

Bruce S. Asay
Associated Legal Group, LLC
1807 Capitol Avenue, Suite 203
Cheyenne WY 82001
Telephone: (307) 632-2888
Facsimile: (307) 632-2828

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

IN THE MATTER OF THE COMPLAINT OF)
UNION TELEPHONE COMPANY, a Wyoming)
Corporation, Against QWEST CORPORATION,) Docket No. 05-054-01
fka U S WEST COMMUNICATIONS, INC.,)
a Colorado Corporation.)

**OPPOSITION TO QWEST CORPORATION'S
MOTION TO DISMISS OR IN THE ALTERNATIVE,
FOR A MORE DEFINITE STATEMENT**

Union Telephone Company (“Union”), by and through its undersigned counsel,
Associated Legal Group, LLC, hereby files its Opposition To Qwest Corporation’s (“Qwest”)
Motion To Dismiss Or In The Alternative, For A More Definite Statement.

In its Motion to Dismiss, Qwest intimates that Union has vaguely alleged that under
federal and state law, Qwest is obligated to compensate Union for originating or terminating
Qwest telecommunication traffic. Hence, since Qwest perceives that the Complaint is vague, it
demands that the Utah Public Service Commission (“Commission”) dismiss the Complaint or in
the alternative, require a more definite statement. As Union is merely requesting of the

Commission that it recognize a time-honored tenet of utility regulation; that a utility should be compensated for the services it provides, Qwest's Motion should be dismissed.

Background

1. Union, in a Complaint filed in the United States District Court for the District of Wyoming, (Docket No. 02-CV-209D) complained that it was not receiving appropriate access charges billed to Qwest for its operations in Wyoming, Colorado and Utah.

2. Union, in its Complaint, noted that it provided local and long distance services to its customers who were connected through the public switched network to facilities beyond its system. Union noted that the system's purpose was to seamlessly transfer telecommunication traffic between different companies, regions and countries. In order for this system to work, Union noted, there must be a compensation scheme in place to ensure that all carriers involved in the origination or termination of traffic are compensated. Whether a call is between states, LATAs or MTAs, the traffic moving from one carrier to another carries with it payment responsibility. In any jurisdiction, when a message or call is originated, carried or terminated, compensation is owed for the service rendered.

3. For Union, an integrated carrier providing local and long distance services, both wireline and wireless, it connects with Qwest primarily in originating and terminating traffic. As it both originates and terminates traffic for Qwest as a wireline and wireless carrier, it is Union's position that as Qwest delivers traffic to Union for termination, for the completion of a message, Union is owed for this service. Qwest disagrees and has refused to compensate Union for certain types of traffic.

4. It is Union's position that pursuant to federal and state law, including the

Telecommunications Act of 1934 and amending legislation, interconnecting carriers are to be compensated for the services that they provide. Whether on a state or interstate basis, these services, whether provided pursuant to tariff, price list or interconnection agreement, are deserving of compensation. A carrier providing services to another is to be compensated for the services provided.

5. In its Complaint, Union alleged that it has and does bill Qwest for terminating access associated with the services it provides in completing Qwest's traffic. As federal and state law require Qwest to compensate Union for terminating the Qwest traffic, Qwest is acting contrary to law in refusing such payment. Notwithstanding Union's position which is based on federal and state law, the federal district court rejected Union's complaint as it related to Wyoming intrastate traffic and deferred a ruling on the implications for the states of Utah and Colorado. Consequently, Union was allowed to pursue its claims in these states while its appeal on Wyoming intrastate traffic was stayed.

6. Notwithstanding Union's position that it be compensated for providing services to Qwest, Qwest has steadfastly refused to compensate Union for receiving, using and benefiting from access services. Indeed, on or about September 30, 2004, Qwest filed a Petition for Arbitration with the Commission in Docket No. 04-049-145 demanding that the Commission arbitrate an interconnection agreement between Qwest Corporation, a local exchange carrier, and Union Telephone Company d/b/a Union Cellular, a wireless carrier.

