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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Petition of QWEST CORPORATION for Arbitration of an Interconnection Agreement with UNION TELEPHONE COMPANY d/b/a UNION CELLULAR under Section 252 of the Federal Telecommunications Act of 1996	<u>DOCKET NO. 04-049-145</u>
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**DIRECT TESTIMONY OF JAMES H. WOODY ON BEHALF OF  
UNION TELEPHONE COMPANY**

1                   **DIRECT TESTIMONY OF JAMES H. WOODY ON BEHALF OF**  
2                   **UNION TELEPHONE COMPANY**

3    Q.     State your name for the record.

4    A.     My name is James H. Woody.

5    Q.     What is your business address?

6    A.     850 North State Highway 414, Mountain View, Wyoming.

7    Q.     Who is your employer?

8    A.     Union Telephone Company.

9    Q.     What is your position with Union Telephone Company?

10   A.     I am the Director of Research and Development for Union Telephone Company  
11           and a member of the Union Management Team.

12   Q.     And what are your duties and responsibilities in that position?

13   A.     I have legal and regulatory responsibilities with the Company. I research various  
14           products and offerings for the Company as well as act as a spokesman before  
15           administrative and legislative bodies including the Congress of the United States,  
16           the Federal Communications Commission, the Colorado Public Utilities  
17           Commission, the Wyoming Public Service Commission, and the Utah Public  
18           Service Commission. As part of these responsibilities, I act in a regulatory  
19           capacity to address the filings before these bodies.

20   Q.     Please provide the Commission with a brief description of your background?

21   A.     I have a degree in Business Management and Accounting from Stevens-Henneger  
22           Business College in Salt Lake City, Utah. I have a certificate from Michigan State  
23           University on a telephone cost separations for a course that I attended as well as

24 numerous other courses and seminars.

25 I began working for Union Telephone Company (“Union”) in 1967 as an  
26 installer/repairman and later moved to central office repair. In 1970, I worked as  
27 the accounting and office manager with duties in general accounting, toll  
28 separations, traffic studies and tariff filings. From that time forward, as an  
29 Executive Vice President for the Company, I have worked with REA and RTB  
30 loans, intercompany agreements, cellular roaming agreements and other regulatory  
31 matters.

32 As part of my duties, I have testified before the Colorado, Wyoming, and Utah  
33 Commissions, Wyoming and Utah Legislatures as well as the United States House  
34 Ways and Means Committee. As a member of the Union Management  
35 Committee, I am involved with the ongoing decisions of the Company as well as  
36 any response by the Company to issues in the industry.

37 Q. Attached to your testimony is a copy of your resume which is identified as Exhibit  
38 1, is that resume true and correct to the best of your knowledge and belief?

39 A. Yes it is.

40 Q. Have you previously participated in proceedings that have come before this  
41 Commission?

42 A. As the dominant share of Union’s operations are in the state of Wyoming, I have  
43 appeared on numerous occasions before the Wyoming Public Service  
44 Commission. Nevertheless, as part of my duties, I have reviewed applications that  
45 have been filed with this Commission and have prepared responses to various

46 filings. I have also testified before the Colorado Commission.

47 Q. Please provide a quick background for Union Telephone Company?

48 A. Union Telephone Company is a telecommunications company providing  
49 telecommunications services to predominantly rural areas in the states of  
50 Wyoming, Colorado and Utah. It provides these services pursuant to certificates  
51 of authority that it has received from the respective regulatory bodies. Union has  
52 been providing telephone service since 1914, it serves southwestern Wyoming,  
53 northeastern Utah and northwestern Colorado and has approximately 7600  
54 wireline customers. Additionally, Union has been certificated to provide wireless  
55 telecommunication services in the states of Wyoming, Colorado and Utah. A  
56 summary of its authority to provide wireless service is provided in Exhibit 2. This  
57 is a summary of Union's wireless authority as maintained by the FCC.

58 Q. What is the purpose of your testimony in this proceeding?

59 A. Qwest Corporation ("Qwest") filed a Petition for Arbitration of an Interconnection  
60 Agreement with this Commission ("Petition"). My testimony is to address that  
61 Petition and to indicate to the Commission that the proposed interconnection  
62 agreement filed with the Petition is a confusing, flawed document that needs to be  
63 changed.

64 While the Parties have filed an Interim Interconnection Agreement, I will suggest  
65 as part of my testimony that there are parts to the Interim Agreement that need to  
66 be changed to properly reflect costs and to make it more useful for the parties. My  
67 goal in appearing before this Commission is to establish an interconnection

68 agreement that will fairly reflect Union's costs and guide the parties in the future  
69 in interconnecting, exchanging traffic and receiving compensation.

70 Q. Have you reviewed Qwest's Petition for Arbitration of an Interconnection  
71 Agreement as filed with this Commission?

72 A. Yes.

73 Q. Generally, what has been your response to the Petition?

74 A. Initially, Union objected to Qwest's Petition and filed a Response indicating that  
75 the Commission did not have jurisdiction to address the Petition. Although there  
76 were timing issues involved with the Petition as reflected in Union's Response,  
77 most certainly, a wireline carrier such as Qwest could not force Union, as a  
78 wireless carrier, to enter into an interconnection agreement. This was later  
79 confirmed by the T-Mobile decision which confirmed the efficacy of wireless  
80 tariffs to the date of the FCC order.<sup>1</sup> In the T-Mobile decision, the FCC found  
81 that to the date of the order, wireline carriers could not force an interconnection  
82 agreement upon a wireless carrier under the Telecommunications Act of 1996  
83 ("Act"). The decision further acknowledged that the Act did not prohibit the  
84 filing of wireless tariffs. Having established these facts, the decision then  
85 precluded the use of wireless tariffs in the future and required interconnecting  
86 carriers to establish interconnection agreements. The decision established, on a  
87 prospective basis, an incumbent provider's right to require interconnection with

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<sup>1</sup> *T-Mobile et. al.* Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, Declaratory Ruling and Report and Order, FCC 05-42, CC Docket No. 01-92, February 24, 2005.

88 wireless carriers.

89 While Union did not have the benefit of the T-Mobile decision at the time of the  
90 initial filing, it did indicate that it would be willing to enter into the negotiation of  
91 an interconnection agreement. Qwest, for its part, while initially refusing to  
92 negotiate or extend the deadlines established by the Act, later acquiesced in  
93 Union's request and the parties engaged in the negotiation of an interconnection  
94 agreement. Ultimately, the parties were able to file with this Commission an  
95 Interim Interconnection Agreement that improves upon the initial proposed  
96 agreement filed by Qwest.

97 As to the negotiation process, while I am disappointed that a final agreement was  
98 not reached, the parties worked for months on the Interim Agreement that has  
99 been filed. While it leaves some very important decisions to the Commission, it  
100 did resolve a number of issues that were important to the parties. While I wish  
101 Qwest had been a little more flexible on certain issues, I certainly compliment  
102 them for the time and effort that they took in negotiating the agreement that is  
103 presently before the Commission. The negotiation process certainly resolved a  
104 number of disputed issues and reduced the issues for the Commission's review.  
105 Fundamentally, the position that Union continually stressed in its negotiation with  
106 Qwest is that it believes that it is entitled to compensation for the services that it  
107 provides. While it perceived that the tariffs on file would appropriately  
108 compensate it for services rendered, any interconnection agreement must also  
109 properly reflect costs incurred by Union in providing services to the

110 interconnecting company.

111 I would note that Union and Qwest have had a working relationship for many  
112 years. This relationship continues although Union believes that Qwest is not fully  
113 compensating Union for services that are being rendered. Union also believes that  
114 Qwest is not acting quickly enough to accommodate reasonable interconnection  
115 requests that have been repeatedly given to it.

116 Q. What requests have been made to Qwest for interconnection?

117 A. There are ongoing requests that have not been addressed, for instance; over a year  
118 ago Union purchased the assets of Pyxis Communications, in addition, it took  
119 steps to extend new wireless services in an expanded area. One of the many  
120 services to be provided with the new technology is a fixed wireless service.  
121 Qwest has refused to route the traffic properly or recognize Union's requests to  
122 accommodate the new NPA-NXX. Qwest has continued its position even though  
123 Union has agreed to use Qwest's interconnection agreement pending a  
124 judicial/administrative resolution. This refusal is difficult to understand as Qwest  
125 has provided similar interconnections in the past under our existing relationship.  
126 It appears to Union that Qwest is objecting more to the competitive threat than the  
127 interconnection relationship.

