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**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, fka US WEST COMMUNICATIONS, INC., A COLORADO CORPORATION	Docket No. 05-054-01 PETITION FOR REVIEW OR REHEARING OF ORDER GRANTING PARTIAL MOTION TO DISMISS AND PETITION FOR HEARING
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Union Telephone Company (“Union”), by and through its undersigned counsel, petitions this Commission, pursuant to Utah Code Ann. §§63-46b-12 and 54-7-15, and Utah Admin. Code R746-100-11 F., for review or rehearing of its September 28, 2005 Order granting Qwest Corporation’s (“Qwest”) Partial Motion to Dismiss Union’s Complaint. In support of this petition, Union states as follows:

1. Union, on or about July 22, 2005, filed its Second Amended Complaint seeking compensation from Qwest for termination of wireline and wireless calls originated and transported by Qwest.

2. Union filed its complaint because it provides terminating access services to Qwest for which it is entitled to compensation. Union noted in its complaint that while it compensates Qwest for terminating Union-originated traffic, Qwest refuses to compensate

Union for certain traffic (particularly wireless traffic) that Union terminates for Qwest's benefit. Union simply seeks compensation for these services.

Union believes, as it alleged in its complaint, that it is entitled to terminating access charges pursuant to its filed tariffs. Nevertheless, even if this Commission rejects the position that Qwest should pay Union's filed terminating access tariff, Union is still entitled to some kind of compensation. The effect of the Commission's order is to allow Qwest to use Union's services and network without paying for them. Whether or not Qwest should compensate Union at Union's tariff rate, the correct compensation is not \$0. That is not just or reasonable and is entirely inconsistent with federal and state law.

3. The Telecommunications Act of 1996, (the "Act") imposes on Local Exchange Carriers ("LECs"), not wireless carriers, the duty to interconnect, and to establish reciprocal compensation arrangements for transporting and terminating telecommunications traffic. 47 U.S.C. § 251 (b)(5), 47 C.F.R. § 51.703. Congress and the Federal Communications Commission ("FCC") gave wireless carriers flexibility in choosing interconnection arrangements. When there is no agreement on rates, the FCC determined that reciprocal compensation rates for transport and termination should be established at the LEC's rates in the absence of a showing that a new entrant's costs differ. *See* FCC First Report and Order, Docket 96-325, ¶ 1089, Released Aug. 8, 1996.

4. The FCC stated:

If a competing local service provider believes that its costs will be greater than that of their incumbent LEC for transport and termination, then it must submit a forward looking economic cost study to rebut this presumptive symmetrical rate. In that case, we direct state commissions, when arbitrating interconnection arrangements, to depart from symmetrical rates only if they find that the cost of efficiently configured and operating systems are not symmetrical and justify a different compensation rate. In doing so, however, state commissions must give full and fair effect to the

economic costing methodology we set forth in this order, and create a factual record, including a cost study, sufficient for purposes of review, after notice and opportunity for the affected parties to participate. In the absence of a cost study justifying a departure from the presumption of symmetrical compensation, reciprocal compensation for the transport and termination of traffic shall be based on the incumbent local exchange carrier's cost studies.

5. The FCC decision in *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 made it clear that, at least to the date of the order, Union could be compensated for terminating wireless traffic based on filed access tariffs. In its September 28, 2005 Order, the Commission distinguished *T-Mobile* from this case by saying that in *T-Mobile* the FCC condoned LECs imposing their terminating access tariffs on wireless carriers' traffic and not the reverse, but the FCC did not make that distinction. The FCC amended its rule to do away with terminating access tariffs and required both wireless carriers and LECs to negotiate interconnection agreements instead. The Act did not eliminate the requirement to compensate for traffic Union terminated for Qwest. Union had no obligation to enter into an interconnection agreement with Qwest until after the *T-Mobile* decision. Union is not seeking compensation for services pursuant to its access tariff after February 24, 2005; the parties have an interim interconnection agreement in place to address that. Union simply wants to be paid for services it rendered for which it has not been compensated. Qwest's position of paying nothing for services that were formerly compensated for on a mutual basis alters the Act and FCC decisions.

To prevent the unjust and unreasonable outcome Qwest advocates, the Commission's analysis should follow a sequence of alternatives to establish the rate relationship between Union and Qwest. Union was charging tariffed access rates for termination of wireless traffic prior to the date of the Act and the Act did not change that

relationship. Union, therefore, could continue to assess access charges for the termination of Qwest traffic, including wireless traffic, at least until the date of the *T-Mobile* decision. If the Commission does not accept that position, then contract rates should be used, but in the absence of an approved interconnection agreement, the contract rate established in 47 C.F.R. § 51.717 should apply. This would utilize Qwest's rate as the incumbent.¹ Parties may also operate under an interim agreement like the one Qwest and Union now have before establishing a final rate in a Commission-approved interconnection agreement. In this instance, however, Union's interim agreement was not in place during the period for which Union is seeking compensation. A decision sequence like this ensures that a carrier like Union is compensated in some fashion for services rendered to Qwest for terminating traffic. As stated above, compensation to terminate this traffic is not \$0.

Res Judicata

6. The Commission accepted Qwest's argument that the Wyoming Federal District Court's summary judgment in favor of Qwest on Union's claim for compensation under Union's tariff barred any consideration of the issue before the Commission. While it is true that the parties in the Wyoming case and this docket are identical, the Court did not consider Union's claim under Utah law. Instead, the Court required that Union take its claim to the Utah Public Service Commission. As Union noted on page 8 of its September

¹ 47 C.F.R. § 51.717. Renegotiation of existing non-reciprocal arrangements.

- (a) Any CMRS provider that operates under an arrangement with an incumbent LEC that was established before August 8, 1996 and that provides for a non-reciprocal compensation for transport and termination of telecommunications traffic is entitled to renegotiate those arrangements with no termination liability or other contract penalties.
- (b) From that date that a CMRS provider makes a request under ¶(a) of this section until a new agreement has been either arbitrated or negotiated and has been approved by a state commission, the CMRS provider shall be entitled to assess upon the incumbent LEC the same rates for the transport and termination of telecommunications traffic that the incumbent LEC assesses upon the CMRS provider pursuant to the preexisting arrangement.

2, 2005 Response to Qwest's Motion for Partial Summary Judgment, Union appealed the decision of the District Court, but the Tenth Circuit rejected the appeal pending a final determination by the state Public Service Commissions in Utah and Colorado.² Currently, Union is required to give periodic status reports to the Wyoming District Court on the instant case. The District Court decision is still not final and, therefore, res judicata and claim preclusion cannot apply.

WHEREFORE, Union Telephone Company petitions this Commission to review or rehear its September 28, 2005 order and allow Union to proceed with its claim for compensation for terminating wireless traffic.

Union also petitions the Commission to schedule a hearing for oral argument as soon as practicable to allow Union to argue this Petition for Review or Rehearing.

DATED this 7th day of October, 2005.

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² A copy of Union's Notice of Appeal of the Wyoming federal district court's decision is attached.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he provided a copy of the foregoing Petition for Reconsideration of Order Granting Partial Motion to Dismiss and Petition for Hearing to the following named parties by electronic mail on the 7th day of October, 2005, and addressed as follows:

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