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IDAHO PUBLIC
UTILITIES COMMISSION

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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.

Complainants

QWEST CORPORATION¹,

Respondent.

CASE NO.: QWE-T-02-11

MOTION TO STAY ORDER NO. 29219

¹ The Complaint names Qwest Communications, Inc. as the Respondent, but the proper party is Qwest Corporation.

The Idaho Public Utilities Commission (“Commission”) issued Order No. 29219 (“Order”) on April 15, 2003. The Order required Qwest to “withdraw the revisions it made to its Access Catalog effective June 1, 2001, and refile it only after providing the means to identify the interLATA toll traffic properly subject to the SS7 message charges. . . .” The Order also stated that “Qwest may not collect from Complainants” for certain services purchased from the Catalog. Qwest hereby asks the Commission to use its inherent powers and stay the effect of this Order during the pendency of its Motion for Reconsideration, and if necessary, during the pendency of its appeal.

A stay is appropriate in this matter because, as Qwest’s Motion for Reconsideration will make plain, Qwest has uncovered substantial new evidence that shows Illuminet knowingly allowed the Idaho Access Service Catalog (“Idaho Catalog”) to take effect and then waited for over one year to file the Complaint in this case. Moreover, there is a substantial question of law as to whether the Commission has the jurisdiction to regulate the rates that Qwest is charging for SS7 services under the Catalog. In fact, the Commission recognizes it does not have the ability to set rates for toll calls; yet by finding the rates in the Catalog “unfair and unreasonable” the Commission sets *de facto* rates in contravention of its enabling legislation. As a result, Qwest respectfully requests that the Commission stay the impact of its Order until at least ruling on Qwest’s Motion to Reconsider, and preferably until after an appeal, if an appeal is necessary.

A. The Commission has Statutory Authority to Issue a Stay.

Idaho Code § 61-626 vests the Commission with discretion to stay an order pending a party’s motion for reconsideration, or even appeal. The statute reads in pertinent part: “A petition for such reconsideration shall not . . . postpone the enforcement [of an order] *except as the commission may by order direct.*” I.C. § 61-626(3). Idaho courts have emphasized the

importance of interlocutory stays of Commission orders pending reconsideration and/or appeal in order to protect parties from potentially confiscatory orders *pendent lite*. See *Utah Power & Light Co. v. Idaho Public Utilities Commission*, 107 Idaho 47, 50, 685 P.2d 276, 279 (1984) (stay of Commission order proper if enforcement may result in confiscation and irreparable loss); *Joy v. Winstead*, 70 Idaho 232, 238, 215 P.2d 291, 293 (1950).

This discretion is further confirmed in Commission Rule 324, which reads: “Any person may petition the Commission to stay any order, whether interlocutory or final. Orders may be stayed by the judiciary according to statute. The Commission may stay any order on its own motion.” IDAPA 31.01.01.324. The Commission has exercised its discretion to grant stays pending reconsideration under a variety of circumstances. See *In re US WEST Communications, Inc. for Authority to Increase its Rates and Charges for Regulated Title 61 Services*, 1997 Ida. PUC Lexis 161 (1997) (granting stay pending reconsideration where potential staff error may subject customers to incorrect billings); *Idaho Power Co. v. The Villager Condominium Ass’n, Inc.*, 1994 Ida. PUC Lexis 69 (1994) (granting stay pending reconsideration in view of appeal to Idaho Supreme Court that might render issues under reconsideration to be moot); *In re The Provision of Time Announcement Services by the Mountain States Telephone and Telegraph Co.*, 1987 Ida. PUC Lexis 388 (1987) (stay of proceedings granted pending reconsideration in view of petitioner’s request for waiver before the Department of Justice and related U.S. District Court proceedings); *In re the Effects of Revisions of the Federal Income Tax Code Upon the Cost of Service of Regulated Utilities*, 1987 Ida. PUC Lexis 386 (1987) (granting stay pending reconsideration where Commission could not address merits of reconsideration order before implementation date); *Id.*, 1987 Ida. PUC Lexis 378 (1987) (same).

