

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Request of All West                     )  
Communications, Inc., for Revision to                     )  
Exchange Boundaries   )  
   )  
   )  
   )  
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DOCKET NO. 02-2270-01

REPORT AND ORDER APPROVING  
STIPULATION

SYNOPSIS

The Commission approves the Settlement Stipulation of All West Communications, Inc. (“All West”), Qwest Corporation (“Qwest”), and the Utah Division of Public Utilities approving the adjustment of the service territory boundary between Qwest and All West in the Promontory Development.

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ISSUED: November 29 2006

By The Commission:

PROCEDURAL HISTORY

On February 1, 2002, All West Communications, Inc. (“All West”) filed a Request for Agency Action (“Request”) seeking Commission order realigning the exchange boundaries of the Jordanelle and Park City exchanges to place the Promontory Development (“Promontory”) entirely within the Jordanelle exchange and within the service territory of All West. The western part of Promontory lies within the Park City exchange and within the service territory of Qwest Corporation (“Qwest”).

On March 6, 2002, Qwest filed a Petition to Intervene and Response to Request of All West stating the Request should be denied because it ignores the policy favoring competition in the local exchange market, fails to demonstrate any compelling need to grant the Request, ignores the interests of the many competitive local exchange carriers (“CLEC”) certificated to provide local exchange service in Qwest’s service territory, makes unwarranted assumptions and

incorrect allegations, ignores the potential impact on the Universal Service Fund (“USF”), and ignores the fact that the problems it alleges will not be solved by the patchwork solution it proposes. Qwest’s Petition to Intervene was granted on March 11, 2002.

On April 8, 2002, the Division of Public Utilities (“Division”) notified the Commission that All West desired the Commission place this matter “on hold” pending continuing discussions with Qwest.

On November 22, 2004, All West filed a Notice of Resumption of Proceeding, Petition for Scheduling Conference, and Supplement to Request for Agency Action stating negotiations with Qwest had been fruitless and requesting the Commission set a Scheduling Conference to establish a schedule for the docket.

Pursuant to agreement of the parties, on December 23, 2004, Qwest filed its Response to Request and Supplement of All West for Revision to Exchange Boundaries and Request for Hearing by Commission in which Qwest continued to object to All West’s Request. All West filed its Reply to Qwest’s Response on January 3, 2005, and filed an Amended Reply on January 5, 2005.

By agreement of the parties, formal Commission action was again placed on hold pending further discussions. However, on April 18, 2006, All West filed a Petition for Scheduling Conference once again requesting a conference to schedule formal proceedings based upon the parties’ inability to reach a settlement in this matter.

Pursuant to an agreed schedule, the parties thereafter pre-filed direct, rebuttal, and surrebuttal testimony in preparation for a November 8, 2006, hearing. On October 4, 2006, in

response to a Qwest Motion for Protective Order filed September 13, 2006, the Commission issued a Protective Order to govern the dissemination and treatment of confidential material in this docket.

Hearing convened as noticed on November 8, 2006 before the Commission's Administrative Law Judge. At the hearing, All West was represented by Stephen F. Mecham of Callister Nebeker & McCullough. D. Vernile Prince, All West President and CEO, testified on behalf of All West. Gregory B. Monson of Stoel Rives LLP represented Qwest and presented the testimony of James B. Farr, Staff Advocate in the Public Policy organization of Qwest Services Corporation. The Division was represented by Michael Ginsberg, Assistant Attorney General. Paul M. Anderson, Utility Analyst, and E. Clair Oman, Utility Analyst, testified on behalf of the Division. At hearing, the parties presented for Commission approval a Settlement Stipulation ("Stipulation") agreed to and signed by All West, Qwest, and the Division.

Following hearing, in accordance with the terms of the Stipulation, All West drafted and provided to the parties a description of the proposed service territory boundary between Qwest and All West. On November 20, 2006, the Division filed said description, with minor changes approved by Qwest and All West, recommending the Commission approve the same.

#### BACKGROUND

On August 15, 2001, All West and its wholly-owned subsidiary All West/Utah, Inc. ("All West/Utah") entered into an agreement ("Agreement") with Pivotal Promontory

Development, L.L.C. (“Developer”) to provide telecommunications services to a development known as the Promontory Ranch Club (“Promontory”) located in Summit County, Utah.

