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CLEC Exhibit No. 5

CLEC
McLeodUSA Exhibit 5.0
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Witness _____
Date 8/14/01 **ILLINOIS COMMERCE COMMISSION**

DOCKET NO. 01-0120

DIRECT TESTIMONY OF ROD COX

PUBLIC VERSION

I. Introductions and Qualifications

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1. Q: Please state your name, business affiliation and address.

A: My name is Rod Cox. I am Senior Manager of Performance and Compliance at McLeodUSA Telecommunications Services, Inc. My business address is 6400 C Street SW PO Box 3177, Cedar Rapids, Iowa 52406-3177.

2. Q: Please describe your business experience and background.

A: My professional background includes 27 years in the telecommunications industry. My career started in 1974 as a lineman with Illinois Consolidated Telephone Company (ICTC). Since that time, I held various positions at ICTC and later Consolidated Communications Inc. (CCI) before it merged with McLeodUSA in September of 1997. The majority of my experience has been in operations, including outside plant construction. I have served as a service center supervisor and as a quality facilitator. After CCI merged into McLeodUSA, I was promoted to Senior Manager of ILEC Relations. More recently I was assigned responsibility for ILEC performance and compliance.

3. Q: Have you previously testified before any regulatory body?

A: Yes, I participated in the Illinois OSS merger condition arbitration in September of 2000, and I testified in Docket No. 98-0252/98-0335. In addition, I testified in the Public Service Commission of Wisconsin

1 (“Wisconsin PSC”) Docket No. 6720-TI-160, which is that state’s omnibus
2 local competition OSS proceeding.

3
4 **4. Q: Please describe your responsibilities as Senior Manager of Performance
5 and Compliance.**

6 A: I am responsible for evaluating the Operational Support System (OSS)
7 interfaces between Incumbent Local Exchange Carriers (ILEC’s) and
8 McLeodUSA. I am also responsible for monitoring ILEC compliance with
9 performance standards that are required to enable McLeodUSA to efficiently
10 provide quality service to our customers.

11 I have been participating in multiple industry OSS, performance
12 measure, and remedy plan collaborative efforts throughout the United States.
13 The Regional Bell Oversight Committee’s (ROC’s) multi state collaborative
14 concerns Qwest 271 testing. In addition, I have been actively engaged in the
15 Illinois, Michigan, Wisconsin, Ohio and Indiana collaboratives relating to
16 SBC/Ameritech and other regulatory workshops within our regional footprint.
17 I have also been actively involved in this proceeding.

1 McLeodUSA is a facilities-based telecommunications provider with, as of
2 March 31, 2001, 396 ATM switches, 50 voice switches, nearly 30,000 route
3 miles of fiber optic network and 11,300 employees. The Company's fiber optic
4 network is capable of transmitting integrated next-generation data, Internet,
5 video and voice services, reaching 800 cities and approximately 90% of the
6 U.S. population. In the next 12 months, McLeodUSA plans to distribute 34
7 million telephone directories in 26 states, serving a population of 56 million.

8
9 **8. Q: Please explain how McLeodUSA came to provide service in Illinois.**

10 **A:** McLeodUSA became certificated by the Illinois Commerce Commission
11 (“Commission”) in December 1993 to provide competitive local service in all
12 exchanges served by Ameritech Illinois, excluding Chicago, via resale of
13 Centrex. McLeodUSA began providing competitive local service in several
14 downstate Illinois exchanges in June 1994. McLeodUSA purchased Centrex
15 out of Ameritech’s retail tariff until it entered into a resale agreement in 1997.

16 Consolidated Communications Telecom Services Inc. (“CCTS”), a
17 wholly owned subsidiary of Consolidated Communications Incorporated
18 (“CCI”), became certified as a competitive local exchange company in late
19 1995. In May 1996, CCTS began offering facilities-based competitive local
20 exchange service in Springfield, Decatur and Champaign. In September 1997,
21 McLeodUSA Incorporated and CCI merged. On August 28, 1998, CCTS
22 merged into McLeodUSA.

23 In 1999, McLeodUSA acquired Ovation Communications of Illinois
24 (“Ovation”). Ovation’s Chicago switch became operational in the first quarter
25 1999. Ovation merged into McLeodUSA in 2000. The Chicago market

1 became the first foray of McLeodUSA into a true Tier 1 market.

2
3 **9. Q: What is the current scope of McLeodUSA's operations in Illinois?**

4 **A:** McLeodUSA provides competitive local service in the Chicago metropolitan
5 area and 12 downstate markets in Illinois on both a resale and facilities basis.
6 Since the Commission's ruling in the special construction dockets (99-0525
7 and 99-0593), McLeodUSA has converted a significant portion of its local
8 access lines from resold Centrex service to facilities-based service via
9 unbundled loops leased from SBC/Ameritech. A very small number of Illinois
10 customers of McLeodUSA are served using its own local loops and switching
11 facilities.

12 McLeodUSA installed a local switching facility in Springfield that
13 became operational in May 1999. A Class 5 switch situated in Davenport,
14 Iowa provides service to customers in the Illinois Quad Cities area. To date,
15 McLeodUSA is collocated in a total of 106 SBC-Ameritech central offices
16 ("COs") throughout the State of Illinois, including COs in Champaign,
17 Decatur, Peoria, East Moline, Rock Island, Rockford, Quincy and Springfield.
18 McLeodUSA provides a broad array of competitive local services to customers.

