

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Formal Complaint ) of Olympus Clinic Inc. against Qwest ) Corporation )	<u>DOCKET NO. 03-049-17</u>  <u>ORDER HOLDING PROCEEDINGS IN ABEYANCE</u> <u>AND INITIATING INVESTIGATION</u>
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ISSUED: May 1, 2003

By The Commission:

On February 18, 2003, Olympus Clinic filed a Complaint against Qwest Corporation (Qwest)<sup>(1)</sup> concerning a billing dispute with Qwest. Olympus Clinic alleges it requested, in 1978, that Qwest provide a point-to-point telephone connection between Olympus Clinic and a Salt Lake County fire department dispatch station. Olympus Clinic alleges that, although Qwest billed for the service through May 2002, the service was not provided after 1988, and perhaps it was never provided. Olympus Clinic alleges it sought a refund from Qwest, for past payments for service that was not provided, but that the amount Qwest has refunded is insufficient.<sup>(2)</sup> Olympus Clinic styled its Complaint as a class action proceeding, seeking relief for itself and others similarly situated. From the pleadings submitted by Olympus Clinic, one could conclude that the class Olympus Clinic seeks to represent is all other customers who had point-to-point service to the particular Salt Lake County fire department dispatch station. It is also possible that Olympus Clinic seeks a more expansive class.

On April 3, 2003, Qwest filed an Answer to the Complaint and also submitted a Motion to Dismiss. Inter alia, Qwest alleges that the Commission does not have jurisdiction to consider many of Olympus Clinic's claims, which Qwest characterizes as based on common law, and that class actions are not cognizable by the Commission. On April 18, 2003, Olympus Clinic filed a Memorandum in Opposition to Qwest's Motion to Dismiss and also filed a Request for Investigation. On April 21, 2003, the Division of Public Utilities (DPU) submitted its memorandum and recommendation on the case. The DPU notes that there is a dispute over the parties' respective responsibilities in determining the existence and provision of the service and in the time period for which any refund may be payable. The DPU recommends that the Commission proceed and set the matter for hearing and resolve the disputed issues.

We recognize that class actions, per se, are not a usual type of proceeding conducted at the Commission. Many of our proceedings are, however, on a substantive basis, akin to class actions as many of our determinations and rulings affect numerous customers, if not all customers, of a public utility. We view the class action type of proceedings undertaken by courts as a procedural mechanism to enable courts to perform functions similar to those we are called to perform with respect to a public utility and its customers. Unlike a court, however, the Commission's procedures and the parameters of the issues the Commission addresses are not defined by the parties' filings. Utility regulation in Utah authorizes, indeed expects, regulatory agencies to conduct independent investigations. E.g., Utah Code §§ 54-4-1.5 and 54-4-2.

Here, Olympus Clinic raises claims for its own interests and seeks to expand its efforts for other customers. We conclude that it would be more efficient and beneficial to the public interest if the specific matter involving Olympus Clinic and Qwest is held in abeyance while the regulatory agencies investigate the factual aspects of this specific complaint, determine the nature and scope of the point-to-point service that is at issue in the complaint and investigate the extent to which similar situations exist or have existed for other customers. Because of its expertise, abilities and authority, we conclude that the DPU may make an efficient and effective investigation of the issues that have been brought to light from the experience of Olympus Clinic. We will direct the DPU to conduct an investigation of this matter and submit a report on the results of its investigation with the Commission in this docket. In addition to addressing the factual aspects, we desire the DPU to also address any legal and policy issues that may arise which

should ultimately be resolved by the Commission.

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. These proceedings shall be held in abeyance pending the DPU's investigation.
2. The DPU is directed to conduct an investigation and submit a report as discussed herein.
3. Qwest is directed to cooperate with the DPU in providing data and all documentation requested by the DPU to perform the investigation.
4. Olympus Clinic is also directed to provide data and all documentation which it may have and which may be requested by the DPU in furtherance of the investigation.
5. Within 30 days from the date of this Order, the DPU shall inform the Commission and the parties of the date on which the DPU believes it will be able to complete the investigation and file the report ordered herein.

DATED at Salt Lake City, Utah, this 1<sup>st</sup> day of May, 2003.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

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1. The complaint actually named Qwest Communications International. The Utah certificated entity is Qwest Corporation. We will treat, as Qwest Corporation has, the complaint having named the Utah certificated entity as opposed to the erroneously named respondent.
2. It is not clear whether a refund for six months or two years was offered or made.