

1
2
3
4
5
6 **BEFORE THE WASHINGTON STATE**
7 **UTILITIES AND TRANSPORTATION COMMISSION**

8 WASHINGTON INDEPENDENT
9 TELECOMMUNICATIONS
10 ASSOCIATION, WASHINGTON
11 EXCHANGE CARRIER ASSOCIATION,
12 THE TOLEDO TELEPHONE CO., INC.,
13 TENINO TELEPHONE COMPANY,
14 KALAMA TELEPHONE COMPANY AND
15 HOOD CANAL TELEPHONE COMPANY,
16 d/b/a HOOD CANAL
17 COMMUNICATIONS,

18 **Complainants,**

19 v.

20 MCLEODUSA TELECOMMUNICATIONS
21 SERVICES, L.L.C. AND PAETEC
22 COMMUNICATIONS, INC.,

23 **Respondents.**

DOCKET NO. UT-111816

MOTION TO COMPEL RESPONSES TO
DISCOVERY

24 1. The Washington Independent Telecommunications Association ("WITA") and the
25 Washington Exchange Carrier Association ("WECA") hereby file this Motion to Compel Responses
26 to Discovery pursuant to WAC 480-07-425.

2. The parties have conferred and are not able to resolve these matters informally.

MOTION TO COMPEL RESPONSES
TO DISCOVERY - 1

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

1 3. There are three items that are subject to dispute. The first is Data Request 1-7. The
2 second is Data Request 1-8 and the third is the Third Set of Data Requests which consists of three
3 separate data requests.

4 4. The data requests and their responses as set out are as follows:

5 FIRST DISPUTE

6 5. The first dispute involves Data Request 1-7. The Data Request and response read as
7 follows:

8 Data Request 1-7: Please produce a true and correct copy of each contract or
9 agreement McLeodUSA has with another entity for delivery of traffic within the state of
10 Washington.

11 Specific Objection: RESPONDENTS object to this request because it is not limited
12 to contracts related to traffic terminating to any or all of the Complainants, is over-broad,
13 and is not calculated to lead to the discovery of admissible evidence. Moreover, some of the
14 agreements are subject to Confidentiality provisions that prohibit disclosure.

15 Response: Notwithstanding and without waiving the objection, non-Confidential
16 responsive agreements will be forwarded on a disk because of their voluminous nature.

17 6. The portion of the response that is the subject of the dispute is the portion that states
18 that agreements that are deemed confidential will not be produced. There is a Protective Order in
19 place in this docket. There is no reason not to produce the agreements. The agreements presumably
20 deal directly with the issues in this case.

21 7. In their Answer, McLeodUSA and PaeTec make the following affirmative
22 statements: "(1) McLeodUSA accepts telecommunications traffic it receives from wholesale VoIP
23 customers and transmits it to terminating local exchange carriers; (2) McLeodUSA's upstream
24 wholesale VoIP customers deliver all traffic to McLeodUSA in IP format; (3) McLeodUSA has no
25

1 visibility regarding the manner in which the calls delivered to it were originated; (4) McLeodUSA
2 does not manipulate, change, mask, or hide the Calling Party Number ("CPN") in the data stream;
3 and (5) if there is no CPN number in the data stream, McLeodUSA does not create one or make one
4 up." See, Paragraph 12 of the Answer. Further, McLeodUSA and PaeTec raise an affirmative
5 defense that "The complainants have failed to name and join indispensable parties to this
6 proceeding. Any access charges allegedly due and owing to the complainants are owed - if at all -
7 by upstream telecommunications carriers that deliver traffic to McLeodUSA." See, Pages 8 and 9
8 of the Answer. Presumably the agreements that are not being provided are with upstream providers
9 of traffic that deliver traffic to McLeodUSA. Therefore, those agreements are entirely relevant to
10 this proceeding and may well contain evidence that bears directly on the affirmative statements and
11 affirmative defenses raised by McLeodUSA and PaeTec.

12 8. PaeTec and McLeodUSA cannot hide behind a claim of confidentiality to not
13 produce documents that they acknowledge reflect upon the dispute that is the subject matter of this
14 Complaint. WITA and WECA respectfully request an order compelling production of the
15 documents claimed to be confidential.

16 SECOND DISPUTE

17 9. The second dispute involves Data Request 1-8:

18 Data Request 1-8: Please identify every measure McLeodUSA takes to identify
19 whether traffic delivered to it is IP-originated or TDM-originated.

20 Response: McLeod/PaeTec runs frequent checks using a verification algorithm in an
21 effort to verify that only IP-originated traffic is sent to its VoIP Termination product
22 platform. Additionally, McLeod/PaeTec investigates whenever a terminating carrier
23 disputes traffic associated with the VoIP Termination product to confirm that the traffic is
24 coming from one of its wholesale VoIP customers. Also, McLeod/PaeTec's VoIP customers
25

1 contractually commit to sending only IP-originated traffic over the VoIP Termination
2 product.

3 10. The issue under dispute is that the response is vague in that it does not identify the
4 metrics involved. Stating that McLeod/PaeTec "runs frequent checks using a verification
5 algorithm" without identifying the algorithm is an incomplete response. The response does not
6 identify how the verification algorithm is used or how frequently. There is no explanation of what
7 constitutes an investigation. The response is simply a vague assertion that McLeod and PaeTec
8 police the traffic that is sent to them, without explaining how. The response is evasive of the
9 question that was propounded. WITA and WECA respectfully request an order directing McLeod
10 and PaeTec to produce the information requested.

11 THIRD DISPUTE

12 11. The third dispute concerns Complainants' Third Set of Data Requests. A copy of
13 that set of data requests and the response is attached.

14 12. The object of the Third Set of Data Requests was for McLeod and PaeTec to produce
15 copies of comments they have made to the Federal Communications Commission concerning issues
16 that are involved in this proceeding. This included any comments on the subject matter by their
17 parent corporation, Windstream.

18 13. The response that was essentially that the documents are available to Complainants
19 and it would be more convenient, less burdensome and less expensive for Complainants to produce
20 that information.

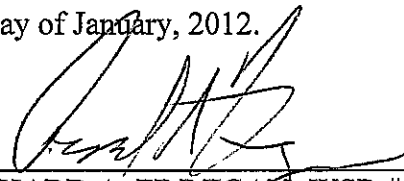
21 14. That response is completely out of bounds. McLeod and PaeTec would have the
22 Complainants research literally thousands of documents in several FCC dockets to try to ferret out
23 information that is readily available to McLeod and PaeTec. The result could well be that the
24
25
26

1 Complainants will overlook relevant documents already in the possession and control of McLeod
2 and PaeTec at the Complainants' peril. That is apparently the hope of McLeod and PaeTec.

3 15. This is essentially the same approach that McLeod and PaeTec takes to its traffic.
4 That is, "we are hiding the traffic from you to see if you can find it." That approach to providing
5 information and requiring the Complainants to act at their peril for information that is easily within
6 the reach of McLeod and PaeTec should not be allowed to continue. Hiding the ball is not an
7 appropriate response to a data request.

8 16. Therefore, WITA and WECA respectfully request that an order be issued requiring
9 McLeod and PaeTec to respond fully to the data requests contained in Complainants' Third Set of
10 Data Requests.

11 Respectfully submitted this 13th day of January, 2012.



12
13
14 RICHARD A. FINNIGAN, WSB #6443
Attorney for Complainants