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1

I. INTRODUCTION AND PURPOSE

2

Q. PLEASE STATE YOUR NAME, TITLE AND ADDRESS.

3

A. My name is Laura L. Scholl. I am employed by Qwest Services Corporation as

4

the Utah Director of Regulatory Affairs for Qwest Corporation (Qwest).

5

Q. ARE YOU THE SAME LAURA SCHOLL WHO PREVIOUSLY FILED

6

DIRECT, REBUTTAL AND SURREBUTTAL TESTIMONY IN THIS

7

DOCKET?

8

A. Yes, I am.

9

Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL SURREBUTTAL

10

TESTIMONY?

11

A. I respond briefly to certain elements of the surrebuttal testimony filed by Mr.

12

Allen on behalf of Clear Wave and Mr. Bodine on behalf of SBS. However,

13

most importantly, I want to alert the Public Service Commission (Commission)

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that Qwest has successfully negotiated a stipulation with The Salt Lake Home

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Builders Association (HBA). I also clarify statements made in my surrebuttal

16

testimony about the impact of 1st Substitute SB 108 on this proceeding.

17

II. STIPULATION WITH HBA

18

Q. PLEASE DESCRIBE THE STIPULATION REACHED BETWEEN QWEST

19

AND THE HBA.

20

A. The stipulation states that the HBA has no objection to the discontinuation of

21

Option 2 of the LDA. It outlines the modifications Qwest is making to its facility

22 placement processes and ensures the opportunity for continued input by HBA
23 members into Qwest's processes. A copy of the stipulation is attached to this
24 testimony as exhibit LLS –SSR1. It was also separately filed with the
25 Commission on March 30, 2005.

26 **Q. WHY DID QWEST PURSUE AN AGREEMENT WITH THE HBA?**

27 A. Qwest believes the HBA is an actual party in interest to the LDA process, unlike
28 the Option 2 contractors. The HBA represents approximately 170 builders and
29 developers, in one of the critical geographic areas of single-family development in
30 the State. Satisfying the needs of such developers is key to Qwest's success in the
31 marketplace. Qwest believes the most effective approach is direct communication
32 with the HBA, not a process convoluted by a third party with adverse interests,
33 such as the Option 2 contractors.

34 Additionally, after reviewing proposals made by the Division of Public Utilities
35 (DPU), Qwest sought to reach an agreement with the HBA that made sense to the
36 HBA and to Qwest in terms of timeliness, effectiveness and cost.

37 Qwest's choice of approach has since been reinforced by the actions of SBS in
38 response to the HBA entering into the stipulation. As I discuss below, rather than
39 working fairly to forward the interests of developers, SBS has unfairly portrayed
40 the stipulation in a seemingly desperate attempt to preserve Option 2 at all costs.
41 Qwest should simply not have to rely on entities who can be so antagonistic for
42 the placement of its facilities.

43 **Q. PLEASE DESCRIBE THE PROCESS**

44 A. Representatives of Qwest met formally with the executive committee of the HBA
45 board on two occasions. There were also numerous informal conversations and
46 discussions to fine tune the provisions of the stipulation. It is my understanding
47 that the executive committee sought and received approval from the full board of
48 the HBA and also sent a copy of the stipulation to all of its members for comment
49 before the president signed it.

50 **Q. WHAT DO YOU CONCLUDE?**

51 A. I conclude that a key real party in interest to this proceeding has been satisfied
52 and that the Option 2 contractors do not represent the interests of the
53 homebuilders and developers as they claimed.

54 **III. CLARIFICATION OF IMPACT OF RECENT**
55 **LEGISLATION**

56 **Q. WHAT CLARIFICATION DID YOU WANT TO MAKE REGARDING**
57 **THE IMPACT OF 1ST SUBSTITUTE SB108?**

58 A. In my surrebuttal testimony, I stated that as a result of the legislation, “the issues
59 in this case may be essentially moot.”. Having now read the pre-hearing brief
60 submitted by Qwest, I believe that a more correct characterization would be that
61 the legislative policy statements update the framework under which Qwest is
62 regulated in Utah. Under that updated regime, Qwest is allowed to make changes
63 to its offerings on five days notice with any challenge coming after the fact.
64 Qwest believes that once the legislation becomes effective on May 2, 2005,

65 consistent with legislative intent, Qwest will have the ability to modify the LDA
66 Option 2 without prior Commission approval. I would like to note, however, that
67 given the protracted history of this dispute, Qwest believes it is prudent to
68 continue with this process to allow for a full hearing and PSC determination on
69 the issues and Qwest's right to control the placement of its own network.

70 **IV. RESPONSES TO OPTION 2 CONTRACTORS**

71 **Q. IN REGARDS TO THE SURREBUTTAL TESTIMONY OF WILLIAM**
72 **BODINE AND STEPHEN ALLEN, HAVE EITHER ONE OF THEM**
73 **PROVIDED ANY COMPELLING PUBLIC POLICY REASONS WHY**
74 **OPTION 2 SHOULD REMAIN?**

75 A. No. Their arguments are based primarily upon self interest. They claim to also
76 speak in the interest of developers (and even Qwest). However, as demonstrated
77 in my surrebuttal testimony, what once appeared to be a large number of
78 developer interveners continue to evaporate. No developer has had any
79 meaningful participation in this docket to support the Option 2 contractors'
80 position, and the HBA has entered into a stipulation with Qwest. Finally, the
81 Option 2 contractors certainly do not speak in the best interests of Qwest.

82 All Qwest seeks in this proceeding is to regain the ability to handle the placement
83 of its own facilities by itself or through its own contractors. Despite the claims of
84 Mr. Allen (e.g., pages 4-5) and Mr. Bodine (e.g., page 15) that hardly seems
85 "arrogant" or seeking to act in "total disregard" for Commission authority,

86 especially when it is something that all of Qwest's competitors enjoy. Indeed,
87 there ought to be an extreme countervailing public interest in order for the
88 Commission to prevent Qwest from managing its own facility placement.

89 They also add a new twist that Qwest hadn't previously addressed, and that is
90 extremely troubling. Both Clear Wave and SBS say Qwest should appreciate the
91 marketing services Option 2 contractors provide, and cite the example of the
92 Traverse Ridge development for their hard work attempting to win placement
93 opportunities for Qwest. Qwest has serious concerns with having its marketing
94 carried out by parties who, in their surrebuttal testimony, variously refer to Qwest
95 or its representatives as being "false and misleading," of committing "failings and
96 abuses," of not being "sincere" (Bodine pages 20-21), of having a reputation of
97 "delaying projects and being uncooperative," of having "arrogance and pride,"
98 and of not being "trustworthy" (Allen pages 2-4, 6). It is easy to imagine
99 conversations with developers where these Option 2 contractors sell their services
100 without necessarily speaking of Qwest in glowing terms. Indeed, Qwest doesn't
101 need to rely on informed judgment to see how Option 2 contractors interface with
102 developers. In response to the stipulation with the HBA, SBS sent an email
103 communication to members of the HBA characterizing the HBA's action as a
104 selling "down the river" "for a handful of beads," strongly implying that Qwest's
105 promises regarding its future dealings with developers are essentially worthless.
106 A copy of the email is attached as exhibit LLS-SSR2. Essentially calling Qwest's
107 proposals empty promises is both unfair and inaccurate, and is destructive of

108 Qwest's relationship with developers. Qwest can do without such "marketing."
109 To me it seems patently unfair to require Qwest to have its facilities placement
110 handled by parties as antagonistic as some Option 2 contractors can be.

111 **Q. ON PAGE 19 OF HIS TESTIMONY, MR. BODINE CLAIMS THAT SBS**
112 **HAS PROVIDED TAX RETURNS THAT PROVE SBS MAKES LITTLE**
113 **MONEY. HAS QWEST RECEIVED SUCH DOCUMENTS?**

114 A. No. SBS initially offered to supply tax returns rather than directly answer
115 questions regarding SBS's profits and the financial benefits it provides to its
116 principals. Qwest agreed (subject to requesting further information if the tax
117 returns did not provide adequate information). However, the tax returns have
118 never been supplied. This may simply have been a logistical issue on getting the
119 returns to Qwest, but whatever the case Qwest has not seen the returns. Further,
120 SBS has flatly refused to answer Qwest's data requests seeking information about
121 things such as SBS's labor costs (which would be important information about a
122 company like SBS, where the principals apparently also provide the labor and
123 where profits could therefore be characterized as expenses). If the tax returns that
124 SBS was planning to supply would accurately demonstrate SBS's true financial
125 condition, Qwest wonders why SBS would refuse to provide information on labor
126 costs. In sum, to date SBS has provided no meaningful information about its
127 financial condition.

128 **Q. DO YOU HAVE ANY FINAL OBSERVATIONS ABOUT MR. BODINE'S**
129 **SURREBUTTAL TESTIMONY?**

130 A. Just one. Mr. Bodine makes statements in his testimony to the effect that if things
131 were as bad as Qwest states under Option 2, Qwest would have the proof in the
132 form of legal judgments (e.g., pages 4, 20). The argument goes something like, if
133 Option 2 contractors are as bad as Qwest asserts (I note in this regard, Qwest has
134 been careful not to paint all Option 2 contractors—including Clear Wave—as
135 being as uncooperative as SBS) why doesn't Qwest just sue for violation of the
136 LDA contract? Putting aside the fact that Qwest has no contractual relationship
137 with Option 2 contractors (a fundamental flaw in Option 2), I found it very telling
138 that SBS's recommendation to Qwest for handling Option 2 problems is to sue. I
139 thought these statements by Mr. Bodine offered a nice snap shot of much of the
140 problem with Option 2.

141 The proposals Mr. Pappas identified in earlier testimony to shorten the tariff time
142 intervals, allow developers to pay for conduit placement if they require expedited
143 treatment, and require Qwest to pay for conduit placement if it fails to meet the
144 tariff timelines, provide ample protection for developers' interests. Qwest's
145 proposals, in addition to held-order rules and the pressures of the competitive
146 market, provide ample protection for Qwest's customers. There is simply no
147 public interest in requiring Qwest to maintain Option 2.

