

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Request of ALL WEST COMMUNICATIONS, INC. for Revision to Exchange Boundaries	Docket No. 02-2270-01
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DIRECT TESTIMONY

OF

JAMES B. FARR

FOR

QWEST CORPORATION

OCTOBER 2, 2006

EXHIBIT QWEST 1

**TESTIMONY OF JAMES B. FARR
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1

I. INTRODUCTION AND PURPOSE

2

Q. PLEASE STATE YOUR NAME, TITLE AND ADDRESS.

3

A. My name is James B. Farr. I am employed by Qwest Services Corporation as a

4

Staff Advocate in the Public Policy organization, representing Qwest Corporation

5

(Qwest) in this proceeding. My work address is Room 1603, 250 Bell Plaza, Salt

6

Lake City, Utah 84111.

7

Q. PLEASE OUTLINE YOUR EDUCATIONAL BACKGROUND, COMPANY

8

WORK EXPERIENCE, AND CURRENT RESPONSIBILITIES.

9

A. I received a Bachelors of Science degree in Business Management from Brigham

10

Young University in 1981. In 1986, I received a Master of Business

11

Administration degree from Utah State University. In 1981, I began my

12

employment with Qwest's predecessor, Mountain Bell as a supervisor in the Loop

13

Assignment Center. In 1983, I transferred to Network Facilities Engineering

14

where I held various management positions in planning and design. In 1990, I

15

accepted a management position in the Utah regulatory group which is a part of

16

the Public Policy organization. Since that time I have had various management

17

responsibilities, primarily dealing with regulatory issues in Utah and more

18

recently in other states. In this proceeding my responsibilities include providing

19

testimony and representing Qwest as a policy witness.

20 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

21 A. Yes. Over the years I have testified before this Commission in various regulatory
22 proceedings including; Docket Nos. 92-999-01, 93-049-20, 95-049-35, and 99-
23 049-T28.

24 **II. PURPOSE OF TESTIMONY AND SUMMARY**

25 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

26 A. The purpose of my testimony is to respond to the testimony of D.Vernile Prince
27 of All West Communications, Inc. (All West Communications) that was filed on
28 July 31, 2006 and explain the reasons why the Commission should not grant All
29 West Communications' petition to have the area of West Promontory removed
30 from Qwest's service territory.

31 **Q. PLEASE PROVIDE A SUMMARY OF YOUR TESTIMONY.**

32 A. Qwest can identify no compelling public interest or customer reason that
33 necessitates the changing of the existing exchange boundary. Rather, it appears
34 that the change is requested for two principal reasons. First, it would allow All
35 West Communications to receive high cost support to serve West Promontory.
36 Second, it would legitimize at least in part All West Communications' and All
37 West/Utah, Inc.'s (All West/Utah) (All West Communications and All West/Utah
38 will sometimes be referred to collectively as All West) current manner of
39 providing service to West Promontory.

40 All West is able to serve West Promontory through its CLEC affiliate All
41 West/Utah. Providing service through a CLEC in Qwest's territory is consistent
42 with the federal and state policy encouraging competition. The claimed problems
43 that arise as a result of having service on one side of Promontory provided by All
44 West Communications and service on the other side provided by All West/Utah
45 either do not really exist at all, are insignificant or involve issues with which the
46 Commission need not be concerned.

47 On the other hand, granting All West Communications' request would have
48 significant negative impacts on competition. It would effectively prevent any
49 competition in Promontory. More importantly, it would encourage the type of
50 arrangement All West has entered into with the developer of Promontory and
51 provide independents like All West Communications with an unfair competitive
52 advantage with respect to such arrangements.

53 There is no public interest need to provide a significant benefit to customers in
54 West Promontory and subsidize phone service to a large, exclusive recreational
55 second home community, containing luxurious, multi-million dollars homes.
56 Since customers pay for high cost support as a surcharge on their phone bill, it is
57 not prudent to have Promontory included in All West's study area to receive high
58 cost support.

59 Given the problems that would result from granting All West Communication's
60 petition, the Commission should deny the petition as not being in the public
61 interest.

62 **III. ALL WEST COMMUNICATIONS' REASONS FOR**
63 **GRANTING THE PETITION ARE NOT PERSUASIVE**

64 **Q. ACCORDING TO THE TESTIMONY OF MR. PRINCE, WHAT ARE THE**
65 **MAIN REASONS ALL WEST BELIEVES THE COMMISSION SHOULD**
66 **BRING WEST PROMONTORY INTO ALL WEST COMMUNICATIONS'**
67 **SERVICE TERRITORY?**

68 A. For the most part, the following summarizes the main reasons:

- 69 1. All West alleges it has to charge different rates for West Promontory than
70 East Promontory. (Direct Testimony of D. Vernile Prince (Prince
71 Testimony), page 5, lines 93-94 and page 9, lines 195-197)
- 72 2. All West argues that if boundaries are not modified, "next door neighbors
73 would have different calling areas." (Prince Testimony, page 3, lines 55
74 and 56)
- 75 3. All West argues that the Commission has made decisions to change
76 service territory boundaries in the past when other utilities were not
77 willing to resolve boundary and service issues. (Prince Testimony, pages
78 8 and 9 lines 168 -189)

79 4. All West claims that “if Qwest willingly agreed to the change, it would be
80 doing nothing it hasn’t done many times in many different places.”
81 (Prince Testimony, page 7, lines 156 and 156)

82 5. All West claims that there are difficulties in accounting for the two
83 different entities within the development. (Prince Testimony, page 16,
84 lines 341-344)

85 **Q. DO ANY OF THESE REASONS JUSTIFY THE BOUNDARY CHANGE?**

86 A. No. Either the allegations or claims are incorrect, they are insignificant or they do
87 not involve issues with which the Commission should be concerned.

88 **A. Charging Different Rates**

89 **Q. PLEASE ADDRESS THE FIRST REASON RELATING TO CHARGING**
90 **DIFFERENT RATES.**

91 A. In his direct testimony, Mr. Prince stated, “All West/Utah is serving customers in
92 West Promontory, but it is costing customers more for service in West
93 Promontory than it is for All West’s customers in East Promontory.” (Prince
94 Testimony, page 9, lines 195-197). Qwest asked All West Communications the
95 basis for this statement in a data request. Exhibit Qwest 1.1 to my testimony
96 includes the responses from All West Communications to Qwest’s data requests
97 excluding the attachments (both the 1st and 2nd sets). In its response to Data
98 Request 1.34, All West stated that “All West/Utah purchases dial tone line from

99 All West Communications at virtually retail, therefore it would be impossible to
100 turn around and sell them at the same price and make a profit.”

101 **Q. WHAT IS THE DIFFERENCE IN HOW ALL WEST**
102 **COMMUNICATIONS PROVIDES SERVICE TO EAST PROMONTORY**
103 **AND ALL WEST/UTAH PROVIDES SERVICE TO WEST**
104 **PROMONTORY?**

105 A. Essentially, there is no difference. In its response to Data Request 1.36, All West
106 Communications stated that “Services to customers in West Promontory are
107 provided exactly the same way as described in the response to Data Request 1.35.
108 The only difference is that the CLEC owns the final transport and termination
109 facility.” All West Communications’ response to Data Request 1.35 explains that
110 customers in East Promontory are served via All West Communications’ switch
111 in Kamas with transport via a fiber transport facility between the switch and a
112 fiber drive in a building located in the Promontory development and then local
113 fiber from the fiber drive to a fiber point network interface device (NID) at the
114 customer premises. Based upon these responses, it appears that the only
115 difference between service to customers in East Promontory and West
116 Promontory is the affiliate owning the local fiber and the NID.

