WILLIAM J. BATT, ISB No. 2938
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

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

Attorneys for Respondent/ Respondent on Appeal

RECEIVED ☒
FILED ☐

2004 JUL -8 AM 10: 10

IDAHO PUBLIC
UTILITIES COMMISSION

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.	SUPREME COURT DOCKET NO. 29175 IPUC DOCKET NO. T-99-24
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.	**QWEST CORPORATION'S OBJECTIONS TO PETITIONERS' REPLY AND MOTION TO STRIKE**

ORIGINAL

INTRODUCTION

In Order No. 29491[1], the Commission ordered the parties to address seven specific questions engendered by the vacation of the FCC's decision in *Mountain Communications v. Qwest* by the Court of Appeals for the District of Columbia Circuit. Two of the questions concerned the issue of wide area calling, and five questions related to the transit traffic issue. The Commission ordered Qwest Corporation (hereinafter "Qwest") to answer the questions and perform certain calculations. The Order further provided that "[o]nce Qwest has filed its response, then the Pagers will have an opportunity to respond to the questions and reply to Qwest's information/ calculations." Order No. 29491 at 8.

Instead, the Petitioners ("Pagers") took this opening to attempt reopening the principal issues in the case – issues not related to the *Mountain Communications* decision. The Pager's Reply[2] went far beyond the Commission's questions and issues implicated by the *Mountain* case. The Reply raises many improper issues and attempts to bring in evidence not in the record. In addition, the Pagers attached a voluminous document prepared by Joseph McNeal on behalf of all three Pagers.[3] That document would add additional improper issues and evidence. The McNeal Appendix is particularly objectionable because it contains blatantly false information and claims.

Below are the following:

1. Qwest's Objections to Petitioner's Reply to Order No. 29491 and
2. Motion to Strike McNeal Appendix and Reply's improper issues and evidence

---

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

[2] Petitioner's Reply Pursuant to Order No. 29491 (hereinafter "Reply").

[3] Appendix A to Pagers' Reply (hereinafter "McNeal Appendix").

QWEST'S OBJECTIONS TO PETITIONER'S REPLY TO ORDER NO. 29491

The Commission should reject the Pagers' attempt to reopen issues not implicated or affected by the *Mountain* decision. Likewise, the Commission should not allow the Pagers' to introduce new evidence not in the record, or to make arguments based on facts that are not before the Commission in this case.

A. This Case is Still on Appeal to the Idaho Supreme Court, and the Present Proceeding is Limited to Narrow Issues

The parties, including the Pagers, obtained a stay of the pending appeal from the Idaho Supreme Court because of the reversal of *Mountain Communications*. On February 13, 2004, the parties, including the Pagers, filed a stipulated motion with the Supreme Court, in which the parties requested a stay for the following reasons:

- To allow the FCC time to reconsider issues raised by DC Circuit Court
- To allow the Idaho Commission to reconsider its Orders with respect to wide area calling and transit traffic issues in light of the DC Circuit Court Decision, and
- To all the parties to discuss settlement

On May 11, all the parties moved the Supreme Court to continue the suspended appeal. The parties reported to the Court that settlement discussions had been unfruitful, and the FCC had not taken action. Therefore, the parties requested further time for the IPUC to obtain briefing from the parties regarding the two issues. The stay of the appeal expires on July 15, 2004 – certainly too soon to allow the Pagers relitigate this case in the meantime.[4]

---

[4] *Robert Ryder et al., Appellants, v. Qwest Corporation and Id. Pub. Util. Comm., Respondents,* Docket No. 29175, Order Granting Motion to Suspend the Appeal, dated June 7, 2004.

B. The Present Proceeding Was Not an Invitation to Reopen Other Issues in the Case, Nor to Provide New Evidence

In their Reply and the McNeal Appendix, the Pagers seek to reopen issues decided long ago, or that the Commission long ago rejected as being outside the scope of the case. They attempt to introduce wholly new issues. They present new "facts", information, and propositions without substantiation, or based on evidence that is not part of the record.

