

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

REBUTTAL TESTIMONY

OF

DENNIS PAPPAS

FOR

QWEST CORPORATION

JANUARY 28, 2005

TABLE OF CONTENTS

	Page
I. EXECUTIVE SUMMARY	1
II. INTRODUCTION	2
III. REBUTTAL TO WILLIAM AND JAY BODINE	5
IV. REBUTTAL TO STEPHAN ALLEN	24
V. CONCLUSION.....	32

22 construct, or develop telephone networks for Qwest.”¹ Yet, when a developer in
23 Utah chooses Option 2, the network distribution facilities being placed are for
24 Qwest’s network and will belong to Qwest. In my view, no reasonable business
25 person would believe that Qwest should be forced to have its facilities placed by a
26 “competitor.” I am aware of no state or federal law or policy that would require
27 such a situation; and, as the testimony of the Option 2 contractors amply
28 demonstrates, it is time for Qwest to be allowed to regain control of its
29 distribution placement costs and activities. Option 2 contractors should no longer
30 be allowed to interfere with the methods and terms upon which Qwest’s network
31 facilities are installed within a new development.

32 **II. INTRODUCTION**

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

34 A. My name is Dennis Pappas. I am employed by Qwest Corporation as a Director
35 in Public Policy representing Network Operations. My business address is 700
36 Mineral Ave., Room MNH19.15 Littleton, CO 80120.

37 **Q. ARE YOU THE SAME DENNIS PAPPAS WHO FILED DIRECT**
38 **TESTIMONY IN THIS DOCKET?**

39 A. Yes, I am.

¹ SBS Communications, Inc.’s Answers to Qwest’s First Set of Data Requests (Dec. 20, 2004) at 3.

40 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

41 A. I will explain how the testimony presented by the other parties actually helps to
42 illustrate the ongoing problems that Qwest continues to experience with Option 2,
43 despite Qwest's good faith efforts to make it work. Additionally, I will respond to
44 some of the many misguided allegations and characterizations that are scattered
45 throughout the testimony of the other parties.

46 **Q. PLEASE SUMMARIZE YOUR MAIN POINTS OF CONCERN WITH**
47 **THE TESTIMONY OF THE OTHER PARTIES.**

48 A. The Bodines and Mr. Allen make recommendations that would result in an even
49 more onerous Option 2 process than the one that exists today. For example, one
50 of their recommendations is that engineering and construction standards be
51 included in the tariff. What this would mean to Qwest is that anytime any of
52 these standards require change, Qwest would be obligated to file a petition to
53 modify the tariff, wait at least a month, and run the risk of having the change
54 opposed by a Option 2 contractor, followed by litigation and potential rejection by
55 the Commission. This unworkable position would drive unnecessary cost into
56 Qwest's business and would allow an Option 2 contractor to obstruct (through
57 objection to changes in the standards, as has been demonstrated by parties such as
58 SBS in the past) the manner in which Qwest designs, builds and implements its
59 network. The recommendations in the Option 2 contractors' testimony would
60 result in Commission micromanagement inconsistent with the Commission's

61 appropriate oversight role, even greater inefficiencies to Qwest than under the
62 current Option 2, and even less control by Qwest over the placement process
63 under Option 2. The impact of the Option 2 contractors' proposal would be a
64 continued harm to Qwest's relationship with developers and to Qwest's
65 competitive position.

66 **Q. THERE ARE A LARGE NUMBER OF (USUALLY INSUFFICIENTLY**
67 **DETAILED) ALLEGATIONS DISCUSSED IN THE TESTIMONY OF**
68 **THE BODINES AND STEPHAN ALLEN. DOES QWEST HAVE A**
69 **RESPONSE FOR EACH SITUATION?**

70 A. No. Although Qwest does address some specific issues in the testimony below,
71 Qwest has not attempted to develop a response for each and every allegation. For
72 example, Qwest disagrees with almost all of the statements, characterizations and
73 allegations in Jay Bodine's testimony. I also believe that Jay Bodine consistently
74 misstates, mischaracterizes and misinterprets what I described in my direct
75 testimony. Therefore, specific rebuttal of each minor point would be inordinately
76 time consuming and lengthy.

77 Qwest believes that little benefit would come to the Commission from a project
78 by project debate, and focus on the main policy issues could be lost. If the
79 Commission does not accept Qwest's position to eliminate Option 2, and decides
80 to proceed with trying to make the Option 2 workable, a more detailed discussion
81 and debate about specific situations may have some benefit. If required, Qwest

82 can develop a response for each allegation. However, given the missing factual
83 detail in the testimony, Qwest most likely would need to receive additional
84 information from the Option 2 contractors before it could do its research.

85 Overall, Qwest has acted in good faith to try and make Option 2 work as smoothly
86 as possible. If there have been any problems caused by Qwest, they have only
87 been isolated situations. One of the primary reasons why Qwest wants to now
88 eliminate Option 2 is because it is tired of the ongoing debates about the process
89 and the tariff with Option 2 contractors, who do not have a contractual or tariff
90 relationship with Qwest. The main point I want to make about the testimony,
91 then, particularly the SBS testimony, is that it provides a glimpse of the endless
92 haggling and debate that will continue if the Commission decides not to let Qwest
93 withdraw Option 2 from its tariff.

94 **III. REBUTTAL TO WILLIAM AND JAY BODINE**

95 **Q. ON PAGE 14 OF WILLIAM BODINE'S TESTIMONY HE INDICATES**
96 **THAT HE CONSIDERS SBS A COMPETITOR OF QWEST, AND THAT**
97 **IF QWEST WERE BETTER AT PROVIDING PLACEMENT SERVICES**
98 **IT WOULD BE DOING A MUCH BETTER JOB OF RETAINING**
99 **DEVELOPERS. DOES QWEST AGREE?**

100 A. No. But this testimony from Mr. Bodine perfectly illustrates why Qwest has had
101 so much difficulty in dealing with Option 2 contractors. When Option 2 was
102 established and put into effect through Qwest's tariff, a key purpose of this second

103 option was to help Qwest strengthen its relationship with Utah developers by
104 allowing them greater flexibility in working with Qwest to efficiently install its
105 network. Qwest viewed this as important at the time because it understood that its
106 **real** competitors were CLECs and other facility based companies who were, and
107 still are, intent on taking customers in these new developments away from Qwest.
108 Instead of achieving this intended result, however, many of the Option 2
109 contractors decided to become “competitors” rather than working as partners with
110 Qwest to place Qwest’s network facilities. They did so by gaming the system in a
111 way that attempted to maximize their profits at the expense of Qwest. Yet, this
112 type of pseudo-competition was never contemplated in either the state or federal
113 telecommunications act. It only arose through the implementation of the tariff,
114 and through some artful maneuvering by these Option 2 contractors.

115 Qwest’s real competitors in Utah are facility-based CLECs, cable telephony
116 providers, wireless providers and VoIP providers. This will continue to be true in
117 the future. The real competitive market, not the alleged competition between
118 Option 2 contractors and Qwest to place facilities, will dictate what Qwest must
119 do to be able to place facilities in developments in the future. Despite Qwest’s
120 best efforts to make it work, unfortunately the Option 2 LDA process has done
121 nothing to advance Qwest’s position in this competitive market. For example,
122 having an Option 2 available in the tariff did not enable Qwest to place facilities
123 in the Traverse Ridge or Promontory developments. These are two very large

124 developments in which the developers selected other providers who do not have
125 an Option 2 in their tariffs or price lists. Nor will Option 2 assist Qwest in its
126 efforts to compete against future projects like UTOPIA, a non- regulated,
127 government-subsidized, interlocal consortium of municipalities, which could have
128 significant impact on Qwest's ability to place facilities and serve subscribers in
129 new developments within those municipalities. Due to UTOPIA-like projects,
130 developers may not want Qwest to place facilities within their developments in
131 the future, whether Option 2 is available or not.

132 Today, opportunities also exist for developers that have not existed in the past –
133 preferred provider agreements, triple-play providers, private right-of-way deals
134 and revenue sharing proposals, all of which are becoming more important. Qwest
135 is very aware of the competitive nature of the telecommunications business,
136 especially in light of the continued rush to wireless alternatives and in many cases
137 wireless substitution and the recent emergence of VoIP. Having an Option 2 in
138 the tariff does nothing to enable Qwest to successfully face these real competitors.
139 In fact, having Option 2, and the higher costs and historic problems that have
140 come with it may place Qwest at a competitive disadvantage. Neither of the
141 telecommunications providers who were selected to serve the two developments
142 used as examples above were shackled by the onerous process that exists in
143 Qwest's tariff today. Putting these examples aside, the fact remains that if Qwest
144 is to remain the provider of last resort within many of these developments, it is

145 essential for Qwest to be able to partner with developers in Utah without having
146 to tackle this third layer of pseudo-competition from Option 2 contractors.

147 **Q. IN HIS TESTIMONY (PAGE 14) JAY BODINE STATED THAT, “THE**
148 **ENTIRE ARGUMENT ABOUT COST ESTIMATES IS BASELESS. SBS**
149 **DOES NOT CARE ONE WHIT ABOUT QWEST’S COST ESTIMATE**
150 **FOR DOING WORK THAT THEY AREN’T DOING.” DOES QWEST**
151 **AGREE WITH THIS STATEMENT?**

152 A. Qwest disagrees with the statement that the “entire argument about cost estimates
153 is baseless.” The entire argument about cost estimates is a result of prior
154 Commission orders. The fact that SBS does not care “one whit” about Qwest’s
155 cost estimates demonstrates that it does not care “one whit” about what the
156 Commission has directed. For example, SBS appears to not care about important
157 statements made by the Commission in its July 15, 2003 order in Docket No. 02-
158 049-66, believing instead that the Commission directives were “superfluous
159 words of the Order” as stated in William Bodine’s testimony (page 9).
160 Specifically, SBS continues to ignore the statements about the cap not being the
161 default price. They also ignore the statement that “[t]o be good faith and
162 verifiable the cost estimates must be more than a quote from one of the
163 Complainants or a similar company to do the job for the amount of the cap under

164 the LDA tariff.”² SBS continues to refuse to provide verifiable cost estimates and
165 only provides Qwest with SBS’s agreement with the developer which is a “quote”
166 to do it for the cap.

167 **Q. IN HIS TESTIMONY (PAGE 14) JAY BODINE STATED THAT, “ONLY**
168 **AFTER EXHAUSTING OUR EFFORTS TO ATTAIN A WIN-WIN**
169 **SOLUTION, HAVE WE TURNED TO LITIGATION.” DOES QWEST**
170 **AGREE WITH THIS CHARACTERIZATION?**

171 A. No. In Qwest’s view, SBS has been excessively litigious and has never sought a
172 “win-win” with Qwest. SBS initiated the multi-unit complaint (Docket No. 02-
173 049-66) trying to further expand its operations into Qwest’s business, in situations
174 not contemplated by the LDA tariff. It has filed a complaint in Docket No. 04-
175 049-06 seeking the tariff cap for all Option 2 jobs, when the Commission had
176 previously directed that the cap was not an appropriate default price. And it has
177 filed a complaint in district court (initially preferring to have the “cap” issue
178 resolved there instead of the Commission—which was understandably misguided
179 given the clear direction against SBS’s position the Commission had already
180 provided), making the outrageous argument that Qwest has tortiously interfered
181 with SBS’s relations with developers. Indeed, the district court case is the perfect
182 example of what is wrong with Option 2—it is clear that the Option has become
183 untenable when a subcontractor placing Qwest’s facilities, pursuant to an option

² Report and Order, Docket No. 02-049-66 (July 15, 2003).

