

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Docket No. UT-033011

Complainant,

v.

ADVANCED TELECOM GROUP, INC.;  
ALLEGIANCE TELECOM, INC.; AT&T  
CORP; COVAD COMMUNICATIONS  
COMPANY; ELECTRIC LIGHTWAVE,  
INC.; ESCHELON TELECOM, INC. f/k/a  
ADVANCED TELECOMMUNICATIONS,  
INC.; FAIRPOINT COMMUNICATIONS  
SOLUTIONS, INC.; GLOBAL CROSSING  
LOCAL SERVICES, INC.; INTEGRA  
TELECOM, INC.; MCI WORLDCOM, INC.;  
McLEODUSA, INC.; SBC TELECOM, INC.;  
QWEST CORPORATION; XO  
COMMUNICATIONS, INC. f/k/a  
NEXTLINK COMMUNICATIONS, INC.,

Respondents

**MOTION OF MCLEODUSA  
TELECOMMUNICAIONS SERVICE,  
INC. FOR PROTECTIVE ORDER  
AGAINST DEPOSITION**

**INTRODUCTION**

On October 21, 2004, McLeodUSA, Inc. ("McLeodUSA") received a notice of Qwest Corporation's ("Qwest") intent to depose Stephen C. Gray on Friday, October 29, 2004 at 1300 S. Evergreen Park Drive S.W., Olympia, WA 98504. McLeodUSA objects to the deposition as set forth in Qwest's October 21, 2004 notice and moves the Commission for a Protective Order to quash the deposition so noticed. The deposition as set forth in Qwest's notice is unnecessary and unreasonable, and it would impose an undue burden on Mr. Gray and McLeodUSA.

**DISCUSSION**

**I. MR. GRAY WILL NOT BE AVAILABLE FOR DEPOSITION UNTIL  
NOVEMBER 19.**

Stephen Gray will not be available for deposition on October 29, 2004. Mr. Gray can be available for deposition on December 2, 2004 and, if absolutely necessary, he can be available

for deposition as early as November 19. But Mr. Gray will not be available before that date.

As President of McLeodUSA, Mr. Gray has broad and critical responsibilities over a company that does business in 25 states. These duties are particularly pressing now and over the next two months as McLeodUSA prepares all of its year-end reports and continues to participate in the FCC rulemaking related to the triennial review. Mr. Gray also has personal commitments on a number of dates over the next two months. He cannot set his substantial professional and personal responsibilities and commitments aside to appear for deposition on one-week's notice. The earliest date available for deposition is November 19, but McLeodUSA has a strong preference for December 2.

## **II. THE DEPOSITION AS NOTICED BY QWEST IS UNREASONABLE AND UNDULY BURDENSOME.**

McLeodUSA filed the testimony of Stephen Gray nearly two months ago on August 31, 2004. McLeodUSA also responded to Qwest's interrogatories related to Mr. Gray's testimony nearly one month ago on September 30. Yet, until this week, McLeodUSA has received no notice or suggestion of Qwest's intent to depose Mr. Gray. It is unreasonable and unduly burdensome at this late date to insist on deposing Mr. Gray on October 29. A procedural schedule has been established and that schedule requires the completion of depositions by December 15, 2004. McLeodUSA will make Mr. Gray available for deposition well before that date.

In lieu of deposing Mr. Gray, Qwest has the opportunity to pursue discovery through interrogatories. Interrogatories are clearly the appropriate method of discovery in a proceeding such as this one that involves pre-filed written testimony. The opportunity to engage in discovery through interrogatories, in combination with the opportunity to cross-examine Mr. Gray at trial, provide more than adequate due process protection to Qwest. This is not a case

in which Qwest Mr. Gray's testimony is a mystery waiting to be unveiled through live direct testimony. Nor is this a jury trial in which depositions may be essential to focus cross-examination in a way that avoids eliciting testimony that might confuse or prejudice a jury. If, after further interrogatories, it becomes clear that depositions are necessary, there is ample time before the December 15 deadline to notice and take those depositions.

**III. ANY DEPOSITION ALLOWED SHOULD BE SCHEDULED TO A DATE CONSISTENT WITH MR. GRAY'S AVAILABILTY AND HELD IN CEDAR RAPIDS, IOWA.**

If Qwest is allowed to depose Mr. Gray, any such deposition should be rescheduled to December 2 when Mr. Gray can be made available all day for deposition. If it is essential to depose Mr. Gray before December, then McLeodUSA will make Mr. Gray available on November 19. Further, any deposition of Mr. Gray should be taken in Cedar Rapid, IA to minimize the burden on Mr. Gray and McLeodUSA. Generally, a corporate officer, such as Mr. Gray, is entitled to have his deposition taken in the venue in which he resides. Presumably, the deposition will be taken by Mr. Nazarian, and it is fair to assume that Mr. Nazarian's travel from Washington D.C. to Cedar Rapids will not impose a greater burden on Qwest than his travel to Olympia, WA. McLeodUSA will agree to make facilities available in Cedar Rapids for other parties and individuals to participate telephonically.

**CONCLUSION**


Accordingly, McLeodUSA requests an Order from the Commission that the deposition of Mr. Gray, as noticed by Qwest, be denied and that any deposition of Mr. Gray allowed by the

Commission be rescheduled consistent with Mr. Gray's schedule to take place on November 19 or December 2 at a location convenient to Mr. Gray, i.e., Cedar Rapids, Iowa.

Dated: October 22, 2004

Respectfully submitted,

MOSS & BARNETT  
A Professional Association

  
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Dan Lipschultz

Attorneys on behalf of McLeodUSA, Inc.