

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of Qwest Corporation's     )  
Land Development Agreements (LDA)     )  
Tariff Provisions                             )

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Docket No. 03-049-62

DIRECT TESTIMONY

OF

WILLIAM R. BODINE

FOR

SBS TELECOMMUNICATIONS, INC.

NOVEMBER 19, 2004

## **Table of Contents**

<b>I.</b>	<b>INTRODUCTION AND PURPOSE .....</b>	<b>1</b>
<b>II.</b>	<b>IMPLEMENTING TELEPHONE NETWORKS INTO RESIDENTIAL HOUSING DEVELOPMENTS .....</b>	<b>3</b>
<b>III.</b>	<b>CONCLUSIONS .....</b>	<b>22</b>

1                                   **I.       INTRODUCTION AND PURPOSE**

2   **Q.     PLEASE STATE YOUR NAME, TITLE AND ADDRESS.**

3   A.     My name is William R. Bodine. I am the President of SBS Telecommunications,  
4           Inc. (SBS). SBS is headquartered in my home at 233 East 500 North in Tooele,  
5           Utah.

6   **Q.     PLEASE REVIEW YOUR EDUCATION, WORK EXPERIENCE, AND**  
7           **PRESENT RESPONSIBILITIES.**

8   A.     My education and work experience are reflected in Exhibit WRB-1.  
  
9           As President of SBS Telecommunications, Inc., I am responsible for the  
10          operational and fiscal success of the company. My duties include managing  
11          personnel and/or performing every required task necessary to: seek out and obtain  
12          contracts; meet all contractual obligations in a manner consistent with good  
13          business practices; negotiate contracts and problem resolutions; be aware of,  
14          conform to, and abide by all appropriate laws and regulations; and lead and direct  
15          legal responses to perceived threats to the company's business.

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

17   A.     No. I did provide an affidavit attached to a filing on the 02-049-66 docket.  
18           However, I believe that particular filing to have been rejected by the  
19           administrative law judge of that docket.

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

2 A. My testimony presents SBS's view of events, policies, procedures, and practices  
3 related to implementing telephone networks into residential land development  
4 projects. I will also introduce the additional testimonies to be filed on behalf of  
5 SBS for this proceeding.

6 Within the testimonies of Laura L. Scholl and Dennis Pappas, filed on behalf of  
7 Qwest, much has been said about the difficulties Qwest has had with working  
8 with "Option 2 Contractors". My testimony is intended to illuminate a  
9 perspective of these working relationships that was conspicuously absent within  
10 Qwest's filings—a perspective that illustrates a clear lack of sincerity in Qwest's  
11 filings. Further, this testimony has been prepared with the intent of convincing  
12 the Commission of the continued need for Developers to retain the option of  
13 developing the telephone networks within their projects.

14 **Q. PLEASE IDENTIFY THE OTHER SBS WITNESSES AND THE**  
15 **PURPOSES OF THEIR TESTIMONY.**

16 A. Testimony will be presented by Jay E. Bodine, Vice President of SBS  
17 Telecommunications, Inc. that will correct the many inaccuracies and point out  
18 some of the fallacies presented within the Qwest filing of Dennis Pappas'  
19 testimony. Gaye Roe, Accountant and Payroll Specialist will present testimony

1 evaluating the legitimacy (or lack thereof) of the conclusions reached and  
2 presented within Qwest's filing of Richard Buckley's testimony.

3 **II. IMPLEMENTING TELEPHONE NETWORKS INTO RESIDENTIAL**  
4 **HOUSING DEVELOPMENTS**

5 **Q. WHAT IS THE BACKGROUND OF SBS INVOLVEMENT IN**  
6 **IMPLEMENTING TELEPHONE NETWORKS INTO RESIDENTIAL**  
7 **HOUSING DEVELOPMENTS?**

8 A. SBS began the business of providing telephone network developmental services  
9 to developers in December, 2000. (We incorporated in February of 2001). Our  
10 first contract, signed in December of 2000, was for the Hill Creek Plat C project  
11 in Lehi—for Mary Mel, Inc. Since that time we have successfully completed  
12 (including the completed transfer of ownership to Qwest) the telephone network  
13 development on over **76** land development subdivisions—accounting for Qwest  
14 telephone capabilities to over **2,034** lots. In addition, we have completed another  
15 **12** land development subdivisions (**303** more lots) where ownership has been  
16 transferred to Qwest under a stipulated agreement and nine (**9**) more projects  
17 (another **155** lots) await payment processing—four (**4**) under stipulation. In  
18 performing this work, SBS has entered into contractual agreements with over **40**  
19 land developers (or Developers/Builders as they are referenced in the vernacular  
20 of Qwest's Exchange and Network Services Tariff).

