

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 05-cv-00478-BNB-PAC

EDWARD J. KERBER,  
NELSON B. PHELPS,  
JOANNE WEST,  
NANCY A. MEISTER,  
THOMAS J. INGEMANN, JR.  
Individually, and as Representatives of plan participants  
and plan beneficiaries of the QWEST PENSION PLAN,

Plaintiffs,

vs.

QWEST PENSION PLAN,  
QWEST EMPLOYEES BENEFIT COMMITTEE,  
QWEST PENSION PLAN DESIGN COMMITTEE,  
QWEST COMMUNICATIONS INTERNATIONAL, INC.,

Defendants.

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**DEFENDANTS' RESPONSE TO MOTION TO COMPEL**

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Defendants Qwest Pension Plan ("Plan"), Qwest Employees Benefit Committee ("EBC"), Qwest Pension Plan Design Committee ("Committee"), and Qwest Communications International, Inc. ("QCII"), by and through counsel, Baird & Kiovsky, LLC, hereby respond to Plaintiff's Motion to Compel as follows:

1. Plaintiffs' Motion to Compel, filed on January 11, 2006, seeks an Order directing Defendants to produce the documents which Defendants previously indicated to Plaintiffs would be produced. Two days after this Motion was filed, on January 13, 2006, Defendants produced approximately 6,000 pages of plan documents, summary plan descriptions, and employee communications that were responsive to Plaintiff's discovery

requests. These discovery requests asked for all pension plan documents dating back to 1913, and all employee communications relating to the death benefit over the last 22 years.

2. On Thursday, February 2, 2006, a second set of documents (approximately 500 pages) containing primarily internal email communications of Defendants and retiree correspondence were produced to Plaintiffs. Unfortunately, it did take Defendants' counsel a long time to review documents, sort through which documents were privileged and create a privilege log.

3. However, as of the filing of this Response, Defendants believe all responsive documents that Defendants indicated would be produced have been produced.

4. Recognizing that it did take some time to compile, review and produce all of the documents requested by Plaintiffs, Defendants' counsel has indicated to Plaintiff's counsel that Defendants would be willing to discuss any proposed changes to the Scheduling Order and to try to work out a proposal between the parties.

5. Plaintiffs' counsel, however, did not make any suggestions or propose any amendments to the Scheduling Order prior to filing his Motion to Compel. Plaintiffs' counsel's representations to the contrary on that point are incorrect. Nor has Plaintiffs' counsel responded to Defendants' February 2, 2006 request to discuss and work out proposed changes to the Scheduling Order.

6. We will endeavor to work jointly with Plaintiffs' counsel prior to the February 10 hearing to develop a proposed, amended Scheduling Order which would eliminate any prejudice to Plaintiff resulting for the delay in the production of documents.

7. Defendants assume that the currently scheduled pre-trial conference

(August 11, 2006) and trial date (November 7, 2006) may need to be adjusted in light of Judge Boland's schedule.

Respectfully submitted this 6<sup>th</sup> day of February, 2006.

s/ Beth Doherty Quinn  
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*Committee,*  
*Qwest Pension Plan Design*  
*Committee,*  
*Qwest Communications*  
*International, Inc.*

**CERTIFICATE OF SERVICE (CM/ECF)**

I hereby certify that on February 6, 2006, I electronically filed the foregoing RESPONSE TO MOTION TO COMPEL with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail address:

Curtis L. Kennedy, Esq. at [CurtisLKennedy@aol.com](mailto:CurtisLKennedy@aol.com)

and, I also certify that I have mailed or served the document via U.S. Mail, postage prepaid, to the following non-CM/ECF participants:

Cynthia Delaney  
Qwest Communications Corp.  
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Denver, CO 80202

s/ Carla Chiles  
Carla Chiles, Paralegal  
Baird & Kiovsky, LLC