

Witness CCS - 1  
Exhibit CCS - 1  
Exhibit CCS - 2

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

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REBUTTAL TESTIMONY OF

OLIWIA SMITH

ON BEHALF OF

THE UTAH COMMITTEE OF CONSUMER SERVICES

28 JANUARY 2005

PUBLIC VERSION

1 **Introduction**

2

3 **Q. Please state your name, business address and your current position**

4 A. My name is Oliwia Smith. My business address is 160 East 300 South,  
5 Heber M Wells Building, Salt Lake City, Utah. I am employed as a Utility  
6 Analyst for the Utah Committee of Consumer Services (Committee).

7

8 **Q. Have you previously presented testimony before this Commission?**

9 A. No.

10

11 **Q. What is your educational and professional background?**

12 A. I received a BA in Economics and was awarded an Honors Degree in  
13 August of 2000 from Westminster College in Salt Lake City. I also  
14 completed a second major in Philosophy and substantial coursework in  
15 Mathematics. Subsequently, I was accepted into the PhD program in  
16 Economics at the University of Utah and completed 2 years of doctoral  
17 studies. Currently I am a candidate for a Master's Degree in Economics at  
18 the University of Utah.

19

20 I have been employed as a Utility Analyst for the Committee since  
21 September of 2002. During that time, I have been involved in many  
22 telecommunications related proceedings through research and analysis.  
23 These cases include Qwest's Petitions for Pricing Flexibility, Dockets 01-  
24 2328-01 and 02-049-82, as well as 03-049-49 and 03-049-50; Qwest's Sale  
25 of Dex, Docket 02-049-76; Uintah Basin EAS, Docket 02-053-02; and all  
26 other proceedings in which the Committee was actively participating during  
27 that time.

28

29 **Q. What is the purpose of your testimony?**

30 A. My testimony is intended to address the role of Option 2 of Qwest  
31 Corporation's (Qwest or the Company) Land Development Agreement Tariff

1 (LDA Tariff or Tariff) in promoting public interest. Specifically, I will discuss  
2 its importance in providing of telecommunications services to residential  
3 customers. My goal in this testimony is to describe the customer benefit  
4 derived from the existence of Option 2 within the LDA Tariff.  
5

6 **Q. What is your understanding of the reason why Option 2 was**  
7 **introduced into the LDA Tariff?**

8 A. Although I was not involved in any of the early LDA Tariff proceedings,  
9 based on my research and assessment of the procedural history, it is my  
10 understanding that Option 2 was introduced in January of 1997 with the  
11 intent of giving developers an alternative to having Qwest place  
12 telecommunications distribution facilities in new areas of residential housing  
13 development.  
14

15 According to Qwest, Option 2 was afforded to developers in an effort to  
16 resolve ongoing concerns over high up-front costs that stemmed from  
17 previous construction and reimbursement arrangements. Thus, the new  
18 LDA Tariff introduced an option allowing developers to save money in  
19 specific areas by utilizing other resources in deployment of  
20 telecommunications facilities.  
21

22 **Q. What were the consequences of Option 2 implementation?**

23 A. The new LDA tariff did what it was supposed to do – it gave developers a  
24 choice between Qwest (Option 1) and an Option 2 contractor to install  
25 telecommunications facilities, so long as Qwest’s construction standards  
26 were followed.  
27

28 In that regard, as pointed out by Ms Scholl in her Direct Testimony, “a new  
29 ‘Option 2 contractor’ industry sprang-up seeking business opportunities by  
30 designing and placing facilities directly for developers under Option 2.”  
31 Although Ms Scholl refers to this phenomenon as an “unintended

1 consequence” it should not be surprising that competition developed in that  
2 arena. As unconstrained developers are able to seek and choose  
3 resources other than Qwest to complete their projects, suppliers will  
4 inevitably respond to such demand.  
5

6 **Q. Have developers chosen Option 2 simply to save money?**

7 A. Importantly, developers have chosen to use Option 2 contractors’ services  
8 to simply avoid delays in placing facilities, not only to save money as  
9 suggested by Qwest. In fact, according to testimony provided by Mr Allen on  
10 behalf of Clear Wave Communications LC, East Wind Enterprises LLC and  
11 ProHill Inc, “developers do not and never have, up to this time, made their  
12 decisions between Option 1 and Option 2 based on cost.”  
13

14 **Q. How does Option 2 serve the public interest?**

15 A. I believe that Option 2 provides a valuable alternative to developers,  
16 because it gives them resource alternatives. In that respect, Option 2  
17 promotes timely construction of telecommunications facilities, and thus  
18 contributes to a more efficient provision of telecommunications services to  
19 Utah’s residential customers.  
20

21 **Q. Please explain further.**

22 A. Before the current LDA tariff was implemented, Qwest (then US West) was  
23 having a hard time fulfilling its service order obligations. In the Company’s  
24 own words “each service order is an opportunity for a held order because  
25 even rearrangements or moves and changes can result in a demand for  
26 facilities which do not yet exist.”<sup>1</sup> A held order was defined by the  
27 Commission in its previous decisions as “a customer request for service that

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<sup>1</sup> In the Matter of the Investigation of Service Quality of US West Communications Inc in the State of Utah, Docket No 97-049-06, Brief of US West Communications, 7 May 1997, p 2.

1 cannot be fulfilled by the requested due date because the Company does  
2 not have the necessary facilities in place.”<sup>2</sup>

3  
4 As US West experienced an increased growth in demand for access lines,  
5 particularly between the years 1995 and 1997, it also began to face serious  
6 difficulties with installing the necessary telecommunications facilities, and  
7 thus with timely provision of telecommunications services to its customers.  
8 Notably, however, the Company’s held order record improved significantly  
9 by mid-year 1997 and the Commission recognized that improvement in  
10 Docket 97-049-06<sup>3</sup>.

11  
12 **Q. What were the circumstances surrounding the improvement in US**  
13 **West’s held order record?**

14 A. Although the Company undoubtedly made a concerted effort towards  
15 reducing the number of held orders during that time, it is nevertheless  
16 difficult to dismiss the coincidence of that improvement with the introduction  
17 of Option 2 in the LDA Tariff. Even though the record does not indicate that  
18 the new LDA Tariff was intended as a solution to US West’s held order  
19 problem at the time, Option 2 nevertheless contributed to alleviating the  
20 delays in construction of facilities, and thus to reducing the number of held  
21 orders.

22  
23 **Q. Please explain further how Option 2 helps alleviate held order**  
24 **problems.**

25 A. The simple answer is that the industry of Option 2 contractors provided a  
26 resource to developers *when* they needed it. By introducing competition in  
27 the facilities construction market, the held order problem associated with  
28 lack of necessary infrastructure was effectively eliminated. Therefore, I  
29 believe that Option 2 continues to provide alternative resources to

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<sup>2</sup> Docket No 97-049-06, Report and Order, 30 July 1997, p 1, Footnote 1.

<sup>3</sup> Ibid p 5.

1 developers, and thus contributes to the more efficient provision of  
2 telecommunications services to the residential customers.

3  
4 **Q. How do you respond to Qwest’s testimony that there is no evidence  
5 that Option 2 improves held order results?**

6 A. To the extent that Qwest does not account for such data in its records<sup>4</sup>,  
7 there may be no evidence. We have been unable to obtain relevant held  
8 order figures associated with delays in the placement of necessary  
9 telecommunications facilities. However, while it is impossible to assess  
10 precisely how many developers and residential customers have actually  
11 benefited from Option 2 contractors’ services, it remains reasonable to  
12 conclude that the overall impact has been beneficial.

13  
14 **Q. How does Qwest describe its held-order record?**

15 A. Qwest describes its Utah held order record as “consistently excellent” citing  
16 general statistics<sup>5</sup> for the period 2002-2004 to prove it.

17  
18 **Q. What is the significance of Option 2 in that aspect?**

19 Although I am not trying to underestimate the Company’s efforts, the fact  
20 that Qwest is now meeting its service order obligations should not be a  
21 surprise considering that Option 2 contractors were responsible for placing  
22 facilities in approximately 56%<sup>6</sup> of new housing developments in the last  
23 three years. In simple terms, Option 2 contractors are meeting a large part  
24 of the demand.

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<sup>4</sup> Qwest’s Response to the Division of Public Utilities’ First Set of Data Requests, Request No 16, 29 November 2004, attached hereto as Exhibit CCS-1.

<sup>5</sup> Direct Testimony of Laura Scholl on behalf of Qwest, 4 October 2004, pp 5-6.

<sup>6</sup> Qwest’s Response to the Division of Public Utilities’ Third Set of Data request, Request No 2, Confidential Attachment A, 20 January 2005. The percentage being referred to in this testimony represents an aggregated number. Confidential Attachment A is not supplied here due to its length however Confidential Exhibit CCS-2 attached hereto illustrates the calculation.

1 The presence of a number of suppliers in any market can be expected to  
2 have a positive effect on meeting the demands of that market. The logical  
3 conclusion here is that the existence of Option 2 contractors aids in meeting  
4 the demand for telecommunications facilities because it introduces more  
5 choices for developers.