1 The experience of SBS in the management, engineering, designing, placing,  
2 splicing, testing, and installing telephone outside plant facilities goes well beyond  
3 the projects catalogued in the preceding paragraph. Two of the  
4 officers/shareholders of SBS (Jay E. Bodine and myself) have performed contract  
5 outside plant development/maintenance/installation duties for Qwest (formerly  
6 U S West) in five (5) states as well as similar services for Pacific Bell, GTE, and  
7 Verizon (See Exhibits WRB-1 and JEB-1). The intricacies and idiosyncrasies of  
8 working with outside plant facilities and working with Qwest were not new to  
9 SBS.

10 **Q. DID YOU DO ANYTHING PARTICULAR IN PREPARING TO PROVIDE**  
11 **TELEPHONE NETWORK DEVELOPMENTAL SERVICES TO LAND**  
12 **DEVELOPERS?**

13 A. Prior to pursuing, or even drafting, our first contract we interviewed several  
14 people that had various insights into the processes being used by Qwest for  
15 managing the “Reverse Land Development Agreements” (RLDAs)—Qwest’s  
16 internal term for referring to the “Option 2 LDAs.” We examined the actual text  
17 of Qwest’s *Exchange and Network Services Tariff*—section 104.4 (of the tariff  
18 filed at that time), titled *Land Development Agreements*. We sought multiple  
19 material bids and quotes from prospective material suppliers. We performed  
20 market and risk analyses to determine the viability of being able to be profitable  
21 in this pursuit.

1 Following the research, we drafted a contract that met the needs of Qwest's  
2 processes (that provides SBS a power of attorney to act on behalf of the  
3 developer), granted client developers reasonable assurances, and provided a  
4 reasonable profit for our services.

5 **Q. HOW SMOOTHLY DID YOUR FIRST FEW PROJECTS GO?**

6 A. The engineering, construction, and testing of those projects went reasonably well.  
7 However, getting the actual LDAs from U S West seemed a bit of a challenge.  
8 After providing U S West with copies of our contracts with the developers and  
9 discussing the scope and nature of the projects, including providing project  
10 designs (unrecorded and recorded plats), we expected to be able to get the LDAs  
11 from U S West and begin negotiating terms. This was/is not the case.  
12 Qwest will not provide an LDA until the project engineering is complete and  
13 approved. Qwest claims their processes will not allow them to develop their input  
14 for the charges section until they have priced the completely engineered project.  
15 This delay in entering into an LDA was (and still is) baffling—particularly  
16 because the LDA actually addresses the processing requirements for the  
17 engineering that **must** be completed and approved before an LDA is ever even  
18 offered. Even more baffling is the fact that Qwest would/will **not** consider any  
19 changes to the terms of an LDA (other than cost, and that negotiation must be  
20 done with the engineer prior to receiving their LDA offering)even when the

1 suggested changes offer improvements to Qwest's own ability to control the  
2 RLDA process.

3 **Q. DO YOU HAVE ANY EXAMPLES OF LDA NEGOTIATION**  
4 **PROBLEMS?**

5 A. Yes. The first two LDAs we received from U S West were for the Chappel  
6 Valley Phase E and Chappel Valley Phase F projects. Upon reviewing the  
7 agreements it was clear that some simple changes needed to be made in order for  
8 the agreements to reflect reality and actually include some meaningful inspection  
9 provisions (meaningful for Qwest). I provided a signed, edited version of these  
10 contracts back to U S West (see Exhibit WRB-2 for a copy of the edited version  
11 for Chappel Valley Phase E) along with a letter supporting the suggested changes.  
12 The changes I sought were: (I) a correction of the Commission's name; (II)  
13 changing to past tense the "Job Prints" section and the "Critical Scheduling  
14 Dates" of functions that had already passed; (III) adding sections to the "Critical  
15 Scheduling Dates" that accounted for trench and conformance tests; (IV) removal  
16 of unnecessary terms, and (V) balancing one-sided terms. I was informed by the  
17 Qwest Developer Contact Group's representative that they would not accept **any**  
18 modifications to the provided LDA.

