

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF UTAH**

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

**DIRECT TESTIMONY OF  
DENNIS PAPPAS  
QWEST CORPORATION**

**October 4, 2004**

**TESTIMONY OF DENNIS PAPPAS  
TABLE OF CONTENTS**

	Page
<b>EXECUTIVE SUMMARY</b>	1
<b>I. INTRODUCTION</b>	1
<b>II. OVERVIEW OF LDA TARIFF</b>	3
<b>III. THE OPTION 2 LDA PROCESS</b>	4
<b>IV. PROBLEMS WITH OPTION 2 LDAS</b>	11
<b>V. CONCLUSION</b>	22

**EXECUTIVE SUMMARY**

1  
2  
3 My name is Dennis Pappas and I am employed by Qwest Corporation as a Director in the  
4 Public Policy organization representing Network Operations. My testimony elaborates on  
5 the network issues related to the Option 2 Land Development Agreement tariff (LDA)  
6 and presents facts on why the Option 2 LDA is driving capital costs higher than those  
7 Qwest experiences under Option 1 LDAs. There are some problems that seem to be  
8 inherent to this LDA option from Qwest's standpoint. Namely, Qwest is unable to  
9 manage construction and placement of the Option 2 distribution facilities due to the third  
10 party nature of the relationship. More importantly, the Option 2 contractors have been  
11 reluctant, and in some cases unwilling, to follow established procedures which have led  
12 to problems, and in some cases held orders for end users seeking Qwest services.  
13 Because of these persistent problems, Qwest is seeking the elimination of Option 2 in  
14 Utah. For the reasons contained in the following testimony, as well as those outlined in  
15 the testimony of Laura Scholl filed herewith, Qwest should be allowed to modify its tariff  
16 and thereby eliminate Option 2.

**I. INTRODUCTION**

17  
18 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

19 A. My name is Dennis Pappas. I am employed by Qwest Corporation as a Director in Public  
20 Policy representing Network Operations. My business address is 700 Mineral Ave.,  
21 Room MNH19.15 Littleton, CO 80120.  
22

1 **Q. PLEASE DESCRIBE YOUR EMPLOYMENT EXPERIENCE AND EDUCATION**  
2 **BACKGROUND.**

3 A. I have worked in the telecommunications industry for twenty-six years. In December  
4 2001, I accepted my current position as Director in the Public Policy organization  
5 representing Network Operations as a technical witness. In prior years, I held numerous  
6 management positions which required expertise in network operations, including, for  
7 example, Network Staff Manager and Regional Service Manager in the Local Networks  
8 Organization. Prior to entering the management team, at then U S WEST, I worked as a  
9 Network Installation and Maintenance Technician (I&M Technician) and an Outside  
10 Plant Technician responsible for the placement of Qwest facilities in new developments  
11 much like the ones that Option 2 contractors are building today in Utah. I have my  
12 Bachelor's degree in Business Administration and a Masters in Telecommunications from  
13 the University of Denver. My experience also includes a stint as Vice President and then  
14 President of TESS Communications. TESS Communications was a "true" facilities-  
15 based CLEC in Colorado and Arizona that provided a suite of services, including  
16 telecommunications, data, long distance and CATV to approximately 1,200 end users  
17 utilizing their own facilities. At TESS, we dealt with Option 2 contractors to build  
18 facilities into the developments where TESS had negotiated such arrangement with the  
19 developer.

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

2 A. The purpose of my testimony is to describe the LDA tariff and the current Option 2 LDA  
3 process and explain some of the issues and problems that continue to plague this LDA  
4 option. In addition, I will provide information about the tariff price cap. I will show that  
5 if Qwest is required to pay the cap as the default price for every Option 2 LDA, Qwest  
6 will be paying significantly more than what it would pay for the same project if it was  
7 handled as an Option 1 LDA. My direct testimony concludes with a discussion about  
8 why it does not make sense for Qwest to continue with Option 2 in its LDA tariff.

