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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Complaint of
BEAVER COUNTY, et al.,

Complainants,

-VS-

QWEST CORPORATION fka U S WEST
COMMUNICATIONS, INC. fka MOUNTAIN STATES TELEPHONE
& TELEGRAPH SERVICES, INC.,

Respondent.

**COMPLAINANTS' REPLY MEMORANDUM IN FURTHER
SUPPORT OF THEIR MOTION FOR MODIFICATION OF
SCHEDULING ORDER**

Docket No. 01-049-75

Complainants, by and through their undersigned counsel, and pursuant to Utah Admin R. 746-100-1.C, 8 and Utah R. Civ. P. 7(c), 81, submit the following Reply Memorandum in Further Support of Their Motion for Modification of Scheduling Order:

Qwest Corporation ("Qwest") opposes Complainants' Motion to Modify the Scheduling Order entered herein, on grounds that Complainants' properly noticed, and timely served, Rule 30(b)(6) notice of deposition for Qwest to appear and testify prior to this Commission's Scheduling Order's discovery cutoff date of August 31, 2004, did not allow Qwest to obtain a ruling on its Motion for Protective Order before the discovery cutoff. Qwest takes this position even though Complainants' agreed with Qwest that it just made sense for this Commission to rule on Qwest's motion before the

actual deposition went forward.

The disingenuous nature of Qwest's opposition is remarkable for no fewer than four separate reasons: First and foremost, Qwest agreed with Complainants that it made sense for the deposition to be put off until this Commission ruled on Qwest's Motion for Protective Order; second, it is Qwest's motion, not Complainants' notice, that caused the deposition to be stymied prior to discovery cutoff; third, Qwest's apparent attempt to "blame" Complainants for the "delay" caused by Qwest's own objection appears to arise from the fallacious argument that Complainants should have served the notice sooner, not because the notice itself failed to comply in any respect with the existing scheduling order herein, which it in fact complied with, but rather, because, according to Qwest, Complainants should have imagined that Qwest would file an objection to the properly noticed deposition; and fourth, Qwest argues that these proceedings in their entirety have been delayed by Complainants' conduct, which argument is an absolute untruth—Complainants have not requested any significant extensions of time on any scheduling order entered.

The present request was timely made under UTAH R. CIV. P. 6(b), before the discovery cutoff had passed, and is based on the practical and agreed-between-the-parties need for a ruling from this Commission on Qwest's motion for protective order before taking the deposition. Complainants' motion is not based on any untimeliness in serving the deposition notice or as to the date noticed, and there was none—the notice was timely served and timely noticed a deposition prior to the scheduled cutoff. The notice was proper in all respects, as is shown by Complainants' Memorandum in Opposition to Qwest's Motion for Protective Order. It is Qwest's objections in its motion for protective order that has raised the practical need to take the deposition after the cutoff date originally set. Qwest cannot be prejudiced by having its own motion for protective order heard and ruled on before the deposition.

For the foregoing reasons, Qwest's opposition is not well taken, and Complainants' motion should be granted.

RESPECTFULLY SUBMITTED this _____ day of December, 2004.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing Complainants' Reply Memorandum in Further Support of Their Motion for Modification of Scheduling Order was served via e-mail transmission, this _____ day of December, 2004, to the following:

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