

Service date: November 7, 2011

BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

WASHINGTON INDEPENDENT
TELECOMMUNICATIONS ASSOCIATION,
WASHINGTON EXCHANGE CARRIER
ASSOCIATION, THE TOLEDO TELEPHONE
CO., INC., TENINO TELEPHONE COMPANY,
KALAMA TELEPHONE COMPANY and
HOOD CANAL TELEPHONE COMPANY,
d/b/a HOOD CANAL COMMUNICATIONS

Complainants,

v.

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

Respondents.

DOCKET NO. UT-111816

ANSWER AND AFFIRMATIVE
DEFENSES OF:

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

The respondents herein – McLeodUSA Telecommunications Services, L.L.C. (“McLeodUSA”) and PAETEC Communications, Inc. (“PAETEC”) – respectfully submit the following Answer and Affirmative Defenses to the Complaint for Violations of Law filed in this Docket and dated October 17, 2011 (the “Complaint”).

INTRODUCTION

The complainants filed their Complaint alleging that McLeodUSA and PAETEC are engaged in activities designed to deprive the complainants of their right to recover terminating access charges for telecommunications directed to their end user customers. The complainants allege that McLeodUSA and PAETEC accomplish this alleged goal by: (1) “altering the data in

the call signaling stream to mask the true origination point or jurisdiction of the traffic, therefore making it appear as if the telecommunications traffic is not subject to access charges”; and (2) employing certain tactics to prevent calls from being completed, “through such things as providing extended ‘dead air’ so that the calling party thinks the call is not going through and terminates, or there is dead air followed by a busy signal, or the person on the called party location answers and does not hear anyone on the calling party end of the call.” Complaint, ¶¶ 12-13.

As set forth in their Answer and Affirmative Defenses below, McLeodUSA and PAETEC categorically deny these allegations and state that – if the alleged issues exist – the problem arises from one or more of McLeodUSA’s upstream wholesale VOIP customers, who deliver their traffic to McLeodUSA in IP format. Neither McLeodUSA nor PAETEC is responsible for such alleged actions, and they have no visibility regarding how the calls originate; rather, the respondents are caught in the middle. In fact, until the filing of the Complaint, McLeodUSA’s engineering personnel had been working cooperatively with complainant WITA in attempting to troubleshoot the alleged problems in order to discover the cause and source and help put a stop to it. For reasons unknown, WITA terminated its cooperative efforts and filed this Complaint.

The problems alleged in the Complaint appear to be widespread and have been receiving increasing attention among carriers and regulators. Accordingly, McLeodUSA and PAETEC respectfully suggest that resolution of this matter is more appropriate for a generic proceeding before the Commission, rather than handled on a piecemeal, company-by-company basis.

ANSWER

1. In answer to Paragraph 1 of the Complaint, the respondents admit that this action has been brought before the Washington Utilities and Transportation Commission (the “Commission”) and that, as of the date of this answer, the Washington Secretary of State’s Office lists WITA and WECA as non-profit Washington corporations and also lists each of the

remaining entities identified in this paragraph as Washington corporations. The respondents lack knowledge sufficient to admit or deny that WITA brings this action on behalf of its “participating member companies” and lack knowledge sufficient to admit or deny the allegations in footnote 1 to Paragraph 1 of the Complaint. Except as expressly admitted herein, the respondents deny each and every remaining allegation set forth in Paragraph 1 of the Complaint.

2. In answer to Paragraph 2 of the Complaint, the respondents admit that, as of the date of this answer, the Washington Secretary of State’s Office lists WITA as a non-profit Washington corporation. The respondents lack knowledge sufficient to admit or deny the remaining allegations set forth in Paragraph 2 of the Complaint. Except as expressly admitted herein, the respondents deny each and every remaining allegation set forth in Paragraph 2 of the Complaint.

3. In answer to Paragraph 3 of the Complaint, the respondents admit that, as of the date of this answer, the Washington Secretary of State’s Office lists WECA as a non-profit Washington corporation. The respondents lack knowledge sufficient to admit or deny the remaining allegations set forth in Paragraph 3 of the Complaint. Except as expressly admitted herein, the respondents deny each and every remaining allegation set forth in Paragraph 3 of the Complaint.

4. In answer to Paragraph 4 of the Complaint, the respondents admit that, as of the date of this answer, the Washington Secretary of State’s Office lists Toledo as a Washington corporation and that the Commission lists Toledo as a regulated local exchange carrier. The respondents lack knowledge sufficient to admit or deny the remaining allegations set forth in Paragraph 4 of the Complaint. Except as expressly admitted herein, the respondents deny each and every remaining allegation set forth in Paragraph 4 of the Complaint.

5. In answer to Paragraph 5 of the Complaint, the respondents admit that, as of the date of this answer, the Washington Secretary of State’s Office lists Tenino as a Washington

corporation and that the Commission lists Tenino as a regulated local exchange carrier. The respondents lack knowledge sufficient to admit or deny the remaining allegations set forth in Paragraph 5 of the Complaint. Except as expressly admitted herein, the respondents deny each and every remaining allegation set forth in Paragraph 5 of the Complaint.

6. In answer to Paragraph 6 of the Complaint, the respondents admit that, as of the date of this answer, the Washington Secretary of State's Office lists Kalama as a Washington corporation and that the Commission lists Kalama as a regulated local exchange carrier. The respondents lack knowledge sufficient to admit or deny the remaining allegations set forth in Paragraph 6 of the Complaint. Except as expressly admitted herein, the respondents deny each and every remaining allegation set forth in Paragraph 6 of the Complaint.

7. In answer to Paragraph 7 of the Complaint, the respondents admit that, as of the date of this answer, the Washington Secretary of State's Office lists HCC as a Washington corporation and that the Commission lists HCC as a regulated local exchange carrier. The respondents lack knowledge sufficient to admit or deny the remaining allegations set forth in Paragraph 7 of the Complaint. Except as expressly admitted herein, the respondents deny each and every remaining allegation set forth in Paragraph 7 of the Complaint.

8. In answer to Paragraph 8 of the Complaint, the respondents admit the allegations set forth therein.

9. In answer to Paragraph 9 of the Complaint, the respondents admit the allegations set forth therein.

10. In answer to Paragraph 10 of the Complaint, the respondents admit that, as of February 8, 2008, McLeodUSA is a wholly-owned subsidiary of PAETEC. Except as expressly admitted herein, the respondents deny each and every remaining allegation set forth in Paragraph 10 of the Complaint.

11. In answer to Paragraph 11 of the Complaint, the respondents admit that the partial quotation from RCW 80.04.110(1), as currently in effect, appears accurate; however, to the

extent that the excerpt is misquoted in the Complaint, the respondents state that the official text of the statute itself is the governing language. Further, the respondents affirmatively state that the statute has been amended, effective July 1, **2012** (see Certificate of Enrollment, 2nd Substitute Senate Bill 5034, Chap. 214, Laws of 2011). Except as expressly admitted herein, the respondents deny each and every remaining allegation set forth in Paragraph 11 of the Complaint.

12. In answer to Paragraph 12 of the Complaint, the respondents admit that McLeodUSA sends telecommunications traffic to local exchange carriers. The respondents categorically deny the allegation in the first sentence that McLeodUSA “is altering the data in the call signaling stream to mask the true origination point or jurisdiction of the traffic.” The respondents lack knowledge sufficient to admit or deny the allegation in the second sentence of Paragraph 12, stating that the complainants “believe[]” that this traffic includes both TDM (Time-Division Multiplexing) originated and IP (Internet Protocol) originated traffic. Except as expressly admitted herein, the respondents deny each and every remaining allegation set forth in Paragraph 12 of the Complaint. Further, the respondents affirmatively state that: (1) McLeodUSA accepts telecommunications traffic it receives from wholesale VoIP customers and transmits it to terminating local exchange carriers; (2) McLeodUSA’s upstream wholesale VoIP customers deliver all traffic to McLeodUSA in IP format; (3) McLeodUSA has no visibility regarding the manner in which the calls delivered to it were originated; (4) McLeodUSA does not manipulate, change, mask, or hide the Calling Party Number (“CPN”) in the data stream; and (5) if there is no CPN number in the data stream, McLeodUSA does not create one or make one up.

13. In answer to Paragraph 13 of the Complaint, the respondents deny each and every allegation set forth therein. Further, the respondents affirmatively state that: the respondents have only very recently become aware of the alleged “dead air” problem; the respondents have not changed any of their practices in such a way that could possibly result in such “dead air”

issues; and, until the filing of the Complaint, McLeodUSA's engineering personnel had been working cooperatively with WITA in attempting to troubleshoot the alleged problems with "dead air" and dropped calls in order to discover the cause and source (which respondents believe to be at the originating end of the call).

14. In answer to Paragraph 14 of the Complaint, the respondents deny each and every allegation set forth therein. Further, the respondents affirmatively state that the reference to "the items set forth in Paragraphs 10, and 11, above" is vague, ambiguous, and overly broad; the respondents re-state their answers to Paragraphs 10 and 11, above.

15. In answer to Paragraph 15 of the Complaint, the respondents admit that the quotation from RCW 80.36.140, as currently in effect, appears accurate; however, to the extent that the excerpt is misquoted in the Complaint, the respondents state that the official text of the statute itself is the governing language. The respondents deny that any of their alleged activities as described in Paragraph 15 or elsewhere in the Complaint constitutes a violation of RCW 80.36.140 or any other law or regulation. Except as expressly admitted herein, the respondents deny each and every remaining allegation set forth in Paragraph 15 of the Complaint.

16. In answer to Paragraph 16 of the Complaint, the respondents deny that there are any "practices" of McLeodUSA specifically described in Paragraphs 10 and 11 of the Complaint, and further deny that any of McLeodUSA's practices is in violation of RCW 80.36.140 in any respect as alleged in Paragraph 16, or otherwise in violation of any other law or regulation.

17. In answer to Paragraph 17 of the Complaint, the respondents deny each and every allegation set forth therein and specifically deny that McLeodUSA has taken or is taking any actions to "disguise" calls as local traffic.

18. In answer to Paragraph 18 of the Complaint, the respondents admit that the quotation from RCW 80.36.160, as currently in effect, appears accurate; however, to the extent that the excerpt is misquoted in the Complaint, the respondents state that the official text of the statute itself is the governing language. The respondents lack knowledge sufficient to admit or

deny the allegation regarding how the Commission has “treated” access charges. Except as expressly admitted herein, the respondents deny each and every remaining allegation set forth in Paragraph 18 of the Complaint, and specifically deny that McLeodUSA has taken or is taking any actions in violation of the statute, and also deny that the alternative relief requested by the complainants under RCW 80.36.180 is appropriate. Further, respondents affirmatively state that the FCC has not established a specific rate for VoIP traffic.

19. In answer to Paragraph 19 of the Complaint, the respondents admit that the quotation from RCW 80.36.170, as currently in effect, appears accurate; however, to the extent that the excerpt is misquoted in the Complaint, the respondents state that the official text of the statute itself is the governing language. Except as expressly admitted herein, the respondents deny each and every remaining allegation set forth in Paragraph 19 of the Complaint.

20. In answer to Paragraph 20 of the Complaint, the respondents deny each and every allegation set forth therein and specifically deny that McLeodUSA has taken or is taking any actions to “disguise” telecommunications traffic in any way.

