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UTILITIES COMMISSION

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Attorneys for
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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF PAGEDATA'S) Case No. GNR-T-04-05
PETITION FOR ARBITRATION OF)
INTERCONNECTION RATES, TERMS AND)
CONDITIONS AND RELATED) RESPONSE AND
ARRANGEMENTS WITH QWEST) MOTION TO DISMISS
CORPORATION PURSUANT TO SECTION) PETITIONS FOR
252(B) OF THE FEDERAL) ARBITRATION
TELECOMMUNICATIONS ACT.)

IN THE MATTER OF WAVESENT'S) Case No. GNR-T-04-06
PETITION FOR ARBITRATION OF)
INTERCONNECTION RATES, TERMS AND)
CONDITIONS AND RELATED)
ARRANGEMENTS WITH QWEST)
CORPORATION PURSUANT TO SECTION)
252(B) OF THE FEDERAL)
TELECOMMUNICATIONS ACT.)

Qwest Corporation ("Qwest") hereby (1) responds to the Petitions for Arbitration filed by Joseph McNeal d/b/a PageData and WaveSent, LLC (the "Pagers") and, (2) moves the Commission to dismiss the Petitions, for the reasons set forth below.

ORIGINAL

I. INTRODUCTION AND BACKGROUND

Petitions for Arbitration. On March 23, 2004, PageData filed a Petition for Arbitration of interconnection agreement terms and conditions with Qwest pursuant to Section 252(b) of the 1996 Act, and WaveSent filed a nearly identical Petition two days later.¹ The Pagers filed their Petitions for Arbitration even though they had only requested negotiations a few days earlier, and despite the fact that no negotiations whatsoever had yet taken place. In their Petitions, the Pagers also requested the Commission's "arbitration" of requests to adopt contract language from other agreements.

Order No. 29463. On April 2, 2004, the Commission consolidated the cases and issued a procedural order.² The Commission (1) ordered the Pagers to provide a citation to any case which purports to allow the Commission to entertain arbitration petitions filed prior to the 135th day after a request for negotiations, and (2) ordered Qwest to file its response to the petitions, separately addressing the Pagers' unresolved arbitration issues and those terms the Pagers desired to adopt under Section 252(i) of the Act.³

Amendment to Petition. The Pagers did not provide a citation of law to support their attempts to invoke the Commission's jurisdiction prior to the 135th day as required by Order No. 29463. Instead, on April 12, 2004, the Pagers filed a joint document entitled "Amendment to Petition" in which they requested that the Commission first

¹ Petition of Joseph B. McNeal, d/b/a PageData filed a Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Qwest Corporation Pursuant to Section 252(b), filed March 23, 2004; Petition of WaveSent, LLC for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Qwest Corporation Pursuant to Section 252(b), filed March 25, 2004. Mr. McNeal acts as "Attorney Pro Se" for both Pagers.

² Order 29463, issued April 2, 2004.

³ *Id.* at 4.

decide a dispute under their existing interconnection agreements with Qwest before proceeding to consider the Arbitration Petitions.⁴ The Amendment stated:

4. WaveSent and PageData seek to amend the Petition to request that the Commission first make a ruling on the current interconnection agreement and whether WaveSent and PageData's position is correct or whether Qwest's position is correct, and then if necessary proceed with the 252(i) and 252(b) requests. . . .

5. WaveSent and PageData seek arbitration under Sections 252(i) and 252(b) if the Commission determines that WaveSent and PageData's interpretation of Section 2.4 of the interconnection agreements is in error and accepts Qwest's interpretation of Section 2.4.⁵

In the Amendment, unlike the Petition, the Pagers appear to ask the Commission to resolve a dispute under their current agreement, rather than to decide unresolved interconnection issues for a new agreement. The Amendment seeks resolution of a dispute whether the Pagers may, under their current agreements, use paging interconnection facilities and services to terminate Internet/enhanced services traffic, including:

- whether the Pagers are entitled to route traffic for termination to Internet Service Providers (ISPs) over paging facilities;
- whether Qwest must provide free facilities for transporting such ISP-bound traffic
- whether ISP-bound traffic is subject to reciprocal compensation.⁶

Thus the Commission is asked to decide:

. . . whether Qwest's interpretation of the current interconnection agreements is correct, which necessitates WaveSent and PageData's taking advantage of the Commission's Order No. 29140 allowing for the adoption of the terms and conditions from the Verizon agreement under 252(i). WaveSent and PageData seek the Commission to adopt the proposed interconnection agreement (provided as Exhibit F) that incorporates the 252(i) adoptions, without changes. WaveSent and PageData would seek an instant and retroactive adoption of the Verizon ISP-Bound traffic amendment per attachment A of the amendment; as well as including the

⁴ WaveSent and PageData's Amendment to Petition, filed April 12, 2004.

