

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

IN THE MATTER OF THE COMPLAINT FILED)	SECOND ORDER FOR AND
BY JOAN AND FRANK URBANSKI ON)	NOTICE OF HEARING
BEHALF OF ANYTIME TAN, NORTH SIOUX)	
CITY, SOUTH DAKOTA, AGAINST)	CT03-006
MCLEODUSA N/K/A PRAIRIEWAVE)	
COMMUNICATIONS, INC. REGARDING A)	
CONTRACT DISPUTE)	

On March 12, 2003, the Public Utilities Commission (Commission) received a complaint filed by Joan and Frank Urbanski on behalf of Anytime Tan, North Sioux City, South Dakota (Complainant), against McLeodUSA n/k/a PrairieWave Communications, Inc. (PrairieWave) regarding a contract dispute.

On March 12, 2003, the complaint was faxed to PrairieWave. Pursuant to ARSD 20:10:01:09, PrairieWave was notified that it must satisfy the complaint or file an answer in writing with the Commission by April 1, 2003. On March 31, 2003, the Commission received an answer from PrairieWave. A hearing was scheduled for October 17, 2003. By order dated August 22, 2003, the hearing was rescheduled for October 24, 2003. By order dated October 17, 2003, the hearing was cancelled and a new hearing was to be rescheduled at a later time.

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, 49-31-89 through 49-31-97, inclusive, and ARSD Chapters 20:10:01 and 20:10:34.

A hearing shall be held on June 2, 2004, beginning at 8:30 A.M., at the Holiday Inn City Centre, 100 West 8th Street, Sioux Falls, South Dakota. All persons testifying will be subject to cross-examination by the parties.

The issue at the hearing is whether the early termination penalty in the amount of \$1,070.87 assessed against Complainant by PrairieWave should be enforced against Complainant or whether such penalty constituted an unlawful or unreasonable act or practice under the facts of this case of which Complainant should be relieved of liability for payment.

The hearing shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided,

if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of the hearing, the Commission shall determine whether the early termination penalty in the amount of \$1,070.87 assessed against Complainant by PrairieWave should be enforced against Complainant or whether such penalty constituted an unlawful or unreasonable act or practice under the facts of this case of which Complainant should be relieved of liability for payment. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that a hearing shall be held at the time and place specified above on the issue of whether the early termination penalty in the amount of \$1,070.87 assessed against Complainant by PrairieWave should be enforced against Complainant or whether such penalty constituted an unlawful or unreasonable act or practice under the facts of this case of which Complainant should be relieved of liability for payment.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 4th day of May, 2004.

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>Delaine Kolbo</u>
Date: <u>5/5/04</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner