

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Complaint of: )  
SBS TELECOMMUNICATIONS, INC, and )  
SILVER CREEK COMMUNICATIONS, INC., )  
Complainants, )  
vs. )  
QWEST CORPORATION, )  
Respondent. )

DOCKET NO. 02-049-66

REPORT AND ORDER ON  
RECONSIDERATION

SSUED: October 29, 2003

By The Commission:

On September 5, 2003, this Commission issued a *Report and Order on Request for Review and Reconsideration*. That order stated:

SBS and Silver Creek, and Qwest, may file responses to the Brief of the DPU, and the accompanying Affidavit of Peggy Egbert, on or before September 26, 2003. The Request for Review and Reconsideration of SBS and Silver Creek is denied as to all other issues raised therein.

Qwest filed its *Comments on DPU Brief and Affidavit* on September 26, 2003. SBS and Silver Creek evidently obtained the consent of counsel for the DPU for a short extension of time for those entities to file their response. As that new deadline approached SBS and Silver Creek sought a further extension. On October 1, 2003, a copy of a letter from counsel for SBS and Silver Creek, addressed to counsel for the DPU, was received by facsimile by the Commission. In that letter counsel for SBS and Silver Creek informed counsel for the DPU, apparently without discussing the matter beforehand with counsel for the DPU, that SBS and Silver Creek would file their response on October 8, 2003.

On October 8, 2003, part of a SBS and Silver Creek pleading entitled *Opposition to the Brief filed by the Division of Public Utilities* was received by facsimile transmission by the Commission. No electronic copy, or the requisite number of paper copies were received that day. <sup>(1)</sup> An electronic copy of the SBS and Silver Creek filing was received by the Commission on October 15, 2003, and the required number of paper copies were received on October 17, 2003.

On October 15, 2003, Qwest filed a pleading entitled *Qwest's Objection to Complainants' Opposition to DPU Brief*. In that filing Qwest raised questions as to the validity of any extension of time beyond September 23, 2003, because no motion had been made to the Commission for any extension. Qwest requested that the filing be rejected because it was untimely, and for additional reasons as well. SBS and Silver Creek have not filed in this docket any response to Qwest's Objection. On October 24, 2003, SBS and Silver Creek did file a pleading entitled *Response to Qwest's Objection to Complainants' Opposition to DPU Brief; and Request for Decision*, but filed that pleading in Docket No. 03-049-62. Notwithstanding SBS and Silver Creek's apparent error in the docket number on that filing, the Commission has considered the arguments made therein, and to the extent necessary incorporates that filing in this docket.

Qwest has raised valid questions as to the timeliness and validity of the extensions of time claimed by SBS and Silver Creek, but we need not address them. SBS and Silver Creek only claimed an extension of time until October 8, 2003, to make their filing. Their response was not filed in accordance with the Commission's rules until October 17, 2003. Their filing was untimely by nine days even if SBS and Silver Creek had a proper extension of time to October 8, 2003. The filing is rejected on that basis.

Even if the response were allowed, our decision would be the same as in our earlier decision. That decision, concluding that townhomes are not included in the definition of "single family dwelling" in the LDA tariff, was made primarily on

the basis that the cost studies used in the creation of the LDA tariff did not include townhomes. It was concluded, therefore, that it would be improper to include townhomes within the parameters of the LDA tariff as currently written. SBA and Silver Creek's response did not add anything to, or address in any way, that issue.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

Our previous Report and Order in this matter, issued July 15, 2003, is reaffirmed. That order included the opening of another docket, Docket No. 03-049-62, to address other issues regarding the LDA tariff, and further proceedings will be scheduled in that docket.

Dated at Salt Lake City, Utah, this 29<sup>th</sup> day of October, 2003.

/s/ Douglas C. Tingey  
Administrative Law Judge

Approved and Confirmed this 29<sup>th</sup> day of October, 2003, as the Report and Order of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

G#35727

1. Commission rule R746-100-3(C) states in relevant part:

Pleadings shall be presented on paper 8-1/2 x 11 inches, shall include the docket number, if known, and shall be dated and time stamped upon receipt by the Commission. Pleadings shall also be presented as an electronic word processing document, an exact copy of the paper version filed, and may be on a 3-1/2" floppy disk, using a Commission-approved format. Pleadings over five pages shall be double sided and three-hole punched.

Rule R746-100-4(A) states:

Originals of pleadings shall be filed with the Commission in the format described in R746-100-3(C), together with the number of copies designated by the secretary of the Commission.