

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Petitioners,

v.

ADVANCED TELECOM GROUP, INC.,
et al.,

Respondents.

DOCKET NO. UT-033011

MCLEODUSA SETTLEMENT
AGREEMENT

PARTIES

1 The Parties to this Settlement Agreement are Commission Staff (Staff), and
McLeodUSA Telecommunications, Inc. (McLeodUSA).

INTRODUCTION

2 The Parties stipulate to this Settlement Agreement to resolve all matters in
dispute between them regarding the Washington Utilities and Transportation
Commission (Commission or WUTC) Complaint and Amended Complaint in this
docket, including all claims, whether known or unknown, related to the subject of or
arising from the Complaint or Amended Complaint with respect to any interconnection
agreements between McLeodUSA and Qwest entered into before the date of this
Settlement Agreement, and to do so while preserving the status of McLeodUSA as a

party to this proceeding for the limited purpose of providing information to the Commission on remaining disputed issues regarding other respondents. The Parties request a Commission order approving this Settlement Agreement after August 30, 2004.

DEFINITIONS

3 The term "Interconnection Agreement" as used in this Settlement Agreement shall include any agreement required to be filed and/or approved by the Commission pursuant to RCW 80.36.150 and 47 U.S.C. § 252. "Interconnection Agreement" shall also include any future agreement required to be filed and/or approved by then existing law.

4 "McLeodUSA" includes McLeodUSA, and/or its subsidiaries or affiliates, including officers, directors, employees and agents of McLeodUSA and its subsidiaries or affiliates.

PROCEDURAL HISTORY

5 On August 13, 2003, and August 15, 2003, respectively, the Commission issued a complaint and an amended complaint against McLeodUSA and several other telecommunications companies. The Commission alleged that McLeodUSA failed, in violation of state and federal law, to file and seek Commission approval for the following Agreements:

- 8A, dated April 28, 2000;
- 9A, dated October 21, 2000;
- 41A, dated April 25, 2000;
- 42A, dated May 1, 2000;
- 43A, dated September 18, 2000;
- 44A, dated October 28, 2000;
- 45A, dated October 26, 2000; and
- 46A, dated October 26, 2000.

between McLeodUSA and Qwest Corporation (“Qwest”), an incumbent local exchange carrier (“ILEC”), as required by 47 U.S.C. § 252(a)(1) and (e), and RCW 80.36.150. On November 7, 2003, Staff and McLeodUSA filed opposing Motions for Summary Determination. Staff argued that CLECs, including McLeodUSA, are legally obligated to file and seek Commission approval for Interconnection Agreements, while McLeodUSA argued that Staff had no cause of action against it. Order Number 5 granted Staff’s Motion for Partial Summary Determination and granted in part and denied in part McLeodUSA’s Motion for Summary Determination. Accordingly, Order No. 5 dismissed the State law claims against McLeodUSA and Agreement 43A.

SPECIFIC TERMS

6 Staff and McLeodUSA agree to the following terms and conditions:

7 1. McLeodUSA accepts and agrees to be bound by the terms of Commission
Order Number 05.

8 2. Staff and McLeodUSA agree that Agreements 41A, and 42A between
McLeodUSA and U S WEST Communications, Inc., and Agreement 46A between
McLeodUSA and Qwest are not Interconnection Agreements. Because Agreements
41A, 42A and 46A are not Interconnection Agreements, Staff agrees to bring a motion to
dismiss these agreements from the complaint at the time this Settlement Agreement is
filed.

9 3. For the purposes of this Settlement Agreement only and in the interests of
settling the disputes between the Parties, McLeodUSA stipulates that Agreements

- 8A, dated April 28, 2000;
- 9A, dated October 21, 2000;
- 44A, dated October 26, 2000;
- 45A, dated October 26, 2000;

between it and Qwest constitute Interconnection Agreements under current FCC and
WUTC rules and orders. McLeodUSA emphasizes that at the time it entered into each
Agreement it believed, based on the law in existence at the time, that the Agreements
did not constitute Interconnection Agreements. McLeodUSA also believed that Qwest
was the only party obligated to file Interconnection Agreements.

10 4. McLeodUSA stipulates that under current WUTC rules and orders it
shares a legal obligation to file and seek Commission approval for all Interconnection
Agreements.

11 5. McLeodUSA accepts its shared obligation to file and seek Commission
approval for all future Interconnection Agreements in compliance with this Settlement
Agreement and then existing law. McLeodUSA agrees that all Interconnection
Agreements shall be filed within thirty (30) days of execution.

12 6. McLeodUSA agrees that if an Interconnection Agreement is presently in
existence and not yet filed for approval, the Interconnection Agreement will be filed
within forty-five (45) days of approval of this Settlement Agreement by the
Commission. Neither Staff nor McLeodUSA is currently aware of any such
Interconnection Agreement presently in existence and not yet filed for approval.

13 7. McLeodUSA agrees that if a conflict arises between the law in existence in
the future and the terms of this Settlement Agreement, the stricter obligation shall
control, unless complying with the stricter obligation would result in a violation of the
law, in which case the then existing law would control. Either party may give the other
party written notice of its belief that a change in the law has affected this Settlement
Agreement. The parties agree to meet and negotiate in good faith to bring this
Settlement Agreement into compliance with existing law. If the parties cannot reach

agreement within sixty (60) days of the date notice was given that a change in the law has occurred, either party may petition any state or federal court in Washington State for appropriate relief.

