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BEFORE THE ARIZONA CORPORATIO

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QWEST CORPORATION, Complaintant, v. MCLEODUSA TELECOMMUNICATIONS SERVICES, INC. dba PAETEC BUSINESS SERVICES. Respondent.	DOCKET NO. T-03267A-09-0307 DOCKET NO. T-01051B-09-0307 **NOTICE OF FILING**

McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services ("PAETEC") hereby files the following decision from the Washington State Utilities and Transportation Commission:

> *In the Matter of the Complaint of Qwest Corporation against McLeodUSA Telecommunications Services, Inc. dba PAETEC Business Services,* Washington State Utilities and Transportation Commission, Docket UT-090892 (December 1, 2010)

By the Final Order, the Washington State Utilities and Transportation Commission denied Qwest's Petition for Administrative Review .

RESPECTFULLY SUBMITTED this 10th day of February 2011.

ROSHKA DEWULF & PATTEN, PLC

By _____

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ATTACHMENT

[Service Date December 1, 2010]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

QWEST CORPORATION, Complainant, v. MCLEOD TELECOMMUNICATIONS SERVICES, INC., d/b/a PAETEC BUSINESS SERVICES, Respondent.	)))))))))))))	DOCKET UT-090892 ORDER 06 FINAL ORDER DENYING PETITION FOR ADMINISTRATIVE REVIEW

1 ***SYNOPSIS.*** *The Commission denies Qwest Corporation's Petition for Administrative Review of Order 05. The Commission determines that by including the Wholesale Service Ordering Charge (WSOC) in their Interconnection Agreement (ICA) as a fully negotiated amendment, Qwest Corporation (Qwest) and McLeod Telecommunications Services, Inc., d/b/a PAETEC Business Services (McLeod) resolved Qwest's federal law cause of action by settlement, obviating the need for further consideration on Qwest's complaint in this proceeding. The Commission also determines that in gaining approval of the WSOC Amendment by which the parties included the WSOC in their ICA as a fully negotiated matter, Qwest's representations to the Commission that the WSOC "does not discriminate against non-party carriers, . . . is consistent with state and federal law, and . . . is in the public interest" resolves, as a matter of law, any claim Qwest may now make that the WSOC violates state or federal law.*

SUMMARY

2 **PROCEEDINGS.** On June 10, 2009, Qwest Corporation (Qwest) filed with the Washington Utilities and Transportation Commission (Commission) a formal complaint against McLeod Telecommunications Services, Inc., d/b/a PAETEC Business Services (McLeod). On July 2, 2009, McLeod filed an answer to the complaint.

3 Qwest's Complaint alleged that McLeod's assessment of its WSOC violated RCW 80.04.110, which prohibits conduct by a competitor that is unreasonable, discriminatory, illegal, unfair or intending or tending to oppress the complainant, or to stifle competition. Further, Qwest's Complaint argued that the imposition of the WSOC through a price list is in direct violation of the Telecommunications Act of 1996 (the Act), Public Law 104-104, 110 Stat. 56 (1996), specifically 47 U.S.C. §§ 251 and 252, which requires that the WSOC be imposed only through arbitration or negotiation.

4 **PARTY REPRESENTATIVES.** Lisa Anderl, attorney, Seattle, Washington, represents Qwest. Mark Trinchero, Davis Wright Tremaine LLP, Seattle, Washington, represents McLeod.[1]

MEMORANDUM

I. Background and Procedural History

5 Qwest and McLeod are telecommunications carriers that interconnect their networks and exchange traffic in Washington pursuant to an existing ICA. Qwest is an Incumbent Local Exchange Company (ILEC) in Washington. McLeod is a Competitive Local Exchange Carrier (CLEC). Qwest and McLeod filed and gained Commission approval of their original ICA on November 30, 1999, in Docket UT-993007. On June 7, 2000, Qwest (then known as USWest) filed a Request for

[1] On September 17, 2010, Mr. Trinchero substituted for Gregory J. Kopta who ceased representing McLeod in this matter when he left Davis Wright Tremaine LLP to become the Director of Administrative Law of the Commission.

Approval of its Statement of Generally Available Terms (SGAT), stating that McLeod had adopted the terms, conditions and prices for interconnection, unbundled elements, ancillary services and resale of telecommunications services that Qwest offered to every CLEC in the state of Washington. The SGAT Agreement replaced in its entirety the previously approved interconnection agreement between McLeod and Qwest. The Commission approved the Request on its no action agenda for its regularly scheduled open meeting on August 30, 2000.

6 Thereafter, over the course of several years, Qwest and McLeod negotiated a number of amendments to their ICA. Each of these was presented to the Commission as a fully negotiated item and approved on the Commission's open meeting consent agendas.[2] It appears the parties conducted their business interactions as competitors during this period within the boundaries of their ICA, as amended from time to time.

7 In 2004, however, McLeod began invoicing Qwest pursuant to a so-called Wholesale Service Ordering Charge (WSOC) included, as relevant here, in McLeod's price list that was then on file with the Commission.[3] We refer to this as the "Price List WSOC." The amount of the basic charge was set at $20.00. Qwest contested the charge, among other reasons, because it was not included in the parties' ICA and McLeod had not made an effort to negotiate or arbitrate an amendment to the ICA as, Qwest contends, it was required to do by the Telecommunications Act of 1996.

8 To resolve their continuing disagreement over the Price List WSOC and "a number of business disputes between them," Qwest and McLeod entered into a settlement agreement on October 10, 2008.[4] As part of their settlement, Qwest filed with the Commission on February 12, 2009, an agreement entitled *Wholesale Service Order Charge Amendment* (WSOC Amendment). This was filed as the parties' 19th fully negotiated amendment to their ICA. The WSOC Amendment became effective on

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[2] The parties had filed and gained approval for 12 amendments by the end of 2003. These and subsequent amendments were filed and approved under the original Docket 993007.

[3] McLeod Telecommunications Services, Inc., Washington UTC Price List No. 1, Original Sheet Nos. 126 and 127. McLeod no longer has a price list on file in Washington, as none is required and, indeed, none has been permitted since June 30, 2007. RCW 80.36.333.

[4] Qwest's Complaint, ¶ 8.

May 7, 2009.[5] Thus, the parties modified their ICA by requiring that Qwest pay a duly invoiced WSOC to McLeod whenever Qwest submits an order to transfer a McLeod customer to Qwest. We refer to this as the "ICA WSOC."

9 Qwest, relying on a certain reservation of rights in the WSOC Amendment, filed with the Commission a formal complaint against McLeod on June 10, 2009. Qwest stated two causes of action, one grounded in federal law and one grounded in state law.

10 Stating its claim under federal law, Qwest asserted that McLeod's unilateral imposition of the Price List WSOC violated the Telecommunications Act of 1996 (the Act), Public Law 104-104, 110 Stat. 56 (1996), specifically 47 U.S.C. §§ 251 and 252, which require that any WSOC must be established only through good faith negotiation or arbitration and included in the parties ICA.[6]

11 Stating its claim under state law, Qwest asserted that McLeod's "assessment of its [WSOC] violates RCW 80.04.110, which prohibits conduct by a competitor that is unreasonable, discriminatory, illegal, unfair or intending or tending to oppress the complainant, or to stifle competition."[7] Qwest's assertion is ambiguous to the extent that it does not state whether it is challenging the Price List WSOC, the ICA WSOC, or both.

12 On July 2, 2009, McLeod filed an answer to Qwest's complaint. McLeod generally and specifically denied its essential allegations.

13 Pursuant to the procedural schedule set by the Commission in Order 01 – Prehearing Conference Order, Qwest and McLeod filed cross-motions for summary determination on October 19, 2009. On November 23, 2009, each party filed a response to the other's motion.

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[5] Order Approving Interconnection Agreement Amendment [19], Docket UT-993007 (May 7, 2009).

[6] Qwest Complaint ¶ 22.

[7] *Id.* ¶ 20 (internal citation omitted).

14 The Commission entered Order 05, the presiding Administrative Law Judge's Initial Order, on August 30, 2010. Order 05 granted McLeod's motion for summary determination and denied Qwest's cross-motion.

15 On September 20, 2010, Qwest filed its Petition for Administrative Review of Order 05. McLeod filed its Answer opposing Qwest's petition on September 30, 2010. Pursuant to WAC 480-07-825: "The commission may by final order adopt, modify, or reject [the] initial order after considering the pleadings and the record. Alternatively, the commission may remand the matter for further proceedings with instructions to the presiding officer."

II. Discussion and Determinations

16 Nearly 40 years ago, Associate Justice Hale of the Washington Supreme Court noted, albeit in a factual context wholly irrelevant here, that "on occasion," it is necessary to apply "common sense" as "the only mechanism available by which to dissipate the fog of rhetoric generated around some legal propositions."[8] As Justice Hale suggests, we attempt to navigate through the "fog" of the circumstances surrounding this case using common sense as our guide.

17 Qwest argues that Order 05 denies the Company certain rights it reserved in settling its disputes with McLeod in October 2008. We have now reviewed Order 05, the pleadings and the record in this proceeding. Using a common sense approach to understand the facts and apply the law, we determine that Order 05 reached the right results insofar as it denied Qwest's challenge. Given the opportunity of this review, however, we find it appropriate to provide a full exposition of our reasons for sustaining these results, our reasons being somewhat different than those stated in Order 05.

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[8] *State v. Dixon, 78 Wash, 2d 796, 479 P. 2d 931 (1971)*

18 Our starting point in reviewing this matter is to recognize that it involves a broader dispute between Qwest and McLeod that spans considerable time and has been pursued in multiple jurisdictions. In two jurisdictions, Minnesota and Colorado, McLeod tried to implement a WSOC in tariffs.[9] McLeod has never filed or maintained a tariff in Washington.

19 Initially, in Washington, McLeod included a WSOC in a price list that was filed with the Commission. However, over time, with changes in state law, neither a tariff nor a price list on file with the Commission was available to McLeod as a vehicle for a WSOC in Washington. Accordingly, in October 2008, when the parties entered into their settlement agreement, of which the WSOC Amendment at issue here was a part, McLeod did not even have a price list on file in this state. Indeed, McLeod was forbidden by law to have such a price list on file in this state after June 30, 2007.[10]

20 Despite these facts, the second recital in the WSOC Amendment, which establishes essential predicates for the terms it includes, states: "CLEC [McLeod] maintains a tariff or price list on file in the State of Washington" that requires Qwest to pay a WSOC. This is clearly incorrect. The ICA WSOC provision itself, which is Attachment 1 to the WSOC Amendment, also ignores the important facts that made the circumstances faced by the parties in Washington at least distinct, if not unique, in

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[9] McLeod withdrew its tariff filing in Colorado when Qwest challenged it. Qwest Complaint ¶ 18. The Minnesota Commission rejected McLeod's tariff filing in that state, saying:

> The Commission agrees with the DOC that the proper recourse in this situation is for the parties to negotiate an amendment to their ICA regarding this matter. First, the subject of disconnection is part of the parties' ICA and federal policy favors the use of the negotiation process set forth in the Act to resolve issues that are the subject of ICA's. Further, in this case both McLeod and Qwest have indicated a willingness to enter into negotiations to amend their ICA. Finally, this is consistent with the Commission's recent action in the *CenturyTel* case and the Commission's recognition that interconnection negotiations are the primary vehicle for resolving interconnection issues. For these reasons, the Commission will reject the proposed tariff.

In the Matter of McLeod's Tariff Filing Introducing Wholesale Order Processing Charges that Apply when McLeod's Customers Shift to Other Telecommunications Carriers, Docket No. P-5323/M-04-395, Order Rejecting Proposed Wholesale Service Charge, July 22, 2004.

[10] RCW 80.36.333.

the broader context of the multi-state dispute they sought to address via their settlement of multiple issues. Specifically, the ICA WSOC provision purports to reserve Qwest's right to challenge McLeod's "Wholesale Service Order *tariff provisions*."[11] Further, the ICA WSOC provision expressly provides that if the "Commission issues a Final Order that the Wholesale Service Order charge provisions *in McLeod's tariff in this state* are unjust, unreasonable, unlawful or otherwise unenforceable" the WSOC Amendment to the ICA is "deemed terminated."[12] Again, however, McLeod has never had a tariff on file in Washington state. Thus, it seems clear that the parties failed to tailor the WSOC Amendment they filed in multiple jurisdictions to the factual and legal circumstances present in Washington at the time.[13] As a matter of strict interpretation, relying on the principle of contract law that the language chosen by the parties is controlling, being the objective manifestation of their intent, we could simply determine that Qwest's reservation of rights in the WSOC Amendment, being limited to "Wholesale Service Order *tariff* provisions," was inoperative in Washington from inception. We do not make this determination, however, for two reasons.

21 Most important, from a common sense perspective, is the fact that McLeod acknowledges that the intent of the parties was to include McLeod's WSOC, as published on its website, within the meaning of the word "tariff."[14] In addition, were we to determine the parties' intent solely by strictly interpreting the words of their agreement, we would render meaningless significant parts of the WSOC Amendment, thus arguably contradicting another well-established principle of contract law that

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[11] Exhibit 3-Stipulation of Material Facts, Exhibit B, Attachment 1, ¶ 2 (emphasis added).

[12] *Id.* (emphasis added). As noted above, McLeod has never had tariffs on file in this state. As also previously noted, McLeod did not even have a price list on file in Washington at the time the parties' executed and Qwest filed for approval of the WSOC Amendment to the ICA. Despite these facts, the WSOC Amendment recites that McLeod "maintains a tariff or price list on file in the State of Washington" that requires Qwest to pay a WSOC. This is plainly incorrect.

[13] It may be, on the other hand, that the WSOC Amendment is the product of artful drafting – an effort to allow Qwest to pursue by indirect means what it knew it would be unable to pursue by direct challenge to the ICA WSOC, once approved. As discussed below, we will not embrace the legal fiction Qwest urges upon us: that we should allow Qwest to challenge the Price List WSOC ignoring the parties' negotiation and our approval of the ICA WSOC.

[14] McLeod's Response to Qwest's Petition for Summary Determination ¶ 6.

requires us to attempt to give meaning to all terms in an agreement such as the WSOC Amendment.[15]

22 Thus, we determine that the parties' failings in drafting the WSOC Amendment and the ICA WSOC provision, while contributing to the confusion that characterizes the record of this proceeding, are not in themselves dispositive. Rather, our determinations in this matter turn on more fundamental failures by one or both of the parties. Qwest, at least, failed to give sufficient attention to the legal ramifications of using the approach of a fully negotiated amendment to its ICA with McLeod as a means to resolve the parties' dispute over whether federal law requires any WSOC charge to be included in their ICA. We discuss more fully below the point that by the very act of including the WSOC in their ICA as a fully negotiated amendment, the parties resolved this question in Qwest's favor. As Order 05 determines, in effect, regardless of the language of reservation in the WSOC Amendment, it would now be pointless for the Commission to entertain a complaint that the WSOC violates federal law based on the fiction that it is not included in the parties' ICA.

23 A related error – again one made at least by Qwest and perhaps by both parties – was a failure to appreciate the full ramifications of seeking approval of the WSOC Amendment as a fully negotiated agreement to revise the subject ICA. Although we do not find evidence of any intentional misuse of our process, we cannot countenance what occurred by granting relief to Qwest on its complaint as pled. Such a result would be unacceptable as a matter of law and policy, and contrary to the public interest. Because this point has continuing and broader implications for our regulation of the telecommunications industry, we explain it in some detail below.

24 We begin this part of our analysis by discussing the approval process for ICA amendments, as conducted in Washington. We emphasize that Qwest and McLeod, both sophisticated and experienced telecommunications companies doing business in this state, were intimately familiar with this process at the time they filed the WSOC Amendment, yet somehow failed to appreciate the implications of using it as they did.

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[15] *E.g., Wagner v. Wagner*, 95 Wn.2d 94, 101, 621 P.2d 1279 (1980).