19 **Q. HAVE THERE BEEN ANY OTHER PROBLEMS?**



1 A. Yes. From our past experiences with Qwest, we knew that the only way we could  
2 avoid having our costs skyrocket out of control was to seek a way to tie Qwest's  
3 requirements to the actual "standard Company specifications" that is called for  
4 within Qwest's LDA tariff. However, we have found Qwest to be adamant in  
5 rejecting any efforts to associate what they demand with company standards. In  
6 fact, in a meeting with Bonnie Anderson, Vice President of Qwest Network  
7 Services and Jim Thomas, Qwest Construction Director, we were told by Jim  
8 Thomas that Qwest does not have any "standard Company specifications" and has  
9 not had any since the divestiture (the AT&T break-up into the "baby-Bell's"). In  
10 contrast to these remarks, I have in my possession a document issued to me by  
11 Volt Telcon that is titled U S West Communications Standard, REGN 633-500-  
12 102RG, Issue 1, October 1989—a date that is well after the divestiture. (See  
13 Exhibit WRB-3 for a copy of a page from that document with this header  
14 information—the volume of the entire document fills a three (3) inch three ring  
15 binder). It is interesting to note that many of the costly requirements Qwest  
16 demands within their "Option 2 LDA Information Package" (see Qwest Exhibit  
17 DP-1 for an example of such—although not complete) are not contained in any  
18 form within this standard.

19 Our fears of continually escalating demands from Qwest—without any real  
20 compliance to the tariff required "standard Company specifications"—have been  
21 fully realized. In contrast to Qwest's Exhibit DP-1, the first version of this  
22 document we received has much less detail and **far fewer demands**. (See Exhibit

1 WRB-4) Since receiving this first version of Qwest's Option 2 requirements, we  
2 have received no less than six (6) others—none of which actually reflect exactly  
3 what is presented in Exhibit DP-1 or any other version we had previously  
4 received.

5 **Q. DO YOU BEGRUDGE QWEST'S EFFORTS TO PROVIDE A SIMPLE**  
6 **PROCESS AND REQUIREMENTS DOCUMENT TO DEVELOPERS**  
7 **CHOOSING OPTION 2?**

8 A. Absolutely not! In fact, SBS has many times attempted to work with Qwest in  
9 order to eliminate or prevent disputes regarding topics contained within their  
10 document. Unfortunately, rather than averting problems, every such attempt has  
11 ultimately resulted in increased demands and a greater unwillingness of Qwest to  
12 cooperate in furtherance of the successful development of telephone networks in  
13 our clients' subdivisions.

14 The central theme in our attempts have been to request that the requirements that  
15 Qwest imposes upon us be a true reflection of the "standard Company  
16 specifications" (i.e. that no more is demanded from us than what Qwest does or is  
17 expected to do when they perform the work) and what is called for within the  
18 actual LDA agreements to which the Developer (and thus SBS) become obligated.  
19 Both aspects of this theme have been repeatedly and soundly rejected by Qwest.

1 **Q. HAS QWEST TAKEN ANY STEPS TO IMPROVE THE NATURE OF**  
2 **YOUR WORKING RELATIONSHIP?**

3 A. Yes. For example, when disputes arose involving the dome closures (Ped Caps)  
4 to be used—SBS was using a “3M Ped Cap”, as specified within the Qwest  
5 provided materials list and Qwest was refusing to process jobs because they  
6 insisted that another ped cap needed to be used—SBS escalated the issue (in  
7 January 2003) to Bonnie Anderson, Qwest Vice President of Network Services.  
8 As a result of meeting with Ms. Anderson, Qwest processed the disputed jobs and  
9 modified their materials list to add the necessary specificity. In addition, Qwest  
10 created the Single Point of Contact (SPOC) positions that created a focused  
11 source of knowledge in handling Qwest/Option 2 Contractor negotiations.  
12 Generally, this change has been positive.

