

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

IN THE MATTER OF THE REQUEST OF)	DOCKET NO. 02-2270-01
ALL WEST COMMUNICATIONS, INC.)	
FOR REVISION TO EXCHANGE)	DPU Exhibit No. 1.0
BOUNDARIES		

REBUTTAL TESTIMONY

OF

PAUL M. ANDERSON

**DIVISION OF PUBLIC UTILITIES
DEPARTMENT OF COMMERCE
STATE OF UTAH**

OCTOBER 20, 2006

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I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH THE DIVISION OF PUBLIC UTILITIES.

A. My name is Paul M. Anderson. My business address is Heber M. Wells Building, 160 East 300 South, 4th Floor, Salt Lake City, Utah. I am employed as a Utility Analyst for the State of Utah in the Division of Public Utilities. I am testifying on behalf of the Division of Public Utilities (DPU).

Q. WHAT ARE YOUR EDUCATIONAL BACKGROUND, QUALIFICATIONS AND EMPLOYMENT EXPERIENCE?

A. My qualifications are summarized on the attached DPU Exhibit 1.1.

II. PURPOSE OF TESTIMONY

Q. PLEASE STATE THE PURPOSE OF YOUR TESTIMONY.

A. The purpose of my testimony is to present the DPU’s engineering analysis and opinion pertaining to All West’s request for a revision to exchange boundaries between Qwest’s Park City Exchange and All West’s Jordanelle Exchange due to the development of the Promontory Ranch Club subdivisions built across the existing exchange boundary. The DPU does not see a compelling public interest

23 or customer reason for the Commission to approve such a significant forced
24 transfer of serving area from Qwest to All West. However, the DPU does
25 recommend an adjustment to the exchange boundary to accommodate the
26 reasonable determination of where ILEC territory for All West ends and
27 CLEC/Qwest territory begins. The DPU has examined this aspect of All West's
28 concern about efficiencies in determining which lots are ILEC and which are
29 CLEC and has developed a proposal to align the exchange boundary along natural
30 barriers.

31

32

III EXISTING SITUATION

33

34 **Q. HAS THE DPU REVIEWED THE AREA THAT ALL WEST WANTS TO**
35 **INCLUDE IN ITS EXCHANGE AREA BY REVISING THE EXCHANGE**
36 **BOUNDARY BETWEEN QWEST AND ALL WEST TO**
37 **ACCOMMODATE ALL OF THE PROMONTORY RANCH CLUB**
38 **DEVELOPMENT?**

39

40 **A.** The DPU conducted a field visit to the Promontory Ranch Club development to
41 familiarize staff with the area. Promontory consists of about 35 proposed and
42 developed individual subdivisions dedicated to upscale multi-million dollar
43 residential speculative investments. Most of the homes are planned to be second,
44 vacation and resort homes occupied seasonally, with two golf courses and other

45 amenities. All West has placed fiber feeder facilities to their Jordanelle terminal
46 building and has placed fiber distribution facilities to about half of the total
47 development. At this time there are about 49 subscribers in the East Promontory
48 area (All West territory) and about 35 subscribers in the West Promontory area
49 (Qwest territory). The current lines per subscriber rate for Promontory is 1.44.
50 The DPU observed how the Promontory Development was being built across the
51 telephone exchange boundary between the Qwest Park City exchange and All
52 West's Kamas/Jordanelle exchange. The exchange boundary was established
53 years ago when the area was undeveloped and was drawn north and south along
54 existing section lines. Refer to DPU Exhibit 1.4.

55

56 **Q. DID THE DPU DETERMINE THE NUMBER OF SUBDIVISION LOTS**
57 **THAT ARE AFFECTED BY ALL WEST'S PROPOSED BOUNDARY**
58 **CHANGE?**

59

60 A. The DPU requested, and received from the developer, all current approved
61 subdivision plats and a future overall map showing proposed subdivisions that
62 Promontory will develop in the foreseeable future. The DPU analyzed in detail
63 the number of lots on both sides of the existing exchange boundary. When a
64 subdivision lot was in both sides of the boundary it was assigned to the exchange
65 that had the majority of its square footage. The number of developed and
66 proposed lots on the All West side of the boundary is 764. The number of

67 developed and proposed lots on the Qwest side of the boundary is 609. The total
68 number of estimated lots is 1,373. Refer to DPU Exhibit 1.2 for a breakdown by
69 subdivision of how the lots currently are positioned in the "Present Method"
70 column.

