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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

AZ CORP COMMISSION
DOCUMENT CONTROL

UTILITIES DIVISION STAFF,

Docket No. T-03267A-03-0887

Complainant,

v.

MCLEODUSA TELECOMMUNICATIONS
SERVICES, INC.

**NOTICE OF FILING REDACTED
TESTIMONY OF STAFF WITNESS
ELIJAH O. ABINAH AND NOTICE
OF FILING ERRATA**

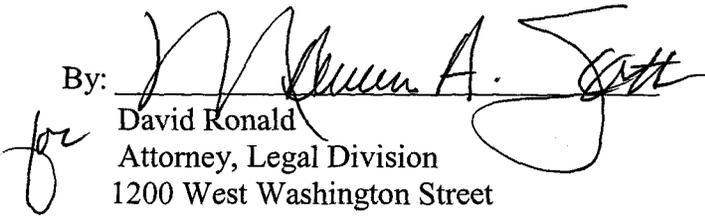
Respondent.

The Staff of the Arizona Corporation Commission ("Staff") hereby provides notice that it is filing the Redacted Testimony of Staff Witness Elijah O. Abinah pursuant to the April 27, 2005, Procedural Order in this matter. Staff also has included an errata to attach the spreadsheet referenced on Page 8 of Mr. Abinah's Testimony which was inadvertently omitted in the original filing. Staff regrets any inconvenience this may have caused.

RESPECTFULLY SUBMITTED this 28th day of April, 2005.

ARIZONA CORPORATION COMMISSION

By:

for 
David Ronald
Attorney, Legal Division
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(602) 542-6020

Original and 13 copies of the foregoing filed this 28th day of April, 2005, with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Arizona Corporation Commission

DOCKETED

APR 28 2005

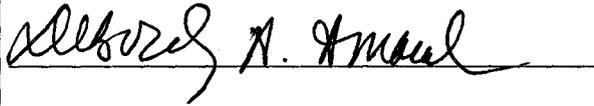
DOCKETED BY

1 Copy of the foregoing mailed this 28th day
2 of April, 2005, to:

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BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
Chairman
WILLIAM A. MUNDELL
Commissioner
MARC SPITZER
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner

IN THE MATTER OF THE FORMAL)
COMPLAINT AGAINST MCLEODUSA)
TELECOMMUNICATIONS SERVICES, INC.)
)
_____)

DOCKET NO. T-03267A-03-0887

REDACTED

DIRECT

TESTIMONY

OF

ELIJAH ABINAH

ASSISTANT DIRECTOR UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

APRIL 25, 2005

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EXECUTIVE SUMMARY

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On April 25, 2005 the Staff of the Arizona Corporation Commission (“Staff”) and McLeodUSA, Inc. (“McLeod”) filed a proposed Settlement Agreement (“the Settlement”) in the following docket: T-03267A-03-0887. Mr. Abinah’s testimony will provide an overview of the Settlement agreement concerning the process, cash payment, obligation to file, ongoing compliance.

INTRODUCTION

1

2 **Q. Please state your name and business address for the record.**

3 A. My name is Elijah O. Abinah. My business address is: Arizona Corporation Commission,
4 1200 W. Washington St., Phoenix, AZ 85007.

5

6 **Q. How long have you been employed with the Utilities Division?**

7 A. I have been employed with the Utilities Division since January 2003.

8

9 **Q. What is your position at the commission?**

10 A. I am employed by the Utilities Division ("Staff") of the Arizona Corporation Commission
11 ("ACC" or "Commission") as the Assistant Director.

12

13 **Q. Please describe your education and professional background.**

14 A. I received a Bachelor of Science degree in Accounting from the University of Central
15 Oklahoma in Edmond, Oklahoma. I also received a Master of Management degree from
16 Southern Nazarene University in Bethany, Oklahoma. Prior to my employment with the
17 ACC, I was employed by the Oklahoma Corporation Commission for approximately eight
18 and a half years in various capacities in the Telecommunications Division.

19

20 **Q. What are your current Responsibilities?**

21 A. As the Assistant Director, I review submissions that are filed with the Commission and
22 make policy recommendations to the Director regarding those filings.

23

24 **Q Did you participate in the discussion which gave rise to the Settlement Agreement
25 between Staff and McLeodUSA Inc. ("McLeod")?**

26 A Yes, I did. I was part of the Staff negotiating team.

1 **Q. What is the purpose of your testimony?**

2 A. The purpose of my testimony is to describe the Settlement process and to explain Staff's
3 view regarding the settlement Agreement between Staff of the Arizona Corporation
4 Commission ("Staff") and McLeod regarding docket No. T-03267A-03-0887 filed by the
5 Utilities Division Staff in the matter of the Formal Complaint against McLeod
6 Telecommunications Services, Inc.