184 that Qwest introduced to assist and improve relationships with developers, sues
185 Qwest for allegedly interfering with the very developers Qwest has a tariff and
186 contractual relationship with and with whom it was trying to work. Apparently,
187 SBS's view of "win-win" is for Qwest to simply agree to SBS's continuing
188 demands so that SBS gets what it wants and Qwest, at least, can finally get some
189 peace.

190 **Q. IN HIS TESTIMONY (PAGE 21), BILL BODINE STATES THAT,**
191 **"SECTION 4.7.1 DO-IT-YOURSELF OPTION APPEARS TO BE**
192 **MERELY EYE-WASH FOR THE BENEFIT OF THE COMMISSION**
193 **RATHER THAN ANY LEGITIMATE OPTION FOR DEVELOPERS OR**
194 **QWEST CUSTOMERS," AND PROVIDES AN EXAMPLE OF A**
195 **DEVELOPMENT WHERE A DEVELOPER ALLEGEDLY WAS DENIED**
196 **THE USE OF SBS FOR SELF-HELP. DOES QWEST AGREE WITH**
197 **THIS ALLEGATION?**

198 **A.** No, Qwest does not agree with the allegation. Section 4.7 is not an issue in this
199 proceeding, but the fact that SBS is attempting to insert itself in Qwest's business
200 in yet a further scenario does illustrate the difficulties Qwest has with SBS.
201 Section 4.7.1 of the Utah Exchange and Network Services Tariff states, "If the
202 customer elects to provide the labor to place cable, the Company will provide the
203 materials, supervision, engineering and testing as required. This service will be
204 provided to the customer for a charge equal to the costs associated with providing

205 the materials and support services.” Although trenching, rather than “labor to
206 place cable” is what was agreed upon for the developer to provide as self-help in
207 this case, SBS tried to insert itself even further in the process by attempting to
208 provide materials and do part of the engineering. The issue, then, was not
209 whether self help was available. The issue was SBS’s attempt to expand the self-
210 help tariff beyond its appropriate scope, just as it had done in seeking to do work
211 on multi-family dwellings (where, even as SBS had a complaint pending to ask
212 the Commission whether it could do work on Qwest’s facilities in multi-family
213 settings, in at least one case—Pioneer Plat Phase D—it went ahead and tried to do
214 the work without permission). Normally, it might be laudable for a
215 businessperson to seek opportunities wherever they may lie, but in the case of
216 SBS the opportunities it seeks with Qwest always seem more akin to a hostile
217 takeover than to a mutual, voluntary business arrangement.

218 **Q. DOES QWEST HAVE ANOTHER EXAMPLE OF WHERE SBS HAS**
219 **ATTEMPTED TO INSERT ITSELF INTO QWEST’S BUSINESS?**

220 A. Mr. Bodine was a party to the request in Arizona by Desert Excavating to get the
221 same Option 2 language from Utah included in the Arizona tariff. This request
222 was filed with the Arizona Corporation Commission in 2001. While no action has
223 been taken on this request, this is just one more example of SBS attempting to
224 micromanage Qwest’s business decisions for the benefit of SBS.

225 **Q. IN HIS TESTIMONY, JAY BODINE (PAGE 3) STATES THAT**
226 **“QWEST’S VIEW PRESENTS THE COMPLETELY ERRONEOUS**
227 **CONCEPT OF THE PUBLIC SERVICE COMMISSION HAVING**
228 **AUTHORITY TO LEVY REQUIREMENTS DIRECTLY UPON LAND**
229 **DEVELOPERS.” WHAT IS QWEST RESPONSE TO THIS**
230 **STATEMENT?**

231 A. I believe this statement reinforces Qwest’s belief that Option 2 contractors feel,
232 perhaps with some justification, that they and developers can ignore the
233 Commission with impunity. Qwest’s LDA tariff contains the terms and
234 conditions upon which Qwest is willing to place or accept placement of facilities
235 in single family developments. If a developer or Option 2 contractor refuses to
236 abide by the terms and conditions of Qwest’s LDA tariff, then Qwest is not
237 obligated to accept Option 2 facilities in that development. However, in a
238 competitive environment it may be extremely difficult for Qwest to enforce such
239 tariff requirements. If Qwest refuses facilities and customer service is impacted,
240 Qwest is the party whose relationship with customers is harmed. SBS has been
241 willfully defiant of Commission orders, such as with regard to verifiable cost
242 estimates, and shows no sign of changing. The removal of Option 2 will
243 eliminate the possibility that other Option 2 contractors (such as Silver Creek,
244 which has also ignored Commission directives) can thumb their noses at the
245 Commission or at Qwest’s tariff requirements.

