

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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. _____

COMPLAINT FOR VIOLATIONS OF LAW

1. THIS COMPLAINT is brought before the Washington Utilities and Transportation
Commission ("Commission") by the Washington Independent Telecommunications Association, a

COMPLAINT FOR
VIOLATIONS OF LAW - 1

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
(360) 956-7001

1 Washington non-profit corporation ("WITA"), on behalf of itself and its participating member
2 companies,¹ Washington Exchange Carrier Association, a Washington non-profit corporation
3 ("WECA"), The Toledo Telephone Co., Inc., a Washington corporation ("Toledo"), Tenino Telephone
4 Company, a Washington corporation ("Tenino"), Kalama Telephone Company, a Washington
5 corporation ("Kalama") and Hood Canal Telephone Company, d/b/a Hood Canal Communications, a
6 Washington corporation ("HCC"). WITA, WECA, Toledo, Tenino, Kalama and HCC are sometimes
7 referred to herein as "Complainants" as for their complaint against Respondents, allege as follows:
8

9 IDENTITY OF COMPLAINANTS

10 2. WITA is a Washington non-profit corporation. WITA is a trade association that
11 represents the interests of incumbent local exchange carriers operating in the state of Washington and
12 brings this Complaint on behalf of itself and its member companies.

13 3. WECA is a Washington non-profit corporation. WECA administers the Washington
14 intrastate switched access pools.

15 4. Toledo is a Washington corporation in good standing and is regulated by the Commission
16 as an incumbent local exchange carrier. Toledo is a member of WITA.

17 5. Tenino is a Washington corporation in good standing and is regulated by the Commission
18 as an incumbent local exchange carrier. Tenino is a member of WITA.

19 6. Kalama is a Washington corporation in good standing and is regulated by the
20 Commission as an incumbent local exchange carrier. Kalama is a member of WITA.
21

22
23 ¹ WITA's members that are represented by WITA for purposes of this Complaint are set out on Exhibit 1.
24

1 7. HCC is a Washington corporation in good standing and is regulated by the Commission
2 as an incumbent local exchange carrier. HCC is a member of WITA.

3 IDENTITY OF RESPONDENTS

4 8. McLeodUSA Telecommunications Services, L.L.C. ("McLeod") is registered with the
5 Washington Secretary of State as a limited liability company and is registered with the Commission as a
6 competitive local exchange company. The Secretary of State lists the registered agent for service of
7 McLeod as CT Corporation System, 1801 West Bay Drive NW, Suite 206, Olympia, WA 98502.
8

9 9. PAETEC Communications, Inc. ("PAETEC") is registered with the Washington
10 Secretary of State as a Delaware corporation. Its registered agent for service within the state of
11 Washington is CT Corporation System, 1801 West Bay Drive NW, Suite 206, Olympia, WA 98502.
12 PAETEC is not registered with the Commission to offer communications services within the state of
13 Washington.

14 10. On information and belief, McLeod is a wholly-owned subsidiary of PAETEC and
15 PAETEC controls the operations of McLeod.
16

17 JURISDICTION

18 11. The Commission has jurisdiction to hear this Complaint under RCW 80.04.110(1) which
19 reads, in pertinent part, as follows:

20 Complaint may be made by the commission of its own motion or by any person or
21 corporation, chamber of commerce, board of trade, or any commercial, mercantile,
22 agricultural or manufacturing society, or any body politic or municipal corporation, or by
23 the public counsel section of the office of the attorney general, or its successor, by
24 petition or complaint in writing, setting forth any act or thing done or omitted to be done
25 by any public service corporation in violation, or claimed to be in violation, of any
26

COMPLAINT FOR
VIOLATIONS OF LAW - 3

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
(360) 956-7001

1 provision of law or of any order or rule of the commission: PROVIDED, That no
2 complaint shall be entertained by the commission except upon its own motion, as to the
3 reasonableness of the schedule of the rates or charges of any gas company, electrical
4 company, water company, or telecommunications company, unless the same be signed by
5 the mayor, council or commission of the city or town in which the company complained
6 of is engaged in business, or not less than twenty-five consumers or purchasers of such
7 gas, electricity, water or telecommunications service, or at least twenty-five percent of
8 the consumers or purchasers of the company's service: PROVIDED, FURTHER, That
9 when two or more public service corporations, (meaning to exclude municipal and other
10 public corporations) are engaged in competition in any locality or localities in the state,
11 either may make complaint against the other or others that the rates, charges, rules,
12 regulations or practices of such other or others with or in respect to which the
13 complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal,
14 unfair or intending or tending to oppress the complainant, to stifle competition, or to
15 create or encourage the creation of monopoly, and upon such complaint or upon
16 complaint of the commission upon its own motion, the commission shall have power,
17 after notice and hearing as in other cases, to, by its order, subject to appeal as in other
18 cases, correct the abuse complained of by establishing such uniform rates, charges, rules,
19 regulations or practices in lieu of those complained of, to be observed by all of such
20 competing public service corporations in the locality or localities specified as shall be
21 found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent
22 oppression or monopoly or to encourage competition, and upon any such hearing it shall
23 be proper for the commission to take into consideration the rates, charges, rules,
24 regulations and practices of the public service corporation or corporations complained of
25 in any other locality or localities in the state.

ACTIONS COMPLAINED OF

12. On information and belief, McLeod is engaging in activity whereby it sends
telecommunications traffic to incumbent local exchange carriers for termination and is 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. It is believed that
this traffic includes both TDM (Time-Division Multiplexing) originated and IP (Internet Protocol)
originated traffic.

COMPLAINT FOR
VIOLATIONS OF LAW - 4

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
(360) 956-7001

1 service to be thereafter installed, observed and used, and fix the same by order or rule as
2 provided in this title.

3 Under RCW 80.36.140, the use of the telecommunications line, instrument, wire, appliance, apparatus or
4 device, transmitter, instrument, extension or extension system of the terminating company by McLeod
5 as described in Paragraphs 10 and 11, above, is unjust. Under RCW 80.36.140, the use of the
6 telecommunications line, instrument, wire, appliance, apparatus or device, transmitter, instrument,
7 extension or extension system of the terminating company by McLeod as described in Paragraphs 10
8 and 11, above, is unreasonable. Under RCW 80.36.140, the use of the telecommunications line,
9 instrument, wire, appliance, apparatus or device, transmitter, instrument, extension or extension system
10 of the terminating company by McLeod as described in Paragraphs 10 and 11, above, is unjustly
11 discriminatory. Under RCW 80.36.140, the use of the telecommunications line, instrument, wire,
12 appliance, apparatus or device, transmitter, instrument, extension or extension system of the terminating
13 company by McLeod as described in Paragraphs 10 and 11, above, is unduly preferential. Under RCW
14 80.36.140, the use of the telecommunications line, instrument, wire, appliance, apparatus or device,
15 transmitter, instrument, extension or extension system of the terminating company by McLeod as
16 described in Paragraphs 10 and 11, above, is in violation of law.

17
18
19 16. Under RCW 80.36.140, the practices of McLeod as described in Paragraphs 10 and 11,
20 above, are unjust. Under RCW 80.36.140, the practices of McLeod as described in Paragraphs 10 and
21 11, above, are unreasonable. Under RCW 80.36.140, the practices of McLeod as described in
22
23
24

25 COMPLAINT FOR
26 VIOLATIONS OF LAW - 6

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
(360) 956-7001

1 Paragraphs 10 and 11, above, are unjustly discriminatory. Under RCW 80.36.140, the practices of
2 McLeod as described in Paragraphs 10 and 11, above, are unduly preferential. Under RCW 80.36.140,
3 the practices of McLeod as described in Paragraphs 10 and 11, above, are in violation of law.

4 17. In addition, by disguising as local traffic that should be subject to access charges,
5 McLeod renders the rates, charges, tolls or rentals of the terminating company insufficient to yield
6 reasonable compensation for services rendered, which is in violation of RCW 80.36.140.
7

8 18. Under RCW 80.36.160, the Commission has the authority to order routing and to
9 establish joint rates. The statute provides as follows:

