

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

UTILITIES DIVISION STAFF,

Complainant,

v.

MCLEODUSA
TELECOMMUNICATIONS SERVICES,
INC.

Respondent.

Docket No. T-03267A-03-0887

TESTIMONY OF

James E. Thompson

ON BEHALF OF MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.

April 25, 2005

1 Q. Please state your name, current position and business address.

2 A. My name is James E. Thompson. I am General Counsel, Group Vice
3 President and Secretary of McLeodUSA Incorporated and its subsidiary,
4 McLeodUSA Telecommunications Services, Inc. (McLeodUSA). My
5 business address is McLeodUSA Technology Park, 6400 C Street SW, P.O.
6 Box 3177, Cedar Rapids, Iowa 52460-3177.

7 Q. How long have you been employed by McLeodUSA in your current
8 positions and what are your responsibilities?

9 A. I joined McLeodUSA in my current positions in December 2002. My
10 current responsibilities include overall responsibility for advising
11 McLeodUSA and its management with respect to legal, regulatory and
12 related matter affecting the Company and its operations, oversight of the
13 Company's compliance with regulatory and legal requirements generally,
14 and responsibilities associated with the position of General Counsel in a
15 publicly traded company.

16 Q. Could you please describe your educational and employment
17 background prior to joining McLeodUSA?

18 A. Prior to assuming my current position with McLeodUSA, I was employed
19 by Alticor Inc. where I headed that firm's International Legal Division in
20 connection with the company's operations in more than 80 countries and

1 territories worldwide, and provided legal support in a general counsel
2 capacity to Alticor's Business Development business unit. Prior to joining
3 Alticor, I was an attorney with the international law firm Jones Day Reavis
4 & Pogue ("Jones Day"), in the firm's Washington DC and Brussels, Belgium
5 offices. I received my Juris Doctorate from the University of Michigan Law
6 School in 1986. I received a B.A in History from the University of Michigan,
7 Ann Arbor, Michigan in 1983.

8 **Q. Are you familiar with the Complaint filed in the Settlement Agreement**
9 **between McLeodUSA and the Utilities Division Staff in this Docket, T-**
10 **03267A-03-0887?**

11 **A.** Yes, am familiar with this settlement.

12 **Q. Can you briefly describe the Settlement Agreement?**

13 **A.** Yes. The settlement consists primarily of a number of commitments by
14 McLeodUSA intended to ensure that the Commission is able to fully
15 exercise its authority to review and approve Interconnection Agreements
16 under both state and federal law. Specifically, McLeodUSA has stipulated
17 that the agreements identified in Staff's complaint are Interconnection
18 Agreements under current federal and state law. McLeodUSA has further
19 agreed to take joint responsibility for filing and seeking Commission
20 approval of all future Interconnection Agreements and to notify the

1 Commission of any oral Interconnection Agreements. McLeodUSA has
2 also committed to notify the Commission of any future commercial
3 agreements with an ILEC, whether oral or written, that relate to
4 interconnection or the purchase of network elements. Finally, McLeodUSA
5 has agreed to a payment of \$75,000 to the State Treasurer.

6 **Q. Do you believe this Settlement Agreement is in the public interest?**

7 **A.** Yes, I believe the Settlement Agreement is in the public interest. The
8 settlement has three primary components that, I believe, advance the public
9 interest. First, it includes specific commitments by McLeodUSA that clarify
10 its responsibilities with respect to the filing of Interconnection Agreements.
11 Second, it includes a significant payment obligation that reflects
12 McLeodUSA's commitment to take responsibility for its past actions.
13 Finally, the Settlement Agreement, if adopted, will resolve all issues
14 between the parties in this Docket and allow both McLeodUSA and
15 Commission Staff to devote their respective scarce resources towards other
16 matters of pressing concern. McLeodUSA, in particular, can focus its
17 resources on providing high quality service to its customers and continuing
18 to bring competitive alternatives to Arizona consumers in a very
19 challenging telecommunications marketplace.

20

1 **Q. How do McLeodUSA's filing commitments advance the public interest?**

2 A. These commitments eliminate any possible doubt or ambiguity about

3 McLeodUSA's obligation with respect to the filing of Interconnection

4 Agreements. I was not working for McLeodUSA or in the

5 telecommunications industry at the time McLeodUSA entered into the

6 agreements named in Staff's Complaint. But I am aware that McLeodUSA

7 believed it was solely the ILEC's responsibility to file Interconnection

8 Agreements and that, in fact, the ILEC (Qwest or SBC) had always

9 previously filed Interconnection Agreements entered into with

10 McLeodUSA. Staff has taken the position that a CLEC, such as

11 McLeodUSA, shares this filing obligation. Accordingly, as part of this

12 settlement, McLeodUSA has agreed to take joint responsibility for filing

13 Interconnection Agreements and to notify the Commission of any such

14 agreements if oral prior to implementation. In so doing, this Settlement

15 Agreement eliminates any potential doubt or ambiguity regarding

16 McLeodUSA's responsibilities regarding the filing of Interconnection

17 Agreements, including those that are entered into orally without being

18 memorialized in writing. This will help ensure that the Commission is able

19 to exercise its critical role under the Federal Act to review and approve

20 Interconnection Agreements.

1 Q. McLeodUSA has agreed to provide the Commission notice of any
2 "commercial agreements" in addition to accepting joint responsibility for
3 filing Interconnection Agreements. How does this notice obligation
4 advance the public interest?

5 A. This notice commitment helps ensure that the Commission has the
6 opportunity to review what Qwest refers to as "commercial agreements."
7 As such, this commitment will help the Commission police the marketplace
8 and protect the public interest by making sure the Commission is aware of
9 all agreements between McLeodUSA and ILECs for interconnection or the
10 purchase of network elements.

11 Q. What was the basis for the \$75,000 payment in paragraph 6 of the
12 Settlement Agreement?

13 A. This payment reflects a reasonable compromise between the parties that is
14 proportionate to the amount paid by Qwest under its settlement with staff
15 and consistent with payments by McLeodUSA and CLECs in other states
16 for similar allegations. It is proportionate to Qwest's payment because it
17 reflects the very substantial differences between the two carriers with
18 respect to size, financial strength and the number of alleged violations.
19 McLeodUSA, for example, currently has approximately 19,000 lines in
20 Arizona compared to Qwest's over 2 million lines. Similarly, Staff's

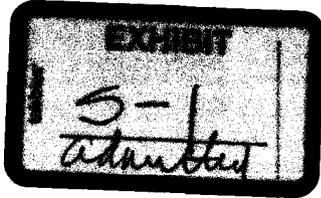
1 complaint alleged six violations by McLeodUSA as compared to the 84
2 violations alleged against Qwest. Only the state of Washington has
3 required McLeodUSA or any other CLEC to pay any penalty related to the
4 failure to file these agreements. The \$75,000 payment in this Settlement
5 Agreement is substantially larger than the \$25,000 payment McLeodUSA
6 made in settlement of the Washington unfiled agreements proceeding,
7 which addressed similar allegations to those presented here.

8 **Q. What, if any, action is McLeodUSA requesting of the Commission with**
9 **respect to this Settlement Agreement?**

10 **A. McLeodUSA requests that the Commission approve the Settlement**
11 **Agreement as presented, resolving all matters related to McLeodUSA in the**
12 **Commission Complaint, and close this docket.**

13 **Q. Does that conclude your testimony?**

14 **A. Yes.**



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BEFORE THE ARIZONA CORPORATION COMMISSION

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JEFF HATCH-MILLER - Chairman
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UTILITIES DIVISION STAFF,

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v.

MCLEODUSA TELECOMMUNICATIONS
SERVICES, INC.

Respondent .

Docket No. T-03267A-03-0887

SETTLEMENT AGREEMENT

PARTIES

The Parties to this Settlement Agreement are the Arizona Corporation Commission Staff ("Staff") and McLeodUSA Telecommunications, Inc (McLeodUSA).

INTRODUCTION

The Parties stipulate to this Settlement Agreement to resolve all matters in dispute between them regarding the Arizona Corporation Commission ("Commission") Complaint in this docket, including all claims, whether known or unknown, related to the subject of or arising from the Complaint with respect to interconnection agreements between McLeodUSA and Qwest entered into between April 25, 2000 and October 26, 2000. The Parties request a Commission order approving this Settlement Agreement as soon as possible.

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DEFINITIONS

The term "Interconnection Agreement" as used in this Settlement Agreement shall include any agreement required to be filed and/or approved by the Commission pursuant to 47 U.S.C. § 252(e) of the Telecommunications Act of 1996 ("the 1996 act") and A.A.C. Rule R14-2-1506.

"McLeodUSA" includes McLeodUSA, and/or its subsidiaries or affiliates, including officers, directors, employees and agents of McLeodUSA and its subsidiaries or affiliates.