7
8 **Q What specific issues will your testimony address?**

9 A Specifically, my testimony will address the following areas:

- 10 • Process
11 • Cash Payment
12 • Obligation to file all interconnection agreement with the Commission
13 • Ongoing Compliance
14 • Resolution of similar issues in other Qwest Jurisdictions
15 • Public Interest

16

17

SETTLEMENT PROCESS

18 **Q. Please discuss the settlement process.**

19 A. Staff was contacted by Mr. William Courter who inquired whether Staff might be
20 interested in some type of resolution of the outstanding docket.

21

22 **Q. What was the nature of your conversation?**

23 A. Basically, we discussed the desire to address the issues raised by Staff in the complaint
24 and
25 concluded that an agreed upon solution would be beneficial.

1 **Q. Were other Staff members' participant in this discussion?**

2 A Yes, the staff negotiating team consisted of Mathew Rowell (Chief of Telecom and
3 Energy), Adam Lebrecht, (Executive Consultant 1), David Ronald (Staff legal Counsel)
4 and myself.

5
6 **Q. Did anyone seek to intervene in this matter?**

7 A. No, not to the best of my knowledge.
8

9 **OVERVIEW OF THE SETTLEMENT**

10 **Q. Please provide an overview of the Settlement Agreement.**

11 A. Through the Settlement Agreement, McLeod has agreed to a variety of concessions
12 including agreement that it has an obligation to file all Interconnection Agreements with
13 the Commission; agreement to file any/all present Interconnection Agreements not
14 already on file with the Commission; agreement that the stricter obligation shall control
15 any conflicts between future law and the terms of this Settlement Agreement, cash
16 payment; notification of all future oral Interconnection or Commercial Agreements; and
17 agreement to notify the Commission of all wholesale telecommunications agreements; and
18 notification of any future commercial agreements. The Settlement agreement provides
19 for a total cash payment of \$75,000.

20
21 **Q. Please define the term "Interconnection Agreement" as used in this testimony.**

22 A. The term "Interconnection Agreement" as used in this testimony refers to any agreement
23 required to be filed and/or approved by the Commission pursuant to 47 U.S.C. § 252(e) of
24 the Telecommunications Act of 1996 ("the 1996 act") and Arizona Administrative Code
25 ("A.A.C.") R14-2-1506.
26

1 **Q. What types of services are covered by Section 251 (b) and (c) of the 1996 act?**

2 A. Generally, wholesale services specific to the provision of local service are covered by
3 Section 251 (b) and (c) of the Act. Unbundled Network Elements (“UNEs”), resale
4 services, and charges for collocation are all covered by Section 251 (b) and (c). Intrastate
5 access, interstate access, switched access, special access, and private line service are not
6 covered by section 251 (b) and (c) of the 1996 Act.

7

8 **Q. How many Interconnection Agreements did McLeod fail to file with the**
9 **Commission?**

10 A. Staff’s complaint alleged that McLeod failed, in violation of state and federal law, to file
11 and/or seek the Commission’s approval of the following six (6) Interconnection
12 Agreements:

- 13 a. Confidential Settlement Document with US WEST dated 4/25/00
14 b. Confidential Billing Settlement Agreement with Qwest dated 9/29/00
15 c. Amendment to Confidential Billing Settlement Agreement with Qwest
16 dated 10/26/00
17 d. Volume discount agreement with Qwest dated on or around 10/26/00
18 e. Purchase Agreement with Qwest Communications Corp. and its
19 subsidiaries (“Qwest”) (McLeod buys from Qwest) dated 10/26/00
20 f. Purchase Agreement with Qwest Communications Corp. and its
21 subsidiaries (“Qwest”) (Qwest buys from McLeod) dated 10/26/00.

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OBLIGATION TO FILE CURRENT/UNFILED INTERCONNECTION AGREEMENTS

Q. Please provide an overview of the provisions of Paragraph 4.

A. McLeod has agreed to file any/all current Interconnection Agreements not already filed with the Commission within forty-five (45) days of the approval of this Settlement Agreement. At this time, neither Staff nor McLeod are aware of any current Interconnection Agreements that are not on file with the Commission.

CONFLICT BETWEEN THIS SETTLEMENT AGREEMENT AND FUTURE LAW

Q. Please provide an overview of the provisions of Paragraph 5.

A. McLeod agrees that, in the future, if a conflict arises between this Settlement Agreement and future laws in existence, the stricter obligation shall control. Staff and McLeod agree that either party may provide the other with written notice of its belief that a change in the law has effected this settlement agreement. If this should happen, both parties shall agree to meet and negotiate in an effort to bring this Settlement Agreement into compliance with the existing law. If Staff and McLeod are unable to reach an agreement within sixty (60) days of the written notice that a change in the law has occurred, either party may petition any state or federal court for relief.

