately April 15, 1999, and requested that Qwest sign and file the Agreement with the Oregon PUC for approval.

29. Instead of doing so, Qwest unilaterally altered the Agreement by appending a hand-written addendum, purporting to exempt ISP-bound traffic from the definition of "local traffic" for reciprocal compensation purposes.

30. Qwest then filed the altered document with the Oregon PUC.

31. Specifically, Qwest added language in an attempt to remove its obligation to compensate Universal for terminating traffic originating on Qwest's network that was to be delivered to the Internet.

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32. After Universal objected to Qwest's actions, an Oregon PUC Administrative Law Judge ("ALJ") issued an Order stating that Qwest would continue to pay Universal compensation for such traffic until the Oregon PUC decided otherwise.

33. The Agreement establishes the terms and conditions for the interconnection of the Parties' networks, to allow for the delivery of calls to each other's customers.

34. The Agreement specifies how the Parties will interconnect their networks, exchange traffic, and compensate one another for the carriage of traffic starting on one network and ending on the other network.

35. Universal and Qwest connect their networks and exchange traffic through a single POI in the two Local Access and Transport Areas ("LATAs") in Oregon.

36. This means that the Parties do not need a large number of connections linking Universal's network to each of the numerous telecommunications switching devices in Qwest's network.

37. Under this arrangement, Universal and Qwest bring all of the traffic that starts on their network, and is destined for the other Party's network, to the POI. At that point the other Party picks up the traffic and assumes responsibility for delivering it.

38. The Agreement sets forth each Party's obligation to compensate the other Party for delivering traffic that starts on the first Party's network. This form of compensation is generally known as "reciprocal compensation."

39. Pursuant to the Agreement, Qwest has deployed certain local interconnection service facilities (so-called "LIS Circuits") which carry the local traffic exchanged by the Parties on its side of the POI.

40. These LIS Circuits are composed of certain transmission and signaling facilities, including two-way "trunks," "entrance facilities," and a "hub mux;" all of which are located on Qwest's side of the POI.

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41. Qwest uses the LIS Circuits to carry local traffic originating on its network that is terminating on Universal's network. Exhibit A, attached hereto, identifies the specific facilities that Qwest deploys on its side of the POI, which make up the components of Qwest's LIS circuits. This diagram presents an accurate graphic representation of the facilities "LIS circuits" used to carry traffic from Qwest's network to Universal's networks.

42. The Agreement contains a provision that sets forth the financial obligations of both Parties with respect to use of the facilities used to carry local traffic originating on Qwest's network.

43. The Oregon PUC has ruled that, with respect to an interconnection agreement in all relevant and material respects identical to the Agreement, Internet-bound, or ISP-bound, traffic is "local traffic" as that term is used in the Agreement.

44. The Agreement treats all traffic exchanged between them as local traffic.

45. The Parties have exchanged traffic under the terms of the Agreement governing the exchange of local traffic each month since approximately April 1, 2000.

46. Qwest has repeatedly attempted to force Universal to bear the cost of the LIS circuits.

47. Universal has repeatedly disputed such charges.

48. On one single occasion Universal paid Qwest for April and May 2000 invoices under protest for certain LIS circuits because Qwest otherwise refused to honor Universal's orders for these LIS circuits, and Universal had an immediate need for the circuits.

49. In a letter sent on or about June 2, 2000, accompanying its payment for Qwest's April and May 2000 invoices Universal explained that it would not pay for facilities to support calls originated by Qwest customers to called numbers served by Universal; and that Universal's limited payments would not constitute a waiver of any term or condition of the Interconnection Agreement between the parties.

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50. The Agreement states that a relative use factor will be determined according to each Party's use of the facility, as measured by "originating minutes of use."

51. On or about April 4, 2001, and several times thereafter, representatives of Qwest acknowledged that the Oregon PUC had previously determined that Internet traffic should be considered local traffic for purposes of compensation obligations.

52. Initially, for approximately eighteen (18) months, from the period between October 1999 and April 2001, Qwest paid "reciprocal compensation" to Universal at the rate set forth in the Agreement to compensate Universal for terminating traffic that originated on Qwest's side of the POI.

53. On or about April 1, 2000 Universal began billing Qwest at the rate of $0.00133 per minute for traffic terminated by Universal.

54. Beginning in January of 2002, and until July of 2002, Qwest paid reciprocal compensation to Universal at a rate lower then the agreed-upon rate, which generally mirrored the declining rate scheme ordered by the FCC in its *ISP Remand Order.*

55. Also, at the same time (January of 2002) Qwest limited (or put a "cap" on) the number of total minutes of use which it compensated Universal, which generally mirrored the minute of use cap ordered by the FCC in its *ISP Remand Order.*

56. On or about July 12, 2002, Qwest ceased making reciprocal compensation payments to Universal.

57. Qwest has also withheld a portion of the amounts owed to Universal, including $159,515.50 in such charges. Qwest has admitted that this sum is properly due Universal, and that Qwest is withholding this undisputed sum simply because of this dispute.

58. As of January 5, 2004, Qwest has failed to pay a total of at least $2,485,489.11 in reciprocal compensation owed to Universal.

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Phone: 541-484-9292
Fax: 541-343-1206

59. Qwest continues to withhold all reciprocal compensation payments to Universal.

60. Because the Oregon PUC had adopted a final, superseding reciprocal compensation rate of $0.00133 for local traffic, Universal billed (and continues to bill) Qwest at that rate.

61. Following the issuance of an FCC Order modifying federal policy concerning compensation for the termination of Internet-bound traffic, Universal attempted to negotiate amendments to the Agreement with Qwest.

62. However, the Parties were not able to agree upon mutually acceptable language to modify the Agreement.

63. As such, the Parties have not executed any amendments to the Agreement. Nor have the Parties made any other substantive modifications, written or otherwise, to the Agreement.

64. The Oregon PUC has never approved any amendment to the Agreement.

65. The Agreement remains in full force and effect between the Parties.

LUVAAS / COBB
ATTORNEYS AT LAW
777 High Street, Suite 300
Post Office Box 10747
Eugene, OR 97440-2747
Phone: 541-484-9292
Fax: 541-343-1206

The foregoing Affidavit is true and correct to the best of my knowledge.

Jeffry R. Martin

JEFFRY R. MARTIN
Universal Telecom, Inc.

Sworn to and subscribed before me on this the 18th day of June 2004.

Audrey E. Bond

Notary Public of the
State of Oregon, Benton County

My Commission Expires July 16, 2007

OFFICIAL SEAL
AUDREY E. BOND
NOTARY PUBLIC - OREGON
COMMISSION NO. 370380
MY COMMISSION EXPIRES JULY 16, 2007

Exhibit B

TRUE COPY OF ORIGINAL

ADMINISTRATIVE HEARINGS

ORDER NO. 99-252

ENTERED APR 9 1999

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

CP 578

In the Matter of the Application of UNIVERSAL TELECOMMUNICATIONS, INC., for a Certificate of Authority to Provide Telecommunications Service in Oregon and Classification as a Competitive Provider.	))))))	ORDER

DISPOSITION: APPLICATION GRANTED

Note: By issuing this certificate, the Commission makes no endorsement or certification regarding the certificate holder's rates or service.

The Application

On December 16, 1998, Universal Telecommunications, Inc. (applicant), filed with the Commission an application for certification to provide telecommunications service in Oregon as a competitive provider. Applicant seeks to provide intraexchange (local exchange) telecommunications service in areas coextensive with local exchanges of U S WEST Communications, Inc., (USWC), GTE Northwest Incorporated (GTE), CenturyTel of Oregon, Inc. (CenturyTel), and United Telephone Company of the Northwest, dba Sprint (United). CenturyTel was formerly PTI Communications. Applicant also seeks to provide interexchange telecommunications service, including private line service, statewide in Oregon.

The local exchanges of USWC encompassed by the application are listed in Appendix A to this order. The local exchanges of GTE encompassed by the application are listed in Appendix B. The local exchanges of CenturyTel encompassed by the application are listed in Appendix C. The local exchanges of United encompassed by the application are listed in Appendix D.

Applicant proposes to provide intraexchange (local exchange) switched service (i.e., local dial tone) and nonswitched private line service (dedicated transmission service) in exchanges listed in Appendices A, B, C, and D to this order. Applicant also proposes to provide interexchange switched telecommunications service (i.e., long distance toll)

and nonswitched private line service (dedicated transmission service) on a statewide basis. Applicant will operate as a reseller of the above services. Applicant may also operate as a facilities based provider of telecommunications service and may purchase unbundled network elements (building blocks) from other carriers.

Operator services are part of switched telecommunications service. Applicant will not directly provide operator services. A statement of compliance with Commission rules and with state law, including ORS 759.690 and OAR 860-032-0005 (regarding operator services), was included in the application.

The Commission served notice of the application on the Commission's telecommunications mailing list on January 12, 1999. The Commission did not receive any protests. However, USWC, GTE, CenturyTel, and United will be considered parties to this proceeding. On February 9, 1999, an Administrative Law Judge (ALJ) with the Commission issued a ruling that adopted procedures for the processing of this docket. The ALJ set forth a procedural schedule. On March 2, 1999, the Commission Staff (Staff) distributed a proposed order for review by the parties. No exceptions to the proposed order were filed.

The Commission has reviewed the proposed order and the record in this matter. Based on a preponderance of the evidence, the Commission makes the following:

FINDINGS AND CONCLUSIONS

Applicable Law

Applications to provide telecommunications service and for classification as a competitive telecommunications service provider are filed pursuant to ORS 759.020. ORS 759.020 provides that:

> (1) No person [or] corporation * * * shall provide intrastate telecommunications service on a for-hire basis without a certificate of authority issued by the commission under this section.
>
> * * * * *
>
> (5) The commission may classify a successful applicant for a certificate as a * * * competitive telecommunications services provider. If the commission finds that a successful applicant for a certificate has demonstrated that its customers or those proposed to become customers have reasonably available alternatives, the commission shall classify the applicant as a competitive telecommunications services provider. * * * For purposes of this section, in determining whether there are reasonably available alternatives, the commission shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions.

(c) Existing economic or regulatory barriers to entry.

(d) Any other factors deemed relevant by the commission.

Applications to provide local exchange (intraexchange) telecommunications service are reviewed pursuant to ORS 759.050, the "competitive zone law." Under ORS 759.050(2)(a), the Commission may:

> Certify one or more persons, including another telecommunications utility, to provide local exchange telecommunications service within the local exchange telecommunications service area of a certified telecommunications utility, if the commission determines that such authorization would be in the public interest. For the purpose of determining whether such authorization would be in the public interest, the commission shall consider:
>
> (A) The effect on rates for local exchange telecommunications service customers both within and outside the competitive zone.
>
> (B) The effect on competition in the local exchange telecommunications service area.
>
> (C) The effect on access by customers to high quality innovative telecommunications service in the local exchange telecommunications service area.
>
> (D) Any other facts the commission considers relevant.

Under ORS 759.050(2)(b), the Commission shall:

> Upon certification of a telecommunications provider under paragraph (a) of this subsection, establish a competitive zone defined by the services to be provided by the telecommunications provider and the geographic area to be served by the telecommunications provider.

Under ORS 759.050(2)(c), the Commission may:

> Impose reasonable conditions upon the authority of [the applicant] to provide competitive zone service within the competitive zone * * * at the time of certification of a telecommunications provider, or thereafter.

Subsection (5)(a) of ORS 759.050 provides that:

> Unless the commission determines that it is not in the public interest at the time a competitive zone is created, upon designation of a competitive zone, price changes, service variations, and modifications of competitive zone services offered by a telecommunications utility in the zone shall not be subject to ORS 759.180 to ORS 759.190 [notice, hearing and tariff suspension procedures], and at the telecommunications utility's discretion, such changes may be made effective upon filing with the commission.

ORS 759.690 and OAR 860-032-0005 establish certain requirements providers of operator services must meet. Included are the following conditions:

The certificate holder involved in the provision of operator services shall:

1. Notify all callers at the beginning of the call of the telecommunications provider's name and allow a sufficient delay period to permit a caller to terminate the call or advise the operator to transfer the call to the customer's preferred carrier.

2. Disclose rate and service information to the caller when requested.

3. Not transfer a call to another operator service provider without the caller's notification and consent.

4. Not screen calls and prevent or "block" the completion of calls which would allow the caller to reach an operator service company different from the certificate holder. In addition, the certificate holder shall, through contract provisions with its reseller clients, prohibit the reseller from blocking a caller's access to his or her operator service company of choice.

5. When entering into operator service contracts or arrangements with call aggregators include in each contract provisions for public notification. A sticker or nameplate identifying the name of the certificate holder shall be attached to, or in close proximity to, each telephone that has public access.

OAR 860-032-0015(1) authorizes the Commission to suspend or cancel the certificate if the Commission finds that (a) the holder made misrepresentations when it filed the application, or (b) the applicant fails to comply with the terms and conditions of the certificate.

Designation as a Competitive Provider

Applicant has met the requirements for classification as a competitive telecommunications service provider. Applicant's customers or those proposed to become customers have reasonably available alternatives. The incumbent telecommunications utilities, USWC, GTE, CenturyTel, and United provide the same or similar local exchange services in the local service area requested by applicant. AT&T, MCI, Sprint Communications, USWC, and others provide interexchange toll, private line and operator services in the service area requested by the applicant. Subscribers to applicant's services can buy comparable services at comparable rates from other vendors. Economic and regulatory barriers to entry are relatively low.

Conditions of the Certificate

As part of the application, the applicant agreed to, or acknowledged, several conditions listed in the application. Those conditions are adopted and made conditions of this certificate of authority.

The Commission first applied the competitive zone law, ORS 759.050, in dockets CP 1, CP 14, and CP 15. After full evidentiary hearings and consideration of the public interest criteria set forth in ORS 759.050(2)(a), the Commission designated three competitive providers of switched local exchange services as alternate exchange carriers (AECs or competitive local exchange carriers (CLECs)) in the Portland metropolitan area. *See* Order No. 96-021. The Commission subsequently applied those findings and conclusions to dockets CP 132, CP 139, and CP 149, and certified two CLECs to provide switched local exchange services in areas located throughout the state.

The Commission takes official notice of the record in dockets CP 1, CP 14, and CP 15.[1] In Order No. 96-021, the Commission established conditions applicable to CLEC certificates. Since applicant, Universal Telecommunications, Inc., proposes to offer switched local exchange services, it seeks certification as a CLEC. Pursuant to ORS 759.050(2)(c) and Order No. 96-021, applicant as a CLEC shall comply with the following conditions:

1. Applicant shall terminate all intrastate traffic originating on the networks of other telecommunications service providers that have been issued a certificate of authority by the Commission.

2. Whenever applicant terminates intrastate long distance traffic directly or indirectly from interexchange carriers or from its own toll network to its end user customers, applicant shall contribute to the Oregon Customer

[1] Under OAR 860-014-0050(2), a party may object to facts noticed within 15 days of notification that official notice has been taken. The objecting party may explain or rebut the noticed facts.

Access Fund (OCAF), or its equivalent, in accordance with provisions of the Oregon Customer Access Plan (OCAP) or any successor plan approved by the Commission. Applicant shall contribute using rates approved by the Commission on intrastate terminating carrier common line access minutes, or on any other basis determined by the Commission. Applicant may not participate in (i.e., receive money from) pooling arrangements established under the OCAP or any successor plan unless authorized by the Commission.

3. Applicant shall comply with the Oregon Exchange Carrier Association's (OECA) informational and operational needs as specified by the OCAP or any successor plan approved by the Commission.

4. Applicant shall offer E-911 service. Applicant has primary responsibility to work with the E-911 agencies to make certain that all users of their services have access to the emergency system. Applicant will deliver or arrange to have delivered to the correct 911 Controlling Office its customers' voice and dialable Automatic Number Identification (ANI) telephone numbers so the lead 911 telecommunications service provider can deliver the 911 call to the correct Public Safety Answering Point (PSAP). Applicant agrees to work with each 911 district and lead 911 telecommunications service provider to develop database comparison procedures to match applicant's customer addresses to the 911 district's Master Street Address Guide in order to obtain the correct Emergency Service Number (ESN) for each address. Applicant agrees to provide the lead 911 telecommunications service provider with daily updates of new customers, moves, and changes with the corresponding correct ESN for each.

5. Applicant shall not take any action that impairs the ability of other certified telecommunications service providers to meet service standards specified by the Commission.

6. At the request of the Commission, applicant shall conduct, and submit to the Commission, traffic studies regarding traffic exchanged with telecommunications service providers and other entities designated by the Commission.

7. For purposes of distinguishing between local and toll calling, applicant shall adhere to local exchange boundaries and Extended Area Service (EAS) routes established by the Commission. Further, applicant shall not establish an EAS route from a given local exchange beyond the EAS area for that exchange.

8. When applicant is assigned one or more NXX codes, applicant shall limit each of its NXX codes to a single local exchange and shall establish a toll rate center in each exchange that is proximate to the toll rate center established by the telecommunications utility serving the exchange.

9. Applicant shall comply with universal service requirements as determined by the Commission.

10. Unless otherwise provided pursuant to an interconnection agreement adopted by the Commission pursuant to Section 252 of the Telecommunications Act of 1996, applicant shall enter into interconnection agreements with telecommunications utilities for exchange of local and EAS traffic, ancillary services (i.e., directory listings, directory assistance, 911 arrangements, mutual repair referral) and other interconnection matters in accordance with requirements the Commission established in Order No. 96-021 as otherwise modified by the Commission.

11. If applicant provides services to a subscriber who, in turn, resells the services, including operator services, then applicant and the subscriber must comply with ORS 759.690 and OAR 860-032-0005.

Public Interest

In Order No. 93-1850, docket UM 381, the Commission considered the public interest aspects of local exchange competition for dedicated transmission service similar to that described in the application before us now. In dockets CP 1, CP 14, and CP 15, Order No. 96-021, the Commission made several public interest findings regarding local exchange competition in general.

The Commission's Findings of Fact and Opinion in docket UM 381, Order No. 93-1850, at pages 4 – 6, and the Commission's Findings and Decisions in dockets CP 1, CP 14, and CP 15, Order No. 96-021 at pages 6 - 21, entered pursuant to ORS 759.050(2)(a)(A) - (C), are adopted. The Commission takes official notice of the record in dockets UM 381, CP 1, CP 14, and CP 15.[2] Based on a review of those findings, as well as information contained in the application, the Commission concludes that it is in the public interest to grant the application of Universal Telecommunications, Inc., to provide local exchange telecommunications service as a competitive telecommunications provider in the exchanges listed in Appendices A, B, C, and D. Further, it is in the public interest to grant the application to provide intrastate, interexchange switched (toll) telecommunications service and dedicated transmission service statewide, as described in the application.