25 Section 251 of the Telecommunications Act of 1996, among other things, imposes on incumbent local exchange companies (ILECs), such as Qwest in Washington, the obligation to enter into interconnection agreements with competitive local exchange companies (CLECs), such as McLeod. Section 251(c)(1) states that both the ILEC and the CLEC must negotiate in good faith the terms and conditions of such agreements. Section 252 establishes procedures for such negotiations and, to the extent the parties cannot agree, arbitration by the jurisdictional State commission of any disputed terms. Section 252 also requires that all interconnection agreements adopted by negotiation or arbitration are to be submitted to the jurisdictional State commission for approval or rejection. The State commission, however, can only reject a fully negotiated agreement if:

> (i) The agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
>
> (ii) The implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.[16]

State commissions have adopted procedures and policies over the course of time to make these processes as efficient as possible while ensuring that the statutory mandates are satisfied.

26 In Washington, at the time Qwest and McLeod requested approval of their original ICA, the Commission routinely approved fully negotiated agreements on its consent agenda at regularly scheduled public meetings. As a practical matter, this meant the agreements were reviewed by the Commission's telecommunications regulatory staff and presented to the Commission for approval without discussion. When the parties to an interconnection agreement presented fully negotiated amendments, these were approved following the same process.

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[16] 47 U.S.C. 252(e)(2)(A)(i) and (ii).

27 The Commission followed this process in approving 15 amendments to the ICA between Qwest and McLeod, the last of these occurring on the Commission's consent agenda for March 31, 2005.[17] By the time Qwest and McLeod sought approval of the 16th amendment to their ICA, in December 2006, the Commission's process followed an even more efficient path. Specifically, the Commission delegated responsibility for approving fully negotiated amendments to ICAs to the Commission Secretary. The delegation process involved the ILEC filing a one page form entitled "Request for Approval of Fully Negotiated Amendment to Interconnection Agreement By: [party names]," and entry of a one page form Order Approving Interconnection Agreement Amendment over the Commission Secretary's signature.

28 When Qwest filed with the Commission for approval of the 19th fully negotiated amendment of its ICA with McLeod on February 12, 2009, using the form of request identified above, it represented to the Commission that it was a complete resolution of the issue presented and: "the amendment *does not discriminate* against non-party carriers, that it *is consistent with state and federal law*, and that it *is in the public interest*."[18] Thus, by the time Qwest filed for approval of the amendment 19 to its ICA with McLeod, which is the subject of this Order, Commission staff and the Commission were accustomed to relying on the representations of the parties that what they were submitting for approval was both fully negotiated and fully in conformance with the requirements of Sections 251 and 252 of the Telecommunications Act of 1996. This meant, so long as true, that there were no grounds upon which the Commission could legally reject the amendment under Section 252.

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[17] The process evolved over the course of time. Initially, through the approval of Qwest and McLeod's 9th amendment in October 2002, the Commissioners retained signature authority for orders amending ICAs that were approved on the consent agenda. Beginning in 2003, the Commissioners delegated signature authority to the Commission Secretary. As discussed, *infra*, the Commission ultimately delegated full responsibility for approving fully negotiated ICA amendments to the Commission Secretary.

[18] Qwest's Request for Approval of Amendment to ICA, Docket UT-993007 (filed February 12, 2009; approved May 7, 2009) (emphasis added). This standard language, found in a form furnished by the Commission, goes on to state that: By virtue of [McCleodUSA's] signature on the amendment, [Qwest] believes that [McCleodUSA] agrees with these representations."

29 The Commission does not take lightly the representations parties are required to make when seeking approval of a fully negotiated amendment to an ICA. Qwest cannot represent to the Commission that the ICA WSOC does not discriminate, is consistent with state and federal law, and is in the public interest, then subsequently argue that the Price List WSOC, imposed for the same purposes and having materially the same rate basis, is discriminatory, violates RCW 80.04.110, and is not in the public interest. That is, taking Qwest's representations at face value, and applying the simple logic of the so-called law of contradiction that a thing cannot both be and not be,[19] we determine that upon filing for approval of the WSOC Amendment as a fully negotiated agreement under the Telecommunications Act of 1996, Qwest acknowledged that the WSOC does not violate state law.