7. In its Petition, Qwest, the incumbent local exchange carrier, ("ILEC") supplied a template wireless interconnection agreement which it had previously proposed to Union. Union, Qwest alleged, was a Wyoming corporation providing cellular telephone service in the region

including parts of Utah. In its Petition, Qwest noted that it as an ILEC had tried unsuccessfully to force a wireless interconnection agreement on Union which it alleged to be a cellular carrier. Qwest having failed to force Union to enter into an interconnection agreement as a wireless carrier, now demanded in its Petition that the Commission force Union as a wireless carrier to enter into an interconnection agreement with Qwest, the ILEC. Union, for its part, rejected the Qwest demand and relied on tariffs, price sheets and regulations filed on both the federal and state level to establish an appropriate compensation scheme between the parties. Further, Union argued that Qwest, as an ILEC, could not force an interconnection agreement on Union as either a wireless or a wireline company.

Union Complaint

8. In order to address the appropriate compensation scheme in Utah, Union filed, on or about the 25th day of February, 2005, a Complaint in this docket with the Commission wherein it stated its position on the need for inter-carrier compensation. Indeed, Union argued that as it was providing compensable services to Qwest, it was entitled to be compensated for these services. Specifically Union stated:

“14. As Qwest customers and others contact Union customers located within the confines of Union’s service area, it is necessary for Union to complete calls which originate in areas outside of Union’s area, or . . . , are transported by Qwest and terminated in Union’s service area. As Union terminates these calls for the benefit of Qwest, Qwest must compensate Union for the services provided in completing these calls. Accordingly, as telephone and communications traffic carried by Qwest is transferred to Union for completion in Union’s service area, pursuant to federal and state law, Union is to be compensated for such services, particularly as Qwest accepts and benefits from these services.”

Union Complaint, p. 6.

9. Union further noted that as Union has billed Qwest for the services

that Union provides and which Qwest accepts and for which Qwest benefits, Union is entitled to compensation. Specifically, Union demanded that it receive a declaration from the Commission that it was entitled to compensation.

10. Although in the proceedings referenced thus far, Union's Federal Complaint, Union's Response To Qwest's Petition For Arbitration and even in Union's Utah Commission Complaint, Qwest has ridiculed Union's position and demanded entry of an interconnection agreement, a recent decision of the Federal Communications Commission ("FCC") supports and even mandates Union's position. This case, *T-Mobile et al Petition for Declaratory Ruling Regarding ILEC Wireless Termination Tariffs*, CC Docket No. 01-92, FCC 05-42, FCC February 24, 2005, held as Union had argued that an ILEC such as Qwest cannot force an interconnection agreement on a wireless carrier and that at least to the date of the order, wireless tariffs were appropriate.

11. In the order, the FCC referenced the very type of dispute that Union has with Qwest. The order noted:

“ 6. The practice of exchanging traffic in the absence of an interconnection agreement or other compensation arrangement has led to numerous disputes between LECs and CMRS providers as to the applicable intercarrier compensation regime. For instance, many CMRS providers argue that intraMTA traffic routed from a CMRS provider through a BOC tandem to another LEC is subject to the reciprocal compensation regime because it originates and terminates in the same MTA. Some LECs, however, contend that this traffic is more properly subject to access charges because it originates outside the local calling area of the LEC, is being carried by a toll provider, *i.e.* the BOC, and is routed to the LEC via access facilities. When a LEC seeks payment of access charges from a BOC in these circumstances, the BOC often refuses to pay such charges on the basis that (1) it is merely transiting traffic subject to reciprocal compensation, and (2) the originating carrier is responsible for the reciprocal compensation due.

7. As a result of these disputes, the LECs have sought assistance from state commissions, requesting that they be compensated for terminating this traffic.”

FCC Order at p.4.

