

## DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER  
COMMISSIONER SMITH  
COMMISSIONER HANSEN  
COMMISSION SECRETARY  
COMMISSION STAFF  
LEGAL**

**FROM: WELDON STUTZMAN**

**DATE: FEBRUARY 28, 2005**

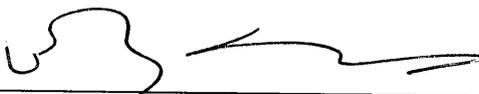
**RE: PETITION BY QWEST CORPORATION FOR AN ORDER TO CLARIFY  
THE SCOPE OF ORDER NOS. 29219 AND 29310, CASE NO. QWE-T-02-11**

On February 7, 2005, Qwest Corporation filed a Petition for Order to Clarify the Scope of Order Nos. 29219 and 29310. Those are the final Order and reconsideration Order in the complaint case filed against Qwest by the Idaho Telephone Association, Illuminet, Inc. and individual small telephone companies, known as the SS7 case. Qwest appealed to the Idaho Supreme Court from the Commission Orders, but the parties stipulated to dismiss the appeal prior to it being argued to the Court. The parties' Stipulation to Dismiss requested the Supreme 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." In its Petition for Clarification, Qwest cites *Idaho Code* § 61-624 as providing authority for the Commission to clarify an Order. That section authorizes the Commission to "rescind, alter or amend any Order or decision made by it." The section also requires notice to the public utility affected, as well as an opportunity for the utility to be heard as provided in the case of complaints. Section 61-624 does not address *clarification* of a Commission Order.

Although Section 61-624 does not specifically authorize Commission clarification of an Order, Commission Rule of Procedure 53 does identify a Petition for Clarification of an Order as a permissible pleading. IDAPA 31.01.01.053.02. In addition, the parties in this case do not question the Commission's authority to clarify a final Order. Staff does not believe any additional notice is required for the Commission to consider Qwest's Petition. Section 61-624

requires notice to “the public utility affected” if the Commission is determining whether to *change* an existing Order by rescission, alteration, or amendment. In its Petition in this case, Qwest is not asking the Commission to change its previous Orders, but merely seeks clarification of the precedential effect of the Orders. Qwest served all other parties with its Petition, and in addition the remaining parties signed the stipulation to dismiss filed with the Supreme Court, which contemplated a request for clarification to the Commission. Qwest stated in its petition that the other parties in the case “take no position on this Motion.” Staff therefore recommends that the Commission regard the Petition filed by Qwest as fully submitted and consider the matter on its merits.

The specific clarification Qwest seeks is a statement that the Commission’s Orders “shall be binding only upon the named parties to the proceeding in which the Orders were entered and cautioning their use as precedent or cited authority by parties to any other proceedings before the Commission, or otherwise.”



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Weldon Stutzman

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