

Kevin M. McDonough, 5109
Nancy A. Mismash, 6615
Tesch Graham P.C.
PO Box 3390
314 Main Street, Suite 201
Park City, Utah 84060-3390
Telephone (435) 649-0077
Facsimile (435) 649-2561

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

SBS TELECOMMUNICAITONS, INC.
and SILVER CREEK
COMMUNICATONS, INC.,
Complainants,

v.

QWEST CORPORATION,
Respondent.

**RESPONSE TO QWEST'S
OBJECTION TO COMPLAINANTS'
OPPOSITION TO DPU BRIEF; AND
REQUEST FOR DECISION**

Docket No. 03-049-62

The above-captioned Complainants, by and through their legal counsel of record, Tesch Graham P.C., submit this Response to Qwest's Objection to Complainants' Opposition to DPU Brief; and further respectfully request the Commission to enter a final decision in the above-referenced matter.

As the Commission is aware, in its Report and Order on Request for Review and Reconsideration ("Reconsideration Order"), the Commission gave the parties until September 26, 2003 to submit comments on the brief and accompanying Affidavit of Peggy Egbert filed by the Division of Public Utilities on January 22, 2003. ("Division Brief.")

On the morning of September 25, 2003, Complainants' attorney, Kevin M. McDonough, engaged in a telephone conversation with Attorney Patricia Schmid from the Division of Public Utilities, requesting an extension of time in which to respond to the Division's Brief. Additionally, Mr. McDonough had a telephone conversation the same morning with Ms. Julie Orchard, of the Public Service Commission, confirming his prior conversation with Ms. Schmid. Moreover, McDonough confirmed the telephone conversations in writing by letter to Ms. Orchard dated September 25, 2003. That letter was faxed to Ms. Orchard on the same date. (See Exhibit "A" hereto.) Further, attorney Schmid and attorney David Elmont (who is now objecting to Complainants' Opposition Brief) were copied with the September 25th letter.¹

Qwest objects to the entry on the record of Complainants' Opposition Brief on the grounds that, inter alia, Complainants should have moved the Commission for an extension of time because "the specified period ha[d] expired." Contrary to Qwest's assertion, because the necessary approval was granted by the Department of Public Utilities and the Commission prior to the due date, it was not necessary to file a motion. Qwest should have been well aware of this fact inasmuch as it was copied with the letter to Ms. Julie Orchard. Accordingly, Complainants' Opposition Memorandum was timely submitted; and should be considered by the Commission.

¹ Subsequent thereto, co-counsel for Complainants, Nancy Mismash, secured an additional extension of time from the Commission. This extension of time was granted prior to the due date of the brief.

CONCLUSION

The above-captioned matter has now been fully briefed, and Complainants respectfully request that all briefs be considered, and the Commission enter a final Report and Order.

DATED this _____ day of October, 2003.

Respectfully submitted,

Tesch Graham

Kevin M. McDonough
Attorney for SBS and Silver Creek

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of October, 2003, I caused to be mailed in the U.S. Mail, postage prepaid, a true and correct copy of the foregoing Response to Qwest's Objection to Complaints' Opposition to DPU Brief and Request for Decision to the following:

Mr. David Elmont
Stoel Rives LLP
201 South Main #1100
Salt Lake City, UT 84111

Patricia Schmid
Assistant Attorney General
160 East 300 South #500
Heber Wells Building
Salt Lake City, Utah 84111