19
20 **10. Q: What is the purpose of your testimony?**

21 **A:** The purpose of my testimony is to address the need for minimum service level
22 standards, which concept McLeodUSA has coined as "Parity with a Floor." In
23 addition, my testimony will address the need for a remedy plan with adequate
24 consequences that are sufficient to drive the appropriate behavior of the ILEC
25 to enable that effective local competition will develop and flourish in Illinois.

1
2 **11. Q. For whom are you testifying?**

3 A. Although I am employed by McLeodUSA, I understand that AT&T and
4 ASCENT also concur in my testimony. However, the experiences described
5 herein with regard to the collaborative processes and the dealings between
6 SBC/Ameritech and McLeodUSA are obviously specific to myself and
7 McLeodUSA.
8

9 **12. Q: What does the term “parity with a floor” mean as applied to CLEC’s**
10 **purchase of services and leasing of facilities from SBC/Ameritech?**

11 A: Generally, it refers to a standard of service quality that SBC/Ameritech should
12 be held to for the provision of services and facilities to its wholesale customers.
13 Specifically, it refers to two things. First, “parity” means that SBC/Ameritech
14 must be required to provide wholesale service to its competitors, such as
15 McLeodUSA, at a quality level no worse than the quality of service that
16 SBC/Ameritech provides to its retail customers. The parity concept embodies
17 the “nondiscriminatory access to UNEs” obligation of ILECs. Second,
18 equally important is the concept that SBC/Ameritech must meet an objective
19 standard of quality for all of its customers, both retail and wholesale, that
20 results in an adequate level of service quality for all SBC/Ameritech customers.
21 That minimum service level of adequate service is the “floor.” The floor is the
22 measure of service quality below which SBC/Ameritech’s services must not be
23 allowed to fall without significant, meaningful consequences.

24 McLeodUSA currently pays 100% of wholesale rates to
25 SBC/Ameritech for “far less” than 100% access to their systems and facilities.
26 In many cases, the ILEC’s performance or lack of facilities have resulted in

1 extensive delays in provisioning service (thereby denying McLeodUSA the
2 revenue stream it would otherwise receive but for the delay) or quite often a
3 “total loss” of the revenue stream when the prospective McLeodUSA customer
4 decides not to switch to McLeodUSA because of inadequate performance by
5 the wholesale provider.

6 The lack of competitive development in local markets since the 1996
7 Act was passed is compelling evidence that parity by itself is simply not
8 enough to facilitate development of local competition. According to recent
9 statements of Illinois policy makers, SBC/Ameritech still controls
10 approximately 90% of the access lines in its Illinois exchanges.
11 SBC/Ameritech’s market share is likely higher if one excludes access lines
12 serving ISP’s from the calculation. On a national basis, McLeodUSA
13 estimates that RBOCs currently have a 95% market share of non-ISP local
14 access lines. To put that figure in context, competitors in the long distance
15 market captured 4X, or about 20%, of the long distance lines in the five years
16 following divestiture of AT&T. Clearly, competition was able to develop at a
17 much quicker pace in the long distance market.

18 I do not believe that “true competition” will fully develop unless ILECs
19 such as SBC/Ameritech is held accountable for minimum levels of service for
20 all of its customers.

21
22 **13. Q: Why is a quality floor important to McLeodUSA and other competitive**
23 **carriers?**

24 **A:** Minimum quality standards are important for many reasons. Simply stated,
25 parity at poor performance is still poor performance. Obviously, poor

1 performance provided to a CLEC not only harms the CLEC; it harms the
2 CLEC's customers as well. As I stated earlier, parity standards help address
3 anti-competitive discrimination by ILEC's. But discrimination is not the only
4 concern CLEC's have with the quality of service provided by ILECs.
5 Customers do not care if we are at parity with SBC/Ameritech if that means
6 they continue to receive inadequate service. Customers want to be served
7 better, faster and more efficiently than ever before and they expect
8 commitments to be met. Customer surveys conducted by McLeodUSA prove
9 that the old industry standards are not meeting customer expectations and that
10 customers expect more, not less, from a new carrier like McLeodUSA.
11 SBC/Ameritech's poor service to a CLEC gets passed down to the CLEC's
12 customer. When SBC/Ameritech fails to provide a line or restore service in a
13 timely fashion, the CLEC's end user customer greatly suffers. Even if the
14 problem is strictly a wholesale issue, Customers rightfully blame their retail
15 provider, the CLEC, not the wholesale supplier, the ILEC. Consequently, poor
16 wholesale service materially hinders a CLEC's ability to establish itself in the
17 marketplace and directly impacts the CLEC's bottom line in a negative fashion.

