

# DIVIDER

STATE OF NORTH DAKOTA

□ INFORMATION TECHNOLOGY DEPARTMENT

SFN 2053 (4-2002)

**PU-05-324**

**Martin Construction, Inc. vs.  
Qwest Corporation**

**Complaint**

**Filed 6/1/2005**

**Closed 1/11/2006**

**05**



Public Service Commission  
Receipt of Payment

Receipt# 6592

Received: 6/12/2006 Check# 420001670 for \$85.74  
Subject: Utility Valuation

**Docket # PU-05-324**

Qwest Corporation  
1801 California Street, Suit  
Denver CO 80202

17 PU-05-324

Pages: 1

Receipt# 6,592 \$85.74

by Qwest Corporation

06/12/2006

**APPROVED**

DATE: 5-24-06  
AS

**MOTION**

May 24, 2006

Martin Construction, Inc. vs.  
Qwest Corporation  
Complaint

Case No. PU-05-324

I move the Commission bill Qwest Corporation for costs incurred to date  
in Case No. PU-05-324, Martin Construction, Inc. vs. Qwest Corporation,  
Complaint.



# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

Tony Clark, President  
Susan E. Wefald  
Kevin Cramer

Executive Secretary  
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408  
Bismarck, North Dakota 58505-0480  
web: [www.psc.state.nd.us](http://www.psc.state.nd.us)  
e-mail: [ndpsc@state.nd.us](mailto:ndpsc@state.nd.us)  
TDD 800-366-6888  
Fax 701-328-2410  
Phone 701-328-2400

May 24, 2006

Scott Macintosh  
Qwest Corporation  
220 N 5<sup>th</sup> St  
Bismarck ND 58501

RE: Case No. PU-05-324  
Martin Construction, Inc. vs.  
Qwest Corporation  
Complaint

Enclosed is a copy of the statement approved at the May 24, 2006 Public Service Commission meeting for the expenses incurred to date in Case No. PU-05-324.

Under N.D.C.C. 49-21-01.7, these expenses are billed through the Valuation Fund and must be paid for by the telecommunications company involved.

Please make your check payable to the *Public Service Commission*.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gloria Geiger".

Gloria Geiger  
Admin Staff Officer  
701-328-2401

Enc.

c: Jason Topp  
Qwest Corporation  
200 S 5<sup>th</sup> St Room 2200  
Minneapolis MN 55402

**Billing Statement**

**May 24, 2006**

Martin Construction, Inc. vs.  
Qwest Corporation  
Complaint

Case No. PU-05-324

**Bill To:**

Qwest Corporation .....\$85.74

**Expenses Incurred to Date:**

Office of Administrative Hearings (August 2005)	\$28.58
Office of Administrative Hearings (October 2005)	19.05
Office of Administrative Hearings (December 2005)	9.53
Office of Administrative Hearings (January 2006)	28.58

**Send Payment and a Copy of this Statement To:**

Public Service Commission  
600 E Boulevard Ave Dept 408  
Bismarck ND 58505-0480

**Federal Tax ID 45-0309764**



# OFFICE OF ADMINISTRATIVE HEARINGS

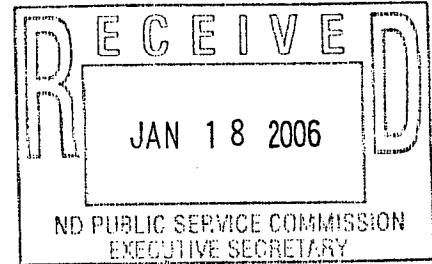
STATE OF NORTH DAKOTA  
1707 North 9th Street  
Bismarck, North Dakota 58501-1882

Allen C. Hoberg  
DIRECTOR

701-328-3260  
Fax 701-328-3254  
oah@state.nd.us  
www.nd.gov/oah

January 17, 2006

Mr. William W. Binek  
Hearing Administrator  
Public Service Commission  
600 East Boulevard Avenue, Dept. 408  
Bismarck, ND 58505-0480



Re: Martin Construction, Inc. vs. Qwest Corporation  
Complaint  
Case No. PU-05-324  
OAH File No. 20050351

Dear Mr. Binek:

On August 25, 2005, I was designated to preside as a procedural administrative law judge in the matter of Martin Construction, Inc. v. Qwest Corporation, Case No. PU-05-324. The hearing was scheduled for October 14, 2005, but was continued pending settlement. On December 27, 2005, I received a copy of a Stipulation of Dismissal in this matter, signed by counsel for the parties. On January 13, 2006, you informed me that the Commission approved the stipulation on January 11, 2005, and closed the case. Accordingly, I am closing our file on this matter and returning that portion of the record I have in my possession to you. Enclosed are copies of documents that have been transmitted to us, as well as originals and copies of documents received while the file was in our possession, for filing with the official agency record of this matter.

Thank you for your attention to this matter.

Sincerely,

Allen C. Hoberg  
Administrative Law Judge

ACH/eap

Encl.

cc: Ms. Melissa K. Thompson  
Qwest Corporation  
Mr. Michael J. Maus  
Hardy, Maus & Nordsvan, P.C.

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Martin Construction, Inc. vs.  
Qwest Corporation  
Complaint**

**Case No. PU-05-324**

**AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL**

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Sharon Helbling** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **12th day of January, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, **four** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

**Order Approving Stipulation for Dismissal**

The envelopes were addressed as follows:

Heidi Dullum  
Hardy Maus & Nordsven P C  
137 1<sup>st</sup> Ave W  
Dickinson ND 58602-0570  
**Cert. No. 7003 2260 0001 3516 1652**

Jason Topp  
Qwest Corporation  
200 S 5<sup>th</sup> St 395  
Minneapolis MN 55402  
**Cert. No. 7003 2260 0001 3516 1669**

Scott Macintosh  
Qwest Corporation  
220 N 5<sup>th</sup> St  
Bismarck ND 58501  
**Cert. No. 7003 2260 0001 3516 1676**

Kent Blickensderfer  
Qwest Corporation  
220 N 5<sup>th</sup> St  
Bismarck ND 58501  
**Cert. No. 7003 2260 0001 3516 1683**

**Sharon Helbling** further deposes and says that on the **12th day of January, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Kurt Martin President  
Martin Construction Inc  
Box 17  
Gladstone ND 58630

Each address shown is the respective addressee's last reasonably ascertainable post office address.

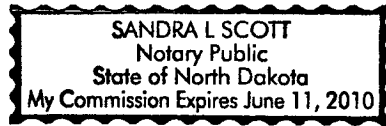
Subscribed and sworn to before me  
this **12th day of January, 2006**.

SEAL

*Sharon Helms*

*Sandra L Scott*

Notary Public



APPROVED

DATE: 1-11-06

KME

**MOTION**

**January 11, 2006**

**Martin Construction, Inc. vs.  
Qwest Corporation  
Complaint**

**Case No. PU-05-324**

I move the Commission adopt the Order approving the Stipulation for Dismissal filed by the parties in Case No. PU-05-324 and close the case.

AB/sdh

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Martin Construction, Inc. vs.  
Qwest Corporation  
Complaint**

**Case No. PU-05-324**

**ORDER**

**January 11, 2006**

On June 1, 2005, Martin Construction, Inc. (Complainant) filed a Complaint against Qwest Corporation (Respondent) alleging that (1) Respondent provided a verbal quotation to install telephone service to a construction project site in August 2004, (2) on March 2, 2005 Complainant contacted Respondent to proceed with the installation of telephone service to the project site, and (3) on March 3, 2005 Complainant received a bill from Respondent in excess of the amount provided in the verbal quotation to install telephone service to the project site. On June 24, 2005, Qwest Corporation filed its Answer.

On August 25, 2005, the Commission issued a Notice of Hearing scheduling the hearing for October 14, 2005. Prior to the hearing, the parties informally informed the Commission that they had reached a settlement. The hearing was continued pending formal confirmation of settlement.

On December 23, 2005, Martin Construction and Qwest filed a Stipulation of Dismissal. The parties stated that they had reached a settlement which included a stipulation for dismissal with prejudice of the complaint proceeding.


Based on the foregoing, the Commission issues the following:

**Order**

1. The Stipulation of Dismissal in Case No. PU-05-324 is approved.
2. Case No. PU-05-324 is closed.
3. A copy of the Stipulation of Dismissal is attached to this order.

**PUBLIC SERVICE COMMISSION**

  
**Susan E. Wefald**  
**Commissioner**

  
**Tony Clark**  
**President**

  
**Kevin Cramer**  
**Commissioner**

12 PU-05-324

Pages: 2

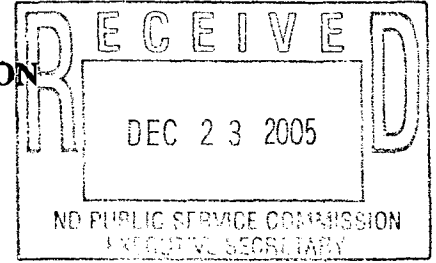
Order

by Public Service Commission

01/11/2006

CC: Comm Legal Illona, Annette ALJ

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF NORTH DAKOTA**



In the Matter of )  
Martin Construction, Inc., )  
Complainant, )  
v. )  
Qwest Communications, )  
Respondent. )

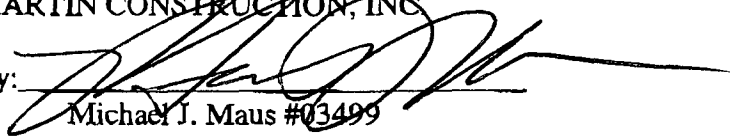
PU05-324

**STIPULATION  
OF DISMISSAL**

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that the Complaint in the above entitled matter shall be and is hereby dismissed with prejudice and without costs to any party hereto.

Dated this 2nd day of December, 2005.

MARTIN CONSTRUCTION, INC

By:   
Michael J. Maus #03499

HARDY, MAUS & NORDSVEN, P.C.  
Attorneys for Martin Construction, Inc.  
137 First Avenue West, P.O. Box 570  
Dickinson, ND 58602-0570  
Telephone: 701-483-4500

Dated this 2nd day of December, 2005.

QWEST COMMUNICATIONS

By:   
Melissa K. Thompson

Attorney for Qwest Communications  
Qwest Services Corporation  
1801 California Street, 10th Floor  
Denver, Colorado 80202  
Telephone: 303-383-6728

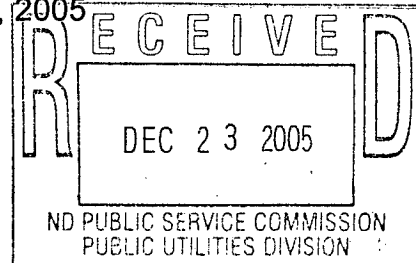
Albert J. Hardy  
Michael J. Maus  
Mary E. Nordsven  
Rhonda R. Ehlis

Some members also authorized to practice  
law in Montana, Colorado and Texas

**Hardy, Maus  
& Nordsven, P.C.**  
ATTORNEYS • AT • LAW

137 First Avenue West  
P.O. Box 570  
Dickinson, ND 58602-0570  
Telephone: (701) 483-4500  
Facsimile: (701) 483-4501  
hmn@hmnattys.com

December 22, 2005



Annette M. Bendish  
Public Service Analyst  
North Dakota Public Service Commission  
600 E. Boulevard Ave., Dept. 408  
Bismarck, ND 58505-0480

Re: In the Matter of Martin Construction, Inc. v. Qwest  
Case No. PU-05-324

Dear Ms. Bendish:

Please find enclosed the Stipulation of Dismissal between Martin Construction and Qwest,  
for filing in the above entitled matter.

Thank you.

Sincerely,

HARDY, MAUS & NORDSVEN, P.C.

A handwritten signature in black ink, appearing to read "Michael J. Maus", with a long horizontal line extending to the right.