117 **Q. DOES THIS DIFFERENCE SUGGEST THAT THERE IS A DIFFERENCE**
118 **IN COST TO SERVE THE CUSTOMERS IN THE TWO SIDES OF**
119 **PROMONTORY?**

120 A. No. To the contrary, it suggests that the cost to serve the customers is the same.
121 The difference in cost to All West/Utah does not result from any difference in the
122 actual costs of service, but in the fact that All West Communications has
123 apparently chosen to charge All West/Utah a retail price for the use of the portion
124 of the loop from the fiber drive to the switch and for the switching function.

125 **Q. LEAVING ASIDE FOR NOW QUESTIONS REGARDING WHETHER**
126 **THIS IS AN APPROPRIATE WAY FOR ALL WEST/UTAH TO PROVIDE**
127 **SERVICE AS A CLEC IN QWEST'S SERVICE TERRITORY, IS THIS**
128 **ARRANGEMENT NECESSARY?**

129 A. No. It is apparent that the reason All West/Utah claims it is required to charge a
130 higher price in West Promontory than All West Communications charges
131 customers in East Promontory is a matter of voluntary agreement between two
132 affiliated companies. The affiliates could just as easily agree that All West
133 Communications would provide unbundled access to the fiber transport and the
134 switching function at TELRIC rates or that a resale discount would be provided to
135 All West/Utah. However, they have chosen not to do so, probably because of a
136 concern that if All West Communications offered such an arrangement to All
137 West/Utah it might also be required to offer the same arrangement to unaffiliated
138 carriers. But whatever reason All West has for structuring the arrangement as it

139 has, the voluntary arrangement is no justification for a change in exchange
140 boundaries.

141 **Q. ARE THERE OTHER REASONS THAT THIS REASON DOES NOT**
142 **JUSTIFY GRANTING ALL WEST'S PETITION?**

143 A. Yes. Other information provided by All West Communications in response to
144 discovery requests and available in its filed tariffs and price lists indicates that the
145 claim that All West/Utah must charge more for service in West Promontory is not
146 correct. Exhibit Qwest 1.2 provides a comparison of basic residential rates for
147 customers in both East and West Promontory. This exhibit is based upon All
148 West's response to Data Request 2.21 (Exhibit Qwest 1.1). When comparing the
149 rates for the same service, including the local calling areas of Kamas and Park
150 City, West Promontory customers are actually paying \$2 less a month than
151 customers in East Promontory. This is confirmed in All West Communications'
152 response to Data Request 2.23 (see Exhibit Qwest 1.1).

153 **Q. IS IT APPROPRIATE TO COMPARE THE RATES FOR THE TWO**
154 **AREAS INCLUDING LOCAL CALLING TO KAMAS AND PARK CITY**
155 **IN BOTH RATES?**

156 A. Yes. All West's agreement with the developer of Promontory, a copy of which is
157 attached as Exhibit Qwest 1.3 (page 5, item 8), requires that All West offer toll
158 free calling for all customers in Promontory to the Kamas and Park City local

159 calling areas. Therefore, this should be considered the standard calling
160 arrangement for these customers.

161 **Q. HAS ANY DIFFERENCE IN RATES CHARGED CUSTOMERS IN EAST**
162 **PROMONTORY VERSUS WEST PROMONTORY CAUSED ANY**
163 **CONCERN TO CUSTOMERS?**

164 A. Apparently not. Qwest sent data requests to both All West Communications and
165 the Division regarding whether customers of All West Communications and All
166 West/Utah have complained about any price differences for their services. Both
167 responded that they have not received any complaints regarding the prices
168 charged for service. (See All West Communications' response to Data Request
169 2.1 in Exhibit Qwest 1.1 and the Division's response to Data Request 1.1 in
170 Exhibit Qwest 1.4.). Furthermore, All West in its response to Data Request 2.1
171 (Exhibit Qwest 1.1) stated that "due to All West providing an acceptable
172 alternative, All West is not aware of any such customer complaint."

173 **Q. DOES THE LACK OF COMPLAINTS SURPRISE YOU?**

174 A. No. Exhibit Qwest 1.5 provides information about the Promontory development
175 from various websites. Homes within the development are multi-million dollar
176 homes. Further, in its response to Data Request 1.37 (see Exhibit Qwest 1.1), All
177 West Communications stated that "All West is aware that most of the homes in
178 the Promontory development are not primary residences. When Summit County
179 approved the development it was on the basis that it would be a second home

180 community.” Given the nature of the development, Qwest doubts that customers
181 will be comparing phone bills or express dissatisfaction with any minor rate
182 differentials between East and West Promontory.

183 **Q. ARE THERE ANY OTHER REASONS THAT THE COMMISSION**
184 **SHOULD NOT BE CONCERNED ABOUT ANY RATE DIFFERENTIAL**
185 **BETWEEN EAST AND WEST PROMONTORY?**

186 A. Yes. There are several. There are no regulatory restrictions on the rates All
187 West/Utah may charge its customers in West Promontory. If All West/Utah is not
188 able to make a profit, one option would be to increase its rates \$2. As shown in
189 Exhibit Qwest 1.2. That would make All West/Utah’s rates in West Promontory
190 equal to the rates All West Communications charges its customers in East
191 Promontory, which includes the same local calling areas of Kamas and Park City.
192 If All West/Utah cannot make a profit by raising its rates \$2, it could raise its
193 rates higher than \$2. There is no regulatory reason that All West/Utah has to
194 charge the same rates as All West Communications. The reason All West
195 believes it must charge approximately the same rates comes from its agreement
196 with the developer. In its agreement, All West agreed that, “All the Services
197 outside of AWC’s certificated territory shall be provided by AWU at rates and on
198 other terms and conditions comparable to the terms offered to Promontory
199 residents by AWC.” (Exhibit Qwest 1.3, page 4 item 6) Entry into the agreement
200 with the developer of Promontory was a business decision of All West. The
201 Commission should feel no obligation to bail out All West if it has made a bad

202 business decision by agreeing to something it may not be able to deliver. All
203 West/Utah was not required to provide service in West Promontory. Had it not
204 elected to do so, the developer would have been forced to allow Qwest or another
205 CLEC into the development. Had Qwest been able to serve, customers in West
206 Promontory would now have options for choosing a telecommunications service
207 provider.

208 Even if it could be proven that All West/Utah is not able to make a profit on West
209 Promontory, this is no basis for concern. Service provided by Qwest and its
210 competitors is no longer rate-of-return regulated. There is no profit guarantee for
211 Qwest or any of its competitors, and none of them has any basis for claiming that
212 the Commission should be concerned about whether it is able to recover its costs
213 based on the prices it is able to charge. Had All West not voluntarily entered into
214 the agreement with the developer, there would be no pending request for a
215 boundary change and customers in West Promontory would have the benefit of
216 competition from several providers.

217 Furthermore, even if All West/Utah is not making a profit on its telephone
218 service, and assuming this is an issue the Commission should be concerned about,
219 All West/Utah is likely making a profit on the bundle of services it sells to
220 customers in West Promontory. All West's supplemental response to the DPU's
221 Data Request 1.3c was that "All West is projecting approximately \$125.00 per
222 customer per month, or \$1500.00 per customer per year in revenue. This revenue

223 includes three services, not just telephone service.” All West refused to respond
224 to Qwest Data Requests 2.16 and 2.17 (see Exhibit Qwest 1.1). This would have
225 enabled Qwest and the Commission to determine if All West/Utah is making a
226 profit on the bundle of services (video, voice and data) it provides in West
227 Promontory.

