

McLeodUSA™

Hand-Delivered

May 12, 1997

Mr. Joel I. Klein
Acting Assistant Attorney General
Antitrust Division
Department of Justice
Main Justice Bldg
10th & Constitution Ave., N.W.
Room 3208
Washington, D.C. 20530

Dear Mr. Klein:

On April 29, 1997, Attorney Joyce Hundley of the Department's Telecommunications Task Force, Antitrust Division, contacted McLeod, Inc. (d/b/a McLeodUSA, "McLeod") regarding its experiences in dealing with U S West Communications, Inc. (U S West). Apparently, information I provided during my participation on a panel discussing the status of local competition at a meeting of the U S West Regional Oversight Committee ("ROC") conference the week prior prompted Attorney Hundley's inquiry. As you may know, the U S West ROC consists of state regulatory commissioners from U S West's fourteen state region. Ms. Hundley expressed an interest by the Department in receiving more detailed information as the Department prepares for an eventual section 271 filing by U S West.

The following Executive Summary outlines a letter submitted under signature of Casey D. Mahon, General Counsel and Senior Vice President, seeking your Department's investigation of U S West's anticompetitive actions against McLeod for both section 271 compliance and potential antitrust violations.

EXECUTIVE SUMMARY

- ▶ The Department of Justice, given its pivotal role in the Telecommunications Act of 1996 ("1996 Act") to evaluate section 271 competitive checklist compliance and its ongoing responsibility to investigate and prosecute antitrust violations of sections 1 and 2 of the Sherman Act, should undertake an investigation of the pattern of anticompetitive actions taken by U S West Communications, Inc, against McLeodUSA.
- ▶ McLeod, Inc. (NASDAQ:MCLD, d/b/a McLeodUSA), through its operating subsidiaries, provides integrated telecommunication services to small and medium size businesses, and (since June 1996) residential customers. McLeod is the second largest competitive local exchange carrier in the country; it is likely the largest competitive local exchange carrier in the country in terms of customers and locations actually served.
- ▶ McLeod began providing competitive local exchange service in January 1994 and currently provides local service through resale of Centrex service in Iowa, Illinois, Wisconsin and Minnesota, a service that bell operating companies (BOCs), including U S West, have offered for more than twenty years. McLeodUSA's local service expansion plans for the near future include South Dakota, North Dakota, Colorado and Wyoming. McLeodUSA currently does not provide facilities-based service.
- ▶ McLeod currently provides competitive local service through resale of Centrex service using existing telephone lines and central office equipment obtained from the incumbent local exchange carrier. Centrex was chosen by McLeod for its entry strategy, in part, because U S West's twenty years plus experience in providing this product to end users and other resellers in an identical manner that should permit U S West to seamlessly transition into a commercially scalable resale mode for this product.
- ▶ U S West has attempted various tactics and strategies to restrict McLeod's aggregation of Centrex to provide competitive local exchange service, which actions, according to U S West, are lawful because it never intended Centrex service to be a vehicle for competitive providers, echoing AT&T's failed arguments against WATS resale.
- ▶ McLeod's expansion plans and its ability to provide service are being significantly obstructed by conscious decisions by U S West Communications, Inc. ("U S West") the Regional Bell Operating Company ("RBOC"), to utilize its continued control of local phone lines -- monopoly bottleneck elements -- to impair, inhibit, and degrade the service McLeod can provide to its customers.
- ▶ U S West is intentionally blocking or delaying McLeod's entry into new markets, and concurrently draining McLeod's finite resources, by repeating anticompetitive actions in each new market entered by McLeod, until each succeeding state regulatory authority declares U S West's actions to be unlawful. U S West refuses to negotiate region wide resolution of most of its anticompetitive actions.

- ▶ Confusion created by U S West over state regulatory authority to enforce competitive provisions of the 1996 Act is limiting the effectiveness of state agencies to redress U S West's anticompetitive actions. As a result, state agencies are reaching inconsistent conclusions on basic questions of what actions are unlawful under the 1996 Act. In addition, some state agency remedies are inadequate in a competitive situation simply by virtue of the fact that complaints are not expeditiously resolved, and the resulting delay works to the advantage of U S West.
- ▶ To date, the anticompetitive actions taken by U S West against McLeod include:
 - a. knowingly preventing McLeod from implementing its planned expansion in 1996 by withdrawing Centrex service to evade resale of the service;
 - b. proposing to directly charge competitive providers the cost of updating U S West's systems and processes to accommodate interconnection;
 - c. attempting to impose a discriminatory, cost prohibitive NAR surcharge on Centrex resale;
 - d. providing deficient call detail records on an untimely basis;
 - e. threatening to degrade service by unnecessarily forcing McLeod's customers to dial "9" before each outgoing call, and repeating the threat in Minnesota;
 - f. in a discriminatory manner, restricting the number of service conversions processed for McLeod;
 - g. failing to process nearly all McLeod residential orders within standard service intervals;
 - h. committing errors on roughly 40-50% of all lines processed for McLeod that cause immediate service problems for approximately 70% of McLeod's new customers;
 - i. refusing to update its order processing for Centrex type orders even though McLeod offered to develop the interface or reimburse U S West for its development;
 - j. in a discriminatory manner, restricting the number of Centrex management system (CMS) priority changes that McLeod could use in Iowa for no technical reason, and repeating this unlawful limitation in Minnesota and other states;
 - k. failing to update its CMS database on the same day service is initiated;
 - l. refusing to include correct end user information in its line information database (LIDB) for McLeod's customers;

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- m. blocking McLeod's offering of competitive local exchange service in Colorado by filing new tariff restrictions on Centrex service that have no technical basis;
 - n. filing tariff restrictions in Colorado that prohibit McLeod from using dedicated access facilities to reach interexchange carriers for no technical reason;
 - o. charging McLeod exorbitant discriminatory directory listing fees priced significantly above U S West's cost in Minnesota;
 - p. requiring Centrex resellers to subscribe to an inefficient and costly service to perform the same functionality provided for free to U S West's customers;
- ▶ Other anecdotal evidence provides a clear picture of a monopolist ILEC using a variety of tactics intended to seriously damage, if not destroy, a smaller competitive provider and protect its monopoly status for as long as feasible;
 - ▶ The Department of Justice should investigate the pattern of wilful anticompetitive actions taken by U S West against McLeod.

I would appreciate the opportunity to personally discuss McLeod's experience with U S West with you and other members of the Department.

Sincerely,



Clark E. McLeod
Chairman and Chief Executive Officer

cc: Stephen C. Gray
President and COO

Casey D. Mahon
General Counsel and Senior Vice President

Donald Russell
Chief, Telecommunications Task Force
Antitrust Division, Department of Justice

Joyce Hundley
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Andrew Lipman, Swidler & Berlin