[2] Under OAR 860-014-0050(2), a party may object to facts noticed within 15 days of notification that official notice has been taken. The objecting party may explain or rebut the noticed facts.

Competitive Zones

The exchanges listed in Appendices A, B, C, and D to this order are designated competitive zones pursuant to ORS 759.050(2)(b).

Pricing Flexibility

In Order No. 93-1850, docket UM 381, the Commission granted pricing flexibility for dedicated transmission service at the time the Commission granted the certificate of authority. Applicant seeks authority to provide intraexchange dedicated transmission service. Accordingly, USWC, GTE, CenturyTel, and United are granted pricing flexibility for dedicated transmission service in the exchanges listed in Appendices A, B, C, and D.

For intraexchange, switched telecommunications service the following applies. The Commission's Findings and Decisions in dockets CP 1, CP 14, and CP 15, Order No. 96-021 at pages 82 and 83, entered pursuant to ORS 759.050(5)(a) - (d), are adopted.

Accordingly, USWC will gain pricing flexibility in an exchange listed in Appendix A when:

1. Applicant, or an authorized CLEC, has received a certificate of authority to provide local exchange service.

2. USWC files a tariff that satisfies the Commission's requirements regarding the provision of interim number portability, as set forth in Order No. 96-021, and the Commission approves the tariff. USWC satisfied this requirement. *See* Order No. 96-277.

3. Staff notifies the Commission that a mutual exchange of traffic exists between USWC and an authorized CLEC, including but not limited to, applicant. If Staff previously provided the required notice regarding an exchange, no additional notice is required for that exchange.

   (a) As used in paragraph 3 above, "mutual exchange of traffic" means a mutual exchange of traffic between USWC and the CLEC within each exchange on an exchange-by-exchange basis. For example, if there is a mutual exchange of traffic in the Bend exchange, USWC would get pricing flexibility in the Bend exchange only.

   (b) As used in paragraph 3 above, for a CLEC who is a reseller (i.e., the CLEC does not use its own lines or switches to provide the particular service at issue), a "mutual exchange of traffic" exists when the CLEC

orders and receives one service, at a wholesale rate, from the LEC for resale pursuant to a certificate granted under ORS 759.050.

Similarly, GTE will gain pricing flexibility in an exchange listed in Appendix B when:

1. Applicant, or an authorized CLEC, has received a certificate of authority to provide local exchange service.

2. GTE files a tariff that satisfies the Commission's requirements regarding the provision of interim number portability, as set forth in Order No. 96-021, and the Commission approves the tariff. GTE satisfied this requirement. *See* Order No. 96-278.

3. Staff notifies the Commission that a mutual exchange of traffic exists between GTE and an authorized CLEC, including but not limited to, applicant. If Staff previously provided the required notice regarding an exchange, no additional notice is required for that exchange. The definitions in paragraphs 3.(a) and 3.(b) above, also apply here.

Similarly, CenturyTel will gain pricing flexibility in an exchange listed in Appendix C when:

1. Applicant, or an authorized CLEC, has received a certificate of authority to provide local exchange service.

2. CenturyTel files a tariff that satisfies the Commission's requirements regarding the provision of interim number portability, as set forth in Order No. 96-021, and the Commission approves the tariff.

3. Staff notifies the Commission that a mutual exchange of traffic exists between CenturyTel and an authorized CLEC, including but not limited to, applicant. If Staff previously provided the required notice regarding an exchange, no additional notice is required for that exchange. The definitions in paragraphs 3.(a) and 3.(b) above, also apply here.

Similarly, United will gain pricing flexibility in an exchange listed in Appendix D when:

1. Applicant, or an authorized CLEC, has received a certificate of authority to provide local exchange service.

2. United files a tariff that satisfies the Commission's requirements regarding the provision of interim number portability, as set forth in Order No. 96-021, and the Commission approves the tariff.

3. Staff notifies the Commission that a mutual exchange of traffic exists between United and an authorized CLEC, including but not limited to, applicant. If Staff previously provided the required notice regarding an exchange, no additional notice is required for that exchange. The definitions in paragraphs 3.(a) and 3.(b) above, also apply here.

ORDER

IT IS ORDERED that:

1. The application of Universal Telecommunications, Inc., to provide intraexchange switched service and dedicated transmission service, and to provide interexchange switched (toll) service and dedicated transmission service, as described in the application, is in the public interest and is granted with conditions described in this order.

2. Applicant is designated as a competitive telecommunications provider for intraexchange service in the exchanges listed in Appendices A, B, C, and D, and for intrastate, interexchange service statewide.

3. The local exchanges of USWC listed in Appendix A, those of GTE listed in Appendix B, those of CenturyTel listed in Appendix C, and those of United listed in Appendix D are designated as competitive zones.

4. USWC, GTE, CenturyTel, and United shall receive pricing flexibility on an exchange-by-exchange basis as set forth in this order.

5. Pursuant to ORS 759.050(2)(c), applicant shall comply with Commission imposed universal service requirements as a condition of authority to provide local exchange service.

Made, entered, and effective APR 9 1999.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to ORS 756.580.

APPENDIX A

CP 578

EXCHANGES OF U S WEST COMMUNICATIONS, INC.
ENCOMPASSED BY THE APPLICATION

Albany
Ashland
Astoria
Athena/Weston
Baker
Bend
Blue River
Burlington
Camp Sherman
Cannon Beach
Central Point
Corvallis
Cottage Grove
Culver
Dallas
Eugene/Springfield
Falls City
Florence
Gold Hill
Grants Pass
Harrisburg
Hermiston
Independence/Monmouth
Jacksonville
Jefferson
Junction City
Klamath Falls
Lake Oswego
Lapine
Leaburg
Lowell
Madras
Mapleton
Marcola
Medford
Milton-Freewater
Newport
North Plains
Oak Grove/Milwaukie
Oakland/Sutherlin
Oakridge
Oregon City
Pendleton
Phoenix/Talent
Portland
Prineville
Rainier
Redmond
Rogue River
Roseburg
St. Helens
Salem
Seaside
Siletz
Sisters
Stanfield
Sumpter
Toledo
Umatilla
Veneta
Walla Walla
Warrenton
Westport
Woodburn/Hubbard

APPENDIX B

CP 578

EXCHANGES OF GTE NORTHWEST INCORPORATED
ENCOMPASSED BY THE APPLICATION

Amity
Aumsville/Turner
Bandon
Beaverton
Brookings
Clatskanie
Coos Bay/North Bend
Coquille
Cove
Dayton
Detroit
Elgin
Enterprise
Forest Grove
Gold Beach
Grand Island
Gresham
Hillsboro
Hoodland
Imbler
Joseph
La Grande
Lakeside
Langlois
Lostine
McMinnville
Mill City
Murphy/Provolt
Myrtle Point
Newberg
Port Orford
Powers
Reedsport
Sandy
Scholls
Sherwood
Silverton
Stafford
Sunnyside
Tigard
Union
Vernonia
Wallowa
Yamhill

ORDER NO.

99-252

APPENDIX C

CP 578

EXCHANGES OF CENTURYTEL OF OREGON, INC.
ENCOMPASSED BY THE APPLICATION

Aurora
Bly
Boardman
Bonanza
Brownsville
Burns
Camas Valley
Charbonneau
Chemult
Chiloquin
Creswell
Depoe Bay
Drain
Durkee
Echo
Fort Klamath
Fossil
Gilchrist
Gleneden Beach
Glide
Government Camp
Harney
Heppner
Huntington
Ione
Jewell
John Day
Knappa
Lakeview
Lebanon
Lexington
Long Creek
Malin
Maupin
Merrill
Mitchell
Monument
North Powder
North Umpqua
Paisley
Paulina
Pilot Rock
Pine Grove
Rocky Point
Scappoose
Seneca
Shedd
Silver Lake
Sprague River
Spray
Starkey
Sweet Home
Tygh Valley
Ukiah
Wamic
Yoncalla

APPENDIX D

CP 578

EXCHANGES OF UNITED TELEPHONE COMPANY OF THE NORTHWEST
ENCOMPASSED BY THE APPLICATION

Arlington
Bay City
Beaver
Butte Falls
Carlton
Cascade Locks
Cloverdale
Crater Lake
Diamond Lake
Fish Lake
Garibaldi
Grand Ronde
Grass Valley
Hood River
Lincoln City
Moro
Mosier
Odell
Pacific City
Parkdale
Prospect
Rockaway
Rufus
Shady Cove
Sheridan
The Dalles
Tillamook
Wasco
White City
Willamina

Exhibit C

ORDER NO. 05-088

ENTERED 02/09/05

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 589

In the Matter of	)	
	)	
QWEST CORPORATION,	)	
	)	ORDER
Petition for Arbitration of Interconnection	)	
Rates, Terms, Conditions and Related	)	
Arrangements with Universal	)	
Telecommunications, Inc.	)	

DISPOSITION: MOTION TO DISMISS GRANTED

Qwest Corporation (Qwest) seeks arbitration of a new interconnection agreement with Universal Telecom, Inc. (Universal). Universal moves to dismiss Qwest's petition with prejudice. Universal contends that there is no contractual or legal authority that allows Qwest to file a petition for arbitration. Qwest argues that it may initiate negotiations with Universal under the current interconnection agreement and federal law, and may file a petition for arbitration after Universal refused to negotiate.

FINDINGS

Qwest is an incumbent local exchange carrier (ILEC) that provides telecommunications services in Oregon. Universal is a competitive telecommunications carrier (CLEC) and, among other things, provides telecommunications services within Qwest's service territory.

In 1999, Universal and Qwest, then known as U S WEST Communications, Inc. (USWC), submitted an interconnection agreement to the Commission for approval pursuant to Section 252(i) of the Telecommunications Act of 1996 (Act). The Commission approved the agreement, in which the parties purportedly agreed to adopt the terms of the arbitrated agreement between MFS Intelnet, Inc., (MFS), and USWC in ARB 1 (hereafter referred to as the MFS Agreement).[1]

Both Universal and Qwest agree that the relationship between the two parties has "not been without its challenges."[2] The parties are currently engaged in civil litigation in federal court regarding several terms contained in the interconnection agreement. The subject matter of these pending disputes is not relevant to this proceeding and need not be addressed.

---

[1] *See* Order No. 99-547.

[2] Universal motion at 2; Qwest Response at 2.

On February 20, 2000, the interconnection agreement expired and remains in evergreen status. On February 6, 2004, Qwest requested negotiations with Universal pursuant to Section 252(a) of the Act. Universal did not respond to the request.

On July 16, 2004, Qwest petitioned the Commission to arbitrate terms, conditions, and prices for interconnection and related arrangements. Qwest requested that the Commission order Universal to execute, as a new interconnection agreement, Qwest's Statement of Generally Available Terms (SGAT) for wireline interconnection.

On August 10, 2004, Universal filed a motion to dismiss Qwest's petition. Universal contends that neither the terms of the existing interconnection agreement, nor any provision of the Act authorize Qwest's request. On August 27, 2004, Qwest filed a response in opposition to Universal's motion.

On November 15, 2004, a preliminary legal analysis was issued and additional briefing was requested from the parties. Both parties submitted filings on November 30 and December 14, 2004.

On January 13, 2005, Oregon attorney Joel DeVore filed a motion to allow counsel for Universal, John Dodge of Washington, D.C., to appear pro hac vice. Qwest did not object to this motion.

On September 16, 2004, Universal moved to hold this docket in abeyance while it reviewed unfiled interconnection agreements entered into by Qwest in docket UM 1168. Qwest objected to the motion. Universal renewed its motion on January 19, 2005, arguing that it would have had the right to pick and choose more favorable contract terms under the original contract. Qwest replied that the issues in UM 1168 have nothing to do with the issues raised by Universal's motion to dismiss.

CONCLUSIONS

We first address the motion to allow Universal's counsel to appear pro hac vice. The motion was made late in the docket but was unopposed and is granted.

Next, we turn to Universal's motion to hold this docket in abeyance. Given our resolution that Qwest may initiate negotiations, we are unsure of the value of holding the docket in abeyance so that Universal may select other terms. The remedy for Qwest withholding certain preferential contract terms, if that is what in fact occurred, is to be determined in UM 1168. This docket will not be held in abeyance to solve an unrelated problem.

Finally, we begin with an analysis of the parties' rights under the Telecommunications Act of 1996 (Act). The Act sets out the obligation to maintain an interconnection agreement and the procedures by which an agreement may be negotiated, adopted, and arbitrated. See 47 USC §§ 251-252. Section 251(c)(1) lists a number of obligations imposed on *incumbent* local exchange carriers, including the "duty to

negotiate in good faith in accordance with Section 252 the particular terms and conditions of [interconnection] agreements." 47 USC § 251(c)(1). The Section separately states that "[t]he requesting telecommunications carrier also has the duty to negotiate in good faith." *Id.* That section clearly differentiates between the incumbent LEC and the carrier which is permitted to request negotiation of an interconnection agreement in imposing the obligation to negotiate in good faith on both parties.

Section 252 sets forth two processes to obtain an interconnection agreement. First, Section 252(a)(1) provides that parties may voluntarily negotiate an agreement:

> Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251.

The provision goes on to state that those agreements must be submitted to the state Commission for approval. Section 252(a)(2) states that, after negotiation has begun, any party may ask the state Commission to participate in mediating differences between the parties.

If the parties are unable to reach a voluntary agreement, Section 252(b)(1) allows either party to request arbitration:

> During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Both Section 252 provisions begin with a condition that must be fulfilled before a carrier may request intervention by the state Commission. Both expressly require that an ILEC receive a request for negotiation. In this case, Qwest acknowledges that "Universal * * * does not assent to a new agreement, or even to negotiate a new agreement."[3]

Although the statute clearly contemplates a CLEC requesting negotiations from an ILEC, Qwest contends that this Commission has already concluded that an ILEC can similarly request negotiations from a CLEC.[4] Qwest adds that cases from other state commissions provide additional support that an ILEC can request interconnection

[3] Qwest letter, 1 (Aug 17, 2004).
[4] *See* docket ARB 365; Order No. 02-148 and Arbitrator's Decision (February 11, 2002).

negotiations from a CLEC and, if the CLEC ignores the request, the ILEC can demand arbitration. We will discuss each case in turn.

We begin with ARB 365, our own docket establishing an interconnection agreement between Qwest and Beaver Creek Cooperative Telephone Company (Beaver Creek). In that case, the Commission adopted the Arbitrator's decision that the Commission had jurisdiction over Qwest's petition for arbitration of interconnection rates, terms, and conditions with Beaver Creek. The Arbitrator's decision hinged on the Act's requirement "that all local exchange carriers, CLECs and ILECs alike, have a duty to establish reciprocal compensation arrangements for the exchange of telecommunications."[5] Before ARB 365, the carriers had a "bill and keep" arrangement, in contravention with the Act's requirement that carriers develop a reciprocal compensation arrangement, in Section 251(b)(5).[6] That situation is not present here. First, Qwest and Universal have already established a reciprocal compensation arrangement. Second, unlike the duty to establish initial reciprocal compensation arrangements, the duty to negotiate is contained in Section 251(c), which sets out the "additional obligations of incumbent local exchange carriers." In addition, "the requesting carrier" has the duty to negotiate in good faith, but the plain language of the statute does not set forth an obligation for the CLEC to negotiate upon a request by an ILEC.

Next we address the decisions from other state commissions. These can be grouped into two categories: 1) cases in which the CLEC became involved in negotiations and the ILEC requested arbitration, and 2) cases in which the carriers had an existing interconnection agreement that allowed either party to begin negotiations. We begin with the first category. In a dispute between BellSouth, an ILEC, and NOW, a CLEC, the Alabama Commission concluded that BellSouth could seek arbitration because NOW had commenced negotiations. The Commission stated:

> The January 26, 2000, correspondence signed by representatives of both parties memorialized NOW's subsequent transition from the negotiation of a resale agreement to the negotiation of an interconnection agreement and demonstrated the mutual understanding of the parties that the arbitration window set to expire on January 27, 2000, was still applicable. Given the clarity of the January 26, 2000, correspondence and NOW's correspondence of February 22, 2000, seeking further extension of the arbitration window, it is difficult to lend credence to NOW's theory that it never intended to engage in the negotiation of a new resale agreement or the renegotiation of its existing agreement with BellSouth.[7]

[5] Order No. 02-148, Appendix A at 4.

[6] *See id.* at 5.

[7] *In re. Petition for arbitration of the interconnection agreement between BellSouth Telecommunications and NOW Communications, Inc.*, Docket 27461, 2000 Ala PUC Lexis 1052 (Ala. PSC, June 23, 2000). The Commission also said, in *dicta*, that ILECs should be able to request negotiation and to interpret the

Similarly, the California Commission found that the CLEC satisfied the Act's requirement that the ILEC receive a request for negotiation when the CLEC,

> sen[t] a reply letter to [the ILEC] expressing its willingness to engage in discussions with [the ILEC] for a new Interconnection agreement. In the same correspondence [the CLEC] furthered the process of negotiation with [the ILEC] by requesting specific documents that are relevant to an interconnection negotiation under the Telecommunications Act.[8]

Likewise, the Louisiana Commission concluded, "By participating in the negotiation process, at a minimum, [the CLEC] tacitly was seeking out the negotiation. While the language of the Act only allows a non-incumbent to commence Section 252 negotiations, the Act does not require any specific notification, and further does not eliminate the possibility of a tacit request."[9] In those cases, the condition in the Act, which requires that negotiations be in progress before a petition for arbitration can be filed with a state commission, was met. On the other hand, in this case, Universal has not requested negotiations with Qwest.

The second category of cases involves contracts that allow either carrier to commence talks. The Tennessee Commission addressed the question of whether an ILEC can submit a request for negotiation by noting that the "approved Interconnection Agreement explicitly permits *either* party to initiate interconnection negotiation."[10] (Emphasis added.) Because the contract allowed either party to initiate negotiations, the Commission found that BellSouth was permitted to start the process under the Act.

Likewise, in arbitrating an interconnection agreement between BellSouth and Supra, the Florida Commission determined the appropriate time frame for the petition for arbitration based on the contract provision that allowed either party to commence negotiations.[11] The agreement mirrored the Act, but allowed either party to initiate negotiation:

Act otherwise "would unfairly work to the detriment of ILECs. Congress surely did not intend such a result." We believe that the best indication of Congress' intent is the plain language of the statute; it is up to Congress to amend the statute if it is "unfair." *U.S. v. Daas*, 198 F3d 1167, 1174 (9th Cir 1999), *cert den*, 531 US 999 (2000).

[8] *In re Pacific Bell for arbitration of an interconnection agreement with Pac-West Telecom, Inc.* (U5266), Decision No. 99-02-014, 1999 Cal PUC Lexis 70, *8 (Cal. PUC Feb 4, 1999).

[9] *BellSouth v. NOW Comm*, Order No. U-24762, 2000 La PUC Lexis 83, * 3-4 (La. PSC May 22, 2000).

[10] *In re Petition for arbitration of the interconnection agreement between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc.*, Docket No. 99-00948, 2000 Tenn PUC Lexis 572 (Tenn Reg Util Comm Feb 29, 2000).

[11] *In re Petition by BellSouth Telecommunications, Inc. for arbitration of an interconnection agreement with Supra Telecommunications and Information Systems, Inc.*, Docket No. 001305-TI PSC-01-1180-FOF-TI, 2001 Fla PUC Lexis 691 (Fla PSC May 23, 2001).

> Section 2.2: No later than one hundred and eighty (180) days prior to the expiration of this Agreement, the Parties agree to commence negotiations with regard to the terms, conditions, and prices of * * * [an interconnection agreement.]
>
> Section 2.3: * * * if within one hundred and thirty-five days (135) of commencing the negotiation referenced to Section 2.2 above, the Parties are unable to satisfactorily negotiate new terms, conditions and prices, either Party may petition the Commission to establish an appropriate [Interconnection] Agreement pursuant to 47 USC § 252.[12]

In these cases, the agreements expressly permitted either party to commence negotiations. We next review the interconnection agreement between Qwest and Universal to determine whether it permits Qwest to initiate negotiations.

First, some background on how three kinds of interconnection agreements are approved by the Commission: a negotiated agreement is submitted under Section 252(e) of the Act; an arbitrated agreement is also submitted under Section 252(e) of the Act; and an adopted agreement is submitted under Section 252(i) of the Act. Section 252(e)(1) allows state commissions to approve or reject negotiated or arbitrated agreements, and subsection (2) specifies the grounds on which state commissions may reject such agreements. On the other hand, section 252(i) requires,

> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

Commission rules at the time recognized the difference in processing the agreements. A negotiated or arbitrated agreement was filed with the Commission, then the Commission served notice of the agreement on an interested party service list and provided parties 21 days to submit comments before the Commission decided whether to approve the agreement. See OAR 860-016-0020 (1998). However, that process did not apply to adopted agreements: "If the agreement merely adopts an agreement previously approved by the Commission, the Commission will process the agreement on an expedited basis, without serving notice of it." *Id.* at (3).

The interconnection agreement submitted by Universal and USWC to the Commission states, "This Agreement is made pursuant to Section 252(i) of the Act and is premised upon the Interconnection Agreement between MFS Intelnet, Inc. and U S West

[12] *Id.* at *6-7.

Communications, Inc." The Commission processed the agreement as if it were a straightforward adoption of a previously approved agreement. In ARB 157, the Commission approved the agreement and ordered, "The agreement adopts the terms and conditions of the agreement previously approved in ARB 1." Order No. 99-547 at 2.

However, the wording of the disputed "Term of Agreement" in the Universal agreement varies from the wording of the same provision in the MFS Intelnet Agreement. The "Term of Agreement" in the Universal agreement states:

> This Agreement shall become effective upon Commission approval and shall expire February 20, 2000. Thereafter, the Agreement shall continue in force and effect until a new agreement, addressing all of the terms of this Agreement, becomes effective between the Parties.[13]

The "Term of Agreement" provision in the MFS Intelnet Agreement differs in two respects. First, rather than expiring on February 20, 2000, the MFS Intelnet Agreement states it is "effective for a period of 2 ½ years." Second, and more importantly, it included a critical sentence to the end of the provision that states: "The Parties agree to commence negotiations on a new agreement no later than two years after this Agreement becomes effective."

We find that Universal and Qwest misrepresented their submitted contract as a straightforward adoption of the terms of the MFS Intelnet Agreement. Their subterfuge led to a bypass of Commission review, because the Commission could not reject an agreement submitted under Section 252(i). Instead, the submitted agreement was negotiated, in that the terms were altered. Such an agreement should have been submitted for a more thorough examination under Section 252(e). Moreover, it is highly unlikely that, if the contract had been properly reviewed, the Commission would have approved such an open-ended "Term of Agreement" provision. *See, e.g., Council of Jewish Women v. Sisters of Charity,* 266 Or 448, 456 (1973) (perpetual agreements are disfavored); *Lund v. Arbonne International, Inc.,* 132 Or App 87, 90 (1994) (contracts that appear to be of indefinite duration may be terminable at will); *In the Matter of MCI WorldCom and Verizon Northwest Inc.*, ARB 533, Order No. 04-241 (carefully reviewing unusual termination provision never approved by the Commission).

Because of this misrepresentation, the Commission approved an interconnection agreement between the parties, "adopting the terms of the previously approved agreement in docket ARB 1." *See* Order No. 99-547. Therefore, the terms of that prior agreement bind the parties. Under the proper "Term of Agreement" provision, either party, including Qwest, may commence negotiations. Like the Tennessee and Florida commissions, we conclude that agreements which expressly permit either party to commence negotiations may supplement the Act's language which permits only the CLEC to commence negotiations.

[13] Section XXXIV.V.

Although we find that Qwest is entitled to initiate negotiations, we nonetheless grant Universal's motion to dismiss. The underlying contract giving rise to this dispute has been nullified. In its place, we have imposed the agreement the parties represented they were adopting, that is, the MFS Intelnet Agreement. Under the circumstances, we conclude that this proceeding should be abandoned in favor of giving the parties a new opportunity to negotiate a contract. If such negotiations commence, either party may seek arbitration as needed under the Act.

ORDER

IT IS ORDERED that the motion to dismiss the petition for arbitration is granted.

Made, entered, and effective FEB 0 9 2005.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

ORDER NO. 05-206

ENTERED 05/03/05

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 589

In the Matter of	)	
	)	
QWEST CORPORATION	)	
	)	ORDER
Petition for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Universal Telecommunications, Inc.	)	

DISPOSITION: RECONSIDERATION GRANTED; ORDER NO. 05-088 ADHERED TO AS MODIFIED HEREIN

On February 9, 2005, this Commission issued Order No. 05-088, dismissing a petition by Qwest Corporation (Qwest) for arbitration of an interconnection agreement with Universal Telecommunications, Inc. (Universal). We concluded, however, that Qwest could initiate negotiations with Universal for a new interconnection agreement. Although the parties had earlier received Commission approval to adopt, as their interconnection agreement, the agreement approved in ARB 1 between MFS Intelenet, Inc., and U S WEST Communications, Inc. (MFS Intelenet Agreement), we discovered that the existing signed interconnection agreement between Qwest and Universal varied from the MFS Intelenet Agreement approved by the Commission.[1] Accordingly, in Order No. 05-088, the Commission applied the term of agreement provision as approved in the MFS Intelenet Agreement and concluded that provision permitted either party to initiate negotiations for a new interconnection agreement.

On March 4, 2005, Universal filed an application for reconsideration and clarification of Order No. 05-088. In its application, Universal requested that the Commission specify the authority which allows the Commission to impose the terms of the MFS Intelenet Agreement on Qwest and Universal and find that the applicable

[1] The MFS Intelenet Agreement was arbitrated by an administrative law judge at the Commission, and the Commission adopted his decision as amended in Order No. 96-324. Reconsideration was granted in part in Order No. 97-125, and the Commission denied USWC's motion to compel MFS Intelenet to submit a final interconnection agreement in Order No. 97-161. Finally, a completed interconnection agreement was submitted and approved by the Commission in Order No. 97-367 on September 17, 1997. It was not amended until February 11, 2000, *see* Order No. 00-085, after the Qwest-Universal interconnection agreement was approved by the Commission on September 22, 1999, *see* Order No. 99-547. All references to the ARB 1 MFS Intelenet Agreement in this order is to the language of the agreement as adopted in Order No. 97-367 on September 17, 1997.

interconnection agreement termination provision no longer allows either party to initiate negotiations.

On March 18, 2005, Qwest filed a response to the application, questioning whether Universal's filing complied with OAR 860-014-0095. Qwest also countered Universal's interpretation of the relevant termination provision. Finally, Qwest argued that the Commission correctly imposed the terms of the contract as it was approved in ARB 157, Order No. 99-547.

On March 31, 2005, Universal filed a reply to the application. A third round of filings is not provided for in OAR 860-014-0095, and the reply was not considered. *See* Order No. 04-598 at 2.

We grant the application for reconsideration and adhere to Order No. 05-088 as modified herein.

Discussion

Either party may file an application for reconsideration under OAR 860-014-0095. The rule requires that an application for reconsideration set out which portion of the challenged order is claimed to be erroneous, the applicable laws, and the party's desired outcome. The Commission has the discretion to grant the application if there is an error of law or fact, a new policy, new evidence, or "good cause for further examination of a matter essential to the decision." OAR 860-014-0095(3) (d).

Universal's application does not strictly adhere to the form set forth in rule, but the Commission will overlook deficiencies in form "to secure just, speedy, and inexpensive determination of the issues presented." OAR 860-011-000(5). The substance of the filing appears to argue that the Commission erred in imposing the contract terms as adopted in Order No. 99-547, and that the Commission incorrectly interpreted those terms.

The Commission's decision in Order No. 05-088 is based on what at best can be characterized as a mistake in the filing of the interconnection agreement between Universal and Qwest.[2] Neither party briefed related issues in the initial proceeding, so the Commission finds good cause to review the matter further, in light of the arguments raised by the parties on reconsideration.

[2] Universal challenges the Commission's characterization of this action as a misrepresentation or subterfuge. Universal asserts on reconsideration that it requested from Qwest a contract identical to the MFS Intelenet Agreement approved by the Commission in ARB 1, Qwest presented an altered contract, and Universal signed it unaware of the alterations. Qwest states that it cannot determine how the alterations were made, and contends that only the term of agreement provision was changed. Whether or not Universal knew what was in the contract, it is responsible for the assertion it made by its signature – that, under Section 252(i) of the Telecommunications Act of 1996 (the Act), it was adopting the terms and conditions of a contract previously approved by the Commission. It is that statement which misled the Commission to expedite approval without a more careful review.

Universal challenges the Commission's authority to impose the underlying MFS Intelenet Agreement between Qwest and Universal, *see* Application at 8, and disputes the manner in which its initial interconnection agreement was submitted for approval. In ARB 157, Denny Bayers signed for Qwest on August 26, 1999, and Stephen C. Roderick signed for Universal on August 18, 1999,[3] in submitting an interconnection agreement for Commission approval under Section 252(i) of the Telecommunications Act of 1996 (the Act). By their signatures, the parties represented,

> This Agreement is made pursuant to Section 252(i) of the Act and is premised upon the Interconnection Agreement between MFS Intelenet, Inc. and U S WEST Communications, Inc. (the "Underlying Agreement"). The Underlying Agreement was approved by the Commission on August 21, 1997.

As noted in Order No. 05-088 at 6, the Act and then-existing Oregon Administrative Rules provided for expedited approval of a contract that "merely adopts an agreement previously approved by the Commission." *See* OAR 860-016-0020(3) (1998). The Commission approved the Qwest-Universal interconnection agreement as if it were a complete adoption of the MFS Intelenet Agreement, as evidenced by the conclusion in Order 99-547: "The agreement adopts the terms and conditions of the agreement previously approved in ARB 1."

As part of considering this petition for arbitration, the Commission discovered that the over 100-page agreement that Qwest and Universal submitted for approval in 1999 varied from the MFS Intelenet Agreement. Presented with this conflicting contractual language, the Commission applied the language in the MFS Intelenet Agreement as approved as the contract between Qwest and Universal in Order No. 99-547. We relied on the language of the order approving the contract:

> According to the Agreement, Universal Telecommunications, Inc., and USWC [now Qwest] agree to adopt the terms of the arbitrated agreement between MFS Intelenet, Inc., and USWC that was approved by the Commission in docket ARB 1. (*See* Order No. 97-367.) USWC agrees to enter into this arrangement pursuant to Section 252(i) of the Telecommunications Act of 1996.

[3] On March 10, 2005, Universal submitted an erratum to its application, stating that Universal signed its contract on April 7, 1999. That is not the contract that was submitted for Commission approval in ARB 157. The agreement approved by the Commission was signed by Universal on August 18, 1999.

See Order No. 99-547 at 1. The ordering clause states, "that the agreement between Universal Telecommunications, Inc., and U S WEST Communications, Inc., adopting the terms of the previously approved agreement in docket ARB 1 is approved." *Id.* at 2. The order clearly adopted the terms of the contract previously approved in ARB 1. Based on that language, and the fact that the parties led the Commission to believe that they were adopting that agreement, the Commission interpreted the terms of the MFS Intelenet Agreement as approved in Order No. 97-367 on September 17, 1997 in determining the term of agreement provision in Order No. 05-088.

At the outset, Universal challenges Order No. 05-088 by arguing that the Commission does not have the authority to nullify the agreement between Universal and Qwest and impose in its place the MFS Intelenet Agreement. *See* Application at 8. In Universal's view, state commissions may only resolve arbitrated issues, approve or reject pending interconnection agreements, and interpret and enforce the terms of prior approved interconnection agreements. *See id.* Qwest counters that Order No. 05-088 "merely clarified that the Commission originally approved the Universal/Qwest ICA only to the extent that its terms were consistent with the MFS/Qwest ICA. * * * That is, the Qwest/Universal ICA that the Commission actually approved on September 22, 1999 contained the identical Term of Agreement provision that was in the Qwest/MFS ICA. [Order No. 05-088] simply clarifies that fact." Qwest response at 7-8.

Admittedly, the wording in Order No. 05-088 was imprecise.[4] Most importantly, the order stated, "the Commission had approved an interconnection agreement between [Qwest and Universal], 'adopting the terms of the previously approved agreement in ARB 1.'" Order No. 05-088 at 7. Qwest argues, and we agree, that the proper applicable interconnection agreement in effect was the agreement approved in ARB 1. Since the Commission approved the Qwest/Universal agreement on September 22, 1999, the effective contract has always been the language of the MFS Intelenet Agreement as approved in ARB 1.

Next, Universal makes three arguments regarding the Commission's application of the Term of Agreement provision set forth in the MFS Intelenet Agreement. That applicable provision states,

> This Agreement shall be effective for a period of 2 ½ years, and thereafter the Agreement shall continue in force and effect unless and until a new agreement, addressing all of the terms of this Agreement, becomes effective between the Parties. The Parties agree to commence negotiations on a new agreement no later than two years after this Agreement becomes effective.

[4] The earlier order purported to nullify the contract between Qwest and Universal and impose the MFS Intelenet Agreement. *See* Order No. 05-088 at 8. As clarified in this order, the supposed interconnection agreement between Qwest and Universal that was signed by the parties was not approved by the Commission as far as it varied from the MFS Intelenet Agreement. The only valid interconnection agreement between the parties, since the date of Commission approval, is the MFS Intelenet Agreement.

Universal first argues that neither MFS Intelenet and its successors nor Qwest initiated negotiations within two years of the MFS Intelenet Agreement becoming effective, and that rendered the negotiation provision, the critical sentence, moot. Further, Universal argues that this happened before the Qwest/Universal contract became effective, so Universal was entitled to adopt a contract without the negotiation provision. *See* Application at 5-6. Qwest argues that the critical last sentence remained in effect under Section JJ of the contract, which states, "The failure of either Party to enforce any of the provisions in this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect."

Universal's argument is appealing; however, we do not know what changes the parties would have made in light of evolving law and conditions. We cannot presume to rewrite the terms of the contract as we would guess that the parties would in light of changing conditions. Therefore, we will apply the precise wording of the MFS Intelenet Agreement from Order No. 97-367, as adopted and approved between Qwest and Universal in Order No. 99-547.

Universal next argues that the MFS Intelenet Agreement was later modified in such a way that the right of both parties to initiate negotiations was terminated and that the Commission ratified that amendment. Pursuant to 47 USC § 252(i), Universal argues that it is entitled to adopt the same provision in its contract. Qwest argues that the amendment to the MFS Intelenet Agreement is irrelevant in this case because no similar amendment was made in the Qwest/Universal agreement. *See* Qwest response at 5. For Universal to adopt an amendment applied in another contract, it would need to file a notice of adoption with the Commission. *See* OAR 860-016-0025. Besides, the import of the cited amendment is unclear. Universal quotes a recital from the beginning of the agreement that states that "the initial term of the MFS Agreement expired, but remains in full force and effect until a new agreement becomes effective between the parties." *See* ARB 1(5) (June 10, 2002) (filing submitted by Qwest and MCI Communications to assume the Rhythms Communications interconnection agreement). The amendment goes on to say, "Except as modified herein, the provisions of the MFS Agreement shall remain in full force and effect." *See id.* at 4. Therefore, the effective terms of that agreement appear to remain unchanged.

Finally, Universal argues that even under the relevant Term of Agreement provision, the window for Qwest to initiate negotiations has long since closed. The contract went into effect on September 22, 1999, and Universal argues that Qwest's ability to initiate negotiations expired September 22, 2001. In fact, Qwest did not request negotiations until February 6, 2004. Qwest argues that the nonwaiver clause in Section JJ enables it to continue to request negotiations after the deadline has passed.

The section titled "Default," Section JJ, states in its entirety:

> If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other provision of this Agreement, and such default or violation shall continue for thirty (30) days after written notice thereof, the other Party may seek legal and/or regulatory relief. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, be and remain in full force and effect.

Additionally, Section M states that provision headings should not be interpreted to limit or modify the provisions themselves. Section JJ appears to address situations in which one party defaults on payments due, breaches the contract, or fails to enforce the terms of the agreement.

The Term of Agreement provision required either party to initiate negotiations within two years of the effective date of the agreement. Neither party met the deadline. Under Section JJ, the "failure of either Party to enforce" the provision allowing either party to initiate negotiations does not lead to relinquishment of the right of both parties to initiate negotiations.[5] The provision indicates an obligation by both parties to renegotiate the interconnection agreement within a reasonable period of time. Even though neither Qwest nor Universal initiated negotiations by the deadline, Qwest never expressly waived its right to initiate negotiations. *See* Order No. 99-611 at 6 (waiver is intentional relinquishment of a known right, claim, or privilege).

When presented with the precise situation at hand, the Florida Commission held, "While it does not appear that the parties commenced negotiations more than 180 days prior to the June 9, 2000, expiration date of the agreement, it is clear that for negotiations to commence, one party had to contact the other." *In re Petition by BellSouth Telecommunications, Inc.*, Docket No. 001305-TI PSC-01-1180-FOF-TI, 2001 Fla PUC Lexis 691 at *6-7 (Fla PSC May 23, 2001).[6] That was sufficient for the Florida Commission to state that the incumbent carrier could continue to initiate negotiations after the deadline had passed. Like the case before the Florida Commission, this contract has a Term of Agreement provision that indicates an understanding between

[5] In the alternative, under Section JJ, the failure of both parties to initiate negotiations could be construed as a breach in which one party could seek legal or regulatory relief. In that situation, specific notice must be provided, which has not occurred here, so we decline to address that scenario.

