ASSOCIATION OF US WEST RETIREES

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April 10, 2006

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

RE: File Number S7-03-06 – Executive Compensation and Related Party Disclosure

Dear Ms. Morris:

These comments are submitted on behalf of the Association of US West Retirees, a nonprofit retiree advocacy organization representing more than 6,000 dues-paying members who are former employees of Qwest Communications, U.S. West and its predecessor companies. Most of our members are shareowners in Qwest as well as in other companies. I am writing to commend the Commission for initiating this much-needed effort to enhance executive compensation disclosure and to recommend several important changes and improvements to the proposed new disclosure rules.

Our Association and its members have firsthand experience with the gaps and omissions that riddle the current SEC disclosure rules. Association officers have introduced one or more shareholder proposals related to reforming executive compensation practices and board independence at Qwest during each of the past six years. Retiree members of our Association have two relevant proposals pending in the current 2006 proxy, which will be voted on at Qwest's annual meeting on May 24. One asks the Qwest board to adopt a policy to pursue all legal remedies to recover for shareholders, in the event of a substantial restatement of financial results, the unearned bonuses and other performance-based compensation paid to executive officers due to fraudulent or erroneous financial results. A second pending proposal asks the board to seek shareholder approval for future non-qualified executive pension benefits, or individual retirement agreements, that provide preferential benefits for senior executives. Qwest's three top officers receive a supplemental pension benefit that guarantees them the extraordinary SERP benefits they would have earned had they stayed with their previous employer (SBC) – supplemental benefits with an estimated lump sum pension payout that totals $29.9 million for these three officers. In addition, their employment agreements contain a "pension parachute" that adds two extra years of service credit to the calculation of their pension payout in the context of a change in control.

As shareholder watchdogs and activists, we find the current annual proxy disclosures to be incomplete and frustratingly opaque. Too many crucial details – such as the terms of employment agreements and the conditions for performance-based payouts – are buried in obscure SEC filings that the typical shareholder does not receive or understand how to access. The current rules ensure that only very sophisticated and motivated shareholders with the resources to hire attorneys or accountants can piece together the true value and metrics that underlie the increasingly complex web of executive compensation schemes at companies like Qwest. We therefore applaud the Commission for advancing this comprehensive proposal and for its intention to finalize it prior to the 2007 proxy season.

Our Association generally supports the proposed new disclosure format, particularly the inclusion of a Compensation Discussion and Analysis section, the revision of the Summary Compensation Table to provide “total compensation” figures, and more complete disclosure of retirement of post-employment benefits. At the same time, we respectfully suggest that the proposed disclosure reforms could be substantially improved if the Commission would adopt the following modifications:

Require Disclosure of Compensation Consultant Remuneration: We urge the SEC to require the disclosure in the proxy of all payments to Board compensation consultants. As *The New York Times* documents today, in a Page One article revealing executive pay abuse at Verizon (“Outside Advice on Boss’s Pay May Not Be So Independent,” by Gretchen Morgensen, April 10, 2006, Page One), the failure to disclose total payments to a board’s outside compensation consultant is a critical gap in the current SEC disclosure rules. In its 2006 proxy, Verizon’s board compensation committee explicitly justifies a 48% increase in the CEO’s compensation last year – to $19.4 million – on the grounds that the CEO (Ivan Seidenberg) met “challenging” performance benchmarks devised with the help of an “outside consultant” who reports to the committee. Last year Verizon’s proxy described the board’s compensation adviser as an “independent, outside consultant.” Yet Verizon “declined to identify the company’s compensation consultant, noting that the [SEC] did not require it,” the *Times* reported. The consultant is Hewitt Associates, the recipient of an estimated $500 million in consulting revenue from Verizon since 1997, according to the *New York Times* report.

Disclosing these potential conflicts is no less important than the disclosure of non-audit consulting fees to the company’s outside auditor, as required under the Sarbanes-Oxley reforms. The problem is well known. Warren Buffett and many large institutions have complained in the past about Board’s relying on compensation consultants who rely on the CEO and other senior officers for far more lucrative actuarial and HR consulting contracts. Buffett is quoted in the *New York Times* article today: “The upshot is that a mediocre-or-worse CEO – aided by his handpicked V.P. of human relations and a consultant from the ever-accommodating firm of Ratchet, Ratchet & Bingo – all too often receives gobs of money from an ill-designed compensation arrangement.” The Commission should address this issue in its otherwise comprehensive rulemaking – and facilitate the ability of shareholders to determine for themselves whether the compensation consultant is “independent” or conflicted due to other material financial relationships with the company and its management.

<u>Performance Targets and Thresholds</u>: The proposed rule should not maintain the current "safe harbor" that gives companies the discretion, allegedly for competitive reasons, to avoid disclosing the actual performance targets and metrics that justify the vast majority of senior executive compensation. This loophole is needlessly vague and overly broad. As the Corporate Library reveals in its comment in this docket, 75% of S&P 500 companies disclose either no information on performance metrics, or only non-specific statements about what the board considers in awarding performance-based pay.

We endorse the balanced approach proposed by the Council of Institutional Investors. We likewise recommend that the SEC require companies to disclose specific performance metrics either in the proxy at the time they are established, or after the award is granted, but only in cases where the board compensation committee articulates in the proxy a competitive reason to defer disclosure. At a minimum, we see no reason not to disclose the targets after the conclusion of the period over which the award is earned.

