

Robert C. Brown
Jeff Nodland
Corporation Counsel
Qwest Services Corporation
1801 California, Suite 1000
Denver, CO 80202
Telephone: (303) 383-6642
Fax: (303) 296-3132
Email: Robert.Brown@qwest.com
Jeff. Nodland@qwest.com

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)	MOTION TO DISMISS, OR IN
Corporation.)	THE ALTERNATIVE, FOR A
)	MORE DEFINITE
)	STATEMENT

Qwest Corporation ("Qwest"), by its attorneys, hereby moves to dismiss the complaint filed by Union Telephone Company ("Union") pursuant to Utah Admin., Rule R746-100-4.D. In the alternative, Qwest moves pursuant to Rule 12(e) of the Utah Rules of Civil Procedure that Union be required to file a more definite statement of its claim(s) against Qwest. In support of this motion, Qwest states the following:

MOTION TO DISMISS

1. On or about February 25, 2005, Union filed its complaint in this matter alleging vaguely that pursuant to federal and state law, Qwest is obligated to compensate Union for originating or terminating Qwest telecommunication traffic. Union also alleges that such compensation "in part, has not been accomplished." Complaint, ¶1.

2. Union's complaint fails to state a cause of action and should be dismissed because it lacks any allegations that Qwest has failed to fulfill its obligations under the terms of any access tariff, price list or interconnection agreement. Such allegations are essential because without them, the Commission cannot even determine whether it has jurisdiction over this matter. If, for example, the traffic for which Union seeks compensation is interstate traffic governed by an FCC tariff, the Commission would not have subject matter jurisdiction. Significantly, Union does not allege that the Commission has jurisdiction over the complaint.

3. Furthermore, Union's complaint will not state a cause of action until Union properly pleads the existence of an intrastate tariff, price list or interconnection agreement that lawfully imposes the obligation upon Qwest to compensate Union. Union notes in its complaint that the services for which it seeks compensation "are typically provided pursuant to tariffs or price lists on file with the federal or state commissions." (Complaint, ¶13) Nevertheless, Union fails altogether to allege the existence of a tariff, price list or other document which imposes an obligation upon Qwest to compensate Union for traffic that Union either originated or terminated.

4. Finally the Commission should dismiss the complaint because it currently has before it an arbitration proceeding between Union and Qwest, in which the rates, terms and conditions for the exchange of telecommunications traffic are among the issues being litigated. See Docket No 04-049-145. Administrative efficiency would dictate that the Commission not decide the same issues in two separate dockets.

MOTION FOR A MORE DEFINITE STATEMENT

5. Utah Rule of Civil Procedure 12(e) provides that a more definite statement is appropriate where a party is unable to prepare a responsive pleading because the complaint as plead lacks

sufficient definiteness or particularity. Union's complaint lacks sufficient definiteness such that Qwest is presently unable to prepare a responsive pleading.

6. In order for Qwest to prepare a responsive pleading, Qwest must know what tariff(s), price lists or interconnection agreement(s) Union relies upon as the basis for its complaint, the time periods and amounts for which Union contends it has not been paid, whether the charges in question are for originating or terminating access, whether Qwest is the originating carrier for the traffic at issue or merely a transiting carrier, whether the traffic is wireline or wireless; whether the entity that claims it was not compensated is Union the Incumbent LEC, or Union the wireless provider and whether the traffic is local traffic or toll traffic. All of these details impact in one way or another whether Union is entitled to compensation from Qwest. Union has provided none of these details.¹

WHEREFORE, Qwest Corporation respectfully requests that the Commission dismiss the Complaint filed by Union Telephone Company, or in the alternative, require Union to amend its complaint to include the detail identified in Paragraph 4 of this motion such that Qwest can prepare a responsive pleading, and grant such further relief as the Commission may deem appropriate.

¹ Qwest also notes that Union's pleading has created some confusion about the relief that it seeks. In paragraph 1 of its WHEREFORE clause Union asks this Commission to render "a declaration" that it is entitled to compensatory damages. There are two problems with this request. First, Union filed this action as a formal complaint against Qwest and not as an action seeking declaratory relief pursuant to Utah Admin., Rule R746-101, or Utah Code 63-46b-21. In fact, the caption on the first page of the request is styled "**COMPLAINT**" and the first paragraph states "... for its Complaint against Qwest Corporation, ..." Thus, to the extent the Commission does not dismiss this matter and instead allows this docket to go forward, it should not decide this matter as a declaratory judgment matter under Utah Code 63-46b-21. Second, Union asks the Commission to declare that it "is entitled to compensatory damages." However, this Commission has previously noted that it "has no jurisdiction" with respect to a request concerning compensatory damages. See, *In the matter of Pogue v. Spring Creek Service Co.*, Docket No. 99-2196-01 (July 2, 1999). Because it appears that Union is ultimately seeking compensatory damages, this Commission should dismiss the complaint for lack of subject matter jurisdiction. See also, *In the matter of the Complaint of Brenda Rogers v. McLeod USA Telecommunications Services, Inc.*, Docket No. 01-2249-01 (April 9, 2001).

Dated this 11TH day of March, 2005

Respectfully submitted,

Robert Brown, Esq
Qwest Services Corporation
1801 California St., 10th Floor
Denver, CO 80202
Telephone: (303) 383-6642
Fax: (303) 296-3132
e-mail: robert.brown@qwest.com
ATTORNEY FOR QWEST CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **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 on this 11th day of March, 2005:

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

James Woody
Executive Vice President
Union Telephone Company d/b/a Union Cellular
850 N. Hwy 414,
P.O. Box 160
Mountain View Wyoming 82939
jwoody@union-tel.com

Bruce Asay, Esq.
Counsel for Union Telephone
1807 Capitol Ave.
Suite 203
Cheyenne, WY 82001
basay@associatedlegal.com

Stephen F. Mecham
Callister, Nebeker & McCullough
10 E. South Temple, Suite 900
Salt Lake City, UT 84133
sfmecham@cnmlaw.com