⁵ Amendment, ¶¶ 4-5.

⁶ *Id.*, ¶¶ 6-15.

Commission ruling on incorporating the flat rate 6000 MOU of local paging traffic into Sections 2.2.1 and 3 of the amendment; dispute resolution clause, and ASR ordering process terms and conditions under 252(i), the Commission ruling on whether continuous paging is local paging, and possible 252(b) negotiations.⁷

The Pagers' confusing amalgam of requests for dispute resolution, arbitration under the Act, and "pick-and-choose" issues, leaves the parties and the Commission in an unusual and confusing situation. If, and only if, the Commission rules against the Pagers on the dispute under the current agreements, then the Pagers apparently would return to the arbitration or 252(i) process – however, not with the proposed agreement, contract language, and list of issues set forth in the Petitions. The Pagers provided new, different proposed agreements and contract language in the Amendment, and appear to have abandoned the original advocacy set out in the Petitions – at least to the extent they attached to the Amendment a new proposed agreement and other language from various interconnection agreements to be adopted with "instant and retroactive" effectiveness⁸.

Order No. 29477. On April 16, 2004, the Commission issued its Order acknowledging the Pagers' Amendment and extending the time for Qwest's "consolidated response to the two petitions and the recent Amendment."⁹

Motion for Expeditious Substantive Relief. An April 19, 2004, PageData filed a "Motion for Expeditious Substantive Relief" in the consolidated dockets. PageData requested the Commission to order Qwest to provision certain facilities.

Qwest's Response to Motion for Expeditious Substantive Relief. On May 3, 2004, Qwest filed its response to PageData's Motion for Expeditious Substantive

⁷ Amendment, pp. 13-14.

⁸ Amendment, ¶¶ 11, 17.

⁹ Order 29477, issued April 2, 2004, p. 2.

Relief.¹⁰ Qwest set forth a history of the dispute and attached relevant correspondence and other documents to its response. Qwest hereby incorporates that response and its attachments by reference.

Negotiations of the Parties. On May 7, 2004, the parties held their first negotiating session. Since then the parties have held several productive sessions, and have made significant progress toward a new interconnection agreement that would resolve the issues raised in the Petitions and the Amendment. Qwest is hopeful that as negotiations proceed, in the manner Congress intended under the Act, the issues between the parties can be resolved or at least substantially narrowed, before the Commission is called upon to decide them.¹¹

Qwest Provision of Facilities. After negotiations began on May 7, and the parties began actually working through the issues, Qwest provided most of the facilities that PageData sought in its Motion for Expeditious Substantive Relief. Qwest believes PageData's motion is now moot.

RESPONSE TO ARBITRATION PETITIONS AND AMENDMENT

The Commission ordered Qwest to respond separately to the negotiation/arbitration issues raised by the Petitions, and the pick-and-choose issues stated in the Petitions.

As Qwest explains below in its Motion to Dismiss, the Pagers are required to negotiate any changes to the existing interconnection agreement, whether they seek entirely new agreements or modification of their existing agreements. Their attempts to pick-and-choose portions of agreements are ineffective because they are currently bound

¹⁰ Qwest Corporation's Response to PageData's Motion for Expeditious Substantive Relief, filed May 3, 2004.

¹¹ Wayne Hart of the Commission's Staff has assisted the parties in these negotiations. Qwest is grateful for Mr. Hart's participation, and believes this has been an important factor in moving the parties toward resolution of the issues.

by agreements to which they previously chose to opt in. Accordingly, the Commission should not entertain the Petitions, but should let the negotiation process go forward.

Qwest notes also that until the parties sat down at the negotiating table well after the Pagers had filed their Petitions for Arbitration, the areas of dispute were not at all clear. This was demonstrated by (1) the Pagers' change of advocacy and strategy in the Amendment to Petition, (2) the Pagers' inclusion of new descriptions of issues and proposed language in the Amendment. Qwest refers the Commission to correspondence attached to Qwest's recent response to PageData's Motion for Expeditious Substantive Relief. A review of that correspondence shows nearly all of the issues raised in the Petitions were raised for the first time in the Petitions themselves. Moreover, many of the issues raised in the Petitions appear to Qwest to have now been resolved in negotiations, or to have become irrelevant to the current negotiation template on which the parties are now focused. For these reasons, and because the Pagers' attempt to invoke the Commission's jurisdiction was premature, Qwest is simply not able at this time to identify issues from the original Petitions that remain both unresolved and pertinent to the current negotiations draft agreement – much less formulate a response on those issues.