Michael J. Maus

MJM:sk

Enclosure

cc w/enc: Qwest, Attn: Melissa K. Thompson

11

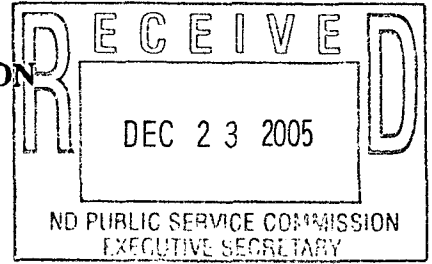
PU-05-324

Pages: 2

Stipulation of Dismissal

by Martin Construction, Inc. by Michael J. Maus, Attorne  
12/23/2005 CC: Comm Legal Ilona, Annette ALJ

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF NORTH DAKOTA**



In the Matter of )  
Martin Construction, Inc., )  
Complainant, )  
 )  
v. )  
 )  
Qwest Communications, )  
Respondent. )

PU05-324

**STIPULATION  
OF DISMISSAL**

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that the Complaint in the above entitled matter shall be and is hereby dismissed with prejudice and without costs to any party hereto.

Dated this 2nd day of December, 2005.

MARTIN CONSTRUCTION, INC.

By: \_\_\_\_\_

Michael J. Maus #03499

HARDY, MAUS & NORDSVEN, P.C.  
Attorneys for Martin Construction, Inc.  
137 First Avenue West, P.O. Box 570  
Dickinson, ND 58602-0570  
Telephone: 701-483-4500

Dated this 22nd day of December, 2005.

QWEST COMMUNICATIONS

By: \_\_\_\_\_

Melissa K. Thompson

Attorney for Qwest Communications  
Qwest Services Corporation  
1801 California Street, 10th Floor  
Denver, Colorado 80202  
Telephone: 303-383-6728



**OFFICE OF ADMINISTRATIVE HEARINGS**

STATE OF NORTH DAKOTA

1707 North 9th Street

Bismarck, North Dakota 58501-1882

Allen C. Hoberg  
DIRECTOR

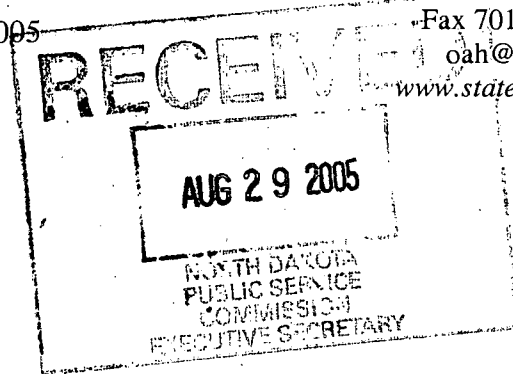
701-328-3260

August 29, 2005

Fax 701-328-3254

oah@state.nd.us

www.state.nd.us/oah



Mr. William Binek, Hearing Administrator  
Public Service Commission  
600 East Boulevard Avenue, Dept. 408  
Bismarck, North Dakota 58505-0408

Dear Mr. Binek:

Thank you for your August 25, 2005, request of the designation of an administrative law judge from the Office of Administrative Hearings to conduct a hearing in the matter of Martin Construction, Inc. vs. Qwest Corporation, Case No. PU-05-324. I hereby designate myself, Allen C. Hoberg, to be assigned as an administrative law judge to conduct the hearing in regard to this matter. Because the administrative law judge will not be making recommended findings of fact and conclusions of law, or issuing a recommended order, the person or persons who will be making the final administrative decision in regard to this matter (*i.e.*, agency head, deputy, board, commission) must be in attendance at the hearing.

Please send all additional relevant documents (correspondence, and other pleadings and documents) to the designated administrative law judge in care of the Office of Administrative Hearings, 1707 North 9th Street, Bismarck, North Dakota 58501-1882. I understand the hearing is scheduled for October 14, 2005, beginning at 9:00 a.m., in the Commission's Hearing Room, 12th Floor, State Capitol, Bismarck. Because the administrative law judge is requested to conduct the hearing only, the agency must give proper notice of the hearing.

**Your request has been assigned OAH File No. 20050351. Please include this number on all future documents and correspondence filed for this matter with the Office of Administrative Hearings.**

Sincerely,

Allen C. Hoberg  
Director

ACH/mw

cc: Ms. Melissa Thompson, Counsel for Qwest  
Mr. Kevin McCabe, Counsel for Martin Construction, Inc.



# Public Service Commission

## State of North Dakota

### COMMISSIONERS

Tony Clark, President  
Susan E. Wefald  
Kevin Cramer

Executive Secretary  
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408  
Bismarck, North Dakota 58505-0480  
web: [www.psc.state.nd.us](http://www.psc.state.nd.us)  
e-mail: [ndpsc@state.nd.us](mailto:ndpsc@state.nd.us)  
TDD 800-366-6888  
Fax 701-328-2410  
Phone 701-328-2400

August 25, 2005

Ms. Melissa K. Thompson  
Qwest Corporation  
1801 California Street, 10<sup>th</sup> Floor  
Denver, CO 80202

Mr. Kevin McCabe  
Hardy, Maus & Nordsven, P.C.  
P. O. Box 570  
Dickinson, ND 58602-0570

Re: Request for Court Reporter  
Case No. PU-05-324  
Martin Construction, Inc. vs.  
Qwest Corporation  
Complaint

Dear Ms. Thompson and Mr. McCabe:

The hearing in the above case has been scheduled for October 14, 2005, beginning at 9 a.m., in the Commission Hearing Room. The Commission will tape record the hearing. If parties would like a court reporter present at the hearing they may do so, and may make their own arrangements. However, if parties would like the Commission to arrange for a court reporter please notify the Commission in writing within ten days of receipt of this letter and our office will make the necessary arrangements.

Parties will pay all costs associated with the court-reporting service.

If you have any questions, please contact us.

Sincerely,

  
William W. Binek  
Hearing Administrator

9 PU-05-324

Pages: 1

Letter to parties re court reporter

by Public Service Commission

08/25/2005

CC: Comm Legal Illona Annette



**Public Service Commission**  
State of North Dakota

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COMMISSIONERS

Tony Clark, President  
Susan E. Wefald  
Kevin Cramer

Executive Secretary  
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408  
Bismarck, North Dakota 58505-0480  
web: [www.psc.state.nd.us](http://www.psc.state.nd.us)  
e-mail: [ndpsc@state.nd.us](mailto:ndpsc@state.nd.us)  
TDD 800-366-6888  
Fax 701-328-2410  
Phone 701-328-2400

August 25, 2005

Mr. Allen C. Hoberg  
Office of Administrative Hearings  
1707 North 9<sup>th</sup> Street, Lower Level  
Bismarck, ND 58501

Re: Martin Construction, Inc. vs.  
Qwest Corporation  
Complaint  
Case No. PU-05-324

Dear Mr. Hoberg:

Enclosed is a request for an administrative law judge in the above case. The Commission has scheduled a hearing for October 14, 2005, beginning at 9 a.m., in the Commission's Hearing Room, 12<sup>th</sup> Floor, State Capitol, Bismarck. The administrative law judge will serve as a procedural law judge, a court reporter may be present, and the hearing will be tape recorded. A copy of the case is enclosed.

Please provide the Commission with a copy of any filings issued by your office in this matter.

If you have any questions, please contact me. Thank you.

Sincerely,

  
William W. Binek  
Hearing Administrator

/sls  
Enclosure

c: Melissa K. Thompson  
Kevin McCabe



**REQUEST FOR ADMINISTRATIVE LAW JUDGE--COMPLAINT**  
 NORTH DAKOTA OFFICE OF ADMINISTRATIVE HEARINGS  
 SFN 17818 (Rev. 03-2001)

Name of Agency, Board, or Commission Public Service Commission		
Name of Respondent(s) Qwest Corporation	Address 1801 California Street, 10th Floor, Denver, CO 80202	Telephone Number 303-383-6728

The above named agency, board, or commission has taken administrative action pursuant to its authority found in Title 49 \_\_\_\_\_ (North Dakota Century Code and/or North Dakota Administrative Code).

The administrative action is more fully described as follows: Hearing is set for October 14, 2005, beginning at 9 a.m., in the Commission Hearing Room, 12th Floor, State Capitol.

Has the respondent been provided a copy of the complaint?  Yes  No

Attached is a copy of the complaint, related documents and correspondence, and certificate, affidavit or admission of service. If the respondent has otherwise been notified about this administrative action, please explain in the comments section below.

It requests designation of an administrative law judge (please check one):

- To conduct the hearing and issue **recommended** findings of fact, conclusions of law, and order.
- To serve as a **procedural** administrative law judge only (no recommended decision). The agency head will be present at the hearing as required by NDCC 54-57-04(6).
- To conduct the hearing, issue findings of fact, conclusions of law, and a **final** order.

**PLEASE MAKE A REQUEST FOR AN ADMINISTRATIVE LAW JUDGE AT LEAST ONE MONTH BEFORE THE HEARING.**

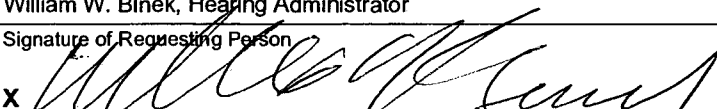
Agency Contact Person(s) William W. Binek, Chief Counsel	Telephone Number 328-4088
---	------------------------------

Representation [attorney (or other)] if known:

Agency William W. Binek, Chief Counsel	Telephone Number 328-4088
Party Melissa K. Thompson, Counsel for Qwest, 1801 California Street, 10th Floor, Denver, CO 80202	Telephone Number 303-383-6728
Party Kevin McCabe, Counsel for Complainant Martin Construction, P. O. Box 570, Dickinson, ND 58602-0570	Telephone Number 701-483-4500

Additional Comments Hearing will be tape recorded, court reporter may be requested.

(For agencies required to use OAH, notice of hearing will be issued by the administrative law judge, unless a procedural administrative law judge is requested. Other requesting agencies and agencies requesting a procedural administrative law judge should first contact OAH about scheduling a hearing. If notice has already been issued, attach a copy of the notice.)

Typed or Printed Name and Title of Requesting Person William W. Binek, Hearing Administrator	Date August 25, 2005
Signature of Requesting Person 	Telephone Number 328-4088

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Martin Construction, Inc. vs.  
Qwest Corporation  
Complaint**

**Case No. PU-05-324**

**AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL**

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Sharon Helbling** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **26th day of August, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, **four** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

**Notice of Hearing**

The envelopes were addressed as follows:

Heidi Dullum  
Hardy Maus & Nordsven P C  
137 1<sup>st</sup> Ave W  
Dickinson ND 58602-0570  
**Cert. No. 7004 2890 0000 5450 7665**

Melissa K thompson  
Qwest Corporation  
1005 17<sup>th</sup> St Ste 200  
Denver CO 80202  
**Cert. No. 7004 2890 0000 5450 7672**

Scott Macintosh  
Qwest Corporation  
220 N 5<sup>th</sup> St  
Bismarck ND 58501  
**Cert. No. 7004 2890 0000 5450 7689**

Mel Kambeitz  
Qwest Corporation  
220 N 5<sup>th</sup> St  
Bismarck ND 58501  
**Cert. No. 7004 2890 0000 5450 7696**

**Sharon Helbling** further deposes and says that on the **26th day of August, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Kurt Martin President  
Martin Construction Inc  
Box 17  
Gladstone ND 58630

7

PU-05-324

Pages: 2

Affidavit of Service

by Public Service Commission

08/26/2005

CC: Comm Legal Ilona Annette

Each address shown is the respective addressee's last reasonably ascertainable post office address.

*Sharon Hedding*

---

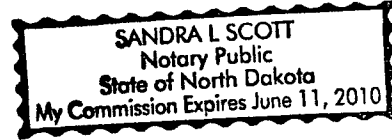
Subscribed and sworn to before me  
this **26th day of August, 2005**.

*Sandra L. Scott*

---

Notary Public

SEAL



**APPROVED**

**MOTION**

DATE: 8-25-05  
KMF

**August 25, 2005**

**Martin Construction, Inc. vs.  
Qwest Corporation  
Complaint**

**Case No. PU-05-324**

I move the Commission issue a Notice of Hearing in this proceeding.

AB/sdh

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Martin Construction, Inc. vs.  
Qwest Corporation  
Complaint**

**Case No. PU-05-324**

**NOTICE OF HEARING**

**August 25, 2005**

On June 1, 2005, Martin Construction, Inc. (Complainant) filed a Complaint against Qwest Corporation (Respondent) alleging that (1) Respondent provided a verbal quotation to install telephone service to a construction project site in August 2004, (2) on March 2, 2005 Complainant contacted Respondent to proceed with the installation of telephone service to the project site, and (3) on March 3, 2005 Complainant received a bill from Respondent in excess of the amount provided in the verbal quotation to install telephone service to the project site. On June 24, 2005, Qwest Corporation filed its Answer.

