

Gregory B. Monson (2294)
Ted D. Smith (3017)
STOEL RIVES LLP
Attorneys for Qwest Corporation
201 South Main Street, Suite 1100
Salt Lake City, Utah 84101
(801) 328-3131
(801) 578-6999 (fax)
gbmonson@stoel.com
tsmith@stoel.com

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In Regard to the Request of ALL WEST	:	Docket No. 02-2270-01
COMMUNICATIONS, INC. for Revision	:	
to Exchange Boundaries	:	PETITION TO INTERVENE AND
	:	RESPONSE OF QWEST TO REQUEST
	:	OF ALL WEST

Qwest Corporation (“Qwest”), pursuant to Utah Code Ann. § 63-46b-9 and Utah Admin. Code R746-100-7, petitions the Commission for intervention so that it may oppose the Request for Agency Action of All West Communications, Inc. (“All West”) dated February 1, 2002 (“Request”). In addition, because Qwest has a direct and substantial interest in the matter and in anticipation of the Commission issuing a notice pursuant to Utah Code Ann. § 63-46b-3(3)(d)(iii) and granting Qwest’s petition to intervene, Qwest, pursuant to Utah Code Ann. § 63-46b-6 and Utah Admin. Code R746-100-3.I, responds to the Request.

INTRODUCTION

The Request seeks a revision to the existing service territory of All West and Qwest by transferring territory within Qwest’s Park City Exchange to All West’s Jordanelle Exchange. The basis of this request is that the Promontory Development (“Promontory”) is being developed on land that straddles the two exchanges. Qwest is the incumbent local exchange carrier

(“ILEC”) certificated to provide local exchange service within the Park City Exchange. All West is the ILEC certificated to provide local exchange service within the Jordanelle Exchange. According to the Request, 2.99 square miles or approximately 1,914 acres of Promontory are located within Qwest’s Park City Exchange (“Subject Territory”).

All West attempts to justify the request on the basis of an allegation that it will be more efficient, cost-effective and less confusing for only one ILEC to provide local exchange service to Promontory. All West alleges that it is better situated to be that ILEC than Qwest because it has a contract with the developer of Promontory to provide local exchange service within Promontory and has installed facilities within the development. All West acknowledges that it can provide local service to the Subject Territory as a competitive local exchange carrier (“CLEC”), but alleges that it is in the public interest that it serve the entire development as an ILEC.

Qwest objects to the relief sought by All West. The Request should be denied because All West has ignored the policy favoring competition in the local exchange market, failed to demonstrate any compelling need to grant the Request, ignored the interests of many CLECs certificated to provide local exchange service in Qwest’s service territory, but not certificated to provide local exchange service in All West’s service territory, made unwarranted assumptions and incorrect allegations; ignored the impact of granting the Request on the Universal Service Fund (“USF”) and ignored the fact that the problems it alleges will not be solved by the patchwork solution it proposes. The public interest will be best served by allowing Qwest to compete with All West/Utah, Inc. for customers in the Subject Territory.

PETITION FOR INTERVENTION

To the extent Qwest is not a party of right in this docket, it petitions the Commission to grant it intervention. Qwest clearly meets the standards for intervention in section 63-46b-9.

Qwest's legal interests are substantially affected by the Request. Utah Code Ann. § 63-46b-9(2)(b). The Request seeks to transfer the Subject Territory in which Qwest is currently the certificated ILEC to All West. Qwest has fiber and copper facilities near the Subject Territory with which it can serve customers in Promontory and has sized facilities in the area in anticipation of serving customers in the Subject Territory and adjacent areas. Qwest's opportunity to receive a return on these facilities would be substantially impaired if the relief sought by the Request were granted. Qwest's rights under its certificate of convenience and necessity would be affected by the Request.¹

The interests of justice and the orderly and prompt conduct of this proceeding will not be affected by granting Qwest intervention. *Id.* 63-46b-9(2)(b). All West has only recently filed the Request, the Commission has not yet noticed further proceedings under section 63-46b-3(3)(d) and responses to the request would not be due for 30 days after the Commission provides that notice. *Id.* 63-46b-6(1). Qwest is providing its response with this petition, so no delay will result from granting Qwest intervention.

