

WILLIAM J. BATT, ISB No. 2938
MARSHALL BATT & FISHER, LLP
U.S. Bank Plaza, Suite 500
101 S. Capitol Boulevard
Post Office Box 1308
Boise, ID 83701
Telephone: (208) 331-1000
Facsimile: (208) 331-2400

RECEIVED
FILED



2004 MAY 27 PM 1:39

IDAHO PUBLIC
UTILITIES COMMISSION

Adam Sherr
Qwest Communications, Inc.
1600 7th Avenue - Room 3206
Seattle, WA 98191
(206) 398-2507

Attorneys for Respondent/ Respondent on Appeal

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT PETITION
OF ROBERT RYDER, DBA RADIOPAGING
SERVICE, JOSEPH MC NEAL, DBA
PAGEDATE AND INTERPAGE OF IDAHO
FOR A DECLARATORY ORDER AND
RECOVERY OF OVERCHARGES FROM U.S.
WEST COMMUNICATIONS, INC.

ROBERT RYDER dba RADIO PAGING
SERVICE, JOSEPH B. MC NEAL DBA
PAGEDATE AND INTERPAGE OF IDAHO,
AND TEL-CAR, INC.,

Petitioners-Appellants,

v.
IDAHO PUBLIC UTILITIES COMMISSION,

Respondent on Appeal,

and

QWEST CORPORATION,

Respondent-Respondent on Appeal.

SUPREME COURT
DOCKET NO. 29175

IPUC DOCKET NO. T-99-24

**QWEST CORPORATION'S
CORRECTED RESPONSE TO IPUC
ORDER NO. 29491**

ORIGINAL

As ordered by the Commission in Order No. 29491¹, Qwest Corporation (“Qwest”) hereby provides:

- Responses to this Commission’s questions concerning wide-area calling and transit traffic issues previously decided by the Commission in this case, in light of the vacation of the FCC’s decision in *Mountain Communications v. Qwest* by the Court of Appeals for the District of Columbia Circuit.
- Calculations of charges for wide area callings services, if any, provided by Qwest to each of the Petitioners/ Appellants, Radio Paging, PageData, and Tel-Car, Inc. (hereinafter “the Pagers”), together with interest up to July 1, 2004.
- Qwest’s calculations of the amount of transit traffic charged to each Pager during the relevant time periods, together with interest up to July 1, 2004.

WIDE AREA CALLING

COMMISSION QUESTION 1. For each Pager, provide the total amount of wide area calling charges (e.g., 800, FX, DID, etc.) assessed by Qwest. Describe with specificity the exact wide area calling service (if any) that each Pager utilized.

RESPONSE:

Qwest provided wide area calling services to both PageData and Tel-Car, Inc. In the case of PageData, Qwest provided both non-local Type 1 facilities and 800 PageLine Services, both of which meet the FCC’s definition of “wide area calling services.” Tel-Car, Inc. ordered non-local Type 1 facilities, but did not purchase 800 PageLine Services.

¹ Commission Order No. 29491, service dated May 12, 2004.

PageData

Non-Local Type 1 Facilities: Qwest provides non-local Type 1 facilities to paging carriers as a form of wide-area calling/reverse billing service. The facilities used to provide this service were sometimes referred to as “FX facilities” by the parties to this case, the hearing officer, and the Commission. Qwest bills non-local facilities by a per mile charge for every mile over 45 miles.² Qwest facilities dedicated to the paging carrier’s traffic extend between the serving wire center of the paging carrier’s point of connection in one local calling area and the Qwest central office housing the DID numbers in a distant local calling area.

PageData purchased two types of interconnection services that required dedicated interoffice facilities extending beyond 45 miles. These services are depicted on Diagrams 1 and 2 attached hereto. For both kinds of services, blocks of numbers in a Qwest central office were assigned to PageData, and traffic to any of those DID numbers was routed over Qwest facilities dedicated to PageData for delivery to PageData’s point of connection.

- See Diagram #1. PageData ordered two facilities extending forty-eight (48) interoffice miles between Qwest’s central offices in Meridian and Payette.³ PageData established a point of connection in Meridian; thus the Qwest serving wire center for PageData was Meridian (MRDNIDMA) and the DID central office that PageData ordered numbers from was Payette (PYTTIDMA).