13 However, these positive changes were short lived. Immediately following the  
14 Commission’s Report and Order dated July 15, 2003, Qwest interpreted the  
15 superfluous words of that Order to relieve them of the tariff requirement to  
16 “reimburse the Developer/Builder their costs” and halted (until a stipulation was  
17 entered into in May of this year) the processing of all LDAs where their own cost  
18 estimates did not exceed the “cap” price. Indeed, Qwest’s interpretation of that  
19 Order went well beyond the scope of that docket which was solely to determine  
20 whether or nor Townhomes were to be processed under the LDA section of the  
21 tariff.

1 **Q. YOU MENTION A STIPULATION SBS ENTERED INTO WITH QWEST.**  
2 **SBS WAS CHARACTERIZED, IN ANOTHER DOCKET, AS BEING**  
3 **OBSTINATELY OPPOSED TO SUCH AN AGREEMENT. IS THAT**  
4 **TRUE?**

5 A. Yes, in the form that Qwest required. It made/makes no sense for SBS to enter  
6 into an agreement with Qwest when it is the contractual obligations between  
7 Qwest and SBS's client Developers that are in dispute. SBS repeatedly proposed  
8 implementing a simple stipulated term within the LDA for projects where the  
9 LDA charges section (i.e. the price to be paid) was in dispute. Qwest rejected this  
10 proposal as an apparent impossibility, as evidenced by one e-mail from Qwest's  
11 lawyer to SBS's lawyer wherein the statement was made was that "changing the  
12 LDA will remain problematic". In fact, at the point where we entered into the  
13 stipulation, SBS had no other legitimate choice inasmuch as one of SBS' client  
14 developers had a resident—his customer—requiring telephone service). Our  
15 contractual obligations to our client developers and our ability to continue to do  
16 business with land developers requires that we resolve the dispute in such a  
17 manner that new home owners are unimpeded from obtaining telephone service.  
18 We would have much preferred to keep our contractual obligations between us  
19 and our client developers and keep them in the loop regarding our payment on  
20 their projects.

1 **Q. DID YOU WITNESS ANY GENUINE CONCERN FROM QWEST FOR**  
2 **THE HOME OWNER TRYING TO GET PHONE SERVICE?**

3 A. Yes. The Qwest engineer who we were working with on the Valley Crest Plat A  
4 Project (the actual subdivision I made reference to in my last answer), worked  
5 diligently with us in order to expedite service to the resident. Likewise, there  
6 appeared to be a sense of urgency exhibited by Qwest's legal representation.  
7 However, there was no evident necessity for Qwest to even consider a  
8 modification to the LDA; rather, for some unknown reason, that document seems  
9 almost sacrosanct to Qwest.

10 **Q. DO YOU UNDERSTAND QWEST'S RELUCTANCE TO MODIFY THEIR**  
11 **PROFORMA LDA?**

12 A. In some ways I do. It could become a difficult process to manage—particularly  
13 across multiple states—if the boiler plate contract had to be modified for every  
14 project. However, Qwest's unwillingness to negotiate **any** terms of the  
15 agreements or even consider making common sense changes (like correcting the  
16 name of the Commission—see Exhibit WRB-5 for a first page of a recent LDA  
17 we have received from Qwest that still has the Utah Public Service Commission  
18 addressed as the Utah State Corporation Commission), along with the fact that  
19 Qwest will not negotiate or provide the contract until much of the work is already  
20 complete, makes it a sham contract; and renders it useless beyond its support to

1 convey funds and ownership (which there is still a bill of sale that is processed to  
2 perform that function).

3 **Q. CONSIDERING THE EXTENSIVE REQUIREMENTS PACKAGE THAT**  
4 **QWEST SENDS OUT TO DEVELOPERS AND OPTION 2**  
5 **CONTRACTORS, IS THE LDA, OR THE TERMS THEREOF, ALL THAT**  
6 **IMPORTANT?**

7 A. As a practical matter, not really. It could be and should be very important. Qwest  
8 has made a great deal about their lack of contractual relationship and control over  
9 “Option 2 Contractors”. In fact on page 24, subparagraph 5 of the Direct  
10 Testimony of Laura L. Scholl, the statement is made that Qwest “has no ability to  
11 protect its interests except through tariff changes” and again on page 25,  
12 subparagraph 9 the statement is made that the “PSC has no ability to enforce  
13 its...decisions with the Option 2 contractors.” These statements reflect the  
14 complete disregard Qwest has demonstrated for the actual LDA required by the  
15 tariff.