9 **II. OVERVIEW OF THE LDA TARIFF**

10 **Q. WHAT IS THE LAND DEVELOPMENT AGREEMENT (LDA) TARIFF?**

11 A. The LDA tariff specifies the terms and conditions upon which Qwest is willing to place  
12 distribution facilities in single family detached residential developments of four or more  
13 lots. There are two options available to developers under this tariff; Option 1 – Facilities  
14 Engineered, Designed, Placed and Spliced by Qwest; and Option 2 – Facilities  
15 Engineered, Designed, Placed and Spliced by the developer. Under both options the  
16 developer is responsible for opening and closing the trenches within the subdivision.  
17 These trenching costs (along with the costs of placing a service drop from the Qwest  
18 network to each home) are the only costs to the developer as long as costs are agreed  
19 upon and identified in an LDA, and the per-lot tariff cap is not expected to be exceeded.<sup>1</sup>  
20 Under Option 1, Qwest designs, places and pays for the facilities directly, and under

---

<sup>1</sup> The cap amount (\$436.13 per lot) was determined in a 1996 cost study establishing the average distribution cost per lot and then adding 25%. Qwest agreed to this formula with the Home Builders Association in Utah.

1 Option 2 Qwest reimburses the developer's placement costs (typically incurred by hiring  
2 an Option 2 contractor), up to the amount agreed upon with Qwest and "identified in the  
3 LDA, not to exceed the distribution portion of the average exchange loop investment."  
4 (LDA Tariff § 4.4.C.2.e). Thus, if the estimated costs agreed upon and identified in the  
5 LDA do not exceed the cap the developer incurs no costs under either Option 1 or Option  
6 2.

7 Under either option, very seldom should the estimated costs exceed the cap. Typically,  
8 this happens in cases when there are larger than normal lot sizes, increasing material and  
9 placement costs. Therefore, usually the developer is able to avoid incurring any costs  
10 (other than trenching costs), regardless of which option is selected.

### 11 III. THE OPTION 2 LDA PROCESS

#### 12 Q. WHAT IS THE PROCESS FOR OPTION 2?

13 A. Exhibit 1, attached to my testimony, is a copy of the Option 2 LDA Information Package  
14 that Qwest provides to developers and Option 2 contractors. It identifies each step of the  
15 Option 2 process. This Information Package has evolved over the years with input from  
16 Option 2 contractors, and was designed by Qwest to assist developers in Utah who select  
17 Option 2 under the tariff. This document has taken a significant amount of time and  
18 effort to develop, and Qwest believes that in its current form it provides all of the  
19 necessary specifications, processes and information for a developer to select and carry out  
20 an Option 2 LDA project.

21

1 **Q. PLEASE DESCRIBE HOW THE OPTION 2 PROCESS HAS BEEN WORKING**  
2 **OVER THE LAST FEW YEARS.**

3 A. The Option 2 process has been difficult essentially since its inception, including over the  
4 last few years. The process should flow as set forth in the Information Package, and some  
5 Option 2 contractors now do a good job of following this process. These are usually the  
6 contractors that Qwest worked with to develop the package along with those that have  
7 attended Qwest-led informational sessions on the package itself. However, some Option  
8 2 contractors would not participate in these joint sessions and continue to ignore or refuse  
9 to even acknowledge certain aspects of the specifications contained in the Information  
10 Package. This causes additional cost and other problems for Qwest when these  
11 specifications and procedures are not followed. In fact, despite being in place now for  
12 several years, some Option 2 contractors continue to raise disputes about the Option 2  
13 LDA Information Package itself. For example, at least one Option 2 contractor continues  
14 to allege that Qwest has not provided “standard specifications” and repeatedly asserts that  
15 it is not required to follow the package. Although the Information Package is not called  
16 by the name of “standard specifications,” it does specify the processes and information  
17 necessary to perform an Option 2 LDA project. Qwest has spent a significant amount of  
18 time and effort to develop the Information Package. Despite this effort, some Option 2  
19 contractors refuse to adhere to these specifications. After enduring disputes for years now  
20 on what should be routine matters, such as the process flow identified in the Information  
21 Package, Qwest is convinced that the Option 2 LDA process is never going to work  
22 smoothly.

1 **Q. YOU MENTIONED THAT ONE OPTION 2 CONTRACTOR BELIEVES THAT**  
2 **QWEST HAS NOT PROVIDED STANDARD JOB SPECIFICATIONS FOR**  
3 **OPTION 2 PROJECTS. IS THAT CONTRACTOR CORRECT?**

4 A. No. The Option 2 contractor making this claim was sent the detailed Information  
5 Package contained in Exhibit 1 numerous times, along with everyone else. This  
6 Information Package provides information on each and every aspect of the Option 2  
7 process. It includes a letter of authorization between the Option 2 contractor and the  
8 developer, engineering steps and guidelines, placing and splicing specifications, material  
9 lists, a splicing checklist, and a trench inspection checklist. The Information Package is  
10 very detailed and includes specifications down to the level of tightening bolts and the size  
11 of gravel to place in the terminal. The Information Package provides insight into each  
12 and every activity that an Option 2 contractor would have to complete in order for Qwest  
13 to accept an Option 2 job. Based on this detailed Information Package, the claim made by  
14 this Option 2 contractor is clearly unfounded. This is particularly true given the fact that  
15 when developing the Option 2 LDA Information Packet, Qwest sought input from Option  
16 2 contractors and made modifications based on the input of this, and other contractors.  
17 This typifies the ongoing disputes that have lasted for several years, leading Qwest to  
18 conclude that the Option 2 process doesn't work.

19 **Q. WHAT RECOURSE DOES QWEST HAVE WHEN OPTION 2 CONTRACTORS**  
20 **DON'T FOLLOW THE OPTION 2 LDA PROCESS?**

21 A. A lot less than the recourse that Qwest has with its own contractors, and a lot less than the  
22 Option 2 contractors would have against Qwest if Qwest didn't follow the Option 2



1 process and tariff. Although the Commission has jurisdiction over Qwest, my  
2 understanding is that it has very little if any jurisdiction over Option 2 contractors.  
3 Moreover, Qwest has no contract with the Option 2 contractors. Unfortunately, this  
4 creates a situation where Option 2 contractors have no one to make them fully  
5 accountable for their actions in placing portions of a public telecommunications network.  
6 Not infrequently, the result is Qwest having to accept something less in facilities  
7 placement than what Qwest would do for itself, while at the same time Qwest pays more  
8 than it would if it performed the work.

9 As a recent example of such difficulties: In August 2004, five months after the Option 2  
10 contractor responsible for placing Qwest facilities was given the necessary information to  
11 engineer the job (including the fact that there were two churches that needed to be fed  
12 beyond the development) Qwest still had not been contacted by the Option 2 contractor  
13 on the status of the facilities placement and therefore couldn't meet customers' requests  
14 for service when they came. Qwest did not receive the engineering job from the Option 2  
15 contractor until September 2nd 2004, after the facilities were already placed. When the  
16 Option 2 contractor did place the job, it failed to provide the necessary upsizing for the  
17 two churches. And Qwest was unable to even inspect the cable placement because the  
18 trenches were covered before Qwest was provided with a work print (which should also  
19 have been given to Qwest for approval prior to the Option 2 contractor placing cable). At  
20 that point, Qwest could have refused to accept the facilities and insist that the Option 2  
21 contractor correct the problems. However, Qwest already had customers waiting for  
22 service; and any refusal to accept the facilities would have exacerbated the delay. Thus,

1 Qwest accepted a job that it could not fully inspect, that it had not approved prior to  
2 placement, and that did not provide the necessary cable size for Qwest's planning. Some  
3 variation of this situation happens all too frequently, in some cases with Qwest providing  
4 cellular service or temporary service drops at its own expense, during the delay.

5 And, of course, if a customer is told that phone service is not available, they attribute that  
6 to Qwest – not the developer. Thus, in such circumstances Qwest's customer  
7 relationships are strained.

8 **Q. WHEN A DEVELOPER DECIDES TO CONTRACT WITH AN OPTION 2**  
9 **PROVIDER, DOESN'T IT ELIMINATE QWEST'S PLACEMENT BURDEN FOR**  
10 **THE DEVELOPMENT AT ISSUE?**

11 A. Unfortunately, no. Even though Qwest pays the developer for the engineering and  
12 construction work, Qwest continues to have responsibility for a significant amount of  
13 engineering and construction work associated with the job. For example, in regards to  
14 engineering activities, Qwest must review and approve the engineering job prints,  
15 estimated cost (when one is provided) and materials list and also enter the job prints into  
16 Qwest's OSP-FM data base. This often entails interpreting field drawings and redrawing  
17 the entire job into the Qwest database, while in an Option 1 design the initial job is drawn  
18 in OSP-FM. In addition, Qwest must provide to the Option 2 contractor cable counts,  
19 size of cables, including any necessary upsizing, and the point of feed (i.e. the location  
20 that the cables within the subdivision must come to in order to be hooked up to the  
21 backbone distribution cable). In regards to construction, Qwest must inspect and test the  
22 facilities before taking ownership. The total time associated with this work activity is

1 approximately 70 hours based on a 50 lot development. In such a development,  
2 depending on the layout, a minimum of 100 pairs would have to be placed in order to  
3 feed all the lots, and in a front lot placement development you may have about 25  
4 pedestals to inspect. If Qwest could conduct and complete the inspection on the first trip,  
5 the overall time would be less; but in a majority of the inspections, Qwest has to return to  
6 the development in order to conduct additional testing once damaged cables have been  
7 fixed or after all of the placement work has concluded. The additional expense incurred  
8 by Qwest to perform these inspections would be approximately \$3,600.<sup>2</sup> As a rough  
9 comparison to demonstrate scale, this would add more than 10% to Qwest's total cost for  
10 the example project identified in Exhibit 2.

11 **Q DOESN'T QWEST HAVE TO DO THESE SAME THINGS IN AN OPTION 1**  
12 **LDA?**

13 A. Even though many of the work activities are very similar with an Option 1 LDA, there  
14 are additional work activities for Qwest with Option 2 LDAs. For example, it is more  
15 efficient for the Qwest engineer working on an Option 1 LDA to engineer the job in  
16 Qwest's OSP-FM database from the outset, rather than receive a paper copy of the job  
17 and have to manually input that document into OSP-FM. It is less efficient and more  
18 costly for Qwest to pay the Option 2 contractor for the engineering when Qwest has to  
19 recreate the entire job. Qwest must also inspect and test the facilities constructed by an  
20 Option 2 contractor before taking ownership pursuant to the terms of the tariff. Once  
21 Qwest has paid for the facilities, it has no recourse with the developer. In contrast, when

---

<sup>2</sup> The loaded labor rate for a Plant Operations and Construction Technician is \$52.10 per hour.

1 Qwest performs an Option 1 LDA, many of the inspection and testing activities are either  
2 not required or are done directly by the Qwest employees doing the splicing. Even when  
3 Qwest uses an outside contractor to place facilities in Option 1 LDA jobs, Qwest only  
4 needs to do periodic spot checks instead of full inspections because Qwest has greater  
5 quality control over its own outside contractors. Qwest's contractors have been trained  
6 on how to properly install telecommunication facilities, and they guarantee their work for  
7 three years. Option 2 contractors provide no such guarantee, and Qwest has little control  
8 over their work. These are only a few examples about why Option 2 LDAs are less  
9 efficient than Option 1 LDAs. In my opinion, it would be hard to ever have Option 2  
10 work in such a way as to eliminate these difficulties, even in situations where the Option  
11 2 contractor is cooperative. Of course, when the Option 2 contractor all-too-often does  
12 not cooperate, the difficulties become even greater.

13 **Q. ARE THERE OTHER SCENARIOS WHICH DRIVE ADDITIONAL COST INTO**  
14 **THE LDA PROCESS?**

15 A. There are. In some instances, Qwest will incur upfront engineering costs in anticipation  
16 of entering an Option 1 LDA (sometimes engineering the entire job for a development)  
17 only to have the developer change its mind later in the process and use an Option 2  
18 contractor to do the work. While the Commission has directed that the LDA be entered  
19 "up front," which would seem to eliminate such costs from being incurred without a  
20 contract in place, in fact some upfront engineering expense is inevitable, because a  
21 verifiable cost estimate (to allow the developer to choose between Option 1 and Option 2)  
22 cannot be provided until the job has been engineered. When Option 2 contractors are

1 hired by a developer at the outset, Qwest can rely on the Option 2 contractors'  
2 engineering to form the basis for its own verifiable cost estimate (still incurring the  
3 inefficient costs noted in the immediately preceding Q&A). However, when a developer  
4 approaches Qwest directly, Qwest must engage in the engineering in order to price the  
5 job, only to then potentially have the developer choose Option 2, causing Qwest's initial  
6 engineering costs to be wasted. While Qwest attempts to sell its engineering to the  
7 Option 2 contractors in such circumstances, the contractors are typically unwilling to pay  
8 a reasonable price. The bottom line, though, is that someone has to engineer the job  
9 before verifiable cost estimates can be exchanged. It is another problem with the Option  
10 2 process that this initial engineering is necessarily done before costs are agreed-upon in  
11 an LDA, and too frequently are not recovered by Qwest.

#### 12 IV. PROBLEMS WITH OPTION 2 LDAs

13 **Q. WHAT ARE SOME OF THE SIGNIFICANT PROBLEMS THAT QWEST**  
14 **CONTINUES TO EXPERIENCE WITH OPTION 2?**

15 A. The following outlines various problems:

16 1. Continued disputes with Option 2 contractors about pricing.

17 There are ongoing disputes regarding the cost of facilities required for the  
18 immediate subdivision, as well as the cost for upsizing facilities to handle other  
19 phases within the development. Many Option 2 contractors continue to insist that  
20 Qwest pay more than is required under the tariff.