[6] In Order No. 05-088, a Tennessee Commission decision, *In re Petition by BellSouth Telecommunications, Inc.*, Docket No. 99-00948, 2000 Tenn PUC Lexis 572 (Tenn Reg Util Comm Feb 29, 2000), was also cited. *See* Order No. 05-088 at 5 n 10. That document is in fact a brief, but the Tennessee Commission took action consistent with the arguments made in that brief by arbitrating the interconnection agreement dispute between the parties. *See In re Petition by BellSouth Telecommunications, Inc.*, Docket No. 99-00948, 2001 Tenn PUC Lexis 383 (Tenn Reg Util Comm June 25, 2001).

the parties that to commence negotiations, one party must contact the other. Therefore, we conclude that Qwest retains the right under the MFS Intelenet Agreement to initiate negotiations with Universal towards a new interconnection agreement.

ORDER

IT IS ORDERED that:

1. Reconsideration is granted.

2. Order No. 05-088 is modified and adhered to as discussed herein.

Made, entered, and effective MAY 0 3 2005.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

QWEST CORPORATION,
a Colorado corporation,
Plaintiff/Counter Defendant,
vs. No. 04-CV-6047-AA
UNIVERSAL TELECOM, INC.,
dba US POPS, formerly
known as UNIVERSAL
TELECOMMUNICATIONS, INC.,
an Oregon corporation,
Defendant/Counter Plaintiff.

ORIGINAL

DEPOSITION OF JEFFRY R. MARTIN

Taken in behalf of the Plaintiff/Counter Defendant

July 27, 2004

* * *

Q. Okay.
A. I don't know the exact dates.
Q. Okay. By the end of '99, approximately, what -- how many employees would there have been in Universal?
A. Seven.
Q. Okay.
A. Approximately.
Q. And just for as a point of contrast, today, in 2004, how many full-time employees are there at Universal?
A. Excluding Steve and Richard?
Q. Yes.
A. I think there's six.
Q. We'll get into maybe -- at this time, there's six full-time employees. Do you contract any of your functions -- "outsource" may be the better term, outsource any of the functions that Universal does at this time?
A. There is some outsourcing. I mean we pay a pretty good check for our legal fees, we have outside CPAs do our taxes, we have some telecom expert that we selectively use, but not -- not a full-time equivalent, not contractors all the time.
Q. Okay. So you don't have a technical call center,

(The reporter read back as requested.)

Q. BY MR. SMITH: Do you understand my question?

A. I -- I -- where I hesitate is did you have any plans to do this. We had always talked about that was something we wanted to do, and it was a natural, to the ISPs and doing various other -- lots of plans on stuff. So did we have that ready to implement and go out to market? Not at that time.

Q. Okay.

A. We talked about lots of things we could do with Universal and provide lots of services, and we saw a market demand for lots of different things and we felt like if we focused first and were successful in one we could expand and do others.

Q. But the central focus, at least initially, was to provide this excellent service you referred to to Internet service providers?

MR. CALDWELL: Well, objection. I think he answered what the central focus was. Ted, I'm not -- I'm really not trying to --

MR. SMITH: I understand.

MR. CALDWELL: I don't want to slow things down, but I want to be accurate.

MR. SMITH: I don't want to put words in his

mouth.

THE WITNESS: And that's what I feel is going in there. Our first focus was to be a great company and provide a great service. We saw an opportunity in this particular niche and we wanted to do that first and we didn't want to just be one thing. We wanted to do a wide variety of services and products and go out there and do that.

So my hesitation is when you say your primary focus, your primary goal, your plan, and all of that, what we did do is start with that.

Q. BY MR. SMITH: Okay.

A. And there's no hesitation of that. Did your plan, did you want, those things, I can't let you put those words in my mouth.

Q. That's absolutely fair. If I'm putting words in your mouth, you call me on it here.

A. I'm trying to do that --

Q. I understand that.

A. -- by clarifying my answer.

Q. Just be blunt here.

Since Universal began operating, has it ever provided local exchange -- voice local exchange service to customers?

MR. CALDWELL: Object to the form and to the

extent it calls for a legal conclusion. Is the question basically whether it's provided voice service?

Q. BY MR. SMITH: Yeah, it's a simple question, which is, you know, have you provided service where a customer can come and get their voice local exchange service from Universal as opposed to Qwest or some other company?

A. Our primary focus has been on managed modem services and some associated time things. As of this time, we haven't gone out with a traditional local exchange service and offering that to residential- or business-type customers.

Q. Okay, thank you.

Does Universal have any other affiliate corporate entities that are, say, sister companies or subsidiaries, let's say?

A. Not at this time. We did at one time.

Q. What was that company or companies?

A. We're an Oregon CLEC, wanted to be a CLEC in other states, and we purchased Village Telephone of Washington, which was a CLEC in Washington, and tried to transfer those -- that CLEC license into Universal Telecom.

Q. Did you successfully?

MR. SMITH: Sure.

MR. CALDWELL: I won't if you don't want me to, but if you wouldn't mind.

MR. SMITH: No, go ahead.

MR. CALDWELL: He testified that the Web site was created in 1999 and it was updated twice since, and the way you're phrasing your questions now, you're asking him to characterize that phrase and then asking him in the present tense, what would you presently provide. So that's the disconnect I'm getting.

MR. SMITH: That's fair.

Q. BY MR. SMITH: Let me ask it this way. The phrase I just read to you, the sentence I just read to you, does that characterize what Universal does today?

A. No.

Q. What do you do today that's different from being a complete single vendor provider for regional ISPs?

A. At that time, we operated only in the state of Oregon. Our primary focus was on the managed modem business, and if you go further down into this paragraph, you can see, starts talking about voice video, data, all sorts of things. We had envisioned being an ASP, having video servers,

doing other things that we would be able to put together as a wholesale outsource solution for ISPs. They can focus on their business, which is retail and business customers, email, Web servers, Web design, Internet consulting, content, all of that sort of stuff. We would operate in the back end, help with their Internet access and modems, maybe do some things with their voice and video and help them and allow little ISPs to survive against the MSNs, the AOLs, all of those big conglomerates, in that Universal would be their back end and they wouldn't have to invest in each of those things. We would do that once and all of the ISPs would gain an advantage over that.

Q. If I understand the answer you just gave, that was more what you aspired or aspire to be, but you haven't reached that point?

A. That's what this couple sentences was aspiring to be, and yes, at this time, we have not reached that.

Q. All right. In the second --

MR. CALDWELL: Can I ask for a clarification in the record, because the witness referred to a couple sentences.

MR. SMITH: Sure.

stuff, but we don't have anything, and what that sentence is trying to show is a wide range of flexibility of ways of providing Internet access.

Q. But it maybe I misunderstood. At this point, your firm is not really providing backbone DS3 Internet offerings?

A. That's correct.

Q. Okay. I'm moving down now into past Mission Statement into "Why US POPS," and I'm in that -- well, let me just read several or three or four sentences.

"Why US POPS? Because you save money. Our solution provides phone access, equipment, bandwidth, maintenance and network management all rolled into one simple package."

At this point in time, do you consider that you're doing all of those things, access, equipment, bandwidth, maintenance and network management for customers?

A. Our service allows them to avoid doing that through buying their own phone, buying their own equipment, buying their own bandwidth, maintaining, managing their own networks. So yes, our service replaced that for them.

Q. So would it be fair to say the managed modem

service that you provide provides kind of a one-stop -- and again, correct me if that's the wrong word, a one-stop solution to get phone access, to get equipment, to get bandwidth, to get maintenance, and to manage their network?

A. No. I don't think you understand. By us providing them a managed modem service, they can avoid having to pay for those other things.

Q. Okay. But if they avoid paying for them, does that mean managed modem service provides that for them?

A. I don't -- I don't think -- does managed modem provide -- we don't provide them with any equipment.

Q. Okay. But -- okay, maybe we break it down.

You do provide them access, phone access, correct?

A. We provide a service to them so their customers can have access, yes.

Q. You obtain phone numbers through the North America Numbering Plan administrator I think is what it's called that you then allow your customers to utilize as the number they can advertise for Internet access. Is that correct?

A. Yes.

Q. Okay. You say our -- you provide --

What equipment do you provide that, because you provide it, they don't have to?

A. That's my point.

Q. Okay. I'm asking you what equipment that is.

A. All right. We have a managed modem service, so if they buy that service from us, then they can have fewer phones, less equipment, less bandwidth, they don't have to manage that equipment, and we provide that service for them and they avoid those costs.

Q. Okay. Maybe I'm beginning to understand better.

And the reason they don't have to manage those costs is because you make the investment, you do all of this, essentially, for them?

A. That's correct.

Q. Okay. We'll get into that.

The next sentence is "No more monthly T1 or PRI bills." Now, I believe I understand what a T1 is. What's your understanding of what a PRI bill is?

A. It's -- I'm not a technical person, and a T1 and a PRI are different ways of getting phone service, depending on how the signaling is done, and ISPs can buy that, one or the other, and by buying our service, they don't need to.

Q. Are these services that they would normally, if they didn't work with you, would need to buy from

some phone company or another?

A. Yes.

Q. Okay. And then going down in that same paragraph, "At US POPS, we believe in working with the top data and technology companies in the world, so our partners are names like Nortel, Cisco, Hewlett-Packard, UUNET," and then you go on to say many others.

I think I understand Nortel, Cisco, and Hewlett-Packard. Is it correct they tend to be hardware suppliers?

A. Yes.

Q. What is UUNET?

A. UUNET was a company that provided Internet bandwidth that got bought up by World Com, and that whole conglomerate now is part of MCI.

Q. And what is it you -- what is it you buy from UUNET?

A. They're an Internet provider, so we buy a service from them that allows us to go on to the Internet or put customers on to the Internet.

Q. Okay. We're going to be looking at some of the diagrams. Maybe we can come back to that and you can show me where on the diagram that fits. Okay.

Oh, there's one other -- just in some of the

Q. Okay. Now, in that situation, then, is there a direct data connection between here and here as opposed to going over the Internet?

MR. CALDWELL: Could you define your "between here and here"?

Q. BY MR. SMITH: Between the routers of Universal and the facility that takes that to the ISP. You indicated --

A. Yeah, it would probably be more over here. I'm not sure. You need to talk to your man or to Steve.

Q. Okay. What -- we've talked a little bit about the facilities that you have in Portland and Eugene. Do you also have equipment that you use to serve your customers that's also located in Corvallis at your headquarters?

A. We do.

Q. What equipment do you have in Corvallis?

A. Again, you would have to talk to Steve to get all the details on that, but essentially, it's monitoring, monitoring and alarming kind of things, so -- because that's where we are, we have the equipment that can monitor an alarm, all of the things that are going elsewhere. It's the network operating center.

Q. It's how you keep track of whether your network's

customer?

MR. CALDWELL: Object to the form.

A. An end user calls into our site and we put them on the Internet and they go anywhere? Is that what you're saying?

Q. BY MR. SMITH: Right.

A. We do that, yes.

Q. And one of your selling points, if you will, to ISPs is we can do that for you. You don't have to invest in the equipment to get your customers out of the Web, we'll do it for you for a fee?

A. That's correct.

Q. Okay. You talked -- we talked on -- with regard to Exhibit 3 about the radius servers, the authentication function. Do you do -- is that something you do for each of your ISP customers?

MR. CALDWELL: Which, the --

MR. SMITH: The authentication function.

A. There's a handshake between our radius server and theirs, and for each call, as I understand it, that occurs before a call is allowed on to the network.

Q. BY MR. SMITH: Okay. And let me ask it this way. Do you have any arrangements with any ISP customers in which they have said, for example, don't route it to your radius server, just route it directly to

ours and we'll do our own authentication function, and if it's --

A. In essence, that's what we're doing. I mean our proxy is talking to their radius server, their radius server is telling us whether to let them on or not. I don't understand the question.

Q. Maybe I misunderstood. So in each instance, for each of your ISP customers, that handshake that you discussed takes place each time a customer logs on and says let me on to the Internet?

A. Again, I'm not the technical person, but that's my understanding, yes.

Q. Okay. What happens --

MR. CALDWELL: Can I stop for a second. Can I have the last question and answer read back.

(The reporter read back as requested.)

MR. CALDWELL: Fine, thank you.

Q. BY MR. SMITH: Let's say you have an ISP customer you're providing the services we've talked about here where you -- their customers want to go browse the Web and you provide that functionality for the ISP. What happens if their end-user customer has trouble logging on, let's say, and it's not just that their account has been closed because they didn't pay their bill but they're having trouble

Universal claiming that a large quantity of the minutes that are generated by these end-user customers that then are handed off to Universal are subject to reciprocal compensation. Where does Universal deliver the traffic that it receives from Qwest customers to its ISP customers?

MR. CALDWELL: Object to the form.

A. I'm not sure I understand your question. Geographically? Physically?

Q. BY MR. SMITH: Physically?

A. We deliver traffic to the Internet.

Q. From Universal's perspective, do you view it as being delivered to the customer at the point where you deliver it to the Internet?

A. I wouldn't say that, no. We don't deliver it to the customer. We deliver it to the Internet for the customer.

Q. Well, your customers are ISPs, right?

A. Yes.

Q. Well, I guess you say you deliver it to the Internet for the ISP. So is delivering a -- some traffic to amazon.com's Web site, in your view, is that delivering it to the ISP customer?

MR. CALDWELL: Objection, lacks foundation.

A. No.

Q. BY MR. SMITH: In that instance where a -- some traffic is being delivered to a popular Web site like that, do you know if that traffic is being delivered to the ISP?

MR. CALDWELL: Objection to the form and foundation.

MR. SMITH: No, I asked him if he knew.

MR. CALDWELL: Read the question back.

(The reporter read back as requested.)

MR. CALDWELL: Hold on a second. It's the beginning part of the question, being delivered to a popular Web site, to which I object. Go ahead.

A. We don't deliver to a Web site. We put it to the Internet and that customer can go wherever they want. We don't track them. Mr. Ashcroft may want us to, but we don't. So wherever they go is up to them. We're providing those customers access to the Internet.

Q. BY MR. SMITH: When you say "those customers," are you talking about your ISP customers or the end-user customers?

A. I thought the question was for the end user, the ISP's end-user customers, where does that go. We take that call from the telephone network and we put it to the network -- to the Internet, and once

we've handed that off from our router to our Internet backbone providers, they're on the Internet and we're done.

Q. And it -- so -- well, I guess that takes me back to a question I had before. When you deliver it to the Internet, now --

Well, let me back up one step.

If I understood our earlier testimony, there is a point in your two POPS somewhere there where there is a UUNET or similar facility from some backbone Internet provider?

A. Uh-huh.

Q. Is that the entry point into the Internet that you're talking about?

A. Yes.

Q. And let's go back. We have an end user, dials in, it's authenticated, valid customer, customer goes online, types in www.amazon.com. You deliver that to that physical point where it enters the Internet.

Here's my question: Do you consider that to be the physical location to which you deliver the traffic to your ISP customer?

MR. CALDWELL: Object to the form, foundation.

A. We put it so they can go wherever they want on the

that --

MR. SMITH: Well, I'm just wondering what --

Q. BY MR. SMITH: When Universal places a connection from an end-user customer on to the Web, how do you characterize that service that you're providing to the ISP?

MR. CALDWELL: I object to the "places on the Web."

Q. BY MR. SMITH: Amazon.com, for example?

A. We don't characterize where they go, what they do, any of those sorts of things. We call our service a managed modem service.

Q. Now, I notice -- we'll get to this in a few minutes or awhile. You provided in response to the recent interrogatories a list of customers. One list is for attorney's eyes only and I can assure you that's -- I'm thus far the only one who has seen that one, but you provided another one that just lists customers and then just the city that I think is where you bill them for their services, correct?

A. Uh-huh.

Q. On that one, I noticed, I think there were four or five ISPs that were where the -- at least the billing is to locations out of Oregon. Do you recall those?

A. I don't recall the number being four or five. I thought there were a couple, yes.
Q. Whatever the number may be, and we can look at that one, do you know where the physical equipment owned by those ISPs, those two or four or five, whatever the number is, is located?
A. No, I don't.
Q. Okay. Is it conceivable that their equipment is located somewhere other than in the state of Oregon?
MR. CALDWELL: Object to the form.
A. Regardless of where their billing address is, their equipment could be located other than the state of Oregon.
Q. BY MR. SMITH: Now, I believe you may have indicated in your interrogatory responses that the -- on the -- the exhibits we had asked some questions about, the cloud that says Internet and/or data network, and I believe you indicated in one of the data responses that you do not actually deliver any traffic to ISPs over a data network. Do you recall that?
A. I do.
Q. Now, what about the frame relay that we've talked about?

Q. Who do you acquire that from?
A. I'm not sure. I think it may be ELI.
Q. Do you have any similar kind of connections that connect Eugene to Corvallis or Portland to Corvallis?
A. We had some frame relay connections and we had a connection through a customer, too, but I don't remember what all of those were.
Q. Okay.

MR. SMITH: Let's take a short break.

(A recess was taken from 2:20 to 2:28.)

MR. SMITH: Let's go to another exhibit.

(EXHIBIT marked: 7.)

MR. SMITH: Again, this is something from the Web site that is poorly copied in Exhibit 1. This one everybody gets color.

Q. BY MR. SMITH: Mr. Martin, Exhibit 7 was taken from your Web site, again, just four or five days ago, and I believe it purports to identify the different areas that is served -- that are served by Universal in terms of areas where customers can originate traffic and be served by Universal.

Is that a fair way of stating it or -- if it's not, please describe what the exhibit is.

A. That's a fair way of describing that.

Q. Okay. One thing, as I look here, it indicates there's nine plans, and maybe we could walk through. The first one is North Coast Connect, and it says Astoria, Cannon Beach, Rainier, and St. Helens. So where would those be on here?
A. On the north coast.
Q. Is that this area?
A. Yes.
Q. Up here? And I'm pointing to the upper left portion.
A. It includes those four cities.
Q. Okay. So help me understand, then, when you -- when an ISP customer subscribes to that particular plan --

Is "plan" the right word?

A. Rate plan, plan.
Q. Rate plan, okay.
A. That's fine.
Q. What is it they get from Universal?
A. Well, first of all, there's a commitment on a -- a relationship that we're going to provide them managed modem service, and within that, if they signed up for that area, then they would be able to send their customers into that area and we would take those local calls and put them on the

Internet.

Q. Okay. So what they can do is then, you will assign local numbers that you get from NANPA, is that the -- from NANPA that serve in this case four areas, now, maybe there are others, but at least those four areas. They can then go market, set -- engage in sales activities to persuade end-user customers living in those areas to utilize their Internet service?