SEPARATE RESPONSE REGARDING 252(i) ISSUES

Order No. 29463 provided that Qwest should respond separately to the Pagers' requests for adoption of terms and conditions under 47 U.S.C. § 252(i). The situation here is even more confused. Qwest refers the Commission to correspondence between the parties, attached to Qwest's Response to Motion for Expeditious Substantive Relief, which shows that, even before they filed the Petitions, the Pagers were unclear or uncertain as to what interconnection agreement – or terms and conditions from multiple approved interconnection agreements – they sought to adopt.

The Petitions and Amendment have only further added to this muddle. For example, in their Amendment, the Pagers seem to have jettisoned their adoption attempts

described in the Petitions, proposing instead the adoption of an entirely new agreement, Exhibit F to the Amendment.

In none of these articulations of what they seek to pick and choose do the Pagers seek the adoption of another carrier's interconnection agreement that has been previously approved by the Commission. Exhibit F to the Amendment appears to be an amalgam of terms and conditions the Pagers deem favorable; they are from a number of other interconnection agreements.

Likewise, the Pagers seem to be of the mistaken view that they can adopt terms that they modify to their own needs as they see fit, or that they can adopt a provision as a starting point and seek further modification of it through the negotiation/ arbitration process. They state:

[t]hen the disputes listed in the Matrices of Unresolved Issues (Exhibits B of the original Petitions) would remain under 252(i) and need to be arbitrated by the Commission with the exception of items numbered 1, 3, 4, 13, 20, 21, 22, and 23 from WaveSent's Matrix and items numbered 1, 2, 4, 5, 14, 22, 23, and 24 from PageData's Matrix. These items would remain under 252(b) negotiations, if necessary.¹²

This "pick and change" methodology is simply different than what the law contemplates. A party adopting an agreement is bound by the terms of that agreement – it cannot pick a phrase here, another there, and then seek modification of the whole to provide an advantageous interconnection agreement.

Qwest also notes that the Pagers claim they would adopt provisions that, on their adoption, are instant and retroactive.¹³ There is no legal authority for a retroactive adoption. By its nature, 252(i) operates prospectively.

Accordingly, Qwest is uncertain as to the extent the Pagers are legitimately attempting to invoke Section 252(i), and is not able to formulate a separate response on

¹² Amendment ¶ 12.

¹³ Amendment, ¶¶ 11, 17.

these issues. As with Qwest's response above regarding the 252(b) arbitration issues, Qwest believes that the issues are currently irrelevant because of the intervening progress of negotiations.

Below, in Qwest's motion to dismiss, Qwest argues that the pick-and-choose provisions of Section 252(i) are not applicable to the present situation because the Pagers may not modify their existing agreements by adopting inconsistent terms and conditions.

MOTION TO DISMISS

Qwest Corporation moves to the Commission to dismiss the Petitions for Arbitration filed by Joseph McNeal d/b/a/ PageData and WaveSent, LLC.

Qwest's Motion to Dismiss the Petitions for Arbitration is based on the following:

- 1. The Pagers Must Follow Contractual Procedures to Modify their Existing Agreements or to Negotiate New Interconnection Agreements.** The Pagers' current Agreements provide specific time periods and procedures for modification or renegotiation which the Pagers have ignored. Because Pagers have not followed their contracts, the Commission should dismiss their Petitions.
- 2. Petitions for Arbitration May Not be Filed Before the 135th Day after a Request for Negotiations.** Because the Pagers have not complied with the Act's strict time requirements, the Commission should dismiss the Petitions for Arbitration.
- 3. Response to Pagers' Allegations of Bad Faith.** There is no law to support elimination of the statutory time requirements based on a claim of bad faith; nevertheless, the Pagers' claims of bad faith are not well taken, and Qwest responds thereto.

ARGUMENT

- 1. The Pagers Must Follow Contractual Procedures to Modify their Existing Agreements or to Negotiate New Interconnection Agreements**

Whether Pagers seek to negotiate new interconnection agreements, or to amend their existing interconnection agreements to incorporate provisions from other carriers' agreements with Qwest, they must follow the procedures in their existing contracts.

