Office of the Secretary
Service Date
August 2, 2004

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

ROBERT RYDER DBA RADIO PAGING SERVICE, JOSEPH B. McNEAL DBA PAGEDATA AND INTERPAGE OF IDAHO, AND TEL-CAR, INC.	)	**SUPREME COURT DOCKET NO. 29175**
Petitioners/Appellants,	)	
v.	)	
IDAHO PUBLIC UTILITIES COMMISSION,	)	**IPUC CASE NO. USW-T-99-24**
Respondent on Appeal,	)	
and	)	
QWEST CORPORATION,	)	
Respondent/Respondent on Appeal.	)	**ORDER NO. 29555**

On February 13, 2004, the Parties in this appeal filed a Stipulated Motion with the Idaho Supreme Court to suspend the appeal and temporarily remand this matter back to the Public Utilities Commission. At that time, the Parties maintained there was good cause to suspend the appeal, primarily so they could consider a recent decision issued by the United States Court of Appeals for the District of Columbia Circuit. In that decision the Circuit Court vacated orders of the Federal Communications Commission (FCC) that the Idaho Commission had relied upon when it issued the underlying orders in this appeal. The Parties asserted in their Stipulated Motion that remanding the matter would allow: (1) the Commission to reconsider its orders in light of the recent Circuit Court opinion; (2) the FCC to address the two telecommunication issues on remand from the Circuit Court; and (3) the Parties another opportunity to settle the appeal. On March 8, 2004, the Court suspended the appeal and remanded the matter back to the Commission.

Following the Court's remand, negotiations to settle or narrow the issues on appeal were unsuccessful. In addition, the FCC has not issued any orders addressing the two telecommunications issues discussed in the Circuit Court's opinion. Given this state of events,

the Commission issued Order No. 29491 on May 11, 2004, directing the Petitioners (collectively referred to as "the Pagers") and Qwest Corporation to file supplemental briefs addressing the transit traffic and wide area calling issues. The Parties also moved the Supreme Court to continue the suspended appeal. On June 7, 2004, the Supreme Court granted the Stipulated Motion to continue the suspension.[1]

On May 28, 2004, Qwest Corporation filed its supplemental brief on remand pursuant to Order No. 29491. On June 8, 2004, the Pagers filed their supplemental reply brief. On July 8, 2004, Qwest filed Objections to the Pagers reply brief and a Motion to Strike portions of the reply brief and several attachments to the Pagers' brief. On July 12, 2004, the Pagers filed an Answer to Qwest's Objections and Motion to Strike.

Having reviewed the record, the Circuit Court decision, the supplemental briefs and the subsequent pleadings, the Commission issues this Order on Remand. As explained in greater detail below, the Commission grants in part and denies in part the Pagers' request for additional compensation. Accordingly, the Commission amends and clarifies its prior Order Nos. 29064 and 29140 regarding the issues of transit traffic and wide area calling pursuant to *Idaho Code* § 61-624.

PROCEDURAL HISTORY

A. The Initial Complaint and Liability Phase

The procedural history of this case is set out in detail in Order Nos. 29064 (R. at 789-92) and 29140 (R. at 863-68) but the pertinent points are summarized here. This case was initiated in September 1999 when PageData[2] and Radio Paging Service filed a Joint Petition for a Declaratory Order against Qwest's predecessor, U S WEST Communications.[3] The three Pagers alleged that Qwest had violated provisions of the federal Telecommunications Act of 1996 as well as the FCC's implementing regulations and orders by improperly charged them for certain telecommunications services and facilities used to deliver telephone calls to the Pagers. Because the Pagers sought specific relief from Qwest's conduct and billing practices, the Commission processed the Petition as a "complaint."

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[1] On July 9, 2004, the Parties filed a Second Stipulated Motion to continue the suspension until August 2, 2004. The Court subsequently granted this Motion.

[2] In June 1998 the owner of PageData, Joseph McNeal, purchased the assets of another paging company called InterPage. Order No. 29140 at n. 3; Tr. at 150, 208.

[3] In January 2000, Tel-Car, Inc. petitioned to intervene. The Commission granted intervention in February 2000.

In the first part of this two-part case (called the "Liability Phase"), the Commission found that the Pagers were partially entitled to relief. In Order No. 28601 issued in December 2000, the Commission found that Qwest had inappropriately billed the Pagers for certain services and facilities. In compliance with the FCC's *Local Competition Order*,[4] the Commission found that effective November 1, 1996, Qwest was prohibited from charging the Pagers for transmitting Qwest-originated traffic to the Pagers (with two exceptions discussed in greater detail below). The Commission's orders in the Liability Phase were final orders and no appeal was taken by either Qwest or the Pagers.

B. The Credit Phase

Having determined that the Pagers were due refunds, the Commission instituted the second part of this case known as the "Credit Phase." The Commission ordered the parties to exchange relevant information and attempt to settle the amount of the refund or billing credit owed each Pager. When Qwest and the Pagers were unable to settle the amounts owed each Pager, the Commission appointed a Hearing Examiner to conduct an evidentiary hearing and issue a Proposed Order. The hearing was held in July 2001.

The Hearing Examiner recommended that the Pagers were entitled to refunds but less than the amounts they claimed. The Examiner found that some of the Qwest services and facilities provided to the Pager were used for non-paging services such as two-way voice service, cellular telephone service, data service, and long-distance service. Proposed Order at 3, 6, 10-11. Refunds were not due for these non-paging services. In addition, the Examiner determined that refunds were not due for Qwest's delivery of "transit traffic" originated by other carriers and "wide area calling" arrangements that allow Qwest customers to call the Pagers' toll-free. Proposed Order at 14-15, 17-21, Order No. 29140 at 4. Finally, the Examiner recommended that Qwest offered the better evidence regarding the billing and payment information used to calculate the actual refunds. In December 2001, the Pagers filed exceptions to the Proposed Order.

After reviewing the Hearing Examiner's Proposed Order, the evidentiary record and the Pagers' exceptions, the Commission issued a lengthy order affirming and expanding on the

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[4] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499 (1996), *aff'd in part and vacated in part sub nom., Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and remanded, AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 119 S.Ct. 721 (1999).

Examiner's proposed findings of fact. Order No. 29064 (July 17, 2002). The Pagers Petitioned for Reconsideration and raised more than 35 points of contention. In September 2002, the Commission granted reconsideration so that it could review the numerous issues raised by the Pagers.

In November 2002 the Commission issued its final Order on Reconsideration No. 29140 (R. at 863-913). On reconsideration the Commission determined that refunds were not due for: (1) non-paging services and facilities; (2) "transit traffic" from non-Qwest carriers; and (3) "wide area calling" services and facilities provided by Qwest that effectively allowed Qwest customers to call the Pagers toll-free. Order Nos. 29064 at 3-4; 29140 at 23-41. The Commission affirmed its prior order but did increase the amount of billing credit owed each Pager. In December 2002, the Petitioners filed their Notice of Appeal, R. at 928-32.[5]

C. Remand Issues Before the Commission

As previously mentioned, Qwest, the Pagers and this Commission filed a Stipulated Motion to remand this matter to the Commission so that the Parties could consider the D.C. Circuit Court Opinion of *Mountain Communications v. Federal Communications Commission (FCC)*, 355 F.3d 644 (D.C. Cir. 2004). In *Mountain Communications*, the Circuit Court overturned two FCC decisions. The Circuit Court concluded that the FCC's decision to allow Qwest to charge the pager for "wide area calling" arrangements was arbitrary and capricious and remanded the case to the FCC. The other issue discussed in the Circuit Court's Opinion was "transit traffic." These issues are the same two issues that were remanded to this Commission for further consideration.

As a preliminary matter, the FCC's *TSR Order*[6] and *Local Competition Order* prohibit local exchange carriers (LECs) like Qwest from charging for facilities used to deliver LEC-originated traffic, in addition to prohibiting charges for the traffic itself. *TSR Order* at ¶ 25. The *TSR Order* also provided that as of the effective date of the *Local Competition Order*, a LEC must cease charging pagers for terminating LEC-originated traffic and must provide that traffic

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[5] After the Notice of Appeal was filed, the Parties agreed to participate in the appellate settlement process. In January 2003, the Court issued an order staying the appeal pending settlement negotiations. Following unsuccessful negotiations, the Supreme Court reinstated the appeal in November 2003 with the Pagers' opening brief due in February 2004.

[6] *TSR Wireless v. U S WEST, Memorandum Opinion and Order,* 15 FCC Rcd 11166 (2000), *aff'd sub nom. Qwest Corporation v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

to a pager without charge. *Id.* ¶¶ 3-28; Order No. 29140 at 5, 23. Despite these prohibitions, the FCC also determined in the *TSR Order* that pagers "are required to pay for 'transit traffic.'" *TSR Order*, 15 FCC Rcd at 11177 n. 70. Later FCC decisions also allowed LECs to charge pagers for "wide area calling" arrangements or services.

1. Transit Traffic. Transit traffic are calls that originate from a carrier other than the interconnecting LEC (in this case Qwest) but nonetheless are carried over Qwest's network to the paging carrier's network. Order No. 29140 at 23, *quoting TSR Order* at n. 70 (emphasis added). In other words, traffic that originates on a non-Qwest network and is transported over the Qwest network to a pager's network may incur charges. An Idaho specific example would be a call from a Silver Star Telephone customer in Driggs would traverse or transit the Qwest network to reach PageData's paging terminal in Idaho Falls. PageData would then "page" its customer by sending a radio signal. Based upon the *TSR Order* and other FCC decisions, the Commission found that Qwest was permitted to charge the Pagers for transit traffic originated by third-party carriers. *See also Qwest Corporation v. FCC*, 252 F.3d 462, 468 (D.C. Cir. 2001) (the FCC requires pagers to pay for transit traffic). The Commission found that 24% of the Pagers' traffic was properly classified as transit traffic. Consequently, Qwest offset the refund credits owed to the Pagers. Order No. 29140 at 3.

2. Wide Area Calling. In addition to charging for transit traffic, the *TSR Order* and other FCC decisions held that LECs may charge pagers for LEC services and facilities not necessary for interconnection and the delivery of LEC-originated traffic to pagers. For example, "wide area calling" generally refers to an arrangement or service "that allows a paging carrier to subsidize the cost of calls from [Qwest's] customers to a paging carrier's customer, when the caller and the paging company are located in different local calling areas." Order No. 29140 at 5. Normally telephone calls from one local calling area to another local calling area are assessed "toll" or long-distance charges. By using various facility arrangements and services, paging carriers can create networks so that it would appear to Qwest callers that their calls to a paging company located in a different local calling area will be toll-free, or will not be assessed a toll charge. *Id.* at 37; *Mountain Communications I*, 17 FCC Rcd 2091 at ¶¶ 3, 13 (Feb. 4, 2002); *Mountain Communications II*, 17 FCC Rcd 15135 at ¶¶ 4-6 (July 25, 2002).

In the underlying proceeding, the Commission found that PageData and Tel-Car had configured their paging systems in a manner that constituted wide area calling arrangements.

Order No. 29140 at 37. Consequently, the Commission determined that the two Pagers were not entitled to a refund for wide area calling charges. Order Nos. 29064 at 25-28; 29140 at 36-41.

THE FCC DECISION AND THE CIRCUIT COURT OPINION

Mountain Communications is a paging carrier serving customers in three Colorado local calling areas. Like the present case, Qwest is the predominate provider of local service within each of the three Colorado calling areas. Although Mountain serves in all three areas, it has a single point of interconnection (POI) with Qwest in one of the three areas as permitted by federal law. *Mountain Communications v. FCC*, 355 F.3d 644, 645 (D.C. Cir. 2004) *citing* 47 U.S.C. § 251(c)(2)(b)(LECs must provide interconnection facilities with other carriers "at any technically feasible point within the [incumbent LEC's] network"). As mentioned above, normally a call from one local calling area to another local calling area is considered a toll call. Thus, a Qwest call from the two local calling areas to Mountain's POI in the third calling area would normally be considered a toll call. A Qwest customer making such a call normally would be charged for a toll call. Conversely, a Qwest call originating in the local calling area where Mountain's POI is located, would be considered a local call and normally transported without charge. In the *Mountain* case, Qwest charged the pager for wide area calling arrangements for Qwest calls made from the two local calling areas into Mountain's POI in the third area. Qwest also charged Mountain for transit traffic.

1. The FCC Decision. Mountain filed a complaint with the FCC arguing that the FCC's regulation at 47 C.F.R. § 51.703(b) bars Qwest from assessing wide area charges for Qwest-originated traffic. This FCC regulation provides that a "LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." Mountain asserted that because its "local" paging area[7] encompasses all three Qwest local calling areas, Qwest is not permitted to charge Mountain for Qwest-originated traffic or for facilities Qwest uses to deliver its traffic to Mountain's single-POI. *Mountain Communications I*, 17 FCC Rcd 2091 at ¶¶ 8-10, 12-13; *see also TSR Order* at ¶ 32. Mountain also insisted that Qwest should be prohibited from charging for transit traffic.

[7] As a commercial mobile radio service (CMRS) provider, Mountain's local paging area is defined by the FCC as a major trading area (MTA). For purposes of our Idaho case, the MTA encompasses the entire Boise LATA, i.e., all of southern Idaho.

The FCC rejected Mountain's wide area calling argument. The FCC observed that Qwest may charge its customers a toll charge when the customer calls Mountain's POI located in another calling area. When Mountain requested dedicated toll facilities from each Qwest calling area to Mountain's POI, it "effectively entered into such [a wide area calling] arrangement with Qwest." *Mountain Communications I*, 17 FCC Rcd at ¶ 13. These dedicated facilities allowed Mountain to "buy-down" the cost of toll calls "to make it appear to [Qwest's customers] that they have made a local call rather than a toll call." *Id.* at ¶ 11. The FCC also decided that "wide area calling services are not necessary for interconnection" to the pager. *Id.*; *Mountain Communications II*, 17 FCC Rcd 15135 at ¶¶ 5-6.

The FCC also determined Qwest may lawfully charge Mountain for transit traffic. In allowing Qwest to charge for transit traffic, the FCC relied upon its *TSR Order* and other paging orders. *TSR Order* at ¶ 19 n. 70; *TexCom v. Bell Atlantic, Memorandum Opinion and Order*, 16 FCC Rcd 21493 at ¶¶ 4-6 (Nov. 28, 2001), *reconsid. denied*, 17 FCC Rcd 6275 at ¶ 4 (March 27, 2002). The FCC noted that Mountain could seek reimbursement from the carrier that originated the transit traffic. *Mountain Communications II*, 17 FCC Rcd 15135 at ¶ 2 n. 30.

2. The Circuit Court Opinion. On appeal, the Circuit Court held that the FCC's wide area calling decision is at odds with the FCC's own regulation and with the *TSR Order*. The Court observed that while the facts of the *TSR Order* and *Mountain* are identical, the results of the two cases "are opposite." *Mountain Communications v. FCC*, 355 F.3d at 646. Thus, the Court easily concluded that the FCC's *Mountain* decision is "logically inconsistent with [the FCC's] *TSR* decision." *Id.* at 647. The Court also found the FCC decision "seemingly comes into direct conflict with its own regulation" at 47 C.F.R. § 51.703(b), which prohibits LECs from levying charges for traffic that originate on their own networks. *Id.*, 355 P.3d at 648. Consequently, the Court rather easily concluded that the FCC's decision on this issue is arbitrary and capricious. The Court vacated the decision and remanded the case to the FCC. *Id.* at 649.

After dealing with wide area calling, the Court turned to the transit traffic issue. The Circuit Court observed that the FCC allowed Qwest to charge Mountain for transit traffic "but indicated that Mountain could seek reimbursement from the originating carrier for whatever charges [Mountain] paid to Qwest." *Id.* Mountain argued that this decision does not follow the standard practice of charging the cost of calls to the network of the party initiating the call. Mountain insisted that the prospects for reimbursement from the originating carrier of the transit

traffic was illusory, because Qwest never provided the calling information to Mountain. Without such information, Mountain maintained it was impossible to seek reimbursement. *Id.*

The Court did not reach the merits of this argument because Qwest advised the Court that it would provide Mountain with the originating carrier information. The Court observed that the FCC

> suggested that Mountain was essentially correct in claiming that the originating carrier should bear *all* [of the transit traffic] costs. At oral argument, Qwest's counsel obviated any need for us to decide this issue by indicating that Qwest would provide Mountain with the information necessary so that Mountain could charge the originating carrier for reimbursement. Under those circumstances, Mountain dropped that part of its petition.

Id. (emphasis original). *See also* Order No. 29491 at 5-6.

REMAND PROCEEDINGS

Given the Circuit Court's ruling on wide area calling, Qwest's concession on transit traffic, the lack of any FCC orders on remand and the unfruitful settlement negotiations, the Commission issued Order No. 29491 directing the Pagers and Qwest to provide supplemental briefing regarding the two telecommunications issues. Order No. 29491 at 7. The Commission noted that it was undisputed that Qwest need not absorb transit traffic costs. What the Circuit Court opinion did not answer was whether Qwest should charge the originating carrier for transit traffic, or whether Qwest could provide the call detail to the Pagers who could in turn seek reimbursement from the originating carriers. *Id.* at 7. The Parties were directed to address the following pertinent questions:

<u>Wide Area Calling</u>

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

2. Did any of the Pagers voluntarily enter into a "buy-down agreement" with Qwest so that Qwest would not assess toll charges on its customers' calls to a Pager located in another local calling area? See 355 F.3d at 648.

Transit Traffic

1. Describe in detail the call data provided to Qwest by the originating carrier of transit traffic.

2. Given Qwest's offer at the Circuit Court's oral argument to provide transit traffic data to Mountain, is Qwest in a position to provide transit traffic data to the Pagers in this case?

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

4. What was the amount of transit traffic charged to each Pager during the relevant time periods?

Order No. 29491 at 7-8.[8] This Order also directed Qwest to prepare exhibits showing the amount of charges it assessed each Pager individually for wide area calling and transit traffic. In addition to the refund/credit calculations, Qwest was directed to include an itemization of interest through July 1, 2004. *Id.* Once Qwest filed its supplemental brief and calculations, then the Pagers were to file their supplemental brief replying to Qwest's brief and the calculations. *Id.* at 8.

In compliance with the Commission's directives, Qwest filed its supplemental brief and calculations on May 26, 2004.[9] The Pagers filed their timely supplemental reply brief on June 8, 2004. The Pagers' reply brief included seven "exhibits" and an appendix with 13 more "exhibits."

