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IDAHO PUBLIC  
UTILITIES COMMISSION

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE APPLICATION OF )	- CASE NO. QWE-T-03-6
PAGEDATA FOR APPROVAL OF AN )	
AMENDMENT TO A PAGING )	
INTERCONNECTION AGREEMENT WITH )	
QWEST COPORATION PURUSANT TO 47 )	
<u>U.S.C. § 252(e).</u> )	
IN THE MATTER OF THE APPLICATION OF )	CASE NO. QWE-T-03-7
WAVESENT, LLC FOR APPROVAL OF AN )	
AMENDMENT TO A PAGING )	
INTERCONNECTION AGREEMENT WITH )	
QWEST CORPORATION PURSUANT TO 47 )	
<u>U.S.C. § 252(e).</u> )	

**PETITION FOR RECONSIDERATION**

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PageData and WaveSent LLC (hereinafter the "Pagers") respectfully request that the Idaho Public Utilities Commission ("Commission") reconsider its decision in this matter in Order No. 29604 under Procedural Rule 331 and the Commission's discretion. IDAPA 31.01.01.331.01 Pagers contend the Order is unreasonable, unlawful, erroneous, and not in conformity with law, which will be discussed below.

### Synopsis

In its most simple form, this case is about Qwest Corporation ("Qwest") voluntarily negotiating a settlement of an informal complaint at the Federal Communications Commission ("FCC"). Qwest consummated the settlement by issuing a letter ("McKenna Letter") on June 4, 2003 (attached as Exhibit A). Qwest followed through on all the terms and conditions set out in the negotiated agreement, except now Qwest wishes to renege on the delivery of Internet traffic set out in paragraph 3 of the McKenna letter. Commission staff spent over eight months mediating the implementation of paragraphs 2 and 3 of the McKenna letter. Qwest failed to file the McKenna letter of understanding/amendment and Pagers filed it officially to be in compliance with Section 252 and to preserve their rights to terminate Internet traffic on a going forward basis under the negotiated agreement.

The Pagers complied with Order No. 29604 and contacted FCC and followed up with a letter to the FCC Market Dispute Resolution Division Chief on October 20, 2004. The FCC staff responded with a conference call (which included Qwest attorneys) on October 22, 2004. A letter from the FCC dated October 25, 2004, attached at Exhibit B, resulted from the conference call. The FCC responded promptly so the Commission could make a decision within the 90-day period.

The Commission made an error by improperly remanding the case to the FCC, as related by FCC staff. By letter dated October 25, 2004, the FCC staff referred the case back to the Commission for first instance determination per Section 252. It is unreasonable for the Pagers to have to wait for the Commission and the FCC to decide sovereignty issues.

For the Commission's reference we have attached as Exhibit C the informal complaint referenced in the FCC's letter dated October 25, 2004. The complaint was filed because Qwest would not allow Pagers to adopt the AirTouch/Arch Paging Interconnection agreement with a single point of presence. Pages 2 and 3 of the informal complaint letter summarized Qwest's discriminatory policies against paging companies and specifically PageData such as: 1) not considering paging companies as full-fledged telecommunications carriers that terminated traffic; 2) unlawfully restricting the type of traffic a CMRS paging carrier can terminate; 3) not interconnecting with a single point of presence; 4) not paying paging carriers reciprocal compensation; 5) settling billing disputes with select, favored carriers; and 6) not giving all companies access to upper management to settle disputes. The issuance of the McKenna letter of understanding/amendment ended the informal complaint at the FCC.

The Commission made an error in granting Qwest's Motion to Dismiss. The 90-day timeframe is the ruling factor and extending it is not in conformity with law and goes against Congress' intent. Section 252(e) clearly and unambiguously requires a vote by the state commission within 90 days or it is automatically approved. There is no law or precedent for the Commission to extend the 90-day time period without the approval automatically taking effect.

A decision by the Commission that Qwest voluntarily negotiated and wrote the letter of understanding/amendment is non-reviewable by state court, federal court, and the FCC. (Section 252(e)(4) and (6))

The Commission is obligated to follow and enforce its own orders and in this instance Order No. 29154 is directly relevant. The Commission detailed what agreements need to be filed (Order No. 29154, p. 7) in conformance with the FCC's ruling in *Qwest Petition for Declaratory Ruling*, 2002 WL 31204893. The FCC has further expounded on this in their Notice of Apparent Liability ("NAL")<sup>1</sup>, specifically in paragraphs 7, 10, 28, 31 and 34. The Commission has a standing order in place for Qwest to continue to review and file all unfiled agreements in conformance with the Act and the FCC's Declaratory Ruling (Order No. 29154, p. 8). The Commission is not in conformity with law by not enforcing their own Order 29154.

Pagers are entitled by statute (Section 252(e)(4)) to have the Commission approve or reject the agreement within 90-days or non-action, which accomplishes the same thing as an approval vote by deeming it approved. The Commission is not in conformity with law by making an extension of the 90-day period.

The Commission erred by placing the burden of proof on the Pagers when the burden of proof should be placed squarely on Qwest.

### **Procedural History**

On August 11, 2004, PageData and WaveSent, LLC each filed a Revised Application for Approval of Amendment to their respective paging interconnection agreement with Qwest. On September 28, 2004, Qwest filed an Objection and Motion to

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<sup>1</sup> FCC Notice of Apparent Liability for Forfeiture *In the Matter of Qwest Corporation Apparent Liability for Forfeiture*, File No. EB-OS-IH-0263, Released March 12, 2004

Dismiss Revised Applications. On October 6, 2004, the Commission filed Order No. 29604. The 90<sup>th</sup> day from the filing of the Revised Application is November 9, 2004.

### **Informal Complaint with the FCC**

On October 21, 2002, PageData filed an informal complaint with the FCC under Section 1321 of the FCC's Local Competition Order. (See Exhibit C) The complaint was filed because Qwest unlawfully withheld adoption of interconnection agreements with a single point of presence and reciprocal compensation in violation of Section 252(i); Qwest was trying to restrict the type of traffic a CMRS carrier could terminate; and Qwest was out of compliance with the FCC Memorandum Opinion and Order No. 02-276<sup>2</sup> in Idaho.