148 **Q. MR. ALLEN DISCUSSES THE UNINTENDED CONSEQUENCE OF**
149 **HAVING AN OPTION 2 LDA. DOES HE IDENTIFY THE REAL ISSUE?**

150 A. No. Mr. Allen misstates Qwest's reference to "unintended consequences." He
151 alleges that the unintended consequence was merely that developers began to use
152 Option 2, which is false. The problem was with the option being interpreted as
153 providing an excessive, flat-rate, per-lot price (at 125% of the distribution portion
154 of Qwest's average loop investment) that sent perverse economic signals both to
155 developers and to the Option 2 contractors seeking to use the tariff for profit (in
156 the case of Clear Wave, eventually charging \$255 per lot for labor). Under this
157 interpretation, the people choosing to use Option 2 (the developers) had no
158 incentive to control costs, while the people with the incentive to control costs
159 (Qwest) had no control over or relationship with the contractors placing the
160 facilities. When combined with the other problems attendant to a situation where
161 the contractors do not work for Qwest (e.g., failing to observe tariff timelines), the
162 result has been an "unintended" mess.

163 **Q. MR. ALLEN TALKS ABOUT THE BENEFITS THAT OPTION 2**
164 **CONTRACTORS PROVIDE TO THE DEVELOPER, THE END USER**
165 **AND QWEST. PLEASE COMMENT ON THESE STATEMENTS.**

166 A. As Mr. Pappas has testified, the end user enters the game so late in the
167 construction cycle of the development itself that they have no idea who placed the
168 facilities. Unless there are disputes that prevent Qwest from assuming ownership

169 of facilities under Option 2, the end-user is essentially never impacted by the
170 decision to use one option or the other.

171 Mr. Allen also misstates the position when he claims that “Qwest also benefits by
172 acquiring customers purchasing at least 56% of the new homes without having to
173 market their services.” (Page 8.) The statement shows a lack of understanding
174 about how many CLECs operate using Qwest’s facilities. Facilities placement
175 does not guaranty that Qwest will obtain customers.

176 As for a “marketing” benefit to Qwest, as stated above marketing should be left to
177 those Qwest employees responsible for building and advancing relationships with
178 developers and end-users. In light of their different interests and apparently
179 negative view of Qwest, entities such as SBS or Clear Wave should not do
180 Qwest’s marketing. Yet that is an almost inescapable by-product of Option 2, as
181 the Option 2 contractors market their own services. This is a compelling reason
182 not to force Qwest to maintain Option 2.

183 **Q. DO YOU HAVE ANY FINAL OBSERVATIONS ABOUT MR. ALLEN’S**
184 **SURREBUTTAL TESTIMONY?**

185 A. Yes. Mr. Allen dismisses the proposal Qwest made to the HBA (which has since
186 become an executed stipulation, filed with the Commission) that if successful in
187 eliminating Option 2 Qwest will do certain things to ensure that it is responsive to
188 developers’ needs. Mr. Allen implies that such a proposal would require
189 developers to blindly trust Qwest to meet their needs. Mr. Allen is wrong for

190 several reasons. First, if Qwest fails to meet its tariff intervals developers can
191 have conduit placed (paid for by Qwest)—they do not need to “trust” that Qwest
192 will meet the schedule. Second, clarifying and shortening the timelines in the
193 tariff does not leave developers to simply trust Qwest—Qwest is legally bound by
194 the terms of its offering documents (e.g., tariffs and price lists) and is subject to
195 Commission jurisdiction. Finally, Qwest has agreed to meet with developers in
196 the future to determine how a revised LDA tariff is working, and cooperate in
197 reaching any needed changes.

198 Despite Mr. Allen’s skepticism, the HBA has entered the stipulation with Qwest
199 whereby the HBA does not oppose the elimination of Option 2. This
200 demonstrates the ability of Qwest and developers to work together to meet their
201 mutual needs without Option 2. It is now crystal clear that Option 2 contractors
202 do not really speak for developers in this proceeding—they speak only for their
203 own interests in maintaining a lucrative tariff provision. As the stipulation further
204 attests, Qwest has every incentive to work with developers and to ensure a good
205 relationship with them in a competitive marketplace.

206 **V. SUMMARY**

207 **Q. DO YOU HAVE ANY CLOSING THOUGHTS?**

208 A. Qwest believes the stipulated agreement with the HBA and the revised tariff
209 proposals made in earlier testimony address the key objectives set forth by the
210 DPU in its testimony as well as being responsive to the needs of the real parties in

211 interest, the home builders. Given the stipulation, in addition to the evidence
212 already offered by Qwest in multiple rounds of testimony, Qwest asks that the
213 Commission allow Qwest to remove Option 2 as an offering, consistent with its
214 revised tariff and the conditions in the stipulation, and finally and completely
215 resolve the issues disputed in this docket.

216 **Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL SURREBUTTAL**
217 **TESTIMONY?**

218 **A.** Yes, it does.