18
19 **14. Q: If SBC/Ameritech provides equally poor service to its wholesale and retail**
20 **customers, how does this harm the ability of CLECs to compete?**

21 **A:** Poor wholesale service, even at parity with SBC/Ameritech's retail
22 performance, can harm a CLEC in at least four ways. First, it often delays a
23 CLEC's ability to recover its costs because the CLEC cannot bill a customer
24 for services it does not deliver while waiting for SBC/Ameritech to install or
25 repair its lines. Second, poor wholesale performance imposes additional

1 personnel costs on the CLEC. These costs include additional staffing to deal
2 with angry customers and to work through the ILEC escalation process to
3 resolve the service problem. Third, poor wholesale service exposes the CLEC
4 to potential liability for harm to the CLEC's customer. Incurring these
5 additional operating expenses poses a significant financial hardship on CLEC's
6 such as McLeodUSA who are already incurring large capital costs associated
7 with competitive entry. This is especially true in today's capital markets where
8 access to capital funds for CLECs have almost, if not completely, dried up.
9 Every dollar spent to remedy poor wholesale performance situations is a dollar
10 that is not available for the CLEC to invest in its network, which means that
11 CLECs will be forced to into longer term reliance on the ILEC's network more
12 than they otherwise would. It is becoming a vicious circle of dependency that
13 CLECs will not be able to break.

14 Finally, and most disturbing, it can seriously damage the CLEC's
15 reputation. For an incumbent monopoly with nearly all the "last mile"
16 facilities and more than 90% market share, bad service can lead to bad press,
17 but little else in terms of real consequences. Indeed, for all the service quality
18 problems experienced by retail customers of SBC/Ameritech in 2000, the fact
19 that its market share did not materially decline as a result of those service
20 problems speaks volumes about SBC/Ameritech's comparative ability to
21 endure poor service quality to its customers.

22 In contrast, for a new competitor trying to establish itself in the market
23 and beginning to generate revenues to recoup the costs associated with heavy
24 capital investments, poor wholesale service can be devastating and eventually
25 thwart the CLEC's ability to gain a foothold in local markets. A CLEC,

1 struggling against the bottom line to carve out a niche in SBC/Ameritech's
2 monopoly markets, simply cannot endure persistently poor service from its
3 monopoly wholesale supplier. The key concept is that by being the sole
4 provider of network elements, especially the last mile loop, SBC/Ameritech
5 controls the facilities, the systems and workforce needed for McLeodUSA to
6 provide quality service to our end user customers. We depend on them and we
7 pay for equal access to end user customers. If parity exists today (and I'm not
8 agreeing that it does actually exist), the experience of the last five years, and
9 especially year 2000 amply shows that parity alone will not facilitate
10 development of competition or cause SBC/Ameritech to change its behavior
11 and materially improve service to customers.

12
13 **15. Q: Are there examples where SBC/Ameritech's performance for their retail**
14 **customers has been at levels that would be considered as a deficient**
15 **standard, thus supporting the need for a Parity with a Floor concept?**

16 **A:** Yes. Consider residential POTS orders that were completed within five (5)
17 business days. SBC/Ameritech installed as little as 66% of POTS orders in the
18 5-day interval as recent as March 2001.¹ Performance actually deteriorated in a
19 consistent manner from an already low 88% in December 2000.² The same
20 was true for their own business POTS customers with performance
21 deteriorating from 88% in December 2000 to 78% in March 2001.³ The
22 performance for SBC/Ameritech's own UNE retail customers fared just as

¹ Retail performance results for Illinois, as reported by SBC/Ameritech for PM#28 Percent Installations Completed within 5 Business Days – POTS – Residential – Field Work

² *Id.*

³ Retail performance results for Illinois, as reported by SBC/Ameritech for PM#28 Percent Installations Completed within 5 Business Days – POTS – Business – Field Work

1 poorly with only 87% of customers orders being completed within three (3)
2 days in November 2000 before backsliding to only 78% as recent as April
3 2001.⁴ Retail performance results for UNE installation intervals have suffered
4 as well with performance results in the 7-8.5 day range.⁵ Once service is
5 installed for SBC/Ameritech's retail residential POTS customers, 12-14% of
6 them are reporting trouble with their service within the first 30 days.⁶ Given
7 the public outcry in 2000 over SBC/Ameritech's service quality, I think it's fair
8 to conclude that its retail performance has obviously not been acceptable to its
9 retail customers.

10 SBC/Ameritech's maintenance and repair performance for their retail
11 customers has been equally deficient. The rate at which customers experience
12 a repeat trouble has consistently deteriorated over the last six (6) months from
13 11% in November 2000 to nearly 15% in March and April 2001 for business
14 POTS customers.⁷ The same deterioration is evident in the intervals that
15 SBC/Ameritech has provided in repairing service troubles for their own
16 residential customers with November 2000 result of over 72 hours before
17 escalating to over 100 hours as recent as April 2001.⁸

⁴ Retail performance results for Illinois, as reported by SBC/Ameritech for PM#56 Percent Installations Completed within 3 Business Days – UNE – 2 Wire Analog (1-10 loops)

⁵ Retail performance results for Illinois, as reported by SBC/Ameritech for PM#55 Average Installation Interval – UNE – 2 Wire Analog (1-10 loops)

⁶ Retail performance results for Illinois, as reported by SBC/Ameritech for PM#35 Percent Trouble Reports within 30 Days of Install – POTS – Residential – Field Work

⁷ Retail performance results for Illinois, as reported by SBC/Ameritech for PM#41 Percent Repeat Reports – POTS – Business

⁸ Retail performance results for Illinois, as reported by SBC/Ameritech for PM#39 Receipt to Clear Duration – POTS – Residential – Dispatch – Affecting Service

1 **16. Q: How do the above-mentioned examples of SBC/Ameritech’s performance**
2 **for their own retail customers support the need for “Parity with a Floor?”**

3 A: For performance measures where parity is the performance standard, how
4 SBC/Ameritech performs for their own retail customers, dictates the incentive
5 to provide adequate service to all customers. For example, if SBC/Ameritech
6 takes 100 hours to resolve troubles for wholesale customers, it is, by definition
7 of parity, completely acceptable so long as they take just as long to resolve
8 troubles for their own retail customers. SBC/Ameritech would be considered
9 as “passing,” thus relieved of any incentive to improve upon what is obviously
10 sub-par performance.

11 However, if a minimum level of service standard, such as “Parity with a
12 Floor” were in place in this scenario, there would be a backstop in place to
13 protect all customers, wholesale and retail, from the inferior service that
14 SBC/Ameritech provides today.

15
16 **17. Q: Should all proposed measures defined in the “Merger Condition 30”**
17 **workshops be held to “parity with a floor” standards?**

18 A: No, while that would be an outstanding result, CLECs are willing to limit
19 application of the parity with a floor standard to key customer impacting
20 measures. In fact, CLECs proposed only 17 measures out of approximately 80
21 parity measures be included in this concept. It is also worth noting that CLECs
22 were willing to negotiate which measures would be held to parity with a floor
23 standard. However, SBC/Ameritech has steadfastly refused to discuss this
24 provision of the proposed remedy plan.

25

1 **18. Q: Why are the remedy implications from the “Parity with a Floor” proposal**
2 **slated to go to the individual state versus the CLEC’s given the fact that**
3 **the CLEC’s are the ones promoting it?**

4 A: Simple. CLECs believe that “parity with a floor” is a much needed incentive
5 for SBC/Ameritech to provide acceptable service to all customers, wholesale
6 and retail. CLECs want to compete on product offerings and service quality.
7 However, in absence of a floor of service quality, CLECs have to expend too
8 much of their limited resources on dealing with damage control. If we gain the
9 benefit through parity with the floor that our customers will be satisfied with a
10 minimum level of service quality, we think it’s a net gain in terms of money
11 saved on damage control (that would otherwise is being spent to cure poor
12 wholesale performance) versus the remedy money.

13
14 **19. Q: Has the “Parity with a Floor” concept received any favorable responses**
15 **from any other state regulatory body?**

16 A: I understand the Ohio commission ordered similar minimum levels for key
17 customer impacting measures in the Verizon merger condition proceeding.

18 Minnesota is currently addressing wholesale service quality and other
19 states may follow suit. Many other states already have minimum standards.
20 However, without remedies tied to those performance measures, I do not
21 believe that there is not enough incentive for the ILEC to actually improve the
22 service quality. . Indeed, I would argue that the evidence set above highlights
23 this fact in Illinois. There can be no doubt that SBC/Ameritech endured a
24 significant amount of public ire over its service quality, but the statistics bear
25 out that it continues to provide poor performance on several key performance

1 metrics. SBC/Ameritech will provide improvement plans but those plans may
2 take months/years to achieve. CLECs cannot afford months of delays or false
3 promises or we will not survive.
4

5 **20. Q: If retail service quality credits are in effect as they will be under new**
6 **Illinois law and Part 730, does that eliminate the need for adopting the**
7 **“parity with a floor” from the CLEC remedy plan?**

8 **A:** The 17 specific parity measurements are essential. Unless the Commission
9 adopted all 17 in through the Part 730 process, then adoption of retail service
10 credits would fall short of what CLECs need. Moreover, there needs to be an
11 adequate incentive in the form of a penalty to incent the ILEC to improve
12 performance. Whether or not that additional incentive would exist through
13 Part 730 is also not certain. Finally, there is no guarantee that Part 730 will be
14 resolved in a timely fashion. Parity with a floor is a critical component of the
15 remedy plan and it should be part of the plan itself.
16

17 **21. Q: Why do you believe the “Joint CLEC Remedy Plan” should be adopted by**
18 **the Commission?**

19 **A:** Although the testimony of AT&T witnesses Karen Moore and Dr. Michael
20 Kalb discuss the overall shortcomings of the Texas plan, I concur in their
21 analysis. To illustrate an example, under the Texas plan, in April 2001,
22 SBC/Ameritech repaired only XXX% [CONFIDENTIAL] of McLeodUSA’s
23 service outages within 24 hours. However, for the same period,
24 SBC/Ameritech managed to clear an impressive 98.33% of their own

1 customers' service outages.⁹ For such a large disparity, McLeodUSA received
2 a minuscule remedy of \$XXX [CONFIDENTIAL]. Clearly, this minuscule
3 amount of damages paid by SBC/Ameritech provides absolutely no incentive
4 to SBC/Ameritech to close such a large gap. Indeed, it is likely that
5 McLeodUSA incurred more than that amount in internal expenses to manage
6 the customers' dissatisfaction resulting from SBC/Ameritech's poor
7 performance to McLeodUSA. In my opinion, the timely repair of service
8 outages is by far the highest impacting measures in terms of customer
9 satisfaction.