A. Yes.

Q. Is that right?

Now, if someone is serving North -- if you have a customer that buys North Coast Connect, where is that traffic ultimately routed? Is that into Portland or is that into Eugene?

A. Portland.

Q. And how does that traffic get from those areas into Portland?

A. Those customers would call those local phone numbers, and if it was Qwest, Qwest would bring those to our single Point of Interface in the Pittock Building and hand those off to us.

Q. Okay. Let's look at -- the Central Coast Connect, it says Newport and Florence, I'm assuming that's over -- I can see Newport and Florence there, it's

kind of halfway down the coast. Is it only those two communities you serve there, or is it more broad than that?

A. Typically it's a local calling area or an extended area of service.

Q. Okay. That would be associated with Newport?

A. A community.

Q. Okay.

A. And that -- if you can call a local number in that community maybe from a local -- from another town or from in there, it's whatever that local calling area is.

Q. Okay. I'm just trying to understand, the -- one thing I'm not clear on is why -- most everything is blue except it looks like Portland is red, and then an area that includes Eugene and Corvallis is yellow. Do you understand the reason for the different color scheme here?

A. Yes.

Q. What is that?

A. It's market -- different kinds of markets and pricing.

Q. So what does yellow mean, then?

A. What yellow is trying to do is show, besides just the Portland area, which is one rate group, there's

another one called I-5 Connect, so the yellow includes Portland and goes all the way down to Eugene, so it's trying to show a geographical area there.

Q. So if you do I-5 Connect, you get essentially a combination of -- is that a combination of two different ones, Portland Metro Connect, and can you just buy the yellow by itself?

A. Yes, you can.

Q. What's that one called?

A. The I-5 Connect.

Q. But it includes Portland?

A. Yes.

Q. Okay. I guess what I was thinking can you buy the yellow without Portland?

A. We've tried to standardize, but we're in business, and if a customer wants something a little special, we'll try to find a way to accommodate them, but our marketing has been broken down into these kinds of ways and that's our focus and the way we generally sell the business.

Q. And as I understand it, you have one, the last one, US POPS Connect, that essentially is the whole shooting match?

A. Yes.

Q. Do you have customers that subscribe to that plan?
A. Yes.
Q. Would that typically be the majority of your customers?
A. The minority.
Q. What?
A. The minority.
Q. Okay. And again, without going customer by customer, typically do -- would the majority of customers only subscribe to one of these smaller plans that's not combined?
A. The -- I think so, but Dave knows that better than I --
Q. That would be Mr. Hodgert?
A. -- better than I do. Customers are generally concentrating in one area.
Q. Now, would you agree that some of the areas covered by your plans are actually served by other local exchange carriers other than Qwest?
A. Yes.
Q. Coos Bay would be an example? Do you know?
A. That's true.
Q. My understanding is Beaverton, for example, is served by Verizon?
A. That's correct.

there's unlimited usage, basically?

A. I guess I don't.

Q. Okay.

A. Most of them are real tight to try to kick people off and control that. That's part of why our Web portal was such a big advantage to them, but I don't know what they charge. I don't know what they do. I don't get in -- that's their business.

Q. I assume if you charge on a per-minute basis, you're less likely to kick somebody off than if it's all you can eat and they're sitting there inactive?

A. Sure.

Q. So I'll ask Mr. Roderick about that.

Go to paragraph 12 of your affidavit on page 3, I'll read this. "The local telephone numbers called by end-user customers are assigned to Universal by virtue of its status as a CLEC, and Universal in turn uses those local numbers to support its ISP customers' local access needs."

We've talked kind of around the edges of it, but if you could spend a minute and describe your understanding of the process to obtain the local phone numbers, by which Universal obtains local phone numbers in an area.

A. Well, as you know, you don't pay for the numbers itself, but there's quite a process of being involved with NANPA and these other organizations that manage phone numbers, and you need to forecast those, you need to manage them, you need to apply for these numbers and be able to get those, and then after you go through that process, you're assigned typically now a thousand block, not a 10,000 block of numbers.

Q. And if I recall, one of the reasons for that is they're worried about having to continually open new area codes and that sort of thing?

A. Oh, absolutely, and usually a thousand is enough to get people started and they can get some more.

Q. Right. I've hung around telecommunications awhile, but NANPA is sort of a new thing to me. Is that in Washington, DC? Where does your consultant go to get those numbers assigned?

A. There's a bunch of these things. NANPA, New Star, Telecordia. I don't know physically where NANPA is located.

Q. Okay. You indicate that it's by virtue of your status as a CLEC. When you say that, what do you mean?

A. My understanding is if you're not a phone company,

you can't get numbers.

Q. So an individual ISP who just wanted to set up his own -- get his own numbers could not go do that unless they were a CLEC? Is that --

A. Unless they're a phone company. I don't -- whether it was an ISP or a corporation like Intel, I don't think they can just go get numbers and say they're a phone company.

Q. Now, once you decide to go into a new area, I assume from what you have said the first task is getting some numbers assigned. Is that right?

A. First task is deciding whether you're going to --

Q. No, no, not deciding. You have decided, and I'm just trying to walk through the continuum of the things you need to do from deciding we want to serve the north coast or pick an area to actually providing the service. I'm trying to walk through the things you need to do.

A. All right.

Q. Maybe I jumped the gun. Is obtaining access to the numbers kind of the first step of the process, or are there a number of things you do at the same time?

A. Well, you have to have a place to start and so a phone number gives you a place to start, and our

POP gives you the end point, so that's -- that is a place that needs to go along, and then you need to order the circuits from whichever ILEC is involved.

Q. So the circuits, and again I'm referring to Exhibit 6, what you have identified as Qwest-provided LIS circuits, at some point along the way if you're going to serve a new area or if business is growing in an area, the way you obtain more of these circuits is to enter an order with Qwest. Is that --

A. That's correct.

Q. Okay. On these kinds of circuits, do you know of a typical time frame in which they are provided from order to having them up and running?

A. Typically a new area would be 45 days to nine months, a year, with Qwest to get something going. Once you have something, two to three weeks, usually you can augment or add to that.

Q. One of the questions I have is the number of circuits you have here is a function of a decision you make as opposed to one Qwest makes; is that correct?

A. Yeah, really what's going on is there's coordination. We're supposed to forecast those; we try to forecast it. We're asked to put the order

Q. BY MR. SMITH: -- phrase?

MR. CALDWELL: -- that's unfortunately where we -- if you're -- the same instruction as before.

THE WITNESS: Yes. I'm not able to talk about that because of the conversations you and John and Chris and I have had.

MR. CALDWELL: Okay. Our witness -- I'll instruct the witness not to answer on the basis of attorney-client privilege.

(Instruction by counsel.)

MR. SMITH: Okay.

Q. BY MR. SMITH: You serve Astoria, correct?

A. Yes.

Q. And you have ISPs that serve Astoria?

A. Yes.

Q. Let's say you have one of those ISPs, and I can't name them, but has a customer, a Qwest customer who wants to get on an Internet session.

First of all, tell me where that -- how that call is routed to get to the Point of Internet connection.

A. That Qwest caller is carried to our single Point of Interface and we put it on the Internet.

Q. Do you have any reason to believe that call is going back to Astoria, Oregon?

A. I have no reason -- I have no idea where it's going.
Q. So it could be going back to Astoria?
A. Certainly.
Q. But it could be going anyone of however many Web sites there are in the world elsewhere?
A. Absolutely.
Q. Okay. Do you -- where would you say that call terminates?
A. That's a legal definition that I'm uncomfortable discussing, because --

MR. CALDWELL: I'm going to -- can you -- what was the question? I believe it was a short one.

MR. SMITH: I asked him if he knows where that call terminates, that kind of a call. Starts in Astoria.

MR. CALDWELL: We may have a matter of privilege, but in addition, we definitely have a question of asked and answered. I mean I think he's testified numerous times that they take local calls and put them on the Internet, and from there he does not know where they go. In fact, most recently said they may go back to Astoria, they may not go back to Astoria.

So in terms of physically what happens, I think

he can describe. If you're going to use terms like "terminate" and so forth, I think that's where we get into an attorney-client area.

Q. BY MR. SMITH: Let's take that same question and assume that he gets on, wants to buy a book from amazon.com and comes to your POI, he's validated, authenticated as a customer, and he types in www.amazon.com, where does that call go?

A. We take the local call to the POI and we put it on the Internet.

Q. Do you know where amazon.com's Web site is hosted?

A. No.

Q. Do you have any reason to think it's in Astoria, Oregon?

A. No.

Q. Okay. So is the answer that once you put it on the Web or on the Internet, you have no information as to where the call goes?

MR. CALDWELL: Object to the form. Also asked and answered.

A. I have answered that numerous times. We put it on the Internet, it goes wherever it goes, and I have no idea --

Q. BY MR. SMITH: Okay.

A. -- where that goes.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

QWEST CORPORATION,
a Colorado corporation,
Plaintiff/Counter Defendant,
vs. No. 04-CV-6047-AA
UNIVERSAL TELECOM, INC.,
dba US POPS, formerly
known as Universal
TELECOMMUNICATIONS, INC.,
an Oregon corporation,
Defendant/Counter Plaintiff.

ORIGINAL

DEPOSITION OF DAVID R. HODGERT

Taken in behalf of the Plaintiff

July 29, 2004

* * *

there is now some traffic that is coming from Universal to Qwest, and the question I have is has Universal implemented any new products or services to customers that you're aware of that would be generating traffic that goes from Universal customers to Qwest, to Qwest's network?

MR. CALDWELL: Object to the form.

A. I have a new product to sell.

Q. BY MR. SMITH: What is that?

A. That -- I don't know what we -- Voice Over Internet.

Q. VOIP, as it's --

A. Yes.

Q. A long distance service utilizing -- let me tell you my understanding of VOIP. Voice Over Internet Protocol is the acronym. That's a service where end-user customers can utilize the Internet for long distance services as opposed to the traditional phone?

A. I don't know how they use it.

MR. CALDWELL: Object to the form.

Q. BY MR. SMITH: That actually wasn't a question. I was trying to give you my understanding. What I have described to you, is that your understanding?

A. I don't know what it is, no.

Q. What is --
A. I don't know my understanding.
Q. What does your service do?
MR. CALDWELL: If you know.
A. Yeah, I don't know exactly how it works. It's a product that the smart guys know how to put together and I figure up a price and sign the contract and work the agreement with them.
Q. BY MR. SMITH: As the sales guy, how do you describe it to your customers? What does it do for them?
A. I don't really have to describe it.
Q. Who describes it to customers?
A. These guys are smarter than I am.
Q. Who are "these guys"?
A. Well, the companies that are using that product. They -- they know how it works.
Q. How do they know you can sell it to them if you don't go tell them that?
A. Because --
MR. CALDWELL: Objection, foundation and speculation. You're asking him how do his customers know? Unless they have told him --
MR. SMITH: Let me back up.
Q. BY MR. SMITH: You said, I think you told me, I've

got a new product to sell, right?
A. Right.
Q. And I assume that product was created by Universal, right?
A. Okay.
Q. Is that right?
A. Yes.
Q. Okay. Now you're a sales guy. You've got a new product. When you call on a customer, do you tell them about the new product?
A. Yes.
Q. And what do you tell them it is?
A. We have VOIP available.
Q. And if they say, "How does it work," what do you tell them?
A. I haven't.
MR. CALDWELL: Objection, foundation.
A. I haven't run across anybody that asked that question.
Q. BY MR. SMITH: Is it your understanding that it's a service that allows their customers to call long distance over the Internet?
MR. CALDWELL: Objection, asked and answered.
A. I don't know how they use it, how they would decide to use it.

Universal Telecom

Universal Telecom was founded on the premise of being a complete single vendor provider to regional ISPs. By utilizing convergent network technologies, we are able to span the gap between traditional phone service and the latest Internet telephony to bring our customers a new harder working network that is a conduit for Voice, Video and Data.

Marketed under the trademark US POPS™, we are in the business of providing customers Telecom and Internet services bundled into a broad range of offerings that can be tailored to fit just about any size ISP. From bundled Managed Modem services to backbone DS3 Internet offerings, our customers benefit by expanding their "footprint" throughout the path of our network without having to incur exorbitant capital and management costs associated with building their own facilities.

Mission Statement

Universal Telecom will serve as a leader in the Data Communications Market for delivering products that offer value and worth to the regional Internet Service Provider.

Why US POPS?
Because we save you money. Our solution provides phone access, equipment, bandwidth, maintenance and network management all rolled into one simple package. No more monthly T1 or PRI bills. No more leasing equipment. And most importantly, no more 3:00 a.m. "Service Down" calls. Your new focus is growing your business...without the headache. At US POPS, we believe in working with the top data and technology companies in the world, so our partners are names like Nortel, Cisco, Hewlet Packard, UUNET and many other familiar names in the market today. Modem to port utilization management has never been this easy, and you'll be able to watch it all through your real time CustomerWeb Portal. That's US POPS.

The power of presence ... the power to grow.

Management Team

Jeffry R. Martin, President
With over twenty years in the High Tech business sector, Jeff brings valuable knowledge through his CPA and CMA training, as well as, financial management experience in several well-known companies such as Hewlett Packard and Intelledex.

Stephen Roderick, CEO / Richard Roderick, Lead Internet Engineer
As co-founders and initial investors for Universal Telecom, Stephen, along with his brother Richard, have been the initiators of three successful start-ups in the Data and Telecom sectors - launching ProAxis Communications in 1995, The GoHome Networks in 1998, and Universal Telecom in 1998.

David Hodgert, Director of National Sales
As Universal Telecom's Director of National Sales, David Hodgert is responsible for developing the US POPS wholesale managed modem service, Bandwidth sales, large enterprise, Site construction and business sales channels. Prior to joining Universal Telecom in January, 2000, David founded a successful international distribution company, which served the entertainment and sporting industry, growing the company in 18 months from start up to 10 Million in sales. The Company expanded to deliver outstanding service and quality products to companies such as The Southland Corp, American Golf, Marriott Corp, Flemings International and Sysco. Previously he was President of a real estate development company in a tourism focused community.

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Super Point of Presence

A Point of Presence is an access point to the Internet. A US POPS Super Point of Presence is a highly reliable, fully redundant, multi-homed access point built on an all digital platform with the latest in equipment technology.

We realize "downtime" can kill your business, so we've built each of our Super POPS to ensure maximum redundancy in the areas of power, servers, routers, modems, switches and Internet backbone services. Industry leading performance that provides you a quality product built upon stability is what you can expect from US POPS.

Diagrams

Current ISP Internet Access

Internet Access Using USPOPS™ Network

User Authentication Process with USPOPS™

Maps

US POPS Coverage Areas

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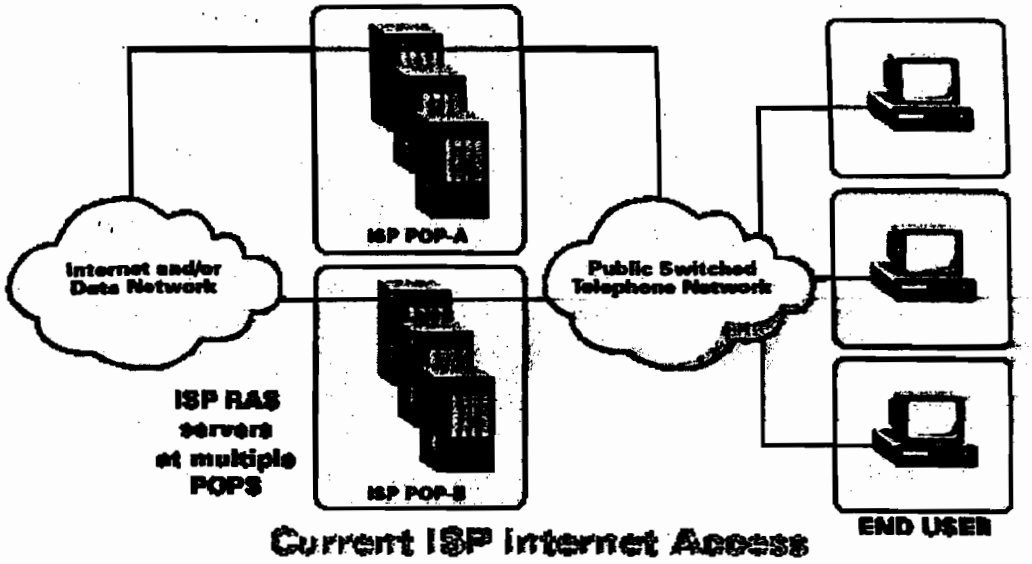
<< Internet Access Using USPOPS™ Network | User Authentication Process with USPOPS™ >>



Current ISP Internet Access

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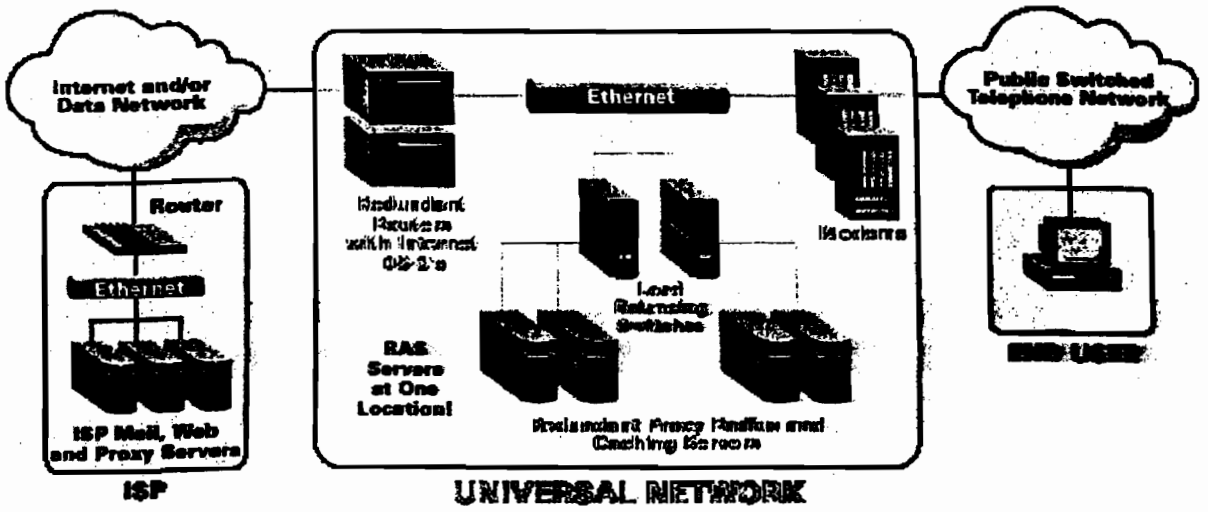
<<User Authentication Process with USPOPS™ | Current ISP Internet Access >>



