EXHIBIT C

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Phyllis A. Reha	Commissioner

JUL 23

In the Matter of McLeodUSA's Tariff Filing Introducing Wholesale Order Processing Charges that Apply When McLeodUSA's Customers Shift to Other Telecommunications Carriers	ISSUE DATE: July 22, 2004 DOCKET NO. P-5323/M-04-395 ORDER REJECTING PROPOSED WHOLESALE SERVICE CHARGE

PROCEDURAL HISTORY

On March 15, 2004, McLeodUSA Telecommunications Services, Inc. (McLeod) filed revisions to its telephone tariff. This proposed tariff revision implements a wholesale service order processing charge applicable to all providers of telecommunication services that assess a non-recurring charge on McLeod for the processing of comparable orders submitted by McLeod to initiate service using network elements leased from the incumbent local exchange carrier (ILEC).

On May 13, 2004, the Department of Commerce (DOC) filed comments. The DOC recommended that McLeod's tariff be rejected on grounds that it violates both federal and state law.

On May 14, 2004, Qwest Corporation (Qwest) filed comments opposing McLeod's tariff as discriminatory, anticompetitive and unreasonable and in violation of Minnesota law.

The matter came before the Commission on July 8, 2004.

FINDINGS AND CONCLUSIONS

I. McLeod's Tariff Proposal

McLeod's proposed tariff provides that a service order charge would apply when a McLeod customer switches service to another telecommunications carrier and that carrier assesses a similar fee on McLeod when that telecommunications carrier's customer switches to McLeod.

Further, the proposed tariff provides that the wholesale service order charge would be equal to a service order charge (or some comparable charge) in an Interconnection Agreement (ICA) between McLeod and the incumbent local exchange carrier (ILEC). In the event that the ICA does not contemplate non-recurring charges identified as a service order charge, a service order supplemental charge, an expedite fee or a forced expedite fee, the tariff would establish the charge.

The proposed service order charge in McLeod's tariff would range from $20, for a wholesale service order, to $75, for a forced expedite fee.[1] The charges would apply only to telecommunications carriers, not retail end users. In practice, the charge would only apply to Qwest.

II. The Parties' Positions

A. McLeod

At hearing McLeod argued that its goal in introducing the proposed tariff was to obtain parity between McLeod and any telecommunications service providers that charge McLeod an order processing charge for comparable orders. McLeod indicated that only Qwest imposes such a charge.

At hearing, McLeod argued that the charge in the proposed tariff would only apply reciprocally and that McLeod would only charge the amount charged by another carrier, in this case Qwest. McLeod argued that Qwest charged McLeod an installation fee of $2.38/line.

McLeod also stated at hearing that it had submitted a draft ICA amendment to Qwest for consideration.

Finally, at hearing, McLeod requested that, in the alternative, the tariff be allowed to go into effect temporarily with the understanding that the parties would negotiate an amendment to the ICA.

B. Qwest

Qwest argued that McLeod's tariff is unreasonable, anticompetitive and discriminatory. Qwest argued that, contrary to McLeod's statement, Qwest does not charge McLeod anything for processing orders to change service providers when a Qwest retail customer switches its service to McLeod. Qwest argued that it was in the same position as any other telecommunications carrier and the imposition of a charge by McLeod would be discriminatory.

Qwest stated that as a wholesale service provider to McLeod, Qwest does charge a non-recurring unbundled loop disconnect charge of $1.95 for disconnecting an unbundled loop. Such charge is assessed whether or not the customer disconnects service entirely or switches to a different provider. The disconnect charge is to recover the cost of disconnecting the service. It is not designed to recover costs associated with transferring a retail customer to another provider.

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[1] McLeod Tariff No. 3, Section 7.1.1.

Further, Qwest argued, imposing a charge of $20 or more, as McLeod has proposed when a McLeod customer switches to Qwest, would create an uneven playing field when competing for Minnesota customers. Qwest argued that McLeod's tariff is designed to punish customers that use Qwest as a retail service provider, without any corresponding punishment if the customer chooses to change to another provider.

C. DOC

The DOC argued that this matter should be handled as an amendment to the parties' ICA. The DOC argued that because McLeod did not attempt to negotiate an amendment to its ICA and instead attempted to bypass negotiations by unilaterally filing a tariff, the filing of the tariff is preempted by the Federal Telecommunications Act of 1996 [2] and should be rejected.

Further, the DOC argued that the proposed tariff is defective under state law.[3] First, it is discriminatory as it only applies to Qwest. In this case, when Qwest wins customers away from McLeod, Qwest would be required to pay the fee set forth in the tariff. The fee would be an obstacle to Qwest in soliciting and signing up new customers. The only way a carrier could avoid the fee would be by not soliciting McLeod customers. This would impair fair competition in violation of MN rules.

The DOC also argued that the cost information that McLeod submitted to show how it arrived at the wholesale service charge in its tariff was inadequate to support the proposed charges.

