

**APPENDIX A TO  
PETITIONERS' REPLY  
PURSUANT TO  
IPUC ORDER NO. 29491**

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## Introduction

Since the Petitioners initiated this proceeding, a number of Circuit Court and FCC decisions have strengthened their position. The Commission's questions are addressed in the TSR Order<sup>1</sup>, WorldCom Order<sup>2</sup>, US Court of Appeals DC Circuit's Mountain Communications ruling<sup>3</sup>, US Court of Appeals 4<sup>th</sup> Circuit MCImetro ruling<sup>4</sup>, and the FCC Notice of Apparent Liability<sup>5</sup>.

These rulings maintained (1) the right for CMRS carriers (including PageData) to establish a single point of presence in the LATA since 1996; (2) the originating carrier is responsible for paying the costs of transporting its traffic to the terminating carrier; (3) Qwest cannot charge competitive carriers for facilities Qwest uses to terminate its traffic;

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<sup>1</sup> "The *Local Competition Order* made clear, however, that as of the Order's effective date, LECs had to provide LEC-originated traffic to CMRS carriers without charge. Accordingly, any LEC efforts to continue charging CMRS or other carriers for delivery of such traffic would be unjust and unreasonable and violate the Commission's rules, regardless of whether the charges were contained in a federal or a state tariff." TSR Order, ¶ 29 "Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules." TSR Order ¶31

<sup>2</sup> "Under the Commission's rules, competitive LECs may request interconnection at any technically feasible point. This includes the right to request a single point of interconnection in a LATA .... Furthermore, under these rules, to the extent an ILEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the ILEC is required to bear financial responsibility for that traffic." *In the Matter of the Petition of WorldCom, Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration, et al.*, Memorandum Opinion and Order (WorldCom Order), 17 F.C.C.R. 27039 (July 17, 2002), ¶3 and ¶52

<sup>3</sup> "47 C.F.R. § 51.703(b) 'unequivocal[ly] prohibit[s] LECs from levying charges for traffic originating on their own networks, and, by its own terms, admits of no exceptions'". US Court of Appeals, DC Circuit, *Mountain Communications v. Federal Communications Commission* (Jan. 16, 2004) quoting US Court of Appeals, 4<sup>th</sup> Circuit MCImetro.

<sup>4</sup> "Rule 703(b) is unequivocal in prohibiting LECs from levying charges for traffic originating on their own networks, and, by its own terms, admits of no exceptions." See *MCImetro Access Transmission Servs. v. BellSouth Telecomms, Inc.*, No. 03-1238, 2003 U.S. App. LEXIS 25782 (4<sup>th</sup> Cir. Dec. 18, 2003)

<sup>5</sup> Federal Communications Commission Notice of Apparent Liability for Forfeiture "NAL" *In the Matter of Qwest Corporation Apparent Liability for Forfeiture*, (March 11, 2004) ¶2

(4) CMRS carriers were not required to have a point of interconnection in each of Qwest's local calling areas as a condition to avoid Qwest facility charges; (5) ILECs such as Qwest are required to file, with the relevant states, all interconnection agreements that they enter into; and (6) Petitioner PageData had the right to a single point of presence in the LATA with reciprocal compensation and cannot be held financially responsible for Qwest refusing to do so.

### **Local Calling Area Restrictions**

Three times Qwest has sought to restrict companies that Qwest considers paging only to its state approved local calling areas and shift all burden of transport to the paging carrier. In all three cases the respective paging petitioners had Type 1 facilities. To this very day Qwest has refused to comply with the 1996 Telecommunications Act, Local Competition Order,<sup>6</sup> and FCC rulings and does not provide a Type 1 single point of presence in the LATA to any paging carrier in any of its fourteen state territory. Qwest has lost twice--once at the FCC in the TSR Order and just recently at the US Court of Appeals DC Circuit. In the third instance, the Idaho Commission must rule the same way. Table 1 compares the fact situation in TSR, Mountain Communications and the present case in a number of relevant respects.

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<sup>6</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order ("Local Competition Order"), 11 F.C.C.R. 15449 (1996).

**Table 1 – Comparison of TSR, Mountain, and Petitioners**

	<b>TSR</b>	<b>Mountain</b>	<b>PageData/ InterPage, Tel- Car, and Radio Paging</b>
Does the paging carrier connect with Qwest using Type 1 interconnection?	Yes	Yes	Yes
Does the paging carrier have a single POI in the LATA?	Yes	Yes	Yes
Are the paging carrier's Type 1 (or "DID") numbers rated in a LCA different from LCA where POI is located?	Yes	Yes	Yes
Are the Type 1 numbers stored in the Qwest switch located in the LCA different from a LCA where the POI is located?	Yes	Yes	Yes
How does Qwest rate a call made by its customers in the LCA where its Type 1 switch is located to paging customer whose number is rated in same LCA?	Local, because the NPANXX in the numbers of both parties are rated in same LCA	Local, because the NPANXX in the numbers of both parties are rated in same LCA	Local, because the NPANXX in the numbers of both parties are rated in same LCA
How does Qwest rate a call made by its customers in the LCA where its Type 1 switch is located to a paging customer whose number is rated in different LCA?	Toll, because the NPANXX in the numbers of the parties are rated in different LCAs	Toll, because the NPANXX in the numbers of the parties are rated in different LCAs	Toll, because the NPANXX in the numbers of the parties are rated in different LCAs
In delivering its customers' traffic from the Type 1 switch to the paging carrier's single POI, must Qwest transport customers' calls from one LCA to another?	Yes	Yes	Yes
Does Qwest consider these transport circuits "dedicated	Yes	Yes	Yes

toll facilities” because they begin and end in different LCAs?			
Is Qwest local traffic (calls that originate and terminate in the same LCA) carried over these “dedicated toll facilities”?	Yes	Yes	Yes

**Table 1 – (Continued)**

	<b>TSR</b>	<b>Mountain</b>	<b>PageData, InterPage, Tel-Car, and Radio Paging</b>
Length of so-called “dedicated toll facilities”?	Over 240 miles	Approximately 40 miles	Approximately 210 miles
Do Qwest’s facilities charges contravene FCC Rule 51.703(b)	<b>Yes</b>	<b>FCC - No</b> <b>US Court of Appeals, DC Circuit - Yes</b>	<b>IPUC – No</b> <b>Under Appeal</b>
May Qwest charge for these facilities when they are used to deliver Qwest customer traffic to paging carrier’s POI?	<b>No</b>	<b>FCC – Yes</b> <b>US Court of Appeals, DC Circuit - No</b>	<b>IPUC – Yes</b> <b>Under Appeal</b>

**Cost Shifting**

Only through funny math and cost shifting can it be explained how a carrier that only terminates traffic (such as Petitioners) can owe the originating carrier (such as Qwest), who is responsible for delivery of all traffic to the terminating carrier. It has been left to Qwest to decide whether to bill the originating carrier for transit traffic or needlessly inject the terminating carrier into an inefficient billing process by billing the terminating carrier, which would then bill the originating carrier. Either way, Petitioners (as terminating carriers) are not ultimately responsible for any transport or facility costs.

If Qwest bills the terminating carrier for transit traffic, Qwest must provide the data necessary for the terminating carrier to seek reimbursement from the originating carrier. Then Qwest becomes the guarantor because they are guaranteeing that the billing information they are providing the terminating carrier concerning the originating carrier is accurate. Qwest would have to be prepared to represent the accuracy of the information in any court proceedings between the terminating and originating carrier in any disputes. Situations such as this one would be repeated at public utility commissions throughout Qwest's 14 state territory if there were computer errors or glitches.

In this case, Qwest chose to bill the terminating carrier in lieu of the originating carrier, who is ultimately responsible for the delivery of its traffic. Qwest responded to the Commission's questions 3 and 4 that Qwest has no call data from the originating wireline or wireless carrier and "such data does not exist."<sup>7</sup> Qwest's failure to provide certified call data billing records precludes Qwest from invoicing the terminating carrier. Therefore, Qwest must seek reimbursement from the originating carrier.

Qwest's cost shifting tactics were rejected in the TSR Order; at the US Court of Appeals DC Circuit in the Mountain Communications ruling; and by Qwest itself in the unfiled interconnection/settlement agreements between Qwest and PageNet and Qwest and Arch, provided in Exhibits 1 and 2, and addressed in the FCC's NAL. The FCC said the terms and conditions of interconnection agreements are available to Petitioners whether Qwest seeks to file them with the Commission or not.<sup>8</sup> The Idaho Commission must reject Qwest's cost shifting also and at a minimum provide Petitioners with the

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<sup>7</sup> Qwest Corporations' Corrected Response to IPUC Order No. 29491, p. 6.

<sup>8</sup> FCC NAL ¶33

same terms and conditions as provided by Qwest in the unfiled interconnection agreements under § 252(i)<sup>9</sup> and Idaho Code § 61-315<sup>10</sup>.

Qwest has cost shifted by not performing one of its fundamental duties to interconnect at any technically feasible point in the LATA and tried to force Petitioners to pay the costs for Qwest's policy of having Petitioners establish a point of presence in each of Qwest's state-approved local calling areas rather than a standard single point of presence. Qwest has charged Petitioners for transport, wide area calling and facilities necessary to interconnect in order to achieve a single point of presence.

#### **Comparison of Payments Made by PageData**

PageData submitted a spreadsheet to the Idaho PUC called "Schedule 1 - Further Categorization By Account of Amounts Paid by PageData/InterPage for Dedicated Qwest Facilities Used to Deliver Traffic in the LATA to 9-1999" in Petitioner's Post-Hearing Brief. Qwest submitted a spreadsheet to the Idaho PUC called "Payment Compare Qwest vs. PageData Figures - Idaho Only" included as Exhibit 5 in Qwest's Post-Hearing Reply Brief. PageData's records show payments totaling \$240,756.03 and Qwest's records show payments totaling \$245,628.51. Both documents have been reattached as Exhibits 3 and 4.

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<sup>9</sup> § 252(i) - Availability to other telecommunications carriers - A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

<sup>10</sup> Idaho Code § 61-315 - DISCRIMINATION AND PREFERENCE PROHIBITED. No public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service. The commission shall have the power to determine any question of fact arising under this section.

Taking the lower figure of \$240,756.03, any charges that are not considered wide area calling or transit factor have to be facility charges. The originating carrier is responsible for all costs associated with the delivery of their traffic to the terminating carrier. For six years, Qwest had refused to interconnect with PageData at a standard single point of presence and has attempted to cost shift its burden to PageData for refusing to interconnect at any technically feasible point in the LATA.

### Wide Area Calling

Petitioners never entered in wide area calling arrangements with Qwest. Qwest's characterization of non-local Type 1 or FX facilities for delivery of direct and indirect traffic in the LATA illustrates that Qwest's company policy has not changed. Any financial information provided by Qwest in their spreadsheets associated with those facilities must be ignored. As stated by the US Court of Appeals in Mountain Communications, "[Paging carriers] [have] no incentive to enter into a wide area calling arrangement with Qwest. [Paging carrier's] system of interconnection provides it no advantages other than those to which, presumably, it is entitled for free." (p. 7) Also, according to published Qwest state tariffs, wide area calling was only available to Type 2 services<sup>11</sup> and during the relevant time period, Petitioners all had Type 1 services.

Specifically by letters dated August 29, 1998 (attached as Exhibit 5) and September 8, 1998 (attached as Exhibit 6), PageData requested in writing ten T1s, which would have given PageData a traditional single point of presence. Also in those letters, PageData complained that it was not being quoted the most economical way to configure

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<sup>11</sup> "Wide Area Calling Service is a billing service offered to Commercial Mobile Radio Carriers and Private Mobile Radio Carriers, in conjunction with their Type 2 Interconnection. Wide Area Calling Service provides direct dialed LATA-wide toll free calling for [Qwest] land to mobile calls. The Type 2 Interconnection provides the exchange of the land to mobile calls and for the billing of the calls to the Carrier rather than the calling party." See various Qwest state tariffs

the network. Using the SGAT as a guideline, Qwest had twenty-two days to fulfill that order because the order was for 240 lines, but Qwest refused to do so. Qwest continued to refuse to install a standard single point of presence for PageData for six years.

For the last six years Qwest has been unlawfully cost shifting its financial responsibility to PageData by billing PageData monthly for Qwest's policy of not interconnecting with companies it considers paging only at a standard single point of presence in the LATA. These cost shifted billings are what Qwest has been crediting the Commission ordered refunds against.

### **800 Numbers**

The 800 numbers were not in the Idaho Tariff and as stated in the record they were bought for a one-time charge (See, Transcript, pp 499-502 testimony of Joseph McNeal) Once all the local NXX codes are routing properly over PageData's standard single point of presence, the 800 numbers will not be needed anymore.

### **Equivalent Services Available for No Charge**

The Commission based its decision on whether or not to give a credit or cash refund payments to the Petitioners on Qwest's unsubstantiated claim that Petitioners owed Qwest money. In the last six years, Qwest has not presented any evidence to the Commission substantiating its claim. As mentioned by the U.S. Court of Appeals DC Circuit, the burden of proof is on Qwest to show the Commission why PageData or TelCar would voluntarily enter into an agreement to pay for services that have clearly been established from recent rulings that they could have obtained for no charge.

As mentioned by the US of Appeals DC Circuit Court in the Mountain case, PageData had “no incentive to enter into a wide area calling arrangement with Qwest”<sup>12</sup> or establish a point of interconnection in each of Qwest’s local calling areas without misinformation from Qwest. “[PageData’s] system of interconnection provides it no advantages other than those to which, presumably, it is entitled for free.”<sup>13</sup> It should have never been established in the first place. Twenty-two days after PageData’s request for facilities, the legacy system remaining in place would financially benefit Qwest only.

Any claims by Qwest that they did not have orders for T1s after receiving two letters in 1998 from PageData requesting T1s should have been squelched when Commission staff attorney, Mr. John Hammond contacted Qwest about the T-1s issue by letter dated October 12, 2000 (see attached Exhibit 7) and requested an update on the dispute resolution process and the status of the order. The T1 orders were brought up at every meeting with Mr. McNeal and Qwest, including negotiation meetings for the first interconnection agreement, Commission hearings, etc.

**PageData had a Credit with Qwest when PageData First Requested SPOP**

Contrary to what Qwest would have the Commission believe, Qwest’s own records (attached as Exhibits 8 pages 1-9 and Exhibit 9) show that PageData actually had a credit with Qwest when PageData requested the ten T1s for a single point of presence in August/September 1998.

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<sup>12</sup> US Court of Appeals DC Circuit, Mountain ruling p. 7

<sup>13</sup> US Court of Appeals DC Circuit, Mountain ruling p. 7

**Table 2 – Summary of PageData Accounts as of September 1998**

<b>Account</b>	<b>Bill Date</b>	<b>Balance Forward</b>	<b>Current Charges</b>	<b>Total Due</b>
L-208-111-1770-117M	Sept. 25, 1998	\$10,000.77	\$5,092.81	\$15,093.58
L-208-111-1771-771M	Sept. 1, 1998	\$617.34	\$726.29	\$1,343.63
L-208-111-1769-769M	Sept. 16, 1998	\$697.00	\$697.00	\$1,394.00
L-208-356-5271-797M	Sept. 1, 1998	\$196.50	\$121.00	\$317.50
208 R55-2312 312	Oct. 20, 1998	\$0.00	\$420.92	\$420.92
208 R51-0454 454	Sept. 20, 1998	\$0.00	\$1,462.78	\$1,462.78
L-208-336-4203-698M	Sept. 1, 1998	\$121.00	\$113.50	\$234.50
208-373-9000-260B	Sept. 4, 1998	\$4,369.48	(\$2,017.37)	\$2,352.11
208-642-8000-188B	Sept. 28, 1998	\$0	(\$932.78)	(\$932.78)
<b>TOTAL</b>		\$16,002.09	\$5,684.15	<b>\$21,686.24*</b>
Retail Tariff Rerate Credit (Per Sheryl Fraser letter dated Nov. 25, 1998)	Nov. 25, 1998			(\$87,388.76)*
<b>Net (Credit) Balance</b>				<b>(\$65,702.52)</b>

\*Note: At this time, PageData had been invoiced 100% for Qwest originated traffic.

If Qwest had installed the standard single point of presence when first requested by PageData, there would have been no need for the leased lines, POTS lines, frame relay, 800 numbers, etc. that PageData utilized in order to achieve a single point of presence. PageData should not be penalized for Qwest's unlawful company policies.

**Commission Must Reject All Previous Qwest Refund Calculations**

The Commission must reject all of Qwest's financial breakouts of cash/credit refunds from the initial filing of the complaint based on the TSR Order, WorldCom Order, US Court of Appeals DC Circuit Mountain ruling, US Court of Appeals 4<sup>th</sup> Circuit MCImetro ruling, and the FCC NAL. Qwest's calculations as shown in its Diagrams 1, 2, and 3 of Qwest's Corrected Response to IPUC Order No. 29491 are based off a multi point of presence in the LATA with charges over 20-45 miles. These diagrams show that Qwest has maintained its same position about multi points of presence despite the decisions in the TSR Order, the Mountain Decision (US Court of Appeals, DC Circuit), and the FCC WorldCom Order. Qwest has never recognized that they were obligated to

deliver direct and indirect calls to PageData's point of interconnection in Boise and the originating carrier was responsible for bearing all costs.

Qwest attempts to cost shift its financial responsibility for its part to deliver direct and indirect traffic to Petitioners' designated point of interconnection by obfuscating interconnection facilities as dedicated toll facilities or private transport facilities. These recent rulings by the FCC and the US Court of Appeals reconfirmed the Local Competition Order and the TSR Order. The FCC's Local Competition Order clearly calls for LECs immediately to cease charging CMRS providers for terminating LEC-originated traffic. The order does not require a § 252 agreement before imposing such an obligation on the LEC.

### **The Commission Must Reject Qwest's Diagrams**

The financial information provide by Qwest is based off faulty information and unlawful charges. The same arguments have been made by Qwest in TSR, Mountain and by Verizon in the WorlCom case and the FCC or the US Court of Appeals rejected the charges based off those assumptions. They rejected Qwest's and Verizon's 20- and 25-mile restrictions and included that Qwest must provide facilities at its own cost of distances of more than 240 miles. Petitioner's furthest point is 208 miles (Idaho Falls to Boise). See Exhibits 10-13. Any charges for LEC-originated traffic to the competitive carrier, no matter how the LEC characterized it, was considered unlawful.

Qwest's Diagrams 1, 2, 3 and all of its financial references associated with it including Wide Area Calling Charges, Transit Charges, and Interest Calculations

submitted by Qwest in its Corrected Response to IPUC Order No. 29491 must be rejected.

Qwest has refused to follow the FCC's decision in TSR, the WorldCom Order, and MCImetro. In addition, Qwest unsuccessfully made identical arguments in TSR and Mountain.

The *Local Competition Order* made clear, however, that as of the order's effective date, LECs had to provide LEC-originated traffic to CMRS carriers without charge. Accordingly, any LEC efforts to continue charging CMRS or other carriers for delivery of such traffic would be unjust and unreasonable and violate the Commission's rules, regardless of whether the charges were contained in a federal or a state tariff. (TSR Order, ¶ 29)

Like Qwest, Verizon proposed to charge competitive carriers for transporting its calls when the centralized POI is located in a local calling area different than the LCA where the call originated – except that Verizon proposed to use a “charge after 25 mile” rule rather than the “charge after 20 mile” practice, which Qwest unilaterally adopted. (See WorldCom Order, ¶37). The Idaho PUC changed the mileage to after 45 miles. The Bureau, applying “current Commission rules and precedents,” held that Verizon's proposed facility charges were unlawful:

Under the Commission's rules, competitive LECs may request interconnection at any technically feasible point. This includes the right to request a single point of interconnection in a LATA .... Furthermore, under these rules, to the extent an ILEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the ILEC is required to bear financial responsibility for that traffic.

Id. at ¶3 and ¶52.

Rule 703(b) is unequivocal in prohibiting LECs from levying charges for traffic originating on their own networks, and, by its own terms, admits of no exceptions.

See US Court of Appeals, 4<sup>th</sup> Circuit MCImetro ruling and quoted by the US Court of Appeals, DC Circuit, Mountain ruling

**Qwest Attempts to Penalize Petitioners for Qwest Company Policies that  
Contradict Federal and State Laws**

Qwest has demonstrated that it believes that when its company policies are against federal and state laws, their company policies supercede the law and competitive carriers must bear all financial costs until Qwest changes its policies. That is the situation we have here. Qwest has recently changed its policy toward a standard single point of presence for Type 2 service. In the last week and after waiting six years, Qwest has finally installed a Type 2 standard single point of presence for PageData. The costs associated with that standard single point of presence must be born by the originating carrier(s) and the terminating carrier's costs are zero.

Since 1996 Qwest has been aware of its obligations to allow a competitive carrier to interconnect at any technically feasible point in the LATA. PageData started its service after 1996, and PageData should have never had to interconnect with Qwest in each of Qwest's local calling areas and did not do so voluntarily. Qwest is trying to cost shift its responsibility for its company's policy to PageData when since the inception of the relationship between PageData and Qwest, PageData should have always been able to interconnect with Qwest at no charge.

**Transit Traffic Billing Information**

Arch Wireless joined interveners Allied National Paging Association, AT&T Wireless, Inc., Sprint Spectrum L.P, T-Mobile USA, Inc. and Western Wireless

Corporation in the Mountain Communications case<sup>14</sup> at the U.S. Court of Appeals, District of Columbia Circuit. Arch Wireless and the other interveners benefited when Qwest stated in the Mountain case that it would provide third party billing information.

Qwest has since initiated plans not to charge paging carriers for transit traffic until such time that they provide warranted third party billing information. This coincides with the US Court of Appeals upholding that the originating carrier is responsible for the transport costs and not the terminating carrier. Therefore, Petitioners should have zero charges for transit traffic, phantom wide area calling, and facility costs. (See Exhibit 13)

### **Reciprocal Compensation**

This scenario excludes reciprocal compensation. Adding reciprocal compensation into the mix, which is payment from Qwest for terminating Qwest originated traffic, Qwest owes Petitioners several thousand dollars a month and Petitioners owe Qwest zero per month. When Petitioners originally brought their case before the Idaho Commission very few individuals in the industry understood the concept of reciprocal compensation as it applied to smaller one-way carriers' cost recovery mechanism. The Commission ruled that they believed it was against the public interest to have facilities at no charge and also did not take into account that was part of the FCC's cost recovery mechanism for all carriers. The concept of smaller carriers recovering their costs is still a powder keg issue at Qwest. Each time the Commission ruled against Petitioners in favor of Qwest, other federal rulings came out that substantiated Petitioners original position and the Commission has had to re-address the issues three times.

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<sup>14</sup> Case No. 02-1255, *In the Matter of Mountain Communications, Inc. v. Federal Communications Commission*.

### **Single Point of Presence Option**

In the WorldCom Order the FCC made it quite clear that a competitive carrier has had the right to request a single point of presence since the implementation of the 1996 Telecommunications Act. There is plenty of information in the record concerning PageData's repeated requests for ten T1s. PageData is requesting that the Commission confirm PageData's right to a single point of presence since the passage of the Act and give a date certain when Qwest should have installed the facilities for PageData. PageData believes Qwest should have initially interconnected with PageData with a single point of presence. Despite Qwest's unlawful policies, Qwest should have converted the facilities to a standard single point of presence within twenty-two days of PageData's written requests dated August 29, 1998 and September 8, 1998.

### **Qwest Attempts to Penalize PageData for Qwest's Unlawful Policies**

PageData should not have to pay higher costs for facilities because Qwest refused to change the network as requested by PageData many times over a six-year period. It is not a matter of Qwest not being aware of PageData's requests, but PageData's requests were contrary to Qwest's unlawful policies.

### **252(i) Dispute Resolution**

§§ 251 and 252 and Idaho Code § 61-315 are of vital importance in this case. At any time during a formal proceeding such as a hearing before the Idaho Public Utilities Commission or state and federal proceedings, Petitioners have the right to invoke § 252(i) and Idaho Code § 61-315 at any time to adopt terms and conditions out of interconnection agreements to resolve their dispute with an ILEC. Specifically, PageData has attempted to invoke its rights under 252(i) to resolve its dispute with Qwest. The

ILEC or the Commission cannot deny this statutory right. As envisioned by Congress and in recent court rulings, the adoptions of terms and conditions evens the playing field for smaller carriers who do not have the financial resources or clout as larger competitors and are able to take advantage of more favorable terms and conditions, and it reduces the time and resources of the Commission, competitive carriers and the ILEC.

If the Commission rules that Petitioners are not entitled to receiving refunds in cash of the unlawful payments made to Qwest or if the Commission insists that credits are applied against unsubstantiated and unlawful billings, then Petitioners seek to resolve the dispute by § 252(i). It is unreasonable to expect Petitioners to settle for credits when more complicated disputes throughout Qwest's 14 state territory were resolved by Qwest in unfiled interconnection agreements that show that Qwest established the total amount paid and refunded in cash a flat percentage anywhere between 70-80% of amounts paid.

The Petitioners have identified several paging confidential billing settlement agreements that have been classified as interconnection agreements by Qwest itself, other state PUCs and the FCC. Of these several paging interconnection agreements, Petitioners have singled out the Arch and PageNet paging interconnection agreements as samples because they have been classified as interconnection agreements by Qwest, Iowa, Colorado, and Arizona. We have attached these agreements as Exhibits 1 and 2.

Even though Qwest has failed to file these interconnection agreements in the state of Idaho, Idaho carriers can adopt their terms and conditions by (1) the Commission recognizing that Petitioners have the right to present unfiled interconnection agreements to the Commission for recognition; (2) the Commission can take the terms and conditions out of the agreements and apply them to the Petitioners under § 252(i) and Idaho Code §

61-315; or (3) enforcing the FCC's decision and forcing Qwest to file the interconnection agreements in the state of Idaho.

The FCC stated, "Section 252(a)(1) does not condition filing on a state commission first telling a carrier that a certain agreement (which has not yet been seen) must be filed." FCC NAL ¶33. This statement by the FCC gives the Petitioners the right to submit unfiled interconnection agreements for adoption under § 252(i) and Idaho Code § 61-315. The FCC also stated, "We find that agreements addressing dispute resolution and escalation provisions relating to the obligations set forth in sections 252(b) and (c) are appropriately deemed interconnection agreements. FCC NAL ¶32. The FCC has identified interconnection agreements that are applicable to Idaho and those terms and conditions are available to Petitioners to settle disputes such as refunds, meeting with the President/CEO of Qwest and other resolutions that were denied to Petitioners.

In their Memorandum Opinion and Order 02-276<sup>15</sup> the FCC stated, "should competition-affecting inconsistencies in state decisions arise, those could be brought to our attention through, for example, petitions for declaratory ruling." The FCC's NAL confirmed that the FCC had given Qwest clear and repeated instructions regarding section 252(a) filing requirements<sup>16</sup> and that all Qwest interconnection agreements

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<sup>15</sup> *In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval under Section 252(a)(1)*, dated October 2, 2002, WC Docket No. 02-89, paragraph 10

<sup>16</sup> "Despite our clear and repeated instruction regarding the section 252(a) filing obligations, Qwest apparently withheld dozens of interconnection agreements from state commissions until it was ready to seek our approval to provide in-region, interLATA service for the relevant states.4 In Minnesota and Arizona, the last two states for which Qwest sought section 271 approval, Qwest delayed filing 46 interconnection agreements until several years after the agreements were executed and months after filing similar agreements in other states. These agreements were filed long after we had clarified, and reiterated, the filing requirements of section 252(a)(1). Indeed, months after Qwest assured us that it had filed all of its previously unfiled interconnection agreements, Qwest filed an additional 53 agreements in six states, some of which date back to 1998." FCC NAL ¶2

approved by state commissions during their investigations were indeed interconnection agreements that should have been filed in each of the relevant states when originally executed between Qwest and the competitor.

According to the FCC and state commissions (such as Iowa, Minnesota, Colorado, and Arizona) that investigated Qwest's unfiled interconnection agreements, some companies received rebates, some companies received cash refunds, and other companies received discounts from Qwest. Petitioners should receive equal treatment.

Excerpts show the relevance to Idaho. Paragraph 3 of the Arch confidential billing settlement agreement says:

Arch agrees to adopt under Section 252(i) of the 1996 Telecommunications Act the interconnection agreements between U S WEST and AirTouch Paging, which were executed on October 18, 1999, in the following nine states: Arizona, Colorado, Iowa, Minnesota, Nebraska, New Mexico, Oregon, Utah and Washington. The Parties also agree to execute new interconnection agreements using the aforementioned AirTouch Paging interconnection agreements as a template in the following five states: Idaho, Montana, North Dakota, South Dakota, and Wyoming.

This agreement settled accounts from 1996 forward, which is the relevant time period for Petitioners. Arch and PageNet received a cash refund of approximately three-quarters of all the money they had paid Qwest. The PageNet and Arch settlement agreements were declared interconnection agreements in the FCC's NAL and therefore Petitioners are entitled to adopt these terms and conditions to settle disputes. It is not conditioned upon the states seeing the agreements and telling Qwest to file them.<sup>17</sup>

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<sup>17</sup> FCC NAL ¶33

### Complicated Calculations Versus Simple Formula

During the Evidentiary Hearings and in reference to all Qwest financial information provided to the Commission, Qwest's representative, Sheryl Fraser, said "It was never our intention that you'd be able to figure this out on your own." (Transcripts, p. 340)

After much time was spent going through Qwest's complicated spreadsheets, Petitioner's counsel questioned Sheryl Fraser about a more simple method of determining the refunds.

Q. Now, I hate to be too simplistic, but if the TSR was saying that paging carriers shouldn't have to pay for dedicated facilities that deliver traffic to their point of connection, and if they shouldn't be required to pay for transitting traffic, wouldn't all these big, thick, voluminous Exhibits 201, 202, and 203 be pretty simple: You'd just figure out how much they paid and refund the whole thing with interest? Wouldn't that be the way you'd figure it?

A. Well, you'd still have to look at whether they had any other types of charges – 800 page line, wide area calling, self-healing...

Q. But you didn't include any 800 service or wide area calling or any of those other options ... the summary sheets of Exhibit 201, 202, 203?

A. Exhibit 203 does show that there were 800 page line charges ...

Q So we would deduct that from the total amount paid, but then once you deducted that, then you could take the amount paid and give 100 percent credit and that would kind of be the end of it, wouldn't it?

A. Sounds right, yes, if we determined that all those facilities should have been provided at no charge.

Examination between Jim Jones and Sheryl Fraser (See Transcripts pp 466-467)

### Summary

In summary,

- 1) We do know that PageData paid Qwest between \$240,000 and \$246,000 based off both companies' records and data submitted to the Commission.

- 2) We do know that all interconnection services provided by Qwest to Petitioners should have been at no charge because Petitioners were terminating carriers only and did not originate any traffic.
- 3) All services provided by Qwest to Petitioners had a functional equivalent available at no charge.
- 4) Despite Qwest's representation, Petitioners PageData and Tel-Car were not required to establish a point of interconnection in each of Qwest's local calling areas.
- 5) It was Qwest policy not to provide a single point of presence in the LATA in Idaho for companies that Qwest considered paging only.
- 6) Qwest defended its SPOP policy through the TSR Order, the Mountain Order and through this proceeding presently before the Commission – a span covering 8 years (1996 to present day).
- 7) In the past year the IPUC staff mediated the first two standard paging single point of presence networks in Qwest's 14 state territory.
- 8) Qwest has settled more complicated paging disputes than what is presently before the Commission.
- 9) Qwest designed and submitted all financial data in a form that could only be understood with Qwest's assistance.
- 10) Section 252(i) can be used as a dispute resolution mechanism at any time.
- 11) Every other paging carrier that Qwest settled with received a cash refund.

- 12) In the TSR Order the FCC rejected Qwest's network design and financial responsibility position in favor of TSR.
- 13) The US Court of Appeals DC Circuit rejected Qwest's network design and financial responsibility position in favor of Mountain.
- 14) 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 presence in the LATA.
- 15) Qwest billed the competitive carrier according to that information when those services were available at no charge.

