

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

RECEIVED  
FILED  
2003 AUG 26 PM 4:19  
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	)	INTERVENER RESPONSE TO
	)	QWESTS MOTION TO RE-OPEN
	)	THE RECORD
	)	

---

Interveners Meierotto oppose Qwests Motion to Re-Open the Record, which motion has been apparently made for the limited purpose of receiving a modified deregulation proposal contained in the Supplemental Testimony of James Schmit.

**Procedure**

Unfortunately the moving party has not cited any rule or legal basis for making this unusual motion. Interveners are aware that on rare occasions such motions are made when, for example, there is a change in the law as a result of an Appellate Court decision, which affects the evidence that was considered. But in this case Qwest has asked that the relief sought in the original complaint be changed or essentially "amended" at a very late date without citing any new decision, statute or other change in circumstances.

Amending the Complaint can occur even after the evidence has been received (See IRCP 15), however, such an amendment must be based upon the evidence presented and usually is made so that the legal theory conforms to the evidence presented.

In the case before this Commission the proposed “amendment” does not arise out of evidence presented on June 4-5. The proposal in Mr. Schmits Motion was never even raised or considered by the parties or the Commission, and this creates some serious issues regarding cross examination and due process for the Intervener.

The proper procedure for putting this proposal before the Commission is, at best, to move to Amend the original Application and substitute this proposal as a new Application, withdrawing the original Application.

Interveners would probably not oppose Qwest if Qwest substituted this new proposal for the original one, and withdrew the original application. Then a new hearing could be held to consider this proposal, with the previous evidence and testimony being a part of the record. In fairness to the parties, Qwest should bear the costs of any additional hearing.

### **Due Process**

An even more significant problem raised by the Supplemental Testimony is one of due process. The proposed testimony is not subject to cross examination, or to the presentation of evidence by the Intervener. Under the Commission Rules we have every right to cross examine the witness and to present evidence bearing on the new proposal. For example, counsel would like to know more about the South Dakota decision referenced in the testimony and counsel would like to know what evidence Qwest has that in 5 years or so it will be technologically possible to address the serious cell phone limitations discussed at the Hearing held in this matter. Can cell phones, with their different technology from land lines, ever be adapted for extension phone or office system

use? Interveners don't know at this point, and we need time and discovery to find out. The nature and reliability of such evidence would shape and even possibly modify our position.

### **Conditional Approval**

Interveners believe that the statute, while written clearly, might well contemplate conditional approval of an application such as Qwests. In other words, if there are safeguards for those who do not have competition, then the legal elements (discussed in earlier briefs) of effective competition are easier to support. That is why we have asked for an informal arbitration proceeding to be introduced in the event that deregulation is ever granted. Qwest seems to agree that conditions to any approval can be granted. If Qwest is requesting different relief which makes deregulation more likely, then Interveners want to present evidence of the Better Business Bureau's arbitration program as well as recent Court decisions and arbitration proceedings in Arizona and California. Sid Meierotto would like to present additional evidence as well as other witnesses who have come to our attention.

### **Conclusion**

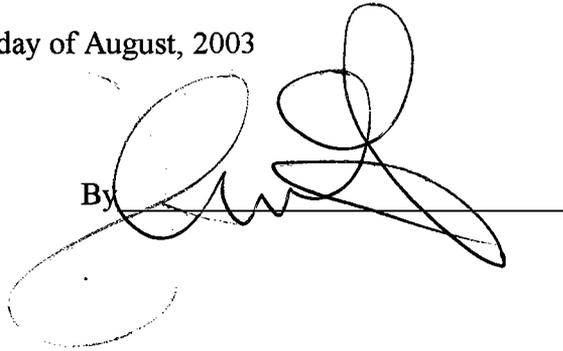
Admission of the proposed testimony is not supported by any Rule of Procedure and raises serious due process issues which cannot be resolved without a new hearing and a new discovery and briefing schedule. Qwest could withdraw its original Application and substitute this new proposal, but again, a new hearing and discovery schedule would be required and Qwest should bear those expenses.

Interveners do commend Qwest and Mr. Schmit for making this new

proposal in an attempt to address Intervenors concerns. It is a step in the right direction, although perhaps not a big enough step, but unfortunately it has been proposed long after parties have expended a tremendous amount of time and effort evaluating and confronting the original proposal in this case.

Dated this 26th day of August, 2003

By

A handwritten signature in black ink, consisting of several large, overlapping loops and a long horizontal stroke at the bottom, positioned to the right of the word "By".

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT ON THE 26th DAY OF AUGUST, 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:

(FAX 389-9040)  
MARY S HOBSON  
STOEL RIVES LLP  
SUITE 1900  
101 S CAPITOL 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

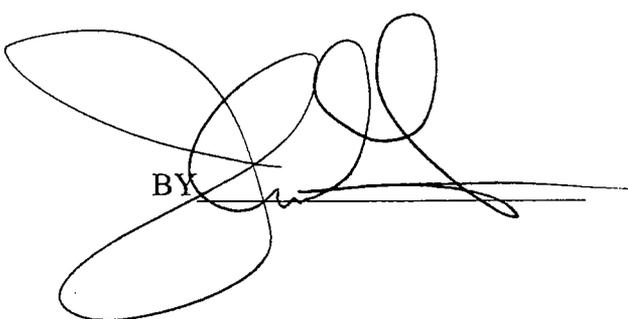
DEAN J MILLER  
McDEVITT & MILLER LLP  
PO BOX 2564  
BOISE, ID 83701

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