

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )  
QWEST CORPORATION'S MOTION TO )  
REOPEN THE SECTION 271 CASE. )  
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**CASE NO. USW-T-00-3**

**ORDER NO. 29137**

Section 271 of the Communications Act of 1934, as amended in 1996, establishes the means for a Bell Operating Company, which includes Qwest Communications International, Inc. (Qwest), to obtain authorization from the Federal Communications Commission (FCC) to begin providing in-region interLATA and interstate telecommunications services. 47 U.S.C. § 271. The role of the states and their utility regulatory commissions in the application process is limited. The FCC, in making its determination on a Section 271 application, is merely required to “consult with the state commission of any state that is the subject of the application in order to verify the compliance of the Bell Operating Company with the requirements of [Section 271].” 47 U.S.C. § 271(d)(2)(B). In order to provide a meaningful consultation to the FCC, the Commission participated in a lengthy multi-state proceeding to obtain information on Qwest’s compliance with the statute’s requirements. The case in Idaho commenced in February 2000 when Qwest filed a Notice of Intention to File a Section 271 Application and a Motion for Alternative Procedure to Manage the Section 271 Process. The Commission issued a final decision in that case on June 10, 2002.

Qwest initially filed its Section 271 application with the FCC on June 13, 2002, and on July 3, 2002, the Commission provided a written consultation to the FCC. Qwest withdrew its application on September 10, 2002, prior to a decision from the FCC.

After Qwest withdrew its initial application, two separate motions to reopen the proceedings before the Idaho Commission were filed. Joseph B. McNeal doing business as PageData (PageData) filed a motion to reopen on September 17, 2002, “based on discrimination of local Idaho carriers.” AT&T Communications of the Mountain States, Inc. (AT&T) filed its motion to reopen and supplement the record on September 19, 2002. Noting that Qwest withdrew its FCC application due to accounting issues and Qwest’s Section 272 affiliate, AT&T

asked the Commission to reopen the proceeding to “require Qwest Corporation (Qwest) to supplement the record with sufficient evidence to demonstrate that Qwest and its new Section 272 affiliate are in compliance with Section 272 of the Telecommunications Act of 1996 (Act).” AT&T Motion, p. 1 (footnote omitted).

Qwest filed a new Section 271 application with the FCC on September 30, 2002, which issued a notice of the application the same day. *See* Public Notice, WC Docket No. 02-0314, DA 02-2438, September 30, 2002. The FCC established October 15, 2002 as the date for state commissions to provide their written consultations. The Commission filed its written comments on the date due, adopting by reference the written consultation it filed with the FCC in Qwest’s initial application.

### **PageData’s Motion to Reopen**

In its motion, PageData asserts that “Qwest has discriminated against PageData for over four years by not filling requests for additional interconnection capacity including a continuing, four year old request for ten T-1s in PageData’s Boise location.” PageData further asserts that Qwest failed to provide the same terms and conditions to PageData as it did to Western Wireless and New Vector, a Qwest affiliate, in interconnection agreements with those companies. PageData contends Qwest’s discriminatory action toward PageData results from Qwest’s failure “to recognize PageData as a full-fledged CMRS carrier equivalent to its subsidiary, U S WEST’s New Vector, and continues to pigeonhole PageData as a Type 1 only paging carrier.” PageData by its motion “seeks an order from the Idaho PUC to reopen Qwest’s Section 271 proceeding to consider new recent evidence of Qwest’s discriminatory practices.”

Qwest filed a response to PageData’s motion on October 3, 2002. Qwest argued PageData’s motion to reopen must be denied on several grounds, the first of which is untimeliness. Noting that PageData never intervened in the Section 271 case, Qwest argues its late motion is “fatally flawed” because it “constitutes the hopelessly belated intervention of a party that could have participated in this docket when it was open and when the issues it now advances were being explored.” Qwest also contends the allegations made by PageData are not properly part of a Section 271 review, and that if any matters of fact remain in dispute in the ongoing litigation between Qwest and PageData, “those disputes must be addressed outside the now completed 271 review by this Commission.”