6  
7 **Q. What about the claim that Option 2 disputes are causing delays in  
8 providing telecommunications services to customers?**

9 A. The current LDA tariff provides parties with the necessary tools to make the  
10 process a successful one. The disputes referred to by Qwest and other  
11 parties to this docket pertain to reimbursement of costs associated with  
12 deployment of the telecommunications facilities. The parties' collective  
13 unwillingness to follow the process outlined in the Tariff produces the  
14 ongoing disputes and these are being addressed in a separate forum. To  
15 the extent that timely provision of facilities ensures supply of dial tone,  
16 Option 2 of the LDA Tariff remains an important alternative to developers  
17 and thus to residential customers. Disputes over financial arrangements  
18 should have no bearing upon the determination of the merits of Option 2.

19  
20 **Q. Does the Committee have a position regarding the financial  
21 arrangements pertaining to Option 2 of the LDA tariff?**

22 A. Although the Committee's sole interest in this proceeding is to ensure that  
23 telecommunications facilities are built expeditiously to satisfy customer  
24 demand for telephone service, I recommend that the Commission direct the  
25 parties to its guidelines in previous orders, and compel them to obey by the  
26 language of the Tariff to avoid future challenges regarding the  
27 reimbursement process.

28  
29 **Q. Have parties successfully completed any projects by complying with  
30 the LDA tariff?**

1 A. According to the Rebuttal Testimony of Stephan G Allen on behalf of Clear  
2 Wave Communications LC, East Wind Enterprises LLC and ProHill Inc,  
3 "(...) when everyone adheres to the rules, the process works very  
4 smoothly. The project designs are approved in a timely manner. The  
5 material is acquired and placed in a timely manner. The trench  
6 inspections take place within one or two days (with few exceptions.)  
7 The splicing moves along nicely and the conformance testing is  
8 normally done in a timely manner."  
9

10 Further, all parties, including Qwest, have proposed changes to the LDA  
11 Tariff, without necessarily eliminating Option 2. Thus, I would like to  
12 emphasize once again that the disputes over reimbursement practices  
13 should not be a reason to eliminate this alternative.  
14

15 **Q. Are there any other recommendations you would like to provide with  
16 regards to the payment issues?**

17 A. Although the Committee believes that the prior exchange of detailed and  
18 verifiable cost estimates, as contemplated in the Tariff, would resolve the  
19 fundamental differences between Qwest and Option 2 contractors, it really  
20 has no preference over the financial arrangements that parties choose to  
21 agree upon.  
22

23 **Q. Do you have anything else to add in support of the continuation of  
24 Option 2 in Qwest's LDA Tariff?**

25 A. Yes. Option 2 of the LDA Tariff benefits residential customers by providing  
26 developers with the opportunity to utilize Option 2 contractors' services if  
27 Qwest (Option 1) is unable or unwilling to do the work itself in a timely  
28 manner. The fact that Option 2 contractors continue to operate in the market  
29 has proven their ability to meet the demands of developers.  
30

31 The simple fact is that, whether unintended or not, an industry of contractors  
32 developed because of the existence of Option 2 within Qwest's LDA Tariff.  
33 This industry now provides competitive services in the area of



1 telecommunications facilities construction, and thus aids in the more  
2 expeditious provision of telephone service to customers. There is no  
3 evidence to the contrary. Ultimately, the elimination of Option 2 could leave  
4 developers with no choices, and Qwest with service orders that it may be  
5 unable to satisfy.

6

7 **Q. Does this conclude your testimony?**

8 A. Yes, it does.

Utah  
Docket No. 03-049-62  
DPU 01-016

INTERVENOR: Division of Public Utilities

REQUEST NO: 016

In the past year how many held orders have there been with respect to facility placement in new development?

RESPONSE:

Qwest does not track held orders summarized by this level of detail (i.e. held orders coded to facility placement in new development.) To provide this information would require a very time consuming special study and therefore Qwest objects to the request as unduly burdensome. As referenced in Laura Scholl's direct testimony, Qwest did undertake a subset of such a study by looking at the end-of-the-month held order data for the April 2004 to July 2004 time frame in areas of Utah where Option 2 contractors are not operating.

Respondent: Jim Farr  
LaMar Dahl  
Roy Rietz

Confidential Exhibit CCS-2  
Subject to Protective Order issued in Docket No 03-049-62  
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CONTAINS INFORMATION SUBJECT TO PROTECTIVE ORDER ISSUED IN  
DOCKET 03-049-62