

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

Docket No. 03-049-62

FINAL PRE-FILED TESTIMONY

OF

WILLIAM R. BODINE

FOR

SBS TELECOMMUNICATIONS, INC.

APRIL 5, 2005

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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, Inc.
4 (SBS). SBS is headquartered in my home at 233 East 500 North in Tooele, Utah.

5 **Q. ARE YOU THE SAME WILLIAM R. BODINE THAT FILED TESTIMONY ON**
6 **BEHALF OF SBS ON NOVEMBER 19, 2004 AND ON MARCH 22, 2005.**

7 A. Yes, I am.

8 **Q. WHAT IS THE PURPOSE OF THIS TESTIMONY YOU ARE PROVIDING?**

9 A. This testimony is to provide a brief response to the surrebuttal testimony of Qwest filed
10 on March 22, 2005 and to the Qwest/Salt Lake Home Builder's Association (SLHBA)
11 stipulation filed on March 30, 2005. In doing so, I intend to illustrate the compelling
12 need to retain Option 2 and for the Commission to take a more proactive role in
13 enforcing the terms of Qwest's construction tariff in general.

14 **II. RESPONSE TO THE FILED QWEST SURREBUTTAL TESTIMONY**

15 **Q. DOES THE QWEST SURREBUTTAL TESTIMONY PRESENT ANY**
16 **“COMPELLING POLICY ARGUMENTS TO ELIMINATE OPTION 2 OF THE**
17 **LDA”¹?**

¹ See *Surrebuttal Testimony of Laura L. Scholl*, lines 11-12.

1 A. Absolutely not! In fact, the testimonies of Ms. Scholl and Mr. Pappas are typical
2 examples of the themes Qwest has used throughout these proceedings². Below are
3 some examples of how the use of these themes pervade these recent filings:

4 **Contractual/Control Themes**

- 5 • In lines 63-64, of her testimony, Ms. Scholl again asserts that Qwest's only
6 recourse in "enforcing the tariff" is "by refusing to accept facilities". In his
7 testimony, Mr. Pappas reiterates this claim in lines 56-59. When the only real
8 requirement of the tariff is for an LDA contract to be entered into, why does
9 Qwest not recognize that their legitimate "enforcement" efforts should lie in
10 enforcing the terms of the contract and that by doing so its recourse for failures
11 could be more legitimately pursued? Could it be that Qwest does not desire to
12 be bound by the terms of any such contract or does Qwest recognize that its
13 contract does not—in any way—support the often ridiculous demands they
14 make?
- 15 • In lines 181-183 of Ms. Scholl's testimony, the assertion is made that Qwest's
16 lack of contractual relationship, in Option 2, makes the developed network "less
17 reliable". This blanket statement is made even though Qwest has admitted that
18 it does not test or inspect the networks it places. This begs the obvious question:
19 "In the absence of Qwest testing or inspecting the networks it places how is

² See *Surrebuttal Testimony of William R. Bodine*, pages 13-20.

1 Qwest able to make the comparison , and conclude that the Option 2 network is
2 “less reliable”?

3 **Tariff Domain and Compliance Themes**

4 • In line 53 of Ms. Scholl’s testimony, the claim is made that Qwest “attempted to
5 enforce the letter” as a means of enforcing tariff terms upon developers and their
6 agents. Again in lines 332-333 of her testimony, Ms. Scholl presents the issue
7 as “Qwest’s attempts to require compliance with the tariff”. In lines 286-287 of
8 Mr. Pappas’ testimony, he laments Qwest’s inability to “meaningfully **force**
9 [developers] to comply with Qwest’s tariff”. These claims reiterate Qwest’s
10 position that Qwest does not need LDA contracts with land developers, it merely
11 has to “enforce the tariff,” and developers and Option 2 contractors need
12 comply!

