

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Qwest Corporation's :
Land Development Agreements (LDA) : **Docket No. 03-049-62**
Tariff Provisions :

SUPPLEMENTAL SURREBUTTAL TESTIMONY

OF

DENNIS PAPPAS

FOR

QWEST CORPORATION

APRIL 5, 2005

SUPPLEMENTAL SURREBUTTAL TESTIMONY OF DENNIS PAPPAS

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1

I. INTRODUCTION

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

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

6 **Q. ARE YOU THE SAME DENNIS PAPPAS WHO FILED DIRECT,**
7 **REBUTTAL AND SURREBUTTAL TESTIMONY IN THIS DOCKET?**

8 A. Yes, I am.

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

10 A. I want to briefly touch on just a couple of points that Mr. William Bodine and Mr.
11 Stephan Allen attempt to make in their surrebuttal testimony submitted on March
12 22, 2005. Most importantly, I want to reiterate the overall theme that is driven
13 home by the testimony of Mr. Allen, and even more so by the testimony of Mr.
14 Bodine—forcing Qwest to continue having its plant placed by parties with which
15 Qwest does not contract and does not control is a sure recipe for continued
16 unnecessary problems and expense. It is an unfair burden placed on Qwest that
17 its competitors do not face.

18

II. REBUTTAL TO WILLIAM BODINE

19 **Q. IN HIS SURREBUTTAL TESTIMONY, MR. BODINE QUESTIONS THE**
20 **CONSISTENCY OF QWEST’S CPD ESTIMATED COSTS. PLEASE**
21 **RESPOND.**

22 A. Discussion of the consistency of CPD will only possibly become relevant in this
23 proceeding if the Commission does not allow Qwest to eliminate Option 2.
24 Further, as my surrebuttal testimony indicated, Qwest would not wish to use CPD
25 as the pricing tool going forward if it were required to keep Option 2 (because
26 Qwest believes CPD tends to overestimate costs). Instead, competitive bidding
27 should be the model for determining Option 2 pricing if that is required in the
28 future.

29 However, Qwest does not want the Commission to have the impression that
30 “Qwest’s CPD cost modeling program is totally dependent upon the subjective
31 inputs (or selections) of the engineer creating the estimate” (page 9). In Mr.
32 Bodine’s Exhibit WRB -10, he provides an analysis comparing “Actual Booked
33 Costs” of 9 projects to the “Charges Per LDA,” which are the CPD estimated
34 costs that were included in the LDA contract. These are 9 of the 43 Option 1
35 projects shown in Exhibit 3 in my direct testimony. SBS asked Qwest for copies
36 of the signed LDA contracts for these 43 projects. Unfortunately, Qwest was only
37 able to locate 9 signed copies of the contracts, which had the CPD estimates
38 shown on the contract. These were projects with 2002 and 2003 job numbers.

39 Many of the 43 contracts had been archived, and Qwest has not been able to
40 locate these contracts. Other of the 43 Option 1 contracts may not have been
41 created and/or signed by developers, which only indicates that the LDA is less
42 important to both Qwest and developers in Option 1 jobs because Qwest almost
43 never seeks to charge developers for placement expenses.

44 Exhibit DP-SS1 is an exhibit similar to Exhibit 3 in my direct testimony and
45 provides a comparison of the CPD estimated costs to actual costs for the 43
46 projects, rather than just the 9 where signed contracts were located. This exhibit
47 shows that on an aggregate basis the CPD cost estimates on these Option 1 jobs
48 were within 1% of the actual costs. Qwest acknowledges that there are significant
49 differences between CPD and actual costs on some projects. However, a majority
50 of the CPD estimates (27 of the 43) were above the actual booked cost.

