



Communications Corporation (“QCC”), regarding charges and payments pertaining to certain telecommunications traffic. In the course of that dispute, QCC exercised its lawful rights in withholding payments for charges it believes McLeod had incorrectly billed QCC. In retaliation, and even though Qwest was not involved in the McLeod-QCC dispute, McLeod refused to pay certain Qwest charges for Qwest tariffed services in a current total amount of approximately \$2.5 million. McLeod did not state any grounds for withholding payments from Qwest and, indeed, had no basis for withholding payment for Qwest-provisioned services.

Because of the significant sum McLeod has wrongfully withheld from Qwest and because of recent public statements McLeod has made about its bleak financial situation, Qwest became very concerned about its financial exposure to McLeod in the event McLeod files for protection from its creditors in bankruptcy court. Of primary concern to Qwest (and the triggering event to the security deposit demand), was McLeod’s 8-K filing on March 17, 2005 to the Securities & Exchange Commission wherein McLeod revealed that its revenues sharply declined in the fourth quarter of 2004; it had to seek forbearance from interest payments to its lenders; and, it was seeking to sell the company. As the 8-K explained, McLeod’s “Lenders have agreed to forbear from exercising any remedies as a result of certain specified defaults under the Credit Facilities anticipated by the Company during the forbearance period, including, without limitation, the failure to make scheduled amortization payments under the Credit Facilities and interest payments under the Credit Agreement.”<sup>1</sup> A press release coincident with the 8-K filing confirmed Qwest’s concerns:

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<sup>1</sup> See Exhibit D to Qwest’s Response to McLeod’s Motion for Emergency Relief at 3.

“There can be no assurance that we will be able to reach an agreement with our lenders regarding a capital restructuring or continued forbearance and covenant relief prior to the end of the initial forbearance period on May 23, 2005. There also can be no assurance that we will be able to identify a suitable strategic partner or buyer . . . . In the event these alternatives are not available to the Company, it is *likely* that we will elect to forgo making future principal and interest payments to our lenders . . . or, alternatively, the *Company could be forced to seek protection from its creditors.*”

McLeod Press Release (Mar. 16, 2005) (emphasis added).<sup>2</sup>

On the news of the 8-K filing, McLeod’s common stock decreased by almost half in one day. In light of McLeod’s own statements of its financial risk and the likelihood of insolvency, Qwest -- one of McLeod’s largest creditors -- took reasonable steps to protect its legitimate interests.

Qwest admits that on March 21, 2005, it sent a letter to McLeod demanding security for services provided under the interconnection agreement. Qwest asserts that its demand for security is supported by the parties’ interconnection agreement and by state law governing commercial transactions and contracts implied in every contract.

Qwest denies McLeod’s allegation that all procedures for dispute resolution in the interconnection agreement must be satisfied before Qwest may exercise its rights under the interconnection agreement to demand security, issue a notice of default, or exercise any of its other rights and remedies as stated in the interconnection agreement.

## **II. ANSWER TO THE PETITION**

### **A. Jurisdiction**

1. Qwest admits the allegations in paragraph 1 of the Petition.

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<sup>2</sup> This document was provided as Exhibit E to Qwest’s Response to McLeod’s Motion for Emergency Relief filed April 1, 2005.

2. Qwest admits the allegations in the first sentence of paragraph 2 of the Petition. Qwest is without knowledge or information sufficient to form a belief as to the truth of the allegation that all relevant portions of the interconnection agreement have been attached to the Petition, and therefore deny the same.

3. Qwest states that the averments in paragraph 3 constitute conclusions of law and, as such, do not contain factual allegations that require an answer. Subject to the foregoing, Qwest asserts that state commissions have authority to interpret and enforce interconnection agreements to the extent granted by the Telecommunications Act, to the extent granted under state law, and subject to the terms of interconnection agreements. Qwest also asserts that certain issues raised by McLeod in its Petition are not ripe for Commission consideration.

4. Qwest states that the averments in paragraph 4 constitute conclusions of law and, as such, do not contain factual allegations that require an answer. To the extent that an answer is deemed required, however, Qwest denies each and every allegation contained in paragraph 4 of the Petition. Subject to the foregoing, Qwest states that on March 22, 2005, McLeod filed for a temporary restraining order (“TRO”) in federal district court in Iowa seeking to prevent Qwest from demanding security deposits and payments and from terminating services to McLeod. The Iowa court granted McLeod’s motion and the TRO, which was in effect until April 12, 2005, and stated in pertinent part that Qwest and QCC are “restrained from . . . terminating or threatening to terminate services to McLeodUSA or requiring security from McLeodUSA as a precondition to the start or continuation or any such services. . . .” The restraining language in the order issued by the Iowa federal court is broad and does not exclude services provided under

interconnection agreements. Accordingly, McLeod injected into the Iowa TRO proceeding the issues relating to payment, security deposits, and termination of services provided under the interconnection agreements. Thereafter, on April 1, 2005, the Iowa federal court transferred the case to the Colorado federal court after Qwest assured the Iowa federal court that Qwest would not disconnect services or stop taking orders unless the Colorado federal court vacates, modifies or otherwise changes the existing TRO. Accordingly, the protections of the TRO are still in effect until the Colorado federal court vacates, modifies or otherwise changes it. In addition, certain issues raised by the Petition are not ripe. Further, on April 13, Qwest withdrew its demand for security under the interconnection agreement, thus rendering moot McLeod's claims and requests for relief. Accordingly, there is no actual case or controversy before the Commission.

