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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT)
PETITION OF ROBERTY RYDER, d/b/a)
RADIO PAGING SERVICE, JOSEPH B.)
MCNEAL, d/b/a PAGEDATA AND)
INTERPAGE OF IDAHO, AND)
TEL-CAR, INC., FOR A DECLARATORY)
ORDER AND RECOVERY OF)
OVERCHARGES FROM U.S. WEST)
COMMUNICATIONS, INC.)

Case No. USW-T-99-24

BRIEF IN SUPPORT OF
MOTION FOR ALTERA-
TION OF COMMISSION
ORDER NOS. 28626 AND
29603

ROBERT RYDER, d/b/a RADIO)
PAGING SERVICE, et al.,)

Supreme Court Docket No.
29175

Petitioners/Appellants,)

vs.)

IDAHO PUBLIC UTILITIES COMMISSION,)

Respondent on Appeal)

and)

QWEST CORPORATION,)

Respondent/Respondent on Appeal.)

I. INTRODUCTION

On September 6, 2005, the Idaho Supreme Court issued 2005 Opinion No. 99 in the above-captioned matter. Remittitur was issued on September 28, 2005. No party to the appeal petitioned for rehearing pursuant to Rule 42, Idaho Appellate Rules.

Consequently, pursuant to Rule 38(b), I.A.R., the Supreme Court's Opinion became final on September 27, 2005, twenty-one (21) days after announcement of the Opinion.

As the Commission is acutely aware, this has been an arduous and complex proceeding. The matter has finally come to a resolution. The Supreme Court has ruled on all issues on appeal and affirmed the Commission in every respect with the exception of the interest rate. Though there were numerous orders issued by the Commission in this case, some that were altered through reconsideration, others because of changes in telecommunications law and still others because of new evidence, the Pagers submit that it is necessary to alter only two orders to satisfy the Supreme Court's ruling.

Order No. 28626 was cited by the Court as the order in which the Commission adopted a 6%, rather than 12%, interest rate. *See, Opinion at p. 18.* Order No. 29603 is the order in which the Commission calculated the amount of refunds due the Pagers. If those two orders are amended, and the refund recalculated at 12% interest, then this matter is concluded.

II. ARGUMENT

The Court agreed with the Pagers that this Commission erred in its selection of 6% per annum, as opposed to 12% per annum, in calculating the refund owed by QWEST to the Pagers. The Court affirmed the Commission, however, on all other aspects subject to the appeal, including: 1) the calculation of refunds due the Pagers; 2) that the Pagers are entitled to a reimbursement of transit traffic, and; 3) that the Commission was correct when it ordered QWEST to reimburse the Pagers in the form of a refund, rather than a billing or other type of credit.

Lest there be any doubt as to the foregoing, the Opinion's Conclusion, found on page 22 of the Court's Opinion, states:

The decision of the Commission is affirmed except as to the interest rate applied to the amount owed the Pagers. The case is remanded

for recalculation of interest. The parties have both prevailed and lost on issues asserted. No costs or attorney fees are awarded.

Emphasis added.

Specifically, the section discussing the refund due PageData starts with the heading: “A. The Commission properly determined PageData’s refund.” *Opinion at p. 10.* The Court concluded that section holding: “The Commission’s findings are supported by substantial, competent evidence. The Commission’s decision not to award further reimbursement is affirmed.” *Opinion at p. 13.*

Regarding Tel-Car’s refund, the Court held that the evidence before the Commission: “necessitates upholding the Commission’s findings that Tel-Car is not entitled to these additional reimbursements.” *Opinion at p. 16.*

With respect to QWEST’s appeal of the Commission’s decision on transit traffic, the Court held: “The Commission’s decision ordering QWEST to refund the transit traffic costs is affirmed. The Commission regularly pursued its authority in accordance with federal law and the facts show that QWEST did not possess the calling data to supply the Pagers.” *Opinion at p. 18.*

Finally, with respect to the issue of billing credit versus refund, the Court held that: “The decision of the Commission is neither arbitrary nor capricious.” *Opinion at p. 22.* Regarding this issue, the Court pointed out that the Commission ordered a cash refund if the Pagers’ alleged payment arrearages were less than the refunds owed by QWEST. The Court recognized that QWEST had not supplied the arrearage data ordered by the Commission. Consequently, the Commission argued on appeal that a cash refund was appropriate. By holding that the Commission acted neither arbitrarily nor capriciously, the Court clearly affirmed the Commission on this issue and the Court

recognized that the balances owed by QWEST, as calculated by the Commission, already include any alleged and proven arrearages.

III. EFFECT OF COURT'S RULING

Idaho Code Section 61-629 sets forth the "extent of review" that Commission orders are subject to on appeal. That statute also limits the Idaho Supreme Court to either affirming Commission orders, or setting them aside. This is, essentially, the same standard by which district courts review other state agency actions on review under the Idaho Administrative Procedures Act. *See*, Idaho Code Section 67-5279.

Specifically, Section 61-629 provides, in part:

Upon the hearing the Supreme Court shall enter judgment, either affirming or setting aside or setting aside in part the order of the commission. In case the order of the commission is set aside or set aside in part, the commission, upon its own motion or upon motion of any of the parties, may alter or amend the order appealed from to meet the objections of the court....

The statute states that in altering or amending its order, the Commission should rely upon Idaho Code Section 61-629, the statute governing the process by which the Commission alters or amends any order, whether appealed or not. That statute, in turn, simply states that the Commission shall notify the public utility in question and, in the case of complaints, provide the utility an opportunity to be heard. There is no complaint filed in this case to alter or amend a final Commission order because that, of course, was the purpose of the appeal.

The Supreme Court has unequivocally affirmed the Commission in every respect except one, the interest calculation. The Pagers respectfully submit that the recalculation of interest is something that can be accomplished literally in several minutes using a basic

calculator. Consequently, there is no need for rehearing. There is no right by any party to introduce new evidence. There is no need for a comment period. In short, this lengthy and exhaustive litigation has come to an end.

IV. CONCLUSION

QWEST is well aware of the Supreme Court's ruling and, by service of this motion, has been put on notice of the Pagers' request for alteration of Order No. 28626. The Pagers move the Commission for order with the refund recalculated at 12%, rather than 6%, and the requirement that QWEST pay the resulting amount to the Pagers within fourteen (14) days from the date of that order.

RESPECTFULLY SUBMITTED, this 3rd day of October, 2005.


Brad M. Purdy

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of October, 2005, I caused to be served the foregoing PETITIONERS/APPELLANTS BRIEF IN SUPPORT OF MOTION FOR ALTERATION OF ORDER NOS. 29626 AND 29603 on the following, by U.S. mail, postage prepaid, in Case No. USW-T-99-24.

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