21. In answer to Paragraph 21 of the Complaint, the respondents admit that the quotation from RCW 80.36.200, as currently in effect, appears accurate; however, to the extent that the excerpt is misquoted in the Complaint, the respondents state that the official text of the statute itself is the governing language. Except as expressly admitted herein, the respondents deny each and every remaining allegation set forth in Paragraph 21 of the Complaint, and specifically deny that McLeodUSA has taken or is taking any actions in violation of the statute.

22. In answer to Paragraph 22 of the Complaint, the respondents admit that the quotation from RCW 80.36.220, as currently in effect, appears accurate; however, to the extent that the excerpt is misquoted in the Complaint, the respondents state that the official text of the statute itself is the governing language. Except as expressly admitted herein, the respondents deny each and every remaining allegation set forth in Paragraph 22 of the Complaint, and specifically deny that McLeodUSA has taken or is taking any actions in violation of the statute.

23. In answer to Paragraph 23 of the Complaint, the respondents admit that the quotation from RCW 80.36.260, as currently in effect, appears accurate; however, to the extent that the excerpt is misquoted in the Complaint, the respondents state that the official text of the statute itself is the governing language. Except as expressly admitted herein, the respondents deny each and every remaining allegation set forth in Paragraph 23 of the Complaint, and specifically deny that McLeodUSA has taken or is taking any actions in violation of the statute and denies that the relief requested by Complainants under that statute is necessary or appropriate.

24. In answer to Paragraph 24 of the Complaint, the respondents deny each and every allegation set forth therein.

25. In answer to Paragraph 25 of the Complaint, the respondents admit only that, as of February 8, 2008, McLeodUSA is a wholly-owned subsidiary of PAETEC. Except as expressly admitted herein, the respondents deny each and every remaining allegation set forth in Paragraph 25 of the Complaint.

26. Paragraph 26 of the Complaint purports to state the "Relief Requested" by the complainants. The respondents deny that the complainants are entitled to any of the relief requested in Paragraph 26 or any other relief requested against the respondents elsewhere in the Complaint.

AFFIRMATIVE DEFENSES

For their affirmative defenses to the Complaint, the respondents assert the following:


1. The Complaint fails to state a claim upon which relief can be granted against these respondents.
2. The Commission lacks jurisdiction over respondent PAETEC.
3. The complainants have failed to name and join indispensable parties to this proceeding. Any access charges allegedly due and owing to the complainants are

owed – if at all – by upstream telecommunications carriers that deliver traffic to McLeodUSA.

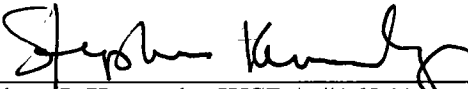
4. This proceeding would be more properly conducted as a “generic” proceeding instead of a single adjudication involving only two respondents. The issues raised in the Complaint have been widely-discussed as a ubiquitous problem (*see, e.g.*, COMMUNICATIONS DAILY, Wednesday, October 19, 2011, at pp. 9-10).
5. The complainants have filed the Complaint in bad faith. Until the filing of the Complaint, McLeodUSA’s engineering personnel had been working cooperatively with WITA in attempting to troubleshoot the alleged “dead air” and dropped calls problem in order to discover its cause and source (which respondents believe to be at the originating end of the call).
6. The complainants have failed to mitigate their alleged damages by, among other things, failing to continue to cooperate with McLeodUSA’s investigative efforts.
7. To the extent that any of the respondents’ affirmative statements set forth above in answer to the Complaint are more properly denominated as affirmative defenses, such statements are incorporated herein by reference.

RESPECTFULLY SUBMITTED this 7th day of November, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of November, 2011, served the true and correct original, along with the correct number of copies, of the foregoing document upon the WUTC, via the method(s) noted below, properly addressed as follows:

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I hereby certify that I have this 7th day of November, 2011, served a true and correct copy of the foregoing document upon parties of record, via the method(s) noted below, properly addressed as follows:

On Behalf Of Complainants:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 7th day of November, 2011, at Seattle, Washington.