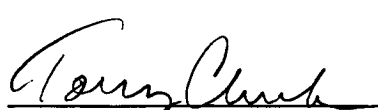
A **public hearing** on this matter will be held **October 14, 2005 beginning at 9 a.m.** in the Commission hearing room, State Capitol, 12<sup>th</sup> Floor, Bismarck, North Dakota. Issues to be considered in this matter include:

1. Whether the Public Service Commission has jurisdiction to award the relief requested by the Complainant.
2. Whether the verbal price quotation was sufficient to form a contract between the parties.
3. Whether the price billed by Respondent is a fair and reasonable price to install telephone service to the project site, and if the price billed is not fair and reasonable, what is a fair and reasonable price for installation of telephone service to the project site.

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Illona A. Jeffcoat-Sacco, Executive Secretary.

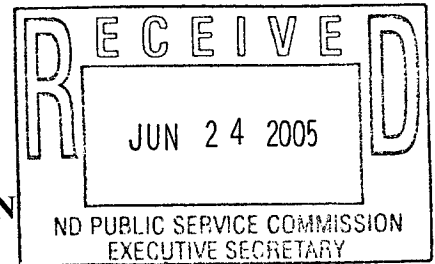
**PUBLIC SERVICE COMMISSION**

  
**Susan E. Wefald**  
Commissioner

  
**Tony Clark**  
President

  
**Kevin Cramer**  
Commissioner

STATE OF NORTH DAKOTA  
BEFORE THE PUBLIC SERVICE COMMISSION



In the Matter of  
Martin Construction, Inc.,  
Complainant,

PU05-324

**ANSWER**

v.

Qwest Communications,  
Respondent

Qwest Corporation ("Qwest"), by and through undersigned counsel, hereby respectfully submits this Answer, and states:

The following numbered sections correspond to the numbered sections set forth in Martin Construction, Inc.'s Complaint.

- I. Qwest lacks information sufficient to form a belief as to the truth of the matters asserted.
- II. Qwest Communications Corporation is a competitive local exchange carrier authorized to conduct business in North Dakota. Except as so admitted, Qwest denies the allegations set forth in section II.
- III. Upon information and belief, Qwest denies the allegations set forth in section III.
- IV. Qwest lacks information sufficient to form a belief as to the truth of the matters asserted and, therefore, Qwest denies the allegations in section IV.
- V. Qwest admits that it informed Martin Construction, Inc. that frost conditions cause additional charges to be incurred. Except as so admitted, Qwest denies the allegations set forth in section V.
- VI. Qwest lacks information sufficient to form a belief as to the truth of whether Martin Construction contacted Qwest on March 2, 2005. Qwest affirmatively states that it sent Mr. Jerry Volk, a Project Engineer for Martin Construction, a letter dated February 28, 2005 containing a cost estimate of \$16,770.11 for work to be performed. Qwest affirmatively states that the parties entered into a written contract dated May 5, 2005 for payment in the amount of \$16,770.11 for work to be performed by Qwest. Qwest affirmatively states that Martin Construction paid Qwest \$16,770.11 with a check dated May 9, 2005 and that Qwest performed the work under the contract. Qwest affirmatively states that, as a matter of standard policy, Qwest requires payment in full before performing work of the type requested by Martin

Construction. Qwest admits that it informed Martin Construction of this policy and required Martin Construction to pay Qwest for the work under the above-described contract before undertaking the work.

VII. Qwest denies the allegations set forth in section VII and restates its affirmative representations in its answer to the allegations set forth in section VI.

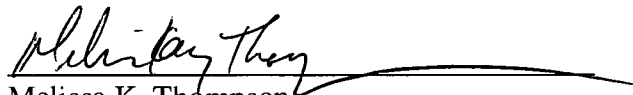
### **AFFIRMATIVE DEFENSES**

1. Martin Construction, Inc. fails to state a claim upon which relief can be granted.
2. Martin Construction, Inc.'s claim is barred by expiration of the quote in the amount of \$7,177.47.
3. Martin Construction, Inc.'s claim is barred because the parties never executed a written contract or had a "meeting of the minds" regarding Qwest's quote of \$7,177.47. Martin Construction, Inc.'s claim is barred because no contract ever existed between the parties in the amount of \$7,177.47.
4. Martin Construction, Inc.'s claim is barred by the doctrines of waiver and estoppel.

WHEREFORE, Qwest Corporation respectfully asks the Commission to deny the claim for relief filed by Martin Construction, Inc.

RESPECTFULLY SUBMITTED this 24th day of June, 2005.

QWEST CORPORATION

  
Melissa K. Thompson

QWEST SERVICES CORPORATION  
1801 California Street, 10th Floor  
Denver, CO 80202  
(303) 383-6728

*Attorney for Qwest Corporation*

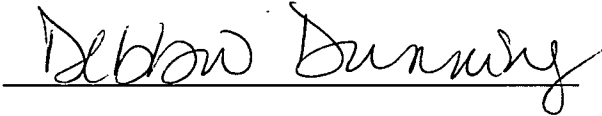
**CERTIFICATE OF SERVICE**

I hereby certify that on this 24<sup>th</sup> day of June, 2005, an original and 7 copies of the foregoing **QWEST CORPORATION'S ANSWER** was served upon the following party:

Ms. Ilona Jeffcoat-Sacco  
Executive Secretary  
North Dakota Public Service Commission  
600 East Boulevard Avenue – 12<sup>th</sup> Floor  
Bismarck, ND 58505-0480

a copy was also sent to the following:

Michael J. Maus  
Kevin McCabe  
Hardy, Maus & Nordsvan, P.C.  
137 1st Ave. W.  
P.O. Box 570  
Dickinson, ND 58602-0570

  
\_\_\_\_\_

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

**Martin Construction, Inc. vs.  
Qwest Corporation  
Complaint**

**Case No. PU-05-324**

**AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL**

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Sharon Helbling** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **9th day of June, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, **four** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

**Complaint**

The envelopes were addressed as follows:

Heidi Dullum  
Hardy Maus & Nordsven P C  
137 1<sup>st</sup> Ave W  
Dickinson ND 58602-0570  
**Cert. No. 7004 2890 0000 5451 4700**

Melissa K thompson  
Qwest Corporation  
1005 17<sup>th</sup> St Ste 200  
Denver CO 80202  
**Cert. No. 7004 2890 0000 5451 4717**

Scott Macintosh  
Qwest Corporation  
220 N 5<sup>th</sup> St  
Bismarck ND 58501  
**Cert. No. 7004 2890 0000 5451 4724**

Mel Kambeitz  
Qwest Corporation  
220 N 5<sup>th</sup> St  
Bismarck ND 58501  
**Cert. No. 7004 2890 0000 5451 4731**

**Sharon Helbling** further deposes and says that on the **9th day of June, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Kurt Martin President  
Martin Construction Inc  
Box 17  
Gladstone ND 58630

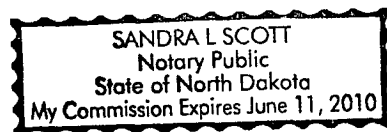
Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me  
this **9th day of June, 2005**.

SEAL

  
\_\_\_\_\_

  
\_\_\_\_\_  
Notary Public



**APPROVED**

DATE: 6-8-05  
KMF

**MOTION**

**June 8, 2005**

**Martin Construction, Inc. vs.  
Qwest Corporation  
Complaint**

**Case No. PU-05-324**

I move the Commission find the complaint filed under North Dakota Century Code Section 49-21-10.3 states a *prima facie* case and serve the complaint on Qwest Corporation.

AB/sdh

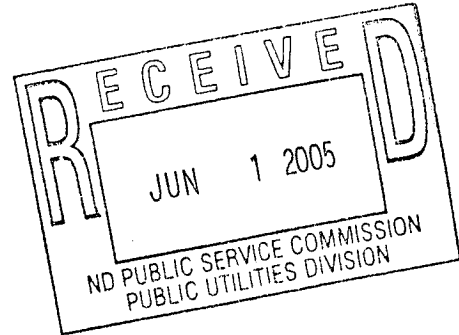
Albert J. Hardy  
Michael J. Maus  
Mary E. Nordsven  
Rhonda R. Ehlis  
Kevin McCabe

Some members also authorized to practice  
law in Montana, Colorado and Texas

**Hardy, Maus  
& Nordsven, P.C.**  
ATTORNEYS • AT • LAW

137 First Avenue West  
P.O. Box 570  
Dickinson, ND 58602-0570  
Telephone: (701) 483-4500  
Facsimile: (701) 483-4501  
hmn@hmnattys.com

May 31, 2005



Public Service Commission  
600 East Boulevard Avenue  
Bismarck, ND 58505

RE: Martin Construction, Inc. vs. Qwest Communications

Enclosed please find an original Complaint along with eight (8) copies in regard to the above referenced matter. If you have any questions, please contact our office.

Thank you.

Sincerely,

HARDY, MAUS & NORDSVEN, P.C.

*Heidi Dullum*  
Heidi Dullum, Secretary

Enclosures

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF NORTH DAKOTA**

**IN THE MATTER OF:**

Martin Construction, Inc.,	)	
	)	
Complainant,	)	
	)	<b>COMPLAINT</b>
vs.	)	
	)	
Qwest Communications,	)	PSC No. _____
	)	
Respondent.	)	

\*\*\*\*\*  
\* \* \* \* \*

COMES NOW, Complainant, Martin Construction, Inc., by and through its attorneys, Hardy, Maus & Nordsven, P.C., and pursuant to N.D.C.C. § 49-21-10.3 and alleges and shows to the commission the following for its claim for relief:

I.

At all times relevant to this Complaint, Martin Construction, Inc., ("Martin Construction"), of Gladstone, North Dakota, has been a North Dakota corporation licensed to do business within North Dakota.

II.

Qwest Communications, of Richfield, Minnesota, ("Qwest"), is a telecommunications company authorized to conduct business in the State of North Dakota.

III.

In August of 2004, Martin Construction was given a verbal quotation of \$7,177.47 by Qwest to have Qwest install telephone service to a construction project site known as Square Butte Dam No. 6, which is also known as the Harmon Lake Recreation Area.

#### IV.

In November of 2004, Martin Construction received a formal notice to proceed on the Square Butte Dam project from the project's engineer, Natural Resource and Engineer Service, ("NRCS").

#### V.

Because of the timing of the notice, Qwest informed Martin Construction that if it were to proceed in November or December additional charges for frost would be applied. Therefore, to save costs, all parties involved decided to wait to have the work done in spring, after the ground thawed.

#### VI.

On March 2, 2005, Martin Construction contacted Qwest to proceed with the installation of telephone service to the project site. Qwest responded by informing Martin Construction that before any work could be done, Martin Construction pay Qwest in full for the work to be done.

#### VII.

On March 3, 2005, Martin Construction received a bill from Qwest regarding the Square Butte Dam project requesting payment of \$16,677.11, which amounts to \$9,499.64 more than originally agreed to.

WHEREFORE, Martin Construction respectfully requests the Commission grant the following relief:

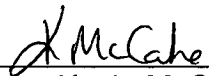
1. An order requiring Qwest to comply with the law and abide by the terms of the original contract, whereby Martin Construction would pay \$7,177.47 to have phone service installed at the Square Butte Dam project.

2. Alternatively, an order requiring Qwest to supply the documentation justifying its actions for the cost increase so Martin Construction can present it to the NRCS project engineer and receive a contract adjustment.

Dated this 31 day of May, 2005.

Respectfully submitted,

HARDY, MAUS & NORDSVEN, P.C.  
Attorneys for Complainant  
137 1<sup>st</sup> Ave. W. PO Box 570  
Dickinson, ND 58602-0570  
(701)483-4500

By:   
Kevin McCabe (05743)



# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

Tony Clark, President  
Susan E. Wefald  
Kevin Cramer

Executive Secretary  
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408  
Bismarck, North Dakota 58505-0480  
web: [www.psc.state.nd.us](http://www.psc.state.nd.us)  
e-mail: [ndpsc@state.nd.us](mailto:ndpsc@state.nd.us)  
TDD 800-366-6888  
Fax 701-328-2410  
Phone 701-328-2400

May 20, 2005

Kurt Martin, President  
Martin Construction Inc.  
PO Box 17  
Gladstone, ND 58630-0017

Dear Mr. Martin:

Thank you for your letter of 10 May 2005 concerning your dispute with Qwest. As you requested and as I discussed with Jerry Volk on the phone, I have provided copies of your letter to the Commissioners and other utilities staff.

Also as discussed on the phone, I have provided a copy of your letter to Qwest and have attempted to resolve the matter informally with Qwest, to no avail. Based on the information provided by you and by Qwest, I have concluded that the only alternative available for you to pursue at this time with our office is the formal complaint we discussed. I understand that you have provided this information to your attorney, and that you earlier received from us copies of our procedural rules explaining formal and informal complaints and procedures. Consequently, I will wait to hear further from you about your decision whether or not to proceed with a formal complaint.

If you do decide to proceed with a formal complaint, please understand that the time frame provided in North Dakota law and our rules will apply, including the 45 day notice period, because there does not appear to be any justification for an emergency procedure. If the parties involved all agree, the process can be shortened somewhat. In addition, if you file a formal complaint, you will have the burden of proof regarding your allegations. As the matter will likely go to hearing (unless resolved beforehand) you or another representative of Martin Construction will need to be prepared to testify in support of your allegations.

I am sorry that I could not be of further help to you. If you have additional questions, please do not hesitate to call or write.

Sincerely,

Illona A. Jeffcoat-Sacco  
Executive Secretary  
Public Utilities Director

cc: Mel Kambeitz, Qwest

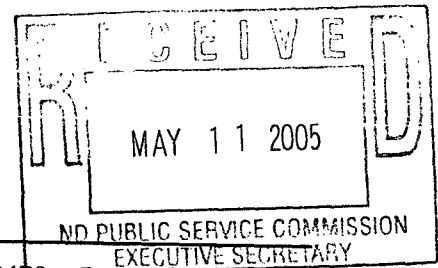
**Helbling, Sharon D.**

---

**From:** Jeffcoat-Sacco, Illona  
**Sent:** Friday, May 13, 2005 1:51 PM  
**To:** -Grp-PSC Commissioners  
**Cc:** -Grp-PSC Legal; -Grp-PSC Public Utilities  
**Subject:** letter from Martin Construction

Martin Construction has filed a letter with the Commission regarding a dispute with Qwest. They asked that the Commissioners be made aware of it, hence you have a copy. I talked to them about putting the info into a formal complaint format, as well as the time frame for formal complaints, and they will be discussing that with their attorney and will get back to me next week about that issue. Meanwhile, I intend to forward the letter to Qwest and discuss the matter with them before I talk to Martin construction again.

***Illona A. Jeffcoat-Sacco***  
***Executive Secretary***  
Director, Public Utilities Division  
Public Service Commission  
600 E. Boulevard Ave., Dept. 408  
Bismarck, ND 58505-0480  
701-328-2407 (fax: 701-328-2410)  
ijs@state.nd.us



Box 17 • Gladstone, ND 58630 Ph: (701) 483-3478 • Fax: (701) 483-3479

May 10, 2005

PUBLIC SERVICE COMMISSION  
600 E. Blvd Ave, Dept 408  
Bismarck, ND 58505-0480

RE: Formal Complaint against Qwest Communications for failure to honor service installation quotation

Martin Construction Inc.  
P.O. Box 17  
Gladstone, ND 58630

VS

Qwest Communications  
6244 Cedar Avenue South  
Richfield, MN 55423

Honorable Members of the Commission:

In August of 2004, Martin Construction Inc, Gladstone, ND received a verbal quotation VIA telephone from Qwest Communications, to install telephone service to a proposed, construction project site, formally known as Square Butte Dam No. 6 but also referred to as, Harmon Lake Recreation Area. The quotation was in the amount of \$7,177.47. Martin Construction verbally requested a written affirmation of this quotation but was told by the Qwest representative that a written quotation was not normal procedure and the request would not be complied with.

In November of 2004, after formal notice to proceed was issued by the Natural Resource and Conservation Service (NRCS), the engineer for the project, Martin Construction contacted Qwest about arrangements for the construction of the quoted service. Martin Construction was informed by a Qwest representative that due to frozen ground and because the proposed service would "share a trench" with the electrical service, the preference would be to wait until spring to have the service installed. Martin Construction was informed that the service could be installed in November/December, but that additional "frost" charges would be applied. This was also confirmed with the electric utility company involved. After consultation with the project engineer the decision was reached to wait until after "spring thaw". No mention was made about any other cost changes, deadlines (90 days or other), contracts or payment.

On March 2, 2005, due to unusually nice weather, Martin Construction contacted the NRCS project engineer to begin work on the project. The NRCS project engineer notified Martin Construction that before any work could begin, the project field office and related telephone and electrical utilities should be in place. Martin Construction contacted the Qwest representative and was informed that no response had been received to Qwest's letter requesting payment and that Qwest would not take any action on the project until payment in full was received. The Qwest representative was informed that Martin Construction had not received any letter and was asked if one could be faxed to this office. The following day, Martin Construction received a faxed copy of a letter (copy attached labeled exhibit 1) which had been sent to the NRCS project engineer on February 22, 2005 and requested agreement to terms, requiring payment in the amount of \$16,677.11. On March 8, 2005 Martin Construction received the identical letter from Qwest, dated February 28, 2005 (copy attached labeled exhibit 2). Martin Construction inquired why the original quotation was not being honored and was informed that the Qwest representative, who had made the quotation, "had made an error and was no longer in that position." When informed that a bid had been submitted and accepted using the initial quotation, the Qwest representative advised Martin Construction to approach the NRCS project engineer for a contract increase to cover the difference. Martin Construction explained to Qwest that to request a cost increase would

require documentation and additional justification. For the record, a written explanation was verbally requested but Qwest has not been willing to provide such information.

The Natural Resource and Conservation Service (NRCS) project engineer was contacted about this conversation, only to find that Qwest had provided the NRCS project engineer with a written quotation, back in August 2004, verifying the original \$7,177.47 quotation (copy of letter attached labeled exhibit 3).

Over the past two months Martin Construction has been trying to resolve this dispute and has gotten nowhere. Qwest Communication's position seems to be; "if you want service within our service area, you pay, whatever we demand, up front." While that specific statement hasn't been made by Qwest, it certainly has been implied.

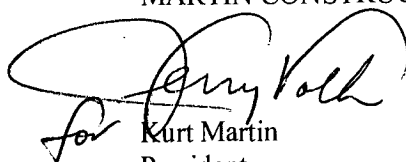
Members of the Commission, Martin Construction must move ahead with the project and at this point has no other recourse than to pay the demanded amount which we've done under protest. Hiring a private contractor was not an option. We were informed by Qwest that if we hire a private contractor (even the same one they propose to use, which we've determined) Qwest will not recognize the cable as their own and any future repairs, or even a "locate", will be at Morton County's (owner of the project) expense. This action by Qwest, in the opinion of Martin Construction, constitutes a monopoly by the utility, since no one else can provide service within the area, and allows no other options. Martin Construction has been informed that the Commission has no jurisdiction in this type of dispute, since it involves a contract between Martin Construction and Qwest Communications. If the Commission does in fact, have no legal jurisdiction, we submit to you that the "system" is severely flawed and this "flaw" needs to be corrected.

Martin Construction respectfully requests your assistance and intervention in this matter and possible investigation into the extent of this type of charging activity. Please keep in mind our statement above, which was that could hire the same installation contractor that Qwest plans to use for considerably less cost than the original quotation provided by Qwest. How then can Qwest possibly justify raising that cost? If, on the other hand, the increased cost(s) can be justified Martin Construction respectfully requests documentation from Qwest, which can be presented to the NRCS project engineer as documentation for a fair and equitable contract adjustment.

Martin Construction further understands the normal time frame for this type of action requires 45 days of formal notice and therefore respectfully requests Commission action under "emergency" circumstances.

Thank you in advance and we look forward to your response. If you need any additional information please do not hesitate to contact this office.

Sincerely,  
MARTIN CONSTRUCTION INC

  
Kurt Martin  
President

Cc: Michael J. Maus, Attorney at Law

Encl:

**QWEST COMMUNICATIONS**  
**The Spirit of Service**

February 22, 2005

Order #: New Facility Placement

File #: 25022

Dear Mr. VanDyke,

This is in reference to the cost estimate for the placement of facilities to the Harmon Lake Recreation Area in Mandan, ND. There were two options presented to you in August 2004. Our understanding is you would like to have a 25 pair cable with terminals placed instead of a 6 pair service wire. Because of costing changes that have taken place since August 2004, the cost for Qwest to perform this work has increased.

Before we can begin construction, it will be necessary for you to agree to the following terms for facility placement. Your portion of the expense will be \$16,770.11 which will cover the costs to place facilities to your location. This would include \$3,158.43 for Materials and \$13,611.68 for Labor. Because this work will be started in the May timeframe, no frost charges are involved.

Please be advised that this quote is good for 90 days only. If we do not hear from you within 90 days it will be assumed that you are no longer interested in the service and the request will be cancelled.

If you would care to go forward with a contract or have any questions in on this matter I can be reached at (763) 585-3386.

Thank you,

Sue Colton  
Special Construction Manager  
Qwest Communications  
6300 Shingle Creek Pkwy  
4th Floor  
Brooklyn Center, MN 55430

Exhibit 1

**QWEST COMMUNICATIONS**  
**The Spirit of Service**

February 28, 2005

File #: 25022

**RECEIVED**

Date: 3/8/05  
Initials: [Signature]

Dear Mr. Volk,

This is in reference to the cost estimate for the placement of facilities to the Harmon Lake Recreation Area in Mandan, ND. There were two options presented in August 2004. It is our understanding you would like to have a 25 pair cable with terminals placed instead of a 6 pair service wire. Because of costing changes that have taken place since August 2004, the cost for Qwest to perform this work has increased.

Before we can begin construction, it will be necessary for you to agree to the following terms for facility placement. Your portion of the expense will be \$16,770.11 which will cover the costs to place these facilities to your location. This will include \$3,158.43 for Materials and \$13,611.68 for Labor. Because this work will be started in the May timeframe, frost charges are not involved.

Please be advised that this quote is good for 90 days only. If we do not hear from you within 90 days it will be assumed that you are no longer interested in the service and the request will be cancelled.

If you have any further questions on this matter or would care to go forward with a contract I can be reached at (763) 585-3386. Construction will take approximately thirty (30) days from the receipt of the signed contract.

