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IDAHO PUBLIC
UTILITIES COMMISSION

Attorney Pro Se

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF PAGEDATA'S PETITION)
FOR ARBITRATION OF INTERCONNECTION) CASE NO. GNR-T-04-5
RATES, TERMS AND CONDITIONS AND)
RELATED ARRANGEMENTS WITH QWEST)
CORPORATION PURSUANT TO SECTION 252(B))
OF THE FEDERAL TELECOMMUNICATIONS)
ACT)
-----)
IN THE MATTER OF WAVESENT LLC'S)
PETITION FOR ARBITRATION OF INTER-) CASE NO. GNR-T-04-6
CONNECTION RATES, TERMS AND CONDI-)
TIONS AND RELATED ARRANGEMENTS WITH)
QWEST CORPORATION PURSUANT TO)
SECTION 252(B) OF THE FEDERAL)
TELECOMMUNICATIONS ACT.)
-----)

**WAVESENT AND PAGEDATA'S
AMENDMENT TO PETITION**

1. On March 25, 2004 and March 23, 2004 WaveSent LLC ("WaveSent") and Joseph B. McNeal d/b/a PageData ("PageData"), respectively, submitted complaints (Case No. GNR-T-04-6 and Case No. GNR-T-04-5) to the Idaho Public Utility Commission ("Commission") requesting negotiations under §§ 252 and 251 and Rule 66, IPUC Rules of Procedure, IDAPA 31.01.01. WaveSent and PageData submitted an Amendment to Petition on April 12, 2004.

WaveSent and PageData Amendment to Petition - 1

2. These Petitions were filed at the Commission because Qwest a) threatened to disconnect facilities necessary for interconnection and b) refused to install a single point of presence for PageData.

3. WaveSent and PageData wish to exercise their statutory rights at the Commission to a) have the Commission determine whether or not WaveSent and PageData can terminate Internet traffic under the current interconnection agreements and whether or not Qwest can renege on the commitments made in their letter issued June 4, 2003 (attached in previous submittals to the Commission), to WaveSent, PageData, and the FCC Enforcement Bureau; b) if the Commission finds that WaveSent and PageData are in violation of the interconnection agreements, they wish to correct it by adopting the Verizon ISP-Bound Traffic Amendment on file at the Commission under § 252(i) (Pick and Choose) and paragraph 13.29 from their current interconnection agreements; and c) if the Commission rules against WaveSent and PageData in options A and B, then WaveSent and PageData wish to exercise their statutory rights under § 252(b) to have the Commission arbitrate a new interconnection agreement.

4. In the previous Petitions in these cases, WaveSent and PageData requested to adopt the Verizon ISP-Bound Traffic Amendment well before the FCC issued their new "All or Nothing" rule¹ under § 252(i) and re-assert those requests before the effective date of the rule.

5. In its Petitions WaveSent and PageData submitted to the Commission that it could act in a time frame less than 135 days from initiation of interconnection agreement negotiations because Qwest was not negotiating in good faith and had not filed all

¹ See *Second Report and Order Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (July 13, 2004)(codified at 47 C.F.R. § 51.809 (effective Aug. 13, 2004)

negotiations because Qwest was not negotiating in good faith and had not filed all interconnection agreements in the state of Idaho as outlined in the FCC's Notice of Apparent Liability ("NAL") in the Matter of Qwest Corporation ("Qwest") Apparent Liability for Forfeiture on March 12, 2004. This costs Idaho consumers and Idaho carriers more money because it increases the cost of competition by giving preferential carriers terms and conditions not available to other competitive carriers. To date these interconnection agreements have not been filed in Idaho. It is WaveSent and PageData's belief that good faith negotiations cannot occur until these agreements are available for adoption under § 252(i).

Qwest's Response and Motion to Dismiss

6. WaveSent and PageData have presented a logical and cost-effective way to proceed by addressing the original interconnection agreements first, then proceeding to § 252(i) (Pick and Choose) and finally § 252(b). This is the procedure outlined by the Telecommunications Act.

7. The FCC's Order on Reconsideration² that Qwest presented to the Commission in Qwest's Response and Motion to Dismiss is actually in WaveSent and PageData's favor when read and understood in its entirety. According to paragraph 22 of the FCC's Order on Reconsideration, Pacific Bell could not indefinitely deny Z-Tel's request. Pacific Bell could have issued a letter of understanding, but it was under no obligation to do so. Z-Tel could receive what it wants if it files a "Bona Fide Request" under option C in their interconnection agreement.