10 In order to provide toll telephone service where no such service is available, or to
11 promote the most expeditious handling or most direct routing of toll messages and
12 conversations, or to prevent arbitrary or unreasonable practices which may result in the
13 failure to utilize the toll facilities of all telecommunications companies equitably and
14 effectively, the commission may, on its own motion, or upon complaint, notwithstanding
15 any contract or arrangement between telecommunications companies, investigate,
16 ascertain and, after hearing, by order (1) require the construction and maintenance of
17 suitable connections between telephone lines for the transfer of messages and
18 conversations at a common point or points and, if the companies affected fail to agree on
19 the proportion of the cost thereof to be borne by each such company, prescribe said
20 proportion of cost to be borne by each; and/or (2) prescribe the routing of toll messages
21 and conversations over such connections and the practices and regulations to be followed
with respect to such routing; and/or (3) establish reasonable joint rates or charges by or
over said lines and connections and just, reasonable and equitable divisions thereof as
between the telecommunications companies participating therein.

19 This section shall not be construed as conferring on the commission jurisdiction,
20 supervision or control of the rates, service or facilities of any mutual, cooperative or
21 farmer line company or association, except for the purpose of carrying out the provisions
of this section.

22 The Commission has treated access charges as a joint rate under this statute. To the extent that the
23 activities of McLeod constitute avoidance of lawful access charges, the Commission has authority under
24

25 COMPLAINT FOR
26 VIOLATIONS OF LAW - 7

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
(360) 956-7001

1 this statute to order McLeod to take corrective action. Even if the practices of McLeod are not unlawful,
2 the Commission should determine that under RCW 80.36.180, that the traffic delivered by McLeod for
3 termination by an incumbent local exchange carrier is subject to tariffed access charges.

4 19. RCW 80.36.170 prohibits unreasonable practices and it reads as follows:

5 No telecommunications company shall make or give any undue or unreasonable
6 preference or advantage to any person, corporation or locality, or subject any particular
7 person, corporation or locality to any undue or unreasonable prejudice or disadvantage in
8 any respect whatsoever. The commission shall have primary jurisdiction to determine
9 whether any rate, regulation, or practice of a telecommunications company violates this
10 section. This section shall not apply to contracts offered by a telecommunications
11 company classified as competitive or to contracts for services classified as competitive
12 under RCW 80.36.320 and 80.36.330.

13 20. By disguising traffic that should be subject to access charges as traffic not subject to
14 access charges, McLeod is giving to itself an undue or unreasonable preference or advantage. Those
15 same actions by McLeod subjects the terminating company to an undue or unreasonable prejudice or
16 disadvantage.

17 21. RCW 80.36.200 requires the transmission and delivery of traffic without discrimination
18 or delay. The statute reads as follows:

19 Every telecommunications company operating in this state shall receive, transmit and
20 deliver, without discrimination or delay, the messages of any other telecommunications
21 company.

22 To the extent that McLeod fails to deliver messages or delays the delivery of messages, or discriminates
23 against the delivery of messages, that are routed to a called party in a terminating company service
24 territory, such practice is a violation of RCW 80.36.200.

1 22. Under RCW 80.36.220, there is a duty to transmit messages without delay or
2 discrimination. The statute reads as follows:

3 Telecommunications companies shall receive, exchange and transmit each other's
4 messages without delay or discrimination, and all telecommunications companies shall
5 receive and transmit messages for any person.

6 In case of the refusal or neglect of any telecommunications company to comply with the
7 provisions of this section, the penalty for the same shall be a fine of not more than five
8 hundred nor less than one hundred dollars for each offense.

9 To the extent that McLeod engages in activities whereby calls to the called party in a terminating
10 company territory are not received by the called party or their receipt by the called party is delayed, such
11 conduct is a violation of RCW 80.36.220.

12 23. Under RCW 80.36.260, the Commission has authority to order betterments. That statute
13 reads as follows:

14 Whenever the commission shall find, after a hearing had on its own motion or upon
15 complaint, that repairs or improvements to, or changes in, any telecommunications line
16 ought reasonably be made, or that any additions or extensions should reasonably be made
17 thereto in order to promote the security or convenience of the public or employees, or in
18 order to secure adequate service or facilities for telecommunications communications, the
19 commission shall make and serve an order directing that such repairs, improvements,
20 changes, additions or extensions be made in the manner to be specified therein.

21 McLeod's activities constitute a violation of this statute and the Commission should order
22 improvements, changes, and additions to the way in which McLeod provides its service.

23 24. The activities of McLeod constitute violation of the tariffs of the Washington Exchange
24 Carrier Association (WECA) and of the individual companies concurring or otherwise participating
25 therein and the individual companies' access tariffs. Such individual companies include Toledo, Tenino
26 and Kalama and each of the following members of WECA: Asotin Telephone Company d/b/a TDS

1 Telecom, Ellensburg Telephone Company d/b/a FairPoint Communications, Hat Island Telephone
2 Company, Hood Canal Telephone Co., Inc. d/b/a Hood Canal Communications, Inland Telephone
3 Company, Lewis River Telephone Company, Inc. d/b/a TDS Telecom, Mashell Telecom, Inc. d/b/a
4 Rainier Connect, McDaniel Telephone Co. d/b/a TDS Telecom, Pend Oreille Telephone Company, d/b/a
5 RTI Pend Oreille Telecom, Pioneer Telephone Company, St. John Co-operative Telephone and
6 Telegraph Company, Western Wahkiakum County Telephone Company d/b/a Wahkiakum West,
7 Whidbey Telephone Company, and YCOM Networks, Inc. d/b/a FairPoint Communications.

8 25. Based on information and belief, PAETEC owns McLeod either directly or through
9 intermediate corporations or other entities and controls the activities of McLeod and as such as engaged
10 in activity which violates provisions of Title 80 RCW and orders of the Commission and is subject to the
11 Commission's jurisdiction for such violations under RCW 80.04.387.

12 RELIEF REQUESTED

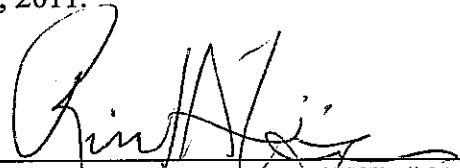
13 26. The Complainants respectfully request that: (1) the Commission order McLeod and
14 PAETEC to cease and desist from engaging in any activity that disguises traffic subject to access
15 charges as though it were traffic not subject to access charges, including, but not limited to, altering data
16 within the call signaling stream to mask the true origination point or jurisdiction of the traffic; (2) revoke
17 McLeod's authority to operate as a competitive local exchange carrier in the state of Washington; and (3)
18 order McLeod and PAETEC to provide a detailed traffic analysis of all traffic that has terminated to
19 each WITA member from McLeod, whether McLeod was the originating carrier or a transiting carrier,
20 for the two years preceding the date of filing of this Complaint, showing all traffic and call detail for
21 traffic that originated outside of the terminating company's local calling area; and (4) to pay terminating
22
23
24

25 COMPLAINT FOR
26 VIOLATIONS OF LAW - 10

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
(360) 956-7001

1 access charges on all such traffic, occurring both during such two-year period and from the date of this
2 Complaint forward.

3 Respectfully submitted this 17th day of October, 2011.

4
5 

6 RICHARD A. FINNIGAN, WSB #6443
7 Attorney for the Washington Independent
8 Telecommunications Association,
9 Washington Exchange Carrier Association,
10 The Toledo Telephone Co., Inc.,
11 Tenino Telephone Company,
12 Kalama Telephone Company and
13 Hood Canal Telephone Company, d/b/a
14 Hood Canal Communications
15
16
17
18
19
20
21
22
23
24

25 COMPLAINT FOR
26 VIOLATIONS OF LAW - 11

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
(360) 956-7001

EXHIBIT 1

Asotin Telephone Company d/b/a TDS
Telecom
Ellensburg Telephone Company d/b/a
FairPoint Communications
Hat Island Telephone Company
Hood Canal Telephone Co., Inc. d/b/a Hood
Canal Communications
Inland Telephone Company, d/b/a Inland
Networks
Kalama Telephone Company
Lewis River Telephone Company, Inc. d/b/a
TDS Telecom
Mashell Telecom, Inc. d/b/a Rainier
Connect
McDaniel Telephone Co. d/b/a TDS
Telecom
Pend Oreille Telephone Company, d/b/a
RTI Pend Oreille Telecom
Pioneer Telephone Company
St. John Co-operative Telephone and
Telegraph Company
Tenino Telephone Company
The Toledo Telephone Co., Inc.
Western Wahkiakum County Telephone
Company d/b/a Wahkiakum West
Whidbey Telephone Company
YCOM Networks, Inc. d/b/a FairPoint
Communications