Both Pagers adopted the Type 1 and Type 2 Paging Interconnection Agreement between Qwest and Arch Paging - “the Arch Agreement”¹⁴ – and both Pagers are currently bound by the terms and conditions of those adopted Agreements.¹⁵ Pagers’ current Agreements provide specific time periods and procedures for modification or renegotiation which the Pagers have ignored. Section 11.4.2 of the Agreements provides:

11.4.2 Voluntary Termination. The Agreement may be terminated upon 160 days’ advance written notice at any time after August 11, 2001. The Parties agree that any such notification of termination shall be deemed a formal request under Sections 251 and 252 of the Act for negotiation of an interconnection agreement. During the termination notice period, the Parties shall negotiate in good faith to reach a revised agreement. If no such agreement is reached, the Agreement will terminate on the 161st day after notice, unless either party has requested arbitration pursuant to Section 252(b)(1) of the Act, in which case the Agreement will continue in force and effect until a successor agreement has been approved by the Commission.

These time periods coincide with those established under Section 252 of the Act.

The contractual terms of the Pagers’ existing Agreements have expired, and the contracts have gone into “evergreen” status. Accordingly, under the language of Section 11.4.2 above, either party is now entitled to send a termination notice and thus request negotiation of a new interconnection agreement. Until a party provides the notice

¹⁴ Type 1 and Type 2 Paging Interconnection Agreement between U S WEST Communications, Inc., and Arch Paging, Inc./ Mobile Communications Corporation of America, filed with the IPUC on July 13, 2000 (hereinafter as “Arch Agreement”). See *In the Matter of the Joint Application of Qwest Corporation FKA U S WEST Communications, Inc. Arch Paging, Inc. and Mobile Communications Corporation of America for Approval of a Type 1 and Type 2 Interconnection Agreement Pursuant to 47 U.S.C. § 252(e)*, Case No. USW-T-00-20. The Commission approved the Arch Agreement on September 1, 2000. *Id.*, Order No. 28499.

¹⁵ The Commission approved PageData’s and WaveSent’s adoptions of the Arch Agreement on February 25, 2003. 2003. See *In the Matter of the Joint Application of Qwest Corporation and Joseph B. McNeal dba PageData for Approval of a Paging Connection Agreement Pursuant to 47 U.S.C. § 252(i)*, Case No. QWE-T-03-6, Order No. 29198; *In the Matter of the Joint Application of Qwest Corporation and WaveSent, LLC for Approval of a Paging Connection Agreement Pursuant to 47 U.S.C. § 252(i)*, Case No. QWE-T-03-_, Order No. 29198.

contemplated in Section 11.4.2, however, the contract remains in effect. The notice starts a 160-day clock, at the end of which the Agreement terminates. Prior to that time, however, both parties remain bound by the existing interconnection Agreement. Qwest is willing to treat the Pagers' requests for negotiations as the termination notices required by Section 11.4.2 of the Agreement, but until the 160-day clock expires, the parties remain bound by the Agreements as written.

The Pagers are bound by the existing contract provisions, whether they seek to negotiate new agreements, amendments to the existing agreements, or whether they purport to incorporate new provisions into the existing agreements pursuant to Section 252(i).¹⁶ In fact, they are not entitled under Section 252(i) to adopt provisions that would modify their existing agreements. The FCC established these principles clearly in its May 4, 2004 reconsideration decision in *Core Communications v. SBC Communications, Inc.*,¹⁷ a copy of which is attached to this Response/Motion to Dismiss. In that case, complainant Z-Tel Communications had opted into interconnection agreements with Pacific Bell Telephone Company. The agreements did not provide shared transport for intraLATA toll calls. Z-Tel, like the Pagers here, sought to modify its existing interconnection agreement by amending the language to provide shared transport – a duty which all agreed was required by the FCC's rules.

¹⁶ See, e.g., *In re Petition of Supra Telecommunications for Generic Proceedings to Arbitrate Terms and Conditions of Interconnection with BellSouth*, Florida Public Service Commission, 1990 Fla. PUC LEXIS 632, Order Granting Motion to Dismiss, March 31, 1998:

As for Supra's request for an arbitration proceeding between Supra and BellSouth, we find nothing in the Act authorizing a state commission to conduct an arbitration on matters covered by an agreement that has been approved pursuant to Section 252(e). The Act does not authorize a state commission to alter terms within an approved negotiated agreement or to nullify an approved negotiated agreement.

