

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE APPLICATION OF )  
QWEST CORPORATION AND MCLEODUSA )  
TELECOMMUNICATIONS SERVICES, INC. ) CASE NO. QWE-T-02-17  
FOR APPROVAL OF AMENDMENTS TO AN )  
INTERCONNECTION AGREEMENT FOR THE )  
STATE OF IDAHO PURSUANT TO 47 U.S.C. § )  
252(e). (PRIOR CASE NO. QWE-T-00-7) )

IN THE MATTER OF THE APPLICATION OF )  
QWEST CORPORATION AND ESCHELON )  
TELECOM, INC. FOR APPROVAL OF AN )  
AMENDMENT TO AN INTERCONNECTION )  
AGREEMENT FOR THE STATE OF IDAHO )  
PURSUANT TO 47 U.S.C. § 252(e). (PRIOR ) ORDER NO. 29175  
CASE NO. QWE-T-00-13) )

IN THE MATTER OF THE APPLICATION OF )  
QWEST CORPORATION AND COVAD )  
COMMUNICATIONS COMPANY FOR )  
APPROVAL OF AMENDMENTS TO AN )  
INTERCONNECTION AGREEMENT FOR THE )  
STATE OF IDAHO PURSUANT TO 47 U.S.C. § )  
252(e). (PRIOR CASE NO. USW-T-99-3) )

On December 10, 2002, PageData, a company headquartered in Boise, Idaho that provides paging and other services to its customers, filed a timely Petition for Reconsideration of final Order No. 29154. In Order No. 29154 the Commission approved seven interconnection agreements between Qwest and McLeodUSA Telecommunications Services, Inc., Eschelon Telecom, Inc. and Covad Communications Company. Qwest filed a Motion for Extension of Time to file a response on December 18, 2002. The next day Qwest submitted its response to PageData's Petition.

**BACKGROUND**

**A. Procedural History**

On August 21, 2002, Qwest Corporation filed six negotiated agreements (four containing redactions made by the Company) with the Commission that it had previously made

with McLeodUSA, Eschelon and Covad.<sup>1</sup> Qwest filed these agreements under the case numbers from previously approved interconnection agreements, *see* Case Nos. QWE-T-00-7, QWE-T-00-13 and USW-T-99-3.

Recently, Qwest has been filing similar and identical agreements with other state commissions in its operating territory. Because many of these agreements were not filed with state commissions at the time they were executed, it has been alleged that Qwest did not comply with the filing requirements contained in the Telecommunications Act of 1996. Recently, Qwest also filed a Petition for Declaratory Ruling with the Federal Communications Commission ("FCC") requesting that it rule on the scope and duty to file and obtain prior approval of certain types of negotiated contractual arrangements under 47 U.S.C. § 252.

On September 19, 2002, the Commission issued Notice of Applications, Modified Procedure (i.e., to process this case by written submission rather than by hearing, IDAPA 31.01.01.201-204), Intervention Deadline and Comment Deadlines. Order No. 29116. The Commission also ordered that these six applications, agreements and their associated case numbers be consolidated into one proceeding, Case No. QWE-T-02-17. On September 19, 2002, Qwest filed an additional application requesting that the Commission approve another amendment to the existing interconnection agreement with McLeodUSA. The Commission ordered that this new amendment would be included in Case No. QWE-T-02-17 for its review. Order No. 29128 at 2. The Commission Staff and PageData filed written comments on October 25, 2002. Qwest filed reply comments on November 8, 2002.

#### **B. Order No. 29154**

The Commission reviewed these agreements and was aided by the FCC's decision on Qwest's Petition for a Declaratory Ruling. Order No. 29154 at 7 (November 19, 2002). The FCC found that agreements that created ongoing obligations regarding resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements or collocation were interconnection agreements. *Qwest Petition for Declaratory Ruling*, 2002 WL 31204893, at 5 (F.C.C. 2002). The FCC also found that dispute resolution and escalation provisions relating to obligations set forth in 47 U.S.C. § 251(b) and (c) are appropriately deemed interconnection agreements. *Id.* However, the FCC ruled that agreements which simply provided for "backward looking consideration" need not be filed as

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<sup>1</sup> Qwest entered these agreements with these Companies between April 19, 2000 and March 1, 2002.

interconnection agreements. *Id.* at 6. Based on the authority of this decision the Commission found that the agreements (redacted and non-redacted) in this consolidated proceeding created ongoing obligations between the contracting parties. Order No. 29154 at 7. The Commission also found that the agreements, with the exception of language concerning confidentiality and withdrawal of a party's opposition to Qwest's positions in certain proceedings, were consistent with the public interest, convenience and necessity and did not discriminate. *Id.* at 7-8. Thus, the Commission approved Qwest's Applications and Agreements. *Id.* at 8. *See* 47 U.S.C. § 252(e).

In Order No. 29154 the Commission also discussed several issues, raised in the written comments, that were not directly related to whether the agreements should be approved as interconnection agreements or amendments.<sup>2</sup> *Id.* at 8-9. The Commission stated it was concerned that Qwest may have violated its duty under the Act to file applicable interconnection agreements in this State. *Id.* at 9. However, the Commission also noted that this proceeding was not intended to be an enforcement action, rather it was limited only to whether the agreements should be approved under the Act. *Id.* Furthermore, the Commission found that the parties in this case had not provided sufficient justification to extend this proceeding to address those other concerns. However, the Commission stated that its decision would not foreclose consideration of the serious questions regarding Qwest's compliance with the Act's filing requirements should the need arise in the future. *Id.* Finally, the Commission ordered Qwest to continue to review any and all unfiled agreements to determine whether they should be filed with the Commission under the provisions of the Act and the FCC's recent order. *Id.* at 8.

#### **PAGEDATA'S PETITION FOR RECONSIDERATION**

PageData alleges that the Commission in Order No. 29154 failed to address several important issues raised by Qwest's Applications, thus, violating its fiduciary duty to ensure compliance with 47 U.S.C. § 252(e)(1). Furthermore, by not addressing these issues PageData

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<sup>2</sup> PageData's written comments requested that the Commission issue an Order that: 1) requires all carriers in Idaho to send copies of all interconnection agreements, documents relating to interconnection or letter agreements they have entered into with Qwest that have not as of yet been filed with Commission; 2) requires Qwest to file all applicable, cancelled unfiled agreements in Idaho; 3) requires Qwest to file all past and present oral agreements made with other carriers in Idaho; and 4) creates a broad definition of what constitutes an interconnection agreement.

alleges that the Commission has failed to act as described by 47 U.S.C. § 252(e)(5).<sup>3</sup> PageData contends this failure to act has given Qwest an economic and procedural advantage and is encouraging the continuous practice of price fixing in Idaho.

In support of its Petition, PageData alleges that several state commissions have determined that Qwest has not filed all applicable agreements as required. PageData states that the Commission Staff recognized this in their comments which stated that at least one filed agreement referred to previous agreements that have yet to be filed with the Commission. PageData contends this is reason enough for the Commission to address the issues raised by its Petition. Specifically, on reconsideration PageData requests that the Commission address the following questions:

1. When was Qwest obligated to file all unfilled interconnection agreements applicable to Idaho that have been filed in other states?
2. When was Qwest obligated to provide a single point of presence in the LATA?
3. When was Qwest obligated to interconnect at any technically feasible point in the LATA? [and],
4. What is the formula for settling disputes relating to obligations set for in Sections 251(b) and (c)?