51 Moreover, CPD is used in a much rougher fashion for Option 1 than for Option 2.
52 Under Option 2, Qwest must identify a rather precise cost estimate for the
53 exchange of verifiable cost estimates when requested and for (in theory)
54 negotiation of price. Under Option 1, all Qwest is seeking is a thumb-nail
55 estimate for whether the tariff cap might be exceeded, and since Qwest almost
56 never seeks to charge developers under Option 1 less care has to be paid, for
57 example, to whether betterments are included in the estimate or not.

58 In regards to Option 2 projects, Qwest follows a more rigorous process to ensure
59 consistency in the cost estimates. The Qwest field engineer uses a template or

60 pricing guide to assist in creating the cost estimate in CPD. After the CPD cost
61 estimate is created by the field engineer, it is reviewed by one of the three Single
62 Point of Contacts (SPOCs) in the state. This helps to ensure consistency in the
63 cost estimates. Additionally, Qwest management periodically reviews some of
64 the CPD cost estimates for Option 2 LDAs to ensure consistency.

65 **Q. IN HIS TESTIMONY, MR. BODINE RAISES THE ISSUE OF QWEST**
66 **NOT PROVIDING LDA CONTRACTS FOR MOST OF THE 43**
67 **PROJECTS SHOWN IN EXHIBIT 3 IN YOUR DIRECT TESTIMONY.**
68 **PLEASE RESPOND.**

69 A. As explained above, Qwest has not been able to locate all of the requested
70 contracts. However, this should not be interpreted to mean that Qwest does not
71 for the most part obtain Option 1 LDA contracts. In response to a data request
72 from the DPU (DPU-03-002), Qwest provided information that showed that
73 between 2002 and 2004 there were 461 different LDA contracts identified in
74 Qwest's developer group database for Option 1. (In comparison there were 512
75 Option 2 LDA contracts during the same time frame.) Because Option 1 does not
76 involve payment by Qwest to a developer, there may not be as much follow
77 through on receiving a signed contract back from the developer. Mr. Bodine calls
78 it "failings and abuses" for Qwest to not always have a signed LDA under Option
79 1 (page 21), as if Qwest were somehow harming developers by not forcing them
80 to return a signed LDA. He even goes so far as to strangely suggest that the
81 absence of located signed contracts for some Option 1 jobs is a reason to require

82 the retention of Option 2 (page 21). Qwest is quite certain that if developers were
83 being harmed by this lack of documentation under Option 1 SBS would have at
84 least stirred-up a factual allegation to that effect. Yet, SBS identifies no situation
85 where a developer has been harmed – nor has any harm occurred. In fact, the lack
86 of documentation under Option 1 shows that Qwest and developers can work well
87 together without the adversarial relationship that often exists with Option 2
88 contractors. At bottom, after all, we are only talking about the placement of
89 telecommunications facilities, and unlike SBS, Qwest and most developers simply
90 wish to get the work done without excessive haggling or having the “tariff
91 scrutinized.”

92 The reason LDAs are more important under Option 2 (and the reason Qwest
93 cannot make payment before it has received a signed contract) is that under
94 Option 2 Qwest is purchasing the facilities from the developer, and the LDA
95 (along with the tariff language and the bill of sale) provides the terms of the
96 transaction. If Qwest is successful in eliminating Option 2, Qwest also wants to
97 simplify the LDA process and the contract for the remaining Option 1 participants
98 to hopefully ensure that Qwest obtains signed Option 1 contracts from developers
99 for all projects.

100 I want to make a more fundamental point about Mr. Bodine’s complaints
101 regarding Qwest’s Option 1 practices, however. Except for comparing Qwest’s
102 costs under Option 1 with the amount Qwest seeks to reimburse Option 2