Thank you,

Sue Cotton  
Special Construction Manager  
Qwest Communications  
6300 Shingle Creek Pkwy  
4th Floor  
Brooklyn Center, MN 55430

*Called on 3/8/05 @ 11:35 AM  
page # 612 621 0017  
can't get through*

*(3/9/05) Called Duane Schep got thru #  
612-861-8118 Bill Wentz  
called Bill left message - Sue  
called me back within minutes she  
said it's up to her boss + she'll let me  
know as soon as she hears.*

*Exhibit 2*



44-05-324

**COMPLETE THIS SECTION ON DELIVERY**

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.  
 Print your name and address on the reverse so that we can return the card to you.  
 Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
*Scott Macintosh*  
*Quest Corporation*  
*220 275th St*  
*Bismarck ND 58501*

A. Signature  
 *[Signature]*  Agent  
 Addressee

B. Received by (Printed Name) *Rele Kelsch* C. Date of Delivery *6-10-05*

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Transfer from service label) 7004 2890 0000 5451 4724

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

44-05-324

**COMPLETE THIS SECTION ON DELIVERY**

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.  
 Print your name and address on the reverse so that we can return the card to you.  
 Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
*Mel Hambley*  
*Quest Corporation*  
*220 275th St*  
*Bismarck ND 58501*

A. Signature  
 *[Signature]*  Agent  
 Addressee

B. Received by (Printed Name) *Al Solberg* C. Date of Delivery *6-10-05*

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Transfer from service label) 7004 2890 0000 5451 4731

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

44-05-324

**COMPLETE THIS SECTION ON DELIVERY**

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.  
 Print your name and address on the reverse so that we can return the card to you.  
 Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
*Heidi Quillum*  
*Early Maus + Nordover PC*  
*1370 1st Ave W*  
*Dickinson ND 58602-0570*

A. Signature  
 *[Signature]*  Agent  
 Addressee

B. Received by (Printed Name) *Beth L. Hurt* C. Date of Delivery

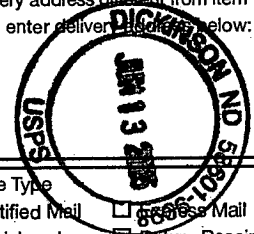
D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Transfer from service label) 7004 2890 0000 5451 4700

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154



44-05-324

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.  
 Print your name and address on the reverse so that we can return the card to you.  
 Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 Melissa K Thompson  
 Quest Corporation  
 1005 17th St Ste 300  
 Denver Co 80202

A. Signature  
 Agent  
 Addressee

B. Received by (Printed Name) *Melissa K Thompson* C. Date of Delivery *6-13-05*

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number  
 (Transfer from service label) 7004 2890 0000 5451 4717

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

44-05-324

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.  
 Print your name and address on the reverse so that we can return the card to you.  
 Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 Heidi Rullum  
 Darcy News & Marketing PC  
 13701st Ave W  
 Richerson ND 58602-0570

A. Signature  
 Agent  
 Addressee

B. Received by (Printed Name) *Heidi Rullum* C. Date of Delivery *8-27-05*

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number  
 (Transfer from service label) 7004 2890 0000 5450 7665

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

44-05-324

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.  
 Print your name and address on the reverse so that we can return the card to you.  
 Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 Mel Kambeitz  
 Quest Corporation  
 220 N 5th St  
 Bismarck ND 58501

A. Signature  
 Agent  
 Addressee

B. Received by (Printed Name) *Mel Kambeitz* C. Date of Delivery *8-29-05*

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number  
 (Transfer from service label) 7004 2890 0000 5450 7696

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-05-324

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.  
 Print your name and address on the reverse so that we can return the card to you.  
 Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

*Scott Macintosh  
Quest Corporation  
220 N 5th St  
Bismarck ND 58501*

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 Agent  
 Addressee  
*X [Signature]*

B. Received by (Printed Name) *PEK KEBEL* C. Date of Delivery *1/29/05*

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Transfer from service label) 7004 2890 0000 5450 7689

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

PU-05-324

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.  
 Print your name and address on the reverse so that we can return the card to you.  
 Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

*Melissa K Thompson  
Quest Corporation  
1005 17th St Ste 200  
Denver Co 80202*

A. Signature  
 Agent  
 Addressee  
*X [Signature]*

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Transfer from service label) 7004 2890 0000 5450 7672

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

PU-05-324

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.  
 Print your name and address on the reverse so that we can return the card to you.  
 Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

*Heidi Dullum  
Hardy Maus & Nordover PC  
137 1st Ave W  
Dickinson ND 58602-0570*

A. Signature  
 Agent  
 Addressee  
*X [Signature]*

B. Received by (Printed Name) *Heidi Dullum* C. Date of Delivery *1-13-06*

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

*JAN 13 2006*

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1652

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

PU-05-324

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 Jason Lupp  
 Quest Corporation  
 200 A 5th St 395  
 Minneapolis Mn 55402

A. Signature  
 John Lupp  Agent  Addressee

B. Received by (Printed Name)  
 John Lupp

C. Date of Delivery  
 1-17-06

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1669

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

PU-05-324

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 Kent Blenkinsdwyer  
 Quest Corporation  
 220 N 5th St  
 Bismarck ND 58501

A. Signature  
 [Signature]  Agent  Addressee

B. Received by (Printed Name)  
 Kent Blenkinsdwyer

C. Date of Delivery  
 1-13-06

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1683

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

PU-05-324

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 Scott Macintosh  
 Quest Corporation  
 220 N 5th St  
 Bismarck ND 58501

A. Signature  
 [Signature]  Agent  Addressee

B. Received by (Printed Name)  
 Scott Macintosh

C. Date of Delivery  
 1-13-06

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1676

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

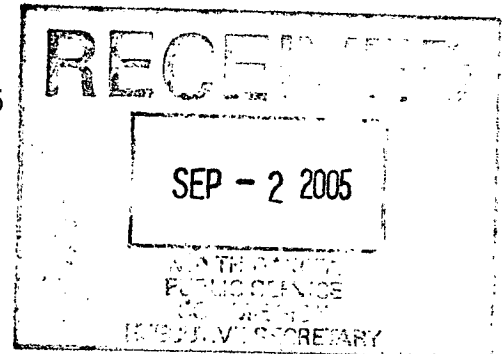
Albert J. Hardy  
Michael J. Maus  
Mary E. Nordsvan  
Rhonda R. Ehlis  
Kevin McCabe

Some members also authorized to practice  
law in Montana, Colorado and Texas

**Hardy, Maus  
& Nordsvan, P.C.**  
ATTORNEYS • AT • LAW

137 First Avenue West  
P.O. Box 570  
Dickinson, ND 58602-0570  
Telephone: (701) 483-4500  
Facsimile: (701) 483-4501  
hmn@hmnattys.com

August 31, 2005



Ms. Illona Jeffcoat-Sacco  
Executive Secretary  
North Dakota Public Service Commission  
600 East Boulevard Ave., 12th Floor  
Bismarck, ND 58505-0480

Re: In the Matter of Martin Construction, Inc. v. Qwest  
Case No. PU05-324

Dear Ms. Jeffcoat-Sacco:

Enclosed for filing are the original, and seven copies, of Martin Construction, Inc.'s Responses to Qwest's First Set of Data Requests.

Thank you.

Sincerely,

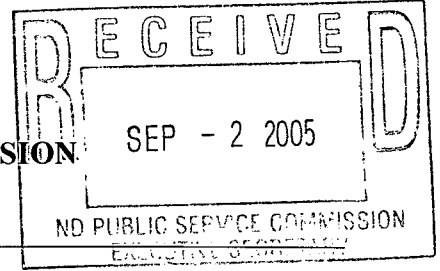
HARDY, MAUS & NORDSVEN, P.C.

*Michael J. Maus*  
Michael J. Maus

MJM:sk

Enclosures

STATE OF NORTH DAKOTA  
BEFORE THE PUBLIC SERVICE COMMISSION



In the Matter of  
Martin Construction, Inc.,  
Complainant,

PU05-324

v.

**MARTIN CONSTRUCTION, INC.'S  
RESPONSES TO QWEST'S FIRST SET  
OF DATA REQUESTS**

Qwest Communications,  
Respondent.

STATE OF NORTH DAKOTA     )  
  ss.  
COUNTY OF STARK            )

Kurt Martin, President of Martin Construction, Inc., being first duly sworn, submits the following Responses to Qwest's First Set of Data Requests to Martin Construction, Inc., dated August 12, 2005:

**DATA REQUESTS**

1. As referenced in Section III of Martin Construction, Inc.'s Complaint, identify the person(s) at Qwest who provided Martin Construction with the alleged verbal quotation.

**Response:** The Qwest employee, who provided Martin Construction with the original, verbal quotation, was Bill Wenz. (Note, the amount quoted was consistent with a written quotation Qwest provided to the Natural Resources Conservation Service, hereinafter referred to as "NRCS").

2. As referenced in Section III of Martin Construction's Complaint, identify the person(s) at Martin Construction who contacted Qwest and received the alleged verbal quotation.

**Response:** Martin Construction employee who contacted Qwest and received the verbal quotation was Todd Stewart.

3. As referenced in Section V of Martin Construction's Complaint, identify the person(s) at Martin Construction who contacted Qwest and received information concerning additional charges for frost.

**Response:** Martin Construction employee who contacted Qwest and received information concerning additional charges if work is undertaken during period of frost was Jerry Volk.

4. As referenced in Section V of Martin Construction's Complaint, identify the person(s) who were involved in deciding to wait to have the work done in spring after the ground thawed.

**Response:** Qwest employee who informed Martin Construction that additional "frost" charges would be applied if work was completed during the winter was Harvey Wolf.

5. As referenced in Section V of Martin Construction's Complaint, identify all person(s) who were involved in deciding to wait to have the work done in spring after the ground thawed.

**Response:** Persons involved in deciding to wait until spring (after the ground is free of frost) were as follows:

- Martin Construction - Kurt Martin, Jerry Volk, B.J. Martin
- NRCS - Jay Van Dyke, NRCS Project Engineer
- Qwest - Harvey Wolf

6. As referenced in paragraph 1 under Section VII of Martin Construction's Complaint, produce the "original contract" specified in that paragraph.

**Response:** Original contract referred to in paragraph 1, Section VII of Martin Construction's Complaint, is attached as Exhibit 1.

7. As referenced in paragraph 2 under Section VII of Martin Construction's Complaint, identify the "NRCS project engineer."

**Response:** NRCS Project Engineer is Mr. Jay Van Dyke.

8. As referenced in paragraph 2 under Section VII of Martin Construction's Complaint, state the basis upon which Martin Construction can seek a "contract adjustment" from NRCS.

**Response:** The basis of the request is a need to understand this unilateral bid change. For specifics, see attached letter from Mr. Michael Maus, attorney for Martin Construction, to Ms. Melissa Thompson, legal counsel for Qwest, labeled Exhibit 2.

9. As referenced in paragraph 2 under Section VII of Martin Construction's Complaint, identify the provisions in the contract between Martin Construction and NRCS (also referred to in the Complaint as "Natural Resource and Engineer Service" and known as "Natural Resource Conservation Service") that provide for contract adjustments.

**Response:** Provisions in contract between Martin Construction and NRCS that provide for contract adjustments as referenced in paragraph 1, Section VII of Martin Construction's Complaint is: Federal Acquisition Clause Number 52.233-1, titled *Disputes* (attached as Exhibit 3).

10. Explain the reasons for the delay in time between the date of the alleged verbal quotation received by Martin Construction from Qwest in August 2004 and the date of actual construction in or about May 2005.

**Response:** The following are the reasons for the delay in time between the date of verbal quotation and the date of construction:

1. Contract was not awarded to Martin Construction until 9/23/04 (attached as Exhibit 4);
2. Notice to proceed was not awarded until 11/23/04 (attached as Exhibit 5);
3. Construction was formally suspended for winter on 12/01/04 (by contract provision);
4. Authorization to install telephone and power service was issued on 2/24/05 (attached as Exhibit 6);
5. Amendment to begin construction (moving the spring start date from May 1 to April 1, 2005) was issued on 4/17/05 (attached as Exhibit 7);
6. Discussion about the cost increase by Qwest, extended the delay into May 2005, when Martin Construction paid the full amount requested to Qwest, under formal, written protest (letter attached as Exhibit 8).

11. As referenced in paragraph 2 under Section VII of Martin Construction's Complaint, produce the contract between Martin Construction and the Natural Resource Conservation Service, referred to in the Complaint as "Natural Resource and Engineer Service" and as "NRCS."

**Response:** Contract between Martin Construction and NRCS is attached as Exhibit 9.

12. Produce all documents that concern the subject matter of Martin Construction's Complaint.

**Response:** Attached Exhibits 10 and 11 are included to show that Qwest did not acknowledge Martin Construction in any written communication until February 28, 2005, even though Qwest had previously provided Martin Construction with a quotation in August 2004. Martin Construction questions why a letter, such as the February 28th letter, was not sent immediately following the original quotation and what caused the costs to increase from \$7,177.47 to \$16,770.11 in a six-month time frame.

13. Produce all documents that Martin Construction intends to introduce at the hearing scheduled in this matter for October 2005.

**Response:** All relevant documents are included above; Martin Construction would like to make the following statement:

"Martin Construction was given a verbal quotation, which was consistent with the written quotation given to NRCS prior to the bid date. Martin Construction used that quotation in preparing its bid in good faith. Qwest and NRCS had communication prior to the bid date, which is normal procedure. Martin Construction did request a written quotation from Qwest at the time the bid was prepared but never received anything in writing until March 8, 2005 (attached Exhibit 11). The identical letter had previously been sent to NRCS (attached Exhibit 10). Martin Construction obtained a fax copy of the February 22nd letter to NRCS on March 3, 2005, after Martin Construction called Qwest to schedule the work. That was when Martin Construction first learned the costs had increased and payment in full would be required "up front" before Qwest would do any work. Martin Construction questions why a letter such as the February 28th letter was not sent to Martin Construction when the verbal bid was given.

