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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF UTAH**

IN THE MATTER OF THE PETITION OF)
QWEST CORPORATION FOR ARBITRATION OF)
AN INTERCONNECTION AGREEMENT WITH)
UNION TELEPHONE COMPANY d/b/a UNION) Docket No. 04-049-145
CELLULAR UNDER SECTION 252 OF THE)
FEDERAL TELECOMMUNICATIONS ACT)

**TRAVERSE OF UNION TELEPHONE COMPANY TO QWEST'S 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**

Union Telephone Company ("Union") by and through its undersigned counsel,
Bruce S. Asay, Associated Legal Group, LLC, hereby files its Traverse to Qwest's
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. In support of its
Traverse, Union states as follows:

1. Union has reviewed Qwest's 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 ("Qwest's Opposition") and would suggest to the Commission that for all of the feigned indignation expressed in the pleading, it is designed to keep

relevant and important information from the Commission's review and to further delay the proceedings.

2. Qwest did file its Petition for Arbitration in this matter on September 30, 2004 and has since that filing avoided a decision by the Commission. Apparently, Qwest would like to review a decision from the Colorado Public Utilities Commission in a companion arbitration petition prior to any action by this Commission. As the Colorado Commission is reviewing an earlier cost study filed by Union, apparently Qwest perceives that it is in its interest to have a decision on the earlier cost study rather than on the more recent one filed with the Utah Commission. Union believes that the information filed in Mr. Jacobsen's testimony is appropriate, relevant and should be reviewed as part of Union's presentation in this proceeding.

3. Qwest's Opposition seemingly intimates that Union is changing its position with the filing of Mr. Jacobsen's testimony, it is not. Union's position has been consistent throughout this proceeding. Its wireless network is traffic sensitive justifying the use of an asymmetrical rate. In Jason Hendricks' Supplemental Surrebuttal Testimony as filed on August 11, 2006, he explained why Union had updated its cost of service study. Mr. Hendricks noted that the reasons were twofold: first, the study originally submitted was based on information from 2003 while Union's network had changed substantially from that time. As Union had received much more detailed cost information on its GSM network from the time of the original filing, it was appropriate to reflect this additional information in a revised study. While the original study was based on projected costs, the revised study was based on actual GSM deployment costs which were correspondingly more accurate. Secondly, the revised study incorporated each of the major user – adjustable inputs that the Commission had previously approved for Qwest. In order to address the prior criticism,

Union's study now included the same "Qwest approved user-adjustable inputs for annual productivity offset, common costs factor, cost of equity, tax rate, debt ratio, cost of debt, and depreciation rates as previously approved. While Union might not necessarily agree with the changes, it acquiesced in their usage in order to minimize the contentions that might be raised by Qwest.

4. In Mr. Hendricks earlier surrebuttal testimony as filed on November 7, 2005, he confirmed Union's position that the facilities were traffic sensitive and addressed Qwest's proposal to eliminate 38 million dollars of investment in cell site costs while leaving only 4.9 million dollars in investment, essentially under the simplistic argument that the cell sites were not traffic sensitive costs. The elimination of the traffic sensitive cell site costs was a major reason that Qwest utilized a compensation rate of \$0.004826 rather than Union's request of \$0.034735 in its asymmetrical rate request.

5. In his testimony, Mr. Hendricks quoted an FCC opinion which had held that if a wireless carrier could demonstrate that the costs associated with spectrum, cell sites, back call links, base station controllers and mobile switching centers varied with the level of traffic that is carried on the wireless networks, the wireless carrier could submit a cost study to justify such a claim for asymmetrical reciprocal compensation which would include the additional traffic sensitive costs. Mr. Hendricks specifically noted that it was inappropriate for Qwest to argue against inclusion of cell site costs in an asymmetrical rate when the FCC had specifically allowed those costs to the extent that they were traffic sensitive. Mr. Hendricks further provided:

"A cell site provides call set-up functions, call management and a wireless interface to all handsets within a specific geographic area or cell. It includes antennas, supporting towers or necessary, and the base transceiver systems (BTS). All three components of the cell site are needed to maintain a wireless connection to a user's handset.