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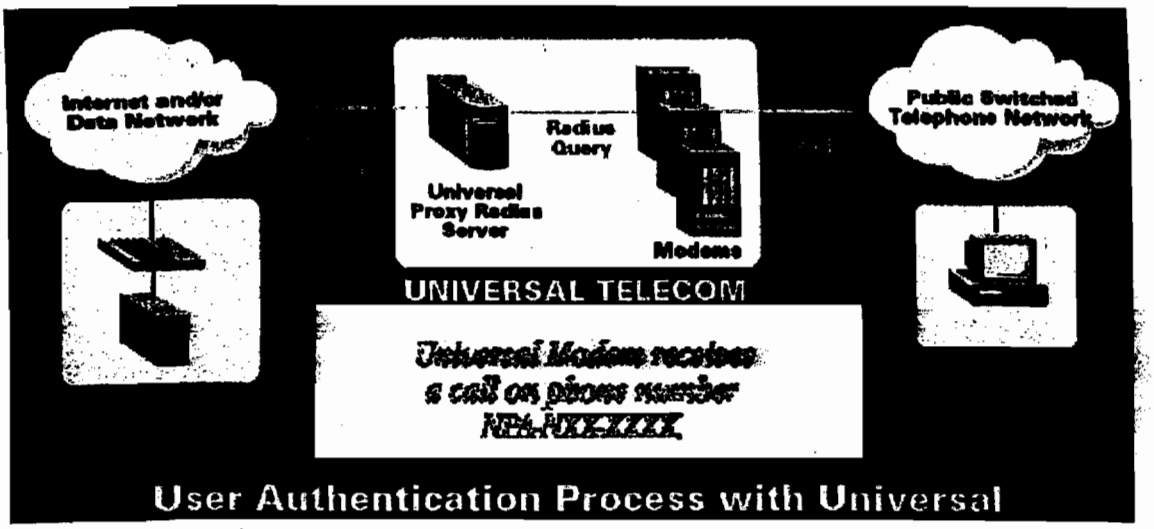
<< Current ISP Internet Access | Internet Access Using USPOPS™ Network >>



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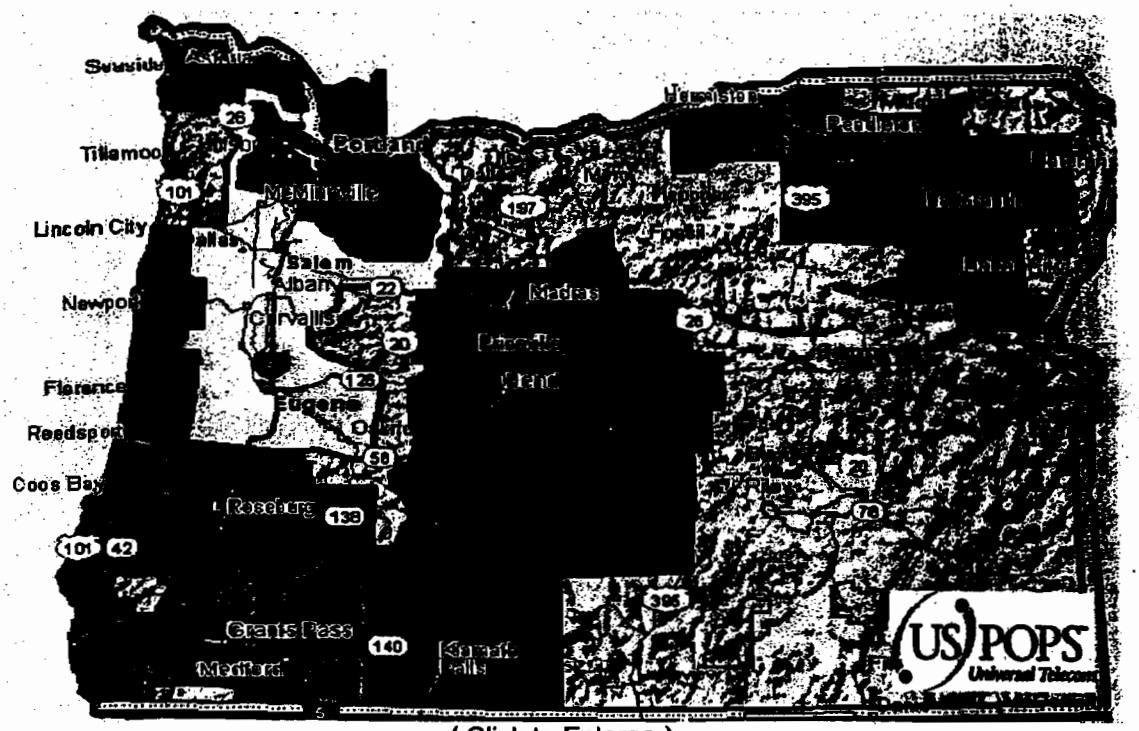
US POPS™ Coverage Areas



(Click to Enlarge)

US POPS™ currently offers local dial-up numbers within the following rate plans:

North Coast Connect
Astoria, Cannon Beach, Rainer, St. Helens

Central Coast Connect
Newport, Florence

South Coast Connect
Reedsport, Coos Bay, Bandon, Gold Beach, Brookings, Port Orford

Southern Oregon Connect
Roseburg, Grants Pass, Medford, Klamath Falls

I-5 Connect
Portland, Beaverton, Woodburn, McMinnville, Salem, Albany, Corvallis, Eugene

Portland Metro Connect
Portland, Beaverton, Woodburn

Central Oregon Connect
Bend, Redmond, Madras

Eastern Oregon Connect

Hermiston, Pendleton, La Grande, Enterprise, Baker City

US POPS Connect

Includes all of the cities listed in other rate plans.

content

PRODUCTS & SERVICES

Managed Modem Plans

Save time on buying, integrating and maintaining your modems, access servers and network bandwidth by choosing a Managed Modem Plan from US POPS. We give you the opportunity to create more value in your business by freeing up working capital that can then be used for expanding into new markets and meeting your business goals.

Each plan is a bundled service that includes:

- Local Phone Number
- V.90/V.92 Modem Termination
- Internet Access w/56k dial-up & ISDN
- Real-time Usage Statistics/ Web Portal
- NOC support
- Convenient billing by the Port or Per User
- Value Transfer Program Enrollment
- SpikeBank Program Enrollment

How does it Work? Your customers call a local phone number and are authenticated by your radius server. The subscriber is then placed directly on the Internet or delivered to your servers via a dedicated circuit or Internet connection. Diagram

Plans and their Descriptions

North Coast Connect	*Astoria, Cannon Beach, Rainer, St. Helens*
Central Coast Connect	*Newport, Florence*
South Coast Connect	*Reedsport, Coos Bay, Bandon, Gold Beach, Brookings*
Southern Oregon Connect	*Roseburg, Grants Pass, Medford, Klamath Falls*
I-5 Connect Plan	*Portland, Beaverton, Woodburn, McMinnville, Salem, Albany, Corvallis, Eugene*
Portland Connect	*Portland, Beaverton, Woodburn*
Central Oregon Connect	*Bend, Redmond, Madras*
Eastern Oregon Connect	*Hermiston, Pendleton, La Grande, Enterprise, Baker City*
US POPS Connect:	*Portland, Beaverton Woodburn, McMinnville, Salem, Albany, Corvallis, Eugene, Roseburg, Grants Pass, Medford, Klamath Falls, Bend, Redmond, Madras, Hermiston, Pendleton, La Grande, Enterprise, Baker City, St. Helens, Rainer, Astoria, Canon Beach, Newport, Florence, Reedsport, Coos Bay, Gold Beach, Bandon, Brookings*

Local Calling Area Map

The US POPS **Value Transfer** plan gives you the flexibility of transferring the contract price of one product or service to another product or service - dollar for dollar. This means underutilized ports in one area can simply be transferred to where you need them the most. No need to worry about expensive change fees or wasted

ports sitting idle... because we give you value.

Think of **SpikeBank** as your overdraft protection against customers receiving busy signals. The option to "spike" up versus having to pre-pay for additional ports that may not be utilized each month saves you BIG money. Manage your growth - without the risk.

Contract Terms

Each Managed Modem Plan is distinguishable by its Local Calling Area "footprint". The price of each plan differs due to the cost associated with building into each market. Therefore, your contract price will be determined by:

1. Number of Ports

- There is a minimum of 10 ports per Plan
- Seed Program has different minimums

2. Contract Length

- Minimum Contract term is 12 months
- 12, 24, 36 Month Contracts offered

3. Plan Chosen

Contact a Sales Executive

US POPS™ Build Program

The new US POPS Build Program is designed to help existing customers grow their company footprint without tying up valuable resources. By utilizing our infrastructure to expand into new areas, you can save precious capitol dollars while focusing more of your time and money on marketing your business to new customers. This way, you can manage your growth without the distraction of managing equipment and networks.

There are two plans to choose from with each including many of the same great service and features as our standard Managed Modem offerings - including

- Local Phone Number
- V.90/V.92 Modem Termination
- Internet Access w/56k dial-up & ISDN
- Real-time Usage Statistics/ Web Portal
- NOC support

The Expansion Plan let's you "test market" any of our local calling areas for 120 days with 5 ports in any one "connect plan" (per package) for only $99 per month plus installation. At the end of the 120 days of service re-evaluate whether or not the area will increase your business on a longer term plan, for details talk with your US POPS Representative.

The Seed Program adds to your current presence through the US POPS Oregon Network with your own unique local numbers in each of the US POPS Network local calling areas for only $195 per month plus installation. And as we grow you grow...that gives you 31 numbers today with more numbers being added just about every month! A one-year term applies, for details talk with your US POPS Representative.

Call us today at (541) 752-9818 and we'll help you grow tomorrow!

Local Calling Area Map

content

Contact a Sales Executive

Internet Bandwidth

We offer efficient high-speed digital access utilizing a T1 connection for either Point-to-Point or Frame Relay service.

Point-to-Point Offering over T1

- 512 Kbps
- 768 Kbps
- 1.544 Mbps

For customers needing a non-mission critical high bandwidth solution for their Data needs, we offer Frame Relay service with the following Port sizes:

- 512 Kbps
- 768 Kbps
- 1.544 Mbps

Point-to-Point over Ethernet is also offered on premise out of the two facilities housing our Internet POPs in increments of half Megabit up to 100 Mbps.

- Pittock Block in Portland
- 2350 Oakmont Way in Eugene

Contact a Sales Executive

Provisioning Note

- For Point-to-Point services US POPS will order and manage the provisioning of your T-1 from the Local Exchange Carrier to either your building Demarcation Point or an extended Demarcation Point - typically to your office phone closet.
- Frame Relay customers will need to order a T-1 connection through their Local Exchange Carrier and have a PVC (Permanent Virtual Circuit) provisioned to point to the US POPS network.

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **AFFIDAVIT OF NANCY J. BATZ IN SUPPORT OF QWEST'S MOTION FOR SUMMARY JUDGMENT** on the following named person(s) on the date indicated below by

- ☐ mailing with postage prepaid
- ☐ hand delivery
- ☐ facsimile transmission
- ☒ overnight delivery
- ☐ e-mail
- ☐ notice of electronic filing using the Cm/ECF system

to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said person(s) at his or her last-known address(es) indicated below.

Joel S. DeVore, Esq.
LUVAAS COBB
777 High St., Suite 300
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DATED: June 25, 2004.

STOEL RIVES LLP

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Attorneys for Plaintiff Qwest Corporation

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

QWEST CORPORATION,
a Colorado corporation,
Plaintiff/Counter Defendant,
vs. No. 04-CV-6047-AA
UNIVERSAL TELECOM, INC.,
dba US POPS, formerly
known as Universal
TELECOMMUNICATIONS, INC.,
an Oregon corporation,
Defendant/Counter Plaintiff.

ORIGINAL

DEPOSITION OF STEPHEN C. RODERICK

Taken in behalf of the Plaintiff

July 28, 2004

* * *

I believe that we can provide, maybe not all today, but our goal would be to provide all of the services that any other carrier could provide them.

So that's our goal. I think that we're close.

Q. BY MR. SMITH: Okay. What is missing, if you will?

A. Probably circuit connections to their end users, so T1s.

Q. Okay.

A. Things like that.

Q. Okay.

A. We have not implemented that yet.

Q. Would one be Web hosting?

A. No. That's kind of your previous question. So those are the things we don't do.

Q. Okay.

A. Billing end users, email.

Q. Okay.

MR. CALDWELL: Accounting. If I can -- if I can go back to that question, that was my problem with the form of the question, "all the services they need to operate" would be legal --

MR. SMITH: Right, fair.

MR. CALDWELL: -- food vending machines.

MR. SMITH: Okay. That's fair.

Q. BY MR. SMITH: In terms of -- and perhaps I ought

A. That's probably not accurate.
Q. Well, make it accurate for me, please.
A. The proxy radius process is transactional. It's not full-time.
Q. Okay.
A. So it happens at a point in time. So an ISP has that point in time when they send the accept --
Q. Okay.
A. -- to send any information on to the modems that they should know about that session.
Q. All right.
A. So they would have to know right then what that time limit was.
Q. Okay.
A. It would not be what I think you were thinking they were monitoring.
Q. I'm not talking about a -- well, I think I was, too, so. And I want to make sure. Here I'm talking about not a time limit to bump them. I'm talking about measuring time on -- online for purposes of billing purposes for a customer that doesn't have an unlimited plan. So were we --
A. Okay.
Q. Okay.
A. There are more transactions in the process.

Q. Okay. Explain those, if you would.
A. After an accept has been sent, then the person is set up, they're now able to go wherever it is they're going to go. The proxy radius server in the Universal network will send what's called an accounting start packet to the ISP's radius server.
Q. Okay.
A. This will contain a lot of information about the user name again, the phone number that they called, or the phone number they called from, and maybe the speed at which they connected. When the user disconnects, the final packet will be sent to the ISP's radius server. It's called a stop accounting packet.
Q. And then the ISP's radius server has some mechanism to say I had a start packet that said they started here and I had a finish or a termination packet or whatever the right term is that's here that measures that time and then somehow sends that to wherever their system is that keeps track of time, is that --
MR. CALDWELL: Object to the form.
A. I would imagine.
MR. CALDWELL: And foundation.
MR. SMITH: Well, I just -- okay.

MR. CALDWELL: Starting over.

Q. BY MR. SMITH: If Universal were in the business of providing local exchange traffic and sending traffic back on to Qwest's network, would this switch be utilized to send information to Qwest similarly to the way the traffic now flows towards Universal?

MR. CALDWELL: Objection to the form and foundation. Go ahead.

A. Yes.

Q. BY MR. SMITH: Okay. So the switch is capable of doing two-way traffic if Universal chose to do that?

A. Yes.

Q. Okay. Now, I think we're -- we have one other piece of equipment I would like to talk about, and that's the routers that sit over here. We worked our way through the modems and the radius servers and the load-balancing switches are sending the traffic where they want to send it. What is the specific function of routers, then, or functions? I mean I don't want to imply that it's only one thing.

A. Routers make determinations on where to send traffic or where to route it to. They're mostly

not very smart, and the reason I say that is in our SS7 example, you can go all the way down the line and make sure there's going to be capacity before we send anything. Routers pick a path and send it on.

Q. Okay.

A. It could drop off the face of the earth a moment later, but that's -- really all they can do at that point is make a routing decision based on the connections that they have.

Q. When you say "a routing decision," is this where -- let's assume I'm this end user, I've gotten on and I've been validated and all of that is set up and then I say www.amazon.com. Is the router -- is that the piece of equipment that says, ah, ww --

A. No.

Q. Okay.

A. That would be -- maybe what's not in this picture would be a DNS server.

Q. Oh, okay. Let's back up and talk about DNS. Tell me about a DNS server.

A. DNS stands for domain name system, and DNS was created so that laypeople could have a nice friendly name like www.amazon.com instead of what is called an IP address.

Q. Which is a lot more numbers and letters?
A. Just numbers.
MR. CALDWELL: Decimal points.
A. It's just numbers. It's written with decimal points so you can actually remember the digits better like a phone. It makes it a little easier. The DNS server takes a name and translates that into the number that corresponds to that name.
Q. BY MR. SMITH: Oh, okay.
A. So it actually potentially reaches out across the Internet to look that information up or it may have the information already or it may have cached the information.
Q. I'm assuming with the amazon.com or eBay, the more popular one, they tend to be cached in DNS servers because they're so commonly used?
A. Yes.
Q. Okay. The DNS servers that you utilize, would it have that kind of information?
A. I don't know.
Q. You don't know?
A. It -- you know, a cache is based on how recently it was accessed.
Q. A cache isn't a permanent record?
A. Correct.

Q. It's keeping recent stuff?
A. Exactly.
Q. Okay. I'm going to be able to amaze my friends. Not that they're going to care.
Okay. So now, does the DNS server sit somewhere in between the load-balancing switch and the routers?
A. It would be --
Q. Where would it sit?
A. It would down -- you see the servers down here? It would be in that group.
Q. The radius?
A. There would be radius, there would be caching, there would be DNS servers. The load balancers would then distribute those requests to the DNS servers to keep them --
Q. Okay. So the DNS server does its thing and then it flows through the --
A. Then it's done.
Q. If I understand this correctly, what it does is it takes an easily recognizable name like www.amazon.com and either goes out and finds out what the address is or has already got it cached in there and then sends it to the router?
A. No.

Q. All right.
A. The end user's browser would -- the end user would type in amazon.com.
Q. Right.
A. The browser would make a DNS query to find out what the IP address was.
Q. Okay.
A. Then whatever transaction the browser is going to do, would do it with that IP address directly.
Q. Okay. Now, is the function of the router to go find that more lengthy address once it's all been determined? Is that --
A. No.
Q. So what's --
A. So.
Q. What is this router doing?
A. We're dealing with packets of information.
Q. Right.
A. So whatever information you have is put into a packet.
Q. Right.
A. That packet travels over the network, Internet, you know, the great cloud.
Q. Right.
A. As that packet comes to a router, part of what's in

the packet is the destination IP address. The router then, based on that IP address, picks its best next step.

Q. Now we're talking a router that's not yours or anybody else's?

A. Might be ours. At this point it's ours because I'm still on the diagram here.

Q. All right.

A. So our router would then say, here's the IP address. The shortest route to that is on this connection, and it would forward it on to the next router, and then from there --

Q. Then you're on the -- you're into routers that are out in the great Internet cloud and ultimately you end up at the --

A. Destination.

Q. -- destination, okay.

Let me ask you this. The term "Super Point of Presence" or Super POP, recognizing that we have added some pieces of equipment to this, is that what you understand is being referred to when you talk about a Super POP?

A. Well, I mean that's the POP. I mean the POP is really an industry standard term, so.

Q. What does Universal mean, if you know, by a Super

POP?