² *In the Matter of CoreComm Communications, Inc., and Z-Tel Communications, Inc. v. SBC Communications Inc., Southwestern Bell Telephone Company, Pacific Bell Telephone Company, Nevada Bell Telephone Company, The Southern New England Telephone Company, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc.*, FCC 04-106, Order on Reconsideration, released May 4, 2004.

8. Unlike Pacific Bell, Qwest actually voluntarily issued (in response to informal complaints filed by WaveSent and PageData with the FCC Enforcement Bureau) a letter dated June 4, 2003, to WaveSent, PageData, and the FCC Enforcement Bureau, stating that Qwest would install WaveSent and PageData facilities under the existing interconnection agreement and if WaveSent and PageData were to terminate Internet traffic then WaveSent and PageData were not to bill Qwest for reciprocal compensation of such traffic.

9. This letter issued to the FCC Enforcement Bureau by Qwest further substantiates a) that WaveSent and PageData are not in violation of their current interconnection agreements; b) Qwest volunteered that it would deliver such traffic; and c) Qwest is obstructing and interfering with WaveSent and PageData's businesses.

10. Qwest's Motion to Dismiss is moot since 135 days have passed.

11. In ruling on a motion to dismiss under Rule 12(b)(6), the Commission is to accept the well-pleaded factual allegations in the complaint as true and construe them most favorable to the Petitioner.

Mediation

12. For the past several months the Commission has fostered mediation between Qwest, WaveSent, and PageData. Qwest delayed installing facilities promised to PageData in the June 4, 2003 letter (to resolve informal complaints filed with the FCC Enforcement Bureau) until the Commission got involved with the mediation. These mediation talks are breaking down. To date, Qwest is still trying to renege on delivery of Internet traffic.

Qwest is Rehashing the Informal Complaint Filed at the FCC
Qwest is Rehashing the TSR and Mountain Orders

13. WaveSent and PageData's cases before the Commission are not complicated.

This is a simple case of Qwest trying to renege on the interconnection agreements that were approved by the Commission and a Qwest letter issued to the FCC Enforcement Bureau, WaveSent, and PageData (to resolve informal complaints filed with the FCC Enforcement Bureau) stating that WaveSent and PageData could terminate Internet traffic as long as neither company charged Qwest for termination of such traffic.

14. This is an elaborate scheme to reverse the TSR Order paragraphs 21 and 22³ and Mountain Order to force WaveSent and PageData into new interconnection

³ TSR Order, 21. (*Footnotes omitted*) We disagree that any conflict exists here between the Order and the rules. Section 51.701(e) must be read in conjunction with the rest of the Order and section 51.703(a). Section 51.703(a) states that "[e]ach LEC shall establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic with any requesting telecommunications carrier." Like the text of the Order, which states that "paging carriers" shall be entitled to request reciprocal compensation arrangements, section 51.703(e) draws no distinction between one-way and two-way carriers. Indeed, section 51.703(a) specifically states that "any ... telecommunications carrier" may request a reciprocal compensation arrangement with a LEC. As stated previously, paging carriers, including those that provide only one-way service, are "telecommunications carriers" under the Act. Absent a specific *exclusion* in the rules, there is no basis upon which to presume that such carriers should not be included within the scope of these provisions. Section 51.701(e) does not, as Defendants argue, require that compensation actually flow in both directions between carriers. It requires only that, to the extent that local telecommunications traffic originates on the network facilities of one carrier and terminates on the facilities of another, compensation shall be paid to the terminating carrier. In fact, the Commission's regulation defining reciprocal compensation and its interpretation of those regulations was recently upheld in *Pacific Bell v. Cook Telecom, Inc.* The Ninth Circuit concluded that the Commission's "interpretation of 'reciprocal' [was] a plausible and permissible interpretation of an ambiguous statutory term" and that our interpretation was entitled to deference. Accordingly, we reject Defendants' arguments that section 51.703(b) of the Commission's rules does not apply to one-way carriers.

22. The *Local Competition Order* states that paging providers "transport," "switch," and "terminate" traffic. Moreover, our rules do not require that a carrier possess a particular switching technology as a prerequisite for obtaining reciprocal compensation. Section 51.701(d) defines termination as "the switching of local telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premise." By using the phrase "switch or equivalent facility," the rules contemplate that a carrier may employ a switching mechanism other than a traditional LEC switch to terminate calls. A paging terminal performs a termination function because it receives calls that originate on the LEC's network and transmits the calls from its terminal to the pager of the called party. This is the equivalent of what an end office switch does when it transmits a call to the telephone of the called party. To perform this function, the terminal first directs the page to an appropriate transmitter in the paging network, and then that transmitter delivers the page to the recipient's paging unit. The terminal and the network thus perform routing or switching and termination. Because a paging terminal performs switching functions akin to an end office switch, we find unpersuasive Defendants'

agreements wherein WaveSent and PageData are obligated to pay more each month to Qwest than Qwest is obligated to pay WaveSent and PageData. To this end Qwest has threatened to disconnect WaveSent and PageData's facilities necessary for interconnection.

