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IDAHO PUBLIC  
UTILITIES COMMISSION

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

JOSEPH B. MCNEAL, d/b/a PAGEDATA, )

Complainant, )

CASE NO. QWE-T-03-25

vs. )

QWEST CORPORATION, )

Respondent. )

\_\_\_\_\_ )

**PAGEDATA'S REPLY TO**

**QWEST CORPORATION'S LIMITED RESPONSE**

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## INTRODUCTION

In Qwest Corporation's ("Qwest") Limited Response filed November 26, 2003, with the Idaho Public Utilities Commission ("Commission") Qwest admitted that it failed to correct billings and unilaterally withheld reciprocal compensation payments without availing itself to the options that it contractually agreed to in the dispute resolution clause (Section 13.14) of the interconnection agreement with PageData. Now Qwest seeks to delay and hinder PageData from exercising its option for dispute resolution as outlined in the interconnection agreement.

By elevating one portion of the dispute resolution clause over another Qwest is now trying to assert that arbitration is the sole remedy for dispute resolution. Qwest, itself, had the option of exercising one of three dispute resolution options. Qwest chose to leave that decision to PageData alone. Qwest's management is still thinking pre-1996 with actions it could have taken under tariff. These same actions are prohibited by the 1996 Telecommunications Act ("1996 Tel Act") and in the interconnection agreement. Qwest should have known that it could not continue to do nothing and it had to choose one of the dispute options, but left the decision up to PageData. Qwest violated their contractual options for dispute resolution in the interconnection agreement by withholding payments of reciprocal compensation and not correcting the billing for PageData.

The questions before the Commission are:

1. Does the Commission have jurisdiction? PageData believes it does and has outlined that below.

2. Can a party to an interconnection agreement seek relief by initiating any option in the dispute resolution clause if the other party is uncooperative?
3. Is arbitration the sole remedy for dispute resolution despite the fact that the interconnection agreement includes three specific options (arbitration, Commission, or the FCC) and excludes two other options (federal and state court)?
4. Can an ILEC such as Qwest unilaterally take action against a competitive carrier without invoking the dispute resolution clause?
5. Can an ILEC such as Qwest refuse to negotiate in good faith to settle a dispute and then interfere with the options exercised in the dispute resolution clause?
6. Does the Commission have authority to investigate and correct billing inaccuracies between competitive carriers that operate within Idaho?
7. Can an ILEC such as Qwest take action against a competitive carrier while accounts are in active dispute before authoritative bodies?
8. Is an interconnection agreement a private contract not subject to the Commission's authority as Qwest claims?
9. Is an interconnection agreement a private contract with no entity having authority over the interconnection agreements except Qwest as Qwest claims?

These are the questions that Qwest has raised in their Limited Response.

PageData believes addressing these questions is important to the telecommunications

industry in Idaho. PageData has addressed these questions in this Reply. The Commission's answers to these questions will determine the Commission's role in dispute resolutions in interconnection agreements in Idaho.

### **The Commission Has The Authority To Hear This Complaint**

Precedence has been set by the Commission for the Commission to hear complaints for failure to correct billing resulting in improper assessments of charges in Commission Order No. 29219 (Idaho Telephone Association, Illuminet, et al vs. Qwest, Case No. QWE-T-02-11).

Footnote 1 of the Commission's Order No. 29219 states the following:

*Idaho Code* § 62-615(1) gives the Commission "full power and authority to implement the federal telecommunications act of 1996.... Other requirements of the Telecommunications Act also may be implicated by the allegations and issues raised by Complainants, including terms of an interconnection agreement between Qwest and ELI, and Qwest's obligation to provide nondiscriminatory access to its services and facilities under sections 251(c)(2)(D) and 251(c)(3) of the Act.

In its Order No. 29219, page 4, the Commission stated the following:

*Idaho Code* § 62-614 is a broad grant of authority to the Commission to resolve disputes between incumbent telephone companies, like Qwest, and any other telephone service provider. Section 62-614 permits a telephone corporation that has elected regulation under Title 62, Idaho Code, or any other telephone corporation, including any mutual, nonprofit or cooperative corporation over which the Commission normally has no authority, to apply to the Commission for resolution of their disputes. The subject matters of dispute that may be brought to the Commission are broadly defined: the Commission's authority is properly invoked whenever the parties "are unable to agree *on any matter relating to telecommunication issues* between such companies, then either telephone corporation may apply to the commission for determination of the matter." *Idaho Code* § 62-614(1) (italics added). The Commission has jurisdiction to "issue its findings and order determining such dispute in accordance with applicable provisions of law and in a manner which shall best serve the public interest." *Idaho Code* § 62-614(2).

In its Order No. 29219, pages 6-7, the Commission stated the following:

Idaho Code § 62-614 confers jurisdiction on the Commission to resolve the issues raised in the Complaint. The legislature intended when it enacted the Idaho Telecommunications Act of 1988, of which Section 62-614 is a part, “to encourage innovation within the industry by a balanced program of regulation and competition.” Idaho Code § 62-602(1). The legislature state in 1997 amendments to the Act that “the telecommunications industry is in a state of transition from a regulated public utility industry to a competitive industry.” Idaho Code § 62-602(4). In this environment, the legislature anticipated disputes would arise between companies as they attempted both to work together as necessary also to compete with one another. Thus, when telecommunication companies “are unable to agree on any matter relating to telecommunication issues between such companies,” Section 62-614 establishes the Commission as the forum to resolve the dispute.

Commission Rule of Procedure No. 13 provides that the Commission’s rules “will be liberally construed to secure just, speedy and economical determination of all issues presented to the Commission.” Commission Rule of Procedure 13 IDAPA 31.01.01.013

Quoting from the Commission’s Order No. 29219 (page 4) “*Idaho Code* § 62-614 is a broad grant of authority to the Commission to resolve disputes between incumbent telephone companies, like Qwest, and any other telephone service provider” (*emphasis added*). If Qwest had its way, it would have the Commission shirk its responsibilities granted it by the Idaho State Legislature by having other authoritative bodies judicate interconnection agreements that are within the Commission’s authority to act upon as outlined in Idaho Code § 62-602(4) and § 62-614. If the Commission did as Qwest has petitioned, the Commission would not be able to fulfill its other federal and state fiduciary duties by determining if ample competition is available in the marketplace before it deregulates Qwest or sets policy and pricing on the triennial review, and SGAT

policies. The fact gathering process involved in these duties cannot be relinquished to the intervenor process only.

If the Commission allows Qwest to classify interconnection agreements, that require mandatory filing by telecommunications companies operating inside the state of Idaho, as private contracts it would be setting dangerous precedent. It would allow Qwest to continue its unlawful policy of not filing all agreements that it operates under. This policy would vacate many established Commission orders and leave other carriers without recourse.

In the Commission's Order No. 29360 (Case No. QWE-T-02-25, "In the Matter of the Application of Qwest Corporation for Deregulation of Basic Local Exchange Rates in its Boise, Nampa, Caldwell, Meridian, Twin Falls, Idaho Falls, and Pocatello Exchanges"), page 6 it says:

At Idaho Code § 62-602, the legislature codified its express intent regarding deregulations of local telephone service rates:

- (1) The legislature of the state of Idaho hereby finds that universally available telecommunications services are essential to the health, welfare and economic well-being of the citizens of the state of Idaho and there is a need for establishing legislation to protect and maintain high-quality universal telecommunications at just and reasonable rates for all classes of customers and to encourage innovation within the industry by a balanced program of regulation and competition.
- (2) It is the intent of this legislature that effective competition throughout a local exchange calling area will involve a significant number of customers having both service provider and service option choices *and that actual competition means more than the mere presence of a competitor. Instead, for there to be actual and effective competition there needs to be substantive and meaningful competition throughout the incumbent telephone corporation's local exchange area.* (italics added in text).
- (3) It is the further intent of the legislature that the commission, in its deliberation of deregulation of the incumbent telephone corporations, will examine the impact such deregulation will have on the public interest in accordance with the general grant of authority given to the

commission by the legislature and that all parties be allowed to comment thereon in such proceeding.

In order to verify that there is ample competition in Qwest's territory, the Commission needs to verify that Qwest is not continuing to use its billing and legal departments as a weapon to stifle meaningful competition and to suppress competitors from speaking out about Qwest's inappropriate activities.<sup>1</sup>

It is the Commission's job to regulate the rates charged by Qwest. Therefore, the Commission is obligated to verify that Qwest is actually charging the correct rates, especially after a company or individual complains of habitual incorrect billing by Qwest. Qwest has a history of improper billing. Further evidence that Qwest habitually bills incorrectly, is the fact that Qwest has recently been investigated by the Attorney General's offices of Idaho, Oregon, and Arizona, to name a few, for incorrect billing and then made settlements with the various states' Attorney General's offices.

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<sup>1</sup> This was addressed by the Administrative Law Judge, Allan Klein, in his "Findings of Fact, Conclusions, Recommendation and Memorandum" Case P-421/C02-197, *In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, September 20, 2002, ¶¶375-377 ("Minnesota Memorandum"):

"Because none of the provisions cited in the Complaint have yet been made available to other CLECs for pick and choose, the harm continues. Qwest's conduct generally harms competition and the growth of CLECs in Minnesota.

The Commission should also consider the quid pro quo that Qwest received from its conduct, including the elimination of CLEC participation in regulatory proceedings address the public interest, and the damage that caused to the furtherance of competition in Minnesota.

Qwest has a history of past violations. In that regard, Qwest tried to avoid its §252 obligations in both the MCIWorldcom docket and the DTI docket. In addition, the Commission recently found that Qwest has engaged in a pattern of anticompetitive behavior in *In the Matter of the Complaint of AT&T Communications of the Midwest Against Qwest Corporation*, Docket No. P-421/C-01-391"

**Qwest Is Contractually Bound To Accept PageData's Selected Method Of  
Relief And Is Without Recourse**

The parties have agreed in advance through the dispute resolution clause in the interconnection agreement that three venues of relief are acceptable (arbitration, the Commission, and the FCC) in lieu of federal and state court.

Qwest is using selective wordsmithing to interpret FCC decisions and Idaho law<sup>2</sup> in their points 3 and 4 (Qwest's Limited Response, page 10). Qwest said, "The FCC recognized that a state commission may not have responsibility to decide a dispute under an interconnection agreement if the parties have contractually agreed to a dispute resolution." (Qwest's Limited Response, page 10) The FCC recognized:

We note that, in other circumstances, parties may be bound by dispute resolution clauses in their interconnection agreement to seek relief in a particular fashion, and, therefore, the state commission would have no responsibility under section 252 to interpret and enforce an existing agreement. In this case, however, the relevant interconnection agreements do not expressly specify how the disputes shall be resolved. (emphasis added)<sup>3</sup>

In this circumstance between PageData and Qwest it is clear that the Commission does have authority to decide a dispute if that venue is selected by either PageData or Qwest because the dispute resolution clause does not restrict the dispute resolution process to arbitration only, but includes options for the Commission and the FCC and excludes state and federal court. Qwest left it to PageData to choose the mechanism for relief. PageData has selected the Commission option for resolution of the dispute. Qwest

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<sup>2</sup> Previous Commission Orders (including Order 29219) and Idaho Code § 62-615(1) give the Commission full power to implement the 1996 Tel Act, including interconnection agreements that are filed in Idaho.

<sup>3</sup> *In the Matter of Starpower Communications, LLC, Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, CC Docket No. 00-52, Memorandum Opinion and Order, FCC 00-216 (re. June 14, 2000)

is contractually bound, without recourse, to accept PageData's decision and to take action to resolve the dispute.