A. I think it's a -- I think it's better.

Q. And I guess my question, is it really better or are there some things you do --

A. It's pretty standard.

Q. Okay. And I hate to backtrack. I think you may have answered this, but forgive me.

The authentication process that takes place between your radius server and the radius server of the ISP. Does your company -- I mean, let me do this.

Is it conceivable that you would have an ISP who would say I don't want to invest in radius servers, we want to use yours, but we'll somehow download some information into your radius server every day that tells you who is legal and what the perimeters are? Is that --

A. That is technically feasible. We don't provide that service. We require you to have your own radius server.

Q. Thank you. There is a reference somewhere to the V.90/V.92 standard modem. Could you just help me understand what that means? Is that just saying that we're meeting industry standard? Is there something more to that?

discussed earlier. Am I right?
A. Yes.
Q. Okay. So my question, then, is what is the means by which -- let's say the modems in Portland, what kind of circuits are in place that allow them to then communicate with one of the four radius servers that are located elsewhere?
A. I can't guarantee you, you know, a route --
Q. Okay.
A. -- that would be taken --
Q. Right.
A. -- because the routers are dynamic and make routing decisions based on current conditions. We have a circuit between Eugene and Portland.
Q. Okay. And is that the ELI circuit?
A. I believe that is so. I won't ask him since it's my deposition.
Q. No.
A. Yeah, I believe that ELI is providing that.

There's a connection between Portland and Corvallis and there's a connection between Corvallis and Eugene.

Q. So the three locations you have, there is a --
A. Kind of a ring.
Q. Okay. And you have an -- I'll call it a dedicated

circuit that connects those, each of those three locations to each other? If "dedicated" is the wrong word --

A. I don't believe that Corvallis and Portland are connected with a dedicated circuit.

Q. What kind of --

A. Well, I think it's more Internet.

Q. Okay. That was really my next question.

Let's back up.

Eugene and Portland are connected by a -- some sort of dedicated private line circuit that connects the two?

A. Yes.

Q. That's your two POPS, right?

A. Yes.

Q. The connection between Eugene and Corvallis and the connection between Portland and Corvallis is what you're saying, that rather than being some sort of dedicated facility you go buy from another telecom company or somewhere, that the communication happens over in the Internet cloud in some manner?

A. No. Corvallis to Portland might. I believe Eugene and Corvallis are dedicated.

Q. Okay. Do you know who the vendor there is?

A. I believe it's USWest, Qwest.

connection -- so there's two connection points.
Q. Right.
A. There can be multiple.
Q. Right.
A. You can have multiple virtual circuits connecting into one circuit, but those connections are effectively hardwired even though they're just virtual, so you as the end user don't know how it gets through the cloud to get there, but it will always go to that other side.
Q. The provider of the frame relay doesn't guarantee you a route but they guarantee you the capacity, if you will, and the connection?
A. Typically, typically. Often with frame relay, you purchase it at a certain capacity, you're guaranteed a minimum capacity, but you're not necessarily guaranteed the maximum capacity.
Q. Okay. Do you know this particular customer who is the provider of the frame relay?
A. It's Qwest.
Q. Is it? Do you know -- obviously you know where it comes to Universal. Is that Eugene?
A. Eugene.
Q. Eugene. Do you know the physical location of the other end?

A. If I knew the customer, I probably would know. I don't.
Q. Okay.
A. And in actuality, I don't know that it's in Eugene.
Q. Okay.

MR. CALDWELL: You mean where it comes into the Universal technology?

THE WITNESS: It's just been my assumption for a very long time.

Q. BY MR. SMITH: Could be Portland?
A. It more likely could be Corvallis than Portland, but I just don't know.
Q. Okay. Now, again, we're looking at Exhibit 3. As you go through this --

THE WITNESS: Excuse me.

(Discussion off the record.)

Q. BY MR. SMITH: Looking at Exhibit 3, I'm just trying to make sure who had what. I'm just -- all of the equipment that we've talked about, and we've added your telephone switch which is over here, and the public switched network, we've added the DSM server, DNS server.
A. Yes.
Q. That is all equipment that is purchased and operated by Universal. Is that correct?

A. Yes.
Q. Okay. And then the radius server --
A. That might not be.
Q. If you need to --
A. The caching servers --
Q. Yeah.
A. -- I don't think that we purchased those.
Q. You may lease?
A. No.
Q. Okay.
A. I'm not sure that we operate them. We allow them to be on our network.
Q. Who --
A. I believe they're owned by a company called Akamai.
Q. Are they -- let's make sure I understand. Are they a vendor to you or are they a vendor to your ISP customers?
A. Neither.
Q. How do they make money I guess is the --
A. They charge companies like amazon.com to distribute their content around the Internet so that the browsing experience is better for the end user.
Q. So they -- they're there, but the economic benefits may be coming from somebody totally separate from either Universal or your ISP customers?

A. The ISP, you know, would verify the authentication, probably would take the message, would determine who the ultimate destination is for that email, and then would forward it on to the mail server of the recipient.

Q. Under this model in forwarding it on, would it come back through Universal to go out over the Web?

A. That's always possible. It's -- it's possible if an ISP subscriber were purchasing Internet backbone connectivity from us, then it could come back. If not, it wouldn't come back unless we were the destination.

Q. Okay. That's okay. So if the -- this end user wants to send an email to his mother across the country, it would come through here as you have described, eventually end up at the email server of the ISP, and if they have their own Internet bandwidth, it would then be sent on, and Universal wouldn't see that piece of traffic anymore or have anything more to do with it?

A. Correct.

Q. Okay. Now, let me kind of do the reverse. Let's assume grandmother or mother across the country sends an email back that's designated for this end user over here. How would that route back through

to that, or how does that work?
A. The email would go to the ISP's mail server and would be stored there.
Q. Sitting over here?
A. It would be stored there. When grandma gets on the Internet, she would then -- her mail software would go to the ISP's mail server, again looking up the IP address if necessary, and ask, do I have anymore messages, and, if so, would probably download the message to her computer, at which point it may or may not be deleted from the mail server.
Q. If mother across the country sends a message to this person, the way we access this is to, again, get on the Internet and then go query that mail server or may get an automatic message?
A. No, you would have to query.
MR. SMITH: Okay. All right. Okay. Why don't we stop right there for lunch.
(A recess was taken from 12:11 to 1:30.)
Q. BY MR. SMITH: Well, you'll be happy to know I've gone through my outline and we actually have already addressed a lot of the questions, but we've got a while here, so.
Where were we. Earlier this morning when we were discussing, I had asked a question about how

A. Again, I have a problem with mixing this diagram in with something that's not related to any kind of phone calls, because that's what this diagram shows, but there are Internet connections in each POP. Those are utilized by phone stuff, and they're utilized by purely Internet activities.

Q. BY MR. SMITH: Okay. So while that isn't related to a phone call, it's still Internet access, and it would be the same physical facility that might also be used for the phone calls?

A. Yes.

Q. Okay. The Corvallis equipment, let me just ask a couple follow-up questions there. I think you indicated there's one radius server, and I believe Mr. Martin said yesterday there's some monitoring equipment of some sort. Could you help me understand what that monitoring equipment is, what it does?

A. Sure. Different pieces of equipment in the network communicate with the Network Operations Center passing on potential trouble areas. Each POP has temperature monitoring equipment, power availability monitoring, and all that information gets sent to the Network Operations Center all the time.

Q. And is that in Corvallis?
A. Yes.
Q. What you call the Network Operations?
A. Yes.
Q. And I think Mr. Martin said that is not staffed 24 hours a day, though?
A. Correct.
Q. What happens if something significant happens in the middle of the night? How does that get communicated to somebody who can go do something about it?
A. The technicians -- a technician would be paged.
Q. So the monitoring equipment can actually page him?
A. Yes.
Q. Now, in Corvallis, in addition to the radius server and the monitoring equipment, are there -- do you have other equipment there as well? And I'm not talking about adding machines and office equipment.
A. I don't know that there's other production equipment.
Q. Okay. The Internet backbone circuit or circuits, I think we've indicated that there may be a variety of providers, UUNET being one, and as I understand it, there's this kind of facility in both Eugene and in Portland. Is there also this kind of a

the question of privilege rather than have the witness not respond, so the witness is going to respond, but I can't say that the witness can answer that particular question, okay?

MR. SMITH: All right. Fair enough.

THE WITNESS: I guess I really can't answer that question in the way you phrased it.

Q. BY MR. SMITH: Let me ask you this. When a company like Universal enters a contract with, let's say, UUNET for this Internet backbone facility, what are they providing to you? Do you know?

A. They provide us capacity for traffic to flow in or out.

Q. Do they say that they're going to guarantee end-to-end capacity from one point to another physical point?

A. Typically on that particular link they will guarantee availability.

Q. From what point to what point?

A. From where they connect to us to whatever their -- you know, the connection to us will be up.

Q. But where do they guarantee the other end of that will --

A. Well, there's no particular other end.

Q. It just goes into the Internet?

A. Yes.
Q. So there's no geographical -- well, let me ask this.

If -- I'm assuming something like this might be a fiber connection that goes outside into the streets of Portland. If that connection gets cut by a contractor, does UUNET, if that's the provider, if we can use them in this case, does UUNET have the responsibility under your contract with them to get that connection back up and running?

MR. CALDWELL: Objection, foundation.

Q. BY MR. SMITH: If you know.

MR. CALDWELL: Your problem is you said under your contract with UUNET. There's no contract with UUNET.

MR. SMITH: Under your business relationship with UUNET?

MR. MARTIN: We use other providers.

MR. CALDWELL: UUNET is not involved.

THE WITNESS: Whichever provider we're using.

MR. SMITH: Whichever provider.

A. What's the question?
Q. BY MR. SMITH: The question is, whoever your Internet backbone provider is --

A. Okay.
Q. -- they have a big piece of copper wire or fiber that exits the Pittock Building and goes out into the street and somewhere to the Internet. If that fiber gets cut by a contractor, is it your understanding that, whoever the Internet backbone provider, would then have the obligation to get that back up and running for you by getting that facility fixed or providing an alternative facility?
A. Yes.
Q. They have an obligation to you pursuant to your whatever kind of an agreement you have?
A. To provide us with that capacity at that location.
Q. And is it just capacity on to the Internet or is it capacity from one -- your end, to some physical point in the Internet, a major hub location, for example?
A. I think that technically it's just that, to the Internet.
Q. Okay.
A. But the "to the Internet" is iffy, because I would say that it is part of the Internet. I mean the cloud kind of -- you need to expand the cloud over that little piece, put the routers in it. I mean

to those.

A. First question, they have a Web portal that they can go into and open up a trouble ticket.

Q. Okay.

A. So fill in a description of what the problem is or what they're seeing. They could call the Network Operations Center directly, and they could probably send an email to the Network Operations Center.

How. Then I think a technician would then take ownership of that, be in touch with the customer, try and make a determination if the problem was on our network, and, if so, you know, proceed to diagnose it and make necessary repairs or whatever and then follow up with the customer to let them know.

Q. Is that generally the procedure that you understand is followed at Universal?

A. Uh-huh.

Q. Let me try this physical location issue one more time in a way that I hope is not problematic.

Mr. Martin, when I was asking him questions yesterday, I believe indicated that once something gets out on the Internet, Universal really isn't in a position to know the physical location where the traffic goes. Is that your understanding of what

he testified to?

A. That's my understanding of what he testified to.

Q. And do you agree with that?

A. One more time.

Q. Once traffic that's destined for the Internet --

A. I would prefer maybe if we just read it back, because if I'm going to answer the same question twice, I'd rather make sure it's the exact same question.

(The reporter read back as requested.)

A. I do agree.

Q. BY MR. SMITH: So would it be fair to say that as traffic routes through this, and again, we're looking at 6, once it hits this Internet backbone that you subscribed to from an -- or lease from another party, the last physical location that you can identify where that traffic was is the point at which it enters the Internet? And by that, I mean the point where your facilities end and the Internet backbone facility begins.

MR. CALDWELL: Object to -- objection on foundation grounds.

THE WITNESS: I'm going to need you to read that.

(The reporter read back as requested.)

MR. CALDWELL: Let me add a form objection to that as well.

THE WITNESS: I want you read it again, please.

(The reporter read back as requested.)

A. Yes.

Q. BY MR. SMITH: Now, with the objections, let me make sure I understand. The last point at which you have the ability to know the location of that traffic as it goes on to the Internet is the point at which it leaves your facility and enters the Internet backbone?

A. Yes.

Q. We made it through it here.

And for Universal, the location -- those locations are either in your POP in Eugene and the POP in Portland?

A. Yes.

Q. Would you agree that the ultimate destination of traffic that enters the Internet could be anywhere in the world?

A. Yes.

MR. CALDWELL: Object to the form.

Q. BY MR. SMITH: Any Web site that conforms to the proper Internet protocols and can be found?

A. Do you want me to adjust my previous answer to that

clarification, because I would probably -- yeah, that didn't sound much like a question, so I'm not sure. I had a question and an answer and if you read it back it might answer where you're going.

Q. Well, I had asked generally about could it go anywhere in the world and then I tried to be maybe a little more specific to suggest that there may be some parts of the world where there aren't any computers, so what I was really suggesting is any part in the world where there are Web sites up and running that can be found from using the proper Internet protocol to --

A. And my hesitation on that is that the Internet and the Web are not synonymous but many people treat it that way, so that's why when you said "Web" I hesitate.

Q. Why don't you enlighten me on that.

A. The Internet carries email, instant messaging, other types of traffic besides the Web.

Q. What is the narrow meaning of the Web the way you use it, then?

A. The Web is something that you would view with a browser.

Q. Okay. We do learn new things here.

Are you aware of any particular instances in

which you know the physical location of the equipment of the ISP customers to whom you may route traffic?

A. I don't believe I know.

Q. Okay. Do you know if anybody else at Universal knows?

MR. CALDWELL: Object to the foundation of the question based on the use of "ISP customers to whom you route traffic."

Q. BY MR. SMITH: To whom Universal routes traffic.

A. I don't believe anyone else knows either.

Q. With regard to Plaintiff's Exhibit 6, which is the exhibit that was attached to Mr. Martin's affidavit, did you assist in its preparation?

A. No.

Q. Did you review it before it was filed?

A. Define "review" for me.

Q. Did you look at it and comment upon it?

A. No.

Q. Did you look at it?

A. Yes.

Q. And maybe I've misread what you said earlier. As I've talked about this in some other context, I have gotten the impression that -- well, strike that.

Do you consider this an accurate representation of the configuration of the -- let's confine it to the Universal facilities that are on its side of the point of interconnection in Portland?

MR. CALDWELL: Just with the proviso that we established yesterday that it does not show all of the facilities. Is that acknowledged?

MR. SMITH: Yes, sure. I'm sorry. I didn't realize that was a question.

A. Yes.

Q. BY MR. SMITH: Is there anything, since you didn't review it before it was filed, that you would change to make it more accurate?

A. I thought I said some things this morning that I would have done differently.

Q. Can you remind me what those were?

A. I would hate to say something different than what I said this morning. I would rather stand by whatever I said this morning.

MR. CALDWELL: Or this afternoon. In fact, he did say something this afternoon that he would change.

Q. BY MR. SMITH: Well, we were talking about this -- I think it's fair for me to ask if there's some things you would change here. That was not the way

the questions were worded this morning. I think it's a fair question. And I'm more than happy to go on the record and say that I wouldn't expect you to remember every single thing, but there may be something you mentioned earlier that you don't mention now, that won't be held against you.

A. Also some servers missing that are on the other diagram. Otherwise, it's not bad.

Q. And this one, unlike Exhibit 3, does show the telecom switch, correct?

A. Yes. Although I would add that when you say "telecom switch," I think you're referring particularly to a Class 4/Class 5 switch. We consider these other switches and routers to definitely be part of our network and part of that process.

Q. And I think I understood that, that -- I was using "telecom switch" to distinguish it from what was otherwise referred to as load-balancing switches.

A. (Nods head.)

Q. Do you consider Universal to be an ISP?

A. No.

Q. Do you consider it to be a wholesale provider of ISP services?

A. I think -- no.

Q. What do you consider Universal to be?
A. Wholesale provider of services to ISPs, to anyone else that would be interested in our products that we have available at this time, or products that we might have available in the future. To our ISP customers, we do consider ourselves to be more of a wholesale type of provider.
Q. Okay. Yesterday I asked Mr. Martin some questions and I think we got pretty close to -- at least I thought I understood the extent of Universal's network, if we can use that term. And as I understood it, it was basically the equipment that's described as, and including things that have been added to this, located in the two POPS in Eugene and Portland, includes some equipment in Corvallis, and it includes two direct -- two data connections, one between Portland and Eugene and one between Eugene and Corvallis. It also includes one frame relay circuit or service that goes to one of your customers.

That was my understanding of a general description of the network that is either owned or leased by Universal in Oregon. Do you agree that that which I have described is a general description of the extent of Universal's network in

Oregon?

A. No.

Q. What would you add to it?

A. Well, I consider Universal and a portion of our network to be part of the Internet. I consider our backbone connection between Portland and Eugene to be a backbone component, and if I was selling somebody Internet access services not through a modem but dedicated, that I would sell it that way, that that would be something that they would base their purchasing decision on, the redundancy that that provides.

Q. Didn't I describe that?

A. I'm just saying that that is part of the Internet. We consider ourselves part of the Internet. You keep talking about handing it to the Internet. I believe we are part of the Internet, and I see that as a larger extension of what we provide to our customers.

Q. And I think the thrust of my question was trying to identify the piece parts that are under the control, either by a lease or owning, that you own in the state of Oregon.

A. Okay.

Q. Is there something I missed there?

MR. CALDWELL: Could you read that back, please.

(The reporter read back as requested.)

MR. CALDWELL: So the question is what does Universal own?

MR. SMITH: Or lease.

MR. CALDWELL: Okay, own and lease.

A. I think you summarized it.

Q. BY MR. SMITH: Okay. To your knowledge, does Universal -- in recent months, has Universal begun to send some traffic back to Qwest over the facilities provided by Qwest that you're aware of?

A. That's my understanding.

Q. What's the nature of that traffic? Where is it?

A. I don't know specifically.

Q. Do you have any information as to how much of it there is?

A. I -- you know, my understanding at this point is that they're in the early product phase trying to, you know, work out what products are going to be, and so it's probably very little traffic.

Q. Okay. But you don't have -- you don't personally have any information as to -- and I'm basing this on something Ms. Batz told me that recently we've been seeing, "we" meaning Qwest. Qwest has been

Q. Now, are you aware that that is a service that Qwest offers to companies like Universal as well as to other companies, multiplexing?
A. I'm aware that Qwest does multiplexing. As far as it being a service that they offer, if I was aware, probably only happened in the last 30 days, you know, as far as a service.
Q. Okay. Are you familiar with the -- I hesitate to call it "the service," but the arrangement between Universal and Qwest early on in the relationship, and I'm talking back into say 2001, that was referred to as hub mux?
A. Yes.
Q. Could you describe your understanding of what that -- and let me start, is it a method of interconnection? Would that be a way to characterize it?
A. Oh, that's not how I would want to characterize it.
Q. You characterize it how you --
A. Sure. It's a 50-ton sack of potatoes that Qwest made us put on our back. That's a characterization. Do you want better?
Q. Now, if you could put it into maybe a little more technical terms as to how you believe it worked or understood that it worked.