30 Even were this not the case, however, we agree with the determination in Order 05 that Qwest failed to demonstrate that McLeod's WSOC is unreasonably discriminatory or anti-competitive.[20] McLeod offers to Qwest the same opportunity for a bill and keep approach to intercarrier compensation that other CLECs doing business with McLeod have elected in connection with the costs associated with customer transfers from one carrier to another. Qwest's election to forego this opportunity in favor of billing McLeod, and being billed by McLeod pursuant to the WSOC, does not make the charge discriminatory. As to the WSOC rate itself, the record supports McLeod's contention, and Order 05's determination, that it is based on McLeod's incurrence of costs for activities that are similar to those Qwest undertakes when processing local service requests (LSRs). According to the evidence McLeod presented through Dr. Ankum, the components that make up McLeod's WSOC rate are based on Qwest's costs that are reflected in the same components in

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[19] According to the online encyclopedia, Wikipedia, the principle of contradiction (*principium contradiction is*) in logic is the second of the so-called three classic laws of thought. The oldest statement of the law, given by Aristotle, is that contradictory statements cannot both at the same time be true and not true (*e.g.* the two propositions *A* is *B* and *A* is not *B* are mutually exclusive). This takes no account of the truth of either proposition; if one is true, the other is not; that is, one of the two must be false.

[20] Order 05 ¶ 65.

its corresponding charge for processing LSRs.[21] Qwest failed to make a showing to the contrary.

31 In addition, consistent with the outcome in Order 05 and our prior discussion, we determine that Qwest did not reserve in the WSCO Amendment to the parties' ICA the right to prosecute the cause of action it states in its complaint under federal law. Under the terms of the settlement agreement between Qwest and McLeod in 2008, McLeod effectively conceded that sections 251 and 252 of the Telecommunications Act of 1996 require such charges to be negotiated or arbitrated and included in the parties' ICA.

32 That is, the parties resolved by their settlement the question whether any such charges must be included in their ICA, following good faith negotiation or arbitration under the Telecommunications Act of 1996. They resolved this question in Qwest's favor. Yet, now, Qwest would have us treat the matter as one that is still disputed and asks us to resolve it in this adjudicatory proceeding, again in Qwest's favor, so as to trigger the termination clause of the WSOC Amendment.[22] Indeed, Qwest argues that "the WSOC must be considered, for purposes of this complaint, as if it did not exist in an amendment."[23] One wonders why Qwest entered into the agreement only to argue that it does not exist. The better way for Qwest to reserve its rights to challenge the WSOC would have been not to agree to the WSOC Amendment in the first place. Accordingly, we reject Qwest's argument that seems to defy the "law of contradiction" and sustain the result reached in Order 05 to the extent the discussion in Order 05 is consistent with our discussion here rejecting Qwest's stated cause of action under federal law.

33 In summary, what Qwest and McLeod purported to do in paragraph 2 of the WSOC Amendment was to establish for Qwest rights that cannot be enforced in a world governed by a common sense application of the law. In retrospect, it might have been

[21] Exhibit M-3, *passim. See* Order 05 ¶¶ 68-70.

[22] Exhibit 3-Stipulation of Material Facts, Exhibit B, Attachment 1, ¶ 3.

[23] Qwest's Memorandum in Support of Petition for Summary Determination ¶ 27. Later, in its Petition for Administrative Review at ¶ 43, Qwest states this is not its position. We find Qwest's argument in its Memorandum plain enough on its face. It clearly depends on the idea that we should simply ignore the ICA amendment.

better for the Commission to simply reject Qwest's request for approval of amendment 19 to the parties' ICA because it did not, in fact, reflect a fully negotiated agreement. Instead, albeit ineffectively, it purported on its face to merely postpone a fully negotiated resolution of the WSOC issue. Once approved as a fully negotiated amendment to the parties' ICA, however, the legal effects of WSOC Amendment's provisions nominally reserving to Qwest the right to challenge indirectly the ICA WSOC via complaint against the no longer effective Price List WSOC, were altered in ways neither Qwest nor McLeod appear to have appreciated at the time.