*Petition* at 4. In addition, PageData requests that the Commission order Qwest to file all verbal and written agreements (including currently effective and cancelled unfilled agreements) that are applicable to Idaho and that Qwest has filed in other states.<sup>4</sup>

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<sup>3</sup> The Commission acted properly to ensure that the Agreements ultimately approved by it in this proceeding were filed in this state. Under the provisions of the federal Telecommunications Act of 1996, interconnection agreements must be submitted to the Commission for approval. 47 U.S.C. § 252(e)(1). The Commission may reject an agreement adopted by negotiations only if it finds that the agreement: (1) discriminates against a telecommunications carrier not a party to the agreement; or (2) implementation of the agreement is not consistent with the public interest, convenience and necessity. 47 U.S.C. § 252(e)(2)(A). Pursuant to 47 U.S.C. § 252(e)(4) the Commission has 90 days after the filing of an agreement that is adopted by negotiation by the parties to approve or reject it. Qwest filed these agreements on August 21, 2002. The Agreements were approved on November 19, 2002, within the 90 day period as provided by § 252(e)(4). Accordingly, the Commission has not failed to “act” as PageData alleges.

<sup>4</sup> Related to this request PageData alleges that in “Order No. 29140, the Commission continues to misquote 49 U.S.C. Section 51.809.” PageData contends that contrary to the Commission’s assertion this section actually provides that any interconnection agreement approved by any state commission is available for pick and choose in any other state. The Commission has already addressed this issue in another proceeding yet PageData continues to

## QWEST'S MOTION AND RESPONSE

On December 18, 2002, Qwest Corporation requested a one-day extension of time to respond to PageData's Petition. Qwest requested this extension of time due to a conflict in its counsel's calendar that has made it difficult to file a response by December 18, 2002.

Consistent with its Motion, Qwest filed its response to PageData's Petition on December 19, 2002. Qwest states that PageData requests that the Commission reconsider its Order not because it disagrees with the decision to approve the interconnection agreement amendments, but because it wants the Commission to take up collateral issues raised in its comments. Qwest contends that should the Commission choose to address these issues it will delay the ultimate approval of the interconnection agreements in this case.

Qwest argues that the Commission was correct in limiting the scope of the present docket to approval of the subject agreements. Furthermore, Qwest contends that it has filed all Idaho agreements with CLECs that contain provisions pertaining to services provided under 47 U.S.C. § 251(b) or (c) and that reflect current or ongoing Qwest obligations. Qwest also states that it is filing all agreements that fall within the standard articulated by the FCC in its *Memorandum Opinion and Order* issued in response to the Company's declaratory judgment action. Accordingly, Qwest contends that PageData has offered no specific evidence that it has not complied with the applicable standards in Idaho.

In summary, Qwest contends that the Commission appropriately concluded that the scope of this docket is limited to the approval of the agreement amendments filed by Qwest. Qwest further alleges PageData offers no reason for reconsideration of that decision. Finally, Qwest argues that PageData's claim that the Company has withheld other relevant agreements is unfounded and, in any event, does not warrant expansion of the scope of the current docket. Thus, Qwest requests that the Commission deny PageData's Petition.

## COMMISSION DECISION

Reconsideration provides an opportunity for a party to bring to the Commission's attention any issue previously determined and thereby provides the Commission with an opportunity to rectify any mistake or omission. *Washington Water Power Co. v. Kootenai*

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attempt to revive it improperly in this case. The Commission's decision on this issue is contained in final Order No. 29140 at 17, Case No. USW-T-99-24.

*Environmental Alliance*, 99 Idaho 875, 591 P.2d 122 (1979). In those instances where an aggrieved party asks the Commission to reconsider its decision based upon the record, it may simply do so. The Commission may also grant reconsideration by rehearing if it intends to take additional evidence or argument. If reconsideration is granted, the Commission must complete its reconsideration within 13 weeks after the date for filing petitions for reconsideration. *Idaho Code* § 61-626(2). If the Commission grants reconsideration, it “must issue its order upon reconsideration within twenty-eight (28) days after the matter is finally submitted for reconsideration.” *Id.*