Conversely, where the Commission has denied a stay, it is apparent that the order to be enforced would not materially prejudice the parties pending reconsideration and later appeal. *See Idaho Power Company v. Idaho Public Utilities Commission*, 2002 Ida. PUC Lexis 170 (2002) (no stay necessary where order concerned one-time charge that power company did not seek to collect while appeal was pending); *cf. In re the Matter of Hayden Pines Water Co.*, 1985 Ida. PUC Lexis 185 (1985) (stay denied where power company has recourse to seek stay at supreme court).

B. The Circumstances Surrounding this Case Justify the Commission Issuing a Stay.

There can be no question that Order No. 29219 will have far reaching consequences for Qwest that if allowed to take effect now, could not be adequately rectified on reconsideration or appeal. The Commission ordered Qwest to withdraw the June 1, 2001 revisions to the Idaho Catalog, which revisions generate approximately \$66,000 every month for Qwest exclusive of Illuminet. *See Attachment A* (Affidavit of Julie Kaufman-Prentice) at ¶5. On the contrary, a stay in this case will preserve the status quo, and will provide the Commission with adequate time to decide Qwest's Petition for Reconsideration, and, if necessary, for a decision on appeal. Such a stay will not have a detrimental effect on the Complainants. Illuminet is the only Complainant that is currently subject to charge under the Catalog and it has refused to pay the Idaho Catalog charges from day one. Thus, issuing the stay will cause no harm.

In contrast, denying a stay would have far-reaching, unalterable consequences. If the Commission determines on reconsideration that its order to withdraw the Catalog was premature or unwarranted, the Commission will not have the authority to retroactively order payment of the charges that would otherwise be billed under the Idaho Catalog while its decision is pending.

E.g., Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 577, 101 S.Ct. 2925, 2930, 60 L.Ed.2d

856 (1981) (“the Commission itself had no power to alter a rate retroactively”). As the Commission has previously stated (and been affirmed in by the Idaho Supreme Court):

When any party, be it utility, ratepayer or the State of Idaho, appeals a rate setting Order ... but does not stay the effectiveness of the Order ... then the rates and charges set forth by that Order are final in all respects as service is provided and consumed so long as the Order continues in effect. *If the Order is later set aside by the Supreme Court of Idaho, no rates and charges previously collected may be adjusted as a result; similarly, no rates and charges later established by the Commission may be adjusted from what they otherwise would have been to take into account what the appealed Order would have been before it was set aside had it, during the time it was in effect, conformed to or been altered or amended to meet the objections of the opinion of the Supreme Court of Idaho.*

Utah Power & Light Co. v. Idaho Public Utilities Comm’n, 107 Idaho 47, 49, 685 P.2d 276, 278 (1984) (affirming PUC denial of request for surcharge based on prior rates). The same is true if Qwest is successful on appeal – the Commission and courts will lack authority to order retroactive payment of charges owing to Qwest under the Idaho Catalog.

Moreover, the facts surrounding this matter justify issuance of a stay. The Commission decision ordered Qwest to “withdraw” its revisions to the Idaho Catalog. However, numerous parties, not just Illuminet, order SS7 services via the Idaho Catalog. Specifically, Qwest provides SS7 service to 9 companies, including Illuminet, in Idaho. Qwest has billed approximately \$3,400,000 for SS7 intrastate usage since Qwest began billing SS7 message charges out of its Idaho Access Service Catalog in June 2001. Among these customers are four interexchange carriers (IXCs). *See Attachment A* at ¶3. No one questions the legitimacy of these charges; to the contrary, the FCC has specifically authorized them. *In the Matter of U S WEST Petition to Establish Part 69 Rate Elements for SS7 Signaling*, Order, DA 99-1474 (Dec. 23, 1999). Nor would any of the arguments advanced by Complainants and cited in Order No. 20219 as a justification for ordering Qwest to withdraw its intrastate Catalog apply to the imposition of SS7 per message charges on IXCs. Moreover, all customers except Illuminet have

paid and continue to pay all SS7 charges assessed by Qwest in accordance with the Idaho Catalog. Thus, Qwest has billed and collected well over \$1.5 million from other carriers for SS7 intrastate usage services under the Idaho Catalog since it was filed on June 1, 2001. *See Attachment A* at ¶4.