228 Additionally, Qwest does not have access to All West/Utah’s cost structure to
229 determine if it is operating efficiently. If in fact All West/Utah is not profitable in
230 providing telecommunication services, Qwest finds it surprising that All
231 West/Utah has not at least explored the economic feasibility of other options
232 besides dealing with All West Communications to provide services to customers
233 in West Promontory. However, in response to Qwest Data Requests 2.13 and
234 2.14, All West has indicated that it has not explored other options. (See Exhibit
235 Qwest 1.1)

236 **B. Local Calling Between East and West Promontory**

237 **Q. TURNING NOW TO THE SECOND REASON OFFERED BY ALL WEST**
238 **THAT IF BOUNDARIES ARE NOT MODIFIED, “NEXT DOOR**
239 **NEIGHBORS WOULD HAVE DIFFERENT CALLING AREAS” (PRINCE**
240 **TESTIMONY, PAGE 3, LINES 55 AND 56), IS THIS A VALID REASON**
241 **FOR GRANTING THE PETITION?**

242 A. No. As already discussed above, Promontory is not a year-round community in
243 which residents are likely to regularly interact. It is a recreational, second-home

244 community. Qwest sent data requests to both All West and the Division asking
245 whether any complaints had been received from customers in East or West
246 Promontory about any inability to make local calls to customers in the other side
247 of the development. All West responded that it had received no complaints. (See
248 response to Data Request 2.2 in Exhibit Qwest 1.1.) The Division responded in
249 the same way. (See response to Data Request 1.2 in Exhibit Qwest 1.4.)

250 **Q. DOES THIS SURPRISE YOU?**

251 A. No. Customers have several options in today's environment to avoid or minimize
252 toll charges for such calls. This would especially be the case with the wealthy
253 individuals who are occasional residents of Promontory.

254 Today long distance rates are significantly lower than they were several years ago
255 and are not regarded by many as the same type of disincentive to making a long
256 distance call that they once were. There are a variety of long distance providers
257 with various long distance plans, including flat rated unlimited calling plans that
258 provide customers with calling through out the United States for a reasonable
259 price.

260 Also, customers have the option to use their wireless service for making long
261 distance calls. For example, I regularly use my wireless service to make calls that
262 would be long distance calls if made from my home phone. I can do this without
263 incurring additional charges because I seldom exceed the monthly daytime
264 minutes on my wireless plan and have unlimited minutes on nights and weekends.

265 Based on conversations and observations of others, I believe my experience is
266 common.

267 **Q. DOES ALL WEST HAVE ALTERNATIVES THAT ARE EQUIVALENT**
268 **TO THE SAME CALLING AREA FOR NEIGHBORS IN BOTH SIDES OF**
269 **PROMONTORY?**

270 A. Yes. All West Communications has developed a Foreign Exchange (FX) service
271 that allows customers in East Promontory to call customers in West Promontory
272 and in Park City. By subscribing to the FX service, customers in East Promontory
273 have the same local calling area as customers in West Promontory, which
274 includes the Kamas and Park City local calling areas. While Qwest has questions
275 about whether all aspects of this FX service are being provided appropriately, it
276 has nonetheless apparently resolved any possible concern about there being a
277 difference in calling areas between neighbors. All West stated in its response to
278 the DPU's Data Request 2.27 (Exhibit Qwest 1.6) that "At present, the FX
279 arrangement is working relatively well in providing customers in East Promontory
280 the local calling they desire into Park City. It is an extra charge on their bill, but
281 even if EAS were available, there would be some charge for that."

282 **Q. BUT ISN'T IT UNREASONABLE TO REQUIRE CUSTOMERS TO PAY**
283 **FOR FX SERVICE TO CALL NEIGHBORS WITHIN THEIR OWN**
284 **DEVELOPMENT?**

285 A. No. It is not unusual in today's environment for people located in close proximity
286 to one another to be required to pay extra charges on their phone bill to call each
287 other without toll charges. For example, as the population has grown along the
288 Wasatch Front in Utah, communities that used to be separated by farm land and
289 which were in separate local calling areas have now grown together. In situations
290 where there is sufficient interest in local calling between areas that were
291 previously in separate areas, Extended Area Service (EAS) has been
292 implemented. However, this service is not provided for free. An EAS charge is
293 added to customers' bills to cover the cost of providing local calling between the
294 two areas and to recover lost toll revenues. Again, avoidance of this type of cost
295 is no reason to adjust exchange boundaries in today's environment.

296 **Q. COULD THE PROMONTORY ISSUE BE ADDRESSED THROUGH EAS?**

297 A. Yes.

298 **Q. BUT DOESN'T QWEST OPPOSE EAS.**

299 A. Not necessarily. Qwest doubts that its customers in Park City would be interested
300 in EAS between Park City and the Kamas local calling area (including East
301 Promontory and Jordanelle) particularly if they were required to pay any
302 additional charge for it. However, if there were sufficient interest with Park City

303 customers, and the costs were reasonable, Qwest would consider EAS. If the
304 Commission denies All West Communications' petition but believes that the local
305 calling area issue has merit, and All West Communications is willing to pay the
306 entire cost and lost revenue for the EAS between Park City and the Kamas local
307 calling area, Qwest would be willing to implement EAS.

308 **Q. IF THE COMMISSION DENIES ALL WEST COMMUNICATIONS'**
309 **PETITION, WHAT OTHER OPTIONS ARE AVAILABLE TO THE**
310 **COMMISSION IN REGARDS TO ESTABLISHING LOCAL CALLING**
311 **FROM EAST PROMONTORY INTO WEST PROMONTORY THAT**
312 **QWEST WOULD SUPPORT?**

313 A. Another way to solve the local calling issue for East Promontory to call into West
314 Promontory and the rest of Park City, would be to bring the entire Promontory
315 development into the Park City Exchange area. If this were to happen, there
316 would be no EAS or FX charges to customers in East Promontory to call the Park
317 City local calling area, because East Promontory would be a part of the Park City
318 Exchange area. In addition, because All West/Utah would presumably be
319 providing service to all of Promontory, the issue regarding different rates would
320 also be resolved.

321 **Q. DOES QWEST BELIEVE THAT ALL WEST WOULD SUPPORT A**
322 **PROPOSAL TO INCLUDE EAST PROMONTORY IN PARK CITY?**

323 A. No. Qwest asked All West Communications if it “would be willing to have the
324 exchange boundaries of its Jordanelle Exchange modified to include East
325 Promontory within Qwest’s Park City Exchange?” In its response All West
326 Communications stated the following: “All West is not willing to adjust its
327 exchange boundary to make East Promontory part of the Qwest Park City
328 exchange because it makes no sense to do so. East Promontory is currently being
329 served by an ILEC which is regulated by the state PSC. If the exchange boundary
330 were to be changed as suggested, there would be no ILEC serving any of the
331 Promontory development which is not in the public interest. If All West became
332 a CLEC for the entire development, it could pick and choose to serve the easy
333 customers and refuse to serve the hard ones. The customers would then be left
334 virtually without a provider as Qwest could not serve them economically.” (See
335 Data Request 1.33 in Exhibit Qwest 1.1)

336 **Q. DOES QWEST AGREE WITH THE STATEMENT THAT “THERE**
337 **WOULD BE NO ILEC SERVING ANY OF THE PROMONTORY**
338 **DEVELOPMENT WHICH IS NOT IN THE PUBLIC INTEREST”?**

339 A. No. Qwest does not agree that this is a valid public interest concern. There are
340 many other examples of “no ILEC serving” in other developments within Qwest’s
341 Utah service territory. In these situations, a CLEC has been chosen by the
342 developer as the preferred provider or Qwest has not been allowed to place

343 facilities in the development and serve. A few of the many examples includes,
344 Gateway (First Digital), Traverse Mountain (Broadweave) and Provo Town Mall
345 (XO). There has been no public interest concern about having “no ILEC serving”
346 in any of these circumstances or many others.