A. Qwest's Motion to Strike

On July 8, 2004, Qwest filed Objections to the Pagers' brief and a Motion to Strike. Qwest argued the Pagers' brief went far beyond simply addressing the wide area calling and transit traffic issues. Qwest asserted the Pagers were attempting to reopen or re-argue issues already decided and beyond the scope of the remand and the Commission's Order No. 29491. Qwest further asserted the Pagers' supplemental brief introduced "new evidence not in the record" and makes "arguments based on facts that are not before the Commission in this case." Motion to Strike at 3. Qwest moved to strike those portions of the Pagers' supplemental brief

[8] One other question asked whether cost recovery mechanisms for creating Qwest's local calling areas contemplated transit traffic. The Parties offered no pertinent information in response to this question.

[9] On May 27, Qwest filed a "corrected" response to the Commission's Order.

that address issues beyond the scope of the two issues identified in Order No. 29491 and strike attachments to the brief that are not in the record.

Qwest also moved to strike in its entirety the 57-page appendix to the Pagers' brief prepared by Joseph McNeal, the owner of PageData. Qwest raised more than 20 specific points of contention with the appendix. The Company urged the Commission to strike the McNeal appendix because: (1) it is non-responsive to the two issues on remand and beyond the scope of the remand proceeding; (2) it addresses several issues that are beyond the scope of the underlying proceeding or the appeal itself; (3) it is in practical terms a second legal brief but "does not appear to be sponsored by the Pagers' attorney"; and (4) Mr. McNeal is not an attorney and cannot represent the two other pagers. Motion to Strike at 9, *citing* Commission Rule 43 (Representation of Parties), IDAPA 31.01.01.043.

On July 12, 2004, the Pagers filed an Answer to Qwest's Objections and the Motion to Strike. In their Answer, the Pagers asserted that most of the attachments to the supplemental brief and the appendix are either exhibits previously admitted or are documents already in the record. The Pagers acknowledged that "exhibit A," "exhibit E,"[10] and Mr. McNeal's appendix are not contained in the record of this proceeding. Pagers Answer at 2.

As to the unsigned appendix, the Pagers maintained it was prepared by Mr. McNeal and it was "fully incorporated by reference into 'the Pagers' Reply [brief] as stated at page 3 thereof.'" *Id.* at 2. The Pagers contend that much of the information in Mr. McNeal's appendix is contained in the record but acknowledged that some of the information is not. *Id.* The Pagers suggested that the "Commission is obviously able to separate the wheat from the chaff and determine the relevance of the points made" in the appendix. *Id.* at 3-4.

Commission Findings: After reviewing the supplemental briefs, the various attached documents, the Motion to Strike and the Answer, we grant in part and deny in part Qwest's Motion to Strike. A Motion to Strike is reviewed under the abuse of discretion standard. *Perry v. Magic Valley Reg'l Med. Ctr.*, 134 Idaho 46, 50, 995 P.2d 816, 820 (2000). The test for determining an abuse of discretion is based upon a three-part inquiry: (1) whether the Commission correctly perceived the issue as one of discretion; (2) whether the Commission acted within the outer boundaries of discretion and consistently with applicable legal standards;

[10] "Exhibits" A and E are not "admitted" exhibits but are documents that were attached to the Pagers supplemental brief. They are not currently in the record on appeal.

and (3) whether the Commission reached its decision by an exercise of reason. *Sun Valley Shopping Ctr. v. Idaho Power Company*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

1. The Pagers Brief. We partially grant the Motion to Strike for two primary reasons. First, portions of the brief and appendix are beyond the scope of the remand issues. As is evident in the three Stipulated Motions filed with the Supreme Court, the Parties requested that this matter be remanded to the Commission. The Parties stipulated that it was appropriate to remand so the Commission could "reconsider its Orders in light of the recent [D.C.] Circuit Court opinion." Stipulated Motion to Suspend Appeal and Remand to the Administrative Agency at 3, 4. The only telecommunications issues discussed in the *Mountain Communications* opinion are wide area calling and transit traffic. Moreover, in the Supreme Court's order issued March 8, 2004, the Court granted the Parties' Stipulated Motion to allow "the Public Utilities Commission to review their decision in this case in light of the above [D.C.] Circuit Court opinion." Sup. Ct. Order 29175 (March 8, 2004). Thus, it is apparent that the Parties only contemplated addressing the issues of wide area calling and transit traffic on remand. Moreover, the Supreme Court's order granted the remand to review the Circuit Court's opinion.

Second, our Order No. 29491 directed the parties to address several questions all focused on wide area calling or transit traffic. Order No. 29491 at 7-8. It was neither our intent then or now to expand the scope of reconsideration beyond the two issues in the Court's opinion nor entertain new arguments or re-arguments on other issues.

We first examine the "exhibits" that accompanied the Pagers' supplemental brief. Of the 11 attachments to the Pagers' brief, two were Circuit Court slip opinions addressing transit traffic and two were copies of transcript pages or excerpts from a previous Pager brief. Of the seven other "exhibits," three were actual exhibits already admitted (B, F, G) and two other "exhibits" are documents already included in the record on appeal (C and D). These documents are appropriate and relevant and are not stricken.

Pager "exhibit" A is a diagram purportedly showing the "Configuration of PageData Paging System." Qwest maintains this diagram "does not even remotely factually represent the [PageData/InterPage] network during the time period in question in this case." Motion to Strike at n. 24. Although we agree with Qwest's basic premise that this diagram does not accurately portray the PageData/InterPage network during most of the refund period, it does show four paging terminals (POIs) and the current configuration. We shall allow it to remain in the record

but accord it little weight. We also note that Qwest submitted a diagram with its brief purporting to show PageData/InterPage facilities leased from Qwest as of July 1998.

Finally, "exhibit" E is a letter dated April 30, 2004 on Qwest letterhead to Joseph McNeal concerning what appears to be the elimination of analog private line service by Qwest on June 15, 2004. A proper foundation for this hyper-technical letter has not been made and it clearly falls well beyond PageData's refund window: November 1, 1996 to September 10, 1999. Order No. 29140 at 5. Consequently, we strike this "exhibit."