² The hearing officer in this case recommended that the division between local (free) and non-local (not free) facilities be set at 20 miles, and the Commission agreed, adopting the hearing officer’s recommendation in Order No.29064 at 27. On reconsideration, the Commission determined that 20-mile rule should be replaced with a “45-mile” rule. The Commission ordered Qwest to recalculate the credits due the pagers using the 45-mile rule. Order No. 29140 at 40. Qwest made those recalculations, and the recalculated credits, together with interest as ordered by the Commission, have been credited. Thus, the only facilities still at issue here are those extending beyond 45 miles.

³ Mileage calculated using V & H coordinates of Qwest central offices.

- See Diagram #2. PageData ordered one facility extending sixty-eight (68) interoffice miles between Qwest's central offices in Twin Falls and Hailey. PageData's established point of connection was in Twin Falls; thus the Qwest serving wire center was Twin Falls (TWFLIDMA) and the DID central office that PageData ordered numbers from was Hailey (HALYIDMA).

800 PageLine: Page Data also ordered 800 PageLine Service in Boise. With this service, Qwest provided blocks of twenty 800 numbers to PageData. Qwest pointed each 800 number to one of PageData's DID numbers; this causes all traffic to the 800 number to route onto the associated DID Type 1 trunk facility for delivery to PageData. PageData had 500 such 800 numbers, 25 blocks of 20 numbers each. ⁴

TelCar

Non-Local Type 1 Facilities:

- See Diagram #3. TelCar ordered one dedicated interoffice facility extending more than 45 interoffice miles. TelCar ordered blocks of DID numbers in one local calling area, Hailey (HALYIDMA) from Qwest, and further ordered facilities to connect the DID numbers to TelCar's point of connection in another local calling area, Twin Falls (TWFLIDMA). Blocks of numbers in Qwest's Hailey central office were assigned to TelCar and traffic to any of those DID numbers was routed over the Qwest facility dedicated to TelCar, for delivery to TelCar's point of connection. By purchasing this facility, TelCar eliminated the toll charges that Qwest subscribers would have otherwise paid, thus buying down

⁴ The 800 numbers were 800 412-4000-4499. The DID numbers associated were 208 672-4000-4499.

the toll to encourage calls to the TelCar network⁵. This dedicated facility extended 68¹ miles between Qwest's central offices in Twin Falls and Hailey.

Radio Paging

Qwest did not provide any wide area calling services to Radio Paging during the complaint period.

COMMISSION QUESTION 2. Based upon the Record, did any of the Pagers voluntarily enter into a "buy-down agreement" (e.g. 800, FX, etc.) with Qwest so that Qwest would not assess toll charges on its customers' calls to a Pager located in another calling area? See F.3d at 648.

Qwest should prepare an exhibit that shows the amount of charges it assessed each Pager individually (if any) for wide area calling arrangements or services. The calculation of the amounts at issue for wide area calling shall also include an itemization of the applied interest. Interest should be calculated up to July 1, 2004.

RESPONSE:

In each of the instances described in Qwest's Response to Question 1, PageData (or its predecessor InterPage) and TelCar, Inc. voluntarily entered into toll buy-down agreements by ordering the wide-calling services from Qwest's tariffs/price lists. The Commission so found in Order No. 29064:

⁵ See Transcript, pp. 143-144, where TelCar's principal Arden Casper testified: "Well, it allowed us to provide toll-free service from Hailey, Idaho to Twin Falls, Idaho, without a toll charge to the – to our potential customers or subscriber or the person that would be calling them."

[T]he Pagers argued that they never agreed to enter into wide area calling arrangements with Qwest. In particular, Mr. McNeal testified that he never agreed to such an arrangement with Qwest. However, as in *Mountain Communications*, we find that PageData's and Tel-Car's ordering of certain dedicated facilities from Qwest was the equivalent of "effectively enter[ing] into such an arrangement with Qwest by requesting dedicated toll facilities to transport calls made to the DID numbers." *Mountain Communications* at ¶ 13. For example, Mr. Casper testified that he has a toll-free calling arrangement that runs from the Hailey exchange to the Twin Falls exchange and from the Burley exchange to the Twin Falls exchange. Tr. at 142-45. Here the paging carrier located in Twin Falls uses a DID number so that callers from Hailey and Burley do not have to incur a toll charge from Qwest. The Pagers' expert Mr. Jackson also noted that DID numbers used by paging carriers "are sent over what would be called dedicated facilities to another exchange." Tr. at 252. PageData utilized a frame relay system "to pick up calls from other areas" and deliver them to his point of interconnection. Tr. at 248. Moreover, on cross-examination, Ms. Fraser testified that Qwest does not deliver LEC originated traffic over private line circuits to pagers. Tr. at 243. We agree with the Hearing Examiner's recommendation and find that PageData and Tel-Car ordered various network facilities and configurations that constitute wide area calling arrangements.⁶

Qwest's calculation of the "amounts of wide area calling at issue" is set forth on the attached exhibits.

