

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

ROBERT RYDER DBA RADIO PAGING)	
SERVICE, JOSEPH B. McNEAL DBA)	SUPREME COURT
PAGEDATA AND INTERPAGE OF IDAHO,)	DOCKET NO. 29175
AND TEL-CAR, INC.)	
)	
Petitioners/Appellants/Cross-Respondents,)	
)	
v.)	
)	
IDAHO PUBLIC UTILITIES COMMISSION,)	IPUC CASE NO. USW-T-99-24
)	
Respondent on Appeal/Cross-Respondent,)	
)	
and)	
)	
QWEST CORPORATION,)	
)	
Respondent/Respondent on Appeal/Cross-)	ORDER NO. 29666
Appellant.)	
)	

On October 5, 2004, the Commission issued its final Reconsideration Order No. 29603 following the Idaho Supreme Court's temporary remand of this matter to the Commission. In Order No. 29603, the Commission determined that the Petitioners (hereinafter referred to as "the Pagers") were entitled to additional refunds from Qwest Corporation. As the Commission observed in its Order, it appeared that based upon Qwest's earlier calculations, the refunds owed the Pagers may exceed any arrearages they may owe Qwest. Consequently, the Commission directed "Qwest to provide up-to-date calculations to confirm [whether] the refunds apportioned to each Pager . . . exceed the amounts the Pagers owe Qwest." Order No. 29603 at 19 (emphasis added). The Commission continued that if the "Pagers' refunds exceed the amounts they owe Qwest, then Qwest shall issue cash reimbursements for the balances to PageData, Radio Paging and Tel-Car's estate[.]" *Id.*

On October 15, 2004, Qwest Corporation submitted its "calculations" in response to Order No. 29603. Rather than provide detailed calculations, Qwest asserted that both PageData and Radio Paging owe Qwest in excess of \$200,000 and \$20,000, respectively. Qwest

Calculations at 9. Qwest also posed several questions and requested that the Commission “look at this issue [of calculating refunds] once more.” *Id.* at 10.

PROCEDURAL BACKGROUND

After Qwest filed its calculations, the Pagers filed a Motion to Strike Qwest’s Calculations on November 12, 2004. The Pagers assert that Qwest’s calculations “are in defiance of the Commission’s order” because Qwest has not issued cash refunds as directed by the Commission. Motion to Strike at 2. The Pagers characterized Qwest’s calculations as a means to “re-argue its case and to attempt to assess bogus charges” against the Pagers. *Id.* The Pagers argue that if they owe something to Qwest for services provided either before or after their interconnection agreements with Qwest, the Pagers should be allowed an opportunity to refute any such claims. The Pagers conclude that the “only way to get out of the quagmire and to provide the clarity desired by all parties” is to strike Qwest’s calculations, order Qwest to pay cash reimbursements in the amounts designated by the Commission, and “to provide that any claims Qwest may have against the Pagers be determined in other proceedings.” *Id.* at 5-6.

On December 10, 2004, the bankruptcy estate of Tel-Car and Qwest filed a “Stipulation for Settlement and Dismissal” of Tel-Car’s claims. Under their Settlement, Qwest agreed to pay Tel-Car a total of \$65,000 in full and final settlement, and in return shall receive a credit of \$20,000 in settlement for all claims against Tel-Car including pre-petition and post-petition claims. Once the settlement is approved by the Bankruptcy Court, Qwest shall remit the net sum of \$45,000 to Tel-Car’s Trustee and the parties will stipulate to the dismissal of Tel-Car’s appeal. Stipulation at ¶ 4.

On December 15, 2004, the Pagers filed a Motion to Compel with the Commission. The Pagers ask the Commission to order Qwest to immediately pay the sum of \$57,467 to Radio Paging and \$96,943 to PageData. These sums are the refund amounts calculated by the Commission in Order No. 29603.

On December 16, 2004, the Pagers filed a Motion for Extension with the Idaho Supreme Court. The Pagers requested that the Court approve an extension of time to file their Reply/Cross Respondents Brief until December 30, 2004. In his affidavit accompanying the Motion, counsel for the Pagers noted that they have requested the Commission to address the refund issue once again. The Pagers suggested that a short extension may allow the remaining

parties to the appeal (PageData and Radio Paging) to settle their dispute. The Court granted the Pagers' Motion for Extension on the day it was filed.

