

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE COMMISSION'S)
INVESTIGATION REGARDING CUSTOMER) DOCKET NO. 70000-TI-01-724
EXCHANGES BETWEEN QWEST) DOCKET NO. 70023-TI-01-34
CORPORATION AND MCLEODUSA) (RECORD NO. 6918)
TELECOMMUNICATIONS SERVICES, INC.)

APPEARANCES

ROGER FRANSEN, Hickey, Mackey, Evans & Walker, Cheyenne, Wyoming
For Qwest Communications (Qwest)

ELIZABETH ZERGA, Jubin & Zerga, LLC, Cheyenne, Wyoming
For McLeodUSA

WILLIAM P. HEASTON, Sioux Falls, South Dakota
Deputy General Counsel
For McLeodUSA Telecommunications Services, Inc.

ALEXANDER K. DAVISON, Patton & Davison, Cheyenne
For Contact Communications & Wyoming.com

HEARD BEFORE

CHAIRMAN STEVE ELLENBECKER
DEPUTY CHAIRMAN STEVE FURTNEY
COMMISSIONER KRISTIN H. LEE

Chairman Ellenbecker, Presiding

MEMORANDUM OPINION, FINDINGS AND ORDER
(Issued January 24, 2002)

This matter is before the Commission upon the Show Cause Order issued to Qwest Communications (Qwest) and McLeodUSA Telecommunications Services, Inc., (McLeodUSA), on October 18, 2001, to determine whether Qwest or McLeodUSA, hereinafter referred to collectively as the Companies, provide safe, adequate and reliable service pursuant to W.S. § 37-15-201.

The Commission, having reviewed the application, its files regarding Qwest and McLeodUSA, the evidence of record in this proceeding, applicable telecommunications law, and being otherwise fully advised in the premises, FINDS and CONCLUDES:

PROCEDURAL FINDINGS

1. On August 24, 2001, The Commission was advised by the Consumer Complaint Section of the Wyoming Public Service Commission through a memorandum that there were numerous complaints received in the Commission's offices in the years 2000 and 2001 regarding the amount of time, in some instances several months, taken to complete customer exchanges between McLeodUSA and Qwest. Specifically, the complaints involved local exchange customers, previously Qwest customers, who switched to McLeodUSA for local exchange service and subsequently tried to switch back to Qwest. The memorandum presented the Commission with a chronology from January 29, 2000, to the present, of the attempts made by the Consumer Complaint Section to resolve delays in the customer exchange process between the two Companies, including several discussions with the Companies in which assurances were given to the Consumer Complaint Section that the delays would be remedied. The Companies were provided a copy of the memorandum and given an opportunity, in a regularly scheduled Commission open meeting, on September 27, 2001, to explain to the Commission the customer exchange process and what steps had been taken by both Companies to decrease the time in which customer exchanges occur. Notwithstanding the presentations given by Qwest and McLeodUSA, the Commission determined that this matter required further investigation.

2. Pursuant to open meeting action on September 27, 2001, the Commission issued a Show Cause Order

and Notice Setting Public Hearing on October 18, 2001, which set this matter for hearing on December 11, 2001. At the hearing, both Companies were to show cause why the Commission should not find the Companies in violation of their respective certificates of Public Convenience and Necessity to provide local exchange telecommunications services, for failure to provide safe, adequate and reliable local exchange service as required by W.S. § 37-15-201. Both Companies were also directed to file prepared testimony and exhibits on or before November 22, 2001. Beginning October 23, 2001, the Commission's Show Cause Order and Notice Setting Public Hearing was published once per week for two consecutive weeks in the legal notice sections of the Casper Star Tribune, the Cheyenne Wyoming Tribune-Eagle, the Laramie Daily Boomerang, and the Rock Springs Daily Rocket-Miner. During this same period of time, public service announcements were aired five times per week for two consecutive weeks on KGAB-AM radio in Cheyenne, KOWB-AM radio in Laramie, KRKK-AM radio in Rock Springs, and KTWO-AM radio in Casper, Wyoming.

3. On October 25, 2001, the Commission sent the Companies a letter informing them that the deadline to file pre-filed testimony, pursuant to the October 18, 2001, Show Cause Order, had been changed to November 26, 2001, due to the Thanksgiving holiday.

4. On October 30, 2001, counsel for Contact Communications, Inc., and Wyoming.com filed a Petition For Leave To Intervene, with regard to this matter.

5. On November 2, 2001, the Commission issued a Special Order Authorizing One Commissioner and /or Hearing Examiner To Conduct Public Hearing, with regard to this matter.

7. On November 2, 2001, the Commission issued an Order Authorizing Intervention for Contact Communications, Inc., and Wyoming.com, with regard to this matter.

8. On November 5, 2001, the Commission sent a letter to the Companies, as well as Contact and Wyoming.com regarding the October 31, 2001, complaint of Gary Freeburg. Mr. Freeburg requested that his complaint be made a part of the Show Cause hearing on December 11, 2001.

9. On November 21, 2001, Qwest filed with the Commission, a Petition for Confidential Treatment, as well as the testimony of Scott A. McIntyre. In this petition, Qwest requested that the Commission order confidential treatment of certain exhibits submitted with the prefiled testimony. On November 26, 2001, Qwest filed with the Commission an Amended Certificate of Service.

