BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF QWEST CORPORATION)	
LAND DEVELOPMENT AGREEMENTS (LDA)	**Docket No. 03-049-62**
TARIFF PROVISIONS)	**DPU Exhibit No. 1**

DIRECT TESTIMONY

OF

PEGGY N. EGBERT

DPU # 1

DIVISION OF PUBLIC UTILITIES
DEPARTMENT OF COMMERCE
STATE OF UTAH

January 28, 2005

Q. PLEASE STATE YOUR NAME.

A. Peggy N. Egbert

Q. BY WHOM ARE YOU EMPLOYED AND WHAT ARE YOUR RESPONSIBILITIES?

A. I am employed by the State of Utah, Department of Commerce, as a technical consultant in the Division of Public Utilities, Telecommunication Section. My work address is 160 East 300 South, Salt Lake City, Utah. My general responsibilities include regulated service and operations evaluations, cost and rate studies, competitive entry and related issues, quality of service monitoring and Extended Area Service (EAS), Utah Universal Service Fund (USF) qualifying analysis and development and analysis of Total Element Long Range Incremental Cost (TELRIC) models and studies.

Q. WHAT ARE YOUR EDUCATIONAL AND PROFESSIONAL QUALIFICATIONS?

A. My qualifications are summarized on the attached Exhibit 1.1

Q. PLEASE STATE THE PURPOSE OF YOUR TESTIMONY.

A. The purpose of this testimony, is to present the Division's analysis of the problems that are deep-seated in the Qwest LDA Tariff. Moreover, the Division will discuss alternative solutions that were explored and make a recommendation.

Q. DOES THE DIVISION AGREE WITH THE HISTORICAL LDA

BACKGROUND THAT HAS BEEN PRESENTED IN THE TESTIMONIES OF OTHER PARTIES IN THIS DOCKET?

A. Yes. However, I would like to expand on the work that has been done in an attempt to resolve the issues surrounding the LDA Tariff.

In Docket 99-049-T28 [1] the Commission concluded that the difficulties attributed to the LDA comes from the failure of the parties to comply with the terms of the LDA and directed the parties to determine if modifications to the LDA are necessary and if there are appropriate remedies for failure to perform.

In an attempt to comply with the Commission' s order the Division facilitated numerous technical conferences in which the sole purpose was to derive workable solutions that would satisfy the needs of all parties and enable a smooth working relationship.

The "Reverse LDA Process Flow, and "Required Materials List" documents (Refer to Attachment 1) were developed through the joint effort of the Option 2 contractors, Qwest and the Division. Over the last four years both documents have been revised through the efforts of both Qwest and the Option 2 contractors. As faults have been identified during construction processes, they have been brought to the attention of all parties. As a result, solutions have been derived, changes in processes and updated materials have been

[1] Docket No. 99-049-T28, Order on Reconsideration

documented. In principal, these two documents are subject to continuous change.

During recent meetings parties all agreed that the "Process Flow[2] and Materials List"[3] are necessary documents that facilitate appropriate facility placement using Qwest approved materials.

Q. IF THE PARTIES HAVE DEVELOPED DOCUMENTS TO FACILITATE WORK PROCESSES FOR ALL PARTIES, WHY ARE THERE CONTINUED PROBLEMS WITH THE LDA TARIFF?

A. There are three interrelated problems. First, neither Qwest nor the Option 2 contractors believe that the other party is providing verifiable costs as ordered by the Commission. Second, the contractors distrust Qwest's estimated cost since they have not been given details nor material prices contained in the Qwest "CPD costing tool" which is used to derive estimated costs. Similarly, the Division has reviewed several of the Option 2 contractor's submissions for payment that have been filed in this Docket and in Docket 04-049-06 and also found them to be non-verifiable. Third, contractors have argued, in a meeting with the Division staff, that Qwest is basing its estimated cost on its own material costs, rather than taking into consideration the price Option 2 contractors have to pay for materials. However, Qwest continues to argue that its labor costs are

[2] Dennis Pappas Direct Testimony

[3] Dennis Pappas Direct Testimony

higher than the Option 2 contractors labor costs and, therefore, the materials cost difference would be offset by the labor cost difference.

Continual complaints filed with the Commission over the past five years lead the Division to believe that neither Qwest nor the developers/Option 2 contractors have operated in the spirit of current tariff language. Qwest has not appropriately adhered to the tariff language because they have paid contractors even when they have not submitted the appropriate documentation and costs (at least prior to August 2004). Likewise, Option 2 contractors continually fail to submit the appropriate documentation to Qwest, which the tariff requires.

