

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.

RICK GROSVENOR, on behalf of himself and all others similarly situated,

Plaintiff,

v.

QWEST COMMUNICATIONS INTERNATIONAL, INC., a Delaware Corporation,  
QWEST SERVICES CORPORATION, a Colorado Corporation,  
QWEST CORPORATION, a Colorado Corporation,  
QWEST COMMUNICATIONS CORPORATION, a Delaware Corporation, and  
QWEST BROADBAND SERVICES, INC., a Delaware Corporation,

Defendants.

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**PLAINTIFF'S CLASS ACTION COMPLAINT AND JURY DEMAND**

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Plaintiff Rick Grosvenor, for his Complaint against Defendants Qwest Communications International, Inc., *et al.* (collectively, "Defendants" or "Qwest"), alleges:

**OVERVIEW OF THE ACTION**

1. This is a putative consumer class action seeking redress for Qwest's failure to honor its "Price for Life Guarantee" on internet services. Qwest entices customers to purchase internet service by promoting a supposed "Price for Life Guarantee." But after customers enter into contracts based on these advertisements, Qwest fails to honor its promise. Instead, Qwest routinely raises the monthly internet rates on these customers. This action seeks damages and injunctive relief on behalf of customers that have been subjected to this deceptive practice and contractual breach.

## **PARTIES**

2. Plaintiff Rick Grosvenor is a resident of the State of Utah. Mr. Grosvenor receives local telephone service from Qwest and subscribed for many years to Qwest's internet service. As set forth below, Mr. Grosvenor responded to an advertisement for Qwest's "Price for Life Guarantee" in 2007.

3. Defendant Qwest Communications International, Inc. is a Delaware corporation with its principal place of business in Denver, Colorado. Qwest Communications International, Inc. has a number of subsidiaries and affiliates through which it operates throughout the West and Midwestern United States, including, but not limited to, defendants Qwest Services Corporation, Qwest Corporation, Qwest Communications Corporation and Qwest Broadband Services, Inc.

4. Defendant Qwest Services Corporation is a Colorado corporation with its principal place of business in Denver, Colorado.

5. Defendant Qwest Corporation is a Colorado corporation with its principal place of business in Denver, Colorado.

6. Defendant Qwest Communications Corporation is a Delaware corporation with its principal place of business in Denver, Colorado.

7. Defendant Qwest Broadband Services, Inc. is a Delaware corporation with its principal place of business in Denver, Colorado.

## **JURISDICTION AND VENUE**

8. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d). The case is filed as a class action, the matter in controversy exceeds the value of \$5,000,000, exclusive of interest and

costs, and more than two-thirds of the members of the proposed class are citizens of a state different than Qwest.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) and (c) because Qwest resides in and is headquartered in the State of Colorado.

### **FACTS**

#### **Qwest's Failure to Honor its "Price for Life Guarantee"**

10. Qwest is the primary local telephone service provider in a multi-state region covering parts of the West and Midwestern United States. Qwest also offers internet service to its telephone subscribers and advertises such services on local phone bills. It also advertises the service on the internet, on television and by mailing unsolicited promotional materials throughout its service area.

11. Since at least 2006, Qwest's advertising and other promotional materials have enticed customers to receive internet service from Qwest with a "Price for Life Guarantee." Under this alleged "Guarantee," Qwest informs customers that they can lock in the same monthly rate so long as they maintain their internet service with Qwest, and that this rate shall remain the same "For Life."

12. This marketing has been highly successful for Qwest and has enticed tens of thousands of internet service customers to agree to pay for internet service based on the "Price for Life Guarantee." But Qwest does not honor the "Price for Life Guarantee." Instead, Qwest routinely raises the monthly rate on these customers.

13. Mr. Grosvenor's experience is illustrative of this business practice. He was a customer who received both his local telephone and internet service through Qwest. In 2006, Mr. Grosvenor was paying \$21.99 a month for internet service.

14. In approximately October 2007, Mr. Grosvenor received an advertisement in the mail from Qwest that set forth a "Price for Life Guarantee" with respect to internet service. The advertisement stated that Mr. Grosvenor would receive a "Price for Life" on his internet service for \$26.99 per month. Mr. Grosvenor contacted Qwest and switched his monthly internet service to the internet service pursuant to the "Price for Life Guarantee."

