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IDAHO PUBLIC  
UTILITIES COMMISSION

Jim Jones (ISB #1136)  
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Attorney for Petitioners

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

*QWE-T-04-32*

IN THE MATTER OF THE JOINT PETITION OF	)	Docket No. 29175
ROBERT RYDER, d/b/a RADIO PAGING SERVICE	)	
and JOSEPH B. MCNEAL, d/b/a PAGEDATA,	)	<b>PETITION FOR</b>
FOR ARBITRATION OF A INTERCONNECTION	)	<b>ARBITRATION</b>
DISPUTE.	)	
_____	)	

Petitioners, Robert Ryder, d/b/a Radio Paging Service, and Joseph B. McNeal, d/b/a PageData, hereby petition the Idaho Public Utilities Commission ("Commission") for arbitration of a dispute between Petitioners and Qwest Communications, Inc. ("Qwest"), arising under interconnection agreements heretofore approved by the Commission. Petitioners show the Commission, as follows:

1. Petitioners are both telecommunication carriers operating Type One paging services. Petitioners interconnect with Qwest and have done so since prior to 1999.
2. On or about February 19, 1999, Robert Ryder entered into a Type One Paging Agreement (Agreement No. CDS-980622-0027) with Qwest's predecessor, U.S. West Communications, Inc., and the same was approved by the Commission on or about May 13, 1999. A true and correct excerpt from that agreement is attached and incorporated as Exhibit A. On or about June 8, 1999, Joseph B. McNeal entered into a Type One Paging Agreement

(Agreement No. CDS-990518-0085) with Qwest's predecessor, U.S. West Communications, Inc., and said agreement was approved by the Commission on or about September 10, 1999. A true and correct excerpt from that agreement is attached and incorporated as Exhibit B.

3. Both of the Petitioners entered into their respective interconnection agreements with U.S. West/Qwest under duress or business compulsion. Petitioners had contended that the facilities and services to be provided pursuant to the agreements were required to be provided without charge under federal telecommunications laws and regulations, while Qwest contended otherwise. Qwest refused to reduce its charges to comply with federal law unless the Petitioners entered into said interconnection agreements. Both agreements provided that charges would be reduced by at least one-half. In order to get the benefit of the reduced charges, the Petitioners entered into said agreements. Both of the agreements allowed Qwest to charge for transit traffic, i.e. traffic originating on systems other than Qwest/U.S. West. Petitioners both contended that they could not be charged or held liable for transit traffic charges.

4. On August 2, 2004, the Commission determined in its Order No. 29555 that Qwest was required to credit or refund back to Petitioners any and all sums charged for transit traffic for the period November 1, 1996, until the time Petitioners entered into their respective interconnection agreements. An excerpt from that order is attached and incorporated as Exhibit C. Both of the agreements contain a change of law provision that incorporates the Commission's ruling in Order No. 29555.

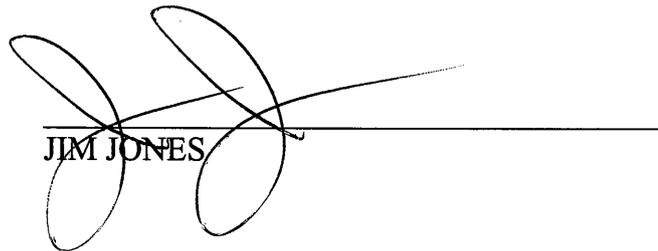
5. Prior to the entry of Order No. 29555, Petitioners had filed suit in the U.S. District Court for the District of Idaho, seeking recovery of the transit traffic charges paid by Petitioners pursuant to their respective interconnection agreements. Qwest filed a motion to

dismiss, claiming that the question of whether Qwest could charge for transit traffic pursuant to the interconnection agreements was required to be resolved by arbitration. An excerpt from Qwest's brief in this regard is attached and incorporated as Exhibit D. The parties subsequently agreed to dismiss the federal action, without prejudice, and stipulated to entry of a dismissal order wherein the parties waived limitations defenses. A copy of the subsequent court order is attached and incorporated as Exhibit E.

6. Petitioners have repeatedly requested that Qwest either refund the transit traffic charges paid pursuant to the interconnection agreements or submit the matter to arbitration. Copies of a number of such requests are attached as Exhibit E. Qwest has failed and refused to do either. Petitioners are entitled to arbitration of the issue of their liability (and entitlement to a refund) for transit traffic charges under their interconnection agreements.

**WHEREFORE**, Petitioners pray that the Commission arbitrate the issue of Petitioners' liability for, and entitlement to a refund of, transit traffic charges paid under their respective interconnection agreements.

DATED this 24<sup>th</sup> day of November, 2004.

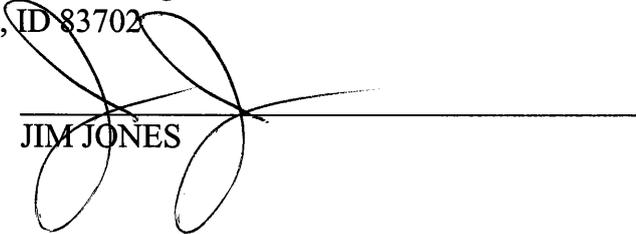
  
JIM JONES

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 24<sup>th</sup> day of November, 2004, I caused to be served a true and correct copies of the foregoing PETITION FOR ARBITRATION by depositing the same in the United States mail, postage prepaid, in envelopes addressed to the following:

WILLIAM J. BATT  
Batt & Fisher  
P.O. Box 1308  
Boise, ID 83701

DON HOWELL  
Idaho Public Utilities Commission  
472 West Washington  
Boise, ID 83702

  
JIM JONES

**TYPE 1 PAGING  
AGREEMENT**

**BETWEEN**

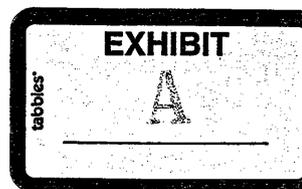
**U S WEST Communications, Inc.**

**AND**

**Robert S. Ryder d.b.a. Radio Paging Service**

**Agreement Number  
CDS-980622-0027**

**for the State of Idaho**



## TYPE 1 PAGING AGREEMENT

This Type 1 Paging Agreement, is between Robert S. Ryder d.b.a. Radio Paging Service ("Paging Provider") an Individual Proprietorship, and U S WEST Communications, Inc. ("USWC"), a Colorado Corporation.

Paging Provider is licensed to provide paging services by the Federal Communications Commission ("FCC"). Both USWC and Paging Provider are engaged in providing telecommunications and other services and have agreed to connect their facilities and exchange traffic; therefore, each party covenants and agrees as follows:

### 1. RECITALS

- 1.1. The Parties enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory, or other public forum addressing any matters, including matters related to the types of arrangements prescribed by this Agreement. It will be submitted to the Idaho Public Utilities Commission.
- 1.2. The Parties have agreed to certain provisions in this Agreement, based, in large part, on the existing state of the law, rules, regulations and interpretations thereof, as of the date hereof (the "Existing Rules"). To the extent that certain of the Existing Rules are changed and modified, and it reasonably appears that the Parties would have negotiated and agreed to different term(s), condition(s), or covenant(s) than as contained herein had such change or modification been in existence before execution hereof, then this Agreement shall be amended to reflect such different term(s), condition(s), or covenant(s). Where the Parties fail to agree upon such an amendment, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement.

### 2. SCOPE OF AGREEMENT

- 2.1. Unless otherwise provided in this Agreement, the Parties will perform all of their obligations hereunder, to the extent provided in the Appendices attached hereto. The Agreement includes all accompanying appendices.
- 2.2. In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement) such action shall not be unreasonably delayed, withheld or conditioned.
- 2.3. Interchange of Type 1 Traffic
  - 2.3.1. USWC will originate and terminate paging traffic and deliver it to the Paging Provider's facility in the service area(s) set forth in Appendix C as herein provided.
  - 2.3.2. This Agreement is for Type 1 traffic interchange for licensed, narrow-band radio carriers only. All other interconnections are covered by

**17.16. Dispute Resolution**

If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents ("Dispute") cannot be settled through negotiation, it shall be resolved by arbitration conducted by a single arbitrator engaged in the practice of law, under the then current rules of the American Arbitration Association ("AAA"). The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all Disputes. The arbitrator shall not have authority to award punitive damages. All expedited procedures prescribed by the AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. The prevailing Party, as determined by the arbitrator shall be entitled to an award of reasonable attorneys' fees and costs. The arbitration shall occur in Denver, Colorado. Nothing in this Section shall be construed to waive or limit either Party's right to seek relief from the Commission or the Federal Communications Commission as provided by state or federal law.

No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues.

**17.17. Controlling Law**

This Agreement was negotiated by the Parties in accordance with the terms of the Act and the laws of the state where service is provided hereunder. It shall be interpreted solely in accordance with the terms of the Act and the applicable state law in the state where the service is provided.

