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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF UTAH**

IN THE MATTER OF THE PETITION)
OF QWEST CORPORATION FOR)
ARBITRATION OF AN INTERCONNECTION)
AGREEMENT WITH UNION TELEPHONE) Docket No. 04-049-145
COMPANY UNDER § 252 OF THE FEDERAL)
TELECOMMUNICATIONS ACT OF 1996)

**RESPONSE OF UNION TELEPHONE COMPANY TO THE PETITION FOR
ARBITRATION OF QWEST CORPORATION**

Union Telephone Company (“Union”) hereby files this Response to the
Petition of Qwest Corporation (“Qwest”) for arbitration and resolution of issues
relating to an interconnection agreement under the terms of the
Telecommunications Act of 1996, 47 USC § 151, *et. seq.* (“the Act”).

I. Summary

1. Qwest filed, on or about September 30, 2004, its Petition for
Arbitration of an Interconnection Agreement with the Utah Public Service
Commission (“Commission”). In its Petition, Qwest represented to the
Commission that as “Union had failed to respond to Qwest’s request to
negotiate, or raise any issues with respect to the terms and conditions of a

wireless interconnection agreement”, the Commission should order Union to execute Qwest’s proposed wireless interconnection agreement.

2. Omitted from Qwest’s Petition was the fact that it had previously filed, on or about February 26, 2004, a Petition for Arbitration with the Wyoming Public Service Commission (“Wyoming Commission”) requesting arbitration of the same interconnection agreement. As that action is subject to Union’s Motion for Rehearing and is presently pending, it might save administrative time to jointly review and arbitrate the issues.

II. Proceeding Time Period

3. A state commission, pursuant to 47 USC § 252 (b)(4)(C), has nine (9) months from the date the responding carrier receives the request for negotiation of interconnection from the initiating party to conclude its proceedings. While Qwest represents that it made a formal request for a wireless interconnection agreement with Union by letter dated April 23, 2004, its Exhibit A reflects a letter dated September 23, 2003 wherein Qwest formally requested, pursuant to 47 CFR 20.11, that Union enter into negotiation with Qwest for a wireless interconnection agreement. In Qwest’s earlier Petition for Arbitration with the Wyoming Commission, Qwest represented that it had first written on September 23, 2003 requesting negotiation of an interconnection agreement. Further, Qwest quoted 47 USC § 252 (b)(1), noting that the initiating or responding party may petition the state commission to arbitrate any open issue from the 135th to the 160th day after the date of the request.

Accordingly, Qwest noted, its position is timely filed before the Commission because the applicable window for filing “began on February 5, 2004 and ends on March 1, 2004 in as much as Qwest originally requested negotiations on September 23, 2003”. While Qwest represents that the nine (9) month period for the Commission to decide the disputed issues, as set forth in 47 USC § 252 (b)(4)(C), expires on January 23, 2005, its own filing would show that the nine month period ended on June 23, 2004 as represented to the Wyoming Commission.

III. Jurisdiction

4. Union does not agree that the Commission has jurisdiction; to consider the petition filed by Qwest pursuant to the Act, to resolve disputed issues, and to approve an interconnection agreement. As Qwest’s request for interconnection occurred on September 23, 2003, it is arguable, as Qwest represented to the Wyoming Commission, that the state commission lost jurisdiction after the nine month period. Union does not take a position in its response as to the possibility of waiver with respect to these stated time lines. Moreover, Union would represent that it has continually taken the position with Qwest that the tariffs on file with the respective state commissions, including the Utah Public Service Commission, remain yet applicable to the interconnection of traffic.

5. Union is filing this Response to the Petition for Arbitration, as filed by Qwest, pursuant to 47 USC §252 (b)(3). While this Response is not

mandatory under the Act, Union wishes to clarify its position on certain issues and appraise the Commission of the state of negotiations between the parties.

IV. The Parties

6. Union is a commercial mobile radio service (“CMRS”) provider extending wireless service through parts of Utah and Colorado and the whole of Wyoming under the trade name of Union Cellular. Union is a Wyoming corporation and also provides other telecommunication services pursuant to its licenses and certificates in Wyoming, Utah and Colorado.

7. Qwest is a Colorado corporation with authority to provide local exchange service to various states in the intermountain west, including the states of Utah, Wyoming and Colorado.

8. The names and titles of the persons to whom requests for information and correspondence should be addressed on behalf of Union in this proceeding are:

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V. Union's Position

9. Qwest represents to the Commission in its Petition that the Parties have not engaged in negotiation over the proposed terms and conditions of a wireless interconnection agreement. More correctly, Qwest should represent to the Commission that Union has not engaged in negotiations with Qwest in the precise manner demanded by Qwest. Union wants to establish an appropriate interconnection and compensation mechanism with Qwest. Nevertheless, it is Union's position that as tariffs exist in the state of Utah which are on file with the Commission, these tariffs are binding and should be enforced pursuant to their terms.