13 **Character Assassination Themes**

14 • On page 2 of Ms. Scholl’s testimony, in an attempt to illustrate how greedy
15 Option 2 contractors are, the claim is made in lines 39-43 that docket 02-049-66
16 was purely a result of “Option 2 contractors [seeking payment of] the cap
17 amount under the LDA tariff for multi-unit dwellings”. The implication made is
18 that Qwest offered to pay some amount less than the cap, and that we refused.
19 This is a lie! That docket was the result of Qwest’s absolute “refusal” to allow

1 us—**at any price**—to fulfill the legitimately negotiated and signed contracts that
2 included phases of townhome developments. The word “detached” did not
3 appear in the LDA tariff, and indeed still does not. In fact, the plain wording of
4 the tariff does not, in any way, support the exclusion of townhome projects.
5 Therefore our determination to be able to fulfill our contractual obligations was
6 totally justified and was based upon a reasonable understanding of the plain
7 language of the tariff. (As presented in the July 15, 2003 Report and Order, the
8 sole determining factor of stating that the tariff should **read** “detached” single
9 family dwellings came from Qwest’s evidence that such were **not** included in
10 the cost study that determined the “cap” amount—evidence not presented prior
11 to the opening of that docket.)

- 12 • In lines 81-83, 155-158, 163-164, and 266-268 of Ms. Scholl’s testimony,
13 Qwest again denigrates the services that Option 2 contractors provide to
14 **Developers**, claiming that we are not “real” competitors of Qwest, that we
15 “game the system,” and that we are in fact merely providing “services to
16 Qwest”. I strongly disagree and I am certain that the client Developers of SBS
17 would do likewise. We do compete vigorously with Qwest to provide **services**
18 **to Developers**. Our “gaming of the system” is merely charging a price that has
19 been clearly specified—by Qwest, within the tariff—as a reasonable investment
20 price.

1 These themes **do not** present compelling arguments for the removal of Option 2. Quite
2 the contrary, these themes illustrate and emphasize the need of the Commission to take
3 a more proactive role in determining tariff content and ensuring that the contract
4 specified therein is used appropriately. Qwest’s claim that its adherence to the tariff has
5 been through “good faith efforts” is completely baseless. Mr. Pappas claims, in lines
6 498-500 of his testimony, that “Qwest would be eager to hear suggestions on how
7 parties can be compelled to comply with Commission or tariff requirements”.

8 However, that is exactly what SBS has suggested to Qwest in virtually every venue
9 since April of 2001. If Qwest used the contract, as it should, the means of tariff
10 enforcement—upon the parties that Mr. Pappas refers to, i.e. Developers and Option 2
11 contractors—would be easily handled through the arbitration process specified within
12 the contract, or through civil actions to enforce the terms of the contract. Qwest’s
13 actions have been completely void of “good faith”, just as is Mr. Pappas’ claim of
14 eagerness.

15 It is Qwest who blatantly ignores the plain language of the tariff. Removing Option 2
16 would not change that fact for the past, present or future. Mr. Pappas’ claim, in lines
17 20-21 of his testimony, that “only the elimination of Option 2 will change the behavior
18 of ALL the stakeholders,” neglects to account for the behavior of Qwest. The removal
19 of Option 2 will only reinforce Qwest’s recalcitrant behavior.

1 **Q. PLEASE RESPOND TO QWEST’S OFTEN REPEATED CLAIM REGARDING**
2 **TARIFF TIMING INTERVAL REQUIRMENTS.**

3 A. This **absurd and baseless position** is almost another theme unto itself. Apparently
4 Qwest believes that if you claim something often enough, it will become true. To be
5 clear, the claim is that the current LDA tariff has “notification and placement interval”
6 requirements that would be “shortened” by Qwest’s illustrative change proposal. The
7 claim is found several times in Dennis Pappas’ recent testimony. It is also found in
8 paragraph 4.b of the Qwest/SLHBA stipulation. Mr. Pappas clearly states this claim in
9 lines 22-23, and again makes reference (referring to Developers and Option 2
10 contractors not following “tariff timelines and other requirements”) in lines 52-53 and
11 109-110. Further, throughout his 26 pages of testimony, the perspective of scheduling
12 intervals and the need for Developers to **pay** for the efficiencies of Option 2 are critical
13 components.

