

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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)	<u>DOCKET NO. 04-049-145</u>
In the Matter of the Petition of QWEST)	
CORPORATION for Arbitration of an)	
Interconnection Agreement with UNION)	<u>ORDER GRANTING MOTION TO</u>
TELEPHONE COMPANY d/b/a UNION)	<u>ACCEPT POST-REBUTTAL</u>
CELLULAR under Section 252 of the)	<u>TESTIMONY AND GRANTING</u>
Federal Telecommunications Act)	<u>MOTION TO VACATE SCHEDULE</u>
)	
)	<u>NOTICE OF SCHEDULING</u>
)	<u>CONFERENCE</u>

ISSUED: April 10, 2007

By The Commission:

On March 19, 2007, Union Telephone Company (“Union”) filed a Motion to Accept Post-Rebuttal Testimony of Henry D. Jacobsen (“Union Motion”). In support of its motion, Union argued it has recently installed a traffic monitoring software package which collects, processes and records traffic and alarm statistics for both Union’s GSM and switched telephone network in much the same way that Qwest Corporation (“Qwest”) collects such data. Union further argued the offered post-rebuttal testimony directly relates to and addresses Qwest’s previously filed surrebuttal testimony.

On April 2, 2007, Qwest filed its Opposition to Union’s Motion to Accept Post-Rebuttal Testimony of Henry D. Jacobsen or, in the Alternative, Motion to Vacate Schedule and Motion for Sanctions (hereinafter separately referred to as “Motion to Vacate” and “Motion for Sanctions”, respectively). In its Opposition, Qwest argues that after more than a year of

discovery in proceedings in two different states leading Qwest to believe that Union does not possess the data that would be necessary to establish the traffic sensitivity of Union's GSM switch and cell sites, Union's offered testimony suddenly indicates that it has always had capacity and usage data and that it has recently obtained peak hour blocking data for the cell sites. Qwest argues Union's Motion is an improper attempt by Union to introduce into evidence information that Union previously represented it did not have, a representation relied on by Qwest in preparing its surrebuttal testimony. Therefore, according to Qwest, introduction of the offered testimony would prejudice Qwest and reward Union for its evasive and dilatory tactics. Qwest further argues that said introduction would be untimely and violate Rule 26 of the Utah Rules of Civil Procedure, as well as the scheduling order currently in effect in this docket.

On March 22, 2007, the Division of Public Utilities ("Division") filed its Response in which the Division does not object to introduction of Union's post-rebuttal testimony but recommends that in light of said testimony a new schedule for this docket should be established, to include convening a technical conference to facilitate discussion of issues raised by Union's cost study.

On April 9, 2007, Union filed its Traverse to Qwest's Opposition, arguing that the offered testimony is relevant to the issues in this docket and that the information contained in said testimony was only recently obtained, and opposing Qwest's Motion for Sanctions.

Having reviewed the matters filed by the parties, we determine to grant Union's Motion and to accept the post-rebuttal testimony of Henry D. Jacobsen. We do so because said testimony appears relevant to the issues remaining in this docket. While such testimony was not

anticipated by the Commission's Eighth Scheduling Order issued March 6, 2007, and while we remain concerned that parties conduct discovery and provide pre-filed testimony in a professional and comprehensive manner, it is reasonable that schedules remain flexible and amenable to change as required to ensure the inclusion of all relevant, non-prejudicial information in the evidentiary record.

In light of the introduction of Union's post-rebuttal testimony, it is reasonable that Qwest and the Division be given adequate opportunity to review said testimony and to file rebuttal thereto. Therefore, we grant Qwest's Motion to Vacate Schedule and hereby vacate the schedule established by our Eighth Scheduling Order.

Finally, we herein reserve judgment on Qwest's Motion for Sanctions and make no order respecting said motion at this time.

Wherefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters this ORDER granting Union's Motion to Accept Post-Rebuttal Testimony of Henry D. Jacobsen and granting Qwest's Motion to Vacate Schedule. The procedural schedule contained in the Eighth Scheduling Order, including the hearing scheduled to commence on April 24, 2007, is hereby vacated.

As such, **notice is hereby given that a Scheduling Conference in the above-entitled matter will be conducted by the Administrative Law Judge of the Public Service Commission of Utah on Thursday, April 19, 2007, at 9:30 a.m., Fourth Floor Hearing Room #451, Heber M. Wells State Office Building, 160 East 300 South, Salt Lake City, Utah.**

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Individuals wishing to participate by telephone should contact the Public Service Commission two days in advance at (801) 530-6716 or 1-866-PSC-UTAH (1-866-772-8824).

All parties have the right to be represented by legal counsel. Failure to bring legal counsel will constitute a waiver of the right to representation.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this hearing should notify the Commission at 160 East 300 South, Salt Lake City, Utah, 84111, (801)530-6716, at least three working days prior to the hearing.

Dated at Salt Lake City, Utah this 10th day of April, 2007.

/s/ Steven F. Goodwill
Administrative Law Judge

Attest:

/s/ Julie Orchard
Commission Secretary
G#53038