

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>MICROSERV COMPUTER TECHNOLOGIES, INC., an Idaho corporation,</b>	)	
	)	<b>CASE NO. USW-T-99-20</b>
<b>Complainant</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>QWEST CORPORATION,</b>	)	
	)	<b>ORDER NO. 28908</b>
<b>Respondent.</b>	)	
	)	

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In August 1999, Microserv Computer Technologies, Inc. (Microserv) filed a complaint against U S WEST Communications, Inc. (hereinafter Qwest).<sup>[1]</sup> In its complaint, Microserv alleged that Qwest had inappropriately sought to terminate telephone service to Microserv. In its Answer, Qwest asserted that Microserv obtained its local telephone service through “subterfuge” and a fraudulent conveyance. Consequently, Qwest maintained that termination was appropriate. Following a period of prolonged but unsuccessful settlement negotiations, the Commission convened an evidentiary hearing in this matter on June 20, 2001. After reviewing the evidentiary record in this matter, the Commission issues its decision as set out in greater detail below.

**BACKGROUND**

In its complaint, Microserv alleged that Qwest had inappropriately sought to terminate telephone service to Microserv. The Commission issued a summons directing Qwest to file an Answer to the complaint. In its timely Answer, Qwest alleged that Microserv purchased most of the assets from and continued doing business at the location of a similarly named company, Microserv Telecomputing, LLC (hereinafter LLC). Although Microserv purportedly purchased the assets of LLC, Qwest stated that LLC’s accumulated debt for telephone service (at the time allegedly \$340,000) was not transferred to the new entity. Qwest Answer at 4-5. Qwest asserted that the two companies are one and the same. *Id.* at 4. Based upon this reasoning, Qwest transferred the unpaid debt of LLC to Microserv. Qwest notified Microserv of its intent to terminate telephone service after Microserv refused to pay the transferred amount.

After the complaint was filed, the parties conducted mutual discovery in January-February 2000. The parties then began protracted negotiations in an attempt to settle the complaint. Following unsuccessful negotiations, the Commission issued Order No. 28682 on March 21, 2001. The Order adopted a discovery schedule and set an evidentiary hearing in this matter. On April 20, 2001, the Commission received oral arguments and ruled on several discovery disputes between the parties. The Commission noted it had jurisdiction over this matter pursuant to *Idaho Code* § 62-616 and IDAPA

31.41.01.000 *et seq.* Order No. 28682 at 3; Summons. Following the discovery hearing, the Commission issued Order Nos. 28721 and 28741 resolving the discovery disputes, issued two subpoenas, and reset the evidentiary hearing.

### **THE EVIDENTIARY HEARING**

The Commission's evidentiary hearing in this matter was held June 20, 2001. Each party was represented by counsel, presented one witness, and introduced supporting exhibits. Neither party offered closing argument nor requested an opportunity to submit a post-hearing brief.

#### ***A. Position of the Parties***

1. Qwest. Qwest relied on two alternatives to support its request to terminate local service to Microserv. First, Qwest asserted the two companies merged so they are one and the same. In essence, Microserv obtained the assets and debts of LLC. When Microserv refused to pay its alleged past due telephone bill (including that portion Qwest reassigned from LLC), Qwest sought to terminate local service. The Commission's Telephone Customer Relations Rule 302.01 permits a telephone company to terminate local service when the customer does not pay past due amounts or make satisfactory payment arrangements. IDAPA 31.41.01.302.01. Moreover, Qwest's Exchange and Network Service Catalog, Section 2.3.2 ¶ 3 (page 29) allows the Company to transfer a customer's indebtedness from one account to another account of the customer if the accounts are at the same service location.

Qwest's alternative theory is related to its first theory. It maintained that Microserv obtained its new local service in a fraudulent manner. More specifically, Qwest alleged that Microserv simply "reincorporated" in an effort to absolve itself of past debts. Relying on Commission Rules 302.04 and 303.05, Qwest argued that Microserv misrepresented its identity for the purpose of obtaining new telephone service. IDAPA 31.41.01.302.04 and 303.05. If true, these Rules would also permit Qwest to terminate telephone service and/or require payment arrangements to extinguish the delinquent balances. In addition, the Company's Exchange and Network Service Catalog, Section 2.3.2. ¶ 12 (page 31) allows Qwest to refuse service to a delinquent customer that has obtained service by subterfuge. <sup>[2]</sup>

2. Microserv. Microserve asserted that it and LLC are entirely separate and distinct businesses. Although Microserv acknowledged that it purchased certain assets from LLC, it denied any intent to acquire either the local telephone accounts (numbers) or the past due telephone debts of LLC. Consequently, Microserv argued it was inappropriate for Qwest to transfer LLC's billing arrearages to Microserv and then threaten to discontinue Microserv's telephone service.

#### ***B. The Evidentiary Hearing***

1. Microserv. Microserv's witness was its president, Travis Johnson. He testified that Microserv initiated its complaint after it received a disconnection notice from Qwest indicating that Microserv had a past due account in excess of \$340,000, of which approximately \$336,000 was designated for Qwest regulated services. Microserv Exhibit 5; Tr. at 76. He alleged Qwest inappropriately transferred LLC's unpaid balance to Microserv.

Mr. Johnson outlined Microserv's history and explained how Qwest could have mistakenly

assumed the two companies were one and the same. Microserv was originally incorporated as Diversified Networking, Inc. in May 1997. It obtained local phone service that same month. Tr. at 59, 77; Microserv Exhibit 4. From its inception, Diversified offered computer-related services such as networking, PC repair, sales and service. Tr. at 60. For its part, LLC was primarily an Internet service provider (ISP). *Id.* at 61. LLC was incorporated in September 1995 as MicroServ, LLC, and changed its name to Microserv Telecomputing, LLC in October 1995. Complaint, Exhibit C, pp. 1-2.

Mr. Johnson testified that Microserv and LLC were and are totally separate companies and in no way related. He asserted that the two companies did not have common owners, shareholders, directors, or officers. The companies were not involved in any joint ventures. Refuting Qwest's allegations, Mr. Johnson testified that Microserv and LLC did not merge or join together. Tr. at 61-64.

Mr. Johnson testified that LLC first approached Microserv and inquired about selling its ISP business. Tr. at 64. On June 30, 1998, Microserv purchased certain assets and assumed certain debts of LLC as set out in a 14-page "Sale of Assets Agreement" executed by both companies. Microserv Exhibit 2. Under the Assets Agreement, Microserv purchased LLC's ISP operation and customer base. Tr. at 135-36. The Assets Agreement contained three attachments labeled "exhibits": Exhibit A—List of Assets; Exhibit B—Assumed Liabilities; and Exhibit C—Excluded Liabilities. Exhibit A—List of Assets did not list any telephone accounts or numbers being transferred from LLC to Microserv. Exhibit 2 at 12. Exhibit B (assumed liabilities) did not list any debts owed to Qwest. Mr. Johnson testified that the Agreement specifically excluded any of LLC's past-due telephone charges being transferred to Microserv. Exhibit C explicitly excluded "any [Qwest] charges not specifically transferred to Microserv Computer Technologies, Inc." Microserv Exhibit 2 at 12-14.

Apparently in anticipation of the Sale Agreement, Microserv amended its Articles of Incorporation to change its name from Diversified Networking to Microserv Computer Technologies on June 11, 1998. Tr. at 60; Qwest Answer, Atch B. Thus, the word "Microserv" was the first word in the business names of both Microserv Computer Technologies (Microserv) and Microserv Telecomputing (LLC). When asked why Diversified changed its name to Microserv, Mr. Johnson noted that Microserv was purchasing the customer base and Internet services previously provided by LLC. LLC's "customers were familiar with the Microserv name and so it made sense [for us] to use the name Microserv." Tr. at 60.

Although not listed in Exhibit A (list of assets to be transferred), Mr. Johnson stated that several Qwest local service accounts or telephone numbers were specifically transferred from LLC to Microserv. For example, Microserv desired to continue using three-frame relay lines,<sup>[31]</sup> which at the time of the transfer had past due charges of \$40,806. Tr. at 68, 82. As indicated in Microserv Exhibit 3, Microserv and Qwest agreed to Microserv's continued use of the three-frame relay lines conditioned upon a payment plan which required Microserv to pay \$2,267 per month for a period of 18 months until the LLC arrearages were fully paid. Tr. at 68-69. Qwest did not assert that payment for these frame relay lines were past due. Microserv also made separate payment arrangements to transfer another telephone number (208-233-5802) from LLC to Microserv. Tr. at 131, 235; Microserv Exhibit 6. When

asked why these transferred telephone lines were not included in Exhibit A (list of assets) Mr. Johnson replied “we didn’t consider a phone line being an asset. I mean, that’s why it was specifically excluded on Exhibit C.” Tr. at 128. He also stated that Microserv and LLC had different business addresses on June 30, 1998 but apparently Microserv subsequently moved into LLC’s location. Tr. at 128; Exhibit 3.

Relying on Qwest billing procedures, Microserv pointed out that existing telephone accounts cannot be switched from one company to another without the written approval of all three parties—the original customer, the assigned customer, and Qwest. Microserv insisted that the only lines that were transferred from LLC to Microserv were the previously mentioned three-frame relay circuits and the one other telephone account. Consequently, it is inappropriate for Qwest to threaten disconnection and seek payment from Microserv of LLC’s unpaid bills when Microserv had not acquired the existing accounts of LLC.

2. Qwest. Qwest presented the testimony of Todd Cannon, a service delivery coordinator with Qwest’s customer service billing department. Prior to January 1, 2001, Mr. Cannon worked in the collections department. Tr. at 179-80. He explained Qwest’s collection procedures, his conversations with representatives of LLC and Microserv, and procedures for transferring telephone numbers or accounts from one customer to another.

On June 3, 1998, he contacted LLC about the outstanding balances on its accounts. According to Mr. Cannon, an LLC employee named Annette asked him to send the outstanding balances on all of LLC’s accounts because “the Company was planning on ‘merging’ with another company.” Tr. at 180. When Mr. Cannon again spoke with Annette on July 20, 1998 (20 days after the execution of the Sale of Assets Agreement), Mr. Cannon testified that she stated that LLC “was going to be ‘bought out’ and that ... LLC would be making payment arrangements for the outstanding balances.” Tr. at 181. Again in September 1998, Mr. Cannon called “LLC” and spoke to an employee who had replaced Annette. When told of the past due accounts and the possibility of disconnection for past due bills, the new accounts payable employee said she would “talk to the owner and see what could be done about payment of the accounts.” *Id.* She did not contact Mr. Cannon.

Mr. Cannon further stated that in November of 1998 he spoke with Mr. Johnson. Mr. Cannon maintained that Mr. Johnson told him “that certain legal disputes had been initiated between Microserv and [Qwest] with respect to certain accounts and that payment arrangements could not be made until the legal matters were concluded.” Mr. Johnson also told Mr. Cannon the name of Microserv’s legal counsel handling the dispute, but Mr. Cannon did not contact the attorney. Tr. at 181-82. Mr. Cannon maintained that during his collection activities no one advised him that Microserv was not responsible for LLC’s accounts. Tr. at 182. However, Mr. Cannon later acknowledged on cross examination that Mr. Johnson had told him in November 1998 that Microserv did not intend to pay LLC’s debt and was not responsible for LLC’s outstanding balances. Tr. at 218, 219. Mr. Cannon stated he was not aware that Microserv and LLC were not the same company until termination notices were sent “for all of the accounts in May or June 1999.” Tr. at 183.

Mr. Cannon made the decision to transfer the past due accounts of LLC to Microserv in June 1998 because he believed that there was “only one entity.” Tr. at 183, 198. He based his decision upon several factors including: 1) LLC and (subsequently) Microserv were located at the same address; 2) they had the “same abbreviated name”; 3) Microserv did not disavow ownership of LLC; 4) some LLC officers were officers of Microserv;<sup>[4]</sup> 5) a Dunn & Bradstreet Report prepared at his request “confirmed that Microserv Computer Technologies was formerly known as Microserv Telecomputing LLC”;<sup>[5]</sup> and 6) Qwest had observed call traffic on some of the lines after June 30, 1998. Tr. at 188, 194-95; Qwest Answer, Atch. C at 1.

Mr. Cannon also questioned that if there were two Microserv companies, why was the new company using the first company’s accounts? He suggested that there should be documents that showed the accounts transferring from one company to the other but his research did not find any such documents. Tr. at 186. Mr. Cannon explained the process for transferring an existing telephone line or an account from one party to another. For a phone number or account to be transferred, the change has to involve: (1) the same phone number; (2) the same address; (3) no break in service; (4) the original customer, new customer, and U S WEST had to agree to the change; and (5) all payments must be current. Tr. at 230-31. He also stated that the Company policy would not allow the transfer of some accounts while there were outstanding balances on other non-transferred accounts. He explained that if this “cherry picking” were allowed, it would be highly unusual and would have to be authorized by a vice president of the Company. Tr. at 185-86. If the Company had these transfer policies, he was asked how the transfer of the three frame relay lines occurred. He answered that frame relay service was “totally separate” from his unit so he was not aware of the Exhibit 3 transfer Agreement. Tr. at 187, 199. He was also unaware of the transfer of the other telephone line noted in Exhibit 6. Tr. at 234-35.

Mr. Cannon also inferred that LLC and Microserv must be one in the same because Mr. Johnson placed disconnection requests for two of the LLC accounts (208-782-1977 and 208-377-4075). Tr. at 183. He explained that “only an owner of an account or an authorized representative of the owner of an account may place an order for any action affecting service, including a disconnect order.” Tr. at 184 (emphasis added). Mr. Cannon could not remember whether Mr. Johnson was the authorized representative for these two accounts. On cross-examination, he could only recollect that Kevin Hemsley was designated as the owner or authorized representative for some LLC accounts. Tr. at 201-202. On further examination, he testified that he did not remember ever speaking with Mr. Hemsley regarding the past due bills or termination of the LLC accounts. Tr. at 205. Mr. Cannon also conceded that he never inquired if there was more than one entity utilizing the name “Microserv” and never checked with the Idaho Secretary of State regarding the registration of corporate names. Tr. at 198.

## **DISCUSSION AND FINDINGS**

### ***A. Distinct Companies***

After conducting an extensive review of the testimony and the admitted exhibits in this matter, we find that LLC and Microserv are two separate and distinct entities. The two companies were incorporated at different times, obtained local telephone service independently, used different corporate

forms, had different (yet overlapping) directors, were engaged in different businesses prior to June 30, 1998, and were initially at different locations. The Sales of Asset Agreement is further evidence that LLC and Microserv are different companies. Microserv Exhibit 2. This document list LLC as the seller and Microserv as the purchaser. The Agreement's Bill of Sale recites that LLC will sell its customer base, customer list, and all inventory to Microserv. The past due balances LLC owed to Qwest were explicitly excluded in the sales transaction.

Given our recitation of the testimony and evidence set out above, it is understandable that there was a great deal of confusion regarding the identity of the "customer" in this instance. Although the two companies initially had different names, Microserv changed its name in contemplation of the Sales Agreement. Consequently, both companies used the word "Microserv" as the first word in their company names. Microserv also took over the business offices of LLC. The Dunn & Bradstreet Report further obscured the issue when it reported that Microserv was formerly known as LLC.