16 If appropriately used, as the plain language of the tariff implies, the LDA could  
17 and should be the very instrument that gives Qwest—and through the tariff  
18 specification thereof, the PSC—the control over the telephone network  
19 development for which they clamor.

20 **Q. WHY WOULDN'T QWEST USE THE LDA TO GAIN THAT CONTROL?**

1 A. I'm not sure. SBS has discussed this possibility in great detail with numerous  
2 Qwest managers, and presented it in many PSC docket filings. I recently heard a  
3 radio commentator mention that individuals who present patently false  
4 information do so either out of ignorance or deceit. Since Qwest has within its  
5 grasp the very tool necessary to control the option 2 process and yet claims that  
6 such control is illusive or unattainable, I am led to the conclusion that Qwest's  
7 motivation must be something other than the success of the option 2 process. In  
8 fact, I believe Qwest's motivation to be evident in their request to eliminate  
9 option 2—especially combined with the fact that this is the third time they have  
10 attempted to do so (although their second attempt was not so direct as to  
11 specifically state that as their intent). (Qwest's previous attempts were done  
12 under Dockets Numbered 99-049-T28 and 01-049-T12.)

13 **Q. HAS QWEST EVER SOUGHT TO WORK WITH SBS IN DRAFTING**  
14 **POTENTIAL TARIFF CHANGES?**

15 A. No. In May, 2001—following Qwest's second attempt to change the LDA  
16 tariff—SBS and Silvercreek presented a tariff change proposal to Qwest in an  
17 attempt to work out difficulties with processing LDAs. Although Qwest  
18 managers promised to consider and further discuss our proposal, no such evidence  
19 of any consideration materialized and no further discussion took place.  
20 On August 9, 2004 the Commission hosted a technical conference for the purpose  
21 of discussing "potential tariff changes." During that conference however, the

1        **ONLY** “change” to the tariff seriously discussed by Qwest was the removal of  
2        option 2.

3        **Q.    DO YOU HAVE ANY REASON TO BELIEVE THAT DEVELOPERS**  
4        **NEED OPTION 2?**

5        A.    Yes! The perfect example of this need comes from the project I referenced earlier  
6        in my Testimony regarding, the Hill Creek project in Lehi. Plat C of Hill Creek  
7        was our first contract with a land Developer. When Mr. Dan Frandsen signed that  
8        contract, he had just closed the joint utility trenches (power and telephone) after  
9        waiting over six weeks for Qwest to place cable into those trenches. In fact,  
10       Qwest never placed cable into those trenches—Mary Mel, Inc. had to procure and  
11       place conduit to accommodate Qwest’s needs throughout the entire subdivision.  
12       Further, SBS engineered, designed, procured, placed, spliced, and constructed  
13       Plat C before Qwest ever placed cable into Plat B. Moreover, SBS completed all  
14       those functions on Plat D of that project before Qwest completed the construction  
15       of Plat B. The telephone network development of Plats B, C, and D of Hill Creek  
16       took place during 2001—four years after option 2 was implemented. Since that  
17       time the business of SBS was to insure that our client developers do not incur  
18       such outrageous expenses and delays.

19       In past proceedings, Qwest has frequently blamed construction delays in meeting  
20       developer schedules upon the developers. Qwest mantra has been that developers  
21       neglect to provide sufficient notice and therefore any delays are their own fault.



1           However, SBS—and it appears other “option 2 contractors”—do not have any  
2           difficulties in staying on top of our projects and meeting the scheduling needs of  
3           our client developers.

4           Something to keep in mind is that SBS—and all other option 2 contractors—are  
5           competitors of Qwest. While we do not compete with their provision of  
6           telecommunications services, we are in direct competition with their  
7           telecommunication development services. If Qwest were better at providing these  
8           services they would be doing a much better job of retaining developers.

9       **Q.    IS IT APPROPRIATE FOR QWEST TO PAY FOR A TELEPHONE**  
10       **NETWORK DEVELOPED BY THEIR COMPETITORS?**

11    A.    The key to the answer of this question can be found on page 7, line 5 of Dennis  
12    Pappas’ direct testimony, where he recognizes the fact that what is being  
13    developed is a “**public** telecommunications network.” However, his conclusion  
14    that telephone networks developed by Option 2 contractors are done so  
15    completely void of any “accountability” to the PSC is utter hogwash! The fact  
16    that the LDA section of the tariff specifically defines “a written agreement entered  
17    into between [Qwest] and the Developer/Builder for the provision of...facilities,  
18    within...land development(s)” (paragraph 4.4.A of the tariff) defines the exact  
19    mechanism the PSC has envisioned and **required** for controlling the “option 2”  
20    process. As defined within the tariff, it is the sole responsibility of Qwest to use  
21    this mechanism appropriately—a responsibility I believe that has been shunned

1 and ignored. I believe Qwest has utterly failed in its duty and responsibility to  
2 properly utilize the LDA.

