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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN RE:	:	Docket No. 05-049-62
	:	
PETITION OF MCLEODUSA	:	QWEST CORPORATION'S
TELECOMMUNICATIONS	:	RESPONSE TO MCLEOD'S
SERVICES, INC., FOR	:	PETITION FOR ENFORCEMENT
ENFORCEMENT OF	:	OF INTERCONNECTION
INTERCONNECTION	:	AGREEMENT
AGREEMENT	:	
WITH QWEST CORPORATION	:	

Qwest Corporation ("Qwest"), by and through its counsel, hereby responds to the
Petition of McLeodUSA Telecommunication Services, Inc. ("McLeod's") Petition for
Enforcement of Interconnection Agreement with Qwest Corporation ("Petition").

Qwest Response to Introductory Paragraph.

With regard to McLeod's allegations and statements contained on pages 1 and 2 of its Petition, Qwest responds that the case arises from McLeod's deteriorating financial condition and its failure to live up to its financial obligations to Qwest. The genesis arises from an unrelated issue between McLeod and Qwest Communications Corporation ("QCC"), regarding charges and payments pertaining to certain telecommunications traffic. In the course of that dispute, QCC exercised its lawful rights by withholding payments for charges it believes McLeod had incorrectly billed QCC. In retaliation, and even though Qwest was not involved in the McLeod-QCC dispute, McLeod refused to pay certain Qwest charges for Qwest tariffed services in a current total amount of approximately \$2.5 million. McLeod did not state any grounds for withholding such payments from Qwest and, indeed, had no basis for withholding payment for services provisioned by Qwest.

Because of the significant amount of money McLeod wrongfully withheld from Qwest and because of recent public statements McLeod made about its bleak financial situation, Qwest became very concerned about its financial exposure to McLeod in the event McLeod files for protection from its creditors in bankruptcy court. Of primary concern to Qwest (and the triggering event to the security deposit demand), was McLeod's 8-K filing on March 17, 2005 to the Securities & Exchange Commission wherein McLeod revealed that its revenues sharply declined in the fourth quarter of 2004; it had to seek forbearance from interest payments to its lenders; and, it was seeking to sell the company. As the 8-K explained, McLeod's "Lenders have agreed to forbear from exercising any remedies as a result of certain specified defaults under the Credit Facilities

anticipated by the Company during the forbearance period, including, without limitation, the failure to make scheduled amortization payments under the Credit Facilities and interest payments under the Credit Agreement.” See Exhibit D, page 3, of Qwest’s initial response to McLeod’s motion for emergency relief filed on April 1, 2005. A press release coincident with the 8-K filing confirmed Qwest’s concerns:

There can be no assurance that we will be able to reach an agreement with our lenders regarding a capital restructuring or continued forbearance and covenant relief prior to the end of the initial forbearance period on May 23, 2005. There also can be no assurance that we will be able to identify a suitable strategic partner or buyer In the event these alternatives are not available to the Company, it is *likely* that we will elect to forgo making future principal and interest payments to our lenders . . . or, alternatively, the *Company could be forced to seek protection from its creditors.*"

McLeod Press Release (Mar. 16, 2005) (emphasis added); *Id.*, Exhibit E. On the news of the 8-K filing, McLeod’s common stock decreased by almost half in one day. In light of McLeod’s own statements of its financial risk and the likelihood of insolvency, Qwest -- one of McLeod’s largest creditors -- took reasonable steps to protect its legitimate interests.

Qwest admits that on March 21, 2005, it sent a letter to McLeod demanding security for services provided under the interconnection agreement. Qwest asserts that its demand for security is supported by the parties’ interconnection agreement and by state law governing commercial transactions and contracts implied in every contract. See, e.g., *Sears v. Riemersma*, 655 P.2d 1105, 1109 (1982) (“[R]espondent was justified in requiring assurances that the appellants would pay their fair share of the improvements and in delaying performance as long as negotiations continued”; citing Restatement (Second) of Contracts § 251(1) (1979)); see also Restatement (Second) of Contracts §

251(1) (“Where reasonable grounds arise to believe that the obligor will commit a breach by non-performance that would of itself give the obligee a claim for damages for total breach under § 243, the obligee may demand adequate assurance of due performance and may, if reasonable, suspend any performance for which he has not already received the agreed exchange until he receives such assurance.”)