15. Mr. Grosvenor was billed and paid \$26.99 and received the internet service. Shortly after enrolling in the "Price for Life Guarantee" program at \$26.99, however, he received new marketing from Qwest promising that he could obtain higher speed "Price for Life Guarantee" service for \$31.99 a month. Based on the new representation, he upgraded his "Price for Life Guarantee" service, starting in November 2007, to a price of \$31.99 "for Life."

16. In August of 2008, Mr. Grosvenor received a bill from Qwest that set forth a \$49.99 monthly charge for internet service. Plaintiff called Qwest to complain about the charge, and the customer service representative ("CSR") with whom he talked did not deny that he had been in a "Price for Life" program. Instead, the CSR explained to Mr. Grosvenor that Qwest had enjoyed such a tremendous response to the "Price for Life Guarantee" that it decided to change the offered price to a promotional rate and then raise the monthly rate.

17. The CSR offered to enroll Mr. Grosvenor in a different promotional offer. He objected and rejected that offer. Instead, he told the CSR that the only offer he accepted was the \$31.99 "Price for Life Guarantee" program in which he had previously enrolled. Instead of

honoring its promise, Qwest reduced Mr. Grosvenor's monthly internet charges from \$49.99 to \$36.99.

18. Mr. Grosvenor continues to pay \$36.99 a month under protest.

19. Mr. Grosvenor's experience of having the "Price for Life Guarantee" dishonored is typical of the experience of tens of thousands of Qwest internet service customers.

20. Qwest continues to offer the "Price for Life Guarantee" when it knows that it has no intention of living up to its promise.

21. Qwest offers internet service identical or substantially identical to the levels of service received by customers induced to sign up for the "Price for Life Guarantee" but at lower monthly rates. Even after Qwest decided that the "Price for Life Guarantee" was a promotional rate subject to change by Qwest at its discretion, Qwest did not switch Class Members into the equivalent service with lower monthly rates. Accordingly, Mr. Grosvenor and each Class Member has paid more than appropriate for the level of service that he or she has received.

**The Subscriber Agreement's Mandatory Arbitration  
and Class Action Waiver Clauses**

22. Qwest's Subscriber Agreement is sent to customers only after they have initiated service. Neither Qwest nor customers are expected to sign the so-called agreement, and Qwest makes no effort other than sending the Agreement to ensure that customers even are aware of it.

23. The Subscriber Agreement purports to impose mandatory arbitration on any claims by customers that are not within the jurisdiction of a small claims court. This so-called agreement is drafted entirely by Qwest on a take-it-or-leave-it basis in a setting in which disputes between the contracting parties predictably involve small amounts of damages. Mr. Grosvenor did not have the bargaining power or ability to change the contractual terms.

24. The arbitration provision in the Subscriber Agreement is not mutual. Qwest is not required to arbitrate when it seeks to bring an action against a customer for failure to pay a bill. A customer, however, is purportedly required either to arbitrate any dispute he or she has with Qwest or to proceed in small claims court with all the attendant lack of rights, such as to legal representation and to discovery.

25. Qwest's Subscriber Agreement also purports to impose a class action waiver on its internet service customers. If enforced, the waiver has the effect of immunizing Qwest from responsibility for its wrongful conduct. Since less than \$20 per month is at stake for any particular customer, the expense associated with pursuing an individual arbitration is prohibitive. For example, Mr. Grosvenor has been damaged in the amount of \$5.00 per month for about 15 months as of the filing of the Complaint. The Subscriber Agreement requires him to pay one-half of the arbitrator's fees up to a maximum of \$125.00. His share of the fees alone – wholly apart from any other fees and expenses associated with arbitration – would exceed his injury for about ten more months. The class action waiver in Qwest's Subscriber Agreement thus is designed to and/or has the effect of making it impossible for customers to vindicate rights that are monetarily insufficient to justify individual litigation, such as Qwest's failure to honor its "Price for Life Guarantee". Such waivers are unconscionable, violate public policy and are not enforceable.

### **CLASS ACTION ALLEGATIONS**

26. Definition of the Class: Mr. Grosvenor brings his claim on behalf of the following class ("Class"): all Qwest internet service customers whose rates Qwest has increased since January 1, 2006, after they had initiated or changed service pursuant to the terms in the

“Price for Life Guarantee”, regardless of whether the customers paid the higher rates or terminated their service. Excluded from the Class are Qwest, any entity in which Qwest has a controlling interest or which has a controlling interest in Qwest, any member of Qwest’s control group, and any member of Qwest’s general counsel office or outside legal counsel involved in defending Qwest in this lawsuit, and their legal representatives, assignees, and successors. Also excluded are the judge to whom this case is assigned and any member of the judge’s immediate family. Plaintiff reserves the right to modify the Class definition or to propose one or more subclasses.

