

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Revised Pages of U.S. West )  
Communications, Inc.'s Exchange and Network )  
Services Tariff, Re: The Provisioning Agreement for )  
Housing Developments (PAHD) as a Replacement of )  
the Land Development Agreement (LDA) Tariff )

DOCKET NO. 99-049-T28  
ORDER ON RECONSIDERATION

ISSUED: October 2, 2000

By The Commission:

U.S. West Communications, Inc. (now Qwest, and hereafter "Qwest"), submitted proposed tariff revisions to replace the existing Land Development Agreement Tariff ("LDA") with a Provisioning Agreement for Housing Developments Tariff ("PAHD"). The Commission's Administrative Law Judge, A. Robert Thurman, heard the matter and submitted a recommended Report and Order which was adopted and issued by the Commission on May 26, 2000 ("May Order"). Rehearing, Reconsideration, or Review of the May Order was sought by Silver Creek Communications ("SCC"), a party in the proceeding. The Commission granted reconsideration and suspended the May Order in its Order issued July 3, 2000. Qwest submitted a Memorandum on Reconsideration to the Commission on August 2, 2000. Upon reconsideration of the original tariff proposal, the record of the proceedings before Judge Thurman, and the parties' filings, the Commission issues the following Order rejecting the PAHD, reinstating the LDA, and directing Qwest, the Division of Public Utilities ("DPU"), and other interested parties to propose modifications to the LDA if they are needed.

Our review and reconsideration of the record leads us to conclude that the difficulties identified with the LDA result not from the LDA itself, but the lack of compliance with the LDA. Rather than replacing the LDA with a new process, we decide to retain the LDA process for the placement of facilities in new developments. We continue to believe, as we did in our 1997 approval of the current LDA process, that the LDA provides appropriate alternatives for the timely deployment of facilities necessary to meet demand for telecommunications services in new developments. We conclude that the difficulties Qwest attributes to the LDA come from the failure of Qwest, developers, and/or developers' agents performing the activities under the existing tariff, to comply with the terms of the LDA. Reasonable conduct under the LDA would permit the placement of equipment/facilities, properly designed, and properly installed for the benefit of telecommunications service consumers locating in new developments. If poorly designed facilities, deficient equipment, or improperly installed equipment occur under the LDA, it is because parties have failed to comply with the LDA and expectations of appropriate conduct under the LDA.

We will continue to provide the option of having distribution facilities for new developments installed by the developer. To the degree that the developer elects to contract with another entity to perform the developer's responsibilities under the LDA, that is a business decision which the developer will make. Whoever places the facilities is expected to comply with the LDA, including expectations that the facilities placed will be properly designed, adequate, sufficient for customer needs, and properly placed to provide the expected services. This is what we interpret the LDA to require. We believe that where these requirements are not met, there has been a failure to comply with the LDA. Interested parties may wish to examine whether additional remedies for this type of failure could and should be implemented and suggest them to the Commission.

For developers, and their agents, to comply with the LDA, it is also reasonable to expect that Qwest's criteria or standards for network engineering, plant equipment, and placement for the equipment or facilities placed for new development be made available for the benefit and direction of the developers, performing their responsibilities under the LDA. Reasonable conduct is expected in placing and inspecting the equipment and facilities for compliance with such criteria or standards, given reasonable opportunity to place the equipment and facilities, and to inspect them. Where Qwest is hindered in performing its LDA responsibilities by the conduct of developers or their agents, or vice

versa, the problem is with conduct, not the LDA. We direct the DPU to monitor activities under the LDA and report to us whether conduct under the LDA complies with the LDA terms and expectations. We direct the DPU to work with Qwest, SCC, and other interested persons to determine whether any modifications to the LDA are needed; to increase the assurance that performance of the responsibilities under the LDA is adequately done and appropriate remedies for failures to perform are available.

DATED at Salt Lake City, Utah, this 2nd day of October, 2000.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary