BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE PETITION OF WWC HOLDING CO., INC.
FOR ARBITRATION OF INTERCONNECTION AGREEMENT

DOCKET NO. 03-2403-02

REBUTTAL TESTIMONY OF

RAYMOND A. HENDERSHOT

On behalf of

Gunnison Telephone Company
Manti Telephone Company
South Central Utah Telephone Association
Uintah Basin Telecommunications Association, Inc.
UBET Telecom, Inc.

October 17, 2003

Q. Please state your name and current business address.

A. My name is Raymond A. Hendershot. My business address is 2270 La Montana Way, Colorado Springs, Colorado, 80918.

Q. Are you the same Raymond A. Hendershot who filed direct testimony in this case?

A. Yes.

Q. Have you read the direct testimony of Mr. Ron Williams filed on behalf of WWC License L.L.C. ("WWC" or "Western Wireless") in Docket No. 03-2403-02?

A. Yes.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my testimony is to respond to certain policy issues that Mr. William's addressed in his testimony.

Q. On Page 6 of Mr. Williams' direct testimony, he states, "The Utah ILECs have proposed an interconnection agreement that is not reciprocal, does not provide for cost-based rates, applies access charges (rather than reciprocal compensation) to traffic subject to reciprocal compensation obligations, and otherwise fails in many respects to meet the requirements of the 1996 Act and the FCC's rules." Do you agree with this assessment?

A. No. Mr. Williams' statements are overbroad and incorrect, and clearly based on incorrect interpretations of the 1996 Act and the FCC's rules. The Utah ILECs recognize that they have reciprocal compensation obligations for traffic between a LEC and a CMRS provider within the MTA. However, the Utah ILECs do not agree that those reciprocal compensation obligations apply to traffic between IXCs and CMRS providers, even when the IXC's end user customer is the LEC's end user customer for local service. Mr. Duval's testimony provides a detailed explanation of the forward-looking, economic cost of providing service, and the FCC rules that pertain to the application of those costs, while Mr. Williams argues that the cost of transporting and terminating traffic is zero. The Utah ILECs would appropriately apply access charges only to IXC carried traffic that is defined as access traffic under the terms of the 1996 Act and the FCC rules, not to reciprocal compensation traffic as Mr. Williams would have the Commission believe.

Q. On Page 7, lines 19-21, Mr. Williams states that the FCC rules were amended "to use the term "telecommunications traffic" to encompass…2) LEC/CMRS calls that originate and terminate within the same MTA." Is this a correct statement of the FCC's rules?

A. No, it is not. §51.701(b)(2) states, "Telecommunications traffic exchanged between a <u>LEC and a CMRS provider</u> that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in Sec. 24.202(a) of this chapter" (emphasis added.) This rule specifically limits "telecommunications traffic" to traffic exchanged between a LEC and a CMRS provider. It clearly but does not include traffic exchanged between an IXC and a CMRS provider. In my direct testimony (Pages 4 through 19) I thoroughly discussed the provisions of the 1996 Act, the FCC rules, and the provisions of the First Interconnection Order to clarify the FCC's intent regarding the application of access charges to traffic between an IXC and a CMRS provider.

Q. In its interconnection agreement with Qwest in Utah, does WWC recognize that IXC carried traffic is non-local traffic that is not subject to reciprocal compensation?

A. Yes. Agreement was negotiated between Qwest and WWC, and signed in July 2000 (Approved in Docket 00-049-66, issued October 17, 2000). There are at least three (3) areas of this interconnection agreement that are relevant to the discussion of traffic subject to reciprocal compensation.

First, Section (A)2.39 on Page 10 of the agreement contains the definition of "local calling area", which is defined as follows:

> (A)2.39 "Local Calling Area" or "LCA" is a geographic area defined either by the MTA or the USW Extended Area Service (EAS) boundaries.
>
>> (A)2.39.1 "MTA/Local" means the geographic area defined by the MTA within which WWC provides CMRS services. Local Interconnection rates apply for traffic originated and terminated within the same MTA. Traffic excluded from MTA/Local includes roaming traffic**,** as defined in the FCC First Report and Order 96-325 47CFR 51701 (b) (2), and Switched Access traffic.
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>> (A)2.39.2 "EAS/Local" means the geographic area defined by the EAS boundaries as determined by the Commission and defined in USW's Local and/or General Exchange Service tariff. LEC customers may complete a call without incurring toll charges. Traffic terminated by USW Customers within their EAS boundary is considered to be EAS/Local; USW Customers are billed toll charges for traffic terminated outside of their EAS boundary.

This definition clearly recognizes that the calling area for CMRS originated traffic, designated as "MTA/Local", is MTA wide, but that the local calling area for Qwest originated traffic, designated as "EAS/Local", only encompasses traffic within Qwest's designated EAS boundaries. This portion of the definition specifically recognizes that Qwest customers are to be billed toll charges for traffic that terminates outside the EAS boundary, but within the MTA.

Second, Section (A)2.49 on Page 11 provides the definition of "Non-Local" traffic, which states:

> (A)2.49 "Non-Local" is traffic that is interMTA, roaming, and/or Switched Access traffic. Reciprocal Compensation does not apply to Non-Local Traffic. For traffic originated by WWC, this includes InterMTA traffic and IntraMTA traffic delivered to USW via an IXC. For traffic delivered to WWC, Non-Local includes all traffic carried by an IXC, traffic destined for WWC's subscribers that are roaming in a different MTA, and all InterMTA/IntraLATA traffic.

Section (B)2.2.2 on Page 38 further states:

> Non-Local traffic will be exchanged over Type 2 facilities. However, mobile to land usage will be rated using interstate tariffed Switched Access rates.

Third, Section (B)2.2.3 on Pages 39 defines how traffic that transits Qwest's network will be treated, when it states:

> (B)2.2.3 Transit Traffic
>
> (B)2.2.3.1 USW will accept traffic originated by WWC for termination to a WSP, existing LEC, or another Wireless carrier that is connected to USW's local and/or Toll/Access Tandems. USW will also terminate traffic from these other Telecommunications Carriers to WWC.
>
> (B)2.2.3.2 To the extent technically feasible, the Parties involved in transporting transit traffic will deliver calls to each involved network with CCS/SS7 Protocol and the appropriate ISUP/TCAP messages to facilitate full interoperability and billing functions.
>
> (B)2.2.3.3 The originating company is responsible for payment of appropriate usage charges to the transit company and to the terminating company.
>
> In the case of intraLATA toll traffic, where USW is the designated intraLATA Toll provider for existing LECs, USW will be responsible for payment of appropriate usage rates.

It is very clear that in its Utah interconnection agreement with Qwest, WWC has recognized that wireline traffic to points outside the Commission designated local calling area of the telephone company is toll traffic, and, if carried by an IXC, is not reciprocal compensation traffic, and therefore is subject to access charges.

Q. Does the interconnection agreement between Qwest and Western Wireless provide any guidance to the Commission regarding the appropriate effective date of an interconnection agreement in this proceeding?

A. I believe that it does. Beginning with the effective date of the interconnection agreement with Qwest, which was prior to the effective date of the Utah ILEC exchange acquisitions from Qwest, Western Wireless was aware that it was responsible to compensate the Utah ILECs for traffic originated by WWC and terminated to the Utah ILECs. The agreement clearly states that the originating carrier is responsible for the payment of appropriate usage charges to the transit company and the terminating company.

Q. Mr. Williams states that, "Each of the parties was aware that it was exchanging traffic with the other party under a "Bill and Keep" arrangement. Based on the Qwest/Western Wireless interconnection agreement referenced above, do you believe that Western Wireless was exchanging traffic with the Utah ILECs under a bill and keep arrangement?

A. Clearly it was not. Pursuant to WWC's interconnection agreement with Qwest, it is plain to see that WWC understood its obligation to compensate the Utah ILECs for traffic that transits Qwest's network and terminates on the networks of the Utah ILECs. In addition, it is clear that WWC and Qwest had an obligation, pursuant to the interconnection agreement, to deliver messages with the appropriate information necessary to facilitate billing functions. Neither of these obligations has been met since the inception of this interconnection agreement.

Q. On Pages 16 through 19 of his direct testimony, Mr. Williams discusses his view of landline to wireless intraMTA calls. Are his opinions expressed in this section of testimony consistent with FCC rules regarding the application of reciprocal compensation to intraMTA calls carried by IXCs?

A. No, they are not. For example, Mr. Williams states, on page 17 at lines 3-4, that "FCC Rules 51.701 and 51.703 require the originating carrier to pay reciprocal compensation on all intra-MTA calls, without exception." This is clearly a misinterpretation of the FCC Rules. Section 51.701(b) only addresses telecommunications traffic exchanged between a LEC and a CMRS provider within the MTA, not calls between an IXC and a CMRS provider. Section 51.703 deals with the "Reciprocal Compensation Obligation of LECs". Section 51.703(b) states that "[a] LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." This Section is referring specifically to reciprocal compensation obligations of LECs. Calls carried by an IXC, which are calls between an IXC and a CMRS provider, are not calls subject to reciprocal compensation, even if they are intraMTA calls.

Part of Mr. Williams' description included with Diagram B, on page 16, is also not correct. Mr. Williams' third bullet point states that, "Utah ILECs' customers pay a per minute long distance charge." This statement is incorrect, as the customer placing the call is the customer of the IXC for purposes of that toll call, not the Utah ILEC's customer. The IXC customer pays the IXC for the call, pursuant to the IXC's price list or tariff, not the Utah ILEC.

Mr. Williams also mischaracterizes the reasons that such calls are directed to an IXC in his statement on Page 17, lines 4-6, where he implies that the Utah ILECs are attempting to avoid compensating WWC by "…simply routing the call through an IXC." The Utah ILECs route calls as 1+ toll calls based on the Commission approved local calling areas, as defined in each LEC's local tariff. Pursuant to toll presubscription and dialing parity rules required by the 1996 Act, the FCC, and this Commission, 1+ calls are routed to the toll carrier of the end user customer's choice, not based on a decision by the Utah ILEC.

Q. Mr. Williams quotes Paragraph 1043 of the FCC *First Report and Order* on Page 17, Lines 11-14. Does this discussion provide a proper context for this quote?

A. No, it does not. While Mr. Williams correctly quotes Paragraph 1043, he ignores other material in surrounding paragraphs which puts this particular statement in the appropriate context, and which includes statements where the FCC specifically excepts traffic carried by an IXC from reciprocal compensation. I have discussed this order extensively in my direct testimony between pages 12 and 17, including references to Paragraph 1034 and to sentences in Paragraph 1043 following the sentence quoted by Mr. Williams, where the FCC clearly indicates that access charges apply to traffic carried by an IXC.

Q. Has the FCC issued subsequent orders that have reiterated the FCC's intent that access charges apply to IXC carried traffic, and that it did not intend to change the treatment of toll calls outside a LEC's local calling area, but within the MTA?

A. Yes. In my direct testimony I made reference to the *ISP Reciprocal Compensation Order* (Page 18) and to the *TSR Wireless Order* (Page 10), which substantiate this treatment. The FCC's order in another case, *Mountain Communications inc., Complainant v. Qwest Communications International, Inc., Defendant,* further substantiates the Rural ILECs' position and refutes Mr. Williams' interpretations. In discussing traffic within an MTA, the FCC provides the following description of the FCC's intent regarding toll calling from a LEC end user within an MTA to a customer of a CMRS provider:

> The Commission noted, however, that nothing prevents a LEC from charging its end users for intraLATA toll calls that originate on its own network and terminate over facilities that are situated entirely within a single MTA. Thus, if a LEC end user makes a call from one local calling area to a paging customer whose number is assigned to a central office in another local calling area of the LEC, the LEC may assess the caller the appropriate toll set forth in its local tariff, even if both LEC calling areas are within the same MTA.[1]

The FCC clearly states that calls between local calling areas of a LEC, even within an MTA, are subject to toll charges. Because such calls are subject to the dialing parity rules for toll calls, the presubscribed interexchange carrier designated by the end user is the carrier for that toll call. As I described in my direct testimony, both the 1996 Act and the FCC's rules and orders clearly indicate that access charges are applicable for calls carried by IXCs.

Q. Is Mr. Williams' description on Page 18, Lines 9-23 a fair characterization of the circumstances surrounding the Utah ILECs' treatment of toll calls that originate from an IXC end user, who is also the ILEC's end user for local service, and terminate to a CMRS provider?

A. No, it is not. Mr. Williams' characterization ignores the fact that the Utah ILECs' position is consistent with their tariffs approved by the this Commission, and with the 1996 Act, FCC rules, and FCC orders regarding the application of access charges to toll calls carried by IXCs. Those tariffs and rules apply toll charges to end users making calls outside the Utah ILECs' local calling areas and access charges to IXCs that utilize LEC

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[1] Memorandum Opinion and Order, *Mountain Communications, Inc., Complainant, v. Qwest Communications International, Inc., Defendant,* File No. EB-00-MD-017, DA 02-250, Released February 4, 2002, paragraph 11.

facilities to originate those calls. The fact that WWC does not collect access charges from IXCs is a completely separate issue that the FCC has indicated they can resolve through negotiations with the IXCs. The fact that they have this problematic business relationship with the IXCs may well provide some of WWC's motivation to misinterpret FCC rules to try to incorrectly impose compensation obligations on the Utah ILECs for IXC carried traffic.

Q. What is your response to Mr. Williams' discussion on Pages 20-23 regarding Issue #3, the delivery of traffic subject to reciprocal compensation?

A. This issue, and Mr. Williams' discussion of the issue, focuses primarily on the nature of the LEC local calling area and the FCC requirements related to that calling area. I do not believe that there is a dispute between the parties related to traffic originated and terminated within the LEC local calling area. The dispute involves treatment of traffic that terminates to NXX codes outside the LEC local calling area. As I have discussed in both my direct testimony and in earlier parts of this rebuttal testimony, WWC has misinterpreted FCC rules and statements in this regard. It is clear from the *Mountain Communications* decision that I referenced earlier that the FCC recognizes that calls that terminate outside the LEC local calling area are appropriately treated as toll calls and should be directed and dialed according to LEC tariffs and toll dialing parity rules. WWC's proposals, both in regard to the prohibition of collecting access charges and to delivery of traffic to WWC over direct or indirect connections are inconsistent with the FCC's rules and orders and should not be accepted.

Q. Mr. Williams cites Oklahoma Corporation Commission and Iowa Utilities Board decisions as support for WWC's positions. What is your response to these cites?

A. As Mr. Williams himself states at page 7, lines 4-7, "CMRS providers are licensed by the FCC in accordance with federal law. As a result, the FCC has jurisdiction over CMRS-LEC traffic, and has established certain standards that apply to interconnection and traffic exchanged between CMRS providers and landline carriers." The Oklahoma Corporation Commission and Iowa Utilities Board decisions are inconsistent with the FCC's position, as contained in both its rules and orders and as confirmed by the *Mountain Communications* decision. The FCC clearly understands that it has done nothing to preclude or preempt LEC tariffs regarding local calling areas, the imposition of toll charges on intraMTA calls between local calling areas, and the imposition of access charges on IXCs that carry such calls. The Commission should give weight to the FCC's decisions in this area, rather than those of the Oklahoma Corporation Commission and the Iowa Utilities Board.

Q. Are there decisions from other state proceedings that are contrary to Oklahoma and Iowa decisions referenced by Mr. Williams?

A. There are. For example, in an interconnection proceeding involving Southwestern Bell and Mid-Missouri Cellular, the Public Service Commission of Missouri ruled:

> The Commission agrees with SWBT that a call from a SWBT landline subscriber to an MMC cellular subscriber is properly rated as a local call only where: (1) the landline and cellular exchanges are locally interconnected; and (2) the V&H coordinates of the cellular exchange lie within the local calling area of the landline exchange.[2]

This Arbitration Order is consistent with the findings of the FCC, that wireline to wireless calling is local only when the companies are directly interconnected and the call originates

[2] Arbitration Order, *In the Matter of Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular's Petition for Arbitration Pursuant to 47 U.S.C. Section 252 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*, Case No. T)-99-279, Issued April 8, 1999.

and terminates within the local calling area of the ILEC. The Commission should give strong consideration to this position, which is clearly consistent with that of the FCC.

Q. Are there any other reasons why defining the MTA as the local calling area would not be appropriate?

A. Yes. While Mr. Williams is correct that each of the Utah ILECs' service territory falls completely within the Salt Lake City MTA, what he fails to consider is the impact of interstate calling between the Utah ILECs and Western Wireless. He also fails to mention that the Salt Lake City MTA includes one county in Nevada, two counties in Wyoming, two counties in Oregon, and a good portion of the State of Idaho. The Commission must seriously consider the interstate ramifications of a potential determination that all IntraMTA traffic is local, even when it is originated by a wireline IXC customer (that is also a wireline local customer) and carried by the IXC. The result of such a determination would establish a local calling area for wireline to wireless traffic that covers portions of five (5) states. Based on the decisions that I referenced earlier in this testimony, it is clear that the FCC did not intend to expand ILEC local calling areas beyond their state Commission defined scope, let alone to expand local calling areas across state boundaries.

Q. In Mr. Williams' testimony, at Pages 25-26, he discusses the standards that apply to the pricing of unbundled network elements and transport and termination. Do you agree with his assessment?

A. Mr. Williams is correct in that the statutory language differs for transport and termination, and unbundled network element pricing. However, Mr. Williams also states that the pricing methodologies are different. It is apparent that Mr. Williams has ignored the

FCC's implementation rules that relate to these statutes. In its *Local Competition Order*, the FCC recognized the difference in the statutory provisions, where it states:

> We conclude that the pricing standards established by section 252(d)(1) for interconnection and unbundled elements, and by section 252(d)(2) for transport and termination of traffic, are sufficiently similar to permit the use of the same general methodologies for establishing rates under both statutory provisions…We, therefore, find that the "additional cost" standard permits the use of the forward-looking, economic cost-based pricing standard that we are establishing for interconnection and unbundled elements.[3]

It is clear from this language that the FCC intended for the pricing methodologies to be consistent and that forward-looking, economic costs are the required basis for the pricing of transport and termination.

Q. Mr. Williams states that the "additional cost" of switching is $0, and that it is unclear whether Western Wireless mobile-to-land traffic terminating on the ILEC's networks should be assessed an additional transport costs. Do you agree with these statements?

A. No. Again I refer back to the referenced language from the FCC's *Local Competition Order*, where the FCC clearly stated that the rates for transport and termination should be based on the forward-looking, economic costs of the ILEC. The Utah ILECs have proposed a forward-looking, economic cost model that provides the appropriate rates for transport and termination. There is no rational reason why the FCC would have gone through the process of developing these rules if the end result was that the "additional cost" was $0. Additionally, there is no rational support for an "additional cost" of $0, given the fact that the FCC has developed default rates to be applied for reciprocal

[3] First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-98 and CC Docket No. 95-185, Adopted August 1, 1996, para. 254.

compensation purposes. Although these default rates are based on the costs of Regional Bell Operating Companies, and not necessarily reflective of the costs of the Utah ILECs, these rates are certainly not $0.

