
BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF QWEST
CORPORATION'S LAND DEVELOPMENT
AGREEMENTS (LDA) TARIFF
PROVISIONS

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Docket No. 03-049-62

SURREBUTTAL TESTIMONY

OF

STEPHAN G. ALLEN

FOR

**CLEAR WAVE COMMUNICATIONS, L.C.,
EAST WIND ENTERPRISES, LLC,
AND**

**PROHILL, INC., dba
MERIDIAN COMMUNICATIONS OF UTAH**

March 22, 2005

1 **Q: Could you please state your name, business and business address?**

2 A: My name is Stephan G. Allen. I am a Project Management Consultant engaged by Clear
3 Wave Communications, L.C., East Wind Enterprises, LLC, and Prohill, Inc. doing
4 business as Meridian Communications of Utah. The above-named companies are
5 Option 2 Contractors and have engaged me to run their telephone projects. My business
6 address is 144 W. Parrish Lane, #114, Centerville, Utah 84014.

7 **Q: Are you the same Stephan G. Allen who testified previously?**

8 A: Yes.

9 **Q: Much has been presented to the PSC throughout this proceeding. Do you have any**
10 **comments that you feel are important?**

11 A: Yes. Qwest has devoted many words to the concept of not paying for the expedited
12 treatment the developers receive from Option 2 contractors (see Laura Scholl rebuttal
13 page 10 and Dennis Pappas rebuttal page 30). What they are apparently referring to is
14 the fact that Option 2 contractors place facilities in subdivisions in a timely manner or
15 according to the developers' schedule. With few exceptions, these are not expedited
16 schedules as the schedule is based on the power company placement schedule and is
17 usually a few weeks out. The developers didn't use Option 2 to get expedited treatment,
18 but to maintain their schedules. It was based on the historical performance, or lack
19 thereof, of Qwest placing facilities without considering the developers schedule. Qwest

1 also claims that Option 2 contractors provide project management or coordination
2 services that Qwest must pay for through Option 2. It has been my experience that our
3 clients will not allow us to get involved in the coordination or management of their
4 work. To state simply, developers use Option 2 because the history of non-performance
5 by Qwest has given them a reputation in the development industry of delaying projects
6 and being uncooperative.

7 **Q: What does this reputation have to do with the docket before the Commission?**

8 A: The actions and statements made by Qwest are called into question because of the
9 reputation that Qwest has within the development industry. For example, Qwest
10 proposed and implemented the tariff provision in 1997 referred to as Option 2 whereby
11 Qwest set out rules intended to allow developers to design and build the outside plant in
12 the developers' subdivisions. The developers were allowed to hire experts to help with
13 this process if they did not have the expertise in house. Qwest now claims that there
14 was an unintended consequence of this provision, namely that the developers actually
15 use Option 2. This stance gives the appearance of not meaning what Qwest says or
16 does, thereby reminding the developers of how it was dealing with Qwest prior to
17 Option 2. Qwest, as stated, set the rules for Option 2. My clients, who are Option 2
18 contractors, and their client Developers followed the rules. Qwest changed the rules and
19 we, my clients and their clients, changed with the rules. Qwest now implies that all
20 developers and all Option 2 contractors are acting in bad faith. They state that in this

1 *competitive environment* Qwest must be allowed to eliminate Option 2 as it is fatally
2 flawed, or at least Qwest should gain control over it. Qwest already controls Option 2
3 by virtue of the tariff and Qwest's published procedures list. I can only conclude that
4 the reputation they have with developers was earned.

5 **Q: Does Option 2 have an effect on Qwest's ability to compete in this new era?**

6 A: Yes. Apparently about 56% of new subdivisions in the years 2002 to 2004 have had the
7 telephone infrastructure designed and built by Option 2 contractors. That means that in
8 this *competitive environment*, the Option 2 contractors are successfully servicing about
9 56% of the new development projects as Qwest customers without Qwest having to do
10 any marketing. This is not always the case with development projects. There was a
11 project called Traverse Mountain for which I personally campaigned, along with
12 Randall Christenson of Qwest, for the placement of Qwest facilities in the project as a
13 backup for the Fiber To The Home facilities to be placed. The primary reason that the
14 project went with a Qwest competitor is because the company that provided the Fiber
15 To The Home solution is owned and run by the son of one of the development owners
16 and the nephew of another. It was not because of Option 2. It would seem that, under
17 normal circumstances, not only does Option 2 provide a valuable service to developers,
18 but it also provides a valuable service to Qwest. This would be a desired *fatal flaw* in
19 most business plans. Is it just a bad business decision on the part of Qwest to get rid of
20 this marketing tool, or is it the arrogance and pride of a company that wants to totally

1 control the relationship with developers? Option 2 is one of the few protections that
2 exist in the tariff for the benefit of the developer and end user and Qwest wants to
3 eliminate it because it has generated ‘unintended consequences.’

4 **Q: What has been the result of Qwest’s actions over time? What can be done about**
5 **it?**

6 A: Qwest has been trying to eliminate Option 2 ever since the first developer chose to use
7 it, even though Qwest is the very party that proposed it in the first place. There have
8 been numerous actions brought before the Public Service Commission (PSC) as a result
9 of Qwest’s efforts to reinterpret and redefine the tariff as they go along or to eliminate it
10 altogether. What needs to be done at this time is to review the wording of the Land
11 Development Agreement (LDA) contract document itself to make sure it complies with
12 the provision and make necessary revisions. It is also important to further clarify the
13 rules and pricing identified in the tariff to eliminate the constant *unofficial rewriting* of
14 the tariff that has taken place. Previous Commission rulings have implied acts of
15 misconduct or bad faith which points out the need to implement stated, rather than
16 implied, consequences for misconduct. The rebuttal testimony filed by Laura Scholl
17 (page 11) and Dennis Pappas (page 12) indicate that it would be unfair to establish
18 consequences to be administered by either the PSC or Division of Public Utilities
19 (DPU), claiming that all misconduct is on the part of the Option 2 contractors and that
20 these agencies have no jurisdiction over the contractors. Qwest states that it is Qwest’s

1 tariff and it is their right and responsibility to administer the tariff, not that of the
2 regulatory agencies.

