

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

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

EDWARD J. KERBER,  
NELSON B. PHELPS,  
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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**ANSWER TO SECOND AMENDED COMPLAINT**

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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 & Kiovsy, LLC, hereby answers Plaintiffs’ Second Amended Complaint as follows:

**PRELIMINARY AND CONTINUING OBJECTIONS BY DEFENDANTS**

Defendants make several objections that apply to the whole of Plaintiffs’ Second Amended Complaint. To the extent titles/subdivisions are allegations, they are denied. They are repeated here for consistency only. Defendants also object to Plaintiffs’ use of term “PLAN.” While Plaintiffs at times attempt to use that term to cover the multiple pension plans that have been in existence over more than twenty years, Plaintiff specifically defined “PLAN” as the current Plan and Defendants have treated it as such.

### **PRELIMINARY STATEMENT**

1. Paragraph 1 of Plaintiffs' Second Amended Complaint ("Complaint") runs on for one and a half pages, contains colloquialisms and legal arguments, and is not an averment to which a response is required. Defendants, therefore, deny same.

### **JURISDICTION AND VENUE**

2. Defendants admit that this Court has jurisdiction to hear this matter, but because Defendants deny that some of the named Plaintiffs have standing to assert some of their claims (*see* simultaneously filed Motion to Dismiss), and because Defendants deny that Plaintiffs may plead a claim pursuant to 29 U.S.C. § 1132(a)(2), and possibly other provisions of ERISA, Defendants deny the remainder of the averments in Paragraph 2 of the Second Amended Complaint.

3. Paragraph 3 of the Second Amended Complaint states legal conclusions to which no response is required. Defendants, therefore, deny same.

4. Defendants admit that the District of Colorado is the proper venue for this matter and denies the remaining allegations in Paragraph 4 of the Second Amended Complaint.

### **THE PARTIES**

5. Defendants admit that Plaintiff Kerber was formerly employed as a Manager within the human resources department at US WEST, Inc. and that he retired from US WEST, Inc. on or about February 28, 1990. Defendants further admit Plaintiff Kerber retired with thirty or more years of employment service and that he is receiving a service pension annuity from the Qwest Pension Plan ("Plan"). Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of

the averments in Paragraph 5 of the Second Amended Complaint and, therefore, deny same.

6. Defendants admit that Plaintiff Kerber is a participant, as defined by 29 U.S.C. § 1002(7), of the Plan and that he receives a service pension in the form of a monthly annuity. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the averments in Paragraph 6 of the Second Amended Complaint and, therefore, deny same.

7. Defendants admit that Plaintiff Phelps was formerly employed as a Director at US WEST, Inc. and that he retired from US WEST, Inc. on or about February 28, 1990. Defendants further admit that Plaintiff Phelps retired with more than 23 years of employment and he is receiving a service pension annuity from the Plan. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the averments in Paragraph 7 of the Second Amended Complaint and, therefore, deny same.

8. Defendants admit that Plaintiff Phelps is a participant, as defined by 29 U.S.C. § 1002(7), of the Plan and that he receives a service pension in the form of a monthly annuity. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the averments in Paragraph 8 of the Second Amended Complaint and, therefore, deny same.

9. Defendants admit that Plaintiff West was formerly employed as a Senior Process Analyst and that she retired on or about February 11, 2004 with approximately 35 years of service. Defendants further admit that Plaintiff West opted for and received a lump sum service pension that did not include monies for a death benefit. Defendants are

without knowledge or information sufficient to form a belief as to the truth of the remainder of the averments in Paragraph 9 of the Second Amended Complaint and, therefore, deny same.

10. Defendants deny that Plaintiff West is a “participant”, as defined by 29 U.S.C. § 1002(7). Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the averments in Paragraph 10 of the Second Amended Complaint and, therefore, deny same.

11. Defendants admit that Plaintiff Meister was formerly employed as a Lead Project Analyst and that she retired on or about February 11, 2004 with approximately 25 years of service. Defendants further admit that Plaintiff Meister opted for and received a lump sum service pension that did not include monies for a death benefit. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the averments in Paragraph 11 of the Second Amended Complaint and, therefore, deny same.

12. Defendants deny that Plaintiff Meister is a “participant”, as defined by 29 U.S.C. § 1002(7). Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the averments in Paragraph 12 of the Second Amended Complaint and, therefore, deny same.

13. Defendants admit that Plaintiff Ingemann was formerly employed as a Customer Account Consultant II and that he retired on or about March 2, 2005 with more than 35 years of service. Defendants further admit that Plaintiff Ingemann receives a service pension annuity from the Plan. Defendants are without knowledge or information

sufficient to form a belief as to the truth of the remainder of the averments in Paragraph 13 of the Second Amended Complaint and, therefore, deny same.

14. Defendants admit that Plaintiff Ingemann is a participant, as defined by 29 U.S.C. § 1002(7), of the Plan and that he receives a service pension in the form of a monthly annuity. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the averments in Paragraph 14 of the Second Amended Complaint and, therefore, deny same.

15. Defendants admit that US WEST, Inc. was a corporation qualified to do business in Colorado and that its principal place of business was located within the District of Colorado. Defendants further admit that at various times, but not at all times during the “relevant time period”, US WEST, Inc. was an “employer”, “plan administrator” and “plan sponsor” as those terms are defined by ERISA. Defendants deny any remaining averment of Paragraph 15 of the Second Amended Complaint inconsistent with said admission.