The purpose of the dispute resolution clause is for speedy and cost efficient resolutions of disputes. Qwest cannot now fight the venue that PageData has chosen after Qwest refused to participate earlier. Qwest knows that the billing is in error, and throughout the dispute Qwest has never denied that the billing is in error. Qwest can curtail the Commission complaint process by simply correcting the billing and handling the reciprocal compensation payments per the interconnection agreement as PageData has requested in its Complaint.

**Qwest's Claim That The Interconnection Agreement Is A Private Contract Is**

**Incorrect**

It is illogical and unpersuasive to call the interconnection agreement a private contract as Qwest is trying to portray. Classifying interconnection agreements as private contracts would be contrary to public policy and allow Qwest to continue its unlawful circumvention of federal and state statutes.

Qwest's policy of advancing this theory that interconnection agreements are private contracts not subject to Commission authority is contrary to Qwest's recent investigation, penalties and fines for similar beliefs before Qwest received its 271 approval. Qwest has been penalized severely by several state PUCs by this mistaken interpretation (Minnesota<sup>4</sup>, Arizona, and Iowa, to name a few). It is in the public interest

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<sup>4</sup> Minnesota Memorandum, ¶¶ 4,5

"The Department has demonstrated by a preponderance of the evidence that each of Qwest's violations of 47 U.S.C. § 251, were knowing and intentional. The Department has demonstrated by a preponderance of the evidence that each of Qwest's violations of 47 U.S.C. § 252, were knowing and intentional."

that the Commission unequivocally stops the advancement of this theory in the state of Idaho.

### **Equal Treatment**

Qwest states that the Commission's decision in this matter will affect no other telecommunications carrier, but PageData believes that the ramification of this decision affects the telecommunications industry in the state of Idaho with regard to enforcement of an ILEC's, such as Qwest's, obligations to follow through on filed and approved interconnection agreements to provide the same terms and conditions (47 U.S.C. §§ 251 and 252). Federal and state law requires Qwest to treat CMRS carriers who have adopted the same interconnection agreement the same way with the same terms and conditions as the other carrier. Therefore Qwest is obligated to treat PageData the same as Arch or AirTouch that originally signed the interconnection agreement. The Commission is responsible for enforcing the pricing schedules and reciprocal compensation terms on interconnection agreements that it approved. (Idaho Code § 62-614)

### **Public Interest**

PageData believes that it is in the public interest, using the Commission's Order No. 29219 as a guideline, that the Commission has the jurisdiction to enforce accurate billing according to the interconnection agreements that are filed and approved by the Commission. The Commission outlined, in its Order No. 29219, its authority to investigate enforcement of interconnection agreements.

PageData believes that the Commission is compelled by Idaho statute to investigate all commercially filed formal complaints and enforce all provisions of interconnection agreements that are filed within the state of Idaho to ensure that all

interconnection agreements filed within the state are not ghost documents filed for show only and not allow the ILEC to provide terms and conditions other than what is on the interconnection agreement. The Commission is also obligated to render a finding on complaints filed by a competitive carrier so the Commission could fulfill its charge under § 62-602.

**The Idaho Commission Is The Best Authoritative Body To Issue A Decision**

**In This Dispute**

Qwest has misinterpreted previous Commission decisions. The Arch interconnection agreement as discussed in this context is actually an adoption of an AirTouch agreement that Qwest had previously failed to file in the state of Idaho. Qwest filed Arch's adoption of the AirTouch agreement because Qwest had secretly signed an interconnection agreement that Qwest classified as a confidential billing settlement agreement with Arch. As part of that agreement Qwest obligated itself to openly file the AirTouch agreement adopted by Arch in the state of Idaho.<sup>5</sup> This occurred during the time period of PageData's hearing before the Commission in Case USW-T-99-24.