**17.18. Joint Work Product**

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

**17.19. Responsibility for Environmental Contamination**

Neither Party shall be liable to the other for any costs whatsoever resulting from the presence or release of any environmental hazard that such Party did not introduce to the affected work location. Both Parties shall defend and hold harmless the other, its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any environmental hazard that the indemnifying party, its contractors or agents introduce to the work locations or (ii) the presence or release of any environmental hazard for which the indemnifying party is responsible under applicable law.

**TYPE 1 PAGING  
AGREEMENT**

**BETWEEN**

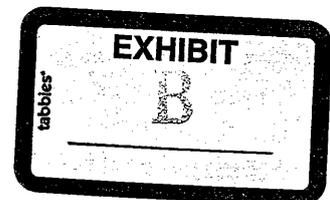
**U S WEST Communications, Inc.**

**AND**

**Joseph B. McNeal d.b.a. Page Data**

**Agreement Number  
CDS-990518-0085**

**Idaho**



## TYPE 1 PAGING AGREEMENT

This Type 1 Paging Agreement, is between Joseph B. McNeal d.b.a. Page Data ("Paging Provider") a proprietorship, and U S WEST Communications, Inc. ("USWC"), a Colorado corporation.

Paging Provider is licensed to provide paging services by the Federal Communications Commission ("FCC"). Both USWC and Paging Provider are engaged in providing telecommunications and other services and have agreed to connect their facilities and exchange traffic; therefore, each party covenants and agrees as follows:

### 1. RECITALS

- 1.1. The Parties enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory, or other public forum addressing any matters, including matters related to the types of arrangements prescribed by this Agreement. It will be submitted to the Idaho Public Utilities Commission.
- 1.2. The Parties have agreed to certain provisions in this Agreement, based, in large part, on the existing state of the law, rules, regulations and interpretations thereof, as of the date hereof (the "Existing Rules"). To the extent that certain of the Existing Rules are changed and modified, and it reasonably appears that the Parties would have negotiated and agreed to different term(s), condition(s), or covenant(s) than as contained herein had such change or modification been in existence before execution hereof, then this Agreement shall be amended to reflect such different term(s), condition(s), or covenant(s). Where the Parties fail to agree upon such an amendment, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement.

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**17.20. Notices**

Any notices required by or concerning this Agreement shall be sent to the Parties at the addresses shown below:

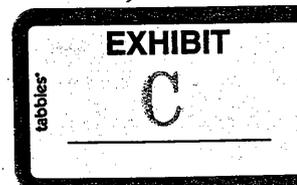
BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

ROBERT RYDER DBA RADIO PAGING	)	
SERVICE, JOSEPH B. McNEAL DBA	)	SUPREME COURT
PAGEDATA AND INTERPAGE OF IDAHO,	)	DOCKET NO. 29175
AND TEL-CAR, INC.	)	
	)	
Petitioners/Appellants,	)	
	)	
v.	)	
	)	
IDAHO PUBLIC UTILITIES COMMISSION,	)	IPUC CASE NO. USW-T-99-24
	)	
Respondent on Appeal,	)	
	)	
and	)	
	)	
QWEST CORPORATION,	)	
	)	
Respondent/Respondent on Appeal.	)	ORDER NO. 29555
	)	

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On February 13, 2004, the Parties in this appeal filed a Stipulated Motion with the Idaho Supreme Court to suspend the appeal and temporarily remand this matter back to the Public Utilities Commission. At that time, the Parties maintained there was good cause to suspend the appeal, primarily so they could consider a recent decision issued by the United States Court of Appeals for the District of Columbia Circuit. In that decision the Circuit Court vacated orders of the Federal Communications Commission (FCC) that the Idaho Commission had relied upon when it issued the underlying orders in this appeal. The Parties asserted in their Stipulated Motion that remanding the matter would allow: (1) the Commission to reconsider its orders in light of the recent Circuit Court opinion; (2) the FCC to address the two telecommunication issues on remand from the Circuit Court; and (3) the Parties another opportunity to settle the appeal. On March 8, 2004, the Court suspended the appeal and remanded the matter back to the Commission.