3 But more to the point of the question, it is completely appropriate for the Public  
4 Service Commission to subject the development of “public” utilities to the  
5 pressures of a competitive environment. Further, it is completely appropriate for  
6 the Commission to establish a reasonable market price for which the ownership of  
7 the “public” utility facilities will be transferred to a utility service provider. What  
8 I do find questionable is Qwest’s demand that any such “market” price be directly  
9 tied to their own “estimated” costs. Although they claim otherwise, I have yet to  
10 see any real indication or proof that their estimated costs are much more than  
11 numbers pulled out of thin air.

12 **Q. YOU QUESTION THE APPROPRIATENESS OF LINKING THE PRICE**  
13 **TO BE PAID FOR THE DEVELOPED TELEPHONE NETWORKS TO**  
14 **QWEST’S COSTS; DO YOU BELIEVE THE CURRENT TARIFF TO BE**  
15 **FLAWED IN THAT RESPECT?**

16 A. I do believe it can be improved. That is why we have twice submitted proposed  
17 tariff changes in an attempt to open a constructive dialogue to improve the tariff  
18 and the supporting processes. Qwest has repeatedly claimed that there is no way  
19 for them to provide or enter into an LDA without having the completed  
20 engineering in order to produce their cost estimate, i.e. come up with the numbers  
21 to put into the paragraph 11 “Charges” section of the LDA—see Exhibit WRB-2.

1 This same claim is repeated in the direct testimony of Dennis Pappas (page 10 in  
2 lines 20-22), when he states that “a verifiable cost estimate...cannot be provided  
3 until the job has been engineered.” While I believe this conclusion to be  
4 fundamentally flawed (estimates are provided by companies and contracts are  
5 entered into every day without completed engineering), it illustrates a driving  
6 need to break the link between Qwest’s costs and the market prices specified (or  
7 the price limitation as currently specified) by the Commission (within the tariff).

8 However, this link between Qwest’s costs and the market price limitation  
9 specified within the tariff is not the only flaw of the current tariff. The fact that  
10 the tariff is completely void of any reference to “betterments” is a serious flaw  
11 that has caused considerable dispute. The issue becomes a simple matter of  
12 project scope. As long as the tariff remains silent on the topic it will remain a  
13 disputed issue, regardless of whether or not option 2 remains intact. It is  
14 interesting to note that despite the problems regarding this lack of scope  
15 definition, Qwest has not included any such language within their “draft tariff.”

16 **Q. WHAT ARE THE ISSUES OR PROBLEMS REGARDING THIS LACK**  
17 **OF SCOPE DEFINITION WITHIN THE TARIFF?**

18 A. The problems with a lack of project scope centers around trust. For instance, if a  
19 project has a cost estimate that exceeds the “cap” and some charges are to be  
20 borne by the developer, the question has to be raised about whether the developer  
21 is paying to support “cable upsizing” for a future project that is outside of the

1 scope of that developer's project. Based upon my experiences and discussions  
2 with our client developers, I believe Qwest's charges to developers for Option 1  
3 projects, whose cost estimates have exceeded the cap, to be honorable and  
4 trustworthy. In other words, it is clear to me that Qwest does **not** charge  
5 developers to place "betterments" into projects where Qwest does the network  
6 development.

7 However, the same cannot be said with regard to Option 2 projects. In several  
8 instances Qwest has refused to pay for betterments they have demanded in  
9 projects worked by SBS. In effect, this is the exact same thing as charging the  
10 developer for the placement of betterments within a project. Qwest's actions with  
11 regard to charges to developers for Option 2 projects have not always been  
12 honorable or trustworthy.

