

DT 01-058

MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.

**Petition for Authority to Provide
Local Telecommunications Services**

Order Nisi Granting Authorization in Part

O R D E R N O. 23,750

July 30, 2001

On March 22, 2001, McLeodUSA Telecommunications Services, Inc. (McLeodUSA) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to RSA 374:22-g. McLeodUSA is currently authorized to provide competitive intraLATA toll services in New Hampshire.

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed McLeodUSA's petition for compliance with these standards. Staff reports that the company has provided all the information required by

Puc 1304.02. The information provided supports McLeodUSA's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). The final question is whether certification in the particular geographic area requested is in the public good.

McLeodUSA seeks state-wide authorization. Although the company initially plans to provide service in Verizon New Hampshire's service area, McLeodUSA plans to expand its provision of local exchange service to other incumbent local exchange carriers (ILECs) territories in New Hampshire as market conditions may warrant. McLeodUSA states that its entry will serve the public interest by fostering greater competition and generating significant benefits to New Hampshire customers. At this time, we cannot approve statewide certification.

All ILECs in New Hampshire other than Verizon have been determined to be rural telephone companies as defined by the Telecommunications Act of 1996 (TAct). *Implementation of the Federal Communications Commission's Order on Universal Service*, 82 NH PUC 819, (1997), As enacted by Congress for implementation by the states, the TAct specifically exempts rural telephone companies from requirements to interconnect with competitive carriers until two particular events occur.

Pursuant to §251(f) (1) of the Tact, a rural telephone company need not interconnect until it has received a bona fide request for interconnection, services, or network elements, and until the Commission finds that providing the requested service is not unduly economically burdensome, is technically feasible, and is consistent with the universal service section of the TAct. McLeodUSA has presented no evidence of making a bona fide request to any of the New Hampshire ILECs. Without such evidence, we will not approve certification for any geographic area other than the Verizon footprint.

McLeodUSA has provided a sworn statement and request for waiver of the US Geological Survey-based map of the geographical areas in which service will be offered requirement in Puc 1304.02(a) (6) stating that they will be offering service in the ILEC service areas for which maps are already on file with the Commission. Staff recommends granting the waiver with regard to the Verizon territory only.

McLeodUSA has provided a sworn statement and request for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

We find that McLeodUSA has satisfied the requirements of Puc 1304.01(a) (1) and (2). In addition, we find that

certification of McLeodUSA in part of its intended service area, Verizon's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because McLeodUSA has satisfied the requirements of Puc 1304.01(a), we will grant certification limited to the Verizon service area.

As part of its application, McLeodUSA agreed to abide by Verizon's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, McLeodUSA seeks to exceed Verizon's access rates it shall first contact the Staff to review the proposal. The Commission will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they, in turn, pay Verizon could inhibit intraLATA toll competition which would call into question Section 253 of the Tact.

We note that as new competitors enter the market, greater pressure is put on the 603 area code, so long as today's

antiquated number assignment process remains in effect. Accordingly, we will require that McLeodUSA request and use numbers responsibly and conservatively, and to join in exploring alternative mechanisms to use existing numbers as efficiently as possible and thereby avert the need for a new area code. By granting this authority McLeodUSA is required to comply with our orders on number conservation including Order No. 23,385 issued January 7, 2000 and Order No. 23,392 issued January 27, 2000 as well as further orders issued by the Commission concerning this matter.

Based upon the foregoing, it is hereby

ORDERED NISI, that McLeodUSA's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services is GRANTED IN PART, limited to the Verizon service area and subject to the requirements of Puc 1304.03 *inter alia*; and it is

FURTHER ORDERED, that McLeodUSA is required to comply with our Order No. 23,385 issued January 7, 2000, Order No. 23,392 issued January 27, 2000, and further orders issued by the Commission concerning number conservation; and it is

FURTHER ORDERED, that McLeodUSA's request for waiver of Puc 1304.02.(a)(6) is granted; and it is

FURTHER ORDERED, that request for waiver of Puc 1304.02(b) is granted; and it is

FURTHER ORDERED, that McLeodUSA shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation, such publication to be no later than August 6, 2001 and to be documented by affidavit filed with this office on or before August 13, 2001; and it is

FURTHER ORDERED, that all persons interested in responding to this Order Nisi shall submit their comments or file a written request for a hearing on this matter before the Commission no later than August 16, 2001; and it is

FURTHER ORDERED, that this Order Nisi shall be effective August 29, 2001, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that McLeodUSA shall file, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New
Hampshire this thirtieth day of July, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary