

U.S. Department of Labor

Employee Benefits Security Administration  
1100 Main Street, Suite 1200  
Kansas City, MO 64105  
816-426-5131 FAX 816-426-5511



APR 07 2005

Employee Benefits Committee  
c/o Karen DuWaldt  
Vice President, Deputy General Counsel  
Qwest Communications International, Inc.  
1801 California Street, Suite 900  
Denver, CO 80202

RE: Qwest Pension Plan  
Case No. 60-099723  
EIN/PN 84-1339282/005

Dear Committee Members:

The U.S. Department of Labor, Employee Benefits Security Administration (the Department), has responsibility for the administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Title I establishes standards governing the operation of employee benefit plans such as the Qwest Pension Plan (the Plan).

This office has concluded its investigation of the Plan and of the activities of the Plan fiduciaries. Based on the facts gathered during this investigation, it appears that the Employee Benefits Committee (the Committee), as a fiduciary to the Plan, violated several provisions of ERISA. The purpose of this letter is to advise you of our findings and acknowledge the corrective action taken.

We understand that the Committee is named the Plan Administrator. In this capacity, the Committee is a fiduciary and party-in-interest to the Plan within the meaning of ERISA Section 3(21) and 3(14). These provisions provide in pertinent part:

*Act Section 3(21)(A)...a person is a fiduciary with respect to a plan to the extent*

- (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets...or*
- (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan...*

*Act Section 3(14) The term "party-in-interest" means, as to an employee benefit plan—*

- (A) any fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian), counsel, or employee of such employee benefit plan;...*

**DEFENDANT'S  
EXHIBIT  
A**

(C) *an employer any of whose employees are covered by such plan; ...*

Our investigation disclosed that the Plan Trust paid expenses related to settlor activities totaling \$83,821. The payment of these expenses by the Plan Trust was a violation of ERISA Sections 403(c)(1); 404(a)(1)(A) and (B); 406(a)(1)(D); and 406(b)(2) which state in relevant part.

ERISA Sec. 403(c)(1) ... *the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan;*"

Act Section 404(a)(1) "...*a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and --*

(A) *for the exclusive purpose of:*

- (i) *providing benefits to participants and their beneficiaries; and*
- (ii) *defraying reasonable expenses of administering the plan;*

(B) *with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims...;*"

Act Section 406(a)(1) "*A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect...*

(D) *transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan...;*" and

Act Section 406(b) "*A fiduciary with respect to the plan shall not --*

(2) *in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries...*"

Subsequently, we understand that corrective action has been taken. Specifically, as a result of our investigation, Qwest and Qwest Asset Management repaid to the Plan Trust \$83,821 to correct the prohibited transaction related to the subject expense payments and an additional \$16,097 to compensate the Plan for lost earnings. The total amount paid to the Plan Trust was \$99,918.

Because you have taken the corrective action noted above, the Department will not take any further action with respect to this matter. You are cautioned, however, that by agreeing to take no further action, the Department commits only itself and cannot in any way restrain any other

individual or governmental agency from taking any further action it may deem appropriate with respect to these or other matters.

As you may be aware, Congress, in enacting ERISA, added Section 4975 to the Internal Revenue Code of 1954, which imposes an excise tax on disqualified persons (generally the same as parties-in-interest under Title I of ERISA) who engage in prohibited transactions with employee retirement benefit plans. The excise tax is paid concurrently with the filing of a Form 5330 (Form and Instructions enclosed).

Please be advised that pursuant to Section 3003(c) of ERISA, the Secretary of Labor is required to transmit to the Secretary of the Treasury information indicating that a prohibited transaction has occurred. Accordingly, this matter will be referred to the Internal Revenue Service.

Sincerely,

  
STEVEN R. EISCHEN  
Regional Director

Enclosures: Form 5330  
Instructions