Transit Traffic

COMMISSION QUESTION 3. Describe in detail the call data provided to Qwest by the originating wireline or wireless carrier for all transit traffic to each Pager during the relevant time periods.

RESPONSE: No such data is provided to Qwest by originating carriers of any type. Such data does not exist.

COMMISSION QUESTION 4. Given Qwest's offer to provide transit traffic data to Mountain, is Qwest in a position to provide transit traffic data to the Pagers in this case?

⁶ Order No. 29064, p. 27.

RESPONSE: No. Qwest is not in a position to provide transit traffic data to the Pagers in this case.

COMMISSION QUESTION 5. If such traffic transit data is no longer available, is it appropriate to credit the Pagers for transit traffic?

RESPONSE: No. It is not appropriate to credit the Pagers. First, the Pagers' position has always been that Qwest could not charge for transit traffic because Qwest itself was the "originating" carrier for 100% of the traffic delivered to the Pagers – even including traffic originating from customers of third party-carriers where land-to-pager calls only transit Qwest's network. Thus, Pagers in this case never asserted that Qwest must supply OCN data as a condition to charging for the dedicated paging facility to the extent such facility carried third-party traffic.⁷

Second, the Pagers were charged for transit traffic in accordance with the law existing at the time. The FCC has repeatedly ruled that LECs may charge paging companies for interconnection facilities to the extent those facilities carry traffic.⁸

⁷ Neither did the paging industry in general make such an argument prior to the oral argument before the District of Columbia Court of Appeals in the *Mountain* case. At the FCC, Mountain Communications simply presented the paging industry's argument – already overruled by the FCC at least half a dozen times – that LECs could not charge paging companies for facilities used to carry third-party-originated traffic.

⁸ *TSR Wireless, LLC v. US WEST, Memorandum Opinion and Order*, 15 FCC Rcd 11116 (2000) (Complainants are required to pay for "transiting traffic," that is, traffic that originates from a carrier other than the interconnecting LEC but nonetheless is carried over the LEC network to the paging carrier's network"); *Metrocall, Inc. v. Southwestern Bell Tel. Co., Memorandum Opinion and Order on Supplemental Complaint for Damages*, 16 FCC Rcd 18123 (2001) ("In [TSR Wireless] we unambiguously permitted LECs to charge paging carriers for transiting traffic. . . . [W]e reject Metrocall's claim that the transiting traffic issue is somehow uncertain . . ."); *Texcom, Inc., d/b/a Answer Indiana v. Bell Atlantic Corp., d/b/a Verizon Communications, Memorandum Opinion and Order*, rel. Nov. 28, 2001 (affirming that LECs can charge pagers for facilities used to carry transit traffic, affirming such principles are in accordance with allocating costs to cost-causers, rejecting arguments that where calls transit LEC's network, LEC becomes the "originating carrier" or that LEC obtains "double-recovery" of costs); *Mountain Communications, Inc. v. Qwest*, 17 FCC Rcd 2091 (February 2, 2002) (rejecting Mountain's arguments that LEC cannot charge for facility carrying transit traffic – all arguments simply mirror

Moreover, as explained below, Qwest is working to develop a records product that, if successful, would make OCN information available for purchase by paging companies. However, that development is neither complete nor is the product's feasibility yet certain. Assuming that product development is successful, the new OCN records product – like other records products offered to interconnecting carriers – will be sold at cost-based pricing to interconnecting carriers that wish to purchase it. Thus, even if the product is successfully developed, it will not fall within the paging companies' entitlement to free facilities and services.

COMMISSION QUESTION 6. During the relevant time periods, what percentage of transit traffic was wireline; what percentage was wireless?

RESPONSE: This information does not exist and cannot be obtained.