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<sup>5</sup> "Confidential Billing Settlement Agreement" between Arch and US West, Amended Agreement for Interconnection, Filed July 29, 2002, Iowa Docket No. NIA-00-32 (FCU-02-2) ¶¶ 3, 4

"INTERCONNECTION AGREEMENTS. Arch agrees to adopt under Section 252(i) of the 1996 Telecommunications Act the interconnection agreements between U S WEST and AirTouch Paging, which were executed on October 18, 1999, in the following nine states: Arizona, Colorado, Iowa, Minnesota, Nebraska, New Mexico, Oregon, Utah and Washington. The Parties also agree to execute new interconnection agreements using the aforementioned AirTouch Paging interconnection agreements as a template in the following five states: Idaho, Montana, North Dakota, South Dakota, and Wyoming. The Parties agree to execute these interconnection agreements within three (3) business days from the execution of this Confidential Billing Settlement Agreement. Each of these new interconnection agreements will be filed with the relevant state public utility commission for approval. The new interconnection agreements will have an effective date of July 1, 2000, and a termination date of January 18, 2002.

FINAL SETTLEMENT. The Parties hereby fully, completely, and unalterable settle any and all claims by the Parties relating to or arising out of the Billing Disputes and the FCC Complaints. The Billing Disputes consist of any and all disputes involving the accounts listed in Exhibit 1 hereto for the period up to and including April 30, 2000."

Qwest believes that because of previous Commission rulings that the Commission agrees with Qwest's unproven allegations that PageData owes Qwest \$300,000 and that previous Commission rulings allowed Qwest to apply Commission determined credits against any account that Qwest chose. Qwest still believes it continues to have that authority because PageData did not seek a stay of the Commission's final order, i.e. applying credits to inflated billings and interest. It is quite clear that Qwest believes that its continued misbehavior towards PageData was and is authorized by previous Commission Orders of how Qwest can apply Commission determined credits and reciprocal compensation to any account that Qwest chooses. The Idaho Supreme Court can amend these Orders because of recent rulings (FCC Order DA-02-1731, July 17, 2002 and the Fifth Circuit Decision No. 03-50107, October 21, 2003).

The importance of the time frame is relevant. The Commission decision was before Qwest and PageData entered into the current interconnection agreement. PageData believes that it is up to the Commission and no other outside agency to correct Qwest's misinterpretation since Qwest believes this authority was granted to it by the Commission.

Since Qwest is continuing to follow through on the Commission's previous decisions then it is up to the Commission to clarify their previous orders. It was implied in the Commission's Orders that they wanted Qwest to correct the billing. Qwest did not have the perpetual right to apply PageData's reciprocal compensation under a new interconnection agreement to any account or invoice that Qwest chose.

The Commission's Orders were limited and dealt with a specific time period. The Commission did not address that Qwest had refused to interconnect with PageData at any

technically feasible point in the LATA. The Commission was concerned that it appeared that PageData had not paid Qwest. But the Commission did not consider reciprocal compensation that Qwest owes PageData in its order, nor the additional facilities requested by PageData, and with reciprocal compensation Qwest owes PageData more money per month than PageData owes Qwest. This is a fact Qwest has never denied. Also in its Order the Commission did not validate that Qwest's billing to date was accurate as Qwest is claiming in their Limited Response.

The Commission's Orders requiring Qwest to refund PageData established the fact that PageData's account was in good standing when PageData originally requested a single point of presence (August 29, 1998) and 10 T-1s (September 8, 1998) from Qwest.

#### **Qwest's Continued Scheme To Limit Competition**

In Qwest's Limited Response (pages 4 & 5), Qwest boldly describes its scheme. Qwest states it has charged PageData, a competitive carrier, wholesale rates for interconnection services, which is strictly prohibited by the Metzger Letter and the TSR Order. Wholesale rates allow Qwest to unlawfully bill for Qwest originated traffic with no mention of reciprocal compensation which would offset any TELRIC rate that Qwest is obligated to charge by FCC rules. This is the bulk of this imaginary \$300,000.

