

IN THE SUPREME COURT OF THE STATE OF IDAHO

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

Respondents,

vs

QWEST CORPORATION,

Appellant.

Docket No. 30107

STIPULATED MOTION TO DISMISS THE APPEAL AND REMAND TO THE IDAHO
PUBLIC UTILITIES COMMISSION

Appeal from the Idaho Public Utilities Commission
Dennis S. Hansen, Commissioner, presiding
IPUC Docket #QWE-T-02-11

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All of the parties to this appeal, Qwest Corporation, Illuminet, Inc., Citizens Telecommunications Company of Idaho, Electric Lightwave, Inc.¹, and the Idaho Telephone Association (collectively "the Parties"),² hereby stipulate pursuant to Idaho Appellate Rule 13.5 that the appeal may be dismissed and the matter remanded to the Idaho Public Utilities Commission ("Commission"). Specifically, the parties have reached a settlement thereby mooted the appeal; however, the Parties request a remand to the Commission so that the Commission can determine whether it should provide the Parties and the telecommunications industry with guidance concerning the scope and precedential impact of its Orders.

This Court's rules specifically allow the Court to remand a matter to the Commission for further hearings upon a stipulation of "all affected parties":

Upon stipulation of all affected parties that a . . . civil judgment of the . . . administrative agency may be . . . remanded for further hearings, the court may enter an order accomplishing the stipulated result without briefs, oral argument, or an opinion of the court. . . .

Idaho Appellate Rule 13.5. The Parties request that the Court remand this matter to the Commission for further proceedings; specifically, for the Commission to determine whether it should provide the Parties, the industry at large, and other judicial and quasi-judicial bodies such as other state regulatory commissions and the American Arbitration Association (AAA) with clarity concerning the scope and precedential impact of its Orders.

Other non-parties to this case are citing the Commission's Orders as having preclusive effect upon Qwest. The Parties to this appeal have reached a settlement that will eliminate the

¹ Electric Lightwave, Inc. intervened in the proceeding; therefore, their name is not on the caption. R Vol. I, pp. 21, 34.

² CenturyTel of Idaho, CenturyTel of the Gem State, and Potlatch Telephone Company withdrew from the case before the November, 2003 hearing before the Commission. R Vol. I, pp. 38, 43.

need or ability of this Court to issue a decision on the merits. The Parties request the Court dismiss the appeal and remand the matter to allow the Commission to determine whether it is appropriate to provide the parties and telecommunications industry with additional clarity as to the scope and precedential impact of its Orders. There is substantial precedent for remanding a matter to allow the lower court – here the Commission – to determine the scope of its decision especially in light of a settlement. In *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U. S. 18 (1994), the United States Supreme Court stated that a court of appeals cannot vacate a lower court decision without extraordinary circumstances, but in the absence of such measures, “may remand the case with instruction that the district court consider the request, which it may do pursuant to Federal Rule of Civil Procedure 60(b).” *Id.* at 29. See *American Games, Inc. v. Trade Products, Inc.*, 142 F.3d 1164, 1167-1170 (9th Cir. 1998); see also *Davis, Cowel & Bowe, LLP v. SSA*, 281 F. Supp. 2d 1154, 1156 (N.D. Cal. 2003) (“when mootness results from settlement, a district court may grant vacatur of its own judgment when equitable considerations counsel in favor of vacatur; a finding of exceptional circumstances is not required.”).

WHEREFORE, the Parties respectfully, request that this Court dismiss the appeal and remand the matter to the Commission for further proceedings.

Respectfully requested this 23^d day of December, 2004.



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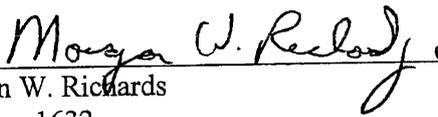
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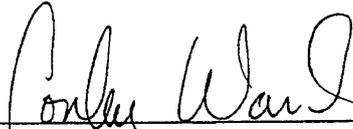
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