Despite this confusion, we find that Microserv clearly was a distinct and different company from LLC. When Microserv acquired the customer list from LLC, its intent was clearly to disavow the past due balances that LLC owed to Qwest except for those accounts that Microserv arranged to acquire from LLC. Exhibit 2. While the transfer of the frame relay lines might have served to alert Mr. Cannon of the distinction between LLC and Microserv (i.e., the original customer and the assigned customer), the arrangement for the frame relay lines was made by another unit of Qwest unknown to Mr. Cannon.

The lack of clear communications between the parties also contributed to the confusion. At the time Mr. Cannon made his first contact with "the customer," he called LLC. At the time of his second call on July 20, 1998, he was dealing with Microserv. Although he was told that LLC was to be "merged," and later to be "bought out," no one from LLC or Microserv initially told him that the transaction had been consummated, and that Qwest should pursue its collection activities against LLC. LLC did not cancel its service and Microserv did not initially tell Qwest that it was not responsible for LLC's debts. Mr. Johnson did not advise Mr. Cannon of the two companies and disavow LLC's debts until November 1998. When he volunteered the name of legal counsel handling the dispute, Mr. Cannon did not follow up.

On the other hand, Mr. Cannon did not inquire whether the transfer transaction had occurred. Given the similarity of names, Qwest assumed that the companies were one and the same. As previously mentioned this assumption was further supported by the Dunn & Bradstreet Report, which indicated that the two companies were one and the same. Unfortunately, Mr. Cannon and other Qwest representatives did not ask whether the sale or merger had occurred, and never checked with the Idaho Secretary of State. Mr. Cannon did not contact the attorney disclosed by Mr. Johnson in November 1998. Even after Microserv's counsel advised Qwest's counsel in April 1999 that the two companies were not the same, LLC service was not discontinued until May 1999.

We also find Mr. Cannon's testimony relating to Mr. Johnson's termination of the two lines and the allegation that U S WEST would not allow some lines to be transferred from one party to another without payment of all past due accounts to be unpersuasive. As noted above, Mr. Cannon was

unaware of the transfer of three-frame relay lines and the other line. Despite his testimony that the Company would only allow the owner or authorized representative to discontinue service, he was unable to demonstrate whether in fact Mr. Johnson was authorized to terminate those two lines. In regards to the “cherry picking” issue, he was inconsistent in his testimony and, we accord it little weight. *Cf. Tr. at 230-32, 238, 262.*

We understand how the facts—in isolation—appear to support each of the party’s positions. However, based upon a review of the entire record, including the chronological timeline of the transactions involved, we conclude that it was inappropriate for Qwest to transfer the unpaid balances of LLC to Microserv.

### ***B. The Transition***

Although the Commission concludes that LLC and Microserv are two separate and distinct entities and it was inappropriate for Qwest to transfer the debt from one company to the other, our inquiry does not end here. As Mr. Cannon explained, one reason he thought Microserv and LLC were the same company was that Qwest observed continuing telephone traffic on several LLC telephone accounts in question after June 30, 1998. *Tr. at 188, 194-95.* Indeed, on cross-examination, Mr. Johnson acknowledged that Microserv did utilize some of LLC’s telephone accounts “during a transition period.” *Tr. at 83.* He said that the transition period could “have been a couple weeks, up to six to eight months.” *Id.*

Microserv used several LLC lines in addition to the frame relay and the other transferred line mentioned above. Microserv used these additional lines while transitioning 4,000 customers from LLC telephone numbers to Microserv telephone numbers. *Tr. at 83.* He explained that the newly acquired Internet customers were advised that the telephone numbers that they dialed to access LLC were to be terminated and these customers needed to use Microserv’s telephone numbers. *Tr. at 136.* Microserv did not advise Qwest that it was using LLC accounts and, thus, no transfer or payment arrangements were established for these accounts. *Tr. at 84, 119-20, 266.* He also said that it was impossible for some other entity other than Microserv to utilize these lines or to incur charges on these accounts. *Tr. at 108.*

While conceding that these lines were not “officially” transferred from LLC to Microserv, Mr. Johnson stated “we were still using those lines, so we figured we’d pay for what we were using.” *Tr. at 172-73.* Microserv made periodic payments on some of the accounts based upon its own usage logs. *Tr. at 84; Qwest Exhibit 103.* The logs purportedly recorded how many Internet customers called in using the LLC numbers and the maximum usage on those numbers. He explained:

On a monthly basis, we would go through and evaluate if there were, say, just for rough numbers, 100 phone lines available on an LLC account and most that we ever used during a transition period was 25 lines, then we’d pay for 25 percent of the bill for that month.

