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 IDAHO PUBLIC  
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**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IDAHO TELEPHONE ASSOCIATION,	)	
CITIZENS TELECOMMUNICATIONS	)	
COMPANY OF IDAHO, CENTURYTEL OF	)	
IDAHO, CENTURYTEL OF THE GEM STATE,	)	
POTLATCH TELEPHONE COMPANY and	)	
ILLUMINET, INC.	)	CASE NO QWE-T-02-11
	)	
Complainants	)	
	)	
QWEST CORPORATION,	)	
	)	
Respondent.	)	

**PETITION FOR RECONSIDERATION AND CLARIFICATION**

Comes Now the Idaho Telephone Association, Citizens Telecommunications Company of Idaho (“Citizens”), Illuminet, Inc. (“Illuminet”) and Intervenor Electric Lightwave, Inc. (“ELI”)(collectively the “Complainants”), by and through their attorneys of record, and hereby requests reconsideration and clarification of two (2) discrete aspects of the Commission’s Order

No. 29219 issued April 15, 2003 in the above-captioned proceeding (the “Order”). For the reasons stated herein, a grant of this relief will help advance, to the fullest extent, the Commission’s conclusion that Qwest unlawfully implemented and applied its intrastate SS7 message rate structure. Further, a grant of this petition should also minimize any effort to misfocus attention from such conclusion.

## **INTRODUCTION**

The Complainants applaud the Commission’s conclusion that the implementation and application by Qwest Corporation (“Qwest”) of its intrastate Signaling System No. 7 (“SS7”) message tariff structure was “fundamentally flawed, resulting in SS7 message charges that are unfair and unreasonable.” Order at 11. The Complainants entirely agree with the Commission that “Qwest did not consider the different payment structures in place for the different types of traffic (*and the signaling that is a necessary part of it*) involved in the intrastate domain, nor did it consider that a variety of arrangements were already in place that were intended to compensate Qwest for its signaling costs.” Order at 11 (emphasis added). Further, the Complainants wholeheartedly agree with the Commission when it concluded that Qwest should not be granted a windfall arising from its action in implementing and applying its intrastate SS7 message rate structure. “The result is that Qwest implemented SS7 message charges that are already recovered in customer rates on local traffic, including EAS traffic, or pursuant to existing inter-carrier traffic arrangements.” *Id.*

To ensure, however, these conclusions are not undermined, the Complainants file this petition with respect to two discrete aspects of the Order. As explained below, one apparently inadvertent oversight occurred within the Order that could otherwise question the Commission’s proper finding that Qwest should not be enriched by its unlawful conduct. Similarly,

Complainants' are concerned that isolated statements within the Order may be used in an effort to distort the conclusions with respect to the Commission's jurisdiction over Qwest and Qwest's unlawful conduct. Thus, Complainants respectively submit that granting the relief requested herein will help ensure the fullest extent of the public interest benefits arising from the Commission's Order.

### **REQUESTED ACTION**

#### **I. RECONSIDERATION OF THE COMMISSION'S "NO REFUND" CONCLUSION IS WARRANTED AND ENSURES QWEST IS NOT ABLE TO GAIN A WINDFALL UNDER THE ORDER**

As discussed below, Complainants respectfully submit that the following aspect of the Order is "unreasonable, unlawful, erroneous or not in conformity with the law." Commission's Rules of Procedure, Rule 331.01. Specifically, Complainants request that the Commission reconsider its conclusion that it need not direct Qwest to issues refunds of its unlawfully assessed intrastate SS7 message charges. *See* Order at 20. Unfortunately, this conclusion appears to be based on an inadvertent oversight of evidence and a reliance only on statements made by non-Illuminet witnesses. Thus, when this inadvertent oversight is corrected, the Complainants respectively submit that the Commission should direct Qwest to issue refunds for all unlawfully assessed Idaho intrastate SS7 message charges paid by Illuminet.

While the Commission is correct that Syringa Networks, LLC, Citizens and ELI have not paid any charges (*see id.* at 21 (*citing* Tr. at 186-87, 430)), Illuminet has, in fact, made such payments although under protest. Specifically, in May of 2002, Illuminet made a partial payment under protest to Qwest with respect to Qwest's intrastate SS7 message charges. A portion of this protested payment, \$145,232.95, was allocated to the very Idaho intrastate SS7 charges assessed by Qwest that have now properly been deemed by the Commission to be

unlawful. This amount is reflected on page 3 of 26 of Exhibit 402 (Proprietary Version) and reflects the total amount (with an \$84.00 late fee) of the first three months of Idaho intrastate SS7 message charges identified on page 7 of 26 of that exhibit.<sup>1</sup> If the Commission were to grant this request, the attached affidavit of Paul Florack is submitted pursuant to Commission Rule of Practice 331.03 as the evidence which otherwise corroborates the existing evidence and would be that evidence which Mr. Florack would testify to at a hearing. Therefore, Complainants note that reconsideration can and should be afforded them based upon on the briefs and attachment hereto.

Accordingly, the Complainants respectively request the Commission to reconsider its conclusion not to order a refund of the unlawful charges assessed by Qwest, and to direct such refunds to be made with due dispatch. As the Order makes clear, Qwest assessed these charges pursuant to an unlawfully implemented and applied tariff structure, and it is clear that the Commission's intent is to avoid allowing Qwest to enjoy any windfall from its unlawful acts. *See, e.g.*, Order at 11. A grant of this request is, therefore, clearly in the public interest as is a prompt order directing that such refunds be issued.

Such relief will ensure that Qwest cannot undermine the Commission's proper conclusion that Qwest invalidly imposed the intrastate SS7 messages charges. Likewise, by correcting this inadvertent oversight regarding Illuminet's protested partial payment, the Commission can ensure that Qwest has no opportunity to be rewarded by its unlawful acts by utilizing this inadvertent oversight as a means to refuse making a refund to Illuminet.

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<sup>1</sup> While Qwest rebuttal indicated that no payment had been made (*see* Order at 21 *citing* Tr. at 455), that statement has no basis in fact for the reasons stated herein. Further, the record is clear that the charges assessed by Qwest for the physical connection to Qwest's SS7 network – the B-links and ports – continue to be paid by Illuminet. *See* Tr. at FLORACK TESTIMONY AT 225 (LINES 24-26), 226 (LINES 13-14).

## II. CLARIFICATION OF THE ORDER IS REQUIRED TO AVOID EFFORTS TO MISFOCUS ATTENTION FROM QWEST'S UNLAWFUL CONDUCT

Complainants also request that the Commission clarify its Order to ensure the existing regulatory/operating status of Illuminet does not provide Qwest with an opportunity to misfocus attention from the preeminent conclusion arising from this proceeding – Qwest has unlawfully implemented and applied its intrastate SS7 message rate structure. Specifically, Complainants request clarification that isolated references within the Order to the provision of “telecommunications services” and Illuminet joining Idaho telephone corporations in this Complaint are not misinterpreted with regard to Illuminet’s existing status as a private, non-common carrier third party provider of SS7 and other services.<sup>2</sup>

Illuminet notes that the Order may be misinterpreted to suggest that Illuminet was being referenced by the Commission’s statement that “as well as a company providing telecommunications services to those companies in competition with Qwest.” Order at 5. Similarly, the reference to the statement that “the Complainants, including Illuminet, are proper parties able to file a Complaint under *Idaho Code* §62-614” (*Id.*) could be misinterpreted to suggest, by inference, that Illuminet is a “telephone corporation.”

