

BILL THOMAS PETERS - 2574

DAVID W. SCOFIELD - 4140

PARSONS, DAVIES, KINGHORN & PETERS, P.C.

185 South State Street, Suite 700

Salt Lake City, Utah 84111

Telephone: (801) 363-4300

Facsimile: (801) 363-4378

Attorneys for the Complainant Counties and All Other Persons
and/or Entities similarly situated

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the matter of the Complaint of:

BEAVER COUNTY, et al.,

Complainants,

-vs-

Qwest Corporation fka U.S. WEST COMMUNICATIONS,
INC., fka MOUNTAIN STATES TELEPHONE & TELEGRAPH
SERVICES, INC.,

Respondent.

Docket No. 01-049-75

AMENDED COMPLAINT

Proposed Class Action

In the matter of the Request of:

BEAVER COUNTY, et al., FOR AN ORDER DIRECTING THAT
1988 THROUGH 1996 PROPERTY TAX REFUNDS BE
RETURNED TO THE RATE PAYERS FROM WHOM SAID
PROPERTY TAXES WERE PREVIOUSLY RECOVERED AND FOR
SIMILAR RELIEF FOR 1997, 1998 AND SUBSEQUENT
YEARS.

Petitioners.

Docket No. 98-049-48

Beaver County, Box Elder County, Cache County, Carbon County, Davis County, Duchesne County,
Emery County, Garfield County, Grand County, Iron County, Juab County, Kane County, Millard County,

Morgan County, Piute County, Rich County, Salt Lake County, San Pete County, Sevier County, Summit County, Tooele County, Uintah County, Utah County, Wasatch County, Washington County, Wayne County, and Weber County ("Petitioning Counties" or "Counties") on behalf of themselves and all other persons and entities similarly situated, allege as follows:

JURISDICTION

1. This agency has jurisdiction over this action pursuant to the Utah Supreme Court's holding in *Beaver County, et al. v. Qwest, Inc.*, Nos. 990771, 20000140, 990268 (Utah September 7, 2001) [hereinafter "*Beaver County*"], copy attached as Exhibit "A," and statutes cited therein.

2. This agency is expressly empowered to treat this petition as a class action claim pursuant to the foregoing authorities, and also, Utah Admin. R. 746-100-1(C) and Utah R. Civ. P. 23.

PARTIES

3. Complainant Counties are political subdivisions of the state of Utah and as such, are authorized by law to sue.

4. Respondent Qwest Corporation ("Qwest") is a Colorado corporation duly authorized to do business in the state of Utah, is regulated by the Utah Public Service Commission and is authorized to provide telecommunication services to Utah residences as well as governmental and other entities located within the state of Utah. Qwest was formerly known as U.S. West Communications, Inc. ("U.S. West") and, before that, as Mountain States Telephone and Telegraph Services, Inc. ("MST&T"), and Qwest is the successor to each of those entities.

5. Complainant Counties and the other members of the proposed Class were and/or are users of MST&T, U.S. West and Qwest's telecommunications services.

6. Said Counties are authorized by law to assess, collect and distribute ad valorem property taxes upon all tangible taxable property located within their respective Counties.

CLASS ACTION ALLEGATIONS

7. Complainants bring this Action on their own behalf and as a class action pursuant to the holding in *Beaver County*, the statutes cited therein, Utah Admin R. 746-100-1(C) and Rule 23 of the Utah Rules of Civil Procedure, on behalf of a Class (the "Class") of all persons with billing addresses within the state of Utah or who otherwise paid rates governed by the Utah Public Service Commission who utilized telecommunication services from MST&T and its successors, US West and/or Qwest from January 1, 1988 through and including December 31, 1996, inclusive (the "Class Period").

8. The members of the Class for whose benefit this action is brought are dispersed substantially throughout the state of Utah, and are so numerous that joinder of all Class members is impracticable. While the exact number of Class members can only be determined through appropriate discovery, Complainants believe that there are tens of thousands of Class members. The Class members used telecommunication services from MST&T or US West and paid for those services pursuant to rates approved by the Public Service Commission of Utah, which rates contained, or had otherwise been set based on the anticipated reimbursement of, MST&T and US West for property taxes levied against, and paid by, respondent for tangible, taxable property located within the state of Utah during the Class Period.

9. MST&T and US West negotiated a tax refund from the Counties of the state of Utah for property taxes previously paid during or relating to the Class Period which had already been recouped by MST&T and US West in their rates charged to and paid by Class Members during the Class Period. The tax refund, therefore, constitutes funds belonging properly and in equity to the Class members, and therefore is a double payment to MST&T and US West by the Class Members and unjustly enriches the Respondents. The Class members are entitled to judgment against the Respondents for the amount they are proven to have been unjustly enriched, but in no event less than \$16.9 million.

