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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 CALCULATIONS PURSUANT TO ORDER NO. 29603**

ORIGINAL

INTRODUCTION

On October 5, 2004, the Commission issued Order No. 29603 essentially denying Qwest Corporation's Petition for Reconsideration, Alteration or Amendment of the Commission's Order No. 29555. In addition, the Commission discussed the credits previously ordered to provide to the Pagers in this case, and apparently concluded that the amount of refunds ordered exceeded the amounts the Pagers "owed." The Commission ordered Qwest to provide new calculations and data relating to whether the refunds ordered by the Commission exceeded amounts owed by the Pagers to Qwest, stating:

> [W]e direct Qwest to provide up-to-date calculations to confirm that the refunds apportioned to each Pager: (1) as of November 2002; and (2) for the additional refunds for wide area calling and transit traffic (with the "800" adjustment), exceed the amounts the Pagers owed Qwest.[1]

Below, Qwest first discusses the Commission's previous orders to explain the difficulty presented by the calculations ordered in Order No. 29063. These difficulties primarily relate to (1) the time at which it is determined how much the Pagers "owe" or "owed" to Qwest, and (2) what services and charges are included in the calculation.

In any event, Qwest review of the data and calculations shows that that refunds previously ordered by the Commission do not exceed amounts "owed" by the Pagers, however defined, and Qwest provides those calculations.

I.
The Commission's Rulings on Credits vs. Cash Refunds

Qwest is unsure whether, at this late state in this long litigation, the Commission is now departing from its many previous rulings on the credit vs. cash refund issue. Up until Order No. 29603, Qwest believes the Commission's rulings had been clear that the Pagers were entitled to

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[1] Order No. 29603, p. 19.

billing credits and not cash refunds. The Commission had accepted Qwest's arguments that because the Pagers had ceased paying their bills, it would be unfair to order refunds. Now, the Commission seems to be saying that if the Pagers currently-ordered refunds exceed they "owe" or "owed" at some unspecified point in time, they are now entitled to refunds.

A review of the Commission's prior Orders shows that the law of this case developed from the Commission's view that because the Pagers were not paying their bills to Qwest, it would not be fair to order refunds:

Order No. 28626

In Order No. 28626, the Commission rejected the Pagers' request that ordering language providing for "a billing credit" be struck. The Commission stated:

> If this language were removed, the Petitioners would presumably be entitled "reimbursements" but not billing credits. In response, Qwest alleges that Petitioners did not seek cash reimbursements in their Petition for a Declaratory Ruling (hereinafter "Complaint"), but did request recovery of amounts charged in the past. Furthermore, Qwest argues that PageData is not entitled to cash reimbursements because it will still owe Qwest a substantial amount of money after any credits are given to it. . . . The Commission finds that Petitioners have not provided any justification for striking the language "a billing credit or" as they have requested. For this reason, they have failed to comply with Commission Rules 326 and 331. IDAPA 31.01.01.326 and .331. Accordingly, this request is denied.[2]

Evidentiary Hearing and Proposed Order:

In the trial of the case in mid-2001, long after the "recover period" established by the Commission in this case, the Hearing Officer routinely admitted evidence that the Pagers had stopped paying their bills. For example, Arden Caspar, TelCar's owner, testified:

3 . . . . Well, as a matter of fact, I
4 think the reason that we stopped paying the bills is
5 that we had made several efforts to get this thing
6 all resolved, and these were efforts that seemed

[2] Order No. 28626, February 5, 2001.

7 very fair in accordance with our side of the
8 picture, and we presented these over time and again
9 and never got response from the Qwest people, so
10 consequently, we then stopped paying the bills if
11 for no other reason, to get attention.
12 Q. Okay. And do you believe it's proper
13 that you not pay your bills because Qwest
14 overcharged you illegally?
15 A. Yes. In other words, it's the same
16 company. In my opinion, Qwest owes us money. Why
17 should we pay Qwest then?
18 Q. So you're looking at it as a setoff?
19 A. Yes.
20 Q. And you're not contending that you
21 have a right not to pay the bill --
22 A. Oh, no.
23 Q. -- and to collect the amount
24 100 percent from Qwest?
25 A. Right.[3]

Mr. Ryder testified as follows on cross-examination:

Q. Have you stopped paying all your bills
17 from Qwest?
18 A. Yes. Uh-huh. I can't -- I don't have
19 the exact date that we -- we stopped paying, but we
20 have stopped paying all of the -- all of the bills
21 that we had received and had paid promptly. And so,
22 yes, we have stopped.
23 Q. What's the justification for that?
24 A. Primarily, as a means of saying that,
25 Hey, these charges are in dispute because Qwest owes[4]

1 us considerably more money than these bills
2 represent.
3 Q. Well, which bills are you not paying?
4 A. We're not paying the specific bills
5 involving the transport of number -- I mean, of
6 these numbers. That's where I gather we'd call them
7 the -- the transport charges. And we get two of
8 these bills: One involving Oregon transport, and
9 then also Boise or Idaho transport.
10 And then we had a -- we have a

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[3] Transcript, p. 128.

