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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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CLEAR WAVE COMMUNICATIONS, L.C.,  
a Utah limited liability company, EAST WIND  
ENTERPRISES, LLC, a Utah limited liability  
company, PROHILL, INC., a Utah corporation  
dba MERIDIAN COMMUNICATIONS OF  
UTAH, and SBS TELECOMMUNICATIONS,  
INC., a Utah corporation,

Complainants,

vs.

QWEST CORPORATION, a Colorado  
corporation,

Respondent.

**DOCKET NO. 04-049-06**

REQUEST FOR AGENCY ACTION

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SBS Telecommunications, Inc. ("SBS"), by and through its attorneys of record, Mismash & McDonough, LLC, and contingent upon the Public Service Commission of Utah granting leave to intervene, hereby complains against Qwest Corporation ("Qwest") as follows:

## **PARTIES**

1. SBS is a private company engaged in the business of providing developers/builders with telecommunications network development services and facilities for new housing development projects ("Option 2 Contractors"), pursuant to a land development agreement ("LDA") entered into under Option 2 of Section 4.4 (c)(2) of Qwest's Utah Exchange and Network Services Tariff (the "LDA Tariff" or "the Tariff").

2. Complainant East Wind, a Utah limited liability company, is an Option 2 Contractor.

3. Complainant Prohill, Inc., a Utah corporation dba Meridian, is an Option 2 Contractor.

4. Complainant Clear Wave, a Utah limited liability company, is an Option 2 Contractor.

5. Respondent Qwest, a Colorado corporation, is certified by this Commission as a telephone corporation in the State of Utah.

## **JURISDICTION AND VENUE**

6. Jurisdiction over this dispute is properly held by the Utah Public Service Commission (the "Commission") pursuant to Utah Code Ann. §§ 54-1-2.5, 54-4-1, and 63-46b-1, *et seq.*

## GENERAL ALLEGATIONS

### I. BACKGROUND INFORMATION

7. At all pertinent times hereto, SBS was and is a private company engaged in the business of providing developers/builders with “telecommunications network development services” for new housing development projects. These development services include, but are not limited to:

- a. Engineering and designing the telecommunications network (the “network”);
- b. Procuring, delivering and/or arranging the delivery of all materials for the network;
- c. Placing, splicing, and otherwise constructing the network;
- d. Testing, maintaining and repairing the network; and
- e. Coordinating all activities with Qwest to ensure that inspection and acceptance of the completed network is accomplished.

8. Qwest Corporation’s Exchange and Network Services Tariff for Utah requires Qwest to enter into a land development agreement with developers/builders that addresses the provisioning of telephone distribution facilities within new areas of land development, for permanent single family dwellings.

9. The Tariff requires Qwest to offer two options for entering into the 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 the specified formula amount of “the distribution portion of the average exchange

loop investment times 125%, times the number of lots in the development" ("base amount" or "base value"). Qwest claims that this value equals \$436.13 per lot.

10. 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" the formula set forth in the preceding paragraph.

11. Under Option 2, Qwest is obligated to purchase the engineered, designed, procured, placed, spliced, completed, thoroughly inspected and maintained fully compliant network from the developer/builder.

12. Option 2 of the Tariff is not viable without the services of SBS and other similarly situated businesses.

13. As SBS provides services to developers under Option 2, it is competing against Qwest's development services.

14. As a normal part of their business, developers/builders do not have the expertise, skills or equipment capable of adequately performing the work encompassed by the Tariff. It is through contracting the services of SBS and other similarly situated businesses that developers/builders are able to use this provision of the Tariff to improve the quality of services rendered to their projects.

15. On July 15, 2003, the Commission issued a Report and Order in the matter of *SBS Telecommunications, Inc., et al., v. Qwest Corporation*; Docket No. 02-049-66, *Report and Order* (July 15, 2003), wherein the Commission re-stated the following:

We believe the only interpretation fair to both parties and consistent with the public interest is as follows:

Section 4.4(B)(6) requires that costs be agreed upon at the inception of the agreement and incorporated in the LDA. In that regard, by implication, both developer and [Qwest] are required to furnish in good faith detailed, verifiable cost estimates on the request of the other party. It will not do for [Qwest] to hide behind alleged proprietary concerns to avoid such disclosure. [Qwest] itself has created the need for this tariff provision, and it now must act in good faith to see that it is implemented fairly and effectively.

*SBS Telecommunications at 2, 7; see also Silver Creek Communications, v. Mountain States Telephone & Telegraph Company, Docket No. 98-049-33, Report and Order (April 30, 1999) at 4.*

16. Option 2 of the LDA Tariff affords land developers the ability "to engineer, design, secure all materials and provide the labor to place and test the facilities within the development" using Qwest's standard specifications. LDA Tariff § 4.4 (C)(2)(c).

17. Prior to installation of the facilities, Qwest must approve job prints and material lists. Qwest must be given the opportunity of inspecting facilities after installation. LDA Tariff § 4.4 (C)(2)(d) and (e).

18. The Commission has ruled that the reimbursement costs are to be agreed upon by the land developer or its agent and Qwest "at the inception of the agreement and incorporated in the LDA ." *SBS Telecommunications at 2, 7; Silver Creek at 4.*

19. As a practical matter, however, construction schedules and the existence of open trenches due to the placement of utility lines by other public utilities, have typically required that facilities be placed prior to incorporation of the price terms in the LDA. Qwest normally

prepares and furnishes the LDA to the land developer after the facilities have already been installed.

20. The LDA Tariff provides for a tariff cap on the amount that Qwest must pay the developer (the "Tariff Cap") for the installation of the facilities:

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).

21. In order for Option 2 Contractors to compete with Qwest's Option 1 provisioning of their development services without any upfront charge or expense incurred by the developer, payment for all Option 2 services are deferred until after ownership of the network is transferred to Qwest, i.e. Qwest has paid for the network.

22. Because SBS must wait for payment from the developers/builders, SBS is dependent upon the fair and effective processing of the Qwest-developer/builder LDA's in order to receive timely compensation for its contracted efforts.

23. In every instance, regardless of the option chosen by developers, Qwest has refused to provide an LDA to the developer/builder until all engineering is complete, inspected, and approved through multiple layers of Qwest's management.

24. Upon information and belief, Qwest has structured a system of processing the LDA's that results in delays in completing the project. That is, rather than providing an LDA at the front end of the project, Qwest withholds processing an LDA until much, and many times ALL of the project work has been completed. By failing or refusing to timely execute an LDA,

Qwest has unilaterally gained leverage in its ability to charge SBS and others similarly situated, for the services performed.

25. In many instances, Qwest requires that additional labor and materials be incorporated into the project for the purpose of enhancing, enlarging and bettering the network (“betterments”). These betterments are not required to provide telephone service within the specified development; however, are claimed to be needed by Qwest in order to support future developments, i.e., excess facility capacity.

26. The betterments required by Qwest have included, but are not limited to the following:

- a. Increased cable sizes/capacity in order to route excess capacity to provide feed points for future developments. Key points related to cable size and capacity include:
  - b. Running additional cables through the length or width of a project to provide feed points for future developments.
  - c. Increased sizing and numbers of other materials, e.g., pedestals, dome closures, connectors, tapes, etc...
  - d. Extra labor associated with the procurement, placement, construction, testing and repair of the excess facilities.

27. The cost of the betterments are often times substantial, relative to the base value of the telecommunications network development services.

28. Upon information and belief, not only has the cost of betterments been substantial relative to the base value of the network development services, but on occasion the cost of betterments have exceeded the total base development value that is capped at \$436.13 per lot.

29. Notwithstanding the additional costs incurred by SBS as related to implementing the betterments, Qwest claims no responsibility to provide additional compensation beyond the per lot cap of \$436.13.

30. The Tariff requires that “the developer/builder must give [Qwest] the opportunity to inspect the placement of the facilities and perform conformance testing.”

31. The Tariff also 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.”

32. Instead of using a legitimately negotiated contract, or using an LDA executed at the front end of the project, Qwest has developed a pattern of adhering to ever-changing informal processes and “policies” and unilaterally dictating the standards that will apply to the business relationships.

- a. For example, Qwest has long used the cost cutting measure in its facilities designs and construction of trailing the end of a cable run with a 6 pair cable and a 4 inch pedestal with no terminal. However, after SBS began using this same method, Qwest changed the “standards” and began disallowing this practice.



33. For the last three years SBS has repeatedly requested Qwest to furnish them with, or otherwise advise them of the “standard [Qwest] specifications,” or segments thereof, that are referenced in the Tariff.

34. On January 24, 2003 William R. Bodine and Jay E. Bodine of SBS met with Bonnie Anderson, Qwest Vice President of Network Operations and Engineering along with Jim Thomas, Qwest Director of Capacity Provisioning for the purpose of discussing the “standards.” SBS was informed that Qwest has no such “standards” or “specifications;” and that none has existed “since the divestiture” (referencing the 1982 break-up of AT&T into the often referred to “baby Bells”).

35. SBS has in its possession a document titled U.S. West Communications Standards, REGN 632-205-235RG, Issue 1, October 1989. However, the information in this document does not reflect or address the engineering or construction demands that Qwest places upon developers/builders using Option 2 of the Tariff.

36. Because there are no negotiated contracts executed at the front end of the project and no “standard [Qwest] specifications” provided, SBS is essentially left to the mercy of Qwest with regard to the labor and materials Qwest demands, and how much Qwest will pay for the betterments that Qwest requires.

37. Qwest’s practice of keeping the processes and standards in an informal structure has allowed Qwest to exercise an inappropriate level of leverage, power and control over the businesses of SBS.

38. Unless and until Qwest is satisfied with the betterments implemented into the design, Qwest refuses to process an LDA, which in turn precludes SBS from being paid by the developer/builder, for work already performed.

39. Qwest has routinely caused unnecessary delays in processing a project to completion, which in turn unnecessarily delays payment to SBS for work performed on the respective project.

