

**BEFORE THE WASHINGTON UTILITIES  
AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKET NO. UT-033011
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	MOTION OF MCLEODUSA
	)	TO DISMISS
v.	)	
	)	
ADVANCED TELECOM GROUP, INC.; ET AL.	)	
	)	
Respondents.	)	
.....	)	

Pursuant to the Prehearing Conference Order dated September 10, 2003, and WAC 480-09-426, McLeodUSA Telecommunications, Inc. (“McLeodUSA”) hereby moves to dismiss the First, Second and Fourth Causes of Action of the Amended Complaint (“Complaint”) in the above-entitled matter as they pertain to McLeodUSA, and that McLeodUSA be dismissed as a Respondent to the Complaint.

1. The Commission, through its Staff, brought the above-entitled Complaint against Qwest Corporation (“Qwest”) and 15 other telecommunications companies, including McLeodUSA.

2. The Complaint alleges three causes of action against all the Respondents, including McLeodUSA. As its first cause of action, the Complaint alleges that each Respondent violated 47 U.S.C. § 252(a) “by failing to submit the agreements to the Commission.” The Complaint alleges in its second cause of action that each Respondent violated 47 U.S.C. § 252(e) by entering into agreements that were not approved by the Commission. Finally, in its fourth cause of action, the Complaint alleges that each Respondent violated RCW 80.36.150 by failing to file certain named agreements.

3. The Complaint should be dismissed as to McLeodUSA because none of the statutes on which the Complaint was brought establish a cause of action against McLeodUSA.

4. As its first stated cause of action, the Complaint alleges that the Respondents violated section 252(a) of the Telecommunications Act of 1996 (“Act”) by failing to file agreements subject to the filing requirement of that statute. Assuming the agreements in question were subject to the filing requirement of section 252(a), that requirement did not apply to McLeodUSA. The filing obligation under section 252(a) applies exclusively to Incumbent Local Exchanges Carriers (“ILECs”). It does not apply to non-ILECs or Competitive Local Exchange Carriers (CLECs) such as McLeodUSA.

5. As its second cause of action, the Complaint alleges that the Respondents violated section 252(e) of the Act by entering into agreements that were not approved by the Commission. Section 252(e) requires that “any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission.” Assuming that the agreements in question were subject to section 252(e), the filing requirement did not apply to McLeodUSA because McLeodUSA is not an ILEC. Further, the filing requirement in section 252(e) does not preclude companies from entering into interconnection agreements before those agreements are filed. To the contrary, section 252(e) contemplates parties adopting agreements through negotiation or arbitration before those agreements are submitted for State commission review. McLeodUSA properly entered into negotiated agreements with Qwest and it was, thereafter, Qwest’s legal responsibility to file those agreements for approval under section 252(e) if those agreements themselves were subject to the filing requirement.

6. As its final stated cause of action involving McLeodUSA, the Complaint alleges that the Respondents violated RCW 80.36.150 by failing to file certain agreements with Qwest.

Section 80.36.150 requires telecommunications companies to file agreements entered into with one another, but it expressly provides that these agreements shall be filed “as and when required by [the Commission].” Further, this state statute requires the Commission to “adopt rules” for the filing of these contracts. In this case, when the agreements in question were entered into, the Commission had neither specifically required McLeodUSA to file these agreements nor adopted rules for such filings as required by RCW 80.36.150. Therefore, McLeodUSA was not obligated under RCW 80.36.150 to file any of the agreements in question and, absent such a duty, there is no cause of action against McLeodUSA for failure to file.

WHEREFORE, McLeodUSA respectfully requests that the Commission enter an Order dismissing the above-entitled action as to McLeodUSA.

Respectfully submitted,



By: \_\_\_\_\_  
Dan Lipschultz

Moss & Barnett  
4800 Wells Fargo Center  
90 S Seventh Street  
Minneapolis, MN 55402  
Telephone: 612.347.0306

Attorneys on Behalf of McLeodUSA  
Telecommunications, Inc.