2. The Appendix. We next turn to the McNeal appendix. The Pagers' reply brief notes that the McNeal appendix is "attached and incorporated" as an "overview analysis prepared by Joseph McNeal on behalf of PageData." Pagers Answer to Motion to Strike at 3. Consequently, Qwest's fears that the McNeal appendix applies to the other two pagers is unfounded. Nevertheless, we agree with Qwest that there are several portions of the appendix that are beyond the scope of our reconsideration on remand. More specifically, some portions of the appendix and its 13 attachments are re-arguing issues that are not subject to reconsideration, introducing new arguments and/or evidence, or are issues in other PUC proceedings involving Mr. McNeal. Mr. McNeal is a pro se litigant in three other PUC proceedings involving disputes with Qwest. Two issues present in these other proceedings have been included in the appendix. Thus, we find it is appropriate to strike portions of the appendix including: Table 1 (pp. 3-4); 800 numbers (p. 8); reciprocal compensation (p. 14); and section 252(i) interconnection agreements (pp. 15-18). These topics are outside the scope of the remand. While other parts of the appendix (and the reply brief) stray beyond the scope of the remand, we are not inclined to attempt to surgically remove bits and pieces. However, we will exercise our ability "to separate the wheat from the chaff" as we evaluate the relevance and weight to be accorded the arguments in the brief and the appendix.

Turning next to the "exhibits" attached to the appendix, we find it appropriate to strike "exhibits" 1, 2, 8-13. The interconnection agreements in 1 and 2 are not relevant and beyond the scope of remand. The diagrams and text in exhibits 10-13 are redundant to the Pagers' "exhibit" A and do not accurately portray PageData/InterPage's network during the majority of the refund period. "Exhibits" 8-9 present new evidence about old arguments beyond the scope of remand. The remaining "exhibits" attached to the appendix are either admitted exhibits (5-7) or are already contained in the record on appeal (3-4). We now turn to the merits.

B. Wide Area Calling

1. Qwest. In response to the Commission's wide area calling questions, Qwest stated that both PageData and Tel-Car utilized wide area calling services. PageData and Tel-Car utilized both "non-local Type 1 facilities" and PageData also ordered 500 toll-free "800" numbers to route traffic to its facilities. Qwest Brief at 3-4. Qwest maintained it did not provide any wide area calling services to Radio Paging and the Pagers do not contest this assertion. *Id.* at 5. Qwest stated that PageData used two non-local Type 1 wide area calling arrangement between: (1) Qwest's central offices located in Meridian and Payette; and (2) Qwest's central offices in Twin Falls and Hailey. These facilities measured 48 miles and 68 miles, respectively. *Id.* at 3-4. Qwest also asserted that Tel-Car utilized Type 1 dedicated facilities extending between Twin Falls and Hailey. *Id.* at 4-5.

Qwest argued that additional refunds for wide area calling were not appropriate because both PageData (and its predecessor InterPage) and Tel-Car "voluntarily entered into toll buy-down agreement by ordering the wide-calling services from Qwest's tariff/price lists." *Id.* at 5. Qwest quoted extensively from Order No. 29064 where the Commission found that PageData and Tel-Car were properly charged for ordering facilities that constituted wide area calling arrangements. Qwest calculated the refund value for wide area calling (with interest to July 1, 2004) to be $10,607 for PageData and $3,909 for Tel-Car.

2. The Pagers. For their part, the Pagers asserted that PageData and Tel-Car are entitled to additional refunds in accordance with the holding in the D.C. Circuit's *Mountain Communications* decision. The Pagers maintained the *Mountain Communications* decision "made it absolutely clear that Qwest could not charge [the Pagers] for transportation of Qwest-originated traffic . . . even if the traffic was across local calling areas established for business and retail customers." Pagers Brief at 8. They insisted that neither PageData nor Tel-Car "voluntarily" entered into any wide area calling arrangement. *Id.* at 11. Despite Qwest's arguments to the contrary, the Pagers observed that the concept of "construction agreement" for the acquisition of wide area calling facilities was specifically overruled by the Circuit Court. *Id.* at 2, 12.

Commission Findings: Although Qwest continues to argue that it is entitled to charge the Pagers for wide area calling arrangements, the Circuit Court in *Mountain Communications* overruled this line of reasoning. In particular, the Court recognized that the

FCC regulation found at 47 C.F.R. § 51.703(b) "unequivocally prohibits LECs from levying charges for traffic originating on their networks, and, by its own terms, admits of no exceptions." *Mountain Communications*, 355 F.3d at 648, *quoting MCIMetro Access Transmission Services v. Bellsouth Telecommunications*, 352 F.3d 872, 881 (4th Cir. 2003). The Court went on to observe that the federal Telecommunications Act obligates Qwest to interconnect its facilities at a single "technically feasible" POI for pagers. *Id.* at 649. In other words, Qwest cannot charge the Pagers for traffic originating on Qwest's network and transported to the point of interconnection with the Pagers. *MCIMetro*, 352 F.3d at 881. The two types of wide area calling arrangements discussed above transports traffic originating on Qwest's network (as well as transit traffic) to the Pagers. Based upon the facts of this case, Qwest may not charge the Pagers for wide area calling services or facilities. However, as the FCC noted in the *TSR Order*, Section 51.703(b) does not prevent Qwest from charging its own end-user customers for calling a pager's POI located in a different local calling area. *TSR Order* at ¶ 31.

Qwest apparently appreciates its dilemma given the holding of *Mountain Communications*. Qwest did not attempt to distinguish the holding of *Mountain Communications* from the present case. Based upon our application of the facts in our case to the holding of *Mountain Communications*, we find that PageData and Tel-Car are entitled to an additional refund for wide area calling charges assessed by Qwest. The calculations of these additional refunds are discussed below.

C. Transit Traffic

1. Qwest. In response to the Commission's transit traffic questions, Qwest stated that there is no existing data which identifies the originating carrier of the transit traffic in this case nor the amount of traffic pertaining to individual carriers. Qwest Brief at 6. Consequently, "Qwest is not in a position to provide transit traffic data to the Pagers." *Id.* at 7. Despite the lack of data, Qwest insisted it is inappropriate to credit the Pagers for the 24% transit traffic for three reasons. First, Qwest argued that the Pagers' position has always been that Qwest was itself the "originating carrier of the transit traffic and thus the identity of the initiating carrier is irrelevant." Qwest insisted the Pagers never asserted that Qwest must supply originating carrier data.

