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SBS Telecommunications, Inc.

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**IN THE UTAH SUPREME COURT**

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SBS TELECOMMUNICATIONS, INC., a  
Utah corporation,

Petitioner,

vs.

PUBLIC SERVICE COMMISSION OF  
UTAH,

Respondent.

**DOCKETING STATEMENT**

Appeal No. 20050692

Agency Decision: Public Service  
Commission of Utah, Docket No. 04-049-  
06

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Pursuant to Rule 9, Utah Rules of Appellate Procedure, Petitioner, SBS  
Telecommunications, Inc. (“SBS”) submits this docketing statement:

1. **Nature of the proceedings.**

This petition is from a final Order of the Public Service Commission of Utah.

2. **Jurisdiction.**

This Court has jurisdiction pursuant to Utah Code Ann. §78-2-2 (3)(e)(i).

3. **Relevant dates.**

- a. On July 29, 2005, the Public Service Commission of Utah issued a final Order  
from which this Petition for Review is taken. (The Public Service

Commission of Utah issued a Report and Order on June 10, 2005; On July 11, 2005, SBS sought review of that Order pursuant to Sections 54-7-15 and 63-46b-12 of the Utah Code; On July 29, 2005, the Public Service Commission of Utah issued its Order on Petition for Review, therein denying a hearing, review or reconsideration of its June 10, 2005 Report and Order.)

- b. On August 16, 2005, SBS filed a Petition for Review, seeking review by the Utah Supreme Court.
4. **Rule 54 (b).**
- This petition is not from an Order in a multiple-party or a multiple-claim case in which the judgment has been certified as a final judgment by the Public Service Commission of Utah and/or Rule 54 (b), Utah Rules of Civil Procedure.

5. **Issues on review.**

Petitioner intends to assert the following issues on review:

- a. **Issue:** Did the Public Service Commission of Utah commit reversible error by issuing an Order beyond the scope of its jurisdiction?

**Standard of review:** This issue presents a question of law which is reviewed for correctness.

**Determinative law:** Midvale City Corp. v. Haltom, 73 P.3d 334 (Utah 2003); I.M.L. v. State, 61 P. 3d 1038 (Utah 2003).

- b. **Issue:** Did the Public Service Commission of Utah commit reversible error by failing to recognize Petitioner’s legally binding contracts in force and effect with its client developers?

**Standard of review:** An agencies legal conclusions are reviewed for correctness.

**Determinative law:** Taylor v. Department of Commerce, 952 P.2d 1090 (Ut. Ct. App. 1998); Drake v. Industrial Commission, 939 P.2d 177 (Utah 1997).

- c. **Issue:** Did the Public Service Commission of Utah have constitutional authority to act upon the proceedings below?

**Standard of review:** Constitutional challenges to statutes present questions of law which are reviewed for correctness.

**Determinative law:** Midvale City Corp. v. Haltom, 73 P.3d 334 (Utah 2003); I.M.L. v. State, 61 P.3d 1038 (Utah 2003).

- d. **Issue:** Did the Public Service Commission commit reversible error by failing to appropriately apply the clear and unambiguous language of the LDA Tariff to the facts in issue?

**Standard of review:** With regard to this issue, while the general rule is that appellate courts review agency's legal conclusions for correctness, a more deferential review standard of whether the agency applied legal standards to the facts is appropriate when the legal issue is highly fact-specific and when there is sparse Utah precedent applying the legal standard to facts.

**Determinative law:** State v. Pena, 869 P.2d 932, (Utah 1994); American Telephone and Telegraph Company v. Central Office, Inc., 524 U.S. 214 (1998).

6. **Factual summary.**

(1) SBS is a private company engaged in the business of installing telephone distribution facilities in new housing developments for land developers.

(2) Qwest Corporation is a party to the proceedings below; and in or about January of 1997, filed a tariff with the State of Utah, known as “Qwest Corporation’s Exchange and Network Services Tariff for Utah” (“the Tariff” or “LDA Tariff”), therein requiring Qwest to enter into a land development agreement (“LDA”) with developers/builders that addresses the provisioning of telephone distribution facilities within new areas of land development.