Following the Court's remand, negotiations to settle or narrow the issues on appeal were unsuccessful. In addition, the FCC has not issued any orders addressing the two telecommunications issues discussed in the Circuit Court's opinion. Given this state of events,



time. The FCC has repeatedly ruled that LECs may charge paging companies for interconnection facilities to the extent that those facilities carry traffic.” *Id.* (footnote omitted). Qwest argued that until the Circuit Court issued its *Mountain Communications* opinion, the FCC had repeated and consistently held that LECs may charge paging carriers for transit traffic.<sup>11</sup> Finally, Qwest disclosed it is working to develop a “records product” that if successful, would make transit calling information available for purchase by paging companies. Assuming that the product can be developed, Qwest intends to sell the service “to interconnecting carriers that wish to purchase it.” *Id.* at 8. Thus, such a service would not be made available to pagers for free. If the Pagers want to seek reimbursement from the originating carrier, then the Pagers can purchase the “records service.”

As directed by the Commission, Qwest calculated the amount of transit traffic at issue for each of the three Pagers with interest through July 1, 2004. The calculated refund credits for each carrier would be: Radio Paging – \$15,311; Tel-Car – \$15,362; and PageData (including InterPage) – \$35,701.

2. The Pagers. The Pagers insisted they are entitled to a full refund for transit traffic. They argued it would be inequitable for Qwest to charge the Pagers for transit traffic, while at the same time not providing the Pagers with the necessary third-party information. Pagers Brief at 13. Just as Qwest offered at the Circuit Court’s oral argument to provide the necessary information to Mountain, the Pagers here assert they are entitled to equal treatment and to receive the calling data. *Mountain Communications*, 355 F.3d at 649. The Pagers insisted that it would be discriminatory for Qwest to provide the calling information to Mountain but not provide similar information to the Pagers. 47 U.S.C. § 251(c)(2)(D).

**Commission Findings:** The issue of transit traffic was vigorously contested in this case. As the Circuit Court noted, Qwest incurs costs for switching and routing calls originating with other carriers, and transported over Qwest’s network to paging carriers. In its *Mountain* decision, the FCC allowed Qwest to charge for transit traffic “but indicated that [the Pagers] could seek reimbursement from the originating carrier for whatever charges it paid to Qwest.” *Id.* at 649. In other words, Qwest has a choice: it can either charge the Pagers and provide calling information so that they may seek reimbursement; or it could charge the originating carrier. *Id.* Although the Circuit Court never reached the merits of this dilemma, it is plain in

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<sup>11</sup> In a footnote, Qwest lists most if not all the FCC Orders cited by the Commission in its prior Orders.

the Court's analysis and ours that Qwest cannot have it both ways. Qwest's statement that the transit traffic calling data "does not exist," provides only one choice.

Qwest's arguments on why the Pagers should not receive refunds for transit traffic are unpersuasive. We agree with the Pagers that it is inequitable to offer the calling data to Mountain but not to other similarly situated carriers. On remand, we find it reasonable for Qwest to provide either refunds or the calling data. Because Qwest has no data to give, we are left with no choice but to order Qwest to refund the transit traffic charges to the Pagers. Qwest's reliance upon the FCC orders is unavailing. While we recognize that the FCC and our prior Order both "validated" Qwest charging the Pagers for transit traffic, even the FCC recognized in *Mountain* that the Pagers could seek reimbursement from the originating carrier provided Mountain was given the necessary data to identify such carriers. *Mountain Communications*, 355 F.3d at 649, citing *Mountain Communications II*, 17 FCC Rcd at 15137 n. 13. We infer this lack of data prompted Qwest to develop a service to record the transit data.

#### CALCULATIONS OF THE REFUNDS

Having determined that the Pagers are due additional refunds/credits for wide area calling and transit traffic, we turn to the calculation of these additional refunds. Order No. 29491 directed Qwest to prepare exhibit(s) showing the amount of transit traffic charged to each pager and the amount of charges for wide area calling (if any). These calculations were also to include appropriate interest calculated up to July 1, 2004. Order No. 29491 at 7-8. Once Qwest filed its calculations, "then the Pagers will have an opportunity to respond to the questions and reply to Qwest's information/calculations." *Id.* at 8.

Pursuant to the Commission's directive, Qwest calculated the refund amounts at issue for wide area calling and transit traffic. Starting with the refund credits issued each pager in November 2002 pursuant to Reconsideration Order No. 29140 (R. at 916), Qwest calculated the amounts at issue as shown in the table below.

The Pagers maintained that they "are entitled to a refund of all sums that they paid to Qwest during the time periods relevant to this proceeding." Pagers Brief at 3 (emphasis added). In addition, PageData now seeks a larger refund than it initially requested at the evidentiary hearing. Although Radio Paging did not seek any refunds for wide area calling, it asserted that it was due additional credit for transit traffic. *Id.* at 16. Radio Paging requested a refund totaling \$57,309.16 (without interest).