16. Defendants admit the allegations of Paragraph 16 of The Second Amended Complaint.

17. Defendants admit that QCII is a Delaware corporation qualified to do business in Colorado with a principal place of business within the District of Colorado. Defendants admit that QCII is a “plan sponsor” and that the EBC is the named fiduciary under the Plan. Defendants deny any remaining averments of Paragraph 17 of the Second Amended Complaint inconsistent with said admission.

18. Defendants affirmatively state that the Plan itself sets forth the Plan History in its Preamble and subsequently defines “Predecessor Plan” at § 1.56.

Defendants deny any allegations in Paragraph 18 of the Second Amended Complaint inconsistent with the aforementioned terms of the Plan.

19. Defendants admit the Plan is an “employee pension benefit plan” as defined by 29 U.S.C. § 1002(2)(A). The remainder of the allegations in Paragraph 19 call for a legal conclusion and are not averments to which a response is required. Defendants, however, deny same.

20. Defendants affirmatively state that the Plan sets forth the eligibility requirements for receipt of a death benefit and further states that the Plan speaks for itself. To the extent the averments in Paragraph 20 are inconsistent with the Plan, those averments are denied.

21. Defendants affirmatively state that the Plan sets forth the eligibility requirements for receipt of a death benefit and further states that the Plan speaks for itself. To the extent the averments in Paragraph 21 are inconsistent with the Plan, those averments are denied.

22. Defendants affirmatively state that the Plan sets forth the eligibility requirements for receipt of a death benefit and further states that the Plan speaks for itself. To the extent the averments in Paragraph 22 are inconsistent with the Plan, those averments are denied.

23. Defendants affirmatively state that the Plan speaks for itself. To the extent the averments in Paragraph 23 are inconsistent with the Plan, those averments are denied.

24. Defendants affirmatively state that the current Summary Plan Description (“SPD”) speaks for itself. To the extent the averments in Paragraph 24 are inconsistent with that document, those averments are denied.

25. Defendants affirmatively state that the Plan speaks for itself. To the extent the averments in Paragraph 25 are inconsistent with the Plan, those averments are denied.

26. Defendants admit that the EBC is, pursuant to 29 U.S.C. § 1002(21) and (16), a “fiduciary” and “administrator” of the Plan. Defendants further admit that the EBC’s principal place of business is Denver, Colorado and that, as the named fiduciary, it does perform certain fiduciary and administrative functions. Defendants deny the remaining averments in Paragraph 26 of the Second Amended Complaint.

27. Defendants admit that the US WEST Employee Benefits Committee was the plan administrator and named fiduciary for the pension plans sponsored by US WEST, Inc. between approximately January 1, 1984 through June 2000. Defendants deny the remaining averments of Paragraph 27 of the Second Amended Complaint.

28. Defendants admit that the EBC is the current Plan Administrator and the named fiduciary for the Plan. Defendants deny the remainder of the averments in Paragraph 28 of the Second Amended Complaint.

29. Defendants admit the averments of Paragraph 29 of the Second Amended Complaint.

30. Defendants deny the averments of Paragraph 30 of the Second Amended Complaint.

## **FACTS**

### **A. Exhaustion of Available Administrative Procedures.**

31. Defendants deny the averments of Paragraph 31 of The Second Amended Complaint.

32. Defendants admit that the letter reproduced at Paragraph 32 of the Second Amended Complaint is similar to a draft letter in the possession of Defendants, but deny the remaining averments of Paragraph 32 of the Second Amended Complaint.

33. Defendants admit that Plaintiff Phelps submitted several written demands that the EBC promise or declare that the death benefit could not be eliminated, among other requests, and that those demands were treated as an individual administrative claim. Defendants deny the remainder of the allegations in Paragraph 33 of the Second Amended Complaint.

34. Defendants admit that the letter from Mr. Curtis Kennedy that is reproduced in full in Paragraph 34 of the Second Amended Complaint was received by QCII and the EBC on or about September 26, 2003. While this letter, as reprinted, appears to be substantially accurate, Defendants specifically assert that the letter speaks for itself.

35. Defendants deny the averments of Paragraph 35 of the Second Amended Complaint.

36. Defendants admit that a letter was sent to Mr. Curtis Kennedy on December 22, 2003 that contained the language, or substantially similar language, set forth in Paragraph 36 of the Second Amended Complaint, but specifically assert that the letter speaks for itself.

37. Defendants admit that the December 22, 2005 letter does not reference Plan Amendment 2003-5 and affirmatively state that the December 22, 2003 letter speaks for itself. Defendants deny the remaining allegations of Paragraph 37 of the Second Amended Complaint.

38. Defendants deny the averments in Paragraph 38 of the Second Amended Complaint.

39. Defendants admit that the Plan does not provide for an internal administrative claim process to overturn Plan amendments and deny the remainder of the averments in Paragraph 39 of the Second Amended Complaint.

40. Defendants admit that letter that is reproduced in part in Paragraph 40 of The Second Amended Complaint was received by QCII, the Plan and the EBC on or about March 5, 2004. While the reprinted portion of the letter appears to be substantially accurate, Defendants specifically assert that the letter speaks for itself and deny any averments in Paragraph 40 of the Second Amended Complaint inconsistent with that document.

