

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON INDEPENDENT	)	DOCKET UT-111816
TELECOMMUNICATIONS	)	
ASSOCIATION, WASHINGTON	)	
EXCHANGE CARRIER	)	ORDER 03
ASSOCIATION, THE TOLEDO	)	
TELEPHONE CO., INC., TENINO	)	
TELEPHONE COMPANY, KALAMA	)	
TELEPHONE COMPANY AND	)	
HOOD CANAL TELEPHONE	)	ORDER GRANTING IN PART
COMPANY, d/b/a HOOD CANAL	)	AND DENYING IN PART
COMMUNICATIONS,	)	COMPLAINANTS' MOTION TO
	)	COMPEL RESPONSES TO
Complainants,	)	DISCOVERY
	)	
v.	)	
	)	
MCLEODUSA	)	
TELECOMMUNICATIONS	)	
SERVICES, L.L.C. AND PAETEC	)	
COMMUNICATIONS, INC.,	)	
	)	
Respondents.	)	
	)	
.....	)	

*1* **NATURE OF PROCEEDING.** This docket involves a formal complaint filed by the Washington Independent Telecommunications Association (WITA), on behalf of itself and its participating member companies, the 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 (collectively Complainants) against McLeodUSA Telecommunications Services, Inc., and PAETEC Communications, Inc. (collectively McLeodUSA) alleging that McLeodUSA is sending telecommunications traffic to incumbent local exchange carriers for termination and are 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 (referred to as “phantom traffic”).

2     **COMPLAINANTS’ MOTION TO COMPEL.** On January 13, 2012, Complainants filed a Motion to Compel Responses to Discovery, to which McLeodUSA filed its response on January 24, 2012. Only Data Request 1-7 and Complainants’ Third Set of Data Requests (Third DRs) remained at issue at the discovery conference convened on January 30, 2012, to resolve the dispute.

3     Data Request 1-7 requests copies of “each contract or agreement McLeodUSA has with another entity for delivery of traffic within the state of Washington.” McLeodUSA objected to the request and notwithstanding its objections, provided nonconfidential contracts, but refused to provide contracts that are subject to confidentiality provisions. Complainants contend that such a refusal is improper when there is a protective order in place and the information requested is relevant to the proceeding. McLeodUSA claims that such production would violate the confidentiality provisions of the contracts and require disclosure of customer proprietary network information (CPNI), which the Commission does not compel.

4     The Third DRs request communications McLeodUSA or its new parent corporation, Windstream, have made with the Federal Communications Commission (FCC) on specified subjects or dockets related to the issues in the complaint. McLeodUSA objects to these requests on the grounds that the requested documents are public records that Complainants can easily research independently on the FCC’s website. Complainants counter that the documents are readily accessible to McLeodUSA but would require them to research thousands of documents in several FCC dockets without a guarantee of finding all communications that are responsive to the request.

5     **DISCUSSION AND DECISION.** The parties agreed during the discovery conference that rather than provide the confidential agreements themselves, McLeodUSA would provide Complainants with the template contract it uses for agreements with customers for the delivery of their traffic to WITA members for termination, along with a declaration from a knowledgeable person that the executed contracts are not materially different from the template.

- 6 Complainants nevertheless insisted on disclosure of the identities of the customers that have executed those contracts, to which McLeodUSA continues to object. The Commission does not lightly require the production of CPNI, particularly in disputes between carriers, but McLeodUSA's answer to the complaint could be construed to contend that its carrier customers are responsible for any alleged "phantom traffic." McLeodUSA may not point to its customers as being liable for any wrongdoing but then refuse to name them.
- 7 At this point in the proceeding, however, McLeodUSA has not taken any specific positions, including whether its customers are responsible for the unlawful or improper acts alleged in the complaint. The Commission will require McLeodUSA to provide *in camera* to the presiding administrative law judge the names of its customers who have executed confidential contracts for terminating traffic to Complainants. If McLeodUSA argues or otherwise takes the position that its customers should be held responsible for the acts alleged in the complaint, the Commission will conduct additional proceedings to determine whether and under what circumstances the names provided *in camera* should be disclosed.
- 8 The parties also continued to dispute whether Complainants are entitled to a response to their Third DRs. The Commission agrees with McLeodUSA that Complainants can obtain the FCC filings they request through their own research of publicly available documents and that such research is more convenient, less burdensome, or less expensive than requiring McLeodUSA to produce those documents in discovery. In addition, FCC filings made by Windstream are not reasonably likely to lead to the discovery of admissible evidence in this proceeding, and comments McLeodUSA has made to the FCC are of marginal relevance at best. The Commission will not compel McLeodUSA to respond to Complainants' Third DRs.

### ORDER

- 9 THE COMMISSION ORDERS:
- 10 A. The Complainants' Motion to Compel is GRANTED, in part, as to Data Request 1-7 as follows:

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(1) McLeodUSA shall provide Complainants with (a) the template it uses for agreements with customers for the delivery of their Washington intrastate traffic to WITA members for termination; and (b) a declaration from a knowledgeable person that the confidential executed contracts are not materially different from the template.

(2) McLeodUSA shall submit *in camera* to the presiding administrative law judge a list of customers that have executed confidential contracts for the delivery of their Washington intrastate traffic to WITA members for termination. The list should be sent directly to the judge, not to the Commission's Record Center. The judge will review and retain that list *in camera* in the event the identity of those customers becomes a legitimate issue in this proceeding, at which time the Commission will determine whether and under what circumstances those customer names will be disclosed.

12 B. The remainder of the Complainants' Motion to Compel is DENIED.

Dated at Olympia, Washington, and effective February 7, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA  
Administrative Law Judge

**NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.**