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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Complaint of:	:	
	:	
BEAVER COUNTY, et al, and all other	:	
Persons or Entities Similarly Situated,	:	Docket No. 01-049-75
	:	
Complainants,	:	
	:	
vs.	:	QWEST’S ANSWER TO AMENDED
	:	COMPLAINT AND MOTION TO
QWEST CORPORATION, fka U S WEST	:	DISMISS
COMMUNICATIONS, INC., fka THE	:	
MOUNTAIN STATES TELEPHONE AND	:	
TELEGRAPH COMPANY,	:	
	:	
Respondent.	:	

Pursuant to Utah Code Ann. § 63-46b-6 and Utah Administrative Code R746-100-3(I),
Qwest Corporation (“Qwest”)¹ hereby responds to the Counties’² Amended Complaint as
follows:

¹ “Qwest” includes the company’s corporate predecessors, including The Mountain States Telephone and Telegraph Company and U S WEST Communications, Inc.

I. STATEMENT OF FACTS

In each of the nine years from 1988 through 1996, Qwest appealed its centrally-assessed property tax assessments to the Utah State Tax Commission, claiming that its valuation was excessive, thus resulting in an over-assessment of property taxes. The Counties intervened, maintaining that their economic interests would be affected by the resolution of those proceedings. In October 1998, the Tax Commission issued a supplemental order, pursuant to stipulation between the Property Tax Division, the Counties and Qwest, resolving these individual appeals on a consolidated basis. The settlement required the Counties to refund \$16.9 million of property tax overpayments and interest to Qwest.

But instead of refunding the money, the Counties immediately filed a putative class action complaint against Qwest's parent, claiming that they and the Qwest customers they purported to represent were entitled to rate refunds in the amount of the refund. The district court dismissed the Counties' suit, holding that the remedies sought by the Counties required rate making or adjustment of rates and thus had to be brought before the PSC. *Beaver County v. Qwest, Inc.*, 2001 UT 81 ¶ 4. On appeal to the Utah Supreme Court, the Counties argued that dismissal was wrong because equitable claims—not a refund of rates—were the essence of their complaint. *Id.* ¶ 13. The Utah Supreme Court considered and explicitly rejected the Counties' argument that the equitable principles of unjust enrichment and restitution form the basis of their claim:

Essentially, the Counties allege that equity requires the return of the ratepayers funds to the ratepayers because the ratepayers initially overpaid telephone rates that were based on estimates of costs provided by Qwest to

² The "Counties" include Beaver, Box Elder, Cache, Carbon, Davis, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Milard, Morgan, Piute, Rich, Salt Lake, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Washington, Wayne, and Weber Counties.

substantiate its rates to the PSC. Overpayment alleged by the Counties is necessarily premised on an unjustifiable, changed, or otherwise incorrect initial rate.

Id. ¶ 15.

The Court further stated that “[s]imple labeling of the issue in an envelope of equity” did not “mandate our opening of a discussion of the same.” *Id.* The Court affirmed that the Commission was the proper forum for the Counties’ complaint because the “relief they seek involves rate making and rate adjustment,” rather than the equitable claims put forth by the Counties. *Id.*

The Counties then filed their complaint in Docket No. 01-049-75, once again alleging unjust enrichment, asking for the imposition of a constructive trust and seeking class certification. Qwest’s motion to dismiss the complaint was orally denied by the Commission without prejudice, on January 29, 2002, and thereafter denied without prejudice by written order on July 26, 2002. On July 23, 2002 the Counties moved to amend their complaint in Docket No. 01-049-75, and also sought to consolidate that docket with Docket No. 98-049-48,³ a docket concluded as a matter of law on March 2, 1999 (the 61st day after filing) when the Commission took no action on the Counties’ petition for a declaratory order, and which was forever extinguished when the Counties failed to seek rehearing or reconsideration by the Commission within 20 days of the denial.

At no time prior to the filing of the Amended Complaint did the Counties ever make the unfounded factual allegations of improper, “fraudulent” behavior by Qwest that now appear in the second cause of action of the Amended Complaint. To the contrary, in their Memorandum in

³ Qwest does not oppose the Counties’ motion to amend but does oppose the motion to consolidate, and is filing today a separate reply to that motion.

Opposition to Qwest's Motion to Dismiss ("Counties' Opposition"), filed in this docket on November 5, 2001 in response to Qwest's Motion to Dismiss, the Counties explicitly stated: "the Counties are not now challenging the reasonableness of the rates and charges allowed during that time period." Counties' Opposition at 10.

