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IDAHO PUBLIC
UTILITIES COMMISSION

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Attorneys for Qwest Communications, Inc.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT
APPLICATION OF QWEST CORPORATION
AND WAVESENT LLC FOR APPROVAL OF
AN AMENDMENT TO AN EXISTING
INTERCONNECTION AGREEMENT
PURSUANT TO 47 U.S.C. § 252(e).

APPLICATION OF JOESPH B. MCNEAL
DBA PAGEDATA FOR APPROVAL OF THE
PAGING CONNECTION AGREEMENT FOR
THE STATE OF IDAHO PURSUANT TO 47
U.S.C. § 252(i).

IPUC DOCKET NO. QWE-T-03-7
IPUC DOCKET NO. QWE-T-03-6

**OBJECTION AND MOTION TO
DISMISS REVISED APPLICATIONS**

On August 11, 2004, Joseph McNeal dba PageData and WaveSent LLC (the "Pagers") each filed a document with the Commission entitled "Revised Application for Approval of Amendment to the Paging Agreement." By these documents, the Pagers seek the Commission approval of amendments to their existing interconnection agreements with Qwest Corporation ("Qwest").

The Commission will note that, contrary to usual procedure and industry practice, Qwest did not join in Pagers' applications for amendment. Indeed, the Pagers did not even inform Qwest of their intent to file the Revised Applications.

Qwest hereby states its formal objections to Pagers' Revised Applications and moves the Commission to dismiss them. In fact, the parties have not negotiated any such amendments as claimed by the Pagers. The Pagers 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, 2003.¹ Each of these agreements has been amended to provide for a single point of presence, and the negotiated amendments were filed with, and approved by, this Commission. There have been no other amendments negotiated by the parties. If the Pagers wish to pursue a claim that the agreements have somehow been amended against Qwest's will, they can do so under the dispute resolution provisions of their existing interconnection agreements.

Each Pager states that "[t]his Amendment was reached through voluntary negotiations of two informal complaints filed with the Federal Communications Commission." They apparently claim that a June 4, 2003 letter from Qwest's FCC counsel, Bob McKenna, somehow amended their interconnection agreements. Before the Pagers' Revised Applications were filed, Qwest was unaware of any claim that the Pagers' existing agreements had been amended by Mr. McKenna's letter.

¹ The Commission approved PageData's and WaveSent's adoptions of the Arch Agreement on February 25, 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-03-7, Order No. 29198.

In fact, the Revised Applications do not even state how, or in what manner, Mr. McKenna's e-mail changed the existing contracts. Even a cursory review of the e-mail message in question, which Pagers attached to their Revised Applications, shows that Mr. McKenna was not negotiating or even offering amendments to the adopted agreements. The e-mail says nothing about the contract language whatsoever, much less offering or agreeing to any change of that language.

The underlying agreement itself provides that amendments must be agreed to in writing by both parties. Section A.13.23 provides, "Paging Provider and U S WEST may mutually agree to amend this Agreement in writing." Here, Qwest does not even understand what the Pagers assert to be the substance or language of any amendments to the agreements, much less agree to it.

In sum, the parties have not agreed on the amendments claimed by the Pagers in their Revised Applications. Qwest notes that this appears to be another in a series of disputes the Pagers have raised under their existing interconnection agreements with Qwest, several of which are already the subject of litigation before this Commission. In those other cases, Qwest has moved the Commission to dismiss the proceedings and to refer the Pagers to the dispute resolution provisions contained in the interconnection agreements.

Likewise in these cases, Qwest moves the Commission to dismiss the Revised Applications. The principles supporting Qwest's instant motion to dismiss have been well-briefed in those other dockets. If the Commission desires, however, Qwest will submit briefing applying the principles already briefed in those other cases to the Revised Applications here on file.

DATED this 28th day of September, 2004.

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Respectfully Submitted,

Adam Sherr
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and

A handwritten signature in black ink, appearing to read 'WJ Batt', written over a horizontal line.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of September, 2004, I caused a true and correct copy of the above and foregoing document to be served, in the manner indicated, on the following:

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By: 

William J. Batt