347 **Q. DOES QWEST AGREE WITH THE STATEMENT THAT “IF ALL WEST**
348 **BECAME A CLEC FOR THE ENTIRE DEVELOPMENT, IT COULD**
349 **PICK AND CHOOSE TO SERVE THE EASY CUSTOMERS AND**
350 **REFUSE TO SERVE THE HARD ONES. THE CUSTOMERS WOULD**
351 **THEN BE LEFT VIRTUALLY WITHOUT A PROVIDER AS QWEST**
352 **COULD NOT SERVE THEM ECONOMICALLY”?**

353 A. No. As explained in the response to the question above, there are other examples
354 of “no ILEC serving.” More to the point, under All West’s agreement with the
355 developer of Promontory if All West refused to serve the more difficult customers
356 in the Promontory development, it would be in breach of the contract. If All West
357 is in breach of its contract, the developer has the option of allowing other
358 telecommunications providers to use the spare conduit in the development. (See
359 Exhibit Qwest 1.3, items 4(C) and 11.) It seems likely that if All West refuses to
360 serve customers in Promontory, the developer would exercise this option. In that
361 circumstance, it would be relatively easy for the developer to comply with the
362 LDA requirements, and Qwest would serve.

363 **C. Ordered Changes in Other Circumstances**

364 **Q. TURNING TO ALL WEST COMMUNICATIONS' THIRD REASON**
365 **THAT THE COMMISSION HAS ORDERED CHANGES IN THE PAST IN**
366 **SIMILAR CIRCUMSTANCES, IS THIS REASON PERSUASIVE?**

367 A. No. All West discusses the Empire Electric Association case in support of its
368 view that the Commission has ordered boundary changes in the past when the
369 utility with authority to serve in the area has not been cooperative. I have read the
370 case. While I do not purport to offer a legal opinion on the case, I can comment
371 on the factual and regulatory context for the case and contrast it with the factual
372 and regulatory context here.

373 The Empire Electric case involved a regulatory environment in which the utilities
374 involved generally had the exclusive right to serve within their service territory
375 and only one provider was generally allowed to serve in each territory. When the
376 customer requested service from Utah Power & Light because it had facilities
377 closer than Empire Electric, Utah Power could not provide service without an
378 order from the Commission authorizing it to do so.

379 This is not the same regulatory environment for the telecommunications industry
380 within Qwest's service territory in Utah today. Qwest no longer has an exclusive
381 right to serve in its service territory. All West/Utah, a certified CLEC within
382 Qwest's Utah service territory, was not precluded from competing against Qwest
383 and serving in West Promontory. The Commission did not need to intervene to

384 decide who should have the exclusive right to serve in West Promontory because
385 that was no longer relevant.

386 Furthermore, as I read the case, the Commission was not asked to change the
387 service territory of Empire Electric. Utah Power already had facilities in the
388 territory because it served customers in the territory who were reserved to it when
389 the certificate was granted to Empire Electric to serve the territory. Utah Power
390 did not seek a boundary change so that it could serve the new customer. Rather,
391 the customer filed a complaint at the Commission because Empire Electric would
392 not serve without a substantial construction charge and Utah Power could not
393 serve because it did not have authority to do so. After hearing the evidence, the
394 Commission simply granted Utah Power the right to provide service to an
395 additional customer in Empire Electric's service territory near where Utah Power
396 already had facilities. As noted above, no such exception is needed in the current
397 telecommunications environment.

398 While it is true that based on its preferred provider agreement, All West/Utah
399 today has facilities closer than Qwest to serve customers in portions of West
400 Promontory, Qwest believes that was not true when the development was
401 originally planned. At that time, Qwest had facilities about 1 ¼ miles away from
402 what is now the west entrance gate of the Promontory development. Today,
403 Qwest has facilities serving the fire station which is about ¼ mile from the west
404 entrance gate to Promontory. All West Communications' facilities were

405 undoubtedly much farther away from the homes in West Promontory because
406 there were no customers in either East or West Promontory. Therefore, if the
407 circumstances present in Empire Electric were still in effect and All West
408 Communications had sought to serve in West Promontory, it is likely that the
409 Commission would have found that Qwest was the closest provider and would
410 have denied All West Communications' request. However, those circumstances
411 are no longer applicable in the telecommunications industry. Therefore, Empire
412 Electric seems to me to be irrelevant to this issue.

413 **D. Qwest's Practices in Other Circumstances**

414 **Q. ALL WEST COMMUNICATIONS' FOURTH REASON FOR THE**
415 **COMMISSION TO GRANT THE REQUEST IS THAT QWEST HAS**
416 **AGREED TO MAKE BOUNDARY CHANGES IN OTHER**
417 **CIRCUMSTANCES. WHAT EXAMPLE DOES ALL WEST GIVE?**

418 A. On page 7, starting at line 156 on his testimony, Mr. Prince states that "If Qwest
419 willingly agreed to the change, it would be doing nothing it hasn't done many
420 times in many different places, the most recent being territory it gave South
421 Central Utah Telephone in Iron County within the last year."

422 **Q. ARE THE CIRCUMSTANCES IN THIS EXAMPLE AND PROMONTORY**
423 **SIMILAR?**

424 A. No. The circumstances in the Iron County situation and in Promontory are
425 significantly different. The area Qwest voluntarily relinquished in its Cedar City

426 Exchange area included the area of Old Iron Town which is a high cost area to
427 serve. This is a remote area that was quite a distance from Qwest's existing
428 facilities. In order to serve the Old Iron Town area, Qwest would have needed to
429 place over 50,000 feet of cable and additional telecommunications equipment at
430 an estimated cost of over \$300,000 to provide service to a small number of
431 customers. Potential customers and property owners were not willing to pay the
432 appropriate line extension charges consistent with Qwest's Tariff or Price List, as
433 applicable, and the formula specified in the Commission rules (R746-360). South
434 Central Utah Telephone had existing facilities closer to this area, and it was
435 Qwest's understanding that South Central Utah Telephone was willing to provide
436 service at a lower line extension cost to the customers than Qwest would charge.
437 Additionally, the existing meet point facility between South Central and Qwest
438 was at capacity, and the companies had to place a new fiber cable meet point. By
439 agreeing to the territory change in Cedar City, Qwest was able to reduce by about
440 6 miles the distance for its portion of the fiber cable placement.

441 None of these reasons exist in the Promontory situation. Promontory is not a high
442 cost area. According to All West, this is a development of "approximately 1600
443 homes" with approximately 30% in West Promontory and about 1 mile east of
444 Highway 40. (Prince Testimony, page 2, lines 37 - 44) Even though Qwest has
445 not developed estimated costs to place facilities in Promontory, if Qwest were to
446 place facilities pursuant to the LDA Price List (Section 4.4 of the Exchange and
447 Network Services Price List), Qwest believes the cost to do so would not exceed

448 the cap specified in the LDA Price List. The developer most likely would only be
449 responsible for the trenching costs.

450 Based on a review of the circumstances, it is apparent why it was in both Qwest's
451 and customers' interests to change the boundary with respect to Old Iron Town
452 and why it is not the same in Promontory.

