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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the Petition of	)	
QWEST CORPORATION for Arbitration	)	DOCKET NO. 04-049-145
of an Interconnection Agreement with	)	
UNION TELEPHONE COMPANY	)	
d/b/a UNION CELLULAR under	)	<b>MOTION FOR PROTECTIVE</b>
Section 252 of the Telecommunications	)	<b>ORDER AND</b>
Act of 1996	)	<b>MOTION FOR EXPEDITED RULING</b>

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Qwest Corporation (“Qwest”), pursuant to Utah Admin. Code R746-100-1.C and R746-100-8 and Rule 26(c)(2) of the Utah Rules of Civil Procedure, hereby moves the Commission to enter a protective order not allowing Union Telephone Company d/b/a Union Cellular ("Union Cellular") to take the deposition of Qwest in accordance with the Notice of Deposition Duces Tecum (“Notice”) served on Qwest on July 5, 2006. In the alterative, Qwest moves the Commission to enter a protective order limiting the scope of the deposition and providing that the deposition will be held at one or more times and locations mutually acceptable to both parties or that any dispute regarding the same will be resolved by the Commission. Finally, Qwest moves for an expedited ruling on this Motion because the date set by Union for the deposition is Tuesday, July 18th.

**I. RULE 26(c) CERTIFICATION**

Pursuant to Utah Rule of Civil Procedure 26(c), undersigned hereby certifies that Qwest

has, in good faith, tried to reach counsel for Union Cellular in an effort to resolve the parties' dispute without Commission action. Undersigned sent Union Cellular's counsel an email in the morning on July 13th immediately upon her return from vacation. A copy is attached.

Undersigned has not received any response as of the writing of this Motion.

## **II. BACKGROUND**

Qwest filed a Petition for Arbitration in this matter on September 30, 2004. The parties participated in a hearing in a similar arbitration in Colorado in December 2005. In the Utah proceeding, the parties filed to alter the procedural schedule for a sixth time on June 19, 2006 because Union Cellular provided Qwest with a substantially revised cost study on April 28, 2006 and responded to Qwest data requests substantially out of time on May 30th. Qwest has served a series of data requests on Union Cellular, the responses to which Union Cellular has either provided long after the deadline or not at all; Union Cellular has not filed any discovery on Qwest in this proceeding.

Several months ago, Union Cellular's counsel, Mr. Bruce Asay, asked undersigned about the possibility of taking the deposition of a Qwest employee. Undersigned responded that any questions posed in such a deposition could just as easily be asked and answered through written discovery and that Qwest opposed the use of depositions because they are unnecessary and unusual in this type of case. Undersigned did not hear from Mr. Asay again regarding this matter until several weeks ago when he asked about it again and undersigned renewed Qwest's objection.

On Thursday, July 5, 2006, with no call from Mr. Asay or consultation between the parties, undersigned received a Notice of Deposition Duces Tecum via U.S. mail from Union Cellular. The Notice sets a Rule 30(b)(6) deposition for July 18th at 8:30 a.m. A copy is

attached. The certificate of service accompanying the Notice lists "June 29th" as the service date for electronic mail. Undersigned never received any such electronic service, although Qwest has received other filings from Union Cellular electronically. Also, the U.S. mail postmark on the envelope in which the Notice arrived is stamped June 30th. Undersigned could not respond to the Notice until now because she has been out of her office on vacation; Qwest attorney Thomas Dethlefs did not receive any copy of the Notice either electronically or by U.S. mail.

Union Cellular's Notice identifies the subject matter of the deposition as follows:

(1) Qwest's knowledge of 'phantom traffic'; (2) whether Qwest strips calls from the traffic stream; (3) whether Qwest stripped information from the message referenced in Qwest data request 3-001 from Emory Telephone Company; and (4) whether Qwest's switches have the capability to strip call information.

*See* Notice, p. 1.

The Notice also demands production of the following documents:

(1) Any record showing message traffic that has had call information stripped from it; (2) Qwest's billing records for one month for all carriers connecting calls to Union Telephone including wireless and IXC traffic; (3) Qwest's billing records for one month for traffic that Qwest delivers to Union (Union's Wyoming LRNs) in which the traffic is that is [sic] unidentified (i.e. no carrier identifying information); (4) the technical material or standards for Qwest's switches that demonstrate its capacity to read message traffic or to strip identifying information from a message; (5) any complaint from other carriers against Qwest or its Predecessor in Interest alleging that Qwest stripped call information from messages or participated in or allowed 'phantom traffic'; and any document filed with regulatory agencies showing Qwest's position on phantom traffic or on the stripping of information from message traffic.