128 Q. What is your understanding as to the Commission's role in reviewing the Petition  
129 for Arbitration?

130 A. A state commission, pursuant to 47 U.S.C. § 252 (b)(4)(C), has nine months from  
131 the date the Respondent carrier receives the request for negotiation of

132 interconnection from the initiating party to conclude its proceedings. While  
133 Qwest initially refused to extend the deadline and allow for negotiation, it later  
134 relented and the parties engaged in the negotiation of an Interim Agreement.  
135 Now, pursuant to the agreement of the parties, the Commission has an extended  
136 period of time in which to hear the evidence, consider the arguments and render a  
137 decision.

138 Q. What guiding principles govern the Commission in reviewing an appropriate  
139 interconnection agreement?

140 A. Certainly the Commission's empowering legislation as found in applicable  
141 statutes and regulations establish the basis for any regulation. In interconnection  
142 issues, the Telecommunications Act of 1996 and the applicable regulations have  
143 had a profound effect on telecommunications providers. This inter-relationship  
144 between federal and state law has been recognized by this Commission as it has  
145 incorporated certain federal rules in its regulations. Rule (4 CCR) 723-44-12.

146 Q. Are there particular rules that you would highlight for the Commission?

147 A. The Telecommunications Act of 1996 (the "Act") and the rules of the Federal  
148 Communications Commission ("FCC") impose interconnection and compensation  
149 obligations on local exchange carriers ("LECs") and commercial mobile radio  
150 service ("CMRS") providers and establish standards to apply in interconnection  
151 arbitration proceedings. In particular, I would highlight the following sections of  
152 the Act and FCC rules:

153 - Section 251(a) of the Act requires all telecommunications carriers,

154 including both CMRS and LECs, “to interconnect directly or indirectly with the  
155 facilities and equipment of other telecommunications carriers.”

156 - Section 251(b)(5) of the Act imposes on all local exchange companies  
157 the “duty to establish reciprocal compensation arrangements for the transport and  
158 termination of telecommunications.” The compensation exchanged will be priced  
159 the same unless an asymmetrical rate can be proven.

160 - Section 251 (d)(3) of the Act preserves to the state the use of its  
161 regulations. The Act specifically precludes the FCC from precluding the  
162 enforcement of any regulation, order or policy of the state commission: that  
163 establishes access and interconnection obligations of local exchange carriers; is  
164 consistent with the requirements of Section 251 and does not substantially prevent  
165 implementation of the requirements of the Section.

166 - Section 261 of the Act is similar in holding in Subsection (B) that state  
167 regulations are applicable. The Subsection provides that nothing in the part is to  
168 be construed to prohibit a state commission from enforcing regulations prescribed  
169 prior to the date of the enactment of the Act or from prescribing regulations after  
170 such date if such regulations are not inconsistent with the provisions of the part.  
171 Furthermore, Subsection (C) indicates that the provisions of the Act are not to  
172 preclude a state from imposing requirements on a telecommunications carrier for  
173 intrastate services that are necessary to further competition in the provision of  
174 exchange access as long as the state requirements are not inconsistent with the  
175 part of the Act or commission’s regulations.

176 - FCC Rule 20.11(a) provides that “a local exchange carrier must  
177 provide the type of interconnection reasonably requested by a mobile service  
178 licensee or carrier, within a reasonable time after the request, unless such  
179 interconnection is not technically feasible or economically reasonable.”

180 - FCC Rule 20.11(b)(1) requires that “a local exchange carrier shall pay  
181 reasonable compensation to a commercial mobile radio service provider in  
182 connection with terminating traffic that originates on the facilities of the local  
183 exchange carrier.”

184 - FCC Rule 51.301(c) requires at subparagraphs (5) and (6) that it is a  
185 sign of bad faith for a carrier to mislead or coerce another party into reaching an  
186 agreement that it would not otherwise make and in intentionally obstructing or  
187 delaying negotiations or resolutions of a dispute.