Based upon the foregoing, the Commission should grant Qwest intervention in this docket.

¹ In serving the Request on Qwest, All West has conceded that Qwest has a direct interest in the matter. Utah Code Ann. § 63-46b-3(3)(b).

RESPONSE TO REQUEST

A. THE REQUEST SHOULD NOT BE GRANTED BECAUSE IT WOULD BE CONTRARY TO THE LEGISLATIVE POLICY IN FAVOR OF FACILITIES-BASED COMPETITION.

All West supports its Request by stating that “[t]here will be greater economies of scale if [Promontory] is served by one incumbent LEC rather than two.” Request at 3 ¶ 5. All West further states that “it will be more efficient, cost-effective and less confusing for All West to serve the entire Promontory development” and “All West seeks the ability to provide seamless services to this development.” *Id.* at 3-4 ¶ 6. Finally, All West asserts that it should be granted the Subject Territory because it has “already placed approximately \$150,000 of facilities within the development.” *Id.* at 4 ¶ 7. While these points may have been considerations in the public utility environment prior to passage of the Telecommunications Reform Act of 1995 and the Telecommunications Act of 1996, they are contrary to the new policies enunciated by those Acts.

In 1995, the Utah Legislature opened the local exchange market to competition as a means to “facilitate access to high quality, affordable public telecommunications services to all residents and businesses,” “provid[e] wider customer choices for telecommunications services throughout the state,” “facilitate and promote the efficient development and deployment of an advanced telecommunications infrastructure,” and “encourage new technologies.” Utah Code Ann. § 54-8b-1.1(2), (3), (5) and (8). In 1996, Congress opened the local exchange market to competition “in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.” 110 Stat. 56 (1996). Under both acts, the type of competition preferred is facilities-based competition.²

² See, e.g., *Fourth Report and Order, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 16 FCC Rcd 15435, 15437 ¶ 4 (2001) (“Through experience over the

The factors cited by the Request in favor of transferring the Subject Territory to All West are inconsistent with these policies. The factors could equally be argued as a basis for not opening the local exchange market to competition in the first place. Certainly, economies of scale, efficiency and lack of confusion would have been served by preserving the regulated monopoly of Qwest to provide seamless service in large portions of Utah. Qwest would have been better able to utilize and recover its enormous investment in facilities had competition not been permitted. But the Legislature and Congress believed consumers would be better served by opening the market to facilities-based competition. Likewise, here the interests of customers in Promontory and other areas of the state will be promoted by allowing Qwest, All West/Utah and other CLECs to compete for their business.

B. THERE IS NO COMPELLING REASON TO GRANT THE REQUEST.

As noted in the Request, All West/Utah, the CLEC affiliate of All West, has been granted authority to provide local telecommunications services in the area of the state served by Qwest. Request at 4 ¶ 6. Therefore, All West can serve the Subject Territory through its CLEC affiliate, and it is not necessary for the Commission to grant the Request for All West, either directly or through its affiliate, to serve all of Promontory.

A decision to transfer certificated area from one company to another is a significant decision that should only be made for compelling reasons. All West does not claim that the transfer is necessary, only that it would be convenient. This argument is unpersuasive.

As a CLEC operating in Qwest's service territory, All West/Utah is free to offer service to customers in the Subject Territory through a price list on any terms and conditions it wishes. These terms and conditions can precisely mirror those under which All West will provide tariffed

last five years in implementing the 1996 Act, the Commission has learned that only by encouraging competitive LECs to build their own facilities or migrate toward facilities-based entry will real and long-

service to customers within the Jordanelle Exchange. All West is also free to offer the service in a number of different ways, including as a facilities-based provider. Any “inconvenience” to All West occasioned by requiring it to serve customers in the Subject Territory through its CLEC affiliate, is likely outweighed by the lower level of regulatory oversight imposed on CLECs and the greater flexibility accorded them as competitors in the ILEC’s territory. There is no compelling reason to grant the Request.