*See* Notice, p. 2.

Qwest responded to the Notice on July 13th by sending Mr. Asay the attached email. Qwest offered to reach agreement on a time and location, and then to argue about the appropriateness of the deposition afterwards. Qwest has not received a response. It is worth mentioning that Qwest has accommodated a request from Union Cellular to meet face to face to

discuss trunking issues, despite the fact that Qwest has provided Union Cellular with the information it needs regarding trunking requirements. Qwest not only adjusted the schedules of several employees and counsel to meet with Union Cellular representatives in the afternoon on July 18th, but also agreed to pay for one of its employees to fly from Salt Lake City to Denver to be present for the meeting. Union Cellular has responded to Qwest's accommodation and courtesy by serving a notice of deposition without consultation on 13-days notice -- essentially by ambush. Qwest has no obligation to meet with Union Cellular on July 18th and it will be forced to cancel the meeting if the deposition proceeds as noticed.<sup>1</sup>

Based on the foregoing, Qwest seeks an order of the Commission either not allowing the deposition to take place at all or, alternatively, limiting the scope of the deposition consistent with Qwest's discussion below and providing that times and locations of the deposition must be mutually agreeable to both parties or that the Commission will resolve any on-going disputes regarding times or locations.

### **III. ARGUMENT**

#### **A. THE NOTICE IS UNREASONABLE AND OBJECTIONABLE.**

##### **1. The Timing of the Notice Is Unreasonable.**

Union Cellular served the Notice only 13 days prior to the date set for the Rule 30(b)(6) deposition without consulting with Qwest regarding the date for the deposition. Union Cellular scheduled the deposition at Qwest's facilities, again without any prior consultation between the parties.

Rule 30(b)(6) provides in part:

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<sup>1</sup> It is Qwest's understanding that the meeting does not directly concern the issues in dispute in this docket; however, to the extent it does concern those issues, all discussions between the parties are subject to U.R.E. Rule 408.

A party may in the notice . . . name as the deponent a public or private corporation . . . and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the person will testify. . . . The persons so designated shall testify as to matters known or reasonably available to the organization.

Under Rule 30(b)(6), in response to the Notice, Qwest is required to identify one or more individuals with knowledge of the matters identified in the Notice and arrange to have such individuals available to testify not only regarding their own knowledge, but as to matters reasonably known to Qwest, and to appear within 13 days from the date of delivery of U.S. mail on July 5th.

Under Rule 30(b)(1) of the Utah Rules of Civil Procedure, “A party desiring to take the deposition of any person upon oral examination shall give *reasonable notice* in writing to every other party to the action”. (emphasis added). The rule does not establish any particular length of time that constitutes reasonable notice, but instead requires assessment of the reasonableness of the notice on a case-by-case basis. *See* Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2111 at 69 (2d ed. 1985) (“Obviously no fixed rule can be laid down because much will depend on the other circumstances of the particular case.”).

Thirteen days is simply not reasonable given the scope of the information (even the unobjectionable information) sought in the Notice and the schedules of counsel and the individuals most knowledgeable about the matters identified in the Notice. As noted previously, Rule 30(b)(6) anticipates that the witnesses designated by the corporation will provide testimony not only of matters of which they have personal knowledge, but also as to matters reasonably known to the corporation. Given the vagueness and breadth of the Notice, which is discussed below, and the lack of time for witnesses to review matters reasonably available to the

corporation, it is impossible for witnesses to prepare to testify. Secondly, as discussed below, the matters identified in the Notice are beyond the scope of the issues relevant to this docket and it is inappropriate to inquire into them.

**2. The Notice Is Vague, Ambiguous, Overly Broad and Unduly Burdensome, and Seeks Information that Is Proprietary, Confidential, Publicly Available and Irrelevant.**

Among other things, the Notice requests that Qwest produce a witness or witnesses to testify regarding "phantom traffic" and to produce documents related to this type of traffic. This term is not an industry-defined standard. It could mean any number of different types of traffic. Thus, Union Cellular's requests containing this term are vague and ambiguous. Qwest cannot discern what it is that Union Cellular is seeking.