COMMISSION QUESTION 7. As noted in Order No. 29140 at pages 40-41, the Commission authorized Qwest to create three large-regional local calling areas (Magic Valley, Treasure Valley and eastern Idaho) in 1996. These regions were implemented in February, April, and May 1997, respectively. In Order No. 27633 the Commission approved a cost recovery methodology for Qwest when local calling (EAS) was authorized between a non-Qwest exchange and a Qwest local calling region. Would this cost recovery mechanism support a reduction in the amount of non-compensation transit traffic? If so, by what amount?

arguments raised by Texcom and were already rejected by FCC); *Metrocall, Inc. v. Concord Tel. Co., Memorandum Opinion and Order*, (February 8, 2002) (Concord may charge for DID facilities to the extent they carry transit traffic); *Metrocall, Inc. v. Southwestern Bell Tel. Co., Order on Reconsideration* (March 15, 2002) (rejecting reconsideration of transit issue; “[O]ur rules ... allow a LEC to charge a paging carrier for traffic that transits the LEC’s network and terminates on the paging carrier’s network as long as the traffic does not originate on the LEC’s network.”); *Texcom, Inc., d/b/a Answer Indiana v. Bell Atlantic Corp., d/b/a Verizon Communications, Order on Reconsideration*, released March 27, 2002 (rejecting several arguments that pagers should not have to pay for facilities carrying transit traffic – Commission has already thoroughly considered and rejected arguments; LEC does not receive compensation for facility through reciprocal compensation or any other mechanism”); *Mountain Communications v. Qwest*, Order on Review (July 25, 2002) (rejecting several arguments that pagers need not pay for facilities carrying transit traffic; arguments have all been made and repeatedly rejected by FCC).

Qwest shall calculate the amount of transit traffic charged to each Pager during the relevant time periods. The calculation shall include an itemization of interest through July 1, 2004.

RESPONSE: The cost recovery mechanism mentioned by the Commission in Question 7 does not support a reduction in the non-compensation transit traffic. Even if the cost-recovery mechanism described in Order No. 27633 was designed to compensate Qwest for costs incurred in Qwest's switching and tandem transport of traffic generated by independent companies that transited Qwest's network for delivery to a third party carrier, the cost recovery mechanism simply neither contemplated nor covered the costs incurred in providing a dedicated facility for a Type 1 paging connection; i.e. the dedicated facility between a Qwest end office and the paging terminal. This was well demonstrated by the hearing officer's examination of the Pagers' expert, Vic Jackson, which showed that the cost of the dedicated facility carrying transit traffic to a paging company is not elsewhere recovered by Qwest.⁹

Likewise, in Order No. 27633, in which the Commission approved the expanded EAS cost recovery mechanism, the Commission stated:

U S WEST and Staff agree further agree that this Stipulation and the methodology adopted by it do not change previous Commission decisions regarding U S WEST non-traffic sensitive cost allocations.¹⁰

⁹ The hearing officer found:

Mr. Jackson's responses to a question posed to him suggested that he was not in a position to disagree with the proposition that the applicable cost studies for sent-paid calls exclude the facilities relevant here; i.e., those that transport traffic from the Qwest end-office switch to the pager's point of connection. (Transcript pages 269 through 272 and pages 290 through 292).

Proposed Order, p. 13.

¹⁰ *In the Matter of the Investigation Into the Methodology for Determining US West Communications, Inc.'s Cost of Extended Area Service (EAS)*, IPUC Case No. USW-T-98-2, Order No. 27633.

Accordingly, Qwest does not believe the EAS cost recovery mechanism implemented in Order No. 27633 includes any compensation for the cost of the facility between Qwest's end office and the paging provider's point of connection, to the extent such facility carries transit traffic, whether initiated by independent companies, CLECs CMRS carriers, or IXC's.

Qwest's calculation of the amount of transit traffic at issue is set forth in the attached exhibit.

DATED this 27th day of May, 2004

Respectfully Submitted,

Adam Sherr
Qwest Communications, Inc.
1600 7th Avenue - Room 3206
Seattle, WA 98191

and



William J. Batt
Batt & Fisher, LLP
U S Bank Plaza, 5th Floor
101 South Capital Blvd.
Boise, Idaho 83702
(208) 331-1000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of May, 2004, I caused a true and correct copy of the above and foregoing document to be served, in the manner indicated, on the following:

Jim Jones
JIM JONES & ASSOCIATES
1275 Shoreline Lane
Boise, Idaho 83702-6870
Telephone: (208) 385-9200
Fax: (208) 385-9955

- Hand Delivery
- U.S. Mail
- Facsimile
- Federal Express

Don Howell
Idaho Public Utilities Commission
472 West Washington
Boise, ID 83702
Telephone: (208) 334-0312
Fax: (208) 334-3762

- Hand Delivery
- U.S. Mail
- Facsimile
- Federal Express

By: 

