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*Attorneys for Qwest Corporation*

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION  
OF QWEST CORPORATION FOR PRICE  
DEREGULATION OF BASIC LOCAL  
EXCHANGE SERVICES**

Case. No. QWE-T-02-25

**QWEST CORPORATION'S MOTION IN  
OPPOSITION TO REQUEST FOR  
INTERVENOR FUNDING**

Qwest Corporation ("Qwest"), by and through its undersigned counsel, and pursuant to Commission Rule of Procedure 164, IDAPA 31.01.01.164 hereby submits its Motion in Opposition to Request for Intervenor Funding. This motion is filed in response to the request filed on behalf of the Intervenor Meierotto served July 9, 2003.

**BACKGROUND**

The Intervenor Meierotto ("Intervenor") sought intervention in this case to "present evidence, to the extent necessary, and to cross examine witnesses regarding how cell phones are

not viable competition for land line users in many circumstances.”<sup>1</sup> Intervenors prefiled testimony of three actual Intervenors, Carol Moyer, Sharon Herrick and Gary Neal, and four other witnesses. However, at hearing Ms. Moyer’s testimony was not offered into the record. Following submission of prefiled testimony Intervenors filed a short legal memorandum and Intervenors’ attorney, John Gannon, appeared at the oral argument on Staff’s Petition for Declaratory Ruling. Intervenors supported Staff’s position but did not offer a position on Idaho law or the requirements that must be met by Qwest to achieve pricing freedom under Idaho Code § 62-622(3) that was different than that offered by the Commission Staff.

At hearing, Mr. Gannon cross examined witnesses but largely explored the same areas covered by Staff’s testimony and/or its attorney in cross examination. While the Intervenors’ testimony represented concerns of Idaho customers, it was often repetitive and not relevant in that the witnesses did not understand that the services upon which they relied, e.g. Digital Subscriber Line service; “rollover” were already price regulated. In other instances the testimony focused on data-related uses for wirelines, which issue had already been fully addressed by Staff. Finally the efforts on behalf of Intervenors to show that certain customer premises equipment described as “key systems” could not be operated by wireless technology added nothing more than to provide an illustration of the proposition that “not every customer will be willing to use wireless as a substitute for wireline service” -- a proposition that Qwest never disputed.<sup>2</sup>

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<sup>1</sup> *Affidavit of John Gannon in Support of Petition to Intervene*, p.1, (Jan. 10, 2003).

<sup>2</sup> Qwest does point however, that business customers who rely on key systems and other similar systems can eliminate lines by placing some or all of its outgoing calls using wireless technology and by allowing frequent business callers to by-pass the key system by calling the wireless number of the business person to whom they wish to speak. Qwest further notes that the Idaho statutes and the Commission’s prior decision construing the relevant statutes in the Burley case do not require that Qwest prove that competition exists for every customer.

## DISCUSSION

The standards for the award of intervenor funding are set out in Idaho Code § 61-617A and Commission Rule 165, IDAPA 31.01.01.165. The Commission must find:

1. the participation of the intervenor has materially contributed to the decisions rendered by the Commission;
2. the costs of intervention are reasonable in amount and would be a significant financial hardship for the intervenor;
3. the recommendation made by the intervenor differed materially from the testimony and exhibits of the commission staff; and
4. the testimony and participation of the intervenor addressed issues of concern to the general body of users or consumers.

Because the Commission had not rendered its decision in this matter, Qwest cannot comment on the first and most important of these criteria. If Qwest's application is granted, it is unlikely that Intervenors' participation in this case can be deemed to have "materially contributed to the Commission's decision." On the other hand, even if the Commission rules against Qwest, it is quite possible that it would reach that decision based entirely, or almost entirely, upon the legal arguments or testimony of the Commission Staff. Qwest respectfully requests, therefore, that Qwest be permitted the opportunity to supplement this motion once the Commission issues its decision on Qwest's application.

However, even without knowing what the Commission's decision will be, it is apparent that the relevant recommendation(s) made by the Intervenors did not materially differ from those of the Commission Staff. Those recommendations that were markedly different, e.g., the creation of an arbitration process, were not germane to the issues presented in the case.

Intervenors, like Staff argued that Qwest did not meet the statutory standards because, in their view, Qwest did not prove that wireless service is "functionally equivalent" to basic local

exchange service. This issue was also addressed by Staff at length. Indeed to a large extent, Staff brought this issue to the Commission's attention with its Motion for Declaratory ruling. Although Qwest submits that both Staff and Intervenors misinterpret the clear direction of the Idaho Legislature in enacting the relevant statutes, the issue would have been no less clearly delineated had the Intervenors chosen not to become involved in this case.

Similarly the evidence offered by Intervenors concerning extension phones and business telephone systems, while helpful from the standpoint of understanding customer concerns, did not offer any perspective not already covered by Staff's functional equivalence arguments. Intervenors' participation did assist Qwest, however, in pointing out that a relatively small number of customers are actually affected by the limitations of wireless services to meet the needs of small business customers. Customers who rely on phone "systems" that allow calls to be aggregated under one central number and distributed to specific recipients through a live receptionist, as in the small law firm example offered by Intervenor Gary Neal, do not make up a major segment of the Title 61 small business market and even these customers have substantial choices.<sup>3</sup>

Intervenors seek to differentiate themselves from Staff by pointing out that they did not discuss pricing. Intervenor funding is not justified, however, on the basis that the Intervenors' case was less comprehensive than Staff's. Further, the Intervenors' recommendation that should basic local exchanges services be deregulated, the Commission should require Qwest to submit to "informal arbitration" of billing disputes did not further the issues presented in this case. Although Qwest appreciates that this recommendation is well intended, Intervenors appear to be unaware that the Commission continues to have jurisdiction over such issues and that its Staff

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<sup>3</sup> See, *Qwest Corporation's Post Hearing Reply Brief*, pp. 17-20 ( Jul. 11, 2003).

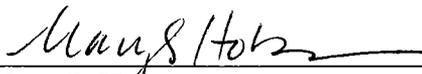
provides a highly effective informal process for resolution of customer issues. Qwest submits that beyond that there has been no need shown for the creation of an arbitration process and that the legal authority of the Commission to create such a process has not been established by Intervenors or anyone else. Similarly, although Qwest appreciates the Intervenors' intentions in arguing that there should be parity between the taxes and surcharges imposed on wireline and wireless services, they fail to appreciate that the Commission has little authority to address that issue. These recommendations do not justify granting intervenor funding in this case.

### **CONCLUSION**

Although the Qwest believes that it cannot fully address the application of the statutory standards for intervenor funding in this case without first reviewing the Commission's decision, for the foregoing reasons Qwest submits that Intervenors did not offer a position that was materially different than that taken by the Commission Staff and that Intervenors' Request should be denied at this time. In the alternative, Qwest asks that the Commission allow it to supplement this Motion after the Commission reaches its decision to address how Intervenors contributed, if at all, to the Commission's decision.

Respectfully submitted this 23<sup>rd</sup> day of July, 2003.

**Qwest Corporation**

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 23<sup>rd</sup> day of July, 2003, I served the foregoing **QWEST CORPORATION'S MOTION IN OPPOSITION TO REQUEST FOR INTERVENOR FUNDING** upon all parties of record in this matter as follows:

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