Additionally, Union Cellular's Notice demands billing records for one month for all carriers connecting calls to Union Telephone including wireless and IXC traffic. This demand is overbroad and seeks irrelevant information. Also, these records contain proprietary and confidential information. The records requested, which purport to include traffic for both Union Telephone the wireline carrier and Union Cellular the wireless carrier, are simply not relevant to Union Cellular's claim in this proceeding for compensation for transit traffic for which neither Qwest nor Union Cellular can identify the originating carrier.

The last two document production demands in the Notice request information that is publicly available, and they are vague, ambiguous, overbroad and unduly burdensome. Union Cellular can research as well as Qwest "any complaint" against Qwest or its predecessor in interest alleging the carrier stripped information from messages or allowed "phantom traffic," whatever it is that Union Cellular means by use of that term.

Lastly, Union Cellular wants Qwest to produce "any document filed with regulatory agencies" showing Qwest's position on "phantom traffic" or "on the stripping of information

from message traffic". This last request, which is vague and ambiguous, seeks publicly available information, and it is overbroad and unduly burdensome. Union Cellular is as capable as Qwest of conducting the research to find "any document filed with regulatory agencies". Moreover, it is unreasonable to expect Qwest to produce documents of the nature and volume requested by Union Cellular upon 13-days notice.

To demonstrate why one or more depositions in this matter are unnecessary, and to show that written data requests are sufficient, Qwest can go on the record right here. In answer to three of the four questions set forth in Union Cellular's Notice, Qwest states as follows:

Union Cellular's question: Whether Qwest strips calls from the traffic stream

Qwest's response: Qwest does not.

Union Cellular's question: Whether Qwest stripped information from the message referenced in Qwest Data Request 3-001 from Emory Telephone Company

Qwest's response: Qwest did not.

Union's Cellular's question: Whether Qwest's switches have the capability to strip call information

Qwest's response: Qwest's switches do not.

To the extent that Union Cellular desires additional explanation for Qwest's responses above, it can request that information easily through data requests. Obviously, it can also serve data requests asking for the production of documents.

The fourth question in Union Cellular's Notice, which seeks "Qwest's knowledge of 'phantom traffic'", Qwest cannot answer because it is vague, ambiguous, overbroad and unduly burdensome, and requests irrelevant information. Again, Qwest does not understand what Union Cellular means by the term "phantom traffic" and, thus, cannot possibly identify an appropriate

witness. The discovery that Union Cellular seeks through its Notice, to the extent that it is not objectionable, can be easily and ably handled through data requests consistent with Utah Admin. Code R746-100-8.A.

Based on all of the foregoing, Union Cellular's Notice is unreasonable and objectionable and Qwest should not be required to provide witnesses or documents in response to it.

**B. IN THE ALTERNATIVE, THE SCOPE OF ANY DEPOSITION PERMITTED PURSUANT TO THE NOTICE SHOULD BE APPROPRIATELY LIMITED AND TIMES AND LOCATIONS OF THE DEPOSITION SHOULD BE SUBJECT TO REASONABLE TERMS AGREED TO BY BOTH PARTIES.**

If the Commission concludes, contrary to the foregoing, to allow Union Cellular to proceed with the deposition, the Commission should still limit the scope of the deposition to matters at issue in this docket. In addition, rather than Union Cellular dictating the time and location of the deposition, scheduling should be a matter subject to discussion and reasonable agreement between the parties consistent with normal practice. If the parties are unable to reach agreement, they should be able to ask the Commission to resolve the dispute.

#### **IV. CONCLUSION**

Based upon the foregoing, Qwest respectfully asks the Commission to grant this Motion on an expedited basis and to issue a protective order not allowing Union Cellular to take the deposition of Qwest in accordance with the Notice. In the alternative, Qwest asks the Commission to issue a protective order on an expedited basis limiting the scope of the deposition in accordance with Qwest's discussion above and providing that the deposition will be held at a time or times and location or locations mutually acceptable to both parties or that any dispute regarding the same will be resolved by the Commission.

RESPECTFULLY SUBMITTED this 14th day of July, 2006.

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Melissa K. Thompson  
Thomas Dethlefs

*Attorneys for Qwest Corporation*

## CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **QWEST'S MOTION FOR PROTECTIVE ORDER AND MOTION FOR EXPEDITED RULING** was served on the following by hand delivery and/or electronically and by U.S. mail on July 14, 2006:

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