

Bruce S. Asay
Associated Legal Group, LLC
1807 Capitol Avenue, Suite 203
Cheyenne, WY 82001
(307) 632-2888

Stephen F. Mecham
Callister, Nebeker & McCullough
10 E. South Temple, Suite 900
Salt Lake City, UT 84133-1101
Telephone: (801) 530-7316

Attorneys for Union Telephone Company

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF UTAH

<p>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</p>	<p>Docket No. 04-049-145 REBUTTAL TESTIMONY OF JAMES H. WOODY</p>
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October 24, 2005

1 Q. Please state name and address for the Commission.

2 A. My name is James H. Woody. I am the Director of Research and
3 Development for Union Telephone Company as well as a member of the
4 Management Committee. The business address of Union Telephone Company is
5 850 North State Highway 414, Mountain View, Wyoming.

6 Q. Why are you providing testimony here today?

7 A. I am providing rebuttal testimony on behalf of Union addressing the testimony of
8 Robert H. Weinstein and Ann Marie Cederberg who previously provided
9 testimony in the above captioned proceeding on behalf of Qwest.

10 Q. What are your concerns with the testimony of Mr. Weinstein and Ms. Cederberg?

11 A. I have a number of comments with respect to the testimony but generally I am
12 concerned because the witnesses do not fully understand the process the parties
13 went through in attempting to negotiate an interconnection agreement. Neither of
14 the witnesses participated in any of the discussions that were held between Union
15 and Qwest in reaching the many areas of compromise that were achieved.

16 If these witnesses had been involved in the proceedings, they would know
17 that when Qwest first requested arbitration from the Commission, Union opposed
18 the request as it was a wireless or CMRS (commercial mobile radio service)
19 provider. Initially it was Union's position that Qwest, an ILEC, could not force
20 interconnection on a wireless carrier as it was the ILEC's duty to interconnect.
21 Furthermore, it was Union's position that its tariffs were applicable to the
22 interconnection arrangement between the parties as they had been utilized in the
23 past. Unless specifically revoked, existing agreements were to continue under the

24 Telecommunications Act of 1996 (the “Act”). Later, Union agreed to negotiate an
25 interconnection agreement and participated on almost a weekly basis for many
26 months in negotiating those terms and conditions upon which the parties agreed.
27 Either the Qwest witnesses are unfamiliar with Union’s position or they are very
28 disingenuous in suggesting a Union position which is simply not accurate. For
29 instance, Ms. Cederberg suggests that Union is advocating the use of access
30 charges to control the interconnection between Qwest and Union. Although it is
31 an appropriate position, it has been abandoned consistent with the FCC’s decision
32 in T-Mobile.¹

33 Additionally, Union objects to much of Mr. Weinstein’s testimony. It is
34 not testimony but simply argument. Mr. Weinstein, an attorney, does not address
35 the specific interconnection to be established in this proceeding, but argues
36 Qwest’s general legal position on the different issues. Although this may be
37 appropriate for post-hearing briefs, it brings little factual support to aid the
38 Administrative Law Judge in his decision. It should be stricken.

39 Q. What issues will you address in the testimony?

40 A. In this testimony, I will respond to the five issues raised by the Qwest witnesses.
41 These include: 1) whether Union is advocating the use of access tariffs, 2)
42 whether Union’s access tandem should be recognized, 3) the appropriate point of
43 interconnection, 4) whether Qwest should properly identify transit traffic, and 5)
44 the appropriate treatment of non-local traffic.

45 Q. Ms. Cederberg in her testimony asks whether the access tariffs that exist between

¹ In the Matter of Developing a Unified Intercarrier Compensation Scheme. T-Mobile, cc Docket No. 01-92,

46 Qwest and Union should govern the relationship. What is your position?

47 A. The question posed by Ms. Cederberg is a red herring; the answer is rhetorical and
48 an attempt to confuse an important issue. Union believes in mutual compensation
49 and that it should be treated equally; that reciprocal compensation and mutuality
50 in treatment should be a fundamental guideline in establishing an appropriate
51 interconnection agreement. Qwest does not agree and perceives that it can
52 denigrate Union's positions on issues and win by default. Hopefully the
53 Commission will not allow such a result.