PRAYER FOR RELIEF

15. To save the parties involved a substantial amount of time and resources WaveSent and PageData reiterate the requests in the previously filed Petitions in these cases for the following:

16. The Commission should address whether or not WaveSent and PageData are in violation of their existing interconnection agreements before the Commission assigns a hearing examiner for any arbitration under § 252(b). The interconnection agreement and letter of understanding language are quite clear and it is evident that WaveSent and PageData are not in violation of their current interconnection agreements. The Commission needs to make a ruling on the interconnection agreements in such a manner that Qwest cannot manipulate the contracts so Petitioners find themselves back in front of the Commission over a dispute of these same issues.

17. Qwest's Motion to Dismiss should be denied because the 135-day period has now passed. WaveSent and PageData believe the Commission had the authority to act in less than 135 days. This issue is now moot.

18. Since 135 days has passed for both WaveSent and PageData, to cover any legal anomalies and in order to save time and resources WaveSent and PageData request

argument that a paging terminal does not qualify as a "switch or equivalent facility" as defined by the Commission's rules. Consequently, we reject Defendants' argument that Complainants fall outside of our reciprocal compensation framework because paging terminals allegedly do not perform a switching function, and, therefore, do not constitute a "switch or equivalent facility" as defined in the Commission's rules.

the Commission count the Petitions and Amendments already filed in this case as being resubmitted as of today's date.

19. The only topic not covered in the Petitions presently before the Commission is whether or not Qwest is compensated for all toll facilities in the local calling areas by extra payments made by Qwest customers in the extended calling area. It is WaveSent and PageData's belief that Qwest is already double billing. By billing paging carriers, this would make Qwest triple billing. The arbitrator would need to address this during the § 252(b) process.

20. In the unlikely event the Commission finds that WaveSent and PageData are in violation of their current interconnection agreements, then WaveSent and PageData wish to exercise their statutory rights under § 252(i) (Pick and Choose) and the current interconnection agreements⁴ and adopt the ISP-Bound Traffic Amendment from the Verizon interconnection agreement. WaveSent and PageData also request the Commission make a ruling on the flat rate 6000 MOU per trunk being deemed local paging traffic under that amendment.

21. If the Commission rules that WaveSent and PageData cannot adopt the ISP amendment from the Verizon interconnection agreement under § 252(i), paragraph 13.29 of the interconnection agreements, and the Commission's Order No. 29140⁵ then WaveSent and PageData exercise their rights under § 252(b) and request the Commission

⁴ Interconnection Agreement, Paragraph 13.29 - Section 252(i) Election - Paging Provider shall have the right under 47 U.S.C. Section 252(i) to elect terms and conditions from other approved agreements consistent with 47 C.F.R. Section 51.809.

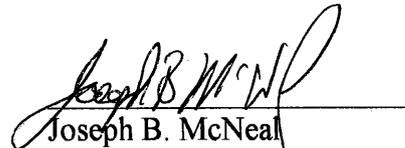
⁵ Idaho Commission Order No. 29140, *In the Matter of the Joint Petition of Robert Ryder, dba Radio Paging Service, Joseph McNeal, dba PageData and InterPage of Idaho, for a Declaratory Order and Recovery of Overcharges from U S WEST Communications, Inc.*, Case No. USW-T-99-24, page 21

arbitrate a new interconnection agreement by accepting the language in its entirety submitted by WaveSent and PageData previously.

22. Additionally, WaveSent and PageData request that the Commission formally remind Qwest that it cannot shut off any facilities of WaveSent and PageData during the time period that these complaints are before the Commission.

Dated this 12th day of August, 2004.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph B. McNeal", is written over a horizontal line.

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CERTIFICATE OF SERVICE

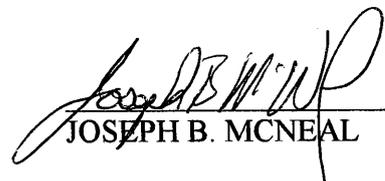
I HEREBY CERTIFY that on the 12th day of August, 2004, I caused to be served a true and correct copy of the foregoing by the method indicated below, and address to the following:

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