

ISSUE DATE: April 19, 2000

DOCKET NO. P-5323/C-97-1458

ORDER ACCEPTING AGREEMENT, DIRECTING EXECUTION OF THE AGREEMENT,  
AND PROVIDING FOR CLOSURE OF THE DOCKET

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott  
Edward A. Garvey  
Joel Jacobs  
Marshall Johnson  
LeRoy Koppendrayer

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of Compliant Against  
McLeodUSA Alleging McLeodUSA is  
Providing Service at Untariffed Rates

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**PROCEDURAL HISTORY**

On September 26, 1997, Rochester Telecom Systems, Inc. (RTSI) filed a complaint against McLeodUSA Telecommunications Services, Inc.(McLeodUSA) alleging that McLeodUSA was providing service at untariffed rates. RTSI stated that nearly all long distance pricing offered and provided by McLeodUSA is unfiled Individual Case Basis (ICB) pricing in violation of McLeodUSA's conditional certificate of authority granted in Docket No. P5323/NA-96-193, which clearly stated that ICB pricing must be filed. RTSI enclosed bills to demonstrate the claim.

On November 12, 1997, the Minnesota Department of Commerce (the Department) notified McLeodUSA of the complaint and on December 8, 1997 forwarded copies of the bills in question to allow McLeodUSA to analyze and offer explanation for the discrepancies.

On August 5, 1998 the Department submitted background on the situation and comments. The Department included the following explanation provided by McLeodUSA:

. . . Section 3.8 of McLeodUSA's tariff permits McLeodUSA to "offer individualized arrangements on a case by case basis where necessary to provide competitive prices, terms or conditions of service." McLeodUSA believes this stipulation provides, "explicit authority for McLeodUSA to offer rates to prospects and existing customers that are lower than the rates set forth in McLeodUSA's filed tariffs."

Based on this explanation the Department recommended the following actions:

1. Within 30 days of the date of this Order, or no later than five working days after a contract is entered into, McLeodUSA shall file copies of its contracts with individual customers with the Department.
2. Within 30 days of this Order McLeodUSA shall file copies of its price lists with the commission and Department. The price list, which may include provisions for ICB pricing, shall include provisions requiring the same contract terms and rates for similarly situated customers. Until such time that McLeodUSA substantiates the above criteria, the department makes the following recommendations:
  - Find that McLeodUSA's charging untariffed rates is discriminatory
  - Order McLeodUSA to remove or revise Section 3.8 of its tariff to be in accordance with Minn. Stat. § 237.74 to prevent further practices of charging rates not in accordance with its tariff.

On September 11, 1998, McLeodUSA filed Reply Comments asserting that (1) the Company's practice falls within the requirements for ICB pricing, (2) the "market conditions" exception in Minn. Stat. § 237.74, subd.3 applies, or (3) meeting a competitor's price under these circumstances is not *per se* unlawful rate discrimination.

On January 8, 1999, the Department filed final comments, recommending that the Commission (1) find that McLeodUSA has violated Minn. Stat. § 237.74, subd. 1 when it failed to submit its rates to the Department, (2) find that McLeodUSA's charging untariffed rates is discriminatory and violates Minn. Stat. § 237. 74, subd. 3., (3) order McLeodUSA to revise its price list and remove Section 3.8 of their tariff to prevent further practices of charging rates not in accordance with their tariff, and (4) direct the Office of the Attorney General to pursue penalties against McLeodUSA, in accordance with Minn. Stat. 237.74, subd. 11.

On January 31, 2000 RTS filed additional documentation that McLeodUSA continues to offer prices that are not tariffed.

The Commission met on April 6, 2000 to consider this matter.

### **FINDINGS AND CONCLUSIONS**

At the hearing on this matter, McLeodUSA and the Minnesota Department of Commerce (the Department) agreed that the matter should be concluded with the following two actions being taken by McLeod:

1. McLeod will withdraw its tariffs for "standard" Raterizer and Custom Raterizer offerings from its tariff book and put those tariffs into the obsolete section so they will be grandfathered for customers that currently have those offerings but will not be offered to new customers; and
2. McLeod will also remove Tariff Provision 3.8 and file a new tariff to address situations of Individual Case Basis (IBC) pricing under new tariff language.

The Department and McLeod asked that the Commission adopt this agreement. The Commission understands that the complainant, RTSI, has indicated satisfaction with these terms and supports resolution of this matter pursuant to these terms.

The Commission has reviewed this matter and finds that the parties' agreement is in the public interest and is supported by substantial evidence in the record. Therefore, the Commission will accept the agreement and order the matter disposed accordingly.

### **ORDER**

1. The Commission approves and adopts the agreement between the Department and McLeodUSA and the resolution of this matter proposed by the Department and McLeodUSA in that agreement.
2. Pursuant to this adopted agreement and this Order, McLeodUSA shall
  - a. withdraw its tariffs for "standard" Raterizer and Custom Raterizer offerings from its tariff book and put those tariffs into the obsolete section so they will be grandfathered for customers that currently have those offerings but will not be offered to new customers; and
  - b. remove Tariff Provision 3.8 and file a new tariff to address situations of Individual Case Basis (IBC) pricing under new tariff language.
3. Upon McLeod's completion of these two actions, this matter will be concluded and the docket closed.

4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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