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Attorneys for the Complainant Counties and All Other Persons
and/or Entities similarly situated

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.

Docket No. 01-049-75

**MOTION TO STRIKE "QWEST'S ANSWER TO AMENDED
COMPLAINT AND
MOTION TO DISMISS"**

Complainants, by and through their undersigned counsel of record, move the Commission for an Order striking the document filed by Qwest styled, "Qwest's Answer to Amended Complaint and Motion to Dismiss," dated August 9, 2002. Grounds for this motion are that Complainants are unable to determine whether the described document is an answer, on one hand, or a motion, to which a response is necessary, on the other, or what part thereof may be which.

The filed document seeks dismissal in the Statement of Relief Sought, wherein Qwest requests that the "Amended Complaint be dismissed on the grounds set forth in the above defenses, as well as the grounds set forth in Qwest's motion to dismiss filed in Docket No. 01-049-75, on October 17, 2001." See Qwest's Answer to Amended Complaint and Motion to Dismiss, at 8. But it is unclear whether it seeks it now,

by way of motion, or simply as an alternate defense.

Qwest's October 17, 2001 Motion to Dismiss was denied, without prejudice, pursuant to the Commission's Order of July 26, 2002. The Commission's Order, however, does not relieve Qwest of complying with the procedural necessities of filing a separate motion to renew its request for dismissal, together with supporting authorities. Utah R. Civ. P. 12(a) deals with presentation of defenses. That rule specifically allows defendant to "serve an answer" or to raise its defenses by "service of a motion . . ." Utah R. Civ. P. 12 (a). Utah R. Civ. P. 12(b) requires each defense to a claim for relief in any pleading to "be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: [listing certain defenses]." Clearly, Rule 12 contemplates that the answer asserting defenses or a motion asserting defenses will be separate documents. Because the Counties are entitled to respond to a motion, they are also entitled to have the issues raised by a motion, clearly raised as part of the motion, and not to have to guess as to what part of a document is an answer, and what part is a motion.

WHEREFORE, Complainants request that the Answer to Amended Complaint and Motion to Dismiss be stricken, that Qwest be ordered to answer and to make any motions directed to the Amended Complaint separately and distinctly, and that the Commission grant such other and further relief as it may deem just and appropriate.

DATED this _____ day of December, 2004.

PARSONS, DAVIES, KINGHORN & PETERS, P.C.

DAVID W. SCOFIELD
Attorneys for Complainants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing Motion to

Strike was mailed, postage prepaid, this _____ day of December, 2004, to the following:

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