

Overview and Background

These consolidated matters matter and the instant “Motion for Expeditious Substantive Relief” are the latest legal ploys in the long history of litigation brought by Joseph McNeal d/b/a PageData (“PageData”) against Qwest Corporation (“Qwest”). Qwest hereby responds to the Motion for Expeditious Substantive Relief.¹

PageData and its affiliate WaveSent, LLC (“WaveSent”) each opted in to the Paging Connection Agreement between Qwest and Arch Paging. They did this in Idaho and the 13 other Qwest states. The Commission approved the Pagers’ adoption on February 25, 2003.²

In the summer through the fall of 2003, Qwest and the Pagers discussed the provisioning of facilities pursuant to the adopted Arch agreements. Difficulties arose and the Commission’s staff provided excellent help in working through many technical issues. Eventually the facilities ordered by WaveSent were provisioned and remain operational today, although as explained below, Qwest has indicated its intention to review the configuration to determine whether the facilities in place are necessary for the delivery of Qwest-originated paging traffic.

Facilities for PageData were provisioned but have not been “turned up” because of continuing disputes between the parties.

¹ Qwest will reply separately to the Petitions for Arbitration and Amendments thereto, as provided in the Commissions Orders and as set out in more detail below.

² The Commission approved PageData’s and WaveSent’s adoptions of the Arch Agreement on February 25, 2003. 2003. See *In the Matter of the Joint Application of Qwest Corporation and Joseph B. McNeal dba PageData for Approval of a Paging Connection Agreement Pursuant to 47 U.S.C. § 252(i)*, Case No. QWE-T-03-6, Order No. 29198; *In the Matter of the Joint Application of Qwest Corporation and WaveSent, LLC for Approval of a Paging Connection Agreement Pursuant to 47 U.S.C. § 252(i)*, Case No. QWE-T-03-_, Order No. 29198. Although the Pagers adopted the Arch agreements in 14 states, they do business only in Idaho today, to Qwest’s knowledge.

The disputes are several:

1. Can the Pagers obtain reciprocal compensation for Internet-bound or other Enhanced Services Traffic, as defined in the adopted Arch Paging Connection Agreement?
2. Can the Pagers obtain reciprocal compensation based on assumed minutes of use, either (i) if there is in actually no traffic; or (ii) if the type of traffic (.e.g. Internet traffic) is excluded from reciprocal compensation by the terms of the Agreement?
3. Can Qwest reconfigure its facilities, as provided in the Agreement, if the facilities are not necessary for the delivery of Qwest-originated traffic?
4. Can the Pagers unilaterally modify their adopted Agreements to provide reciprocal compensation for such traffic (or no traffic), or to restrict Qwest's ability to reconfigure its facilities used to deliver Qwest-originated traffic?

In the midst of this dispute, and despite the utter lack of any interconnection negotiations or discussion of potential amendments to their existing Paging Connection Agreements, the Pagers filed what purported to be Petitions for Arbitration under Section 252 of the Telecommunications Act of 1996.³

The Commission ordered the Pagers to provide legal support for their Pagers' claim that the Commission could entertain Section 252 arbitration petitions prior to the 135th day after negotiations are requested. The Pagers did not comply with the Commission's Order; instead,

³ Petition of Joseph B. McNeal, d/b/a PageData filed a Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Qwest Corporation Pursuant to Section 252(b), filed March 23, 2004; Petition of WaveSent, LLC for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Qwest Corporation Pursuant to Section 252(b), filed March 25, 2004. Mr. McNeal acts as "Attorney Pro Se" for both Petitioners.

they filed “Amendments” to their petitions in which they ask the Commission to “first decide” the reciprocal compensation dispute between the parties, and to decide the Section 252 issues only if Qwest prevailed on the existing interconnection agreement dispute.

Qwest will file its Response to the Petitions for Arbitration, as amended, by May 7, 2004, as ordered by the Commission.⁴ Meanwhile, however, Qwest submits that the Pagers’ “Motion for Expeditious Substantive Relief” simply describes the existing disputes that each of them has under their adopted Arch Paging Connection Agreements. Accordingly, those disputes are not the proper subjects of arbitrations under Section 252 of the Act, but should be determined by the dispute resolution procedures of the existing interconnection agreements.

The Disputes in More Detail

Although the Pagers appeared to initially request the arbitration of a new interconnection agreement with Qwest under Section 252(b) of the Act, what the Petitioners really seek by their Petitions and their recent Motion for Expeditious Substantive Relief is favorable resolution of their current disputes with Qwest under their current interconnection agreements. The Commission in its most recent Order acknowledged that Petitioners are seeking resolution of current disputes under their current interconnection agreements:

Before the Commission embarks in arbitrating the 252(b) issues and reviewing the proposed “pick and choose” terms under 252(i), the Pagers request the Commission “first make a ruling on the current interconnection agreement[s] and whether” the agreements would allow reciprocal compensation of the termination of Internet traffic and enhanced services traffic.⁵

⁴ Order No. 29477, April 16, 2004.

⁵ *Id.* p. 2.

The Commission's conclusion is fortified by an examination of the interactions of the Parties. The following table provides a summary of those interactions. Relevant correspondence is attached to this Response as Exhibits.

Exhibit	Date	Description
A	2-5-04	PageData letter to Qwest complaining that it was denied a single point of presence and suffered other wrongs by Qwest, that Qwest is using mail to deliver unlawful billings, that it wants its billings corrected, wants someone with authority to agree to zero out account balances, refund all monies paid, and pay PageData retroactive reciprocal compensation.
B	2-17-04	PageData letter to Qwest complaining that PageData is not being paid reciprocal compensation. PageData states that all past balances are being formally disputed through litigation in federal and state courts, and Qwest is continuing the old policies that have been overruled by the courts.
C	2-17-04 WaveSent Qwest	<ul style="list-style-type: none"> • Qwest should not dispute assumed MOUs in ICA. Qwest does not realize technological advances that are subject to reciprocal compensation, "continuous paging" and "paging naught." • Qwest personnel has not seen WaveSent's proprietary continuous paging, which sends compressed data 24 hours per day. • WaveSent is therefore not scared to bill actual usage, which would greatly exceed the assumed MOU. • WaveSent also provides vehicle location, alarm monitoring, vending machine accounting, voicemail, Internet, and email retrieval, all of which are subject to reciprocal compensation. • Threats: new RICO lawsuit, complaints with FCC/ PUC, and filing for arbitration to obtain true termination costs. • WaveSent billed assumed MOUs to avoid dispute with Qwest, but can begin billing actual MOUs, but WaveSent's continuous paging will generate massive amount of MOUs.
D	3-1-04 PageData to Mr. Howell	<ul style="list-style-type: none"> • Many ICAs have not been filed in Idaho. • IPUC's failure to investigate portrays Qwest with false image in community that it has been following the law. Qwest's lawlessness is putting Idaho businesses out of business. • Small paging companies deserve same treatment as Arch and PageNet, which is they got back all the money they ever paid Qwest. Qwest zeroed out their accounts and allowed them to change their networks. Qwest's legal and billing departments know that unfiled agreements mean millions of dollars of fraudulent billing every month to paging companies that have not had the opportunity to adopt those agreements. This is criminal activity. • Qwest has not put this to rest in Idaho and should be fined \$50 million by IPUC. We will be augmenting our previous complaint that the IPUC put on hold. • Something is seriously wrong at Qwest. Qwest underestimated PageData's resolve about a single POP and instead of settling with

		<p>PageData for \$650 thousand, they paid millions in fines to state PUCs.</p> <ul style="list-style-type: none"> • If Notebaert knew those investigations started here in Idaho there would be many changes at Qwest. I believe you should set up a meeting between Notebaert and myself.
E	<p>3-5-04</p> <p>Qwest Letter to WaveSent and PageData</p>	<ul style="list-style-type: none"> • The traffic described in WaveSent's letter of February 17, such as "Continuous Paging," vehicle location, alarm monitoring, vending machine accounting, and Internet traffic, is not legitimate paging traffic and is not subject to reciprocal compensation under the WaveSent/ PageData – Qwest ICAs. • Qwest has learned that some of the numbers registered to PageData and WaveSent are Internet access numbers. • Qwest disputes WaveSent/ PageData's reciprocal compensation bills until it can be determined which if any of the traffic is legitimate paging traffic under the ICAs. • Qwest may revise or reconfigure the facilities as necessary to deliver legitimate paging traffic.
F	<p>3-5-04</p> <p>WaveSent Letter to Qwest</p>	<ul style="list-style-type: none"> • Qwest is discriminating against WaveSent by threatening to reconfigure facilities. Qwest is not filing all ICAs. Qwest is paying reciprocal compensation to other carriers for the traffic on which it will not pay WaveSent. • WaveSent could not avail itself of more favorable terms and conditions available to other carriers. • Fourth Circuit says ICA terms that violate Act are unenforceable. Because of this WaveSent is going to avail itself of new terms under Section 252(i). WaveSent proposed deleting restrictions on types of traffic. • WaveSent also proposes restricting changing from flat rated reciprocal compensation. • WaveSent is impatient. This letter serves as notice Qwest has 10 days to present offer to resolve this issue or WaveSent will initiate arbitration under Section 13.14, Dispute Resolution.
G	<p>3-12-04</p> <p>Qwest to WaveSent</p>	<ul style="list-style-type: none"> • Qwest disputes entire amount of reciprocal compensation billing until WaveSent breaks down traffic between legitimate paging traffic and enhanced services traffic. • WaveSent cannot unilaterally change its agreement. Amendment must be agreed to by both parties. • WaveSent must abide by the terms of its current interconnection agreement. • There is no change in the agreement warranted by a "change in law." • Qwest proposes that WaveSent issue a revised invoice, delineating enhanced services traffic minutes such as "continuous paging" traffic, MOUs of traffic terminating to an ISP and actual minutes of termination for Paging Connection Service. Qwest will review the revised invoice, pay undisputed amounts for Paging Connection Service reciprocal compensation, and work with WaveSent to reconfigure the facilities to WaveSent to be consistent with the Agreement and applicable tariffs and law. • Qwest has determined that some telephone numbers which are registered to PageData are actually terminating to ISPs. Therefore, it is Qwest's position that facilities that PageData may attempt to

		provision for termination of enhanced services traffic and traffic bound for an ISP are not appropriately provisioned under the applicable agreement with PageData.
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I	3-18-04 WaveSent to Qwest	<ul style="list-style-type: none"> • WaveSent is not claiming reciprocal compensation for termination of ISP traffic. Continuous paging is not enhanced or Internet traffic. • WaveSent wants to stay with assumed MOUs. WaveSent rejects Qwest's proposal that it bills segregate types of traffic. • WaveSent initiates negotiation of a new agreement.
J	3-25-04	WaveSent letter to Qwest reveals that despite previous statements that WaveSent provided "continuous paging" services; in fact WaveSent has no continuous paging customers.
NOT ATTACHED	3-25-04	PageData Petition for Arbitration
NOT ATTACHED	3-27-04	WaveSent Petition for Arbitration
K	3-30-04 "Tick tock" Email from Mr. McNeal to Mr. Howell	The tenant of rule of law is the lawbreaker cannot be advantaged by non-compliance. The simple fact is Qwest is not in compliance with 47 U.S.C. Sections 251 and 252, and Qwest and their conspirators have been substantially advantaged. Qwest is guilty of white collar crime. Qwest's own vice presidents would not self-certify that all interconnection agreements have been filed in Idaho when requested by PageData. <u>This in itself should speak volumes.</u> I believe that extraordinary circumstances exist and the Idaho PUC should issue Qwest a hefty fine to reflect the manipulation of the process in sum of no less than \$10,000,000.
L	4-2-04 Qwest to WaveSent	<ul style="list-style-type: none"> • WaveSent must delineate which traffic is actual paging traffic and which is Enhanced Services Traffic. • Qwest will not pay reciprocal compensation on idle trunks. Qwest has the right to reconfigure facilities. • Qwest is willing to negotiate but attempts to opt into language without legitimately related provisions are not proper. • Redline of WaveSent's proposed language attached. • Qwest is available for negotiations next week, please contact to schedule a time that would allow us to begin negotiations.
M	4-6-04 WaveSent to Qwest	Communications on WaveSent's reciprocal compensation have reached an impasse and need to be addressed during the arbitration proceedings. Discussions on termination of Internet traffic have blinded the eye of your writer. Qwest is intentionally mixing the responsibilities of the permissions to continue its policy of creating litigious situations with

		WaveSent's management to justify its illegal stances. The flat rate billing of 6000 MOU per trunk does <u>not</u> require <u>any</u> delineation of the minutes.
N	4-7-04 WaveSent to Qwest	WaveSent submits its interconnection agreement amendments under Section 252(i). WaveSent encloses its instant and retroactive ISP Amendment that purports to clear up all back issues of terminating Internet and enhanced services traffic.
O	4-9-04 Qwest to WaveSent	<ul style="list-style-type: none"> • Qwest rejects 252(i) adoptions as stated in 4-7 email. WaveSent is taking an approved amendment and changing the language of that agreement. This is called "pick and change" and is not appropriate under 252(i). • WaveSent must adopt the amendment and related language without changes. If WaveSent wants to make changes to the amendment after approval Qwest will certainly entertain those negotiations. • Qwest is concerned and confused by WaveSent's "shotgun" approach to negotiations. • PageData and WaveSent have opened windows for negotiations under 251/252. Qwest acknowledged these requests and sent back a redline of WaveSent's proposed contract. • There has been no attempt by either WaveSent or PageData to contact Qwest and begin negotiations. • On the other hand, Qwest has received numerous adoption requests for amendments from WaveSent/ PageData under the guise of 252(i). This is confusing. Are we negotiating new agreements or are we amending existing agreements? • Staying focused with one approach would be more productive. Qwest favors negotiating new agreements to clarify and quantify the disputed issues between Qwest and WaveSent and PageData. • As stated in Qwest's last correspondence, Qwest is available at your earliest convenience to begin negotiations.
P	4-9-04 WaveSent to Qwest	<ul style="list-style-type: none"> • Noting from Qwest's red-lined agreement under 252(b) that Qwest has already agreed to the new dispute resolution clause and the ASR Ordering Process. • This gets us back to what the dispute has always been about—carriers that Qwest considers paging only cannot terminate Internet or enhanced traffic. • No matter how much bloviating Qwest does, WaveSent is in compliance with the ICA, and this is an exercise to delay and hinder WaveSent from exercising its statutory rights under the 1996 Tel Act to terminate any Qwest-originated traffic. • WaveSent has not provided Qwest an adoption of terms and conditions under 252(i) that Qwest could reject. This is a stalling tactic by Qwest to postpone and hinder WaveSent from immediately adopting the ISP-Bound Traffic amendment. • WaveSent is simply rebutting this presumption now and establishing that 6000 MOU per trunk is deemed local paging traffic. This should be included with this amendment to avoid WaveSent and Qwest going back to the PUC about this issue. • The Idaho PUC might as well establish the flat rate paging minutes of use and the continuous paging issues at the same time. When the Idaho PUC establishes that continuous paging is a local paging call, I am quite sure that Qwest is going to want to do flat rate billing.

		<p>WaveSent has voluntarily done this to prevent future conflict. Qwest trying to establish continuous paging as enhanced services is like Qwest redefining voice paging as enhanced traffic.</p> <ul style="list-style-type: none"> • If Qwest is serious about negotiating, then Qwest should blue-line the 252(i) interconnection agreement WaveSent provided Qwest for its comment. WaveSent will be asking the Idaho PUC to accept this agreement in its entirety. • If you are available for negotiations give a specific time, date, and phone number of your availability. I am available either Tuesday, April 13, 2004 at 10:00 am or Wednesday, April 14 at 10:00 am (m.s.t.).
Q	<p>4-15-04</p> <p>Sanderson (Qwest) to Mr. McNeal</p>	<p>I have been out of the office for the last three days. I am therefore suggesting some times next week to begin negotiations. They are April 21, 9-11 or 1-3 PDT, April 22, 1-3 PDT, or April 23, 8-10 PDT. Please let me know if one of these times works. We can also use my conference bridge which is: 877-550-8688 PIN 7983819#. Qwest sent its changes to you in an electronic copy on April 6. You also received a hard copy on Friday, April 2. That redline clearly shows Qwest's proposed language and is sufficient to begin these negotiations. Thank you.</p>
NOT ATTACHED	<p>4-19-04</p>	<p>WaveSent and PageData's Amendment to Petition. WaveSent and PageData believe that the current interconnection agreement allows for the termination of Internet and enhanced traffic. WaveSent and PageData seek to amend the Petition to request that the Commission first make a ruling on the current interconnection agreement and whether WaveSent and PageData's position is correct or whether Qwest's position is correct, and then if necessary proceed with the 252(i) and 252(b) requests.</p>

This history shows that the parties have several defined disputes under their current interconnection agreements. The dispute resolution provisions of the Arch Agreement, as adopted by the Pagers, provide for arbitration of all disputes between Petitioners and Qwest concerning agreements.⁶

⁶ Arch Paging Connection Agreement, ¶ 13.14:

If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents ("Dispute") cannot be settled through negotiation, it shall be resolved by arbitration under the then current rules of the American Arbitration Association ("AAA"). The arbitration shall be conducted by a single neutral arbitrator familiar with the telecommunications industry and engaged in the practice of law. Such arbitrator shall not be a current or former employee, agent, contractor, officer or director of either Party or its affiliates or subsidiaries or related in any way to a current or former employee, agent, contractor, officer, or director of either Party or its affiliates. The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all Disputes. The arbitrator shall not have authority to award punitive damages. All expedited procedures prescribed by the AAA rules shall apply and

Moreover, Idaho law strongly favors the enforcement of contractual arbitration clauses.⁷ Like the Idaho courts, the Commission should favor the enforcement of contractual arbitration provisions.

CONCLUSION

Based on the foregoing, Qwest respectfully requests that the Commission deny the Motion for Expeditious Substantive Relief.

DATED this 3rd day of May, 2004.

Respectfully Submitted,

Adam Sherr
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Seattle, WA 98191

and



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James B. Alderman
Batt & Fisher, LLP
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101 South Capital Blvd.
Boise, Idaho 83702
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the rules used shall be those for the telecommunications industry. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. The prevailing Party, as determined by the arbitrator, shall be entitled to an award of reasonable attorneys' fees and costs. The arbitration shall occur at a mutually agreed upon location. Nothing in this Section shall be construed to waive or limit either Party's right to seek relief from the Commission or the FCC as provided by state or federal law.

⁷ Idaho Code § 7-901-7-922; *International Assoc. of Firefighters, Local No 672 v. City of Boise*, 136 Idaho 162; 30 P.3d 940; 2001 Ida. LEXIS 36 (2001).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of May, 2004, I served the foregoing upon all parties of record in this proceeding as indicated below.

Jean Jewell
Idaho Public Utilities Commission
472 W. Washington Street
Boise, ID 83702-5983

(208) 334-0300

- Certified Mail
- First Class Mail
- Hand Delivery
- Facsimile

Joseph McNeal, d/b/a PageData
P.O. Box 15509
Boise, ID 83715

(208) 375-9844

- Certified Mail
- First Class Mail
- Hand Delivery
- Facsimile



William J. Batt

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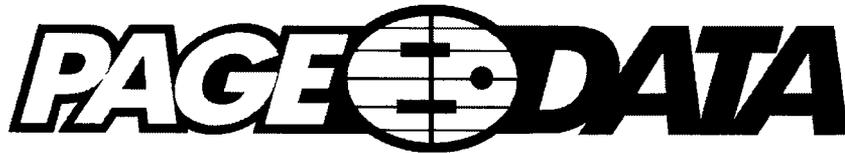
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		<p>of WaveSent's proposed contract.</p> <ul style="list-style-type: none"> • There has been no attempt by either WaveSent or PageData to contact Qwest and begin negotiations. • On the other hand, Qwest has received numerous adoption requests for amendments from WaveSent/ PageData under the guise of 252(i). This is confusing. Are we negotiating new agreements or are we amending existing agreements? • Staying focused with one approach would be more productive. Qwest favors negotiating new agreements to clarify and quantify the disputed issues between Qwest and WaveSent and PageData. • As stated in Qwest's last correspondence, Qwest is available at your earliest convenience to begin negotiations.
P	<p>4-9-04</p> <p>WaveSent to Qwest</p>	<ul style="list-style-type: none"> • Noting from Qwest's red-lined agreement under 252(b) that Qwest has already agreed to the new dispute resolution clause and the ASR Ordering Process. • This gets us back to what the dispute has always been about—carriers that Qwest considers paging only cannot terminate Internet or enhanced traffic. • No matter how much bloviating Qwest does, WaveSent is in compliance with the ICA, and this is an exercise to delay and hinder WaveSent from exercising its statutory rights under the 1996 Tel Act to terminate any Qwest-originated traffic. • WaveSent has not provided Qwest an adoption of terms and conditions under 252(i) that Qwest could reject. This is a stalling tactic by Qwest to postpone and hinder WaveSent from immediately adopting the ISP-Bound Traffic amendment. • WaveSent is simply rebutting this presumption now and establishing that 6000 MOU per trunk is deemed local paging traffic. This should be included with this amendment to avoid WaveSent and Qwest going back to the PUC about this issue. • The Idaho PUC might as well establish the flat rate paging minutes of use and the continuous paging issues at the same time. When the Idaho PUC establishes that continuous paging is a local paging call, I am quite sure that Qwest is going to want to do flat rate billing. WaveSent has voluntarily done this to prevent future conflict. Qwest trying to establish continuous paging as enhanced services is like Qwest redefining voice paging as enhanced traffic. • If Qwest is serious about negotiating, then Qwest should blue-line the 252(i) interconnection agreement WaveSent provided Qwest for its comment. WaveSent will be asking the Idaho PUC to accept this agreement in its entirety. • If you are available for negotiations give a specific time, date, and phone number of your availability. I am available either Tuesday, April 13, 2004 at 10:00 am or Wednesday, April 14 at 10:00 am (m.s.t.).
Q	<p>4-15-04</p> <p>Sanderson (Qwest) to Mr. McNeal</p>	<p>I have been out of the office for the last three days. I am therefore suggesting some times next week to begin negotiations. They are April 21, 9-11 or 1-3 PDT, April 22, 1-3 PDT, or April 23, 8-10 PDT. Please let me know if one of these times works. We can also use my conference bridge which is: 877-550-8688 PIN 7983819#. Qwest sent its changes to you in an electronic copy on April 6. You also received a hard copy on Friday, April 2. That redline clearly shows Qwest's proposed language and is sufficient to begin these negotiations. Thank you.</p>

NOT ATTACHED	4-19-04	WaveSent and PageData's Amendment to Petition. WaveSent and PageData believe that the current interconnection agreement allows for the termination of Internet and enhanced traffic. WaveSent and PageData seek to amend the Petition to request that the Commission first make a ruling on the current interconnection agreement and whether WaveSent and PageData's position is correct or whether Qwest's position is correct, and then if necessary proceed with the 252(i) and 252(b) requests.
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EXHIBIT A



SENT VIA FACSIMILE AND EMAIL

February 5, 2004

Cindy Minor
Qwest
Billing Department
Salt Lake City, UT
800-955-6714 Ext. 4983
801-239-4149 Fax

RE: Billing Corrections

Dear Cindy:

Per your request we have included with this fax a copy of the letter sent to initiate disconnection of unnecessary facilities. The facilities became non-usable by virtue of the move from Meridian to Boise.

I do not believe from the responses that we have been getting from Qwest that our problems are being handled by someone at Qwest's vice-president's level with the authority to override all the departments involved to fully straighten out these accounts. We do know that the legal department has taken PageData off unofficial provisioning hold and the installation of PageData's new facilities has been proceeding as negotiated.

One of the primary questions that need to be answered by Qwest is when was Qwest obligated to provide a single point of presence to CMRS carriers that Qwest considered paging only. The FCC and the courts have said Qwest was obligated to do this since 1996. If someone at Qwest would acknowledge this I believe the rest of what we are talking about would fall into place.

Until recently it was Qwest's policy that CMRS carriers, that Qwest considered paging only, had to locate in each one of Qwest's local calling areas. Also, it was Qwest's policy that paging carriers' local calling area was Qwest's 20-mile local calling area and not the LATA. Qwest erected barriers so that paging carriers had to set up their network as such. (See Sheryl Fraser's paging network diagram submitted to the FCC.) Qwest's policies were contrary to FCC and court rulings. This is the reason why PageData had DID lines, leased lines, T-1, frame relay, and POTS lines scattered throughout the LATA. These were facilities that Qwest was responsible for bearing the cost for delivering Qwest originated traffic. Each of the following accounts falls into this category:

PO Box 15509
Boise, Idaho 83715

Telephone (208) 375-9844
Facsimile (208) 373-7159

6610 Overland Road
Boise, Idaho 83709

208 R55-2312 312	L-208-111-1771-7718
208 R51-0454 454	L-208-111-1769-7698
208 R51-0485 085	208-373-9000-260B
208-642-8000-188B	208-375-9003-192B
208-D08-6826-826	208-375-9844-00-00
6058670 (old Act # 178793)	208-375-8896-00-00
L-208-111-1770-117M	

PageData requested and was denied a single point of presence network because of Qwest's policies. PageData has had a LATA wide network and for efficiency's sake that network should have been designed similar to PageData's single point of presence network that is being installed now.

Qwest has been using the U.S. postal service or common carrier to deliver unlawful billings to paging carriers such as PageData. Qwest has not corrected the billing to reflect the 1996 Telecommunications Act and is still trying to collect these unlawful charges (because of Qwest's past policies) for delivering Qwest originated traffic. PageData was forced to stay in the small business group and had to hire an attorney before Qwest would switch PageData over to carrier services because at that time Qwest did not recognize paging carriers with Type 1 lines as terminating carriers. Qwest's policy at that time was that Qwest terminated the traffic at their end office switch and paging carriers were not co-carriers entitled to the statutory rights and privileges granted in the 1996 Telecommunications Act. Qwest would not give reciprocal compensation to paging companies until AirTouch forced the issue at arbitration. That arbitration is the basis of the AirTouch/Arch interconnection agreement that PageData adopted. These are the problems that PageData is still dealing with today.

We do not believe that we are going to get the billing corrected through normal Qwest means because Qwest is trying force PageData to pay for unlawful policies Qwest had in place. It appears also that the paperwork that PageData had previously submitted to Qwest several times is not all in one location because this is information that should already be available in PageData's file. Each time this gets handed off to a new manager the whole process starts all over again while he or she has to catch up to what is going on. This is a very inefficient way to correct these problems. Qwest has failed to respond to the change of law provision in the first interconnection agreement between PageData and Qwest and when Qwest was obligated to provide PageData a single point of presence network configuration. These issues resolve the bulk of the billing disputes.

It was unusual in the 1998 time frame for PageData to hand anything in to Qwest in writing because everything was done verbally over the phone with the small business group or the paging services group. PageData never had to complete any ASRs for facilities or numbers. Anytime PageData had a problem or a request we would call either the representative at the small business group or later we would call Rhonda, Doug, or Velvet, but Rhonda Belka was our primary contact person.

We have attached the letter, dated September 30, 1998, concerning moving and disconnecting facilities. This was part of a multi-step process and a vast majority of it was done verbally. During that move, Qwest was not providing a single point of presence according to the 1996 Telecommunications Act and made PageData change all its Meridian numbers to Boise numbers because Qwest would not transfer numbers from one end office to another end office without charging mileage.

By PageData's calculations, according to the 1996 Telecommunications Act and Qwest's concessions at the D.C. Court of Appeals, all the accounts mentioned above should be zeroed out and PageData should receive a refund of all money paid to Qwest and payment of reciprocal compensation from the first date of PageData terminating Qwest originated traffic.

What is the name and authority level of the person with cross-department authority that Qwest has assigned to correct the billing errors that continue in PageData's accounts?

Sincerely,

Joseph B. McNeal

Attachment

cc: Vickie Boone, Qwest
Sheila Pedersen, Qwest
Bryan Sanderson, Qwest

EXHIBIT B



SENT VIA EMAIL

February 17, 2004

Lori Lydon
Lexcis Payables
Qwest
900 Keo Way - 4 South
Des Moines, IA 50309
515-241-1202
515-286-4023 Fax

RE: PageData Reciprocal Compensation Payments

Dear Ms. Lydon:

Sharon informed me of the email she received from you yesterday. This do nothing policy is unacceptable.

We were informed through correspondence with Qwest that you were the person designated to handle this, but now we find that is not so and we are getting the Qwest run-around again. Who specifically at Qwest is making these decisions so he or she can be held accountable? This shadowy person needs to come forth.

PageData already has an ICA with Qwest. There are no scheduled negotiations between PageData and Bryan Sanderson of Qwest at this time.

To date PageData has not received any reciprocal compensation payments. This is in direct violation of the ICA. Qwest has claimed that it is crediting PageData's accounts BAN 208 R51-0454-454 and 208-375-8896, but PageData has not seen Qwest issue credits for the reciprocal compensation to these accounts and invoices designated by PageData. Every month that PageData receives invoices from Qwest the balances are increasing, but the balances should be zero if the reciprocal compensation has been applied. Who specifically is responsible for crediting these accounts? This individual's failure to credit these accounts only exacerbates the billing problems in the other Qwest billing departments.

It is Qwest's non-responsiveness that is creating an illusionary billing crisis at Qwest. Since PageData received its first facilities from Qwest, the reciprocal compensation due and owing PageData has always offset any lawful charges due Qwest by PageData. Qwest has failed to recognize this point. That is what this billing crisis is about.

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Boise, Idaho 83715

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Facsimile (208) 373-7159

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Boise, Idaho 83709

Qwest is expecting payment from PageData while Qwest continues to unlawfully hold reciprocal compensation from PageData for terminating Qwest originated traffic. This is inconsistent with resolving the problems on a going forward basis.

Qwest cannot have it both ways. Qwest must either issue payment for reciprocal compensation directly to PageData or it must apply the reciprocal compensation to BAN 208 R51-0454-454 for corrected invoices from March 2003 to date and 208-375-8896 from October 2003 to date. Note that any so-called balances prior to March 2003 on BAN 208 R51-0454-454 and all other accounts up to date are under active, formal dispute in federal and state court. PageData cannot be penalized in any way for disputing unlawful charges, as Qwest is attempting to do.

The indecisiveness of the individual(s) at Qwest is generating meetings for meetings and endless paperwork going nowhere rather than resolving the issues. It was our understanding that the relationship between PageData and Qwest was going to be normalized on a going forward basis and each party would start paying each other according to the ICA.

Qwest has created this illusionary billing crisis through its old, entrenched, unlawful policies that were carried out by the previous paging product manager, Sheryl Fraser, in contradiction of the 1996 Telecommunications Act. The recent US Court of Appeals District of Columbia Circuit decision on January 16, 2004, in the Mountain Communications, Inc. vs. Federal Communication Commission (Case No. 02-1255) and the US Court of Appeals Fourth Circuit decision on December 18, 2003 in the MCI Metro Access Transmission Services Inc. vs. Bell South Telecommunications (Case No. 03-1238) have further substantiated PageData's interpretation of the 1996 Telecommunications Act and rejected Sheryl Fraser's group's interpretation of the 1996 Telecommunications Act. Qwest itself is rejecting its old policies with the availability of the new ICAs that are more in line with the 1996 Telecommunications Act by including a single point of presence option and reciprocal compensation. However, individuals inside and outside Qwest are advising Qwest to continue trying to collect money from PageData for past Qwest billing policies that the courts have deemed unlawful.

Qwest's withholding of reciprocal compensation is unlawfully penalizing PageData for exercising its rights to dispute charges and is the source of the imaginary billing crisis because Qwest is aware that the reciprocal compensation will be redistributed back to Qwest to pay for accounts BAN 208 R51-0454-454 and 208-375-8896. Correcting the billing starts with the reciprocal compensation. Qwest has refused to correct the billing through an external process by paying PageData directly or through an internal process of applying the credits to the accounts and invoices designated by PageData.

In Conclusion

Your letter dated December 19, 2003, that you emailed Sharon on February 12, 2004, is unlawful for two very important reasons: 1) under the ICA, Qwest must issue reciprocal compensation payments directly to PageData; and 2) Qwest has no legal authority to apply reciprocal compensation due and owing PageData to actively disputed accounts that are before federal and state court. Further, your letter claims that Qwest has applied monies owed PageData to offset

balances, but this has not been done. Why would Qwest issue a legally binding letter and not apply the credits to the accounts that PageData designates?

We expect this situation to be corrected. According to Idaho law, if an ILEC such as Qwest is holding money, Qwest must apply the credits to accounts and items that PageData designates. The next invoices PageData receives for accounts BAN 208 R51-0454-454 and 208-375-8896 should be zero if Qwest follows through on either one of the two promises it made to PageData through either your unlawful letter or the ICA.

Sincerely,

/s/ Joseph B. McNeal
Joseph B. McNeal

cc: Bryan Sanderson
Sheila Pederson
Vickie Boone
Cindy Minor

EXHIBIT C



6610 Overland Rd
Boise, ID 83709
(208) 373-7158
(208) 373-7159 Fax

SENT VIA EMAIL

February 17, 2004

Bryan Sanderson
Qwest
Seattle, WA

RE: Technological Advances

Dear Mr. Sanderson:

WaveSent received an email from Lori Lydon today claiming that Qwest is disputing its own contract language in the ICA in regard to the minutes of use (MOU) per trunk in WaveSent's recent invoices. How can Qwest dispute what Qwest itself wrote? In the first 4-1/2 months there is nothing to investigate. We believe this email is a ruse to delay and hinder Qwest's obligation to pay reciprocal compensation. Is Qwest disputing the invoice under the dispute resolution clause? What Qwest is disputing has already been clearly outlined in the ICA itself and therefore is a non-disputable item.

Lori Lydon's email is in direct contradiction to Appendix A, paragraph 2(a) of the ICA which clearly states that **Qwest will pay 6000 MOU per trunk as a flat rate until an actual three month average is established**. Paragraph 2(b) says upon establishment of an actual three month average Minutes of Use per trunk group type, Qwest will compensate at a flat rate times the actual average MOU per trunk. Obviously, an establishment of the actual minutes of use **over a three month period** cannot possibly be done in the first **40 days** of receiving the facilities. According to the ICA, switching to actual minutes of use cannot occur until a minimum of 4-1/2 months has passed. Based on paragraph 2(b) WaveSent can provide new average MOU every 3 months.

During meetings last summer for the installation of the facilities in Idaho, it is my understanding that Qwest and WaveSent discussed using the flat rate of 6000 MOU average per trunk rather than actual MOU to prevent future disputes. Now we are receiving contrary information.

This letter is about technological advances in the paging industry that are subject to reciprocal compensation. One is called "paging naught" and another is called "continuous paging," which we will describe below. Both technologies accumulate a massive amount of MOU.

WaveSent has no qualms about billing Qwest for actual minutes of use per trunk group if that is the methodology that Qwest chooses to use because of the manner in which WaveSent provides CMRS services. WaveSent's actual average minutes of use will far exceed an average of 6000 MOU per trunk.

Qwest's personnel are still thinking human intervention, analog paging. Qwest has not seen the type of paging technology that WaveSent provides such as continuous paging. Continuous paging is a technology that has been stifled for quite some time. Continuous paging allows a corporation or an individual to send compressed data on a 24-hour, 7-day a week continuous stream through a modem connection to the paging terminal to update data on a continuous basis to readily available pagers with specialized e-proms that have been flashed with special software. This means that one company or individual that utilizes this paging service will be connected 1,440 minutes per day, every day of the month. Multiply this by the number of trunks that WaveSent has and you can see WaveSent is not scared of billing by actual usage. It would take less than four customers per T1 with continuous paging to exceed the average of 6000 MOU per trunk.

See figures below:

$$288 \text{ trunks} \times 6000 \text{ MOU} = 1,728,000 \text{ MOU monthly}$$

$$60 \text{ minutes} \times 24 \text{ hours} = 1,440 \text{ MOU daily}$$

$$1,440 \text{ MOU per day} \times 30 \text{ days} \times 40 \text{ customers} = 1,728,000 \text{ MOU monthly}$$

In this high tech era, it is not difficult to obtain 40 customers in southern Idaho that are interested in receiving real time updates to data on a pager such as ham radio operators, day traders, computer geeks, etc.

We have discussed this proprietary continuous paging technology with you and Bill Batt (Qwest's attorney) in several meetings during legal proceedings. I do not know if you were really concentrating on what I was talking about. It was not a priority to you because of what the meetings were about.

Continuous paging fits in Qwest's most conservative definition of paging. As a CMRS carrier, WaveSent provides other telecommunications services that are subject to reciprocal compensation under the ICA, such as vehicle location, alarm monitoring, vending machine accounting, voicemail, internet, and retrieval of email messages through voicemail and alphanumeric pagers. Those services have not been taken into consideration in the above example of figuring minutes of use.



It has been my experience that if this dispute is not resolved quickly, WaveSent would best be served by taking three simultaneous steps: 1) filing a federal lawsuit with RICO charges; 2) filing a formal complaint with either the FCC or the State PUC for violations of the ICA; and 3) filing for arbitration to determine WaveSent's actual costs for terminating Qwest originated traffic, which are considerably higher than the rate included in the ICA.

To avoid a fight in the future requiring arbitration or a court order, WaveSent has invoiced the flat rate of 6000 MOU per trunk in the ICA rather than the massive amounts of MOU WaveSent will be accumulating subject to reciprocal compensation.

If Qwest is unhappy with its own contract language in Appendix A, paragraph 2(a) of the ICA for a flat rate average of 6000 MOU per trunk, in 4-1/2 months WaveSent can begin invoicing using actual average MOU according to paragraph 2(b). At that time, WaveSent should not receive any complaints from Qwest about the massive amount of MOU that will be on the system subject to reciprocal compensation because we have explained that using Qwest's most conservative definition of paging, which WaveSent does not agree with, the reciprocal compensation will be considerably higher because of WaveSent's continuous paging technology.

Sincerely,

/s/ Joseph B. McNeal
WaveSent LLC
Joseph McNeal, Its Manager

cc: Bill Batt, Marshall Batt & Fisher
Lori Lydon, Qwest
Barbara Newman, Qwest
Marni Feters, Qwest
Sheila Pederson, Qwest
Vickie Boone, Qwest
Cindy Minor, Qwest



EXHIBIT D



SENT VIA EMAIL

March 1, 2004

Don Howell
Idaho PUC
472 W. Washington
Boise, ID 83702

RE: CO PUC Staff Report

Dear Don:

Attached is a copy of the Colorado PUC Staff's Appendix M - Unfiled Agreement Matrix, which was released on Friday, February 27, 2004. In it you will find many unfiled interconnection agreements from companies that also do business in Idaho under agreements that have not been filed at the Idaho PUC. I believe these unfiled agreements have cost the Idaho consumers millions and millions of dollars. I have only isolated two agreements that affect PageData.

The Colorado PUC Staff, on item number 5, considered the Arch Confidential Billing Settlement Agreement as an Interconnection Agreement. This same agreement was voluntarily filed in Iowa by Qwest as an interconnection agreement. In item number 55, the PageNet Confidential Billing Settlement Agreement, which I do not have the full copy of because I wanted to get it through public sources, has been considered an interconnection agreement by the Colorado PUC staff. Qwest also filed the PageNet agreement in Iowa as an interconnection agreement.

I believe that the Idaho PUC's lack of investigating Qwest for unfiled interconnection agreements portrays a false image of Qwest in the community that Qwest has been following the law, when in fact Qwest's lawlessness is putting Idaho businesses out of business. This lack of investigation is what emboldened the Idaho legislature to consider deregulating Qwest.

PageData, Radio Paging, and Tel-Car deserve the same treatment as Arch and PageNet, which boiled in a nutshell is they got the money back that they paid into Qwest, Qwest zeroed out all their accounts, and allowed them to change their networks. Qwest's legal and billing departments recognize that those unfiled interconnection agreements represent millions of dollars in fraudulent billing every month to paging companies that have not had the opportunity to adopt those agreements. This is criminal activity.

Additional information concerning this Colorado docket can be found at the following link:

http://www.dora.state.co.us/puc/docket_activity/HighprofileDockets/02I-572T.htm#comments

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Boise, Idaho 83715

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Facsimile (208) 373-7159

6610 Overland Road
Boise, Idaho 83709

Because Qwest continues to try to deny their past actions instead of correcting them, it just makes their past actions worse. Qwest has had plenty of opportunities to put this matter to rest in Idaho, but has refused to voluntarily settle the matter. I believe they are subject to fines of no less than \$50,000,000. We will be augmenting our previous complaint that the Idaho PUC put on hold.

Something is seriously wrong at Qwest. Rather than settling with Mountain Communications for approximately \$800,000, they walked in at the federal district court and gave up millions of dollars in transit fees. Qwest under-estimated PageData's resolve about a single point of presence and the unfiled interconnection agreements and instead of settling with PageData for \$650,000, they paid millions of dollars in fines to state PUCs. I believe if Dick Notebaert and his executive staff at Qwest knew that those state investigations started in Idaho, there would be substantial changes in personnel at Qwest. It makes no economic sense. It is obvious these are people that are not spending their own money.

I believe you should set up a meeting between Dick Notebaert and myself, which is a term and condition that was made available to other executives in unfiled agreements, because I believe this situation would get resolved.

Sincerely,

/s/ Joseph McNeal
Joseph McNeal

cc: Wayne Hart, PUC
Jim Jones, Jim Jones & Associates
Bill Batt, Marshall Batt & Fisher
Adam Sherr, Qwest
Sheila Pederson, Qwest
Vickie Boone, Qwest
Cindy Minor, Qwest
Lori Lydon, Qwest
Barbara Newman, Qwest
Bryan Sanderson, Qwest

EXHIBIT E



Wholesale Emerging & Diversified Markets
Barbara J. Newman
Senior Access Manager
(303) 965-0562 Voice (303) 896-1287 (FAX)
E-Mail: bjnewma@qwest.com
1801 California, Room 2420
Denver, Colorado 80202

March 5, 2004

Joseph McNeal
WaveSent/PageData
6610 Overland Road
Boise, ID 83709

Dear Joseph:

We are responding to several letters and emails that have been recently sent to Qwest. This is in regards to payment of reciprocal compensation to WaveSent/PageData for traffic originated on Qwest's network. In your letter you cite several sections of the Paging Connection Agreement ("Agreement") between Qwest and WaveSent/PageData for substantiation of reciprocal compensation to WaveSent/PageData. Qwest acknowledges those sections and does provide facilities for and pay reciprocal compensation for legitimate paging traffic, as defined and intended to be covered under the Agreement. However, you neglected to cite the following paragraph from the agreement which excludes reciprocal compensation payments for enhanced and internet traffic. Paragraph 2.4 states:

- 2.4. This Agreement recognizes the unique status of traffic delivered to enhanced service providers. For purposes of this Agreement, Enhanced Services traffic, such as voice-mail, that is not incidental to Paging Provider's primary business, is not Compensable Traffic. Additionally, traffic originated by one Party, and delivered to the

other Party, which in turn delivers the traffic to an Internet Service Provider (a) shall be deemed interstate in nature, (b) shall not qualify as Compensable Traffic under this Agreement, and (c) U S WEST shall not be obligated to deliver such traffic to Paging Provider under this Agreement.

Under the Agreement, Qwest provides Paging Connection Service to WaveSent/PageData “which consists only of those one-way facilities and services that are provisioned by U S WEST for the *sole purpose* of delivering one-way, land-to-pager traffic sent by U S WEST’s End Users and Transit Traffic to Paging Provider’s POC(s)”. Agreement, ¶ 2.1.

The “Continuous Paging” service you described in your letter clearly does not fall within the definition of paging. Likewise, the other applications you describe in your letter, such as vehicle location, alarm monitoring, vending machine accounting, voice mail, etc., are clearly enhanced or internet related services and are not compensable under this agreement as stated in the paragraph above. Further, as described in subparagraph 2.4(c) above, Qwest is not even obligated to provide facilities for or send to WaveSent/PageData this traffic, much less pay reciprocal compensation on such traffic.¹ It is Qwest’s position that WaveSent/PageData is improperly billing Qwest for this enhanced services/ Internet-related traffic, and improperly using the Paging Connection Service to provide enhanced services. In addition, Qwest has found that certain telephone numbers which are registered to WaveSent/PageData have been represented as being access numbers for a customer to obtain access to an Internet Service Provider (“ISP”) and the traffic generated to the ISP is similarly not compensable under the Agreement.

Therefore, this letter is to inform you that Qwest is, according to Section 12.3 of the Agreement, disputing all of WaveSent/PageData’s invoices to Qwest for reciprocal compensation because the traffic is non-compensable under the terms and conditions of the Interconnection Agreement. Qwest also intends to review facilities currently provided under WaveSent/PageData’s Paging Connection Service, and may revise, modify, or reconfigure the facilities and service as is necessary to deliver legitimate paging traffic. See Agreement ¶ 2.6.2. Qwest is disputing the entire amount because we have been unable to verify that any of the traffic that is the source of the invoice sent to Qwest is actually Paging Connection Service, as described in the Agreement. Qwest is

¹ Enhanced Services is defined as follows in the WaveSent/PageData-Qwest Paging Connection Agreements:

“Enhanced Services” are services offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber’s transmitted information; provide the subscriber additional, different or restructured information; or involve subscriber interaction with stored information.

Clearly, the services WaveSent/PageData has described in its recent letter fall within this broad definition.

ready to expedite this investigation in order to determine which traffic is compensable and which traffic is not. Qwest is willing and ready to negotiate a resolution of this issue, and we would also point out that WaveSent/PageData is fully able to follow the processes of Section 13.14 if you feel that negotiation is not possible.

Sincerely,

Bryan Sanderson
Barbara Newman

EXHIBIT F



6610 Overland Rd
Boise, ID 83709
(208) 373-7158
(208) 373-7159 Fax

SENT VIA EMAIL

March 5, 2004

Bryan Sanderson
Qwest
Seattle, WA

RE: Statutory Rights Under Sections 251(2) and 252(i)

Dear Bryan:

Qwest is and has been discriminating against WaveSent as evidenced by the veiled threat by Qwest to reconfigure WaveSent's facilities, the Colorado PUC staff report dated February 27, 2004, Qwest Corporation not filing all the interconnection agreements in Qwest's 14-state territory, and Qwest obligating itself to pay reciprocal compensation to other carriers for Qwest originated traffic that it is refusing to pay WaveSent for.

WaveSent could not avail itself to all of the more favorable terms and conditions, including reciprocal compensation, that were available to other carriers during the adoption of the Arch interconnection agreement. Under the recent ruling by the U.S. Fourth Circuit Court of Appeals¹ interconnection agreements that have terms and conditions that violate the 1996 Telecommunications Act are not enforceable.

47 U.S.C. Section 251, paragraph (2)

Interconnection - The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network - (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and

¹ U.S. Court of Appeals, Fourth Circuit, *In the Matter of MCIMetro Access Transmission Services, Inc., v. BellSouth Telecommunications, Inc. and North Carolina Utilities Commission*, No. 03-1238, Decided December 18, 2003

conditions of the agreement and the requirements of this section and section 252 of this title.

Because of this WaveSent is going to avail itself of its statutory rights under 47 U.S.C. Section 252(i) and drop the following sections of paragraph 2.1, 2.4, 2.6.2, and 3.8 of the interconnection agreement:

- 2.1 This Agreement covers both Type 1 and Type 2 Paging Connection Service, which consists only of those one-way facilities and services that are provisioned by U S WEST for the sole purpose of delivering one-way, land-to-pager traffic sent by U S WEST's End Users and Transit Traffic to Paging Provider's POC(s). ~~Type 1 and Type 2 Paging Connection Service enables U S WEST's End Users and other telecommunications carriers transiting U S WEST's network to page End Users of Paging Provider's network.~~ This Agreement includes and incorporates by reference all accompanying appendices and attachments.
- ~~2.4 This Agreement recognizes the unique status of traffic delivered to enhanced service providers. For purposes of this Agreement, Enhanced Services traffic, such as voice-mail, that is not incidental to Paging Provider's primary business, is not Compensable Traffic. Additionally, traffic originated by one Party, and delivered to the other Party, which in turn delivers the traffic to an Internet Service Provider (a) shall be deemed interstate in nature, (b) shall not qualify as Compensable Traffic under this Agreement, and (c) U S WEST shall not be obligated to deliver such traffic to Paging Provider under this Agreement~~
- 2.6.2 Pursuant to joint planning as specified in the Forecasting section of this Agreement, U S WEST shall determine all aspects and elements of the Paging Connection Service facilities that it provides itself, including, but not limited to, design, location, quantities, distance, etc. U S WEST shall base this determination on technical and economic efficiency considerations, e.g., network requirements. Subject to the provisions of this Section, U S WEST shall



~~monitor its usage on Paging Connection Service and will reconfigure trunk groups as it deems necessary. U S WEST reserves the right to review, revise or modify its Paging Connection Service at any time for any lawful business reason. All circuits and equipment provided by U S WEST will always be wholly owned and operated by U S WEST. U S WEST shall provide interconnection and interconnection facilities for Paging Connection Service that are equal in quality to what U S WEST provides itself, its affiliates, or other carriers. Paging Connection Service facilities shall be engineered to be consistent with the Eighth Circuit court decision, BellCore Special Report SR-TAP-000191 and any applicable requirements in the state of Idaho.~~

- 3.8 ~~“Enhanced Services” are services offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber’s transmitted information; provide the subscriber additional, different or restructured information; or involve subscriber interaction with stored information.~~

Qwest’s interpretation of what services a telecommunications carrier can provide and Qwest’s segmenting traffic that is subject to reciprocal compensation violates the 1996 Telecommunications Act.

Further, per the ICA, in the first six months after the facilities are installed, reciprocal compensation cannot be changed from the flat rate of 6000 MOU per trunk. Qwest is obligated to pay the reciprocal compensation as it comes due. WaveSent had already discussed with Qwest the option of continuing with the 6000 MOU per trunk or changing to actual MOU after the first six months.

It is totally unacceptable to WaveSent to be forced in a position where WaveSent would owe Qwest monthly recurring charges for terminating Qwest originated traffic. This is a scheme by Qwest to extort WaveSent to pay for Qwest originated traffic. Qwest is not honoring its obligations to pay WaveSent reciprocal compensation for terminating Qwest originated traffic. Previously Qwest tried to unilaterally lower the reciprocal compensation rate.

WaveSent is impatient with Qwest’s stalling tactics. This letter serves as notification that Qwest has 10 days to present its offer to resolve this issue (per



Barbara Newman's and your letter dated March 5, 2004), or WaveSent will initiate arbitration under expedited procedures per paragraph 13.14 Dispute Resolution. During arbitration, WaveSent will avail itself of other benefits under Section 252(i) as they come to light.

Awaiting your response,

/s/ Joseph B. McNeal
WaveSent LLC
Joseph B. McNeal, Its Manager

cc: Barbara Newman, Qwest
Bill Batt, Marshall Batt & Fisher
Cindy Minor, Qwest
Lori Lydon, Qwest
Sheila Pedersen, Qwest
Vickie Boone, Qwest



EXHIBIT G

Bryan Sanderson
Interconnection Negotiator
(206) 345-2275
Fax: (206) 345-0225
E-mail: besande@qwest.com

Joseph McNeal
WaveSent
6610 Overland Rd
Boise, ID 83709

March 12, 2004

Dear Joseph:

I am writing to you in response to your letters of March 5, 2004 and March 10, 2004. At the outset, I would like to reiterate that Qwest is disputing the reciprocal compensation invoices that WaveSent has sent because the invoices you sent did not delineate between enhanced services traffic, traffic bound for Internet service providers ("ISPs") and actual Paging Connection Service traffic, as defined in the Paging Connection Agreement (the "Agreement") between Qwest and WaveSent. Qwest has been able to determine, both from your statements and from an initial investigation by Qwest representatives, that a significant amount of the traffic WaveSent is claiming reciprocal compensation for is actually either enhanced services traffic or traffic bound for an ISP. Thus, until Qwest receives the above discussed breakdown of traffic, it is disputing the entire amount of the reciprocal compensation billing.

In your March 5, 2004 letter, you claim that certain provisions of the Agreement violate the Telecommunications Act of 1996 (the "Act"). You then claim that 47 U.S.C. 252(i) gives WaveSent the ability to unilaterally amend the terms and conditions of the Agreement without Qwest's consent. These positions are contrary to both the Agreement and the current state of the law. As you are no doubt aware, Section 13.23 of the Agreement states that any amendment to the Agreement must be mutually agreed to and expressed in writing. In addition, under Section 1.2 of the Agreement, even if the law as it existed at the time the Agreement was negotiated (the "Existing

Rules") changes after the parties entered into the Agreement "in a manner material to [the] Agreement," Section 1.2 requires that the parties negotiate in good faith to amend the Agreement. If the parties are not able to negotiate an amendment to bring the Agreement into compliance with the "New Rules", then the Dispute Resolution provisions of the Agreement would apply. It is Qwest's position that the Existing Rules have not changed in a manner material to the Agreement, and in fact the Agreement is not inconsistent with the current state of the law. If WaveSent has an alternate view, WaveSent must express that view according to the terms of the Agreement.

On page 3 of the March 5, 2004 letter, you claim that Qwest must pay reciprocal compensation charged, based on six thousand (6000) minutes of use ("MOU") for each trunk. As stated in the letter from Qwest on March 5, 2004, enhanced services traffic, including traffic bound for an ISP, is not compensable traffic under the Agreement. Your letter fails to consider the language of Section 2.4 of the Agreement, which states that enhanced services traffic and ISP bound traffic are not compensable traffic. In addition, as also pointed out in the March 5 letter from Qwest, Qwest is not required to even deliver this traffic to WaveSent. Therefore, Qwest does reserve the right to reconfigure the facilities between WaveSent and Qwest in order to properly reflect the nature of the traffic being exchanged and that the facilities are consistent with the Agreement, any applicable tariffs and applicable law.

With respect to your letter of March 10, 2004, you are incorrect in your assertion that WaveSent's reciprocal compensation claim is indisputable. As stated above, WaveSent is not entitled to be compensated for traffic that is bound for an ISP or other enhanced services traffic. Therefore, until WaveSent provides a reciprocal compensation invoice consistent with the Agreement, Qwest will continue to dispute the invoices. In regard to WaveSent's proposed compromise, Qwest rejects the proposal as inconsistent with both the Agreement and applicable law. You again claim to be unilaterally amending the Agreement pursuant to 47 U.S.C. §252(i), but that is permitted neither by the Agreement or the Act and applicable Rules. You do not identify any agreement that WaveSent is attempting to opt into, nor have you even identified a change

to the Existing Rules that would require the parties to attempt negotiation of a contractual amendment. You do not even attempt to state specifically why any of the Agreement's provisions you purport to change or eliminate are inconsistent with the current state of the law. Generally referencing wireline interconnection agreements that contain language different from the Agreement does not give WaveSent rights under Section 252(i) to unilaterally amend the Agreement, particularly where those wireline agreements do not provide WaveSent the services it requires, nor do they provide compensation for any of the traffic which you claim. Since there is a currently existing agreement between Qwest and WaveSent, WaveSent must abide by the terms and conditions of the Agreement, including the terms and conditions for any amendment that WaveSent may desire.

I also want to take this opportunity to make Qwest's position clear with respect to your proposed amendments. First, it is Qwest's position that no change in law has occurred under Section 1.2 of the Agreement. You identify no change to the Existing Rules, nor do you cite any Final Order (as defined in Section 3.11 of the Agreement) to support WaveSent's proposition that the Agreement as currently worded is inconsistent with the law. Therefore, it is Qwest's position that no changes are warranted in the Agreement. In your March 5 letter, you state that WaveSent will avail itself of the Dispute Resolution process of Section 13.14 of the Agreement, which is certainly WaveSent's right. However, that does not change Qwest's position either with respect to the nature of the traffic being terminated to WaveSent or with respect to your "proposal" to amend the Agreement. In response to your question in your March 10 letter about Qwest's proposed resolution, Qwest proposes that WaveSent issue a revised invoice, delineating enhanced services traffic minutes (for example, the "continuous paging" traffic you have referred to previously), MOUs of traffic terminating to an ISP and actual minutes of termination for Paging Connection Service. Qwest will review the revised invoice, pay any undisputed amounts for Paging Connection Service reciprocal compensation, and work with WaveSent to reconfigure the facilities to WaveSent to be consistent with the Agreement and applicable tariffs and law. It is Qwest's position that this would be an acceptable resolution of these issues with WaveSent.

Finally, while you expressed concern with any joining of WaveSent issues and PageData issues, I do want to relate to you that Qwest has determined that some telephone numbers which are registered to PageData are actually terminating to ISPs, similar to WaveSent's conduct. Since PageData opted in the same agreement that WaveSent opted into, the limitations on compensable traffic are identical. Therefore, it is Qwest's position that any facilities that PageData may attempt to provision for termination of enhanced services traffic and traffic bound for an ISP are not appropriately provisioned under the applicable agreement with PageData. However, I also want to make clear that Qwest has not considered PageData's traffic or its conduct in determining its position with respect to WaveSent. I am available to discuss these issues with you and I look forward to your response to Qwest's proposal. Please feel free to contact me with any questions you may have. Thank you.

Very truly yours,

Bryan Sanderson

EXHIBIT H



SENT VIA EMAIL

March 16, 2004

Bryan Sanderson
Qwest
Seattle, WA

RE: ICA Scheduled Timeline

Dear Bryan:

As you are aware, Qwest has reneged on the FOCs (Firm Order Commitments) given to PageData and has put on hold turning on PageData's SPOP facilities. This is totally unacceptable. Qwest's restrictions of the type of traffic that PageData terminates is in violation of Section 251(c)(2). The same enhanced services and Internet traffic are acceptable and compensable traffic under the Verizon Wireless ICA, which PageData also adopted.

Qwest's actions serve to harass, hinder, and delay PageData's growth. PageData is not in violation of its ICA for terminating such traffic. The U.S. Court of Appeals, Fourth Circuit Court has already determined in its decision dated December 18, 2003¹ that terms and conditions in a interconnection agreement in violation of the 1996 Tel Act are unenforceable. Qwest's restriction of the types of traffic that PageData terminates falls under that decision and is therefore unenforceable.

Today PageData has provided you a proposed interconnection agreement that is in compliance with the 1996 Tel Act. This serves as notice that PageData requests this interconnection agreement for each of Qwest's 14 state territory, beginning with Idaho, then Minnesota, Arizona, Iowa, and so on. We have marked additions to the Arch ICA in red and highlighted in yellow from where the terms and conditions were obtained under pick and choose. We have marked the terms and conditions to be deleted from the Arch ICA with a red strikethrough.

PageData is not interested in a long, drawn out negotiation process. If PageData does not receive timely responses from Qwest concerning this interconnection agreement, it is PageData's intention to petition the state of Idaho to arbitrate the interconnection agreement. It is PageData's belief that the 135-160 day period in Section 252(b) pertains to companies that have negotiated according to Section 251(c)(1) -

¹ *In the Matter of MCImetro Access Transmission Services, Inc. v BellSouth Telecommunications, Inc. and North Carolina Utilities Commission.*, U.S. Court of Appeals, Fourth Circuit, Decided December 18, 2003, Case No. 03-1238

PO Box 15509
Boise, Idaho 83715

Telephone (208) 375-9844
Facsimile (208) 373-7159

6610 Overland Road
Boise, Idaho 83709

The duty to negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

Qwest has not negotiated with PageData according to Section 251(c)(1). As such, PageData is not required to wait until the 135-160 day period in order to request arbitration from the Idaho PUC.

In the recent FCC Notice of Apparent Liability (“NAL”)², the Commission found that Qwest entered into discriminatory arrangements (the contents of which were unknown to other competitors) with preferred carriers. What is particularly disturbing is paragraphs 3 and 8 of the FCC’s NAL that indicates that Qwest management is willing to break company policy and willing to change minutes of meetings in order to cover up information that would assist non-preferred carriers in getting the same terms and conditions as the preferred carriers. According to the FCC NAL, the information that Qwest has been giving PageData over the years under Section 252(i) has been incomplete and in error. Any state approved interconnection agreement is available to any carrier for pick and choose under Section 252(i).

Qwest must respond by the end of business day, Friday, March 19, 2004 with

- 1) An affidavit from an executive vice-president at Qwest that
 - a) Qwest has filed at the Idaho PUC all interconnection agreements that it has entered into with other competitive carriers in the state of Idaho.
 - b) At all relevant times, Qwest had negotiated with PageData in good faith according to Section 251(c)(1).
- 2) Notification that Qwest will submit proposed revisions to the interconnection agreement by Friday, March 26, 2004.

PageData’s proposal is not to be looked at or to be thought of as an ultimatum. A voluntarily negotiated agreement is best. PageData is simply establishing a timeline for responses. If Qwest has some other proposal with an established timeline that is acceptable to PageData, we will entertain it.

As you will see, the interconnection agreement submitted to Qwest is a complete document. According to Section 252(b)(3), Qwest will have 25 days to respond after PageData submits the request for compulsory arbitration to the Idaho PUC. PageData will ask the Commission/ Arbitrator to accept the interconnection as is without further changes from Qwest. If Qwest does not put in a response and the Commission accepts it, then the document that you see before you

² *In the Matter of Qwest Corporation Apparent Liability for Forfeiture*, FCC Notice of Apparent Liability for Forfeiture, File No. EB-03-ID-0263, Released March 12, 2004.

will be the interconnection agreement. But even if the Commission turns down the petition for compulsory arbitration at that time, the 135-day clock will still be clicking.

There are other more favorable conditions in unfiled interconnection agreements that Qwest is currently withholding from PageData by not filing the agreements, but there is nothing Qwest can do to keep PageData from adopting favorable terms and conditions from the Verizon, XO Idaho, and Bridgeband agreements under Section 252(i) in the interconnection agreement that we are submitting to Qwest for comment.

Sincerely,

/s/ Joseph B. McNeal

Joseph B. McNeal

cc: Adam Sherr, Qwest
Barbara Newman, Qwest
Bill Batt, Marshall Batt & Fisher
Cindy Minor, Qwest
Lori Lydon, Qwest
Sheila Pedersen, Qwest
Vickie Boone, Qwest

EXHIBIT I



6610 Overland Rd
Boise, ID 83709
(208) 373-7158
(208) 373-7159 Fax

SENT VIA EMAIL

March 18, 2004

ATTN: Barbara Newman and Bryan Sanderson
Qwest

Dear Barbara and Bryan:

The payment of reciprocal compensation for the termination of ISP traffic is such a powder keg subject at Qwest that I believe this issue blinded the judgment of the people that are involved in settling this dispute. This issue has been the cause of many arbitrated disputes between Qwest and Level 3. We believe that the Utah Public Service Commission's decision in docket # 02-2266-02 issued February 20, 2004, should shed some light on this dispute. WaveSent is not claiming or billing reciprocal compensation as proposed by Level 3 in that arbitration. Wireless carriers such as Verizon and WaveSent are allowed to terminate Internet traffic on a bill and keep basis. WaveSent believes that applicable law prevents restrictions on the termination of Internet traffic under the Arch agreement on a bill and keep basis.

Any telecommunications carrier can terminate Internet and enhanced traffic, whether or not the carrier receives reciprocal compensation is a separate issue. Qwest's dispute with WaveSent's reciprocal compensation is imaginary and a disguise to withhold reciprocal compensation. Qwest's prior acceptance of the flat rate billing makes its dispute moot and is an attempt to obfuscate Qwest's primary objective, which is to prevent certain so-called classes of carriers from terminating Internet and enhanced traffic, which is contrary to the 1996 Tel. Act. Qwest has not shown where WaveSent's calculations on its invoices are in error.

For the sake of clarification, I will try to address the issues.

Continuous Paging

WaveSent rejects Qwest's assessment of continuous paging as being enhanced or Internet traffic. Continuous paging does not fall under the definition of enhanced services per section 3.8 of the agreement and it is not Internet related traffic. The FCC already addressed origination, transport, and termination of paging traffic in the TSR Order¹.

¹ *In the Matter of TSR Wireless LLC, et al, v US West Communications, Inc., et al*, Memorandum Opinion and Order, Released June 21, 2000, at ¶ 22.

Qwest misunderstands how continuous paging works. Continuous paging is a local call. Qwest has not supplied any evidence to the contrary. WaveSent does not provide the content that the customer sends from a modem connection to the CMRS terminal switch, which is then transmitted to the pager. This alone takes it out of the realm of enhanced and Internet services because WaveSent does not control the data.

Restrictions of Termination of Certain Types of Telecommunications Traffic

WaveSent was not trying to unilaterally change the interconnection agreement. This is inconsistent with the interconnection agreement and the present state of law. WaveSent was simply pointing out that under Section 252 a new interconnection agreement could be obtained and under Section 251(c)(2) Qwest cannot restrict the type of traffic that a competing carrier terminates and any provisions of the interconnection agreement with this type of language is unenforceable. (See the U.S. Court of Appeals, Fourth Circuit decision.²) For example, section 2.4 of the interconnection agreement says that Qwest is not obligated to transport Internet traffic. This is contrary to the Telecommunications Act and is therefore unenforceable. The Internet and enhanced services issue is nothing new and is not a subject that Qwest was not aware of. Please see attached letter dated June 4, 2004, from Bob McKenna to Joseph McNeal and Chris Olsen of the FCC Enforcement Bureau. Also, there is nothing in the interconnection agreement that says WaveSent cannot terminate Internet traffic. There are no provisions for WaveSent to bill and collect reciprocal compensation for the termination of Internet or enhanced traffic. Therefore this was not done.

If Qwest is refuting these points, then Qwest must specifically point out:

- 1) Why section 251(c)(2) does not take precedent
- 2) Why the Fourth Circuit decision does not apply
- 3) How the billing calculations say that WaveSent has invoiced for enhanced services and Internet traffic

Reciprocal Compensation

Last year WaveSent contacted Qwest, per paragraph 6.2 of the interconnection agreement, and submitted a sample invoice. Upon Qwest's review, Qwest will see that the sample invoice was submitted as a flat rate of 6,000 MOU per trunk. There was much discussion about the difference between the flat rate and actual billing. Qwest is paying flat rate reciprocal compensation to other carriers with similar interconnection agreements. As a matter of fact, WaveSent received assistance from other carriers prior to submitting the initial sample invoice because those carriers billed the flat rate of 6,000 MOU per trunk and were paid on that rate. Qwest ok'd the format of the sample invoice, the flat rate billing of 6,000 MOU per trunk according to Appendix A, paragraph 2(A),

² *In the Matter of MCI Metro Access Transmission Services, Inc. v BellSouth Telecommunications, Inc. and North Carolina Utilities Commission*, U.S. Court of Appeals, Fourth Circuit, Decided December 18, 2003, Case No. 03-1238.



and invoice submittals by email. Once WaveSent invoiced Qwest the flat rate billing of 6,000 MOU per trunk, Qwest is now trying to renege on this provision and is fabricating a dispute by claiming that all traffic is Internet related. Qwest is discriminating against WaveSent and intentionally provoking a dispute by not allowing the flat rate billing of 6,000 MOU per trunk as it does other carriers.

Continuous paging, we believe, could revolutionize and spark new life into the paging industry. WaveSent chose the flat rate billing method to avoid this very issue. WaveSent did not want to get into a dispute with Qwest about the massive amount of MOU that continuous paging would use that is subject to reciprocal compensation. On this point, we believe that Qwest has more to lose than WaveSent does. After consultation, we were advised that the best place to handle this dispute, if we cannot negotiate this out and come to some kind of settlement, is through a declaratory ruling from the FCC and not arbitration on a state by state basis.

You stated in your March 12, 2004, letter on page 3 that

Qwest proposes that WaveSent issue a revised invoice, delineating enhanced services traffic minutes (for example, the "continuous paging" traffic you have referred to previously), MOUs of traffic terminating to an ISP and actual minutes of termination for Paging Connection Service.

WaveSent rejects Qwest's proposal as without merit and used to cause confusion by addressing imaginary issues that can be easily determined by calculating the billing formula—which Qwest has refused to do. Qwest's proposal is inconsistent with the flat rate billing of 6,000 MOU that Qwest has already agreed to. Flat rate billing of 6,000 MOU per trunk means that whether WaveSent terminates one minute of use or one million minutes of use, under paragraph 2(A) of Appendix A, the contract authorizes a flat rate billing of 6,000 MOU per trunk. Qwest's proposal for delineating the billing is contrary to the flat rate billing option of 6,000 MOU per trunk. The calculations are within Qwest's own grasp to show that enhanced billing and Internet traffic is not included in WaveSent's billing. The invoice calculations show that Qwest's assertion that WaveSent invoiced Qwest for termination of Internet traffic or enhanced services is in error and misplaced. This is a disguise by Qwest to withhold reciprocal compensation.

Appendix A, paragraphs 2(A) and (C) of the current agreement says:

Flat Rate per Trunk: Pursuant to Section 6, USWC will compensate Paging Provider on a monthly basis at a flat rate per trunk for delivery of USWC originated traffic as follows:

- Type 1: 6,000 MOU per trunk times Compensable Traffic percentage times \$0.003398 times trunk quantity



- Type 2: 6,000 MOU per trunk times Compensable Traffic percentage times \$0.003398 times trunk quantity

The Compensable Traffic percentage shall be calculated as follows:
Compensable Traffic percentage equals one minus Third Party Traffic percentage.

Therefore the Compensable Traffic percentage is 76% ($1 - 24\% = 76\%$) and billing under Appendix A, 2(A) would be:

$$76\% \times 6000 \text{ MOU} \times \text{Number of Trunks} \times \$0.003398 = \text{Reciprocal Compensation}$$

This is exactly the formula used by WaveSent on its invoices.

Qwest is very familiar with flat rating billing because Qwest invoices its residential and business customers for phone lines at a flat rate per line. This means that it does not matter whether the individual or business uses the line 0 minutes or 24 hours per day, 7 days a week – the rate stays the same. This is the fundamental definition of a flat rate—it stays the same no matter what the actual usage is. WaveSent has invoiced Qwest the flat rate of 6,000 MOU per trunk per the interconnection agreement and the approved sample invoice and therefore, Qwest cannot legally dispute it or require a change from it. Qwest has not shown where WaveSent's calculations are in error. Qwest must admit that it allows other carriers flat rate billing and this method is not unusual.

Interconnection Agreement

It is only Qwest's policy that differentiates between statutory benefits granted to wireless or wireline telecommunications carriers under the 1996 Tel Act. The 1996 Tel Act does not differentiate between types of telecommunications carriers and their statutory benefits. WaveSent has the right to pick and choose terms and conditions out of any state approved interconnection agreement, whether Qwest labels the interconnection agreement as wireline or wireless. Qwest only addresses this issue with hyperbole and no substantive law to back up its statements.

Also, how can Qwest claim that it has negotiated contracts in good faith when Qwest has withheld filing numerous interconnection agreements with more favorable terms and conditions? In light of the FCC's Notice for Apparent Liability for Forfeiture³ on March 12, 2004, concerning Qwest's unfiled interconnection agreements, Qwest must make these terms and conditions available for pick and choose under 252(i).

Since Qwest has not filed all applicable interconnection agreements, WaveSent is not sure of what terms and conditions, written or verbal, that Qwest made available to other

³ Federal Communications Commission *Notice of Apparent Liability for Forfeiture In the Matter of Qwest Corporation Apparent Liability for Forfeiture*, File No. EB-03-IH-0263, Released March 12, 2004.



carriers. WaveSent believes it will be years before the unfiled agreements issue will be resolved. WaveSent believes that the issues concerning reciprocal compensation, which Qwest is bringing to the forefront, have already been resolved in other proceedings. While we are negotiating the reciprocal compensation dispute, WaveSent has determined that it is better to negotiate a new interconnection agreement under Section 252 and have attached a proposed agreement. This should start the clock ticking under Section 252. We are awaiting your answers regarding the reciprocal compensation flat rate billing and input on the proposed agreement.

Sincerely,

/s/ Joseph McNeal
WaveSent LLC
Joseph McNeal, Its Manager

cc: Bill Batt, Marshall Batt & Fisher
Cindy Minor, Qwest
Lori Lydon, Qwest
Sheila Pederson, Qwest
Vickie Boone, Qwest



EXHIBIT J



6610 Overland Rd
Boise, ID 83709
(208) 373-7158
(208) 373-7159 Fax

SENT VIA EMAIL

March 25, 2004

Bryan Sanderson
Qwest
Seattle, WA

Dear Bryan:

In your letter dated March 24, 2004, you said:

Qwest has no obligation to deliver enhanced services traffic to WaveSent. If any portion of the traffic sent on the trunks to Qwest is enhanced services traffic, any billing for those trunks is inaccurate and that is the source of Qwest's dispute over WaveSent's billing.

WaveSent strongly disagrees with Qwest's stance that if 60 minutes of enhanced traffic is passed over the trunks that Qwest is not obligated to pay any reciprocal compensation. This is disputable and arbitrable, however this situation does not exist. WaveSent believes that Qwest's negotiation tactic is getting into endless debates about frivolous issues, with the object of never coming to a conclusion until the other party does exactly what Qwest wants them to do, regardless of what the Telecommunications Act says.

WaveSent has not used the SPOP network or anything associated with WaveSent's network for sending continuous paging. WaveSent has no customers using continuous paging. Nor has WaveSent experimented with continuous paging on the network.

Bob McKenna's letter dated June 4, 2003, was a milestone, and WaveSent followed it to the letter so that Qwest could not find an excuse to begin an endless debate. This disagreement started over an integrity issue. Qwest claimed that WaveSent had broken the agreement made and would not acknowledge this part of the agreement, "Should PageData or WaveSent use interconnection facilities or services for Internet traffic, such traffic would not be subject to reciprocal compensation payments." Qwest was aware that PageData was terminating Internet traffic at that time and the subject was previously part of the hearings at the Idaho PUC. Any reasonable person would interpret this as "you can terminate Internet traffic, but we are not going to pay reciprocal compensation for it."

WaveSent billed the flat rate formula that was approved by Qwest. Qwest has not shown any evidence of WaveSent deviating from or breaking this agreement. However, now Qwest is saying they are not obligated to exchange Internet traffic, they are not paying the flat rate reciprocal compensation, and they are going to shut off facilities necessary for interconnection. I believe the fact that WaveSent has not terminated any continuous

paging traffic should put an end to the dispute. Payment of reciprocal compensation means that WaveSent is in Qwest's system properly and normal relationships have been established.

Sincerely,

/s/ Joseph McNeal
WaveSent LLC
Joseph McNeal, Its Manager

cc: Barbara Newman
Vickie Boone



EXHIBIT K

From: Bill Batt
Sent: Thursday, April 08, 2004 1:21 PM
To: Kerri Hurst
Subject: FW: tick tock

wjb@battfisher.com
William J. Batt
Batt & Fisher LLP
101 S. Capitol Blvd. 5th Floor
Boise ID 83701
208-331-1000
208-331-2400 (fax)
208-724-4258 (cell)

www.battfisher.com

-----Original Message-----

From: Joseph McNeal [mailto:joseph@pagedata.com]
Sent: Tuesday, March 30, 2004 10:36 AM
To: Don Howell
Cc: Bill Batt
Subject: tick tock

Don,

The tenant of rule of law is the lawbreaker cannot be advantaged by non-compliance. The simple fact is Qwest is not in compliance with 47 U.S.C. Sections 251 and 252, and Qwest and their conspirators have been substantially advantaged. The Commission has the authority to level the playing field.

I believe Qwest has been disrespectful to you and the Idaho PUC by continuing to say they are in full compliance with Sections 251 and 252. This is white collar crime. Qwest's own vice presidents would not self-certify that all interconnection agreements have been filed in Idaho when requested by PageData. This in itself should speak volumes. I believe that extraordinary circumstances exist and the Idaho PUC should join their counterparts in the other states and issue Qwest a hefty fine to reflect the manipulation of the process in sum of no less than \$10,000,000.

I know from past experience that Qwest's goal is to get the Idaho PUC and the companies that I represent (PageData and WaveSent) into endless debates about frivolous issues, with the

object of never coming to a conclusion regardless of what the Telecommunications Act says. For example, the termination of Internet and enhanced traffic is already available in the existing interconnection agreement.

Qwest has 18 days to put in their response and language for the interconnection agreement for PageData's Petition for Arbitration and 20 days to answer WaveSent's Petition for Arbitration. There is nothing Qwest can do, but delay, hinder, and intimidate because the majority of the items requested by PageData and WaveSent were 252(i) items that were by-products of the unfiled interconnection agreements. The terms and conditions requested by PageData and WaveSent are covered under three rules: 1) Section 252(b); 2) Section 252(i); and 3) Commission Order No. 29140.

Joseph

EXHIBIT L

Bryan Sanderson
Interconnection Negotiator
(206) 345-2275
Fax: (206) 345-0225
E-mail: besande@qwest.com

Joseph McNeal
WaveSent
6610 Overland Rd
Boise, ID 83709

April 2, 2004

Dear Joseph:

I am writing to you in response to your letter of March 25, 2004 and your email of March 25, 2004. Qwest and WaveSent obviously disagree with respect to Qwest's obligations under the Telecommunications Act of 1996 (the "Act") and the current Paging Connection Service Agreement (the "Agreement") between Qwest and WaveSent. While you have stated that the trunking facilities between Qwest and WaveSent are not currently being used for the enhanced services traffic that you refer to as "continuous paging," WaveSent has not provided the delineation of traffic Qwest has previously requested in order to resolve Qwest's dispute regarding reciprocal compensation. Nor has WaveSent shown a need for 192 one way land to mobile trunks currently installed for delivery of Qwest originated traffic, especially now that WaveSent admits that it has no customers using "continuous paging". Qwest continues to reserve its rights under the Agreement (paragraph 2.6.2) to monitor usage on these one way trunks and reconfigure these trunk groups as it deems necessary. Certainly, Qwest does not plan to pay reciprocal compensation for "idle" trunks.

In addition, you again neglect to acknowledge the plain language of Section 2.4 (c) of the Agreement governing Enhanced Services including Internet traffic, which states that Qwest, "shall not be obligated to deliver such traffic to Paging Provider under this Agreement." It is Qwest's position that the language of the Agreement is clear on this issue, and that is the foundation of the dispute. A breakdown of ISP terminated traffic and actual paging traffic would enable Qwest

to review the usage and pay reciprocal compensation for appropriate traffic.

Finally, with respect to your email of March 25, Qwest is always ready and willing to negotiate terms and conditions of an interconnection agreement which would supersede the existing agreement between Qwest and WaveSent. Qwest has never said that it is unwilling to enter into an alternate agreement, but Qwest does not agree with your improper attempts to opt into certain portions of both wireless and wireline agreements without also opting into all legitimately related language in the differing agreements. In order to productively move negotiations along, I have undertaken the attempt to redline your proposed agreement and I am enclosing that redline with this communication. I am ready to discuss the revisions with you and look forward to negotiating a new agreement that is consistent with WaveSent's needs and applicable law. I am available next week to begin negotiations. Please feel free to contact me to schedule a time that would allow us to begin negotiations. Thank you.

Sincerely,

Bryan Sanderson

EXHIBIT M



6610 Overland Rd
Boise, ID 83709
(208) 373-7158
(208) 373-7159 Fax

SENT VIA EMAIL

April 6, 2004

Bryan Sanderson
Qwest
Seattle, WA

Dear Bryan:

The Idaho PUC Order No. 29463 split WaveSent's complaint into two administrative proceedings – 252(b) and 252(i). Qwest initially rejected WaveSent's requests for inclusion of more favorable terms and conditions under 252(i) because of Qwest's opposition to WaveSent terminating Internet and continuous paging traffic. WaveSent requested to adopt terms and conditions from the Verizon Wireless¹, Bridgeband² and XO Idaho³ agreements under 252(i) as envisioned by Congress, the FCC and the Idaho PUC Order. If Qwest proposes changes to the language in the pick and choose sections, the language must maintain the essence of the original context.

1. Exchange of ISP bound traffic, Section 2.4 (Verizon Wireless, paragraphs 2.1 – 2.2.4)
2. ASRs, Appendix D – 7.4 Ordering (Bob McKenna's June 4, 2003 letter and Bridgeband and XO Idaho, sections 7.4)
3. Dispute Resolution, Section 13.14, 13.14.1, and 13.14.2 (Bridgeband Sections 5.12.1-5.12.3 and XO Idaho Sections 5.12.1-5.12.3)
4. Scope (Verizon Wireless, Section IV.A. Reciprocal Traffic Exchange – Scope)
5. Transit Factor (Bridgeband Section 7.2.2.3.3; XO Idaho Section 7.2.2.3.3; Mountain Communications v. FCC case)
6. Facilities Design and Changes to Network – (Arch Colorado ICA, 2.6.2)

It appears that communications on WaveSent's reciprocal compensation have reached an impasse and will need to be addressed during the arbitration proceedings. Discussions on termination of Internet traffic have blinded the eye of your writer. Section 2.4 (c) of the interconnection agreement language is plain and Qwest is intentionally mixing the

¹ Type 2 Wireless Interconnection Agreement between Qwest Corporation and Cellco Partnership d/b/a Verizon Wireless for the State of Idaho pursuant to 47 U.S.C. 252(e)

² IPUC Case QWE-T-01-26, Interconnection Agreement between Qwest Corporation and Bridgeband Communications, approved January 29, 2002

³ IPUC Case QWE-T-02-02, Statement of Generally Available Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services Provided by Qwest Corporation in the State of Idaho, Second Revision, and XO Idaho, December 10, 2001.

responsibilities of the permissions to continue its policy of creating litigious situations with WaveSent's management to justify its illegal stance. Because Qwest believes it is not obligated to deliver Internet traffic does not mean that WaveSent cannot terminate Internet traffic. The language that Qwest "shall not be obligated to deliver such traffic" is a passive permission and does not place any obligations or restrictions on WaveSent. WaveSent cannot be penalized for Qwest's illegal stance in contradiction of 251(c)(2). Contrary to Qwest's belief, it is obligated to deliver Internet and enhanced services traffic to WaveSent, because Qwest delivers these types of traffic to itself and other carriers such as Verizon over the same types of facilities and Qwest pays Verizon reciprocal compensation for such termination (252(c)(2)(c) and (d) and the Local Competition Order).