453 **Q. ALL WEST COMMUNICATIONS REFERS TO BUT DOES NOT**
454 **IDENTIFY OTHER AREAS IN WHICH QWEST VOLUNTARILY**
455 **RELINQUISHED TERRITORY IN ITS DIRECT TESTIMONY. ARE**
456 **THERE OTHER AREAS IN WHICH QWEST HAS DONE SO THAT ARE**
457 **SIMILAR TO PROMONTORY?**

458 A. No In all other circumstances in which Qwest has voluntarily relinquished
459 territory, there were sound business and customer reasons for the change which
460 are not present in this circumstance.

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E. Accounting Issues

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Q. THE LAST PRINCIPAL REASON OFFERED BY ALL WEST COMMUNICATIONS IN SUPPORT OF ITS POSITION THAT THE COMMISSION SHOULD GRANT THE BOUNDARY CHANGE IS THAT FAILURE TO GRANT IT CAUSES SIGNIFICANT ACCOUNTING PROBLEMS FOR ALL WEST. IS THIS A VALID JUSTIFICATION FOR THE CHANGE?

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A. No. All West Communications alleges that “if the boundary change is not approved, we will be required to do some intense analysis to divide investment and expenses, as well as keep a completely separate set of accounts just for this entity.” (Prince Testimony, page 16, lines 341-344) This statement appears to be inconsistent with All West Communications’ response to Qwest Data Request 1.28 (see Exhibit Qwest 1.1). Qwest asked All West Communications to “Provide the account by account methodology used to allocate investments and expenses between All West Communications and All West/Utah with respect to service to customers in West Promontory.” All West Communications responded, “The methodology is simple in that All West employees record their time to the company (ILEC or CLEC) that they are working for. All associated expenses (taxes, benefits, tools, vehicles and work equipment) are then allocated based on that time record.”

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All West Communications’ testimony on this point causes concern for an

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additional reason. It says “if the boundary change is not approved, we *will* be

483 required to do some intense analysis to divide investment and expenses, as well as
484 keep a completely separate set of accounts just for this entity.” (Emphasis added.)
485 In its response to Data Request 2.18 (Exhibit Qwest 1.1) All West stated that, “All
486 West service in West Promontory is relatively new and separating investment
487 between East and West Promontory is arduous and has inherent problems. All
488 West is awaiting the outcome of this proceeding to determine if separation will be
489 required. All other areas served by All West/Utah are fully separated from
490 regulated accounts.” These statements indicate that All West is not now
491 separating the investment and expenses and keeping a separate set of accounts for
492 All West/Utah in West Promontory. Since it is able to do so in “All other areas
493 served by All West/Utah,” Qwest questions why it is so difficult for All West to
494 do the same in West Promontory? Qwest believes the correct reason is that All
495 West does not want to do this hoping the Commission will make legitimate its
496 inappropriate actions. The Commission and the Federal Communications
497 Commission should have serious concerns about how All West is conducting its
498 business.

499 Assuming that All West’s answer to Data Request 1.28 is the correct state of
500 affairs and that All West is correctly accounting in all other circumstances as
501 represented in answer to Data Request 2.18, it seems that this issue is grossly
502 overblown in All West’s testimony. Qwest understands that it may be difficult for
503 an employee to log his time to one entity or the other when the boundary line
504 between East Promontory and West Promontory is not clear, or it divides a lot in

505 two. However, that circumstance will likely arise in only limited situations.
506 Furthermore, Qwest believes the Division may have a solution to this limited
507 problem that would be agreeable to Qwest. In its 2nd Set of Data Requests to
508 Qwest (DPU 02-008), the Division asked Qwest “If a major boundary change is
509 not granted what minor adjustments in the Qwest/All West serving area
510 boundaries would Qwest be willing to make to locate the boundary along natural
511 boundaries rather than through private property so that the determination between
512 CLEC and ILEC is simplified?” Qwest responded that “Qwest has not looked at
513 what minor adjustments could be made, but would be willing to consider a
514 proposal to change the boundary in minor ways, for example, that would move
515 the boundary so that it does not cut through the property of a single homeowner.”

516 **Q. DOES ALL WEST ALREADY HAVE TO DEAL WITH THE ISSUE OF**
517 **SEPARATELY ACCOUNTING FOR ILEC AND CLEC INVESTMENTS,**
518 **EXPENSES AND OPERATIONS?**

519 A. Yes. As discussed above, by its own admission, “All other areas served by All
520 West/Utah are fully separated from regulated accounts.” (Data Response 2.18,
521 Exhibit Qwest 1.1) It is Qwest’s understanding that All West/Utah serves in
522 other areas within the Park City area, including the Fox Bay Condos and the
523 upper Deer Creek area. Since All West objected to responding to Data Request
524 2.10 (Exhibit Qwest 1.1), I was not able to identify and confirm in my testimony
525 all of the areas in which All West/Utah serves. If All West were willing to
526 provide this information, I believe it would reveal that All West is serving in

527 several areas in the Park City area. This list is likely to continue to grow. For
528 example, it is Qwest's understanding that All West/Utah has recently been
529 selected to provide service in a Deer Canyon Development project of about 400
530 lots near the Qwest/All West Communications territory boundary. Therefore, it is
531 already required to make the same type of accounting allocations that it is
532 required to make in Promontory and apparently already is doing so. Granting the
533 boundary change sought by All West Communications in this case will not
534 eliminate the need to deal with this accounting issue.

535 **IV. HIGH COST SUPPORT ISSUES**

536 **Q. YOU STATED IN YOUR SUMMARY THAT YOU BELIEVE ONE OF**
537 **THE PRINCIPAL REASONS ALL WEST COMMUNICATIONS IS**
538 **PROPOSING THE BOUNDARY CHANGE IS TO GAIN HIGH COST**
539 **SUPPORT FOR SERVICE TO CUSTOMERS IN WEST PROMONTORY.**
540 **WHY DO YOU SAY THAT?**

541 A. All West Communications has been relatively open about its intention to seek
542 federal high cost support for West Promontory if its petition is granted. For
543 example, on page 15 of his testimony, lines 326-329, Mr. Prince states, "All West
544 intends to use any increase in federal support mechanisms . . . [to] provid[e]
545 significant benefit to the residents of West Promontory." In response to DPU
546 Data Request 2.12, All West states that its "intention would be to seek a study

547 area wa[i]ver from the FCC so [it] could include [West Promontory in its study
548 area on which federal high cost support is determined].” (See Exhibit Qwest 1.6)

549 Given that fact and the fact that the purported justifications discussed above are so
550 weak, it seems apparent to Qwest that the ability to gain high cost support is one
551 of the real principal motivations for All West Communications to seek the
552 boundary change.

553 **Q. IS THAT A PROBLEM?**

554 A. Yes. Promontory is not some small pocket of un-served customers in some
555 remote area of the state which would make it a high cost area to serve. This is a
556 large, exclusive recreational second home community, containing luxurious,
557 multi-million dollars homes. If Qwest were allowed to serve Promontory, it
558 would not need state USF or federal high cost support to do so. The determining
559 factor for whether an area qualifies for high cost support should not be based upon
560 who serves it, but the nature of the development and its location. Qwest believes
561 there is no public interest need to provide a “significant benefit” to customers
562 living for a portion of the year in Promontory.