(3) The Tariff requires Qwest to offer two options for entering into an LDA. Under the first option (“Option 1”), Qwest performs the engineering, design, placement and splicing of the facilities. These tasks and services are performed for no charge so long as Qwest’s costs do not exceed a specified formula.

(4) Under the second option (“Option 2”), Qwest is obligated to pay the developer/builder to perform the engineering, design, placement and splicing of the facilities for an amount that “does not exceed” a specified formula price.

(5) Under Option 2, Qwest is obligated to purchase the network from the developer/builder. The Tariff provides that “once [Qwest] has accepted the facilities, [Qwest] will reimburse the developer/builder their costs, as identified in the LDA, not to exceed the distribution portion of the average exchange loop investment, times 125%, times the number of lots in the development.”

(6) Option 2 of the Tariff is not viable without the services of SBS and other similarly situated businesses (“Option 2 contractors”). SBS, at all times pertinent to these

proceedings, acted as an Option 2 contractor, consistent with Section 4.4 (C)(2) of the LDA Tariff.

(7) SBS has entered into a contract with each of its client developers/builders whereby SBS acts for and in the stead of the developer/builder in conjunction with the provisioning of telecommunications network facilities, and whereby SBS is to receive the compensation or reimbursement from Qwest for the work provided.

(8) The Tariff provides for a tariff cap on the amount that Qwest must pay the developer (the "Tariff Cap") for the installation of the facilities. More specifically, the LDA portion of the Tariff provides, in part:

All charges to be borne by [Qwest] will be an amount that does not exceed, or is lesser than, the distribution portion of the average exchange loop investment, times 125%, times the number of lots. LDA Tariff, § 4.4(B)(6).

(9) Qwest has taken the position that it is "unnecessary" to reimburse Option 2 Contractors any amount in excess of its (Qwest's) own estimate of what it would cost Qwest to install facilities.

(12) Qwest has taken the position that the Tariff Cap is unreasonable because it exceeds its own estimate of what it would cost Qwest to install facilities.

(13) SBS has taken the position that pursuant to the terms of the LDA Tariff, Qwest is obligated to reimburse SBS the costs that it's (SBS's) client developer/builder has incurred with regard to the installation of telecommunication network facilities.

(14) There are numerous projects undertaken by SBS as an Option 2 contractor upon which Qwest has failed to adhere to the Tariff requirements that Qwest reimburse

the developer/builder their costs. In this regard, SBS sought an Order from the Public Service Commission declaring the developer/builders costs to be reasonable; and requiring Qwest to pay SBS the amounts due and owing consistent with the LDA Tariff then in effect.

(15) In essence, these disputes deal with the parties' disagreements on the amount of reimbursement Qwest is to make for specific installations which have been made in various subdivisions where the builder/developer has elected to use SBS as an Option 2 contractor.

(16) In its Order, the Public Service Commission of Utah has denied SBS its requested relief; and rather, has limited SBS's lawful right to reimbursement.

**(9) Related Appeals.**

There are no related appeals.

**(10) Attachments.**

The following are attached:

- a. The final Order issued on July 29, 2005 issued by the Public Service Commission of Utah.<sup>1</sup>
- b. The Report and Order issued on June 10, 2005 by the Public Service Commission of Utah.<sup>2</sup>
- c. The July 11, 2005 Petition for Review filed by SBS pursuant to Sections 54-7-15 and 63-46b-12 of the Utah Code.<sup>3</sup>
- d. The Petition for Review filed by SBS on August 16, 2005.<sup>4</sup>

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<sup>1</sup> See Exhibit "A" hereto

<sup>2</sup> See Exhibit "B" hereto

<sup>3</sup> See Exhibit "C" hereto

DATED this \_\_\_\_\_ day of September, 2005

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Kevin M. McDonough  
Attorney for Petitioner

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<sup>4</sup> See Exhibit "D" hereto

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing **Docketing Statement**, to be sent by regular U.S Mail, postage prepaid, and transmitted by e-mail on this \_\_\_ day of September, 2005, to:

Public Service Commission of Utah  
160 East 300 South  
PO Box 45585  
Salt Lake City, Utah 84145-0585

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