21 2. Ongoing disputes about verifiable cost estimates.

22 Upon request from an Option 2 contractor, Qwest provides a detailed verifiable

1 cost estimate for the specific project at issue. Exhibit 2 is an example of a  
2 verifiable cost estimate that Qwest has provided in response to an Option 2  
3 contractor request. However, some Option 2 contractors demand significantly  
4 more detail than that which Qwest can provide. For example, some Option 2  
5 contractors have demanded that Qwest provide information from, or about, its  
6 vendors that is proprietary to those vendors. This information can't be provided  
7 without permission from these vendors, particularly when there is no indication  
8 from the contractor on how such information would be used or protected by them.  
9 Despite their demands that Qwest provide such information, some of these same  
10 Option 2 contractors refuse to provide Qwest with any meaningful cost estimates  
11 as to their own scope of work on these projects. Instead, these contractors claim  
12 that the only verifiable cost estimate they need to provide Qwest is the price the  
13 developer agreed to pay them for performing the work, which coincidentally  
14 always happens to equal the per-lot cap found in the Option 2 tariff. These Option  
15 2 contractors have taken this stance despite what the PSC stated in Docket No. 02-  
16 049-66 (Report and Order, July 15, 2003) that "To be good faith and verifiable the  
17 cost estimates must be more than a quote from one of the Complainants or a  
18 similar company to do the job for the amount of the cap under the LDA tariff."

19 3. Option 2 jobs routinely result in higher costs.

20 Many Option 2 contractors continue to insist that Qwest pay the per-lot cap  
21 amount identified in the tariff on every job even though Qwest's estimated costs  
22 to perform the work are substantially lower. As demonstrated by the Option 1

1 projects identified in Exhibit 3 attached hereto, if developers had used Option 2  
2 contractors for these projects and Qwest were required to pay the per-lot cap  
3 identified in the tariff, this would result in a windfall to Option 2 contractors in  
4 the amount of more than \$100,000 for these projects. In today's competitive  
5 marketplace where Qwest cannot seek to recover such costs in rates, such a  
6 windfall is clearly inappropriate.

7 4. Failure to adhere to Qwest's specifications.

8 Some Option 2 contractors do not follow the process outlined in the LDA  
9 Information Package (see Exhibit 1). Instead, these Option 2 contractors choose  
10 to take short cuts that can be detrimental to Qwest. For example, several Option 2  
11 contractors move forward with construction on a project before they give Qwest  
12 an opportunity to approve their engineering drawings. Others move forward with  
13 construction, and even complete their construction activities, before giving Qwest  
14 an opportunity to inspect their construction work. Given that Qwest ends up  
15 owning these facilities, and that it must ensure the integrity of its distribution  
16 plant, these kinds of issues are particularly troubling to Qwest because they  
17 demonstrate a complete disregard by the contractors as to the specifications and  
18 processes that Qwest has worked so hard to establish.

19 5. Ongoing litigation and regulatory proceedings.

20 For the past several years, Qwest has been involved in ongoing litigation and  
21 regulatory proceedings over the Option 2 LDA tariff and process despite its  
22 significant efforts to try and make the Option 2 process work in accordance with

1 the Commission's intent. Qwest is now involved in its fourth (Docket No. 03-  
2 049-62) and fifth LDA-related regulatory proceedings (Docket No. 04-049-06). I  
3 understand that Qwest is also dealing with a complaint in State District Court.  
4 One of the things that is hard to understand about all of the proceedings is that  
5 they have involved Option 2 contractors with minimal input from developers.  
6 Qwest has no contractual relationship with Option 2 contractors, and the Option 2  
7 contractors are not regulated by the Commission. Nevertheless, in this  
8 proceeding, Option 2 contractors are seeking decisions against Qwest that directly  
9 benefit their own businesses to the detriment of Qwest. Yet, if they don't get what  
10 they want it is likely that some of these Option 2 contractors will ignore the results  
11 of this proceeding, like they have done in the past, and continue to try and extract  
12 the per-lot maximum payments from Qwest on every job, or they will continue to  
13 sue Qwest for damages. Although these Option 2 contractors have a choice about  
14 whether to participate in these expensive legal and regulatory proceedings, Qwest  
15 does not. Instead, it is forced to continue spending a significant amount of time  
16 and resources to try to resolve the ongoing problems that have plagued the Option  
17 2 LDA tariff since its introduction.

18 6. Lack of privity and/or control.

19 Because there is no contractual relationship between Qwest and the Option 2  
20 contractors, there is a lack of complete control over the placing of facilities that  
21 Qwest ends up owning. Unlike its dealing with its own contractors, Qwest  
22 encounters opposition from Option 2 contractors when it needs to make



1 modifications to the engineering and construction specifications. Also, when held  
2 orders are encountered in Option 2 LDAs, Qwest is at the mercy of the developer  
3 or Option 2 contractor and does not control the construction schedule to minimize  
4 delays to end-user customers waiting for service.

5 **Q. WHY DO DISPUTES CONTINUE WITH SOME OPTION 2 CONTRACTORS**  
6 **OVER THE PRICE FOR OPTION 2 LDAs?**

7 A. Disputes continue because some Option 2 contractors have not been willing to negotiate a  
8 price with Qwest and are not willing to accept Qwest's estimated costs for Option 2  
9 LDAs, and because the Commission has not yet given direction on the price Qwest  
10 should pay when the parties cannot agree. The Option 2 contractors involved in this  
11 proceeding are those that have continued to demand that Qwest pay the per-lot cap, or  
12 have submitted cost estimates that are just coincidentally always very close to the cap, on  
13 every Option 2 LDA project. Usually, Qwest's estimated costs are significantly lower  
14 than the cap price. Qwest believes that it should not have to pay more for an Option 2  
15 LDA than what it would cost for Qwest to do the work itself under Option 1 of the tariff.  
16 To do so causes Qwest to be inefficient and to pay a premium for work performed by the  
17 Option 2 contractors.

18 **Q. WHY IS QWEST RELUCTANT TO PAY THE CAP ON EACH OPTION 2 LDA.**

19 A. In today's competitive telecommunications environment, Qwest can't recover these  
20 excess costs. Moreover, it was never intended that the cap become the default price that  
21 Qwest must pay on every Option 2 LDA. The Utah Public Service Commission stated  
22 (Report and Order in Docket No. 02-049-66, July 15, 2003);

1 Qwest argues that the cap incorporated into the LDA tariff has been  
2 interpreted by Complainants as the default price Qwest is to pay for every  
3 development. That was not the intent of the tariff. The cap was just that, a  
4 cap, and if costs exceeded that amount a developer is responsible for the  
5 additional costs. It was not designed to be the default price.

6  
7 If Qwest were to pay the current cap of \$436.13 per lot on every Option 2 LDA, on  
8 average Qwest would be paying at least 27% more for Option 2 LDAs in comparison to  
9 Option 1 LDAs. In an increasingly competitive environment, Qwest has to place  
10 facilities in the most efficient, cost effective manner possible. As noted in earlier  
11 testimony, Exhibit 3 is an illustrative comparison that shows the actual booked cost of  
12 Option 1 LDA projects. A comparison is made to show the relationship of actual costs  
13 and the cap cost. On average, the cap is approximately 27% higher than Qwest's actual  
14 costs. In order to do a meaningful comparison, Exhibit 3 illustrates Option 1 projects  
15 performed by Qwest that were very similar to the work done on Option 2 projects. Many  
16 Option 1 projects could not be included in the comparison because they included  
17 construction work outside of the subdivision, which includes work not done by Option 2  
18 contractors on an Option 2 LDA project.

19 **Q. PLEASE PROVIDE MORE DETAILED EXAMPLES OF THE TYPES OF**  
20 **PROBLEMS THAT QWEST EXPERIENCES WHEN THE OPTION 2 LDA**  
21 **PROCESS IS NOT FOLLOWED.**

22 A. Some Option 2 contractors frequently begin the job prior to getting the engineering  
23 approved. This may lead to the inappropriate size of cable being placed before sizing  
24 assessments are completed. Option 2 contractors have also placed facilities and the  
25 developer has closed the trenches prior to the time when Qwest is given the opportunity

1 to conduct visual inspections – this step is covered in the Placing and Splicing  
2 specifications at bullet point #5. “Trenches can’t be backfilled until inspection by a  
3 Qwest employee has been completed”. Closed trenches prevent Qwest from being able to  
4 inspect the facilities for depth and sheath damage, and valid verification of bonding is  
5 limited.