563 **Q. WOULD THE AVAILABILITY OF HIGH COST SUPPORT IN WEST**
564 **PROMONTORY HAVE OTHER NEGATIVE PUBLIC INTEREST**
565 **REPURCUSSIONS?**

566 A. Yes. All West Communications has admitted that it received the equivalent of
567 \$44 per line per month in federal high cost support during the 1st quarter of 2006

568 in East Promontory and throughout its service territory. (See Qwest Data Request
569 2.11 in Exhibit Qwest 1.1) This fact combined with the intention that this support
570 could be extended to West Promontory through a boundary change undoubtedly
571 gave All West a competitive advantage over Qwest in making proposals to the
572 developer of Promontory. If the state and federal policy of encouraging
573 competition is to be advanced, it cannot be advanced appropriately if one
574 competitor relies on high cost support to reduce its costs of doing business and
575 another competitor does not.

576 **Q. WEREN'T THERE OTHER FACTORS THAT GAVE ALL WEST A**
577 **COMPETITIVE ADVANTAGE OVER QWEST AT THE TIME ALL**
578 **WEST ENTERED INTO THE PREFERRED PROVIDER AGREEMENT**
579 **WITH THE DEVELOPER OF PROMONTORY?**

580 **A.** Yes. Because East Promontory is in All West Communications' certificated area
581 as a rural ILEC, it was the only provider that could provide telephone service in
582 that area at that time. Therefore, to the extent the developer wanted service for
583 the entire development from only one provider, All West was the only entity that
584 could purport to offer that service. In addition, because it receives high cost
585 support, apparently All West Communications has been more willing to install
586 fiber to the home (FTTH) and provide triple play to customers than ILECs or
587 CLECs in non-rural areas. At the time All West made its proposal to the
588 developer of Promontory, Qwest did not find it economical to provide FTTH,
589 including its own video offering, in its service territory.

590 I doubt that it was ever intended that state and federal high cost support would be
591 the basis for providing more advanced services to customers in rural areas than
592 are provided to customers in urban areas. All West provided objections,
593 incomplete responses or apparent inconsistencies in a number of its responses to
594 various accounting/separations type questions (1.22-1.28, 2.9, 2.18, 2.19 in
595 Exhibit Qwest 1.1, 2.2 in Exhibit Qwest 1.6). Because of this Qwest continues to
596 have concerns that All West may be receiving federal high cost support for
597 investments supporting its CLEC operation and/or investments supporting non
598 telecommunication type services. If this is true, this would have a negative
599 impact upon competition.

600 **Q. REGARDLESS OF THE POLICY ISSUES YOU HAVE JUST**
601 **MENTIONED, HAS THE COMPETITIVE LANDSCAPE CHANGED**
602 **SINCE PROMONTORY WAS PLANNED?**

603 A. Yes. Qwest has now determined that it can offer FTTH and triple play to
604 customers even without high cost support in greenfield developments of sufficient
605 size to justify the investment. Thus, for example, Qwest is now providing this
606 type of service to the Daybreak development in southwestern Salt Lake County.
607 It is interesting to note that All West/Utah competed with Qwest to provide
608 service in Daybreak, but that Qwest was selected. The inability of All West/Utah
609 to include high cost support in developing its proposal to Daybreak, assuming All
610 West is properly accounting for its CLEC and non telecommunications

611 investments, may have contributed to the fact that the developer found Qwest's
612 proposal to be superior.

613 **Q. WHAT RELEVANCE DOES THAT HAVE TO THE ISSUES IN THIS**
614 **CASE?**

615 A. By approving a change in boundary as requested by All West Communications,
616 the Commission will be tipping the competitive playing field for new
617 developments which straddle exchange area boundaries between rural and non-
618 rural ILECs in favor of the rural ILECs. If All West is permitted to use not only
619 its competitive advantage of being the only provider able to provide service on its
620 side of the development and to use high cost support to be more competitive on its
621 side of the development, but to extend the high cost support to Qwest's side of the
622 development through a boundary change, Qwest and other competitors will be at
623 a distinct disadvantage in competing to provide service to customers in its service
624 territory.

625 **Q. ARE THERE OTHER HIGH COST SUPPORT ISSUES ASSOCIATED**
626 **WITH ALL WEST COMMUNICATIONS' PETITION?**

627 A. Yes. On Page 15 of his testimony, starting on line 332, Mr. Prince discusses the
628 financial impact on the federal USF and customers, stating that, "while individual
629 rural LECs may receive increases or decreases in support, the total federal high-
630 cost loop fund for rural LECs is frozen. Accordingly, this boundary change will

631 not result in increased contributions to the federal universal fund by any Utah
632 customer of telecommunications services.”

633 Even if the federal USF is currently capped, this was funded by a 10.5%
634 surcharge during the 3rd quarter, 2006 and will be funded by a proposed 9.1% for
635 4th quarter 2006. In comparison, the state USF is funded by a 0.5% surcharge.
636 This does not mean there will not be changes in the future that could negatively
637 impact customers. All West Communications acknowledges that it “could receive
638 additional support from the federal high cost loop fund.” (Prince Testimony, page
639 15, lines 323-324) If All West Communications is allowed to receive high cost
640 support for Promontory, how many other similar situations exist where the
641 telecommunication facilities to multi-million dollar home developments are being
642 subsidized through the payment of the surcharge on phone bills? This is one
643 reason why the federal high cost fund needs to be overhauled, which hopefully
644 would result in a continued reduction in the surcharge percentage charged to
645 customers.

646 **Q. ARE THERE OTHER HIGH COST SUPPORT ISSUES RAISED BY THE**
647 **PETITION?**

648 A. Yes. In response to Data Requests from Qwest and the Division regarding how
649 service is provided to customers in West Promontory and in other portions of the
650 Park City Exchange area, All West Communications acknowledges that most of
651 the facility costs are booked to All West Communications and All West/Utah

652 purchases services from All West Communications. (See DPU Data Request 2.2
653 in Exhibit Qwest 1.6) All West Communications' facilities are included in the
654 financial data submitted to NECA to determine All West Communications' USF
655 support. Elsewhere, All West Communications states that All West/Utah resells
656 dial tone line services provided from All West Communications (Data Response
657 2.07a and 2.08a, Exhibit Qwest 1.1). What remains unclear to Qwest is whether
658 All West Communications is properly excluding investments and costs for the
659 dial tone line services it provides to All West/Utah in determining federal high
660 cost support. For example in its response to Data Request 2.09 (Exhibit Qwest
661 1.1), All West Communications responded that in West Promontory, "these costs
662 are allocated accordingly." It did not respond to the question for the other areas
663 it serves in Park City. Additionally its response to Data Request 2.09 appears to
664 be inconsistent with its response to Data Request 2.18 (Exhibit Qwest 1.1) when it
665 acknowledged that "All West is awaiting the outcome of this proceeding to
666 determine if separations will be required." Based on these responses, Qwest
667 wonders if All West/Utah's service to customers in West Promontory and in other
668 locations in the Park City Exchange area is being subsidized by high cost support.
669 If this is true, this does not seem appropriate to Qwest.

670 **V. LEGITIMIZING CURRENT OPERATIONS**

671 **Q. IN YOUR SUMMARY YOU STATED THAT ANOTHER PRINCIPAL**
672 **REASON ALL WEST SEEKS A BOUNDARY CHANGE IS TO**
673 **LEGITIMIZE ITS CURRENT OPERATIONS. PLEASE EXPLAIN.**

674 A. I have just addressed various issues associated with possible indirect use of high
675 cost support to assist All West/Utah in providing service to customers in West
676 Promontory. If West Promontory were brought into All West Communications'
677 territory, any inappropriate use of high cost support would be legitimized.

