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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 OPPOSITION TO
QWEST CORPORATION, fka U S WEST	:	COUNTIES’ MOTION TO STRIKE
COMMUNICATIONS, INC., fka THE	:	
MOUNTAIN STATES TELEPHONE AND	:	
TELEGRAPH COMPANY,	:	
	:	
Respondent.	:	

Qwest Corporation (“Qwest”) hereby responds to the Counties’ Motion to Strike Qwest’s Answer to Amended Complaint and Motion to Dismiss (“Counties’ Motion”), filed on August 23, 2002.

The Counties’ Motion is, unfortunately, a further symptom of much of what is wrong with the way the Counties have pursued their claims ever since 1998. The Counties strain for compliance with rules of civil procedure, while completely ignoring the relevant statutory authority. The Motion should be denied.

The relevant statutory provision governing the sufficiency of Qwest's Answer to Amended Complaint and Motion to Dismiss ("Response") is Utah Code Ann. § 63-46b-6, the provision of the Utah Administrative Procedures Act that specifically governs responsive pleadings. Pursuant to that section, Qwest's Response was to include:

- (a) the agency's file number or other reference number;
- (b) the name of the adjudicative proceeding;
- (c) a statement of the relief that the respondent seeks;
- (d) a statement of the facts; and
- (e) a statement summarizing the reasons that the relief requested should be granted.

Id. at § 63-46b-6(1).

Although the Counties fail to cite the statute at all, paragraphs (c) and (e) are the only portions of subsection (1) that appear even remotely implicated by the Counties' Motion. Pursuant to the statute, in identifying "the relief that the respondent seeks," the Response identified Qwest's request "that the Counties be denied any of their requested relief and that the Amended Complaint be dismissed." (Response at 8.) Also pursuant to the statute, in providing a "statement summarizing the reasons that the relief requested should be granted," the Response stated that the relief should be granted "on the grounds set forth in the above defenses, as well as the grounds set forth in Qwest's motion to dismiss filed . . . on October 17, 2001." *Id.* The Response, therefore, fully complies with the requirements of Section 63-46b-6(1). The Counties do not attempt to argue otherwise.

Moreover, it is disingenuous for the Counties to claim to be "unclear" about what Qwest now seeks. (Counties' Motion at 2.) Qwest could not have been more clear in its Reply to Counties' Motions to Amend and Consolidate ("Reply"), filed the same day as the Response. In

that pleading, Qwest stated that “the original cause of action propounded by the Counties, which continues to be part of the Amended Complaint, should be dismissed because it pleads a claim for equitable relief that is outside the statutory authority granted to the Commission and that the Counties’ claim, if anything, is one for rate reparations. Because Qwest’s motion to dismiss that claim was denied by the Commission without prejudice, *Qwest preserves that position but does not seek further hearing on it at this time.*” (Reply at 2, emphasis added.) The Counties’ claim that Qwest’s intentions are unclear is baffling.¹

Even in relying on Rule 12, the Counties do not identify the relevant issues for determining a motion to strike. Under Rule 12(f), a court “may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Utah R. Civ. P. 12(f). The Counties do not identify which of these deficiencies they allege the Response to contain, nor do they seek appropriate relief in attempting to strike the entire Response—even assuming some portion of the Response to be deficient. Rule 12(f) is intended to remove offending *portions* of a pleading, not the pleading in its entirety. *See generally* 54 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1380 (2d ed. 1990) (discussing analogous federal rule). The Counties do not identify which portion of the Response they allege to be deficient, but surely they could not claim deficiencies in the sections entitled

¹ During the conference of the parties held pursuant to the Commission’s direction to determine how the matter might proceed, the Counties and Qwest discussed the fact that they would continue to preserve their positions in this case. Accordingly, the Counties stated that they would continue to assert their original cause of action in an amended complaint, and Qwest stated that while it would continue to assert its position that the cause of action should be dismissed, it would proceed to answer the amended complaint and would not seek further hearing on its motion to dismiss at this time in light of the Commission’s ruling to deny the motion without prejudice at this time. The Counties’ Motion is somewhat disingenuous in light of this discussion.

Statement of Facts, Answer and Defenses. Moreover, for the reasons stated above, there is nothing wrong with the section entitled Statement of Relief Sought.

Qwest maintains, as it is entitled to do under the statute for the “relief [it] seeks,” that the Amended Complaint should be dismissed. As previously noted, however, Qwest is not seeking further hearing on its motion to dismiss at this time. Thus, to the extent the Counties are concerned that they may need to respond to that request at this time, they can relax. At such time as Qwest believes it is appropriate to seek dismissal of the Amended Complaint, it will raise the issue by a motion with a supporting memorandum and the Counties will have an opportunity to respond. In the meantime, the Counties’ Motion to Strike should be denied.

DATED: June 18, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of **QWEST'S OPPOSITION TO COUNTIES' MOTION TO STRIKE** was served upon the following for Docket No. 01-049-75, by U.S. Mail, postage prepaid, on June 18, 2018:

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