3 **Q: What about the pricing issues Qwest has raised?**

4 A: Qwest complains about the exorbitant costs bid by Option 2 contractors for projects and
5 that they should only have to pay what their CPD program says it will cost. We felt that
6 the input of data may not be consistent and that was causing questions to be raised about
7 the costs estimated by Qwest. We reviewed the Qwest estimates on our projects to see
8 if that was the case. The projects are similar in nature throughout the Wasatch Front.
9 Listed here are the results of our review:

10 Gary Weaver, Single Point Of Contact (SPOC) in Ogden, averages 87.4% of our
11 estimate (\$345 per lot)

12 Matt Ivester, SPOC in Salt Lake, averages 82.2% of our estimate (\$330 per lot)

13 Kate Warren, SPOC in Provo, only priced one of our jobs and came up with
14 essentially the same price as we did, but was limited by the cap in the tariff
15 provision therefore that job is being done at the cap. (\$436.13 per lot)

16 Kit Hawkins of First Link stated in a letter that the lowest price he received from Qwest
17 is \$375 per lot and he received as high as \$595 per lot with betterments. Most of his
18 projects are in Utah County where Kate Warren prices the projects. It appears that the
19 input of data to CPD truly has a great deal to do with the outcome. Gary and Matt are
20 both engineers and 'know how to do it.' Kate is not an engineer so she uses the

1 company's guideline sheet when she inputs the data. Apparently when the company
2 guideline is followed, the estimated price from Qwest is more in line with the Option 2
3 contractors' bids. Qwest's average loop investment in 1996 was stated as \$348.90 per
4 lot (Qwest's number). This became the base price for the formula stated in the tariff
5 provision that identifies the cap. Since that time there have been increases in material
6 costs and labor contract costs and yet Qwest is saying that their cost now averages \$345
7 (per Gary Weaver), or \$330 (per Matt Ivester), or \$260.90 (per Richard Buckley). What
8 is their average cost? I submit that they do not even know what their costs are.

9 **Q: Are there any other issues that you wish to comment on?**

10 A: Yes. Qwest uses the tactic of diverting attention from the facts and the issues. As an
11 example, in Laura Scholl's rebuttal of January 28 (page 11), she has a section specific to
12 my testimony wherein she uses my name and then goes on and on about SBS. She and
13 Dennis Pappas state, without addressing facts, that Option 2 is absolutely broken and
14 can not be fixed. Rather than create a good provision going forward, in spite of the
15 efforts of the DPU and Option 2 contractors to negotiate with them, Qwest has
16 approached the Salt Lake Home Builders Association (HBA) with the plan that if they
17 will support Qwest in eliminating Option 2, they can trust Qwest to help them meet their
18 schedules. Qwest will treat them well and expedite the provision of material for the job.
19 This would return the process to where everyone was in 1996 when Option 2 was first
20 created because of delays. Qwest is no more trustworthy now than they were at the

1 beginning of Option 2. The members of the HBA and other developers remember those
2 days and are going with Option 2 in ever increasing numbers to get their projects done
3 in a timely manner. They continue to need the protection and alternative that is offered
4 by Option 2. It is very much in the public interest as this is just one of the factors that
5 has helped stabilize the real estate development industry here while it sky rockets
6 elsewhere. It seems to me that if Qwest embraced Option 2 as a good and just
7 provision, as the PSC has done time and again, it would further improve Qwest's
8 position in this *competitive environment*, continue to provide them with error free plant
9 which lowers their operating costs, and help improve their public relations. Instead
10 Qwest chooses to go against all sound reason and divest themselves of these benefits.
11 Once again, is it just a bad business decision or arrogance and pride?

12 **Q: There was reference in Laura Scholl's rebuttal on page 8 concerning improper**
13 **Petitions to Intervene. Are any of your clients involved?**

14 A: No. It was stated in a letter from Mr. Elmont to Mr. Mooy that one of our clients,
15 McMullin Homes, did not sign the petition. We responded immediately to Mr. Mooy
16 that all of our clients had an authorized company employee sign the petition.

17 **Q: Do you wish to summarize?**

18 A: Yes. It is clear that Option 2 is in the public interest as well as in the best interest of
19 Qwest. 1. The developers have been able to control some of their costs by controlling

1 their schedule thereby keeping the cost to the home buyer stable (possibly the only
2 stable market in the country). 2. The home buyer has been able to just move in to their
3 new home and be confident (when projects are allowed to flow based on the tariff rules)
4 that they can get phone service, unlike when I moved here in 1995. 3. Qwest receives
5 error free plant which lowers their operating costs and greatly enhances their public
6 image. 4. Qwest also benefits by acquiring customers purchasing at least 56% of the
7 new homes without having to market their services. The home buyer does not know
8 who built the infrastructure, they just assume that Qwest did since it is their plant. 5.
9 Qwest looks great in the eyes of the consumer. It makes absolutely no sense to
10 eliminate a provision that has such far reaching benefits. However, I do agree that the
11 tariff should be restated to eliminate or reduce the actions brought because of
12 compensation issues.

13 **Q: Does this conclude your testimony?**

14 A: Yes it does.