Finally, the DOC argued that the tariff allows McLeod to disconnect services after a ten day written notice but does not make it clear that it would seek Commission approval before discontinuing this service, as required by Minnesota Rules.[4]

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[2] Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of title 47, United States Code).

[3] Minn. Rules part 7812.2210, subp. 5 (CLEC may not offer telecommunication service within the state on terms or rates that are unreasonably discriminatory, with certain exceptions); Minn. Rules part 7812.2210, subp. 8 (CLEC's local services are not subject to price or rate regulation, except if the Commission determines that: B. the pricing or pricing practice is unreasonably discriminatory in violation of subpart 5; D. the price or pricing practice will impede the development of fair and reasonable competition...)

[4] Minn. Rules part 7812.2210, subp. 11.

III. Commission Action

A. Summary of Commission Action

Under Minn. Stat. § 237.035, competitive local exchange carriers (CLECs), such as McLeod, are exempt from rate regulation and most of the other regulatory requirements that apply to incumbent local exchange carriers, such as Qwest. With proper notice, CLECs are permitted to change their rates without regulatory review and without cost support, provided that the new rates are not unreasonably discriminatory,[5] will not impede the development of fair and reasonable competition,[6] and do not otherwise conflict with state or federal law.[7]

In this case, the proposed tariff appears to run afoul of all three exceptions – it unreasonably discriminates against Qwest; it acts to impede the development of a thriving telecommunications marketplace; and it violates the purpose, if not the letter, of the federal Telecommunications Act of 1996 (the Act).[8] The Commission will therefore reject the tariff.

Finally, both Qwest and McLeod have stated their desire to resolve the issues underlying the proposed tariff through the interconnection negotiation process of 47 U.S.C. §§ 251 and 252. The Commission agrees that that is the most appropriate procedural vehicle and will advise the parties to focus their energy and resources on that process.

These actions will be explained in turn.

B. The Proposed Tariff is Unreasonably Discriminatory

The tariff would apply only to Qwest even though there are a wide range of service providers to which a McLeod customer could decide to transfer.

On its face the tariff is not reciprocal. The tariff proposes to impose higher charges on Qwest than Qwest imposes for what McLeod views as the same services.

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[5] Minn. Stat. § 237.74, subds. 2 and 4; Minn. Rules, part 7812.2210, subp. 8 B.

[6] Minn. Stat. § 237.16, subd. 8 (6) and (7); Minn. Rules, part 7812.2210, subp. 8 D.

[7] Minn. Rules, part 7812.2210, subp. 8 C.

[8] Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of title 47, United States Code).

C. The Proposed Tariff Impedes the Development of Competition

The provisions of the proposed tariff would not only single out Qwest but would also present an obstacle to Qwest in soliciting and signing up new customers from McLeod. It would be much more costly for Qwest to convert McLeod customers than the customers of other CLECs, thus giving McLeod an unfair advantage over other CLECs when competing with Qwest. Consequently, Qwest would be discouraged from marketing to McLeod customers.

D. The Proposed Tariff is Inconsistent with Other Provisions of State and Federal Law

The Department makes credible claims that portions of the new charge would be used to defray costs of McLeod meeting its obligation to provide local number portability, in violation of the Act's exclusive jurisdiction over local number portability.[9]

The proposed tariff allows for McLeod to disconnect services after a 10 day written notice. This violates Minn. Rules, part 7812.2210, subp. 11, which requires Commission approval to discontinue service or physical connection to another carrier.

E. The Interconnection Negotiation Process is the Appropriate Vehicle for Resolving the Issues Underlying the Proposed Tariff

The Commission agrees with the DOC that the proper recourse in this situation is for the parties to negotiate an amendment to their ICA regarding this matter. First, the subject of disconnection is part of the parties' ICA and federal policy favors the use of the negotiation process set forth in the Act to resolve issues that are the subject of ICAs. Further, in this case both McLeod and Qwest have indicated a willingness to enter into negotiations to amend their ICA.

Finally, this is consistent with the Commission's recent action in the *CenturyTel*[10] case and the Commission's recognition that interconnection negotiations are the primary vehicle for resolving interconnection issues.

For these reasons, the Commission will reject the proposed tariff.

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[9] *In the Matter of Telephone Number Portability,* Third Report and Order, CC Docket No. 95-116, Released May 12, 1998, p.20, citing 47 U.S.C. §251(e)(2).

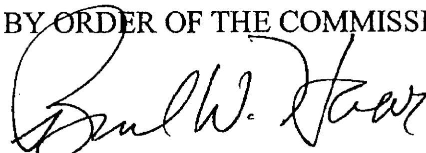
[10] *In the Matter of Wireless Local Termination Tariff Applicable to Commercial Mobile Radio Service Providers That Do Not Have Interconnection Agreements with CenturyTel of Minnesota*, Docket No. P-551/M-03-811, ORDER REQUIRING REVISED FILING (November 18, 2003); ORDER AFFIRMING PRIOR ORDER AND INVITING REVISED FILING (July 12, 2004)(CenturyTel).

ORDER

1. The wholesale service charge proposed by McLeod is rejected.

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary

(S E A L)

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