

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UT 125

In the Matter of)
)
QWEST CORPORATION, fka U.S. WEST) RULING
COMMUNICATIONS, INC.)
)
Application for an Increase in Revenues.)

**DISPOSITION: STAFF MOTION TO DISALLOW DEPOSITION
GRANTED**

On May 19, 2006, the parties filed opening briefs addressing a proposal by Qwest Corporation (Qwest) to rebalance rates in this docket. On June 7, 2006, I issued a Memorandum raising an additional issue not addressed in the opening briefs. Attached to the Memorandum was a proposed decision interpreting the Stipulation entered in Phase I of this proceeding. I requested that the parties address the proposed decision in their reply briefs.

On June 19, 2006, a telephone conference was held in this docket to consider a motion filed by the Staff of the Public Utility Commission (Commission) to disallow Qwest's proposed deposition of Mr. Philip Nyegaard, Administrator of the PUC Telecommunications Division. Mr. Nyegaard is a signatory to the Stipulation. A summary of my ruling entered at the conference is set forth below:

During the conference, both Qwest and Staff expressed the opinion that the Stipulation is unambiguous, at least insofar as it pertains to matters addressed in the proposed decision. Qwest raised the concern, however, that the proposed decision may seek to introduce matters extrinsic to the Stipulation to the extent that it refers to the testimony of Qwest witness Carl Inouye and statements made in Qwest's Phase I post-hearing brief. To that extent, Qwest seeks to depose Mr. Nyegaard regarding his personal understanding of the Stipulation.

As the parties point out, the Stipulation should be interpreted based on the language in the agreement. This does not mean, however, that reference cannot be made to the record to substantiate an interpretation of the Stipulation. The proposed decision refers to Qwest's testimony and post-hearing brief because they are consistent with the

interpretation of the Stipulation set forth in the proposed decision and provide the necessary context for understanding Qwest's "major concession" acknowledged by the Commission in Order No. 00-190.

Qwest indicated that it interprets the Stipulation differently from the proposed decision. To that extent, it is free to point to evidence in the record supporting its interpretation. On the other hand, Qwest's proposal to depose Mr. Nyegaard regarding his understanding of the Stipulation goes beyond the record and seeks to inquire into personal recollections of an agreement executed over six years ago. Aside from reliability concerns associated with the passage of time, Mr. Nyegaard's subjective understanding of the Stipulation has no probative value in these circumstances.

I find that Qwest's proposed deposition of Mr. Nyegaard regarding his understanding and recollection of the Stipulation entered in the Phase I proceeding is unlikely to produce relevant evidence as defined in OAR 860-014-0045. Accordingly, Staff's motion to disallow the deposition is granted.

Dated at Salem, Oregon, this 21st day of June, 2006.

Samuel J. Petrillo
Administrative Law Judge