71 **Q. HAVE TELEPHONE FACILITIES BEEN PLACED IN ANY OF**
72 **THE DEVELOPED SUBDIVISIONS?**

73

74 A. All West has placed fiber optic cable from the outskirts of the Kamas exchange
75 along Highway 40 through Qwest's area and into the Promontory development to
76 a building which All West has designated the Jordanelle wire center which houses
77 a remote fiber terminal. Fiber optic cable is then distributed along the front lot
78 lines in some of the developed subdivisions in portions of both East Promontory
79 (existing All West territory) and West Promontory (existing Qwest territory).

80

81 **Q. HOW DOES ALL WEST SERVE THE EXISTING CUSTOMERS IN THE**
82 **QWEST TERRITORY OF THE PROMONTORY DEVELOPMENT?**

83 A. All West/Utah, a CLEC, serves West Promontory, as well as other areas in the
84 Qwest Park City exchange, with authority of a certificate from the Public Service
85 Commission.

86

87 **Q. HAS QWEST PLACED ANY TELEPHONE FACILITIES IN THE**
88 **PROMONTORY DEVELOPMENT?**

89 A. Qwest has not placed any facilities in the Promontory development. All West is
90 the only telephone provider. Qwest's closest facilities are at the fire station that
91 serves the area.

92

93 **Q. WHAT QWEST TERRITORY HAS ALL WEST PROPOSED TO BE**
94 **TRANSFERRED TO ALL WEST TERRITORY?**

95

96 A. All West provided the Division with a map of their proposed transfer area (refer
97 to DPU Exhibit 1.3). All West proposes that the exchange boundary be moved
98 about three quarters of a mile to the west along a four mile stretch of the
99 Promontory Development to Interstate 80 as a west boundary on the north and
100 most of the West Promontory property line as a west boundary on the south.

101

102 **IV. ISSUES OF CONCERN REGARDING THE TRANSFER OF EXCHANGE**

103

SERVICE AREA

104

105 **Q. HAS THE DPU REVIEWED THE REASONS ALL WEST GIVES FOR**
106 **THEIR PROPOSED CHANGE IN EXCHANGE BOUNDARY BETWEEN**
107 **ALL WEST AND QWEST IN THE PROMONTORY DEVELOPMENT?**

108 A. The DPU reviewed the Direct Testimony of D. Vernile Prince outlining All
109 West's public interest reasons for their proposed area transfer. The following is a
110 summary of All West's reasons for their proposed transfer:

- 111 1. It is impossible for the CLEC to charge the same rates as the ILEC.
- 112 2. The customers on the Qwest side of the boundary line would pay to extend
113 Qwest's facilities. A boundary change would avoid those costs.
- 114 3. All customers in both West and East Promontory would be assured access to
115 the same services at the same prices.
- 116 4. Qwest hasn't attempted to provide service in West Promontory so far
117 (seemingly implying that the certificate holder is not performing its obligations).
- 118 5. All West is willing to waive the size requirements for CLEC entry into West
119 Promontory (Meaning they would not oppose competitive entry.).
- 120 6. Significant savings from efficiencies in All West's operations will
121 automatically flow to the customer.
- 122 a. The process of determining what side of the boundary the customer is in
123 is time consuming and expensive.
- 124 b. Keeping a separate set of accounts for this little pocket of customers
125 will be costly.
- 126 7. The NECA tariff requires All West to contribute a tarified charge for each
127 broadband subscriber in the ILEC area only.
- 128 8. The increase in Federal USF will provide significant benefit to the residents of
129 West Promontory.
- 130 9. The existing exchange boundary creates hardships for customers and for the
131 utility serving those customers and seems like an unfair and unnecessarily
132 burdensome regulation.

133 **Q. HOW DOES ALL WEST'S CLEC RESIDENTIAL RATE COMPARE**
134 **WITH ITS ILEC RESIDENTIAL RATE?**

135 A. All West did not provide data to show the cost difference for service between the
136 CLEC and the ILEC, but the rate information given to Qwest in All West's
137 response to Qwest's Second Set of Data Requests on question 2.21 shows that the
138 totals with foreign exchange service included in the ILEC rate are only \$2 apart.
139 The residential rate for CLEC is service is \$28.95 and the residential rate for
140 ILEC is \$30.95. Foreign exchange (FX) service allows calls to Park City from the
141 ILEC in East Promontory to be charged as local calls. This difference in rates
142 does not seem of significant concern to the DPU, and should not be a concern of
143 the Commission.