34 Having reached these results on the bases stated, we need not address the parties' various other arguments. They are, in light of our determinations, beside the point. However, we have one further point to make in connection with this matter. While the parties failed as a matter of law to establish an effective reservation of rights for Qwest to pursue this matter via complaint to the Commission, it is clear both parties intended that the matter of McLeod's WSOC be revisited at some point in time after they gained approval of the WSOC Amendment to their ICA. Considering this, were Qwest to seek renegotiation of the ICA WSOC, the principles of good faith negotiation under the Telecommunications Act of 1996 would require McLeod to participate. If negotiations failed, Qwest or McLeod could seek arbitration before the Commission. Thus, while our determination here is dispositive of the disputed charge as it exists in the parties' ICA today, it can be modified, if appropriate, following the processes available under federal law.

FINDINGS OF FACT

35 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of Order 05:

36 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including telecommunications companies.

37 (2) Qwest is a telecommunications corporation as defined in RCW 80.04.010 and is an incumbent local exchange company, as defined by 47 U.S.C. § 251(h) within the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996). Qwest provides local exchange and other telecommunications services in the state of Washington.

38 (3) McLeod is an Iowa corporation and is registered with and classified by the Commission as a competitive local exchange company and is also a telecommunications corporation as defined in RCW 80.04.010. McLeod is authorized to provide switched and non-switched local exchange and long distance services in Washington.

39 (4) Qwest and McLeod are parties to an interconnection agreement (ICA), which was voluntarily negotiated, as is permitted by the Act. The ICA was filed by Qwest with the Commission, which granted approval of the ICA in Docket UT-993007, on August 30, 2000.

40 (5) The ICA provides the terms, conditions, and prices for access to Unbundled Network Elements, which McLeod leases from Qwest to serve the majority of its end user customers in Washington.

41 (6) Qwest assesses non-recurring charges (NRCs) for the installation of unbundled loops which are based on Total Element Long Run Incremental Cost studies that were approved by the Commission in Dockets UT-960369 and UT-003013.

42 (7) Part of Qwest's cost study included cost support for NRCs in order to recover costs Qwest incurs to process local service requests (LSRs), including various costs related to order processing and completion.

43 (8) McLeod and Qwest executed a WSOC Amendment to their ICA that was approved by the Commission on May 7, 2009, in Docket UT-993007. Under the WSOC Amendment, Qwest and McLeod agreed that McLeod would assess a wholesale service order charge (WSOC) associated with LSRs submitted by Qwest to transfer a customer from McLeod to Qwest.

44 (9) McLeod's WSOC recovers the costs incurred to process the LSR that Qwest submits via a McLeod web-based Operations Support Systems (OSS). McLeod's OSS takes the information resulting from the LSR and streams that information into various internal systems. The OSS initiates, and in some instances, completes various tasks that must be performed to ensure that end users can seamlessly move their local service to their new service provider.

45 (10) In addition to the OSS, McLeod personnel are involved in various aspects of completing the steps required to process an LSR for number portability, including: releasing of the trigger in the McLeod switch, granting concurrence in the Number Portability Administration Center, pulling the telephone number from the McLeod switch once the line has ported out, changing McLeod's internal facility assignment to the correct status, deleting McLeod's Line Information DataBase record, unlocking the 911 record, sending and terminating McLeod's billing to the end user.

46 (11) The administrative tasks McLeod undertakes in order to process an LSR are very similar to the actions Qwest must employ when processing an unbundled network element LSR.

CONCLUSIONS OF LAW

47 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions and Order 05:

48 (1) Summary judgment is properly entered if there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *WAC 480-07-380(2). CR 56(c).*

49 (2) The Telecommunications Act of 1996 (the Act) provides the process by which telecommunications carriers are to negotiate interconnection agreements and amendments. *47 U.S.C. § 251, et. seq.*

50 (3) The WSOC Amendment executed by the parties and approved by the Commission on May 7, 2009, and which authorized McLeod to collect the WSOC from Qwest, does not violate the Act.

51 (4) McLeod's WSOC recovers expenses the carrier incurs when processing Qwest's LSRs, and is based upon the established costs Qwest incurs when processing other carriers' LSRs.

52 (5) Qwest has failed to establish that McLeod's WSOC violates state or federal law.

ORDER

THE COMMISSION ORDERS:

53 (1) Qwest's Petition for Administrative Review of Order 05 is denied.

Dated at Olympia, Washington, and effective December 1, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.