

DISTRICT COURT, OTERO COUNTY, COLORADO Otero County Courthouse 13 W. 3rd Street, Room 207 La Junta, CO 81050-1536	COURT USE ONLY
Plaintiffs: WESLEY COLVIN v. Defendant: QWEST COMMUNICATIONS INTERNATIONAL, INC.	
Attorneys for Defendant: Christopher J. Koenigs, #12364 Michael B. Carroll, #18736 SHERMAN & HOWARD, L.L.C. 633 17th Street, Suite 3000 Denver, CO 80202 Phone: 303-297-2900 Fax: 303-298-0940 Email: ckoenigs@sah.com; mcarroll@sah.com Lewis M. Quigg, #2615 SHAW & QUIGG, P.C. 501 N. Main St., Suite 222 Pueblo, CO 81003 Phone: 719-543-8596 Fax: 719-543-8599	Case Number: 04CV39 Div./Ctrm.: B
ANSWER OF DEFENDANT QWEST COMMUNICATIONS INTERNATIONAL, INC.	

Defendant Qwest Communications International, Inc. (“Defendant”), through its attorneys, answers the Class Action Complaint (the “Complaint”) of plaintiff Wesley Colvin (“Plaintiff”) as follows:

1. Denies.

2. Paragraph 2 states conclusions of law to which Defendant need not respond.

3. Paragraph 3 states conclusions of law to which Defendant need not respond. To the extent a response would be required, Defendant denies for lack of knowledge or information.

4. Admits that Plaintiff was formerly employed at US West Communications, Inc. and retired in or about February 1990 after approximately 30 years of employment. Denies all remaining averments of paragraph 4 for lack of knowledge or information.

5. Admits that US West, Inc. merged with Qwest Communications International, Inc. in or about July of 2000 and denies the remaining allegations of paragraph 5.

6. Admits the first and second sentences of paragraph 6. Admits that Defendant is a telecommunications company that conducts the business described in the third sentence of paragraph 6, among other things. Denies all remaining averments of paragraph 6 for lack of knowledge or information.

7. Denies.

8. Denies.

9. Paragraph 9 and its footnote state conclusions of law to which Defendant need not respond.

10. Admits Named Plaintiff received telephone concession reimbursement for some period of time and admits his local telephone exchange was sold to Pacific Telecom. Denies that Plaintiff had a protected right to receive a telephone service reimbursement. Denies all remaining averments of paragraph 10 for lack of knowledge or information.

11. Denies for lack of knowledge or information.

12. Denies for lack of knowledge of the meaning Plaintiff gives to the term “committed” and denies the remaining averments of paragraph 12 of the Complaint.

13. Plaintiff has not included the document purportedly excerpted in paragraph 13 with the Complaint. As a result, Defendant has not yet had an opportunity

to identify or examine such document. For this reason among others, Defendant denies the averments of paragraph 13 for lack of knowledge or information.

14. Denies.

15. Denies.

16. Denies.

17. Plaintiff has not included the document purportedly excerpted in paragraph 17 with the Complaint. As a result, Defendant has not yet had an opportunity to identify or examine such document. For this reason among others, Defendant denies the averments of paragraph 17 for lack of knowledge or information.

18. Denies.

19. Denies.

20. Denies.

21. Plaintiff has not included the documents purportedly excerpted in paragraph 21 with the Complaint. As a result, Defendant has not yet had an opportunity to identify or examine such documents. For this reason among others, Defendant denies the averments of paragraph 21 for lack of knowledge or information.

22. Plaintiff has not included the documents referenced in paragraph 22 with the Complaint. As a result, Defendant has not yet had an opportunity to identify or examine such documents. For this reason among others, Defendant denies the averments of paragraph 22 for lack of knowledge or information.

23. Denies.

24. Plaintiff has not included the document purportedly excerpted in paragraph 24 with the Complaint. As a result, Defendant has not yet had an opportunity to identify or examine such document. For this reason among others, Defendant denies the averments of paragraph 24 for lack of knowledge or information.

25. Plaintiff has not included the documents referenced in paragraph 25 with the Complaint. As a result, Defendant has not yet had an opportunity to identify or

examine such documents. For this reason among others, Defendant denies the averments of paragraph 25 for lack of knowledge or information.

26. Denies.

27. Plaintiff has not included the document purportedly excerpted in paragraph 27 with the Complaint. As a result, Defendant has not yet had an opportunity to identify or examine such document. For this reason among others, Defendant denies the averments of paragraph 27 for lack of knowledge or information.

28. Denies.

29. Denies.

30. Upon information and belief, Qwest communicated with retirees and/or employees concerning telephone concessions upon the sale of a local exchange. Plaintiff has not included the document purportedly excerpted in paragraph 30 with the Complaint. As a result, Defendant has not yet had an opportunity to identify or examine such document. For this reason among others, Defendant denies the remaining averments of paragraph 30 for lack of knowledge or information.

31. Denies for lack of knowledge or information, including a lack of knowledge of the meaning Plaintiff gives to the phrase “retirees were ‘grandfathered’ or ‘protected’ for the ‘Telephone Concession Reimbursement.’”

32. Plaintiff has not included the document purportedly excerpted in paragraph 32 with the Complaint. As a result, Defendant has not yet had an opportunity to identify or examine such document. For this reason among others, Defendant denies the averments of paragraph 32 for lack of knowledge or information.

33. Plaintiff has not included any document evidencing the procedures and policies purportedly excerpted in paragraph 33 with the Complaint. As a result, Defendant has not yet had an opportunity to identify or examine such documents. For this reason among others, Defendant denies the averments of paragraph 33 for lack of knowledge or information.

34. Denies.

35. Denies.

36. Denies.

37. Admits that on or about December 9, 2003, Defendant sent a letter, which was intended for retirees residing in areas whose residents receive local telephone service from companies other than Defendant, which was signed by Defendant's Executive Vice President and Chief Human Resources Officer Barry Allen and which discusses both telephone service reimbursement and a new plan to provide certain discounts on Defendant's products and services, to retirees. Defendant states that such letter speaks for itself. Defendant denies all remaining averments in paragraph 37, if any, for lack of knowledge or information.

38. Admits that on or about December 9, 2003, Defendant sent a letter, which was intended for retirees residing in areas whose residents receive local telephone service from companies other than Defendant, which was signed by Defendant's Executive Vice President and Chief Human Resources Officer Barry Allen and which discusses both telephone service reimbursement and a new plan to provide certain discounts on Defendant's products and services, to retirees. Defendant states that such letter speaks for itself. Defendant denies all remaining averments in paragraph 38, if any.

39. Admits that it received letters and email from retirees discussing telephone service reimbursement. Denies all remaining averments of paragraph 39 for lack of knowledge or information.

40. Admits that it disagreed with some statements made in the letters and email referenced in paragraph 39. Denies all remaining averments of paragraph 40.

41. Qwest admits it believes past actions have not created a contractual commitment as alleged by Plaintiff and denies the remaining averments of paragraph 41 of the Complaint.

42. Denies the averments of fact in paragraph 42. To the extent paragraph 42 also includes conclusions of law, Defendant need not respond. To the extent a response would be required to such conclusions, Defendant denies same.

43. Qwest admits the cost of reimbursing retirees who reside in exchanges other than those served by Qwest for local telephone service is approximately \$150,000 per month. Qwest denies the remaining averments of paragraph 43 of the Complaint.

RESPONSE TO CLASS ACTION ALLEGATIONS

44. Admits that Plaintiff purports to bring this action on behalf of the purported class described in paragraph 44. Denies that Plaintiff can properly bring such a class action. Denies any other averments of paragraph 44.

45. Paragraph 45 states conclusions of law to which Defendant need not respond. To the extent a response would be required, Defendant denies same.

46. Denies for lack of knowledge or information.

47. Paragraph 47 states conclusions of law to which Defendant need not respond. To the extent a response would be required, Defendant denies for lack of knowledge or information.

48. Paragraph 48 states conclusions of law to which Defendant need not respond. To the extent a response would be required, Defendant denies for lack of knowledge or information.

49. Paragraph 49 states conclusions of law to which Defendant need not respond. To the extent a response would be required, Defendant denies for lack of knowledge or information.

50. The first sentence of paragraph 50 states conclusions of law to which Defendant need not respond. To the extent a response to that sentence would be required, Defendant denies for lack of knowledge or information. Denies all remaining averments of paragraph 50 for lack of knowledge or information.

51. Denies for lack of knowledge or information, including a lack of knowledge of the meaning Plaintiff gives to the phrases “experienced counsel,” “successfully litigated” and “multi-plaintiff civil actions against Defendant and predecessors.”

52. Denies.

53. Paragraph 53 states conclusions of law to which Defendant need not respond. To the extent a response would be required, Defendant denies for lack of knowledge or information.

54. Paragraph 54 states conclusions of law to which Defendant need not respond. To the extent a response would be required, Defendant denies for lack of knowledge or information.

55. Denies for lack of knowledge or information.

56. Denies for lack of knowledge or information.

57. Paragraph 57 states conclusions of law to which Defendant need not respond. To the extent a response would be required, Defendant denies for lack of knowledge or information.

58. Paragraph 58 states conclusions of law to which Defendant need not respond. To the extent a response would be required, Defendant denies for lack of knowledge or information.

RESPONSE TO FIRST CLAIM FOR RELIEF

59. Incorporates by reference its response to paragraphs 1 through 58.

60. Denies.

61. Denies for lack of knowledge or information, including lack of knowledge of the meaning Plaintiff gives to the phrase “all obligations and requirements for the ‘Telephone Concession Reimbursement.’”

62. Denies.

RESPONSE TO SECOND CLAIM FOR RELIEF

63. Incorporates by reference its response to paragraphs 1 through 62.

64. Denies.

65. Denies.

66. Denies.

SEPARATE DEFENSES

1. The Complaint fails to state a claim against Defendant upon which relief can be granted.
2. The claims of Plaintiff and/or the putative class members are barred in whole or in part by the statute of frauds.
3. The claims of Plaintiff and/or the putative class members are barred in whole or in part by a failure or absence of consideration.
4. The claims of Plaintiff and/or the putative class members for damages are barred in whole or in part by a failure to mitigate damages.
5. This action should not be certified or maintained as a class action because the requirements for a class action including those in C.R.C.P. 23 have not been and cannot be satisfied.
6. To the extent the putative class includes purported class members who were union employees at the time of retirement, such purported class members' claims may be preempted by Section 301 of the National Labor Relations Act.
7. To the extent the putative class includes purported class members whose relevant claims are subject to arbitration, such claims must proceed in arbitration rather than in this Court and such claims are evidence that this action should not be certified or maintained as a class action.
8. The claims of certain members of the purported class are barred by the doctrines of waiver and estoppel.
9. Defendant reserves the right to assert additional defenses as they may be discovered.
10. Defendant denies all averments in the Complaint not specifically admitted above.

WHEREFORE, Defendant ask this Court to dismiss the Complaint and to award Defendant its costs, expert witness fees, attorney fees and costs, and such other relief as the Court deems proper.

Dated: April 1, 2004.

SHERMAN & HOWARD, L.L.C.

By: /S/ SIGNATURE ON FILE
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Attorneys for Defendant

Address for Defendant:
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Attention: Legal Department
1801 California Street, Ninth Floor
Denver, Colorado 80202

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2004, I served a true and correct copy of the foregoing **ANSWER OF DEFENDANT QWEST COMMUNICATIONS INTERNATIONAL, INC.** on the following **via the E-Filing System**:

Curtis L. Kennedy, Esq.
8405 E. Princeton Ave.
Denver, CO 80237-1741

/s/ SIGNATURE ON FILE