William J. Batt

DIAGRAM #1 PageData Non-Local Facilities

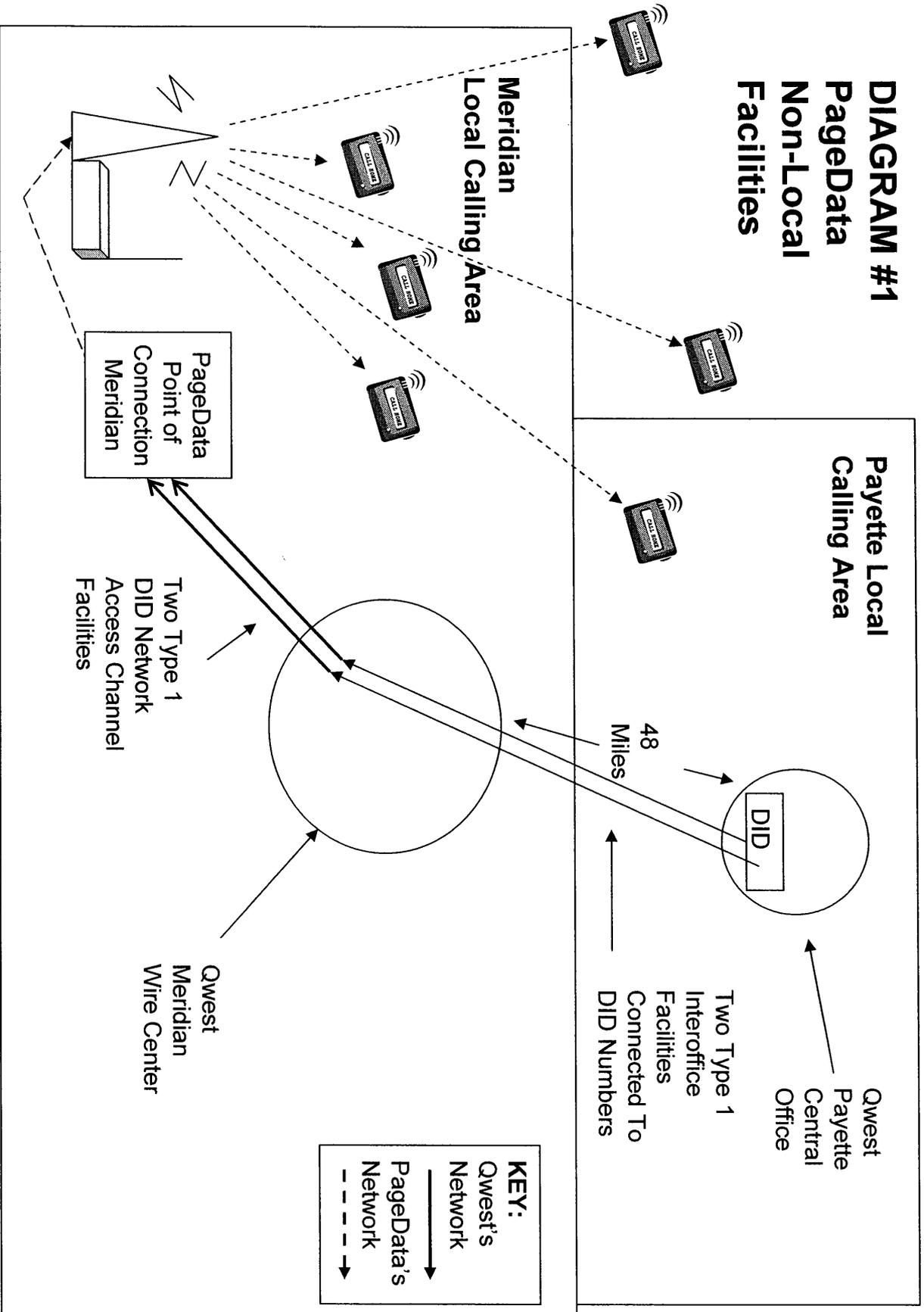


DIAGRAM #2