246 **Q. ON PAGE (7) OF WILLIAM BODINE’S TESTIMONY HE STATES THAT**
247 **QWEST “WOULD/WILL NOT CONSIDER ANY CHANGES TO THE**
248 **TERMS OF A LDA.” IS QWEST WILLING TO CONSIDER CHANGES**
249 **TO THE LDA CONTRACT?**

250 A. Yes. Qwest is willing to make necessary changes to the LDA contract. Qwest
251 has told SBS that it is willing to consider reasonable changes to the contract, but
252 given that the document is hard coded in a database (as opposed to being a simple
253 word processor document), Qwest desired to make all changes at once instead of
254 on a piece-meal basis. For example, at the time that SBS first suggested changes
255 to the contract, Qwest had an LDA tariff change (Docket No. 01-049-T12)
256 pending before the Commission. That tariff filing was suspended by the
257 Commission. Had that proceeding moved forward, it had the potential of causing
258 significant changes to the LDA. Qwest acknowledges that the contract has been
259 an ongoing issue for SBS. However, a sensible person would have to ask why
260 this has not been a big issue with the handful of other Option 2 contractors in
261 Utah. The existing contract has been workable for these other entities. From
262 Qwest’s perspective, there is only one Option 2 contractor in this proceeding that
263 has complained about the contract, and it makes no sense to accept modifications
264 to a document when the document in question could see significant changes
265 resulting from this proceeding.

266 As Qwest has told Mr. Bodine in the past, Qwest is willing to make the necessary
267 changes, including the proper reference to the Utah Public Service Commission,
268 in the LDA when this proceeding is concluded.

269 **Q. ON PAGE (7) OF WILLIAM BODINE’S TESTIMONY HE STATES THAT**
270 **“QWEST CLAIMS THEIR PROCESSES WILL NOT ALLOW THEM TO**
271 **DEVELOP THEIR INPUT FOR THE CHARGES SECTION UNTIL THEY**
272 **HAVE PRICED THE COMPLETELY ENGINEERED PROJECT.” WHY**
273 **IS IT NOT POSSIBLE TO DEVELOP A REASONABLE VERIFIABLE**
274 **COST ESTIMATE BEFORE THE PROJECT IS ENGINEERED?**

275 A. Without the job being engineered, Qwest cannot determine its estimated costs. As
276 explained in my direct testimony, Qwest uses the CPD program to develop its
277 detailed verifiable cost estimates. The field engineer inputs into the CPD program
278 all necessary work items shown on the engineering work prints provided by the
279 developer. Subdivision projects require at least some degree of custom
280 engineering. For example, custom engineering is necessary to ensure that
281 properly sized facilities are being placed in a subdivision to handle not only the
282 immediate phase of a development, but future phases and other undeveloped
283 property. Because of this, Qwest cannot guess what may be required on any
284 particular project up front prior to the developing of the engineering prints. This
285 is true for both Option 1 and Option 2 projects. A good analogy would be a
286 comparison to an architect trying to send out a bid for a project to build a new

287 building without first developing the specific work plans that contractors could
288 review. Even if contractors were to submit bids in this situation, the architect
289 would not likely receive reasonable bids. The only reason SBS doesn't have a
290 similar requirement that engineering be performed before pricing is that pricing
291 becomes very simple when you always charge \$436.13.

292 **Q. IN HIS TESTIMONY (PAGE 16) JAY BODINE STATED THAT “THE**
293 **DEVELOPER/BUILDER’S EXPENSES ARE CAPPED AT A PRICE**
294 **BASED UPON AN AVERAGE PER LOT COST FOR THE**
295 **TELECOMMUNICATIONS SYSTEM. THE FACT THAT THE ‘CAP’**
296 **PRICE IS BASED UPON AN AVERAGE INHERENTLY PROTECTS**
297 **QWEST FROM BEING OVER CHARGED.” DOES QWEST AGREE**
298 **WITH THESE STATEMENTS?**

299 A. No. First it is not the developer/builder's expenses that are capped, it is Qwest's
300 costs that are capped in the tariff. If a project is below the cap and prices have
301 been agreed upon in an LDA, the developer is only responsible for the trenching
302 costs (under both Option 1 or 2). Only in situations involving larger lot sizes
303 would the estimated costs be above the cap and the developer would be
304 responsible for the costs above the cap. Also, the current cap is not an average
305 cost. The calculated cap of \$436.13 per lot is **125%** of the distribution portion of
306 the average exchange loop investment coming from a 1996 study (\$348.90 x
307 125% = \$436.13). Therefore, based upon that old 1996 study, the “average per lot

308 cost” is \$348.90 not the 125% amount of \$436.13. As pointed out in the direct
309 testimony of Richard Buckley, a current cost study would result in an amount of
310 \$249.52 for the distribution portion of the average exchange loop investment.
311 Qwest is not “inherently” protected by paying the current cap on each project as
312 advocated by SBS, because the cap is **at least** a 25% premium above the “average
313 per lot cost.” Even if the cap was lowered to \$348.90, and Qwest agreed to pay
314 this on every project, there still would be significant problems and debates over
315 “betterments.” Also, paying a flat cost per lot creates the motivation for Option 2
316 contractors to resist any necessary changes to the Option 2 Information Package
317 that may happen in the future and to cherry pick low-cost Option 2 jobs where
318 they can still obtain inflated profits.

319 **Q. IN HIS TESTIMONY, WILLIAM BODINE DISCUSSES A CONCERN**
320 **REGARDING THE “STANDARD COMPANY SPECIFICATIONS” AND**
321 **THE EXHIBIT DP-1 IN YOUR TESTIMONY. WHAT IS QWEST’S**
322 **RESPONSE TO THESE CONCERNS.**

323 A. Aside from SBS, Qwest’s standard company specifications have been workable
324 for, and in fact were originally requested by, other Option 2 contractors. Qwest
325 has consistently worked with the other Option 2 contractors in Utah in the
326 establishment and implementation of these specifications. In its order in a
327 previous LDA proceeding, the Commission stated the following:

328 For developers, and their agents, to comply with the LDA, it is also
329 reasonable to expect that Qwest's criteria or standards for network
330 engineering, plant equipment, and placement for the equipment or facilities
331 placed for new development be made available for the benefit and direction
332 of the developers, performing their responsibilities under the LDA.³

333 Soon after the above referenced order, the Division of Public Utilities facilitated
334 meetings between Qwest and Option 2 contractors. One of the purposes for the
335 meetings was to obtain input from Option 2 contractors into the design of what
336 later has evolved into the Option 2 LDA Information Package. Silver Creek
337 Communications was the main Option 2 contractor that provided input in these
338 meetings regarding the format that would be most useful to them in doing Option
339 2 projects. After the DPU meetings concluded, Qwest continued to develop the
340 Option 2 LDA Information Package. Qwest held its own meetings with Option 2
341 contractors to continue to develop this useful information package. SBS claims
342 that it provided significant input into this document, yet it continues to suggest
343 that the document does not represent Qwest's standard specifications.