The Commission should reject the Pagers' attempts to manipulate this narrow proceeding to their advantage. The Pagers' appeal to the Idaho Supreme Court was filed after three and a half years of litigation, during which the Commission had issued a half dozen major Orders, while the Pagers filed many petitions for rehearing, reconsideration, amendment, and modification. To reopen those issues, except to the extent necessary for the Commission to reconsider the transit and wide area calling issues implicated by *Mountain's* reversal, is neither warranted or appropriate.

Qwest respectfully urges the Commission to repress the Pager's efforts and keep the focus of this proceeding on the narrow issues described in Order No. 29491. Qwest is already defending six separate actions brought by Joseph McNeal and his affiliates; they exhibit no concern that they tax the Commission's scarce and valuable resources.

The Commission should reject the Pagers' attempts to open additional issues and to bring in new evidence.[5]

---

[5] If the Commission admits or otherwise considers the new evidence submitted by Petitioners – particularly the false evidence proposed in the McNeal Appendix, Qwest will have no alternative but to request an opportunity to address the evidence.

C. Qwest Objects to Issues Raised by Pagers that are Outside the Scope of the Present Proceeding

The following issues in the Reply and McNeal Appendix do not related to the Commission's questions in Order No. 29491, the wide area calling issue, or the transit traffic issue:

Issues Concerning All Three Pagers

1. The Commission should reject all Qwest's previous and current calculations[6]
2. The Pagers should have option of getting a cash refund[7]
3. The Pagers have right at any time to invoke 252(i) dispute resolution in a formal hearing such as this proceeding to resolve their disputes, and Commission cannot deny that right[8]
4. The Pagers have a right to reciprocal compensation[9]

Issues Relating to Radio Paging

None

Issues Relating to Page Data

5. All amounts paid by PageData must be refunded by Qwest.[10] PageData was billed and paid total of $245,628.51, all of which must be reimbursed[11]
6. PageData was billed and should be reimbursed an additional $14,926.80 for frame relay and T-1s, even though PageData does not claim to have paid these bills.[12] Qwest's

---

[6] McNeal Appendix, pp. 10-13, 19

[7] Reply, pp. 16-17; McNeal Appendix p. 16.

[8] McNeal Appendix, pp. 15 -18. The Pagers state that they invoke (or perhaps will invoke) "252(i) dispute resolution" if Commission does not order refunds in cash of all unlawful payments made to Qwest, and they will adopt the Arch and PageNet Confidential Billing Settlement Agreements. Id.

[9] McNeal Appendix, p. 14.

[10] Reply, p. 3; McNeal Appendix, p. 19

[11] Reply, pp.4, 6, 9, Exhibits B and C

[12] Reply, p. 9, Exhibit C

federally tariffed frame relay service must be provided to PageData by Qwest without charge[13]

7. The Commission must confirm PageData's right to SPOP and give Qwest a date certain by which facilities should be installed.[14] Qwest should have provided SPOP to PageData long ago [15]

8. POTS lines should be free to PageData[16]

9. All facilities of PageData are part of its network and must be provided by Qwest for free because PageData originates no traffic.[17] PageData's network should be provided by Qwest free of charge even on its side of the POC.[18]

10. Qwest was/ is obligated to provide dedicated transport ("leased" lines) to PageData without charge, irrespective of their purpose or location[19]

11. PageData does not have to pay tariffed charges for 800 numbers that PageData purchased[20]

12. PageData should not have to pay for any facilities or services because Qwest should have provided a single point of presence[21]

13. PageData actually had a credit balance, if rerates had been applied, when it asked for a single point of presence in 1998[22]

Issues Relating to TelCar, Inc.

14. TelCar should be reimbursed for $17,574.72 in mobile charges billed by Qwest[23]

---

[13] Reply, pp. 5,6 Exhibit A, B , C

[14] McNeal Appendix, p. 15. Qwest is uncertain what PageData is after here. In another proceeding before the Commission, PageData had filed a "Motion for Expeditious Substantive Relief" seeking the Commission's intervention in provisioning of certain trunking to PageData. Qwest believed this issue was settled after it provisioned facilities to PageData as part of recent interconnection negotiations. In fact, earlier the McNeal Appendix states, "In the last week and after waiting six years, Qwest finally installed a Type 2 standard single point of presence for PageData."