12. Here, the FCC addresses the concern that Union has continually raised. Qwest has continuously forced traffic on Union’s system without providing compensation. Qwest argues that in the absence of an interconnection agreement it need not compensate Union for terminating the traffic. Union, to the contrary, has argued that there are regulations, guidelines, tariffs and price lists in place which control and which demand compensation for traffic which is forced by Qwest onto the Union system for termination. It is absolutely unfair that Qwest receives compensation from its customers or initiating carriers under the premise that it is paying for the termination of calls when in actuality in many circumstances, it refuses to compensate the terminating carrier.

13. In response, the FCC noted that its existing rules do not explicitly preclude tariff compensation arrangements or preclude LECs from filing termination tariffs.¹

14. Most importantly, the FCC noted in its Order that it was allowing tariff arrangements because existing law did not specify the types of arrangements that trigger a compensation obligation. Because the existing compensation rules are silent as to the type of arrangement necessary to trigger payment obligations, it is not unlawful to utilize tariffs to assess transport and termination charges. FCC Order, p. 6 ¶ 10.

¹ The FCC did note that on a prospective basis, it was amending its rules to make clear its preference for contractual arrangements by prohibiting LECs from imposing compensation obligations via tariff arrangements. FCC Order at p.6, ¶ 9. Further, the FCC noted that it was amending its regulations to allow incumbent LECs to request interconnection with CMRS

15. Presently, Union and Qwest, as part of Qwest's Petition, (Docket No. 04-049-145) are negotiating an interconnection agreement. Union acknowledges the FCC decision in *T-Mobile* now allows Qwest to require interconnection even of a CMRS provider. Union anticipates that it will have an interim agreement in the very near term and either by judicial action or mutual agreement, will have a permanent interconnection agreement in place. Obviously, this has not always been the law. Prior to the FCC's *T-Mobile* decision, an ILEC could not force a CMRS provider to enter into an interconnection agreement. In the absence of such an interconnection agreement, tariffs, even state tariffs, were applicable and appropriate.

16. As Union and Qwest will soon have an interconnection agreement in place, the interconnection agreement will control compensation for the exchange of traffic between the companies. As the interconnection agreement controls compensation on a prospective basis, the agreement will not control compensation for traffic exchanged to the date of the agreement. Consequently, as contained in Union's Complaint to the Commission, compensation is owed for this period of time.

17. While Qwest may have argued in the past that an interconnection agreement was mandated by the FCC, such that alternative compensatory schemes were not allowed, the *T-Mobile* decision clearly refutes this position. In the absence of an interconnection agreement, other compensatory schemes, including tariffs, are allowed and compensation is due and owing. Therefore, within the applicable statutory timeframe until the date of an interconnection agreement, compensation is due Union in accordance with the tariff and/or applicable regulations.

WHEREFORE, as the FCC in its *T-Mobile* decision has recognized alternative compensatory schemes, the Commission must recognize Union's request for compensation and order the payment of appropriate compensation due and owing Union. In addition, Qwest's Motion To Dismiss Or In The Alternative For A More Definite Statement must be denied.

DATED this _____ day of _____, 2005.

Bruce S. Asay
Associated Legal Group, LLC
1807 Capitol Avenue, Suite 203
Cheyenne, Wyoming 82001
Telephone: (307) 632-2888

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing OPPOSITION TO MOTION TO DISMISS OR IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT to be served by electronic mail and/or by U.S. Mail, postage prepaid to the following named parties on this _____ day of April 2005, and addressed as follows:

Michael Ginsberg
Patricia Schmid
Mark Shurtleff
Counsel for Division of Public Utilities
P.O. Box 140857
Salt Lake City, UT 84114-0857
mginsberg@utah.gov

Robert Brown, Esq.
Qwest Service Corporation
1801 California Street, 10th Floor

Denver, CO 80202
Telephone: (303) 383-6642
robert.brown@qwest.com

Bruce S. Asay