344 The bottom line is that the Option 2 LDA Information Package has been
345 developed by Qwest network management in Utah with significant input from
346 Option 2 contractors. Despite this fact, SBS has attempted to play Monday-
347 morning quarterback for several years in an effort to challenge this document and
348 ignore its requirements. SBS has informed Qwest on more than one occasion that
349 it believes it does not have to follow the steps outlined in this document. This is a

³ Order on Reconsideration, Docket No. 99-049-T28 (October 2, 2000).

350 clear example as to why Qwest now desires to eliminate Option 2 in its LDA
351 tariff—all it takes is one or two uncooperative Option 2 contractors and the
352 process becomes unworkable. Qwest is almost totally dependent on the good will
353 of the contractors, because it has so little leverage. Its main leverage, refusing to
354 accept facilities, is essentially no option—it can almost never be used because
355 harm to customers is so likely. The only times that Qwest has been able to
356 practically refuse to accept facilities have been in limited situations where Qwest
357 was able to provide service to its customers through a temporary solution without
358 having to first accept the network from the Option 2 contractor.

359 **Q. JAY BODINE TESTIFIED ABOUT HOW THE LDA INFORMATION**
360 **PACKAGE DOES NOT ESTABLISH STANDARDS OR**
361 **SPECIFICATIONS. PLEASE COMMENT.**

362 A. As I have stated above and in earlier testimony, I'm not sure how any reasonable
363 person could believe this to be true. From the processes set forth in the
364 engineering section to the section bolded in large type called "**PLACING**
365 **AND SPLICING SPECIFICATIONS SPECIFIC TO LDA'S AND**
366 **REVERSE LDA'S.**" I'm at a loss on where the confusion arises from. Mr.
367 Bodine has stated that he does not believe that these "**PLACING AND**
368 **SPLICING SPECIFICATIONS SPECIFIC TO LDA'S AND**
369 **REVERSE LDA'S**" apply to his company because the tariff does not

370 explicitly refer to them. I find it rather odd that most of the other Option 2
371 contractors in Utah place facilities following these standards without significant
372 issue. The Option 2 LDA Information Package **is** the Qwest standards for Option
373 2 contractors operating in the State of Utah.

374 **Q. WILLIAM BODINE GOES ON TO SAY THAT QWEST ITSELF DOES**
375 **NOT EVEN FOLLOW ITS OWN STANDARDS AND ATTEMPTS TO**
376 **MAKE HIS POINT BY CITING WORK HE AND HIS BROTHER**
377 **PERFORMED IN ARIZONA ON QWEST'S BEHALF ON END-CAP**
378 **REMOVAL. PLEASE COMMENT ON HIS ASSERTION?**

379 A. Mr. Bodine fails to tell the entire story in the Arizona experience. First, it is
380 important to note that since the network belongs to Qwest, it should be Qwest that
381 determines the type of facilities that get placed within the state/city/development
382 – surely not a decision that an Option 2 contractor should have any say in. But as
383 to his attempt to confuse the issue with the end-cap example – the reason Mr.
384 Bodine and his brother were conducting work on end-cap was to alleviate held
385 order requests for those subscribers that were requesting a third and fourth line
386 from Qwest. Let me explain. End-cap is manufactured based on engineering jobs
387 and footages and was intended to eliminate the need for above-ground pedestals
388 and exposure to the environment. In the end-caps I have placed and terminated to
389 end user's homes, Qwest dedicated 2 pair per home which gave each address the
390 ability to connect two lines. The problem arises when an end user requests more

391 than two lines. In that case Qwest must dispatch to the site, dig up the cable,
392 splice in a loop and add a terminal in order to provide lines 3 and beyond for the
393 end user. This is really not a standards argument at all as Mr. Bodine would have
394 the Commission believe. It is simply Qwest responding to the needs of its end
395 users – needs beyond the capability of the current plant.

396 **Q. IN HIS TESTIMONY, WILLIAM BODINE STATES THAT “QWEST**
397 **SHOWS NEITHER ANY RESPECT, NOR ANY SKILL IN USING**
398 **STANDARDS.” DO YOU AGREE WITH THIS STATEMENT?**

399 A. No. This provides another reason why Option 2 needs to be eliminated from the
400 tariff. It is not appropriate for Option 2 contractors to dictate the manner in which
401 standards relating to Qwest’s distribution facilities are developed or implemented.
402 Qwest and its predecessors have been constructing distribution facilities for over
403 100 years and have provided services within developments encompassing
404 hundreds of thousands of lots, not the 2,500 or so developed by SBS. Because
405 Qwest is the entity that ends up owning the network and is responsible for
406 providing service to its customers over it, Qwest is the entity that has the right to
407 determine the standards under which the network should be deployed.