40. Qwest has taken the position that it is "unnecessary" to reimburse Option 2 Contractors any amount in excess of its own estimate of what it would cost Qwest to install facilities, when in some cases, Qwest's actual cost of materials may be less than that of the actual cost of materials to Option 2 Contractors. Moreover, Qwest's position would deny Option 2 Contractors the ability to earn any profit from installing facilities.

41. The failure of Qwest to reimburse developers (and thus Option 2 Contractors) any amount in excess of Qwest's own estimate of what it would cost for Qwest to install facilities is unreasonable and unfairly compensates Option 2 Contractors.

42. 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.

43. Qwest's estimated costs are not detailed or verifiable. It does not include a statement of itemized material costs (including ped caps, if any), taxes, if any, or administrative costs.

44. Qwest has unilaterally estimated its own costs for the project, *ex post facto* and it intends to reimburse accordingly.

45. Under normal circumstances, the costs would have been agreed upon at the "inception of the agreement" and prior to the installation of facilities.

46. SBS and Qwest have, from time to time during 2004, entered into stipulations for the purpose of providing an interim solution to certain payment disputes regarding Option 2 Contracts governed by the LDA ("stipulated amount" or "stipulated LDA").

## **II. SPECIFIC PROJECTS REQUIRING PROBLEM RESOLUTION**

47. This Request for Agency Action is predicated on Qwest's conduct towards land developers and SBS as an Option 2 Contractor on several projects in which the land developer engaged the services of SBS: (1) phase 1 of the Brookhaven Villas Residential P.U.D. in Lehi, Utah ("Brookhaven Project"); (2) Canterbury North Subdivision, Plat F in Highland, Utah ("Canterbury Plat F Project"); (3) North Lake Subdivision, Plat G in Lehi, Utah ("North Lake Project"); (4) Meadow Breeze Number 2 in West Valley City, Utah ("Meadow Breeze Project"); (5) Valley Crest, Plat A in Spanish Fork, Utah ("Valley Crest Plat A Project"); (6) Valley Crest, Plat B in Spanish Fork, Utah ("Valley Crest Plat B Project"); (7) Cedar Hollow, Plat C in Lehi, Utah ("Cedar Hollow Project"); (8) Hobble Creek Cove, Plat D in Springville, Utah ("Hobble Creek Project"); (9) Canterbury North Subdivision, Plat G in Highland, Utah ("Canterbury Plat G Project"); (10) Virginia Ridge, Plats F & I in American Fork, Utah ("Virginia Ridge Project"); (11) Old Farm, Plat E in Lehi, Utah ("Old Farm Project"); (12) Nibley Gardens, Phase 3 in Logan, Utah ("Nibley Gardens Project"); (13) Rose Garden, Phase 3 in Clearfield, Utah ("Rose Garden Project"); (14) Sunrise Estates in Riverton, Utah ("Sunrise Project"); and (15) Riverwood

Subdivision in Logan, Utah ("Riverwood Project"); (16) Green Meadows, Phase 3 subdivision in Logan, Utah ("Green Meadows Project").

**A. Brookhaven Project**

48. On or about May 5, 2003, SBS undertook telecommunications network development services work on a project known as "Phase One of the Brookhaven Villas Residential P.U.D." in Lehi, Utah ("Brookhaven Project").

49. Work on the Brookhaven Project was undertaken by SBS for and on behalf of Brookhaven Investments, LLC.

50. SBS completed all engineering, procurement and construction efforts as related to the telecommunications network development services it performed on the Brookhaven Project.

51. SBS's work on the Brookhaven Project was completed on or about August 25, 2003.

52. Subsequent to approving the engineering work completed on the Brookhaven Project, which had to be modified to include Qwest's demanded betterments, Qwest provided an LDA that did not include any consideration for betterments that had been incorporated into the Brookhaven Project by SBS.

53. The betterments for the Brookhaven Project consist of increasing the cable capacity through the length and width of the project in order to leave 100 pair cable at each of two different locations.

54. On behalf of Brookhaven Investments, LLC, SBS has rejected the provided LDA due to its lack of consideration for the demanded (and constructed) betterments.

55. On or about September 3, 2004, Qwest paid the stipulated amount of \$22,242.63 on the Brookhaven Project.

56. On or about August 5, 2003, Qwest began providing telephone service to residences in the Brookhaven subdivision. Said services were accomplished by utilizing the network SBS has constructed, and not been paid for, within the Brookhaven Project.

57. Qwest refused to, and continues to refuse to make payment for the betterments incorporated into the Brookhaven Project.

58. The Brookhaven Project consists of 51 lots and therefore has a base value of \$22,242.63. SBS has incurred additional expenses of \$4,725.00 in placing and constructing the betterments for this project.

#### **B. Canterbury Plat F Project**

59. On or about May 13, 2003, SBS undertook telecommunications network development services work on a project known as “Canterbury North Subdivision, Plat F” in Highland, Utah (“Canterbury Plat F Project”).

