

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

DIRECT TESTIMONY

OF

JAY E. BODINE

FOR

SBS TELECOMMUNICATIONS, INC.

NOVEMBER 19, 2004

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1 **I. INTRODUCTION AND PURPOSE**

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

3 A. My name is Jay E. Bodine. I am the Vice President of SBS Telecommunications,
4 Inc. (SBS). My home address is 267 East 360 South in Lehi, Utah.

5 **Q. PLEASE REVIEW YOUR EDUCATION, WORK EXPERIENCE, AND**
6 **PRESENT RESPONSIBILITIES.**

7 A. My education and work experience are reflected in Exhibit JEB-1.

8 As Vice President of SBS Telecommunications, Inc., I am responsible for:

- 9 • forwarding a copy of SBS contracts with developers to Qwest;
- 10 • obtaining feed points and engineering requirements from Qwest;
- 11 • engineering the facilities design;
- 12 • providing Qwest with engineering prints, materials list, Qwest cover
13 sheets, and cost sheets with betterment calculations;
- 14 • scheduling open trench inspections and conformance tests and other tasks
15 pertaining to the aforementioned items and as required for the success of
16 the company.

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

18 A. To correct the many inaccuracies and point out some of the fallacies presented
19 within the Qwest filing of Dennis Pappas' testimony. I will present a viewpoint

1 of the LDA tariff and the current Option 2 LDA process from an Option 2
2 contractors perspective. I will explain some of the issues and problems Option 2
3 contractors and developers routinely encounter due to Qwest's adamant stance of
4 not adhering to the terms of the tariff.

5 II. OVERVIEW OF THE LDA TARIFF

6 **Q. IS THE OVERVIEW OF THE LDA TARIFF PRESENTED BY MR.**
7 **PAPPAS CLEAR AND CORRECT?**

8 A. No, it is not clear or correct. It is not clear because it does not at all convey the
9 fact that the entire LDA tariff (as described within paragraph 4.4.A) defines "a
10 written agreement entered into between [Qwest] and [Developers]". If I were to
11 take his overview at face value, I would be led to believe that the LDA tariff
12 merely defines a process for getting telephone facilities into new developments—
13 with the LDA (the actual contract between Qwest and Developers) only defining
14 the Developer's cost obligations. This neglects the fact that the LDA's are ten
15 page documents that define numerous obligations required of the Developers.
16 The testimony of Mr. Pappas also neglects to identify the LDA as the controlling
17 document for the process of getting the telephone network into land
18 developments. This omission is glaring inasmuch as the tariff itself contemplates
19 and describes the LDA as the controlling document.

1 I suppose Mr. Pappas' overview does effectively illustrate Qwest's own view of
2 the tariff. In fact, SBS' experience with Qwest has been consistent with the
3 viewpoint presented here—a great deal of emphasis is placed upon defining the
4 process alluded to within the tariff, while cost seems to be their **sole** concern for
5 the actual LDA contract.

6 **Q. WHAT IS THE SIGNIFICANCE OF THESE ERRORS?**

7 A. In order to accept Qwest's view of the LDA tariff (as described in Mr. Pappas'
8 testimony), one must completely disregard the plain language of the tariff itself.
9 Further, Qwest's view presents the completely erroneous concept of the Public
10 Service Commission having authority to levy requirements directly upon land
11 developers (page 3 lines 15-16, Mr. Pappas' testimony) referring to Developer's
12 trenching responsibilities. It is through the specification, and I believe the
13 **expected** proper execution and use of, the "written agreement...between [Qwest]
14 and [Developers]" that such requirements are legitimate.

15 **III. THE OPTION 2 LDA PROCESS**

16 **Q. IS THE DESCRIPTION MR. PAPPAS PROVIDES CONCERNING THE**
17 **"EVOLUTION" OF THE OPTION 2 LDA INFORMATION PACKAGE**
18 **ACCURATE?**

19 A. Not entirely. Mr. Pappas implies that Qwest incurred all of the costs in
20 developing this package for the Option 2 contractors. While they did physically

1 put the packet together, the fact not stated is that the input taken from the Option
2 2 contractors was significant, and was derived from problems that we have faced
3 over the years, for example, moving between engineers who each had their own
4 unique requirements for the area over which they presided. There were obviously
5 no internal standards for all areas—not only for engineering, but for placement
6 and splicing as well. As a result, this lack of any standard spilled over to the
7 Option 2 contractors. Option 2 contractors were required to change their process
8 for each area in which they were providing work. We, as Option 2 providers,
9 approached Qwest to try to resolve these problems and create a standard from
10 which we could work. The resulting meetings between Qwest and Option 2
11 contractors have required SBS (as well as other Option 2 contractors) to absorb a
12 significant burden of cost in time.

