

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE COMPLAINT FILED)	ORDER DENYING REQUEST
BY MIKE MATTERN, ABERDEEN, SOUTH)	TO ADD QWEST
DAKOTA, AGAINST MCLEODUSA)	CORPORATION AS A
TELECOMMUNICATIONS SERVICES, INC.)	PARTY
REGARDING POOR SERVICE)	CT00-112

On December 6, 2000, the Public Utilities Commission (Commission) received a complaint filed by Mike Mattern, Aberdeen, South Dakota (Complainant), against McLeodUSA Telecommunications Services, Inc. (McLeod) regarding poor service

On December 6, 2000, the complaint was faxed to McLeod. Pursuant to ARSD 20:10:01:09, McLeod was notified that it must satisfy the complaint or file an answer in writing with the Commission by December 26, 2000. On December 22, 2000, the Commission received an answer and motion to dismiss from McLeod. On January 9, 2001, the Commission received a letter from Complainant requesting that Qwest Corporation (Qwest) be added to his complaint.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-13, including 49-13-1 through 49-13-14, inclusive, and SDCL Chapter 49-31, including 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.2, 49-31-7.3, 49-31-7.4, 49-31-10, 49-31-11, 49-31-38, 49-31-38.1, 49-31-38.2, 49-31-38.3, and ARSD Chapters 20:10:01 and 20:10:33.

On January 17, 2001, at a regularly scheduled meeting, the Commission considered this request. The Complainant stated he did not have a problem with Qwest, he just wanted some information from Qwest. Qwest's representative stated Qwest would provide the information through a subpoena. The Commission voted to deny the request to add Qwest as a party (Pam Nelson, dissenting). It is therefore

ORDERED, that the request to add Qwest as a party is hereby denied.

Dated at Pierre, South Dakota, this 25th day of January, 2001.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u><i>Delaine Kelbo</i></u>
Date: <u>1/25/01</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

PAM NELSON, Commissioner, dissenting

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

DISSENT OF COMMISSIONER NELSON

McLeodUSA provides local exchange service for Mr. Mattern. This service is used to solicit customers for his business, Mattern Electric. Mr. Mattern's issue before us is a service complaint. McLeodUSA, in lieu of providing its own facilities, has contracted with Qwest to resell Qwest's local service. The Telecommunications Act of 1996 clearly established resale as one method of local exchange competition. While resale injects a measure of competition between two local exchange companies, there remains an obvious and indisputable interdependence between the two as one (Qwest) provides the facilities and the other (McLeod) leases those facilities and provides the retail service. A customer-reported service facilities problem triggers joint responsibilities.

Mr. Mattern's original complaint filed December 6, 2000, named his local service provider, McLeodUSA, as respondent. In a letter dated January 6, 2001, Mr. Mattern requested that Qwest be added as an additional respondent. This seems logical given the relationship between Qwest and McLeod. It has been a common practice of this Commission to include "underlying carriers" as parties to complaints initially directed toward companies leasing or otherwise paying for services of the underlying, or facilities-based carriers. The cure for the complaint may require action by either of the carriers, or perhaps both.

In this docket the majority ruled to deny Mr. Mattern's written request that Qwest be added as a party. Qwest's counsel offered to provide needed information if it is properly subpoenaed. I fail to comprehend how this cumbersome alternative improves our basis to reach a timely and fair decision. I don't understand why Qwest wants to avoid party status, to place itself procedurally on the outside, looking in, on a matter in which they are inextricably involved. I don't understand why the majority suddenly decided to veer off the path that has served everyone, and especially the complainants who generally are at a disadvantage in the process, so well.

I therefore dissent from the majority decision to deny Mr. Mattern's request to include Qwest as a party in this docket.