PROCEDURAL HISTORY

On December 9, 2003, the Commission issued a complaint against McLeodUSA. The Commission alleged that McLeodUSA failed, in violation of state and federal law, to file and seek Commission approval for the following Agreements:

- a. Confidential Settlement Document with US WEST dated 4/25/00
- b. Confidential Billing Settlement Agreement with Qwest dated 9/29/00
- c. Amendment to Confidential Billing Settlement Agreement with Qwest dated 10/26/00
- d. Volume Discount Agreement with Qwest dated on or around 10/26/00
- e. Purchase Agreement with Qwest Communications Corp. and its subsidiaries ("Qwest") (McLeod buys from Qwest) dated 10/26/00
- f. Purchase Agreement with Qwest Communications Corp. and its subsidiaries ("Qwest") (Qwest buys from McLeod) dated 10/26/00

between McLeodUSA and Qwest Corporation ("Qwest"), an incumbent local exchange carrier ("ILEC"), as required by 47 U.S.C. § 252(a)(1) and (e), and A.A.C. Rule R14-2-1506. On May 20, 2004, McLeodUSA filed an Answer to the Complaint. McLeodUSA argued that Staff had no cause of action against it.

SPECIFIC TERMS

Staff and McLeodUSA agree to the following terms and conditions:

1 1. For the purposes of this Settlement Agreement only and in the interests of settling the
2 disputes between the Parties, McLeodUSA stipulates that Agreements:

- 3 a. Confidential Settlement Document with US WEST dated 4/25/00
- 4 b. Confidential Billing Settlement Agreement with Qwest dated 9/29/00
- 5 c. Amendment to Confidential Billing Settlement Agreement with Qwest dated
6 10/26/00
- 7 d. Volume Discount Agreement with Qwest dated on or around 10/26/00
- 8 e. Purchase Agreement with Qwest Communications Corp. and its subsidiaries
9 ("Qwest") (McLeod buys from Qwest) dated 10/26/00
- 10 f. Purchase Agreement with Qwest Communications Corp. and its subsidiaries
11 ("Qwest") (Qwest buys from McLeod) dated 10/26/00

12 between it and Qwest constitute Interconnection Agreements under current Federal Communications
13 Commission ("FCC") and Commission rules and orders.

14 2. Staff's position is that Federal Law and Commission rules and orders require CLEC's
15 to file and seek Commission approval for all Interconnection Agreements, whether written or oral.
16 At this time, both Staff and McLeodUSA agree that the FCC has not issued a definitive ruling on
17 whether CLEC's have the above obligation under Federal Law. McLeodUSA is aware of Staff's
18 position regarding the filing obligations of CLEC's under Federal Law. Staff is aware of
19 McLeodUSA's position that Federal Law imposes a requirement solely on ILEC's to file
20 Interconnection Agreements. McLeodUSA admits that Commission rules and orders require it to file
21 and seek Commission approval for all Interconnection Agreements, whether written or oral, and
22 McLeodUSA will do so for all future Interconnection Agreements. McLeodUSA, however,
23 emphasizes that at the time it entered into each Agreement identified in the Commission Complaint,
24 it believed in good faith, based on the law in existence at the time, that Qwest was the only party
25 obligated to file Interconnection Agreements.

26 3. McLeodUSA accepts its shared obligation to file and seek Commission approval for
27 all future Interconnection Agreements in compliance with this Settlement Agreement and existing
28

1 law. McLeodUSA agrees that all Interconnection Agreements shall be filed with thirty (30) days of
2 execution.

3 4. McLeodUSA agrees that if an Interconnection Agreement is presently in existence and
4 not yet filed for approval, the Interconnection Agreement will be filed within forty-five (45) days of
5 approval of this Settlement Agreement by the Commission. Neither Staff nor McLeodUSA is
6 currently aware of any such Interconnection Agreement presently in existence and not yet filed for
7 approval.

8 5. McLeodUSA agrees that if a conflict arises between the law in existence in the future
9 and the terms of this Settlement Agreement, the stricter obligation shall control, unless complying
10 with the stricter obligation would result in a violation of the law, in which case the then existing law
11 would control. Either party may give the other party written notice of its belief that a change in the
12 law has affected this Settlement Agreement. The parties agree to meet and negotiate in good faith to
13 bring this Settlement Agreement into compliance with existing law. If the parties cannot reach
14 agreement within sixty (60) days of the date notice was given that a change in the law has occurred,
15 either party may petition any state or federal court in Arizona for appropriate relief.

16 6. McLeodUSA agrees to pay the State of Arizona seventy-five thousand dollars
17 (\$75,000) in settlement of this proceeding. This amount shall be made payable to the State Treasurer
18 for deposit in the General Fund for the State of Arizona and shall be remitted within 30 days of an
19 order approving this settlement agreement.

20 7. McLeodUSA must notify the Commission of all future oral interconnection or
21 commercial agreements with ILECs as set forth in paragraphs 8 and 9 of the Specific Terms before
22 implementing the terms of such an agreement.