Q. Ok, even though it was not your account or your billing?

A. Correct.

Tr. at 139. These usage logs were only kept for a period of 12 months and, consequently, were not available for discovery or the evidentiary hearing. Tr. at 85, 270-73.

When questioned about the 14 disputed accounts portrayed in Qwest Exhibit 103, Mr. Johnson acknowledged that there were 8 telephone numbers or accounts that Microserv used during the transition period. Most of these numbers were local measured service (LMS) accounts, while at least two were local flat-rate accounts.<sup>[6]</sup> The eight accounts comprised more than 550 telephone lines. Tr. at 189. For example, Account No. (208) 233-1085-142 was a LMS account containing 190 lines. Tr. at 101, 189, Qwest Exhibit 103 at p. 1. The LMS accounts with multiple lines were also equipped with “call-hunting.” When a customer calls in on the main LMS telephone number, the telephone equipment will “hunt” for the next available line to carry the call. The eight accounts are set out in the Table below.

**TABLE 1**

<b>Acct/Number</b>	<b>Type of Service</b>	<b>Charges</b>	<b>Payments/Credits</b>	<b>Balance</b>
1. 233-1085-142	LMS	\$27,058.97	\$12,093.57	\$14,965.40
2. 357-2424-145	LMS	14,879.01	6,783.56	8,095.45
3. 232-4622-598	LMS	42,468.26	18,019.84	24,448.42
4. 524-0030-591	LMS	87,182.79	28,918.57	58,192.22
5. 356-0113-284	LMS	18,057.57	17,994.14	63.43
6. 534-0151-403	UNKN	41,156.03	13,718.48	27,437.55
7. 232-7922-579	Flat IFB	871.36*	0	871.36
8. 232-7921-569	Flat IFB	871.36*	0	871.36
				<u>\$134,945.19</u>

Source: Exhibit 103, pp. 1, 6-11, 13; Tr. at 101, 106, 109-113, 115.

\*Adjusted, see infra pp. 11-12.

We find that Microserv did utilize 8 accounts and several hundred telephone lines during the transition period and it is appropriate for Qwest to charge for their usage. Microserv did not notify Qwest that it was using these lines and it did not request that these lines be transferred from LLC to Microserv. Having used these lines, we find that Microserv should be responsible for the charges incurred from July 1998 until the accounts were terminated with two adjustments noted below. As to the six other accounts listed in Qwest Exhibit 103, we find that Qwest has not adequately demonstrated that Microserv used these lines. Mr. Johnson did not recognize these accounts being used during the transition. Tr. at 102-16. Most of these excluded accounts were flat-rate lines and showed no traffic. In addition, even if these six accounts were assigned to Microserv for the period July 1998 to May 1999, in some instances there were small or no past due balances and, in one case, Microserv paid/was credited more than the charges accruing between July 1998 and disconnection. Qwest Exhibit 103, pp. 2-3, 12.

Although it used these facilities, Microserv maintains that the appropriate rates for using these facilities should be based upon its own calculations rather than the rates applicable to LLC. However, Microserv was unable to offer evidence of its calculations or produce the usage logs. Microserv's use of these accounts makes them unavailable for use by other Qwest customers. Moreover, the rates for these accounts and lines are set out in Qwest's tariffs and price catalogs. A customer may not unilaterally disregard or refuse to pay the established rates. With the two adjustments noted below, we accept Qwest's evidence regarding the charges from July 1998 until the 8 accounts were disconnected, generally in May 1999. Table 1; Qwest Exhibit 103. We further find that Exhibit 103 represents the better evidence regarding the reasonable charges incurred for the accounts during the transition period.