CASH PAYMENT

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Q. Does the agreement provide for a cash payment?

A. Yes.

Q. What is the amount of the cash payment?

A. The cash payment amount is \$75,000.00. McLeod agrees to pay the sum of \$75,000 to the Arizona State Treasurer for deposit in to the General Fund within 30 days of the Effective Date of a Commission Decision approving the Settlement.

Q. Mr. Abinah, could the amount of the cash payment be different than what Staff recommends?

A. Yes, but considering all of the issues in the case, Staff believes that \$75,000.00 is a reasonable amount.

Q. Can you please describe the monetary options available to the Commission?

A. I am not a lawyer, but it is my understanding that there are three options available to the Commission. Firstly, consistent with A.R.S. § 40-425, the Commission can assess a base fine up to \$5000.00 per agreement. Secondly, under A.R.S § 40-424, the Commission has the authority to assess an additional fine of up to \$5000.00 per day per agreement if the Commission determines that a company is in contempt of the Commission's orders, rules, or requirements. Lastly, the Commission could impose a flat penalty that falls within the range of penalty describe above.

Q. Is the sum of \$75,000.00 an appropriate fine when compared to the fine assessed to Qwest in Decision No. 66349?

A. Yes.

1 **Q. Can you please explain the methodology utilized by Staff in arriving at that number**
2 **and why Staff believes the proposed fine is appropriate?**

3 A. Based on the information provided by the company and the review of the company's
4 annual report, Staff considered the following:

- 5 • McLeod's number of access line as compared to Qwest
- 6 • McLeod's number of customer's (Residential and Business)
- 7 • McLeod's Intrastate (Arizona) revenue,
- 8 • The number of unfiled interconnection agreements.

9 In addition, Staff considered the fact that the fine imposed by the Commission in the
10 settlement agreement involving Qwest, resolved three separate dockets that were
11 consolidated for settlement purposes. (Docket RT-00000F-02-0271, Docket T-00000-A-
12 97-0238 and Docket T-01051B-02-0871).

13
14 **Q. Please briefly explain the analysis performed by Staff in arriving at the proposed**
15 **fine.**

16 A. According to its 2003 Annual Report, Qwest had [REDACTED] customer lines in Arizona and
17 its total Arizona revenue was [REDACTED]. The \$8,811,000 fine assessed by the
18 Commission in Decision No. 66349 is representative of [REDACTED] per customer line and
19 [REDACTED] of Qwest's 2003 Arizona revenue (see attached spreadsheet).

20
21 According to its 2003 Annual Report, McLeod had [REDACTED] customer lines and a total
22 Arizona Revenue of [REDACTED]. A fine amount of \$75,000 is representative of [REDACTED] per
23 customer line and [REDACTED] of McLeod's 2003 Arizona revenue. Staff believes that the
24 higher per customer line figure ([REDACTED] compared to [REDACTED]) is offset by the lower percent of
25 its 2003 Arizona revenues ([REDACTED] compared to [REDACTED]) (See attached spreadsheet).

26

1 Staff believes that the above comparison between McLeod and Qwest indicates that the
2 fine agreed to by the parties is comparable to the fine imposed on Qwest in Decision No.
3 66349
4

5 **NOTIFICATION OF FUTURE ORAL INTERCONNECTION OR COMMERCIAL**
6 **AGREEMENTS**

7 **Q. Please describe the provisions of Paragraph 7.**

8 A. McLeod has agreed to notify the Commission of all future oral Interconnection or
9 Commercial Agreements with ILECS.
10

11 **NOTIFICATION OF WHOLESALE TELECOMMUNICATIONS AGREEMENTS**

12 **Q. Please describe the provisions of Paragraph 8.**

13 A. McLeod has agreed to notify the Commission of all wholesale telecommunications
14 agreements between McLeod and other ILECS relating to the resale, interconnection or
15 purchase of unbundled network elements entered into in Commission dockets of general
16 application within 10 days of execution.
17

18 **NOTIFICATION OF FUTURE COMMERCIAL AGREEMENTS**

19 **Q. Please describe the provisions of Paragraph 9.**

20 A. McLeod has agreed to notify the Commission of any future commercial agreements with
21 ILECs that relate to interconnection or the purchase of network elements from ILECS.
22

Customer line and revenue information taken from Qwest and McLeod 2003 Confidential Annual Reports

Company Name	Customer Lines	Fine Amount	Fine Per Line	AZ Revenue	Fine Amount	Percent of Revenue
Qwest	[REDACTED]	\$8,811,000	[REDACTED]	[REDACTED]	\$8,811,000	[REDACTED]

Company Name	Customer Lines	Fine Amount	Fine Per Line	AZ Revenue	Fine Amount	Percent of Revenue
McLeod	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

PROPRIETARY