103 contractors (which, again, is only relevant if the Commission refuses to let Qwest
104 eliminate Option 2), I don't see how Qwest's Option 1 practices should be any of
105 SBS's concern. Yet Mr. Bodine practically exults in his surrebuttal testimony
106 about SBS identifying alleged faults in how Qwest handles both Option 1
107 contracts and the self-help option (page 21). Mr. Bodine says that Qwest's claim
108 that Option 2 has spawned a monster "is merely an expression of frustration with
109 having its construction tariff scrutinized—apparently for the first time" (page 21).
110 The irony of the situation is apparently lost on Mr. Bodine, but in the course of
111 asserting that Option 2 contractors are merely acting appropriately under the LDA
112 tariff rather than excessively meddling where they weren't invited Mr. Bodine
113 demonstrates precisely some of the very meddling that often makes dealing with
114 Option 2 contractors so difficult. Mr. Bodine's scouring of the construction tariff
115 to find areas in addition to Option 2 where SBS can insert itself (whether for work
116 or for argument) is a clear demonstration of the problems Qwest can continue to
117 expect in dealing with certain Option 2 contractors. Qwest simply asks that it be
118 allowed to do its placement business with the contractors it chooses, rather than
119 contractors who are constantly trying to force themselves into Qwest's affairs.

120 **Q. ON PAGE 9 OF HIS SURREBUTTAL TESTIMONY, MR. BODINE**
121 **ATTEMPTS TO ILLUSTRATE WHAT HE CALLS THE “COMPLETE**
122 **DISCONNECT” BETWEEN QWEST’S ESTIMATED AND ACTUAL**
123 **COST. PLEASE ELABORATE ON WHAT EXHIBIT WRB-10**
124 **DEMONSTRATES.**

125 A. Mr. Bodine’s exhibit is a great example of the impact a single number can have
126 when utilizing a sample size of only 9 jobs. By eliminating the job with the
127 largest variance (Dove Meadows), the percentage is reduced from 112% down to
128 104% while the average per job difference goes from \$1,010 down to \$399. What
129 this exhibit indicates is that unforeseen issues can arise on jobs that lead to
130 increased costs – costs greater than the estimate, or in some instances costs which
131 are less than the estimates. In either instance, there is nothing in the Qwest
132 estimating tool that can foresee unexpected occurrences which impact a job in
133 either fashion. Without the use of a crystal ball when constructing outside plant,
134 it will always be difficult to establish an exact cost.

135 **Q. ON PAGE 12 OF MR. BODINE’S TESTIMONY HE ALLUDES TO**
136 **“DESTRUCTIVE INSPECTIONS.” PLEASE CLARIFY FOR THIS**
137 **COMMISSION WHAT MR. BODINE IS TALKING ABOUT.**

138 A. The claim of destructive inspections results directly from the manner in which
139 SBS insists on building facilities. Qwest works with many Option 2 contractors
140 and the process of placing ped caps prior to the work being inspected seems to be
141 something that only SBS insists on doing. In order for Qwest to inspect the work

142 done by SBS, Qwest must remove the ped cap to see that cable bonding and
143 binder group ties were installed correctly along with ensuring adequate cable loop
144 lengths inside the ped cap. Due to SBS's insistence on installing ped caps prior to
145 inspection, Qwest is required to remove a single ped cap to check compliance
146 with Qwest splicing standards – unfortunately at some of the locations Mr.
147 Bodine has complained about, SBS has not met Qwest's standards. This, in turn,
148 has led to removal of additional ped caps by Qwest to verify additional splices
149 within the development. Qwest continued following this process until we were
150 satisfied that the remainder of the plant had been placed to company
151 specifications and then notified SBS of those locations where the ped caps had
152 been removed in order to allow SBS to correct their mistakes. I certainly do not
153 view the action of the Qwest inspectors as an act of vandalism – it appears to me
154 to be the only way to actually inspect the work done by SBS.

155 This is another manifestation of the problems that can arise because Option 2
156 contractors do not work for Qwest. If Qwest had a contractor that refused to place
157 facilities in the manner Qwest desired, it could fire that contractor. Under Option
158 2, all Qwest can do is haggle about the work that needs to be done before it will
159 accept the facilities, and its only real recourse when an Option 2 contractor
160 refuses to cooperate is to reject the facilities (with all the negative customer-
161 service and developer-relations implications Qwest has discussed in previous
162 testimony). A more reasonable company would place the facilities, conduct the

163 splicing and contact Qwest to conduct conformance testing prior to “permanently”
164 closing the plant up.

165 **III. REBUTTAL TO STEPHAN ALLEN**

166 **Q. MR. ALLEN STATES ON PAGE 2 OF HIS TESTIMONY THAT CLIENTS**
167 **DO NOT ALLOW THE OPTION 2 CONTRACTOR TO GET INVOLVED**
168 **IN THE COORDINATION OF THE WORK. PLEASE RESPOND TO**
169 **THAT STATEMENT.**

170 A. I will paraphrase the notes of a telephone conversation Qwest had with Warren
171 Kirk from Peterson Development. During the conversation, the statement was
172 made that all the developer has to do is call Steve Allen and he takes care of all
173 the steps the contractor needs to take – Steve does it for them. This seems
174 contrary to the statement made by Mr. Allen, and his involvement – apparently
175 this developer believes that Mr. Allen will take care of all of his needs including
176 the coordination of efforts with other contractors – sounds like a project
177 management role to me.

178 Even if this is an erroneous understanding of how Clear Wave operates, Qwest
179 had conversations with other developers who made similar statements about
180 Option 2 contractors.

181 **Q. MR. ALLEN MAKES STATEMENTS ON PAGES 7-8 OF HIS**
182 **TESTIMONY REGARDING BENEFITS TO DEVELOPERS,**
183 **CUSTOMERS, AND QWEST FROM OPTION 2. DO YOU HAVE ANY**
184 **COMMENT ON THOSE STATEMENTS**

185 A. I will leave it to Laura Scholl to rebut the supposed “marketing” benefits to Qwest
186 that Mr. Allen claims come from Option 2. With regard to customers, as I have
187 previously stated and as I believe no party can reasonably dispute, unless there is
188 a delay caused by a dispute about Qwest taking ownership of facilities placed
189 under Option 2, facilities placement happens early enough that the end-user
190 customer is essentially never impacted by the timing regardless of which option
191 was used to place facilities. Therefore, I do not see how Option 2 benefits the
192 end-user customer. As for developers, I agree that it can be characterized as a
193 “benefit” for some developers to have been able to ignore Qwest’s tariff timelines
194 by utilizing Option 2 (though I am amazed that Mr. Allen could consider
195 telecommunications facility placement to have any meaningful impact on
196 stabilizing home prices—rational home builders will charge what the market can
197 bear). But to the extent that developers benefit by being “able to control some of
198 their costs by controlling their schedule,” Qwest’s reduced tariff intervals and
199 conduit placement proposals would equally serve that goal, and would
200 appropriately place the costs on either the developer or Qwest depending on
201 whether the tariff time interval was followed. If Mr. Allen is correct that the
202 placement schedule for developers previously using Option 2 is “with few

203 exceptions” not expedited and “usually a few weeks out” (page 1), then Qwest’s
204 revised tariff proposal of 21 days notice of open trench will satisfy such
205 developers’ needs.

206 **Q. MR. ALLEN CITES PER LOT COST ESTIMATE DIFFERENCES**
207 **AMONG OGDEN, SALT LAKE, AND PROVO SINGLE POINTS OF**
208 **CONTACTS (SPOCS) AS ONE OF THE FLAWS WITH QWEST’S CPD**
209 **PROGRAM. PLEASE COMMENT ON THIS CLAIM.**

210 A. There are a multitude of reasons why the per lot costs vary among these cities just
211 like they can vary between different phases in a multi-phased development.
212 Without knowing the details of the developments at issue it would be nearly
213 impossible to determine why the per lot costs were different but several factors
214 could impact that amount, including pedestal placement (front lot vs. rear lot), the
215 size of cable needed to feed lots inside the development, and the number of
216 houses being fed by the cable (fewer houses fed drives the per-lot cost up just as
217 more houses fed drives per-lot cost down).

