

JOHN GANNON (ISB #1975)
Attorney at Law
1101 West River, Suite 110
Boise, Idaho 83702
Telephone No.(208) 433-0629
Attorney for Intervenors Meierotto et al

RECEIVED
FILED
2003 MAY 20 PM 4: 10
IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE)	
APPLICATION OF QWEST)	
CORPORATION FOR PRICE)	CASE NO. QWE-T-02-25
DEREGULATION OF BASIC LOCAL)	
EXCHANGE SERVICES)	INTERVENORS MEMORANDUM
)	REGARDING PETITIONS FOR
)	DECLARATORY RULINGS
)	

Intervenors Meierotto et al believe this motion is very useful in addressing a legal issue which has been the subject of many pages of testimony by the various witnesses involved. Most of that testimony isn't helpful, because as both parties suggest, this is a legal issue to be resolved. A ruling on the issues raised in Staff's Motion, as well as the issues raised in response by Qwest will be helpful in expediting this proceeding by focusing and narrowing the evidence presented.

I

LEGISLATIVE INTENT

The Telecommunications Act of 1988 (I.C.62-601 et seq) is a unique statutory act in the Idaho Code . It is detailed and lengthy. It is specialized and somewhat complex and perhaps this is why there is actual legislative intent language.

Most Legislative Acts that are a part of our Idaho Code do not have statements of Legislative Intent and those that do usually have a very short statement. But this Act tells us clearly and concisely what the Legislature intended to do. Why would the Legislature do that?

Probably because the Legislature recognized this is a complex statute and the Legislature wanted to be sure that those interpreting this Act would not have to speculate or guess as to what result the Legislature wanted. Unlike most legislative Acts, it is clear what the Legislature intends with regard to the Telecommunications Act of 1988:

1. I.C. 62-602 (1) “there is a need for establishing legislation to protect and maintain high quality universal telecommunications at just and reasonable rates for all classes of customers”
2. I.C. 62-602(2) “effective competition throughout a local exchange calling area will involve a significant number of customers having both service provider and service option choices and that actual competition means more than the presence of a competitor. for there to be effective competition there needs to be substantive and meaningful competition..
3. I.C. 62-602(3) .. in its deliberation of deregulation of the incumbent telephone corporation, will examine the impact such deregulation will have on the public interest.
4. I.C. 62-604(4) ... the Legislature encourages the development of open competition in the telecommunications industry in accordance with the provisions of Idaho law.

Qwest, as Intervenors understand it, generally presents the view that cell phones are effective competition and the functional equivalent of local land based lines and therefore deregulation of local service as the statute states, or basic local exchange service as Qwest believes the legislature intended the statute to read, should occur.

Qwest has to prove that this competition is “effective competition” and that this effective competition is “substantial and meaningful “. “Just and reasonable rates” must be protected and the “public interest” must be considered. When this occurs, then the Legislature encourages “open competition.”

All of this intent must be read in conjunction with an interpretation of “functional equivalent” and whether the legislature really meant to say “basic local exchange service” when it said “local service.”

II

STATUTORY CONSTRUCTION

There are a number of judicial rules regarding statutory construction which are used to determine how an ambiguous statute should be construed and they are stated in the briefs that have been filed. But first there must be a determination that the statute is “ambiguous.” (Staff Petition Page 4). There is very little ambiguity regarding what the legislature has said in Idaho Code 62-622(3)(b). It says “competitively priced local services”. Local service is a readily understandable phrase, used in general conversation and public discourse.

III

ARGUMENT

1.

STAFFS REQUEST FOR A RULING THAT THE LEGISLATURE DID NOT INTEND “BASIC LOCAL EXCHANGE SERVICES” SHOULD BE SUBSTITUTED FOR “ LOCAL SERVICES” IN I.C. 62-622(3)(b) IS CORRECT

Statutory interpretation points to the conclusion that “local services’ is what is meant and not the defined term “basic local exchange service.” They are significantly different words. There is no ambiguity.

Stated legislative intent is that effective competition must be meaningful, which means the competition must amount to something of use to customers. "Basic local exchange service" seems to only address the voice communication itself, and not the issue of whether it is of any use to the user. For example, a voice cell phone communication can be received in an office through a cell phone, but that voice cell phone communication cannot be used in the expensive office phone systems used by small businesses. Therefore, the competition is not meaningful and it is therefore not effective competition. Thus, legislative intent is consistent with the use of the broader "local service" term found in Idaho Code 62-622(3)(b) because the more restrictive term would result in, and coincide with Qwest's position, that all that must be delivered is the voice transmission. The fact that it cannot be meaningfully used is irrelevant Qwest says, but that position is completely contrary to legislative intent.

2.

**WHETHER OR NOT "BASIC LOCAL EXCHANGE SERVICE"
INCLUDES FAX AND INTERNET ACCESS, "FUNCTIONAL EQUIVALENT"
OR "EFFECTIVE COMPETITION" DOES REQUIRE SUCH CONSIDERATIONS IN
ORDER TO COMPARE THE PRODUCTS**

Legislative intent requires that the range of products offered and their price be considered in determining what is "functional equivalent," or in the alternative that they be considered in determining whether there is "effective competition". It doesn't really matter which term authorizes this evidence. The range of products and their price is admissible because of legislative intent that "just and reasonable rates" be maintained for all classes of customers and effective competition must be "meaningful."

