

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Formal Complaint of Beaver )  
County, Box Elder County, Cache County, Carbon )  
County, Davis County, Duchesne County, Emery )  
County, Garfield County, Grand County, Iron )  
County, Juab County, Kane County, Morgan )  
County, Piute County, Rich County, Salt Lake )  
County, Millard County, San Pete County, Sevier )  
County, Summit County, Toole County, Uintah )  
County, Utah County, Wasatch County, )  
Washington County, Wayne County, Weber )  
County, and all other Persons or Entities Similarly )  
Situating vs. Qwest Corporation fka US West )  
Communications, Inc., fka Mountain States )  
Telephone & Telegraph Services Inc. )  
)  
)

DOCKET NO. 01-049-75

ORDER DENYING  
MOTION FOR MODIFICATION  
OF SCHEDULING ORDER

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ISSUED: September 21, 2004

By The Commission:

On August 31, 2004, the Counties filed their Motion for Modification of Scheduling Order. Qwest filed its response to the Counties Motion on September 15, 2004. No other responses have been submitted. The Counties filed their Reply Memorandum on September 17, 2004. The Counties seek modification of our July 6, 2004, Scheduling Order, in which we set August 31, 2004, as a discovery cut off date  and set September 30, 2004, as the date for all parties to file their pre-hearing motions or notice that they seek Commission consideration of previously filed motions.

The Counties claim that their discovery cut off date should be modified as they have been unable to conclude their discovery; concomitantly, they request an extension of the motion filing deadline as appropriate from any discovery extension. The Counties claim they should be accorded additional time for discovery as their effort to take the deposition of Qwest, on August 30, 2004, was unsuccessful. The Counties faxed notice of the proposed deposition to Qwest at 4:30 p.m. on August 20, 2004. Qwest responded to the deposition notice on August 24, 2004, offering to make two witnesses available, each for a maximum of one day of seven hours, but proposed limitation of the scope of the

deposition from what Qwest viewed as an overly broad and burdensome scope proposed by the Counties. On August 25, 2004, the Counties informed Qwest that they would not agree with Qwest's proposed conditions. On August 26, 2004, Qwest filed a Motion for Protective Order on Notice of Rule 30(b)(6) Deposition, in which it sought limitation of the deposition's scope consistent with the limitations it had proposed to the Counties. The Counties have responded to Qwest's August 26<sup>th</sup> Motion for Protective Order through a memorandum received September 17, 2004. The Commission has not had the opportunity to rule on the August 26 Motion for Protective Order prior to the August 30, 2004, discovery cut off date.

As far as we can tell, the August 30, 2004, deposition is only the third effort of the Counties to conduct discovery since filing their complaint with the Commission on September 17, 2001, the other two instances being data requests submitted to Qwest in October of 2002 and further data requests submitted in November of 2003. We note that the September 17, 2001, Complaint is based upon the same allegations upon which the Counties sought previous commission action in PSC Docket 98-049-48, filed December 31, 1998. The Counties have had almost three years since filing their 2001 Complaint to prepare for hearings. It appears that the Counties' interest in taking action or steps to pursue this matter was only recently activated when the Commission itself scheduled and gave notice of a Status Conference for June 28, 2004 (resulting in our July 6, 2004, Scheduling Order), in order to be apprised of the parties' pursuit of this case. We will not extend the ending date of the Counties discovery, nor the September, 30, 2004, date for pre-hearing motions. We find no persuasive basis to relieve the Counties from the consequences of the dilatory conduct of their case, including their refusal to conduct a deposition, albeit with limitations, on the morning of their discovery cut off date.

Wherefore, we deny the Counties' Motion for Modification of Scheduling Order.

DATED at Salt Lake City, Utah, this 21<sup>st</sup> day of September, 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

GW#40426