Second, Qwest asserted the Pagers are not entitled to additional refunds or credits because "the Pagers were charged for transit traffic in accordance with the law existing at the

time. The FCC has repeatedly ruled that LECs may charge paging companies for interconnection facilities to the extent that those facilities carry traffic." *Id.* (footnote omitted). Qwest argued that until the Circuit Court issued its *Mountain Communications* opinion, the FCC had repeated and consistently held that LECs may charge paging carriers for transit traffic.[11] Finally, Qwest disclosed it is working to develop a "records product" that if successful, would make transit calling information available for purchase by paging companies. Assuming that the product can be developed, Qwest intends to sell the service "to interconnecting carriers that wish to purchase it." *Id.* at 8. Thus, such a service would not be made available to pagers for free. If the Pagers want to seek reimbursement from the originating carrier, then the Pagers can purchase the "records service."

As directed by the Commission, Qwest calculated the amount of transit traffic at issue for each of the three Pagers with interest through July 1, 2004. The calculated refund credits for each carrier would be: Radio Paging – $15,311; Tel-Car – $15,362; and PageData (including InterPage) – $35,701.

2. The Pagers. The Pagers insisted they are entitled to a full refund for transit traffic. They argued it would be inequitable for Qwest to charge the Pagers for transit traffic, while at the same time not providing the Pagers with the necessary third-party information. Pagers Brief at 13. Just as Qwest offered at the Circuit Court's oral argument to provide the necessary information to Mountain, the Pagers here assert they are entitled to equal treatment and to receive the calling data. *Mountain Communications*, 355 F.3d at 649. The Pagers insisted that it would be discriminatory for Qwest to provide the calling information to Mountain but not provide similar information to the Pagers. 47 U.S.C. § 251(c)(2)(D).

Commission Findings: The issue of transit traffic was vigorously contested in this case. As the Circuit Court noted, Qwest incurs costs for switching and routing calls originating with other carriers, and transported over Qwest's network to paging carriers. In its *Mountain* decision, the FCC allowed Qwest to charge for transit traffic "but indicated that [the Pagers] could seek reimbursement from the originating carrier for whatever charges it paid to Qwest." *Id.* at 649. In other words, Qwest has a choice: it can either charge the Pagers and provide calling information so that they may seek reimbursement; or it could charge the originating carrier. *Id.* Although the Circuit Court never reached the merits of this dilemma, it is plain in

[11] In a footnote, Qwest lists most if not all the FCC Orders cited by the Commission in its prior Orders.

the Court's analysis and ours that Qwest cannot have it both ways. Qwest's statement that the transit traffic calling data "does not exist," provides only one choice.

Qwest's arguments on why the Pagers should not receive refunds for transit traffic are unpersuasive. We agree with the Pagers that it is inequitable to offer the calling data to Mountain but not to other similarly situated carriers. On remand, we find it reasonable for Qwest to provide either refunds or the calling data. Because Qwest has no data to give, we are left with no choice but to order Qwest to refund the transit traffic charges to the Pagers. Qwest's reliance upon the FCC orders is unavailing. While we recognize that the FCC and our prior Order both "validated" Qwest charging the Pagers for transit traffic, even the FCC recognized in *Mountain* that the Pagers could seek reimbursement from the originating carrier provided Mountain was given the necessary data to identify such carriers. *Mountain Communications*, 355 F.3d at 649, *citing Mountain Communications II*, 17 FCC Rcd at 15137 n. 13. We infer this lack of data prompted Qwest to develop a service to record the transit data.

CALCULATIONS OF THE REFUNDS

Having determined that the Pagers are due additional refunds/credits for wide area calling and transit traffic, we turn to the calculation of these additional refunds. Order No. 29491 directed Qwest to prepare exhibit(s) showing the amount of transit traffic charged to each pager and the amount of charges for wide area calling (if any). These calculations were also to include appropriate interest calculated up to July 1, 2004. Order No. 29491 at 7-8. Once Qwest filed its calculations, "then the Pagers will have an opportunity to respond to the questions and reply to Qwest's information/calculations." *Id.* at 8.

Pursuant to the Commission's directive, Qwest calculated the refund amounts at issue for wide area calling and transit traffic. Starting with the refund credits issued each pager in November 2002 pursuant to Reconsideration Order No. 29140 (R. at 916), Qwest calculated the amounts at issue as shown in the table below.

The Pagers maintained that they "are entitled to a refund of **all** sums that they paid to Qwest during the time periods relevant to this proceeding." Pagers Brief at 3 (emphasis added). In addition, PageData now seeks a larger refund than it initially requested at the evidentiary hearing. Although Radio Paging did not seek any refunds for wide area calling, it asserted that it was due additional credit for transit traffic. *Id.* at 16. Radio Paging requested a refund totaling $57,309.16 (without interest).

The Pagers asserted Tel-Car is owed a total of $67,098.07. *Id.* They maintained that Tel-Car is entitled to reimbursement for wide area calling totaling $21,749.07. This amount is the sum of $4,174.35 "for what Qwest characterized as 'T-1 non-local'" and $17,574.72 for "mobile charges." *Id.* at 10 *citing* Qwest Exh. 202 p. 8 and pp. 24-27, respectively. The Pagers argued again on remand that Tel-Car is entitled to reimbursement for its mobile telephone services and facilities because "mobile services were part of the Tel-Car paging system, utilized to deliver paging traffic to its point of [inter]connection." *Id.* at 11. These amounts should be added to the $45,349 shown on Exhibit 105. Thus, Tel-Car asserted that it should receive a total refund of $67,098.07, not including interest. *Id.* at 16.

In the Credit Phase of this case, PageData argued it was entitled to a refund of approximately $240,756.03. In the Pagers' response to Qwest's wide area calling and transit traffic calculations, PageData asserted that it is now entitled to even a greater refund than previously requested. Pagers Brief at 7, 16. Relying upon an attachment to Qwest's post-hearing reply brief, PageData insisted that the starting point for its refund is $245,628.51. Added to this figure is an additional $14,926.80 "for the T-1 lines and the frame relay," which results in a total refund of $260,555.31. *Id.* at 16. The table below shows the refund positions of Qwest and the Pagers.