Respectfully submitted by PageData as Appendix A to Petitioners' Reply Pursuant to IPUC Order No. 29491.

## CONFIDENTIAL BILLING SETTLEMENT AGREEMENT

THIS CONFIDENTIAL BILLING SETTLEMENT AGREEMENT ("Confidential Billing Settlement Agreement"), by and between Qwest Corporation formerly known as Qwest Communications, Inc. ("Qwest") and Paging Network, Inc. (together with its direct and indirect subsidiaries, "PageNet"), a wholly owned subsidiary of Arch Wireless Holdings, Inc. ("Arch"), is a complete and final settlement of the disputes described herein. Qwest and PageNet are referred to herein jointly as the "Parties" or individually as a "Party."

1. **DESCRIPTION OF THE RELATIONSHIP OF THE PARTIES AND DISPUTES.**
  - a. PageNet and Qwest have entered into various interconnection arrangements, identified by the account information set forth on Exhibit 1 hereto, pursuant to which the Parties' respective communications networks are interconnected in the states of Arizona, Colorado, Idaho, Minnesota, Nebraska, New Mexico, Oregon, Utah, and Washington (collectively, the "Previous Interconnection Arrangements").
  - b. In connection with the Previous Interconnection Arrangements, (i) PageNet asserts that Qwest must refund certain amounts paid by PageNet to Qwest for interconnection facilities, (ii) Qwest asserts that PageNet must pay Qwest for interconnection facilities provided by Qwest to PageNet, and (iii) PageNet has also claimed the right to receive reciprocal compensation payments from Qwest. These billing disputes, which cover only the period from November 1, 1996 through December 31, 2000, along with any and all other billing and payment issues related to the accounts listed on Exhibit 1 hereto arising or occurring during such period, are referred to herein as the "Billing Disputes."
2. **PURPOSE OF CONFIDENTIAL BILLING SETTLEMENT AGREEMENT.** The Parties desire to resolve permanently and unilaterally their differences and settle all their disagreements regarding the Billing Disputes. The Parties also desire to operate under the existing Arch Interconnection Agreements (as defined below) to govern the interconnection of the Parties' networks on a going forward basis. The Parties intend that this Confidential Billing Settlement Agreement settle, resolve and extinguish any and all claims by the Parties relating to or arising out of the Billing Disputes as established in 1b. above.
3. **FINAL SETTLEMENT.** The Parties hereby fully, completely, and unilaterally settle any and all claims by the Parties relating to or arising out of the Billing Disputes.
4. **CREDIT OF ACCOUNTS.** In exchange for the covenants and agreements set forth herein, within sixty (60) days from execution of this Confidential Billing Settlement Agreement, Qwest agrees to provide PageNet with bill credits totaling \$ 1,517,260.57 U.S. dollars. These bill credits will settle all billing and payment issues for the accounts listed on Exhibit 1 for the period from November 1, 1996 through December 31, 2000; and Qwest agrees not to take any action, whether before a court, regulatory agency, or other adjudicatory body, to collect any

## CONFIDENTIAL BILLING SETTLEMENT AGREEMENT

March 30, 2001/Arch/PageNet-Qwest Settlement  
 CDS-010330-00851c

EXHIBIT

1

tabbles

THE UNDERSIGNED DECLARE THAT THE TERMS OF THIS CONFIDENTIAL BILLING SETTLEMENT AGREEMENT HAVE BEEN COMPLETELY READ AND ARE FULLY UNDERSTOOD AND ARE VOLUNTARILY ACCEPTED FOR THE PURPOSE OF MAKING A FULL AND FINAL COMPROMISE OF THE DISPUTES BETWEEN THE PARTIES.

Qwest Corporation

Paging Network, Inc.

By: Audrey McKenney  
Audrey McKenney

By: Paul Kuzia  
Paul Kuzia

Title: Senior Vice President

Title: Executive Vice President  
Technology and Regulatory Affairs

Date: 4/23/01

Date: 4/8/01

**CONFIDENTIAL BILLING SETTLEMENT AGREEMENT**

March 30, 2001 and PagingNet-Qwest Settlement  
CDS-010330-0085/c

EMIF

### EXHIBIT 1 ACCOUNTS UNDER DISPUTE

**PageNet Accounts:**

- ~~206-R51-0010-010~~
- ~~206-R54-2510-510~~
- ~~206-R54-5004-004~~
- ~~206-R55-2365-365~~
- ~~206-R55-5004-004~~
- ~~206-R55-7018-012~~
- ~~206-R51-0300-000~~
- ~~206-R54-5000-000~~
- ~~206-R55-0004-004~~
- ~~206-R55-5054-054~~
- ~~216-R54-0004-004~~
- ~~216-R54-5052-052~~
- ~~302-R54-0000-000~~
- ~~302-R54-0400-100~~
- ~~305-R54-5005-005~~
- ~~320-R54-0002-002~~
- ~~430-R54-5070-070~~
- ~~402-R54-5000-000~~
- ~~502-R51-0115-115~~
- ~~503-R51-0142-142~~
- ~~503-R54-2525-255~~
- ~~503-R54-5014-014~~
- ~~503-R54-5010-010~~
- ~~503-R56-5025-025~~
- ~~503-R56-7201-701~~
- ~~503-208-0086-278-86~~
- ~~505-R54-2500-500~~
- ~~506-R54-5050-050~~
- ~~507-R54-5070-070~~
- ~~508-R54-0010-010~~
- ~~508-R54-2440-440~~
- ~~509-R55-5105-105~~
- ~~520-R54-5054-054~~
- ~~602-R51-0033-033~~
- ~~602-R51-0010-010~~
- ~~602-R54-5050-050~~
- ~~602-R55-2327-237~~
- ~~612-R54-2500-500~~
- ~~612-R54-5053-053~~
- ~~710-R51-0100-100~~
- ~~710-R54-5000-000~~
- ~~801-R54-5000-000~~
- ~~801-R55-5110-110~~

\$	83,349.10	72,424.94
\$	35,771.55	23,577.55
\$	61,830.70	46,037.55
\$	1,789.92	UB
\$	2,937.67	2,330.64
\$	1,837.63	
\$	12,975.30	
\$	5,523.34	
\$	858.37	UB
\$	1,072.23	
\$	2,771.34	
\$	26,421.04	
\$	189,420.30	
\$	20,040.11	
\$	4,120.69	
\$	477.68	
\$	10,193.35	
\$	50,602.73	
\$	44,443.00	
\$	43,774.00	
\$	8,754.00	
\$	9,340.89	
\$	4,863.70	
\$	877.00	
\$	35,036.41	
\$	77,072.02	
\$	3,519.96	
\$	5,117.27	
\$	5,781.89	
\$	3,004.30	
\$	20,433.64	
\$	238,632.52	
\$	26,107.00	
\$	413,046.77	
\$	12,705.45	
\$	8,841.30	
\$	70,927.83	
\$	57,853.14	
\$	8,033.46	
\$	44,378.27	
\$	3,020.71	

Total December Balance

\$ 1,517,280.57

311,300.57  
219,744.32

### CONFIDENTIAL BILLING SETTLEMENT AGREEMENT

March 30, 2001/nd/PageNet-Credit Settlement  
CDS-010330-007/c

### CONFIDENTIAL BILLING SETTLEMENT AGREEMENT

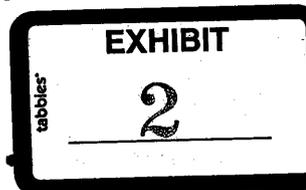
**THIS CONFIDENTIAL BILLING SETTLEMENT AGREEMENT (Confidential Billing Settlement Agreement), by and between U S WEST Communications, Inc. ("U S WEST"), and Arch Communications Group, including MobileMedia Communications, Inc. and Mobile Communications Corporation of America (collectively "MobileMedia") and Arch Paging, Inc. and Arch's other subsidiaries, affiliates and assigns (collectively "Arch"), is a complete and final settlement of the disputes described herein. U S WEST and Arch are referred to herein jointly as the "Parties" or individually as a "Party."**

#### 1. DESCRIPTION OF THE RELATIONSHIP OF THE PARTIES AND DISPUTES.

- a. Arch and U S WEST have entered into various interconnection arrangements pursuant to which the Parties' respective communications networks are interconnected in the states of Arizona, Colorado, Idaho, Iowa, Minnesota, Nebraska, New Mexico, North Dakota, Oregon, Utah, Washington and Wyoming. These interconnection arrangements are referred to herein as "Previous Interconnection Arrangements."
- b. In connection with the Previous Interconnection Arrangements, Arch asserts that U S WEST must refund certain amounts paid by Arch to U S WEST for interconnection facilities. U S WEST asserts that Arch must pay U S WEST for interconnection facilities provided by U S WEST to Arch. Arch has also claimed the right to receive reciprocal compensation payments from U S WEST, and U S WEST has denied Arch's claims. These billing disputes, which cover the period ending on July 1, 2000 (i.e., the effective date of the new interconnection agreements described in Section 3 below), are referred to herein as the "Billing Disputes."
- c. On December 3, 1998, Arch Paging, Inc., filed a formal complaint (E-98-05) with the Federal Communications Commission ("FCC") complaining of certain actions by U S WEST. On January 29, 1999, MobileMedia's predecessor company, also known as MobileMedia Communications, Inc., filed an informal complaint (IC-99-04735) with the FCC against U S WEST. The Arch Paging, Inc. and MobileMedia complaints are referred to herein as the "FCC Complaints."

2. **PURPOSE OF CONFIDENTIAL BILLING SETTLEMENT AGREEMENT.** The Parties desire to resolve permanently and unalterably their differences and settle all their disagreements regarding the Billing Disputes. The Parties also desire to provide for new interconnection agreements to govern the interconnection of the Parties' networks on a going forward basis. The Parties intend that this Confidential Billing Settlement Agreement settles, resolves and extinguishes any and all claims by the Parties relating to or arising out of the Billing Disputes prior to the Effective Date of this Agreement. The Parties also intend that this Confidential Billing Settlement Agreement settles and resolves all matters at issue in the FCC Complaints.