Q. IN ADDITION TO THE ISSUES LISTED ABOVE, HAS THE DIVISION DEFINED AN UNDERLYING PROBLEM THAT IS PREVENTING THE CURRENT LDA TARIFF FROM BEING FUNCTIONAL.

A. The "Estimated Cost " or the amount that Qwest pays the Option 2 contractors is the dominant issue.

The Option 2 Developers/contractors are hesitant to accept Qwest's cost and believe that they should be paid the LDA Cap ($436.16), because they are not furnished adequate information on Qwest's itemized statement to allow a full understanding of what is included in the project cost estimation. Qwest's estimated cost is derived using the "CPD costing tool." There is no method for the Option 2 contractors to compare what they submitted for payment, to what Qwest has provided in their estimated cost statement. Likewise, Qwest is unable to verify the Option 2 contractors costs.

The Commission's interpretation of the language incorporated in the LDA Tariff has allowed contractors to charge for and receive payments for projects that are in excess of Qwest's estimated cost. Some of the Option 2 contractors are submitting costs that equal the 125% cap or $436.16 per lot, rather than submitting verifiable cost estimates. Likewise, up until August 2004, Qwest paid its own contractors $436.16 per lot when placing facilities under an LDA. In August Qwest notified all contractors that it would no longer pay Option 2 contractors without submission of verifiable cost estimates, as required by the current LDA Tariff.

Q. HAS THE DIVISION INVESTIGATED THE QWEST "CPD COSTING TOOL" THAT IS USED TO DETERMINE THE ESTIMATED COST OF A PROJECT?

A. Yes. The Division participated in a field visit to Qwest's engineering center and spent time with the engineers, working with the "CPD costing tool," for the purpose of fully understanding the processes and methodology of determining the estimated cost of a project.

The Division had the opportunity to validate many of the characteristics and calculations of the CPD model. During the analysis, Qwest maintained that the material prices contained in the model are updated at least annually and, in most instances, are updated when a price for a piece of material is adjusted by a vendor. Additionally, it was pointed out in a response to DPU Data Request #1 (Refer to Attachment 2), and later verified during the field visit, that Qwest uses the CPD model to develop its own estimated costs on LDA projects. From this aspect, the Division believes that Qwest dutifully maintains and updates vendors' material prices in the model to assure that its own projects are estimated accurately.

Furthermore, the Division questioned materials included in the "Misc" category and the level of information printed on the statement given to the contractors. In DPU Data Request #2 (Refer to Attachment #3), the Division asked Qwest to define the makeup of the Misc category. During its analysis, staff was able to ascertain the relationship between the Misc category and the material prices and labor rates. The percentage factor that Qwest applies appears to be reasonable when compared to cost study data used in the UNE Dockets. To itemize every screw, tape, tie down etc., would be virtually impossible, therefore, staff believes that the factor used in the Misc category is reasonable.

Q. DID THE OPTION 2 CONTRACTORS EXPRESS A CONCERN WITH THE

"MISC" CATEGORY FURNISHED BY THE CPD MODEL?

A. Yes they did. The Option 2 contractors are most concerned with Qwest's cost statement which does not indicate the price of a PED CAP[4] splice point installed by the Option 2 Contractors. The contractors have indicated that each PED CAP runs between $60.00 and $100.00 and is one of the major costs of a project. The PED CAP is not included in the Qwest CPD costing tool, since Qwest uses encapsulated splicing rather than splicing in a PED CAP. Qwest maintains that the Misc category incorporates the cost of the encapsulated splice which is near the same cost of a PED CAP. In response to the Division's Data Request #3 (Proprietary no Attachment), Qwest has provided vendor specific costs[5] for the encapsulated splice and the PED CAP. The Division has verified that the price for a PED CAP is somewhat higher than the encapsulated splice. The Division has asked Qwest if this piece of equipment could be separately itemized on the output report of the CPD estimate given to the contractors. Qwest believes that it may be possible.

Q. DOES THE DIVISION BELIEVE THAT QWEST SHOULD HAVE TO PAY MORE THAN ITS ESTIMATED COST?

[4]PED CAP is defined as a housing that contains telephone splice points required for the construction of facilities in a new development.

[5]Qwest Vendor Specific Costs are highly proprietary and can not be released by the Division.

A. In past proceedings[6] the Division has taken the position that Qwest should not have to pay more than its own costs to place the facilities in a new subdivision. In Docket No. 03-049-62 the Division file its brief stating:

> **"Qwest should only be required to pay an LDA contractor the costs that Qwest would incur to do the work itself, and should not be required to pay in excess of that amount. The telecommunications industry has changed dramatically since the LDA tariff went into effect and Qwest is no longer subject to rate of return regulation."**

Additionally, in Docket 03-049-62, the Division advocated:

> **"There seems to be no reason why Qwest should be forced to pay a contractor an amount in excess of the costs that it would incur if Qwest performed the work itself or provided engineering and design services under Option 1."**

The Division continues to advocate this position. It is not in the public interest to require Qwest to pay a contractor more than its own costs for placing network facilities because the additional cost is ultimately recovered by Qwest through increases of other products and services. This said, the issue of "COST" remains at the forefront. The one lingering question common to the dispute and all solutions is "What is Qwest's cost."

[6] Docket No. 03-049-62 Response Brief Of The Division Of Public Utilities on Cost Policy Issues.

B. WHAT ARE THE PERCEIVED BENEFITS OF OPTION 2?

A. The Option 2 contractors claim that they are capable of placing facilities in a more timely manner and can better meet developer construction timetables. Additionally, Option 2 contractors assert that they offer personalized service to the developer including project management for the coordination of facility placement of all utilities in the subdivision. In an attempt to validate the Option 2 contractor's claims, the Division asked Qwest to provide construction time frames, indicating how long it takes to place facilities in a new subdivision. Qwest responded in DPU Data Request #1 that it does not track facility placement time frames in a new subdivision. In a continued effort by the Division to validate the Option 2 contractor's assertions, Staff met with the State Home Builders Association (HBA). The HBA Committee stated that the Option 2 contractors do place facilities in a more timely manner than Qwest, especially when there is an urgency. To verify statements in the meeting, the Division asked the developers to respond to its data request (Refer to Attachment 5) and to write letters explaining the relationship between themselves and the Option 2 contractors. Presently the Division has received minimal response to both requests. However, developers have indicated in these responses that they desire the quick facility placement that Option 2 allows. Further, the developers indicated, verbally, that normally there is enough lead time for construction of telecommunication facilities, which would enable Qwest and/or the Option 2 contractors to easily meet construction schedules. This has been validated by the Division's review of Qwest's Quality Of Service report for the past two years[7]. It was suggested that PacificCorp is often the cause of delay which forces the developer to request short construction intervals for Qwest to place telecom facilities. For explanation, PacificCorp designs the running lines for joint use utility placement. Telecommunications providers cannot engineer their facilities until they have the power line placement design. The developers asserted that PacificCorp does not operate under time constraints. PacificCorp states that often the developer has not paid the up front deposit to allow the project to be scheduled into the engineer's work load.

Currently Option 2 of the LDA Tariff allows the developer of a subdivision to choose someone other than Qwest to engineer, design, place and splice telecom facilities. Thus, when Qwest or an Option 2 contractor does not perform to the satisfaction of the developer, the developer has the option of choosing another contractor to place facilities for subsequent developments.

WHAT ARE THE CONSEQUENCES OF ELIMINATING OPTION 2 OF THE LDA TARIFF?

A. The Division has identified several consequences of eliminating the current Option 2 of the LDA Tariff, they are as follows:

[7] Qwest's Proprietary Quality of Service Report is filed with the Division on a quarterly basis.

Disadvantage to Developers

Elimination of the current version of Option 2 of the LDA Tariff entirely abolishes "choice." The HBA asserts that developers want "choice." Elimination of Option 2, as claimed by the HBA, will leave the developers with no choice but to work directly with Qwest's contractors to engineer, place and splice facilities. Moreover, the developers stated that they will be forced to adhere to Qwest's work load and time frames which, in turn, may result in construction delay.

In the past, the HBA expressed support of Option 2 because it provided its members the capability of working with contractors who have satisfied their construction needs and enabled them to meet construction deadlines. HBA members continue to support the concept of Option 2. The small number of developers[8] who have responded to the Division and the Commission have expressed a desire to maintain the benefits of Option 2. The developers do not want to be held hostage by Qwest's construction time frames.