The Commission’s Rules of Procedure set out the requirements to which petitions for reconsideration must conform. To allow parties to timely respond to reconsideration filings, Rule 63 provides that all documents must be served upon the representatives of every party of record. IDAPA 31.01.01.063. Rule 331 requires petitions and cross-petitions for reconsideration to “set forth specifically the ground or grounds why the [cross-] petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law, and a statement of the nature and quantity of evidence or argument the [cross-] petitioner will offer if reconsideration is granted.” IDAPA 31.01.01.331.01. To allow the Commission to consider the relief requested by the petitioner, Rule 331.03 requires that a petition or cross-petition for reconsideration “must state whether the [cross-] petitioner. . . requests reconsideration by evidentiary hearing, written briefs, comments, or interrogatories. . . .” IDAPA 31.01.01.331.03.

As a preliminary matter the Commission grants Qwest’s Motion to file a response to PageData’s Petition.

The Commission denies PageData’s Petition. First, the Commission exercised its discretion appropriately and limited this proceeding to whether the previously unfiled agreements made by Qwest should be approved as interconnection agreements under the Act. Thus, in its review of these agreements the Commission considered only whether to approve or reject them based on analysis of whether they discriminate against a telecommunications carrier not a party to the agreement or implementation of the agreement would not be consistent with the public interest, convenience and necessity. 47 U.S.C. § 252(e)(2)(A). Limiting the scope of this proceeding allowed the Commission to quickly approve these agreements under the Act in order that other carriers could pick and choose from their provisions. *See* 47 U.S.C. § 252(i).

PageData does not request that the Commission reconsider its decision to approve these agreements under the framework of the Act. Rather, PageData requests that the Commission take up issues that were not relevant to this decision in Order No. 29154. Although the Commission did request comments and raised concerns regarding Qwest's compliance with the Act's filing requirements for interconnection agreements it is without sufficient justification at this time to extend this case to consider these matters. For example, PageData raises only general allegations regarding possible Qwest wrongdoing. Further, PageData has not pointed to evidence of secret agreements that should have been filed or any damage it may have suffered as a result of any non-filing. PageData does point to proceedings in other jurisdictions to support its Petition. Although aware of these proceedings, a finding by another state jurisdiction that an agreement should have been filed in that state does not necessarily mean that Qwest was required to file that agreement in all states that it operates in.

PageData also contends that the Commission Staff recognized that "at least one of the agreements refers to previous agreements that have yet to be filed with the Commission." Order No. 29154 at 4. On this basis PageData demands reconsideration and an Order requiring Qwest to file all verbal and written agreements (currently in effect or cancelled) that apply to Idaho. Staff merely recognized that these agreements did exist. However, currently there is not sufficient evidence to demonstrate that these agreements should have been filed as interconnection agreements in Idaho. PageData's allegation adds nothing to this issue. Based on the foregoing the Commission denies PageData's Petition for Reconsideration.

Although PageData's Petition is denied the Commission must reiterate that this decision to not resolve possible issues regarding Qwest's alleged non-compliance with the Act's filing requirements in this proceeding is without prejudice. Thus, it shall not be used to prohibit any person, party, corporation, etc., from seeking a determination of whether Qwest did violate these duties as they pertain to Idaho in the appropriate manner and forum.

### **ORDER**


IT IS HEREBY ORDERED that Qwest's Motion for Extension of Time to file a Response is granted. Accordingly, Qwest's written response to PageData's Petition for Reconsideration shall be considered timely filed.

IT IS FURTHER ORDERED that PageData's Petition for Reconsideration is denied.



THIS IS A FINAL ORDER ON RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. QWE-T-02-17 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. *See Idaho Code* § 61-627.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this 7<sup>th</sup> day of January 2003.

  
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PAUL KJELLANDER, PRESIDENT

  
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MARSHA H. SMITH, COMMISSIONER

**Commissioner Hansen did not  
participate in this decision.**

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DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
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Jean D. Jewell  
Commission Secretary

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