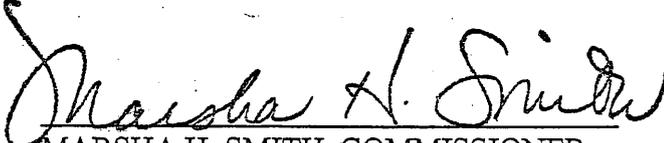
IT IS FURTHER ORDERED that Qwest issue the respective additional billing credits and/or refunds to PageData and Radio Paging no later than 21 days from the service date of this Order.

IT IS FURTHER ORDERED that Qwest issue the \$52,783 refund to the bankruptcy estate of Tel-Car, Inc. (plus one additional month of interest) and shall file said refund with the appropriate Bankruptcy Court within 21 days from the service date of this Order.

THIS IS A FINAL ORDER ON REMAND. Any party aggrieved by this Order may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules.

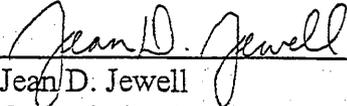
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 2<sup>nd</sup> day of August 2004.

  
\_\_\_\_\_  
PAUL KJELLANDER, PRESIDENT

  
\_\_\_\_\_  
MARSHA H. SMITH, COMMISSIONER

Commissioner Hansen Out of the Office  
DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
\_\_\_\_\_  
Jean D. Jewell  
Commission Secretary

bis/O:USWT9924\_dh

WILLIAM J. BATT, ISB No. 2938  
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Facsimile: (208) 331-2400

Attorneys for Defendants

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF IDAHO

JOSEPH B. MCNEAL, d/b/a PAGEDATA  
and INTERPAGE OF IDAHO, ROBERT  
RYDER, d/b/a RADIO PAGING  
SERVICE, and RICHARD  
CRAWFORTH, Bankruptcy Trustee for  
TEL-CAR, INC. a bankrupt Idaho  
corporation,

Plaintiffs,

vs.

QWEST CORPORATION and  
MALHEUR BELL COMPANY,

Defendants.

Case No. CIV03-473-S-MHW

**DEFENDANTS' MEMORANDUM IN  
SUPPORT OF THEIR MOTION TO  
DISMISS UNDER RULE 12(b)(1) FOR  
LACK OF SUBJECT MATTER  
JURISDICTION AND IN THE  
ALTERNATIVE TO DISMISS  
PLAINTIFFS PAGEDATA AND  
RADIO PAGING UNDER RULE 12(b)  
AS A MATTER SUBJECT TO  
ARBITRATION, OR IN THE  
FURTHER ALTERNATIVE TO STAY  
PENDING ARBITRATION AND TO  
FURTHER ORDER ARBITRATION,  
AND FINALLY, IN THE  
ALTERNATIVE, FOR DISMISSAL  
UNDER RULE 12(b)(6) OF THE RICO  
COUNT AS TO ALL PLAINTIFFS**



DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS UNDER RULE 12(b)(1)  
FOR LACK OF SUBJECT MATTER JURISDICTION AND IN THE ALTERNATIVE TO DISMISS  
PLAINTIFFS PAGEDATA AND RADIO PAGING UNDER RULE 12(b) AS A MATTER SUBJECT TO  
ARBITRATION, OR IN THE FURTHER ALTERNATIVE TO STAY PENDING ARBITRATION AND TO  
FURTHER ORDER ARBITRATION, AND FINALLY, IN THE ALTERNATIVE, FOR DISMISSAL UNDER  
RULE 12(b)(6) OF THE RICO COUNT AS TO ALL PLAINTIFFS, P. 1

## INTRODUCTION

Defendants Qwest Corporation and Malheur Bell Company (collectively hereinafter "Defendants") submit this memorandum in support of their Motion to Dismiss, or, in the Alternative, to Stay Pending Arbitration.

This case arises under the Telecommunications Act of 1996, ("the Act"), Pub.L. 104-104, 110 Stat. 56, which "created a new telecommunications regime designed to foster competition in local telephone markets." *Verizon Md. Inc. v. PSC*, 535 U.S. 635, 638, 152 L. Ed. 2d 871, 122 S. Ct. 1753 (2002). As explained below, the Act created a complicated system under which state public utility commissions were federally conscripted to do most of the work in opening up local markets. On the other hand, the decisions of the state commissions are not appealable or reviewable by a state court, but are subject to review by federal district courts.