41. Defendants admit that the EBC responded to the March 5, 2004 letter, but specifically assert that the response letter speaks for itself and deny any averments in Paragraph 41 of the Second Amended Complaint inconsistent with that document.

42. Defendants admit that Plaintiff Phelps and Kerber individually exhausted their administrative remedies. Defendants deny the remainder of the allegations in Paragraph 42 of the Second Amended Complaint.

43. Defendants deny the allegations of Paragraph 42 of the Second Amended Complaint.

44. Defendants admit that a number of retirees sent letters or emails to QCII or the EBC or both regarding the death benefit. Defendants admit those letters were not treated as administrative claims. Defendants specifically assert that the letters speak for

themselves and deny any averments inconsistent with those letters and the remaining averments of Paragraph 44 of the Second Amended Complaint.

45. Defendants deny the averments of Paragraph 45 of the Second Amended Complaint.

46. Defendants deny the averments of Paragraph 46 of the Second Amended Complaint.

47. Defendants deny the averments of Paragraph 47 of the Second Amended Complaint.

**B. Description and History of the Pension Death Benefit.**

48. Defendants admit that the Plan currently provides a death benefit for certain retirees. Defendants also admit that AT&T and certain affiliated companies maintained pension plans but affirmatively state that each of those plans speaks for itself. Defendants deny any averments of Paragraph 48 of the Second Amended Complaint that are inconsistent with those actual plans.

49. Defendants admit that immediately prior to January 1, 1984, AT&T offered certain death benefits under a then existing pension plan, the Bell System Management Pension Plan, as amended. Defendants specifically assert that the pension plan speaks for itself and deny any averments in Paragraph 49 inconsistent with that document. Defendants deny the remaining averments in Paragraph 49 of the Second Amended Complaint.

50. Defendants admit that AT&T and certain affiliated companies have previously maintained pension plans, and that those plans, as amended over time, speak

for themselves. Defendants deny the remaining allegations in Paragraph 50 of the Second Amended Complaint.

51. Defendants specifically assert that the AT&T pension plan, as amended over time, as well as the pension plans of affiliated companies, as amended over time, speak for themselves. Defendants deny any averments in Paragraph 51 of the Second Amended Complaint inconsistent with said pension plans.

52. Defendants specifically assert that the AT&T pension plan, as amended over time, as well as the pension plans of affiliated companies, as amended over time, speak for themselves. Defendants specifically assert that any SPDs associated with said plans speak for themselves. Defendants deny any averments in Paragraph 52 of the Second Amended Complaint inconsistent with said pension plans or SPDs. Defendants specifically deny that the death benefit was a “key” element of any such plans or plan documents.

53. Defendants are unaware of the specific documents referenced by Plaintiffs. Defendants specifically assert that any such documents speak for themselves. Defendants deny any averment in Paragraph 53 of the Second Amended Complaint inconsistent with said documents.

54. Defendants are unaware of the specific SPDs referenced by Plaintiffs. Defendants specifically assert that any such SPDs speak for themselves. Defendants deny any averment in Paragraph 54 of the Second Amended Complaint inconsistent with said SPDs.

55. Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 55 of the Second Amended Complaint and, therefore, deny same.

56. Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 56 of the Second Amended Complaint and, therefore, deny same.

57. Defendants assert that the plan in effect immediately prior to January 1, 1984, the Bell System Management Pension Plan, as amended, set forth the “pension plan termination arrangements” in § 4(10). Defendants deny any averments in Paragraph 57 of the Second Amended Complaint inconsistent with that provision or plan. Defendants further assert that any previous plans issued by AT&T speak for themselves and deny any averments inconsistent with those plans.

58. Defendants admit that, pursuant to the AT&T Consent Decree, otherwise known as the Modified Final Judgment (“MFJ”), AT&T was required to divest itself of its affiliated Bell Operating Companies and that, effective January 1, 1984, there was a divestiture of AT&T. Defendants deny the remainder of the allegations in Paragraph 58 of the Second Amended Complaint.

59. Defendants admit that the US WEST Pension Plan and the US WEST Management Pension Plan, both of which became effective January 1, 1984, are successors in interest to the Bell System Pension Plan sponsored by AT&T. Defendants are without information or knowledge sufficient to form a belief as to the truth of the remaining averments in Paragraph 59 of the Second Amended Complaint and, therefore, deny same.

60. Defendants admit that the US WEST Pension Plan and the US WEST Management Pension Plan received assets from the Bell System Pension Plan. Defendants are without information or knowledge sufficient to form a belief as to the truth of the remaining averments of Paragraph 60 of the Second Amended Complaint and, therefore, deny same.

61. Defendants specifically assert that the MFJ speaks for itself and specifically deny any averments of Paragraph 61 of the Second Amended Complaint inconsistent with the MFJ.

62. Defendants specifically assert that the MFJ and the then existing pension plans speak for themselves and Defendants deny any averment of Paragraph 62 of the Second Amended Complaint inconsistent with said documents.

63. Defendants specifically assert that the US WEST Pension Plan and US WEST Management Pension Plan that first became effective January 1, 1984 provide for certain death benefits in Section 5 of the respective plans. Defendants deny any averment of Paragraph 63 of The Second Amended Complaint inconsistent with the US WEST Pension Plan, effective January 1, 1984 and US WEST Management Plan, effective January 1, 1984. Defendants further deny any remaining averments in Paragraph 63 of the Second Amended Complaint.