188 - FCC Rule 51.305 provides in part that an incumbent LEC shall  
189 provide for the interconnection with the incumbent’s LEC’s network for the  
190 transmission and routing of telephone exchange traffic, exchange access traffic, or  
191 both, at any technically feasible point within the incumbent LEC’s network that is  
192 at a level of quality equal to that which the incumbent LEC provides itself on  
193 terms and conditions that are just, reasonable and non-discriminatory.

194 - FCC Rule 51.305(e) requires that an incumbent LEC which denies a  
195 request for interconnection at a particular point must prove to the state  
196 commission that the requested interconnected point is not technically feasible.

197 - FCC Rule 51.711 provides that rates for the transport and termination

198 of telecommunication traffic are to be symmetrical except that a state commission  
199 may establish asymmetrical rates for the transport and termination of  
200 telecommunication traffic if the carrier (other than the incumbent LEC) proves to  
201 the state commission on the basis of a forward-looking economic cost study that  
202 the forward-looking costs operated by the carrier exceed the costs of the  
203 incumbent such that the higher rates are justified. FCC Rule 51.711(b).

204 Q. In light of the existing law, have you had an opportunity to review Qwest's  
205 proposed interconnection agreement?

206 A. Yes, I was provided a copy of the proposed agreement submitted by Qwest. The  
207 initial agreement was much too long, wordy, complicated and ambiguous. It  
208 appeared to me that Qwest, in an attempt to have a document that meets every  
209 circumstance, prepared a document that is not particularly suited to any one  
210 specific situation. Although, I still believe that the parties' own tariffs provide  
211 guidelines to the parties in establishing an appropriate business relationship, these  
212 were not considered. Nevertheless, as part of the negotiation process, we reduced  
213 the length and complexity of the initial proposal and filed an Interim  
214 Interconnection Agreement. There are still additional changes that need to be  
215 made. I have submitted the proposed changes in legislative format to the  
216 Commission as Exhibit 3. I have displayed the proposed changes in tabular form  
217 in the attached Exhibit 4. It is anticipated that these will further be reflected in the  
218 joint matrix to be filed in the future.

219 Q. Are there particular changes that you would like to highlight?

220 A. Yes, while Union acquiesced in a number of areas, there are still issues that need  
221 to be resolved. One difficulty that Union had in negotiating with Qwest was  
222 Qwest's obsession with other possible contracts. While I understand Qwest's  
223 concern with the myriad of other contracts which it negotiates, it restricts any  
224 ability to negotiate a contract for a particular situation. If there is not going to be  
225 any negotiation of the particular provisions, it would be much easier to simply use  
226 tariffs that are applicable to all companies rather than enter into the charade of the  
227 negotiation process. For instance, there are a number of provisions relating to  
228 dispute resolution, indemnification and so forth that need to be changed.  
229 Nevertheless, Union left them unchanged because it had little effect on the final  
230 result. It would be much better, however, to amend these provisions making them  
231 more consistent with a normal business practice.

232 As to the issues, Union is very concerned that the Commission recognize the type  
233 of interconnection that Union has with Qwest. Qwest's actual interconnection is  
234 with Union's access tandem. It is the access tandem of Union's wireline  
235 company. Qwest refuses to recognize this interconnection, even the naming of the  
236 type of document that is being negotiated. It is only after the interconnection is  
237 accomplished with Union's access tandem, that traffic is then routed through the  
238 tandem for termination on Union's wireless facilities. In addition, as it is  
239 technically and economically feasible to route wireless and wireline traffic on the  
240 same trunks, this should be recognized by the Commission and recognized in the  
241 agreement as it saves unnecessary expense for Union. Again, Qwest refused to

242 recognize this capability. Finally, as Union is a rural telecommunications carrier  
243 providing telecommunications services in very rural areas in Northern Colorado,  
244 Eastern Utah and Wyoming, it's costs far exceed those of more urban carriers  
245 such as Qwest. As Union has accomplished a forward-looking cost analysis, the  
246 results of this analysis should be recognized in the Interconnection Agreement.  
247 Pursuant to statute and regulation, Union is entitled to an asymmetrical rate as it  
248 has demonstrated with its forward-looking economic cost study that its forward-  
249 looking costs exceed those costs of the more urban interconnecting carriers. The  
250 study is discussed in the testimony and exhibit provided by Mr. Hendricks.

251 Q. Does this conclude your testimony?

252 A. Yes.