27. Numerosity: Thousands of current and former Qwest internet customers are in the Class. The members of the Class are so numerous that joinder of all members is impracticable. Moreover, the disposition of the claims of the Class in a single action will provide substantial benefits to all parties and the Court.

28. Commonality: Questions of law or fact are common to the Class, including at least the following:

a. Whether Plaintiff and members of the Class have agreed with Qwest to an enforceable “Price for Life Guarantee”;

b. Whether, under the terms of the “Price for Life Guarantee”, Qwest has promised not to increase its charges for the service for as long as Qwest offers and the customer accepts the service;

c. Whether Qwest has breached its contracts with Plaintiff and members of the Class;

d. Whether Qwest's past willingness to breach the terms of its "Price for Life Guarantee" threatens Class members who have retained service with Qwest with future breaches of their contracts by Qwest;

e. Whether Qwest is precluded from violating the "Price for Life Guarantee" under the promissory estoppel doctrine;

f. Whether provisions of Qwest's Subscriber Agreement are unconscionable, violate public policy or are otherwise unenforceable, including the class action waiver and mandatory non-mutual arbitration provisions;

g. Whether Qwest's practices constitute unfair and/or deceptive trade practices;

h. Whether Qwest has been unjustly enriched;

i. Whether declaratory and injunctive relief are appropriate; and

j. Whether Plaintiff and the Class members have been damaged, and if so, the proper measure of such damages.

29. Typicality: Mr. Grosvenor's claim is typical of the claims of the Class. He and members of the Class have been harmed by the same failure to honor the "Price for Life Guarantee" and their claims are based on the same legal and remedial theories. The same legal and remedial theories create the rights of Mr. Grosvenor and Class members to injunctive relief.

30. Adequacy of Representation: Mr. Grosvenor will fairly and adequately protect the interests of the Class. He has retained competent and capable attorneys who are experienced trial lawyers with significant experience in complex and class action litigation, including consumer and contract law. Mr. Grosvenor and his counsel are committed to prosecuting this

action vigorously on behalf of the Class, and counsel have the financial resources to do so. Neither Plaintiff nor his counsel have interests that are contrary to or that conflict with those of the proposed Class.

31. Predominance: Qwest has engaged in a common course of conduct toward Mr. Grosvenor and members of the Class by violating its promise to each of them and by subjecting them to the deceptive business practices set forth above. The common issues arising from this conduct that affect Plaintiff and members of the Class predominate over any individual issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

32. Superiority: Mr. Grosvenor and Class members have suffered and will continue to suffer harm and damages as a result of Qwest's unlawful and wrongful conduct. Absent a class action, however, Class members would find the cost of litigating their claims prohibitive. Even if Class members could practicably litigate their claims individually, class treatment is superior to multiple individual suits or piecemeal litigation because it conserves judicial resources, promotes consistency and efficiency of adjudication, provides a forum for small claimants, and deters illegal activities. Plaintiff and his counsel are unaware of any litigation that has already been commenced concerning Qwest's "Price for Life Guarantee". There will be no significant difficulty in the management of this case as a class action. The Class members are readily identifiable from Qwest's records.

33. Appropriateness of Injunctive and Declaratory Relief: Qwest has acted on grounds generally applicable to the Class, thereby making final declaratory or injunctive relief appropriate with respect to the Class as a whole.

## **CAUSES OF ACTION**

### **COUNT I (Breach of Contract)**

34. Plaintiff re-alleges all previous paragraphs as if fully set forth herein.

35. Qwest's "Price for Life Guarantee" is an enforceable term of the contract into which Mr. Grosvenor and Class members entered with Qwest relating to Qwest's internet service.

36. Qwest breached this contractual term by raising the monthly internet rate on customers who agreed to the "Price for Life Guarantee".

37. Mr. Grosvenor and members of the Class have been damaged in an amount to be determined at trial by Qwest's breach of its contractual obligation.

38. Qwest's actions are ongoing and have a substantial likelihood of being repeated. As a result, Plaintiff and members of the Class are threatened with injury by Qwest's demonstrated willingness to violate the terms of its contractual obligation.

### **COUNT II (Promissory Estoppel)**

39. Plaintiff re-alleges all previous paragraphs as if fully set forth herein.

40. Qwest's "Price for Life Guarantee" is a promise made to Plaintiff and Class members.

41. Mr. Grosvenor and Class members relied on the promise by purchasing service with Qwest or switching their pre-existing service from Qwest to the service subject to the "Price for Life Guarantee", even though it was at a higher price than identical service not subject to the guarantee.