54 For instance, as to the "straw man" of access charges raised by Ms.
55 Cederberg, Union is not advocating the use of access charges in this proceeding
56 except as ordered by the FCC (interMTA traffic). While Union initially
57 advocated this position, it has abandoned this position in light of the T-Mobile
58 decision. Nevertheless, I would like to give the Administrative Law Judge a sense
59 of how difficult it is to negotiate with Qwest in any proceeding of this nature.

60 Ms. Cederberg, in her testimony, quotes in part from an FCC decision
61 addressing the present negotiation of interconnection agreements. While this is
62 fine as an abstract concept, it is very difficult to accomplish at the negotiating
63 table. While most companies begin negotiations with a proposed agreement that
64 they anticipate will be changed over the course of negotiations, Qwest does not. It
65 initiates the proceedings by proposing a long complicated document which is
66 essentially its SGAT agreement. While other companies will negotiate a private
67 agreement addressing the specific peculiarities of the companies'

FCC, Feb. 24, 2005.

68 interrelationships, Qwest will not. Qwest cannot focus on a particular
69 interconnection agreement because it is too concerned with the implications of
70 that agreement on the myriad of other agreements that it must negotiate.

71 While I appreciate the courtesy that was extended to Union by the Qwest
72 negotiating team, the difficulty is that the negotiating team cannot address
73 Union's particular and peculiar situation because Qwest is driven by what it
74 considers to be a normal interconnection agreement.

75 Qwest even refuses simple requests. For instance, Union agreed to
76 Qwest's language in a number of areas even though Union offered more concise
77 language. For instance, Union agreed to Qwest's language relating to
78 indemnification and the dispute resolution process. Qwest's language is long and
79 complicated. There are many models in a number of interconnection agreements
80 which are much simpler and more understandable. Qwest refuses to consider
81 other language because it is not sure of the implications on other agreements.

82 Union believes that the good faith negotiation of private agreements means
83 that the provisions of any proposed agreement are open for negotiation. That does
84 not mean that a company is simply given an agreement and forced to adopt it
85 without any reference to the specific individual characteristics that mark the
86 relationship between the parties.

87 The FCC guidelines provided by Ms. Cederberg in her testimony require
88 that LECs such as Qwest enter into reciprocal compensation arrangements with
89 CMRS providers such as Union and that they do so by negotiating in good faith.
90 Qwest did not do this. Qwest's version of negotiation is to hand over a one-sided

91 document and demand that it be signed. In this proceeding, Union is requesting
92 that the Commission establish a reciprocal agreement that recognizes the parties'
93 unique issues.

94 Q. Ms. Cederberg in her testimony asks whether Qwest should be able to directly
95 connect to Union Cellular. How do you respond?

96 A. As stated above, Qwest refuses to acknowledge the concept of a reciprocal
97 agreement and asks that the Commission impose an agreement that favors Qwest
98 particularly as it relates to compensation. There is no magic in the use of a term
99 to describe a particular interconnection, but there are implications that Qwest is
100 attempting to force on Union. The FCC, in establishing the good faith negotiation
101 of private interconnection agreements, requires negotiating parties to reflect in any
102 resulting agreement the peculiarities of their particular networks; otherwise,
103 Qwest's "one size fits all" system of negotiation is appropriate. In the instant
104 case, Union, like Qwest, interconnects through its tandem switch. Qwest refuses
105 to recognize Union's tandem switch. If Ms. Cederberg had been a party to the
106 negotiation, she would know that Union's interconnection arrangement was
107 compared during the negotiation to Qwest's interconnection with Verizon which
108 has both a wireline and wireless side. Those participating in the negotiations
109 understood that the interconnection at issue is not typical. Rather than
110 interconnecting directly with a wireless switch, Qwest is interconnecting with
111 Union's tandem which is more like the Verizon example. In her testimony, the
112 witness refuses to recognize this issue.

113 Ms. Cederberg wants wireless providers such as Union to interconnect

114 with Qwest by establishing a point of interface, generally at a Qwest tandem,
115 allowing them to send calls to any end user that is supplied dial tone via any end
116 office subtending that tandem. This position is an attempt to foist Qwest's
117 network architecture on Union, it does not comport with the network architecture
118 in this case. Union does not want to interconnect at the Qwest tandem; it has its
119 own tandem. If the interconnection agreement is to be reciprocal, Union's
120 architecture needs to be recognized. Qwest wants to have Union's switch subtend
121 to the Qwest tandem as this is the more typical architecture with which it is
122 familiar. As Union has its own tandem, it does not want to home to the Qwest
123 tandem nor is it requesting that all of Qwest's numbers home to the Union
124 tandem. The reciprocal agreement recognizes the network architecture of the
125 different companies.

