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IDAHO PUBLIC
UTILITIES COMMISSION

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Attorney for Petitioners/Appellants

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT)
PETITION OF ROBERT RYDER, d/b/a)
RADIO PAGING SERVICE, JOSEPH B.)
MCNEAL, d/b/a PAGEDATA AND)
INTERPAGE OF IDAHO, AND)
TEL-CAR, INC., FOR 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, d/b/a RADIO)
PAGING SERVICE, et al.,)

**PETITIONERS' RESPONSE TO
QWEST CORPORATION'S
OBJECTIONS TO PETITIONERS'
REPLY AND MOTION TO STRIKE**

Petitioners/Appellants,)

vs.)

IDAHO PUBLIC UTILITIES)
COMMISSION,)

Respondent on Appeal,)

and)

QWEST CORPORATION,)

Respondent/Respondent on)
Appeal.)
_____)

The objections made by Qwest to the documents attached to or referenced in Petitioners' Reply Pursuant to IPUC Order No. 29491 ("Petitioners' Reply") are not well founded. Each and every such exhibit or attachment is contained in the record of this proceeding, excepting only Exhibit A (Configuration of PageData Paging System), the Fourth Circuit's slip opinion in MCImetro Access Transmission Services v. BellSouth Telecommunications, Exhibit E (letter to Joseph McNeal from Qwest, dated April 30, 2004), and Appendix A. Exhibit A, which shows how the PageData paging system is configured, was submitted in response to Diagram #1 and Diagram #2 to Qwest Corporation's Corrected Response to IPUC Order No. 29491. If Exhibit A is subject to being stricken, so are Diagram #1, Diagram #2, and Diagram #3. The MCImetro decision is applicable law which obviously can be considered by the Commission. Exhibit E was obviously prepared by Qwest and sent to PageData after the record in this matter was closed but it certainly should be considered since it is an admission by Qwest that POTS or private lines have been used for transporting paging traffic on Qwest's system, an admission which obviously contradicts the testimony of Qwest's witness Sheryl Fraser. Appendix A will be dealt with below.

The most critical exhibit to the current proceeding is Exhibit C to Petitioners' Reply. This document was prepared by Qwest and submitted following the hearing. Qwest was obligated to furnish to the Commission a full accounting of the PageData and InterPage accounts, showing payments made on those accounts. During the hearing, Qwest claimed that it had not been able to reconstruct the accounts. However, following the hearing, Qwest submitted the material contained in Exhibit C as Exhibits 4 and 5 to Qwest's Post-Hearing Reply Brief. This account information substantiated PageData's assertion that it and InterPage had paid at least \$240,756.03 for delivery of traffic to these paging systems, as

PETITIONERS' RESPONSE TO QWEST CORPORATION'S OBJECTIONS TO
PETITIONERS' REPLY AND MOTION TO STRIKE - 2

PageData had specified in its Exhibits 109 and 122. Indeed, the Qwest exhibits conclusively established that PageData and InterPage had paid \$245,628.51 to Qwest for invoices from 11/96 through 8/99, not counting \$14,926.80 that PageData paid for T-1 lines and frame relay. The hearing examiner had stated that PageData had not substantiated its claim regarding the level of payments but Qwest, following the hearing, conclusively documented the payments claimed by PageData, and then some.

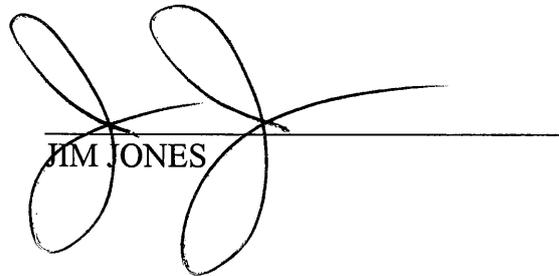
The foregoing payment history is absolutely relevant to this proceeding because the hearing examiner considered the POTS lines (private service lines) and frame relay to be unrelated to interconnection, based solely on Sheryl Fraser's statement that Qwest did not consider them such. He completely ignored Mr. McNeal's testimony that the POTS lines were used to transport traffic from outlying areas, a function also provided by the frame relay. Mr. McNeal's testimony – that the private lines and the frame relay were used to funnel traffic to his point of interconnection – was unrebutted. In any event, the hearing examiner considered these to be wide area calling services for which Qwest could charge and that resulted in their being excluded from reimbursement. The Mountain Communications decision says otherwise. That is why all of these accounts are relevant and why it is appropriate that a full refund be made with regard to payments made on them by InterPage and PageData.