The plaintiffs are three paging companies: (1) Joseph McNeal d/b/a PageData ("PageData"), (2) Robert Ryder d/b/a Radio Paging ("Radio Paging"), and (3) Richard Crawforth, trustee in bankruptcy for TelCar, Inc. ("TelCar"). The Amended Complaint states four counts: (1) racketeering under 18 U.S.C. §§ 1961-1962; (2) violations of the Act and contracts; (3) wrongful denial of facilities; and (4) fraudulent inducement.

Defendants believe it is not entirely clear which counts apply to which Plaintiffs, but Defendants believe the following to be the case:

**PageData** – alleges it is entitled to damages for Qwest's breach of duties under the Telecommunications Act and under its written interconnection agreements. PageData appears to seek relief under all four counts of the Amended Complaint.

**Radio Paging** – Radio Paging has written contracts with Qwest in Idaho and Malheur Bell in Oregon. Radio Paging's claims are the same as PageData's, except that Radio Paging does not claim damages under Count Three (wrongful denial of facilities).

**TelCar** – TelCar had no written contract, but alleges that an "informal" contractual relationship existed with Qwest in Idaho and Malheur Bell in Oregon. TelCar did not have an interconnection agreement approved by a state commission, which means TelCar would have purchased its services and facilities from Defendants under state tariffs filed with the state commissions in Idaho and Oregon. It is unclear to Defendants whether TelCar claims damages under Count Two, i.e. it is not clear whether TelCar claim its "informal" contract was an interconnection agreement under the Act.

Defendants' motion to dismiss is based on the following arguments:

1. The Court lacks subject matter jurisdiction, because the facts alleged in the Amended Complaint essentially describe an interconnection dispute under the Act. The law requires that such disputes first be presented to a state public utilities commission, whose decisions may then be reviewed by this or another federal district court. Accordingly the Amended Complaint must be dismissed.
2. In the alternative, Plaintiffs pleading of the racketeering claim, Count One, is defective under Ninth Circuit case law and must be dismissed.
3. In the alternative, the interconnection agreements of PageData and Radio Paging include broad dispute resolution provisions, which call for mandatory arbitration under the Federal Arbitration Act. The Court should enforce those provisions by dismissing or staying this action.

U.S. Courts  
Rec'd Filed *JA*

AUG 26 2004

Cameron S. Burke  
Clerk, Idaho

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

JOSEPH B. McNEAL, d/b/a Pagedata,  
ET AL.,

Plaintiffs,

v.

QWEST CORPORATION, et al.,

Defendants.

CASE NO. CV 03-473-S-MHW

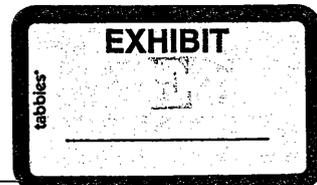
ORDER

On August 26, 2004, a status conference was held between the Court and parties.

Although the case has been pending since it was filed on October 31, 2003, the litigation has not gotten off of "square one" due to there being various parallel proceedings before both the Idaho Supreme Court and the Idaho Public Utilities Commission ("IPUC"). In reviewing the case, it became apparent that the instant litigation would continue to be held in abeyance while waiting for the Idaho Supreme Court and the IPUC to act. It further appeared that decisions at the state level might result in Plaintiff's claims here becoming moot. Plaintiff's counsel also stated that discussions on settlement are ongoing.

Taking into consideration all of these factors, the Court indicated that it was inclined to enter an order dismissing this case without prejudice as long as the parties would agree to waive

Order - page 1

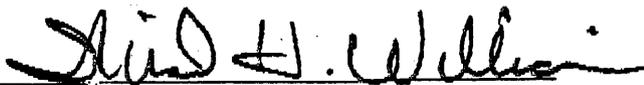


any statute of limitations defenses that would potentially bar any claims on either side. Both counsel represented on the record that they would agree to waive any future statute of limitations defenses in connection with Plaintiff's current claims and Defendant's counterclaim should it become necessary to refile the case in the future. Counsel also stated that they did not object to a dismissal without prejudice.

Therefore, based on the foregoing, this case is hereby **DISMISSED WITHOUT PREJUDICE**, and with the right to refile without statute of limitations repercussions, should it become necessary in the future.

**IT IS SO ORDERED.**

DATED: August 26, 2004.