64. Defendants specifically assert that the US WEST Pension Plan and US WEST Management Pension Plan that first became effective January 1, 1984 speak for themselves. Defendants deny any averment of Paragraph 64 of the Second Amended Complaint inconsistent with the US WEST Pension Plan, effective January 1, 1984 and US WEST Management Plan, effective January 1, 1984.

65. Defendants admit that the US WEST Pension Plan and US WEST Management Pension Plan that first became effective January 1, 1984 contain at Section 4.8 the language quoted in Paragraph 65 of the Second Amended Complaint and certain amendments thereto contained the same language. Defendants specifically state however that the US WEST Pension Plan and the US WEST Management Pension Plan, including amendments and successor plans, speak for themselves and deny any averment of this Paragraph 65 that is consistent with said plan documents.

66. Defendants deny the averments of Paragraph 66 of the Second Amended Complaint.

67. Defendants deny the averments of Paragraph 67 of the Second Amended Complaint.

68. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 68 of the Second Amended Complaint and, therefore, deny same.

69. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 69 of the Second Amended Complaint and, therefore, deny same.

70. Defendants admit that effective as of January 1, 1993, the US WEST Pension Plan and the US WEST Management Pension Plan were merged into a single plan, named the US WEST Pension Plan. Defendants admit that in 2001 the US WEST Pension Plan was renamed the Qwest Pension Plan (referred to herein as the "Plan"). Defendants deny any averments inconsistent with said admissions.

71. Defendants specifically assert that the Plan speaks for itself and Defendants deny any averments of Paragraph 71 inconsistent with the Plan, and any remaining averments in Paragraph 71 of the Second Amended Complaint.

C. **U S WEST Issued PLAN Publications and Summary Plan Descriptions and Representations About the Pension Death Benefit.**

72. Defendants deny the averments of Paragraph 72 of the Second Amended Complaint.

73. Defendants deny the averments of Paragraph 73 of the Second Amended Complaint.

74. Defendants are unaware of the document that Plaintiffs are referencing, but specifically assert that any such document, if it exists, speaks for itself and deny any averments in Paragraph 74 of the Second Amended Complaint inconsistent with any such document.

75. Defendants deny that the Plan, as defined by Plaintiffs, issued an SPD in October 1, 1980. Defendants admit that the Bell System Management Pension Plan SPD effective October 1, 1980 contains language substantially similar to the language reproduced in Paragraph 75 of the Second Amended Complaint, but specifically assert that the SPD speaks for itself. Defendants deny any averment in Paragraph 75 inconsistent with the October 1, 1980 SPD.

76. Defendants are unaware of the document that Plaintiffs are referencing, but specifically assert that any such document, if it exists, speaks for itself and deny any averments in Paragraph 76 of the Second Amended Complaint inconsistent with any such document.

77. Defendants admit that both the US WEST Management Pension Plan SPD and the US WEST Pension Plan SPD, both revised January 1, 1985, contain the language reproduced in Paragraph 77 of the Second Amended Complaint, but specifically assert that the SPDs speak for themselves. Defendants deny any averment in Paragraph 77 inconsistent with those SPDs.

78. Defendants admit that both the US WEST Management Pension Plan SPD and the US WEST Pension Plan SPD, both revised January 1, 1985, contain the language reproduced in Paragraph 78 of the Second Amended Complaint, but specifically assert that the SPDs speak for themselves. Defendants deny any averment in Paragraph 78 inconsistent with those SPDs.

79. Defendants are unaware of the newsletter that Plaintiffs are referencing, but specifically assert that any such newsletter, if it exists, speaks for itself and deny any averments in Paragraph 79 of the Second Amended Complaint inconsistent with any such document.

80. Defendants admit that both the US WEST Management Pension Plan SPD and the US WEST Pension Plan SPD, both revised January 1, 1987, contain the language reproduced in Paragraph 80 of the Second Amended Complaint, but specifically assert that the SPDs speak for themselves. Defendants deny any averment in Paragraph 80 inconsistent with those SPDs.

81. Defendants admit that both the US WEST Management Pension Plan SPD and the US WEST Pension Plan SPD, both revised January 1, 1987, contain language substantially similar to the language reproduced in Paragraph 81 of the Second Amended

Complaint, but specifically assert that the SPDs speak for themselves. Defendants deny any averment in Paragraph 81 inconsistent with those SPDs.

82. Defendants are unaware of the document that Plaintiffs are referencing, but specifically assert that any such document, if it exists, speaks for itself and deny any averments in Paragraph 82 of the Second Amended Complaint inconsistent with any such document.

83. Defendants admit that the US WEST Management Pension Plan SPD, revised January 1, 1989 and published in a *Benefits Today* Special Edition dated July 1, 1989, contains the language reproduced in Paragraph 83 of the Second Amended Complaint, but specifically assert that the SPD speaks for itself. Defendants deny any averment in Paragraph 83 inconsistent with that SPD.

84. Defendants are unaware of the document that Plaintiffs are referencing, but specifically assert that any such document, if it exists, speaks for itself and deny any averments in Paragraph 84 of the Second Amended Complaint inconsistent with any such document.

