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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of QWEST
CORPORATION'S Land Development
Agreements (LDA) Tariff Provisions

**REPLY BRIEF OF THE DIVISION OF
PUBLIC UTILITIES ON COST POLICY
ISSUES**

DOCKET NO. 03-049-62

The Division of Public Utilities (“Division”) hereby submits its reply brief addressing whether Qwest should be required to pay more than its costs for contractor-installed facilities.

When reviewing the response briefs filed by the other parties, the Division noted that parties frequently brought forth issues outside the single issue to be addressed by these briefs – that single issue being whether Qwest Corporation (“Qwest”) should be required to pay more for facilities installed under Option 2 of its tariff than for facilities installed under Option 1 of the tariff. For example, some parties question whether Qwest’s placement costs are accurate or appropriate. The Division believes that under the tiered approach agreed to by the parties, it is inappropriate to bring up, and for the Division to comment upon,

these additional issues at this point and that these other issues are more appropriately addressed later in these proceedings. Accordingly, the Division now will comment only upon the issue of whether Qwest should be required to pay more than its costs under Option 1 for facilities installed pursuant to Option 2 of its tariff.

In their reply briefs, SBS Telecommunications, Inc. and Silver Creek Communications, Inc. (jointly “SBS”), Clear Wave Communications, L.C., East Wind Enterprises, LLC, and Prohill, Inc., DBA Meridian Communications of Utah (jointly “Clear Wave”), and the Committee of Consumer Services (“Committee”) assert that Option 2 should remain in place, with Qwest being required to pay more than its costs, to eliminate or decrease the backlog of Qwest held orders and to facilitate more expedient placement of facilities.¹ This argument relies upon outdated facts, and is without merit. The policy issue now before the Commission should be decided upon current facts, not upon past history.

From documents filed with the Division, it appears that Qwest is providing timely service. So far this year, the Division has received only one complaint related to providing service in a subdivision, and that delay was the result of facility testing.² ~~NEED CITE~~ Qwest’s performance measure report, filed with the ~~Division~~ ~~COMMISSION?~~ ~~DIVISION???~~ on a quarterly basis, demonstrates that Qwest is facilitating timely placement of facilities. The Division notes that complaints involving provision of Initial Service generally have decreased 85%

¹ See SBS brief at p. 9, Clear Wave’s brief at pp. 4-6, and the Committee’s brief at p. 4.

² Division’s Lotus Notes Complaint Database.

from 1999 to 2003. ~~Importantly, this percentage was not broken down by category of provision delays due to time constraints. HELP. DON'T UNDERSTAND WHAT THIS LAST SENTENCE MEANS. NEED TO BE ABLE TO REBUT BETTER WHY SBS/CW/COMMITTEE ARGUMENT THAT OPT 2 ALLOWS HELD ORDER PROBLEM TO BE FIXED.~~ Confidential Held Order Report #6 filed with the Division indicates that the amount of held orders is insignificant and far below the allowable service quality level, and that Qwest has been complying with required service quality standards.

Although SBS, Clear Wave, and the Committee argue that Option 2 is what allows the held order problem to be resolved, implementing the LDA tariff is only one method Qwest utilizes to expedite facility placement. In addition to the LDA tariff, Qwest provides cellular telephones and billing credits to customers if it is unable to place facilities within seven days.³ ~~NEED CITE>~~ Additionally, Commission Rule R746-340-8 provides installation specifications and associated penalties if Qwest fails to adhere to service quality~~CKSERVICE QUALITY~~ standards. Under R746-340-8, Qwest is allowed no more than four held orders per 1,000 new transfer or change orders at the end of any month for unexcepted areas. Additionally, the rule requires that Qwest must, with a very limited exception for complaints related to initial installation, "meet 90 percent of all new, transfer and change order installation commitments" absent a customer request

³ See Letter dated May 7, 2000 from Laura Scholl, Qwest Director of Regulatory Affairs, to the Public Service Commission, included herewith as Attachment 1.

for a later date⁴ and “automatically credit \$10 to a residential customer, \$40 to a business customer, for missing an installation date.”⁵

Thus, arguments that Qwest is untimely or unresponsive in installing facilities in subdivisions do not appear to be correct. It appears from filings that Qwest has made with the Division that such timely service is currently already being provided by Qwest. It also seems inappropriate to force Qwest to pay a premium to enable developers to receive expedited service. Additionally, it seems inappropriate to credit the LDA tariff alone for the near elimination of the held order problem.

———Qwest’s performance, as documented above, does not appear to support the contention of the LDA contractors that developers are choosing LDA contractors due to delay by Qwest, but support instead the concept that the LDA contractors are chosen because the developer perceives some benefit from their use. As brought forth in the Division’s response brief, it is appropriate to match cost causation with cost benefit. Thus, it is appropriate for the increased costs, if any, of a LDA contractor to be paid by the developer receiving the benefit of the LDA contractor’s services, and for the developer to pay a premium for the benefit, if necessary. Requiring Qwest to pay a premium for LDA contractor installation is the equivalent of requiring Qwest’s customers to subsidize LDA contractors, and the developers who see a benefit from

⁴ Rule 746-340-8 A 2.

⁵ Id. at A 3 and 4.

installation by the LDA contractors. This sort of subsidization is improper in the increasingly competitive telecommunications market.

The Division believes that it is appropriate to again state that many problems associated with the LDA tariff would be solved if the LDA contractors and Qwest would abide by the tariff provisions and enter into a written agreement prior to placement of facilities. It is unreasonable for the LDA contractor to perform work without a written agreement from Qwest, but, nonetheless, expect payment from Qwest. Written contracts are often required in the business world. It would be unheard of for a business to determine that it needed a new roof, for someone else to pick the roofing contractor, for the roofing contractor to install the new roof, and then for the roofing contractor to expect the business owner to pay whatever the roofing contractor asks without a prior written contract.

–Of course, all parties involved in the LDA process must act in good faith. They must act expeditiously, and must allow sufficient time for the negotiation and execution of such a contract. It would be unreasonable for the developer or the LDA contractor to allow insufficient time for contract negotiation and execution. It would also be unreasonable for Qwest to delay negotiation and execution of an acceptable contract. In their reply briefs, some LDA contractors allege that Qwest has been slow in processing LDA contracts.⁶ The Division suggests that the parties begin the LDA process as early as possible so that it can be completed at least four weeks prior to the desired facilities installation date. The Division stresses that the Commission has ordered ~~CITE~~ the parties to enter into a written contract prior to performing work, and seeks the Commission

⁶ See SBS brief at p. 4.

to mandate, yet again, its requirement a prior written contract is a necessary prerequisite for payment. ~~hit the parties over the head with a baseball bat to make them abide by the tariff language. Need new words.~~

For the reasons set forth above, the Division urges the Commission to determine that Qwest should not be required to pay more for facilities installed

under Option 2 of its tariff than it would pay for facilities installed under Option 1 of its tariff.

Dated this _____ day of March 2004.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the **REPLYRESPONSE BRIEF OF THE DIVISION OF PUBLIC UTILITIES ON COST POLICY ISSUES** in Docket No. 03-049-62, In the Matter of QWEST Corporation's Land Development Agreements (LDA) Tariff Provisions, was hand delivered, mailed via electronic means or sent by regular U.S. Mail the 22nd day of March 2004 to the following:

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ATTACHMENT A