Disadvantage to Option 2 Contractors

If the Commission decides to eliminate the current version of Option 2 of the LDA Tariff, some of the Option 2 contractors will lose this segment of their business. In order for an Option 2 contractor to continue to place facilities in new subdivisions, they will have to become a subcontractor for Qwest which is now the practice under Option 1 of the LDA Tariff.

[8] Letters sent by developers are on file with the Commission.

<u>Disadvantage to Qwest</u>

The Option 2 contractors and Qwest have indicated that the Option 2 contractors currently place fifty six percent of the telecommunication facilities in new developments. The Division is concerned that with the elimination of Option 2, Qwest may not have adequate resources to meet the additional demand of placing facilities in one hundred percent of the new subdivisions due to continued downsizing. During a discussion between staff and a Qwest representative, Qwest indicated that it might have to activate additional technical support to satisfy the new demand. Additionally, in response to DPU Data Request #2, Qwest continues to maintain they will be able to meet the increased demand. The Division is hesitant in accepting Qwest's claim based on past performance.

The current tariff restricts Qwest from having the freedom to change its tariffs and price lists when it changes its operational methods or prices charged to consumers, as do other competing telecommunication providers

Q. WHAT ACTION DOES THE DIVISION RECOMMEND THE COMMISSION TAKE IN RELATION TO OPTION 2 OF THE LDA TARIFF.

A. The Division recommends that the Commission replace the mechanisms of Option 2 of the LDA Tariff with new provisions that ensure Qwest more control of its own facilities and, at the same time, allow developers flexibility and choice in selecting approved contractors.

During its investigation, the Division found that some Option 2 contractors have used faulty placement techniques, which ultimately increased Qwest's expenses. Qwest has incurred expenses for dispatching technicians to correct cable placement and splice inspections time and again. In its response to the Division's Data Request #1 question 4, Qwest provided documentation that verifies continued construction problems caused by the Option 2 contractors that cause Qwest to expend resources to inspect or correct problems that surface either during construction or after the Option 2 contractor has completed the job[9]. Likewise, Qwest incurs engineering expenses that are in addition to the engineering fee paid to the Option 2 contractors, for the purpose of insuring that feeder and distribution connecting cables beyond the new development are sized appropriately and cable records are updated. Qwest maintains that when their own engineer designs and documents the total project it is done at equal to, or lower than, the engineering expense paid to the Option 2 contractors.

The network placed by Option 2 contractors belongs to Qwest and Qwest is ultimately responsible for poor construction that causes problems for the end user. The increased costs of faulty workmanship are passed to subscribers through increased rates for products and services or are included in competition losses. Furthermore, Qwest is mandated, as carrier of last resort, to be responsible for facilities within and beyond the

[9] Data Request #1-004 is marked proprietary. The Division believes the Data is also market sensitive and may cause competitive damage. Therefore, data is not discussed in detail.

new development. The Division believes that Qwest should direct or oversee placement techniques, the materials that are being used and efficient sizing of cable and splicing methodologies. Option 2 of the LDA Tariff interferes with Qwest's control over construction of its facility network.

Moreover, the Division, as discussed in this testimony, has not been able to compare materials and costs between Qwest and the Option 2 contractors. Also the Division is concerned that some Option 2 contractors may cut cost to increase their profits. In any event, Qwest should not have to pay Option 2 contractors more than its own estimated cost for installing facilities. The LDA Option 2 price cap provisions generally result in Qwest paying a higher cost for placement of facilities in a new subdivision.

Q. PLEASE EXPLAIN THE CONDITIONS THAT ARE RECOMMENDED BY THE DIVISION THAT WOULD PROMOTE A WORKABLE SOLUTION WHEN INCORPORATED INTO OPTION 2 OF THE LDA TARIFF.

A. The Division advocates that five major principals must be applied to Option 2 of the LDA Tariff for it to become workable. More importantly, all principals must be clearly outlined in the Tariff and all parties must adhere to the guidelines. The five critical components are <u>verifiable cost</u>, <u>approved materials</u>, <u>workmanship expectations,</u> <u>methodology to correct problems</u> and <u>shortened facility placement intervals</u>. The Division furnishes the following explanation:

1. Qwest will be required to formulate a list, using Qwest's own standards or criterion, of contractors that place telecommunication facilities with the following

requirements:

a) Qwest will develop certification criteria specifically for LDA contractors based on customary standards and criteria currently used by Qwest.

b) Qwest will prepare a list, preferably listing at least six (6) contractors including its own contractors, to be given to the developer when entering into an LDA.