408 **Q. ON PAGE 19 OF WILLIAM BODINE’S TESTIMONY HE STATES, “ON**
409 **PAGE 4 OF EXHIBIT DP-4, QWEST, WITHOUT COMMENT OR**
410 **REASONING, DELETES THE REFERENCE TO ‘STANDARD**
411 **COMPANY SPECIFICATIONS’ FROM THEIR DRAFT LDA TARIFF**
412 **(PARAGRAPH 4.4.C.)” IS THERE A REASON WHY QWEST DID**
413 **THIS?**

414 A. The illustrative tariff in my direct testimony reflects the elimination of Option 2.
415 If Option 2 is eliminated, Qwest does not need to state in the tariff that Qwest will
416 follow its own standard specifications.

417 **Q. JAY BODINE ASKS THIS COMMISSION TO BELIEVE THAT QWEST**
418 **DID NOT ACKNOWLEDGE CONTRACTOR INVOLVEMENT IN THE**
419 **DEVELOPMENT OF THE LDA INFORMATIONAL PACKAGE ON**
420 **PAGE 4 OF HIS TESTIMONY. IS HIS ASSERTION CORRECT?**

421 A. Not at all. If Mr. Bodine were to review page 4 of my direct testimony he would
422 see that I do note and acknowledge the contractor’s involvement during the
423 development of the package (page 4, line 15-16). The point, again, that needs to
424 be understood here, putting aside all of the grandstanding, is that even though
425 SBS claims to have had significant input into Qwest’s development of the Option
426 2 LDA Information package, it continues to resist this as being Qwest’s standard
427 specifications, and it continues to demonstrate an unwillingness to cooperate.

428 Such a continual lack of cooperation makes the Option 2 process inordinately
429 burdensome.

430 **Q. IN HIS TESTIMONY, WILLIAM BODINE STATES ON PAGE 17, LINES**
431 **9-11 THAT “THE FACT THAT THE TARIFF IS COMPLETELY VOID**
432 **OF ANY REFERENCE TO ‘BETTERMENTS’ IS A SERIOUS FLAW**
433 **THAT HAS CAUSED CONSIDERABLE DISPUTE.” BECAUSE THE**
434 **TARIFF DOES NOT SPECIFICALLY MENTION BETTERMENTS,**
435 **DOES THIS MEAN THIS IS NOT A PART OF QWEST’S**
436 **SPECIFICATIONS?**

437 A. Of course not. If this were the case then Qwest could make the argument that
438 since the tariff does not mention Option 2 contractors that Qwest can refuse to
439 deal with Option 2 contractors. With respect to betterments, it has long been a
440 common practice for Qwest field engineers to properly size distribution facilities
441 in order to accommodate subsequent phases within the development. This
442 practice is spelled out in the Option 2 LDA Information Package in Exhibit DP-1
443 of my direct testimony, and has been Qwest’s consistent practice since Option 2
444 came into existence. And it should be noted that Qwest has always paid Option 2
445 contractors an appropriate amount for the placement of these betterments. The
446 primary reason disputes have arisen is that some Option 2 contractors have
447 attempted to take shortcuts and place undersized facilities in order to increase
448 their profit margins at Qwest’s expense.

449 **Q. IN HIS TESTIMONY ON PAGE 18, WILLIAM BODINE STATES “IN**
450 **SEVERAL INSTANCES QWEST HAS REFUSED TO PAY FOR**
451 **BETTERMENTS THEY HAVE DEMANDED IN PROJECTS WORKED**
452 **BY SBS.” DOES QWEST REFUSE TO PAY FOR BETTERMENTS?**

453 A. No. As explained in my direct testimony, Qwest’s estimated costs take into
454 consideration all of the work required on a project. If upsizing is required, this is
455 included Qwest’s estimated costs. SBS, however, in addition to seeking the tariff
456 cap of \$436.13 per lot on its projects, also asks for additional payment for the
457 upsizing necessary for subsequent phases within the same development. The
458 result of this would cause Qwest to pay above the per lot cap for the entire
459 development.

460 **Q. WITH ALL THE PROBLEMS YOU IDENTIFY THAT SEEM UNIQUE**
461 **TO SBS, COULDN’T THE COMMISSION SOLVE THE PROBLEMS**
462 **WITH OPTION 2 SHORT OF ELIMINATING THE OPTION BY SIMPLY**
463 **ALLOWING QWEST TO REFUSE TO ACCEPT FACILITIES FROM**
464 **SPECIFIC RECALCITRANT OPTION 2 CONTRACTORS?**

465 A. No. First of all, although SBS is among the most difficult Option 2 contractors
466 Qwest deals with, the most significant problems with Option 2 are not unique to
467 SBS. On the critical cost issue, for example, Clear Wave, et al. and Silver Creek
468 cause essentially the same problem as SBS. They all seek to force Qwest to
469 accept facilities at a cost beyond that which Qwest would pay for Option 1

470 facilities, and in so doing they competitively harm Qwest. Even on the more
471 behavioral issues, there are also problems with other Option 2 contractors,
472 including Silver Creek. My testimony is more focused on SBS because it is the
473 party that filed the testimony to which I was responding. Moreover, even if some
474 of the problems with Option 2 would be mitigated if everyone acted reasonably,
475 the fact that Qwest does not have a contractual relationship with Option 2
476 contractors and the fact that the Commission does not have jurisdiction over
477 Option 2 contractors will always leave Qwest at the mercy of the Option 2
478 contractors' decision to cooperate or not. Short of refusing to accept facilities,
479 with all the problems that entails, there will never be effective recourse against
480 Option 2 contractors like SBS who choose not to cooperate.