A. Yeah. How I think it happened was that, while our interconnection allows us to have a single point of interconnection within the LATA, I believe that USWest in the early days was ill-prepared to handle competition. They did not want to provide a single Point of Interface. They had trouble getting single Point of Interface connections into their operational support systems, into their billing system, getting it provisioned. Qwest told us the only way that we could connect at that single point in Eugene was if we put in this hub mux arrangement.

We argued about it quite a bit, but in the end, it was stopping us from getting into the market. We told them that we would move forward but that we would dispute it. The hub mux itself took a single connection from Eugene in one instance to Corvallis. They then charged us I think even maybe a retail rate for that connection and they charged us for the muxing and the hub itself in that area and then they brought what would be direct trunk transport facilities into the hub mux, to the end offices, so that the traffic would ultimately meet at the POI.

Q. At the point at which hub mux was the method of

operation, which I understand didn't last -- How long did it last before --

A. I don't know how exactly long it lasted. I know at some point Qwest fixed the problem with their systems, created a product, I quote that, because they started referring to it as a product that they called S-POP which allowed a single Point of Interface. So they decided that they needed to do that after all. At which point we -- my understanding is we canceled or tried to cancel the hub mux but Qwest continued to bill us for it for as long as a year or longer after we originally tried to cancel it.

Q. During the time the hub mux was up and running, where were you offering -- what were the areas in Oregon that you were offering to your ISP customers that you could collect traffic from?

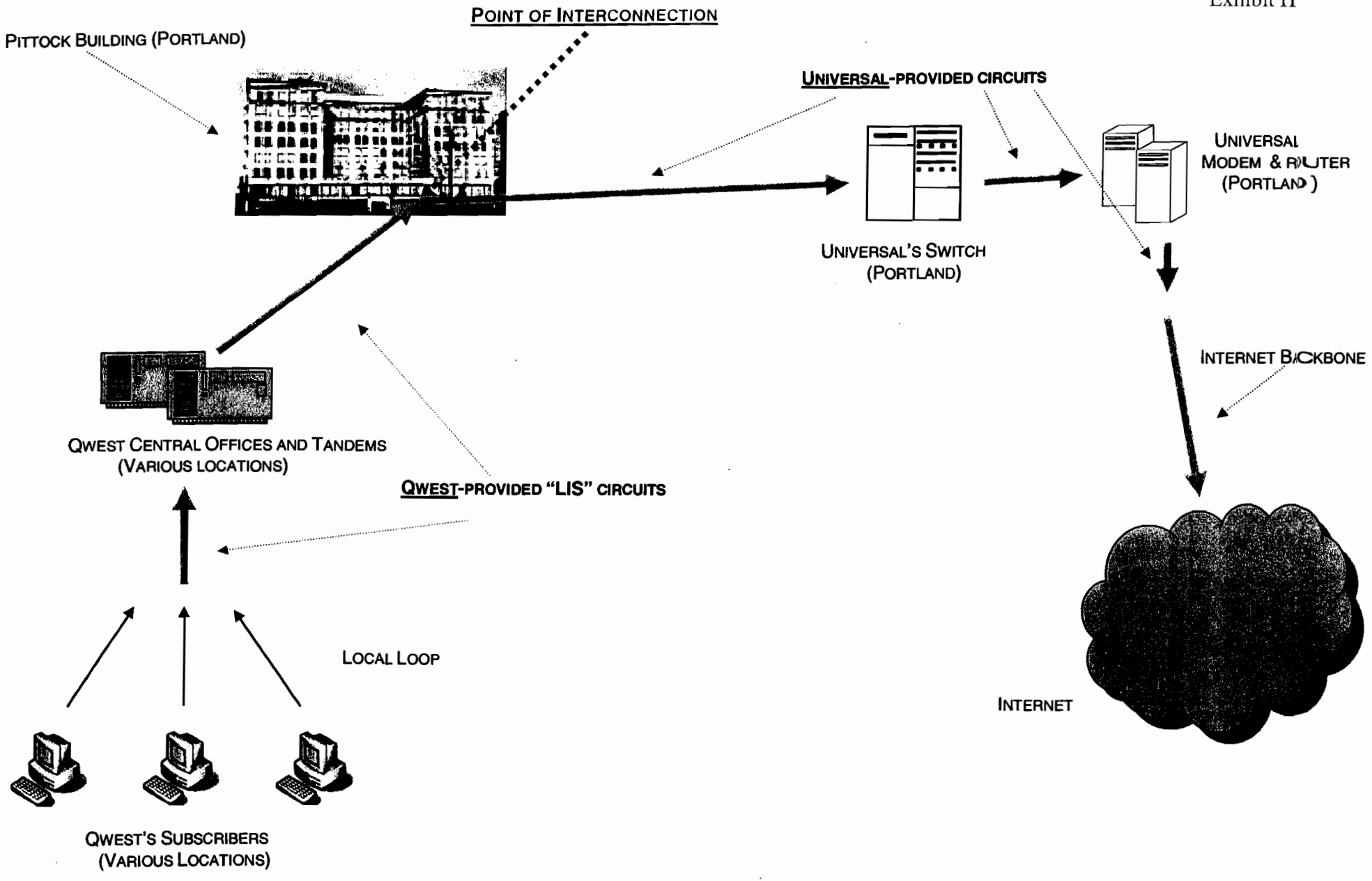
A. We don't collect traffic.

Q. I don't want to get into it. What areas of the state were you offering local phone numbers to your ISP customers for their customers to call?

A. It's my understanding that the hub mux was used in Corvallis and Salem. There may have been other areas that connected into that hub mux, but that's my understanding of the primary areas.

SIMPLIFIED NETWORK CONFIGURATION FOR SINGLE POINT OF INTERCONNECTION BETWEEN QWEST AND UNIVERSAL IN LATA 672 (PORTLAND).

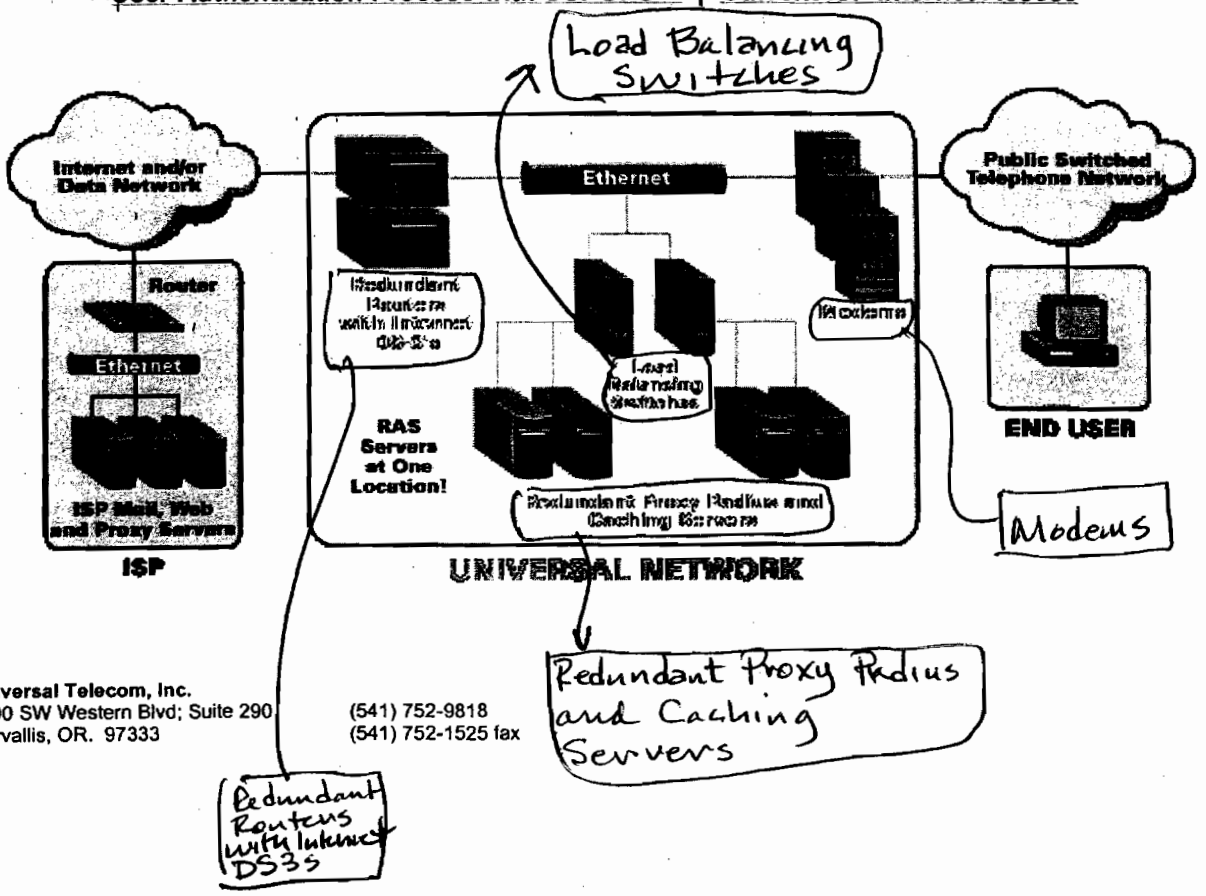
Exhibit H



LEGEND: Traffic direction indicated by solid arrows. Diagram does not show certain elements of the LIS circuits, for which Qwest alleges damages. Such equipment includes multiplexing equipment, generally housed in Qwest's central offices (on Qwest side of the point of interconnection). Qwest maintains a "service wire center" in the basement of the Pittock Building. Universal has a point of presence in the Pittock Building on the fourth floor. Qwest-provided facilities within the building connect the parties' networks.

Exhibit I

<<User Authentication Process with USPOPS™ | Current ISP Internet Access >>



Universal Telecom, Inc.
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Exhibit J

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT COURT OF OREGON

QWEST CORPORATION, a Colorado corporation,

Plaintiff,

v.

UNIVERSAL TELECOM, INC., dba US POPS, fka UNIVERSAL TELECOMMUNICATIONS, INC., an Oregon corporation

Defendant.

Civil No. 04-6047-AA

ORDER

AIKEN, Judge:

Defendant's motion in limine (doc. 89) is denied. Plaintiff's cross-motion in limine (doc. 92) is granted, however, plaintiff's alternative motion for scheduling conference (doc. 92) is denied. In further clarification of this court's opinion filed December 12,

2004 (doc. 66), and responding to an issue that has been raised during settlement negotiations concerning damages, the court finds the following:

> Regarding the court's statement in the Opinion and Order:
>
> for a call to be local and subject to reciprocal compensation, it must originate at some physical location within a LCA or EAS and terminate at a physical location within the same LCA or EAS. Specifically here, for an ISP bound call to be subject to reciprocal compensation it must originate in a LCA or EAS and terminate in that same LCA or EAS by delivery of the call to the ISP.

Qwest Corporation v. Universal Telecom, Inc., 2004 WL 2958421, *10 (D. Or. 2004).

The court intended compensable traffic to include traffic that originates in one LCA or EAS area and "terminates" in that same LCA or EAS area only for that traffic that Universal maintains a point of interconnection in the same LCA or EAS area in which the call originates. In other words, the "termination point" is the location of the Universal modems that handle the call on behalf of the ISP. This interpretation is supported by both the GTE/ELI Decision[1] and the ISP Remand Order[2].

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[1] Commission Decision, In the Matter of the Petition of Electric Lightwave, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions with GTE Northwest Inc., Pursuant to the Telecommunications Act of 1996, ARB 91 (March 17, 1999).

[2] 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).

The parties are ordered to return to Judge Coffin to resume settlement negotiations.

IT IS SO ORDERED.

Dated this 22 day of September 2005.

Ann Aiken
United States District Judge

Exhibit K

COPY

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

QWEST CORPORATION, a Colorado corporation,

Plaintiff,

v.

UNIVERSAL TELECOM, INC., dba US POPS, formerly known as UNIVERSAL TELECOMMUNICATIONS, INC., an Oregon corporation,

Defendant.

SUPPLEMENTAL AFFIDAVIT OF NANCY J. BATZ IN SUPPORT OF QWEST'S MOTION FOR SUMMARY JUDGMENT

(AUTHORIZED TO BE FILED UNDER SEAL)

(Contains Confidential Information in Paragraph 8)

Case No. 04-CV-6047-AA

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").

2. I previously filed an Affidavit in this matter. My current address, job responsibilities, work history and experience, and educational background are set forth in paragraphs 1-4 of that affidavit and have not changed since it was filed in June 2004. I have personal knowledge of the facts set forth below.

3. Following the recent depositions of Universal witnesses in which Universal's method of operation was clarified, I performed an analysis to determine, based on the locations of the Local Interconnection Services (LIS) facilities that Qwest provides to Universal, the number of different local calling areas from which traffic is originated that is routed to telephone numbers assigned to Universal.

4. Based on information available to me, that has as its source information that is filed on a rate center basis in the BIRRDS (Business Integrated Routing and Rating Database Systems) database,[1] Universal currently has all or a portion of thirty-six Oregon area

[1] The BIRRDS database is managed by Telcordia Technologies ("Telcordia"), an independent provider of support services to the telecommunications industry. BIRRDS is a data base that provides information that supports public switched telephone network (PSTN) rating procedures used by Telcordia client companies and independent exchange companies.

code/prefixes (NPA-NXXs) assigned to it by the North American Numbering Plan Administrator (NANPA). Each NPA-NXX has an associated rate center assigned to it that is recorded in the BIRRDS database.

5. A rate center is a geographical coordinate location used for determining mileage for billing purposes and for determining the jurisdiction of calls (i.e., local versus toll). Rate centers have names such as Albany, Florence, or Pendleton.[2]

6. The local calling areas for any given NPA-NXX can be determined by referencing tools such as the Oregon Public Utility Commission's ("OPUC's") Extended Area Service (EAS) matrix that was provided as Exhibit C to Don Mason's affidavit. I utilized this matrix in performing this analysis.

7. Of the 36 Oregon NPA-NXXs currently assigned to Universal:

a. Three are associated with rate centers that are located in exchanges in which United Telephone of the Northwest is the incumbent local exchange carrier, ten are associated with rate centers that are located in exchanges in which Verizon Northwest Inc. is the incumbent local exchange carrier, and 23 are associated with rate centers that are located in exchanges in which Qwest is the incumbent local exchange carrier.

---

[2] A rate center frequently is associated with a single exchange; however, it may encompass multiple exchanges.

b. Of the latter 23 NPA-NXXs located in exchanges in which Qwest is the incumbent local exchange carrier, two are associated with rate centers that are part of the Portland Extended Area Service (EAS) Region and one is associated with the Eugene-Springfield local calling area.

c. The remaining 20 NPA-NXXs are associated with at least 15 local calling areas that are completely separate from the Portland EAS Region and the Eugene-Springfield local calling area.

d. In other words, traffic that terminates to Universal at its POPs in the Portland EAS Region or Eugene-Springfield local calling area is originated in at least 15 separate local calling areas that are not part of either the Portland EAS Region or Eugene-Springfield local calling area. This traffic is routed to Universal local numbers, then carried over Qwest local interconnection service ("LIS") facilities, and delivered to one of Universal's POPs, in either Eugene or Portland. As I noted in my prior affidavit, approximately 70% of the minutes of use for which Universal has billed reciprocal compensation to Qwest does not originate in the Portland EAS Region or Eugene-Springfield local calling area. (See Batz Aff. ¶ 22).

8. [NOTE: THE INFORMATION IN PARAGRAPH 8 THAT IS UNDERLINED AND IN BOLD-FACE TYPE IS CONFIDENTIAL AND FILED WITH THE COURT UNDER SEAL PURSUANT TO THE PROTECTIVE ORDER IN THIS CASE] In addition to analyzing

the locations of the LIS facilities that Qwest provides to Universal as described above, I also examined a July 2004 inventory of the LIS direct trunk transport facilities that Qwest provided to Universal to determine (1) the total number of circuits that Qwest provides to Universal; and (2), of this total, (a) the number that connect to Qwest switches within the Portland EAS Region or Eugene-Springfield local calling area and (b) the number that connect to Qwest switches within local calling areas that are completely separate from the Portland EAS Region and Eugene-Springfield local calling area. Because circuits can be ordered in different capacity levels, in order to create a meaningful comparison, I have expressed them as DS1 equivalents.[3] The result of my analysis is as follows:

Redacted

[3] A DS1 is the equivalent of 24 single circuits. A DS3 is the equivalent of 28 DS1s.

Redacted

9. The length of the direct trunk transport facilities that Qwest provides to Universal is often well in excess of 100 miles. For example, the airline miles between Baker City and Universal's point of interconnection (POI) with Qwest in Portland is approximately 241 miles;

the airline miles between Bend and Universal's POI in Portland is approximately 122 miles; the airline miles between Medford and Universal's POI in Eugene is approximately 121 miles; and the airline miles between Klamath Falls and Universal's POI in Eugene is approximately 144 miles

10. I am familiar with the statements of generally available terms ("SGATs") filed by Qwest with the OPUC in Oregon. Attached hereto as Exhibit A is a true and correct copy of section 7.1.2 of the SGAT filed by Qwest with the OPUC on April 24, 2000. Attached hereto as Exhibit B is a true and correct copy of section 7.1.2 of the SGAT filed by Qwest with the OPUC on June 12, 2001.

DATED this 30th day of August, 2004

Nancy J. Batz

Nancy J. Batz

Subscribed and sworn to before me this 30th day of August, 2004.

Carla M Butler

NOTARY PUBLIC

OFFICIAL SEAL
CARLA M. BUTLER
NOTARY PUBLIC-OREGON
COMMISSION NO. 368928
MY COMMISSION EXPIRES JUNE 1, 2007

Residing at [redacted] cms
Newberg, Oregon

My Commission expires: 6/1/07

CERTIFICATE OF SERVICE

ARB 671

I hereby certify that on the 21st day of October 2005, I served the foregoing **QWEST CORPORATION'S STATEMENT OF FACTS** in the above entitled docket on the following persons via U.S. Mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

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Jeffry Martin
Universal Telecom Inc
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Corvallis, OR 97333

Ted D. Smith
Stoel Rives LLP
201 S. Main; Suite 1100
Salt Lake City, UT 84111

DATED this 21st day of October, 2005.

QWEST CORPORATION

By: _____

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