<u>Compensation Tables</u>: We strongly support the Commission's proposal to require the disclosure of "total compensation" in the Summary Compensation Table. The proposed components of compensation are appropriate. In particular, we urge the Commission to include the annual increase in the actuarial value of pension and non-qualified retirement benefits, as well as the full and fair value of option awards. In addition, past, current and target compensation should each be disclosed and separately identified with clear explanations of how and why they differ.

<u>Retirement and Deferred Compensation</u>: Executive pension benefits are an immensely costly and frustratingly opaque source of compensation. *See* Lucian A. Bebchuk and Robert J. Jackson Jr., *Executive Pensions*, National Bureau of Economic Research Working Paper 11907, http://www.nber.org/papers/w 111907 (December 2005), a study finding that the ratio of the typical S&P 500 CEO's pension value to the CEO's total compensation (including both equity and non-equity pay) during their service had a median value of 34% We strongly support the Commission's proposed requirement that companies include the increase in the actuarial value of defined benefit pension plans and non-qualified SERPs in particular.

We further urge the Commission to require that the formula describing the rate of SERP benefit accrual be disclosed in the proxy – since, as noted above vis-à-vis Verizon, **the distinction between a traditional and abusive SERP is only evident to shareholders if they can readily compare the rate of benefit accrual** between the SERP and the retirement plans for the rank-and-file. In addition, we support the disclosure of not just post-employment *pension* benefits, but also post-employment *medical* benefits. Compensation in the form of comprehensive medical coverage for an executive and spouse for life can be worth hundreds of thousands of dollars. Finally, we support the proposed disclosure of deferred compensation programs.

<u>Perquisites</u>: We strongly oppose the proposed $10,000 threshold for the disclosure of perks for two reasons. First, any substantial threshold (certainly one exceeding $1,000) is an open invitation to evasion and abuse. Perquisite compensation can be disaggregated (e.g.., $5,000 for basketball tickets, $5,000 for baseball tickets) such that hundreds of thousands of dollars worth of perks can go unreported. Second, shareholders have a right to judge for themselves whether certain perks are appropriate or, rather, a waste of corporate resources. It's likely that fewer companies would be providing fresh flowers daily, or $9,999 gilded umbrella stands, if these perks were subject to the disinfectant of sunshine. Finally, we agree with the Council of Institutional Investors that the SEC should require tabular disclosure of individual perquisites (*not* an aggregate figure, nor a list buried in footnotes) that are valued at market rates (*not* at marginal cost, which fails to reflect both the true value of the compensation and its actual cost to shareholders).

<u>Disclosure of 'Clawback' Policy</u>: We believe the Commission should require the disclosure of any policy that a company may have with respect to seeking the return of any bonus, or other incentive-based compensation, paid to executives on the basis of financial returns that were later restated. We view the maintenance of such a "clawback" policy as essential to any pay-for-performance compensation philosophy. A substantial restatement of earnings can destroy shareholder value – as indeed it has at companies such as Qwest, where accounting fraud prosecuted by the SEC resulted in a $2.5 billion restatement, but to date no effort by the company to pursue restitution of ill-gotten compensation by the company's former CEO (Joe Nacchio) and other executive officers. To date, some companies (*e.g.*, International Paper, EDS) have adopted policies on this topic. Whether or not those policies go far enough, we believe that companies should, at a minimum, disclose any such policy and, if no such policy is in force, disclose why that is the case.

<u>Post-Employment Compensation</u>: The Association strongly supports the proposed post-employment compensation disclosures, including enhanced disclosure of potential payments from retirement plans, nonqualified deferred compensation, post-employment consulting and all other potential post-employment payments, whether cash or in-kind. In addition, we urge the Commission to require that this disclosure each year include the projected present value, on an assumed date, of the immediate vesting of stock options and other long-term equity grants if this benefit is included as a component of a company's severance or change in control ("golden parachute") compensation package. Frequently the accelerated vesting of stock options and other equity grants – which would otherwise be earned and vest over a period of years – is one of the most valuable payouts in the context of a change-in-control termination, yet the potential cost of that benefit remains invisible under current disclosure rules. Like the equity grant itself, immediate vesting can be valued as if the termination and payout would be made at an assumed date during the current fiscal year.

<u>Performance Graph</u>: We recommend retaining the performance graph and ensuring that it compares total shareholder return to relevant indices over at least a five-year period. The graph is particularly useful for individual and small investors, including our retiree members, who typically lack a readily accessible means to put the company's recent performance in context. It is also a useful and non-controversial reference point for shareholder proposals and for the company's own discussion of its performance, particularly in the context of the new Compensation Discussion and Analysis section.

Related-Party Transactions: We oppose the Commission's proposal to raise the threshold on related-party transaction reporting from $60,000 to $120,000. The SEC's current benchmark for director independence, as set forth in exchange listing standards, is already overly permissive since it allows directors with material financial relationships different from other shareholders to be classified as "independent." At Verizon and a number of other companies, corporate boards that meet the exchange listing standards for board independence standard would not be considered "majority independent" under the standard for independence adopted by the Council of Institutional Investors – an association of investors with $3 trillion in assets. Given that such differences of opinion exist concerning the existence of a material relationship, we believe it would be inappropriate to relax the disclosure and reporting requirements for related-party transactions. Even $60,000 is not a trivial financial interest, particularly for directors affiliated with academia, non-profits or smaller professional services firms.

The Association of US West Retirees supports the Commission's efforts to improve the accountability of corporate employees to its owners – the shareholders. Thank you for developing these comprehensive disclosure reforms and for your consideration of these comments. Please do not hesitate to contact me if our Association can provide further information.

Very truly yours,

/s/ Nelson Phelps

Nelson B. Phelps
Executive Director