481 **IV. REBUTTAL TO STEPHAN ALLEN**

482 **Q. IN HIS TESTIMONY (PAGE 4), STEPHAN ALLEN STATED “THE**
483 **MOST COMMON PROBLEM IN ADMINISTRATION IS THAT THE**
484 **LDA AND BILL OF SALE DOCUMENTS SEEM TO GET LOST OR**
485 **MISPLACED IN DENVER IN THE DEVELOPER CONTACT GROUP.”**
486 **IS THIS A WIDESPREAD PROBLEM?**

487 A. No. In response to a data request about this, Clear Wave was able to only list two
488 projects that it alleges had administrative problems caused by Qwest. Clear Wave
489 also stated in its data response that “[t]his has only occurred sporadically.”
490 Because these are only isolated situations, Qwest has not attempted to research

491 the specific facts to determine where blame, if any, lies. Qwest believes that
492 Option 2 contractors rarely encounter administrative problems such as the ones
493 described in Stephan Allen's testimony.

494 In my (25 +) years working in telecommunications, I have yet to find a perfect
495 process that never has at least minor glitches or problems occasionally. Qwest
496 has also observed that Option 2 contractors have glitches and problems as well.
497 In an attempt to improve the Option 2 LDA process, Qwest set up three Single
498 Points of Contacts (SPOCs) that deal with Option 2 contractors throughout the
499 state. If an Option 2 contractor encounters problems with Qwest on any project, it
500 knows about and has gone to the SPOCs for a more timely resolution. In my
501 direct testimony, I discussed common and significant problems with Option 2
502 LDAs. I have generally avoided raising problems with Option 2 contractors that
503 are more isolated in nature. Isolated problems may happen "sporadically," and
504 with the SPOCs in place, these problems have been worked out on a case by case
505 basis. It is the ongoing problems outlined in my direct testimony that are more
506 significant in nature and need to be considered by the Commission in making a
507 determination that Qwest should not be required to have an Option 2 in its LDA
508 tariff.

509 **Q. ON PAGE 6 OF HIS TESTIMONY, MR. ALLEN MAKES FIVE**
510 **SUGGESTIONS THAT HE BELIEVES WOULD IMPROVE THE LDA**
511 **PROCESS. DOES QWEST HAVE ANY COMMENTS CONCERNING**
512 **THESE RECOMMENDATIONS?**

513 A. A discussion about each of these may only be beneficial if the Commission
514 refuses to let Qwest withdraw Option 2. If this happens, Qwest would not be
515 opposed to further discussion and research regarding at least one of Mr. Allen's
516 suggestions. That suggestion is to "[e]stablish a unit rate schedule for the pricing
517 of the projects thereby eliminating the disputes over what cost should be used and
518 what might happen if there is a disagreement over cost." This may be a useful
519 idea, although Qwest believes there would be a lot of debate from Option 2
520 contractors about how to establish unit rates and about the appropriate rates, and
521 the inclusion of unit rates in the tariff would cause administrative problems going
522 forward. Qwest already has competitively bid unit pricing for at least most of the
523 various construction activities. Also, in the past Qwest has paid contractors for
524 engineering subdivision projects. Stephen Allen at one time worked for one of
525 the Qwest contractors. The unit pricing for engineering on a per lot basis could be
526 established through a competitively bid process, and if so might be useful.

527 Qwest believes, on engineering for example, that a competitively bid unit pricing
528 would result in a per lot cost of less than \$20 per lot. This result is consistent with
529 the experience of one of Qwest's SPOCs who has prior experience as an engineer

530 for a Qwest contractor and separately for an Option 2 contractor. This SPOC was
531 paid significantly less than \$20 per lot as an engineer for both the Qwest
532 contractor and for the Option 2 contractor.

533 Exhibit DP-2 in my direct testimony provides an example of a Qwest verifiable
534 cost estimate. The development in this example involved 69 lots. At \$20 per lot,
535 Qwest would have paid \$1,380 for the engineering, significantly less than the
536 \$5,974.23 shown on the verifiable cost estimate which is based upon CPD.
537 Option 2 contractors most likely would not like this result, even though it would
538 be a reasonable approach.

539 The idea of establishing unit prices for materials poses significantly more
540 challenges even though Qwest already has competitively bid unit prices from its
541 vendors. Qwest's vendors consider this information highly sensitive, and a unit
542 price that points back to any specific vendor would be problematic. Additionally,
543 since the required sizing of facilities differs from project to project, this adds
544 another layer of complexity.

545 One of Mr. Allen's suggestions that the Commission should certainly not
546 incorporate is the inclusion of Qwest's standards and specifications in the tariff.
547 As I mention in my introduction, this would make Option 2 worse, not better. It
548 would involve the Commission in micromanaging Qwest's business and would
549 allow Option 2 contractors even more opportunity to obstruct Qwest's business.

550 **Q. ON PAGE 9 OF MR. ALLEN’S TESTIMONY, HE STATES THAT**
551 **“DEVELOPERS DO NOT AND HAVE NEVER, UP TO THIS TIME,**
552 **MADE THEIR DECISION BETWEEN OPTION 1 AND OPTION 2 BASED**
553 **ON COST.” WHAT IS QWEST’S RESPONSE TO STATEMENT?**

554 A. Qwest agrees. Although under even the current LDA tariff developers should
555 have been factoring cost all along, they have not been. This is one of the
556 fundamental flaws with Option 2 from Qwest’s prospective—unless the developer
557 is required to pay the difference between Qwest’s cost estimate and the estimate
558 of the Option 2 contractor (which the Option 2 contractors in this proceeding
559 strongly oppose) there is no clear economic incentive for a developer to make a
560 decision based upon the “lowest cost estimate” for a project. Unfortunately for
561 Qwest and its stockholders, higher construction cost is money out of Qwest’s
562 pocket for which Qwest derives no benefit.