678 Also as noted earlier in my testimony, there are possible accounting and
679 separation issues regarding the expenses and investments of the CLEC and ILEC
680 entities of All West. Qwest asked All West Communications a number of
681 questions intended to help Qwest determine if All West is properly accounting for
682 the various aspects of its business. All West Communications' responses were
683 essentially that it is accounting in accordance with applicable regulations without
684 providing any demonstration that it is doing so. (See Qwest Data Requests 1.22 -
685 1.28, 2.9, 2.18 and 2.19 in Exhibit Qwest 1.1) If the boundary change is granted,
686 All West's accounting and separations would be legitimized at least with respect
687 to West Promontory because there would no longer be a need for separate
688 accounting and separations.

689

VI. OTHER ISSUES

690 **Q. ARE THERE OTHER REASONS THE COMMISSION SHOULD NOT**
691 **GRANT THE PETITION?**

692 A. Yes. In response to Qwest's Data Requests 1.01 - 1.09 (see Exhibit Qwest 1.1),
693 All West Communications stated that it is "exempt from many obligations
694 imposed upon the Bell Companies." Based upon this, competitors will have more
695 alternatives if West Promontory is left in the Park City Exchange. Also, the
696 Commission should not grant the petition because there may be technologies
697 deployed by providers that will enable them to serve Promontory without the
698 developer's permission. However, if the boundary change is granted, the entire
699 development will be in All West Communications' exclusive service territory and
700 subject to high cost support, making competition far more difficult.

701 **Q. IN HIS TESTIMONY ON PAGE 8, STARTING ON LINE 166, MR.**
702 **PRINCE STATES THAT "WHAT MAKES THE MOST SENSE AND IS**
703 **BEST FOR THE CUSTOMER SHOULD BE THE DETERMINING**
704 **FACTOR." DOES QWEST AGREE WITH THIS STATEMENT?**

705 A. Qwest agrees that what is best for customers in general is an important factor in
706 determining public interest. However, what All West Communications perceives
707 to be best for customers in the Promontory development, even if it could be
708 shown that granting the petition was in the best interest of the customers within
709 Promontory, does not mean it is in the best interest for other customers in Utah.

710 Qwest fails to understand how customers in West Promontory would benefit from
711 a change moving them from the Park City exchange area to All West
712 Communications' service territory. Customers in West Promontory currently
713 have toll free calling into Park City without additional charge. If All West
714 Communications' petition is granted, they will no longer be within the Park City
715 Exchange and will lose local calling to Park City unless EAS is established or
716 they subscribe to an FX service provided by All West Communications, both of
717 which impose an additional charge. Based upon Exhibit Qwest 1.2, West
718 Promontory customers would experience a \$2 a month increase for receiving the
719 same basic residential telecommunication service with local calling to the Park
720 City and Kamas local calling areas as they currently have.

721 Additionally, if competition is impacted in a negative way, this also negatively
722 impacts customers. The impact on competition is another very important factor
723 the Commission needs to consider. Within Qwest's service territory in Utah, with
724 the certification of many CLECs including All West/Utah, it has been presumed
725 to be in the public interest to have more than one provider that can give customers
726 choices for their telecommunication services. It should be presumed by the
727 Commission that it is in the public interest for other providers to be able to
728 compete on a level playing field with All West in all of Promontory.

729 **Q. IN HIS TESTIMONY, ON PAGE 12 STARTING ON LINE 250, MR.**
730 **PRINCE STATED, “WEST PROMONTORY IS NOW OPEN TO**
731 **COMPETITION AND TECHNICALLY WITH A BOUNDARY CHANGE**
732 **IT WOULD BE OPEN TO COMPETITION BY ORDER FROM THE PSC.**
733 **ALL WEST IS WILLING TO WAIVE THE SIZE REQUIREMENTS FOR**
734 **CLEC ENTRY INTO WEST PROMONTORY. IT WOULD REMAIN A**
735 **COMPEITIVE AREA UNDER ALL WEST’S PROPOSAL.” WHAT IS**
736 **QWEST’S RESPONSE TO THIS STATEMENT?**

737 A. This statement suggests that currently West Promontory is open to competition.
738 However, Promontory is a gated community with private roads and the developer
739 has not allowed Qwest to come in and place facilities. In responses to Qwest Data
740 Requests, All West Communications has confirmed that it does not intend to
741 allow competitors to use its facilities. (See Data Requests 1.1 - 1.3 and 1.5 – 1.9
742 in Exhibit Qwest 1.1) The developer receives a percentage of the data and video
743 revenue and if a competitor was allowed to serve, this could reduce the
744 compensation to the developer. (See Exhibit Qwest 1.3, page 5, item 10.) For
745 this reason alone the Commission should deny All West Communications’
746 petition and not reward the developer for refusing to let others serve.

747 The statement in the question also implies that nothing would change in regards to
748 competition in West Promontory if the petition is granted. However, if the
749 petition is granted, and if Qwest or another provider were able to place facilities
750 in West Promontory, they would need to obtain approval from the Commission.

751 Today, Qwest and other CLECs already have approval from the Commission.
752 Even though All West Communications has stated that it would waive the size
753 requirement in West Promontory, that does not automatically mean a CLEC
754 would receive approval to serve. Even if All West Communications agrees not to
755 oppose the petition on any grounds, All West Communications has not and cannot
756 guarantee that no one would oppose the petition and that the Commission would
757 grant the petition.

758 In addition, allowing a CLEC to serve in West Promontory does not allow service
759 throughout the Promontory development. From a practical standpoint it would
760 not make much sense for a provider to seek Commission approval to serve in only
761 a portion of the development.

762 Also to make competition meaningful, All West Communications would also
763 have to guarantee that there would be no opposition to a request from another
764 provider to receive Eligible Telecommunications Carrier (ETC) status.

765 Otherwise, the competitor would not be eligible to receive the same high cost
766 support All West Communications receives. Without availability of high cost
767 support to all providers, meaningful competition could not take place because All
768 West Communications is starting with a \$44 per line per month advantage. (See
769 Data Response 2.11, Exhibit Qwest 1.1)

770 Finally, All West Communications acknowledged in its answer to a Division Data
771 Request 2.4 that, "It is All West's belief that it will be the exclusive wireline

772 provider for Promontory simply because no other company is likely to overbuild.”
773 (See Exhibit Qwest 1.6) All West’s “belief” is supported by its unwillingness to
774 lease or sell conduit to other providers. The DPU in its Data Request 1.16 to All
775 West asked, “If conduit is available, is All West willing to lease space to Qwest?”
776 All West responded that, “It is generally All West’s policy to place at least one
777 additional empty conduit in the ground because the cost of burial is so much
778 greater than the cost of the conduit. This placement is made for future expansion
779 and not generally considered for lease or sale.” All West’s “belief” is further
780 supported by the facts that the roads in the Promontory development are private
781 roads and All West was the only telecommunications provider allowed to place
782 within the Developer’s provided trenches. Thus, unless something changes, the
783 only type of competition that might be provided in West Promontory would be
784 some type of wireless competition. Therefore, All West Communications’
785 attempt to imply that West Promontory will be a competitive service area if the
786 petition is granted is incorrect.

787 **Q. IN HIS TESTIMONY ON PAGE 7, STARTING ON LINE 152, MR.**
788 **PRINCE STATES, “[QWEST] OBJECT[S] PRIMARILY DUE TO THE**
789 **PERCEPTION THAT THIS ACTION WILL SOMEHOW SET AN**
790 **UNWANTED PRECEDENT THAT COULD CAUSE [IT] HARM IN**
791 **OTHER AREAS AND OTHER SITUATIONS.” DOES THIS**
792 **ACCURATELY REFLECT QWEST’S POSITION?**

793 A. Even though this is an important reason, as explained in my testimony there exist
794 other important reasons why the Commission should deny All West
795 Communications’ petition. However, this issue is an important public interest
796 consideration for the Commission if it wants to ensure a level playing field for
797 competitors. Given the level of high cost support that All West Communications
798 currently receives, equivalent to \$44 per line per month during the 1st quarter of
799 2006 (see Data Request 2.11 in Exhibit Qwest 1.1), there is a valid concern about
800 the precedent of All West Communications being able to take away Qwest’s
801 service territory and moving it into All West Communications’ territory, thus
802 enabling it to seek high cost support that Qwest or other CLECs do not receive.
803 This gives All West Communications a significant advantage when negotiating
804 with developers to choose it as the preferred provider. All West Communications
805 already has a significant advantage with the exclusive right to serve within its
806 territory. It can compete for the entire development where other providers can
807 only compete for the portion within Qwest’s service territory. During the time
808 that the developer of Promontory made the decision to go with All West, Qwest

809 or any other provider could only offer to serve the West Promontory side of the
810 development. Based upon earlier meetings with representatives of the developer,
811 it is Qwest's belief that having just one provider was an important factor to the
812 developer. If the Commission does not deny All West Communications' petition,
813 what will stop All West Communications or other rural ILECs from doing the
814 same thing over and over again as other situations arise? Going through a
815 contested regulatory proceeding to get approval, even though it makes it more
816 difficult for All West Communications, has not deterred it from moving forward
817 in this proceeding. The Commission is well aware of the other providers that are
818 offering triple play services to developers in Qwest's territory throughout Utah.
819 This is not just about Qwest and All West Communications competing for the
820 Promontory development.

821 **Q. IN HIS TESTIMONY ON PAGE 10, STARTING ON LINE 214, MR.**
822 **PRINCE STATED, "QWEST HAS SAID IT IS WILLING TO SERVE**
823 **CUSTOMERS IN WEST PROMONTORY, BUT IT HASN'T**
824 **ATTEMPTED TO PROVIDE SERVICE THERE SO FAR." HAS QWEST**
825 **ATTEMPTED TO SERVE AND IS QWEST WILLING TO SERVE WEST**
826 **PROMONTORY? PLEASE EXPLAIN.**

827 **A.** Yes. Qwest's field engineer for the Park City area, Kurt Woodman, made several
828 contacts with representatives of the developer and he was told that All West had
829 been selected and that the developer did not want or need Qwest to place
830 facilities. Even though there are public utilities easements within the

831 development, Promontory is a gated community and the roads are private. If
832 Qwest tried to overbuild Promontory, Qwest could not since it would need
833 permission to cross the private roads. Qwest continues to be willing to serve
834 pursuant to its Land Development Agreement (LDA) Price List (Section 4.4 of
835 the Exchange and Networks Service Price List).

836 **Q. ARE THERE OTHER ISSUES THAT QWEST HAS BECOME AWARE**
837 **OF DURING THIS PROCEEDING THAT THE COMMISSION SHOULD**
838 **BE CONCERNED ABOUT?**

839 A. As discussed above, Qwest has significant concerns that All West may not be
840 properly accounting for its CLEC and ILEC entities. Qwest believes it is relevant
841 for the Commission to know if All West is accounting properly before seriously
842 considering the All West Communications' petition.

843 Qwest also is not satisfied based on All West Communications' responses to its
844 Data Requests that All West is properly accounting for its video and data
845 investments to ensure that it is not receiving high cost support for the non
846 telecommunication services investments and expenses. Qwest asked All West
847 Communications if its investments to provide dial tone service to All West/Utah
848 is included in its investment base upon which it receives federal high cost support.

849 All West responded that, "these costs are allocated accordingly," in regards to
850 West Promontory, but did not provide a response regarding the other areas it
851 serves in the Park City area. Additionally, its Data Response to 2.18, that "All

852 West is awaiting the outcome of this proceeding to determine if separation will be
853 required,” appears to be inconsistent to its response in 2.09. (See Qwest Data
854 Request 2.09 and 2.18 in Exhibit Qwest 1.1) This raises a number of concerns
855 because All West Communications is not certified to provide wholesale services
856 in Qwest’s territory and should not be receiving federal high cost support for
857 telecommunication services it provides outside of its territory and inside of
858 Qwest’s service territory. In addition, Qwest does not receive high cost support
859 for the wholesale services it provides to CLECs. Qwest believes that the
860 Commission should undertake an investigation to learn the facts and take
861 appropriate action before it considers granting All West Communications’
862 petition.

863 **Q. DOES QWEST HAVE ANY CONCERNS REGARDING THE WAY THAT**
864 **ALL WEST COMMUNICATIONS ROUTES ITS “FX” SERVICE**
865 **TRAFFIC TO QWEST?**

866 A. Yes. All West Communications is routing its FX traffic to Park City through All
867 West/Utah which routes the traffic to Qwest through the local interconnection
868 service (LIS) trunks that All West/ Utah has with Qwest in Park City. (See
869 Qwest Data Request 1.30 in Exhibit Qwest 1.1) This is inappropriate. LIS trunks
870 are for the exchange of local traffic, not for delivery of inter-exchange traffic.
871 Furthermore, they should be used only for traffic originated by All West/Utah or
872 Qwest, not traffic initiated by All West Communications. All West/Utah is not
873 authorized to provide service in All West Communications’ territory anymore

874 than any other CLEC is. Therefore, the traffic cannot be originated by All
875 West/Utah. If All West/Utah were not a CLEC and it did not have LIS trunks
876 with Qwest, All West Communications would have to route its non-local traffic
877 the proper way through the meet point facilities it has with Qwest and pay the
878 appropriate access charges. If the requested boundary change is made, this
879 problem will be exacerbated because local traffic now originated in West
880 Promontory by All West/Utah customers, will then be non-local traffic originated
881 by All West Communications. Presumably, All West Communications will still
882 attempt to route this "FX" traffic on All West/Utah's LIS trunk to avoid access
883 charges. Therefore, Qwest believes this issue should be investigated and resolved
884 before granting the petition is considered.

885 **VII. CONCLUSION**

886 **Q. IN CONCLUSION, DO YOU BELIEVE THE COMMISSION SHOULD**
887 **GRANT ALL WEST COMMUNICATIONS' PETITION?**

888 A. No. All West Communications has provided no compelling public interest reason
889 for the Commission to move West Promontory into its service territory. Other
890 than the problems it should already be correctly dealing with relating to
891 accounting and high cost support, All West Communications has presented no
892 significant reason that could justify granting its petition. And the high cost
893 support issues argue against granting the petition, not in favor of it. Rather, given
894 the facts that have been presented to the Commission in my testimony, there are

895 compelling public interest reasons to deny the petition. Therefore, the

896 Commission should deny the petition.

897 **Q. DOES THIS COMPLETE YOUR TESTIMONY?**

898 **A.** It does.

State of Utah)
) ss.
County of Salt Lake)

I, James B. Farr, being first duly sworn on oath, state that the answers in the foregoing written testimony are true and correct to the best of my knowledge, information and belief. Except as stated in the testimony, the exhibits attached to the testimony were prepared by me or under my direction and supervision, and they are true and correct to the best of my knowledge, information and belief. Any exhibits not prepared by me or under my direction and supervision are true and correct copies of the documents they purport to be.

James B. Farr

SUBSCRIBED AND SWORN TO this 2nd day of October, 2006.

Notary Public