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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 REPLY TO
STAFF'S RESPONSE TO QWEST'S
MOTION TO RE-OPEN THE RECORD**

Qwest Corporation ("Qwest"), by and through its undersigned counsel, files this Reply to Staff's Response to Qwest Corporation's Motion to Reopen the Record ("Staff's Response"), filed August 22, 2003. Qwest's Motion to Reopen the Record seeks Commission leave to file the supplemental testimony of James M. Schmit, which describes a proposal that the Commission approve Qwest's application in the form of a provisional Pilot Project. Staff's Response misconstrues the record and, consequently, Qwest's proposal. Further, Staff's Response impugns Qwest's motives in offering its proposal and seeks to deny the Commission the opportunity to evaluate a proposal that will minimize the perceived risks for customers, while still granting Qwest the flexibility it needs to compete in the marketplace.

**QWEST CORPORATION'S REPLY TO STAFF'S RESPONSE
TO QWEST'S MOTION TO RE-OPEN THE RECORD – Page 1**

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**THE RECORD IS ENTIRELY CONSISTENT WITH DEREGULATING BASIC LOCAL
EXCHANGE SERVICES UNDER THE PROPOSED PILOT PROJECT**

Although Staff's Response purports to address the procedural question whether the record should be reopened to permit the filing of Mr. Schmit's testimony, much of it is devoted to making one last attempt to convince the Commission that the overwhelming and unrefuted evidence of "effective competition" from wireless providers simply does not exist. Hence, Staff repeatedly references "evidence [that] does not meet the statutory standard"¹ and "the absence of real evidence."² By ignoring the record evidence and pretending that its unsupported interpretations of the Idaho statutes have been upheld, Staff feels free to mischaracterize Qwest's proposal as an attempt to "address the deficiencies in its case."³ In taking this approach Staff misconstrues Qwest's proposal and its purpose.

Qwest's proposal is not offered to "address the shortcomings of its case" as Staff suggests,⁴ but rather to make clear Qwest's commitment to exercise the regulatory freedoms to which it is entitled under *Idaho Code § 62-622(3)* in a manner that is entirely consistent with the public interest. Staff, in pursuit of its decision to "oppose[] Qwest's Application from the very beginning"⁵ appears to have lost sight of what matters of public interest are actually at stake in this proceeding. As a result, Staff states, "it is incorrect to say that Staff's primary concern is that competition will not adequately constrain Qwest's pricing."⁶ While this may be true, it is an admission that Staff is unconcerned about the ultimate question of public interest raised by this case. Section 62-622(3) poses only one question: has competition become sufficiently "effective" to replace Commission price regulation? Qwest's literally unchallenged evidence⁷ is that competition from wireless companies will constrain competition and therefore replace Commission regulation.

Qwest's proposal, which limits Qwest's pricing freedom and subjects the company to potential Commission "claw-back," goes to the very heart of the case and demonstrates Qwest's

1 *Staff's Response*, p. 5.

2 *Id.* at 6.

3 *Id.* at 2.

4 *Id.* at 5.

5 *Id.* a. 3.

6 *Id.*

7 *See e.g., Tr.* 61, 99, 168, 270, 271, 540.

conviction that effective competition prevails in its seven largest exchanges. Rather than being prompted by “awareness that its evidence does not meet the statutory standard,”⁸ Qwest’s proposal is grounded in the awareness that competition is so effective that Qwest cannot expect to increase prices significantly over the foreseeable future. It is also based on the conviction that the Commission will not find that the manner in which Qwest will proceed under the freedoms accorded by section 62-622(3) raises public interest concerns that justify exercise of “claw-back.”

Staff’s Response is correct that Mr. Schmit’s testimony is not directed at meeting the requirements of section 62-622(3). The evidence demonstrating Qwest’s compliance with Idaho statute is already in the record. The purpose of Qwest’s proposal is offer customers and the Commission added assurance that granting Qwest’s application will be in the public interest.