10. Complainants are representative parties who will fairly and adequately protect the interests of the other members of the Class, and have retained counsel competent and experienced in class action litigation. Complainants have no interest antagonistic to, or in conflict with, the Class they seek to represent.

11. A class action is superior to other available methods for the fair and efficient adjudication of the claims asserted herein. Furthermore, because the benefit conferred by each individual Class member upon MST&T and US West may be relatively small, the expense and burden of individual litigation makes it virtually impossible for the Class members to individually seek redress for the claims alleged herein, and the likelihood of individual Class members prosecuting separate claims is remote. Moreover, since the Utah Supreme Court held in *Beaver County* that this agency is the exclusive forum for adjudication of these claims, tens of thousands of claims, if not handled through a class action, would overwhelm the capacity of this agency to function to adjudicate the individual claims.

12. This action will allow for the orderly and expeditious administration of the Class claims, produce economies of time, effort and expense, and insure uniformity of decisions. Complainants anticipate no unusual difficulties in the management of this action as a class action.

13. There are questions of law, equity and fact common to all Class members which predominate over any questions affecting any individual members of the Class. Such questions include, without limitation:

- a. Whether MST&T and its successor, US West, have been fully or partially reimbursed through their rates for property taxes initially assessed and/or paid for the Class Period;
- b. Whether MST&T and US West have recovered through their rates the property taxes assessed and paid for or relating to the Class Period;
- c. Whether, and to what extent, the \$16,900,000.00 refund paid by the Counties constitutes a double or otherwise duplicative recovery by respondent for ad valorem taxes paid for the Class Period;
- d. Whether MST&T, US West, and/or Qwest, their successor, will be or has been unjustly enriched at the expense of the members of the Class by virtue of receiving said \$16,900,000.00 refund or any portion thereof; and
- e. Whether this agency should, in equity or otherwise, impress a constructive trust upon the \$16,900,000.00 or such portion thereof as constitutes a double recovery for property taxes assessed

by the Utah State Tax Commission and/or paid during the Class Period.

14. Respondent provides telecommunications services in the state of Utah, and as a telecommunications provider in the state of Utah, respondent functions and functioned as a public utility and is and was, therefore, regulated by the Public Service Commission of Utah. Additionally, MST&T and US West, the predecessors to Qwest, were, at all times pertinent to this action, regulated by the Public Service Commission of Utah on the Cost of Service and Rate of Return form of regulation.

15. The amounts allowed by the Public Service Commission of Utah to be recovered for ad valorem tax liability by MST&T and US West through their rates in the Class Period included an amount sufficient to reflect a return on and a return of MST&T's and US West's investment in and to their regulated system.

16. Complainants are informed and believe that the rates of MST&T and US West charged to those persons and entities using said companies' telecommunication services reflected a component in the rate structure for the recovery of ad valorem property taxes assessed upon the fair market value of MST&T and US West's taxable property located within the state of Utah which taxable value was then apportioned to each of the petitioning Counties and incorporated into their assessment rolls for purposes of ad valorem taxation within each of the respective Counties.

17. For each of the years of the Class Period, MST&T and its successor US West appealed the initial valuation to the Utah State Tax Commission, seeking a reduction of the valuation of their taxable property located within the state of Utah.

18. As a result of the appeals filed by MST&T and US West for the Class Period, their taxable value for the years in question was subject to modification and was in fact reduced.

19. As a result of said appeals and reductions, the Counties as participants in said appeals proceedings and the Property Tax Division of the Utah State Tax Commission agreed to compromise the taxable value thereby fixing the amount of tax refund MST&T and US West would receive as a result of said appeals. A copy of the settlement agreement is attached hereto as Exhibit "B" and by this reference,

incorporated herein.

20. The total amount of agreed tax refund by the Counties for the Class Period was Sixteen Million Nine Hundred Thousand (\$16,900,000.00) Dollars.

**FIRST CAUSE OF ACTION
(Unjust Enrichment/Constructive Trust)**

21. Complainants incorporate paragraphs 1 through 20 above.

22. Because Qwest, US West and MST&T have received a tax refund for the Class Period, respondent has received a double recovery for property taxes, which the Class has already once reimbursed it through payments for services rendered.

23. To the extent that respondent received double recovery for property taxes as a result of the Sixteen Million Nine Hundred Thousand (\$16,900,000.00) Dollar refund, Qwest has been unjustly enriched at the expense of the Class Members including the Complainant Counties unless respondent is required to repay the tax refund for the Class Period to the Class.

24. In order to ensure that the refund of taxes is used for the benefit of the Class Members, this agency should impress a constructive trust upon said funds and direct that said funds be held and used for the benefit of the Class Members.

25. Complainant Counties and other members of the Class are without a plain, speedy or adequate remedy other than a class action claims procedure, and therefore require the equitable power of this agency to be exercised through a class action.

**SECOND CAUSE OF ACTION
(In The Alternative, Reparations)**

26. Complainants incorporate paragraphs 1 through 25 above.

27. Respondent Qwest Corporation and its predecessors, US West and MST&T, have, for years, sought and received tax refunds that they have failed to include in rate base with a knowing and fraudulent

intent to have the benefit of those refunds go directly to their shareholders and not to ratepayers.

28. On information and belief, Qwest and its predecessors, US West and MST&T, have, in furtherance of their scheme, presented differing analyses of their financial status to the Utah State Tax Commission, on the one hand, when seeking tax refunds, and to the Utah Public Service Commission, on the other hand, when seeking increases in rates.

29. On information and belief, the net effect of those differences in Qwest, and its predecessors, US West and MST&T, receiving tax refunds that they have managed to hide from the Public Service Commission, instead presenting assessments to the Public Service Commission that Qwest and its predecessors know will be challenged as too high and which Qwest and its predecessors will result in a lower determination of actual taxes to be paid, without ever notifying the Utah Public Service Commission of that knowledge.

30. In light of that conduct, it is unjust, unfair and inequitable to allow Qwest to reap the benefits of the tax refunds here involved, and those monies should be paid back to the ratepayers who have already reimbursed Qwest for those funds, based upon the representations made by Qwest to the Utah Public Service Commission during rate proceedings.

31. Justice and equity require appropriate adjustments in future rates to offset the extraordinary financial consequence of over \$16 million in property tax refund, which has already been paid by the ratepayers to Qwest, being paid, for a second time, to Qwest, rather than the ratepayers.

32. Alternatively, if Qwest and its predecessors' conduct with respect to its property tax appeals and property tax refunds is found to be anything other than a willful and deliberate scheme to enhance corporate revenues payable to shareholders, rather than considered in rate base in Public Service Commission proceedings, then the results are unforeseen and extraordinary because, to hold otherwise would, *inter alia*, require a finding that Qwest and its predecessors intended to deceive the Public Service Commission through their submissions.

33. Under either set of circumstances, reparations should be ordered.

WHEREFORE, complainants, on behalf of themselves and other members of the Class, demand judgment in favor of the Class and against the respondent as follows:

- A. Declaring this action to be properly maintainable as a Class Action pursuant to *Beaver County*, statutes cited therein, Utah Admin. R. 746-100-1(C), and Rule 23 of the Utah Rules of Civil Procedure and declaring complainants to be proper Class representatives;
- B. Declaring and determining that the respondents have received a double recovery by virtue of the receipt of the Class Period tax refunds and have been therefore unjustly enriched by the receipt of a tax refund that properly and equitably belongs to the Class Members;
- C. Impressing a constructive trust upon the Class Period tax refund, said trust to be for the use and benefit of the Class Members;
- D. Awarding equitable and/or injunctive relief, including the imposition of a constructive trust upon the tax refund for the Class Period paid by the respective Counties to the respondents, pursuant to equity, the common law and/or Rules 64 and 65 of the Utah Rules of Civil Procedure, and any appropriate other remedies;
- E. In the alternative, awarding reparations and ordering the tax refund monies paid back to the ratepayers who have already reimbursed Qwest for those funds because of the unforeseen and extraordinary nature of the refunds, as set forth in the Second Cause of Action; and
- F. Awarding any and all such reasonable attorneys' fees, costs and expenses as may be allowable to the Counties and/or other Class members, by contract, at law, in equity, by statute, rule, inherent power of this agency or otherwise.

DATED this _____ day of December, 2004.

PARSONS, DAVIES, KINGHORN & PETERS, P.C.

DAVID W. SCOFIELD
Attorneys for Complainants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing Amended Complaint (Proposed) was mailed, postage prepaid, this _____ day of December, 2004, to the following:

Michael L. Ginsberg
Kent Walgren
Reed Warnick
Assistant Attorneys General
500 Heber M. Wells Building
160 East 300 South
Salt Lake City, Utah 84111

Gregory B. Monson
Ted D. Smith
Stoel Rives LLP
201 South Main, Suite 1100
Salt Lake City, Utah 84111
Attorneys for Qwest

David W. Scofield