Qwest complained to the FCC that it would cost too much money to have interconnection agreements filled out specifically for the Pagers and adoption letters were more cost efficient. Qwest had failed to file the Arch single point of presence amendment when it was signed. (See Exhibit D – Single Point of Presence Email Correspondence) This failure to file caused an array of problems because some states immediately approved the amendment while other states took as long as 90 days. Therefore, some states did not automatically consider the single point of presence amendment as being part of the adoption by Pagers, even though that was the original intent. The FCC mediated filing the single point of presence amendment separately to assure that the single point of presence amendment was included in the adoption of the interconnection agreement in each of Qwest's 14 states.

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<sup>2</sup> FCC Memorandum Opinion and Order No. 02-276, "In the Matter of Qwest Communications International Inc. Petition for Declaratory ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)", October 4, 2002

On June 4, 2003, Qwest issued the McKenna letter of understanding advising Pagers that Qwest would work with Pagers for the installation of single point of presence facilities. Qwest also gave a contact person for assistance in completing the Access Service Requests (“ASRs”), determining the facilities configuration, and deposit requirements. Qwest further stated if Pagers used the facilities for Internet traffic, such traffic would not be subject to reciprocal compensation payments.

### **Commission Staff Mediation**

Since the time Qwest sent the McKenna letter of understanding to Pagers and the FCC, the Commission staff had been mediating specifically from the letter of understanding to have PageData and WaveSent’s facilities installed. All parties had been following the letter of understanding until WaveSent and PageData submitted their first flat rate invoices for reciprocal compensation for facilities under the single point of presence. Qwest then started to renege on the agreement.

### **Burden of Proof**

The Commission erred in placing the burden of proof on the Pagers. The issue is whether Qwest or the Pagers should bear the burden of proof regarding the voluntary nature of the letter of understanding that amends the interconnection agreements. The burden of proof should be placed squarely on Qwest—the party responsible for writing the letter of understanding to the FCC, PageData and WaveSent.

According to Pace v. Hymas, 111 Idaho 581, 585, 726 P.2d 693 (1986):

It is the general rule that where evidence necessary to establish a fact lies peculiarly within the knowledge and competence of one of the parties, principles of fairness require that party to bear the burden of going forward with evidence on the issue.

In that case, the party having knowledge of facts had the burden of proving it. Here, Qwest voluntarily submitted a letter of understanding that amended the interconnection agreements and clarified Section 2.4 specifically stating that if PageData and WaveSent terminated Internet traffic, PageData and WaveSent were not to charge Qwest reciprocal compensation for that traffic. Qwest controlled the ASR process and whether or not PageData and WaveSent received facilities for a single point of presence. The Commission staff helped mediate the installation of the single point of presence and the completions of the ASRs. Certainly, the burden of proof is on Qwest to show why they wrote the letter to PageData, WaveSent and the FCC.

**Commission Order 29604 Does Not Follow Guidelines Established In**  
**Commission Order 29154**

The Commission erred by not applying the same filing requirements to the letter of understanding as it applied to other amendments (letters of understanding) filed by Qwest as in Order No. 29154<sup>3</sup>.

In Order No. 29154, under Commission Findings and Decision (p. 7) the Commission stated:

“Guiding the Commission’s review in this case is a recent decision regarding the filing requirements for interconnection issued by the FCC. The FCC found an agreement that created ongoing obligations regarding resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements or collocation is an interconnection agreement. *Qwest Petition for Declaratory Ruling*, 2002 WL 31204893, at 5 (F.C.C. 2002)”

Further the Commission stated:

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<sup>3</sup> In the Matter of the Applications of Qwest Corporation and McLeodUSA Telecommunications Services, Eschelon Telecom, Inc., and Covad Communications Company for approval of Amendments to their Interconnection Agreements, Issued November 19, 2002

“The Commission finds that it is necessary to order Qwest, in addition to its duties under the Act, 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.” (Order No. 29154, p. 8)

The letter of understanding clearly has going forward terms and conditions relevant to interconnection, interconnection facilities, reciprocal compensation, and dispute resolution between PageData, WaveSent and Qwest. As such, the letter of understanding meets the Commission Order No. 29154 and Section 251(b) and (c) criteria and should be filed as an amendment to the interconnection agreements.

**Commission’s Only Options Under 252(e)**

Under Section 252(e) the Commission only has 3 choices for handling the submittal of a negotiated agreement: 1) approve it; 2) reject it if it discriminates against other telecommunication carriers or if it is not consistent with public interest, convenience, and necessity; or 3) make no ruling and it automatically becomes approved after 90 days. 47 U.S.C. Section 252(e)(2) Therefore 252(e)(6) would be implemented only if the Commission rejects the voluntary agreement because the agreement discriminated against other telecommunications carriers or is not consistent with public interest, convenience, and necessity and then the aggrieved party would bring action in federal court. In essence the Commission’s only remedy is an up or down vote based on the evidence presented. If the Commission rules that Qwest voluntarily wrote the letter of understanding, that would be the final determination and it would not be subject to judicial review.

### Qwest's Motion to Dismiss

Qwest failed to ask for a hearing and their response was a motion to dismiss. A motion to dismiss is not a proper response in a 252(e) procedure. Section 252(e) requires an approval or denial or no action (which is the same as approval) after 90 days. These limited actions were the intent of Congress for quick approval and to promote competition and entrance into the marketplace. Again, Section 252(e) clearly and unambiguously requires a vote by the state commission within 90 days or it is automatically approved.

In their motion, Qwest asserted that the McKenna email does not state how or in what manner it changed the existing contracts and that it said nothing about the contract language whatsoever, much less offering or agreeing to any change of that language. (Qwest's Objection and Motion to Dismiss Revised Applications, p. 3)

Qwest is trying to obfuscate the issue by keeping the Commission from focusing in on its Order No. 29154 and the FCC's NAL, in which the FCC stated that "in May 2002, Qwest informed the state commissions in its region of a new policy of filing all new 'contracts, agreements, and letters of understanding' between Qwest and competitive LECs that 'create obligations to meet the requirements of Section 251(b) or (c) on a going-forward basis.'"<sup>4</sup> The letter of understanding/amendment in this case clearly falls in the guidelines established by Qwest's company policy and promise to all the 14 state commissions in their territories. The Commission should hold Qwest to publicly made promises.

Many of the other letters of understanding or amendments filed by Qwest in various states such as Colorado, Washington, Arizona, New Mexico, Minnesota, or Iowa

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<sup>4</sup> FCC NAL, ¶ 7

did not specifically reference specific interconnection agreements or said specifically which sections or paragraphs of the interconnection agreements were amended, but they were determined to be amendments because they had going forward terms and conditions that related to Section 251(b) or (c).

Having a simple letter considered an interconnection agreement is not unusual. For example, the letter dated July 3, 2001 from Qwest to Eschelon Telecom concerning Status of Switched Access Minute Reporting (attached at Exhibit G and referenced in Exhibit H, Colorado February 27, 2004 "Initial Public Comments of Staff of the Commission" Appendix M Unfiled Agreements Matrix, Item No. 20) has been determined by Minnesota, Arizona, and Colorado to be an interconnection agreement. It does not specifically address an interconnection agreement, or say what contract language it modified. There are over nine letters that the Colorado commission determined were interconnection agreements in their investigation of unfiled agreements (Exhibit H). These letters do not rise to the level of settling a complaint filed at the FCC. Qwest is trying to put restrictions on the Pagers letter of understanding that were not put on Qwest's other letters of understanding that were deemed interconnection agreements by various state commissions.

#### **Motion to Dismiss is Not an Option**

The Commission erred by granting Qwest's Motion to Dismiss. Section 252(e) does not allow the Commission to dismiss a negotiated agreement unless the Commission rules that the agreement discriminates against other carriers or is not consistent with the public interest, convenience, and necessity.

### **Setting Bad Precedence**

The Washington Utilities and Transportation Commission (“UTC”) filed complaints against 14 CLECs concerning unfiled agreements with Qwest. Some of these same CLECS provide services in Idaho. As part of their settlement agreements with the Washington UTC, many of the CLECS stated they previously believed the only entity eligible to file agreements was the ILEC itself. (See Exhibits I and J, showing example settlement agreement excerpts.) The Washington UTC specifically ruled that both carriers involved in an interconnection agreement were responsible for filing with the state under Section 252. So, if Qwest had not filed the interconnection agreements, then it was up to the carrier to individually file the agreements themselves.

Even though Washington’s ruling has no legal authority in Idaho, legal options on how competitive carriers are to handle such situations are set. Both PageNet and Arch provided paging service in Washington and Idaho in the relevant time period. Had Arch or PageNet done what was recommended in Washington, they would have had to file their agreements in Idaho as well because their agreements also covered Idaho.

Even the Idaho PUC staff recognized in Order No. 29154 that not all interconnection agreements were presently on file at the Idaho PUC, even though the Commission ordered Qwest to review and to file any and all interconnection agreements. Many of the companies mentioned in the FCC’s NAL and many of the companies who admitted that they were involved in unfiled interconnection agreements in Washington also do business or have done business in Idaho during the relevant time periods of both

agencies investigations. However, Qwest and the CLECs have failed to file those agreements in the state of Idaho.

PageData and WaveSent have stepped forward to comply with Section 252(a) by filing the letter of understanding (McKenna letter) so that it would be officially on file at the Commission. For the telecommunications industry in general in the state of Idaho it is in the public good that the Commission wholeheartedly support and encourage such action.

### **Economic Harm of Delay**

Under Section 252(e) the Commission is to approve the interconnection agreement or deny it within 90 days. While the Commission may disagree with the FCC remanding the case back to the Commission any decision to extend the proceedings past the 90-day time frame is in violation of the Act and causes economic harm and delay to both PageData and WaveSent. The Pagers submit to the Commission that the Pagers should not be involved in a fight of sovereignty issues between the Commission and the FCC. That should not delay an up or down vote at the Commission.

### **PageData Has Been Harmed By Qwest's Noncompliance of Commission**

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

PageData was harmed because it was not able to adopt terms and conditions out of unfiled interconnection agreements such as the Arch and PageNet unfiled interconnection agreements where Qwest refunded in cash 76% of the amount of money that Arch and PageNet paid Qwest for certain facilities and forgave past disputed accounts. (See Exhibit F)

Qwest voluntarily filed the Arch and PageNet agreements in Iowa as interconnection agreements and the agreements clearly cover Idaho (see Exhibit F, ¶3 of the Arch agreement and ¶1a of the PageNet agreement). Arch Paging and PageNet provided paging in the state of Idaho during all relevant time periods. (See Exhibit E, showing Arch and PageNet yellow pages advertising for the Boise area) PageNet, Arch and Qwest have all failed to file this interconnection agreement in the state of Idaho.

In footnote 89 of its NAL, the FCC referenced Iowa's investigation of Qwest's unfiled agreements and the Arch and PageNet settlement agreements were two of the fourteen agreements filed by Qwest. Arizona, Colorado (see Exhibit H, Items No. 5 and 55), Minnesota, and Iowa declared the Arch and PageNet settlement agreements as interconnection agreements. These agreements cover the state of Idaho and therefore these interconnection agreements need to be filed in Idaho as well. Qwest continues to disregard the Commission Order No. 29154 "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." (p. 8)

#### **Application Not Remanded Properly to FCC**

The Pagers complied with Order No. 29604 and contacted the FCC to request clarification of how the Pagers or the Commission would remand the case to the FCC. The Pagers followed up with a letter to the FCC Market Dispute Resolution Division Chief on October 20, 2004. The FCC staff responded with a conference call (which included Qwest attorneys) on October 22, 2004. FCC staff attorneys said the Commission made an error by improperly remanding the case to the FCC and the case was a state matter because the state has first jurisdiction under Section 252. As a follow-up to the

conference call, on October 25, 2004, the FCC staff referred the case back to the Commission for first instance determination per Section 252. (See Exhibit B)

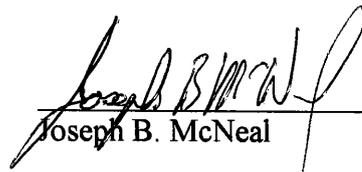
**Additional Information to be Provided with Reconsideration**

Because of the unusual nature of this case and the 90-day time restraint that is involved in the decision, Pagers have submitted additional evidence supporting the Pagers' position with this Petition. The Pagers could provide more detailed correspondence between the Pagers, Qwest and the FCC to supplement the additional information provided.

**Conclusion**

For all the foregoing reasons, Pagers request that the Commission grant reconsideration by rescinding, modifying or changing the order granting Qwest's Motion to Dismiss; considering all the attached exhibits; putting the Application for the submittal of the letter of understanding/amendment back on the 90-day track, which ends November 9, 2004; making a ruling either approving the Application or denying it per Section 252(e)(2), Commission Order No. 29154, the FCC Declaratory Ruling (2002 WL 31204893), and the FCC NAL; and requiring Qwest to file the Arch and PageNet interconnection agreement according to Commission Order No. 29154.

Respectfully submitted this 27<sup>th</sup> day of October, 2004.

  
\_\_\_\_\_  
Joseph B. McNeal

**CERTIFICATE OF SERVICE**

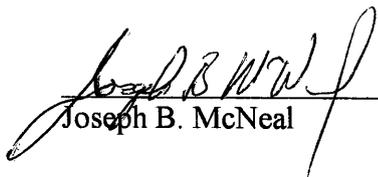
I HEREBY CERTIFY that on this 27<sup>th</sup> day of October, 2004, I caused a true and correct copy of the foregoing PETITION FOR RECONSIDERATION to be served, in the manner indicated, on the following:

Jean Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
Boise, ID 83720-0074

Hand Delivery  
 U.S. Mail  
 Facsimile  
 Email

William J. Batt  
Batt & Fisher  
U.S. Bank Plaza, Suite 500  
101 S. Capitol Boulevard  
Boise, ID 83701

Hand Delivery  
 U.S. Mail  
 Facsimile  
 Email

  
\_\_\_\_\_  
Joseph B. McNeal

**Exhibit A**

**Qwest Letter of Understanding (“McKenna Letter”) Dated June 4, 2003**

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

From: Bob McKenna [[mailto:"Bob McKenna"](mailto:Bob McKenna)]

Sent: Wednesday, June 04, 2003 3:02 PM

To: Joseph McNeal

Cc: Christopher Olsen; William Bill Batt; Bryan E Sanderson; Andrea E Sanchez; kpettey; dljenni

Subject: WaveSent and PageData

Text item: Message Text

Dear Mr. McNeal:

We have reviewed your May 28 responses to the FCC's questions concerning interconnection requests by PageData and WaveSent. Upon such review, we have determined that Qwest will not insist on resolution of Qwest's claims for payment of past amounts as a precondition to either PageData's or WaveSent's ordering further interconnection facilities and services from Qwest. Qwest will be willing to process properly submitted ASRs for interconnection on a timely basis upon submission.

In the past, PageData and WaveSent have had difficulty completing and submitting proper ASRs for service. Andrea Sanchez (303.965.1805) will be available to meet with you to assist you in preparing these documents. As Qwest has noted in its filings with the Federal Communications Commission, the ASRs that PageData sent to the Commission are not complete and do not provide sufficient information on which Qwest could begin to fill the order. In addition, while Qwest is willing to provide PageData and WaveSent with the interconnection facilities and services that they need to provide the services for which such interconnection can lawfully be utilized, the number of trunks shown on the two ASRs filed with the FCC is clearly excessive for the paging services that form the basis of the ASRs. These matters can be worked out with Ms. Sanchez, who can insure that the ASRs that you submit are complete and accurate.

Finally, irrespective of disputes over past amounts due, there does not seem to be any dispute that compensation will be necessary for services provided under current interconnection agreements. Such compensation can be required in the case of transiting traffic and WATS or FX equivalent facilities, on the one hand, and reciprocal compensation on the other hand. Should PageData or WaveSent use interconnection facilities or services for Internet traffic, such traffic would not be subject to reciprocal compensation payments. Qwest would, of course, run its standard credit check on WaveSent to determine whether a deposit is necessary. These and similar compensation matters likewise can be worked out in advance with Ms. Sanchez. It makes sense to determine at this time what facilities and services must be paid for, and by whom.

Please do not hesitate to give me a call with questions. I can be reached at 303.672.2861.

**Exhibit B**

**FCC Letter Dated October 25, 2004**



**Federal Communications Commission**  
Washington, D.C. 20554

Copies by Facsimile Transmission; Originals by U.S. Mail

October 25, 2004

Mr. Joseph McNeal  
6610 Overland Road  
Boise, ID 83709  
(208) 373-7159 (facsimile)

Re: In the Matter of the Application of PageData for Approval of an  
Amendment to a Paging Interconnection Agreement with Qwest  
Corporation Pursuant to 47 U.S.C. § 252, Case No. QWE-T-03-6

In the Matter of the Application of WaveSent, LLC for Approval of an  
Amendment to a Paging Interconnection Agreement with Qwest  
Corporation Pursuant to 47 U.S.C. § 252, QWE-T-03-7

Idaho Public Utilities Commission Order No. 29604

Dear Mr. McNeal:

This letter responds to your October 20, 2004 letter to Alexander Starr, Chief of the Markets Dispute Resolution Division of the Federal Communications Commission's ("FCC") Enforcement Bureau regarding the above-referenced matter. In your letter, you ask for guidance with respect to IPUC Order No. 29604.

In response to your letter, I participated in a conference call with you and counsel for Qwest on October 22, 2004. During that call, I explained that the FCC's informal dispute resolution processes are not intended or designed to result in a Commission determination, decision, and/or order resolving the merits of an informal dispute. Informal disputes such as yours are typically closed without any formal decision by the Commission, whether or not they are ultimately settled by the parties.