We now turn to the two exceptions. At least two of the eight accounts set out in our Table above (Nos. 7 & 8) are flat rate service lines. Qwest does not measure traffic on flat-rate service lines. For these two accounts, Qwest continued to charge \$108.92 per month until December 1999 and February 2000, respectively. For reasons that are not apparent from the record, U S WEST did not disconnect these two lines until after May 1999, and well after the 6-8 months of the transition period. Consequently, we find it reasonable to adjust these charges. We believe the appropriate charge for each

of these two lines is \$871.36 (\$108.92 x 8 mos). After making this adjustment, we conclude that based upon the evidence presented to us, Qwest appropriately charged Microserv \$134,945.19 for services on the eight accounts used during the transition period.

We further find that it is reasonable for Microserv to pay Qwest the amount owed in 12 equal installments. Microserv shall be responsible for paying its current monthly charges for service and the monthly amount of \$11,245.43 representing the past due balance. The arrearage will be paid in monthly installments with the first installment to begin 28 days after the service date of this Order.

#### **ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Qwest Corporation is a telecommunications corporation subject to our regulatory jurisdiction pursuant to Idaho Code Titles 61 and 62. The Commission has jurisdiction over this matter as authorized by *Idaho Code* §§ 61-612 and 62-616.

Having fully reviewed the record in this proceeding, we find Microserv Computer Technologies, Inc. and Microserv Telecomputing, LLC to be separate and distinct companies. We find it was inappropriate for Qwest to assign past due balances from LLC to Microserv.

We further find that Microserv utilized facilities previously assigned to LLC without notifying Qwest or making payment arrangements. Based upon the evidence as set out above, we find that Microserv owes Qwest a balance of \$134,945.19. We further find it is reasonable that Qwest recover this amount in 12 monthly installments of \$11,245.43 per month.

#### **ORDER**

IT IS THEREFORE ORDERED that Microserv Computer Technologies, Inc.'s complaint against Qwest Corporation is granted in part and denied in part. As set out in the body of this Order, Microserv owes Qwest a total of \$134,945.19 for the use of the eight accounts during the transition period.

IT IS FURTHER ORDERED that Microserv pay Qwest the amount owed in 12 monthly installments of \$11,245.43 beginning 28 days from the service date of this Order. Microserv shall also be responsible for paying its existing monthly service charges. If Microserv fails to pay its existing monthly charges or the monthly past due installment, Qwest may seek disconnection per the Commission Rules, IDAPA 31.41.01.000.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. USW-T-99-20 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this order or in interlocutory Orders previously issued in this Case No. USW-T-99-20. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this day of December 2001.

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PAUL KJELLANDER, PRESIDENT

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MARSHA H. SMITH, COMMISSIONER

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DENNIS S. HANSEN, COMMISSIONER

ATTEST:

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Jean D. Jewell  
Commission Secretary

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[1] After this complaint was filed, U S WEST Communications' parent corporation merged with Qwest Communications International. Qwest Corporation is the surviving operating entity. Accordingly, the Commission has changed the case caption reflected above.

[2] Per the Service Catalog, subterfuge includes but is not limited to an application for telephone service at a given location in the name of another party by an applicant whose account is delinquent at that same location.

[3] Frame relay services allow high-speed, packet-switched data transmissions through dedicated circuits in a digital network.

[4] Two of Microserv's five directors were also the sole members of LLC. Order No. 28721 at 2.

[5] Qwest Answer, Atch C.

[6] Flat-rate service allows unlimited calling within a local calling area for a uniform "flat" rate. Qwest does not measure traffic on flat rate service lines. Local measured service allows local calling on a usage-sensitive basis with two rate elements. The first element is a uniform monthly charge and the second element is a usage charge based upon the number of outgoing calling minutes. Qwest Local Exchange Tariff, section 5.2.1 at p. 26.