5. Qwest states that the averment in paragraph 5 constitutes a conclusion of law and, as such, does not contain factual allegations that require an answer. Subject to the foregoing, for the reasons stated in Qwest's answer to paragraph 4 of the Petition, Qwest further denies that the Commission has jurisdiction to consider this Petition.

#### **B. Parties**

6. Qwest admits the allegations contained in paragraph 6 of the Petition.

7. Qwest admits the allegations contained in paragraph 7 of the Petition.

#### **C. Statement Of Facts**

8. In answer to paragraph 8 of the Petition, Qwest denies that the terms of the interconnection agreement do not allow Qwest to demand a security deposit and Qwest incorporates its response to the Introductory Paragraph of McLeod's Petition. In further response to paragraph 8, Qwest states that it has withdrawn its demand for security thus

rendering moot the allegations contained in this paragraph. Qwest denies each and every remaining allegation contained in paragraph 8.

9. Answering paragraph 9 of the Petition, Qwest denies that its conduct is in violation of its interconnection agreement or any of its tariffs. In further answer to paragraph 9, Qwest states that the Opinion and Temporary Restraining Order issued by the Iowa federal court speaks for itself and denies the remaining allegations contained in paragraph 9.

10. Answering paragraph 10 of the Petition, Qwest asserts McLeod has improperly failed to separate issues regarding Qwest and QCC, and it is McLeod's failure that serves as the background to disputes between the parties. Qwest denies that it has merged issues regarding QCC or Qwest tariffed services with rights under the interconnection agreement. Qwest admits that McLeod has paid its invoices for services provided by Qwest under the interconnection agreements, but Qwest denies that McLeod has performed all of its obligations under the interconnection agreement, which include posting of adequate security in light of McLeod's own admissions of financial instability. Qwest denies each and every remaining allegation contained in paragraph 10.

11. Qwest admits the allegations contained in paragraph 11 of the Petition.

12. Answering the allegations of paragraph 12 of the Petition, Qwest states that the Demand Letter speaks for itself. In further answer to paragraph 12, Qwest asserts that on April 13, 2005 it withdrew the Demand Letter rendering moot McLeod's claims in this Petition and its allegations regarding the Demand Letter.

13. Answering paragraph 13 of the Petition, Qwest states that the Demand Letters for Idaho and the other thirteen in-region states speak for themselves. Qwest also

asserts that on April 13, 2005 it withdrew the Demand Letter rendering moot McLeod's claims in this Petition and its allegations regarding the Demand Letter.

14. Answering paragraph 14 of the Petition, Qwest states that the Demand Letter speaks for itself. Qwest also asserts that on April 13, 2005 it withdrew the Demand Letter rendering moot McLeod's claims in this Petition and its allegations regarding the Demand Letter.

15. Answering paragraph 15 of the Petition, Qwest states that the Demand Letter speaks for itself. In further answer, Qwest asserts that on April 13, 2005 it withdrew the Demand Letter rendering moot McLeod's claims in this Petition and its allegations regarding the Demand Letter. Qwest also asserts that the terms of the Interconnection Agreement allow Qwest to demand a security deposit and that Qwest's demands for security and other remedial procedures under the interconnection agreement are not conditioned upon first invoking the dispute resolution process of the interconnection agreement. Qwest denies each and every remaining allegation contained in paragraph 15.

16. Answering paragraph 16 of the Petition, Qwest states that McLeod's March 22, 2005 response speaks for itself.

17. Answering paragraph 17 of the Petition, Qwest states that McLeod's March 24, 2005 response speaks for itself.

18. Qwest denies the allegations contained in paragraph 18 of the Petition.

19. Answering paragraph 19 of the Petition, Qwest states that McLeod's allegations contained therein are vague and incomplete, or constitute conclusions of law, and therefore Qwest denies the same.

20. Answering paragraph 20 of the Petition, Qwest is without knowledge or information sufficient to form a belief as to the truth the allegation that McLeod has “never” been delinquent in payments to Qwest for services provided to McLeod under the interconnection agreement and therefore denies the same. In further answer, Qwest admits that services provided under the interconnection agreement are invoiced separately from service provided under either Qwest’s tariffs or the QCC Wholesale Service Agreement. Qwest admits that with respect to the most recent invoice for services provided under the interconnection agreement on the date of this Answer, McLeod is current.