60. Work on the Canterbury Plat F Project was undertaken by SBS for and on behalf of Canterbury Development and Investment, Inc.

61. SBS completed all engineering, procurement and construction efforts as related to the telecommunications network development services it performed on the Canterbury Plat F Project.

62. SBS’s work on the Canterbury Plat F Project was completed on or about August 19, 2003.

63. Subsequent to approving the engineering work completed on the Canterbury Plat F Project, which included demanded betterments, Qwest provided an LDA that did not include any consideration for betterments that had been incorporated into the Canterbury Plat F Project by SBS.

64. The betterments for the Canterbury Plat F Project consist of providing an additional 200 pair cable run through the length of the project to support a future feed point.

65. On behalf of Canterbury Development and Investment, Inc. SBS has rejected the provided LDA due to its lack of consideration for the demanded (and constructed) betterments.

66. On or about August 12, 2004, Qwest paid the stipulated amount of \$8,286.47 on the Canterbury Plat F Project.

67. The Canterbury Plat F Project consists of 19 lots and therefore has a base value of \$8,286.47. SBS has incurred additional expenses of \$2,850.00 in placing and constructing the betterments for this project.

68. On or about November 7, 2003, Qwest began providing telephone service to residences in the Canterbury North Plat F subdivision. Said services were accomplished by utilizing the network SBS has constructed, and had not been paid for, within the Canterbury Project.

69. Qwest has refused to, and continues to refuse to make payment for the betterments incorporated into the Canterbury Plat F Project.

### **C. North Lake Project**

70. On or about March 31, 2003, SBS undertook telecommunications network development services work on a project known as “North Lake Subdivision, Plat G” in Lehi, Utah (“North Lake Project”).

71. Work on the North Lake Project was undertaken by SBS for and on behalf of J&C Investments, L.L.C.

72. SBS completed all engineering, procurement and construction efforts as related to the telecommunications network development services it performed on the North Lake Project.

73. SBS’s work on the North Lake Project was completed on or about August 12, 2003.

74. Subsequent to approving the engineering work completed on the North Lake Project, which included Qwest’s demanded betterments, Qwest provided an LDA that did not include any consideration for betterments that had been incorporated into the North Lake Project by SBS.

75. The betterments for the North Lake Project consist of increasing the cable capacity through the length and width of the project in order to leave a 100 pair cable at one location and a 50 pair cable at another location.

76. On behalf of J&C Investments, L.L.C., SBS has rejected the provided LDA due to its lack of consideration for the demanded (and constructed) betterments.

77. On or about August 13, 2004 Qwest paid the stipulated amount of \$21,806.50 towards the North Lake Project.

78. Qwest has refused to, and continues to refuse to negotiate payment for the betterments incorporated into the North Lake Project.

79. The North Lake Project consists of 50 lots and therefore has a base value of \$21,806.50. SBS has incurred additional expenses of \$2,400.00 in placing and constructing the betterments for this project.

#### **D. Meadow Breeze Project**

80. On or about September 29, 2003, SBS undertook telecommunications network development services work on a project known as “Meadow Breeze Number 2” in West Valley City, Utah (“Meadow Breeze Project”).

81. Work on the Meadow Breeze Project was undertaken by SBS for and on behalf of David & Paula Ellis.

82. SBS has completed all engineering, procurement and construction efforts as related to the telecommunications network development services it performed on the Meadow Breeze Project.

83. SBS’s work on the Meadow Breeze Project was completed on or about October 10, 2003.

84. Subsequent to approving the engineering work completed on the Meadow Breeze Project, Matt Ivester, Qwest Design Engineer, demanded a “verifiable cost estimate” before Qwest would process an LDA on the project.

85. SBS provided Mr. Ivester a letter that detailed the verifiable costs obligation of the developer, referencing the fact that he had already been provided a complete copy of the



actual SBS/developer contract for the Meadow Breeze Project. Qwest has refused to honor its obligation to pay the verified costs, and has demanded that SBS accept a lesser sum as a condition precedent to processing the LDA on the Project.

86. Qwest has refused to make payments related to any portion of the Meadow Breeze Project.

87. Qwest has refused to, and continues to refuse to provide and process an LDA for the Meadow Breeze Project; and has failed to pay SBS even the stipulated amount due.

88. The Meadow Breeze Project consists of 4 lots and therefore has a base value of \$1,744.22. Qwest has advised SBS that Qwest is willing to pay only \$1,430.00.

#### **E. Valley Crest Plat A Project**

89. On or about October 17, 2003, SBS undertook telecommunications network development services work on a project known as “Valley Crest, Plat A Project” in Spanish Fork, Utah (“Valley Crest Plat A Project”).

90. Work on the Valley Crest Plat A Project was undertaken by SBS for and on behalf of Envision Development, L.L.C.

91. SBS completed all engineering, procurement and construction efforts as related to the telecommunications network development services it performed on the Valley Crest Plat A Project.