Consistent with our practice in handling informal disputes, Commission staff facilitated discussions between you and Qwest in 2003 regarding an apparent dispute involving Qwest's alleged refusal to allow your company to opt into existing interconnection agreements. I understand that that dispute was resolved and your company ultimately opted into various interconnection agreements with Qwest. Subsequently, in response to an apparent attempt by your company to take service under one or more of these interconnection agreements, Qwest sent the June 4, 2003 email attached to your October 22<sup>nd</sup> letter. Commission staff received the email but did not take any position with respect to Qwest's email and did not adopt or endorse this email as a formal or informal resolution of the dispute you were apparently having with Qwest concerning ordering service, a dispute which differs from the opt-in dispute you initially asked Commission staff to mediate.

It appears from your letter that your present dispute with Qwest concerns whether the Qwest email should be considered an amendment to one or more of your existing interconnection agreements under section 252 of the Communications Act of 1934, as amended ("Act"). As I indicated, Commission staff was not asked to and did not make any determination as to the substance, effect, legality, and/or enforceability of the referenced email under the governing law. Thus, Commission staff never considered whether the email was a valid section 252 amendment, nor would it have been appropriate for Commission staff to make that determination, given that section 252 gives state commissions the exclusive right to make such determinations in the first instance.

Do not hesitate to contact me if you have any additional questions.

Sincerely,



Anthony J. DeLaurentis  
Attorney  
Markets Dispute Resolution Division  
Enforcement Bureau  
Federal Communications Commission

cc: Robert McKenna, Qwest Counsel (303) 896-1107 (facsimile)  
Timothy Boucher, Qwest Counsel (303) 896-1107 (facsimile)



**Federal Communications Commission**  
Washington, D.C. 20554

**FASCIMILE COVER SHEET**

**Date: October 26, 2004**

**FROM: Anthony J. DeLaurentis**  
**Attorney**  
**Market Disputes Resolution Division**  
**Enforcement Bureau**

**Phone: (202) 418-0198**  
**Fax: (202) 418-0435**

**TO: Mr. Joseph McNeal**  
**(208) 373-7159 (facsimile)**

**Timothy Boucher, Qwest**  
**(303) 896-1107 (facsimile)**

**Robert McKenna, Qwest**  
**(303) 896-1107 (facsimile)**

**RE: In the Matter of the Application of PageData for Approval of an Amendment to a Paging Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252, Case No. QWE-T-03-6**

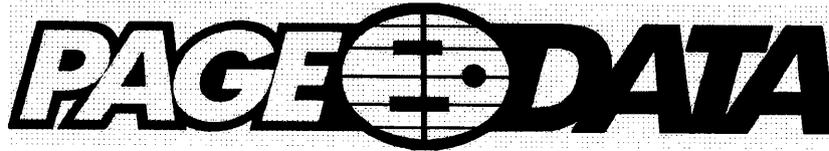
**In the Matter of the Application of WaveSent, LLC for Approval of an Amendment to a Paging Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252, QWE-T-03-7**

**Idaho Public Utilities Commission Order No. 29604**

**Number of Pages (including cover sheet):** 3

**Exhibit C**

**PageData's Original Informal Complaint to FCC Under Section 1321**



October 21, 2002

Chris Olsen  
Assistant Chief  
Market Dispute Resolution Division  
Enforcement Bureau  
Federal Communications Commission  
445 Twelfth Street SW, Room 5A-803  
Washington DC 20554  
(202) 418-7332  
(202) 418-0435 Fax

RE: FCC Enforcement of 47 USC § 252(i) to Allow Adoption of Existing State Commission Approved Interconnection Agreements Under Pick and Choose and to Protect the Integrity of the FCC Auction Process

Dear Mr. Olsen:

Per our conversation last week regarding section 1321 of the Federal Communications Commission's ("FCC" or "Commission") 96-325 Order (The Local Competition Order) we are submitting the following. PageData paid the FCC for CMRS licenses and bought frequencies during the Commission Auction 40 with the expectation that the Commission would enforce its own rules and regulations. Under 47 USC § 252(i) and other FCC regulations, PageData wants the Commission to enforce its regulations and require Qwest to allow PageData to adopt the US WEST New Vector<sup>1</sup> interconnection agreement before Qwest tries to cancel it. PageData wants the FCC to enforce PageData's rights under 47 USC § 252(i) to adopt the full Arch agreement as filed in Iowa,<sup>2</sup> except for paragraph 7, to be effective in all of Qwest's 14 states. PageData wants the US WEST New Vector agreement executed in any state that US WEST New Vector has an interconnection agreement.

PageData wants the other benefits provided in the Arch and PageNet agreements in the same time frame. In the Arch agreement Qwest agreed to pay Arch cash within five (5) days and credit Arch's accounts within sixty (60) days.<sup>3</sup> In the Arch agreement they also agreed to execute new interconnection agreements within three (3) business days.<sup>4</sup> The FCC and the U.S. Supreme Court confirmed that small carriers that do not have the bargaining power that large multi-state carriers have can use the pick and choose adoption procedures to navigate out of difficult

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<sup>1</sup> Interconnection Agreement between US WEST Communications, Inc. and US WEST New Vector Group, Inc. d.b.a. AirTouch Cellular, Idaho Docket USW-T-97-15, September 9, 1997

<sup>2</sup> Arch Amendment, "Confidential Billing Settlement Agreement", effective June 16, 2000, as filed in Iowa Docket NIA-00-32

<sup>3</sup> Arch Amendment, "Confidential Billing Settlement Agreement", effective June 16, 2000, paragraph 5, Payment.

<sup>4</sup> Arch Amendment, "Confidential Billing Settlement Agreement", effective June 16, 2000, paragraph 3, Interconnection Agreements

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situations in a time-effective manner.<sup>5</sup> It was the FCC's goal to promote competition in the marketplace and the US Supreme Court upheld this goal.

