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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

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**IN THE MATTER OF THE PETITION  
OF MCLEODUSA TELECOMMUNICATIONS  
SERVICES, INC. FOR ENFORCEMENT OF  
AN INTERCONNECTION AGREEMENT  
WITH QWEST CORPORATION**

**TC05-057**

**MOTION TO DISMISS**

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Qwest Corporation ("Qwest"), by and through its counsel, hereby files this Motion to Dismiss pursuant to ARSD 20:10:01:11:01 requesting the South Dakota Public Utilities Commission ("Commission") to dismiss McLeodUSA Telecommunication Services, Inc.'s ("McLeodUSA") Petition for Enforcement of Interconnection Agreement with Qwest Corporation ("Petition"). For the reasons set forth herein, McLeodUSA does not have a good or sufficient reason for making a complaint and this case should be dismissed.

The Commission opened this docket on March 30, 2005 when McLeodUSA filed its Petition, and emergency motion, seeking to prevent Qwest from demanding a security deposit and from discontinuing services or disconnecting McLeodUSA pursuant to the parties' interconnection agreement ("ICA").<sup>1</sup> McLeodUSA filed its Petition and emergency motion after receiving a letter from Qwest on March 21, 2005 demanding a security deposit pursuant to the parties' ICA. Since filing its Petition, however, McLeodUSA has engaged in discussions with Qwest about Qwest's demand for a security deposit. During those discussions, McLeodUSA assured Qwest that it would remain current on its monthly payments under the ICAs in each of the fourteen states in Qwest's region. McLeodUSA's assurance to Qwest that it will remain current on its payment obligations under the ICAs in each state has satisfied Qwest's need for

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<sup>1</sup> McLeodUSA filed identical pleadings against Qwest in the States of Arizona, Colorado, Idaho, Iowa, Minnesota, New Mexico, Oregon, Nebraska, North Dakota, South Dakota, Washington and Wyoming.

security. As a result, Qwest has withdrawn its March 21, 2005 demand for a security deposit under the ICA.<sup>2</sup>

The withdrawal of the demand for security under the ICA renders moot all of the issues and requests for relief presented in McLeodUSA's Petition. In the second sentence of the Petition, McLeodUSA defines the basis for commencing this case:

This Petition stems from a dispute between McLeodUSA and Qwest over Qwest's right under the interconnection agreement to demand security deposits from McLeodUSA for services provided under the agreement, and to discontinue services to McLeodUSA should McLeodUSA not comply with Qwest's demand.

Petition, p. 1. McLeodUSA then asserts that Qwest's demand for security should have been in accordance with the dispute resolution provision of the ICA. *Id.* The Request for Relief in McLeodUSA's Petition is also premised upon Qwest's March 21, 2005 demand for security under the ICA:

McLeodUSA asks the Commission to open a contested case proceeding based on this Petition, and following such hearings or procedures to which the Parties may be entitled, rule *that Qwest may not demand a security deposit from McLeodUSA at this time.* McLeodUSA further requests that *in the event of a default* under the Agreement, Qwest must follow the dispute resolution provisions in the Agreement and may not 'suspend order activity,' 'disconnect services,' or terminate the Agreement until those dispute resolution procedures have been completed. Petition, p. 8, ¶ 25 (emphasis added).

The references to the "demand for a security deposit at this time," and "in the event of a default," rest upon Qwest's March 21, 2005 demand for a security deposit. Thus, the entire factual premise of McLeodUSA's Petition is Qwest's March 21, 2005 demand for security. With Qwest's withdrawal of that demand, there is no controversy between the parties under the ICA, and McLeodUSA's Petition is moot.

Because the circumstances giving rise to this controversy have been eliminated through Qwest's withdraw of its demand for a security deposit, the Commission should now dismiss

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<sup>2</sup> A copy of Qwest's letter withdrawing the demand for a security deposit is attached as Exhibit 1, and incorporated herein by reference.

McLeodUSA's Petition as moot. *See e.g. Order Granting Application, In The Matter Of The Joint Application Of Allegiance Telecom, Inc., Debtor-In-Possession, Transferor, And Xo Communications, Inc., Transferee, For Approval Of A Change In Ownership Of An Authorized Telecommunications Provider And Request For Waivers To The Extent Required*, Docket No. 04A-077T; Decision No. C04-0362 (Co. P.U.C. April 7, 2004)(“ The request for a waiver of the Commission's slamming rules is not necessary because the transfer of control will be transparent to end-use customers of Allegiance Telecom of Colorado, Inc. Therefore, the request for waiver is denied as moot.”).

It is noteworthy that on April 11, 2005, McLeodUSA filed a Petition in Minnesota withdrawing its Complaint (the Minnesota Complaint is the same as the Petition at issue here).<sup>3</sup> Although Qwest does not agree with much of the editorializing contained in McLeodUSA's Petition withdrawing its Complaint, McLeodUSA's action demonstrates the absence of any real continuing controversy between the parties.