13 In addition, the package illustrated by Exhibit DP-1 is merely the latest (maybe)
14 in a long series of changes. Items in the package have been routinely changed by
15 Qwest, with no apparent reason other than the personal whim of one of their
16 managers. While Mr. Pappas states that “Qwest believes that **in its current form**
17 it provides all of the necessary...information” (page 4, lines18-19), the more
18 pertinent question would address how long is it expected to remain in its current
19 form.

20 **Q. IS MR. PAPPAS CORRECT IN DESCRIBING A “DIFFICULT” PROCESS**
21 **FOR OPTION 2?**

1 A. Yes, but his assessment of why the process has been difficult is absurd. Although
2 SBS was instrumental, if not key (as described in my preceding answer), in
3 working with Qwest to compile this process package; we have always suggested
4 that this package is **not** the key to resolving difficulties. While SBS has attended
5 all but one of the “Qwest-led informational sessions” that we were invited to (the
6 one missed due to unalterable scheduling conflicts), to my knowledge Mr. Pappas
7 has never been a part of any of those proceedings. Further, attendance or
8 participation at those meetings has not staved off problems.

9 SBS strives diligently to adhere to every aspect of Qwest’s *Option 2 LDA*
10 *Information Package*. However, such efforts are apparently not recognized by
11 Mr. Pappas since he characterizes SBS (page 5, 13-15) as ‘one Option 2
12 contractor [that] continues to allege that Qwest has not provided “standard
13 specifications” and repeatedly asserts that it is not required to follow the
14 package’—this reference is directed to SBS and our repeated complaints within
15 our filings that Qwest does not use or provide “standard Company specifications”
16 as called for within the tariff. SBS’ adherence to the “package” is not out of a
17 voluntary sense of goodwill toward Qwest, but rather due to the fact that our jobs
18 will **not** be paid (Qwest will not process the LDA) if the package is not
19 followed—since a good many of our jobs (see the Direct Testimony of William R.
20 Bodine) have been processed to payment by Qwest, our compliance is evident.

1 Following the “package”, attending the “Qwest-led informational sessions”, and
2 even going along with every new Qwest demand is not enough to eliminate the
3 difficulties of the Option 2 process. In fact, there is **no** action an Option 2
4 contractor can take to eliminate the difficulties. Option 2 contractors **cannot**
5 control the timely execution and proper use of the LDA contract; nor can Option 2
6 contractors keep Qwest’s demands from changing at whim (as implied with the
7 term “standard Company specifications”). After years of requesting that the
8 actions of Qwest be grounded in these simple requirements of the tariff, it is
9 evident that Option 2 contractors also have no ability to get Qwest to take these
10 actions.

11 **Q. YOU CITE A CLAIM OF MR. PAPPAS THAT ‘one Option 2 contractor**
12 **continues to allege that Qwest has not provided “standard specifications” and**
13 **repeatedly asserts that it is not required to follow the package’ AND ALLEDGE**
14 **THAT SBS IS THE FOCAL POINT OF THIS CLAIM. IS THE CLAIM**
15 **TRUE?**

16 A. Yes and no. SBS has repeatedly stated in various filings that Qwest does not use
17 nor provide the “standard Company specifications” called for in the tariff (not
18 merely “standard specifications”—which has no meaning—to which Mr. Pappas
19 refers). Further, we have asserted that the ad hoc “package” Qwest has assembled
20 is **not** a “requirement” for us to follow. How can it be? It is not something
21 specified within the tariff. It is not even remotely referred to within the LDA

1 contracts entered into by our client Developers, nor do our contracts with
2 developers include any such reference. (We actually have a clause that our
3 networks will be designed and built to the best of Bell system and Qwest
4 standards—still it has no reference to an ad hoc *Option 2 LDA Information*
5 *Package*). The only way it is **required** of any Option 2 contractor is the fact that
6 Qwest will not process an LDA (even send it out for signatures) unless the
7 “package” is followed to the letter.

8 **Q. MR. PAPPAS CLAIMS THAT THE “OPTION 2 LDA INFORMATION**
9 **PACKAGE” MEETS THE TARIFF DEMAND FOR “STANDARD**
10 **COMPANY SPECIFICATIONS.” IS HE CORRECT?**

11 A. Absolutely not. How can he be? The LDA tariff was written and enacted in the
12 1996-1997 timeframe. In 2001 SBS received a much simpler version of the
13 “package”—that we were told had just recently been drafted and released by
14 Qwest Director Jim Thomas. The current version, as presented by Mr. Pappas, is
15 at least 6 to 8 iterations from that first version we received. With those facts, how
16 can this “package” possibly be the “standard Company specifications” that were
17 called for years before the existence of the “package”?

18 **Q. HOW WOULD YOU CHARACTERIZE MR. PAPPAS’ CLAIM THAT**
19 **QWEST HAS LESS RECOURSE FOR PROBLEMS THAN OPTION 2**
20 **CONTRACTORS?**

1 A. Mr. Pappas claims that Qwest has little or no recourse with Option 2 contractors
2 and that Option 2 contractors are not responsible to the Commission or anyone
3 else for their actions. He continues by stating that there is “no one to make them
4 fully accountable for their actions” (page 7, lines 4-5)—implying that Option 2
5 contractors run wild and perform generally shoddy, substandard work. This is
6 patently false. All Option 2 contractors gain claim to perform the telephone
7 network development projects by entering into contractual obligations with
8 Developers **prior to actual work being performed**. The fact that Option 2
9 contractors are dependant upon the fair and equitable processing of the LDA
10 contracts between Qwest and the Developers inherently ties our compensation to
11 the terms of the LDA, i.e. to exactly what the Developer becomes obligated.
12 Option 2 contractors represent land developers!

13 The Commission has required that the LDA be the controlling document in the
14 Qwest/Developer relationship, and therefore it should be the correct means of
15 controlling/regulating Option 2 contractors. If Qwest actually used the LDA as
16 specified within the tariff, their examples of “such difficulties” could have been
17 resolved with rather simple “breach of contract” complaints filed in the Utah
18 District Court.

19 Further, Mr. Pappas’ claim that Qwest has “a lot less [recourse] than Option 2
20 contractors” is pure bunk. Other than potential legal action, Qwest has virtually
21 no financial risk associated with their refusal to follow the tariff. To my

1 knowledge Qwest has never incurred **any** financial penalties for flaunting the
2 terms and conditions of the LDA tariff (or any other part of the Construction
3 Charges and Other Special Charges section). However, as a small business (SBS
4 is the sole source of employment and income for two families and employs four
5 other individuals) Option 2 contractors are heavily dependant upon Qwest's
6 processing of the Option 2 jobs and LDA's to payment. Our only recourse to
7 Qwest's wrongful acts rests in very expensive and protracted legal action, an
8 expense which Qwest seems to take in stride, without displaying any real
9 willingness to avoid or negotiate.

10 **Q. DOES QWEST REALLY DESIGN THE INITIAL JOB IN OSP-FM?**

11 A. No. The designing process takes place before the information is ever logged into
12 the computer. On numerous occasions SBS has witnessed Qwest engineering and
13 designs drawn out in complete detail on plat records by Qwest engineers prior to
14 being passed on to drafters to enter the data into Qwest's OSP-FM. In fact, OSP-
15 FM is a proprietary database Qwest uses for tracking its rather large multi-state
16 outside plant facilities. We have been told by Qwest engineers that OSP-FM is
17 **not** a Computer-aided Design (CAD) program and does not accept any industry
18 standard CAD drawing format—thus, the reason for their requirement to “redraw
19 the entire job into the Qwest database” (lines 16-17 of page 8), a function that is
20 preformed on EVERY job Qwest does itself.