85. Defendants admit that the US WEST Pension Plan SPD, effective January 1, 1990 and published in a *Benefits Today* Special Edition dated December 1, 1990, contains the language reproduced in Paragraph 85 of the Second Amended Complaint, but specifically assert that the SPD speaks for itself. Defendants deny any averment in Paragraph 85 inconsistent with that SPD.

86. Defendants admit that a 1991 US WEST Management Pension Plan SPD contains the language reproduced in Paragraph 86 of the Second Amended Complaint, but specifically asserts that the SPD, and accompanying handbook, speaks for itself.

Defendants deny any averment in Paragraph 86 of the Second Amended Complaint inconsistent with such document. Defendants further assert that if a 1991 US WEST Pension Plan exists, with an accompanying handbook, it speaks for itself and deny any averments in Paragraph 86 of the Second Amended Complaint inconsistent with any such document.

87. Defendants are unaware of the document that Plaintiffs are referencing, but specifically assert that any such document, if it exists, speaks for itself and deny any averments in Paragraph 87 of the Second Amended Complaint inconsistent with any such document.

88. Defendants admit that a July 1993 US WEST Retirement Plans Bulletin was published by US WEST that contains the language restated in Paragraph 88 of the Second Amended Complaint but specifically aver that the document speaks for itself. Defendants deny any averments inconsistent with that document.

89. Defendants admit that a 1994 US WEST Pension Plan SPD contains the language reproduced in Paragraph 89 of The Second Amended Complaint, but specifically asserts that the SPD, and accompanying handbook, speaks for itself. Defendants deny any averment in Paragraph 89 of the Second Amended Complaint inconsistent with such document.

90. Defendants admit that a 1996 US WEST Pension Plan SPD contains the language reproduced in Paragraph 90 of The Second Amended Complaint, but specifically asserts that the SPD, and accompanying handbook, speaks for itself. Defendants deny any averment in Paragraph 90 of the Second Amended Complaint inconsistent with such document.

91. Defendants deny the averments of Paragraph 91 of the Second Amended Complaint.

92. Defendants deny the averments of Paragraph 92 of the Second Amended Complaint.

93. Defendants deny the averments of Paragraph 93 of the Second Amended Complaint.

94. Defendants deny the averments of Paragraph 94 of the Second Amended Complaint.

95. Defendants deny the averments of Paragraph 95 of the Second Amended Complaint.

**D. Language Restricting U S WEST's Power To Amend The Plan.**

96. Defendants admit that the US WEST Pension Plan and US WEST Management Pension Plan that first became effective January 1, 1984 contain at Section 9 the language quoted in Paragraph 96 of the Second Amended Complaint and certain amendments thereto contained the same language. Defendants specifically state however that the US WEST Pension Plan and the US WEST Management Pension Plan, including amendments and successor plans, speak for themselves and deny any averment of this Paragraph 96 that is consistent with said plan documents.

97. Defendants deny the averments of Paragraph 97 of the Second Amended Complaint.

**E. US WEST Fiduciary Representations When Offering Certain Named Plaintiffs a Special Retirement Incentive.**

98. Defendants admit that from time to time US WEST would offer its employees retirement packages. Defendants admit that Plaintiffs Phelps and Kerber both

accepted retirement packages resulting in retirement dates of February 28, 1990.

Defendants specifically assert that any information, letters or documents provided in connection with a specific retirement package speak for themselves. Defendants deny any allegations inconsistent with such documents and deny the remainder of the allegations in Paragraph 98 of the Second Amended Complaint.

99. Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 99 of the Second Amended Complaint and, therefore, deny same.

100. Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 100 of the Second Amended Complaint and, therefore, deny same.

101. Defendants deny the averments in Paragraph 101 of the Second Amended Complaint.

102. Defendants deny the averments in Paragraph 102 of the Second Amended Complaint.

**F. The PLAN Sponsor's and COMMITTEE's Prior Actions Served As An Interpretation Making the Pension Death Benefit A Vested, Protected or Accrued Defined Pension Benefit Under the Existing Terms of the PLAN.**

103. Defendants deny the averments in Paragraph 103 of the Second Amended Complaint.

104. Defendants deny the averments in Paragraph 104 of the Second Amended Complaint.

105. Defendants admit the averment in Paragraph 105 of the Second Amended Complaint.

106. Defendants admit that § 7.11 of the US WEST Pension Plan, effective January 1, 1993, contains the language reprinted in Paragraph 106 of the Second Amended Complaint. Defendants specifically assert that the US WEST Pension Plan, effective January 1, 1993, speaks for itself and deny any averments in Paragraph 106 of the Second Amended Complaint inconsistent with said plan.

107. Defendants deny the averments in Paragraph 107 of the Second Amended Complaint.

108. Defendants deny the averments in Paragraph 108 of the Second Amended Complaint.

109. Defendants admit that the Plan has made distributions in accordance with the Plan terms to plan participants. Defendants deny the remainder of the allegations in Paragraph 109 of the Second Amended Complaint.

110. Defendants admit that the Plan §13.7 contains language substantially similar to the language reprinted in Paragraph 110 of the Second Amended Complaint. Defendants specifically assert that the plan language speaks for itself.