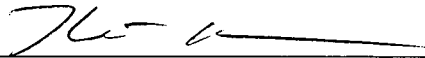
Learning of the increased costs, Martin Construction did request and receive an installation quotation from the same subcontractor ultimately used by Qwest to complete the work in April 2005. (The name of the subcontractor was received from Mor-Gran-Sou Electrical Cooperative because they and Qwest used the same subcontractor). This quotation was requested in an effort to find a less costly alternative to complete the contracted work. That quotation was less than the original, verbal quotation provided by Qwest. Martin Construction could not, however, employ that subcontractor because the contract between NRCS and Martin Construction states that Martin Construction must use Qwest and NRCS would not approve a requested change.

In summation, Martin Construction believes that Qwest, being aware of this contract provision, arbitrarily increased their quotation to Martin Construction, knowing that Martin Construction would have no other option but to use Qwest. We make this statement since Qwest has been repeatedly asked, beginning on March 3, 2005, to provide an explanation which supports the cost increase but to this writing, has not responded." Lastly, a modest, reasonable increase would have been understandable but an increase from \$7,177.46 to \$16,770.11 is in the opinion of Martin Construction, unacceptable without some documented explanation. Especially when all installation was contracted at a cost less than the original amount and furthermore final connection charges, performed by Qwest, were in addition to the above quoted costs.


14. Produce all documents, including but not limited to contracts, bids, correspondence and notes, related to or concerning telephone service at the construction project site referred to in the Complaint as Square Butte Dam No. 6, which is also known as the Harmon Lake Recreation Area.

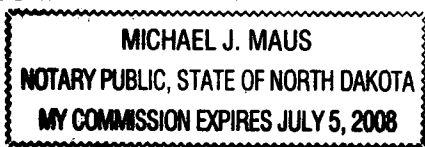
**Response:** A complete set of contract documents can be obtained from NRCS.

Dated this 31 day of AUGUST, 2005.

  
Kurt Martin

Subscribed and sworn to before me this 31<sup>st</sup> day of August, 2005.

  
Notary Public:

(Seal) 

State of North Dakota  
My Comm. Expires:

**CERTIFICATE OF SERVICE**

I certify that an original copy of the foregoing **Martin Construction, Inc.'s Responses to Qwest's First Set of Data Requests**, was on the 31 day of August, 2005, mailed to:

Melissa K. Thompson, Attorney  
Qwest Services Corporation  
1801 California Street, 10th Floor  
Denver, CO 80202

and an original, plus seven copies, was served upon:

Ms. Illona Jeffcoat-Sacco  
Executive Secretary  
North Dakota Public Service Commission  
600 East Boulevard Avenue, 12th Floor  
Bismarck, ND 58505-0480

  
Michael J. Maus



Albert J. Hardy  
Michael J. Maus  
Mary E. Nordsven  
Rhonda R. Ehlis  
Kevin McCabe

Some members also authorized to practice  
law in Montana, Colorado and Texas

**Hardy, Maus  
& Nordsven, P.C.**  
ATTORNEYS • AT • LAW

137 First Avenue West  
P.O. Box 570  
Dickinson, ND 58602-0570  
Telephone: (701) 483-4500  
Facsimile: (701) 483-4501  
hmn@hmnattys.com

August 2, 2005

Melissa Thompson, Senior Attorney  
Qwest  
1801 California Street, Suite 900  
Denver, CO 80202

Re: Martin Construction, Inc. v. Qwest

Dear Ms. Thompson:

What Martin Construction needs to file a claim with NRSC is appropriate documentation for the change from \$7,177.47 to \$16,770.11. This documentation should provide an explanation of why the cost went up so much in approximately six months. Perhaps this would be an explanation of how Qwest quotes contractors such as Martin Construction and some detail explaining the costing changes.

If there was an error in the original quotation, an explanation of that would certainly be helpful.

In other words, for Martin Construction to file a claim with NRSC for the increase, there needs to be a valid explanation. That explanation can only come from Qwest as the change came from Qwest. That explanation can be an increase in cost of materials, change in rate schedule, or whatever brought about the change from \$7,177.47 to \$16,770.11.

Sincerely,

HARDY, MAUS & NORDSVEN, P.C.



Michael J. Maus

MJM:sk  
Enclosure  
cc: Martin Construction, Inc.

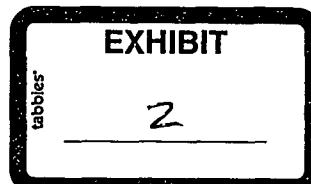


Exhibit 2 -

COPY  
FOR YOUR INFORMATION  
HARDY, MAUS & NORDSVEN  
ATTORNEYS AT LAW  
BOX 570 PHONE 483-4500  
DICKINSON, ND 58602-0570



**52.233-1 Disputes.**

As prescribed in 33.215, insert the following clause:

**DISPUTES (JULY 2002)**

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

*Alternate I (Dec 1991).* As prescribed in 33.215, substitute the following paragraph (i) for paragraph (i) of the basic clause:

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal,

Exhibit 3



United States  
Department of  
Agriculture

Natural  
Resources  
Conservation  
Service

Bismarck State Office  
P.O. Box 1458  
Bismarck, ND 58502-1458

CERTIFIED MAIL - RETURN RECEIPT

September 23, 2004

Mr. Curt Martin  
Martin Construction  
P.O. Box 17  
Gladstone, ND 68630

Dear Mr. Martin:

Your bid of \$6,134,824.00 in response to our SF-1441, Solicitation, Offer and Award, NRCS-ND-04-06, Construction of Square Butte Creek Watershed Multiple-Purpose Dam No. 6, Phage 2, is accepted. A duplicate original of the contract is enclosed.

The enclosed payment and performance bonds must be properly executed and returned to the Contracting Officer within 10 days; a notice to proceed will be issued at a later date. Your construction schedule and safety program must be returned prior to commencement of work.

Also enclosed are poster "Equal Employment Opportunity is the Law" and "Notice To All Employees" which should be posted in accordance with the contract. The use of the enclosed payroll Form WH-347 is optional, however, we recommend that it be used. If you use your own form, you must complete Form WH-348 also.

Sincerely,

LINDA K. McARTHUR  
Contracting Officer

Enclosure

cc:

Wesley J. Wiedenmeyer, SCE, NRCS, Bismarck  
Jay W. Van Dyke, COTR, NRCS, Mandan PO

Exhibit 4





United States  
Department of  
Agriculture

Natural  
Resources  
Conservation  
Service

Bismarck State Office  
P.O. Box 1458  
Bismarck, ND 58502-1458

CERTIFIED MAIL – RETURN RECEIPT

November 23, 2004

Mr. Curt Martin  
Martin Construction  
P.O. Box 17  
Gladstone, ND 58630

Dear Mr. Martin:

SUBJECT: NOTICE TO PROCEED

You were awarded contract 50-6633-4-10 for the construction of Square Butte Creek Watershed Multiple-Purpose Dam No. 6, Phase 2 on September 21, 2001.

You are hereby notified to commence work within 20 calendar days and to complete all work within 974 calendar days. Performance time begins the day following receipt of this notice.

Please contact Jay Van Dyke on the exact time you will start work, 701-667-1163, ext. 117.

Sincerely,

*Linda K. McArthur*

LINDA K. McARTHUR  
Contracting Officer

Enclosure

cc:

Jay Van Dyke, COTR, NRCS, Mandan, ND  
Wesley J. Wiedenmeyer, SCE, NRCS, Bismarck  
Bradley T. Benson, Construction Eng., NRCS, Bismarck

*Time in 2004 = 36 days  
" " 2005 = 365 "  
" " 2006 = 365 "  
" " 2007 = 365 "*

*2610 Old Red Trail  
Mandan, ND  
58554  
Exhibit 5*

*Rec'd @ Martin Constr.  
on Nov. 24, 2004*

EXHIBIT
5



Natural Resources Conservation Service  
P.O. Box 1458  
Bismarck, ND 58502-1458

CERTIFIED MAIL – RETURN RECEIPT

February 24, 2005

Mr. Curt Martin  
Martin Construction  
Box 17  
Gladstone, ND 58630

Dear Mr. Martin:

When we met on November 23, 2004 for the preconstruction meeting, at that time it was discussed that any work during December 1 through April 30 would be items that did not need NRCS inspection.

At your request, we have approved work on the following items during seasonal shutdown:

- Disposal of the debris piles in the auxiliary spillway
- Testing of your dewatering concept, limited to a groundwater pump out test. None of the other dewatering or stream bypass facilities may be installed.
- Clearing and grubbing on the abutment and foundation areas
- Moving in the construction trailer
- Installation of telephone and power services
- Working on permits.

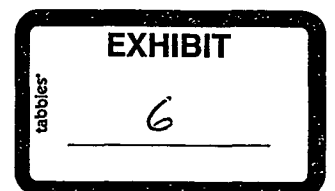
Any other work that would require NRCS inspection will not be allowed until after April 30.

If you have any questions please feel free to contact me at 701-530-2010 or call Jay Van Dyke at 701-667-1163 ext. 117.

Sincerely,

*Linda K. McArthur*  
LINDA K. McARTHUR  
Contracting Officer

cc: Jay Van Dyke, COTR, NRCS, Mandan  
Wesley J. Wiedenmeyer, SCE, NRCS, Bismarck  
Bradley T. Benson, Construction Engr, NRCS, Bismarck



*Exhibit 6*

**AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT**

1. CONTRACT ID CODE \_\_\_\_\_ PAGE 1 OF 2 PAGES 2

2. AMENDMENT/MODIFICATION NO. 6 3. EFFECTIVE DATE 03/30/05 4. REQUISITION/PURCHASE REQ. NO. \_\_\_\_\_ 5. PROJECT NO. (if applicable) \_\_\_\_\_

6. ISSUED BY CODE \_\_\_\_\_ 7. ADMINISTERED BY (if other than Item 6) CODE \_\_\_\_\_  
 USDA, Natural Resources Conservation Service  
 Box 1458  
 Bismarck, ND 58504-1458  
 Same as #6

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)  
 Martin Construction, Inc.  
 Box 17  
 Gladstone, ND 58630

(X) 9A. AMENDMENT OF SOLICITATION NO. \_\_\_\_\_  
 9B. DATED (SEE ITEM 11) \_\_\_\_\_

X 10A. MODIFICATION OF CONTRACT/ORDER NO. 50-6633-4-10  
 10B. DATED (SEE ITEM 11) 03/30/05

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.  
 Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:  
 (a) By completing items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

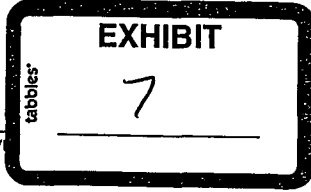
12. ACCOUNTING AND APPROPRIATION DATA (If required) \_\_\_\_\_

**13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
X	Far 52.243-4
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor  is not,  is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)  
 Adding to Section F.4 Fixed Shutdown "December 1, 2004 to March 29, 2005 and December 1 to April 30 for remainder of the contract." Deleting "December 1 to April 30."  
 Adding to Section F.2 52-211-10 Commencement, Prosecution, and Completion of Work, "937".  
 Deleting "974".  
 Final completion date is June 20, 2007



Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and

15A. NAME AND TITLE OF SIGNER (Type or print) <i>[Signature]</i> PRESIDENT	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Linda McArthur Contracting Officer
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	16B. UNITED STATES OF AMERICA <i>[Signature]</i> (Signature of Contracting Officer)
15C. DATE SIGNED 4-22-05	16C. DATE SIGNED 4/7/05



Box 17 • Gladstone, ND 58630 Ph: (701) 483-3478 • Fax: (701) 483-3479

May 9, 2005

Ms. Irene Hamlin  
Resource Allocation Coordinator  
Qwest  
Resource Allocation – BART  
700 W. Mineral Ave – Room NE H30.07  
Littleton, CO 80120

Re: County Rd. 140; Square Butte Dam, Mandan, ND

BAN Number C5F0011

In response to your May 5, 2005 letter/fax, enclosed please find the completed documents along with a check in the amount of \$16,770.11.

For the record, Martin Construction is making this payment under protest because this amount is considerably more than Qwest initially quoted Martin Construction. This has also been discussed with Sue Cotton, Qwest engineering representative.