1 **Q. WHAT IS YOUR ASSESSMENT OF THE ADDITIONAL QWEST WORK**
2 **MR. PAPPAS CLAIMS IS REQUIRED FOR OPTION 2 PROJECTS?**

3 A. Mr. Pappas' claim doesn't hold water. As described in my previous answer, it is
4 readily apparent that Qwest's engineering efforts for Option 2 are the same
5 documentation efforts as required for Option 1. Qwest is relieved completely of
6 the actual engineering effort for the project. The efforts for compiling the feed
7 point and cable count data required for the engineering is the exact exercise
8 required for the Qwest engineer to be able to perform the work.

9 When it comes to the actual inspection and testing of "the facilities before taking
10 ownership" (page 8, lines 21-22), it is down right appalling that Mr. Pappas
11 presents the argument that such efforts are not needed when Qwest performs the
12 construction efforts. Further, Mr. Pappas has come up with a figure of 70 hours in
13 which to inspect and conformance test a 50 lot subdivision. This is totally
14 outrageous. How did he come up with that figure? Maybe he came up with that
15 figure in the same manner that he made the determination that 100 pairs will feed
16 50 lots at a stated requirement of 2.1 pairs per lot—this requires a minimum of
17 105 pairs or a 200 pair cable to begin. If Qwest is allowing 70 hours for these
18 testing and inspection activities for this size of subdivision, then it appears Qwest
19 has a management malfunction. The actual work of placing the cable and splicing
20 it is what takes the time; and that is already complete before inspection and testing
21 can be accomplished. Testing and inspection of facilities on a project this size

1 should not require more than 10-12 hour—and that would include trip charges and
2 all engineering reviews as well.

3 Mr. Pappas also states that Qwest routinely has to make multiple trips for trench
4 inspections and conformance testing. If this is true for other Option 2 contractors,
5 it does not reflect the experiences of SBS. While our jobs require the occasional
6 repair found by Qwest’s inspection, more often than not the reported error has
7 been reported in error by Qwest (in other words—far greater than 50% of the time
8 no error existed when SBS personnel returned to perform the repair). SBS
9 maintains this record because we fully inspect and test our networks before Qwest
10 is ever notified for their conformance test. I suspect other Option 2 contractors
11 carry out similar testing efforts in order to avoid delays in processing their jobs to
12 payment. The telling aspect of Mr. Pappas’ complaints about the cost and trouble
13 of multiple inspection visits is the fact that within paragraph 9 of the LDA
14 contract Qwest processes (see Exhibit WRB-2), Qwest stipulates that the
15 “Developer/Builder shall reimburse [Qwest’s] expenses for any additional site
16 inspections(s)” and yet has **never** sought to enforce that contract stipulation.

17 **Q. WHAT IS YOUR ASSESSMENT THAT A “PERIODIC SPOT CHECK” IS**
18 **SUFFICIENT INSPECTION AND TESTING FOR OPTION 1 JOBS?**

19 A. It is inaccurate. There is no need for a double standard. In fact the tariff requires
20 that Qwest “test the facilities” (see paragraph 4.4.C.1.a of the LDA tariff)
21 developed under Option 1 as well as Option 2. SBS, and to the best of our

1 knowledge, most of the other Option 2 contractors, have many years of
2 experience in engineering, placing, and splicing telecommunications outside plant
3 facilities. Indeed, much of this experience was gained from working directly for
4 Qwest. Our skill levels did not suddenly drop as a result of choosing to provide
5 Option 2 benefits to developers. Qwest employees also do not magically have
6 enhanced skills because they are working for Qwest. The same level of
7 inspection and testing should be performed for both Option 1 and Option 2
8 projects.

9 As a note related to the trench inspections Qwest has performed for SBS, there
10 has never been a significant problem noted to date. Also, trench inspections, no
11 matter how in depth, cannot stand alone as an accurate test of how the cable will
12 perform once it is spliced. This is exactly why conformance testing must be
13 performed. Conformance testing is crucial to finding sheath damage. Finally, the
14 conclusions Mr. Pappas reaches regarding the additional expenses incurred by
15 inspecting and testing Option 2 facilities are as faulty as his conclusion that
16 conformance testing will not find sheath damage.