[4] Transcript, p. 120.

11 commercial business line, which we are -- have not
12 been paying on, along with several other business
13 lines that we have not been paying on.
14 Q. Are those ordinary telephone lines?
15 A. They're business lines, yes.
16 Q. And the transport charges that you're
17 talking about, those are covered by your
18 Interconnection Agreement, are they not?
19 A. Yes. However, we have difficulty in
20 determining exactly what those charges are, in that
21 they are varied from time to time.
22 Q. Well, would you agree that you do owe
23 Qwest some amounts for facilities provided under the
24 Interconnection Agreement?
25 MR. JONES: Objection, I don't know[5]

1 that we've talked about the appropriate time frame.
2 Are we talking about under the Interconnection
3 Agreement? What time?
4 MR. BATT: Well, this really is in
5 response to Jim's question about why the mention of
6 the Interconnection Agreement amount due is proper
7 on the matrix.
8 HEARING OFFICER: Yeah, I think that's
9 fair response to that issue that was raised during
10 direct.
11 THE WITNESS: So repeat the question,
12 please.
13 Q. BY MR. BATT: Yeah, sure. Would you
14 agree that today, you owe Qwest charges under your
15 Interconnection Agreement that you haven't paid?
16 A. I -- I would say, yes, we owe you
17 charges as you had billed them. Now, the amount
18 that you had billed seems to be in question,
19 however.[6]

13 Q. Okay. Did I understand your testimony
14 that you believe the Commission has ordered that you
15 are entitled to a refund as opposed to a credit, or
16 did I misunderstand that?
17 A. Well, I -- I would be satisfied with
18 either, I suppose, credit or a refund.[7]

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[5] Transcript, p. 121.

[6] Transcript. p. 122.

[7] Transcript, p. 126.

In his Proposed Order, the Hearing Officer discussed and ordered only billing credits. The Hearing Officer required Qwest to provide new calculations of billing credits, which Qwest filed on January 15, 2002.[8]

Order No. 29064:

The Commission issued its Order No. 29064 on July 17, 2002, adopting for the most part the recommendations of the Hearing Officer, including the ordering of billing credits rather than cash refunds. The Commission deemed this part of the case the "Credit Phase." The Pagers sought to raise their claim to a cash refund, rather than a billing credit, again, this time claiming that the McLeod "unfilled agreement" had provided for cash refunds of certain charges. The Commission rejected the Pagers' attempt to raise the issue on several grounds, and stated in part:

> [T]he Commission has already rejected the Pagers request to require Qwest to provide them with cash reimbursements rather than billing credits. In Order No. 28626, the Commission declined the Pagers' request to amend its final prior Order to require Qwest to provide the Pagers with cash reimbursements rather than billing credits. Order No. 28626 at 2. Having previously declined to require cash reimbursements in Order No. 28626, the Pagers could have sought judicial review of that issue from the Idaho Supreme Court. The Pagers did not appeal that decision and the Commission declines to revisit the issue now.[9]

Qwest calculated the billing credits ordered the Commission, which were filed with and approved by the Commission. In accordance with the Commission's Orders, the Commission applied those credits to the Pagers' accounts.[10]

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[8] Qwest's Recalculation of Billing Credits, filed January 15, 2002.

[9] Order No. 29064, p. 10.

[10] Qwest's Recalculation of Billing Credits, filed July 30, 2002; Qwest's Application of Billing Credits, filed August 14, 2004. Qwest acknowledges and agrees that because TelCar was already in bankruptcy at that point in time, payment rather than credit to the trustee is appropriate, subject to Qwest's rights of setoff under bankruptcy law.

Order No. 29140

The Pagers petitioned for reconsideration, and the Commission granted their motion in part in Order No. 29140. The Commission, however, steadfastly refused to depart from its previous rulings on the propriety of billing credits. It is this Order that the Commission now seems to be saying required Qwest to issue refunds rather than credits. When read in whole, however, the Order simply does not so provide. For example:

> 2. Credits vs. Reimbursements. The Pagers also take issue with the "form" of the refund due each Pager. In the Commission's Liability Order, we found the Pagers were entitled "to reimbursement or billing credits." Order No. 28601 at 11. In the Commission's Credit Order No. 29064, we directed Qwest to "issue the respective [billing] credits to the Pagers no later than 28 days from the service date of this Order." Order No. 29064 at 31. The Pagers do not claim that Qwest has failed to issue the billing credits but take issue with the actual form of the refunds. More specifically, the Pagers assert Qwest should have issued them reimbursements rather than simply issue credits to their accounts. The Pagers also claim they requested reimbursement in their initial Petition for Declaratory Order. "They never asked for a billing credit." Petition for Reconsid. at 2. In the alternative, the Pagers argue they should have the option of deciding how the credits should be applied to their Qwest accounts. *Id.*
>
> **Commission Findings**. We decline the Pagers requests and find that it was appropriate to direct Qwest to issue billing credits in this case for four reasons.[11] First, the Pagers' Petition for Declaratory Order simply stated that they "are entitled to recovery" of amounts paid or overcharged. Petition for Declaratory Order at 5. In other words, the Pagers' initial pleading simply sought recovery – they did not specify the form or manner of refund.