PageData has been a victim of Qwest's discrimination policies against paging companies in the following areas:

1. Carriers that Qwest considered as Type 1 paging only were not considered full-fledged telecommunication carriers under the Act. Qwest's position was that Type 1 pagers did not terminate traffic at their switch but the traffic was terminated at Qwest's end office. The FCC TSR Order<sup>6</sup> overturned this unlawful Qwest policy. When PageData initially requested CMRS interconnection facilities from Qwest, Qwest put PageData in the retail/small business group instead of the wholesale group, Qwest's CMRS interconnection division. Qwest kept PageData in the retail/small business group until July 1998 when PageData hired an attorney to represent the company.
2. Qwest placed unlawful restrictions on the type of traffic that a CMRS paging carrier can terminate, especially for the companies Qwest considered as Type 1 paging companies only. This policy is against 47 USC § 51.307(c) and 47 USC §§ 251(c)(2) and 251(c)(2)(c). It has been Qwest's policy to restrict the types of telecommunications services that can be offered by interconnected carriers, in direct violation of federal law. PageData is certainly entitled by Federal law to equal treatment on rates, terms and conditions that are just, reasonable and nondiscriminatory, with other telecommunications carriers. 47 USC §§ 251(c)(2)(d) and 252(i). 47 CFR § 51.809(a) specifies that ILECs are required to make interconnection terms equally available to other carriers.
3. Qwest has refused to interconnect with companies they considered as only Type 1 paging carriers with a single point of interconnection in the LATA, as required by FCC rules. The FCC's July 17, 2002 Memorandum Opinion and Order DA 02-1731<sup>7</sup> ruled against this unlawful Qwest policy. Arch is just now negotiating a single point of interconnection amendment to their current agreement with Qwest.
4. Qwest did not pay paging carriers reciprocal compensation for terminating Qwest originated traffic. The FCC TSR Order paragraph 19 and the Local Competition Order § 251(b)(5) overturned this Qwest policy.
5. Qwest selected favored carriers, or carriers that agreed as part of the settlement agreement, not to object to Qwest's section 271 long distance applications, to settle billing disputes and other related disputes. For example, see the Arch, PageNet, Metrocall, and McLeod settlement agreements. Qwest discriminated against other carriers by not offering them the same terms and conditions for settlements as the select carriers. The FCC said, "We find that agreements addressing dispute resolution and

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<sup>5</sup> See AT&T Corp. v. Iowa Utilities Board, 525 U.S. 366

<sup>6</sup> FCC TSR Memorandum Opinion and Order 00-194, adopted May 31, 2000, released June 21, 2000, paragraph 22

<sup>7</sup> FCC's July 17, 2002 Order DA 02-1731 "In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al.," CC Docket Nos. 00-218, 00-249, 00-251, paragraphs 52, 301 and 302

escalation provisions relating to the obligations set forth in sections 251(b) and (c) are appropriately deemed interconnection agreements.”<sup>8</sup>

6. Other carriers had access to Qwest’s upper management to get their problems resolved in a short time frame. For example, see the Eschelon, McLeod, and other unfiled interconnection agreements with escalation terms to settle disputes. PageData has been deprived of this interconnection agreement provision. PageData has not had access to upper management, such as Audrey McKenney, Senior Vice President for Qwest’s Wholesale Market Business Development group, with authority to settle disputes. Many of the previously unfiled interconnection agreements that have recently been made public by state commissions have signature pages with Ms. McKenney’s signature. PageData requested dispute resolution with Qwest upper management in a letter dated June 27, 2002, but no one at Qwest with signature authority to commit Qwest has talked to PageData or given any correspondence.

Qwest’s company policies conflicted with Commission regulations and PageData’s requests. During these long standing disputes over the past four (4) years, Qwest has had PageData on hold, waiting for the Commission to rule on each of these Qwest policies and interpretation of the Telecommunications Act.

1. PageData, through its attorney, requested to be moved from the small business group to the carrier services (wholesale) group on July 17, 1998. (PageData had made earlier requests to no avail.)
2. PageData requested a refund of overcharges for Qwest delivering Qwest originated traffic to PageData’s point of interconnection in a letter dated July 17, 1998.
3. PageData requested a single point of interconnection in the LATA on August 29, 1998. PageData requested additional facilities (10 T-1s) to go with the single point of interconnection in a letter dated September 8, 1998.
4. Qwest refused to allow PageData to adopt interconnection agreements that had the same terms and conditions as the US WEST New Vector agreement, that embodied the new rules of the road under the Telecommunications Act.

These original requests by PageData predate the current long standing disputes between PageData and Qwest. PageData’s requests have remained valid requests under the Telecommunications Act and have passed the test of time and interpretation of the Commission’s rules. Qwest did not see it this way, however, and has disputed PageData’s requests to this day, delaying any possible expansion of PageData’s business. Had Qwest honored these requests on the date requested there would have been no problems and no current long standing disputes. Through various Orders and Decisions, the Commission has overturned Qwest’s interpretation of the Telecommunications Act and Qwest’s long-standing policies. None of the Commission’s Orders that have been issued have countermanded the original requests by PageData. PageData’s requests have always been in compliance with the Telecommunications Act.

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<sup>8</sup> FCC Memorandum Opinion and Order No. 02-276, “In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)”, October 4, 2002 at ¶ 9

Several state commissions (Minnesota, Iowa, New Mexico, and Arizona) have investigated Qwest for discriminatory practices in connection with Qwest's interconnection agreements and found that Qwest had not filed all interconnection agreements (both oral and written) for approval by the applicable state commissions, thus making the terms and conditions previously unavailable for other carriers to pick and choose. PageData has been discriminated against because the terms and conditions that it requested from Qwest were offered to other carriers, but Qwest refused PageData's requests.

Qwest has treated PageData in a discriminatory manner including the treatment regarding the adoption of interconnection agreements that are approved by state commissions and available for adoption. Qwest has not allowed PageData to complete a simple adoption of an agreement that has already been approved by state commissions. US WEST New Vector and Western Wireless had the benefit of a single point of interconnection so they could expand their business. Not only did Western Wireless and US WEST New Vector have the benefit of a single point of interconnection but they also had no recurring charges for their T-1 facilities. The Arch, PageNet, and Metrocall disputes were far more complicated than PageData's dispute with Qwest. Qwest settled disputes with Arch, PageNet, and Metrocall, which freed up their legal resources while Qwest continues PageData's dispute. This gives this sector of PageData's competitors a distinct advantage over PageData. The Arch, PageNet, and Metrocall settlements included accepting a compromise in interconnection agreements that included restrictions on services that could be provided on the Qwest facilities. Metrocall, Arch, and PageNet were able to expand with the help of Qwest. They were able to take advantage of the licenses they purchased at the auction by settling with Qwest over 2 years ago. If PageData's dispute had been a priority with Ms. McKenney or someone else of her caliber at Qwest with a will to settle, this dispute would have been handled long ago.

