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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In Regard to the Request of ALL WEST COMMUNICATIONS, INC. for Revision to Exchange Boundaries	Docket No. 02-2270-01 **RESPONSE OF QWEST TO REQUEST AND SUPPLEMENT TO REQUEST OF ALL WEST FOR REVISION TO EXCHANGE BOUNDARIES AND REQUEST FOR HEARING BY COMMISSION**

Qwest Corporation ("Qwest"), pursuant to Utah Code Ann. § 63-46b-6 and Utah Admin. Code R746-100-3.I, hereby responds to the Request for Agency Action ("Request") filed by All West Communications, Inc. ("All West") dated February 1, 2002 and the Supplement to Request for Agency Action ("Supplement") filed by All West dated November 22, 2004. In addition, because of the significance of the policy issues presented by the Request and Supplement, Qwest requests, pursuant to Utah Code Ann. § 54-1-3(2)(b), that the Commission hear this matter.

INTRODUCTION

The Request and Supplement seek a revision to the existing service territory of All West and Qwest by transferring territory within Qwest's Park City Exchange to All West's Jordanelle Exchange. The basis of this request is that the Promontory Development ("Promontory") is being developed on land that straddles the two exchanges. Qwest is the incumbent local exchange carrier ("ILEC") certificated to provide local exchange service within the Park City Exchange. All West is the ILEC certificated to provide local exchange service within the Jordanelle Exchange. According to the Request, 2.99 square miles or approximately 1,914 acres of Promontory are located within Qwest's Park City Exchange ("Subject Territory").

All West attempts to justify the request on the basis of an allegation that it will be more efficient, cost-effective and less confusing for only one ILEC to provide local exchange service to Promontory. All West alleges that it is better situated to be that ILEC than Qwest because it has a contract with the developer of Promontory to provide local exchange service within Promontory and has installed facilities within the development and that Qwest's nearest facilities are 0.8 miles from the development and 2.0 miles from the nearest home in the development. All West acknowledges that it can provide local service to the Subject Territory through its affiliate All West / Utah, Inc. ("All West/Utah") as a competitive local exchange carrier ("CLEC"), but alleges that it is in the public interest that it serve the entire development as an ILEC. In the Supplement, All West suggests that Qwest's opposition to its request is inconsistent with Qwest's position on the change of the Lehi Exchange boundary in connection with the sale by the City of Eagle Mountain ("Eagle Mountain") of its municipal telephone system to Direct

Communications Cedar Valley, LLC ("Direct") and claims that it is inconsistent with Qwest position on a proceeding in Colorado involving service to the Front Range Airport.

Qwest objects to the relief sought by All West. The request should be denied because All West has ignored the policy favoring competition in the local exchange market, failed to demonstrate any compelling need to grant the Request, ignored the interests of many CLECs certificated to provide local exchange service in Qwest's service territory, but not certificated to provide local exchange service in All West's service territory, made unwarranted assumptions and incorrect allegations, ignored the impact of granting the Request on the Universal Service Fund ("USF") and ignored the fact that the problems it alleges will not be solved by the patchwork solution it proposes and because granting the request would amount to a taking. The public interest will be best served by allowing Qwest, All West/Utah and other CLECs to compete for customers in the Subject Territory.

In addition, because the issues raised by the request would adversely impact the fundamental policy of the state to promote competition, would disenfranchise CLECs and impact the USF, could affect similar issues developing in other areas and have constitutional taking implications, Qwest requests that the Commission hear the matter.

RESPONSE

A. THE REQUEST SHOULD NOT BE GRANTED BECAUSE IT WOULD BE CONTRARY TO THE LEGISLATIVE POLICY IN FAVOR OF FACILITIES-BASED COMPETITION.

All West supports its Request by stating that "[t]here will be greater economies of scale if [Promontory] is served by one incumbent LEC rather than two." Request at 3 ¶ 5. All West further states that "it will be more efficient, cost-effective and less confusing for All West to serve the entire Promontory development" and "All West seeks the ability to provide seamless services to this development." *Id.* at 3-4 ¶ 6. Finally, All West asserts that it should be granted the Subject Territory because it has "placed facilities to and in Promontory at a cost of over $1 million and is already serving customers in Promontory." Supplement at 3. While these points may have been considerations in the public utility telecommunications environment prior to passage of the Telecommunications Reform Act of 1995 and the Telecommunications Act of 1996, they are contrary to the new policies enunciated by those Acts. Likewise, All West's citation of *Empire Electric Ass'n v. Public Service Comm'n*, 604 P.2d 930 (Utah 1979), is anachronistic in the current telecommunications environment.

In 1995, the Utah Legislature opened the local exchange market to competition as a means to "facilitate access to high quality, affordable public telecommunications services to all residents and businesses," "provid[e] wider customer choices for telecommunications services throughout the state," "facilitate and promote the efficient development and deployment of an advanced telecommunications infrastructure," and "encourage new technologies." Utah Code Ann. § 54-8b-1.1(2), (3), (5) and (8). In 1996, Congress opened the local exchange market to competition "in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." 110 Stat. 56 (1996). Under both acts, the type of competition preferred is facilities-based competition.[1]

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[1] *See, e.g., Fourth Report and Order, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 16 FCC Rcd 15435, 15437 ¶ 4 (2001) ("Through experience over the last five years in implementing the 1996 Act, the Commission has learned that only by encouraging competitive LECs to build their own facilities or migrate toward facilities-based entry will real and long-lasting competition take root in the local market.")

The factors cited by All West in favor of transferring the Subject Territory to All West are inconsistent with these policies. The factors could equally be argued as a basis for not opening the local exchange market to competition in the first place. Certainly, economies of scale, efficiency and lack of confusion would have been served by preserving the regulated monopoly of Qwest to provide seamless service in large portions of Utah. Qwest would have been better able to utilize and recover its enormous investment in facilities had competition not been permitted. But the Legislature and Congress believed consumers would be better served by opening the market to facilities-based competition. Likewise, here the interests of customers in Promontory and other areas of the state to competitive choice will be promoted by allowing Qwest, All West/Utah and other CLECs to compete for their business.

B. THERE IS NO COMPELLING REASON TO GRANT THE REQUEST.

As noted in the Request, All West/Utah has been granted authority to provide local telecommunications services in the area of the state served by Qwest. Request at 4 ¶ 6. Therefore, All West can serve the Subject Territory through its CLEC affiliate, and it is not necessary for the Commission to grant the request for All West, either directly or through its affiliate, to serve all of Promontory.

A decision to transfer certificated area from one company to another is a significant decision that even in the environment prior to the introduction of competition in the local exchange market should only have been made for compelling reasons. In the new environment, All West cannot claim that the transfer is necessary, only that it would be convenient. This argument is unpersuasive.

As a CLEC operating in Qwest's service territory, All West/Utah is free to offer service to customers in the Subject Territory through a price list on any terms and conditions it wishes. These terms and conditions can precisely mirror those under which All West will provide tariffed service to customers within the Jordanelle Exchange. All West is also free to offer service in a number of different ways, including as a facilities-based provider. Any "inconvenience" to All West occasioned by requiring it to serve customers in the Subject Territory through its CLEC affiliate, is likely outweighed by the lower level of regulatory oversight imposed on CLECs and the greater flexibility accorded them as competitors in the ILEC's territory. There is no compelling reason to grant the request.

C. GRANTING THE REQUEST WILL DISENFRANCHISE NUMEROUS CLECS AND DENY OPTIONS TO CUSTOMERS.

Just as All West/Utah was granted a certificate limited to providing local telecommunications services in Qwest's service territory, approximately 84 other CLECs have been granted certificates limited to competing with Qwest.[2] Thus, the Request is not only an attempt to disenfranchise Qwest, it is an attempt to disenfranchise these CLECs.

If the Subject Territory is left as is in Qwest's service area, customers in the area will have the opportunity to receive service from Qwest and any number of CLECs, including All West/Utah. If the Request is granted, they will be limited to obtaining service from only one provider, All West.[3]

[2] *The State of the Telecommunications Industry in Utah*, Seventh Annual Report to the Governor, Legislature, the Public Utilities and Technology Interim Committee, and Information Technology Commission (Utah PSC October 2004) at 3.

[3] This argument indicates that, contrary to the request, the public interest would best be served by transferring the portion of Promontory in All West's certificated area to Qwest. In that case, Qwest, All West/Utah and every other certificated CLEC in the state could compete for the business of all customers in Promontory. Qwest is not at this time seeking that relief, but would be willing to consider it if the Commission found it in the public interest.

Even assuming All West agrees to open some part of its certificated area to competition as a condition to granting the Request, it is unlikely that competition will develop as quickly in the Subject Territory as it would if the Subject Territory is left in Qwest's service area. Qwest has established interconnection agreements with 88 providers, and 15 CLECs are currently collocated in its central offices in Utah. Two CLECs are collocated in Qwest's Park City Central Office, plus one has remote collocation and one has a Field Connection Point collocation in the Park City Exchange. Others CLECs not located in Park City have the option to serve customers in the Park City Exchange through extended loops from collocations in other offices, including offices in Salt Lake City. All West has no experience with interconnection with CLECs or collocation. In addition, it is likely less attractive for a CLEC to collocate in All West's central office that serves the Jordanelle Exchange than Park City or another Qwest central office. Additionally, CLECs can choose to serve in Qwest's service area through resale and through their own facilities.

And even ignoring the foregoing issues that arise if All West agrees to permit competition, there is no reason that customers should be allowed to receive competitive services from All West and CLECs, but to deny them the benefit of competition from Qwest. It would be discriminatory and contrary to the public interest to allow everyone to compete for customers in the Subject Territory except Qwest.

D. THE REQUEST IS BASED ON UNFOUNDED ASSUMPTIONS AND INCORRECT ALLEGATIONS.

Basic assumptions underlying the Request are that Promontory is itself a community, that it will have a greater community of interest with Jordanelle than with Park City and that there are inherent difficulties in customers in the same locale having different NXX codes or local calling areas. No foundation is offered for any of these assumptions.

While there is no doubt that Promontory is a development, it is not at all clear that it is a community based on facts provided by All West. For example, does Promontory intend to incorporate and to have its own local government, police and fire protection, medical services, schools and churches or will it be part of some larger community that provides these services? If the latter, what community will it be part of, Jordanelle or Park City? If the Subject Territory is left as is in the Park City Exchange and if Qwest is able to win customers in the Subject Territory, Park City will be within their local calling area. They will not be required to pay an extra charge for extended area service or to pay for a toll call to call Park City.

All West's concern about neighbors having different NXXs and local calling areas is unfounded in the current telecommunications environment. It is not at all uncommon for second lines in the same home to have different NXXs in Qwest's calling areas currently, let alone for neighbors to have different NXXs. Multiple NXXs are commonly needed and used now within the same central office and local calling area. It is also common for neighbors to have different local calling areas depending on the central office from which they are served. While there was a time when undeveloped land lay between the areas served by central offices, those days have long since passed. Customers are not confused by having different NXXs and local calling areas than their neighbors.

All West also makes incorrect allegations in support of its request. All West "does not believe that Qwest has the facilities available to provide the requested services to Promontory in a timely manner. Qwest currently has not facilities installed [sic] within the boundaries of the Promontory development." Request at 4 ¶ 7. In fact, Qwest has a major fiber backbone and copper facilities from which it can serve the Subject Territory. These facilities were sized in anticipation of serving customers in the Subject Territory and adjoining areas. Qwest already serves customers northeast of Highway 40 adjacent to the Subject Territory and is able to install distribution facilities in Promontory as it is developed as easily as All West. This allegation is simply incorrect.

In the Supplement, All West suggests that Qwest's position in this matter is inconsistent with its position in the Eagle Mountain / Direct matter and argues that it is inconsistent with its position in Colorado regarding service to the Front Range Airport. The circumstances in both of these situations are completely different than those presented here.

In the case of change of the Lehi Exchange boundary, the Supplement acknowledges the unfortunate history of the Eagle Mountain municipal system. Supplement at 4. As the Commission is aware, Qwest was not allowed to compete with the municipal system and customers have suffered significant detriment as a result. Qwest did not size facilities with the intent to serve the municipal system initially because no customers were located in the area and later because the city and developers refused to cooperate with Qwest. Direct could only take over service from the city and resolve many of the problems experience by customers if it could do so as an incumbent-like entity with the opportunity to receive USF. In fact, All West and other members of the Utah Rural Telecom Association ("URTA") closely monitored the proceeding and expressed concerns about the impact of the proposed change of exchange boundaries on the USF. Qwest's willingness to cooperate in the solution to a longstanding problem by voluntarily ceding certificated territory has nothing to do with the circumstances presented by All West's request that territory be involuntarily removed from Qwest's service area and placed in All West's service area.

All West has apparently failed to fully research or has misunderstood the Front Range Airport situation in Colorado and has completely missed the point of Qwest's request that it be allowed to serve along with the incumbent in a portion of the incumbent's service territory. Unlike All West's request that it become the incumbent for all of Promontory, thus eliminating competitive choice for customers, Qwest's application in Docket No. 04A-254T before the Colorado Public Utility Commission, provided an opportunity for customers to have a competitive choice.

The Front Range Airport and an accompanying industrial development straddle the certificated territories of Qwest and Eastern Slope Rural Telephone Association. Qwest already provides service to customers in its portion of the area, and Eastern Slope already provides service to customers in its portion of the area. The developer of improved facilities and services at the airport and accompanying industrial area approached Qwest with a request that it consider investing in upgraded facilities to provide voice as well as advanced services throughout the area. Qwest was interested and, based on discussions with the developer, agreed to submit an application seeking authority to provide service throughout the area. It has never sought to exclude Eastern Slope from serving as a competitor. In addition, if the application is granted, CLECs will be allowed to compete for customers in the area. The opposite result would occur if All West's request were granted here.

E. All West Fails To Address How the USF Would Be Impacted by Granting the Request.

All West currently receives support from the USF to provide service to its customers at the rates provided in its tariff. If the Subject Territory is transferred to All West and no other changes are made, the rates paid by customers in the Subject Territory would be subsidized by the USF. Qwest currently receives no such subsidies and, unless other changes are made, would not do so if the Subject Territory remains within its service territory. In considering the public interest, the Commission needs to address impacts on the USF resulting from granting the Request. Qwest believes the USF would be impacted adversely by granting the Request.

As noted above, even though the change of the Lehi Exchange boundary to accommodate Direct's takeover of Eagle Mountain service did not involve the service territories of All West or other members of URTA, they intervened in the proceeding and expressed concern about the impact of the change on the USF. It is inconsistent for All West to ignore this significant issue in connection with its request.

F. Granting the Request Is a Patchwork Solution that Will Not Resolve the Underlying Issue.

The Request recommends a solution to supposed issues arising because development is occurring in an area encompassing adjacent areas served by different ILECs. The proposed solution is not in the public interest for the reasons previously stated. However, even assuming the solution were in the public interest with respect to Promontory, as currently planned, the potential issues raised by All West in support of the Request will not be removed by transferring the Subject Territory to All West. The Subject Territory and the surrounding area all the way to Park City are in the early stages of development. Some of this development is within Qwest's service area and some is within All West's service area. It is likely that as development continues, there will be additional areas in which developments will straddle exchange boundaries or in which neighbors living in close proximity will be located in different exchanges. Granting the Request is simply a patchwork solution that addresses only one area and which may contribute to even more issues in the future.

