

[Service Date April 1, 2005]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

MCLEODUSA)	DOCKET NO. UT-053024
TELECOMMUNICATIONS)	
SERVICES, INC.,)	
)	ORDER NO. 01
Petitioner,)	
)	
v.)	ORDER DENYING MOTION
)	FOR EMERGENCY
QWEST CORPORATION,)	ADJUDICATION
)	
Respondent.)	
.....)	

1 **SYNOPSIS:** *McLeodUSA moves for an emergency order forbidding Qwest from suspending order processing or disconnecting service, pending resolution of a petition for enforcement of its Washington interconnection agreement with Qwest. Qwest’s answer commits that it will not take either action immediately, and resolves the asserted emergency as a matter of law. The motion is denied.*

2 On March 31, 2005, McLeodUSA Telecommunications Services, Inc. (McLeodUSA), filed with the Commission a petition for enforcement of interconnection agreement with Qwest Corporation (Qwest), and a motion for emergency relief. The petition states the dispute is between McLeodUSA and Qwest over Qwest’s right under the interconnection agreement to demand security deposits from McLeodUSA for services provided under the agreement, and to discontinue services to McLeodUSA should McLeodUSA not comply with Qwest’s demand. McLeodUSA is asking the Commission for emergency relief consisting of an order that Qwest may not demand a security deposit from McLeodUSA or disconnect or discontinue providing telecommunications services to McLeodUSA and its customers under the Parties’ Interconnection

Agreement until the Commission resolves McLeodUSA's petition for enforcement of a the parties' interconnection agreement.

3 McLeodUSA is represented by Gregory J. Kopta, Davis Wright Tremaine, Seattle. Lisa A. Anderl, attorney, Seattle, represents Qwest.

4 **Background information.** Briefly, Qwest is an incumbent local exchange telecommunications carrier that provides service in Washington and other states. McLeodUSA is a competitive telecommunications carrier that is registered to provide local exchange and interexchange service in Washington State. McLeodUSA and Qwest are party to an interconnection agreement that governs their rights and obligations with regard to the provision of service.

5 Qwest and McLeodUSA are involved in a billing dispute. On March 23, 2005, Qwest notified McLeodUSA that it was demanding security for payments, and was prepared to stop accepting orders and to terminate service as of April 1, 2005, if Qwest's demands for security were not met.

6 McLeodUSA contends that the demand is counter to the terms of its interconnection agreement, and petitions for enforcement of its agreement with Qwest to foreclose the demand under WAC 480-07-650. It also petitions for an emergency adjudication under RCW 34.05.479 and WAC 480-07-620 for an order barring Qwest from taking action against it while the petition for enforcement is pending.

7 Qwest answered the petition. It notes that the Federal District Court for the Northern District of Iowa has issued a temporary restraining order (TRO) forbidding Qwest from taking its threatened action. It also represents that its initial notification to McLeodUSA was not that it would discontinue service on April 1 but that it would "commence the process" of terminating the interconnection agreement or discontinuing service, etc., on April 1, and that the process requires further notice to McLeodUSA and an *additional* 30 days, after the TRO is vacated or expires, before action to discontinue service could be taken.

Qwest represents that consequently, there is no imminent threat of discontinuance and no emergency exists requiring action of the sort McLeodUSA asks.

- 8 We note that the Iowa litigation is subject to Qwest's motion for removal to Colorado on the basis that Qwest earlier filed its claim in this dispute in federal court in Colorado.¹ In the event Qwest's motion is granted, Qwest agrees that the Iowa TRO would remain in effect until the Colorado court decides whether to modify, extend, or rescind it.
- 9 In Colorado, McLeodUSA withdrew a parallel petition for emergency action upon similar representations by Qwest,² but the New Mexico Commission has entered an order forbidding Qwest from acting to suspend order activity or disconnect services until the parties complete the New Mexico process to resolve their dispute.³
- 10 We recognize that the issues are serious, and that the dispute is subject to many possible outcomes in different forums. However, Qwest's representations to the Commission that it will not immediately discontinue service under the interconnection agreement and that it agrees to the extension of the Iowa District Court's TRO remove as a matter of law the requirement for emergency action, and we therefore deny McLeodUSA's motion for emergency adjudication.
- 11 McLeodUSA is of course not foreclosed from petitioning again if the threat of disconnection of service or suspension of order activity becomes imminent. In the meantime, its petition for enforcement has been filed. Unless the issues are resolved in the federal litigation, the petition for enforcement provides a forum

¹ Qwest response, paragraph 7. No decision on the motion had yet been posted to the Iowa court's web site when this order was signed.

² Attachment to Qwest's response to McLeodUSA's motion for emergency adjudication.

³ Order of the New Mexico Commission on March 31, 2005, in Utility Case No. 3531.

for examination of McLeodUSA's claim under its Washington interconnection agreement with Qwest.

ORDER

12 The Commission denies McLeodUSA's motion for an emergency adjudication.

DATED at Olympia, Washington and effective this 1st day of April, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.