111. Defendants affirmatively state that the pleadings and papers in the matter *Jarvis v. US WEST, Inc.*, Civil Action No. 97-N-2189, speak for themselves. Defendants deny any averments in Paragraph 111 of the Second Amended Complaint inconsistent with said pleadings and papers.

112. Defendants deny the averments in Paragraph 112 of the Second Amended Complaint.

**G. Undisclosed Material Modifications Made In An Attempt To Impermissibly Bootstrap Power To Reclassify and Declare the Pension Death Benefit To Not Be An 'Accrued Benefit.'**

113. Defendants admit that § 11.4 of the US WEST Pension Plan effective January 1, 1993 contained language substantially similar to the language reprinted in Paragraph 113 of the Second Amended Complaint. Defendants assert that the plan language speaks for itself and deny any averments inconsistent with said language and deny the remainder of the averments in this Paragraph.

114. Defendants affirmatively state the proper notification has always been given to plan participants. Defendants also affirmatively state that Plaintiffs have not identified the "plan publications" on which the averment relies and, therefore, Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 114 of the Second Amended Complaint and, therefore, deny same.

115. Defendants deny the averments in Paragraph 115 of the Second Amended Complaint.

116. Defendants admit the averments in Paragraph 116 of the Second Amended Complaint.

117. Defendants admit that § 1.0 of the US WEST Pension Plan, effective January 1, 1997, contains language substantially similar to the language reprinted in Paragraph 117 of the Second Amended Complaint. Defendants assert that the plan language speaks for itself and deny any averments inconsistent with said language.

118. Defendants admit that § 11.4 of the US WEST Pension Plan, effective January 1, 1997 contained language substantially similar to the language reprinted in Paragraph 118 of the Second Amended Complaint. Defendants assert that the plan language speaks for itself and deny any averments inconsistent with said language.

119. Defendants admit the averments of Paragraph 119 of the Second Amended Complaint.

120. Defendants affirmatively state that the plan document speaks for itself and deny any averments in Paragraph 120 of the Second Amended Complaint inconsistent with said plan document.

121. Defendants deny the averments of Paragraph 121 of the Second Amended Complaint.

122. Defendants are without information or knowledge sufficient to admit or deny the averments in Paragraph 122 of the Second Amended Complaint and, therefore, deny same.

123. Defendants are without information or knowledge sufficient to admit or deny the averments in Paragraph 123 of the Second Amended Complaint and, therefore, deny same.

124. Defendants deny the averments of Paragraph 124 of the Second Amended Complaint.

125. Defendants deny the averments of Paragraph 125 of the Second Amended Complaint.

126. Defendants deny the averments of Paragraph 126 of the Second Amended Complaint.

127. Paragraph 127 of the Second Amended Complaint states legal conclusions to which no response is required. Defendants, therefore, deny same.

128. Defendants deny the averments of Paragraph 128 of the Second Amended Complaint.

129. Defendants deny the averments of Paragraph 129 of the Second Amended Complaint.

130. Defendants deny the averments of Paragraph 130 of the Second Amended Complaint.

**H. The New COMMITTEE's Position on the Status of the Pension Death Benefit With Respect to Named Plaintiffs and All Retired PLAN Participants.**

131. Defendants admit the allegations of Paragraph 131 of the Second Amended Complaint.

132. Defendants deny the averments of Paragraph 132 of the Second Amended Complaint.

133. Defendants admit that effective January 1, 2001, the US WEST Pension Plan was renamed the Qwest Pension Plan (referred to herein as the "Plan") and specifically assert that the Plan speaks for itself. Therefore, Defendants deny any averments of Paragraph 133 of the the Second Amended Complaint inconsistent with the Plan.

134. Defendants admit the averments of Paragraph 134 of the Second Amended Complaint.

135. Defendants admit that § 1.0B of the Plan contains language substantially similar to the language reprinted in Paragraph 135 of the Second Amended Complaint.

Defendants assert that the plan language speaks for itself and deny any averments inconsistent with said language.

136. Defendants admit that § 11.4 of the Plan contains language substantially similar to the language reprinted in Paragraph 136 of the Second Amended Complaint. Defendants assert that the plan language speaks for itself and deny any averments inconsistent with said language.

137. Defendants admit that a letter was drafted indicating that the Plan was being amended to eliminate the death benefit for retirees, but deny the remainder of the averments in Paragraph 137 of the Second Amended Complaint.

138. Defendants admit that Qwest representatives shared with certain representatives of the AUSWR the potential decision to eliminate the death benefit in a meeting in the Fall of 2003 and denies the remaining averments of Paragraph 138 of the Second Amended Complaint.

139. Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 139 of the Second Amended Complaint and, therefore, deny same.

140. Defendants admit that they received more than one hundred letters from retirees regarding the death benefit, but are without information or knowledge sufficient to form a belief as to the truth of the remainder of the averments in Paragraph 140 of the Second Amended Complaint and, therefore, deny same.

141. Defendants admit that QCII or the PDC have not agreed to date to insert language into the Plan documents vesting the death benefit. Defendants deny the remainder of the averments in Paragraph 141 of the Second Amended Complaint.

142. Defendants affirmatively assert that the death benefit is not a vested, or accrued benefit as those terms are defined or used under ERISA, or that anyone has ever treated it as such. Defendants deny any averments in Paragraph 142 of the Second Amended Complaint inconsistent with this admission.