Qwest denies McLeod’s allegation that all procedures for dispute resolution in the interconnection agreement must be satisfied before Qwest may exercise its rights under the interconnection agreement to demand security, issue a notice of default, or exercise any of its other rights and remedies as stated in the interconnection agreement. Qwest also denies that McLeod’s request for interim, expedited, and emergency relief should be granted, for the reasons stated in Response Of Qwest Corporation to McLeodUSA Telecommunications Services, Inc., Motion For Emergency Relief, filed with this Commission on April 1, 2005.

Qwest Response to Specific Allegations (the following paragraph numbers conform the paragraphs of the same number in McLeod’s Petition):

1. Admitted.
2. Qwest states that pursuant to Section 252 of the Telecommunications Act of 1996 McLeod and Qwest entered into an interconnection agreement resulting from McLeod opting into another interconnection agreement that had been filed with the Commission. The interconnection agreement between McLeod and Qwest was filed with the Commission on April 11, 2000, and was approved by the Commission on July 11, 2000. Qwest is without knowledge or information sufficient to form a belief as to the

truth of whether all of the relevant portions of the interconnection agreement have been attached to the Petition, and therefore deny the same.

3. Qwest asserts that state commissions have authority to interpret and enforce interconnection agreements to the extent granted by the Telecommunications Act, to the extent granted under state law, and subject to the terms of interconnection agreements. Qwest also asserts that certain issues raised by McLeod in its Petition are not ripe for Commission consideration.

4. Qwest states that paragraph 26.19.1 of the interconnection agreement speaks for itself. Qwest also asserts that certain issues raised by the Petition were not ripe for the Commission's consideration when the Petition was filed, and they are now moot.

5. Qwest states that on March 22, 2005, McLeod filed for a temporary restraining order ("TRO") in federal district court in Iowa seeking to prevent Qwest from demanding security deposits and payments and from terminating services to McLeod. The Iowa court granted McLeod's motion and the TRO, which was in effect until April 12, 2005 and stated in pertinent part that Qwest and QCC are "restrained from . . . terminating or threatening to terminate services to McLeodUSA or requiring security from McLeodUSA as a precondition to the start or continuation or any such services. . . ." The restraining language in the order issued by the Iowa federal court is broad and does not exclude services provided under interconnection agreements. Accordingly, McLeod injected into the Iowa TRO the issues relating to payment, security deposits, and termination of services provided under the interconnection agreements. Thereafter, on April 1, 2005, the Iowa federal court transferred the case to the Colorado federal court

after Qwest assured the Iowa federal court that Qwest would not disconnect services or stop taking orders unless the Colorado federal court vacates, modifies or otherwise changes the existing TRO. Accordingly, the protections of the TRO are still in effect until the Colorado federal court vacates, modifies or otherwise changes it. In addition, certain issues raised by the Petition are not ripe. Further, on April 13, Qwest withdrew its demand for security under the interconnection agreement, thus rendering moot McLeod's claims and requests for relief. Accordingly, there is no actual case or controversy before the Commission. Based upon the foregoing statements, Qwest denies McLeod's allegation that the Commission has clear jurisdiction to interpret the terms of the interconnection agreement.

6. For the reasons stated in Qwest's answer to paragraph 5 of the Petition, Qwest denies that the Commission has jurisdiction to consider this Petition.

7. Admitted.

8. Admitted.

9. Qwest incorporates its response to the Introductory Paragraph of McLeod's Petition. Qwest denies that the terms of the interconnection agreement do not allow Qwest to demand a security deposit. Qwest states that it has withdrawn its demand for security thus rendering moot the allegations stated in this paragraph. Qwest also asserts that Qwest's demands for security and following the notice of default, default, and other remedial procedures under the interconnection agreement are not conditioned upon first invoking the dispute resolution process of the interconnection agreement.

10. Qwest denies that its conduct is in violation of its interconnection agreement or any of its tariffs. The Opinion and Temporary Restraining Order issued by

the Iowa federal court speaks for itself. Qwest denies the remaining allegations contained in paragraph 10 of the Petition.