For the foregoing reasons, Qwest requests an order of this Commission dismissing McLeodUSA's Petition for Enforcement of Interconnection Agreement with Qwest Corporation because McLeodUSA's Petition is moot and, consequently, McLeodUSA does not have a good or sufficient reason for making a complaint.

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<sup>3</sup> A copy of McLeodUSA's Petition to the Minnesota Public Utilities Commission withdrawing its complaint is attached as Exhibit 2, and is incorporated herein by reference.

Respectfully submitted this 15<sup>TH</sup> day of April, 2005.

QWEST CORPORATION

By:   
Melissa K. Thompson

Qwest Services Corporation  
1005 17th Street, Suite 200  
Denver, CO 80202  
(303) 896-1518

Thomas J. Welk  
BOYCE, GREENFIELD, PASHBY & WELK, L.L.P.  
P.O. Box 5015  
Sioux Falls, SD 57117-5015  
Telephone: (605) 336-2424

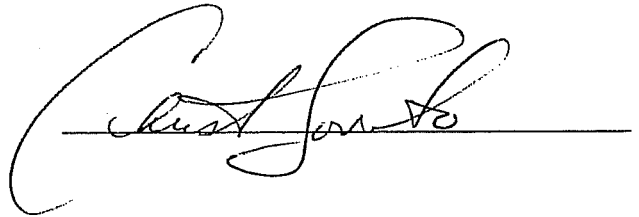
**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of April, 2005, an original and 10 copies of the foregoing **QWEST CORPORATION'S MOTION TO DISMISS** was served upon the following party:

Ms. Pam Bonrud  
Executive Secretary  
South Dakota Public Utilities Commission  
State Capitol Building  
500 East Capitol Avenue  
Pierre, SD 57501-5070

a copy was also sent to the following:

Brett M. Koenecke  
MAY, ADAM, GERDES & THOMPSON LLP  
503 South Pierre Street  
PO Box 160  
Pierre, SD 57501-0160

A handwritten signature in black ink, appearing to read "Brett M. Koenecke", is written over a horizontal line.

**EXHIBIT 1**



**Qwest Corporation**  
1801 California Street  
Suite 2400  
Denver, CO 80202  
Telephone: 303-896-4686  
Facsimile: 303-896-8887

**Larry Christensen**  
Director, Carrier Relations  
Worldwide Wholesale Markets

April 13, 2005

*Via Overnight Mail & Facsimile*

James LeBlanc  
Vendor Manager  
McLeodUSA Telecom  
First Place Tower  
15 E. 5th St., Ste. 1500  
Tulsa, Oklahoma 74103

Lauraine Harding  
Sr. Manager, Interconnect Negotiation  
McLeodUSA, Inc.  
6400 C Street SW  
P.O. Box 3177  
Cedar Rapids, IA 52406-1377

RE: Notice of Withdrawal of ICA Security Deposit Demands

Dear Sir/Madam,

This letter is to notify you that, based on assurances by McLeod that it will remain current on its monthly payments under the ICAs, Qwest Corporation ("Qwest") is withdrawing its March 21, 2005 letters of demand for security deposit from McLeodUSA Telecommunications Services, Inc. and its CLEC affiliates (collectively, "McLeodUSA") under the Interconnection Agreements ("ICAs") between the parties. This withdrawal applies solely to the interconnection agreement demands noticed for the States of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, New Mexico, Oregon, Nebraska, North Dakota, South Dakota, Utah, Washington, and Wyoming. This withdrawal does *not* affect the letters of default and demands for security deposit in connection with Qwest tariffed services and Qwest Communications Corp. services (dated March 18, 2005) in litigation before the United States District Court for the District of Colorado. Qwest reserves all its legal rights with respect to the security deposit demanded under those disputes and all other rights in that litigation.

The withdrawal of the letters of demand for security under the Interconnection Agreements does not constitute an admission by Qwest of the truth, accuracy or merit of any fact or principle of law asserted by McLeod, including but not limited to any purported interpretation of any term or condition of any of the Interconnection Agreements. Qwest does not waive and expressly reserves any and all rights to take any action with respect to any other security deposit demand, any notice of default or default, or any conduct taken in the future under the Interconnection Agreements.

Sincerely,

Larry Christensen

Cc: Ken Burkhardt, CFO

## **EXHIBIT 2**



STATE OF MINNESOTA  
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer  
Marshall Johnson  
Kenneth Nickolai  
Thomas Pugh  
Phyllis Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Complaint by McLeodUSA  
Telecommunications Services, Inc. against Qwest  
Corporation for Demand of Security Deposit for  
an Approved Interconnect Agreement

MPUC Docket No.: P421/C-05-523

**PETITION TO WITHDRAW COMPLAINT, REQUEST FOR EXPEDITED  
PROCEEDING AND REQUEST FOR TEMPORARY RELIEF**

On March 31, 2005, McLeodUSA Telecommunications Services, Inc. ("McLeodUSA") filed a *Complaint, Request for Expedited Proceeding and Request for Temporary Relief* ("Complaint") with the Minnesota Public Utilities Commission ("Commission") in response to Qwest Corporation's ("Qwest") letter demanding payment under the Interconnection Agreement ("ICA") of a security deposit of \$2,098,141.82 in Minnesota by 5:00 p.m. on April 1, 2005, or risk having McLeodUSA's order activity suspended and services disconnected. The Complaint seeks temporarily relief prohibiting Qwest from disconnecting service to McLeodUSA and its end-user customers or suspending order activity. The Complaint also seeks an expedited proceeding and order precluding Qwest from demanding a security deposit.

