

Qwest Corporation  
Law Department  
(612) 672-3905-Phone  
(612) 672-3911-Fax

Jason D. Topp  
Corporate Counsel

200 South 5th Street, Room 2200  
Minneapolis, MN 55402



May 5, 2008

Patricia Van Gerpen  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

**Re: In the Matter of the Complaint filed by Roger L. Hall, Rapid City, South  
Dakota, against Qwest Corporation regarding the Cost of Telephone Line  
Extension  
Docket No. CT08-002**

Dear Ms. Van Gerpen:

Enclosed please find Qwest Corporation's Answer and Motion to Dismiss regarding  
the above-referenced matter.

Very truly yours,

A handwritten signature in black ink that reads "Jason D. Topp". The signature is written in a cursive style with a large, looped "J" and "T".

Jason D. Topp

JDT/bardm

Enclosure

cc: Mr. Roger L. Hall

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5<sup>h</sup> day of May, 2008, **Qwest Corporation's Answer and Motion to Dismiss** was e-Filed upon the following party:


Patricia Van Gerpen  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

and copies sent electronically or via U.S. mail, addressed to the following:

Colleen E. Sevold  
Manager-Regulatory Affairs  
Qwest Corporation  
125 South Dakota Avenue, 8<sup>th</sup> Floor  
Sioux Falls, SD 57194  
[colleen.sevold@qwest.com](mailto:colleen.sevold@qwest.com)

Jason D. Topp  
Corporate Counsel  
Qwest Corporation  
200 South Fifth Street, Room 2200  
Minneapolis, MN 55402  
[Jason.topp@qwest.com](mailto:Jason.topp@qwest.com)

Roger L. Hall  
2107 Westgate Place  
Rapid City, SD 57702

  
\_\_\_\_\_  
Dianne Barthel

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE COMPLAINT            )     DOCKET NO. CT08-002**  
**FILED BY ROGER L. HALL, RAPID CITY,        )**  
**SOUTH DAKOTA, AGAINST QWEST             )**  
**CORPORATION REGARDING THE COST            )**  
**OF TELEPHONE LINE EXTENSIONS            )**

**QWEST CORPORATION’S ANSWER AND MOTION TO DISMISS**

**Introduction**

Pursuant to South Dakota Admin. R. 20:10:01:09, Qwest Corporation submits this answer and motion to dismiss the complaint of Roger Hall dated November 20, 2007.

Mr. Hall fails to state a claim upon which relief can be granted; and therefore, his complaint should be dismissed pursuant to South Dakota Admin. Rule 20:10:01:11.01 which incorporates the judicial standard for a motion to dismiss under S.D.C.L. 15-6-12(b)(5).

**Discussion**

Pursuant to S.D.C.L. 15-6-12(b)(5), a complaint should be dismissed for “failure to state a claim upon which relief can be granted.” In the present case, Mr. Hall merely alleges that Qwest has offered service consistent with its catalogues and tariffs. Mr. Hall alleges that “the telephone company is responsible for the line to the box on the house.” He cites no authority for that proposition.

Contrary to Mr. Hall, Qwest’s catalogues and tariffs precisely specify the scope of Qwest’s responsibility to provide facilities for customers. Qwest provides services to general customers under Section 4.3 of its Network and Exchange Services Catalogue. Section 4.3

governs connections with a single household and provides that the customer will be charged for facilities more than 400 feet from the nearest available capacity. That section provides:

**4.3 CONSTRUCTION CHARGES A.** Where the Company extends its facilities on public highways or on private property in order to furnish main station service (first local access line per premises) to an applicant or applicants in territory where telephone facilities are not in place, the Company will provide facilities for each applicant based on distance from the nearest available capacity. The customer will be provided the first 400 feet beyond the nearest point of capacity at no charge. The 400 feet free allowance will apply on either private property or public rights-of-way. (The route established shall be determined by the Company.) Charges to the customer will begin at a point beginning immediately beyond the 400 feet allowance. The charge to provide service for the initial or first line to the premise will be \$1.25 per foot after the 400 feet allowance. Requests for lines that exceed the initial or first line and where adequate capacity is not in place, the applicant shall be charged the actual cost. (M) Material moved from Page 3. (N) (M) (C) (M)