For example, as noted above, Qwest already provides service to businesses and facilities located northeast of Highway 40. If the request were granted, what would happen when development occurs between Promontory and this development? Presumably, All West will then request a further transfer of territory, territory that may include customers already receiving service from Qwest or a CLEC.

Of equal importance, the situation raised by All West is becoming more and more common in other portions of Qwest's service territory as developments occur in areas that were once undeveloped buffers between different communities. For example, development is now occurring in other areas that straddle territories served by Qwest and independent telephone companies, including other territories served by All West in its Jordanelle exchange. By way of further example, the development on Traverse Ridge straddles Salt Lake County and Utah County. While the affected portions of both counties are within Qwest's service territory, they are in different exchanges and will present precisely the same type of issues of different prefixes and different local calling areas raised by All West for Promontory. Furthermore, to date Qwest has been denied the opportunity to place facilities in developments encompassing Traverse Ridge. If a developer's decision to select one provider for its development is allowed to dictate public policy at Promontory, it may encourage requests to modify exchange boundaries in other locations.

Rather than start down the path suggested by All West based on the circumstance in one development, Qwest submits that the interests and needs of customers throughout the Park City Exchange and throughout the state will be best served through competition, not repeated patchwork solutions.

G. GRANTING THE REQUEST WOULD BE A TAKING WITHOUT COMPENSATION.

Qwest has sized facilities adjacent to Promontory in anticipation of having the opportunity to serve customers in Promontory. Qwest understands that its investment in facilities in the current competitive environment is at greater risk than in the past because its ability to use the facilities to serve customers is subject to competition from other providers. However, Qwest does not understand that its risks are also increased as a result of state action to take away certificated territory. Such action raises potential for taking of property without just compensation in violation of the United States and Utah Constitutions. *See* U.S. Const., amend. V and XIV; Utah Const., art. 1, § 22.

REQUEST FOR HEARING BY COMMISSION

Section 54-1-3(2)(b) provides that proceedings involving an issue of significant public interest should be heard by the Commission. This is such a proceeding. The strong public policy in favor of competition in the local exchange market is a central issue in this proceeding. The outcome of this proceeding could have significant impact on the availability of customer choice, not only in Promontory, but elsewhere. It could also affect CLECs who have entered the market with the expectation that they could compete for customers within Qwest's certificated service areas. The impact on the USF of allowing an independent to exclude Qwest from an area that would not otherwise receive USF support is also a significant issue in the public interest. Excluding Qwest from territory it has reasonably prepared to serve through investment in facilities in the ground is an issue with constitutional implications. For all of these reasons, the Commission should find that the issues presented in this proceeding involve significant public interest and should hear this matter.

CONCLUSION

All West's request is ill conceived. It is contrary to the policy in favor of competition in the local exchange market. There is no compelling reason to grant the request. All West can already serve the Subject Territory through its CLEC affiliate. Granting the request would disenfranchise not only Qwest, but numerous CLECs that have been granted authority limited to Qwest's service territory. The public interest will not be served by limiting the competitive options available to customers in the Subject Territory. The request is based on unfounded assumptions and incorrect factual allegations. Granting the request would likely have negative impacts on the USF. Granting the request is a patchwork solution that does not resolve the underlying issue. Finally, granting the request would amount to a taking without just compensation. The interests of customers in Promontory and in surrounding areas and throughout the state and of telecommunications corporations generally will be best served by allowing competition in the Subject Territory.

For the foregoing reasons, it is respectfully submitted that the request should be denied. In addition, because the foregoing reasons raise significant policy questions affecting the public interest, it is respectfully submitted that the Commission should hear this matter.

DATED: December 23, 2004.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **RESPONSE OF QWEST TO REQUEST AND SUPPLEMENT TO REQUEST OF ALL WEST FOR REVISION TO EXCHANGE BOUNDARIES AND REQUEST FOR HEARING BY COMMISSION** was sent by electronic mail to the following on December 23, 2004.

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