17 **Q. MR. PAPPAS DISCRIBES OTHER FACTORS THAT DRIVE UP COSTS**
18 **INTO THE LDA PROCESS; IS HIS ASSESSMENT ACCURATE?**

19 A. No. Mr. Pappas states that Qwest does engineering work on subdivisions in
20 “anticipation” (page 10, line15) of entering into an Option 1 agreement. Again,
21 this is an indication that Qwest doesn’t follow the tariff. If they did, they would

1 have a contract up front, to wit, the LDA contract. If Qwest chooses to perform
2 work in anticipation of a contract, then that is a problem of Qwest's own
3 making—and it is in direct violation of the tariff and previous Commission
4 Orders. Option 2 contractors enter into contractual agreements with developers
5 prior to commencing work. Any work performed before a contract is signed is
6 recognized as a gamble, just as it is for Qwest.

7 Mr. Pappas complains about Option 2 contractors refusing to purchase or pay a
8 reasonable price for Qwest's "anticipated" engineering work (page 11, lines 3-7).
9 SBS recently refused a Qwest engineer's efforts to sell us their design for a multi-
10 phased development. It took only a cursory review of their design to determine
11 that their design would cost us thousands of dollars **extra** in material costs. After
12 creating our design, not only were we able to save the material costs, but with
13 slight modifications we were able to cut off almost **one mile of cable** length for
14 almost 400 cable pairs. Cable length is a significant concern for consumers with
15 high data rate service needs.

16 **IV. OPTION 2 LDA PROBLEMS**

17 **Q. PLEASE DESCRIBE THE ROOT CAUSE OF THE PROBLEMS PAPPAS**
18 **LISTS IN HIS OUTLINE OF VARIOUS PROBLEMS?**

19 A. Mr. Pappas states in his testimony that many Option 2 contractors continue to
20 insist that Qwest pay more than is required under the tariff. This claim is patently

1 false. The tariff wording and the Commission’s previous ruling regarding the
2 “cap” amount is perfectly clear; and yet Qwest insists upon some perverse
3 interpretation that allows them to cap the payment amount to their own cost
4 estimates.

5 The entire argument about cost estimates is baseless. SBS does not care one whit
6 about Qwest’s cost estimate for doing work that they aren’t even doing.

7 However, to maintain the position that the information Qwest furnishes as their
8 cost estimates as detailed and verifiable is absurd. As the tariff requires, it is only
9 the “Developer/Builder” costs that are relevant—up to the “cap”.

10 The bottom-line root cause to all six (6) of the problems Mr. Pappas complains
11 about is the fact that Qwest adamantly refuses to execute or use the tariff
12 mandated LDA in the manner specified within the tariff.

13 Of particular note is Mr. Pappas’ statement in his testimony that Qwest continues
14 to be required through no choice of its own to be involved with expensive legal
15 proceedings both with the PSC and State District Court, while the Option 2
16 contractors have all choice in the matters (page 14, lines 13-15). That is **wrong**.

17 We have genuinely tried, and met with people of several different levels of Qwest
18 management in attempts to resolve the problems we have encountered. Only after
19 exhausting our efforts to attain a win-win solution, have we turned to litigation.

20 We turned to the Commission and courts only because we felt we had no other
21 recourse. It appeared, and still does, that we were in a fight or die situation as a

1 company. Further, we recognize the fact that the demise of Option 2 would not
2 be good for anyone in Utah. It is not good for us, for the developers, the home
3 owner, and it would not be good for Qwest either (whether they admit it or not).
4 SBS has done everything in its power to make Option 2 work and to continue to
5 provide a quality service, with integrity. No expensive legal action taken by SBS
6 has been done so frivolously.

7 **Q. IS QWEST WILLING TO NEGOTIATE PRICES WITH OPTION 2**
8 **CONTRACTORS?**

9 A. In many instances where betterments drive Qwest's cost estimates to exceed the
10 cap, SBS has been able to amiably negotiate the network cost. However, there
11 have been instances where Qwest has insisted that they are not required to pay
12 anything for betterments.

13 **Q. SHOULD QWEST BE RELUCTANT TO PAY THE**
14 **DEVELOPER/BUILDER'S EXPENSES AS REQUIRED BY THE**
15 **TARIFF?**

16 A. No. Qwest has been the primary benefactor of the work that Option 2 contractors
17 have performed for developers. Whether option 2 of the tariff was created to
18 alleviate the burden of the immense overload of held orders and long wait times
19 under which Qwest was laboring, the availability of option 2 of the tariff to
20 developers has freed Qwest to attend to other demands it faces as a

1 telecommunications provider. Qwest is receiving new plant that, by its own
2 admission, is better tested and more fully inspected than what they develop on
3 their own.