10 In contrast, the proposed "Joint CLEC Plan" holds SBC/Ameritech
11 accountable for poor performance and ensures progressive meaningful
12 payments to CLECs and the State of Illinois in the event the ILEC performance
13 backslides after section 271 approval. It is unquestionable that the
14 SBC/Ameritech/Texas plan has built in *forgiveness* that will simply become a
15 "cost of doing business" that is so insignificant that it will not drive
16 SBC/Ameritech to change its behavior. Indeed, the experience of
17 McLeodUSA in Illinois under the Texas-like remedy plan interconnection
18 agreement amendment confirms just how insignificant a remedy the
19 SBC/Ameritech plan generates in payments to the damaged CLEC. For April
20 2001 performance, McLeodUSA received a paltry \$ [CONFIDENTIAL]
21 under that plan. Yet, McLeodUSA is one of the largest and most active CLECs
22 in Illinois in terms of local access lines. In addition, under the Texas plan with
23 the K-table forgiveness, SBC/Ameritech avoided paying anything on six (6)

⁹ Wholesale and retail performance results for McLeodUSA and SBC/Ameritech in Illinois, for April 2001 as reported by SBC/Ameritech for PM#68 Percent Out of Service Troubles Cleared within 24 hours – 2 Wire Analog 8dB Loop – Illinois South

1 benchmark measures. In comparison, the joint CLEC plan would have paid
2 out \$25K for each measure.

3 Again, I think it is important to put these remedy figures in context.
4 When competition was initiated in the long distance market, AT&T was
5 required to give competitive long distance companies up to a 55% discount for
6 unequal access. I believe that when an ILEC fails to meet the key performance
7 measures, CLECs are not getting equal access to the ILEC network to serve
8 end user customers. Perhaps the disparity in incentive for ILEC's today to
9 provide equal access to CLECs explains at least in part why competition was
10 able to develop much quicker in the long distance market than the local
11 markets since the 1996 Act.

12 In summary, I believe strict enforcement mechanisms are needed. If the
13 ILEC performs, then the remedy plan is nothing more than an insurance policy
14 for a **level playing field**. McLeodUSA trusts that the Commission will do the
15 *right thing* for the telecommunications industry and the consumers of Illinois.

16
17 **22. Q: Do you believe the Commission should implement whatever remedy plan**
18 **it orders by requiring CLECs and SBC/Ameritech to enter into**
19 **interconnection agreement ("ICA") amendment or to have**
20 **SBC/Ameritech file tariffs implementing the plan?**

21 **A:** No, I strongly believe that the Commission should clearly order that the
22 remedy plan it approves be self executing. Requiring an interconnection
23 agreement ("ICA") amendment or the filing of a tariff by SBC/Ameritech will
24 simply empower SBC/Ameritech to delay implementation of the remedy plan
25 to the detriment of CLECs.

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23. Q: What evidence is there that SBC/Ameritech may delay implementation of the remedy plan?

A: The evidence is that fact that SBC/Ameritech has done it before to McLeodUSA and even as they seek section 271 approval, SBC/Ameritech continues to do so today in other jurisdictions.

24. Q: Please elaborate.

A: Attached as Exhibit 1.1 to my testimony is the chronology of events related to the attempt of McLeodUSA to obtain the necessary remedy plan ICA amendment that SBC/Ameritech agreed to make available in Illinois (and Ohio) through the collaborative process. As detailed in this exhibit, McLeodUSA first requested the ICA amendment required by SBC/Ameritech in May 2000. SBC/Ameritech did not provide the correct amendment until after McLeodUSA provided SBC/Ameritech an amendment that SBC/Ameritech had previously provided to AT&T. Due to the numerous delays in obtaining the correct ICA amendment, it was not filed with the Commission for approval until February 2001. SBC/Ameritech's first remedy payment to McLeodUSA was made in June 2001, more than one (1) year after McLeodUSA started the process of attempting to be compensated for SBC/Ameritech's inadequate wholesale performance. In light of the fact that SBC/Ameritech delayed the availability of the ICA amendment, McLeodUSA requested that SBC/Ameritech make the amendment payments retroactive to the date McLeodUSA first requested the amendment. SBC/Ameritech has rejected that request (for both Illinois and Ohio).

1 SBC/Ameritech has also delayed providing McLeodUSA the more
2 recent Michigan ICA amendment. The Michigan PSC issued its order on April
3 17, 2001, which order required an ICA amendment to implement the remedy
4 plan approved by the Michigan commission. McLeodUSA issued its request to
5 SBC/Ameritech on April 19, 2001. Again, McLeodUSA learned that
6 SBC/Ameritech had provided an ICA amendment to AT&T and requested a
7 copy of the same amendment. McLeodUSA has a copy of the amendment
8 provided to AT&T.

9 Delay is not the only problem with using ICA amendments. In
10 Michigan, the amendment provided by SBC/Ameritech is not acceptable to
11 McLeodUSA (or AT&T) because the language proposed by SBC/Ameritech
12 arguably makes the remedy plan subject to the consent of SBC/Ameritech and
13 not effective until any appeals of the PSC order are exhausted. Because of
14 these concerns, AT&T and McLeodUSA jointly filed letters with commissions
15 in Michigan, Wisconsin, Indiana explaining those concerns with
16 SBC/Ameritech amendment. Exhibit 1.2 is a copy of the letter submitted to
17 Michigan commission.

18
19 **25. Q: Identify the potential problem with requiring SBC/Ameritech to file**
20 **tariffs to implement the approved remedy plan?**

21 **A:** Again, the primary problem would be the resulting delay. The Commission
22 could avoid some delay by requiring SBC/Ameritech to file the tariffs by a date
23 certain. Assuming the filing date is not delayed, the approval process means a
24 minimum 45-day delay, according to SBC/Ameritech. If SBC/Ameritech
25 inserts unacceptable language/conditions in its proposed tariff, which given the

1 recent Michigan experience is not too far-fetched, then that would result in
2 further delay. All the while SBC/Ameritech could be providing inadequate
3 wholesale service and the CLECs are not getting compensated.

4 Another potential problem exists with attempting to implement the
5 remedy plan through tariffing. I understand from my legal counsel that
6 SBC/Ameritech is taking the position in Michigan that it does have to make
7 interconnection services available through a tariff to CLECs. I understand that
8 SBC/Ameritech takes this position based on a federal district court ruling.
9 Indeed, McLeodUSA is experiencing first hand SBC/Ameritech's refusal to
10 permit a company to purchase interconnection services out of its tariff setting
11 forth interconnection related services.

12 Finally, I think it is important to note that the recent legislation enacted
13 in Illinois specifically exempts SBC/Ameritech from penalties under 13-514
14 for unreasonably delaying implementation of an interconnection agreement
15 until it has obtained section 271 approval. I think it is a fair assumption that
16 this exemption was inserted into the legislation at the behest of
17 SBC/Ameritech. The fact that this language was inserted in the new law
18 certainly lends credence to my concern that delay with regard to ICA
19 amendments might in fact be part of SBC/Ameritech's strategy in Illinois.
20 Again, McLeodUSA is experiencing first hand SBC/Ameritech's delay tactics
21 in other aspects of implementing the new law. For these reasons, I strongly
22 urge the Commission to make the remedy plan self executing in the order
23 approving the plan.
24

1 **27. Q: Does McLeodUSA have any experience that shows that having a remedy**
2 **plan that results in material payments by the ILEC directly to the CLEC**
3 **for poor wholesale service can drive the ILEC to improve its**
4 **performance?**

5 **A:** Yes, I believe our experience with Qwest shows that when the ILEC's poor
6 performance results in substantial payments directly to the CLEC, an ILEC
7 facing that consequence performs better than an ILEC that does not have the
8 same incentive. For approximately the past two years, Qwest has been
9 required to pay significant dollars to McLeodUSA when its wholesale service
10 has been inadequate (albeit the compensation is not as much as McLeodUSA
11 believes it should be, the amount is certainly significant in comparison to the
12 miniscule amount received from SBC/Ameritech in Illinois). After paying
13 these substantial penalties to McLeodUSA for a period of time, two key things
14 have happened: (a) Qwest's performance has shown improvement in
15 comparison to SBC/Ameritech's performance, and (b) equally important,
16 Qwest has committed that it will act as a true wholesale provider, the result of
17 which is that Qwest's wholesale organization is much more responsive and
18 making a concerted effort to have a business, rather than a legal, relationship
19 with McLeodUSA.

20
21 **28. Q: Does this conclude your testimony?**

22 **A:** Yes, it does.

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5/15/00 MCLD 1st request of SBC (Sharon Donahue, Lead Negotiator) to amend existing IL & OH Agreements to incorporate the new ordered measures and remedy plans (noted in the email; my understanding that if MCLD signed the Amendment prior to 5/31/00, MCLD was eligible for reports and remedies based on 5/00 performance data, thus our desire to expedite the request).

5/15/00 SBC response (from Sharon Donahue) will process request for the new Performance Measures Amendment in IL & OH, which were developed as a result of the collaborative process in those states. Note: Sharon's last day would be 5/18 and Celeste McGee would be new contact for follow up.

5/18/00 Note from Todd McNally: SBC revising language in Amendment per Accessible Letter CLECOH_00-007.D

5/22/00 Have not received PM Amendments requested 5/15/00 from SBC

5/29/00 Have not received PM Amendments requested 5/15/00 from SBC

5/31/00 Note from Sal Fioretti: SBC extending deadline for signing Amendment to 6/15/00, Sal to send 'revised' Amendment language to Rod Cox for review

5/31/00 Lauraine advised Rod & Todd that we could review Sal's copy of language, however would still need the actual 'original' Amendment from SBC to execute. Have not received PM Amendments requested 5/15/00 from SBC.

06/02/00 Note from Rod Cox: Still looking for Amendment language from Sal Fioretti

06/05/00 Note from Todd McNally: Amendment language rec'd from Sal does not reflect collaborative process; 'revised' version is the same as 'first' version word for word

06/10/00 Received 'revised' Amendment language from Sal Fioretti review. Still have not received the PM Amendments requested from SBC.