14 The fact of the matter is that the current LDA tariff does **NOT** contain **any** “notification
15 and placement interval” or any other form of scheduling requirements! How can a
16 timeframe be shortened when it is not there to begin with? The only reference to such
17 is just that—a reference. That reference is presented in paragraph 4.4.B.2.e, following
18 the final words of paragraph 4.4.B.2 (which are “The LDA will include:”) **and** the
19 words that clearly specify the exemplary nature of the reference: “**such as**”. Further,

1 and contrary to that very term of the tariff, no such provision is included within the
2 actual LDA contracts.

3 In fact, Qwest's illustrative tariff removes those examples from paragraph 4.4.B.2.e and
4 specifies detailed scheduling intervals in paragraph 4.4.B.2 (**prior** to the words "The
5 LDA will include:"), in an obvious effort to further bolster its position that the LDA
6 contract is not necessary, Qwest must merely "enforce" tariff terms upon Land
7 Developers.

8 **Q. MR. PAPPAS REPEATEDLY CLAIMS THAT DEVELOPERS USING OPTION**
9 **2, DO SO ONLY BECAUSE OF THEIR OWN FAILURE TO PLAN AHEAD. IS**
10 **THAT A FAIR ASSESSMENT?**

11 A. No! In reviewing the 43 most recently completed jobs SBS has performed, our clients
12 have entered into contracts with us, on the average, of almost four (4) months in
13 advance of the need to place cable into an open trench. While five (5) of those jobs
14 were short notice jobs (within 2 weeks) and one (1) job was held for 28 months, the
15 remaining average is still almost 4 months advance notice. Frankly, I find it amazing
16 that Qwest can so thoroughly and unfairly malign the business sensibilities of Land
17 Developers and yet still convince the Salt Lake Home Builders Association ("SLHBA")
18 to support their position.

1 **Q. MR. PAPPAS CLAIMS, IN LINES 98-99 OF HIS TESTIMONY, THAT “THE**
2 **CPD PRICING TOOL...PRODUCE COSTS THAT ARE HIGHER THAN**
3 **QWEST’S ACTUAL COSTS”. DOES THE EVIDENCE SUPPORT THAT?**

4 A. No! Exhibit WRB-10 clearly shows that Qwest’s CPD tool, which was used (as
5 claimed by Qwest) to produce the figures presented in the “Charges per LDA” column,
6 averaged \$1010.00 **less** than what Qwest has presented as actual charges.

7 **Q. IN LINES 377-385 OF HER TESTIMONY, MS. SCHOLL CLAIMS THAT THE**
8 **PASSAGE OF SENATE BILL 108 MAY MAKE “THE ISSUES IN THIS CASE**
9 **...ESSENTIALLY MOOT”. IS THAT A REASONABLE ASSESSMENT?**

10 A. Not even close to reasonable. It is clear by the modified paragraph of Section 54-8b-2.3
11 (2)(b)(ii) of the Utah Code, which reads “the incumbent telephone corporation shall
12 offer basic residential service **throughout** the area in which the incumbent telephone
13 corporation
14 is authorized by certificate to provide basic residential service”, that Qwest’s “carrier-
15 of-last-resort responsibilities”³ are enhanced, not diminished by the passage of this
16 legislation. Further, Section 54-8b-2.3(2)(a) specifically defines “retail end user public
17 telecommunications services” as those services that may be offered through the use of a
18 “price list or competitive contract in the same manner as a competing
19 telecommunications corporation”. Certainly no part of section 4, *Construction Charges*

1 *and Other Special Charges of Qwest’s Exchange and Network Services Tariff* could
2 possibly be construed as “retail end user public telecommunications services,” and
3 therefore may **not** be offered through the use of a “price list”. Further, the increased
4 emphasis of the Legislature on ensuring that “incumbent telephone corporations” meet
5 their “carrier-of-last-resort responsibilities,” prescribe that the Commission act
6 diligently and continue and improve the regulation of construction issues.