4 Further, the Developer/Builder's expenses are capped at a price based upon an
5 **average** per lot cost for the telecommunications system. The fact that the "cap"
6 price is based upon an average inherently protects Qwest from being over
7 charged.

8 **Q. MR. PAPPAS PROVIDES A FAIRLY DETAILED RECITAL OF THE**
9 **NEED FOR TRENCH INSPECTIONS; IS HIS REASONING SOUND?**

10 A. Not at all. While I wholeheartedly agree with Mr. Pappas' position that the
11 trenches need to be of sufficient depth to accommodate sufficient cover at grade
12 level, his conclusions on the need for the trench inspection to achieve this goal is
13 fundamentally flawed. The fact of the matter is that whether municipal or Utah
14 Power, the power facility **always** goes into the trench first! SBS has never
15 encountered any instance where power has entered the trench and any other utility
16 (Qwest or Cable TV) has demanded from the developer a deeper trench. In other
17 words, the power company accepts the trench—period. The power company's
18 acceptance of these trenches is not always with the best judgment. Once done,
19 however, Qwest lives with the trenches in all instances—Option 1 or Option 2.

1 Mr. Pappas' claim that a trench inspection is necessary to determine the number
2 of cables in a trench is equally ridiculous. The engineering prints and cable loops
3 within pedestals allow the very easy determination of exactly what cable sheaths
4 reside within any given trench.

5 When presenting the association of trench inspections to locating sheath damages,
6 Mr. Pappas' testimony clearly demonstrates his lack of knowledge regarding
7 construction and maintenance splicing and testing capabilities and procedures.
8 Damage to a cable sheath creates a ground fault. When a simple ohm meter (or
9 kick meter) measures the resistance between the cable bonds (the metal interior
10 sheath of a cable) and earth ground, any sheath damage appears as a ground fault
11 on the cable, i.e. the meter will indicate some resistance short of infinite. SBS
12 performs this testing on every cable prior to calling Qwest out for a conformance
13 test, as does Qwest when they come out to do their conformance testing. Once
14 the fault is detected, it is then necessary to find the sheath damage with test
15 equipment (a cable fault locator), dig it up and repair it. High resistance faults
16 can be damage as small as a little pinhole. We have repaired several. They are
17 difficult to find but they can be found and repaired. Furthermore, locating these
18 faults are next to impossible in a trench inspection. Unless and until the trenches
19 have been backfilled (providing the potential earth ground), these damages will
20 not be found.

1 **Q. WHAT ABOUT THE PROSPECT OF FINDING SHEATH DAMAGE BY**
2 **POTHOLING AS EXTOLLED BY MR. PAPPAS?**

3 A. Impossible, unless the damage was done during the pothole excavation.

4 Also, there is nothing in the LDA contract or tariff that allows Qwest to force the
5 developer to pothole his subdivision in order for Qwest to look at the depth and
6 condition of the cable.

7 **Q. MR. PAPPAS CLAIMS THAT QWEST'S "THREE YEAR WARRANTY"**
8 **FROM THEIR OWN CONTRACTORS IS SUFFICIENT PROTECTION**
9 **FROM THE PLACEMENT OF DAMAGED CABLE WITHOUT**
10 **TESTING. IS HE CORRECT?**

11 A. I have worked with telephone cables in buried, underground, and aerial
12 environments that have been in place from days to decades. Mr. Pappas'
13 assessment that possible sheath damage due to a placement contractor's error
14 would be identified within a three year warranty period without testing is
15 completely erroneous. The fact of the matter is that a small sheath damage will
16 cause the metal cable interior sheath to begin to rust and rot. However, in a
17 buried environment, without being exposed to air and sunlight, the rotting process
18 takes some time. For the rust and rotting to get bad enough to work through the
19 additional plastic cable sheathing, the cable fill, and the wire insulation and begin
20 to affect services, it is likely a protracted period of time would elapse. Without

1 testing, the only way those problems will be found is when consumer services are
2 affected. The fact of the matter is that even when the sheath damage is fairly
3 severe, these symptoms will not be displayed for several years. It is very unlikely
4 that it would take place within Qwest's warranty period or that Qwest would be
5 able to effectively bill their contractor for the required repairs, even if the damage
6 were discovered within time, without immediate testing.

