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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In Regard to the Request of ALL WEST COMMUNICATIONS, INC. for Revision to Exchange Boundaries	DOCKET NO. 02-2270-01 Direct Testimony of D. Vernile Prince for All West Communications, Inc.
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July 31, 2006

1 **Q. Please state your name, employer, your place of employment, and your**
2 **position.**

3 A. My Name is D. Vernile Prince; I am employed by All West
4 Communications at 50 West 100 North in Kamas Utah, as President and Chief
5 Executive Officer.

6 **Q. Please describe your educational background and experience that qualify**
7 **you to testify in this matter.**

8 A. I received a BS degree from Brigham Young University in Electronics
9 Engineering Technology and have been working in the telecommunications
10 industry for the past 35 years. I have worked extensively in many areas including
11 outside plant, switching, transmission, construction, regulation, legal, legislative,
12 and all areas of management.

13 **Q. Have you held positions of leadership in the industry?**

14 A. I have served as president of the Utah Rural Exchange Carriers three
15 times, President and board member of the Rocky Mountain Telecommunications
16 Association, and I am currently serving as a board member of our national trade
17 association, US Telecom.

18 **Q. Have you ever testified before this commission?**

19 A. Yes, I have testified before this commission on several occasions,
20 primarily in rate cases.

21 **Q. Please identify the companies affected in this case to avoid confusion in name**
22 **identification.**

23 A. All West Communications (All West) is the petitioner in this case and the
24 incumbent local exchange carrier (ILEC) in the Kamas area. All West is a
25 consolidation of several smaller companies that served rural Utah and Wyoming
26 and were purchased over a period of time from 1971-1979. These include
27 Cokeville Telephone Company, Utah-Wyoming Telephone Company and Kamas
28 Woodland-Telephone Company. All West / Utah is a CLEC subsidiary of All
29 West Communications.

30 Qwest is the incumbent local exchange carrier in the Park City area.
31 Qwest was formerly US West, formerly Mountain Bell, formerly Mountain States
32 Telephone and Telegraph Company which was a part of the American Telephone
33 and Telegraph Company.

34 **Q. Would you please describe the situation that led you to file this proceeding?**

35 A. Approximately five years ago All West was approached regarding a new
36 development named The Promontory Ranch Club (Promontory) that had recently
37 been approved in Summit County. The proposed development was to include
38 approximately 1600 homes along with various owner amenities and possibly a
39 hotel.

40 Geographically, the project was to be located between Silver Creek
41 Junction and the Brown's Canyon Road approximately one mile east of State
42 Highway 40. Serving the area became problematic when it was discovered that
43 approximately 30% (West Promontory) was in US West's (now Qwest) serving
44 area and 70% (East Promontory) was in All West's serving area.

45 The developer specifically requested that the area be served using fiber-to-
46 the-home (FTTH) infrastructure, that the preferred provider would be required to
47 serve the entire development with voice, video and internet services, and that
48 there would have to be local calling to the Park City area.

49 This created several problems: (1) Under current corporate structure,
50 neither Qwest nor All West could serve the entire development; (2) It was a long
51 distance call from All West's Kamas exchange to Qwest's Park City exchange;
52 and, (3) Qwest did not deploy FTTH, nor did they supply video.

53 All West was selected as the preferred provider, and agreed to meet the
54 needs of the developer. In the process of providing what the developer wanted,
55 problems were encountered: (1) Under existing regulations next door neighbors
56 would have different calling areas, and (2) It would require a gargantuan effort to
57 maintain separation of facilities and records for customers along the territory
58 boundary. We believe that the easiest way to solve these inherent problems is to
59 simply modify the service territory boundary.

60 **Q. How and why did the developer of Promontory select All West as its**
61 **preferred provider?**

62 A. All West made a presentation of its qualifications and ability to serve,
63 along with suggested solutions to the various problems and was chosen based on
64 an analysis done by the development team. I believe All West was the only
65 provider considered that could meet the needs of the developer.

66 **Q. Could anyone else have been selected?**

67 A. Technically, All West was the only applicant legally qualified to serve
68 East Promontory because it is in All West's service territory. Any other provider
69 would have had to receive a CLEC certificate from the Public Service
70 Commission to serve an exchange with fewer than 5,000 access lines owned by a
71 provider with fewer than 30,000 access lines. To date, no applicant has shown
72 that that is in the public interest. Qwest or any CLEC could serve West
73 Promontory if they chose to do so because it is in Qwest's service territory, but it
74 was the developer's desire that the preferred provider serve the entire
75 development.

76 **Q. What do you mean by 'preferred provider'? Does All West have any**
77 **exclusivity or 'sweetheart' deals with the developer?**

78 A. The preferred provider was allowed to place conduit in trenches as they
79 were opened by the developer's contractors. By virtue of being able and willing
80 to place facilities as trenches were open, All West definitely has an advantage;
81 however, there are public utility easements recorded that could be used by any
82 other provider. All West has no special deals with the developer, and bills all
83 customers individually according to existing tariffs and price schedules.

84 **Q. What about the Qwest territory? Doesn't Qwest have the obligation to serve**
85 **that area?**

86 A. Qwest has the obligation to serve anywhere in its service territory, as the
87 carrier of last resort, if the customer is willing to pay applicable charges in the
88 currently approved tariff and there are facilities available. However, that
89 obligation applies only to basic service.

90 **Q. Why doesn't the present arrangement work? Can't All West / Utah (the**
91 **CLEC) serve the affected areas adequately?**

92 A. All West has worked very hard to make the existing boundary invisible to
93 customers, but in reality it is impossible for our CLEC to charge the same rates as
94 our ILEC. We do try to make sure that all customers get the same treatment when
95 it comes to installation, repairs and general quality of service, but there is very
96 little we can do on price and still recover our costs.

97 **Q. Would you characterize the Promontory Development as seasonal?**

98 A. No. Unlike other areas in All West's service territory that become
99 inaccessible by normal means during severe winters, Promontory is a year round
100 development and to date not a single customer has requested seasonal service.

101 **Q. It seems that the 'service territory' issue is of some consequence in this case.**
102 **Please explain that concept.**

103 A. Early in the history of telephone service there was basically only one
104 provider, and that was the American Telephone and Telegraph Company.
105 Because they couldn't provide service to an entire nation in a timely manner,
106 other companies sprang up and began providing similar services. It was
107 discovered that because of infrastructure requirements it was generally
108 uneconomic and technically infeasible to have more than one provider serving a
109 community or geographic area. Authority was given to state Public Service
110 Commissions to assign a particular area to a specific provider, thus service
111 territories were created.

112 **Q. How was a service territory defined?**

113 A. I believe service territories were originally defined primarily by
114 population centers such as cities or communities. If a particular provider was
115 serving a particular population center, they were ‘certificated’ for that area,
116 usually along with the surrounding rural territory. Geographically these lines
117 sometimes followed county boundaries, ridgelines, section lines or rivers. In
118 many cases it appears that lines were drawn arbitrarily between communities
119 using township, section or even quarter-section lines simply because no obvious
120 dividing point existed.

121 **Q. So is the entire state defined by service territories?**

122 A. No, even today there are areas in the state that are considered ‘open
123 territory’. These areas generally have very little or no population.

124 **Q. Have service territories or boundary lines changed over time?**

125 A. Yes. Service territories change quite frequently. This happens when one
126 serving company sells an exchange or portion thereof to another company, or
127 perhaps due to build-out situations a particular area may become hard for a
128 company to serve so territory is transferred by mutual agreement. Boundaries
129 change when open territory becomes populated and customers request service. Of
130 course, all such transfers must be approved by the Public Service Commission.

131 **Q. Has All West ever been involved in a service territory boundary change?**

132 A. All West, or its predecessors, has been involved in several such changes.
133 Kamas-Woodland Telephone Company gave territory along the Mirror Lake
134 highway to Union Telephone 40 or so years ago when it was determined it would
135 be easier for Union to serve the Christmas Meadows area. All West was awarded

136 'open territory' east of Heber City known as Timberlakes about 12 years ago
137 because customers there were crying for service and no one else wanted to serve
138 them. Qwest (Wyoming) gave territory to All West in the Anchutz oil field
139 southwest of Evanston a few years ago because All West had facilities nearby and
140 Qwest had none. About five years ago Qwest gave All West territory around
141 Rockport Reservoir when Qwest couldn't meet customer demands and All West
142 had facilities nearby. The largest territory change came when All West purchased
143 the Coalville Exchange from Qwest a few years ago.

144 **Q. As deregulation advances in the telecommunications industry, will the**
145 **concept of service territories change?**

146 A. One must assume that in a completely deregulated industry there will be
147 no such thing as limitations on where a provider can serve, and thus no territory
148 boundaries. At this point it is simply conjecture as to when or if the industry will
149 become fully deregulated.