42. This reliance was detrimental to Mr. Grosvenor and Class members in that they paid more on a monthly basis for the service with the guarantee than they would have paid for the identical service without the guarantee.

43. It was reasonable for Plaintiff and Class members to rely on a promise from Qwest of a “Price for Life Guarantee”.

44. Justice can be done only by enforcing the guarantee according to its terms and by awarding Plaintiff and Class members appropriate monetary relief.

**COUNT III**  
**(Unjust Enrichment)**

45. Plaintiff re-alleges the prior paragraphs as if fully set forth herein.

46. Qwest unjustly induced Mr. Grosvenor and Class members to confer benefits on it when it obtained payments above and beyond what it promised to charge Mr. Grosvenor and members of the Class. It also unjustly continued to induce Plaintiff and Class members to confer benefits on it when it did not reduce the rates associated with the service containing the “Price for Life Guarantee” to the rates associated with the identical service without the guarantee once it decided to treat the “Price for Life Guarantee” as merely a promotion rather than an enforceable promise.

47. Qwest was aware or knew of these benefits conferred by Mr. Grosvenor and the other Class members.

48. Qwest accepted and has retained these benefits under circumstances that make it inequitable for it to do so.

49. Plaintiff and the other Class members are therefore entitled to a return or refund of all amounts they have paid Qwest in excess of the monthly rate associated with the same service they are receiving but without the “Price for Life Guarantee”.

**COUNT IV**  
**(Violation of Colorado Consumer Protection Act)**

50. Plaintiff re-alleges the prior paragraphs as if fully set forth herein.

51. Plaintiff brings this claim pursuant to the Colorado Consumer Protection Act, Colo. Rev. Stat. §§ 6-1-101, *et seq.* (“CCPA”), which was enacted and designed to protect consumers against unfair and/or deceptive business practices.

52. The CCPA prohibits unfair methods of competition and unfair or deceptive acts or practices that occur in the conduct of any trade or commerce.

53. Qwest’s actions alleged herein constitute unfair and/or deceptive trade practices under the CCPA, including but not limited to, C.R.S. §6-1-105(1) (e), (i), (l), (n), (r) and (u). Qwest’s unfair and deceptive trade practices occurred in the course of Qwest’s business.

54. Mr. Grosvenor and Class members are actual or potential consumers of Qwest’s services.

55. Qwest’s unfair and/or deceptive trade practices significantly impacted the public in that thousands, if not tens of thousands of consumers signed up for the “Price for Life Guarantee” and received less than they had bargained for.

56. Qwest’s representations regarding the “Price for Life Guarantee”, or at least those representations made after Qwest decided to treat its promise as merely a promotional rate, were made with knowledge of their untruth, or recklessly and willfully made without regard to their consequences and with intent to mislead and deceive Plaintiff and the other Class members.

57. Qwest's misrepresentations regarding the "Price for Life Guarantee" had the capacity or tendency to attract consumers.

58. Qwest's conduct has injured or threatens injury to the property of Plaintiff and the other Class members, in that these consumers have been charged, or are likely to be charged in the future, for Qwest's "Price for Life Guarantee" even though Qwest's interpretation of it makes it worthless or of substantially less value than Qwest's misrepresentations make it appear.

59. Plaintiff and the other Class members are therefore entitled to an order enjoining the conduct complained of herein and to actual damages, treble damages, costs of suit, including a reasonable attorneys' fee, and such further equitable relief as the Court may deem proper.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for an Order as follows:

- A. Certifying the Class pursuant to Fed. R. Civ. P. 23(b)(2) and/or (b)(3);
- B. Designating Plaintiff as representative of the Class and designating his counsel as Class Counsel, including an Order pursuant to Fed. R. Civ. P. 23(g)(3) designating Plaintiff's counsel as interim class counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Qwest;
- D. Declaring that the arbitration and class action waiver provisions are unenforceable, violate public policy and are unconscionable;
- E. Enjoining Qwest from failing to honor the "Price for Life Guarantee" and awarding the Class attorneys' fees and costs;

F. Awarding Plaintiff and the Class actual, statutory and exemplary damages, attorneys' fees and costs, and any other appropriate monetary relief; and

G. Granting such further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

DATED: December 7, 2009

Respectfully submitted,

s/ Jeffrey A. Berens

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