23 8. McLeodUSA must notify the Commission of all wholesale telecommunications
24 agreements between McLeodUSA and ILECs relating to resale, interconnection or the purchase of
25 unbundled network elements entered into in Commission dockets of general application within 10
26 days of execution.

27 9. McLeodUSA must notify the Commission of any future commercial agreements with
28 ILEC's that relate to interconnection or the purchase of network elements from an ILEC.

1
2 **GENERAL TERMS**

3 The Parties stipulate to the following general terms of the Settlement Agreement:

4 1. The Parties agree to use their best efforts to secure the approval by the Commission of
5 the Specific Terms of this Settlement Agreement. The Parties understand that the Specific Terms
6 listed do not apply unless approved by the Commission.

7 2. The Specific Terms of the Settlement Agreement represent an integrated resolution of
8 issues. Accordingly, the Parties recommend that the Commission adopt the Specific Terms of this
9 Settlement Agreement in its entirety. Each party reserves the right to withdraw from the Settlement
10 Agreement if the Commission does not approve the Specific Terms of the Settlement Agreement in
11 its entirety or conditions approval of the Specific Terms of the Settlement Agreement on material
12 revisions to its terms and conditions.

13 3. The Parties agree to provide at least one witness at the time the Settlement Agreement
14 is presented to the Commission to provide testimony in support of the Settlement Agreement and
15 answer any questions the Commission may have. The Parties agree to cooperate, in good faith, in the
16 development of such other information as may be necessary to support and explain the basis of this
17 Settlement Agreement, and to supplement the record accordingly.

18 4. The Parties enter into this Settlement Agreement to avoid further expense, uncertainty,
19 and delay in resolving the issues between them in this docket. By executing this Settlement
20 Agreement, the Parties shall not be deemed to have accepted or consented to the facts, principles,
21 methods, or theories employed in arriving at the Settlement Agreement. The Parties shall not use,
22 advocate or otherwise employ—itsself or in conjunction with any other individual or entity—this
23 Settlement Agreement for disputing, arguing, or resolving any issues in any other proceeding.

24 5. All negotiations relating to or leading to this Agreement are privileged and
25 confidential, and no party is bound by any position asserted in negotiations, except to the extent
26 expressly stated in this Agreement. As such, evidence of conduct or statements made in the course of
27 negotiation of this Agreement is not admissible as evidence in any proceeding before the
28 Commission, any other regulatory agency or any court.

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.

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INTRODUCTION

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

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

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

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

Q. What is your position at the commission?

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

Q. Please describe your education and professional background.

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

Q. What are your current Responsibilities?

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

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

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.
22

1 **OBLIGATION TO FILE CURRENT/UNFILED INTERCONNECTION AGREEMENTS**

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

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

7
8 **CONFLICT BETWEEN THIS SETTLEMENT AGREEMENT AND FUTURE LAW**

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

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

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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).

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

NOTIFICATION OF FUTURE ORAL INTERCONENCTION OR COMMERCIAL AGREEMENTS

Q. Please describe the provisions of Paragraph 7.

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

NOTIFICATION OF WHOLESALE TELECOMMUNICATIONS AGREEMENTS

Q. Please describe the provisions of Paragraph 8.

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

NOTIFICATION OF FUTURE COMMERCIAL AGREEMENTS

Q. Please describe the provisions of Paragraph 9.

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

ACTION TAKEN AGAINST McLEOD IN OTHER QWEST JURISDICTIONS

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2 **Q. Are you aware of any action that was taken in other jurisdictions against McLeod as**
3 **it relates to the unfilled agreements?**

4 **A. Yes. In the State of Washington, a fine in the amount of \$25,000.00 was imposed against**
5 **McLeod.**

6
7 **PUBLIC INTREST**

8 **Q. Mr. Abinah, do you believe the agreement is in the public interest?**

9 **A. Yes, I do.**

10
11 **Q. Please explain why Staff believes this agreement is in the public interest.**

12 **A. Staff believes that the commitment expressed by the company to comply with the**
13 **Commission's orders, rules and regulations, in conjunction with the monetary penalties**
14 **adequately address the concern raised in Staff's complaint. Resolving this contentious**
15 **matter through settlement agreement, rather than a contested hearing will enable Staff to**
16 **devote resources toward other issues pending before the Commission. Also, Staff believes**
17 **there are risks associated with litigation, the outcome is ultimately determined by someone**
18 **else. There are times where litigants believe that it would be more preferable to have**
19 **certainty instead of uncertainty.**

20
21 **For these reasons, Staff believes that the settlement is in the public interest.**

22
23 **Q. Does this conclude your direct testimony?**

24 **A. Yes, it does.**
25

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