

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. **05-CV-00711-LTB-MJW**

MARLYS RATHBUN,

Plaintiff,

v.

QWEST COMMUNICATIONS INTERNATIONAL, INC.

Defendant.

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**COMMUNICATIONS WORKERS OF AMERICA'S MOTION TO INTERVENE  
AND NOTICE OF OBJECTIONS**

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Pursuant to F.R.C. P. Rule 24, INTERVENOR COMMUNICATIONS WORKERS OF AMERICA ("CWA"), through its counsel, Richard Rosenblatt, moves for leave to intervene for purpose of objecting to the class certification. Additionally, INTERVENOR CWA objects to the pending motion for class certification.

**I. Intervention By CWA**

1. This is a proposed class action concerning a claim over the "telephone concession" an employee and retiree fringe benefit. Plaintiff has filed a motion for class certification seeking an order to certify a class to include both current employees of Qwest and post-1984 U.S. West/Qwest retirees and an order appointing Plaintiff's counsel to be the class counsel.
2. CWA is a labor organization as defined in 29 U.S.C. §152(5) and an employee organization as that term is defined in 29 U.S.C. §1002(4).

For many years, CWA have been the bargaining representative for a bargaining unit of occupational and sales employees employed by Defendant Qwest and its predecessors, including U.S. West (“Qwest”).

3. CWA and Qwest have been parties to numerous collective bargaining agreements (“Agreement”), including one currently in effect.
4. Since approximately 1980, as part of each Agreement CWA and Qwest have negotiated a fringe benefit known as the “telephone concession” benefit. For those living in the Qwest coverage area, this “telephone concession” benefit provides for free or reduced cost local telephone service with Qwest. This benefit covers all employees covered by the Agreement **and** all occupational retirees living in the Qwest coverage area. Presently, there are approximately 23,600 employees and 17,100 post-1990 occupational retirees.
5. In this lawsuit, Plaintiff seeks to certify a class that includes both occupational retirees and certain occupational employees, and argues that the telephone concession received by all such retirees and employees is taxable income to them.
6. CWA as the party that negotiated this fringe benefit for the occupational retiree represents the interests of these retirees. See, for example, International Union, United Automobile, Aerospace and Agricultural Implement Workers v. Acme Precision Products, 515 F. Supp. 537, 539 (E.D. Mich 1981)(retirees’ interests are represented by the Union that negotiated the benefit now in dispute). Moreover, CWA

is the bargaining representative and negotiated this fringe benefit for the current employees, some of whom Plaintiff seeks to include in the class.

7. F.R.C.P. Rule 24 provides that “upon timely application anyone shall be permitted to intervene in an action ... when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest.”
8. Here, this application is timely. CWA did not learn of the jeopardy to the retirees and employees until last week when Qwest counsel informed CWA’s counsel of Plaintiff’s position that this telephone concession was taxable income.
9. Applicant indisputably has an interest relating to the telephone concession that it negotiated for the employees and retirees.
10. Finally, the Court’s disposition could as a practical matter impair or impede the applicant’s ability to protect that interest. Obviously, retirees and employees and their bargaining representative do not want this long-time negotiated fringe benefit to suddenly be declared taxable income as it will create a financial burden that will impair the benefit and thus lessen the value of that negotiated benefit.

11. Just as clear is the fact that Plaintiff's interest in this matter is not aligned with CWA since Plaintiff seeks a result that is completely adverse to CWA, the retirees and the employees.
12. Accordingly, pursuant to Rule 24(a), CWA should be allowed intervention of right to oppose the class certification sought by Plaintiff.
13. If the Court does not find that CWA may intervene as of right, then pursuant to F.R.C.P. Rule 24(b), CWA shall be granted permissive intervention to oppose the class certification sought by Plaintiff.
14. CWA's claim or defense -- that this fringe benefit is not taxable income -- raises the same question of law AND facts.
15. Pursuant to Local Rule 7.1, CWA's counsel has conferred with both Qwest's counsel and Plaintiff's counsel as to their position on this motion. Qwest has no objection to CWA's motion to intervening for the limited purpose of objecting to the class certification. Plaintiff does not oppose CWA intervening but requests an opportunity to reply to the notice to objections at the same time that his reply to the motion for class certification is due.

**II. Notice Of CWA's Objection To Plaintiff's Motion For Class Certification.**

16. For the same reasons that CWA's motion to intervene should be granted, CWA objects to Plaintiff's motion for class certification.
17. Plaintiff seeks to represent a class of retirees and current employees whose interests are juxtaposed to the outcome sought by Plaintiff.

18. As this class of retirees and employees will be adversely affected if Plaintiff's claim prevails, Plaintiff cannot adequately represent the interests of this class of retirees and current employees.
19. Therefore, pursuant to F.R.C.P. Rule 23, Plaintiff's motion for class certification of retirees and current employees who receive this telephone concession should be denied.

Respectfully submitted,

Intervenor's Address  
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s/Richard Rosenblatt  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 3rd day of February 2006, a true and correct copy of the foregoing was attached to the *Communications Workers of America's Motion to Intervene and Notice of Objections* to be served on the following:

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