3. **INTERCONNECTION AGREEMENTS.** Arch agrees to adopt under Section 252 (f) of the 1996 Telecommunications Act the interconnection



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

4. **FINAL SETTLEMENT.** The Parties hereby fully, completely, and unalterably settle any and all claims by the Parties relating to or arising out of the Billing Disputes and the FCC Complaints. The Billing Disputes consist of any and all disputes involving the accounts listed in Exhibit 1 hereto for the period up to and including April 30, 2000.
5. **PAYMENT.** Within five (5) business days from the date of the request for dismissal of the FCC Complaints as required by Section 6 below, U S WEST shall pay Arch the sum of \$ 1,500,000.00 U.S. dollars. Further, within sixty (60) days from execution of this Confidential Billing Settlement Agreement, U S WEST agrees to provide Arch with bill credits totaling \$ 2,700,000 U.S. dollars. These bill credits, along with the payment of the \$ 1,500,000 U.S. dollars, will settle all billing issues for the accounts listed on Exhibit 1 for the period ending on April 30, 2000; provided, however, U S WEST agrees not to take any action, whether before a court, regulatory agency, or other adjudicatory body, to collect any amounts it later claims are owed by Arch under the account numbers listed in Exhibit 1 through April 30, 2000. Additionally, for the period from May 1, 2000 to the effective date of the new interconnection agreements described in Section 3 above, U S WEST agrees not to bill Arch for interconnection facilities, or, if it renders such bills in error, to provide Arch with a credit for any amounts billed to it for interconnection facilities during this period; provided, however, Arch agrees to continue paying appropriate charges for non-interconnection facilities and services, including, but not limited to, Wide Area Calling services and private lines, for as long as it obtains such facilities and services from U S WEST. Arch also agrees not to bill U S WEST for reciprocal compensation until the effective dates of the new interconnection agreements described in Section 3 above. These payment arrangements shall be in consideration for settlement of all disputes in connection with the Billing Disputes and dismissal of the FCC Complaints.
6. **DISMISSAL OF FCC COMPLAINTS.** Within five (5) business days from the execution of this Confidential Billing Settlement Agreement, Arch will request the FCC to dismiss with prejudice the FCC Complaints by making filings substantially in the form of Exhibits 2 and 3 hereto; provided, however, that, if Arch does not request withdrawal of the FCC Complaints by the close of business on June 19, 2000, Arch agrees to notify the FCC of its intent to request withdrawal of the FCC Complaints by the close of business on June 19, 2000. In the unlikely event that the request to dismiss the FCC Complaints is refused, and U S WEST is required

to pay any type of restitution to Arch once the FCC Complaints are resolved by the FCC, including, but not limited to, damages and interest, Arch agrees that pursuant to Section 5 above, U S WEST is relieved of any and all obligation to provide Arch with such restitution.

7. **RELEASE.** Arch and U S WEST do hereby release and forever discharge the other and the other's associates, owners, stockholders, predecessors, successors, agents, directors, officers, partners, employees, representatives, employees of affiliates, employees of parents, employees of subsidiaries, affiliates, parents, subsidiaries, insurance carriers, bonding companies and attorneys, from any and all manner of action or actions, cause or causes of action, in law, under statute, or in equity, suits, appeals, petitions, debts, liens, contracts, agreements, promises, liabilities, claims, affirmative defenses, offsets, demands, damages, losses, costs, claims for restitution, and expenses, of any nature whatsoever, fixed or contingent, known or unknown, past and present, asserted or that could have been asserted, in any way relating to or arising out of the Billing Disputes or the FCC Complaints.

8. **COMPROMISE.** The Parties agree that this Confidential Billing Settlement Agreement is the compromise of disputed billing claims and all issues raised in the FCC Complaints.

9. **NO ADMISSIONS.** This Confidential Billing Settlement Agreement does not constitute an admission by either Party of the truth or merit of any fact, any asserted principle of law, any matter, claim, or cause of action alleged or asserted in any legal regulatory or other forum, past, present or future, relating to the matters addressed in this Confidential Billing Settlement Agreement. This Confidential Billing Settlement Agreement also does not constitute an admission with respect to the appropriateness or legality of any charges, billed or unbilled, whether paid or unpaid.

10. **ARBITRATION.** In the event that either Party asserts that the other Party has breached its obligations under this Confidential Billing Settlement Agreement, the Parties agree to submit the dispute to binding arbitration, closed to the public, and conducted by the Rules of the American Arbitration Association. Each Party shall be responsible for its own fees and costs. The Parties shall equally share the fees and expenses of the arbitrator. Any arbitration proceedings shall be held in a location mutually agreed to by the Parties. The Parties agree that the arbitrator only shall have authority to award compensatory damages or provide for injunctive relief, but that the arbitrator shall not have authority to award punitive, special, consequential, or similar damages.

11. **ENTIRE AGREEMENT REGARDING BILLING DISPUTES; NO EFFECT ON INTERCONNECTION ARRANGEMENTS.** This Confidential Billing Settlement Agreement is the entire agreement between Arch and U S WEST regarding the Billing Disputes and the FCC Complaints and replaces any previous understanding or agreement regarding these matters. This Confidential Billing Settlement Agreement relates only to settlement of the Billing Disputes and the FCC Complaints, but it does not establish any duties regarding the new interconnection agreements required by Section 3 above. Any modification to

this Confidential Billing Settlement Agreement must be in writing and signed by both Parties to be effective.

12. **CONFIDENTIALITY.** The Parties agree that this Confidential Billing Settlement Agreement is confidential. Each Party agrees not to disclose the terms and conditions herein, unless: (1) the other Party invokes the dispute resolution procedures set forth in Section 10 above in connection with the Billing Disputes or the FCC Complaints; or (2) the Party is required by a properly issued subpoena or other legal process to produce a copy of this Confidential Billing Settlement Agreement or otherwise is required to reveal the terms of this Confidential Billing Settlement Agreement. In either case, prior to making disclosure, the Party shall obtain an appropriate protective order or nondisclosure agreement to protect the confidentiality of this Confidential Billing Settlement Agreement and the terms hereof.

13. **APPLICABLE LAW.** The laws of the state of Colorado shall govern the interpretation of this Confidential Billing Settlement Agreement.

14. **MULTIPLE COUNTERPARTS.** This Confidential Billing Settlement Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

15. **NOTICES.** Any notice to a Party required or permitted under this Confidential Billing Settlement Agreement shall be in writing and shall be served personally, delivered by a national courier service. Upon prior agreement of the Parties' designated recipients identified below, notice may also be provided by facsimile, internet or electronic messaging system (e-mail), followed by mailing a copy of the fax/e-mail via first class U.S. mail. Any notice shall be delivered using one of the alternatives mentioned in this section and shall be directed to the applicable address indicated below or such address as the Party to be notified has designated by giving notice in compliance with this Section 15:

If to U S WEST: U S WEST Communications, Inc.  
Attention: Legal Department  
1801 California Street, Suite 5100  
Denver, Colorado 80202  
Phone: (303) 672-2700  
Fax: (303) 265-7048

If to Arch: Arch Paging, Inc.  
Dennis M. Doyle  
Vice President, Telecommunications  
1800 West Park Drive  
Suite 250  
Westborough, MA 01581-9912  
Phone: (508) 870-6612  
Fax: (508) 870-8012  
Mdoyle@Arch.com

- 16. **NO WAIVER OF POSITIONS.** The Parties agree that their entering into this Confidential Billing Settlement Agreement and the other agreements contemplated herein is without prejudice to, and does not waive, any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial, or other forum addressing any matters, including matters related to interconnection arrangements and/or matters related to interconnection cost recovery generally.
- 17. **EFFECTIVE DATE.** The Effective Date of this Confidential Billing Settlement is June 16, 2000.

THE UNDERSIGNED DECLARE THAT THE TERMS OF THIS CONFIDENTIAL BILLING SETTLEMENT AGREEMENT HAVE BEEN COMPLETELY READ AND ARE FULLY UNDERSTOOD AND ARE VOLUNTARILY ACCEPTED FOR THE PURPOSE OF MAKING A FULL AND FINAL COMPROMISE OF THE DISPUTES BETWEEN THE PARTIES.

Arch Communications Group

*Dennis M. Doyle*  
 Name Printed/ Typed  
Dennis M. DOYLE  
 Name Printed/ Typed  
Vice President - Telecommunications  
 Title  
6/16/2000  
 Date

U S WEST Communications, Inc.

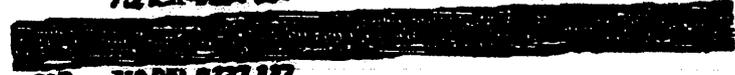
*Audrey McRenny*  
 Name Printed/ Typed  
Audrey McRenny  
 Name Printed/ Typed  
Vice President - Wholesale Markets  
 Title  
Finance  
6/16/00  
 Date

**EXHIBIT 1**  
**ACCOUNTS UNDER DISPUTE**

# ARCH ACCOUNTS



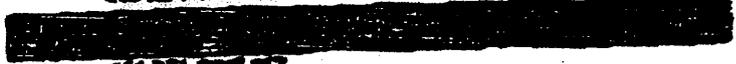
- ATA 319 R51-0250 250
- 319 R51-0251 251
- 319 R51-0252 252
- 319 R51-0254 254
- 319 R51-0255 255
- 319 R51-0256 256
- 619 R51-0257 257
- 319 R51-0275 275
- 515 R51-0280 280
- 628 R51-0260 260
- 615 R51-0261 261
- 515 R51-0262 262
- 619 R51-0263 263
- 708 R51-0293 293
- 712 R51-0264 264



- PRE 319 R51-0227 227
- 319 R51-0288 288



- TES 806 R51-0115 115
- 803 R51-0118 118
- 803 R51-0117 117
- 806 R51-0107 017
- 803 R51-0106 016



- UW7 806 R51-0307 017
- 208 R51-0303 012
- 219 R51-0402 402
- 303 R51-0178 178
- 307 R51-0401 411
- 319 R51-0461 461
- 320 R51-0401 401
- 402 R51-0370 070
- 505 R51-0280 280
- 507 R51-0400 400
- 609 R51-0021 021
- 602 R51-0035 035
- 602 R51-0089 089
- 701 R51-0203 203
- 701 R51-0285 285

719 851-0189 189  
 801 851-0130 130  
 206 854-5067 067  
 303 854-5043 043  
 319 854-5069 069  
 319 854-5070 070  
 402 854-5077 077  
 505 854-5047 047  
 538 854-5068 068  
 602 854-5046 046  
 612 854-5026 026  
 719 854-2431 431



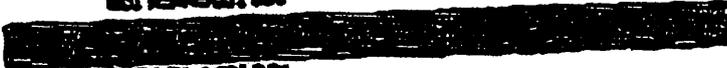
**MOBILEMEDIA  
 ACCOUNTS**



882 402 851-0160 460  
 605 851-0284 284  
 507 851-0392 492  
 515 851-0336 436  
 612 854-5044 144



454 206 851-0339 439  
 308 851-0445 445  
 503 851-0701 401  
 609 851-0404 404  
 520 851-0489 489  
 602 851-0448 448  
 303 854-5095 155  
 719 854-5054 154  
 801 854-5031 331



882 805 851-0231 231  
 303 854-5041 141



**EXHIBIT 2**  
**FORM OF ARCH COMPLAINT DISMISSAL PLEADING**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of

Arch Paging, Inc.,

Complainant,

v.

U S WEST Communications, Inc.

Defendant.