[15] Reply, pp. 4-5, 6, Exhibit A

[16] Reply, pp. 5, 6, 7-8, Exhibits A, B, C, E

[17] McNeal Appendix, p. 14

[18] Reply, pp. 5, 6, Exhibits A, B, C

[19] Reply, pp. 6, Exhibit A, B, C

[20] McNeal Appendix, p. 8

[21] McNeal Appendix, p. 10

[22] McNeal Appendix, pp. 9-10

D. Qwest Objects to New Evidence Not In the Record

Qwest objects to the following items, which are either new evidence not in the record, or discussions/ arguments based on facts that are not in the record. Such evidence and arguments are improper and should be rejected by the Commission.

- Exhibit A to the Reply and the McNeal Appendix, showing PageData's new claim as to how its network was configured[24]
- Exhibit E, April 30, 2004 letter from Qwest to Joseph McNeal regarding planned changes in offering for resale of private line services[25]
- Mobile services were part of TelCar's paging network[26]
- Discussion of Qwest's settlement discussions with bankruptcy trustee and needs of bankruptcy trustee[27]
- "Unfiled" Arch and PageNet settlement agreements[28]
- October 12, 2000 letter from Deputy Attorney General to counsel for parties[29] and discussion of same[30]
- Qwest account statements, bill dates September and October 1998, and overdue balance statements[31]

---

[23] Reply, pp. 10-11, Exhibits F, G

[24] The diagram does not even remotely factually represent the McNeal network during the time period in question in this case. Qwest believes the diagrams may show WaveSent's present network or some idealized network of PageData.

[25] Reply, Exhibit E.

[26] Reply, pp. 10-11. No evidence supports this claim.

[27] Reply, p. 16. The description of the discussions is false. Qwest can provide the trustee's settlement offer letter, in which he demanded that Qwest pay a significant sum above the Commission-ordered credit to settle.

[28] McNeal Appendix, Exhibits 1 and 2.

[29] McNeal Appendix, Exhibit 7.

[30] McNeal Appendix, p. 9

[31] McNeal Appendix, Exhibit 8.

- First page of what purports to be a letter from someone at Qwest to Joseph McNeal dated November 25, 1998[32]

- Table 1 in McNeal Appendix, comparing claimed facts regarding TSR Wireless, Mountain Communications, and PageData. Virtually none of that information is in the record and much of it is inaccurate or false.[33]

- Table 2 in McNeal Appendix, showing purported calculations that PageData should have had a credit balance sometime in the fall of 1998[34]

- Discussion of (i) Qwest's changes in policies regarding Type 2 SPOP since the hearing in this case, (ii) PageData's recent negotiations with Qwest, and (iii) Qwest's recent provisioning of Type 2 SPOP to PageData.[35]

- Discussion of Qwest's initiation of plans to cease charging paging carriers for transit traffic unless third party billing information is warranted by Qwest[36]

- "Qwest has settled more complicated paging disputes than what is presently before the Commission."[37]

- "It was Qwest's policy not to provide a single point of presence in the LATA in Idaho for companies that Qwest considered paging only."[38]

- Unidentified Exhibits 10 – 13 of McNeal Appendix[39]

- "Every other paging carrier that Qwest settled with received a cash refund."[40]

---

[32] McNeal Appendix, Exhibit 9. Qwest cannot even identify this document or where it came from.

[33] McNeal Appendix, p. 10 (Data and documents from which Table is claimed to be derived are not in evidence)

[34] McNeal Appendix, p. 10 (It is not clear what evidence this Table is based on, but in an event the data and documents from which Table is claimed to be derived are not in evidence)

[35] McNeal Appendix, p. 13

[36] McNeal Appendix, p. 14

[37] McNeal Appendix, p. 20.

[38] McNeal Appendix, p. 20.

[39] These appear to show current network configurations, which are unrelated to PageData's network configuration at the time period in question

[40] McNeal Appendix, p. 20. The Pagers attempt to mislead the Commission with this fallacious statement. To the personal knowledge of Qwest's undersigned counsel, Qwest's settlements with paging carriers have involved credits or refunds, depending on whether the application of the *TSR Wireless* rerate resulted in a positive or negative account balance.