The shenanigans that Qwest has not been forced to explain before an authoritative body is how a carrier such as PageData, who terminates 100% of Qwest originated traffic, can owe the originating carrier money at the end of the month on a monthly basis. Qwest's argument is illogical. Without some kind of Qwest shenanigans, Qwest's claim that PageData owes Qwest \$300,000 falls flat on its face and their claim is void of truth.

The Fifth Circuit Court affirmed (in a US Court of Appeals decision No. 03-50107 on October 21, 2003) an earlier decision by a Texas Federal District Court that Southwestern Bell Telephone Co. (SBC) must deliver without charge, local call traffic it originates, to a point of interconnection with AT&T Communications of Texas, even if that point of interconnection is outside the local calling area where the call originates. This ruling parallels a July 17, 2002 Federal Communications Commission Order (DA-02-1731) that addressed, in part, a similar issue. Up to now, SBC has been attempting to charge wireless and other competitive carriers for interconnection facilities more than 14 miles in length or that are used to carry SBC's traffic that originates outside the local exchange where the interconnection point is located. The Court of Appeals ruling means that SBC cannot charge for facilities it uses to deliver Intra-LATA call traffic to other carriers, regardless of the distance it must transport the calls.

Qwest expects to reap windfall profits by forcing PageData and other Idaho paging carriers to pay unlawful billing until such time as Qwest is forced to follow the law and fulfill its duty to bill according to FCC mandates and Commission approved interconnection agreements.

Even though Qwest does not agree with the FCC ruling of July 17, 2002 or the Fifth Circuit Court of Appeals decision No. 03-50107, upholding an earlier decision by a Texas Federal District Court, Qwest cannot charge PageData for delivery of any Qwest originated traffic within the LATA.

Qwest's unlawful policies have had a real impact on competition in the state of Idaho by putting Spud Beep, Progressive Paging, Newtel, Telcar, and InterPage out of business. These are but a few of the companies that were forced to shut their doors in the

state of Idaho due in large part to the excessive and unlawful rates charged by Qwest. These companies never got to take full advantage of their statutory benefits under the 1996 Tel Act.

### **Other Complaints And Proceedings**

This Complaint concerns the time period from PageData's adoption of the Arch interconnection agreement forward. PageData is not rehashing old disputes, nor disputes that are currently before the Idaho Supreme Court and federal court as Qwest has implied.

In its Limited Response Qwest has failed to mention that in its Order the Commission did not address: (1) unfiled interconnection agreements; (2) failure to interconnect at a single point of presence; (3) damages; (4) attorney's and consultants fees; (5) loss of business share; (6) reciprocal compensation; (7) business interference; (8) mail fraud; and (9) RICO violations. These unresolved matters are currently before federal court and not a part of this complaint.

The unresolved matters before the Idaho Supreme Court are (1) a 45-mile restriction; (2) cash refund versus credit; (3) interest rate; (4) math errors; (5) unlawful charges for delivery of Qwest originated traffic and (6) unfiled interconnection agreements. These items are also not part of PageData's current complaint with the Commission.

### **No Difficult Math Involved In PageData's Request**

In the time Qwest took to write their 13-page Limited Response and in the subsequent time, Qwest could have simply corrected PageData's billing according to the interconnection agreement and applied the reciprocal compensation to the accounts and

invoices PageData outlined in its complaint filed with the Commission on October 31, 2003. There is no difficult math involved in calculating the proper charges under the new interconnection agreement.

Elementary math is needed to multiply 24% of TELRIC rates for the monthly charges under the interconnection agreement. Then this amount would be subtracted from the reciprocal compensation, with the remainder reciprocal compensation credits applied to the accounts and invoices designated by PageData from the date of the new interconnection agreement forward. Any excess money would be issued to PageData.