563 The cost difference between Option 1 and Option 2, depending on many factors,
564 can be significant. For example, in response to a data request, Qwest provided
565 information that shows that since 2002, Option 2 contractors were responsible for
566 at least 14,844 subdivision lots. Qwest estimates based upon this and some
567 information provided in Exhibit DP-3 in my direct testimony that Qwest may
568 have paid up to \$1.7 million more in direct capital costs for these lots than what it
569 would have expected to have paid under Option 1 ($\$436.13 \text{ cap} \times 14,844 \text{ lots} \times$
570 27% — 27% being Qwest’s estimate of the average difference between Qwest’s

571 Option 1 costs and the \$436.13 cap amount). To put this in perspective, in the
572 competitive broadband market place, \$1.7 million would pay for the purchase and
573 deployment of more than 35 remote DSL equipment cabinets making advanced
574 data services available to a substantial number of potential end users, thus
575 enabling Qwest to be more responsive in a competitive environment.

576 If developers were required to pay the difference between the estimated costs
577 under Option 1 and Option 2, they may well make a decision between the two
578 options based on cost. However, that is not the way Option 2 contractors, acting
579 as agents for developers, interpret the tariff.

580 **Q. MR ALLEN TESTIFIES (PAGE 14, LINES 5-6) THAT DEVELOPERS**
581 **LIKE TO USE OPTION 2 CONTRACTORS BECAUSE THEY PROVIDE**
582 **CABLE MORE QUICKLY. OTHERS HAVE SAID THAT DEVELOPERS**
583 **LIKE THE PROJECT COORDINATION THEY RECEIVE FROM**
584 **OPTION 2 CONTRACTORS. IF THE COMMISSION WERE TO**
585 **ELIMINATE OPTION 2, WOULD DEVELOPERS STILL BE ABLE TO**
586 **OBTAIN PROJECT COORDINATION AND EXPEDITED**
587 **INSTALLATION OF TELECOMMUNICATION FACILITIES IN THEIR**
588 **DEVELOPMENTS?**

589 **A.** First, in regards to project coordination, developers already have many options to
590 obtain project coordination. They can do it themselves by having their current
591 project manager include the placement of facilities as another item on their project

592 plan or they can hire additional personnel – much like Qwest does to conduct
593 additional work activities – like Option 2 inspections. For example, a developer
594 could require the contractor who is digging the trenches to project coordinate with
595 the various companies that will be using the trench. Of course, some developers
596 who have obtained the “free” benefit provided by Option 2 contractors, paid for
597 by Qwest, may not like having to now pay for this. Yet, as stated earlier, it is not
598 fair to continue to require Qwest to absorb the cost of these developer benefits.

599 In regards to expedited treatment, Qwest has been and remains willing to offer
600 expedited options to developers. However, if expedited treatment is required by
601 the developer, the developer should pay for any associated costs. Today, under
602 Option 1 when a developer does not provide adequate notice of the open trench,
603 and requests that Qwest expedite its placement work, Qwest first attempts to meet
604 the developer’s requested date. In some situations Qwest has been able to react
605 very quickly. However, it is not reasonable to expect this type of treatment to
606 become the norm and a reason for the developer to continue to ignore the
607 timeframes associated with the placement of facilities. The intervals outlined in
608 Exhibit DP-4 of my direct testimony are reasonable intervals that most developers
609 should be able to comply with regularly. For example, the minimum 21 days
610 advance notice for open trench, gives Qwest adequate time to order the cable and
611 have it shipped to the appropriate construction yard so that Qwest does not have
612 to maintain a large amount of inventory which would otherwise increase material

613 holding costs. In fact, these intervals fall in line with the same notification
614 periods TESS Communications required when I was involved with placing their
615 facilities into new developments. Our construction personnel and the developer
616 we were working with found these intervals to be reasonable in that they allowed
617 enough time to order, log and receive cables in anticipation of its placement.

618 If a developer wanted Qwest to react in an interval shorter than that stated in the
619 LDA contract (21 days) for advanced notice of open trench and Qwest was unable
620 to respond, the developer could pay to have conduit placed in the trench and then
621 pay the incremental higher placing cost for pulling a cable in a conduit in
622 comparison to laying a cable in an open trench. Qwest can develop a per-foot unit
623 cost for the conduit material and the placing of the conduit, and another one for
624 the incremental higher placing costs. If the developer wanted to hire its own
625 contractor to place the conduit, it could do so. The developer would only have to
626 pay Qwest the unit cost for the incremental higher placing costs. These unit costs
627 would be provided upfront to the developer, along with the normal intervals. This
628 option would allow the developer to determine and evaluate the economic
629 consequences of scheduling decisions made in regards to its developments.

630 If for some reason, Qwest was not able to meet the reasonable time frames
631 identified in the revised tariff, the developer could require Qwest to place conduit,
632 paid for by Qwest. This would address the alleged issues raised in the rebuttal

633 testimony by the Option 2 contractors that Qwest has caused delays to which have
634 been detrimental to developers.

635 **V. CONCLUSION**

636 **Q. PLEASE BRIEFLY SUMMARIZE YOUR TESTIMONY.**

637 A. Option 2 is fundamentally flawed in the fact that it costs too much, it causes
638 Qwest to face burdens that Qwest's competitors and other utilities do not face,
639 and it leaves Qwest with no effective control over Option 2 contractors who,
640 although placing facilities for Qwest's network and at Qwest's expense, do not
641 answer to Qwest. The Option 2 contractors' testimony to which I respond amply
642 highlights the difficulties Option 2 contractors can cause, and the difficulties they
643 wish to cause in the future by pushing for even more regulation over Qwest's
644 facility placement. No competitor of Qwest's has to deal with such difficulties.
645 Qwest should be allowed to eliminate Option 2.

646 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

647 A. Yes it does.