144
145 **Q. WOULD EAS BETWEEN PARK CITY AND KAMAS BE A**
146 **SATISFACTORY SOLUTION TO THE CALLING AREA PROBLEM?**

147 A. Assuming that All West and Qwest were able to work out an EAS arrangement
148 between the two exchanges there would be an EAS charge to replace the existing
149 FX charge. According to the direct testimony of James B. Farr, Qwest apparently
150 does not oppose EAS in this area and All West has stated that there is a
151 community of interest between Promontory and Park City.

152
153 If All West wants to fund an EAS study, the DPU will facilitate it and provide the
154 necessary surveys to determine customer calling preferences for toll charges

155 verses EAS charges in Park City, Promontory and Kamas. However, the DPU
156 believes that All West's FX plan is the best solution at this time because of the
157 small number of subscribers it will actually help.

158

159 **Q. IF QWEST EXTENDED ITS FACILITIES IN THE WEST**
160 **PROMONTORY AREA WHO WOULD PAY FOR THIS EXPENDITURE?**

161 A. Qwest uses a standard Land Development Agreement (LDA) with developers in
162 greenfield areas where the developer opens trenches for joint placement of
163 utilities. In the case of Promontory, a major portion of the facilities have already
164 been placed by All West. It is very unlikely that Qwest would overbuild facilities
165 through the developed subdivisions. There are, however, subdivisions in West
166 Promontory that have not been developed yet for which Qwest could enter into an
167 LDA with the developer and provide facilities. The DPU believes that it is
168 unlikely that the developer would voluntarily let Qwest extend facilities because
169 of the developer's contract with All West. Qwest's costs associated with the
170 extension of facilities would be recovered through the rates Qwest charges its
171 customers. A boundary change would not necessarily affect these costs.

172

173 **Q. DO CUSTOMERS ON BOTH SIDES OF THE EXISTING BOUNDARY**
174 **HAVE ACCESS TO THE SAME SERVICES AT THE SAME PRICE?**

175 A. All West/Utah (CLEC) has the capability to provide the same services to West
176 Promontory that All West (ILEC) provides to East Promontory. The CLEC is
177 free to price its services exactly the same or as necessitated by their costs.

178

179 **Q. HAS QWEST ATTEMPTED TO PROVIDE SERVICE TO WEST**
180 **PROMONTORY?**

181 A. According to the testimony of Jim Farr, the Qwest field engineer for the area
182 contacted the developer and was told that All West had been selected as their
183 development's telephone provider and that the developer did not want or need
184 Qwest to place facilities. Qwest can only fulfill its obligation to serve if the
185 customers, or by extension, developers allow or facilitate the process. At this
186 point in time no one in West Promontory is being denied access to telephone
187 service.

188 **Q. WOULD ALLOWING CLEC ENTRY INTO WEST PROMONTORY, IF**
189 **ALL WEST'S PROPOSED BOUNDARY CHANGE IS ALLOWED,**
190 **PROVIDE COMPETITION?**

191 A. Some competition can now be achieved by the use of Voice over Internet (VoIP).
192 But, at this time, even if the developer allows access on their private roads, or All
193 West allows access to its facilities, there is still a competitive advantage for All
194 West because of a \$44 per line per month USF subsidy. In the event that Qwest's
195 CLEC or another carrier is designated an ETC (Eligible Communications Carrier)
196 in the All West they would have to qualify to receive federal USF to have the

197 capability to serve customers at the same rate. Only allowing CLEC entry into
198 West Promontory, and not East Promontory, would be a big disadvantage to
199 competitors since it would be harder to convince the developer to give future
200 access to only part of the development.

201

202 **Q. WOULD ALL WEST'S PROPOSED BOUNDARY CHANGE HELP**
203 **IMPROVE OPERATIONAL EFFICIENCIES IN THE PROMONTORY**
204 **AREA?**

205 A. The DPU recognizes that an arbitrary boundary from point A to point B through a
206 subdivision presents operational problems. In an attempt to alleviate these
207 problems, the DPU proposes a less radical revised exchange boundary along the
208 natural barrier of the golf course that runs north and south through Promontory
209 near the existing boundary (see DPU Exhibit 3). The establishment of this new
210 clearly defined boundary will help eliminate the costly and confusing process of
211 determining what side of the exchange boundary a particular lot is on. This new
212 modified exchange boundary will require the transfer of only 73 lots from being
213 located in the Qwest area to being located in the existing All West ILEC area.

214

215 The expense of keeping a separate set of accounts for West Promontory is only
216 part of doing business, as All West already knows from doing the same thing for
217 other areas it serves as a CLEC in the Park City exchange since it is required to by
218 law.