REFUND CALCULATIONS/REQUESTS

		QWEST *(includes interest)*		**PAGERS** *(without interest)*	
Radio Paging		$ 42,105	(Nov. 2002 Amount)		
		NA	(Wide Area Calling)		
		$ 15,311	(Transit Traffic)		
	TOTAL	$ 57,416		$ 57,309.16	
Tel-Car		$ 33,512	(Nov. 2002 Amount)	$ 45,349.00	(Exh. 105)
		$ 3,909	(Wide Area Calling)	$ 4,174.35	(Wide Area Calling)
		$ 15,362	(Transit Traffic)	$ 17,574.72	(Mobile)
	TOTAL	$ 52,783		$ 67,098.07	
PageData		$ 55,486	(Nov. 2002 Amount)	$245,628.51	(Qwest, Exh. 5)
		$ 10,607	(Wide Area Calling)	$ 14,926.80	(T-1, Frame Relay)
		$ 35,701	(Transit Traffic)		
	TOTAL	$101,794		$260,555.31	

Commission Findings: At the outset, we reaffirm the findings in our previous Orders that Qwest presented the better evidence regarding the billing and payment information necessary to calculate refunds.[12] Order No. 29064 at 19-23; Order No. 29140 at 35-36, 44-46. We also reaffirm that the refund credits should be limited to paging charges and not allowed for non-paging services. Order No. 29064 at 22; Order No. 29140 at 34-36.

1. Radio Paging. For Radio Paging, Qwest calculates the refund for transit traffic (with interest) would be $15,331.[13] We adopt Qwest's calculations and further find that Radio Paging's appropriate total refund with interest as of July 1, 2004 is $57,416. We also observe that this amount is comparable to Radio Paging's request of $57,309.16 (without interest).

2. Tel-Car. Tel-Car seeks a total refund in the amount of $67,098.07. Pagers Brief at 16. This amount is the sum of $45,349 shown on Pager Exhibit 105, plus $4,174.35[14] in wide area calling charges, and $17,574.72 for a refund of its mobile cellular charges. *Id.* For its part, Qwest starts at the amount ordered by the Commission in Order No. 29140 of $33,512 in November 2002. To this amount, Qwest adds $3,909 for the wide area calling refund and $15,362 for the transit traffic refund, or a total refund of $52,783.

We adopt Qwest's calculations for the refund owed to Tel-Car. We again reject Tel-Car's argument that it is entitled to a refund for its cellular services for several reasons. First, as we noted above, the scope of the issues to be examined in this remand were narrow and specific. What Tel-Car attempts to do is to re-argue the cellular service issue. This issue was previously decided and is beyond the scope of this remand. As we have consistently held, the Pagers are not entitled to a refund for non-paging services. Tel-Car again argues that it was using its mobile cellular facilities for paging. Pagers Brief at 10. However, as the Commission noted in Order No. 29140,

> Tel-Car has not pointed to any evidence in the record that supports its position that it should be compensated for mobile service. Qwest did not apply a credit for mobile service because the USOC for this service was a non-paging code. As the Commission found in its Credit Order, "Tel-Car's witness, Mr. Casper, said that his Company provides one-way paging, two-way answering services, and cellular services. Tr. at 131. He testified that some of his circuits are utilized to provide paging and non-paging services.

[12] Consistent with our adjustments in this Order for wide area calling and transit traffic.

[13] As previously mentioned, Radio Paging had no wide area calling charges.

[14] This figure appears in Qwest's calculations.

> Tr. at 147." Order No. 29064 at 21 (emphasis added). Given this admission, we find it was incumbent upon Tel-Car to provide evidence regarding the usage ratio between one-way paging and non-paging traffic over the [alleged] joint use circuits. Tel-Car did not provide any such evidence.

Order No. 29140 at 35 (emphasis original).

We find Tel-Car is due additional refunds for wide area calling and transit charges totaling $52,783, plus an additional one month's interest to August 1, 2004. After subtracting the requested mobile services refund, Tel-Car's proposed refund of $49,523.35 (without interest) is comparable to Qwest's calculated refund of $52,783 (with interest).

3. PageData. Based upon our review of the pleadings and the evidentiary record, we find that PageData has overstated its claimed refund. We also reject PageData's refund calculations for several reasons. First, in the Credit Phase evidentiary hearing, PageData sought a refund of $240,756.03. Tr. at 154. This amount was the combined refund request for both PageData ($52,282.47) and InterPage ($188,473.56). Tr. at 154, 496. Now on remand, PageData asserts it is owed $245,628.51 as shown in Qwest's post-hearing brief on "exhibit" 5.[15] To this amount PageData adds for the first time $14,926.80 for T-1 and frame relay charges. It now seeks a total refund (without interest) of $260,555.31. We find the request for a larger refund unreasonable. The law of the case compels use of the original request. Arguing for the additional $14,926 is clearly beyond the scope of the remand. Second, PageData has not cited and we have not found any basis for the calculation of the $14,926 attributed to T-1 lines and frame relay charges.

Third, in Order No. 29064, the Commission found unpersuasive the Pagers' argument that they were entitled to a full credit for all charges. Order No. 29064 at 22. The Commission adopted its Hearing Examiner's proposed findings that the Pagers

> presented scant evidence to support their claim that all their bills from Qwest were for interconnection for the purpose of receiving one-way paging traffic from Qwest. Bare assertions that their bills were not credible given the other kinds of businesses they operated across the same networks (some of which were for two-way traffic), nor was it credible to believe that they had no business operations needs for other telecommunications services from Qwest. Qwest's exhibits, in contrast, took each billing element and assigned it to interconnection or other types of service based on logical categorizations. Moreover, months before hearings, Qwest provided the detailed billing

[15] "Exhibit" 5 is not an admitted exhibit but was attached to Qwest's post-hearing brief.

> elements for each month of the reimbursement period involved. [The Pagers] . . . made no effort to show that specific billing elements detailed for them by Qwest and included in Exhibits 201, 202 and 203 [were] incorrectly assigned to non-interconnection use.

Order No. 29064 at 22-23 and Order No. 29140 at 35-36, *quoting* Proposed Order at 11-12.