143. Defendants affirmatively assert that there have been no breaches of fiduciary duty relating to any representations or omissions about the death benefit. Defendants deny any averments in Paragraph 143 of the Second Amended Complaint inconsistent with this admission.

144. Defendants affirmatively assert that they are not forbidden or estopped from altering, modifying or eliminating the death benefit. Defendants deny any averments in Paragraph 144 of the Second Amended Complaint inconsistent with this admission.

145. Defendants deny the averments of Paragraph 145 of the Second Amended Complaint.

146. Defendants deny that there is an actual controversy with regard to a subset of the Class (namely pre-2004 retirees) regarding their 1132(a)(1)(B) claims. Defendants admit that it is their position that the death benefit can be altered, modified or eliminated at any time. Defendants deny the remainder of the averments in Paragraph 146 of the Second Amended Complaint.

147. Defendants deny the averments of Paragraph 147 of the Second Amended Complaint.

148. Defendants deny the averments of Paragraph 148 of the Second Amended Complaint.

**FIRST CLAIM FOR RELIEF**  
**(Breach of Fiduciary Duty and Equitable Estoppel Due to Failure to Disclose Material Information; Requested Equitable and Remedial Relief)**

149. Defendants incorporate by reference the responses to Paragraphs 1 through 148 and 198 through 214 of this Answer as if set forth fully herein.

150. Defendants deny the averments of Paragraph 150 of the Second Amended Complaint.

151. Defendants deny the averments of Paragraph 151 of the Second Amended Complaint.

152. Defendants deny the averments of Paragraph 152 of the Second Amended Complaint.

153. Defendants deny the averments of Paragraph 153 of the Second Amended Complaint.

154. Defendants deny the averments of Paragraph 154 of the Second Amended Complaint.

155. Defendants deny the averments of Paragraph 155 of the Second Amended Complaint.

156. Defendants deny the averments of Paragraph 156 of the Second Amended Complaint.

157. Defendants deny the averments of Paragraph 157 of the Second Amended Complaint.

158. Defendants deny the averments of Paragraph 158 of the Second Amended Complaint.

159. Defendants deny the averments of Paragraph 159 of the Second Amended Complaint.

160. Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 160 of the Second Amended Complaint and, therefore, deny same.

161. Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 161 of the Second Amended Complaint and, therefore, deny same.

162. The statements in Paragraph 162 are not averments to which a response is required, but otherwise deny said allegations.

163. The statements in Paragraph 163 are not averments to which a response is required, but otherwise deny said allegations.

164. The statements in Paragraph 164 are not averments to which a response is required, but otherwise deny said allegations.

165. Defendants deny the averments in Paragraph 165 of the Second Amended Complaint.

**SECOND CLAIM FOR RELIEF**  
**(Violations Due To Illegal Elimination Of Pension Death Benefit)**

166. Defendants incorporate by reference the responses to Paragraphs 1 through 165 and 198 through 214 of this Answer as if set forth fully herein.

167. Defendants admit that the Plan made several transfers of assets to the health benefits account pursuant to IRC §§ 420 and 401(h), which statutory provisions speak for themselves. Defendants deny the remaining allegations of Paragraph 167 of the Second Amended Complaint inconsistent with this admission.

168. Paragraph 168 of the Second Amended Complaint states legal conclusions to which no response is required. Defendants, therefore, deny same.

169. Paragraph 169 of the Second Amended Complaint states legal conclusions to which no response is required. Defendants, therefore, deny same.

170. Defendants admit that Transfers to the health benefits account occurred on the following dates: December 15, 1998; November 30, 1999; December 15, 2000; and December 31, 2001. Defendants deny any averments in Paragraph 170 of the Second Amended Complaint inconsistent with this admission.

171. Defendants specifically assert that the various plans in effect at the time of the transfers speak for themselves and deny any averments in Paragraph 171 of the Second Amended Complaint inconsistent with said plan language.

172. Defendants deny the averments in Paragraph 172 of the Second Amended Complaint.

173. Defendants deny the averments in Paragraph 173 of the Second Amended Complaint.

174. Defendants deny the averments in Paragraph 174 of the Second Amended Complaint.

175. Defendants specifically assert that the various plans in effect at the time of the transfers speak for themselves and deny any averments in Paragraph 175 of the Second Amended Complaint inconsistent with said plan language.

176. Defendants deny the averments in Paragraph 176 of the Second Amended Complaint.

177. Defendants admit that the PDC adopted Amendment 2003-5, which Amendment speaks for itself. Defendants deny the remainder of the averments in Paragraph 177 of the Second Amended Complaint.

178. Defendants deny the averments in Paragraph 178 of the Second Amended Complaint.

179. Defendants deny the averments in Paragraph 179 of the Second Amended Complaint.

180. Defendants deny the averments in Paragraph 180 of the Second Amended Complaint.

181. Defendants deny the averments in Paragraph 181 of the Second Amended Complaint.

182. Defendants deny the averments in Paragraph 182 of the Second Amended Complaint.

183. Defendants deny the averments in Paragraph 183 of the Second Amended Complaint.

184. Paragraph 184 of the Second Amended Complaint states the relief they are seeking and is not an averment to which a response is required. Defendants, however, deny same.

185. Paragraph 185 of the Second Amended Complaint states the relief they are seeking and is not an averment to which a response is required. Defendants, however, deny same.