c) As a precondition to be on the contractor list, a contractor must agree:

i) to place facilities to Qwest's standard specifications as itemized on Qwest's pre-approved Materials list, which identifies the construction materials Qwest elects to use in its network. It is Qwest's option to supply the materials to the contractors or have the contractors purchase materials to construct the project.

ii) to receive payment or reimbursement as predetermined using Qwest's "CPD cost estimating tool." The contractor will not be reimbursed more than what it would cost Qwest for the placement of facilities in a specific subdivision and the 125% will be eliminated.

iii) if an Option 2 contractor places facilities without having a contract with Qwest or following the guidelines outlined in the revised Tariff, Qwest does not have the obligation to reimburse the Developer or its Option 2 contractor.

c) The "Reverse LDA Process Flow" and pre approved "Materials" list that has previously been developed by the parties will be provided to the contractor's if Qwest determines that the contractor will furnish the materials.

d) When changes or updates are made to the "Process Flow" or "Materials List" a copy will be filed with the Commission and a copy will be given, within 14 calendar days, to all contractors on the list.

e) Qwest will update variables in its CPD costing tool every 6-12 months or whenever there is a change that would impact price.

2. The revised LDA Tariff will reflect condensed time intervals to place telecommunication facilities in new subdivisions. Qwest will decrease construction time frames, as proposed, to more expeditiously place telecommunications facilities. The Division mainly accepts Qwest's new tariff language regarding timing proposals made in Dennis Pappas's Testimony. In general, the Division believes that this will facilitate a timelier placement of telecommunications facilities.

3. <u>Time Line</u>

a) An LDA is required where the Developers/Builders plan to develop four or more lots as is the current practice.

b) The Company or the Contractor will engineer, design and test the facilities within the development, as proposed in Dennis Pappas's Testimony. If the contractor engineers and designs the facilities, it must be approved by Qwest. There should be no charge to the Developer/Builder as long as the "Cost" does not exceed the distribution portion of the average exchange loop cost.

c) The Developer/Builder will provide trench and subsequent cover, with suitable backfill that will not damage the Companies facilities.

i) The Developer/Builder must cause a recorded, addressed plat in electronic digitized or written format to be received by the Company Engineer at least <u>60 days</u> prior to the open trench date.

ii) If the Developer/Builder wants the Company to place its facilities in a joint trench with the power company, at least <u>35 days</u> prior to the open trench date, a copy of the power company prints must be provided to the Company.

iii) Within 2-day notification by the contractor, Qwest will inspect facilities not exceeding 2 days. This is in addition to the 60 or 30 day periods listed above.

Q. WHAT ARE THE BENEFITS OF THE DIVISION'S PROPOSAL?

A. **<u>Qwest</u>**:

Most importantly, Qwest will have control of the placement of facilities in their distribution network. Errors and faulty facility placement should be reduced. Qwest can conveniently contract work out to pre-approved, Qwest certified subcontractors to efficiently and expeditiously meet Developer/Builder's schedules. Assuming the service is the same as that under the current Option 2, that will not result in delays to the end user.

Furthermore, the proposal will resolve the problem of contractors who routinely cut corners or use inferior materials in order to underbid competitors who offer quality service and workmanship. Developers will be able to build and rely on business relationships with the Qwest-approved subcontractors who provide them the most expeditious service.

Qwest will no longer pay in excess of its estimated cost for placement of facilities. The disputes concerning Qwest's cost probably will be eliminated. Qwest can redirect its resources to more important areas.

Contractors:

Option 2 contractors will have an opportunity to continue placing facilities in new developments so long as they qualify for the pre-approved, certified, contractor "List".

Moreover, if this proposal is accepted, approved contractors will experience a higher degree of exposure. Currently, Option 2 contractors seek out the developers through blind calling and word of mouth. In this scenario, their name will be on a list that is given to developers from Qwest. Repeat business will thus be based on quality of service provided to the developer.

Developers/Builders

The Developer/Builder will continue to have a choice of contractors who can offer the swift and personal service they desire.

Subscribers

It is the Division's goal in recommending changes to the LDA Tariff, for subscribers in new developments to experience expedient placement of telecommunication facilities. It is perceived that faulty cable placement will be eliminated and will no longer be the cause of delayed service or "held orders."

Commission/DPU

If most cost disputes are resolved through operation of the tariff, the Public Service Commission and the Division of Public Utilities can redirect resources to other issues.

Q. IF THE COMMISSION SUPPORTS LEAVING THE LDA TARIFF IN PLACE WITHOUT MODIFICATIONS RECOMMENDED BY THE DIVISION, HOW CAN THE ISSUE OF "REASONABLE COST" PAID TO THE CONTRACTORS FOR FACILITY PLACEMENT BE RESOLVED

A. To avoid having Qwest pay more than its estimated cost for facilities placement, the Commission should clarify that the Option 2 contractors would be obligated to accept Qwest's estimated cost.

A "flat based rate" for facility placement can be developed based on the average cable footing that is placed in the subdivision. It is reasonable to assume that the "CPD Costing Tool" can be used by Qwest to develop flat based rates for Option 2 contracts since it is currently used by Qwest to determine its own estimated cost for LDA projects.

After the formulation of the proposed rates, a detailed cost analysis will be provided and reviewed by all parties. If necessary, changes would be made in agreement with all parties. At the conclusion of this process, the results will be placed on file with the Commission and published in a tariff. In this scenario Qwest and the Developer/Builder would know exactly how much the contractor will be paid prior to construction. Staff believes that this alternative will virtually do away with rate arguments between Qwest and the Contractor, since all rates will be easily calculated and agreed to at the onset of the project. Qwest would not be required to pay an Option 2 contractor more than its estimated cost, unless there are mitigating circumstances. On this basis, Option 2 Contractors will have the freedom to either decline or pursue facility placement in a particular subdivision. In summary, there will no longer be a 125 percent Cap and Qwest will no longer pay a contractor more than the flat rate developed by cable footage.

Q. PREVIOUSLY IN ITS TESTIMONY, THE DIVISION SUGGESTED A POSSIBLE SOLUTION TO THE COSTING ISSUE BUT DID NOT RESOLVE THE ISSUE OF POOR WORKMANSHIP AND THE USE OF INAPPROPRIATE MATERIALS. DOES THE DIVISION HAVE A RECOMMENDATION?

A. Faulty cable placement and splicing has been an on going problem for approximately five years. However, at the current time most of the Option 2 contractors place facilities according to Qwest standards and specifications. Nonetheless, based on Qwest's response to Data Request #1, there are some contractors who continually place faulty facilities which increases maintenance expenses for Qwest. In an effort to resolve this issue the parties have already developed satisfactory guidelines which are clearly outlined in the "Option 2 Process Flow. " On page 2, (4)(e) it states that,

" Qwest will make one inspection for free. If a second test is required and the subdivision fails, the second test and all subsequent re-inspection costs will be deducted from the contract cost".

The Division asserts that this is a step in the right direction and recommends that if the current Option 2 of the LDA Tariff remains in place, the Commission require Qwest to include language in its LDA Tariff which outlines consequences for faulty workmanship and the use of none approved materials.

Q. WHY IS THIS NOT THE DIVISION'S PRIMARY RECOMMENDATION?

A. To continue Option 2 as it is currently written, even if "Cost" issues are resolved will promote continued disputes of one form or another. The Division's recommendation returns network control back to Qwest, resolves cost issues while still allowing the Option 2 contractors to remain in operation.

Q. COULD COSTS BE DEVELOPED, AS DESCRIBED ABOVE, IF COST DISPUTES OCCUR BETWEEN QWEST AND ITS CONTRACTORS?

A. The Division does not perceive that there would be cost disputes since contractors agree, up front, to accept Qwest's estimated cost. However, if a dispute were to arise, construction costs can be developed on a unit basis to allow the contractors to determine what their costs will be prior to accepting a contract.

Q. SHOULD QWEST HAVE THE FINANCIAL BURDEN THAT IS PLACED ON THEM BY OPTION 2 OF THE LDA, WHEN NO OTHER TELECOMMUNICATIONS COMPANY OPERATING IN UTAH IS BOUND TO PAY OPTION 2 CONTRACTORS FOR FACILITY PLACEMENT UNLESS HIRED BY THE COMPANY?

A. To our knowledge, there are no other competing providers utilizing Option 2 contractors to design, engineer, place and splice distribution facilities in new developments and paying them as Qwest is obligated to do. Qwest initiated this tariff, but this was in an era when there were no competitors. In today's environment a Developer or Home Owners Association has the freedom to choose a competitive provider to serve as a "Preferred Provider" in its development.