Qwest complains that Appendix A was prepared by Mr. McNeal and not signed by his counsel of record. The objection is beside the point. It was fully incorporated by reference into Petitioners' Reply, as stated at page 3 thereof. Much of the information referenced in Appendix A is contained in the record. Some is not. The Commission is

obviously able to separate the wheat from the chaff and determine the relevance of the points made therein.

One further point is relevant, Qwest is currently taking the position in interconnection negotiations, both in Idaho and Oregon, that paging carriers need not pay for transit traffic unless Qwest furnishes the up-stream transit billing information. Petitioners believe that the Commission can take notice of the attached Qwest Communications, which document this position. Qwest has offered this term to Mr. Ryder and he has agreed to it. While Petitioners continue to believe that Qwest may not charge anything for transit traffic, Qwest should, at minimum, be deemed in this proceeding to be unable to charge for transit traffic during the time frame relevant to this proceeding since Sheryl Fraser admitted that transit billing information could not be produced and it obviously was not furnished to the Petitioners. In other words, based on Qwest's current interpretation of the 1996 Act, transit traffic should not have been charged for, which requires that the 24% credit previously granted by the Commission be refunded to the Petitioners.

DATED this 9th day of July, 2004.



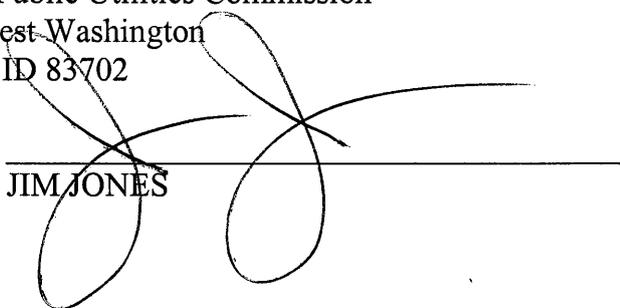
JIM JONES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of July, 2004, I caused to be served a true and correct copy of the foregoing PETITIONER'S RESPONSE TO QWEST CORPORATION'S OBJECTIONS TO PETITIONERS' REPLY AND MOTION TO STRIKE by depositing the same in the United States mail, postage prepaid, in an envelope addressed to the following:

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

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



JIM JONES

**Amendment to the Connection Agreement
Between
Robert Ryder dba Radio Paging Service
and
Qwest Corporation
In the State of Idaho**

This Amendment ("Amendment") is made and entered into by and between Robert Ryder dba Radio Paging Service ("Radio Paging" or "Paging Provider") and Qwest Corporation f.k.a. U S WEST Communications, Inc. ("Qwest").

RECITALS

WHEREAS, Radio Paging and Qwest entered into a Connection Agreement for service in the state of Idaho that was effective January 2, 2004 ("Agreement"); and

WHEREAS, Radio Paging and Qwest desire to amend the Agreement by adding the terms and conditions contained herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Amendment Terms.

This Amendment is made in order to modify the terms and conditions described below:

Appendix A – Rates and Charges, is modified to read as follows:

1. FACILITY CHARGES

- A. Radio Paging shall be obligated to pay for the portion of the facilities used to deliver Third Party Traffic as set forth below. The payment shall be calculated by multiplying the specified rate by the Third Party Traffic percentage. Twenty-four percent (24%) of all traffic delivered by Qwest to Radio Paging under this Agreement shall be deemed Third Party Traffic.
 - (i) Type 1: Between the Serving Wire Center serving Paging Provider's POC and the BDP, subject to Section 2.6.6.1.1.1, Paging Provider shall be obligated to pay at the rates described in Schedule 1 for the portion of the facilities used to deliver Third Party Traffic. The payment shall be calculated by multiplying the specified Schedule 1 rate by the percentage of traffic deemed exempt under Section 1 of this Appendix A.
 - (A) Between the BDP and the end office where the DID numbers reside, subject to Section 2.6.6.1.1.2, Paging Provider shall be

obligated to pay for 100 % of the mileage band rates only pursuant to the appropriate Tariff.