The evidence in this case will compare the range of services offered by the cell phone against the uses of the land line phone in order to determine whether there is really functional

equivalence or in the alternative, effective competition..

One primary difference between the land line and cell phone is that a land line is required to use a fax machine. A cell phone can't do that. Therefore, the land line is not the equivalent of the cell phone and the cell phone is not effective competition even if the land line and cell phone are the same price and even if they both transmit a voice. The land line is essential for those small businesses that have fax lines.

Qwest takes the position that there is effective competition if you can send the voice, and then you have functional equivalence as a matter of law. This position ignores the fact that maybe this is of no use to a small business or family that has a fax machine. This is, in other words, not the functional equivalent or substantive and meaningful competition. It is not competition at all, because just having a voice transmission does not relieve the customer's need for the land line.

Similarly, and of tremendous importance, cell phones can't have extension phones like land lines do. Is Qwest seriously contending that a cell phone is an option for an Idaho family with a split level home or an Idaho small business with a telephone system, simply because the voice can reach the destination? Two way radio's have been able to perform the voice function for years, yet no contention is made that they are the functional equivalent or effective competition. Thus, the inability to use cell phones with extension phones or a small business telephone system makes them ineffective competition and not the functional equivalent of land lines.

Qwest must demonstrate that the cell phone can generally replace the land line phone at a similar price and provide actual and meaningful competition in order to meet its burden of proof. In order to be meaningful, effective competition, Qwest must show that the cell phone can fulfill

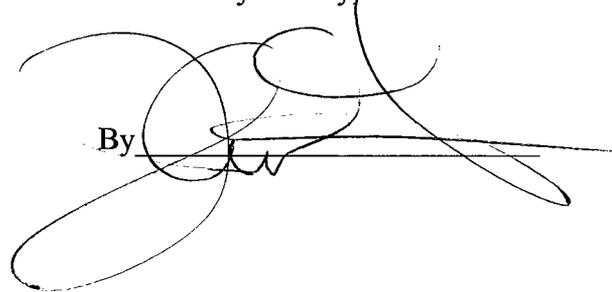
these requirements to the extent that land lines can be reasonably replaced by the cell phone. If they can't do that, there is neither functional equivalence nor effective competition

CONCLUSION

Thus, the Staff's first, second and third declaratory ruling requests should be granted, and Qwests first and third request should be denied. Qwests second request, "B" is not an issue that needs to be decided because "basic local exchange service" is not used in 62-622(3)(b).

Dated this 20th day of May, 2003

By

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and loops around itself.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON THE 20th DAY OF MAY, 2003, I SERVED THE FOREGOING PLEADING IN CASE NO QWE-T-02-25. BY MAILING A COPY THEREOF, POSTAGE PREPAID, (UNLESS OTHERWISE INDICATED) TO THE FOLLOWING:

(VIA FAX)

MARY S HOBSON
STOEL RIVES LLP
SUITE 1900
101 S CAPISTOL BLVD
BOISE, ID 83702

ADAM L SHERR
QWEST
1600 7th AVE, ROOM 3206
SEATTLE, WA 98191

CONLEY WARD
GIVENS PURSLEY LLP
277 N 6th ST, SUITE 200
PO BOX 2720
BOISE, ID 83702-2720

CLAY R STURGIS
MOSS ADAMS LLP
601 W RIVERSIDE, SUITE 1800
SPOKANE, WA 99201-0663

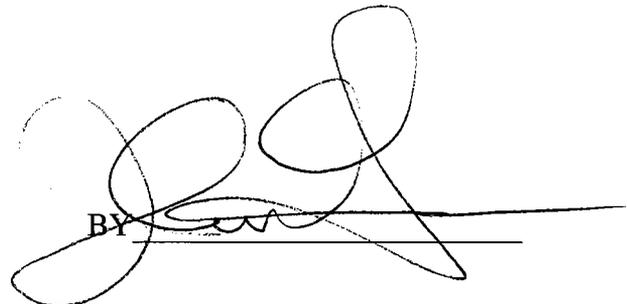
DEAN J MILLER
McDEVITT & MILLER LLP
PO BOX 2564
BOISE, ID 83701

BRIAN THOMAS
TIME WARNER TELECOM
223 TAYLOR AVE NORTH
SEATTLE, WA 98109

(PERSONAL SERVICE)
WELDON STUTZMAN
DEPUTY ATTORNEY GENERAL
IPUC
PO BOX 83720
BOISE, ID 83720-0074

DEAN RANDALL
VERIZON NORTHWEST INC.
17933 NW EVERGREEN PKWY
BEAVERTON, OR 97006-7438

MARLIN D ARD
WILLARD L FORSYTH
HERSHNER, HUNTER, ET AL
180 E 11th AVE PO BOX 1475
EUGENE, OR 97440-1475

BY 

CERTIFICATE OF SERVICE