

049-62 (“LDA Docket”) on the policy question of whether Qwest must pay more for facilities placed under Option 2 of Qwest’s Land Development Agreement (“LDA”) tariff than it would pay for facilities placed under Option 1 of the tariff.

ARGUMENT

The Complaint in this manner seeks a Commission order interpreting and enforcing various provisions of Option 2 of Qwest’s LDA tariff. Many of the issues raised in the Complaint are already the subject of Commission review in the LDA Docket. One key issue among these is the amount Qwest must pay for facilities placed by Option 2 contractors. Until the Commission has addressed that issue, virtually none of the relief Complainants seek can be granted.

The LDA Docket was opened pursuant to the Commission’s July 15, 2003 final order in Docket No. 02-049-66 (“SBS Order”), wherein the Commission responded to Qwest’s desire to fix the Option 2 LDA process that had resulted in repeated disputes over recent years. As identified by the Commission in the SBS Order, among the issues Qwest sought to have resolved were: “the costs Qwest should pay” for Option 2 LDAs¹ The SBS Order states that the consideration of the outstanding LDA issues, including the Option 2 cost issue, are “more appropriate for a more general docket in which all interested parties could participate.”²

There are multiple outstanding Option 2 projects on which Qwest and Option 2 contractors have been unable to reach agreement on payment and enter an LDA. The projects identified in by Complainants in this proceeding represent only a small portion of these projects. New Option 2 projects are very likely to be started—involving multiple Option 2 contractors in addition to Complainants—while this docket and the LDA Docket remain open. As the

¹ SBS Order at 8.

² *Id.*

Commission has already made clear in the SBS Order, a broader, more expansive proceeding wherein all interested parties can participate is the more appropriate forum for resolving the fundamental Option 2 cost policy issue.

The answer to the question of how much Qwest should be required to pay for Option 2 jobs is therefore more appropriately answered in the broader LDA Docket than in this proceeding. It would be inefficient and duplicative for the Commission to hear arguments about Option 2 costs in this matter at the same time it addresses such arguments in the LDA Docket. This docket should be stayed until the Commission has resolved the cost policy question in the LDA Docket.

A stay of this proceeding will not adversely affect Complainants. The LDA Docket is a general docket wherein “all interested parties [can] participate.” Complainants are already parties to that proceeding, and their interests will be addressed therein. The parties have agreed to an expedited briefing schedule of the cost policy issue, and the Commission has indicated its intent to resolve that issue prior to addressing the remaining issues in the LDA Docket. After the policy issue of how much Qwest should have to pay for Option 2 jobs is resolved, the Commission will be able to determine whether Complainants are entitled to any relief on the projects identified in the Complaint.

CONCLUSION

For the foregoing reasons, Qwest respectfully requests a Commission order staying this proceeding pending a decision in the LDA Docket on the policy issue of whether Qwest must pay more for facilities placed under Option 2 of Qwest’s LDA tariff than it would pay for facilities placed under Option 1 of the tariff.

RESPECTFULLY SUBMITTED: February 13, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MOTION FOR STAY** was served upon the following by U.S. mail, postage pre-paid, on February 13, 2004:

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