The Commission should have the ability in house to review the data supporting PageData's complaint filed in connection with rates and invoices under the interconnection agreement the Commission has approved, especially in the early stages while a dispute is less than \$20,000.

It is common knowledge in the communication industry that Qwest uses its billing and legal departments as a weapon against targeted carriers, such as PageData, as punitive measures for challenging Qwest's unlawful policies, as pointed out by the Administrative Law Judge in Minnesota.<sup>6</sup>

In Idaho Code § 62-602(1) the Idaho legislature granted the Commission broad authority to ensure competition in Idaho before the Commission deregulates Qwest "to protect and maintain high-quality universal telecommunications at just and reasonable

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<sup>6</sup> Minnesota Memorandum, ¶¶ 134, 141

"Section 252 requires public filing of interconnection agreements to ensure that ILECs do not discriminate through the use of unfiled agreements. § 252(i) puts every similarly situated CLEC on a level playing field in terms of its relationship with Qwest, but the statutory mechanism works only if Qwest's agreements related to pricing and other issues are actually filed with the Commission. The easiest way that an ILEC can discriminate between CLECs is by adjusting its pricing to favor one CLEC over another.

The testimony of Qwest witness Judy Rixe regarding the "consulting" agreement between Qwest and Eschelon is not credible. On May 1, 2002, Ms. Rixe testified "Well, number 1, we don't offer

rates for all classes of customers and to encourage innovation within the industry by a balanced program of regulation and competition.” Qwest has kept PageData from bringing its innovative technology to market and has hindered PageData from fully competing in the marketplace. Qwest’s violation of Idaho Code § 62-602(1) is well within the Commission’s jurisdiction to correct.

### **Due Process**

Qwest has no authority under the interconnection agreement or the 1996 Tel Act to unilaterally withhold reciprocal compensation payments from PageData (or any carrier) or apply PageData’s (or any carrier’s) reciprocal compensation to billings actively disputed. This does not mean Qwest is without means of recourse. Under the dispute resolution clause of the interconnection agreement, Qwest has the ability to take PageData to arbitration; file a complaint at the Commission where the services are being provided; or file a complaint at the FCC in order that Qwest may request an order to demand payment or disconnect services. If the controlling authority issues an order for PageData to pay and that order is not followed, then Qwest would be able to follow the recourse dictated in the order. Qwest has refused attempts by PageData to resolve disputes and denied jurisdiction of the FCC, the Commission, and arbitration.

PageData prevailed in its case USW-T-99-24 at the Commission by proving that Qwest had overcharged PageData for termination of Qwest originated traffic. The Commission did not address the other issues in the complaint that are now before federal court. PageData prevailed in its informal complaint at the FCC Enforcement Bureau. The FCC’s informal complaint process compelled Qwest to file previously unfiled single

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discounts.” Her testimony is directly contradicted, however, by Qwest-drafted discount offers she possessed that Qwest produced to the Department only after Ms. Rixe had been cross-examined.”

point of presence amendments and to enter into the AirTouch/Arch interconnection agreement (as filed in Iowa) with PageData and agree to facilities installation (which are still pending).

If the Commission allows Qwest to unilaterally withhold payments and to fight jurisdiction of the three options available in the dispute resolution clause of the interconnection agreement (arbitration, the Commission, and the FCC), this extends Qwest's monopoly in the marketplace and gives an incumbent carrier an unfair advantage in the marketplace and prevents speedy resolutions of disputes. The law was not designed for the incumbent carrier to win through stonewalling. (Commission Rule of Procedure 13 IDAPA 31.01.01.013)

Qwest had the option to initiate arbitration, file a complaint at the Commission, or to go to the FCC. Qwest chose not to act according to the dispute resolution clause, but instead chose to withhold money from PageData and not to settle. Now that PageData exercised its right to go to the Commission for resolution of the dispute, Qwest claims that PageData should have requested arbitration. Under the dispute resolution clause, Qwest has no right to tell PageData by which method to seek relief. The arbitration method of dispute resolution does not supercede the other two options.