92. SBS’s work on the Valley Crest Plat A Project was completed on or about December 15, 2003.

93. Subsequent to approving the engineering work completed on the Valley Crest Plat A Project, which had to be modified to include Qwest's demanded betterments, Qwest provided an LDA that did not include any consideration for betterments that had been incorporated into the Valley Crest Plat A Project by SBS.

94. The betterments for the Valley Crest Plat A Project consist of increasing the cable capacity through the length and width of the project in order to leave 100 pair cable at each of two different locations.

95. On behalf of Envision Development, LLC, SBS has rejected the provided LDA due to its lack of adequate consideration for the demanded (and constructed) betterments.

96. On or about July 27, 2004 Qwest paid the stipulated amount the Valley Crest Plat A Project.

97. The Valley Crest Plat A Project consists of 19 lots and therefore has a base value of \$8,286.47. SBS has incurred additional expenses of \$6,075.00 in placing and constructing the betterments for this project.

#### **F. Valley Crest, Plat B Project**

98. On or about October 17, 2003, SBS undertook telecommunications network development services work on a project known as "Valley Crest, Plat B Project" in Spanish Fork, Utah ("Valley Crest Plat B Project").

99. Work on the Valley Crest Plat B Project was undertaken by SBS for and on behalf of Envision Development, L.L.C.

100. SBS completed all engineering, procurement and construction efforts as related to the telecommunications network development services it performed on the Valley Crest Plat B Project.

101. SBS's work on the Valley Crest Plat B Project was completed on or about June 6, 2003.

102. On behalf of Envision Development, LLC, SBS accepted a stipulated LDA on August 26, 2004. The stipulated LDA includes a cost based upon Qwest's estimate of \$9,011.00.

103. Qwest has failed to make payments related to any portion of the Valley Crest Plat B Project, despite the stipulated LDA entered into between SBS and Qwest.

104. The Valley Crest Plat B Project consists of 26 lots and therefore has a base value of \$11,339.38.

#### **G. Cedar Hollow Project**

105. On or about August 29, 2003, SBS undertook telecommunications network development services work on a project known as "Cedar Hollow Project" in Lehi, Utah ("Cedar Hollow Project").

106. Work on the Cedar Hollow Project was undertaken by SBS for and on behalf of Artemesia, L.L.C.

107. SBS completed all engineering, procurement and construction efforts as related to the telecommunications network development services it performed on the Cedar Hollow Project.

108. SBS's work on the Cedar Hollow Project was completed on or about June 6, 2004.

109. On behalf of Atemesia, LLC, SBS accepted a stipulated LDA on July 8, 2004. The stipulated LDA includes a cost based upon Qwest's estimate of \$8,684.00.

110. On or about August 10, 2004 Qwest paid the stipulated amount of \$8,684.00 on the Cedar Hollow Project.

111. The Cedar Hollow Project consists of 22 lots and therefore has a base value of \$9,594.86, \$8,684.00 has been paid.

#### **H. Hobble Creek Project**

112. On or about September 19, 2003, SBS undertook telecommunications network development services work on a project known as "Hobble Creek Project" in Lehi, Utah ("Hobble Creek Project").

113. Work on the Hobble Creek Project was undertaken by SBS for and on behalf of C & A Construction Company, Inc.

114. SBS completed all engineering, procurement and construction efforts as related to the telecommunications network development services it performed on the Hobble Creek Project.

115. SBS's work on the Hobble Creek Project was completed on or about March 1, 2004.

116. On behalf of C & A Construction Company, Inc., SBS has rejected the provided LDA due to its lack of consideration for the demanded (and constructed) betterments.

117. On or about August 31, 2004 Qwest paid the stipulated amount of \$4,298.00 on the Hobble Creek Project.

118. The Hobble Creek Project consists of 14 lots and therefore has a base value of \$6,105.82, \$4,298.00 has been paid.

### **I. Canterbury Plat G Project**

119. On or about January 21, 2004, SBS undertook telecommunications network development services work on a project known as “Canterbury Plat G Project” in Highland, Utah (“Canterbury Plat G Project”).

120. Work on the Canterbury Plat G Project was undertaken by SBS for and on behalf of Canterbury Development & Investments, Inc.

121. SBS completed all engineering, procurement and construction efforts as related to the telecommunications network development services it performed on the Canterbury Plat G Project.

122. SBS’s work on the Canterbury Plat G Project was completed on or about June 15, 2004.

123. Subsequent to approving the engineering work completed on the Canterbury Plat G Project, which had to be modified to include Qwest’s demanded betterments, Qwest provided an LDA that did not include any consideration for betterments that had been incorporated into the Canterbury Plat G Project by SBS.

124. The betterments for the Canterbury Plat G Project consist of increasing the cable capacity through the length and width of the project in order to leave a 50 pair cable at the opposite end of the project.

125. Qwest refused to, and continues to refuse to make adequate payment for the betterments incorporated into the Canterbury Plat G Project.

126. On or about September 2, 2004, Qwest paid the stipulated amount on the Canterbury Plat G Project.

127. The Canterbury Plat G Project consists of 52 lots and therefore has a base value of \$22,678.76. SBS has incurred additional expenses of \$2,513.40 in placing and constructing the betterments for this project.