As the record reflects, however, Illuminet is not a telecommunications carrier and provides no services to end users, and on this issue even Qwest agrees. *See, e.g.*, Tr. at FLORACK TESTIMONY at 203 (lines 1-3) and Tr. at MCINTYTRE REBUTTAL TESTIMONY at 426 (lines 19-21). Relevant here, as a private, non-common carrier third party provider of SS7 services, Illuminet does not provide “telecommunications services” to its carrier/customers nor is it a telephone corporation. *See* Order at 5. Rather, the arrangements

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<sup>2</sup> In the event that the Commission finds that reconsideration, rather than clarification, is necessary, Complainants submit that, for the reasons stated herein, the Order should be reconsidered because, pursuant to the Commission’s

between Illuminet and its carrier/customers are contractual and are offered solely under contract to telecommunications carriers. *See, e.g.*, Tr. at FLORACK TESTIMONY at 203 (lines 3-9), 227 (lines 6-10).

Thus, Complainants respectively request that the Commission clarify its Order to reflect the fact that Illuminet is a private, non-common carrier third party SS7 provider. Such action is consistent with the uncontroverted record in this proceeding. A grant of this clarification will also avoid the potential for using such isolated statements to misfocus attention not only from the Order's conclusion that Qwest unlawfully implemented and applied its intrastate SS7 message rate structure, but also the direct impact of that unlawful implementation and application upon Complainants. Further, the requested clarification does not otherwise disturb any finding or conclusion of the Commission. For example, Illuminet, as one of the Complainants, voluntarily subjected itself to the Commission's jurisdiction for purposes of resolving this dispute. Similarly, Illuminet has joined entities that are telephone corporations in this Complaint and, as such, all of the Complainants can properly rely upon the Commission's authority to resolve this dispute pursuant to *Idaho Code* §62-614. *See* Order at 5.

### **CONCLUSION**

The Commission's Order reflects rational decision making. Action consistent with the relief requested herein will advance that result. Accordingly, Complainants respectively request that the Commission promptly grant this Petition.

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Rules of Procedures, the Order is "unreasonable, unlawful, erroneous or not in conformity with the law."  
Commission's Rules of Procedure, Rule 331.01.

Respectfully submitted,

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for Conley Ward ISB #1683  
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Counsel for Illuminet, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of May, 2003, I caused a true and correct copy of the foregoing **PETITION FOR RECONSIDERATION AND CLARIFICATION** to be served by the method indicated below, and addressed to the following:

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Morgan W. Richards

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IDAHO TELEPHONE ASSOCIATION, )  
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 COMPANY OF IDAHO, CENTURYTEL OF )  
 IDAHO, CENTURYTEL OF THE GEM STATE, )  
 POTLATCH TELEPHONE COMPANY and )  
 ILLUMINET, INC. )  
 )  
 Complainants )  
 )  
 QWEST CORPORATION, )  
 )  
 Respondent. )

CASE NO QWE-T-02-11

**AFFIDAVIT OF PAUL FLORACK**

I, Paul Florack, do hereby certify and affirm that:

1. In May of 2002, Illuminet, Inc. made a partial payment under protest to Qwest Corporation ("Qwest") with respect to Qwest's intrastate SS7 message charges assessed by Qwest prior to that date.
2. Illuminet continues to pay for the charges assessed by Qwest required for the physical connections (the B-links and ports) of the Signaling System No. 7 network components operated by Qwest and Illuminet.
3. A portion of the partial payment made to Qwest was allocated to the outstanding Idaho invoices for intrastate SS7 message charges assessed to Illuminet by Qwest.

- 4. The Idaho-specific amount of the protested payment was \$145,232.95 (the "Protested Payment").
- 5. This Protested Payment is reflected on page 3 of 26 of Exhibit 402 (Proprietary Version) and reflects the total amount (with an \$84.00 late fee) of the first three months of Idaho intrastate SS7 message charges identified on page 7 of 26 of that exhibit.

The undersigned hereby certifies that the information contained in this Affidavit is true and accurate to the best of my information and belief.

Paul Floral  
Signature

5/5/03  
Date

**NOTARY CERTIFICATION**

State of KANSAS,

County of Johnson

TO WIT:

On May 5, 2003, before me, a Notary Public of such State and County, appeared Paul Florack, who is the individual who executed this Affidavit.

Subscribed and sworn to before me this 5th day of May, 2003. My Commission expires on June 10, 2003.

Rosemary D. Wilson  
Notary Public