Fourth, PageData's argument that it is entitled to a recovery of all its payments (even without the additional $14,926) is a re-argument beyond the scope of the issues on remand. As both the Hearing Examiner and the Commission found below: "it was reasonable and appropriate to exclude from the calculation of the credits those Qwest charges for non-paging services and facilities." Order No. 29140 at 33; Order No. 29064 at 23; Proposed Order at 3. We found in Order No. 29064, PageData (and its predecessor InterPage) provided one-way paging, long-distance services, signal traffic, e-mails, data, two-way mobile service, private line service, 800 service, and plain old telephone service (POTS). Tr. at 148, 199, 352, 499-500. Mr. McNeal also testified that all his traffic, paging and non-paging alike, travels over the same facilities "that's available to us at no charge." Tr. at 199. There is no compelling reason to alter this previous finding.

At this juncture, a review of PageData and InterPage's networks would be helpful. Mr. McNeal of PageData purchased InterPage in June 1998. Tr. at 150, 208. At the time, InterPage and PageData had five points of interconnection (POIs): Idaho Falls, Pocatello, Twin Falls, Meridian, and Boise. Tr. at 164; Pagers Exh. 111 at p. 10. As Mr. McNeal testified at the evidentiary hearing, he attempted on or about September 1, 1998, to take advantage of the Telecommunications Act's single POI entitlement (47 U.S.C. § 251(c)(2)(B)) and the FCC's regulation 51.703(b) that prohibits Qwest from charging for delivery of its traffic to the pagers. Tr. at 504; Pagers Exhibit 111 at p. 10. What appears undisputed is that for the first 22 months of the 34-month refund period (Order No. 29140 at 5), PageData/InterPage had at least four (if not five) POIs scattered throughout Qwest's southern Idaho service area. Pursuant to FCC regulation 51.703(b), facilities transporting Qwest local traffic to these POIs should have been without charge to the Pagers. However, charges for facilities used by PageData/InterPage to connect parts of their networks on the paging side of the POIs (such as connecting the multiple POIs together), are costs appropriately borne by the Pagers. *Qwest Corporation v. FCC*, 252 F.3d 462, 468 (D.C. Cir. 2001).

Mr. McNeal testified that InterPage leased lines connecting its paging terminals (i.e., the POIs) to Boise. Tr. at 164, 195. He stated that "there was a lease line that went from Idaho Falls to Pocatello, from Pocatello to Twin Falls, from Twin Falls into Boise, and so if you made a phone call into . . . Idaho Falls, then it would travel along that network back to Boise." Tr. at 195. PageData's August 29, 1998 letter to Qwest explains that the pager's "network sends TMPP packets between the paging terminals." Exh. 111 at p. 10. In other words, for at least 22 months, the Qwest facilities that transported traffic among the POIs was appropriately charged to InterPage. Order No. 29140 at 44.

Taking account of the non-paging services, the inter-POI facilities, the 22 months of the 34-month period with multiple POIs, the majority of the paging payments ($188,473.56) were attributed to InterPage, Qwest's better calculating evidence, and the less weight attributed to Mr. McNeal's explanation of exhibits 109 and 122, we find there is substantial and competent evidence to reject PageData's calculations and adopt Qwest's calculations. Accordingly, we find that PageData/InterPage should receive a total refund credit of $101,794.

In summary, we find Radio Paging is due a refund credit of $57,416, Tel-Car is due a refund credit of $52,783 and PageData is due a refund credit of $101,794 as of July 1, 2004. Given the fact that the parties requested that the remand be continued until August 2, we further find it is appropriate for Qwest to include one additional month of interest up to August 1, 2004.

Because the refunds have been substantially increased from those credits originally calculated by Qwest in July 2002, it is possible that the refund credits might exceed the amounts the Pagers owe Qwest, if any. If the refunds afforded to PageData and Radio Paging exceed the amounts they owe Qwest, then Qwest shall provide them with cash reimbursement within 21 days of the service date of this Order.

One other refund issue remains to be addressed. When the Commission issued its initial Credit Order No. 29064 in July 2002, we were unaware that Tel-Car was in bankruptcy. It was not until the Pagers filed their Petition for Reconsideration in August 2002 that we were advised that Tel-Car became a Chapter 7 debtor effective in January 2002. R. at 848. Given this circumstance, Qwest suggested in its credit notice of November 29, 2002 that "any credit due Tel-Car in this case is due, if at all, to the bankruptcy estate of Tel-Car, Inc." R. at 926. Qwest concluded that disposition of any credit or refund owed to Tel-Car "is properly a matter for the Bankruptcy Court." *Id.* We agree. Consequently, we find that it is appropriate for Qwest to

tender any refund that is due to Tel-Car's estate to the Bankruptcy Court subject to any right of set-off that the Court may order. We believe that the Bankruptcy Court is the appropriate forum to determine whether Qwest has any right to set-off.

CONCLUSION

The Commission finds on remand that the Pagers are entitled to additional refunds or credits for transit traffic and wide area calling arrangements. The Commission further finds that there is substantial and competent evidence to support its findings regarding the continued exclusion of non-paging services and the calculations of the appropriate refunds/credits for each Pager. Consequently, the Commission amends its Order Nos. 29064 and 29140 to conform to the decisions reached in this Order regarding transit traffic and wide area calling.

ORDER

IT IS HEREBY ORDERED that the Commission grants in part and denies in part the Pagers' requests for additional compensation. The Commission's Order Nos. 29064 and 29140 are amended to reflect the changes contained in this Order regarding transit traffic and wide area calling. *See Idaho Code* § 61-624. As of July 1, 2004, Radio Paging is due a refund of $57,416 and PageData is due a refund of $101,794.

IT IS FURTHER ORDERED that Qwest's Motion to Strike is granted in part and denied in part.

IT IS FURTHER ORDERED that Qwest recalculate the refund amounts due the three Pagers to reflect the one-month of additional interest from July 1 to August 1, 2004. Qwest shall file this updated credit information with the Commission and the Pagers within 10 days from the service date of this Order.

IT IS FURTHER ORDERED that Qwest issue the respective additional billing credits and/or refunds to PageData and Radio Paging no later than 21 days from the service date of this Order.

IT IS FURTHER ORDERED that Qwest issue the $52,783 refund to the bankruptcy estate of Tel-Car, Inc. (plus one additional month of interest) and shall file said refund with the appropriate Bankruptcy Court within 21 days from the service date of this Order.

THIS IS A FINAL ORDER ON REMAND. Any party aggrieved by this Order may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 2nd day of August 2004.

PAUL KJELLANDER, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

Commissioner Hansen Out of the Office
DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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