#### **J. Virginia Ridge Project**

128. On or about October 24, 2003, SBS undertook telecommunications network development services work on a project known as “Virginia Ridge Project” in American Fork, Utah (“Virginia Ridge Project”).

129. Work on the Virginia Ridge Project was undertaken by SBS for and on behalf of Patterson Construction, Inc.

130. SBS completed all engineering, procurement and construction efforts as related to the telecommunications network development services it performed on the Virginia Ridge Project.

131. SBS’s work on the Virginia Ridge Project was completed on or about December 3, 2003.

132. On behalf of Patterson Construction, Inc., SBS entered into a stipulated LDA on June 28, 2004. The stipulated LDA includes a cost based upon Qwest's estimate of \$2,493.00.

133. Qwest has failed to make payments related to any portion of the Virginia Ridge Project, despite the stipulated LDA entered into between SBS and Qwest.

134. The Virginia Ridge Project consists of 6 lots and therefore has a base value of \$2,616.78.

#### **K. Old Farm Project**

135. On or about December 3, 2003, SBS undertook telecommunications network development services work on a project known as "Old Farm Project" in Lehi, Utah ("Old Farm Project").

136. Work on the Old Farm Project was undertaken by SBS for and on behalf of Sierra West Construction.

137. SBS completed all engineering, procurement and construction efforts as related to the telecommunications network development services it performed on the Old Farm Project.

138. SBS's work on the Old Farm Project was completed on or about February 5, 2004.

139. Subsequent to approving the engineering work completed on the Cedar Old Farm Project, which had to be modified to include Qwest's demanded betterments,

140. The betterments for the Old Farm Project consist of increasing the cable capacity through the width of the project in order to leave a 50 pair cable for a previous development phase.

141. Qwest has failed to make payments related to any portion of the Old Farm Project, despite the stipulation entered into between SBS and Qwest.

142. On or about March 15, 2004, Qwest began providing telephone service to residences in the Old Farm Project (the previous phase) over the betterment cable provided by SBS. Said services were accomplished by utilizing the network SBS has constructed, and not been paid for, within the Old Farm Project.

143. On behalf of Sierra West Construction, SBS accepted a stipulated LDA on June 28, 2004. The stipulated LDA includes a cost based upon Qwest's estimate.

144. The Old Farm Project consists of 12 lots and therefore has a base value of \$5,233.56. SBS has incurred additional expenses of \$1,656.00 in placing and constructing the betterments for this project.

#### **L. Nibley Gardens Project**

145. On or about October 17, 2003, SBS undertook telecommunications network development services work on a project known as "Nibley Gardens Project" in Logan, Utah ("Nibley Gardens Project").

146. Work on the Nibley Gardens Project was undertaken by SBS for and on behalf of Horizon Construction & Development, Inc.

147. SBS completed all engineering, procurement and construction efforts as related to the telecommunications network development services it performed on the Nibley Gardens Project.



148. SBS's work on the Nibley Gardens Project was completed on or about February 20, 2004.

149. On behalf of Horizon Construction & Development, Inc. SBS accepted a stipulated LDA on July 6, 2004. The stipulated LDA includes a cost based upon Qwest's estimate of \$8,966.00.

150. Qwest has failed to make payments related to any portion of the Nibley Gardens Project, despite the stipulated LDA entered into between SBS and Qwest.

151. The Nibley Gardens Project consists of 24 lots and therefore has a base value of \$10,467.12.

#### **M. Rose Garden Project**

152. On or about September 5, 2003, SBS undertook telecommunications network development services work on a project known as "Rose Garden Project" in Clearfield, Utah ("Rose Garden Project").

153. Work on the Rose Garden Project was undertaken by SBS for and on behalf of Wentworth Development, L.L.C.

154. SBS completed all engineering, procurement and construction efforts as related to the telecommunications network development services it performed on the Rose Garden Project.

155. SBS's work on the Rose Garden Project was completed on or about January 5, 2004.

156. Qwest has failed to make payments related to any portion of the Rose Garden Project, despite the stipulated LDA entered into between SBS and Qwest.

157. The Rose Garden Project consists of 18 lots and therefore has a base value of \$7,850.34.

**N. Sunrise Project**

158. On or about September 3, 2003, SBS undertook telecommunications network development services work on a project known as “Sunrise Project” in Riverton, Utah (“Sunrise Project”).

159. Work on the Sunrise Project was undertaken by SBS for and on behalf of Hadco Excavating.

160. SBS completed all engineering, procurement and construction efforts as related to the telecommunications network development services it performed on the Sunrise Project.

161. SBS’s work on the Sunrise Project was completed on or about January 24, 2004.

162. Qwest has failed to make payments related to any portion of the Sunrise Project, despite the stipulation entered into between SBS and Qwest.

163. The Sunrise Project consists of 20 lots and therefore has a base value (withheld by Qwest) of \$8,722.60.

**O. Riverwood Project**

164. On or about June 6, 2003, SBS undertook telecommunications network development services work on a project known as “Riverwood Project” in Logan, Utah (“Riverwood Project”).