219 **Q. IS THE DPU RECOMMENDING A CHANGE IN EXCHANGE**
220 **BOUNDARY?**

221 A. The DPU is not recommending a boundary change to include all of West
222 Promontory in All West's service area. The DPU is only recommending to the
223 Commission a minor change in exchange boundary alignment to provide a clearly
224 defined boundary. This boundary adjustment would be negotiated between Qwest
225 and All West to alleviate operational problems and would clearly benefit both
226 companies.

227 **Q. WOULD ALL WEST'S PROPOSED BOUNDARY CHANGE BENEFIT**
228 **THE CUSTOMERS IN THE WEST PROMONTORY AREA BY HAVING**
229 **THEIR BROADBAND COSTS AND REVENUES INCLUDED IN THE**
230 **NECA POOL?**

231 A. It is possible that the broadband costs and revenues for this group of subscribers
232 would affect the calculation of the NECA tariff, but not probable. The biggest
233 effect would be that the recovery of broadband costs would not come from what
234 the CLEC charges, but from the NECA tariff rate and pooling used by the ILEC.
235 This difference would have a negligible effect on subscribers.

236

237 **Q. WOULD ALL WEST'S PROPOSED BOUNDARY CHANGE GIVE A**
238 **SIGNIFICANT BENEFIT TO THE CUSTOMERS IN THE WEST**
239 **PROMONTORY AREA BY INCREASING THE FEDERAL USF**
240 **FUNDING TO ALL WEST?**

241 A. Yes. All rate payers contribute to the federal and state USF high cost fund, if not
242 directly as a line item on their telephone bill, then indirectly in the rates they pay
243 for telephone service. The federal and state USF funds are intended to help
244 support basic telephone service to high cost rural areas. The West Promontory
245 service area is currently a “competitive area” since it is located in the Qwest Park
246 City exchange. There are other subdivisions similar to Promontory that are being
247 served in the Park City exchange by Qwest and some by All West/Utah that do
248 not qualify for high cost USF support. None of these subdivisions have the
249 characteristics of the traditional “rural” environment that used to exist when low
250 density agricultural and ranching farms were pervasive. These subdivisions look
251 more like denser high-end “urban” residential developments with all the
252 amenities. As un-served or low density rural areas become upscale higher density
253 urban areas, the need for high-cost support is eliminated and the onset of
254 competition should be encouraged.

255

256 In the particular case of West Promontory, the DPU believes that the boundary
257 change that All West proposes would have a harmful effect on competition as it
258 would convert about three square miles of high-end looking urban area that is
259 presently “competitive” to a “high cost” status. It would release federal USF
260 funds at a current rate of \$44 per line per month.

261

262 **Q. WHAT EFFECT WOULD ALL WEST'S PROPOSED BOUNDARY**
263 **CHANGE HAVE ON STATE USF FUNDING?**

264

265 A. If All West's proposed boundary change is granted the West Promontory area
266 would be eligible for future Utah USF funds which would be based on a revenue
267 requirement analysis in a rate of return or rate case audit. All West did not
268 provide future state USF funding impacts and the DPU cannot calculate the
269 change in state USF funding that would be due to West Promontory's inclusion in
270 All West's study area without a detailed audit. However, because the cost per
271 loop is high, the DPU believes the effect on state USF funding would be to raise
272 these payments considerably and is a reason for not granting the proposed area
273 change. If All West's boundary change is granted and federal USF funds are not
274 approved because the territory was previously a Qwest serving area, the burden of
275 high cost support will fall on state USF. Please refer to the Rebuttal Testimony of
276 E. Clair Oman for an analysis of issues regarding state and federal USF.

277

278 **Q. DOES THE EXISTING EXCHANGE BOUNDARY CREATE HARDSHIPS**
279 **FOR CUSTOMERS AND FOR THE UTILITY SERVING THOSE**
280 **CUSTOMERS AND SEEM LIKE AN UNFAIR AND UNNECESSARILY**
281 **BURDENSOME REGULATION?**

282

283 A. No customers have complained to date, and, as discussed above, the DPU's
284 proposed exchange boundary modification will eliminate some of the problems
285 associated with determining the location of ILEC and CLEC lots. This boundary
286 modification will also resolve the boundary dispute if agreed to by all parties. As
287 indicated by the agreement All West executed with the developer, All West was
288 aware of the boundary dividing the development and the necessity of their CLEC
289 providing service in the Qwest area.