In its Limited Response, Qwest has acknowledged reciprocal compensation is now due PageData, but Qwest says it is applying it towards PageData's accounts. However, PageData has not seen any record of Qwest applying reciprocal compensation credits to PageData's accounts over the past nine months. The Commission should require Qwest to produce documentation supporting their claim.

### **Qwest Has Not Disconnected Facilities Per PageData's Request**

Qwest has no authority to continue to charge for those facilities that have been made inoperable by Qwest and have been requested in writing by PageData to be shut off. Qwest continues to invoice for these facilities, at inflated rates, along with interest and late charges. The Commission should immediately put a halt to this practice. A carrier should not have to go to arbitration, the Commission, or the FCC in order for Qwest to disconnect facilities requested in writing by the carrier.

### **CONCLUSION**

It is Qwest's fiduciary duty to render lawful billings according to interconnection agreements on file with the Commission and according to FCC regulations. It is the Commission's duty to approve interconnection agreements, ensure that all parties are in compliance with the interconnection agreement, ensure equal treatment, hear complaints, oversee the triennial review and the SGAT, and the regulation of Qwest.

According to federal and state law, the Commission has the jurisdiction and is obligated to review all complaints filed against Qwest in this timeframe. This gives the Commission first hand knowledge of any impropriety that Qwest promulgates in the marketplace, so the Commission does not depend solely on the intervener process to ensure innovation and true competition is available before Qwest is granted de-regulation.

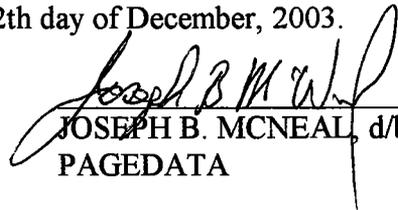
It is the intent of Commission Rule of Procedures No. 13 and 47 U.S.C. § 252 to resolve disputes in a speedy and expeditious manner with the right of either party to exercise any of the three options available in the dispute resolution clause of the interconnection agreement.

Qwest is obligated itself to use the dispute resolution clause before it can take any action against a co-carrier, but Qwest neglected to exercise any of its three options under the dispute resolution clause. After Qwest has failed to exercise its options, Qwest cannot now dictate to PageData which course of action PageData should use to seek relief. Qwest is contractually obligated by the interconnection agreement not to fight jurisdiction, to accept the method for dispute resolution chosen by PageData, and to actively participate in the dispute resolution process to resolve the dispute. In fact, Qwest should have participated earlier in getting the dispute resolved by simply correcting the billing or agreed on one of the methods for dispute resolution. If no consensus was reached, a coin could have been flipped to decide the method. This was not done.

Therefore, Qwest is in violation of the interconnection agreement and does not have any legal basis in law to unilaterally withhold PageData's reciprocal compensation payments or apply reciprocal compensation credits to any account or invoice that Qwest chooses without invoking one of the three options in the dispute resolution clause. Qwest can only apply the reciprocal compensation to accounts and invoices that PageData designates and pay any remainder to PageData directly.

The Commission should reject Qwest's continuing attempts to stonewall the dispute, require Qwest to follow the provisions of the dispute resolution clause, exercise its jurisdiction over interconnection agreements in Idaho, have Qwest disconnect the facilities requested, and require Qwest to answer the complaint.

RESPECTFULLY SUBMITTED this 12th day of December, 2003.

  
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JOSEPH B. MCNEAL, d/b/a  
PAGEDATA

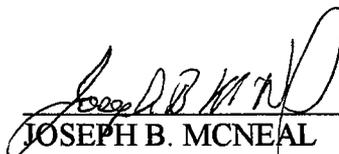
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of December, 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Jean Jewell  
Idaho Public Utilities Secretary  
472 W. Washington Street  
PO Box 83720  
Boise, ID 83720-0074  
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