

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION
OF MCLEODUSA TELECOMMUNICATIONS
SERVICES, INC. FOR ENFORCEMENT OF
AN INTERCONNECTION AGREEMENT
WITH QWEST CORPORATION

TC05-057

ANSWER

RECEIVED
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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Qwest Corporation ("Qwest"), by and through its counsel, hereby answers and responds to the Petition of McLeodUSA Telecommunications Services, Inc. ("McLeod") for Enforcement of Interconnection Agreement with Qwest Corporation (the "Petition"). On April 18, 2005, Qwest filed a Motion to Dismiss McLeod's Petition and Qwest respectfully asks the Commission to consider that Motion first, and then the defenses raised herein.

INTRODUCTION

With regard to McLeod's allegations and statements contained on pages one and two of its Petition, Qwest responds that this case arises from McLeod's deteriorating financial condition and its failure to live up to its financial obligations to Qwest. The genesis of this dispute is 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 incorrectly billed to 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) is 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. McLeod's 8-K filing also stated that McLeod had to seek forbearance from interest payments to its lenders and that 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." Exhibit D, page 3. A press release coincident with McLeod's 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).

On the news of the 8-K filing, McLeod's common stock decreased in value 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.

ANSWER

Introductory Paragraphs

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 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 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, issue a notice of default, or exercise other rights and remedies.

Jurisdiction

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 approved by the Commission on July 23, 1999. 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 states that the averments in paragraph 3 constitute conclusions of law and as such contain no factual allegation for which Qwest must admit or deny. Subject to the foregoing, 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 the averments in paragraph 4 constitute conclusions of law and as such contain no factual allegations for Qwest must admit or deny. Subject to the foregoing, 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 above, Qwest denies

McLeod's allegation that the Commission has clear jurisdiction to interpret the terms of the interconnection agreement.

5. Qwest states that the averments in paragraph 5 constitute conclusions of law and as such contain no factual allegations for Qwest must admit or deny. Subject to the foregoing, for the reasons stated in Qwest's response to paragraph 4 above, Qwest denies that the Commission has jurisdiction to consider this Petition.

Parties

6. Qwest admits that McLeodUSA is a competitive local exchange carrier certified to provide local exchange service in South Dakota. Except as so admitted, Qwest is without knowledge or information sufficient to form a belief as to the truth of matters asserted.

7. Admitted.

Statement of Facts

8. Qwest incorporates its responses to the Introductory Paragraphs of McLeod's Petition. Qwest states that it has withdrawn its demand for security thus rendering moot the allegations stated in this paragraph. Qwest denies it attempted to ignore the dispute resolution provisions of the interconnection agreement and asserts that a notice of default and other remedial procedures under the interconnection agreement are not conditioned upon first invoking the dispute resolution process of the interconnection agreement. Qwest denies that action by this Commission is needed as described by McLeod in this paragraph 8.

9. Qwest denies that its conduct is in violation of 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 9 of the Petition.

10. 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 the issues pending in the federal court are separate from the issues raised in this Petition. 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 agreement, but Qwest is without knowledge or information sufficient to form a belief as to the truth of whether McLeod has otherwise complied in all respects with the terms and conditions of the interconnection agreement.

11. Admitted.

12. 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.

13. Qwest states that the Demand Letters for New Mexico 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.

14. 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. Qwest denies each and every remaining allegation contained in paragraph 14.

15. 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 also asserts that a 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.

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

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

18. Denied.

19. Qwest states that McLeod's allegations in paragraph 19 of the Petition are vague and incomplete, or constitute conclusions of law, and therefore without further information Qwest denies the same.

20. 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 with respect to the most recent invoice for services provided under the interconnection agreement on the date of this Answer, McLeod is current.

21. 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. As to the remaining allegations contained in paragraph 21, the cited provisions of the interconnection agreement speak for themselves.

22. 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 for a security

deposit. Qwest states that the interconnection agreement speaks for itself. Also, Qwest asserts that paragraph 22 states legal conclusions to which Qwest need not respond.

23. 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 for a security deposit. Also, Qwest asserts that paragraph 23 states legal conclusions to which Qwest need not respond.

24. 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 for a security deposit. Also, Qwest asserts that the interconnection agreement speaks for itself and that paragraph 24 states legal conclusions to which Qwest need not respond.

Requested Relief

Qwest requests an order of the Commission denying McLeod's requested relief. Qwest asserts that because of 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 relief have been rendered moot.
2. McLeod's claims and requests for relief are not ripe.
3. Due to McLeod's own actions, issues raised by McLeod's Petition and its requests for relief are the subject of an action before the United States District Court for the District of Colorado, and in the interests of judicial efficiency and to avoid potentially conflicting orders, this Commission should dismiss, stay, or defer this case pending further proceedings before the federal court.

Respectfully submitted this 18th day of April, 2005.

QWEST CORPORATION

By: _____

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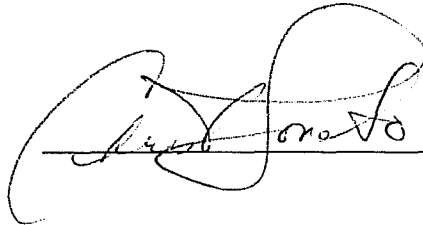
CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of April, 2005, an original and 10 copies of the foregoing **QWEST CORPORATION'S ANSWER** was served upon the following party:

Ms. Pam Bonrud
Executive Secretary
South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501-5070

a copy was also sent to the following:

Brett M. Koenecke
MAY, ADAM, GERDES & THOMPSON LLP
503 South Pierre Street
PO Box 160
Pierre, SD 57501-0160



A handwritten signature in cursive script, appearing to read "Brett Koenecke", is written over a horizontal line.