Q. In his testimony, Mr. Williams states that Western Wireless must be compensated at the tandem interconnection rate for calls terminated on its network. Do you agree with this statement?

A. While I agree that Mr. Williams has referenced all of the correct FCC rules and orders that speak to this issue, I believe that he fails to understand the most important aspect of these rules. Mr. Williams quotes the *First Report and Order*, relating to the "geographic area" test, where it states:

> We, therefore, conclude that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. (emphasis added)

Mr. Williams chooses to focus on the second part of the reference where the order discusses the appropriate proxy for the interconnecting carrier's additional costs, thereby inferring that the Commission is obligated to allow Western Wireless to utilize the tandem switched rate. By doing so, he ignores the fact that the order simply says that, "states may" establish tandem rates for the interconnecting carrier at their own discretion.

It is also important to note that none of the Utah ILECs operate a tandem switch; therefore no additional tandem switching should apply. The Utah ILECs have proposed a rate structure that allows for interconnection at the ILEC end office or the Qwest tandem. The rate for interconnection at the Qwest tandem is not designed to recover the cost of tandem switching, it is simply designed to cover the additional cost of transport that would not be incurred if interconnection were to take place at the ILEC end office. Therefore, there is no tandem switching rate to apply to traffic that terminates to Western Wireless

Q. In his testimony, Mr. Williams states that Western Wireless has the right to obtain numbers and rate the numbers as local whether or not it has a direct connection with an ILEC in the ILEC's service area. Does the Utah interconnection agreement between WWC and Qwest offer insight into this issue?

A. Yes. The last sentence of Section (B)1.2, page 32 provides the agreement of WWC and Qwest in regard to this issue. It states: "WWC shall establish a physical point of interconnection (POI) in each USW EAS/Local Calling Area in which WWC has NXXs assigned." This demonstrates that WWC has voluntarily agreed with Qwest to a direct connection within the local calling area and was willing to forgo the indirect connections that it is proposing in the Utah ILEC contract.

Q. Do you agree with Mr. Williams' assessment that an Inter-MTA factor is not warranted in the proposed interconnection agreement?

A. Again, while Mr. Williams is correct that each of the Utah ILECs' service territory falls completely within the Salt Lake City MTA, he fails to recognize that the Salt Lake City MTA does not include the Utah counties of Daggett, Grand, and San Juan. UBTA's service territory borders both Dagget and Grand Counties, while SCUTA's service territory is very close to the border of San Juan County. The proximity of these service territories to these intrastate, interMTA locations cannot be ignored. In addition, there is no logical reason to believe that customers of Gunnison and Manti would not have occasion to call these intrastate, interMTA locations.

Q. What is your response to Mr. Williams' discussion regarding who should pay the Utah ILECs' billing costs?

A. Mr. Williams has commingled two issues that should be addressed separately. First, the Utah ILECs have never contended that Western Wireless should pay the cost of preparing invoices to be provided to Western Wireless. Second, the cost of purchasing transit reports from Qwest should be recovered by the Utah ILECs from Western Wireless. These reports are necessitated by the fact that either Western Wireless; or Qwest as the transiting carrier for Western Wireless, pursuant to their Utah interconnection agreement, is not providing the call detail necessary for the Utah ILECs to properly rate and bill for this traffic. In cases where Western Wireless chooses to route its traffic through Qwest, rather than via a direct connection with the Utah ILECs, they must be responsible for the associated costs of purchasing call records from Qwest incurred by the Utah ILECs. These are direct costs that the Utah ILECs will incur as a result terminating Western Wireless' traffic, and is therefore a forward-looking cost of the Utah ILECs for transport and termination. In cases where Western Wireless chooses to directly connect with the Utah ILECs, these costs are not incurred by the Utah ILECs and there is no reason to seek recovery.

Q. Does this conclude your rebuttal testimony?

A. Yes.