13 **Q. WHAT ABOUT THE CALL FOR USING "STANDARD COMPANY**  
14 **SPECIFICATIONS" WITHIN THE TARIFF—IS IT A FLAW?**

15 A. If Qwest showed any respect for standards, this reference within the tariff would  
16 be more than sufficient for the PSC to be assured of quality and consistent public  
17 utility facilities. However, Qwest shows neither any respect for, nor any skill in  
18 using standards. For example, prior to 2002, Utah County was the only location  
19 in the state that required "ped cap" closures to be used. This difference in plant  
20 construction in Utah also existed in 1996 when I worked on U S West property as  
21 a "contract splicer." Further, the use of "ped caps" became required in other areas

1 of the state only after SBS raised the issue of inconsistency. Further, it is clear  
2 that while Qwest has begun being relatively consistent with their demands upon  
3 developers using option 2—due to their ad hoc construction of the *Option 2 LDA*  
4 *Information Package*—they still do not require the same consistency for their own  
5 construction efforts.

6 Another example of the complete lack of facility consistency within Qwest is the  
7 fact that in recent years Qwest has begun using a construction and placing  
8 technique in Utah that they refer to as “end-cap” projects. These projects take the  
9 cable loops out of the pedestals and bury the terminal splices. If “ped caps” are  
10 actually used, the trade-off is a “ped cap” for a buried splice closure (XAGA or  
11 Kold-N-Klose) and there is some savings of cable length. However, in 1997 my  
12 brother and I worked on U S West plant in Arizona (Phoenix area) removing “end  
13 caps.” In other words, in a dry climate area, we were paid by U S West (Qwest)  
14 to replace the “end cap” buried splice with a cable loop into the pedestal and the  
15 terminal splice in the pedestal. Of course this required that the single buried  
16 terminal splice closure was also replaced with two buried splice closures.

17 As for whether the tariff reference for the use of “standard [Qwest] specifications”  
18 is a flaw, it appears that Qwest believes it is. On page 4 of Exhibit DP-4, Qwest,  
19 without comment or reasoning, deletes the reference to “standard Company  
20 specifications” from their draft LDA tariff (paragraph 4.4.C). While I agree that it  
21 is a flaw, I expect my reasons for this determination are different from theirs.

1 With Qwest’s demonstrated lack of consistency or “standards” in the quality of  
2 their own work, I am convinced that the specification of work and quality  
3 standards should **not** be left in their hands—neither for the work of option 2  
4 contractors, nor for Qwest itself.

5 **Q. WHAT ARE YOUR RECOMMENDATIONS FOR CHANGING THE**  
6 **TARIFF?**

7 A. It depends upon the scope of the discussion. If the discussion is limited to 4.4, the  
8 Land Development Agreements section, my recommendations may be as simple  
9 as:

- 10 • Define real market pricing related to a definitive scope of the work—keeping  
11 Option 2, of course.
- 12 • Incorporate into the tariff the “standard specifications” to which all parties must  
13 adhere.

14 By defining a fixed “market” price, all reasons for Qwest to delay executing an  
15 LDA are eliminated; and Qwest might even begin using the LDA as the  
16 controlling device for these projects as required by the tariff. Further, it would  
17 provide a real market incentive for Qwest to perform well on the jobs they  
18 actually do for developers, i.e. if they are able to retain developer jobs and reduce  
19 their costs, that savings would be a “profit to Qwest.” The inclusion of the actual  
20 “standard specifications” into the tariff would at least provide some oversight into

1 the changes made, and reduce the frequency and ad hoc nature of those changes.  
2 Even so, based upon Qwest's past actions, I do not actually believe Qwest would  
3 actually begin conforming to any standards included within the tariff.

4 However, I also believe that all of section 4 of Qwest's Exchange and Network  
5 Services Tariff should be under scrutiny. Qwest's actions with regard to other  
6 portions of this tariff have been less than forthright—either in the filing of these  
7 tariff sections or the routine execution of them. For example, Qwest has  
8 historically and routinely demanded that developers provide a conduit network  
9 throughout the entire development—for their cables to be placed later—in  
10 townhome, condominium, and apartment developments. Qwest processes such  
11 jobs under section 4.6.E of the tariff—which only allows the requirement of a  
12 “reusable raceway or conduit...between the pedestal terminal...and the entrance  
13 location of the [building]”. Further, section 4.7.1 *Do-It-Yourself Option* appears  
14 to be merely eye-wash for the benefit of the Commission rather than any  
15 legitimate option for developers or Qwest customers. SBS recently sought the use  
16 of the *Do-It-Yourself Option*, for and on behalf of one client developer who was  
17 required to pay Qwest many thousands of dollars in order to get some work  
18 accomplished. We were told emphatically that the Do-it-Yourself option was not  
19 available.