165. Work on the Riverwood Project was undertaken by SBS for and on behalf of Seamons Construction, Inc.

166. SBS completed all engineering, procurement and construction efforts as related to the telecommunications network development services it performed on the Riverwood Project.

167. SBS's work on the Riverwood Project was completed on or about January 28, 2004.

168. Qwest has failed to make payments related to any portion of the Riverwood Project, despite the stipulated LDA entered into between SBS and Qwest.

169. The Riverwood Project consists of 30 lots and therefore has a base value of \$13,083.90.

#### **P. Green Meadows Project**

170. On October 2, 2003, Qwest Engineer, Mike Helfrich, demanded of SBS that a 200 pair cable be placed through a project known as "Green Meadows Project" in Logan, Utah in order to support future developments. The Green Meadows Project consists of 9 lots.

171. This represents an 8X increase in facilities capacity over what is needed for this subdivision. The total facilities needed to support the Green Meadows Project may be supplied with a 25 pair cable.

172. Mr. Helfrich reiterated Qwest's position that Qwest will not pay for these betterments.

173. Qwest is engaged in a course of conduct which has hindered, delayed and otherwise obstructed the completion of the forgoing and other contracts between SBS and its client developers.

174. Qwest has used and continues to use a procedure of paying less for the developed networks than the Tariff formula requires, thus denying SBS and other similarly situated companies tens of thousands of dollars due and owing for services rendered.

175. Qwest's scheme of refusing to execute an LDA at the front end of the project jeopardizes every telephone development contract entered into between SBS and Developers.

176. Qwest's scheme of refusing to execute an LDA at the front end of the project jeopardizes SBS' ability to maintain good will with established clients.

177. Qwest has represented to SBS that in the event SBS refuses to incorporate betterments into an existing project (betterments that Qwest has demanded, but refuses to pay for), Qwest will refuse to process the LDA.

178. Qwest has represented to SBS that in the event SBS refuses to accept less than what is contractually and lawfully due for a project, Qwest refuses to process the LDA, subject to the terms of the Stipulation dated May, 2004.

179. Qwest's refusal to process an LDA results in Qwest either using a network for which it has not paid, or Qwest denying telephone services to the new homeowners in a particular development, thereby creating a significant breach in the established relationships between SBS and its client developer.

180. If SBS incorporates the betterments into a specific project, but rejects the LDA due to its lack of consideration for said betterments, the LDA is not processed to payment.

181. If SBS includes the betterments and accepts the LDA, (which excludes costs for betterments) Qwest then takes possession of facilities for which it has not provided appropriate compensation to SBS.

182. Qwest's unwillingness to pay the developers legitimately and obligatory costs accrued for the installation of facilities will eliminate Option 2 Contractors from the market, rendering Option 2 of the LDA Tariff a nullity, leaving Qwest with a monopoly, and leaving land developers without any alternative when Qwest is unable to install facilities in a timely basis.

### **REQUEST FOR AGENCY ACTION**

183. Pursuant to Utah Code Ann. § 54-4-1, the Commission is vested with the power to regulate every public utility in Utah and to supervise all of the business of every public utility, "and to do all things, whether herein specifically designed or in addition thereto, which are necessary or convenient in the exercise of such power..." Utah Code Ann. § 54-4-1.

184. Rule 746-101-4 vests the Commission with the power to render a declaratory ruling upon petition. See Utah Admin. Code R. 746-101 *et seq.*

185. Qwest has failed to disclose in good faith, detailed verifiable cost estimates to Option 2 Contractors in violation of the Commission's Order in *Silver Creek and SBS Telecommunications*.

186. Qwest has refused to disclose to Option 2 Contractors its materials costs based upon confidential agreements with suppliers in violation of the Commission's Order in *Silver Creek and SBS Telecommunications*.

187. Qwest has refused to pay land developers for costs that exceed Qwest's estimate of what it would cost for Qwest to install facilities, in violation of the Commission's Report and Order in *Silver Creek and SBS Telecommunications*.

188. Qwest's refusal to negotiate in good faith with Option 2 Contractors over the price to be paid by Qwest for facilities installed under Option 2 of the LDA Tariff has increased Option 2 Contractor's administrative, legal, and carrying costs.

189. Qwest's delays in approving pricing of facilities, and preparing and furnishing the LDA has increased Option 2 Contractors' administrative, legal, and carrying costs.

190. Qwest's refusal to use or abide with "standard company specifications" leaves Developers and Option 2 Contractors completely at the mercy of individual whims and wants of Qwest.

191. Qwest's failure to negotiate in good faith cripples the entire Option 2 LDA process.

192. Qwest's delay in submitting cost estimates and refusal to negotiate in good faith with Option 2 Contractors over the price to be paid by Qwest for facilities is unreasonable, unfair, and interferes with the business relationship between developers and Option 2 Contractors.