PageData did not receive a single point of interconnection like US WEST New Vector, a Qwest subsidiary, nor settlement benefits similar to Arch and PageNet. In fact PageData has been on unofficial provisioning hold so PageData has not been able to expand its business despite numerous requests for 10 additional T-1s (interconnection facilities). PageData has not been able to fully implement its marketing and business plans with proprietary technology. PageData lost opportunities to buy existing businesses with large customer bases because Qwest obfuscated requests by PageData for additional facilities.

Qwest did not offer companies that they considered as paging carriers only, a single point of interconnection even though they were doing it for themselves under the US WEST New Vector agreement<sup>9</sup> and for Western Wireless<sup>10</sup> since 1997. This is a prime example of Qwest exercising its monopolistic power to manipulate the market to its liking. The following is a quote from the US WEST New Vector agreement.

“The Parties acknowledge that Carrier will initially serve all of the customers within a given LATA through a single Carrier switch. The Parties also

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<sup>9</sup> Interconnection Agreement between US WEST Communications, Inc. and US WEST New Vector Group, Inc. d.b.a. AirTouch Cellular, Idaho Case No. USW-T-97-15, approved August 28, 1997, page 11, ¶ D(1)(c)

<sup>10</sup> Interconnection Agreement between US WEST Communications, Inc. and Western Wireless Corporation, Idaho Case No. USW-T-96-11 and WST-T-96-1, approved January 17, 1997

acknowledge that Carrier may, in the future, deploy additional switches in each LATA. For purposes of call termination, the initial Carrier switch shall be treated as an end office switch.”

Because Qwest considered PageData a Type 1 paging carrier only, Qwest never offered these two interconnection agreements to PageData even though PageData has two-way, CMRS licenses from the Commission.

After thorough examination of old and new interconnection agreements that were previously unavailable to PageData and to quickly resolve PageData's long standing disputes with Qwest, PageData chooses to adopt the following interconnection agreements under 47 USC § 252(i). PageData is requesting that the Commission enforce 47 USC § 252(i) and allow PageData to adopt the following two interconnection agreements with Qwest.

1. Under pick and choose, PageData will adopt the full Arch Interconnection agreement, with the exception of paragraph 7 -- Release, that is filed in Iowa (Docket NIA-00-32) but covers all of Qwest's states. PageData wants to adopt this agreement in each of Qwest's 14 states for the future expansion of PageData's business. This agreement will cover PageData's current Type 1 lines and numbers in Idaho. PageData wants the agreement executed in the same time frame and speed as in the Arch interconnection agreement amendment dated June 16, 2000. As per the formula and ratios in the Arch agreement PageData wants a cash refund of approximately \$247,000 within five (5) days for overpayment of delivery of Qwest traffic and all PageData's accounts credited within sixty (60) days and any other subsequent outstanding disputed accounts credited. Only part of the PageNet agreement dated April 23, 2001 was provided to Iowa. Pages 2 through 4 were not included in the Iowa filing (Docket NIA-00-32). PageData requests the Commission require Qwest to send the complete document to PageData since the complete document was not filed in Iowa per 47 USC § 252.
2. Under 47 USC § 252(i) PageData requests to adopt the US WEST New Vector interconnection agreement (Idaho Case No. USW-T-97-15, September 9, 1997) in full, with no changes, in each Qwest state this agreement has been approved. PageData has requested the installation of 10 Type 2 T-1s per the US WEST New Vector pricing schedule (one time installation charge of \$78.92 per T-1 with no recurring charges). The Covad agreement allows for installation of facilities within 48 hours of ordering and PageData will accept installation within 10 days. If Qwest has any problems understanding or completing this request, then as in the Eschelon agreement PageData requests two (2) Qwest employees at PageData's office to assist with the provisioning. The Eschelon agreement also reimbursed Eschelon for having to hire consultants and accountants to audit and defend Eschelon's rights. Likewise, PageData requests reimbursement for its attorneys and consultants fees.

Starting with the original requests of PageData for refunds of overcharges, one point of interconnection, the installation of 10 T-1s, and adoption of the terms and conditions in the Western Wireless or US WEST New Vector interconnection agreements, a timeline matrix including a state by state comparison of terms and conditions of unfiled interconnection agreements, would show how Qwest's company policies contradicted Commission regulations and discriminated against PageData. Qwest did not apply their company policies to themselves

or their own subsidiaries. As an example of Qwest's discriminatory treatment, compare PageData's original requests in a timeline matrix with Qwest's company policy replies to what services Qwest was providing its own subsidiary, US WEST New Vector.

On September 3, 2002 PageData asked Qwest to adopt the Western Wireless agreement. On October 2, 2002, PageData sent a letter of inquiry to Qwest as to the status of the request for interconnection. In Qwest's reply on October 7, 2002 Qwest played another stall tactic and said the agreement was expired so they were confused, even though Qwest's subsidiary US WEST New Vector had an agreement based off the Western Wireless agreement. PageData notified Qwest on October 10, 2002 that PageData wanted to adopt the US WEST New Vector agreement. PageData has reason to believe Qwest is trying to cancel the US WEST New Vector agreement so PageData would be unable to adopt it.

Under 47 USC § 252(i), Federal Trade Commission rules, and other federal regulations covering discrimination, PageData deserves the same terms and conditions as in the previously unfiled secret interconnection agreements. PageData now knows about the numerous settlements made public by various state commissions that Qwest made with many other companies, including cash refunds, disputed accounts credited, attorneys and consultant fees paid, facilities installed in a short time frame, provisioning assistance, and escalation procedures. To expect PageData to accept anything less is discrimination.