21. Answering paragraph 21 of the Petition, Qwest denies that the terms of the interconnection agreement did not allow Qwest to demand a security deposit under the circumstances. Qwest also asserts that on April 13, 2005, it withdrew the Demand Letter rendering moot McLeod’s claims in this Petition and its allegations regarding the Demand Letter. As to the remaining allegations contained in paragraph 21, the cited provisions of the interconnection agreement speak for themselves.

22. Answering paragraph 22 of the Petition, Qwest states that the cited provisions of the interconnection agreement speak for themselves.

23. Answering paragraph 23 of the Petition, Qwest admits that with respect to the most recent invoice for services provided under the interconnection agreement on the date of this Answer, McLeod is current but Qwest denies each and every remaining allegation contained in paragraph 23.

24. Answering paragraph 24 of the Petition, Qwest states that the cited provisions of the interconnection agreement speak for themselves and denies each and

every remaining allegation contained in paragraph 24. Answering paragraph 25 of the Petition, Qwest states that the cited provisions of the interconnection agreement speak for themselves and denies each and every remaining allegation contained in paragraph 25.

25. Qwest denies the allegations contained in paragraph 26 of the Petition.

26. Answering paragraph 27 of the Petition, Qwest states that the averments contained therein constitute conclusions of law and do not contain allegations of fact that require an answer.

27. Answering paragraph 28 of the Petition, Qwest admits that McLeod would have thirty days to cure a default but Qwest denies each and every remaining allegation contained therein.

28. Answering paragraph 29 of the Petition, Qwest states that the cited provisions of the interconnection agreement speak for themselves and denies each and every other allegation contained therein.

29. Answering paragraph 30 of the Petition, Qwest states that the cited provisions of the interconnection agreement speak for themselves and denies each and every other allegation contained therein.

30. Qwest denies the allegations contained in paragraph 31 of the Petition.

### **III. QWEST'S AFFIRMATIVE DEFENSES**

1. McLeod's claims and requests for interim and other relief have been rendered moot.

2. McLeod's claims and requests for interim and other relief are not ripe for decision.

3. Due to McLeod's own actions, issues raised by McLeod's Petition and its requests for interim and other relief are the subject of the action before the United States

District Court for the District of Colorado, and in the interests of judicial efficiency and to avoid potentially conflicting orders, this Commission should dismiss, stay, or defer this case pending further proceedings before the federal court.

**A. Requested Relief**

With Qwest's withdrawal of its March 21, 2005 demand letter under the interconnection agreement, McLeod's allegations, claims, and requested relief are rendered moot. Qwest, therefore, requests an order of the Commission denying McLeod's requested relief.

Dated this 20<sup>th</sup> day of April, 2005.



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Mary S. Hobson  
Stoel Rives LLP

Adam Sherr  
Qwest

*Attorneys for Qwest Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of April, 2005, I served the foregoing **ANSWER TO McLEOD PETITION** upon all parties of record in this matter as follows:

Jean Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
P.O. Box 83720  
Boise, Idaho 83720-0074  
[jjewell@puc.state.id.us](mailto:jjewell@puc.state.id.us)

Hand Delivery  
 U. S. Mail  
 Overnight Delivery  
 Facsimile  
 Email

Weldon Stutzman  
Idaho Public Utilities Commission  
472 West Washington Street  
P.O. Box 83720  
Boise, Idaho 83720-0074  
[wstutzm@puc.state.id.us](mailto:wstutzm@puc.state.id.us)

Hand Delivery  
 U. S. Mail  
 Overnight Delivery  
 Facsimile  
 Email

William Courter  
McLeodUSA Telecommunications Services, Inc.  
6400 C Street SW  
Cedar Rapids, IA 52406

Hand Delivery  
 U. S. Mail  
 Overnight Delivery  
 Facsimile  
 Email

Peter Richardson (ISB #3195)  
Richardson & O'Leary  
515 North 28<sup>th</sup> Street  
Boise, ID 83702  
Telephone: (208) 938-7901  
Facsimile: (208) 938-7904  
[peter@richardsonandoleary.com](mailto:peter@richardsonandoleary.com)  
*Attorney for McLeod*

Hand Delivery  
 U. S. Mail  
 Overnight Delivery  
 Facsimile  
 Email

Mark Trincherro (OSB #88322)  
Davis Wright Tremaine LLP  
1300 SW Fifth Avenue – Suite 2300  
Portland, OR 97201-5682  
Telephone: (503) 241-2300  
Facsimile: (503) 778-5299  
[marktrincherro@dwt.com](mailto:marktrincherro@dwt.com)  
*Attorney for McLeod*

Hand Delivery  
 U. S. Mail  
 Overnight Delivery  
 Facsimile  
 Email



Brandi L. Gearhart, PLS  
Legal Secretary to Mary S. Hobson  
Stoel Rives LLP