10. On November 26, 2001, McLeodUSA filed with the Commission, the direct testimony of John P. Bickel.

11. On December 4, 2001, the Commission sent a letter to the Companies, as well as Contact and Wyoming.com regarding the complaint of Terrie Anderson. In this complaint, Ms. Anderson requested that her complaint be made a part of the Show Cause hearing on December 11, 2001.

12. On December 5, 2001, Contact Communications, Inc., and Wyoming.com filed with the Commission, the testimonies of John C. Patton and Steven A. Mossbrook.

13. On December 6, 2001, the Companies filed a Proposed Order of Witnesses. At the same time, Qwest also filed a Motion for Approval of Confidentiality Agreement.

14. On December 7, 2001, Contact Communications, Inc., and Wyoming.com filed with the Commission, a Motion to Withdraw Intervention.

15. A public hearing was held, with regard to this matter, on December 11, 2001. All parties were present and were represented by counsel. At the public hearing, the Commission allowed Contact and Wyoming.com to withdraw their intervention. (Tr., pp. 7-10.). Public deliberations were held, with regard to this matter on December 11, 2001.

SUBSTANTIVE FINDINGS

16. At the public hearing, Scott A. McIntyre, Director of Product and Market Issues for Qwest, testified regarding the problems of processing customer requests to shift from McLeodUSA to Qwest, as well as the changes that have been implemented to improve the process required to shift customers between providers.

17. Mr. McIntyre testified that shifts between providers could be complicated due to the issue of slamming.

Mr. McIntyre went on to explain that the FCC has very stringent rules that require accurate information that must match up with the information from the other service provider when establishing service for a customer already served by another provider. He testified that Qwest has implemented some changes to ensure that Qwest received the proper information and verification to switch a customer's service. Mr. McIntyre explained that Qwest signed an interconnection agreement with McLeod that has helped to clearly define Qwest's responsibilities when switching a customer back, as well as reducing the time it takes to process a customer's request to switch service. Mr. McIntyre explained that the process of switching a customer back to Qwest is now designed to take eight days. He stated that at times the process could take longer than eight days if Qwest does not get all correct information or if the information does not match up with what McLeodUSA has in their customer database. (Tr., pp. 24-28)

18. Mr. McIntyre further testified that Qwest has implemented some changes that are also designed to streamline and expedite the process of switching a customer's service back to Qwest. Mr. McIntyre explained that Qwest hired more employees, implemented new training procedures for employees when dealing with customer exchanges, and improved and enhanced the existing system. He further explained that new procedures are also being considered in order to assist with the third party verifier. (Tr., pp. 33-42.)

19. John P. Bickel, manager of Outsource Relations for McLeodUSA, testified regarding McLeodUSA's process to switch a customer from McLeodUSA back to Qwest. Specifically, Mr. Bickel testified that the process has been improved with the implementation of the interconnection agreement between McLeodUSA and Qwest by better defining both company's responsibilities. Mr. Bickel explained that McLeodUSA only tells the customer that they have to contact Qwest regarding their desire to switch service. Mr. Bickel stated that it is Qwest's responsibility to process a customer's request to switch service. (Tr., pp. 66-72.)

CONCLUSIONS OF LAW

20. Qwest and McLeodUSA are telecommunications companies as defined by W.S. § 37-15-103(a)(xi) and, as such, subject to the Commission's jurisdiction pursuant to W.S. § 37-15-401.

21. The Commission initiated an investigation into this matter pursuant to the Consumer Complaint Section's memorandum advising the Commission of the numerous complaints received in the Commission's offices regarding the amount of time taken to complete customer exchanges between McLeodUSA and Qwest. As a result of that investigation, the Commission finds both companies have adequately addressed the problems regarding the amount of time taken to complete customer exchanges between McLeodUSA and Qwest. Therefore, the Commission finds that Qwest and McLeodUSA provide safe, adequate and reliable local exchange services pursuant to W.S. § 37-15-201.

22. The Commission concludes that the Show Cause Order requiring Qwest and McLeodUSA to show cause why the Commission should not find the Companies in violation of their respective certificates of Public Convenience and Necessity to provide local exchange telecommunications services within the state of Wyoming, due to failure to provide safe, adequate and reliable local exchange service, should be dismissed.

IT IS THEREFORE ORDERED THAT:

1. Pursuant to the public deliberations held in this matter on December 11, 2001, the Show Cause Order requiring Qwest and McLeodUSA to show cause why the Commission should not find the Companies in violation of their respective certificates of Public Convenience and Necessity to provide local exchange telecommunications services within the state of Wyoming, due to failure to provide safe, adequate and reliable local exchange service pursuant to W.S. § 37-15-201, should be, and hereby, is dismissed.

2. The Commission directs Qwest to update the Commission at the end of the first fiscal quarter of 2002, to show that the process of exchanging customers between Qwest and McLeodUSA continues to work adequately and in a timely manner.

3. This Order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, this 24th day of January, 2002.

STEVE ELLENBECKER, Chairman

STEVE FURTNEY, Deputy Chairman

KRISTIN H. LEE, Commissioner

(SEAL)

ATTEST:

ANTHONY M. REYES, Assistant Secretary