If you have any questions or require additional information, please do not hesitate to contact this office.

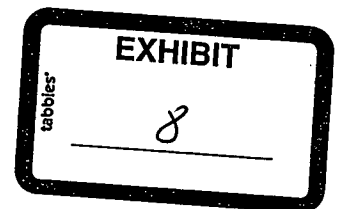
Sincerely,  
MARTIN CONSTRUCTION INC

  
Jerry Volk  
Project Engineer

Cc: Michael J. Maus, Attorney at Law  
Linda McArthur, Contracting Officer, NRCS

Encl

Exhibit 8



<b>SOLICITATION, OFFER, AND AWARD</b> <i>(Construction, Alteration, or Repair)</i>	1. SOLICITATION NO. NRCS-ND-04-06	2. TYPE OF SOLICITATION X SEALED BID (IFB) NEGOTIATED	3. DATE ISSUED 07/02/04	PAGE 1	OF PAGES 3
	IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.				

4. CONTRACT NO. 50-6633-4-10	5. REQUISITION/PURCHASE REQUEST NO.	6. PROJECT NO.
---------------------------------	-------------------------------------	----------------

7. ISSUED US Department of Agriculture Natural Resources Conservation Service 3 <sup>rd</sup> St. & Rosser Ave., Federal Bldg. Room 278, Bismarck, ND 58501 <i>Rm 164</i>	8. ADDRESS OFFER TO US Department of Agriculture Natural Resources Conservation Service P.O. Box 1458 Bismarck, ND 58502-1458
--	---

9. FOR INFORMATION CALL: <input type="checkbox"/>	A. NAME LINDA K. MCARTHUR	B. TELEPHONE NO. (NO COLLECT CALLS) 701-530-2010
---	------------------------------	---

**SOLICITATION**

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (Title, identifying no., date):

Construction of Square Butte Creek Watershed Multiple-Purpose Dam No. 6, Phase 2, Morton County, North Dakota

11. The Contractor shall begin performance within 20 calendar days and complete it within 812 calendar days after receiving

award,  notice to proceed. This performance period is  mandatory,  negotiable. (See Sec. 00800 of RFP.)

12A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS?

(If "YES," indicate within how many calendar days after award in Item 12B.)

YES  NO

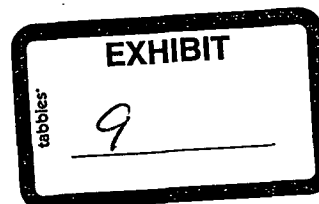
12B. CALENDAR DAYS

10

13. ADDITIONAL SOLICITATION REQUIREMENTS:

- A. Sealed offers in original and 1 copies to perform the work required are due at the place specified in Item 8 by **01:00 PM** local time August 12, 2004. If this is a sealed bid solicitation, offers must be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.
- B. An offer guarantee  is,  is not required.
- C. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.
- D. Offers providing less than 60 calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.

*Exhibit 9 (6 sheets)*



**OFFER (Must be fully completed by offeror)**

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)  Martin Construction, Inc. PO Box 17 Gladstone, ND 68630	15. TELEPHONE NO. (Include area code) 701-483-3478  16. REMITTANCE ADDRESS (Include only if different than Item 14)
---	--

17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within \_\_\_\_\_ calendar days after the date offers are due. (Insert any number equal to or greater than the minimum requirement stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)

AMOUNTS ▶ 6,134,824.00  
*Six Million one hundred thirty four thousand eight hundred*

18. The offeror agrees to furnish any required performance and payment bonds.

**19. ACKNOWLEDGMENT OF AMENDMENTS**

(The offeror acknowledges receipt of amendments to the solicitation - give number and date of each)

AMENDMENT NO.	1	2	3						
DATE	7/9/04	7/23/04	8/3/04						

20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print) <b>Kurt Martin-President</b>	20B. SIGNATURE 	20C. OFFER DATE <b>8/12/04</b>
--	--------------------	-----------------------------------

**AWARD (To be completed by Government)**

21. ITEMS ACCEPTED:  
**ALL**

22. AMOUNT <b>\$6,134,824.00</b>	23. ACCOUNTING AND APPROPRIATION DATA
-------------------------------------	---------------------------------------

24. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified) ▶	ITEM	25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO <input type="checkbox"/> 10 U.S.C. 2304(c) ( ) <input type="checkbox"/> 41 U.S.C. 253(c) ( )
---	------	--

26. ADMINISTERED BY <b>US Department of Agriculture Natural Resources Conservation Service P.O. Box 1458 Bismarck, North Dakota 58502-1458</b>	27. PAYMENT WILL BE MADE BY <b>US Department of Agriculture Natural Resources Conservation Service P.O. Box 1458 Bismarck, North Dakota 58502-1458</b>
---	---

**CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE**

28. NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office. ) Contractor agrees to furnish and deliver all items or perform all work, requisitions identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations certifications, and specifications incorporated by reference in or attached to this contract.	<input type="checkbox"/> 29. AWARD (Contractor is not required to sign this document. ) Your offer on this solicitation, is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.
---	---

30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN (Type or print) <b>Kurt Martin-President</b>	31A. NAME OF CONTRACTING OFFICER (Type or print) <b>Linda K. McArthur</b>
30B. SIGNATURE 	30C. DATE <b>8/12/04</b>
31B. UNITED STATES OF AMERICA BY <b>Linda K McArthur</b>	31C. AWARD DATE <b>9/21/04</b>

<b>SOLICITATION, OFFER, AND AWARD ADDENDUM TO STANDARD FORM 1442</b>	<b>SOLICITATION NO. NRCS-ND-04-06</b>	<b>PAGE</b>	<b>OF</b>
--	---	-------------	-----------

14. OFFEROR (*Company Name*) **Martin Construction, Inc.**

<b>A. OFFEROR FAX NUMBER</b> 701-483-3479	<b>B. OFFEROR E-MAIL ADDRESS (<i>Optional</i>)</b>
<b>C. OFFEROR DUNS NUMBER( 01=719-4911</b>	<b>D. OFFEROR TAX ID NUMBER) 450440806</b>

\*\*\*\*\*

THE FOLLOWING IS THE ACCOUNTING AND APPROPRIATION DATA:

NRCS-ND-04-06

Section C

PART I - THE SCHEDULE

SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

B 1 ITEMS AND PRICES

SQUARE BUTTE CREEK WATERSHED MULTIPLE PURPOSE, Dam No. 6, Phase 2,  
Morton County, North Dakota

BID ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
1.	Clearing and Grubbing	1	LS	\$ <u>XXXX</u>	\$ <u>39,550.00</u>
2.	Pollution Control	1	LS	\$ <u>XXXX</u>	\$ <u>26,250.00</u>
3.	Seeding and Mulching	66	AC	\$ <u>797.50</u>	\$ <u>52,635.00</u>
4.	Temporary Cover	30	AC	\$ <u>95.18</u>	\$ <u>2,855.40</u>
5.	Construction Surveys	1	LS	\$ <u>XXXX</u>	\$ <u>92,000.00</u>
6.	Mobilization and Demobilization	1	LS	\$ <u>XXXX</u>	\$ <u>412,500.00</u>
7.	Water for Construction	7,600	GAL	\$ <u>15.00</u>	\$ <u>114,000.00</u>
8.	Removal of Water	1	LS	\$ <u>XXXX</u>	\$ <u>107,500.00</u>
9.	Excavation, Common, Foundation Preparation	13,300	CY	\$ <u>1.59</u>	\$ <u>21,147.00</u>
10.	Excavation, Common, Abutments and Cutoff Trench	164,190	CY	\$ <u>2.33</u>	\$ <u>382,562.70</u>
11.	Excavation, Common, Principal Spillway	25,560	CY	\$ <u>3.18</u>	\$ <u>81,280.80</u>
12.	Excavation, Common, Borrow	1,501,707	CY	\$ <u>2.27</u>	\$ <u>3,408,874.89</u>
13.	Excavation, Rock	60,000	CY	\$ <u>2.27</u>	\$ <u>136,200.00</u>
14.	Fine Drainfill	6,117	CY	\$ <u>22.07</u>	\$ <u>135,002.19</u>
15.	Coarse Drainfill	3,455	CY	\$ <u>31.14</u>	\$ <u>107,588.70</u>
16.	Transition Drainfill	23	CY	\$ <u>107.58</u>	\$ <u>2,474.34</u>

NRCS-ND-04-06

## Section C

BID ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
17.	Topsoiling, 12" Depth	163,083	SY	\$ 0.47	\$ 76,649.01
18.	Topsoiling, 6" Depth	24,000	SY	\$ 0.24	\$ 5,760.00
19.	Concrete, Class 4000	271.2	CY	\$ 550.18	\$ 149,208.82
20.	Steel Reinforcement	26,065	LB	\$ 1.02	\$ 26,586.30
21.	18" Dia. Reinforced Concrete Pressure Pipe	140	LF	\$ 97.20	\$ 13,608.00
22.	42" Dia. Reinforced Concrete Pressure Pipe	384	LF	\$ 204.60	\$ 78,566.40
23.	31"x51" RC Pipe-Arch	42	LF	\$ 123.75	\$ 5,197.50
24.	31 "X51 " RC Pipe-Arch End Sections	2	EA	\$ 928.50	\$ 1,857.00
25.	6" Dia. Perforated PVC Pipe, SDR 13.5	1,594	LF	\$ 23.75	\$ 37,857.50
26.	Rock Riprap, Embankment	3,837	CY	\$ 35.71	\$ 137,019.27
27.	Rock Riprap, Plunge Pool	1,307	CY	\$ 31.30	\$ 40,909.10
28.	18"x18" Slide Gate	1	EA	\$ 10,000.00	\$ 10,000.00
29.	Orifice Gate	1	EA	\$ 2,500.00	\$ 2,500.00
30.	Principal Spillway Trash Racks	1	LS	\$ XXXX	\$ 9,900.00
31.	6" Dia. Steel Pipe Drain Outlets	1	LS	\$ XXXX	\$ 2,250.00
32.	Quality Control	1	LS	\$ XXXX	\$ 80,000.00
33.	Field Office, Type B	1	LS	\$ XXXX	\$ 15,000.00
34.	Excavation, Common, Recreation Site	6,297	CY	\$ 2.00	\$ 12,594.00
35.	Topsoiling, Recreation Site	56,395	SY	\$ 0.24	\$ 13,534.00
36.	Concrete, Sidewalks, Recreation Site	5,940	SF	\$ 4.02	\$ 23,878.80
37.	Concrete, Boat Ramp, Recreation Site	5,040	SF	\$ 5.12	\$ 25,804.80

NRCS-ND-04-08

Section C

BID ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
38.	Concrete, Header Curb, Recreation	155	LF	\$ <u>18.15</u>	\$ <u>2,813.25</u>
39.	Granular Cushion, Recreation Site	138	CY	\$ <u>31.61</u>	\$ <u>4,362.18</u>
40.	16" Dia. RC Pipe, Recreation Site	80	LF	\$ <u>35.39</u>	\$ <u>2,831.20</u>
41.	15" RC Pipe End Section, Recreation Site	4	EA	\$ <u>433.10</u>	\$ <u>1,732.40</u>
42.	18" Dia. RC Pipe, Recreation Site	144	LF	\$ <u>42.71</u>	\$ <u>6,150.24</u>
43.	18" RC Pipe End Section, Recreation Site	6	EA	\$ <u>490.65</u>	\$ <u>2,943.90</u>
44.	Rock Riprap, Recreation Site	9	CY	\$ <u>50.50</u>	\$ <u>454.50</u>
45.	Geotextile, Recreation Site	11,340	SY	\$ <u>0.98</u>	\$ <u>11,113.20</u>
46.	Beach Sand, Recreation Site	8,760	CY	\$ <u>15.08</u>	\$ <u>132,100.80</u>
47.	Road Surface Aggregate,	2,646	CY	\$ <u>18.69</u>	\$ <u>49,453.74</u>
48.	Permanent Utility Services, Recreation Site	1	LS	\$ <u>XXXX</u>	\$ <u>29,766.27</u>
TOTAL					\$ <u>6,134,824.00</u>

AWARD RESTRICTION (AUG 1987, NRCS, AMB)  
 One award for the aggregate of all items will be made under this solicitation.

**QWEST COMMUNICATIONS**  
**The Spirit of Service**

February 22, 2005

Order #: New Facility Placement  
File #: 25022

Dear Mr. VanDyke,

This is in reference to the cost estimate for the placement of facilities to the Harmon Lake Recreation Area in Mandan, ND. There were two options presented to you in August 2004. Our understanding is you would like to have a 25 pair cable with terminals placed instead of a 6 pair service wire. Because of costing changes that have taken place since August 2004, the cost for Qwest to perform this work has increased.

Before we can begin construction, it will be necessary for you to agree to the following terms for facility placement. Your portion of the expense will be \$16,770.11 which will cover the costs to place facilities to your location. This would include \$3,158.43 for Materials and \$13,611.68 for Labor. Because this work will be started in the May timeframe, no frost charges are involved.

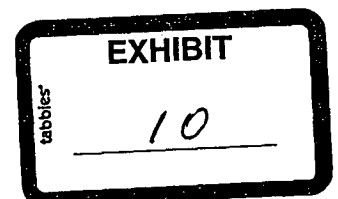
Please be advised that this quote is good for 90 days only. If we do not hear from you within 90 days it will be assumed that you are no longer interested in the service and the request will be cancelled.

If you would care to go forward with a contract or have any questions in on this matter I can be reached at (763) 585-3386.

Thank you,

Sue Colton  
Special Construction Manager  
Qwest Communications  
6300 Shingle Creek Pkwy  
4th Floor  
Brooklyn Center, MN 55430

*Exhibit 10*



**QWEST COMMUNICATIONS**  
**The Spirit of Service**

February 28, 2005

File #: 25022

**RECEIVED**  
Date: 3/8/05  
Initials: [Signature]

Dear Mr. Volk,

This is in reference to the cost estimate for the placement of facilities to the Harmon Lake Recreation Area in Mandan, ND. There were two options presented in August 2004. It is our understanding you would like to have a 25 pair cable with terminals placed instead of a 6 pair service wire. Because of costing changes that have taken place since August 2004, the cost for Qwest to perform this work has increased.

Before we can begin construction, it will be necessary for you to agree to the following terms for facility placement. Your portion of the expense will be \$16,770.11 which will cover the costs to place these facilities to your location. This will include \$3,158.43 for Materials and \$13,611.68 for Labor. Because this work will be started in the May timeframe, frost charges are not involved.

Please be advised that this quote is good for 90 days only. If we do not hear from you within 90 days it will be assumed that you are no longer interested in the service and the request will be cancelled.

If you have any further questions on this matter or would care to go forward with a contract I can be reached at (763) 585-3386. Construction will take approximately thirty (30) days from the receipt of the signed contract.

Thank you,

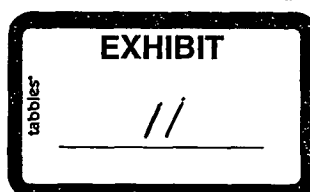
Sue Cotton  
Special Construction Manager  
Qwest Communications  
6300 Shingle Creek Pkwy  
4th Floor  
Brooklyn Center, MN 55430

*Called on 3/8/05 @ 11:35 AM  
page # 612 621 0017  
can't get through*

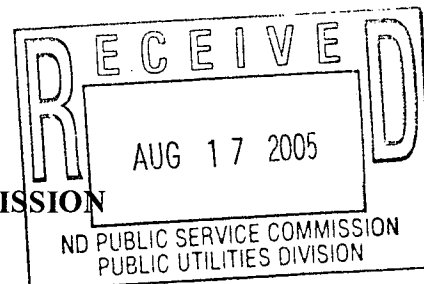
*(3/9/05) Called Duane Schop got this #  
612-861-8118 Bill Wentz  
called Bill left message - Su  
called me back within minutes  
said it's up to her boss + she'll let  
know as soon as she hears.*

*Exhibit*

*11*



STATE OF NORTH DAKOTA  
BEFORE THE PUBLIC SERVICE COMMISSION



In the Matter of  
Martin Construction, Inc.,  
Complainant,

PU05-324

v.

Qwest Communications,  
Respondent

**QWEST'S FIRST SET OF  
DATA REQUESTS TO  
MARTIN CONSTRUCTION,  
INC.**

Qwest Corporation ("Qwest") requests that Martin Construction, Inc. ("Martin Construction") submit answers to the following data requests by serving the same on Qwest's undersigned counsel within 30 days after service in accordance with N.D. Cent. Code § 28-32-33 and N.D.R. Civ. P. Rules 33 and 34.

**INSTRUCTIONS**

1. These data requests shall be deemed continuing in nature, and any answer to a data request must be supplemented when additional information responsive to the data request comes to your attention or the attention of your attorneys or other representatives while this docket is pending.
2. Each data request should be answered fully and independently. If it is not possible to provide a complete answer to a data request, or portion of a data request, the remaining part of the data request should be answered and a reason should be stated why only part of the data request has been answered.
3. All words used in their singular form shall include the words in their plural form, and all words in their plural form shall include the words in their singular form.
4. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense.
5. If you contend that you are entitled to withhold any information requested herein on a claim of privilege, then for each such item of information:
  - a. Identify the character of the information that is claimed to be privileged;

- b. State the date and place of any communication which contained the information;
- c. Identify each person who sent, participated in, overheard, or received the communication or who now has possession, custody, or control of any documents relating thereto;
- d. Describe the subject matter of the privileged information;
- e. State the number of pages of any privileged document;
- f. State the basis upon which you contend that you are entitled to withhold the information.

6. Any objection that you raise should be confined to that portion of the data request for which you claim a privilege or objection and shall not excuse you from answering the remaining part of the data request.

7. If any document requested has been lost or destroyed, state the circumstances of such loss or destruction and identify each person having knowledge of such loss or destruction.

8. For any data request answered, identify the person or persons answering the data request.

## **DEFINITIONS**

1. As used in these data requests, the term "Martin Construction" shall refer to Martin Construction, Inc. (the Complainant in this matter), its principals and predecessors in interest, and any person acting on behalf of any of them, including but not limited to their past or present officers, directors, shareholders, agents, representatives, employees, attorneys, accountants, and investigators.

2. As used in these data requests, the term "Qwest" shall refer to Qwest Corporation, its principals and predecessors in interest, including U S WEST Communications, Inc., and the Mountain States Telephone and Telegraph Company, and any person acting on behalf of any of them, including but not limited to their past or present officers, directors, shareholders, agents, representatives, employees, attorneys, accountants, and investigators.

3. The term "data request" or "request" includes an interrogatory, request for admission, and request for production of documents, as applicable.

4. The term "document" has the same meaning as in Rule 34 of the North Dakota Rules of Civil Procedure and cases decided thereunder. It includes the original and all non-identical copies (whether different from the original because of notes made on or attachments to such copies or otherwise) of all "writings" and "recordings". The term "document" as used herein also includes, without limitation, papers, books, letters, journals, photographs,

correspondence, telegrams, cables, telex messages, facsimile copies, brochures, memoranda, notes, notebooks, work papers, data sheets, bulletins, instructions, tape recordings, video tapes, transcripts, minutes or other records of meetings or conferences, reports, agendas, affidavits, studies, financial statements, press releases, contracts, pamphlets, catalogues, calendars, desk calendars, appointment books, diaries, time records, telephone logs, expense reports, and drafts of all of the above. The term “document” further includes tapes, disks, and all other computer, electronic, photographic, magnetic, laser, or mechanical means of storing and recording information, together with program and program documentation necessary to use or retrieve such information, and printouts of such information.

5.. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the requests inclusive rather than exclusive.

6. The word “including” shall be construed to mean without limitation.

7. The term “communication” means any oral or written statements, conversations, meetings, speeches, discussions, remarks, questions, answers, telephone calls, letters, memoranda, correspondence, electronic transmissions, or other transmittal of information by writing or by other means.

8. The terms “relating to” or “regarding” means constituting, comprising, containing, consisting of, evidencing, setting forth, proposing, showing, disclosing, describing, discussing, explaining, summarizing, concerning, reflecting, authorizing, referring to, or in any way pertinent to that subject matter, either directly or indirectly.

9. The term “identify,” or words of similar import:

a. When used in reference to a document, shall mean to describe the document with sufficient specificity to enable it to be requested in a subpoena duces tecum, including, but not limited to, the type of document, its author (and, if different, its signer or signers), its date, its present or last known location, and its present or last known custodian.

b. When used in reference to a natural person shall require the person’s full name, present or last known residence address, present or last known place of employment, and present or last known occupation or job title.

10. The term “person” means any individual, firm, corporation, association, partnership, joint venture, governmental agency, or any other form of entity, together with any officers, directors, partners, trustees, employees, representatives, or agents.

11. To “state the basis” for a claim, denial or defense means to provide a reasonably detailed statement of the facts, information and matters which you presently believe support or tend to support that claim, denial or defense. Your summaries should include, where applicable, references to dates, times, persons and documents.

## DATA REQUESTS

1. As referenced in Section III of Martin Construction's Complaint, identify the person(s) at Qwest who provided Martin Construction with the alleged verbal quotation.
2. As referenced in Section III of Martin Construction's Complaint, identify the person(s) at Martin Construction who contacted Qwest and received the alleged verbal quotation.
3. As referenced in Section V of Martin Construction's Complaint, identify the person(s) at Martin Construction who contacted Qwest and received information concerning additional charges for frost.
4. As referenced in Section V of Martin Construction's Complaint, identify the person(s) at Qwest who provided Martin Construction with information concerning additional charges for frost.
5. As referenced in Section V of Martin Construction's Complaint, identify all person(s) who were involved in deciding to wait to have the work done in spring after the ground thawed.
6. As referenced in paragraph 1 under Section VII of Martin Construction's Complaint, produce the "original contract" specified in that paragraph.
7. As referenced in paragraph 2 under Section VII of Martin Construction's Complaint, identify the "NRCS project engineer".
8. As referenced in paragraph 2 under Section VII of Martin Construction's Complaint, state the basis upon which Martin Construction can seek a "contract adjustment" from NRCS.
9. As referenced in paragraph 2 under Section VII of Martin Construction's Complaint, identify the provisions in the contract between Martin Construction and NRCS (also referred to in the Complaint as "Natural Resource and Engineer Service" and known as "Natural Resource Conservation Service") that provide for contract adjustments.
10. Explain the reasons for the delay in time between the date of the alleged verbal quotation received by Martin Construction from Qwest in August 2004 and the date of actual construction in or about May 2005.
11. As referenced in paragraph 2 under Section VII of Martin Construction's Complaint, produce the contract between Martin Construction and the Natural Resource Conservation Service, referred to in the Complaint as "Natural Resource and Engineer Service" and as "NRCS".

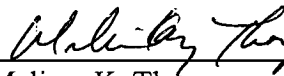
12. Produce all documents that concern the subject matter of Martin Construction's Complaint.

13. Produce all documents that Martin Construction intends to introduce at the hearing scheduled in this matter for October 2005.

14. Produce all documents, including but not limited to contracts, bids, correspondence and notes, related to or concerning telephone service at the construction project site referred to in the Complaint as Square Butte Dam No. 6, which is also known as the Harmon Lake Recreation Area.

DATED this 12th day of August, 2005.

QWEST CORPORATION



Melissa K. Thompson

QWEST SERVICES CORPORATION  
1801 California Street, 10th Floor  
Denver, CO 80202  
(303) 383-6728

*Attorney for Qwest Corporation*

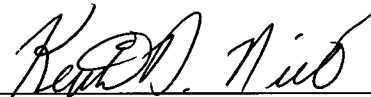
**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of August, 2005, an original copy of the foregoing **QWEST'S FIRST SET OF DATA REQUESTS TO MARTIN CONSTRUCTION, INC.** was served via facsimile and UPS delivery, postage prepaid upon:

Michael J. Maus  
Kevin McCabe  
Hardy, Maus & Nordsvan, P.C.  
137 1st Ave. W.  
P.O. Box 570  
Dickinson, ND 58602-0570

and an original plus 7 copies was served upon:

Ms. Ilona Jeffcoat-Sacco  
Executive Secretary  
North Dakota Public Service Commission  
600 East Boulevard Avenue – 12<sup>th</sup> Floor  
Bismarck, ND 58505-0480

  
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