The Division has discussed internally the repercussions of the tariff in an "emerging competitive environment." Staff believes that it is not reasonable to force only one competitor, Qwest, to allow developers to choose a contractor outside of its control to engineer, design, place and splice its own telecom facilities. Moreover, since competing providers have the capability to port Qwest subscribers to its services, a developer may elect to have a CLEC as its "Preferred Provider" after Qwest has paid an Option 2 contractor for placement of telecommunications facilities. The lines would be priced at wholesale or UNE rates under current rules.

Q. HAS ANY OTHER STATE IN QWEST'S REGION MAINTAINED OPTION 2 OF THE QWEST LDA TARIFF?

A. Colorado has a comprehensive LDA Tariff (Refer to Attachment 4). The Colorado staff, Qwest and the developers have worked together to determine rates for each exchange in Colorado and then codified the rates in a tariff. Additionally, all processes and procedures for facility placement in a subdivision are outlined in the tariff. As the Division understands the Tariff has resolved many issues, but new issues arise periodically.

Q. IF FUTURE PROBLEMS, ARISING FROM THE LDA TARIFF, ARE BROUGHT TO THE COMMISSION, HOW DOES THE DIVISION PROPOSE THAT THEY BE HANDLED.

A. The Division is willing to mediate disputes or facilitate discussions to help the parties reach resolution before resorting to the Commission's formal process.

Q. IN SUMMARY WHAT DOES THE DIVISION'S RECOMMEND?

A. It is in the public interest to <u>revise</u> Option 2 of the LDA Tariff with the standards and principals recommended by the Division. The fundamental principles are as follows:

1. Eliminate the reference to the "125% cap" in Option 2 of the LDA tariff and replace it with language stating that the developer/contractor shall not be reimbursed more than what it would cost Qwest to engineer, design, place and splice facilities itself.

2. Modify language for Option 2 of the LDA Tariff, incorporating new principals and guidelines as discussed in this testimony.

3. Require Qwest to develop criteria for approving LDA contractors and create a list preferably listing at <u>least</u> six (6) "Qwest approved and certified"contractors to be furnished to the developers when entering into and LDA.

4. An original, Qwest pre-approved contractor list, must be filed with the Commission. Additionally, an updated list will be filed with the Commission on an annual basis and at anytime that the contractor list is changed.

5. Contractors must agree to accept Qwest's estimated cost prior to being added to

Qwest's list.

6. Qwest should not be forced to pay more than their estimated loop cost. This may require further cost analysis.

7.Qwest will Maintain and distribute "Reverse LDA Process Flow" and "Materials List."

8. Require Qwest to become efficient by shortening time intervals for placing facilities in new developments as proposed by Dennis Pappas and discussed in this testimony.

9. Order mediation as the first step in resolving future disputes associated with the LDA Tariff.

10. If telecommunication facilities are placed in a new subdivision by an uncertified contractor, who does not have a previous agreement with Qwest, Qwest is not obligated to reimburse the contractor for facility placement.

Q. DOES THIS COMPLETE YOUR TESTIMONY?

A. Yes it does.

<u>Exhibit 1.1- Qualifications</u>

X Bachelor of Science, Business Management Degree, Westminster College

X **Extensive BELLCORE Marketing and Technical training** in the telecommunication industry.

X **NARTE Certified Engineer** (National Association of Radio and Telecommunication Engineers).

X Over **20 years of experience** in the telecommunication industry. Extensive background in facility and switch planning, developing and analyzing long range incremental cost studies, conducting local loop integrated planning, designing SONET/digital transmission systems for interoffice facilities.

X Instrumental in the development and direction of the fiber based Broadband strategies, and the establishment of survivability and diversity for the U S

WEST switch and facility network.

$ Participated on a Regional Task Force to design strategies for the deployment of new technologies in the Network.

X Interactively participated with vendors, community, state and business groups to design and develop communication systems and develop the expansion of the public network.

X Monitored and initiated modernization strategies for U S WEST's interoffice facility and switch network in Utah. Provide company direction for orderly economic network evolution; includes making recommendations to high level managers.

X Initiated strategic business case development and economic analysis for U S WEST business customers, Rural Independent Companies and Interexchange Carriers.

X Translated customer needs to technical requirements and analyzed future emerging technologies and network elements.

X • - Analyzed and determined telecommunication system and operational problems.

X Prepared, and tracked capital and expense operating budget through project approval, co-ordination and completion.