Antennas are needed to transmit wireless signals from a cell site to a subscriber handset, and to receive wireless signals from wireless handsets in an area covered by the cell site. The antennas, and other equipment, are often placed on towers or rooftops. Towers or rooftop sites help ensure adequate signal strength between handsets across the cell and the antenna at the cell site. BTSs contain the electronics necessary to convert the signal received from the antenna into a format suitable for transport to a base station receiver (BSC), which performs traffic concentration, supervision of call handoffs between BTSs, the administration of BTS resources, and aggregation of traffic for handoff to [the] wireless switch. . . .

* * *

The ability of a BTS to carry traffic is limited by the capacity of its processor unit, which is used to translate formats, control power, supervise call set-up, and manage internal handoffs. When the volume of calls increases sufficiently, the installed capacity of the BTS will be exhausted, and the number of calls being blocked or dropped will increase. The quality of service can be maintained by increasing the capacity of the BTS in one of two primary ways – the addition of radio carriers or the addition of cell sites.

When the initial calling volume is still relatively low, the electronic equipment at the cell site is initially configured to use only a portion of the available radio spectrum. In this case, capacity can be expanded by adding electronic equipment to the BTS that permits additional “radio carriers” (frequencies that were previously unused) to be brought into service. Since calling volume triggers the level of investment in BTSs, the cost of BTSs are traffic sensitive.

6. Mr. Hendricks, in his testimony, explains other methods by which Union adjusts its system to address increases in traffic. Moreover, Mr. Hinman in his testimony as filed on November 7, 2005, also addresses from a more technical view how the system is sensitive to traffic and the changes that must be made to the system when it approaches exhaust or its capacity. These witnesses clearly established Union’s position that the wireless system was traffic sensitive such that the cost of the traffic sensitive system should be utilized in establishing a reciprocal compensation rate.

7. As Union has clearly expressed its position, Qwest seemingly has taken a new tack in opposing Union’s request for a fair reciprocal compensation

rate. Rather than arguing that the network is not traffic sensitive, Qwest now is arguing that Union's measurement of the network traffic is inappropriate. The new argument does not rebut Union's position that the network is in fact traffic sensitive.

8. Qwest, in its opposition argues that Union "failed to provide critical information regarding whether its switch and cell sites included in the cost study are capacity constrained due to high utilization, whether Union's cost study contains costs for facilities not needed to terminate calls and whether the costs are based on Union's most current vendor contract."

9. The position is absurd; Union continually persisted in its position that the switch and cell sites included in the cost study are traffic sensitive and are constrained dependant on utilization. As Union testified, it designed the system to adequately provide services to its customers and the facilities are upgraded as conditions warrant. Obviously, as usage patterns change, the need for changes in the facilities will change. Notwithstanding Union's persistent position, Qwest argues that Union was not responsive. In support, in Qwest's Opposition, Qwest quotes the following from a Union response:

"(4). You requested additional information on Data Request 4-019 that asks for the percent of a typical cell sites daily minutes of use occurring during the busiest hour of the day. You objected to Union's response because it had stated that it did not track the information in this fashion. Again, following inquiry, while the minutes of use are measured, they are not tracked in a fashion that would allow a segregation of minutes for the busiest hour of the day. It is my understanding that software has been ordered that would allow for tracking in such a manner, but it is not in place at this time."

Interdelineation added.

10. In Union's response dated October 2006, Union specifically indicated that it did not maintain its system in the fashion that Qwest requested. It stated that

while Union measured the usage on its system, as it was traffic sensitive, it did not measure the specific results that Qwest demanded. Qwest was further advised that new software had been ordered but that it was not operational at that time. Qwest did not like the response and filed a Motion to Compel which was ultimately resolved and resulted in Union responding again in the same manner to the same request in January of 2007. As noted in Qwest's Opposition, Union stated:

“RESPONSE: In this data request, Qwest requested that Union state what the typical Union cell site minutes of use would be during the busiest hour of the day. Union objected to the request and indicated that it did not track the information as requested by Qwest. Following discussion among counsel, Qwest has requested that Union confirm that Union does not have data on cell site volumes specifically relating to the busy or peak hour. As Union does not maintain the data in such a fashion, it would confirm this representation as part of this response.”

