

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| 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 CORPORATION PURSUANT TO 47) | |
| U.S.C. § 252(e).) | |
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| 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) | ORDER NO. 29604 |
| QWEST CORPORATION PURSUANT TO 47) | |
| U.S.C. § 252(e).) | |

On August 11, 2004, PageData and WaveSent, LLC (hereinafter the “Pagers”) each filed a Revised Application for Approval of Amendment to their respective paging interconnection agreements with Qwest Corporation. Each Pager requests that the Commission approve the same “amendment” to their interconnection agreements. The proposed amendment is an email that the Pagers contend was a settlement agreement in “two informal complaints filed with the Federal Communications Commission” (FCC).

On September 28, 2004, Qwest filed an Objection and Motion to Dismiss the Revised Applications. Because the Pagers’ Revised Applications are identical, the Applications are consolidated into a single proceeding. Having reviewed the Revised Applications and the Motion to Dismiss, the Commission issues this Order referring the matter to the FCC.

THE REVISED APPLICATIONS

A. The Underlying Interconnection Agreements

In February 2003, each Pager adopted an interconnection agreement that Qwest had entered into with Arch Paging and Mobile Communications Corporation of America (hereinafter the “Arch Agreement”) pursuant to 47 U.S.C. § 252(i).¹ The Commission approved the Pagers adoption of the Arch Paging interconnection agreements in Order No. 29198. In June 2003, the Pagers and Qwest filed a joint Application to amend their interconnection agreements. In Order

¹ The Commission approved the Arch Agreement in Order No. 28499 issued September 1, 2000 (Case No. USW-T-00-30).

No. 29293 issued July 15, 2003, the Commission approved an identical amendment to both interconnection agreements.

The underlying Arch Agreement and the June 2003 amendment each include a Section 2.4. In the Arch Agreement Section 2.4 relates to the delivery of enhanced services traffic.² Under the terms of the amendment, Qwest and the Pagers agreed to amend the Arch Agreement “to include the addition of Single Point of Presence (SPOP)” language. (Emphasis added.)

B. The Proposed Amendment

The Pagers request that the Commission approve a proposed amendment to Section 2.4 of their interconnection agreements. More specifically, the proposed amendment is an email purportedly from Qwest’s FCC counsel, Bob McKenna, dated June 4, 2003. Revised Applications; Qwest Motion to Dismiss at 2. The Pagers state that the proposed amendment “was reached through voluntary negotiations of two informal complaints filed with the [FCC]. The settlement [amendment] has forward-looking terms and clarifies and amends section 2.4 of the Agreement.” Applications at 1.

The Pagers insist that the statements contained in the email represent the settlement terms of two informal FCC complaints. *Id.* at 1. The Pagers do not specifically identify which portion(s) of the email memorialize the settlement or constitutes the language of the proposed amendment at issue here. However, one section of the email addresses reciprocal compensation for Internet traffic, transit traffic, and wide area calling services. More specifically, this portion of the email states:

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. . . .It makes sense to determine at this time what facilities and services must be paid for, and by whom.

² Section 2.4 of the Arch Agreement states: “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.”

Proposed Amendment (McKenna email).

The Pagers request that the Commission approve the amendment without a hearing. The Pagers maintain the amendment is consistent with the public interest and does not discriminate against any telecommunications carrier not a party to the Agreement. *Id.* at 2. Because the amendment “was reached through voluntary negotiations,” the Pagers suggest no hearing is necessary. *Id.* at 2-3.

QWEST MOTION TO DISMISS

Qwest objects to the amendment of its interconnection agreements with the Pagers and urges the Commission to dismiss the Revised Applications. Contrary to the assertion of the Pagers, Qwest maintains that the McKenna email does not represent either negotiations or an amendment to the Arch Interconnection Agreement. Qwest Motion to Dismiss at 2. Qwest maintains that the Pagers’ Applications “did not even state how, or in what manner Mr. McKenna’s email changed the existing contracts. . . .The email says nothing about the contract language, whatsoever, much less offering or agreeing to any change of that language.” *Id.* at 2.

Qwest asserts it has not agreed to any amendment and argues that a cursory review of the email does not support the Pagers’ contention. *Id.* at 3. Qwest states that these Applications appear to be “another in a series of disputes the Pagers have raised under their existing Interconnection Agreements with Qwest.” Because there is no agreement between the parties to amend their interconnection agreements, Qwest suggests that the Pagers utilize the dispute resolution provisions of their interconnection agreements to address this disagreement.

DISCUSSION

Because the PageData and WaveSent Revised Applications are identical and propose to adopt the same amendment, we find it is appropriate to consolidate these Applications into a single proceeding pursuant to procedural Rule 247. IDAPA 31.01.01.247. As set out in the Applications, Joseph McNeal represents both PageData and WaveSent. The Commission finds that the issues raised in both Applications are identical and that the rights of the parties will not be prejudiced by consolidation.

Although the Pagers represent that the email amendment was reached through voluntary negotiations, Qwest specifically rejects that characterization. The Pagers maintain that the email amends Section 2.4 of the Agreement. However, it is not clear to us and the Applications do not articulate which portion(s) of the email contain the amending language. In

addition, it is unclear about which Section 2.4 the proposed amendment pertains to – the Arch Agreement or the 2003 Amendment. Both the Arch Agreement and the Amendment contain a Section 2.4.

It appears that the only area of agreement between the parties is that the email arose in the context of an FCC informal proceeding. Clearly the McKenna email responds to issues in an informal FCC proceeding. However, this Commission was not a party to the FCC proceeding. Given the disagreement between the parties, the lack of specificity to the proposed amendment and the fact that the proposed amendment arises in the context of an FCC informal proceeding, we believe the better course of action is to refer this matter to the FCC. The FCC is the agency with primary jurisdiction over both the Pagers and Qwest. The FCC Staff also conducted the informal proceeding and its Staff is presumably familiar with the context in which the email arose. Consequently, we find it is reasonable to dismiss this matter without prejudice and refer this matter to the FCC.

ORDER

IT IS HEREBY ORDERED that Case Nos. QWE-T-03-6 and QWE-T-03-7 be consolidated into a single proceeding pursuant to Rule 247. IDAPA 31.01.01.247.

IT IS FURTHER ORDERED that the Applications of the Pagers to amend their interconnection agreements are referred to the Federal Communications Commission (FCC) for resolution. Because the Commission refers this matter to the FCC, we grant Qwest's Motion to Dismiss the cases without prejudice.

IT IS FURTHER ORDERED that the Pagers contact the Chief of the Market Disputes Resolution Division of the FCC's Enforcement Bureau for guidance before filing any pleadings in the referral of this matter to the FCC.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case Nos. QWE-T-03-6 and QWE-T-03-7 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this order or in interlocutory Orders previously issued in this Case Nos. QWE-T-03-6 and QWE-T-03-7. *Idaho Code* § 61-626. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 6th
day of October 2004.



PAUL KJELLANDER, PRESIDENT

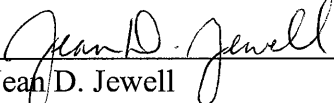


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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