C. GRANTING THE REQUEST WILL DISENFRANCHISE NUMEROUS CLECS AND DENY OPTIONS TO CUSTOMERS.

Just as All West/Utah was granted a certificate limited to providing local telecommunications services in Qwest’s service territory, approximately 100 other CLECs have been granted certificates limited to competing with Qwest.³ Thus, the Request is not only an attempt to disenfranchise Qwest, it is an attempt to disenfranchise these CLECs.

If the Subject Territory is left as is in Qwest’s service area, customers in the area will have the opportunity to receive service from Qwest and any number of CLECs, including All West/Utah. If the Request is granted, they will be limited to obtaining service from only one provider.⁴

Even assuming All West agrees to open some part of its certificated area to competition as a condition to granting the Request, it is unlikely that competition will develop as quickly in the Subject Territory as it would if the Subject Territory is left in Qwest’s service area. Qwest

lasting competition take root in the local market.”)

³ *The State of the Telecommunications Industry in Utah*, Fourth Annual Report to the Governor, Legislature, the Public Utilities and Technology Interim Committee, and Information Technology Commission (Utah PSC November 2001) at 3.

⁴ This argument indicates that, contrary to the Request, the public interest would best be served by transferring the portion of Promontory in All West’s certificated area to Qwest. In that case, Qwest, All West/Utah and every other certificated CLEC in the state could compete for the business of customers in Promontory. Qwest is not at this time seeking that relief, but would be willing to consider it if the Commission found it in the public interest.

has established interconnection agreements with 80 CLECs,⁵ and 16 CLECs are currently collocated in its central offices in Utah. Two CLECs are collocated in Qwest's Park City Central Office. Others CLECs not located in Park City have the option to serve customers in the Park City Exchange through extended loops from collocations in other offices, including offices in Salt Lake City. All West has no experience with interconnection with CLECs or collocation. In addition, it is likely less attractive for a CLEC to collocate in All West's central office that serves the Jordanelle Exchange than Park City or another Qwest Central Office. Additionally, CLECs can choose to serve in Qwest's service area through resale and through their own facilities.

And even ignoring the foregoing issues that arise if All West agrees to permit competition, there is no reason that customers should be allowed to receive competitive services from All West and CLECs, but to deny them the benefit of competition from Qwest. It would be discriminatory and contrary to the public interest to allow everyone to compete for customers in the Subject Territory except Qwest.

D. THE REQUEST IS BASED ON UNFOUNDED ASSUMPTIONS AND INCORRECT ALLEGATIONS.

Basic assumptions underlying the Request are that Promontory is itself a community, that it will have a greater community of interest with Jordanelle than with Park City and that there are inherent difficulties in customers in the same locale having different NXX codes or local calling areas. No foundation is offered for any of these assumptions.

While there is no doubt that Promontory is a development, it is not at all clear that it is a community based on facts provided in the Request by All West. For example, does Promontory intend to incorporate and to have its own local government, police and fire protection, medical services, schools and churches or will it be part of some larger community that provides these

⁵ *The State of the Telecommunications Industry in Utah, supra.*

services? If the latter, what community will it be part of, Jordanelle or Park City? If the Subject Territory is left as is in the Park City Exchange and if Qwest is able to win customers in the Subject Territory, Park City will be within their local calling area. They will not be required to pay an extra charge for extended area service or to pay for a toll call to call Park City.

All West's concern about neighbors having different NXXs and local calling areas is clearly unfounded. It is not at all uncommon for second lines in the same home to have different NXXs in Qwest's calling area currently, let alone for neighbors to have different NXXs. Multiple NXXs are commonly needed and used now within the same central office and local calling area. It is also common for neighbors to have different local calling areas depending on the central office from which they are served. While there was a time when farms or fields lay between the areas served by central offices, those days have long since passed. Customers are not confused by having different NXXs and local calling areas than their neighbors.