193. Qwest's unreasonable refusal to negotiate payment for "betterments" for projects developed under Option 2, while continuing to provide betterments under Option 1 for no charge to developers create an enormously unfair competitive advantage for Qwest's development services.

WHEREFORE, Complainant respectfully requests the Commission to enter an Order:

1. Declaring Qwest must issue to land developers and Option 2 Contractors good faith, detailed verifiable cost estimates and not hide behind confidentiality agreements it has with its suppliers.
2. Declaring Qwest may not exclude as unreasonable an Option 2 Contractor's profit margin from cost estimates when the cost estimates are at or below the Tariff Cap, regardless of whether Qwest is thereby obligated to pay more than its own costs for a project.
3. Requiring Qwest to comply with the LDA Tariff and to reimburse land developers in accordance therewith.
4. Declaring the developer costs, as defined within the SBS Telecommunications' contract on the Brookhaven Project are reasonable.
5. Requiring Qwest to pay SBS Telecommunications the developer costs on the Brookhaven Project to SBS.
6. Declaring the developer costs, as defined within the SBS Telecommunications' contract on the Canterbury Plat F Project are reasonable.
7. Requiring Qwest to pay SBS Telecommunications the developer costs on the Canterbury Plat F Project to SBS.
8. Declaring the developer costs, as defined within the SBS Telecommunications' contract on the North Lake Project are reasonable.
9. Requiring Qwest to pay SBS Telecommunications the developer costs on the North Lake Project to SBS.

10. Declaring the developer costs, as defined within the SBS Telecommunications' contract on the Meadow Breeze Project are reasonable.

11. Requiring Qwest to pay SBS Telecommunications the developer costs on the Meadow Breeze Project to SBS.

12. Declaring the developer costs, as defined within the SBS Telecommunications' contract on the Valley Crest Plat A Project are reasonable.

13. Requiring Qwest to pay SBS Telecommunications the developer costs on the Valley Crest Plat A Project to SBS.

14. Declaring the developer costs, as defined within the SBS Telecommunications' contract on the Valley Crest Plat B Project are reasonable.

15. Requiring Qwest to pay SBS Telecommunications the developer costs on the Valley Crest Plat B Project to SBS.

16. Declaring the developer costs, as defined within the SBS Telecommunications' contract on the Cedar Hollow Project are reasonable.

17. Requiring Qwest to pay SBS Telecommunications the developer costs on the Cedar Hollow Project to SBS.

18. Declaring the developer costs, as defined within the SBS Telecommunications' contract on the Hobble Creek Project are reasonable.

19. Requiring Qwest to pay SBS Telecommunications the developer costs on the Hobble Creek Project to SBS.



20. Declaring the developer costs, as defined within the SBS Telecommunications' contract on the Canterbury Plat G Project are reasonable.

21. Requiring Qwest to pay SBS Telecommunications the developer costs on the Canterbury Plat G Project to SBS.

22. Declaring the developer costs, as defined within the SBS Telecommunications' contract on the Virginia Ridge Project are reasonable.

23. Requiring Qwest to pay SBS Telecommunications the developer costs on the Virginia Ridge Project to SBS.

24. Declaring the developer costs, as defined within the SBS Telecommunications' contract on the Old Farm Project are reasonable.

25. Requiring Qwest to pay SBS Telecommunications the developer costs on the Old Farm Project to SBS.

26. Declaring the developer costs, as defined within the SBS Telecommunications' contract on the Nibley Gardens Project are reasonable.

27. Requiring Qwest to pay SBS Telecommunications the developer costs on the Nibley Gardens Project to SBS.

28. Declaring the developer costs, as defined within the SBS Telecommunications' contact on the Rose Garden Project are reasonable.

29. Requiring Qwest to pay SBS Telecommunications the developer costs on the Rose Garden Project to SBS.

30. Declaring the developer costs, as defined within the SBS Telecommunications' contract on the Sunrise Project are reasonable.

31. Requiring Qwest to pay SBS Telecommunications the developer costs on the Sunrise Project to SBS.

32. Declaring the developer costs, as defined within the SBS Telecommunications' contract on the Riverwood Project are reasonable.

33. Requiring Qwest to pay SBS Telecommunications the developer costs on the Riverwood Project to SBS.

34. Declaring the developer costs, as defined within the SBS Telecommunications' contract on the Green Meadows Project are reasonable.

35. Requiring Qwest to pay SBS Telecommunications the developer costs on the Green Meadows Project to SBS.

36. Declaring all cost incurred by SBS for betterments implemented into Option 2 Projects are reasonable.

37. Requiring Qwest to pay SBS all of its reasonable costs incurred for betterments implemented into Option 2 Projects.

DATED this the 7<sup>th</sup> day of September, 2004.

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/S/  
Kevin M. McDonough  
Attorney for SBS Telecommunications, Inc.

**CERTIFICATE OF MAILING**

I hereby certify that on this the 7<sup>th</sup> day of September, 2004, I caused to be delivered by U.S. Mail, postage prepaid, and by electronic mail, a true and correct copy of the foregoing REQUEST FOR AGENCY ACTION to the following individual:

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/S/