Furthermore, the Catalogue provides:

Where the facilities required to provide a requested service are not available, and in the opinion of the Company, *the cost to provision service to a customer does not constitute a prudent investment*, the customer may be required to pay: construction charges; carrying charges; termination charges; or agree to longer than normal initial service periods; or any combinations thereof. These charges or conditions would be in addition to regularly applicable rates, charges, and normal initial service periods stated in this Price Schedule, for that part of the equipment and facility costs that would not constitute a prudent investment.<sup>1</sup> (emphasis supplied)

Qwest has offered to provide Mr. Hall with service consistent with these provisions in the Catalogue. Qwest has offered three separate pricing proposals consistent with these provisions. (See diagram attached as Exhibit 1). Option 1 would be for Mr. Hall to provide the needed facilities. Qwest estimates the cost of such an arrangement at \$5,125.25. The second option would be for Mr. Hall to make a trench available for Qwest to install the facilities. The cost for that option is \$4,972.22. The third option is for Qwest to perform splicing at the demarcation point and have Mr. Hall install the drops to the housing units.

---

<sup>1</sup> South Dakota Catalogue § 4.2.A.2.

The estimated price for that option is \$2,425.01. Mr. Hall has turned each of those options down.

Qwest provides service to mobile home parks where the lots are individually owned pursuant to Section 4.4. That section does not apply in this instance because the lots in the park are not individually owned.<sup>2</sup> Even if it did apply, the developer would be responsible for construction costs pursuant to Section 4.7.

Mr. Hall's final argument seems to be based on Qwest's general investment in the network. Mr. Hall argues that Qwest has failed to live up to its obligation to employ prudent management planning practices in violation of S.D. Admin. R. 20:10:33:13. The only evidence Mr. Hall cites in support of that position is that Qwest does not have facilities in place to serve new mobile home lots that he intends to develop.

Mr. Hall's allegation is inadequate to withstand a motion to dismiss. If Qwest were required to anticipate every potential new customer that might want service and have facilities in place, such an approach would result in overinvestment in Qwest's network. Furthermore, there would be no need for Sections 4.3, 4.4 and 4.7 of the Catalogue that require the customer to pay for new facilities beyond 400 feet for new service and to pay for special construction costs.

---

<sup>2</sup> Section 4.4 B of Qwest Network and Exchange Access Tariff provides:

1. A PAHD is required for the following:
  - b. Developments for mobile home lots **that are individually owned**. The Company will provide facilities to a post provided by the owner of the mobile home or mobile home park. . . .

(emphasis added).

**Conclusion**

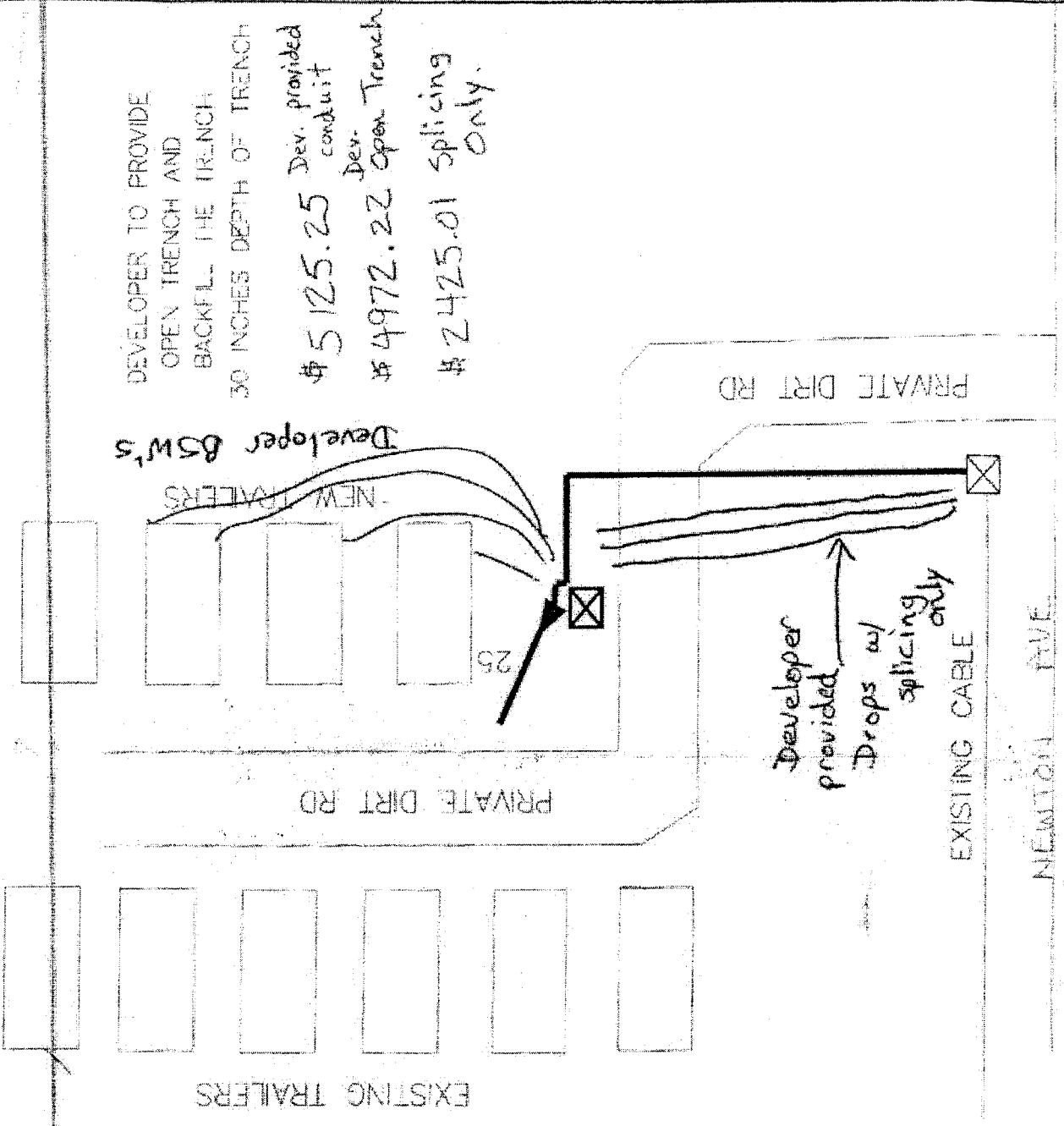
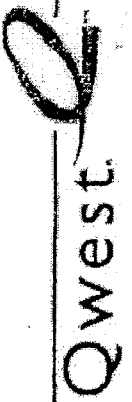
For the foregoing reasons, Qwest Corporation denies that Mr. Hall is entitled to the relief he seeks in his complaint. Qwest Corporation asks that the Commission, pursuant to South Dakota Admin. Rule 20:10:01:11.01, dismiss his complaint with prejudice.

Dated this 5<sup>th</sup> day of May, 2008.

QWEST CORPORATION



Jason D. Topp  
200 South Fifth Street, Room 2200  
Minneapolis, MN 55402  
(612) 672-8905  
[Jason.topp@qwest.com](mailto:Jason.topp@qwest.com)



DEVELOPER TO PROVIDE  
OPEN TRENCH AND  
BACKFILL THE TRENCH  
30 INCHES DEPTH OF TRENCH

# 5125.25 Dev. provided  
conduit

# 4972.22 Dev.  
Open Trench

# 2425.01 Splicing  
only.

**Exhibit 1**