

1 BEFORE THE PUBLIC UTILITIES COMMISSION
2 OF THE STATE OF MINNESOTA

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4
5 Leroy Koppendrayer, Chair
6 Gregory Scott, Commissioner
7 Marshall Johnson, Commissioner
8 Phyllis Reha, Commissioner

9 In the Matter of the Consideration
10 of the Complaint of the Minnesota
11 Department of Commerce Against
12 Qwest Corporation Regarding Unfiled
13 Agreements

14 PUC Docket No: P-421/C-02-197

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16 Minnesota Public Utilities Commission
17 350 Metro Square Building
18 121 Seventh Place East
19 St. Paul, Minnesota
20 Large Hearing Room
21 February 4, 2003

22 Met, pursuant to notice, at 9:30 in the
23 morning.

24
25 COURT REPORTER: Angie D. Threlkeld, RPR CRR

1 CHAIR KOPPENDRAYER: I think the buyout
2 should be calculated against the going-forward
3 amount that they participated.

4 COMMISSIONER JOHNSON: I do too.

5 CHAIR KOPPENDRAYER: In straight up
6 dollars of the buyout. I don't care about the
7 idiosyncracies of why you did what you did; but you
8 were part of the agreement also, which was an
9 illegal agreement. So whatever you got as dollars
10 as buyout gets counted against the going-forward
11 benefit.

12 COMMISSIONER SCOTT: Is that amount in
13 the record?

14 MR. ALPERT: Chair Koppendrayer,
15 Commissioner Scott, I believe that we put a dollar
16 number in, a total, I believe, between the two
17 companies. But I think that when Eschelon filed a
18 series of agree -- or terminated a series of
19 agreements, they also filed the next agreement; and
20 there was a dollar amount there. And we can get
21 those numbers, specific numbers from Eschelon and
22 McLeod.

23 CHAIR KOPPENDRAYER: Thank you.

24 MR. ALPERT: So I guess my question is
25 then for clarification: This is a -- this is a

1 credit that Qwest would have had to have given, but
2 McLeod and Eschelon will not be entitled to it until
3 they've exhausted whatever the amount is that we had
4 calculated --

5 CHAIR KOPPENDRAYER: In the 24 months
6 going forward, they first have to exhaust the amount
7 that they got as a buyout on their contract, and
8 they can go from there.

9 COMMISSIONER REHA: Not to throw a wrench
10 into this, but I have a few due process concerns on
11 that.

12 CHAIR KOPPENDRAYER: And you would know
13 those better than I, Commissioner Reha.

14 COMMISSIONER REHA: Because the issue of
15 any type of penalty or any type of adjusting for
16 Eschelon and McLeod is not before us. We -- We'd
17 almost have to open a separate docket, wouldn't we?
18 I'm asking. I'm concerned that --

19 CHAIR KOPPENDRAYER: They could indicate
20 to us at this time that they accept that and won't
21 appeal that provision.

22 COMMISSIONER REHA: Yeah. I'd be happy
23 with that, but I don't know if we'll get there.

24 CHAIR KOPPENDRAYER: Mr. Lipschultz.

25 MR. LIPSCHULTZ: Mr. Chair, Commissioner

1 Reha, I'd have to confer with my client. But I was
2 going to raise the same due process issue you raised
3 but also suggest the possibility that just to
4 resolve this it might make sense to resolve this
5 along the lines you're suggesting. So if you wanted
6 to take a break, I could try to confer. If you want
7 to defer until tomorrow. But if you'd like an
8 answer on this question before you make a decision,
9 I would just need the opportunity to confer with my
10 client.

11 COMMISSIONER JOHNSON: Let's take a
12 five-minute break.

13 MR. ALPERT: Chair Koppendrayer,
14 Commissioner Reha, are you considering granting
15 immunity? We do have an open docket that has not
16 been resolved. We were -- As we indicated to the
17 commission before, we were waiting until this was
18 resolved before we made decisions on whether
19 something further would be -- would be done. And
20 although I -- this may be the end result of this
21 whole thing, I don't know. I just wonder if that is
22 your intent at this point.

23 CHAIR KOPPENDRAYER: So if we went with
24 this proposal, that would -- that would basically
25 answer the docket, which was to consider their --

1 COMMISSIONER REHA: Wrongdoing.

2 COMMISSIONER JOHNSON: Wrongdoing.

3 CHAIR KOPPENDRAYER: -- in this matter.

4 MR. ALPERT: Well, one could argue that
5 you've just said, Let's wrap everything up --

6 CHAIR KOPPENDRAYER: That's what I said.

7 MR. ALPERT: -- by this agreement, and
8 that would seem to indicate that that's your
9 decision on the matter. And, you know, the
10 department hasn't made any final decisions on this
11 yet. We're still looking at the matter. But I just
12 caution a broad statement like that.

13 MR. LIPSCHULTZ: Well, Mr. Chair,
14 Commissioner Reha, if a concession along the lines
15 you're suggesting doesn't resolve an investigation
16 into McLeod, then my client is certainly not going
17 to come before you and say, Fine, we'll -- we'll
18 apply this buyout. And --

19 COMMISSIONER REHA: Good point.

20 MR. LIPSCHULTZ: And then I just -- I
21 guess I'm going to reiterate just for a moment what
22 I said before, not to change your view, but just to
23 make sure everybody has a perspective on this. I
24 think some of us tend to get a little cavalier at
25 times. We've all been at this for a long time. But

1 we're about to see UNE rates go down 29 to 30
2 percent. When you apply a discount on top of that,
3 the marketplace today going forward with those new
4 rates and a discount overlaid on top is very, very
5 different from the market previously where we had
6 \$18 average loop rates in this state. So there's a
7 real discrimination issue going forward if you apply
8 a discount prospectively on a selective basis.

9 And that -- And I appreciate your point,
10 Mr. Chair, about the buyout; and I'm willing to run
11 that by my client, if that's your intent to wrap
12 this all up. But if you don't direct the department
13 to terminate its investigation, then obviously
14 what's the point?

15 COMMISSIONER REHA: Well, I -- I would
16 think we would to want terminate the --

17 COMMISSIONER JOHNSON: Sure.

18 COMMISSIONER REHA: -- investigation --

19 COMMISSIONER JOHNSON: Sure.

20 COMMISSIONER REHA: -- if they forego
21 that. Don't you?

22 CHAIR KOPPENDRAYER: Mr. Ahlers, do you
23 have some words of wisdom for us?

24 MR. AHLERS: Well, I guess my answer
25 would be about the same. I would have to talk to

1 the people back at the office about this. I really
2 know very little about the terms of the buyout and
3 what that encompassed. So I can't -- I can't give
4 you an explanation of what was included in that and
5 whether or not we would consider that to be the
6 equivalent of buying out the remainder of the
7 agreement. I know that we gave up a bunch of rights
8 in terms of litigating future issues as part of
9 that, which other parties aren't apparently going to
10 be able -- going to have to give up. So.

11 COMMISSIONER REHA: Perhaps we can order
12 it and then agree -- address it on reconsideration.

13 COMMISSIONER JOHNSON: Good point.

14 CHAIR KOPPENDRAYER: Then they would have
15 time to respond also.

16 COMMISSIONER JOHNSON: Good point.

17 COMMISSIONER REHA: I just had a little
18 bug in my ear that just suggested that.

19 CHAIR KOPPENDRAYER: Okay.

20 COMMISSIONER SCOTT: I'll so move.

21 CHAIR KOPPENDRAYER: Any other
22 discussion?

23 Mr. Brown, are you --

24 MR. BROWN: Okay.

25 CHAIR KOPPENDRAYER: -- comfortable with