6 **Q. ISN’T THE OPTION 2 CONTRACTOR HELD LIABLE FOR ANY CABLE OR**  
7 **SHEATH DAMAGE DURING THE CONSTRUCTION PHASE OF THE JOB?**

8 A. During the construction phase, the Option 2 contractor is held responsible for any damage  
9 caused to the cable. However, if the trench is backfilled prior to Qwest being given the  
10 opportunity to actually view the cable in the trench, damage could have occurred and  
11 Qwest would not discover the problem until later. At that point, it is difficult, if not  
12 impossible, to hold the Option 2 contractor responsible.

13 **Q. WHAT STEPS DOES QWEST TAKE TO VERIFY FACILITIES ONCE THE**  
14 **TRENCH HAS BEEN BACKFILLED?**

15 A. Due to the labor intensive nature of either retrenching or entirely digging up newly  
16 placed facilities, Qwest will ask the Option 2 contractor to pothole<sup>3</sup> the cable at different  
17 locations along the route in order to view placement depth and cable type. However, this  
18 is about all the inspector can see when exposing cable in this manner. When potholing is  
19 conducted, a very short piece of the cable is exposed, and consequently, a very small  
20 piece of the overall facility can be viewed by the Qwest inspector. The only way that

---

<sup>3</sup> Potholing in this context is the process of digging into a recently backfilled trench in order to expose the newly placed cable to verify placement depth and number of cables that reside within the trench.

1 sheath damage could be detected by potholing was if one were lucky enough to expose  
2 the exact location where the damage occurred.

3 **Q. WOULDN'T CABLE/SHEATH DAMAGE SUCH AS THAT DESCRIBED**  
4 **ABOVE BE IDENTIFIED DURING THE CONFORMANCE TESTING STEP?**

5 A. Not always. Damage to a cable's sheath initially will not give those conducting the  
6 conformance testing any indication of trouble. It will be later in the cable's life when  
7 water or other terrestrial elements will begin breaking down the integrity of the cable  
8 resulting in service affecting trouble for those end users served by that cable.

9 **Q. WHY IS THIS AN ISSUE FOR QWEST? DOESN'T QWEST JUST GO BACK**  
10 **TO THE OPTION 2 CONTRACTOR TO RESOLVE THE ISSUE AT SOME**  
11 **POINT IN THE FUTURE?**

12 A. No. Once Qwest has accepted the job, the Option 2 contractor is off to their next  
13 opportunity and Qwest is left holding the bag if problems went undetected during the  
14 conformance testing and become evident at a later date. In contrast, Qwest can go back to  
15 an Option 1 contractor for a period of three years after acceptance and have them pay for  
16 any additional work that may have resulted from shoddy workmanship or cable damage  
17 which resulted from their placement activity in a previous build.

18 **Q. BRIEFLY DESCRIBE UPSIZING AND WHY IT IS NECESSARY WHEN**  
19 **BUILDING OUT A DEVELOPMENT WITH TELECOMMUNICATION**  
20 **FACILITIES.**

21 A. The term "upsizing" simply considers the placement of a larger count cable ( e.g. 600 pair  
22 instead of 300 pair) in order to meet the future needs, either for future phases within the

1 development or for future growth outside the development. For illustrative purposes,  
2 consider the following. A development with 3 phases is being built with phase I being on  
3 the eastern end of the development, phase II in the middle and phase III on the western  
4 end of the development. The new facility build comes from the eastern end and as part of  
5 the build-out of phase I, a larger distribution cable is placed in the direction of phases II  
6 and III so that when these phases begin, the appropriate amount of distribution facilities  
7 will already be near and additional distribution facilities can be extended into the other  
8 phases from the point where the upsized cable stops. Building in this manner ensures that  
9 the ground is only disturbed (i.e., trenched and backfilled) once in phase I in order to  
10 provide services in later phases. It is also more cost-effective to place a larger size cable  
11 at the onset and avoid having to reinforce a smaller cable at a later time.

12 **Q. SINCE THE DEVELOPER MUST PROVIDE THE TRENCHES WITHIN THE**  
13 **SUBDIVISION UNDER BOTH OPTIONS, WHAT CAN QWEST DO TO HELP**  
14 **MINIMIZE THE COST OF TRENCHING TO THE DEVELOPER?**

15 A. When it performs an Option 1 job, Qwest is almost always able to work together with the  
16 power utility in a common trench. This way the developer does not have to dig two  
17 different trenches. However, by working with the power utility in a joint trench, it creates  
18 some different design and construction specifications. For example, the engineering for  
19 the telecommunications facilities cannot be completed until the power facilities have also  
20 been engineered. Telecommunication facilities placed in a joint trench with power  
21 facilities must be properly bonded to the power facilities. There is also the issue of  
22 having to partially backfill before telecommunication facilities can be placed in order to

1 ensure physical separation of the differing types of outside plant materials. Also, it  
2 allows for the opportunity of locating the above ground structures close together. This  
3 way the service wire trench can also be shared and home owners usually appreciate  
4 having the above ground structures of the different utilities close together instead of  
5 spread out across the front property line.

6 In contrast, in an Option 2 scenario, Qwest does not control the coordination between the  
7 contractor and the power company but contends that coordination, if done correctly,  
8 would reduce the overall cost to the Option 2 contractor. One of the intractable problems  
9 with Option 2 has been the developers' use of the option as a last-minute placement  
10 method when the developer has not planned ahead and allowed coordinated placement.

11 Although a self-help option can and should allow greater scheduling flexibility, that  
12 flexibility must have reasonable limits as spelled out in the tariff (e.g., it should not cause  
13 Qwest to lose the opportunity to view job prints and fully inspect facilities). But the  
14 timelines in the LDA tariff that should apply both to Option 1 and Option 2 are  
15 essentially universally ignored by developers when Option 2 is chosen.

16 **Q. IN THE INITIAL BRIEFING IN THIS PROCEEDING THERE WERE SOME**  
17 **CLAIMS BY OTHER PARTIES THAT OPTION 2 WAS ESSENTIAL TO**  
18 **MINIMIZE HELD ORDERS. IS THIS TRUE?**

19 A. No. As pointed out in Laura Scholl's testimony, there is not a held order problem in  
20 Utah. Even if there was a held order problem, in the past the Utah Public Service  
21 Commission has not tried to micro-manage the company but instead has put into place  
22 adequate safeguards such as the held order standards discussed in Ms. Scholl's testimony.

1 My review of held orders in Utah shows that there has been some trouble with held orders  
2 in Option 2 LDAs. Even recently, Qwest has been taking held orders on a number of jobs  
3 due to problems with Option 2. Exhibit 5 contains four emails – by three different Qwest  
4 engineers, identifying a number of developments where this concern was brought to light.  
5 These issues are not isolated to job completion - just getting the work to Qwest for  
6 approval seem to now be an issue with Option 2 contractors which is very troubling to  
7 Qwest – as it should be to this Commission.

8 **Q. CONSIDERING ALL OF THE ONGOING PROBLEMS WITH THE OPTION 2**  
9 **LDA, DOES QWEST BELIEVE IT IS ACCEPTABLE TO CONTINUE WITH**  
10 **THIS OPTION IN THE TARIFF?**

11 A. No. Because of the ongoing problems and battles with this tariff, Qwest believes that  
12 Option 2 should be removed from the tariff. Qwest needs to be able to place its facilities  
13 in the most efficient manner possible. Also, because these facilities serve Qwest's  
14 customers, Qwest needs to have control of the facilities throughout the process in order to  
15 mitigate the risk of taking held orders within the development. In today's environment, if  
16 end user customers are unhappy with Qwest's service they can choose to get service from  
17 someone else. Exhibit 4 is a draft tariff that reflects the terms and conditions upon which  
18 Qwest is willing to provide facilities in single family residential detached dwelling  
19 subdivisions on a going forward basis. This tariff is provided for illustrative purposes,  
20 and Qwest remains willing to work with other parties to resolve the problems associated  
21 with the LDA tariff, to arrive at final tariff language. In Qwest's view, however, Option 2  
22 has shown to be unworkable and it should be removed from the tariff.

**V. CONCLUSION**

1  
2 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

3 A. Plainly stated, the Option 2 LDA is riddled with problems and has been since its creation  
4 in 1997, even though Qwest has expended an inordinate amount of effort to make it work.  
5 Some Option 2 contractors continue to insist that they be paid the entire per-lot cap  
6 amount on every project even though such a payment would be far more than the job cost  
7 to place these facilities if Qwest were to place them under Option 1. Some contractors  
8 consistently refuse to follow the LDA processes identified in Exhibit 1, while still others  
9 work with the developer and establish time frames that do not comply with the tariff  
10 requirements and do not coincide with the projected move in dates. The continual battles  
11 with the Option 2 contractors and the additional engineering and administrative costs that  
12 are incurred by Qwest make this an unworkable option. It may be convenient for  
13 developers looking for a free project manager, but does nothing to enhance the end user  
14 customer's experience when they move into a new home and cannot receive services,  
15 because of an Option 2 contractor's inability to organize their work in a manner  
16 conducive to the end user's needs.

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

18 A. Yes it does.