Any claim by Illuminet that a stay will cause it harm would be without basis. The Commission acknowledged that Illuminet has not paid the disputed SS7 message charges under the Idaho Catalog. Order, p. 20 Moreover, for about 23 months before Illuminet filed this Complaint, it purchased SS7 services from an identical federal tariff. *See Attachment A* at ¶ 8. Evidence offered in support of Qwest's Petition for Reconsideration will make plain that Illuminet's purchases from Qwest's federal tariff raised questions that prompted a series of meetings between Qwest and Illuminet. For example, Illuminet's Exhibit 406 reveals that on November 22, 2000, Mr. F. Terry Kremian, Executive Vice President and COO of Illuminet, sent Beth Halvorsen, Vice President Wholesale Markets a letter requesting a meeting to discuss several issues related to SS7 message charges. Specifically: "On behalf of Illuminet, this letter is to request a meeting with you . . . to discuss the outstanding issues related to the appropriateness of Qwest's charges to Illuminet for . . . (SS7) messaging. As you are aware, these issues have been the subject of on-going discussions between our two companies. . . ."

On reconsideration Qwest is prepared to demonstrate that after this November 2000 meeting, Qwest and Illuminet held a series of additional meetings wherein Illuminet asked how it could obtain SS7 services at different rates from those set forth in the tariff. Qwest informed Illuminet that if it wanted to act as an agent for its customers, it should not order out of the appropriate customer's agreement. Qwest also informed Illuminet that there were procedures for acting as an agent of another carrier. Qwest made Illuminet fully aware that if it ordered tariffed

services it would be charged tariffed rates. Again, since Illuminet purchased SS7 services via the federal tariff in the past, and since the Idaho Catalog was modeled after the federal tariff, Illuminet knew exactly what Qwest intended to do.

Moreover, Qwest provided Illuminet with copies of equivalent state tariffs before they were filed with the respective state commissions. There was nothing “unilateral” about Qwest’s conduct as Illuminet suggested. Not only was there an “opportunity for comment” (see Order No. 29219 at p. 2), Illuminet actually did comment. Despite all of the meetings and discussions, Illuminet waited for over one year after Qwest filed the Idaho Catalog to file this Complaint. As stated above, since June 1, 2001, Qwest has billed and collected over \$1.5 million dollars from the Idaho Catalog for the provision of SS7 services. Illuminet’s decision to delay filing its Complaint clearly caused Qwest harm.

Given that there will be no harm in issuing a stay, and given that a denial of the stay will cause Qwest substantial harm and will cause turmoil in the proper manner in which Qwest can and should charge for all forms of SS7 services, the Commission should issue a stay pending the decision on Qwest’s Motion for Reconsideration, and if necessary, on appeal.

RESPECTFULLY SUBMITTED this 5th day of May, 2003,

Stephanie Boyett-Colgan
Qwest Service Corporation

Charles W. Steese
Steese & Evans, P.C.



Mary S. Hobson
Stoel Rives, LLP

Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2003, I served **MOTION TO STAY ORDER NO. 29219** as follows:

Ms. Jean Jewell, Secretary Idaho Public Utilities Commission 472 West Washington Street P.O. Box 83720 Boise, Idaho 83720-0074 jjewell@puc.state.id.us	<input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> U. S. Mail <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
Weldon Stutzman Deputy Attorney General Idaho Public Utilities Commission 472 West Washington Street Boise, ID 83702	<input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> U. S. Mail <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
Stephanie Boyett-Colgan Qwest Services Corporation 1801 California Street - 47th Floor Denver, CO 80202 Telephone: (303) 896-0784 Facsimile: (303) 896-8120 scolgan@uswest.com	<input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> U. S. Mail <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
F. Wayne Lafferty LKAM Services, Inc. 2940 Cedar Ridge Drive McKinney, TX 75070	<input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> U. S. Mail <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile
Thomas J. Moorman Kraskin, Lesse & Cosson LLP 2120 L Street NW – Suite 520 Washington DC 20037 Phone: (202) 296-8890 Fax: (202) 296-8893 tmoorman@klctele.com	<input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> U. S. Mail <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
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Brandi L. Gearhart, PLS
Legal Secretary to Mary S. Hobson
Stoel Rives LLP

ATTACHMENT A
TO MOTION TO STAY ORDER NO. 29219

Affidavit of Julie Kaufman-Prentice

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IDAHO TELEPHONE ASSOCIATION,
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IDAHO, CENTURYTEL OF THE GEM
STATE, POTLATCH TELEPHONE
COMPANY and ILLUMINET, INC.

CASE NO.: QWE-T-02-11

**AFFIDAVIT OF
JULIE KAUFMAN-PRENTICE**

Complainants

QWEST CORPORATION¹,

Respondent.

State of Arizona)
) ss.
County of Maricopa)

1. I am employed by Qwest Corporation (Qwest) as a Director of Customer Service and give this affidavit from my personal knowledge and from review of the business records of Qwest and its predecessor company, U S WEST Communications, Inc. (U S WEST).

2. I have job responsibilities for several customer service areas, which include managing the billing for SS7 tariff/catalog products purchased by Qwest wholesale customers.

¹ The Complaint names Qwest Communications, Inc. as the Respondent, but the proper party is Qwest Corporation.

3. Qwest provides SS7 service to 9 companies, including Illuminet, in Idaho and has billed approximately \$3,400,000 for SS7 intrastate usage since Qwest began billing SS7 message charges out of its Idaho Access Service Catalog in June 2001. Among these customers are 4 interexchange carriers (IXCs).

4. All customers except Illuminet have paid and continue to pay all charges assessed by Qwest in accordance with the Idaho Access Service Catalog. Thus, Qwest has billed and collected well over \$1.5 million from other carriers for SS7 intrastate usage services under the Idaho Access Service Catalog.

5. Currently, Qwest bills approximately \$66,000 monthly, exclusive of Illuminet, in Idaho for SS7 charges in accordance with the Access Service Catalog.

6. Given that some carries may view this information as CPNI, I do not attach the billing summary of these 9 customers; however, Qwest could easily provide the Commission with that information subject to the Protective Order in this case if so requested.

7. SS7 customers are billed out of Qwest's FCC Tariff and/or the Idaho Access Service Catalog, depending upon the percentage of interstate usage the customer declares. The USOC codes for Qwest's FCC Tariff and the Idaho Access Catalog are identical for SS7 services. Thus, when a customer orders SS7 services and declares a percentage of interstate usage greater than zero, that customer is billed in accordance with Qwest's FCC tariff. Qwest then calculates the projected intrastate percentage of use and bills that percentage in accordance with the Idaho Access Catalog.

8. Historically, Qwest began billing Illuminet out of its FCC Tariff in July 2000 for Illuminet's interstate SS7 messages based upon a percentage of interstate usage of 50%, which Illuminet subsequently reduced that percentage to 10%.

9. Qwest continues to bill Illuminet out of its FCC Tariff for interstate SS7 messages based upon a 10% declared percentage of interstate usage.

10. Qwest began billing Illuminet out of its Southern Idaho Access Catalog for intrastate SS7 services in June 2001 based upon the projected 90% intrastate percentage of use.

11. This concludes my affidavit.

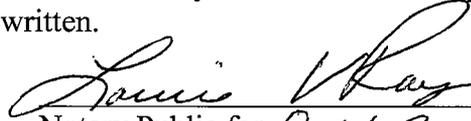
DATED This 2nd day of May, 2003.


Julie Kaufman-Prentice

State of Arizona)
) ss.
County of Maricopa)

On this 2nd day of May, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared Julie Kaufman-Prentice, known or identified to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public for Quest Communications
Residing at Maricopa County
My commission expires: October 6, 2006