11. Qwest asserts that it was McLeod that improperly failed to separate issues regarding Qwest and QCC, and it is McLeod's failure that serves as the background to disputes between the parties. Qwest denies that it has merged issues regarding QCC or Qwest tariffed services with rights under the interconnection agreement. Qwest admits that McLeod has paid its invoices for services provided by Qwest under the interconnection agreements, but Qwest denies that McLeod has performed all of its obligations under the interconnection agreement.

12. Admitted.

13. Qwest states that the Demand Letter speaks for itself. Qwest also asserts that on April 13, 2005 it withdrew the Demand Letter rendering moot McLeod's claims in this Petition and its allegations regarding the Demand Letter.

14. Qwest states that the Demand Letters for Utah and for the other thirteen in-region states speak for themselves. Qwest also asserts that on April 13, 2005 it withdrew the Demand Letter rendering moot McLeod's claims in this Petition and its allegations regarding the Demand Letter.

15. Qwest states that the Demand Letter speaks for itself. Qwest also asserts that on April 13, 2005 it withdrew the Demand Letter rendering moot McLeod's claims in this Petition and its allegations regarding the Demand Letter.

16. Qwest states that the Demand Letter speaks for itself. Qwest asserts that on April 13, 2005 it withdrew the Demand Letter rendering moot McLeod's claims in this Petition and its allegations regarding the Demand Letter. Qwest asserts that the

terms of the Interconnection Agreement allow Qwest to demand a security deposit.

Qwest also asserts that Qwest's demands for security and following the notice of default, default, and other remedial procedures under the interconnection agreement are not conditioned upon first invoking the dispute resolution process of the interconnection agreement.

17. Qwest states that McLeod's March 22, 2005 response speaks for itself.

18. Qwest states that McLeod's March 24, 2005 response speaks for itself.

19. Denied.

20. McLeod's allegations in paragraph 20 of the Petition are vague and incomplete, and therefore without further information Qwest denies the same.

21. At this time Qwest is without knowledge or information sufficient to form a belief as to the truth of whether McLeod has never been delinquent in payments to Qwest for services provided to McLeod under the interconnection agreement and therefore denies the same. Qwest admits that services provided under the interconnection agreement are invoiced separately from service provided under either Qwest's tariffs or the QCC Wholesale Service Agreement. Qwest admits that McLeod is current on all invoices from Qwest for services provided under the interconnection agreement.

22. Qwest denies that the terms of the interconnection agreement did not allow Qwest to demand a security deposit under the circumstances. Qwest also asserts that on April 13, 2005 it withdrew the Demand Letter rendering moot McLeod's claims in this Petition and its allegations regarding the Demand Letter. As to the remaining allegations contained in paragraph 22, the cited provisions of the interconnection agreement speak for themselves.

23. Qwest states that the cited provisions of the interconnection agreement speak for themselves.

24. Qwest denies that repeated delinquency is the sole condition permitting it to demand a security deposit. Qwest admits that McLeod is current on all invoices from Qwest for services provided under the interconnection agreement.

25. Denied.

26. Admitted.

27. Qwest admits that McLeod would have thirty days to cure a default. Qwest denies the remainder of the allegations in paragraph 27.

28. Denied.

29. Qwest states that the cited provisions of the interconnection agreement speak for themselves. Qwest denies that the interconnection agreement does not permit Qwest to act unilaterally, and Qwest denies that demands for security and following the notice of default, default, and other remedial procedures under the interconnection agreement are conditioned upon first invoking the dispute resolution process of the interconnection agreement.

30. Denied.

Requested Relief

Qwest requests an order of the Commission denying McLeod's requested relief. Qwest also asserts that due to Qwest's withdrawal of its March 21, 2005 demand letter under the interconnection agreement, McLeod's allegations, claims, and requested relief are rendered moot.

QWEST'S AFFIRMATIVE DEFENSES

1. McLeod's claims and requests for interim and other relief have been rendered moot.
2. McLeod's claims and requests for interim and other relief are not ripe.
3. Due to McLeod's own actions, issues raised by McLeod's Petition and its requests for interim and other relief are the subject of the action before the United States District Court for the District of Colorado, and therefore the Commission should dismiss McLeod's Petition in this docket.

RESPECTFULLY SUBMITTED: April 19, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **QWEST CORPORATION'S RESPONSE TO MCLEOD'S PETITION FOR ENFORCEMENT OF INTERCONNECTION AGREEMENT CORPORATION**

was served on the following by electronic mail on April 19, 2005:

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