As envisioned by the Commission, PageData as a small carrier is using 47 USC § 252(i) to pick and choose the same terms and conditions as the large multi-state carriers. The simple adoption of the US WEST New Vector interconnection agreement, the Arch interconnection agreement as filed in Iowa, and provisions from previously unfiled interconnection agreements would settle all outstanding PageData disputes with Qwest outlined above.

Based on the Commission's obligations to enforce its rules in conformance with both the Telecommunications Act of 1996 and Congressional mandates regarding auction proceeds, PageData requests that the Commission enforce PageData's statutory rights to adopt the requested interconnection agreements under 47 USC § 252(i), have Qwest install the requested interconnection facilities, and provide any other relief allowed PageData for damages.

Sincerely,

S/ (via email)  
Joseph B. McNeal

**Exhibit D**

**Single Point of Presence Email Correspondence**

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Read Messages

Folder : **Qwest related Emails (529 Message(s), 5 Unread)** 

Show Full Headers :

**Date:** Tue, 14 Jan 2003 13:46:15 -0500  
**From:** "Christopher Olsen" <COLSEN@fcc.gov> [+]  
**To:** <joseph@pagedata.com> [+]  
**Subject:** Fwd: Re: PageData

Move Message To : **Qwest related Emails (529 Message(s), 5 Unread)** 

**Reply Reply & Delete Reply All Forward Next Previous Delete Print**

Message - 294/529

FYI - update from Qwest re filing dates of Arch SPOP amendment.

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**Date:** Tue, 14 Jan 2003 13:44:33 -0500  
**From:** "Bob McKenna" <rxmcken@qwest.com> [+]  
**To:** <COLSEN@fcc.gov> [+]  
**Subject:** Re: PageData

Hi Chris. Attached is a chart showing the filing dates for all of our states. Please give me a call with additional questions. Thanks for your patience. bob

(See attached file: FILING DATES ARCH SPOP AMENDMENTS.doc)

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 **TEXT.htm** **Content-Type:** text/plain name="TEXT.htm"  
**Content-Transfer-Encodings:**  
**Length:** 0.26 KB

 **FILING DATES ARCH SPOP AMENDMENTS.doc**

**Content-Type:** application/msword name="FILING DATES ARCH SPOP AMENDMENTS.doc"  
**Content-Transfer-Encodings:** base64  
**Length:** 19 KB

**Reply Reply & Delete Reply All Forward Next Previous Delete Print**

Message - 294/529

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## FILING DATES ARCH SPOP AMENDMENTS

STATE	DATE FILED WITH COMMISSION
Arizona	12/12/02
Colorado	1/6/03
Iowa	12/18/02
Idaho	12/16/02
Minnesota	12/18/02
Montana	12/18/02
North Dakota	12/27/02
Nebraska	12/18/02
New Mexico	12/18/02
Oregon	12/19/02
South Dakota	12/17/02
Utah	12/20/02
Washington	12/18/02
Wyoming	12/18/02

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Inbox

Read Message

Folder : **Inbox (49 Message(s), 1 Unread)**

**Message-Id:** <se018887.069@gwmail.fcc.gov>

**Date:** Thu, 19 Dec 2002 08:51:07 -0500

**From:** "Christopher Olsen" <COLSEN@fcc.gov> [+]

**To:** <joseph@pagedata.com> [+]

**Subject:** Fwd: Re: PageData

Move Message To : **Inbox (49 Message(s), 1 Unread)**

Reply

Reply & Delete

Reply All

Forward

Next

Previous

Delete

Print

Message - 1/49

fyi

**Date:** Wed, 18 Dec 2002 17:59:54 -0500

**From:** "Bob McKenna" <rxmcken@qwest.com> [+]

**To:** <COLSEN@fcc.gov> [+]

**Subject:** Re: PageData

I initiated the process immediately when we discovered the Idaho problem. However, I told our people to drop everything and get it filed in Idaho, because that's where the confusion seemed to be most pointed. I'll follow up and give you final assurance of the other filings. Thanks for your patience. bob.

"Christopher Olsen" <COLSEN@fcc.gov> on 12/18/2002 03:28:00 PM

To: <rxmcken@qwest.com>

cc: <hhaney@qwest.com>, <joseph@pagedata.com>

Subject: Re: PageData

Bob, thanks for following up on this and getting back to me so quickly. In light of the fact that there was some confusion as to whether the Arch amendment had been filed in Idaho, have you also gone back to ensure that the

amendment has in fact been filed in the other states in your region?

Please

let me know. Thanks

Chris Olsen

FCC Enforcement Bureau

202 418-7332

>>> Bob McKenna 12/17/02 03:43PM >>>

Dear Chris. Your e.mail of Friday asks for further information on the filing of the Arch SPOP amendment with the Idaho Commission. This amendment was executed by Qwest on October 16, 2002. The amendment took effect immediately. The amendment was sent to the organization responsible for the filing of these amendments. Accordingly, Qwest personnel believed that the amendment had been previously filed with the Idaho Commission. Unfortunately, in reviewing the actual filing log in order to respond to your follow-up question, it was discovered that the amendment had not been filed (although it had been sent to PageData on December 13 in accordance with Qwest's response). Qwest took immediate steps to file the agreement yesterday. Attached is a copy of the stamped transmittal

letter filing the amendment with the Idaho Commission together with the amendment itself.

Qwest apologizes for this oversight. There was no intent to mislead the Commission, and Qwest's personnel believed that the amendment had been filed some time ago.

Please do not hesitate to give me a call with further questions. My number is 303.672.2861.

Bob McKenna

(See attached file: pagedataamend.pdf) (See attached file: Amendment.DOC)

(See attached file: TEXT.htm)

 TEXT.htm	<b>Content-Type:</b> text/plain name="TEXT.htm" <b>Content-Transfer-Encoding:</b> <b>Length:</b> 0.22 KB
 TEXT.htm	<b>Content-Type:</b> text/plain name="TEXT.htm" <b>Content-Transfer-Encoding:</b> <b>Length:</b> 1.56 KB

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**Exhibit E**

**Arch and PageNet Yellow Pages Advertising**

**QWE-T-03-06 / QWE-T-03-07**

**ATTACHMENTS ARE POOR  
QUALITY AND CANNOT BE  
SCANNED – SEE CASE FILE**