E-99-05

TO: Chief, Market Disputes Resolution Division, Enforcement Bureau

**MOTION FOR WITHDRAWAL OF FORMAL COMPLAINT**

Arch Paging, Inc. ("Arch"), with the consent of U S WEST Communications, Inc. ("U S WEST"), hereby requests that the Commission dismiss, with prejudice, the above-captioned formal complaint, which Arch filed against U S WEST on December 3, 1998. Arch and U S WEST recently reached an agreement that resolves the matters that formed the basis of Arch's formal complaint. As part of this agreement, the parties agreed that Arch would

ask the Commission to dismiss its formal complaint, with prejudice. Grant of the motion would serve the public interest by eliminating the need for further litigation and expenditure of further time and resources by the Commission and the parties.

Accordingly, Arch respectfully requests that the Commission grant the Motion. A proposed Order is attached.

Respectfully submitted,

Arch Paging, Inc.

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

Jonathan Jacob Nadler  
Squire, Sanders & Dempsey L.L.P.  
1201 Pennsylvania Avenue NW  
Suite 500  
Washington, DC 20004  
202-626-6838

June \_\_, 2000

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of  
**Arch Paging, Inc.,**

**Complainant,**

**v.**

**U S WEST Communications, Inc.**

**Defendant.**

E-99-05

**ORDER**

**Released:**

**Adopted:**

**By the Chief, Market Disputes Resolution Division, Enforcement Bureau**

1. This matter comes before the Commission on a Motion to Dismiss (with prejudice), filed by Arch Paging, Inc. ("Arch"), with the consent of U S WEST Communications, Inc. ("U S WEST").

Recently, Arch and U S WEST reached an agreement that resolves the matters that formed the basis of MobileMedia's informal complaint. As part of this agreement, the parties agreed that MobileMedia would ask the Commission to dismiss its informal complaint, with prejudice.

MobileMedia is grateful for the consideration that the Commission has given this matter. If you have any questions, please contact the undersigned.

Sincerely,

Jonathan Jacob Nedler

cc: Magalia Roman Sales  
Patricia A. Gray  
Dennis M. Doyle  
Jeff Bruggeman

CONFIDENTIAL BILLING SETTLEMENT AGREEMENT - 16

SCHEDULE 1

FURTHER CATEGORIZATION BY ACCOUNT OF  
AMOUNTS PAID BY PAGEDATA/INTERPAGE  
FOR DEDICATED QWEST FACILITIES USED TO DELIVER TRAFFIC IN THE LATA TO 9-1999

<u>Acct. Number</u>	<u>Location</u>	<u>Interpage Pymnts.</u>	<u>PageData Pymnts.</u>	<u>Total Payments</u>
208-373-9000-160B	6610 Overland		15,128.37	15,128.37
208-642-8000-188B	220 E. Meridian (Payette)	7,181.95	1,190.28	8,372.23
208-884-8822-6398 (POTS)	Meridian DID	2,948.09	36.34	2,984.43
*208-111-1770-117M	Master Account	62,733.24	24,836.09	
208-226-3040-734B	American Falls	3,536.50		
208-234-3800-714B	Pocatello	5,729.22		
208-324-1950-783B	Jerome	3,415.86		
208-359-6900-868B	Rexburg	6,520.19		
208-522-7386-715B	Dial-up Modem ID Falls	337.22		
208-525-3000-774B	Idaho Falls	6,206.30		
208-587-0500-757B	Mountain Home	7,322.43		
208-677-8000-053B	Burley	6,159.00		
208-684-9000-072B	Blackfoot	8,414.45		
208-736-5400-773B	Twin Falls	8,946.79		
208-788-6800-888B	Sun Valley	1,674.00		
208-893-9100-703B	Meridian	11,646.81		157,478.10
208-336-4203-698M	Beep 4 Wire Merid. To Boise	9,223.57	121.00	9,344.57
L208-356-5271-514M	47 E. Rexburg	1,028.03	196.50	1,224.53
<b>"CRIS POTS"</b>				
*208-111-1771-771M	Master Account	9,680.65	2,583.49	
208-233-1284	656 S. 2nd Ave. - Pocatello	6,453.73		
208-733-9450	273 Blue lakes - Twin	3,037.52		
208-884-8365	220 E. Fairview - Meridian	4,442.41		26,197.80
<b>"CRIS PRIVATE LINE"</b>				
(208R552313)				
*208-111-1769	Master Account	5,576.00	727.00	
208-232-7709	DID lines Pocatello/ID Falls	1,712.04		
208-232-7722	DID lines Pocatello/ID Falls	1,787.60		
208-888-5152	DID lines Meridian/Boise			
208-888-5156	DID lines Meridian/Boise	2,759.96		12,562.60
<b>T-1 LINES</b>				
208-327-8990-8022			1,635.37	
208-375-6027-7998			606.67	
208-375-6023-8008			675.16	
T1 Line installation fee			976.86	3,894.06
<b>FRAME RELAY</b>				
208-D08-6826-826			990.20	
#178793			2,579.14	3,569.34
TOTALS		\$ 188,473.56	\$ 52,282.47	\$ 240,756.03

**NOTE:**

Amounts listed on "Master Account" lines are actually separate payments from the amounts paid on the specific sub-accounts.



Payment Compare Qwest vs PageData Figures  
Idaho Only

Qwest: Payments for Invoices 11-96 thru 8-99 Itemized				
PageData: Payments for Invoices 1-96 thru 8-99				
<b>DID Service</b>				
Account Number	Pmt per PageData by Account	Pmt per Qwest by Account	PageData Total Summary + SubAccount	Qwest Total Summary + SubAccount
208 P51-0454 454				
Total 208 111-1770	\$ 87,569.33	\$ 87,389.78	\$0.00	\$87,389.78
208 234-3800 / 208 111-1770	\$ 5,729.22	\$ 79,419.71		
208 288-8800 / 208 111-1770	\$ 1,874.00	\$ 1,598.43		
Total 208 738-5400 / 208 111-1770	\$ 8,948.79	\$ 1,242.53		
Total 208 324-1950 / 208 111-1770	\$ 3,415.86	\$ 807.78		
Total 208 877-8000 / 208 111-1770	\$ 5,159.00	\$ 1,239.84		
Total 208 226-3040 / 208 111-1770	\$ 3,536.50	\$ 1,057.95		
Total 208 587-0500 / 208 111-1770	\$ 7,322.43	\$ 2,639.42		
208 624-9000 / 208 111-1770	\$ 6,414.45	\$		
Total 208 358-8900/208 111-1770	\$ 6,520.19	\$ 2,266.69		
208 893-9100 / 208 111-1770	\$ 11,848.81	\$ 3,080.14		
Total 208 525-3000/208 111-1770	\$ 8,208.30	\$ 2,147.21		
Total Summary/Sub 208 111-1770			\$157,476.10	\$95,307.68
Total 208 842-8000	\$ 8,372.23	\$ 8,912.34		
Total 208 373-9000	\$ 15,128.37	\$ 16,238.15		
Total DID Payments / Adjustments	\$ 180,841.48	\$ 207,847.83		
<b>Private Line Accounts (Leased Lines)</b>				
Account Number	Pmt per PageData	Pmt per Qwest	PageData Total Summary + SubAccount	Qwest Total Summary + SubAccount
208 P54-2313 312	\$	\$		
Total 208 111-1769	\$ 8,303.00	\$ 12,182.94		
Total 208 232-7708/L 208 111-1769	\$ 1,712.04	\$ 2,963.44		
Total 208 232-7722/L 208 111-1769	\$ 1,787.80	\$ 1,079.43		
Total 208 888-5182/L 208 111-1769	\$	\$ 2,127.21		
Total 208 888-5156/L 208 111-1769	\$ 2,769.98	\$ 1,846.79		
Total Summary/Sub 208 111-1769			\$12,562.60	\$19,979.78
Total Private Line (Leased Lines)				
Pmt Adj	\$ 12,562.60	\$ 19,979.78		
<b>Business Lines (POTS)</b>				
Account Number	Pmt per PageData	Pmt per Qwest	PageData Total Summary + SubAccount	Qwest Total Summary + SubAccount
Total 208 111-1771	\$ 12,264.14	\$ 10,314.23		
Total 208 733-8450/L 208 111-1771	\$ 3,037.52	\$ 614.04		
Total 208 233-1284/L 208 111-1771	\$ 6,453.73	\$ 596.84		
208 884-8365/L 208 111-1771	\$ 4,442.41	\$		
Total Summary/Sub 208 111-1771			\$16,197.80	\$11,524.91
Total 208 884-8822	\$ 2,984.43	\$ 2,049.73		
Total 208 522-7386	\$ 337.22	\$ 545.90		
Total POTS Payments / Adjustments	\$ 28,518.45	\$ 14,120.54		
<b>Other Accounts not on Qwest Itemization of Payments</b>				
Account Number	Pmt per PageData	Pmt per Qwest	PageData Total Summary + SubAccount	Qwest Total Summary + SubAccount
208 335-4203	\$ 8,344.57	\$ 1,981.40		
208 366-5271	\$ 1,224.53	\$ 1,688.66		
T-1 Lines				
208 327-8990-8022	\$ 1,835.37	no info		
208 375-6027-7998	\$ 808.87	no info		
208 375-6023-8008	\$ 876.16	no info		
T-1 Line Installation Fee	\$ 876.88	no info		
Total T-1 Lines	\$ 3,894.06	no info		
Frame Relay				
208 608-8828	\$ 990.20	no info		
208 7783	\$ 2,579.14	no info		
Total Frame Relay	\$ 3,569.34	no info		
Total Other Payments/Adjustments	\$ 18,032.50	\$ 3,680.26		
<b>Total Payments all Accounts</b>	<b>\$ 240,756.03</b>	<b>\$ 245,628.51</b>		

Page: 9/11/01  
Summary to Qwest



# PAGE DATA

August 29, 1998

US West  
Carrier Services Group  
Salt Lake City, UT

ATTENTION: Cheryl Frasier, 801-239-4070 Fax  
Susan Holtan, 800-335-5651 Fax  
Velvet Shearer,, 801-239-4070 Fax  
Rhonda Belka, 801-239-4070 Fax

RE: PageData, ACNA PDD

We are requesting assistance from the design engineers at US West. We need to make some adjustments in the design of how our paging calls and numbers are being transported across the state of Idaho.

We are currently using a private network where we have leased lines from US West (point to point 2- and 4-wire circuits) connected together with Motorola UDS v.34 modems. These modems and paging terminals are currently located at Idaho Falls (854 Lindsey Blvd., KUPI address); Pocatello (656 S. 2nd Ave, Idaho Power address); Twin Falls (273 Blue Lakes Blvd, Idaho Power address); Meridian (220 E. Fairview, Tel-Car address); and Boise at 6610 Overland Rd. The network sends TNPP packets between the paging terminals. This system has been unreliable and was set up under the old US West local calling areas. Because the current setup is so unreliable in routing we are losing customers and business from Twin Falls to Idaho Falls. Some of our customers are Idaho State Police, Idaho Department of Transportation, school districts, firefighters, doctors, attorneys and numerous other businesses and individuals.

Our main paging terminal is located in Meridian at 220 E. Fairview, but we want to move it to our office at 6610 Overland in Boise. At 6610 Overland Rd., Boise, we currently have eight DID lines and one 4-wire circuit. We need to have a T-1 installed at 6610 Overland Rd., Boise, Idaho and have an order pending with US West for this T-1. All facilities are in place at 6610 Overland to install the T-1 per previous work orders by US West and ourselves.

We need to have the services currently located in Meridian at 220 E. Fairview moved to 6610 Overland Rd, Boise, Idaho. We presently have eight DID lines and three 4-wire circuits and one 2-wire circuit in Meridian. One of the 4-wire circuits will need to change the routing connection from Meridian:Northern Idaho to Boise:Northern Idaho. We think this is through PacNet. Password has an order with their vendor to move the circuit when we move our other system from Meridian to Boise. The 4-wire circuit that connects Meridian to 6610 Overland, Boise will not be needed once the equipment is moved to Boise. We will need the 4-wire and 2-wire connections between Meridian and Boise (Idaho Power) connected from 6610 Overland to Idaho Power in Boise. We also have numbers from Payette and Mountain Home that are routed to Meridian. These will need to be changed to route to our Boise office.

PO Box 15509  
Boise, Idaho 83715

Telephone (208) 375-9844  
Facsimile (208) 373-7159

6610 Overland  
Boise, Idaho

EXHIBIT

5

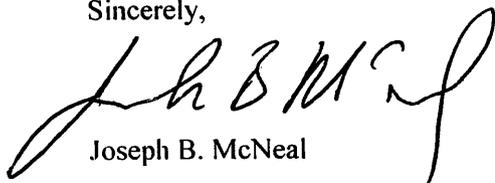
We will also need to have the Meridian numbers routed to our Boise location. The phone numbers that we presently have going to paging terminals in Idaho Falls, Pocatello, and Twin Falls we would like to route to our Boise office (once the main terminal is moved from Meridian to Boise).

Our current system in Boise uses four digit read-out for telephone numbers, but the other terminal locations utilize a seven digit telephone read-out. Once we move the system to Boise from Meridian we will need to have all systems use the seven digit read-out. We are not sure if we are using the proper terms or not.

We will need to have a cost breakout of all costs involved in changing the system such as costs for moving the circuits and lines; routing all numbers to our Boise location; and any other one time or recurring costs involved in changing the set up of the system.

We have attached some information sheets that detail our account numbers and circuits. If the design engineers at US West have any other suggestions or recommendations on how to make the system more efficient and reliable, we look forward to hearing from them. We are aware of the current labor problems with US West, but we would appreciate a timely response. If you have any questions, I can be reached at (208) 375-9844.

Sincerely,

A handwritten signature in black ink, appearing to read 'J B McNeal', written in a cursive style.

Joseph B. McNeal

# PAGE/DATA

September 8, 1998

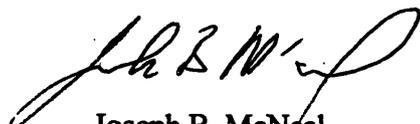
US West  
Carrier Services Group  
Salt Lake City, UT

ATTENTION: Velvet Shearer, 801-239-4070 Fax  
Rhonda Belka, 801-239-4070 Fax

We do not understand all of the Local Competition and Telecommunications Act but it does not seem that we are getting quoted the most economical way to bring all our numbers we have into our Boise office. We may not know all the proper terminology, but we want to work with US West's engineers so that we can design the most economical and reliable way to set up our system. We have been discussing some options with some US West personnel for T-1s, leased lines, fx lines, frame relay, and muxing. We have been discussing one time versus recurring charges. It seems like with all the people we are dealing with US West is trying to confuse us. Is there a different way we should ask about changing our system setup in Southern Idaho?

We have requested to have ten T-1s installed but you said it would take over one year. We do not understand why there would be such a delay when we just paid US West to have an engineering study and design done to allow T-1s to be installed at our Boise office.

Sincerely,



Joseph B. McNeal

PO Box 15509  
Boise, Idaho 83715

Telephone (208) 375-9844  
Facsimile (208) 373-7159

6610 Overl  
Boise, Ida

EXHIBIT

6



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
ALAN G. LANCE

October 12, 2000

Jim Jones  
Jim Jones & Associates  
1275 Shoreline Lane  
Boise, Idaho 83702-6870

William J. Batt  
Marshall Batt & Fisher LLP  
101 South Capitol Blvd., Suite 500  
Boise, Idaho 83702

**Re: Paging Complaint, Case No. USW-T-99-24**

Gentlemen:

The Commission, pursuant to *Idaho Code* § 61-626 must issue its final Order on Reconsideration in the above referenced case by November 16, 2000. Because of this approaching deadline Staff wishes to inquire about certain issues raised by the parties.

At the hearing before the Commission on September 11, 2000, Mr. Batt represented that Qwest Corporation would be offering the Petitioners credits against their bills for the period before they entered into their interconnection agreements, but at that time the credits had not yet been calculated. Has Qwest determined the amount of these credits, and if not, when will this information be available? Second, during the recess of this hearing the parties discussed whether Joseph McNeal could obtain T-1 lines for his business. Has this issue been addressed? Finally, are the parties actively attempting to settle this matter and what is the progress/result of that negotiation?

Because settlement of this case would obviate the need for further action by the Commission, I am requesting that you advise me of the status on the above matters prior to November 2, 2000. If I can help to expedite this process feel free to contact me at (208) 334-0357.

Sincerely,

  
John Hammond  
Deputy Attorney General

T\_batt\_jh

EXHIBIT

7

tabbles

**EXHIBITS 8 & 9 ARE  
CONFIDENTIAL**

# Paging Type 1 & 2 Trunk Diagram

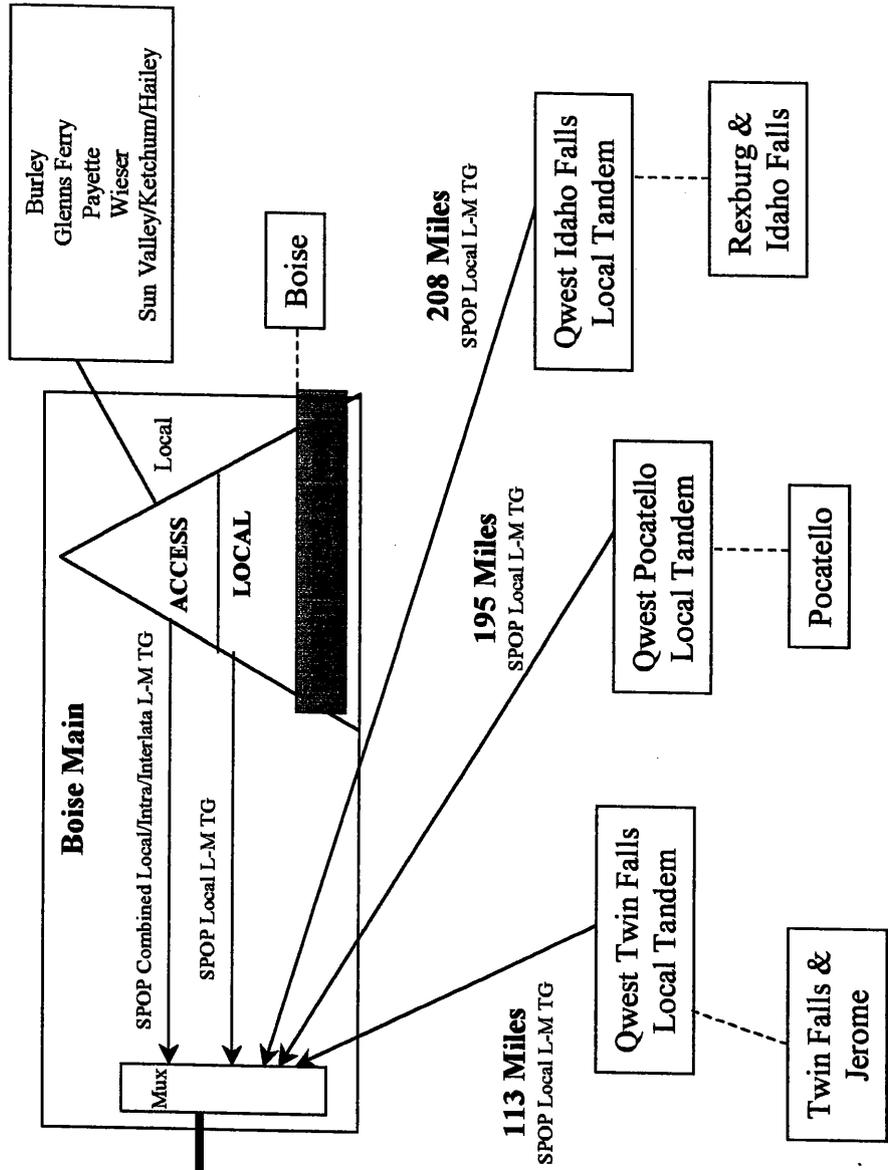
SPOP in LATA 652 -- Boise, ID

**REPRESENTATIVE LOCAL NPA/NXXs**

- Boise
- Burley
- Payette
- Sun Valley
- Ketchum
- Hailey
- Rexburg
- Idaho Falls
- Pocatello
- Twin Falls
- Jerome

**Facilities Charges: Transit Traffic.** Carriers interconnect with each other either directly or indirectly. With direct interconnection, the originating carrier is responsible for delivering its traffic to the terminating carrier's switch serving the called party, and it is prohibited from charging the terminating carrier for the delivery of this traffic. (See 47 C.F.R. §§ 51.701(c), 51.703(b), 51.709(b), TSR, US Court of Appeals District of Columbia Circuit Mountain). With indirect interconnection the originating carrier chooses to use the transit services of a third party, but is still ultimately responsible for all costs. For example, if a Filer Telephone customer makes a call to one of Petitioner's pagers, then Filer Telephone is ultimately responsible for the costs to deliver its call.

## Qwest's Financial Responsibility



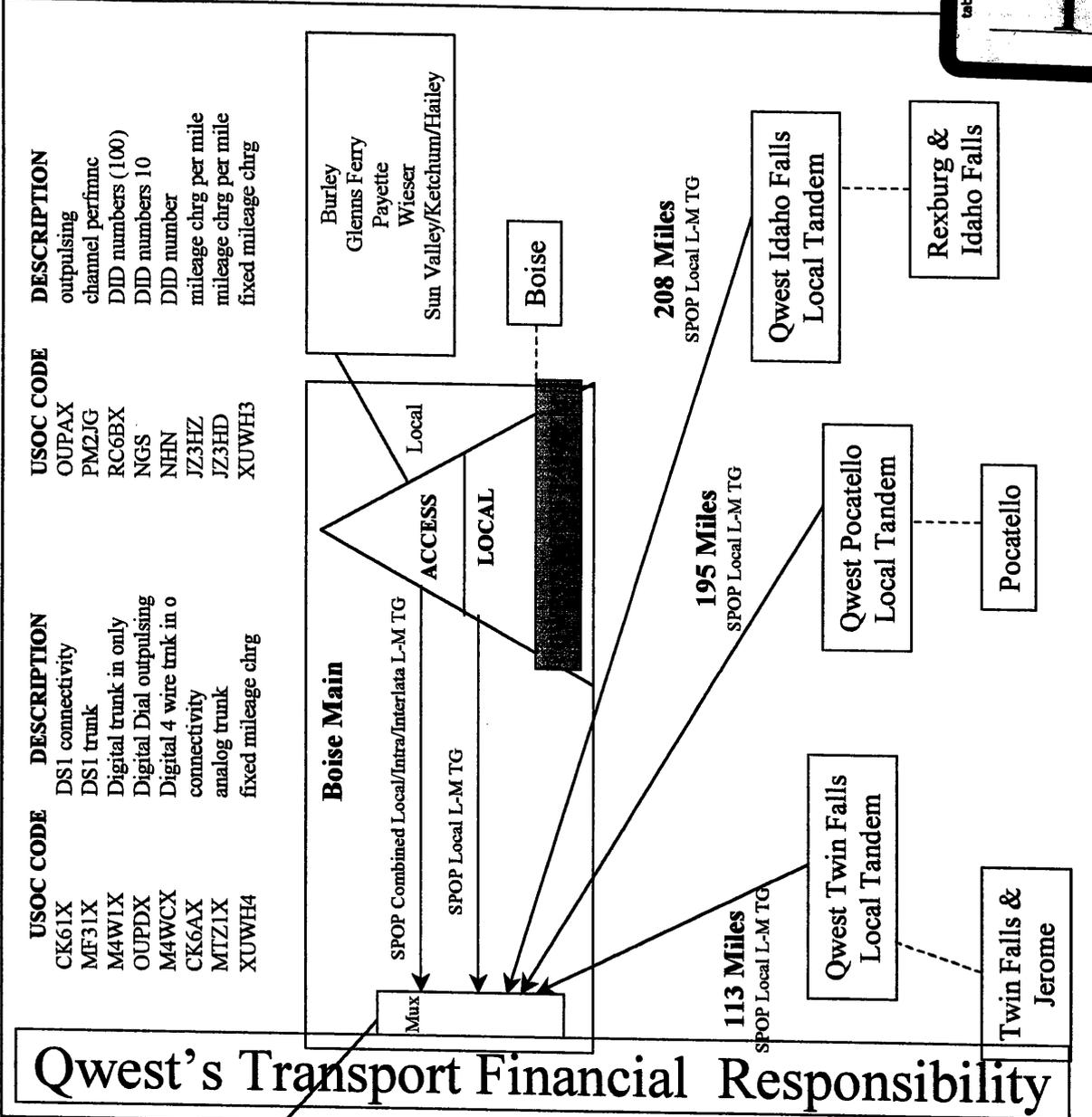
**Boise POI**

**Terminating Paging Carrier**

- Transport Direct and Indirect Costs - \$0
- Transit - Originating Carrier's Responsibility

POI = Point of Interconnection  
 SPOP = Single Point of Presence  
 L-MTG = Land to Mobile Trunk Group

# Diagram - Qwest's Financial Transport Responsibility In MTA, In LATA



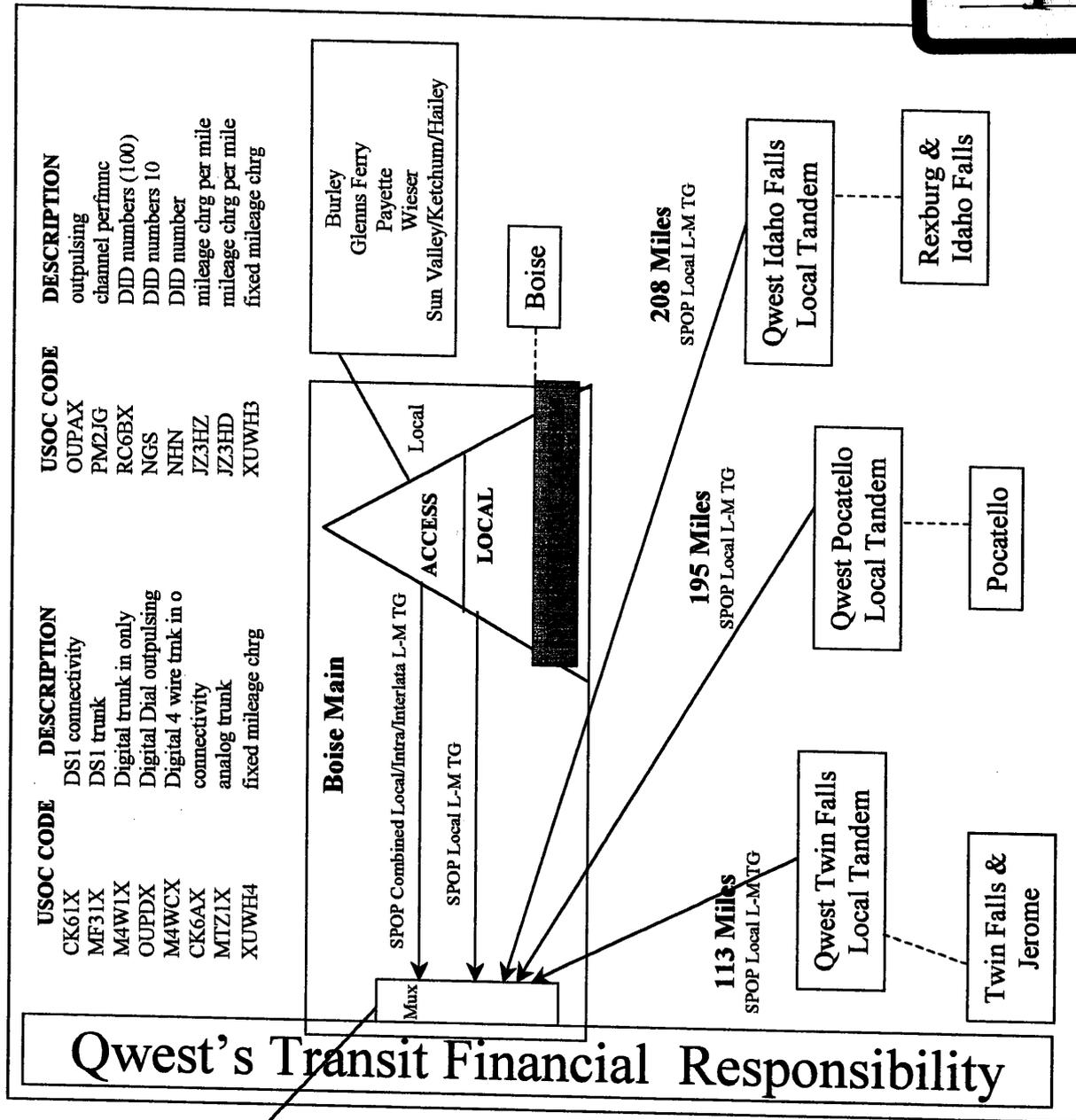
Terminating Paging Carrier	
Direct and Indirect	Mux POI
Transport Costs - \$0	
Pmt Per PageData	Pmt Per Qwest*
\$240,756.03	\$245,628.51
X 76%	X 76%
\$182,974.58 Refund	\$186,677.67 Cash
\$240,756.03	\$245,628.51
X 24%	X 24% Transit
\$57,781.45	\$58,950.84 Cash Refund

Disputes can be settled under 252i at any time.  
252i Arch, PageNet Unfiled ICA  
(See Exhibit \_\_\_\_\_)  
Idaho Code § 61-315

"Section 252(a)(1) does not condition filing on a state commission first telling a carrier that a certain agreement (which has not yet been seen) must be filed." (FCC NAL ¶ 33) "We find that agreements addressing dispute resolution and escalation provisions relating to the obligations set forth in sections 251(b) and (c) are appropriately deemed interconnection agreements." (FCC NAL ¶ 32).

\* See Exhibit 5, Qwest's Post-Hearing Reply Brief (Attached as Exhibit \_\_\_\_\_)

# Diagram - Qwest's Financial Transit Responsibility In MTA, In LATA



Terminating Paging Carrier		Mux POI
Direct and Indirect		
Transport Costs - \$0		
Pmt Per Page/Data	Pmt Per Qwest*	
\$240,756.03	\$245,628.51	
X 76%	X 76%	
\$182,974.58	\$186,677.67	Cash
Refund		
\$240,756.03	\$245,628.51	
X 24%	X 24%	Transit
\$57,781.45	\$58,950.84	Cash Refund

The FCC and Qwest agreed that [paging carriers] could charge the originating carrier. "[They] suggested that [paging carriers] [were] essentially correct in claiming that the originating carrier should bear all the transport costs." (US Court of Appeals, DC Circuit, Mountain, page 10, *emphasis in original*) The court said "[paging carriers] [have] no incentive to enter into a wide area calling arrangement with Qwest. [Paging carriers'] system of interconnection provides it no advantages other than those to which, presumably, it is entitled for free." (p. 7)

Therefore 100% of the transit factor should be refunded.

# Phantom Wide Area Calling

Qwest was able to confuse the FCC and the IPUC by characterizing interconnection facilities as dedicated toll facilities or private transport facilities. See below.

"Wide Area Calling Service is a billing service offered to Commercial Mobile Radio Carriers and Private Mobile Radio Carriers, in conjunction with their Type 2 Interconnection. Wide Area Calling Service provides direct dialed LATA-wide toll free calling for [Qwest] land to mobile calls. The Type 2 Interconnection provides the exchange of the land to mobile calls and for the billing of the calls to the Carrier rather than the calling party." (Various Qwest state Tariffs). During the relevant time period all of Petitioners had Type 1 facilities, had no reverse billing arrangements with Qwest, nor were billed on a per minute basis.

The court said "[paging carriers] [have] no incentive to enter into a wide area calling arrangement with Qwest. [Paging carriers'] system of interconnection provides it no advantages other than those to which, presumably, it is entitled for free." (US Court of Appeals, DC Circuit, Mountain, p. 7)

"Wide area calling" also known as "reverse billing" or "reverse toll," is a service in which a LEC agrees with an interconnector not to assess toll charges on calls from the LEC's end users to the interconnector's end users, in exchange for which the interconnector pays the LEC a per-minute fee to recover the LEC's toll carriage costs. (As defined in *TSR Wireless v. US West*, 15 F.C.C.R. 11166 (June 21, 2000), footnote 6)

## Qwest's Financial Responsibility

Mux

**Boise – PageData's Designated Single Point of Presence**

**Terminating Paging Carrier**

- Transport Direct and Indirect Costs - \$0
- Transit – Originating Carrier's Responsibility

"Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules." TSR Order ¶ 31