DISCUSSION

Contrary to our directions in Order No. 29603, Qwest's calculations submitted on October 15 did not explicitly "confirm" the Commission's calculation of refunds. Instead, Qwest asserted PageData owes Qwest in excess of \$200,000 and Radio Paging owes Qwest approximately \$20,000. Qwest argued its Exhibits 201 and 202 support its belief that the two Pagers owe Qwest amounts that exceed "the credits that would later be granted." Qwest Calculations at 9. Qwest did not provide detailed calculations regarding any arrearages that the Pagers owe Qwest. Thus, we find Qwest's "calculations" to be non-responsive to our directive in Order No. 29603. We are unable to fully address Qwest's argument that the Pagers' arrearages exceed the refunds owed to the Pagers.

As set out above, both Qwest and the two remaining Pagers request that the Commission once again take-up the issue of refunds. In an attempt to resolve this question, we shall layout some parameters for the parties and direct that they meet once again to exchange data and attempt to settle their differences.

First, Qwest asks in its calculations at what point in time should "debits and credits" be compared to determine whether the Pagers owed Qwest. Consistent with our previous Orders, the Commission believes that refunds and arrearages should generally pertain to the undisputed refund periods identified for PageData and Radio Paging. The refund period for PageData is November 1, 1996 to September 10, 1999, and November 1, 1996 to May 13, 1999 for Radio Paging. The end of the refund periods in 1999 corresponds to the dates that the Commission approved the respective interconnection agreements between the parties.

The Commission has consistently maintained throughout this proceeding that the refunds and any arrearages should end on the effective dates of the interconnection agreements set out above. In the Liability Phase of this case, the Pagers sought to extend the refund periods past the effective dates of their respective interconnection agreements. In Order No. 28626, the Commission found that such a request was inappropriate for several reasons. First, we found that the requested expansion exceeded the scope of the Pagers' Complaint. Order No. 28626 at 4. In addition, the Commission observed that each interconnection agreement contained a provision addressing dispute resolution. Order No. 28626 at 5. The Commission found that

neither PageData nor Radio Paging had attempted to exercise their options under these dispute resolution provisions. Consequently, the Commission concluded that it was “much too late for the Pagers to expand the scope of the refund period to include their interconnection agreements.” *Id.*

For its part, Qwest also objected to expansion of the refund periods to include the interconnection agreements. Qwest acknowledged that the interconnection agreements have their own dispute resolution mechanisms and it asserted that the Commission has no “jurisdiction over those matters [even] if it wanted to.” R. at 178. Qwest conceded that “[c]harges under the interconnection agreements are not at issue in this proceeding.” *Id.* Thus, it is clear that refunds and any arrearages arising after the effective dates of the interconnection agreements are beyond the scope this proceeding.

Qwest next asks what services should be included in determining whether the Pagers have a positive or negative balance. Qwest did not elaborate further. Without addressing the merits of which services may be included in the alleged arrearages, we believe that Qwest should identify all arrearages owed by the Pagers by type of service. Qwest should provide detailed calculations pertaining to what services are the subjects of any claimed arrearages. Qwest should also restate the data contained in the Table on page 9 of its calculations if such information is relevant to the refund issue.¹

We order the parties to meet with our counsel in another settlement conference to address the issues of refunds and arrearages. Prior to the expedited settlement conference, Qwest should provide the Pagers and the Commission’s counsel with detailed evidence regarding paging and non-paging arrearages up to the effective dates on the interconnection agreements. For both paging and non-paging services, Qwest should identify with particularity the types of services in arrears. The amounts allegedly owed by PageData and by InterPage shall also be separately identified.

To facilitate settlement, the Commission directs that parties’ representatives attending the meeting have authority to settle these disputes or that such individuals participate in the settlement conference via teleconference.

¹ Qwest’s question about “reversing” the billing credits should be addressed by the parties after they have examined Qwest’s data.

ORDER

IT IS HEREBY ORDERED that Qwest submit new calculations showing debits and credits (e.g., refunds and arrearages) as set out in greater detail above.

IT IS FURTHER ORDERED that the parties meet to exchange refund information and attempt to settle this matter. Each party shall be represented by persons with authority to authorize settlement of the dispute either in person or via teleconference. Counsel for Qwest and the Pagers shall contact Deputy Attorney General Howell to arrange a mutually agreed meeting time as soon as possible.

IT IS FURTHER ORDERED that the Commission Secretary shall serve this Order via electronic mail or facsimile to expedite the service of this Order.

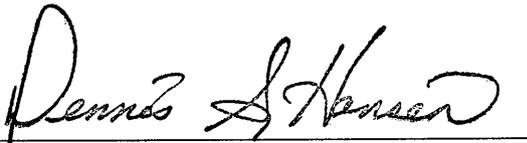
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 21st day of December 2004.



PAUL KJELLANDER, PRESIDENT

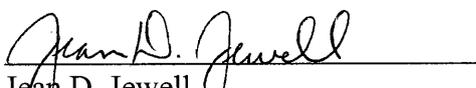


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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