McLeodUSA respectfully requests to withdraw its Complaint without prejudice based on Qwest's assurances in its April 5, 2005 filing with the Commission ("Qwest Response")<sup>1</sup> that it will not disconnect service or suspend ordering activity without following the "processes required for it to gain relief." Qwest Response at p. 4. Following the required processes would include compliance with the ICA, including its dispute resolution procedures, and with State law

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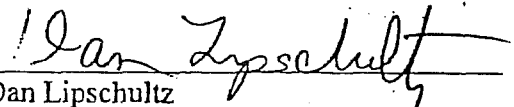
<sup>1</sup> *Response of Qwest Corporation to McLeodUSA Telecommunications Services, Inc.'s Request for Emergency Relief*, dated April 5, 2005.

regarding interconnecting carriers such as McLeodUSA and Qwest. It is McLeodUSA's understanding that state law precludes one carrier from disconnecting without prior Commission approval. McLeodUSA may file an amended complaint or request for dispute resolution under its ICA.

McLeodUSA would also like to take this opportunity to correct the record with regard to several assertions in the Qwest Response. Specifically, in the second paragraph on page 5, Qwest asserts that it "could initiate the process of Section 26.12 regarding default . . . ." In fact, the ICA between McLeodUSA and Qwest does not include a Section 26.12 or any other provision establishing rights and procedures for declaring a default. Similarly, in the first paragraph on page 6, Qwest cites Section 11.9.1 of the ICA and asserts under that Section what it characterizes as its "unconditioned right to request such a deposit if McLeodUSA becomes a credit risk." In fact, the ICA does not contain a section 11.9.1. Nor does any provision of the current ICA grant Qwest an "unconditioned right" to a security deposit. To the contrary, Sections 2.1 and 2.2 of the ICA set forth terms and conditions under which a security deposit may be required and McLeodUSA believes it has "satisfactory credit" with Qwest under those sections. In any event, whether and to what extent a security deposit may be required is subject to resolution by the Commission under Section 11 of the ICA.

Dated: April 11, 2005

Respectfully submitted,

By   
Dan Lipschultz

MOSS & BARNETT  
A Professional Association

Attorneys on Behalf of McLeod  
Telecommunications Services, Inc.

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA )  
 ) ss  
 COUNTY OF HENNEPIN )

In Re: In the Matter of the Complaint by McLeodUSA  
 Telecommunications Services, Inc. against Qwest  
 Corporation for Demand of Security Deposit for  
 an Approved Interconnection Agreement

MPUC Docket No.:

Kim R. Manney, being first duly sworn on oath, deposes and states that on the 11<sup>th</sup> day of April, 2005, copies of the Petition to Withdraw Complaint, Request for Expedited Proceeding, and Request for Temporary Relief on behalf of the McLeodUSA Telecommunications Services, Inc. in the above referenced matter were hand delivered or mailed by United States first class mail, postage prepaid thereon, to the following:

Dr. Burl W. Haar  
 Executive Secretary  
 MN Public Utilities Commission  
 121 Seventh Place E, Suite 350  
 St. Paul, MN 55101

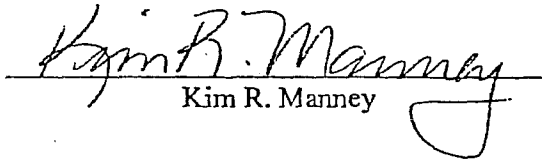
Linda Chavez  
 Minnesota Department of Commerce  
 85 Seventh Place East, Suite 500  
 St. Paul, MN 55101

Curt Nelson  
 Assistant Attorney General  
 900 NCL Tower  
 445 Minnesota Street  
 St. Paul, MN 55101

Jason Topp  
 Qwest Communications  
 200 S Fifth Street, Room 395  
 Minneapolis, MN 55402

William Courter  
 McLeodUSA Telecom, Inc.  
 Tech Park  
 6400 C Street SW  
 Cedar Rapids, IA 52404

William Haas  
 McLeodUSA Telecom, Inc.  
 Tech Park  
 6400 C Street SW  
 Cedar Rapids, IA 52404

  
 Kim R. Manney

SWORN TO BEFORE ME this  
 11<sup>th</sup> day of April, 2005

  
 NOTARY PUBLIC