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06/10/00 Meeting with Bill Haas, Rod Cox & Todd McNally: reviewed 'revised' language for PM Amendment that Sal Fioretti sent; this was still not the language reflecting the collaborative process (AT&T's Amendment). Amendment was the language from the 'standard' Performance Measures Appendix in SBC's Interconnection Agreement. Determined there was no substantial benefit to enter into the Amendment (as written) and therefore decided to forego amending the IL and OH Agreements. Note: MCLD never received the 'original' PM Amendments (to execute) from SBC as a result of 1st request placed on 5/15/00.

10/24/00 Request from Rod Cox to secure the 'latest' version of the Illinois Performance Measures Amendment (as a result of the collaborative process) as soon as possible

10/25/00 MCLD submitted new (2nd) request to SBC (Lisa Dabkowski, Lead Negotiator) for the IL PM Amendment to incorporate recently ordered measures and remedy plans for both the existing IL QST Interconnection Agreement and the IL MCLD Resale Agreement. This was MCLD's 2nd attempt to receive the PM Amendments (originally requested same PM Amendments on 5/15/00).

10/27/00 SBC response (from Lisa Dabkowski) ordered the IL PM Amendment for both the QST and MCLD Agreements in the state of IL

10/30/00 MCLD questioned SBC as to when we would receive the IL PM Amendments, expressed our desire to expedite the process and execute the Amendments as soon as possible

11/05/00 SBC response (from Lisa Dabkowski) should receive the PM Amendment on or about 11/12/00 via overnight delivery

11/13/00 Received (from SBC) the IL PM Amendment for MCLD Resale Agreement; incorrect Amendment was sent, received the 'standard' PM Amendment, did not receive the Amendment written as a result of the collaborative process in IL & OH

11/13/00 Called SBC (Marianne Kline, Area Mgr. Contract Processing) and left message that incorrect PM Amendment had been sent, please call to discuss

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- 11/14/00 Called SBC (Lisa Dabkowski, Lead Negotiator) left message regarding PM Amendment received was incorrect, please call to discuss
- 11/16/00 No Response from SBC (either party) called and left messages again
- 11/17/00 SBC returned call (Lisa Dabkowski); SBC requested that MCLD send example of the PM Amendment MCLD wants
- 11/17/00 Worked with Rod Cox & Dave Conn to secure copy of AT&T's PM Amendment with AIT in IL from outside sources
- 11/20/00 MCLD secured faxed copy of AT&T IL PM Amendment from Cheryl Urbanski Hamill, AT&T Government Affairs
- 11/20/00 Faxed the AT&T IL PM Amendment (which MCLD secured from AT&T Government Affairs) to SBC (Lisa Dabkowski) and left voice message regarding fax
- 11/28/00 SBC response (Lisa Dabkowski) requested MCLD to send 3rd request stating specific PM Amendment for both IL QST & MCLD Agreements
- 11/28/00 MCLD submitted 3rd request to SBC (Lisa Dabkowski) for the Performance Measures Amendment to the Interconnection Agreement, dated 1/8/97, between Ameritech Illinois and AT&T Communications of Illinois that was executed by AIT and AT&T on 9/7/00. MCLD requests SBC to prepare the above PM Amendment for the IL QST Interconnection Agreement and the IL MCLD Resale Agreement
- 12/01/00 SBC response (Lisa Dabkowski) will order PM Amendments requested
- 12/05/00 MCLD submitted request for the PM Amendment (referenced in 11/28/00 request for IL) be prepared for OH and questioned if the same PM Amendment was available in additional SBC states
- 12/06/00 SBC response (Lisa Dabkowski) All 13 states have FCC mandated 20 Performance Measures, in addition to the FCC mandates the IL & OH State Commissions added some of their own
- 12/13/00 Received the correct PM Amendments for the IL QST Agreement, did not receive IL MCLD Resale PM Amendment, received incorrect OH PM Amendment

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12/13/00 Called SBC (Lisa Dabkowski) regarding Amendments requested and not received, also signature page of IL QST Amendment is incorrect and OH Amendment incorrect; left voice message to call

12/15/00 SBC response (Lisa Dabkowski) will send corrected signature page for QST, sign the MCLD signature pages received for IL & OH, SBC will prepare correct Amendments and file

12/16/00 SBC sent email (Lisa Dabkowski) stating that the OH PM Amendment was sent on 5/19/00 and the IL Amendments were sent on 11/10/00

12/16/00 MCLD called SBC (Lisa Dabkowski) regarding 12/16/00 email; advised the PM Amendment referenced for OH was never received by MCLD on/or around 5/19/00, nor was it ever received after that date, and the IL PM Amendments received on 11/14/00 were the incorrect Amendments per telephone conversation on 11/17/00

12/19/00 MCLD sent email to SBC requesting QST signature page; per SBC's direction (on 12/15/00) to sign new signature pages

12/19/00 SBC response (Lisa Dabkowski) sent QST signature page, requested another request for OH PM Amendment

12/20/00 MCLD sent 2nd request to SBC for OH PM Amendment, also detailed discussion regarding IL QST Amendment executed and OH & IL MCLD signature pages executed on 12/18/00 & sent to Marianne Kline, SBC Contract Processing via overnight mail 12/19/00

