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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of QWEST	:	Docket No. 03-049-62
CORPORATION'S Land Development	:	
Agreements (LDA) Tariff Provisions	:	OPPOSITION TO MOTION
	:	TO STRIKE SURREPLY OF QWEST
	:	CORPORATION ON COST
	:	POLICY ISSUES

Qwest Corporation ("Qwest") hereby responds to the Motion to Strike Surreply; Response to Surreply of Qwest Corporation on Cost Policy Issues ("Motion") filed by SBS Telecommunications, Inc. ("SBS") and Silver Creek Communications, Inc. ("Silver Creek") on May 11, 2004.

The Motion is frivolous and should be denied. The only basis the Motion gives for striking Qwest's surreply is that "briefing on cost policy issues was completed on or about March 26, 2004, when all 'reply' memoranda were filed . . . and none of the parties . . . requested

leave to file briefs beyond the scope of the Commission’s Scheduling Order.”¹ The Motion then disputes, without citation to the transcript, Qwest’s position that surreplies (if necessary) were contemplated by the parties in the January 15, 2004 scheduling conference. Qwest attaches hereto as Exhibit 1 the relevant portions of the transcript and will let the transcript speak for itself. In any event, regardless of whether surreplies were appropriate without leave or whether, as the Motion argues, “it was . . . contemplated . . . that if further briefing were to be permitted, leave of the Commission must first be obtained,”² Qwest did seek leave of the Commission to file its surreply.

In the first footnote of its surreply, Qwest stated: “To the extent Qwest is required to seek leave to file a surreply, Qwest hereby respectfully seeks such leave.”³ This is the exact method by which SBS and Silver Creek sought permission in the Motion to respond to Qwest’s surreply.⁴ Thus, it is difficult to see what SBS and Silver Creek are complaining about. The sole basis for their Motion—that Qwest did not seek leave to file a surreply—is facially untrue; and in seeking leave, Qwest took the very same steps SBS and Silver Creek took to seek leave to respond to Qwest’s surreply. The Motion lacks any basis and should be denied.

The submission of a proposed tariff by SBS and Silver Creek—ostensibly in response to Qwest’s surreply—is just as baseless as their Motion. SBS and Silver Creek need not fear that Qwest’s illustrative tariff from Docket No. 02-049-62 will “somehow slip in the side door and be

¹ See Motion at 1. It is ironic that SBS and Silver Creek complain about filings “beyond the scope of the Commission’s Scheduling Order,” when it was precisely such a filing by them (and the Committee for Consumer Services) that necessitated Qwest’s surreply.

² See *id.* at 2.

³ See Qwest’s Surreply at 1-2, n. 1.

⁴ See Motion at 2, n. 1 (“[T]o the extent that SBS and Silver Creek are required to seek leave to file a response to Qwest’s Surreply, SBS and Silver Creek hereby respectfully request such leave be granted.”).

considered by the Commission” in addressing cost policy.⁵ The cost-policy issue is not dependent upon current, proposed, or “illustrative” tariff language, but is rather a Commission policy assessment on “[w]hether Qwest can or should be required to pay more than its costs would be under Option 1 of the LDA tariff for facilities placed under Option 2 of the tariff”⁶

Moreover, Qwest does not need a “side door” to put proposed tariff language before the Commission. It can simply make a tariff filing pursuant to Utah Admin. Code R746-405, and the Commission can determine whether the proposed change is in accordance with the public interest. SBS and Silver Creek, on the other hand, cannot make such a filing.⁷ They have no right to impose upon Qwest the terms under which it will provide service. Rather, if SBS and Silver Creek seek to influence the contents of Qwest’s tariff they need to demonstrate that the tariff (or tariff proposal) is unjust or unreasonable, or otherwise not in accordance with the law.⁸ If Qwest submits new tariff language for Option 2, SBS and Silver Creek can comment on that language in this docket. Perhaps they can even go so far as to argue that certain language they would propose is required in the public (as opposed to the Option 2 contractor) interest. What

⁵ See *id.* at 3.

⁶ See Scheduling Order, Docket No. 03-049-62 (January 23, 2004). SBS and Silver Creek have consistently failed to grasp this point, as is evidenced by their attempts to inappropriately enlarge the scope of briefing via reply brief. Qwest’s illustrative tariff, just like the arguments raised in the SBS/Silver Creek reply, has nothing to do with the Commission’s decision on what public policy demands with regard to Option 2 costs.

⁷ See, e.g., Utah Admin. Code R746-405-2.D.3.g and D.7 (containing no provision for tariff filings by parties other than the utility, but noting, for example, that “[t]he filing of proposed tariff sheets shall of itself constitute the representation of the filing utility that it, in good faith, believes the proposed sheets or revised sheets to be consistent with applicable statutes, rules and orders” and that “[a]t the time of making a tariff filing with the Commission, the utility shall furnish a copy of the advice letter”) (emphasis added).

⁸ See, e.g., Utah Code Ann. §§ 54-3-7; 54-4-4; 54-7-9; Utah Admin. Code R746-405.B (“The Commission at any time may direct utilities to make revisions or filings of their tariffs or a part thereof to bring them into compliance.”) (emphasis added).

SBS and Silver Creek cannot do, however, is simply “request[] that if and when the Commission considers any alternative ‘illustrative’ tariffs as related to the issues presented in this Docket, that the draft provided by SBS herein [be] given equal consideration.”⁹ If the Commission “cannot . . . take into [its] hands the management of utility properties or unreasonably interfere with the right of management,”¹⁰ parties such as SBS and Silver Creek certainly cannot do so. SBS and Silver Creek need to put forward a compelling reason why the public interest demands that their draft tariff be “given equal consideration” before the Commission should consider it at all. The Motion makes no attempt to argue such a compelling reason.

In addition to denying the Motion, therefore, the Commission should also disregard the draft tariff attached to the Motion.

RESPECTFULLY SUBMITTED: May 26, 2004.

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⁹ See Motion at 3.

¹⁰ See *Logan City v. Public Utilities Comm’n*, 296 P. 1006, 1008 (Utah 1931).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **OPPOSITION TO MOTION TO STRIKE SURREPLY OF QWEST CORPORATION ON COST POLICY ISSUES** was served upon the following by electronic mail, on May 26, 2004:

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