(ii) Type 2: Subject to Section 2.6.7.1, Paging Provider shall be obligated to pay at the rates described in Schedule 1 for the portion of the facilities used to deliver Third Party Traffic. The payment shall be calculated by multiplying the specified Schedule 1 rate by the percentage of Third Party Traffic.

B. Paging Provider does not have to pay facility charges for Third Party Traffic as specified in A above if Qwest does not provide the originating company's calling records to the Paging Provider's POC. A Category 11 per record fee of \$.0014877 will be assessed by Qwest to Paging Provider for these records.

C. 100% of the Non recurring charges incurred due to Radio Paging relocation or equipment change will be paid.

Neither Party shall lose any of its rights from the original Agreement by entering into this Amendment.

2. Effective Date.

This Amendment shall be deemed effective upon the Idaho Public Utilities Commission's approval; however, the Parties may agree to implement the provisions of this Amendment upon execution.

3. Amendments; Waivers.

The provisions of this Amendment, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

4. Entire Agreement

The Agreement as amended (including the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of this Amendment and supersedes any prior understandings, agreements, amendments, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of this Amendment.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

Robert Ryder dba Radio Paging Service


Authorized Signature

ROBERT F. RYDER
Name Printed/Typed

OWNER
Title

2/9/04
Date

Qwest Corporation

Authorized Signature

L.T. Christensen
Name Printed/Typed

Director Interconnection Agreements
Title

Date

Bryan Sanderson
Interconnection Negotiator
(206) 345-2275
Fax: (206) 345-0225
E-mail: besande@qwest.com



Via Fax TO: 208-385-9599

July 6, 2003

Jim Jones, Esq.
Jim Jones & Associates
1275 Shoreline Lane
Boise, ID 83702-6870

Re: Interconnection agreement between Radio Paging and Malheur Home Telephone Company

Dear Jim:

I am responding to your fax dated July 1, 2004 regarding amending the third sentence of Section 1.A on page 43 by striking "Thirty-one point forty-five percent (31.45%)" and substituting "Zero percent (0.00%)" in the Oregon interconnection agreement between Malheur Home Telephone Company and Radio Paging. Qwest is not in agreement with this "minor change". The FCC has held on a number of occasions that ILECs may charge paging companies for the portion of the facility that is used to terminate transit traffic on a paging carrier's network. In your original letter requesting an interconnection agreement for Radio Paging dated February 12, 2004 you refer to the recent decision by the U S Court of Appeals for the D.C. Circuit in Mountain Communications v. Federal Communication Commission eliminating charges for transit traffic. My reading of that decision does not conform to your understanding. As a matter of fact, the Court did not make a decision on this matter because Mountain dropped that portion of the petition after Qwest counsel stated that Qwest would provide Mountain with the information necessary to charge the originating carrier.

In light of this position, Qwest Product Management is currently reviewing the feasibility of providing transiting records to the terminating paging carrier. That is why in the proposed Malheur agreement, Section 1.B page 43, it states that Malheur will not charge for transiting traffic unless it provides the originating records to Radio Paging. If the records become available in the future Malheur intends to reimplement Section 1.A of the agreement and charge Radio paging 31.45% of the facility for transiting traffic. Malheur will also charge a record fee per record to recover its costs for providing these records. Malheur is willing to forego charges for transit traffic for the time being, but reserves its rights to charge Radio Paging for this traffic based on numerous rulings by the FCC and Qwest's acknowledgement before the circuit court, that it will provide transit records to the terminating paging carrier.

Please let me know how Radio Paging wants to proceed.

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Sincerely,

Bryan Sanderson
Bryan Sanderson

Cc: Bill Batt
Jeff Nodland
Gilbert Wan