THE COMMISSION’S PROCEDURAL RULES DO NOT PRECLUDE REOPENING THE RECORD

Staff’s Response attempts to create the impression that reopening the record to allow submission of Mr. Schmit’s supplemental testimony somehow violates the Commission’s procedures. Staff is incorrect.

Staff fails to cite any Commission rule or precedent that supports the position that Qwest is precluded from supplementing the record prior to the Commission’s rendering a final decision. Instead, Staff argues that because Qwest’s Application requested broader relief than is now being sought under the Pilot Project, the Commission cannot consider the Pilot Project proposal. On its face, this argument is illogical. If Qwest’s original Application was sufficient to invoke the Commission’s jurisdiction to grant unfettered price deregulation, it must certainly be adequate to invoke jurisdiction for consideration of the more narrow⁹ issue of Qwest’s voluntary offer to exercise the pricing freedoms provided under section 62-622(3) under the terms contained in the supplemental testimony. Rather than being “inconsistent” with Qwest’s Application, the proposal merely limits the potential impact of price deregulation on customers while increasing the Commission’s ability to exercise oversight of Qwest as it operates in the competitive market.

Moreover, as Qwest made clear in its Motion, Qwest is not trying to prevent the parties from having the opportunity to comment on the Pilot Project. In fact, the Motion specifically

⁸ *Id. at 5.*

⁹ Staff erroneously suggests that Qwest is seeking “to broaden the issues.” *Id. at 3.*

stated that “Qwest will agree with any reasonable procedure to allow the parties to understand this proposal and to voice their views.”¹⁰ Staff did not comment on this aspect of Qwest’s Motion.

Instead, Staff tries to convince the Commission that Qwest has failed to meet some standard of justification for reopening the record. Contrary to Staff’s suggestion, however, the Commission’s rules do not require that a party seeking to supplement the record meet the judicial standard for provision of a new trial.¹¹ Obviously such a standard would not be appropriate because supplementing the record is not remotely similar to seeking a new trial. Qwest is not asking that the Commission disregard the previous record.

Instead of attempting to borrow from judicial rules that have no bearing on the procedural issue presented here, the Commission will find better guidance in Rule 13 of the Commission’s Rules of Practice and Procedure:

These rules will be liberally construed to secure just, speedy and economical determination of all issues presented to the Commission. Unless prohibited by statute, the Commission may permit deviation from these rules when it finds compliance with them is impracticable, unnecessary or not in the public interest.¹²

Qwest respectfully submits that granting its Motion secures the “just, speedy and economical” determination of the “issues presented to the Commission.” This is because the issue here is not simply whether Qwest’s original application will be granted or denied, but rather how Qwest will operate in the increasingly competitive basic local exchange markets in which it does business. Denying Qwest’s Application, as Staff advocates, will not determine that central issue—it will merely delay determination and force Qwest, the Commission and interested parties to take it up again in another docket. Although granting Qwest’s Motion to Reopen the Record does not assure that such a result will be avoided, it offers the Commission and the parties the opportunity to assess a proposal that, Qwest believes, resolves the ultimate issue while minimizing the perceived risks for customers and for the Commission.

Qwest is unaware of any Commission rule or precedent that justifies narrowing the range of possible solutions to a difficult case or cutting off potentially fruitful discussion, simply

¹⁰ *Qwest’s Motion to Reopen the Record*, p. 3.

¹¹ *Staff’s Response*, p. 4.

¹² *IDAPA 31.01.01.013*.

because the record has been “closed.” In addition, since the “status quo” of Commission price regulation is maintained while the discussion continues, it is not surprising that Staff has failed to cite a single public interest justification for opposing Qwest’s Motion.

Qwest respectfully requests that the Commission grant its Motion to Reopen the Record to allow a discussion of the proposed Pilot Project.

Submitted this 26th day of August, 2003.

Qwest Corporation



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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2003, I served the foregoing **QWEST CORPORATION'S REPLY TO STAFF'S RESPONSE TO QWEST'S MOTION TO RE-OPEN THE RECORD** upon all parties of record in this matter as follows:

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