  
MIKEL H. WILLIAMS  
UNITED STATES MAGISTRATE JUDGE

dkh

United States District Court  
for the  
District of Idaho  
August 27, 2004

\* \* CLERK'S CERTIFICATE OF MAILING \* \*

Re: 1:03-cv-00473

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

Jim Jones, Esq. 1-208-385-9599  
JIM JONES & ASSOCIATES  
1275 Shoreline Ln  
Boise, ID 83702-6870

William J Batt, Esq. 1-208-331-2400  
MARSHALL BATT & FISHER  
PO Box 1308  
Boise, ID 83701

\_\_\_\_ Chief Judge B. Lynn Winmill  
\_\_\_\_ Judge Edward J. Lodge  
\_\_\_\_ Chief Magistrate Judge Larry M. Boyle  
\_\_\_\_  Magistrate Judge Mikel H. Williams

Visiting Judges:

\_\_\_\_ Judge David O. Carter  
\_\_\_\_ Judge John C. Coughenour  
\_\_\_\_ Judge Thomas S. Zilly

Cameron S. Burke, Clerk

Date: \_\_\_\_\_

8-27-04

BY: \_\_\_\_\_

(Deputy Clerk)

**JIM JONES & ASSOCIATES**  
**Attorneys at Law**  
**1275 Shoreline Lane**  
**Boise, Idaho 83702-6870**

Boise: (208) 385-9200

Fax: (208) 385-9599

June 14, 2004

Steve Dea, Manager  
Interconnection Management  
Qwest Corporation  
1801 California Street, Suite 2420  
Denver, CO 80202

Re: Type 1 and Type 2 Paging Connection Service Agreement for Robert  
Ryder, d/b/a Radio Paging Service, for the State of Idaho

Dear Mr. Dea:

You will recall that Qwest Corporation and Robert Ryder entered into Agreement No. CDS-031106-0001 in early December of last year. Section 1.A. of Appendix A, pertaining to rates and charges, requires that Mr. Ryder pay for the portion of the Qwest facilities used to deliver third party traffic. The provision results in Mr. Ryder paying 24% of traffic delivered to his system. Section 1.1 of the Agreement provides that where the Existing Rules are materially changed, the Agreement shall be amended to reflect the modification or change of the Existing Rules. On January 16, 2004, the United States Court of Appeals for the District of Columbia Circuit entered its decision in Mountain Communications, Inc. v. Federal Communications Commission, et al., 355 F.3d 644 (D.C. Cir. 2004). It is our belief that the Mountain Communications decision requires the elimination of the 24% transit charges under the Agreement between Qwest and Mr. Ryder, particularly since Qwest does not furnish billing information for the transit traffic. It is hereby requested that the Agreement be modified accordingly.

Sincerely,

Jim Jones

JTJ/tg

cc Bryan Sanderson, Via Fax To: 206-345-0225  
William J. Batt, Via Fax To: 331-2400

EXHIBIT

tabbles

**JIM JONES & ASSOCIATES**  
**Attorneys at Law**  
**1275 Shoreline Lane**  
**Boise, Idaho 83702-6870**

Boise: (208) 385-9200

Fax: (208) 385-9599

July 19, 2004

**Via Fax To: (206) 345-0225**

Bryan Sanderson  
Qwest Corporation  
1600 Seventh Avenue, Room 3007  
Seattle, WA 98191

Re: Robert Ryder Interconnection Agreements

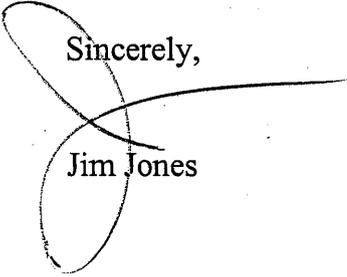
Dear Bryan:

Attached are copies of orders entered by the Idaho and Oregon Public Utility Commissions approving the interconnection agreements that Bob Ryder entered into with Qwest Corporation and Malheur Home Telephone Company in 1999. The Idaho agreement was effective on May 13, 1999, and the Oregon agreement was effective on September 22, 1999. Qwest's records will reflect that Bob Ryder objected to being charged for transit traffic under both agreements. In light of the Mountain Communications decision, Qwest and Malheur have come around to our way of thinking and have agreed not to charge for transit traffic unless the billing records can be provided. This provision should have been a part of the two 1999 agreements and we are hereby requesting that the following language be incorporated into both agreements, retroactive to their respective approval dates:

Paging Provider does not have to pay facilities charges for Third Party Traffic if [Malheur or Qwest] does not provide the originating company's calling records to the Paging Provider's POC.

What we are asking for, in effect, is to have the two agreements amended, retroactively, and to have Qwest and Malheur credit back all transit traffic charges from the beginning of those agreements, together with accumulated interest on the amounts charged.