126 To better illustrate Union's position, I would direct your attention to the
127 exhibits that are provided as part of my rebuttal testimony. Exhibit 5(A) shows a
128 wireless to wireline connection as initiated by a third party mobile customer (such
129 as Verizon) and terminating to a Union wireline customer. In this example, the
130 call goes from the mobile customer, to a tower, to the mobile switching office and
131 then to the Qwest tandem switch. The call is connected through a Type 2
132 connection. From Qwest's tandem, the call is routed over infrastructure trunks to
133 an interconnection with Union and from there to Union's tandem switch. The call
134 is then connected through interoffice trunking to Union's Class 5 end office and
135 then to the wireline customer. This is important because if you refer to Exhibit
136 5(B), you will see that the Union mobile customer connects to a wireline customer

137 of Qwest in essentially the reverse manner. The Union mobile customer connects
138 to the Union tandem through the mobile switching office and then across trunks to
139 the Qwest tandem after which it goes through Qwest's end office to the wireline
140 customer. The routing of the call is essentially the same on either exhibit. In the
141 same fashion, if you refer to Exhibits 5(C) and 5(D), you will see a connection
142 from a third party wireless caller to a mobile Union caller and the reverse. Again,
143 you can see that the transmission path is essentially the same whether the call is
144 going from Qwest or to Qwest. In both examples, the calls are routed from or to
145 Union's tandem in the same manner as they flow through Qwest's system and its
146 tandem. Union's tandem is an integral part of the transmission path in all of these
147 situations. In the same sense, if you were to review Exhibit 5(E), this shows an
148 illustration of Qwest's position. In this example, Qwest ignores Union's tandem
149 and requires Union to connect to Qwest's tandem and greatly expand its expense
150 by forcing Union to utilize needless trunking. As Union, the CMRS provider,
151 should be able to interconnect in any technically feasible manner, it should be able
152 to utilize the interconnection arrangement which best suits its needs. Qwest's
153 proposal is inappropriate.

154 Q. What are the financial implications relating to this issue?

155 A. Obviously, in Union's opinion, Qwest is attempting to establish an asymmetrical
156 interconnection agreement in order to "game" the system and in return, make
157 more money.

158 Q. What do you mean?

159 A. Presently, Union has one tandem. It is at Mountain View, Wyoming. Qwest, for

160 its part, has at least four tandems located at Fort Collins, Denver, Colorado
161 Springs and Grand Junction, Colorado. While Qwest does not need this many
162 tandems, it is proliferating the use of tandems to accelerate its receipts. In
163 demanding that this Commission ignore Union's tandem, Qwest is requiring
164 Union to establish a direct connection with all of Qwest's tandems for both its
165 wireline and wireless traffic. While Union's traffic might justify a direct trunk for
166 both wireless and wireline traffic to the Grand Junction tandem, there is not
167 sufficient traffic to justify a trunk to Fort Collins or Colorado Springs.

168 In its testimony, Qwest justified its demand by indicating that such is
169 needed to identify and bill for the calls, yet the calls are identified by Union.
170 There is no need for separate trunking.

171 Not only does Qwest's proposal accelerate Union's costs, it is also
172 internally inconsistent. In another area, when Qwest discussed transiting traffic, it
173 insists that it be able to direct traffic to Union without cost. It insists that it has a
174 right to "dump" unidentified traffic on to Union's system. Union's position, on
175 the other hand, is consistent. It recognizes that it must provide appropriately
176 identifiable traffic to Qwest if utilizing a common trunk (both wireless and
177 wireline). It also requests that Qwest's transiting traffic be identified in order that
178 all traffic is identified to allow rating and billing of the traffic.

179 Q. Does Union's proposal result in the charging of inappropriate compensation?

180 A. No, Union charges appropriate rates, the overwhelming percentage of Union's
181 customers are engaged in interstate traffic and that affects the compensation
182 scheme. Moreover, the designation does not affect whether a call is intra or inter

183 MTA. Certainly, Ms. Cederberg’s representation that Union charges access tariff
184 rates for intraMTA traffic is simply false. Again, as stated earlier, Union has
185 utilized tariff rates in the past for the termination of wireless traffic and believes
186 that such was appropriate under then existing FCC rules. Presently, while Union
187 may charge access rates (as does Qwest) for interMTA traffic, it does not do so for
188 intraMTA traffic.

