

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN RE:

Docket No. TC12-016

MIDCONTINENT COMMUNICATIONS,

**MOTION TO DISMISS AND/OR FOR
CLARIFICATION OF COMMISSION'S
JURISDICTION.**

Complainant,

v.

PAETEC COMMUNICATIONS, INC., and
MCLEODUSA TELECOMMUNICATIONS
SERVICES, L.L.C.,

Respondents.

COME NOW the Respondents herein – McLeodUSA Telecommunications Services, LLC., (“McLeodUSA”) and PAETEC Communications, Inc., (“PAETEC”) – and respectfully submit the following Motion to Dismiss and/or for Clarification of Commission’s Jurisdiction regarding the Amended Complaint and Request for Declaratory Order filed in this Docket and dated February 7, 2012 (the “Amended Complaint”)¹.

INTRODUCTION

Midcontinent Communications (“Midcontinent” or “Complainant”) filed its Amended Complaint against McLeodUSA and PAETEC, alleging that they are engaged in activities designed to deprive the Complainant of its right to recover terminating access charges for telecommunications directed to its end user customers. The Complainant alleges that McLeod accomplishes this alleged goal by: (1) “altering and/or disguising the data in the call signaling

¹ Midcontinent filed its initial Complaint on January 12, 2012, naming PAETEC Communications, Inc., -- an affiliate of McLeodUSA – as the sole Respondent. On February 7, 2012 Midcontinent filed its Amended Complaint (to which this Answer and Affirmative Defenses responds) adding McLeodUSA as a co-Respondent.

stream to mask the true origination point or jurisdiction of the traffic, thereby making the traffic appear as if it is a local telecommunications call not subject to terminating access charges” (“Phantom Traffic issue”); and (2) employing certain tactics to prevent calls from being completed, including activities that result in long distance calls “being delayed, dropped, blocked and/or otherwise prevented from terminating to the Midcontinent customer.” (“Call Termination Issue”); Amended Complaint, pp. 1-2.

As set forth in its Motion to dismiss, below, and its accompanying Answer and Affirmative Defenses², PAETEC categorically denies these allegations.

Moreover, for the reasons explained below, at least with respect to Count II (“Cease and Desist Order”), the Complaint is moot and fails to state a cause upon which relief can be granted and should therefore be dismissed.³ Moreover, the Commission should clarify that its review and handling of the Amended Complaint is limited to intrastate traffic and, conversely, excludes, interstate traffic.

GROUND FOR DISMISSAL

1. With respect to the issue regarding insertion of a Charge Number into the data stream of traffic delivered to Midcontinent, the allegations of the Amended Complaint contending that the practice is an on-going one by Respondent McLeodUSA is factually incorrect -- while that practice was not uncommon in the telecommunications industry prior to the FCC’s recent *ICC-USF Transformation Order*⁴, prior to the effective date of that decision -- and prior to Midcontinent’s filing of its Amended Complaint -- McLeodUSA conformed its practice to the FCC’s prospective prohibition, such that Respondent no longer inserts a CN into the data stream of traffic it hands off for termination. In all respects, Respondent is in compliance with the FCC’s new signaling rules. As a result, the allegations and requests for relief pertaining to on-going insertion of a CN into the data stream or otherwise asserting

² By filing its Answer and Affirmative Defenses, Respondents do not waive, and instead specifically reserve, any and all arguments relating to dismissal of the Complaint.

³ In seeking here dismissal of Count II, Respondents do not waive, and instead specifically reserve, any and all arguments that may be raised for dismissal of other Counts of the Amended Complaint.

⁴ *In the Matter of Connect America Fund, A National Broadband Plan for Our future, Establishing Just and Reasonable Rates for LOCAL Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208. Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (*USF-ICC Transformation Order*).

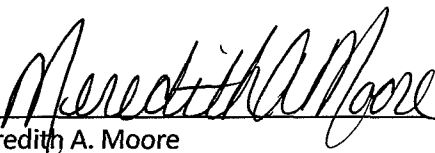
violations of law or regulations by Respondent concerning signaling rules – including, particularly, Count II of the Complaint – are wholly unsubstantiated and should be dismissed.

2. At a minimum, the significant portion of the traffic which is covered by the Complaint is believed to be jurisdictionally interstate in nature. While the Complaint does not limit its allegations or requests for relief to intrastate traffic, it is only with respect to the latter that the Commission has jurisdiction. Thus, the Complaint should be dismissed due to the extent it is not explicitly limited to South Dakota intrastate traffic. Alternatively, the Commission's should clarify that its review of the Amended Complaint will be limited to any such intrastate traffic that may be identified by Midcontinent.

WHEREFORE, the reasons stated herein, Respondents move for dismissal and/or clarification of the Commission's jurisdiction over the Amended Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned attorney for the Defendant hereby certifies that on February 28, 2012, a true and correct copy of Respondents' Motion to Dismiss and/or for Clarification of Commission's Jurisdiction was served by electronic mail on the following individuals:

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