7 **Q. MS. SCHOLL CLAIMS, IN LINES 369-375 OF HER TESTIMONY, AND IN A**
8 **GREAT DEAL OF HER JANUARY 28TH REBUTTAL TESTIMONY, THAT**
9 **DEVELOPERS ARE NOT REALLY INTERESTED IN OPTION 2. IS THAT**
10 **CONSISTENT WITH YOUR OWN EXPERIENCES?**

11 A. No! EVERY Developer we have contacted has expressed firm support for the retention
12 of Option 2. Several joined, at our request, the action in this Docket. However, as a
13 course of business, Developers grow very wary of regulatory action—developments are
14 routinely ground to a halt by the actions of a single government agency from the
15 municipality to the federal levels of government. It does not take too many strolls
16 through that mine field to gain a heightened sense of concern with regard to
17 participating in regulatory affairs. Coupled with that natural wariness, Qwest militantly
18 overwhelmed all Developers that intervened in this docket until many withdrew their
19 participation. The reality is that Developers like and use Option 2 because it gives the

³ See *Surrebuttal Testimony of Dennis Pappas*, line 294.

1 control of the development were it belongs—in the hands of Developers, not Qwest. It
2 indeed gives them an “option”, rather than a “take it – or leave it” mandate.

3 **III. RESPONSE TO THE FILED STIPULATION BETWEEN QWEST AND THE**
4 **SALT LAKE HOME BUILDER’S ASSOCIATION**

5 **Q. WHAT IS YOUR RESPONSE TO THE REFERENCED STIPULATION?**

6 A. Frankly, I was floored. I still am. The fact that Qwest managed to convince the
7 managing body of that organization that there is some advantage to Qwest’s position as
8 set forth by that filed stipulation, is nothing short of astounding. I admit that I admire
9 Qwest’s tact in pursuing this private deal, and wish that I had similarly sought an
10 opportunity to sway the SLHBA’s position. But in fact, no Option 2 contractor (that I
11 know of) met with the SLHBA at any time to present the facts of the case. I suspect
12 that the only individual involved with managing the SLHBA who has read the filed
13 briefs is Don Green—the **QWEST manager over the RLDA process**. (Mr. Green
14 currently sits on the SLHBA Government Affairs Committee.) I can only reason that
15 the twisted logic, denigration, deflection, and even deception that has pervaded Qwest’s
16 filings found their mark with the managing body of the SLHBA.

17 **Q. WHAT HAS BEEN THE RESPONSE OF DEVELOPERS TO THE**
18 **REFERENCED STIPULATION?**

1 A. The reaction I have seen and heard from the Developers I've talked to has been very
2 similar to my own. Many, as members of the SLHBA, have expressed outrage. SBS
3 has collected from many such developers, letters (that they have faxed to our legal
4 counsel) expressing their opinion of this stipulation. These several letters are included
5 in this testimony as Exhibit WRB-13 hereto.

6 **IV. SUMMARY**

7 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

8 A. There **is no reason** to consider eliminating Option 2. Qwest's testimony serves to
9 illustrate the driving need for the Commission to bring home the point of just who is
10 regulated by this tariff. The LDA contract will remain a useless and virtually pointless,
11 document until Qwest is ordered to comply with the tariff requirement to use it as the
12 tool for defining the relationship between Qwest and Land Developers. Qwest's
13 repeated interpretation is that **Qwest** is the enforcer of the tariff and that the tariff is
14 **Qwest's** tool to regulate others. The removal of Option 2 will solidify this position in
15 Qwest's attitude and actions, and assure further disputes due to that fact.

16 As stated by Mr. Brett Miller of D.R. Horton (see Exhibit WRB-13), the "'Spirit of
17 Service' that is being sold in the Qwest commercials" is not noticed by most
18 developers. Nor is it perceptible in Qwest's treatment of Developers in their own
19 testimony. While Qwest claims to be keenly interested in maintaining (or developing)

1 good relations with Developers, it seems to have an unceasing list of reasons that all
2 construction problems are the Developer's fault. Amazingly, Option 2 contractors
3 appear to be able to overcome these faults and provide their development services in a
4 fashion suitable to Developers. Qwest seeks to end that disparity in service by putting
5 an end to Option 2 contractors—not exactly the response of a service oriented company.

6 **Q. IS THIS THE CONCLUSION OF YOUR TESTIMONY.**

7 **A.** Yes it is.