PageData Non-Local Facilities

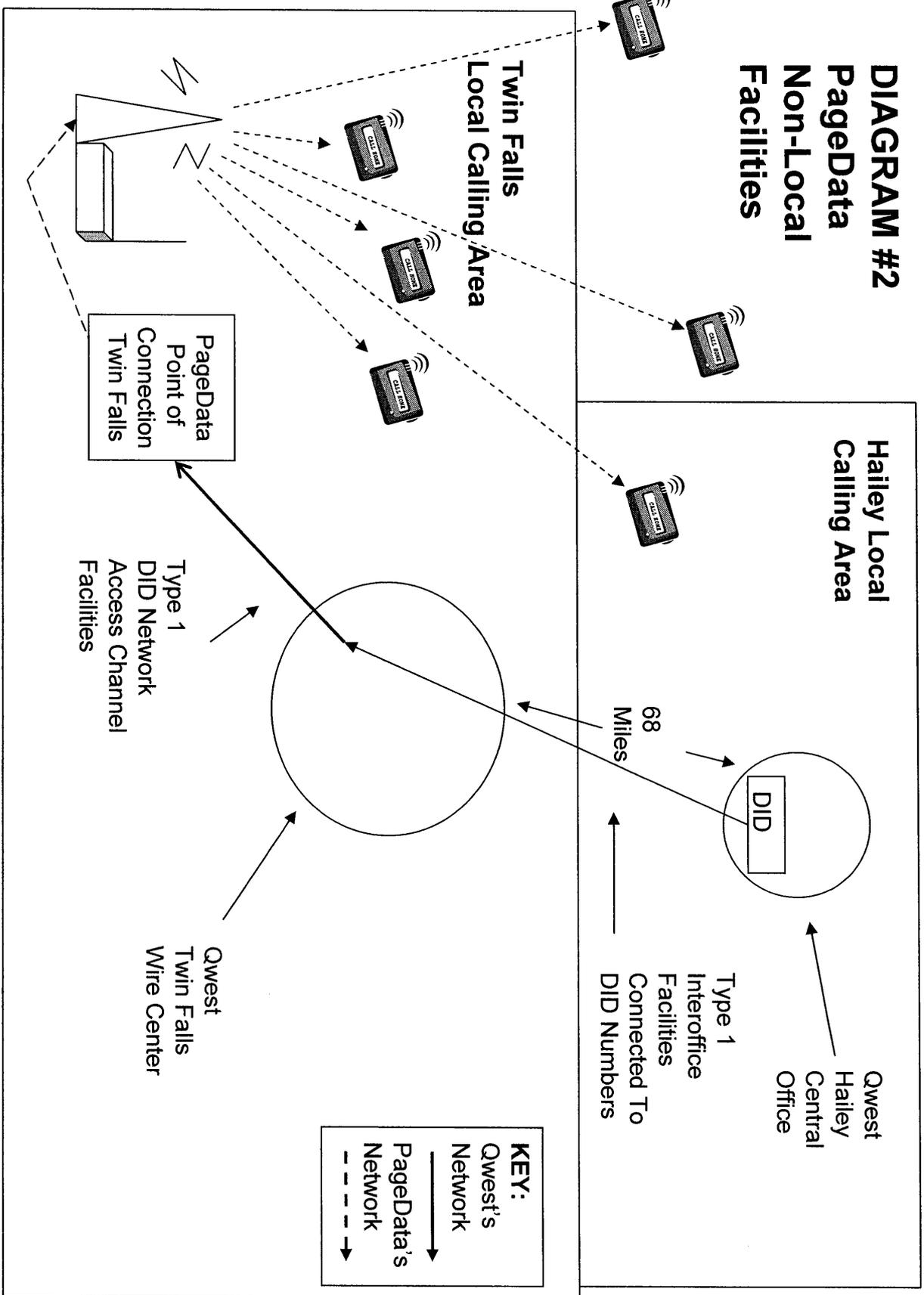
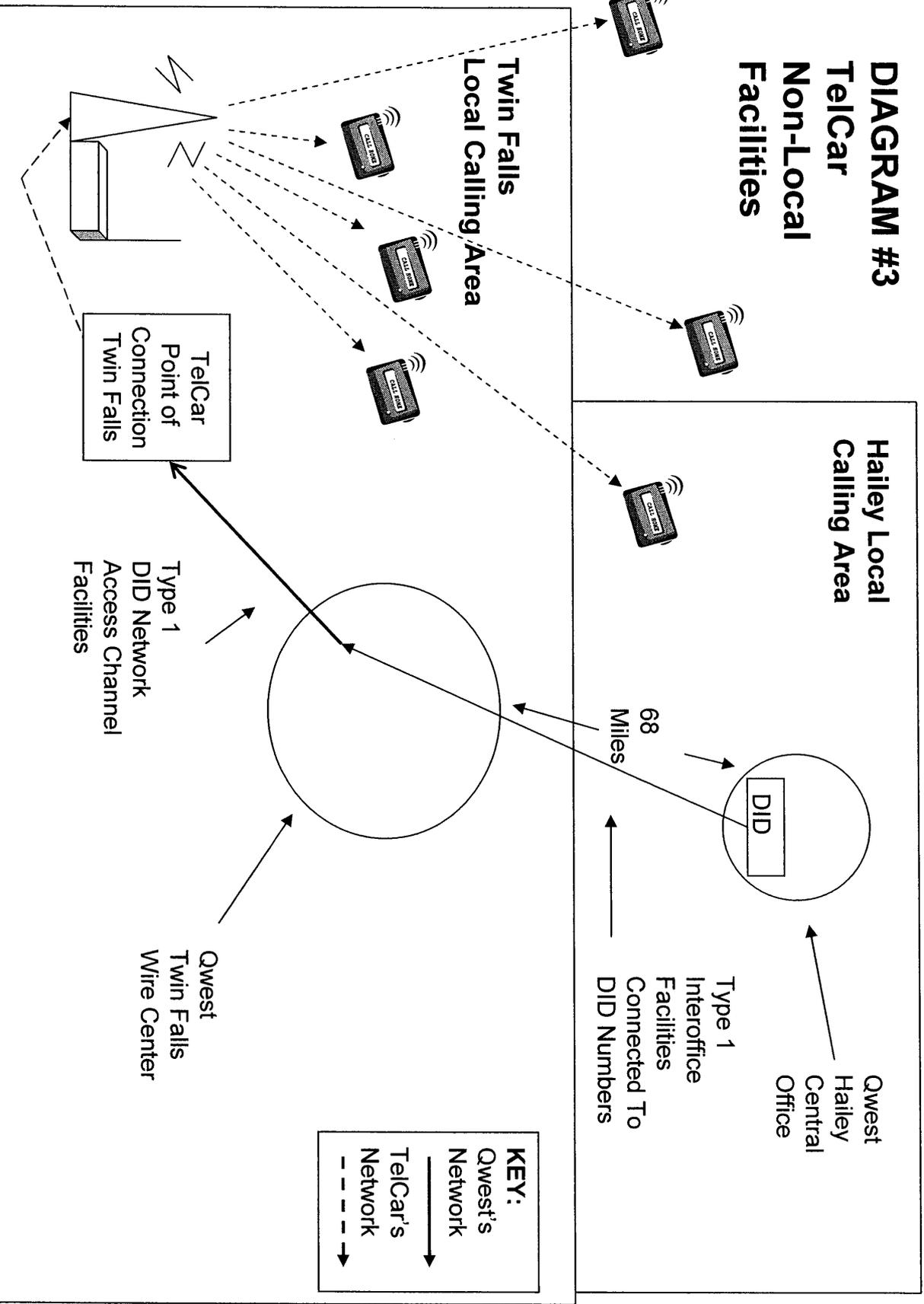