189 Q. Qwest rejects Union’s proposed definition of an “access tandem switch”. Please
190 explain.

191 A. In Qwest’s company-centered view of the world, it is the only company that has a
192 tandem switch. It is incorrect. Unfortunately, Qwest is not simply dissatisfied
193 with the proposal but attempts to mislead the Commission with testimony that is
194 not accurate. Ms. Cederberg in her testimony states “the Commission should
195 reject Union Cellular’s continued attempt to charge access charges for wireless
196 traffic by broadening the definition of the term “access tandem”.” As noted
197 earlier, this is simply an incorrect statement. Union is not attempting to charge
198 access charges for wireless traffic other than that allowed by the FCC (as is
199 Qwest). As Union has an access tandem that lies between the point of
200 interconnection and end users (as does Qwest), it should be recognized in any
201 definition.

202 Qwest’s definition of access tandem is taken directly from the SGAT. It is
203 asymmetric and not consistent with the architecture of the two companies. Union
204 suggested in negotiations that instead of using Qwest’s definition, that a more
205 generic definition used in the industry would be appropriate. For instance, the

206 definition used by independent companies in some tariffs states: “Access Tandem.
207 A telephone company switching system that offers an interexchange carrier
208 originating and terminating access to several end offices within a LATA.”
209 Alternatively, access tandem has been defined by others as “a telephone company
210 or a centralized equal access provider switching system that provides a
211 concentration and distribution function for originating or terminating traffic
212 between end offices and a customer designated premises.”

213 Qwest rejected the more common industry definition in favor of the SGAT
214 asymmetric definition which Union rejects. Union’s attempt to address Qwest’s
215 intransigence was to have language which would at least make the definition
216 reciprocal. Union’s proposed amendment is entirely accurate and consistent with
217 the companies’ network architecture.

218 Qwest should not, by some company fiat, be able to declare Union’s
219 architecture irrelevant and non-existent. The fact is Union has a tandem switch
220 which lies in the transmission path of communications. It is used by Union as part
221 of its network architecture and should not be ignored any more than Union would
222 expect this Commission to ignore Qwest’s tandem. At the same time, it is
223 inappropriate to expect that Union traffic will home to Qwest’s tandem when it
224 has a tandem of its own.

225 Union’s position is appropriate. Either use a more generic industry
226 definition or make Qwest’s definition reciprocal. It should not be asymmetrical.

227 In addition, Qwest argues that the Commission should ignore Union’s
228 tandem because “the interconnection between Qwest and Union Cellular does not

229 include the wireline portion of Union Telephone Company.” Again the statement
230 is misleading and inaccurate. Qwest designates its tandem even though it can
231 transmit wireless or wireline traffic. In the same sense, Union’s switch performs
232 the exact same function as Qwest’s tandem switch. If a Union wireless customer
233 initiates a call, the call might flow to the tandem for switching to an interexchange
234 carrier or Qwest. The tandem will switch the traffic whether it originates or is
235 destined for a wireless or wireline carrier. It is an integral part of Union’s network
236 architecture as is Qwest’s tandem. The Commission cannot simply ignore the
237 tandem. Again I would refer you to my illustrations in Exhibit 5.

238 Q. In a related issue, Qwest objects to Union’s definition of a point of
239 interconnection (“POI”) which allows for a more flexible designation. Please
240 explain.

241 A. The Telecommunications Act of 1996, 47 U.S.C. § 251(a)(1) indicates that it is
242 the general duty of every telecommunications carrier to interconnect directly or
243 indirectly with the facilities and equipment of other telecommunications carriers.
244 Furthermore, 47 U.S.C. § 251(c)(2) providing that it is the duty of an (Incumbent
245 Local Exchange Carrier]:

246 “to provide, for the facilities and equipment of any requesting telecommunications
247 carrier, interconnection with the local exchange carrier’s network

- 248 (A) for the transmission and routing of telephone exchange service and exchange
249 access;
250 (B) at any technically feasible point within the carrier’s network;
251 (C) that is at least equal in quality to that provided by the local exchange carrier to
252 itself or to any subsidiary, affiliate, or any other party to which the carrier
253 provides interconnection; and
254 (D) on rates, terms, and conditions that are just, reasonable, and non-
255 discriminatory, in accordance with the terms and conditions of the agreement

256 and the requirements of this section and Section 252.”

257 Although Union attempted to accommodate Qwest’s position that an
258 interconnection point needed to be within Qwest’s certificated territory, such is
259 not required.

260 While network is not defined in the Act, 47 C.F.R. § 51.5 defines network
261 element as “any facility or equipment used in the provision of telecommunications
262 service”. Hence the use of the word “network” by the drafters of the Act was to
263 recognize that the interconnection point can be anywhere on the local exchange
264 carrier’s network. Furthermore, 47 C.F.R. § 51.321 indicates that an incumbent
265 shall provide interconnection at technically feasible points, including “meet
266 points”. The provision states:

267 “47 C.F.R. § 51.321. Methods of obtaining interconnection and access to
268 unbundled elements under Sections 251 of the Act.

- 269 (A) Except as provided in paragraph (e) of this section, an incumbent LEC shall
270 provide, on terms and conditions that are just, reasonable and non-
271 discriminatory in accordance with the requirements of this part, any
272 technically feasible method of obtaining interconnection or access to
273 unbundled network elements at a particular point on the request by a
274 telecommunications carrier.
- 275 (B) Technically feasible methods of obtaining interconnection or access to
276 unbundled network elements include, but are not limited to:
- 277 (1) physical collocation and virtual collocation of the premises of an
 - 278 incumbent LEC; and
 - 279 (2) meet point interconnection arrangements.
- 280 (C) A previously successful method of obtaining interconnection or access to
281 unbundled elements at a particular premises or point on any incumbent LECs
282 network is substantial evidence that such method is technically feasible in the
283 case of substantially similar network premises or points. . . .”

284 In negotiations and in this proceeding, Qwest misrepresents the governing
285 law. Qwest, through its witness, represents that the interconnection point or meet
286 point, must be within Qwest’s local serving territory which apparently it interprets

287 to be its state certificated territory. This is incorrect. An appropriate reading of
288 the governing law indicates that Qwest is to interconnect at any technically
289 feasible point within its network. In other words, if Qwest has facilities that pass
290 through another company's serving territory, Union can expect that it will be able
291 to interconnect with Qwest at a technically feasible point on Qwest's network,
292 though in another company's area.

293 While Union has been willing to recognize Qwest's wireline serving area,
294 such is not the provision contemplated by the law. Union can expect that
295 interconnection will be on any point within Qwest's network. Accordingly, the
296 applicable language of the interconnection agreement shall so provide. Clearly
297 the language should provide as follows:

298 "4.68 "Point of Interface" "Point of Interconnection" or "POI" is a
299 physical demarcation between the networks of two LECs (including a LEC and
300 Union). The POI is that point where the exchange of traffic takes place. This
301 point establishes the technical interface, the test points, and the points for
302 operational division of responsibility. The POI must be established at any
303 technically feasible location selected by Union in Qwest's network."

304 Accordingly, Section 6.1.1, 6.1.2.1 and 6.3.1.4.1 and 6.3.1.4.2 should
305 reflect Union's language allowing for interconnection at any point on Qwest's
306 network.

307 Q. Qwest also argues against having any responsibility for transiting traffic. Do you
308 agree?

309 A. No. What Union is attempting to accomplish with its amendment to Section
310 6.2.4.3.1 is to ensure that the cost causer is responsible for payment of any costs
311 incurred. While Qwest is concerned that its customers not be responsible for

312 payment of the charge created by another carrier, Union has the same concern.
313 Union does not want its customers to be responsible for the payment of
314 termination fees over which they have no control or for which Union has no
315 control. Union is merely asking that the Commission require that Qwest be
316 responsible for traffic for which it benefits.

317 In the case of transiting traffic, Qwest delivers traffic from an originating
318 carrier to Union. Qwest is compensated for carrying the transiting traffic and
319 therefore, encourages that traffic to its benefit. That is acceptable as long as it is
320 not allowed to ignore unidentified traffic. Qwest argues that it should not have to
321 take responsibility for transit traffic and yet this is simply semantics. Qwest
322 should not be in the position of benefiting from illegal traffic and then claim that
323 it has no responsibility. As it is benefiting from the traffic, it needs to have some
324 responsibility over the illicit traffic or it will continue.

325 Qwest chooses the trunking that it utilizes in delivering traffic to Union.
326 Qwest utilizes a common C group. Unfortunately, Qwest utilizes this particular
327 trunking mechanism because it is allowed to deliver traffic without identifying the
328 traffic. This is inappropriate. As Qwest has provided traffic for which it can
329 identify sufficient to bill carriers, this information must be provided to the
330 terminating carrier or Union. While Qwest claims that it doesn't "strip" the
331 identifying information, the representation is counterintuitive. If Qwest can bill a
332 customer for the transiting traffic, it can provide the same information to Union.

333 Union's request is very simple, do not transit the call without the
334 identifying carrier information. Other states have recognized Union's position. In

335 some states, for instance, residual billing requires that Qwest pay for calls that it
336 does not identify. In other states, such as South Dakota and Montana, the state
337 legislatures have required that Qwest provide identifying information.

338 In Section 69-3-815 of the Montana Statutes, the Montana legislature provided:

- 339 “(1) An originating carrier of local telecommunications service shall transmit with
340 the originating carrier’s telecommunications traffic information necessary to
341 enable the terminating carrier to identify, measure, and appropriately charge
342 the originating carrier for the termination of the local telecommunications
343 service.
344 (2) The provider of intralocal access transport area toll services or any other
345 carrier that provides non-local telecommunications services in Montana shall
346 transmit with its telecommunications traffic information necessary to enable
347 the terminating carrier to identify, measure, and appropriately charge for the
348 termination of the telecommunications traffic.
349 (3) A transmitting carrier shall deliver telecommunications traffic to terminating
350 carriers by means of facilities that enable the terminating carrier to receive
351 from the originating carrier any and all information that the originating carrier
352 transmits with its telecommunications traffic that enables the terminating
353 carrier to identify, measure and appropriately charge the originating carrier
354 for the interlocal access transport area carrier or intralocal access transport
355 area toll provider of non-local telecommunications traffic for the termination
356 of its telecommunications traffic. . . .”

357 The intent of the Montana legislature - as well as Union in suggesting its
358 language, is to prevent Qwest from benefiting from a misdeed. Qwest argues in its
359 testimony that Union’s proposal would give originating carriers the financial
360 incentive to omit information; the opposite is true. They already have such a
361 financial incentive. Presently, because Qwest passes their traffic without
362 identifying information, third party carriers find it in their benefit to transit the
363 traffic through Qwest without identifying information. Union’s proposal stops
364 this “gaming” of the system. Union’s proposal requires Qwest to provide Union
365 notice of the carriers and to block the traffic of carriers which refuse to comply.

366 This is the only possible result that is workable and one that has been adopted by
367 other states.

368 Q. Should Qwest be required to provide this information without cost?

369 A. Yes, when Qwest receives identifying information from third party carriers, it can
370 provide this information to Union without additional cost to the company. Indeed,
371 Qwest's present capacity to transmit sonet information is contained within the
372 telecommunications stream. It does not cost Qwest anything to transmit this
373 information and it should be required to do so. Alternatively, if Qwest strips the
374 information and does not provide it to Union, it should provide Union the
375 Category 11 records without cost. This is only fair.

376 Q. Qwest objects to Union's request for the billing of non-local or interMTA traffic.
377 Is Union's request appropriate?

378 A. Yes. Union is simply attempting to make the agreement reciprocal. Qwest, in its
379 language, is demanding, as allowed by the FCC, to bill for non-local or interMTA
380 traffic at its switched access tariffed rates. Union is simply requesting the same.

381 Q. Does that conclude your testimony?

382 A. Yes.

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of October, 2005, I caused to me emailed and/or mailed postage prepaid, true and correct copies of the foregoing Rebuttal Testimony of James H. Woody in Docket No. 04-049-145 to the following:

Michael Ginsberg
Assistant Attorney General
Utah Division of Public Utilities
Heber M. Wells Bldg., Fifth Floor
160 East 300 South
Salt Lake City, UT 84111
mginsberg@utah.gov

Robert Brown
Jeff Nodland
Corporate Counsel
Qwest Service Corporation
1801 California Street, Suite 1000
Denver, CO 80202
Robert.Brown@Qwest.com
Jeff.Nodland@Qwest.com