¹⁷ *CoreComm Communications, Inc., and Z-Tel Communications, Inc., SBC Communications Inc., Southwestern Bell Telephone Company, Pacific Bell Telephone Company, Nevada Bell Telephone Company, The Southern New England Telephone Company, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc.*, FCC 04-106, Order on Reconsideration, released May 4, 2004.

The FCC ruled that Z-Tel could not allege that Pacific Bell had violated the Act, or that the agreement itself violated the Act, because parties negotiating for interconnection under Section 252 are free to choose terms and conditions that are different from terms required by the Act or the FCC's rules.¹⁸ Likewise, Z-Tel could not require Pacific Bell to amend the agreements, nor could Z-Tel attempt to modify the contractual language by invoking Section 252(i). The FCC stated:

[T]he Commission has never held that a requesting carrier may successfully charge an ILEC with violating its section 251(c) obligations when the requesting carrier has, pursuant to section 252(i), opted into an interconnection agreement that excludes the very section 251(c) obligations at issue.¹⁹

The FCC further explained:

Indeed, to so hold under these specific circumstances would undermine the point of these interconnection agreements, which Congress established as the mechanism to implement the duties arising section 251(c). In the present case, Z-Tel opted into a pre-existing Pacific interconnection agreement without first negotiating or arbitrating an amendment to the agreement regarding shared transport. Z-Tel is bound by the Pacific Agreement, and may not now require Pacific to amend its terms. *See Liability Order*, 18 FCC Rcd at 7581-82, ¶ 30 (stressing that any request by Z-Tel to change the Pacific Agreement's terms would have to comply with the agreement's modification or change of law provisions).²⁰

Like Z-Tel, the Pagers voluntarily opted into the Arch Agreements. Just as Z-Tel could not require Pacific to amend the agreements after opting in, the Pagers may not now require Qwest to modify the existing agreements.

Because Pagers are still bound by the existing contracts, the Commission should dismiss their Petitions.

¹⁸ 47 U.S.C § 252(a) and 47 U.S.C § 252(e)

¹⁹ *Id.*, ¶ 10.

²⁰ *Id.* n. 24.

2. Because Pagers Have Not Followed the Strict Time Periods Set Out in the Act, The Commission Should Dismiss the Petitions for Arbitration

Section 252(b)(1) of the Act states:

During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

This section of the Act clearly and unambiguously requires a telecommunications carrier to wait 135 days after the date of a request for negotiation to file a petition for arbitration with a state commission.²¹ According to the Pagers' own pleadings, PageData requested negotiations on March 16, 2004;²² WaveSent's request for negotiations was made on March 18, 2004.²³ Accordingly, the windows for arbitration under Section 252 of the Act open on July 29, 2004 for PageData and July 31, 2004 for WaveSent.

Other state commissions have found the 135-day period for opening the arbitration window is mandatory or jurisdictional; i.e., a party cannot seek arbitration before the window opens. For example, the West Virginia Public Service Commission stated:

The Commission concludes that Sprint's petition for arbitration should be dismissed on the grounds that it was not timely filed under the provisions of TA96. Section 252(b) of that statute deals with interconnection agreements arrived at through compulsory arbitration and provides, in relevant part:

During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request

²¹ 47 U.S.C. § 252(b)(1).

²² PageData Petition ¶ 7, see also Exhibit A, PageData's Petition.

²³ WaveSent Petition ¶ 7

for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issue.

47 U.S.C. § 252(b)(1). The Commission believes that this provision can only be read to require petitions to be filed within the 135-160 day period following the request for interconnection negotiations, despite the fact that the phrase “may petition” is used. A proper reading of the language in this section is that requesting carriers may file a petition for Commission arbitration of an interconnection agreement--they are not required to do so. However, if they wish to request such arbitration, they must file their petition requesting same during the 25-day period specified in 47 U.S.C. § 252(b)(1). This point is made clear by the legislative history of 47 U.S.C. § 252(b)(1). Congress wrote that: “Requests to the State to intervene must be made during the 25 day period that begins 135 days after the local exchange carrier received the negotiation request.” H. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 124, reprinted in 1996 U.S. CODE CONG. & AD. NEWS 135.²⁴

3. Response to Pagers’ Allegations of Bad Faith

The Pagers attempt to circumvent the strict requirements of Section 252(b)(1) by arguing that PageData is not required to comply with the time requirements because Qwest has negotiated in bad faith.²⁵ There is no authority for such a position; in fact, it is more likely that Congress imposed the 135-day negotiation requirement, and the requirement that both carriers negotiate in good faith, to avoid exactly the situation the Commission faces here: a carrier who seeks to use the Act’s processes to its own ends and until recently, without coming to the negotiating table

Qwest does not believe that the parties can – through their behavior or otherwise – modify the jurisdictional time periods set forth in Section 252(b)(1) of

²⁴ *In re Sprint LP Petition for Arbitration with Bell Atlantic*, CASE NO. 98-1493-T-PC, West Virginia Public Service Commission, 1999 *W. Va. PUC LEXIS 6444*, January 29, 1999.