DIAGRAM #3 TelCar Non-Local Facilities



WIDE AREA CALLING CHARGES - ORDER NO. 29491 MAY 25, 2004

QWEST SUMMARY

	Page Data				TelCar		Radio Paging		
	IABS	Notes	CRIS	Notes	Total IABS + CRIS	IABS	Notes	IABS	Notes
Nonlocal Facilities	\$ 6,876	1	\$ 4,679	3	\$ 11,555	\$ 4,174	6	\$ -	8
Less Credit for 45 Mile Adjustm	\$ (3,986)	2	\$ (3,565)	2	\$ (7,551)	\$ (1,234)	7	\$ -	8
Total Adjusted Nonlocal Facilit	\$ 2,890		\$ 1,114		\$ 4,004	\$ 2,940		\$ -	
800 Pageline	\$ 3,613	1	\$ -		\$ 3,613	\$ -	6	\$ -	8
WAC	\$ -	1	\$ -		\$ -	\$ -	6	\$ -	8
Taxes	\$ 549	1	\$ 281	4	\$ 830	\$ 46	6	\$ -	8
Less Tax Credit for 45 Mile Adj	\$ (209)	2	\$ (214)	2	\$ (423)	\$ (14)	7	\$ -	8
Subtotal	\$ 6,843		\$ 1,181		\$ 8,024	\$ 2,972		\$ -	
Factor	\$ 0,991	9	\$ 0,991	9	\$ 0,991	\$ 1,000	9	\$ 1,013	9
Adjusted Total	\$ 6,782	5	\$ 1,170	5	\$ 7,952	\$ 2,972	5	\$ -	5