All West also makes incorrect allegations in support of its Request. All West "does not believe that Qwest has the facilities available to provide the requested services to Promontory in a timely manner. Qwest currently has not facilities installed [sic] within the boundaries of the Promontory development." Request at 4 ¶ 7. In fact, Qwest has a major fiber backbone and copper facilities from which it can serve the Subject Territory. These facilities were sized in anticipation of serving customers in the Subject Territory and adjoining areas. Qwest already serves customers northeast of Highway 40 adjacent to the Subject Territory and can install distribution facilities in Promontory as it is developed as easily as All West. This allegation is simply incorrect.

E. ALL WEST FAILS TO ADDRESS HOW THE USF WOULD BE IMPACTED BY GRANTING THE REQUEST.

All West currently receives support from the USF to provide service to its customers at the rates provided in its tariff. If the Subject Territory is transferred to All West and no other changes are made, the rates paid by customers in the Subject Territory would be subsidized by the USF. Qwest currently receives no such subsidies and, unless other changes are made, would not do so if the Subject Territory remains within its service territory. In considering the public interest, the Commission needs to address impacts on the USF resulting from granting the Request. Qwest believes the USF would be impacted adversely by granting the Request.

F. GRANTING THE REQUEST IS A PATCHWORK SOLUTION THAT WILL NOT RESOLVE THE UNDERLYING ISSUE.

The Request recommends a solution to supposed issues arising because development is occurring in an area served by two ILECs. The proposed solution is not in the public interest for the reasons previously stated. However, even assuming the solution were in the public interest with respect to Promontory, as currently planned, the potential issues raised by All West in support of the Request will not be removed by transferring the Subject Territory to All West. The Subject Territory and the surrounding area all the way to Park City are in the early stages of development. Some of this development is within Qwest's service area and some is within All West's service area. It is likely that as development continues, there will be additional areas in which developments will straddle exchange boundaries or in which neighbors living in close proximity will be located in different exchanges. Granting the Request is simply a patchwork solution that addresses only one area and which may contribute to even more issues in the future.

For example, as noted above, Qwest already provides service to businesses and facilities located northeast of Highway 40. If the Request were granted, what would happen when development occurs between Promontory and this development? Presumably, All West will then

request a further transfer of territory, territory that may include customers already receiving service from Qwest or a CLEC.

Rather than start down this path, Qwest submits that the interests and needs of customers throughout this area will be best served through competition, not repeated patchwork solutions.

CONCLUSION

All West's Request is ill conceived. It is contrary to the policy in favor of competition in the local exchange market. There is no compelling reason to grant the Request. All West can already serve the Subject Territory through its CLEC affiliate. Granting the Request would disenfranchise not only Qwest, but numerous CLECs that have been granted authority limited to Qwest's service territory. The public interest will not be served by limiting the competitive options available to customers in the Subject Territory. The Request is based on unfounded assumptions and incorrect factual allegations. Granting the Request would likely have negative impacts on the USF. Finally, granting the Request is a patchwork solution that does not resolve the underlying issue. The interests of customers in Promontory and in surrounding areas and of telecommunications corporations generally will be best served by allowing competition in the Subject Territory.

For the foregoing reasons, it is respectfully submitted that the Request should be denied.

DATED: June 18, 2018.

Gregory B. Monson
Ted D. Smith
STOEL RIVES LLP

Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **PETITION TO INTERVENE AND RESPONSE OF QWEST TO REQUEST OF ALL WEST** was mailed, postage prepaid, to the following on this 6th day of March, 2002.

Jerry D. Fenn
Blackburn & Stoll, L.C.
77 West 200 South, Suite 400
Salt Lake City, Utah 84101

Michael Ginsberg
Assistant Attorney General
500 Heber M. Wells Building
160 East 300 South
Salt Lake City, Utah 84111

Reed Warnick
Assistant Attorney General
500 Heber M. Wells Building
160 East 300 South
Salt Lake City, Utah 84111