01/11/01 Received (from SBC) 'correct version' of PM Amendment for OH MCLD Interconnection Agreement with new signature pages; executed same and returned to SBC via overnight mail 01/11/01

01/11/01 Received (from SBC) 'correct version' of PM Amendment for IL MCLD Resale Agreement with new signature pages; executed same and returned to SBC via overnight mail 01/11/01

01/19/01 Received (from SBC) fully executed PM Amendment for IL MCLD Resale Agreement

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- 01/19/01 Received (from SBC) fully executed PM Amendment for OH MCLD Interconnection Agreement
- 02/06/01 Received letters, dated 1/26/01, via overnight mail from SBC on 1/29/01, indicating Joint Petitions are required with IL & OH filings (out of office week of 1/29/01 in negotiations with SBC), called SBC contact Mary Velez, Mgr. Regulatory Affairs, regarding letters; left message
- 02/09/01 MCLD called SBC (Mary Velez) again, left message
- 02/14/01 SBC (Mary Velez) returned call; discussed joint petitions needed, also questioned Mary regarding contact for OH Joint Petition; suggested Jon Kelly or D'Anna Sturdivant
- 02/15/01 MCLD processed Joint Petition paperwork for IL QST & MCLD Agreement and sent same via overnight mail to Mary Velez to file; left message for Jon Kelly & D'Anna Sturdivant regarding OH PM Amendment
- 2/16/01 SBC (Mary Velez) filed the Joint Petition for Approval of the IL QST PM Amendment with the IL Commerce Commission
- 2/19/01 MCLD called SBC (D'Anna Sturdivant), she will have Jon Kelly send information needed for Joint Petition electronically when he returns to office on 2/21/01
- 2/21/01 SBC (Mary Velez) filed Joint Petition for Approval of the IL MCLD PM Amendment with the IL Commerce Commission
- 2/21/01 SBC (Jon Kelly) faxed Joint Petition paperwork to Ken Kirley & sent Joint Petition paperwork to MCLD electronically for OH PM Amendment
- 2/22/01 MCLD faxed signed Joint Petition paperwork to SBC (Jon Kelly) for filing, sent same via overnight mail
- 2/22/01 SBC (Jon Kelly) filed the Joint Petition for Approval of the OH MCLD PM Amendment with the OH Commission

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3/09/01 A Olusanjo Omoniyi, IL Commerce Commission Policy Analyst, recommends the Commission approve the PM Amendment to the IL MCLD Resale Agreement

3/12/01 Christopher L. Graves, IL Commerce Commission Policy Analyst, recommends the Commission approve the PM Amendment to the IL QST Interconnection Agreement

3/20/01 Performance Measures Amendments to the OH MCLD Interconnection Agreement, the IL MCLD Resale Agreement and the IL QST Interconnection Agreement have been filed and are pending (respective) Commission approval

Via FedEx

June 27, 2001

Ms. Dorothy F. Wideman
Executive Secretary Division
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

Re: **MPSC Case No. U-11830**

Dear Ms. Wideman:

Pursuant to Rules 327 and 401 of the Rules of Practice and Procedures before the Commission, AT&T Communications of Michigan, Inc. and TCG Detroit ("AT&T") and McLeodUSA move for reopening of the record in the above-reference proceeding to submit additional information relevant to the case. The information is attached hereto as Exhibit A and described below.

A major issue addressed in this proceeding is whether the remedy plan adopted by the Michigan Public Service Commission ("Commission") should be implemented by tariff or amendment to interconnection agreement. In its April 17, 2001 Opinion and Order, the Commission ruled that competitive local exchange carriers ("CLECs") with interconnection agreements must amend their interconnection agreements to incorporate the remedy plan. The Commission further ruled that Ameritech Michigan "shall enter into conforming interconnection agreements without delay". (Order, pp. 16 and 20).

Ameritech Michigan recently provided to AT&T and McLeodUSA its proposal the purports to implement the Commission's April 17, 2001 decision. The document is entitled: "Appendix Performance Measurements" ("Appendix"). Section 1.6 of Ameritech Michigan's Appendix provides in relevant part:

In the event that the state commission that approved this Agreement subsequently orders liquidated damages/remedies with respect to performance measures in a proceeding binding on both parties, the parties agree to incorporate commission-ordered liquidated damages/remedies into this Agreement once the decision

approving such remedies *becomes final, non-modifiable, and any appeals are exhausted. The parties expressly reserve all of their rights to challenge any liquidated damage/remedy award, including but not limited to the right to oppose any such order and associated contract provision because remedy/liquidated damage provisions must be voluntarily agreed to and AM-MI does not at this time so agree.* (emphasis supplied)

AT&T and McLeodUSA request that that Commission take administrative notice of Ameritech Michigan's "Appendix". The Appendix goes to two issues in this case: (1) Whether Ameritech Michigan has an intention of complying with the Commission's decision; and (2) Even if Ameritech Michigan ultimately "consents" to the Commission's decision, will it wait until the decision in this proceeding is "final, non-modifiable, and any appeals are exhausted" before paying remedies to CLECs and the State of Michigan.

This document did not become available to AT&T until after AT&T's last responsive filing in this case.

Very truly yours,

John J. Reidy, III ((P60620))
Douglas Trabaris

JJR:jbc
Attachments

cc: Service List