The flat rate billing of 6000 MOU per trunk does not require any delineation of the minutes. This is a new requirement that Qwest is attempting to introduce that is not in the interconnection agreement and contradicts flat rate billing. WaveSent's termination of Internet traffic does not have anything to do with Qwest mischievously reclassifying the flat rate 6000 MOU per trunk of paging traffic to Internet traffic to intentionally invoke a dispute and delay payment of reciprocal compensation. In all of Qwest responses, Qwest conveniently leaves out Bob McKenna's letter, FCC regulations, and that Verizon Wireless terminates like traffic, and just quotes Qwest policies towards companies Qwest considers paging only. WaveSent billed Qwest the flat rate 6000 MOU per trunk as outlined in the interconnection agreement and did not charge Qwest for terminating any Internet or enhanced services per Bob McKenna's letter. Qwest's inappropriate behavior will eventually come to light.

We await your response on the language for the terms and conditions under 252(i) per the PUC Order No. 29463. We will assist with the construction of the language, but the essence of the original language and statutory benefits of 252(i) must remain.

Sincerely,

/s/ Joseph McNeal
WaveSent LLC
Joseph McNeal, Its Manager

cc: Bill Batt, Batt & Fisher



EXHIBIT N



6610 Overland Rd
Boise, ID 83709
(208) 373-7158
(208) 373-7159 Fax

SENT VIA EMAIL

April 7, 2004

Bryan Sanderson
Qwest
Seattle, WA

Dear Bryan:

Per the Idaho PUC Order No. 29463. WaveSent is submitting interconnection agreement additions under 252(i) to the current agreement. We have attached how WaveSent sees having the current agreement formatted in order to incorporate the terms and conditions under 252(i) – Pick and Choose. WaveSent’s changes are marked in red or red strikethrough text.

Please pay particular attention to the ISP Amendment, Attachment A, which says that termination of ISP-bound traffic was an instant amendment. Also, note the amendment became effective June 14, 2001, but it was not submitted to the Idaho PUC until January 7, 2002. So, not only was it instant, but Qwest and Verizon agreed that they would work under that agreement until it was approved by the Commission. In fairness, this agreement goes back approximately seven months taking into account the approval time of the PUC. WaveSent’s adoption of this **instant and retroactive amendment** should clear up all back issues of terminating Internet and enhanced traffic, when the same terms and conditions are applied to WaveSent.

We await your response on the language for the terms and conditions under 252(i) per the PUC Order No. 29463. If Qwest has any changes, please use blue text, so it is easy to differentiate any changes. We will assist with the construction of the language, but the essence of the original language and statutory benefits of 252(i) must remain without adding any additional restrictions.

Sincerely,

/s/ Joseph McNeal
WaveSent LLC
Joseph McNeal, Its Manager

cc: Bill Batt, Batt & Fisher

EXHIBIT O

Bryan Sanderson
Interconnection Negotiator
(206) 345-2275
Fax: (206) 345-0225
E-mail: besande@qwest.com

Joseph McNeal
WaveSent
6610 Overland Rd
Boise, ID 83709

April 9, 2004

Dear Joseph:

I am writing to you in response to your email of April 7, 2004. First, there is nothing in the Idaho PUC (IPUC) Order No. 29643 that requires WaveSent to submit interconnection additions under 252(i) to the current agreement to Qwest. The Order does three things: 1) it consolidates Case Nos. GNR-T-04-5 and GNR-T-04-6 into a single proceeding, 2) asks WaveSent for a citation to any case, which supports its petition for arbitration to be filed before the 135th day and 3) requires Qwest's to respond to the IPUC within 14 days, responding separately to WaveSent's arbitration issues and the terms WaveSent desires to adopt under Section 252(i) of the Act. Qwest has not yet responded to item 3 to the IPUC, but will do so by April 16.

Qwest is rejecting your 252(i) adoptions as stated in this email, under the "pick and choose" rules allowed under the Act. WaveSent is taking an approved amendment and changing the language of that agreement. This is called "pick and change" and is not appropriate under 252(i). Under rule §51.809, an ILEC must make available under any individual interconnection service, or network element arrangement contained in any agreement approved by the commission upon the same rates, terms and conditions as those approved in the agreement. WaveSent has changed the rates, terms and conditions of the amendment. The plain language of the rule does not allow WaveSent to change or modify the language of the amendment. WaveSent must adopt the amendment (including any related language) in its entirety

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without changes. If WaveSent wants to make changes to the amendment after it has been approved by the commission, Qwest will certainly entertain those negotiations.

Finally, Qwest is concerned and confused about the "shotgun" approach WaveSent is using in its approach to negotiations. On the one hand, PageData and WaveSent have opened windows for negotiations under 251/252. This was done on March 16 and March 18, 2004, respectfully. Qwest has acknowledged these requests and has even sent back a "redline" of WaveSent's proposed contract. Yet, there has been no attempt by either WaveSent or PageData to contact Qwest and begin new negotiations. On the other hand, Qwest has received numerous adoption requests for amendments from WaveSent/ PageData under the guise of 252(i). This is confusing. Are we negotiating new agreements or are we amending existing agreements? It seems to me that staying focused with one approach would be far more productive. Qwest favors negotiating new agreements which will clarify and quantify the disputed issues between Qwest and WaveSent and PageData. As I stated in my last correspondence, I am available at your earliest convenience to begin negotiations.

Sincerely,

Bryan Sanderson

EXHIBIT P



6610 Overland Rd
Boise, ID 83709
(208) 373-7158
(208) 373-7159 Fax

SENT VIA EMAIL

April 9, 2004

Bryan Sanderson
Qwest
Seattle, WA

Dear Bryan:

It appears from Qwest's red-lined agreement under 252(b) that Qwest has already agreed to the new dispute resolution clause and the ASR Ordering Process. Both of these provisions are immediately available for adoption from other agreements under 252(i). This gets us back to what the dispute has always been about—carriers that Qwest considers paging only cannot terminate Internet or enhanced traffic. WaveSent will not be deterred or sidetracked from adopting the terms and conditions of the Verizon ISP-Bound Traffic amendment under 252(i). No matter how much bloviating Qwest does, WaveSent is in compliance with the present interconnection agreement and has not broken any terms and conditions. This is an exercise to delay and hinder WaveSent from exercising its statutory rights under the 1996 Tel Act to terminate any Qwest-originated telecommunications traffic that hits WaveSent's switches.

WaveSent has not provided Qwest an adoption of terms and conditions under 252(i) that Qwest could reject. This is a stalling tactic by Qwest to postpone and hinder WaveSent from immediately adopting the ISP-Bound Traffic amendment. WaveSent has not changed the language in the ISP amendment as Qwest alleged in your April 9th letter. Paragraph 2.2.1 of the ISP-Bound Traffic amendment says:

Either party may rebut this presumption by demonstrating to the state Commission that traffic above or below the 3:1 ratio is in fact Local Traffic delivered to non-ISP customers.

WaveSent is simply rebutting this presumption now and establishing that 6000 MOU per trunk is deemed local paging traffic per the current interconnection agreement and many other Qwest interconnection agreements approved by the Idaho PUC and should be included with this amendment to avoid WaveSent and Qwest going back to the PUC about this issue. This rebuttal does not constitute a change in adoption of the amendment.

Qwest has already established the fact that it will not voluntarily allow WaveSent to adopt the ISP-Bound Traffic amendment, which Qwest is legally obligated to do so. Because Qwest is insisting that arbitration is needed in order for WaveSent to exercise its statutory rights under 252(i) to adopt the ISP-Bound Traffic amendment, the Idaho PUC might as well establish the flat rate paging minutes of use and the continuous paging issues at the same time. When the Idaho PUC establishes that continuous paging is a local

paging call, I am quite sure that Qwest is going to want to do flat rate billing. WaveSent has voluntarily done this to prevent future conflict. Qwest trying to establish continuous paging as enhanced services is like Qwest redefining voice paging as enhanced traffic. The FCC Decision¹ and the Comments of Qwest Communication International² in the pulver.com case makes WaveSent's point. Once continuous paging is demonstrated at the PUC, it will be easy for the PUC to conclude that continuous paging is a local call subject to reciprocal compensation.

In my previous letter to you I pointed out the Verizon amendment was instant and was in effect over seven months before the Idaho PUC approved it. WaveSent expects Qwest to provide WaveSent with the same terms and conditions.

If Qwest is serious about negotiating, then Qwest should blue-line the 252(i) interconnection agreement WaveSent provided Qwest for its comment. WaveSent will be asking the Idaho PUC to accept this agreement in its entirety. If you are available for negotiations you should give a specific time, date, and phone number of your availability. I am available either Tuesday, April 13, 2004 at 10:00 am or Wednesday, April 14 at 10:00 am (m.s.t.) and can meet at Bill Batt's office for a conference call. Please let me know as soon as possible if this time works for you. So time is not wasted, please have the 252(i) agreement that we sent to you on April 7, 2004, blue-lined and emailed to us ahead of time and be prepared to discuss incorporating the ISP-Bound Traffic amendment into the present agreement. Preparation ahead of time would give the Idaho PUC fewer issues to arbitrate, if that is Qwest's desire.

Sincerely,

/s/ Joseph McNeal
WaveSent LLC
Joseph McNeal, Its Manager

cc: Bill Batt, Batt & Fisher

¹ *In the Matter of Petition for Declaratory Ruling that pulver.com's Free World Dialup is neither Telecommunications nor a Telecommunications Service*, WC Docket No. 03-45, Federal Communications Commission Memorandum Opinion and Order, Released February 19, 2004

² *In the Matter of Petition for Declaratory Ruling that pulver.com's Free World Dialup is neither Telecommunications nor a Telecommunications Service*, WC Docket No. 03-45, Comments of Qwest Communications International Inc., Dated February 14, 2003



EXHIBIT Q

From: Sanderson, Bryan [Bryan.Sanderson@qwest.com]
Sent: Thursday, April 15, 2004 12:24 PM
To: Joseph McNeal
Cc: Bill Batt; Love, John; Kerri Hurst
Subject: RE: 252(i) Adoption 2
Joseph:

I have been out of the office for the last three days. I am therefore suggesting some times next week to begin negotiations. They are April 21, 9-11 or 1-3 PDT, April 22, 1-3 PDT, or April 23, 8-10 PDT. Please let me know if one of these times works. We can also use my conference bridge which is: 877-550-8688 PIN 7983819#. Qwest sent its changes to you in an electronic copy on April 6. You also received a hard copy on Friday, April 2. That redline clearly shows Qwest's proposed language and is sufficient to begin these negotiations. Thank you.

Bryan Sanderson

-----Original Message-----

From: Joseph McNeal [mailto:joseph@wavesent.com]
Sent: Friday, April 09, 2004 6:47 PM
To: Bryan Sanderson
Cc: William Bill Batt
Subject: 252(i) Adoption 2

See attached letter.

WaveSent LLC
Joseph McNeal, Its Manager