290

291 The DPU does not see a need for the Commission to discourage All West from
292 serving customers in the Promontory development with their CLEC. Rather, the
293 DPU encourages All West to provide state of the art communications with their
294 broadband investment in the area. The DPU does see a need for clear exchange
295 boundaries between companies, especially when the companies are regulated
296 differently. Competition and high cost support are both affected in considering
297 exchange boundary changes. This is only the first development among many that
298 will need to be looked at along the All West/Qwest boundary in the future. The
299 DPU believes that both parties should look for appropriate new development trade
300 offs, if necessary, to ensure good identifiable boundaries in the future and avoid
301 the necessity of future hearings.

302

303

V. CONCLUSION

304

305 **Q. PLEASE SUMMARIZE YOUR RECOMMENDATIONS.**

306 A. The DPU does not see a compelling public interest or customer reason for the
307 Commission to approve such a significant forced transfer of serving area from
308 Qwest to All West in the West Promontory area. The Qwest service area should
309 remain with Qwest and All West should continue to serve West Promontory as a
310 CLEC.

311

312 However, the DPU does see a need for an adjustment to the arbitrarily defined
313 existing exchange boundary to accommodate the reasonable determination of
314 where ILEC territory for All West ends and CLEC/Qwest territory begins. The
315 DPU has examined this aspect of All West's concern about efficiencies in
316 determining which lots are ILEC and which are CLEC and has developed a
317 proposal to align the exchange boundary along clearly defined natural barriers, in
318 this case, a golf course running north and south through the development and a
319 future par 3 golf course (refer to DPU Exhibit 1.4).

320

321 The DPU believes that changing the West Promontory area from a competitive
322 area to a high cost area is going in the wrong direction, since West Promontory
323 does not have the characteristics of the traditional rural environment, but is a more
324 densely populated high end development that should be served competitively.

325

326 The DPU believes that allowing West Promontory to be included in All West's
327 study area will increase federal USF funding if approved by the FCC and increase
328 state USF funding and recommends that the Commission not grant All West's
329 proposed exchange boundary change.

330

331 If the Commission grants All West's proposed exchange boundary change the
332 DPU recommends that it should be approved only on condition that All West
333 submits its new study area and apply for and receive federal USF. The approval
334 for increased federal USF must be submitted to the Utah Public Service
335 Commission prior to receiving any increase in state USF.

336

337 The DPU recommends that the DPU's smaller boundary realignment proposal not
338 be conditioned on the approval of federal USF since it will help promote more
339 efficient operations and not have a significant effect on state USF.

340

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

342 A. Yes it does. Thank you.

VII. EXHIBIT(S)

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Exhibit 1.1 – Qualifications

- Bachelor of Science, Engineering Degree, University of Utah
- Extensive BELLCORE TECHNICAL training in the telecommunications industry.
- NARTE Certified Engineer (National Association of Radio and Telecommunications Engineers) while employed at US West.
- Over 30 years experience in the telecommunication industry. Extensive background in facility and switch planning, designed SONET/digital transmission systems for interoffice facilities, developed and analyzed long range incremental cost studies, facilitated and developed local loop integrated planning.
- Instrumental in the development and direction of fiber based Broadband strategies, and the establishment of survivability and diversity for the US West switch and facility network. Over 7 years experience engineering and constructing backbone fiber rings for MCI using Sonet self-healing fiber optic ring design. Scheduled and managed construction jobs, obtained permits and worked with customers and contractors on site surveys for building entrance and riser cable designs.
- Monitored and initiated modernization strategies for US West's interoffice facility and switch network for Utah, Idaho and Montana. Provided Company direction for orderly economic network evolution; includes making recommendations to high level managers.
- Translated customer needs to technical requirements and analyzed future emerging technologies and network elements.
- Prepared, and tracked capital and expense operating budget for facility and switch projects through approval, co-ordination and completion of the project.
- Planned and engineered local access feeder and distribution cable facilities for Utah. Planned and engineered structure reinforcements such as underground conduit and pole line facilities. Analyzed feeder routes to allocate cable pairs to distribution points. Conducted plant rehabilitation studies to determine areas to be upgraded. Developed construction budget (\$20M).
- Received the following recognition and awards: (1) *Network Stars Award for Contributions to Excellence*, N&TS, 1990, (2) *Volunteer of the Year Award*, Salt Lake City School District, 1992, (3) *On-The-Spot Award*, LATA Network Planning, 1992 and (4) *Award of Excellence*, Brooks Fiber Communications, 1997.