218 I also find it interesting that the SPOC Mr. Allen chooses to criticize for lack of
219 engineering experience is the one who “came up with essentially the same price
220 as [Clear Wave] did,” whereas the two SPOCS who “know how to do it”
221 apparently (assuming Mr. Allen’s calculation is correct) average 12 to 18% lower
222 than Clear Wave in their cost estimates.

223 **Q. IN HIS SURREBUTTAL TESTIMONY, MR. ALLEN QUESTIONS THE**
224 **CONSISTENCY OF QWEST’S CPD ESTIMATED COSTS AND STATES**
225 **“THAT THEY DO NOT EVEN KNOW WHAT THEIR COSTS ARE.”**
226 **PLEASE RESPOND.**

227 A. A detailed evaluation of the validity of CPD may only become necessary at a later
228 time in this proceeding if the Commission determines that Qwest cannot eliminate
229 Option 2 (and potentially not even then since Qwest would prefer to use
230 competitive bidding on a going-forward basis, rather than CPD, if Option 2
231 remains). With the regard to the substance of his claim, I do not know how Mr.
232 Allen calculated his averages or how many subdivisions were included in his
233 calculations. Also, even though he alleges that the “projects were similar in
234 nature,” two similarly sized subdivisions may have significant differences in the
235 estimated cost per lot depending on the necessary upsizing related to other phases.
236 An outcome of one SPOC averaging \$345 per lot while another averages \$330
237 certainly seems to be in the range of reasonableness for a calculated average
238 estimated cost per lot, depending upon the projects used for the analysis. These
239 estimated costs are comparable to the actual average cost per lot of \$344, shown
240 on Exhibit 3 in my direct testimony. They are significantly less than the cap
241 amount of \$436.13 per lot that some Option 2 contractors continue to seek from
242 Qwest, or the amount just under the cap the Clear Wave continues to seek.

243 In regards to the \$260.90 average per lost cost from Mr. Buckley’s testimony, Mr.
244 Allen apparently does not understand what this number represents. This is not

245 Qwest's calculated average cost per lot, but an average cost per lot based upon the
246 Commission's ordered results from the Unbundled Network Element (UNE) Loop
247 cost docket.

248 **Q. DO YOU HAVE ANY FINAL OBSERVATIONS ABOUT MR. ALLEN'S**
249 **SURREBUTTAL TESTIMONY?**

250 A. Yes. I found it interesting that Mr. Allen, like Mr. Bodine, completely ignored
251 the proposal I submitted in my rebuttal testimony to have conduit placed (paid for
252 by either Qwest or the developer, depending on whether the notice of open trench
253 met the shortened 21-day tariff interval), in order to ensure that the trench is
254 always able to be closed—allowing construction to proceed. I think their silence
255 speaks volumes. In my experience, I do not believe there is any reasonable basis
256 to argue that such a proposal would not meet the legitimate needs of developers
257 (e.g., as Mr. Allen states on page 1, even for developers using Option 2 the
258 placement schedule “is usually a few weeks out.”). Instead of addressing Qwest's
259 proposal, Mr. Allen focuses on how Option 2 supposedly isn't broken and how if
260 there is just some **more** regulation (and Qwest stops being uncooperative) it can
261 work great. Then, tellingly, he criticizes Qwest's efforts to work with The Salt
262 Lake Home Builders Association to be responsive to developers' needs. I think
263 the fact that Mr. Allen fails to address Qwest's proposal and instead worries about
264 Qwest working directly with developers to meet their needs further demonstrates
265 (along with the fact that none of the developers that the Option 2 contractors got
266 to intervene have bothered to meaningfully participate—and that many of the

267 interventions were apparently bogus) that the Option 2 contractors in this
268 proceeding are speaking for their own financial interest, not the interest of
269 developers and not the public interest.

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

271 **A.** Yes it does.