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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE COMPLAINT)	DOCKET NO. 05-054-01
OF UNION TELEPHONE COMPANY, a)	
Wyoming Corporation, Against QWEST)	
CORPORATION, fka US WEST)	QWEST CORPORATION'S
COMMUNICATIONS, INC., a Colorado)	ANSWER TO SECOND AMENDED
Corporation.)	COMPLAINT WITH RESPECT TO
)	WIRELINE CLAIMS

Pursuant to Utah Administrative Code § R746-100-4-D, Qwest Corporation (“Qwest”), hereby answers the Second Amended Complaint filed by Union Telephone Company (“Union”) to the extent that it seeks compensation for termination of wireline traffic. Qwest has contemporaneously moved to dismiss the Second Amended Complaint to the extent that it seeks compensation for the termination of wireless traffic.

I. INTRODUCTION

This proceeding is an attempt by Union to re-litigate claims previously asserted and rejected in a lawsuit filed against Qwest in the United States District Court for the District of Wyoming. In that proceeding, Union sought to recover access charges for terminating both wireline and wireless calls in the states of Colorado, Utah and Wyoming. Union sought recovery

from Qwest even in circumstances in which Qwest was merely a transiting carrier delivering calls to Union placed by customers of other telecommunications carriers.

Union bases all of its claim(s) in this proceeding upon its Access Service Tariff. (Second Amended Complaint, ¶15). Union has not entered into an interconnection agreement with Qwest in Utah and Union has not alleged the existence of any other agreement, price list or tariff as the basis for its claim(s).¹ Thus, Union's claim(s) here are identical to the claims Union asserted before the Wyoming Federal Court for termination of calls in Utah.

In orders dated May 11, 2004 and September 3, 2004, the Wyoming Federal Court granted Qwest summary judgment on several claims that Union is attempting to assert in this proceeding. In particular, the Court dismissed all of Union's claims for terminating wireless calls in Utah. Since the vast majority of Union's customers are wireless customers, the Court's dismissal of the claims for terminating wireless calls disposed of all but a small portion of Union's total claim.

In its May 11, 2004 Order, the Wyoming Federal Court declined to rule on whether Union was entitled to collect access charges for terminating wireline calls in Colorado and Utah that are delivered to Union by Qwest but placed by customers of third party carriers ("wireline transit traffic"). Instead, the Wyoming Federal Court noted that "Qwest disputes the application of Union's tariffs presently on file in Utah and Colorado to intrastate wireline traffic that transits Qwest's network for termination on Union's network in those states" and stayed these claims "pending the interpretation of those tariffs by the appropriate state agencies."

In a separate motion filed contemporaneously, Qwest has moved to dismiss the Second Amended Complaint insofar as Union seeks compensation from Qwest for the termination of

¹ Qwest initiated Docket No. 04-049-145 requesting that the Commission arbitrate the terms of an interconnection agreement precisely because Union refused to negotiate such an agreement.

wireless traffic. Qwest's position with respect to Union's wireline claims is straightforward. Union is not entitled to collect access charges from Qwest for termination of calls that merely transit Qwest's network. Under the existing access charge regime, the calling party's carrier is responsible for compensating Union for the termination of calls placed by its customers. The Federal Communications Commission ("FCC") has long recognized this industry arrangement. As the FCC has explained:

Existing access charge rules, and the majority of existing reciprocal compensation arrangements require the calling party's carrier, whether LEC, IXC or CMRS, to compensate the called party's carrier for terminating the call. Hence these regimes may be referred to as "calling party's network pays" (or "CPNP"). Such CPNP arrangements, where the calling party's network pays to terminate a call, are clearly the dominant form of interconnection regulation in the United States and abroad.²

II. ANSWER WITH RESPECT TO WIRELINE CLAIMS

1. Qwest admits the allegations in the first two sentences of paragraph 1. Qwest denies the third sentence of paragraph 1 to the extent that it alleges that Qwest is responsible for paying access charges for terminating local traffic and/or traffic originated by carriers other than Qwest. The fourth sentence of paragraph 1 states a claim for relief which Qwest neither admits nor denies.

2. Qwest admits the allegations in paragraph 2.

3. Qwest admits the allegations in paragraph 3.

4. Qwest admits the allegations in the first two sentences of paragraph 4. Qwest lacks knowledge sufficient to admit or deny the allegations in the third sentence of paragraph 4 and therefore denies same.

² *In the Matter of Developing a Unified Inter-carrier Compensation Regime*, 16 FCC Rcd. 9610, 2001 WL 455872 (Notice of Proposed Rulemaking, 2001), ¶9.

5. Qwest admits that its predecessor U S WEST Communications, Inc., was one of the seven RBOCs following the breakup and divestiture of the AT&T. Qwest admits that U S WEST was authorized to provide long distance service within Local Access and Transport Areas. Qwest denies the remaining allegations in paragraph 5.

6. Qwest admits the allegations in paragraph 6.

7. Qwest denies the allegations in the first sentence of paragraph 7. Qwest lacks knowledge sufficient to admit or deny the allegations in the second sentence of paragraph 7 and therefore denies same.

8. Qwest admits the allegations in paragraph 8.

9. Qwest admits the allegations of the first sentence of paragraph 9. Qwest admits that among the purposes of the PSTN is the carriage of telephone calls and data transmissions between customers.

10. Qwest denies the allegations set forth in paragraph 10.

11. Qwest admits that the existing access charge regime requires the calling party's carrier to pay originating access charges and terminating access charges for calls from one local calling area to another. Qwest denies the remaining allegations set forth in paragraph 11.

12. Qwest admits the allegations in the first sentence of paragraph 12. Qwest denies the remaining allegations of paragraph 12.

13. Qwest lacks knowledge sufficient to admit or deny the allegations in paragraph 13 and therefore denies same.

14. Qwest admits the allegations of the first sentence of paragraph 14. Qwest lacks knowledge sufficient to admit or deny the remaining allegations of paragraph 14 and therefore denies same.

15. Qwest admits the allegations in paragraph 15.
16. Qwest denies the allegations of paragraph 16.
17. Qwest denies the allegations in the first three sentences of paragraph 17. Qwest lacks knowledge sufficient to admit or deny the fourth, fifth and sixth sentences of paragraph 17 and therefore denies same.
18. Qwest denies the allegations set forth in paragraph 18.
19. Qwest denies the allegations set forth in the first and fourth sentences of paragraph 19. Qwest lacks knowledge sufficient to admit or deny the second and third sentences of paragraph 19 and therefore denies same.
20. Qwest denies the allegations in paragraph 20.

DEFENSES

1. Union's Second Amended Complaint fails to state a cause of action.
2. Some or all of Union's claims are barred by applicable statutes of limitations.
3. Some or all of Union's claims are barred by laches.
4. Qwest has paid Union all or part of the amount owed to Union for traffic originated by Qwest's customers.

WHEREFORE, Qwest Corporation respectfully requests that the Commission dismiss the Second Amended Complaint filed by Union Telephone..

Dated this 10th day of August, 2005

Respectfully submitted,

Robert C. Brown, Esq.
Qwest Services Corporation

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **QWEST CORPORATION'S ANSWER TO SECOND AMENDED COMPLAINT WITH RESPECT TO WIRELINE CLAIMS** to be served by electronic mail and/or by U.S. Mail, postage prepaid, to the following on this 10th day of August, 2005:

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