Second, this is the second time the Pagers have pursued this issue. In their Petition to Amend the Liability Order No. 28601, the Pagers asked the Commission to remove the language "a billing credit or" so that the form of the refund would be a reimbursement. The Commission denied this request finding that the Pagers provided no justification for this change. Order No. 28626 at 2. That Order was a final decision appealable to the Supreme Court. *Id.* at 10. The

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[11] We noted in Order No. 29064 at nn. 8, 17 that "billing credits may not be appropriate" for Tel-Car because the company is no longer in business.

Pagers did not appeal. At that time, the Pagers remedy was to seek judicial review. The Commission will not permit the Pagers to now collaterally attack the prior Order in violation of *Idaho Code* § 61-625 (final and conclusive decisions shall not be attacked collaterally).

Third, as set out above, at least two pagers acknowledged they stopped paying their paging bills from Qwest. This fact coupled with the fact they sought much larger refunds than the Commission eventually ordered, leads us to infer that the credits may not exceed the arrearages.[12] If this is the case, it would be unreasonable to require cash reimbursements. *See Metrocall Order I* at ¶¶ 4, 12 (Oct. 2, 2001). Finally, *Idaho Code* § 61-641 (concerning overcharges by a utility) empowers the Commission to order Qwest to "make due reparation to the complainant therefore, with interest from the date of collection provided, no discrimination will result from such reparation." (Emphasis added). The statute does not prescribe the form of the refund. In this instance, we find providing cash reimbursements would be discriminatory.

II.
Calculation of Amounts Due vs. Amounts Owed

We do not believe that the Commission's intent, in its original orders in this case, was to determine what amounts were owed by the Pagers to Qwest at some time past on certain accounts, and compare that to the credit amounts, and thereby determine if the Pagers were entitled to cash payments or billing credits. Because the Pagers stopped paying their bills, it was clear to Qwest – and we believe to the Commission – that the Pagers would ultimately owe Qwest much larger amounts than the Commission-ordered credits.

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[12] In Qwest's Motion to Dismiss and Answer to the Petition to Amend, the Company states that "PageData still owes Qwest a substantial sum after credits are applied." Answer at 5.

Thus, Qwest understood the Commission to intend in Order No. 29555, that Qwest would perform that type of calculation. In fact, the Commission stated, "[b]ecause the refunds have been substantially increased from those credits originally calculated by Qwest in July 2002, it is possible that the refund credits might exceed the amounts the Pagers owe Qwest, if any. If the refunds afforded to PageData and Radio Paging exceed the amounts they owe Qwest, then Qwest shall provide them with cash reimbursement within 21 days of the service date of this Order."[13]

Indeed, that is the case today. PageData owes Qwest in excess of $200,000, and Radio Paging's balance is approximately $20,000. Accordingly, Qwest did not understand the Commission to have made reference past point in time in determining what the Pagers "owe" Qwest.

However, even a 1999 date, and looking solely at wholesale interconnection services, Qwest believes that amounts owed by the Pagers exceeded the credits that would later be granted. The following table was prepared by Sheryl Fraser, Qwest's expert:

Pager	Exhibit	Page	Service	Date	Balance
PageData	Qwest 203	70	Type 1 Paging	8-99	Billed $120,246 Payments/Adjustments $87,390 Balance $32,856
		69 & 1	Private Line CRIS	8-99	$3,750.50
		2-3	POTS	8-99	$6,632.28
				9-99	$7,170.64
		5-6	DID CRIS	8-99	$5,144.92
				9-99	$5,502.49
		12	DID CRIS	8-99	($8,223.52)
			Note: This credit balance was moved to IABS as part of the conversion process.		
				9-99	$1,463.67
		13	Private	8-99	$7,212.93

[13] Order No. 29555 at p. 21.

			Line IABS		
				9-99	$7,911.46
Radio Paging	Qwest 201	1	Type 1	4-99	Billed $53,335 Payments/Adjustments $50,034 Balance $3,301

Thus, Qwest does not believe that refunds are appropriate. Moreover, how would such refunds be calculated; that is, at what point in time would debits and credits be compared? What services would be counted in determining whether there is a positive or negative balance? What about the billing credits previously ordered by the Commission and already applied – should they now be reversed?[14]

CONCLUSION

Qwest respectfully requests the Commission to look at this issue once more. If the Commission still believes, after considering Qwest's comments, that refunds should be provided to the Pagers, then Qwest requests further guidance on the questions stated above. Qwest would welcome an informal meeting of the parties and staff to discuss how these would be calculated. In the meantime, though, it might be helpful to convene the parties, with Sheryl Fraser attending, to try to work through the calculations.

[14] Qwest applied the billing credits for Radio Paging and PageData more than one month ago.

DATED this 15th day of October, 2004.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of October, 2004, I caused a true and correct copy of the above and foregoing document to be served, in the manner indicated, on the following:

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