10. Section 54-8b-2.2 of the Utah statutes provides in pertinent part:

54-8b-2.2. (1)(a)(i) "The Commission may require any telecommunications corporation to interconnect its essential facilities with another telecommunications corporation that provides public telecommunications services in the same, adjacent or overlapping service territory.

(ii) Interconnecting telecommunications corporations shall permit the mutual exchange of traffic between their networks without unreasonable blocking or other unreasonable restrictions on the flow of traffic. In determining unreasonable blocking or unreasonable restrictions, the Commission shall, among other things, take into account the necessity and time required for adapting the network to respond to significant changes in usage patterns. . . .

(D)(i) A telecommunications corporation shall file with the Commission the prices, terms and conditions of any agreement it makes with the interconnection of essential facilities or the purchase or sale of essential services."

11. As the Parties have on file with the Commission their tariffs

governing interconnection and they are filed pursuant to Utah statute, it is Union's position that these tariffs are applicable and should be enforced according to their terms.

12. Although Qwest argues that Union has not entered into negotiations, Union has been consistent in demanding that Qwest honor the filed tariffs as approved by various commissions. In Wyoming, for instance, Union filed a Complaint in Docket No. 70008-TC-04-40/70000-TC-04-960 in which it stated:

“As telecommunications companies providing service within the state of Wyoming, Union and Qwest are subject to the supervision and regulation of the Commission. As the parties are subject to the regulation of this Commission, their intrastate telecommunications services, unless exempt, are to be provided pursuant to statute. Union provides its applicable services in accordance with filed tariffs. It has a tariff that is applicable to wireless and wireline services. Customers, such as Qwest, taking services from Union do so subject to the applicable tariff. In the same manner, as Qwest has filed tariffs that identify the services it provides to the public, carriers such as Union, take these services as filed. Qwest must provide these services as identified in the filed tariffs.”

13. It remains Union's position that as telecommunications companies are providing services within the various states, including the state of Utah, the parties are subject to the supervision and regulation of this Commission. As the Parties have filed tariffs, which have been approved by this Commission, these tariffs should be enforced pursuant to their terms. By Utah statute, the tariffs on file with the Commission are applicable. Although the Act allows for the filing of interconnection agreements, any such agreement which is subject

to approval by the state commission, is subject to previously approved tariffs (unless inconsistent with federal act). As Union and Qwest have tariffs on file with the Commission, which tariffs are presumed to be lawful, they should be enforced.

VI. Reservation of Rights

14. As stated, Union persists in its position that the filed tariffs remain applicable and enforceable by their terms, to the extent not inconsistent with federal law. Accordingly, the filed tariffs should be enforced and govern interconnection between the Parties. Any interconnection agreement should first recognize the applicability of the filed tariffs, which tariffs have the force and effect of law.

15. Notwithstanding Union's position on the filed rate doctrine and the Commission's jurisdiction, if this proceeding is not dismissed, Union reserves its right to supplement the issues which it believes to be important and to submit revised language to any proposed interconnection agreement.

VII. Initial Issues Raised by Union

16. Although Union questions the jurisdiction of this Commission to resolve any issues raised by Qwest's Petition, it would suggest that there are a number of issues that would need to be resolved if this proceeding continues.

Initially, the issues include:

- a. What is the applicability of the filed tariffs that have been approved by the Commission?
- b. What is the definition of "local traffic" and what traffic should be

subject to reciprocal compensation?

- c. What is the definition of “point of interconnection” for the agreement?
- d. How should traffic be delivered to the respective parties, rated and billed?
- e. What are the responsibilities of the respective originating, transiting, and terminating carriers to ensure that compensation is provided for the costs of providing the respective service?
- f. What types of interconnection methodologies are viable for the exchange of traffic between the Parties?
- g. What are the Parties’ obligations with respect to routing of calls?
- h. Should Qwest be required to provide traffic information?
- i. What compensation should be allowed?

VIII. Request for Relief

WHEREFORE, Union Telephone Company respectfully requests of the Commission that it:

Consider the Petition and Union’s Response and ascertain whether, under § 252 of the Act that the Commission is without jurisdiction such that the Petition should be dismissed. Alternatively, in the absence of a dismissal, that the Commission, perhaps in concert with other Commissions, arbitrate the unresolved issues between the Parties and issue an order consistent with its filed tariffs; and

Issue such other orders as are just and proper.

DATED this _____ of _____, 2004.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via first class and electronic mail on the _____ day of _____, 2004, addressed as follows:

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