- "It was the routine at Qwest to give competitive carriers false information concerning network configuration and interconnection options based on Qwest's policy not to provide a single point of interconnection in the LATA."[41]

E. This Commission Should Strike the Pager's Reply to the Extent the Pagers Proffer Improper Issues and Evidence

Qwest stated above its objections to improper issues and evidence submitted by the Pagers in their Reply. Qwest also moves the Commission to strike the Pagers' Reply on those issues and that evidence objected to by Qwest.

Many of those improper issues and evidence are outside the scope of the record in this case. More importantly, however, the Pagers attempt to go far beyond the narrow scope of the present proceeding. That scope was first defined by the parties in their joint motions to the Supreme Court, and further delineated by the Commission's specific questions in Order No. 29491.

Qwest also moves the Commission to strike the McNeal Appendix in its entirety as stated below.

F. This Commission Should Strike the McNeal Appendix in its Entirety

The Commission should strike the McNeal Appendix in its entirety, because:

1. The McNeal Appendix is non-responsive to the Commission's questions in Order No. 29491 and the scope of the present proceeding;

2. The McNeal Appendix is essentially a rant about issues that are not before the Commission at this time;

3. The McNeal Appendix is in reality a second legal brief filed by the Pagers, but does not appear to be sponsored by the Pagers' attorney Jim Jones; and,

4. Mr. McNeal is not an attorney and cannot appear for other parties before the Commission.

---

[41] McNeal Appendix, p. 21. This malicious statement by the Pagers is unfounded, false, and defamatory.

The McNeal Appendix is attached to the Reply as Exhibit A. The Reply itself does not refer to the McNeal Appendix, except to describe it as an "overview" prepared by "Joseph B. McNeal, d/b/a PageData" – one of the Petitioners in this case. Of course, Jim Jones, attorney for the Pagers throughout this case, signed the Reply. However, he did not sign the Appendix.

Rather, the McNeal Appendix seems to be an entire additional brief filed on behalf of the Pagers. Unquestionably it is filed on behalf of all three Pagers, but it is signed by Joseph McNeal instead of Jim Jones. However, Mr. McNeal is not an attorney and cannot appear for other parties under the Commission's Rules.[42]

This is not much ado about appearances or niceties. If an attorney had signed the McNeal Appendix, he or she would have at least made a facial attempt to draft a pleading that appears appropriate given the present state and procedural posture of the case. The McNeal Appendix, however, is a tirade about not only the issues in this case, but also the now-familiar rants about secret agreements and conspiracies against paging companies.

The McNeal Appendix is an inappropriate document in more ways than one. Of course, Mr. McNeal cannot represent the other two Pagers before the Commission. Rule 43 of the Commission's Rules of Practice and Procedure provides:

> **01. Natural Person**. A natural person must represent himself or herself or be represented by a duly authorized employee, or an attorney. (3-16-04)
>
> **02. Partnership**. A partnership must be represented by a partner, duly authorized employee, or an attorney. (7-1-93)
>
> **03. Corporation**. A corporation must be represented by an officer, duly authorized employee, or an attorney. (7-1-93)

---

[42] See Rule 43, Rules of Practice and Procedure.

Clearly the McNeal Appendix does not comply with Rule 43. Moreover, it is replete with improper discussions beyond the scope of this proceeding. For these reasons, the Commission should strike the McNeal Appendix in its entirety.

CONCLUSION

For the foregoing reasons, the Commission should reject the improper issues and evidence proffered by the Pagers, grant Qwest's objections thereto, and strike such improper issues and evidence. In addition, the Commission should strike the McNeal Appendix in its entirety.

DATED this 8th day of July, 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 8h day of July, 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
- [x] U.S. Mail
- [x] Facsimile
- [ ] Federal Express

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

- [x] Hand Delivery
- [ ] U.S. Mail
- [ ] Facsimile
- [ ] Federal Express

By: _____
William J. Batt