150 **Q. Does Qwest object to your boundary change proposal?**

151 A. Yes. I'm sure Qwest will more fully define their objections in their
152 testimony, but as I understand it, they object primarily due to a perception that
153 this action will somehow set an unwanted precedent that could cause them harm
154 in other areas and other situations. If this Commission orders this change,
155 precedent may be set, but only to the extent that it is done by order, and not
156 voluntarily. If Qwest willingly agreed to the change, it would be doing nothing it
157 hasn't done many times in many different places, the most recent being territory it
158 gave to South Central Utah Telephone in Iron County within the last year.

159 **Q. What precedent will be set if this proposal is approved?**

160 A. I believe the precedent that will be set, or perhaps affirmed, is that the PSC
161 has the right as well as the obligation to re-draw exchange boundaries as it deems
162 in the public interest. It will demonstrate and confirm that customer needs are
163 more important than an imaginary line drawn on a map.

164 **Q. What standard should the PSC use in judging such requests?**

165 A. It is my belief that the public interest should be the primary standard.
166 What makes the most sense and is best for the customer should be the determining
167 factor. If the companies involved agree on a boundary change it is a fairly simple
168 matter to file a joint petition and get PSC approval. If the companies do not
169 agree, then as a last resort the PSC must be asked to make the determination.

170 **Q. Has the PSC faced this kind of situation before?**

171 A. Yes. In a supplement to our Request for Agency Action, All West cited
172 the Empire Electric Association case decided in 1979 in which the Commission
173 and the Utah Supreme Court addressed issues that are very close to the issues
174 presented in our Request for Agency Action.

175 **Q. How are the facts similar?**

176 A. Atlas Mineral owned Dunn Mine in Empire Electric's service territory, but
177 Empire Electric's closest facilities were over six miles from the mine and Atlas
178 did not want to pay the costs to extend Empire's facilities to the mine. Utah
179 Power had facilities within one mile of the mine portal so it was much more
180 efficient for Atlas to take service from Utah Power.

181 **Q. What did the Commission decide?**

182 A. Basically that the public interest required that Utah Power be allowed to
183 serve Atlas's Dunn Mine even though it was in Empire Electric's service territory.
184 Strictly adhering to the service territory boundaries in that situation made no sense
185 because it hurt the customer. The Court agreed with the Commission.

186 **Q. Did the Commission actually change Empire Electric's service territory?**

187 A. Not as far as I can tell from the case, but the effect was the same because
188 Atlas took service from Utah Power as if it were a Utah Power customer in Utah
189 Power's territory.

190 **Q. How does the Empire Electric case apply to the facts in this proceeding?**

191 A. All West's and Qwest's service territories were established a long time
192 before there was any development in the area that is the subject of this
193 proceeding. The Promontory development is now split between the two
194 providers' territories. All West has facilities in Promontory and is already serving
195 customers in its territory. All West / Utah is serving customers in West
196 Promontory, but it is costing customers more for service in West Promontory than
197 it is for All West's customers in East Promontory. That hurts customers and is
198 not in the public interest.

199 **Q. Does Qwest have facilities in the Promontory development?**

200 A. No. Qwest would have to extend its network just under a mile to reach
201 Promontory and just over an additional mile to reach the closest home in the
202 development.

203 **Q. Who would pay the costs to extend Qwest's facilities?**

204 A. I assume the customers on Qwest's side of the boundary line would pay to
205 extend Qwest's facilities.

206 **Q. Would there be any similar costs for those customers if the Commission**
207 **grants All West's Request for Agency Action?**

208 A. No. As I said, All West and All West / Utah already have facilities on
209 both sides of the Promontory development and avoiding those costs is another
210 reason why I believe granting our Request for Agency Action is in the public
211 interest. An additional reason is that all the customers in both West and East
212 Promontory would be assured access to the same services at the same prices.

213 **Q. Do you know if Qwest is willing to serve customers in West Promontory?**

214 A. Qwest has said that it is willing to serve customers in West Promontory,
215 but it hasn't attempted to provide service there so far. The Empire Electric case is
216 helpful on this point as well because it is not necessary for the Commission to
217 find that the certificate holder is not performing its obligations in order to award
218 another applicant the right to serve an area.

219 **Q. Haven't there been too many changes in the telecommunications industry for**
220 **the Empire Electric case to be relevant any more?**

221 A. There have been a lot of changes in the industry, but the case is as relevant
222 today on the question of service territory boundaries as it was when the
223 Commission and the Court decided the case. Incumbent Local Exchange Carriers
224 still have service territories established by the Commission. If the Commission
225 were setting the boundaries between Qwest and All West in Promontory today it
226 would not draw a line that divided a neighborhood and imposed different costs

227 and prices on customers that depended on which side of the line they lived. The
228 facts of this case and the public interest call for the Commission to re-draw the
229 boundary.

230 **Q. Are there other situations that have come before the Commission that might**
231 **be instructive?**

232 A. There are two different situations that could warrant PSC action. One,
233 which has historically been quite common, is when the dispute arises over a
234 boundary between two areas that are served by the same utility. The second,
235 which is less common, is when the two areas are served by different utilities.

236 In the first case, a group of citizens, businesses or political entities may
237 seek the change. In the telecom regulatory environment this has traditionally
238 been handled as an EAS issue. In today's environment where Qwest is essentially
239 deregulated for this type of service, it has been presumed by politicians that
240 competitive forces in the market will solve the problem and the PSC claims no
241 jurisdiction.

242 In the second situation, where two separate utilities serve, the public
243 interest standard should still apply. In this case, a neighborhood is divided
244 between two ILECs' service territories. Since competitive forces are not going to
245 change territory boundaries to provide customers with what they need in the near
246 future, the PSC has the obligation to determine what is best for the customer and
247 order accordingly.

248 **Q. What about competition from other CLECs? Even though it is not probable,**
249 **will it still be allowed if this proposal is approved?**

250 A. West Promontory is now open to competition and technically with a
251 boundary change it would only be open to competition by order from the PSC.
252 All West is willing to waive the size requirements for CLEC entry into West
253 Promontory. It would remain a competitive area under All West's proposal.

254 **Q. Besides a boundary change, were other solutions considered? Please explain.**

255 A. All West has worked diligently for the past several years to find workable
256 solutions. I will discuss several here.

257 (1) EAS. Extended Area Service between the ILEC side of the exchange
258 and the Qwest Park City exchange would solve the calling area half of the
259 problem. We have, however worked with Qwest to see if an EAS arrangement
260 could be worked out to no avail.

261 (2) FX. At Qwest's suggestion we have been offering our customers on
262 the ILEC side of Promontory a Foreign Exchange line into the CLEC exchange.
263 This solves the calling area problem by giving ILEC customers free calling into
264 the Qwest Park City exchange. Free calling does come with a price tag of \$10.00
265 per month for the FX and this is one of the price differences I discussed above.

266 (3) Qwest Negotiations. We have negotiated with Qwest representatives
267 off and on for the past four years and have not been able to come to a satisfactory
268 agreement.

269 (4) Purchase Territory. We offered to purchase the territory from Qwest
270 but that offer was rejected I think primarily because they had no assets or
271 customers in the area to sell.

272 (5) Joint Providers. The idea of allowing both Qwest and All West to be
273 ILECs in the same area was discussed, but didn't go far. I think this was
274 primarily due to the fact that this solution may also create a bad precedent and it
275 has never been done in Utah. Also it leaves a question of who is going to be the
276 carrier of last resort.

277 **Q. How will customers and/or consumers benefit if this proposal is approved?**

278 A. Significant savings from efficiencies in All West's operations will
279 automatically flow to the customer. In addition, the customers will be treated the
280 same at the Commission and will enjoy the same pricing. There simply will be no
281 difference between East Promontory and West Promontory.

282 **Q. What are the efficiencies that will result from the change?**

283 A. Because there is no actual line drawn in the ground across the real estate,
284 any time a customer in the vicinity of the boundary requests service it must be
285 determined which side of the boundary line they are on. Maps must be studied
286 and even though lots are platted on the maps which have the boundary delineated,
287 if the boundary line splits the lot it will probably require a site visit to see exactly
288 where on the lot the house is located. There will undoubtedly be instances where
289 the boundary line splits a home. Is one side of the house then served by the
290 CLEC and the other side served by the ILEC? This process is time consuming
291 and expensive, and creates the question of who should burden the expense of
292 making that determination, the ILEC or the CLEC.

293 In addition, keeping a separate set of accounts for this little pocket of
294 customers will be costly. It means making separate and sometimes double entries

295 for every transaction involved with the provision of service or maintenance of
296 existing service.

297 **Q. How does All West account separately for broadband investment? Can that**
298 **be done in Promontory?**

299 A. While the FCC has recently deregulated the provision of broadband for
300 cable providers and price cap LECs, such as Qwest, for rural LECs, like All West,
301 broadband is still subject to Title II regulation in the interstate jurisdiction.
302 Accordingly, All West records its broadband investment and expenses into
303 regulated accounts in accordance with FCC rules. All West offers its broadband
304 services under the NECA tariff, which requires All West to contribute the tariffed
305 charge for each broadband subscriber. Thus a contribution is made to the network
306 costs by those customers using its broadband services. Currently, this accounting
307 and cost recovery of broadband only occurs in East Promontory, as CLECs are
308 not allowed to participate in the NECA DSL tariff and cost pooling arrangement.

309 **Q. What financial impact would the proposed boundary change have on the**
310 **State USF?**

311 A. None, at this time. All West currently receives no support for any of the
312 Promontory development, as its current USF draw was established prior to any
313 investment in Promontory. Should All West's current support level be modified,
314 the PSC has the option to either include or exclude our investment in West
315 Promontory at that time.

316 **Q. Does the expense that All West incurs in Promontory work into the State**
317 **USF calculation?**

318 A. No. In order to increase state USF support to allow for increased cost and
319 investment in Promontory, All West would have to file for a rate analysis and
320 possibly a rate case.

321 **Q. Would this action have any financial impact on the Federal USF?**

322 A. Depending upon the level of investment per customer in Promontory, in
323 comparison with All West's existing per-line investment, All West could receive
324 additional support from the federal high cost loop fund. The purpose of the
325 federal high cost loop fund is to enable consumers in rural, high-cost areas to
326 receive comparable services at comparable rates as urban consumers. All West
327 intends to use any increase in its federal support mechanisms for exactly that
328 purpose, thereby providing significant benefit to the residents of West
329 Promontory.

330 **Q. Will Qwest customers pay more if the Commission approves this boundary**
331 **change?**

332 A. No. While individual rural LECs may receive increases or decreases in
333 support, the total federal high-cost loop fund for rural LECs is frozen.
334 Accordingly, this boundary change will not result in increased contributions to the
335 federal universal fund by any Utah consumer of telecommunications services.

336 **Q. How much does All West currently have invested in the Promontory**
337 **development and how is this investment currently being divided between the**
338 **ILEC and the CLEC?**

339 A. As of 12/31/2005 All West has \$1.29 million in plant investment in
340 Promontory. The current investment is 99% on the ILEC side. Because there is

341 currently a significant amount of activity on the CLEC side, if the boundary
342 change is not approved, we will be required to do some intense analysis to divide
343 investment and expenses, as well as keep a completely separate set of accounts
344 just for this entity.

345 **Q. Does All West have an exclusive long term contract with Promontory?**

346 A. No, the contract that All West has with Promontory is not exclusive and it
347 only provides for a joint-trenching and conduit placement.

348 **Q. If the boundary change is approved, will All West have a competitive
349 advantage in Promontory?**

350 A. The only competitive advantage that All West will have is that it has
351 facilities in place. Any other CLEC that desires to compete can get certified by
352 the Commission and serve West Promontory and be eligible to get same federal
353 USF that the incumbent ILEC gets.

354 **Q. In your opinion, what will it harm to leave things as they are?**

355 A. I believe if we fail to act on this matter we are failing our customers.
356 These are captive customers despite the fact that they are in a competitive area;
357 they really don't have another choice for a wired telecommunications provider.
358 Any way you look at it, they are in the same position as customers served by a
359 regulated provider, even though they are served by a non-regulated CLEC. If
360 there is a way to make things better and simpler for them, we have the obligation
361 to do so. If we fail to act, regulation does not work and the customer suffers.
362 Failing to act will simply perpetuate the stranglehold Qwest has on territory and
363 customers it apparently does not want to serve.

364 **Q. Do you have anything else to add?**

365 A. Yes. It seems to me that making a small modification to this exchange
366 boundary is a very simple solution to a very complex problem. This particular
367 boundary is a line drawn on a map along a convenient section line decades ago
368 when nothing existed there but sagebrush and jack rabbits. It seems to me to be a
369 very reasonable approach to re-visit the boundary issue and make adjustments
370 based on how the area is developing and what the community of interest is.
371 Territory boundaries are not cast in stone, but should be as moveable and
372 changeable as the communities they delineate. For an exchange boundary to
373 create hardships for customers, or the utilities serving those customers, seems like
374 an unfair and unnecessarily burdensome regulation. This commission is able, and
375 should be willing, to adjust boundaries as needs change.

376 **Q. Does this conclude your direct testimony?**

377 A. Yes.

CERTIFICATE OF SERVICE

I certify that on July 31, 2006 I mailed postage prepaid and emailed a true and correct copy of the foregoing **Direct Testimony of D. Vernile Prince** in Docket No. 02-2270-01 to the following:

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