Interest \$ 2,655 \$ 937
 Total Wide Area Calling Plus Interest **\$ 10,607** **\$ 3,909**

- Notes - Source of Numbers
 EXHIBITS FROM: QWEST'S RECALCULATION OF CREDITS DUE PURSUANT TO ORDER NO. 29140
 Exhibits From: Case No. USW-T-99-24, Evidentiary Hearing, July 24, 2001
 1 EXHIBIT 6, Itemization of Charges 11-96 thru 8-99, PageData ID Summary 11-17-02 srf.1/45 Mi LCA
 2 EXHIBIT 4, Calculation of Additional Credits for Idaho PUC Order on 45 Mile LCA, PageData 45 Mi Credit 11-17-02 srf/PAGEDATA
 3 Exhibit 203, pg 96 Total Billed (JZ3HC/2 + JZ3HD) *.61=\$4679
 4 Exhibit 203, pg 96 Taxes (JZ3HC/2 + JZ3HD) *.61=\$280.60
 5 Total used for Interest Calculation per Order No. 29491, pg 7, #1-2
 6 EXHIBIT 3, Summary of Charges Nov 96 thru Jul 00, TelCar ID Summary 11-17-02 srf/450Mi LCA
 7 EXHIBIT 1, Calculation of Additional Credits for Idaho PUC Order on 45 Mile LCA, TelCar 45 Mi Credit 11-17-02 srf/TELCAR
 8 Summary of Charges Nov 96 thru Apr 99, RadioPaging ID Summary 7-30-02 srf.1/Int Hrg Exmr Formula
 9 Qwest Exhibit Calculation of Corrected Rerate Factor, Corrected Rerates 12-10-01 srf.a/Factor Calculation

TRANSIT CHARGES - ORDER NO. 29491 MAY 25, 2004

QWEST SUMMARY

	Page Data				TelCar		Radio Paging		
	IABS	Notes	CRIS	Notes	Total IABS + CRIS	IABS	Notes	IABS	Notes
Local Facilities	\$ 51,745	1	\$ 47,262	3	\$ 99,007	\$ 46,905	5	\$ 45,134	6
Taxes	\$ 2,712	1	\$ 2,835	4	\$ 5,547	\$ 513	5	\$ 1,302	6
Facilities 26-45 Miles	\$ 3,986	2	\$ 3,565	2	\$ 7,551	\$ 1,234	2	\$ -	2
Taxes	\$ 209	2	\$ 214	2	\$ 423	\$ 14	2	\$ -	2
Total Local Facilities	\$ 58,652		\$ 53,876		\$ 112,528	\$ 48,666		\$ 46,436	
Transit Rate	0.24	9	0.24	9	0.24	0.24	9	0.24	9
Total Transit Charges	\$ 14,076		\$ 12,930		\$ 27,007	\$ 11,680		\$ 11,145	
Factor	0.991	7	0.991	7	0.991	1.000	7	1.013	7
Adjusted Total	\$ 13,950	8	\$ 12,814	8	\$ 26,764	\$ 11,680	8	\$ 11,290	8
Interest					\$ 8,937	\$ 3,682		\$ 4,021	
Total Transit Plus Interest					\$ 35,701	\$ 15,362		\$ 15,311	

Notes - Source of Numbers

- 1 Itemization of Charges 11-96 thru 8-99, PageData ID Summary 11-18-02 srf/45 Mi LCA
- 2 WIDE AREA CALLING CHARGES - ORDER NO. 29491 MAY 25, 2004, May 21-04 Wide Area Calling/Wide Area Calling Svcs
- 3 Exhibit 203, pg 96 Total Billed Less Nonlocal Facilities (\$51,941-\$4,679) = \$47,262
- 4 Exhibit 203, pg 96 Total Taxes Less Nonlocal Taxes (\$3,116-\$281) = \$
- 5 Summary of Charges Nov 96 thru Jul 00, TelCar ID Summary 11-17-02 srf/45 Mi LCA
- 6 Summary of Charges Nov 96 thru Apr 99, RadioPaging ID Summary 7-30-02 srf:1/Int /hrg Exmr Formula
- 7 Qwest Exhibit Calculation of Corrected Retrate Factor, Corrected Rerates 12-10-01 srf:a/Factor Calculation
- 8 Total used for Interest Calculation per Order No. 29491, pg 8, #7
- 9 Idaho PUC Order No. 29064, July 17, 2002, pg 31