²⁵ See P. 4, ¶ 11 of PageData’s Petition for Arbitration dated March 23, 2004.

the Act. However, Qwest will briefly address Pagers' baseless claims that Qwest has negotiated in bad faith.

As the Commission is well aware, the law concerning paging interconnection is disastrously unclear and self-contradictory. Likewise, the Commission is familiar with the Pagers in this case. They are among the most – if not the most - litigious in the industry. As of the day this motion is written, PageData is pursuing its claims against Qwest before this Commission, at the Idaho Supreme Court and in Federal District Court in at least six actions.

As demonstrated in the documents attached to Qwest's Response to PageData's Motion for Expedient Substantive Relief, Qwest notes that until after the Petitions for Arbitration had been filed there had been no negotiations at all between the parties. Qwest has been encouraged by recent negotiations and is hopeful that they will continue to be productive. Before that, however, Qwest faced claims of "instantaneously effective retroactive amendments" which the Pagers claim they can do without Qwest's agreement, take-it-or-leave-it demands; threats of further RICO lawsuits, accusations that Qwest's management are criminals, demands, and so forth. The Pagers also have a duty to engage in negotiations in good faith.

Because the Petitions for Arbitration were both filed before the 135th day of the time period established by Section 252(b)(1), the Commission should decline to exercise jurisdiction over the Petitions. Accordingly, the Commission should dismiss the Petitions as a matter of law.

CONCLUSION

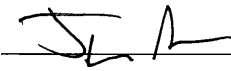
Based on the foregoing, Qwest respectfully requests that the Commission dismiss the Petitions for Arbitration and allow the parties to process with the negotiation process envisioned by Congress in the Telecommunications Act of 1996. The parties are currently making progress in negotiations. Once the parties reach the negotiation period contemplated by the existing interconnection agreements and Section 252 of the Act, any of the parties may seek the Commission's arbitration of unresolved issues. Until then, Qwest is hopeful that negotiations will continue to be fruitful, and is grateful for the Commission's assistance in that regard.

DATED this 18th day of June, 2004.

Respectfully Submitted,

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and

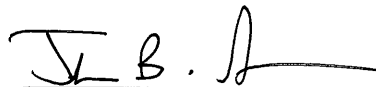
for 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of June, 2004, I served the foregoing upon all parties of record in this proceeding as indicated below.

Jean Jewell Idaho Public Utilities Commission 472 W. Washington Street Boise, ID 83702-5983 (208) 334-0300	<input type="checkbox"/> Certified Mail <input type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile
Joseph McNeal, d/b/a PageData P.O. Box 15509 Boise, ID 83715 (208) 375-9844	<input type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile



William J. Batt

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
CoreComm Communications, Inc., and)	
Z-Tel Communications, Inc.,)	
)	
Complainants,)	
)	File No. EB-01-MD-017
v.)	
)	
SBC Communications Inc.,)	
Southwestern Bell Telephone Company,)	
Pacific Bell Telephone Company,)	
Nevada Bell Telephone Company,)	
The Southern New England Telephone)	
Company,)	
Illinois Bell Telephone Company,)	
Indiana Bell Telephone Company,)	
Michigan Bell Telephone Company,)	
The Ohio Bell Telephone Company, and)	
Wisconsin Bell, Inc.,)	
)	
Defendants.)	

ORDER ON RECONSIDERATION

Adopted: April 28, 2004

Released: May 4, 2004

By the Commission:

I. INTRODUCTION

1. In this Order, we deny the Petition for Reconsideration¹ filed by Z-Tel Communications, Inc. ("Z-Tel") pursuant to section 405 of the Communications Act of 1934, as amended ("Act").² Z-Tel seeks reconsideration of the Commission's *Liability Order*³ insofar as

¹ Petition for Reconsideration, File No. EB-01-MD-017 (filed May 19, 2003) ("Petition").

² 47 U.S.C. § 405.