Sincerely,

  
Jim Jones

cc William J. Batt

JOB	PHONE NUMBER/ADDRESS	START TIME	PAGES	MODE	STATUS
63	12063450225.....	7/19 12:47PM.....	6/ 6	BC .....	COMPLETED.....
63	3312400.....	7/19 12:50PM.....	6/ 6	BC .....	COMPLETED.....

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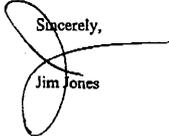
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Jim Jones

cc William J. Batt

**JIM JONES & ASSOCIATES**  
**Attorneys at Law**  
**1275 Shoreline Lane**  
**Boise, Idaho 83702-6870**

Boise: (208) 385-9200

Fax: (208) 385-9599

September 2, 2004

**Via Fax To: 331-2400**

William J. Batt  
Marshall, Batt & Fisher, LLP  
Attorneys at Law  
P.O. Box 1308  
Boise, ID 83701

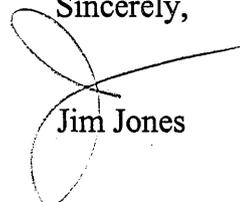
Dear Bill:

If we are going to try to settle some or all of the pagers' claims, it should be done fairly quickly. Our brief is due on September 13 and I am going to have to get started on it early next week. If Qwest wants to keep dragging this out, please let me know so that I can make plans. If there is a chance of settling along the lines that I proposed in my previous correspondence, I could ask for a short extension to allow for discussions. Please let me know what Qwest's pleasure is.

If Qwest is not interested in getting these matters resolved, we will soon be filing a request with the PUC for arbitration regarding the effect of Order No. 29555 on the PageData and Radio Paging interconnection agreements that were entered into in 1999. As I have previously mentioned, they are both entitled to a refund of all transit charges paid under those interconnection agreements based on the change of law provisions in those agreements and the PUC's order giving retroactive effect to its decision. I presume Qwest will resist so it will become necessary to proceed to arbitration. The limitations provisions in the arbitration agreements have been rendered ineffective by Judge Williams' order.

With best wishes, I am,

Sincerely,



Jim Jones

JTJ/tg

JOB	START TIME	USAGE	PHONE NUMBER/ADDRESS	TYPE	PAGES	MODE	STATUS
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TOTAL 0'24" PAGES SENT: 1 PAGES PRINTED: 0

**JIM JONES & ASSOCIATES**  
Attorneys at Law  
1275 Shoreline Lane  
Boise, Idaho 83702-6870

Boise: (208) 385-9200

September 2, 2004

Fax: (208) 385-9599

Via Fax To: 331-2400

William J. Batt  
Marshall, Batt & Fisher, LLP  
Attorneys at Law  
P.O. Box 1308  
Boise, ID 83701

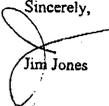
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With best wishes, I am,

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Jim Jones

JTJ/tg

**JIM JONES & ASSOCIATES**  
**Attorneys at Law**  
**1275 Shoreline Lane**  
**Boise, Idaho 83702-6870**

Phone: (208) 385-9200

Fax: (208) 385-9599

October 8, 2004

William J. Batt  
Marshall, Batt & Fisher, LLP  
Attorneys at Law  
P.O. Box 1308  
Boise, ID 83701

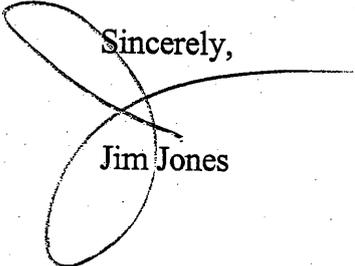
Re: Robert Ryder, et al. v. Qwest Corporation

Dear Bill:

Enclosed are two copies of my appeal brief. Now that the Commission has acted on your motions, I think it is time for Qwest to pay. If payment is not made within ten (10) days of the date of this letter, I will file an action on behalf of the Commission as a private attorney general to recover the \$2,000 per day penalty provided for under I.C. § 61-642.

Also, Robert Ryder and Joseph McNeal hereby provide notification that they wish to proceed to arbitration under the change of law provision of their respective 1999 interconnection agreement in order to eliminate and obtain reimbursement for transit traffic charges. As you know, this was an issue in the federal case and Judge Williams' order eliminates any limitations defense. Please advise as to whether Qwest will voluntarily make reimbursement. If not, please provide the names of attorneys who you would suggest to act as arbitrator. I would recommend D. Duff McKee, Jim Gillespie, or Tony Park.

Sincerely,

  
Jim Jones

JTJ/tg

Enclosures