Opposition, p. 10.

11. Union confirmed on January 8, 2007 that which it had previously stated; Union did not have traffic data on cell site volumes specifically relating to the busy or peak hour. While Union obviously did maintain and track data on its system; it did not maintain the data in the fashion requested by Qwest. While Union, on January 8, 2007, did not maintain the system in the fashion requested by Qwest, this did not negate the traffic sensitive nature of the system.

12. Qwest states in its Opposition that its witness prepared and filed surrebuttal but criticizing Union for the manner in which it measured system capacity. The testimony, which might be viewed as a concession by Qwest, does not impact the underlying traffic sensitive nature of the wireless facilities. As noted in Mr. Jacobsen's affidavit, while Union monitored its traffic, it did not have the information specifically requested by Qwest.

13. Qwest's testimony can be viewed as a concession that Union's system is traffic sensitive. Nevertheless, Qwest in its Opposition contends that Union should be sanctioned for not earlier supplementing its prior response. Union disagrees. Union advised Qwest in October of 2006 that it was ordering new software. Qwest's counsel knew, as did Union, that software was to be installed. As shown on the attached affidavit of Henry D. Jacobsen, Union installed the software at the end of 2006 and began testing the software during the early part of 2007. Even in March of 2007, the software was still being tested and has only recently been placed in full service.

14. When exactly should Union have supplemented its testimony? It supplemented the record by filing the testimony of Mr. Jacobsen only a few days after counsel received information that the software program was in place such that results could be made available.

15. As reflected on the exhibit provided with Mr. Jacobsen's pre-filed testimony, there was still relatively limited information being reported at that time, but it is being provided at an increasing rate and is useful in disputing the allegations and representations maintained by Mr. Copeland.

16. In the end, the testimony is relevant as it discredits Qwest's witness's representations and shows that they are in fact, inaccurate and wrong. The affidavit reflects that notice of Union's traffic reporting program was provided within a few days of disclosure to Union's counsel. At that time, the program was still in its final testing and implementation phase and was not reasonably available prior to that time. While Qwest argues that Union should have supplemented its disclosure earlier, such was not appropriate as the program was not ready and any preliminary

information was only being initially reviewed. Qwest was advised in an appropriate manner when the material was reasonably available. The testimony should be accepted and sanctions are not appropriate.

17. The imposition of sanctions is not appropriate. This Commission in discussing the concept of sanctions noted that there must be more than the provision of misleading information or the failure to disclose information and has held that “more must be shown than obtuseness – deliberate or otherwise”. *Salt Lake Citizen’s Congress v. Mountain States Telephone and Telegraph Company d/b/a Mountain Bell, et al.* 141 P.U. R. 4th, 518, 846 P.2d 1245, Sec. IV (Utah, 1992). In the instant case, there is no evidence that Union was anything other than responsive to the Qwest request. The representations made by Union in October 2006 and January 2007 were accurate and responsive. Union provided an update by the filing of Mr. Jacobsen’s testimony immediately upon learning of the operational nature of the software program. It would have been inappropriate to provide the response until the results of the program were reasonably meaningful.

18. In addition, Union, as part of its Motion to Accept the Testimony of Henry D. Jacobsen, indicated that the schedule could be amended if such was necessary. Union, while recognizing that the Division of Public Utilities might need additional time in which to supplement its testimony, does not believe that Qwest needs additional time in which to supplement its testimony. While a short delay might be necessary, Union would request that the schedule not be unduly extended in order that the proceeding may be brought to an end rather than unduly delayed.

WHEREFORE, Union states in this Traverse to Qwest’s Opposition to Union’s Post-Rebuttal Testimony of Henry D. Jacobsen that the testimony is

appropriate and relevant and addresses specific allegations and representations made by Qwest's witness. Further, while Union is opposed to an unduly long continuance of the proceedings, Union would acquiesce to a short extension of the schedule. Finally, given Union's efforts in providing the revised testimony immediately upon receipt of the information that was available, Qwest's Motion for Sanctions is inappropriate and should be denied.

DATED this 9th day of April, 2007.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via electronic mail and/or first class mail (postage prepaid) on the 9th day of April, 2007, addressed as follows:

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