7 **Q. IN LINES 13-15 OF PAGE 20, MR. PAPPAS CLAIMS THAT**
8 **“TIMELINES IN THE TARIFF...ARE...UNIVERSALLY IGNORED BY**
9 **DEVELOPERS WHEN OPTION 2 IS CHOSEN”. IS HE CORRECT?**

10 A. No. In fact, once again Mr. Pappas presents a completely illusory view of the
11 tariff itself. In fact the tariff places no such “timeline” requirements upon the
12 developer—it cannot. The tariff does provide two timeline suggestions (in
13 paragraph 4.4.B.2.e) for potential inclusion into the LDA. However the “90 days
14 prior to the backbone trench date” to which Mr. Pappas refers is NOT included in
15 the LDAs Qwest provides.

16 **Q. ARE THERE ANY OTHER ISSUES WITH MR. PAPPAS' TESTIMONY**
17 **THAT YOU WOULD LIKE TO ADDRESS?**

18 A. Yes. Mr. Pappas references held-orders on Option 2 projects and implies that
19 these are solely the responsibility of Option 2 contractors. Of course this
20 implication completely neglects the fact that since September of 2003 Qwest has

1 taken a hard line in processing jobs to payment with their ridiculous claim that the
2 July 15, 2003 ruling interpreting townhome project exclusion from LDA
3 processing as releasing them of the clear tariff requirement to reimburse the
4 developers' costs. Without some insight regarding how Qwest's own actions
5 affect those held-orders, it is impossible to assess any responsibility for the
6 service delays associated.

7 Further, while held-orders may or may not have been a significant factor in the
8 implementation of Option 2, it is obvious that Option 2 was intended to be a
9 significant concession (even if that intent was deceptive in nature) and it is clear
10 that Qwest's actions do not now warrant the rescinding of this concession.

11 **V. CONCLUSION**

12 **Q. WHAT CONCLUSIONS DO YOU DRAW FROM MR. PAPPAS'**
13 **TESTIMONY?**

14 A. While Mr. Pappas is obviously well briefed on the LDA tariff in Utah and shows
15 some understanding of Qwest's position on the issues of Option 1 versus Option
16 2, it is clear that his experience as an Installation and Repair (I&R) Technician
17 does not qualify him to testify with regard to the engineering and construction
18 issues that are so intricate and vital to these proceedings.

19 **Q. PLEASE SUMMARIZE YOUR TESTIMONY?**

1 A. Qwest wants Option 2 of the tariff removed simply because Option 2 has become
2 a viable option with the existence of Option 2 contractors. Qwest no longer has
3 complete control over developers' choices, nor do developers any longer have to
4 beg for the telecommunications developmental services for their projects—at least
5 for some residential developments. If Qwest's continuous complaints about the
6 tariff specification of Qwest's reimbursement of the Developer/Builder's costs up
7 to the "cap" were genuine, why have they continually rejected all attempts to
8 discuss potential tariff changes? The cost complaints aren't genuine, and neither
9 is Mr. Pappas' claim that "Qwest has expended an inordinate amount of effort to
10 make [Option 2] work" (page 22, line 4). The fact of the matter is this is Qwest's
11 third attempt to eliminate Option 2 and they have yet to make even one attempt to
12 use the LDA (for Option 1 or 2) in the manner prescribed by the tariff.

13 In contrast, SBS has continually made every effort to abide by the rules of Option
14 2 of the tariff—even the ad hoc, unsupportable rules Qwest has mandated and
15 continually changed.

16 Option 2 of the tariff is a valuable asset to the State of Utah. The competitive
17 pressures of a free market have dramatically increased land developers'
18 satisfaction in receiving telephone network development services. The quality of
19 the networks constructed have improved and actually begun to reflect some form
20 of "standard." Qwest has been able to meet new service and construction
21 demands.

1 While there have been many problems in the execution of Option 2, all of those
2 problems could have been eliminated or effectively managed if Qwest would
3 abide by terms of the tariff.