

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF PAGEDATA'S PETITION</b>	)	
<b>FOR ARBITRATION OF INTERCONNECTION</b>	)	<b>CASE NO. GNR-T-04-5</b>
<b>RATES, TERMS AND CONDITIONS AND</b>	)	
<b>RELATED ARRANGEMENTS WITH QWEST</b>	)	
<b>CORPORATION PURSUANT TO SECTION 252(B)</b>	)	
<b>OF THE FEDERAL TELECOMMUNICATIONS</b>	)	
<b>ACT.</b>	)	
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<b>IN THE MATTER OF WAVESENT LLC'S</b>	)	
<b>PETITION FOR ARBITRATION OF INTER-</b>	)	<b>CASE NO. GNR-T-04-6</b>
<b>CONNECTION RATES, TERMS AND CONDI-</b>	)	
<b>TIONS AND RELATED ARRANGEMENTS WITH</b>	)	
<b>QWEST CORPORATION PURSUANT TO</b>	)	
<b>SECTION 252(B) OF THE FEDERAL</b>	)	
<b>TELECOMMUNICATIONS ACT.</b>	)	<b>ORDER NO. 29463</b>
	)	

On March 23, 2004, Joseph B. McNeal d/b/a PageData filed a Petition for Arbitration requesting that the Commission arbitrate unresolved issues necessary to complete an interconnection agreement between PageData and Qwest Corporation. On March 25, 2004, Mr. McNeal on behalf of WaveSent LLC filed another Petition for Arbitration requesting the Commission to arbitrate an interconnection agreement between WaveSent and Qwest. PageData states that it is "a telecommunications carrier that provides CMRS services in Idaho."<sup>1</sup> PageData Petition at 2. For its part, WaveSent states that it is a Nevada LLC telecommunications carrier that provides CMRS services in Idaho. WaveSent Petition at 2. Both PageData and WaveSent (hereinafter referred to as the "Pagers") maintain their primary business offices at 6610 Overland Road, Boise, Idaho. For the most part, both Pagers raise identical issues and seek identical remedies.

The Commission issues this procedural Order to consolidate these two cases. This Order also addresses initial procedures to process these Petitions.

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<sup>1</sup> CMRS means Commercial Mobile Radio Service. Generally, CMRS carriers provide telecommunications services such as cellular, paging, personal communications services (PCS), and specialized mobile radio services.

## THE FEDERAL INTERCONNECTION SCHEME

Congress enacted the federal Telecommunications Act of 1996 (“the Act”)<sup>2</sup> to promote competition in all telecommunication service markets. Under the Act, each telecommunications carrier is required “to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.” 47 U.S.C. § 251(a). Congress envisioned that telecommunications carriers would enter into contracts or agreements that would contain the rates, terms and conditions for interconnecting their networks. These agreements are commonly referred to as “interconnection agreements.”

In general, the federal Act contemplates that parties will enter into interconnection agreements in one of three ways.

First, the Act requires that parties negotiate in good faith in an attempt to voluntarily negotiate in Interconnection Agreement. Second, if parties are unable to negotiate an agreement, either party may request binding arbitration by a state utilities commission to resolve the [disputed] issues. To encourage voluntary negotiations, a request for arbitration cannot be filed before the 135<sup>th</sup> day or after the 160<sup>th</sup> day from when the incumbent LEC receives a request to negotiate an interconnection agreement.

Third, Section 252(i) of the Act requires that a LEC “make available any interconnection service, or network element provided under an agreement provided under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the Agreement.” This section is commonly referred to as the “pick and choose” provision of the Act. Rather than constantly renegotiating terms and conditions, Section 252(i) allows a requesting carrier in Idaho to adopt expeditiously any term or condition of an interconnection agreement previously approved by this Commission.

Order No. 29140 at 9 (footnote and internal citations omitted). In these Petitions the Pagers are pursuing both the second and third alternatives.

## THE PETITIONS

The Pagers petition this Commission to arbitrate approximately 30 unresolved interconnection issues. They also propose to adopt several “pick and choose” terms from other interconnection agreements previously approved by the Commission. More specifically, the Petitions identify the following issues.

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<sup>2</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified in scattered sections at 47 U.S.C. §§ 291(b), 251, *et seq.*).

1. Arbitration Issues. The unresolved issues identified by the Pagers include: is “continuous paging” an enhanced telecommunications service; shall Qwest certify that it has filed all applicable interconnection agreements in Idaho; is it appropriate to restrict the filing of arbitration petitions until the 135<sup>th</sup> day; which carrier is responsible for the payment of “transit traffic”; flat rate billing of services; the impounding of disputed reciprocal compensation; the payment of lost profits or compensatory damages; referring disputed resolution matters to small claims court; and other issues. *See* Petitions Exhibit B, Matrix of Unresolved Issues.

2. Adoption of Terms Under Section 252(i). In their Petitions, the Pagers indicate that they wish to adopt (pick and choose) terms and conditions from other interconnection agreements previously approved by this Commission. In particular, the Pagers desire to adopt terms and conditions from the BridgeBand and XO Idaho Interconnection Agreements concerning the submittals of “access service requests” (ASRs). Petitions at 7, nn. 4 and 5. Second, the Pagers also desire to adopt conditions regarding dispute resolution procedures (including access to Company vice presidents) contained in the BridgeBand and XO Idaho agreements. Next, the Pagers propose to adopt terms and conditions from the Verizon Wireless Interconnection Agreement for the exchange of Internet service provider (ISP) – bound traffic. *Id.* at 7-8; Exhibit C.<sup>3</sup>

PageData and WaveSent state that they submitted their requests to initiate interconnection negotiations to Qwest on March 16 and 18, 2004, respectively. Both Pagers represent that they are currently operating under the Arch Paging Interconnection Agreement adopted by the Pagers and Qwest pursuant to Section 252(i) of the Act and approved by this Commission.

### DISCUSSION

Because the PageData and WaveSent Petitions are almost identical and raise nearly identical issues, we find that it is appropriate pursuant to Rule 247 to consolidate these Petitions into a single proceeding. IDAPA 31.01.01.247. As set out in the Petitions, Mr. McNeal represents both PageData and WaveSent. Consolidation will allow the parties, as well as the Commission, to utilize their time and resources efficiently. The Commission finds that the

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<sup>3</sup> Exhibit C in both Petitions is the “Draft Interconnection Agreement” proposed by the Pagers. The Draft Agreements denote the “Pick and Choose” terms that the Pagers propose for adoption pursuant to Section 252(i). E.g., see §§ 2.2, 2.4, 2.6.2, 13.14, etc.

issues raised in both Petitions are related and the rights of the parties will not be prejudiced by consolidation.

As set out above, Section 252(b)(1) restricts arbitration petitions from being filed with a state commission until the 135<sup>th</sup> day from the date the Pagers forwarded their requests to initiate negotiations with Qwest. The Pagers generally assert in their Petitions that Qwest has acted in “bad faith” thereby allowing the Commission to “shorten” the 135-day waiting period. Petitions at ¶ 10. In particular, the Pagers allege that Qwest has “threatened to shut off [their] facilities....” Petitions at ¶ 11. PageData also alleges that Qwest has prohibited access to 12 T-1 trunks necessary for PageData’s single point of presence (SPOP). PageData Petition at ¶ 11.

The Pagers argue that Qwest’s conduct allows them to petition this Commission to arbitrate unresolved issues between the parties. Although any party may seek the mediation assistance of a state commission, Section 252(b)(1) limits the filing of an arbitration petition to no sooner than 135 days after the Pagers initiated negotiations with Qwest. In this instance the 135<sup>th</sup> day would be approximately July 30, 2004. Despite this apparent filing restriction, the Pagers have not provided any authority for their argument that the Commission may “shorten” this period. Consequently, we find that it is appropriate for the Pagers to provide the Commission with any authority supporting their argument regarding this issue.

Because the Pagers seek to both arbitrate and to adopt terms from other interconnection agreements, Qwest’s response shall separately address the arbitration issues and the adoption issues.

#### **ORDER**

IT IS HEREBY ORDERED that Case Nos. GNR-T-04-5 and GNR-T-04-6 be consolidated into a single proceeding pursuant to Rule 247, IDAPA 31.01.01.247.

IT IS FURTHER ORDERED that the Pagers provide the Commission with a citation to any case, which purport to allow arbitration petitions to be filed prior to the 135<sup>th</sup> day. The Pagers shall provide these citations, if any, within ten days of the service date of this Order.

IT IS FURTHER ORDERED that Qwest file its consolidated response to these petitions within 14 days of the service date of this Order. Qwest’s response shall separately address the Pagers unresolved arbitration issues and those terms that the Pagers desire to adopt under Section 252(i) of the federal Act.

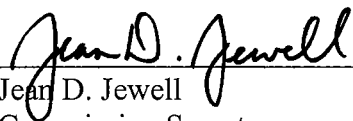
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this *2nd*  
day of April 2004.

  
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PAUL KJELLANDER, PRESIDENT

  
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MARSHA H. SMITH, COMMISSIONER

  
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DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
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Jean D. Jewell  
Commission Secretary

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