186. Defendants deny the averments in Paragraph 186 of the Second Amended Complaint.

187. Defendants affirmatively state that the Plan does not provide for a death benefit for persons retiring on or after January 1, 2004. Defendants are without information or knowledge sufficient to form a belief as to the truth of the remainder of the averments in Paragraph 187 of the Second Amended Complaint.

188. Defendants deny the averments in Paragraph 188 of the Second Amended Complaint.

**THIRD CLAIM FOR RELIEF**  
**(ERISA Section 502(a)(1)(B) Claim to Clarify Future Rights to the Pension Death Benefit)**

189. Defendants incorporate by reference the responses to Paragraphs 1 through 188 and 198 through 214 of this Answer as if set forth fully herein.

190. Paragraph 190 of the Second Amended Complaint states the relief they are seeking and further states a legal conclusion and is not an averment to which a response is required. Defendants, however, deny same.

191. Paragraph 191 of the Second Amended Complaint states the relief they are seeking and is not an averment to which a response is required. Defendants, however, deny same.

192. Paragraph 192 of the Second Amended Complaint states the relief they are seeking and is not an averment to which a response is required. Defendants, however, deny same.

**FOURTH CLAIM FOR RELIEF**  
**(ERISA Section 502(a)(2) Claim to Correct Faulty PLAN Documents, Including SPD)**

193. Defendants incorporate by reference the responses to Paragraphs 1 through 192 and 198 through 214 of this Answer as if set forth fully herein.

194. Paragraph 194 of the Second Amended Complaint states a legal conclusion and is not an averment to which a response is required. Defendants, however, deny same.

195. Defendants deny the averments of Paragraph 195 of the Second Amended Complaint.

196. Defendants deny the averments of Paragraph 196 of the Second Amended Complaint.

197. Paragraph 197 of the Second Amended Complaint states the relief they are seeking and is not an averment to which a response is required. Defendants deny the remainder of the allegations in Paragraph 197 of the Second Amended Complaint.

198. Paragraph 198 of the Second Amended Complaint states the relief they are seeking and is not an averment to which a response is required. Defendants, however, deny same.

#### **CLASS ACTION ALLEGATIONS**

199. Defendants deny that the Class described is an appropriate class or that the class action is appropriate. Defendants deny the remainder of the averments in Paragraph 199 of the Second Amended Complaint.

200. Defendants deny the averments in Paragraph 200 of the Second Amended Complaint.

201. Defendants deny the averments in Paragraph 201 of the Second Amended Complaint.

202. Defendants deny the averments in Paragraph 202 of the Second Amended Complaint.

203. Defendants deny the averments in Paragraph 203 of the Second Amended Complaint.

204. Defendants deny the averments in Paragraph 204 of the Second Amended Complaint.

205. Defendants deny the averments in Paragraph 205 of the Second Amended Complaint.

206. The averments in Paragraph 206 of the Second Amended Complaint call for a legal conclusion and are not averments to which a response is required. Defendants, therefore, deny same.

207. Defendants deny the averments in Paragraph 207 of the Second Amended Complaint.

208. Defendants deny the averments in Paragraph 208 of the Second Amended Complaint.

209. Defendants deny the averments in Paragraph 209 of the Second Amended Complaint.

210. Defendants deny the averments in Paragraph 210 of the Second Amended Complaint.

211. Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 211 of the Second Amended Complaint and, therefore, deny same.

212. Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments in Paragraph 212 of the Second Amended Complaint and, therefore, deny same.

213. Defendants deny the averments in Paragraph 213 of the Second Amended Complaint.

214. Defendants deny the averments in Paragraph 214 of the Second Amended Complaint.

### **PRAYER FOR RELIEF**

Defendants deny Plaintiffs are entitled to the relief sought therein or that the relief is available or appropriate.

### **AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim upon which relief can be granted.
2. Plaintiffs, or some of them, failed to exhaust administrative remedies.
3. Plaintiffs, or some of them, lack standing.
4. Plaintiffs' claims are barred by the applicable limitations periods or the doctrines of waiver and laches.
5. Plaintiffs failed to mitigate their alleged damages, if any, and such damages are barred in total or in part in accordance with Plaintiffs' failure to mitigate.
6. Plaintiffs' claims are barred under ERISA or provisions of the Internal Revenue Code.
7. Plaintiffs' claims are barred because the death benefit is an ancillary benefit that may be altered at any time.
8. Plaintiffs' claims, or some of them, are barred by the doctrine of accord and satisfaction, arbitration and aware, payment or release.
9. Plaintiffs' claims are barred by the statute of frauds.
10. Plaintiffs' claims are not ripe.

11. Defendant designates all denials of allegations in the Complaint or the Prayer for Relief set forth above as Defenses if necessary for its full defense of this matter.

12. Plaintiffs' claims may be barred for lack of consideration or employment contract.

13. Plaintiffs' claims, or any part of them, are not appropriately brought as a class action.

Respectfully submitted this 22<sup>nd</sup> day of December, 2005.

s/ Elizabeth I. Kiovsky  
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*International, Inc.*

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

I hereby certify that on December 22, 2005, I electronically filed the foregoing **ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT** 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.  
1801 California Street, Suite 900  
Denver, CO 80202

s/ Sara Schwenner  
Sara Schwenner, Paralegal  
Baird & Kiofsky, LLC