20 **Q. WILL YOU INCLUDE AN ILLUSTRATIVE TARIFF WITH YOUR**  
21 **TESTIMONY?**

1 A. Yes. While I would much prefer (and have tried) to work out a solution with the  
2 participation and contribution of all involved in an informal setting, it does not  
3 appear that will ever be a reality. Further, it appears that this will be the only  
4 forum to have the input of SBS even considered, and therefore I will include an  
5 illustrative section 4.4 tariff as Exhibit WRB-6.

6 **III. CONCLUSIONS**

7 **Q. WHAT CONCLUSIONS DO YOU DRAW FROM QWEST'S REQUEST**  
8 **TO ELIMINATE OPTION 2?**

9 A. Qwest's request is absolutely in concert with the expectations we have developed  
10 based upon our past experiences. Just as it is apparent that the *Do-It-Yourself*  
11 *Option* of the tariff was included as merely eye-wash—an option that was **never**  
12 intended to be used—it is even more apparent that Option 2 of the LDA section  
13 was also intended to be eye-wash. In fact, Laura Scholl cleared up Qwest's  
14 intentions regarding Option 2 in her statement, that "[t]he new option 2 tariff  
15 created an unintended consequence." (Page 7 of Laura Scholl testimony) She  
16 refers to this unintended consequence as being the development of a 'new "Option  
17 2 contractor" industry'; however, I believe it is more accurately depicted as  
18 developers actually being able to take advantage of the option. Ever since  
19 developers have begun exercising control over their developments and using  
20 "Option 2" Qwest has fought the existence of option 2 and its use by developers.  
21 (Illustrated by this, Qwest's third attempt to eliminate option 2 and in the tone of



1           their communications with developers—see underlined and highlighted section of  
2           Exhibit WRB-7, a Qwest letter “To all developers/builders”.)

3   **Q.    ARE THERE ANY FINAL COMMENTS YOU WOULD LIKE TO MAKE**  
4   **REGARDING QWEST’S REQUEST AND SUPPORTING TESTIMONY?**

5   A.    In a vacuum, Qwest’s request and supporting testimony makes some sense.  
6           However, the following facts should not be ignored when evaluating their  
7           position:

- 8           •   The direct testimony of Laura Scholl, although replete with questionable impact  
9           assessments upon telephone subscribers, provides very little with regard to the  
10          impact upon the true “consumer” of Qwest’s development services, i.e., land  
11          developers. Ms. Scholl’s testimony on this point comes down to a claim that  
12          since developers in other states where Qwest does business do not have the ability  
13          to control their projects, developers in Utah should not have that ability either. As  
14          a counter to this point, SBS working with Desert Excavating, Inc. (of Yuma,  
15          Arizona) and three Arizona land developers have petitioned the Arizona  
16          Corporation Commission to consider a similar option. The land developers on  
17          that petition have expressed a great deal of frustration in having their projects  
18          unavoidably linked to Qwest’s development services.

- 1       • The direct testimony of Dennis Pappas is so fraught with inaccuracies and  
2       fallacies with regard to the telephone network development and testing process  
3       that it is almost impossible to determine what has merit.
- 4       • The direct testimony of Dick Buckley is yet another example of Qwest throwing a  
5       few numbers out to indicate a reasonable cost conclusion, yet leaving out **all** links  
6       to how the numbers were derived. Qwest’s perpetual argument along these lines  
7       seems to be one HUGE “Trust Me”. Well, as a young man I was taught to never  
8       trust anyone who says (or implies) “trust me”. I recommend that advice to the  
9       Commission.

10       In short, if Qwest’s request is granted, developers will suffer. In fact, there is  
11       some trepidation among Option 2 contractors and their clients concerning  
12       potential vindictive handling of our client projects if option 2 is eliminated.

13       The Commission should deny Qwest’s request and instruct that the tariff be  
14       modified to reflect the recommendations listed previously in this testimony. Short  
15       of that, the Commission should, at the very least, demand that Qwest follow the  
16       tariff as currently constructed and use the LDA in an appropriate manner.