14 8. McLeodUSA agrees to pay the Commission twenty-five thousand dollars (\$25,000) in settlement of this proceeding.

15 9. McLeodUSA agrees that, notwithstanding the resolution through this stipulation of all claims against McLeodUSA in this proceeding, it will remain a party in this proceeding and will sponsor and provide expert testimony and exhibits related to the remaining disputed issues involving other respondents. McLeodUSA specifically agrees that it will sponsor reply testimony of Stephen C. Gray,¹ the President of McLeodUSA. McLeodUSA will submit prefiled responsive testimony and supporting exhibits on August 30, 2004. Mr. Gray will appear for direct and cross-examination of his testimony at a hearing date to be determined by the Commission. Mr. Gray's testimony will, at a minimum, address the following topics within the limits of his knowledge and understanding:

¹ **Stephen C. Gray** currently serves as President of McLeodUSA Corporation. Mr. Gray joined McLeodUSA in September 1992 as the Company's President and Chief Operating Officer and has continued to serve uninterrupted for the past 12 years as a McLeodUSA executive. He received a Bachelor of Business Administration degree, with minors in Finance and Public Administration, from the University of Tennessee at Knoxville in 1980. From 1981 to 1987, Mr. Gray was employed by ClayDesta Communications and WilTel in various management capacities. From 1987 to August 1990, Mr. Gray was employed as Senior Vice President of National Accounts and Carrier Services by Teleconnect Company (later TelecomUSA, Inc.). Mr. Gray subsequently served as Vice President of Business Services for MCI Communications Corporation with responsibility for sales, marketing, and customer services activities. In that capacity, Mr. Gray helped develop MCI's local access strategy.

- (1) An account of the circumstances in which McLeodUSA entered into each of the Agreements and agreed to the confidential treatment of the Agreements, including any statements, positions, or requirements by Qwest that are not reflected in the written terms of the Agreements.
- (2) The reasons for McLeodUSA's decision to enter into the Agreements with Qwest, including any problems or concerns with Qwest's performance of its obligations as an incumbent local exchange company;
- (3) The nature of the business relationships among McLeodUSA, Qwest, Eschelon, and other respondents during the time the agreements were negotiated and entered into;
- (4) The effect on McLeodUSA and its success as a competitive local exchange company of the practices of Qwest, Eschelon, and other respondents with regard to entering into interconnection agreements that were not filed and made available to McLeodUSA pursuant to 47 USC 252(i);
- (5) McLeodUSA will provide exhibits in support of Mr. Gray's testimony, documenting to the extent possible, the facts and opinions presented in testimony.

Staff agrees that McLeodUSA will not file a brief in this proceeding.

GENERAL TERMS

16 The Parties stipulate to the following general terms of the Settlement Agreement:

17 1. The Parties agree to use their best efforts to secure the approval by the
Commission and, as necessary, other parties to this proceeding, of the Specific Terms of
this Settlement Agreement. The Parties understand that the Specific Terms listed do not
apply unless approved by the Commission.

18 2. The Specific Terms of the Settlement Agreement represent an integrated
resolution of issues. Accordingly, the Parties recommend that the Commission adopt
the Specific Terms of this Settlement Agreement in its entirety. Each party reserves the
right to withdraw from the Settlement Agreement if the Commission does not approve
the Specific Terms of the Settlement Agreement in its entirety or conditions approval of
the Specific Terms of the Settlement Agreement on material revisions to its terms and
conditions.

19 3. The Parties agree to cooperate to assure compliance with WAC 480-07-730
– 750, including providing at least one witness at the time the Settlement Agreement is
presented to the Commission to provide testimony in support of the Settlement
Agreement and answer any questions the Commission may have. The Parties agree to
cooperate, in good faith, in the development of such other information as may be
necessary to support and explain the basis of this Settlement Agreement, and to
supplement the record accordingly.

4. The Parties enter into this Settlement Agreement to avoid further expense, uncertainty, and delay in resolving the issues between them in this docket. By executing this Settlement Agreement, the Parties shall not be deemed to have accepted or consented to the facts, principles, methods, or theories employed in arriving at the Settlement Agreement. The Parties shall not use, advocate or otherwise employ—itsself or in conjunction with any other individual or entity—this Settlement Agreement for disputing, arguing, or resolving any issues in any other proceeding.

REQUEST FOR APPROVAL

This Settlement Agreement and the attachments are presented to the Commission under WAC 480-07-730 - 750 for the Commission's approval. If this Settlement Agreement is approved, it would constitute a full settlement of all issues raised against McLeodUSA in the Complaint and Amended Complaint by the Commission with respect to any interconnection agreements between Qwest and McLeodUSA that were entered into and not filed before the date of this Settlement Agreement. McLeodUSA would remain a party to the proceeding for the limited purpose of fulfilling its obligation to sponsor and provide testimony and evidence as provided in this Settlement Agreement.

DATED this 12th day of August, 2004.

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