

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Petition of )  
McLeod USA )  
Telecommunications Services, )  
Inc., for Enforcement of )  
Interconnection Agreement with )  
Qwest Corporation )

DOCKET NO. 05-049-62

ORDER GRANTING  
SUPPLEMENTAL MOTION TO DISMISS

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ISSUED: April 21, 2005

SYNOPSIS

Qwest having withdrawn the security deposit demand on which McLeod’s complaint was based, we dismiss.

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By The Commission:

On March 30, 2005, McLeod USA Telecommunications Services, Inc. (“McLeod”) filed a Petition for Enforcement of Interconnection Agreement with Qwest (“Petition”) seeking Commission ruling “that Qwest may not disconnect or discontinue providing telecommunications services under the Parties’ Interconnection Agreement or demand a security deposit from McLeodUSA at this time.” McLeod’s Petition was based on a March 21, 2005, letter from Qwest demanding payment of a security deposit. Qwest’s letter indicated that if the security deposit were not paid within ten days Qwest would “commence the process of terminating the Interconnection Agreement, suspending order activity, disconnecting services, and/or any other remedy available to it under law or equity in the State of Utah.”

On April 13, 2005, following scheduling of an expedited hearing in this matter, Qwest formally withdrew its demand for a security deposit and filed a Supplemental Motion to Dismiss seeking dismissal of McLeod’s complaint as moot.

On April 19, 2005, the parties filed pre-hearing briefs. In its brief, McLeod responded to Qwest’s Supplemental Motion to Dismiss arguing that Qwest’s withdrawal of its deposit demand did not moot its complaint since Qwest has failed to acknowledge that it may only demand a deposit under the Interconnection Agreement (“ICA”) if McLeod fails to make timely payments under the ICA and that the ICA’s dispute resolution process would apply to a dispute over any future deposit demand. Qwest’s brief re-iterates its belief that McLeod’s complaint is moot and should

therefore be dismissed.

In its Petition, McLeod made clear that the basis for its complaint was Qwest's demand for a security deposit. That demand has since been withdrawn. Qwest has not attempted to invoke the ICA provisions relating to default for failure to pay a deposit, yet McLeod asks the Commission to rule that "in the event" Qwest does so the ICA's dispute resolution process would apply. McLeod also seeks a determination of the circumstances under which Qwest may demand a security deposit under the ICA, even though no such demand is now before the Commission. The Commission declines to provide the advisory opinion which McLeod now seeks in its place.

Therefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters the following proposed ORDER:

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

The complaint filed herein is dismissed without prejudice. Further proceedings in this docket previously scheduled for April 22 and 25, 2005, are hereby canceled.

DATED at Salt Lake City, Utah, this 21<sup>st</sup> day of April , 2005.

/s/ Steven F. Goodwill  
Administrative Law Judge

Approved and Confirmed this 21<sup>st</sup> day of April, 2005, as the Report and Order of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

G#44098