II. ANSWER

Responding to the specific allegations of the Amended Complaint, Qwest admits, denies and avers as follows:

1. Admits that the Commission has jurisdiction over any rate-making aspects of the Counties' claims, as confirmed by the Utah Supreme Court's holding in *Beaver County v. Qwest, Inc.*, 2001 UT 81, otherwise denies the allegations of paragraph 1.
2. Denies the allegations of paragraph 2.
3. Admits the allegations of paragraph 3.
4. Admits the allegations of paragraph 4 except denies that a company named Mountain States Telephone and Telegraph Services, Inc. was its predecessor and affirmatively alleges that its predecessor in Utah was The Mountain States Telephone and Telegraph Company. For the balance of this answer, Qwest will assume that MST&T refers to The Mountain States Telephone and Telegraph Company rather than Mountain States Telephone and Telegraph Services, Inc.
5. Admits that the Counties were and are users of Qwest's telecommunications services, otherwise denies the allegations of paragraph 5.
6. Paragraph 6 calls for a legal conclusion not requiring a response. To the extent paragraph 6 requires a response, Qwest lacks information sufficient to form a reasonable basis for belief as to the truthfulness of the allegations, and therefore denies those allegations.

7. Denies the allegations of paragraph 7.
8. Denies the allegations of paragraph 8.
9. Denies the allegations of paragraph 9.
10. Denies the allegations of paragraph 10.
11. Denies the allegations of paragraph 11.
12. Denies the allegations of paragraph 12.
13. Denies the allegations of paragraph 13.
14. Admits the allegations of paragraph 14, except (1) Qwest denies the allegation that all of its functions and operations in Utah during periods relevant to this matter were public utility operations regulated by the Public Service Commission and (2) given the fact that the Utah Legislature legislatively ended rate or return regulation for Qwest in a statute enacted in 1995 and given the ambiguity of the phrase “at all time pertinent to this action,” Qwest denies the same.
15. Because of disputed disallowances in each of Qwest’s rate cases and for other reasons, Qwest denies the allegations of paragraph 15
16. Because of disputed disallowances in each of Qwest’s rate cases and because of disputes regarding fair market value of Qwest’s property located within the state of Utah and for other reasons, Qwest denies the allegations of paragraph 16.
17. Admits the allegations of paragraph 17.
18. Admits the allegations of paragraph 18.
19. Admits the allegations of paragraph 19.
20. Admits the allegations of paragraph 20.
21. Incorporates its response to paragraphs 1 – 20 above.

22. Denies the allegations of paragraphs 21-33.

23. Denies each and every allegation of the Amended Complaint to the extent not specifically admitted in this answer.

III. DEFENSES

First Defense

The Commission lacks subject-matter jurisdiction over the Counties' claims.

Second Defense

The Counties' first cause of action is preempted and precluded by the Public Utilities Code, Utah Code §§ 54-1-1 *et seq.*

Third Defense

The Counties have failed to state a claim upon which relief can be granted.

Fourth Defense

The Counties' claims for the years 1988 and 1989 are barred by release and res judicata.

Fifth Defense

The Commission lacks authority to certify a class in this action. Even assuming Commission authority to certify a class, the Counties are not adequate representatives of that putative class and certification is improper.

Sixth Defense

The Counties' claims are barred by the applicable statute of limitations, including the provisions of Utah Code Ann. § 54-7-20.

Seventh Defense

The Counties claims are barred by the rule against retroactive ratemaking.

Eighth Defense

The Counties' have failed to plead circumstances constituting fraud with requisite particularity.

Ninth Defense

Relief available before the Commission is limited to that contemplated by statute. Equitable relief, therefore, is not available. If, however, the Commission may appropriately consider principles of equity, the Counties' claims are barred by estoppel and the Counties' second cause of action is barred by laches and waiver.

Tenth Defense

The Counties' claims are barred by res judicata.

Eleventh Defense

The Counties claims that Qwest's rates were unjust or unreasonable are barred by judicial estoppel.

IV. STATEMENT OF RELIEF SOUGHT

Qwest respectfully requests that the Counties be denied any of their requested relief and 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.

Dated: August 9, 2002

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Ted D. Smith
STOEL RIVES LLP

Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **QWEST'S ANSWER TO AMENDED COMPLAINT AND MOTION TO DISMISS** was served upon the following for Docket No. 01-049-75 by U.S. Mail, postage prepaid, on the 9th day of August, 2002,

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