The eastern portion of Promontory (“East Promontory”) is located in the Jordanelle Exchange in which All West is the incumbent local exchange carrier (“ILEC”) certified by the Commission to provide telecommunications service. The western portion of Promontory (“West Promontory”) is located in the Park City Exchange in which Qwest is the ILEC certified to provide telecommunications service.

All West/Utah is a competitive local exchange carrier (“CLEC”) certified by the Commission to provide telecommunications service in exchanges served by Qwest in the state of Utah.

Pursuant to the Agreement, All West and All West/Utah have placed facilities in Promontory and have provided telecommunications service to customers that have requested service in Promontory.

The Developer elected not to comply with the terms and conditions of Qwest’s LDA Tariff and Price List for Qwest to place facilities in Promontory to provide telecommunications service to potential customers in the development, so Qwest has not placed facilities in Promontory.

By its Request, All West sought to have all of West Promontory which currently lies within Qwest’s service territory transferred to All West’s service territory.

On October 23, 2006, the Division filed rebuttal testimony recommending a minor boundary adjustment within Promontory in order to provide a clearly defined boundary

between the All West and Qwest service territories. According to this recommendation, a revised boundary would be established along the natural barrier of the golf course that runs north and south through Promontory near the existing boundary. According to the Division, establishment of this new boundary would help eliminate the costly and confusing process of determining what side of the exchange boundary a particular lot is located, and thereby ease All West's burden of determining whether a particular lot must be served by All West or by All West/Utah. This new boundary would require the transfer of 73 lots from the current Qwest service territory to an expanded All West service territory.

In response to this recommendation, the parties engaged in negotiations resulting in the Stipulation now before the Commission for approval.

THE STIPULATION

The Stipulation essentially adopts the recommendation put forth by the Division in its pre-filed testimony. The Stipulation contains the following principal terms and conditions. This description of the Stipulation is made for convenience of reference only and is not intended to modify the terms and conditions of the Stipulation appended to this Order.

The Parties agree that the boundary between the Jordanelle and Park City Exchanges may be adjusted as proposed in the Rebuttal Testimony of Paul M. Anderson for the Division dated October 20, 2006. All West shall prepare a legal description of the proposed new boundary line and shall circulate the legal description to Qwest and the Division for their review and approval. Upon approval by Qwest and the Division, All West shall submit the proposed

new boundary line to the Commission, and the Parties request that the Commission enter an order approving the new boundary line.

All West may seek a study area waiver from the Federal Communications Commission changing its study area to include the new territory included in the Jordanelle Exchange. The Parties will not oppose the change in study area and request that the Commission support the change.

All West agrees that its wholly-owned subsidiary All West/Utah will provide telecommunications service to the portion of Promontory remaining in the Park City Exchange in accordance with the terms of the Agreement without seeking state or federal high cost support to provide telecommunications service to the area. If Qwest or another provider, other than All West or a provider affiliated with All West, receives state or federal high cost support to provide telecommunications service to the portion of Promontory remaining in the Park City Exchange, All West/Utah may seek high cost support, state or federal, on the same terms and conditions to provide telecommunications service to the portion of Promontory remaining in the Park City Exchange.

All West agrees that it will not seek a further boundary change between the Jordanelle and Park City Exchanges unless Qwest has agreed in advance to the change:

- a. for Promontory, or
- b. for any other development for a period of three years. All West and Qwest agree that during that period and thereafter they will attempt in good faith to agree to any

boundary changes when they arise that will make the boundary clear to customers and the service providers.

All West and Qwest shall attempt in good faith to develop a mutually acceptable proposal for extended area service between the Jordanelle and Park City Exchanges within 90 days of the date this Stipulation is approved by the Commission.

DESCRIPTION OF PROPOSED SERVICE TERRITORY BOUNDARY

The proposed service territory boundary between Qwest and All West in Promontory is described as follows:

Beginning at the Northwest corner of Section 1, T. 1 S., R. 4 E.; thence south to the intersection of Promontory Ranch Road; thence easterly along said road to the intersection of the 20' sewer easement that separates Promontory Ridge Phase 1 Subdivision from Wapati Canyon Phase 1 Subdivision; thence southwesterly along the west boundary of the Pete Dye Canyon Golf Course as it meanders through sections 1, 2, 11 and 14 to the point where it intersects the Ranch Club Trail road; thence south along said road to the intersection of Promontory Ranch Road, thence west along said road to the west boundary of the proposed executive golf course; thence south along said boundary to the east-west quarter section line of Section 23, T. 1 S., R. 4 E.; thence east to the Northwest corner of the Southwest quarter of section 24, T. 1 S., R. 4 E.; thence south to the South West corner of Section 36, T. 1 S., R. 4 E., SLB&M; thence East to the South East corner of Section 31, T.1 S., R. 5 E., SLB&M; thence South to the South West corner of the North West quarter of Section 32, T. 2 S., R. 5 E., SLB&M; thence East to the South East corner of the North East quarter of Section 33, T. 2 S., R. 5 E., SLB&M; thence South to the South West corner of Section 22, T. 3 S., R. 5 E., SLB&M; thence East to the South East corner of Section 24, T. 3 S., R. 5 E., SLB&M; thence North to the North East corner of Section 25, T. 2 S., R. 5E., SLB&M; thence West to the South East corner of Section 22, T. 2 S., R. 5 E., SLB&M; thence North to the North East corner of Section 34, T. 1 S., R. 5 E., SLB&M; thence West to the South East corner of Section 29, T. 1 S., R. 5 E., SLB&M; thence North to the North East corner of Section 17, T. 1

S., 4. 5 E., SLB&M; thence West to the South West corner of Section 7, T. 1 S., R. 5 E., SLB & M; thence North to the North West corner of the South West Quarter of Section 6, T. 1 S., R. 5 E., SLB & M; thence West to the South West corner of the North West Quarter of Section 1, T. 1 S., R. 4 E., SLB & M; point thence north to the north west corner of then north east quarter of section 1, T. 1 S., R. 4 E., SLB & M; thence west to the point of beginning.

In addition to approval of this revised boundary line, the Division recommends the Commission require Qwest to submit a new Park City exchange boundary map reflecting the revised boundary.

#### DISCUSSION

At hearing, the parties testified the terms and conditions of the Stipulation are in the public interest and represent a reasonable settlement of the matters currently before the Commission. By limiting the number of lots to be transferred from Qwest to All West service territory—all of which are already served exclusively by All West/Utah and only about half of which are currently inhabited—the settlement lessens the customer impact that could have occurred had the entire West Promontory area transferred to All West. Any customer impact is also lessened by the fact that many of the residences at Promontory are second home or vacation properties. The parties also note transfer of these lots will have minimal impact on the state USF. The parties point out that revising the service boundary along the natural barrier of the golf course will benefit numerous residents whose lots are bisected by the current boundary line and will remove an operational burden from All West since it will no longer have to determine on which side of the boundary line a particular lot is situated. The public interest is also served by the parties' agreement to develop a proposal for extended area service between the Jordanelle



and Park City Exchanges within 90 days of Commission approval of the Stipulation. Finally, the parties point out that the Stipulation prohibits All West from seeking a further boundary change in the Promontory area or in any other area of development for the next three years.

FINDINGS AND CONCLUSIONS

Settlement of matters before the Commission is encouraged at any stage of proceedings.<sup>1</sup> The Commission may approve a stipulation or settlement after considering the interests of the public and other affected persons if it finds the stipulation or settlement in the public interest.<sup>2</sup> Parties to a proceeding not joining in a stipulation or settlement shall be entitled to oppose the stipulation.<sup>3</sup> No party has done so in this case.

Accordingly, we must determine whether the Stipulation in this case is in the public interest. In making this determination, we refer to the definition of public interest factors in section 54-4a-6. These factors include promotion of safe and reliable service at just, reasonable and adequate rates. In reviewing a stipulation, the Commission may also consider whether it was the result of good-faith, arms-length negotiations.<sup>4</sup>

We have carefully reviewed the record in this matter, all issues raised by the parties and the arguments and evidence provided by the parties with respect to those issues. Based upon this review, we find and conclude the parties' agreement to revise the boundary line

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<sup>1</sup> Utah Code Ann. § 54-7-1. *See also Utah Dept. of Admin. Services v. Public Service Comm'n*, 658 P.2d 601, 613-14 (Utah 1983).

<sup>2</sup> *Id.*

<sup>3</sup> Utah Code Ann. § 54-7-1(3)(e)(ii).

<sup>4</sup> *Utah Dept. of Admin. Services*, 658 P.2d at 614, n.24.

between Qwest and All West in the Promontory area is in the public interest. The terms of the Stipulation represent a just and reasonable resolution of the current dispute such that approval of the Stipulation is in the public interest. We therefore approve the Stipulation as a just and reasonable settlement between the parties to this docket. However, as we have indicated in previous cases, said approval is not intended to alter any existing Commission policy or to establish any precedent by the Commission.

Pursuant to our approval of the Stipulation and the agreed revision of the service territory boundary line between Qwest and All West, we determine to modify the certificated service territories of Qwest and All West in accordance with the boundary line description provided above.

Wherefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters the following proposed:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Settlement Stipulation is approved.
2. The service territory boundary line between Qwest Corporation and All West Communications, Inc., in the West Promontory area of the Promontory Ranch Club located in Summit County, Utah, is adjusted and fixed as described *supra*.
3. The Certificates of Public Convenience and Necessity of Qwest Corporation and All West Communications, Inc., granted by the Commission are amended to reflect the service territory boundary line adjustment approved herein.

4. Qwest shall file for review with the Division a revised Park City exchange boundary map reflecting the service territory boundary line adjustment approved herein.

5. Pursuant to *Utah Code Ann.* §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of *Utah Code Ann.* §§ 63-46b-14 and 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 29<sup>th</sup> day of November, 2006.

/s/ Steven F. Goodwill  
Administrative Law Judge

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Approved and Confirmed this 29<sup>th</sup> day of November, 2006, as the Report and  
Order of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary  
G#51523

**APPENDIX: STIPULATION**

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In Regard to the Request of ALL WEST COMMUNICATIONS, INC. for Revision to Exchange Boundaries	Docket No. 02-2270-01 <b>SETTLEMENT STIPULATION</b>
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All West Communications, Inc. (“All West”), Qwest Corporation (“Qwest”) and the Utah Division of Public Utilities (“Division”) (collectively “Parties”), pursuant to Utah Code Ann. § 54-7-1, stipulate as follows:

**INTRODUCTION**

1. On August 15, 2001, All West and its wholly-owned subsidiary All West/Utah, Inc. (“All West/Utah”) entered into an agreement (“Agreement”) with Pivotal Promontory Development, L.L.C. (“Developer”) to provide telecommunications services to a development known as the Promontory Ranch Club (“Promontory”) located in Summit County, Utah.

2. The eastern portion of Promontory (“East Promontory”) is located in the Jordanelle Exchange in which All West is the incumbent local exchange carrier (“ILEC”) certified by the Public Service Commission of Utah (“Commission”) to provide telecommunications service. The western portion of Promontory (“West Promontory”) is located in the Park City Exchange in which Qwest is the ILEC certified to provide telecommunications service.

3. All West/Utah is a competitive local exchange carrier (“CLEC”) certified by the Commission to provide telecommunications service in exchanges served by Qwest in the state of Utah.

4. Pursuant to the Agreement, All West and All West/Utah have placed facilities in Promontory and have provided telecommunications service to customers that have requested service in Promontory.

5. The Developer elected not to comply with the terms and conditions of Qwest’s LDA Tariff and Price List for Qwest to place facilities in Promontory to provide telecommunications service to potential customers in the development, so Qwest has not placed facilities in Promontory.

6. On February 1, 2002, All West filed a request for agency action, requesting that the Commission revise the exchange boundaries of its Jordanelle Exchange to include West Promontory. Qwest petitioned the Commission for intervention and opposed the request.

7. The Parties engaged in periodic discussions in an effort to settle their dispute, but were previously unsuccessful.

8. The Commission entered a scheduling order on July 11, 2006, scheduling the filing of written testimony and a hearing in this matter and providing for discovery.

9. Pursuant to the scheduling order, the Parties have filed testimony and conducted discovery.

10. Having now fully developed their positions, the Parties have determined that it is in the public interest to resolve this matter in the following manner:

**TERMS AND CONDITIONS**

11. The Parties agree that the written testimony, including exhibits, previously filed in this docket may be admitted into the record as the sworn testimony of the respective witnesses. The Parties agree to waive cross examination of the testimony.

12. The Parties agree that the boundary between the Jordanelle and Park City Exchanges may be adjusted as proposed in the Rebuttal Testimony of Paul M. Anderson for the Division dated October 20, 2006. All West shall prepare a legal description of the proposed new boundary line and shall circulate the legal description to Qwest and the Division for their review and approval. Upon approval by Qwest and the Division, All West shall submit the proposed new boundary line to the Commission, and the Parties request that the Commission enter an order approving the new boundary line.

13. All West may seek a study area waiver from the Federal Communications Commission changing its study area to include the new territory included in the Jordanelle Exchange. The Parties will not oppose the change in study area and request that the Commission support the change.

14. All West agrees that its wholly-owned subsidiary All West/Utah will provide telecommunications service to the portion of Promontory remaining in the Park City Exchange in accordance with the terms of the Agreement without seeking state or federal high cost support to provide telecommunications service to the area. If Qwest or another provider, other than All West or a provider affiliated with All West, receives state or federal high cost support to provide telecommunications service to the portion of Promontory remaining in the Park City Exchange,

All West/Utah may seek high cost support, state or federal, on the same terms and conditions to provide telecommunications service to the portion of Promontory remaining in the Park City Exchange.

15. All West agrees that it will not seek a further boundary change between the Jordanelle and Park City Exchanges unless Qwest has agreed in advance to the change:

a. for Promontory, or

b. for any other development for a period of three years. All West and Qwest agree that during that period and thereafter they will attempt in good faith to agree to any boundary changes when they arise that will make the boundary clear to customers and the service providers.

16. All West and Qwest shall attempt in good faith to develop a mutually acceptable proposal for extended area service between the Jordanelle and Park City Exchanges within 90 days of the date this Stipulation is approved by the Commission.

17. The Parties stipulate and agree that the settlement of this matter on the foregoing terms and conditions is just and reasonable in result and in the public interest and that the evidence contained in the record supports a finding that the settlement is just and reasonable in result and in the public interest.

#### **MISCELLANEOUS TERMS AND CONDITIONS**

18. All negotiations related to this Stipulation are privileged and confidential and no Party shall be bound by any position asserted in negotiations. Neither the execution of this Stipulation nor the order adopting this Stipulation shall be deemed to constitute an admission or



acknowledgment by any party of any liability, the validity or invalidity of any claim or defense, the validity or invalidity of any principle or practice, or the basis of an estoppel or waiver by any Party other than with respect to issues resolved by this Stipulation; nor shall they be introduced or used as evidence for any other purpose in a future proceeding by any Party to this Stipulation except a proceeding to enforce the approval or terms of this Stipulation.

19. If requested by the Commission or demanded by any person properly allowed by the Commission to do so, the Parties each agree to present testimony of one or more witnesses to explain and support this Stipulation and argument from counsel in support of this Stipulation. The witnesses of the Parties will be available for cross examination, and counsel for the Parties will appear at any hearing on approval of this Stipulation. No Party to this Stipulation may present testimony or argument in opposition to this Stipulation.

20. The Parties agree that if any person challenges the approval of this Stipulation, requests rehearing or reconsideration of any order of the Commission approving this Stipulation or seeks review in any court of any order of the Commission approving this Stipulation, each Party will use its best efforts to support the terms and conditions of the Stipulation in any such proceeding.

21. Except with regard to the obligations of the Parties under paragraphs 19, 20 and 21 of this Stipulation, this Stipulation shall not be final and binding on the Parties until it has been approved without material condition by the Commission in an order that is no longer subject to any further reconsideration or appellate review. In the event the Commission rejects any part or all of this Stipulation, or imposes any additional material condition on approval of

this Stipulation, or in the event the Commission's approval of this Stipulation is rejected or conditioned in whole or in part by a court, each Party reserves the right to withdraw from this Stipulation. If such an order is issued, the Parties agree to meet and discuss the applicable Commission or court order within five business days of its issuance and to attempt in good faith to reach a modified stipulation. No Party shall provide notice of withdrawal prior to complying with the foregoing sentence. In the event that no modified stipulation is reached, any Party may withdraw from this Stipulation by giving written notice of withdrawal to the Commission and the other Parties to this Stipulation. Any such notice shall be given within ten days after reaching impasse in any discussions regarding modifying the Stipulation. If any Party withdraws from this Stipulation pursuant to this paragraph, no Party shall be bound or prejudiced by any facts stipulated in or the terms and conditions of this Stipulation, and each Party shall be entitled to undertake any step or to assert any position it deems appropriate without regard to this Stipulation.

BASED ON THE FOREGOING, the Parties request that the Commission issue an order adopting and approving this Stipulation.

RESPECTFULLY SUBMITTED: November 8, 2006.

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