

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE</b>	§	
<b>COMPLAINT FILED BY ROGER L.</b>	§	
<b>HALL, RAPID CITY SOUTH</b>	§	
<b>DAKOTA, AGAINST QWEST</b>	§	<b>DOCKET NO. CT08-002</b>
<b>COPROPRATION REGARDING</b>	§	
<b>THE COST OF TELEPHONE LINE</b>	§	
<b>EXTENSIONS</b>	§	

**ROGER L. HALL’S RESPONSE TO QWEST CORPORATION’S  
MOTION TO DISMISS**

NOW COMES Roger L. Hall (“Hall”) and submits this Response to Qwest Corporation’s Motion to Dismiss and would show unto the Commission as follows:

**I. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM ARE  
VIEWED WITH DISFAVOR**

1.1 It is the established law of South Dakota that a Rule 12(b)(5) Motion to Dismiss For Failure to State A Claim is viewed with disfavor and is rarely granted. See *Thompson v. Summers*, 1997 S.D. 103, 567 N.W.2d 387, 390. “Pleadings should not be dismissed merely because the court entertains doubts as to whether the pleader will prevail on the action.” *Id.* The rules of procedure favor the resolution of complaints *upon the merits* by a contested hearing or trial rather than on inartful accusations. *Id.* In responding to a Rule 12(b)(5) motion, this Commission must accept Hall’s description of the facts as true, along with all reasonable conclusions that can be drawn therefrom. *Id.* “A complaint should not be dismissed for failure to state a claim unless it appears *beyond doubt* that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Id.* (emphasis added).

1.2 Qwest has failed in its burden to show that it is “beyond doubt” that Hall can prove no set of facts in support of his claim.

1.3 Therefore, Qwest’s Motion to Dismiss must be denied according to the established law of South Dakota.

## II. THE FOLLOWING FACTS MUST BE TAKEN AS TRUE

2.1 Under the established law of South Dakota, as cited above, the following facts must be accepted as true:

2.3 Hall wishes to remind the Commissioners that he provides low income housing (a mobile home park) to twenty three (23) families and adding more sites every year.

2.4 The phone service in question is not for Hall personally, but for the tenants who reside in the mobile home park.

2.5 Qwest is essentially denying phone service to these low income families who cannot afford to pay for the actual cost of installing the phone lines.

2.6 As the Commissioners are very aware, the goals of Universal Service, as mandated by the 1996 Telecommunications Act, are to promote the availability of quality services at just, reasonable, and affordable rates; increase access to advanced telecommunications services throughout the Nation; advance the availability of such services to all consumers, *including those in low income*, rural, insular, and high cost areas at rates that are reasonably comparable to those charged in urban areas. In addition, the 1996 Act states that all providers of telecommunications services should contribute to Federal universal service in some equitable and nondiscriminatory manner; there should be specific, predictable, and sufficient Federal and State mechanisms to preserve and

advance universal service; all schools, classrooms, health care providers, and libraries should, generally, have access to advanced telecommunications services.

2.7 Qwest's "prudent investment" argument violates the Universal Service mandate.

It is *never* in the telephone company's best interest to extend phone lines to the most remote homes located in rural areas. Phone companies would prefer to invest their dollars in the most highly populated urban areas where they would get the greatest return on their investment. However, the 1996 Telecommunications Act trumps Qwest's selfish interest of only providing phone lines to the most highly populated urban areas. In exchange for the right to provide phone lines to the highly populated areas, Congress requires Qwest to provide phone service to the less populated rural areas – including the mobile homes in question. The bottom line is that Qwest cannot pick and choose who gets service and who does not based solely on which areas will provide the greatest return on investment.

2.8 Therefore, Qwest cannot cite to its own self-serving Tariff and Catalogue as a justification for denying service to these low income individuals. So far, Qwest has not cited any legal authority in support its denial of service to these people. Where Qwest's local tariff conflicts with federal law, federal law prevails.

### **III. QWEST MISCHARACTERIZES THE COMPLAINT**

3.1 In addition, Qwest has grossly mischaracterized Hall's complaint. Qwest claims that Hall alleges that Qwest has offered service "consistent with its catalogues and tariffs." Nothing could be further from the truth.

3.2 In fact, Qwest has not responded to Hall's complaint at all, preferring instead to respond to its own version of Hall's complaint.

3.3 Hall's complaint is that Qwest has not fulfilled their obligation to provide service to new single-family residences in my mobile court located in Hill City. Qwest is currently providing service to 17 of the 21 mobile homes and 2 houses on the property establishing the precedence for service. Furthermore, Qwest is a monopoly in Hill City; there are no other telephone options available. There are four mobile homes (single family residences) without telephone service and that have been denied service because Qwest will not meet their obligation.

3.4 Because Qwest has not responded to this complaint, Qwest's Motion to Dismiss must be denied.

#### **IV. CONCLUSION**

4.1 In conclusion, Qwest has failed in its burden to show that it is beyond doubt that Hall can prove no set of facts in support of his claim. Nor has Qwest provided the Commissioners with any legal basis for denying basic phone service to the consumers in the rural area in question.

4.2 Wherefore, Hall respectfully requests that the Motion to Dismiss be denied; and hereby requests an evidentiary hearing on the merits.

Respectfully submitted,  
**Roger L. Hall**

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2107 Westgate Place  
Rapid City, SD 57702

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Response to Motion To Dismiss has been served to the South Dakota Public Utilities Commission.

Hand carried, June 24, 2008.

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Roger L. Hall