Approved 1/25/05

STATE OF MICHIGAN

FILED

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MICHIGAN PUBLIC SERVICE COMMISSION

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In Re the Request for Commission Approval	)
of the First Amendment to	)
an Interconnection Agreement	)
By and Between	)MPSC Case No. U-11551
McLeodUSA Telecommunications Services, Inc.	)
Verizon North Inc.,	)
and Contel of the South, Inc.	)
d/b/a Verizon North Systems	)

JOINT APPLICATION FOR APPROVAL OF AN AMENDMENT TO AN INTERCONNECTION AGREEMENT

McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), successor to BRE Communications, L.L.C. d/b/a Phone Michigan ("BRE"), Verizon North Inc., and Contel of the South, Inc. d/b/a Verizon North Systems (collectively, "Verizon") jointly submit to the Michigan Public Service Commission ("Commission") pursuant to Section 203(1) of the Michigan Telecommunications Act ("MTA"), as amended, *see* MCL §484.2203(1), and Sections 252(a)(1) and 252(e) of the Communications Act of 1934, as amended, ("Act"), *see* 47 U.S.C. §§252(a)(1) & 252(e), Amendment to an Interconnection Agreement ("Amendment"), by and between McLeodUSA and Verizon for the Commission's approval. In support of this Joint Application, McLeodUSA and Verizon state as follows:

1. McLeodUSA is a certified provider of telecommunications services in the State of Michigan.

2. Verizon is an authorized provider of telecommunications services to the public in its various exchanges and zones throughout the State of Michigan.

3. The Commission approved an agreement between Verizon and BRE (succeeded by McLeodUSA following the acquisition of BRE) on February 17, 1999. Pursuant to Section 252(a) of the Act, McLeodUSA and Verizon agreed to amend their Interconnection Agreement with respect to Reciprocal Compensation. This Amendment, attached to this petition as Exhibit 1, was negotiated voluntarily between Verizon and McLeodUSA. Verizon and McLeodUSA are requesting approval of this Amendment pursuant to 47 U.S.C. §§ 252(a)(1) and 252(e).

4. Among other things, this agreement amends the terms and conditions between Verizon and McLeodUSA with respect to Reciprocal Compensation.

5. Under the Act, this Commission must approve the filed Amendment unless:

> (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or,
>
> (ii) the implementation of such an agreement or portion is not consistent with the public interest, convenience, and necessity. *See* 47 U.S.C. § 252(e)(2).

6. The Amendment must be submitted to this Commission for approval or rejection, with written findings as to any deficiencies. *See* 47 U.S.C. § 252(a)(1).

7. Since the Amendment is the result of voluntary negotiations between the parties, the Amendment is not subject to review under the standards set forth in Section 251 or 252(2)(d) of the Act. *See* 47 U.S.C. § 252(d)(2)(B). Nor do agreements voluntarily negotiated between or among parties have to comply with the standards set forth in 47 U.S.C. §§ 251(b) & (c). *See* 47 U.S.C. § 252(a)(1)

8. Verizon will make the arrangements set forth in this filed Amendment, attached as Exhibit 1, available on the same terms and conditions to any other duly authorized telecommunications carrier operating within the State of Michigan.

9. The Amendment is the product of good faith, private negotiations between the parties. The Amendment is acceptable to both parties, and it shows that the two parties, negotiating in good faith under the terms of the Act, can arrive at a mutually beneficial business arrangement that meets their individual business interests and furthers the cause of telecommunications competition in the State of Michigan. This is precisely the process Congress envisioned in the Act.[1] Thus, the Amendment is consistent with the public interest, convenience, and necessity.

10. Pursuant to Sections 252(a)(1) and 252(e) of the Act, McLeodUSA and Verizon jointly request approval of their Joint Application without any public hearing or formal solicitation of comments. The Application and the Amendment provide the Commission with sufficient information to approve the Amendment under the standards of Section 252(e)(2)(A) of the Act.

THEREFORE, McLeodUSA and Verizon jointly request Commission approval of the Agreement pursuant to Sections 252(a)(1) and 252(e) of the Act.

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[1] S. Rep. No. 23, 104th Cong., 1st Sess, at pp. 19-20; see also Joint Explanatory Statement of the Committee of Conference at p. 125.

Respectfully submitted this 29th day of November 2004.

VERIZON NORTH INC.,
CONTEL OF THE SOUTH, INC.
D/B/A VERIZON NORTH SYSTEMS

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MCLEODUSA

TELECOMMUNICATIONS SERVICES,

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AMENDMENT NO. 1

to the

INTERCONNECTION AGREEMENT

BETWEEN

VERIZON NORTH INC., CONTEL OF THE SOUTH INC.,
D/B/A VERIZON NORTH SYSTEMS

AND

BRE COMMUNICATIONS, L.L.C.
D/B/A PHONE MICHIGAN
NOW KNOWN AS
MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.
SUCCESSOR ENTITY TO BRE COMMUNICATIONS, L.L.C.

This Amendment No. 1 (the "Amendment") is effective June 30, 2004 ("Amendment Effective Date") and is entered into by and between Verizon North Inc., Contel of the South Inc., d/b/a Verizon North Systems (collectively, "Verizon") and BRE Communications, L.L.C. d/b/a Phone Michigan, now known as McLeodUSA Telecommunications Services, Inc. successor entity to BRE Communications, L.L.C. ("McLeodUSA"). McLeodUSA and Verizon may be referred to jointly as the "Parties" and individually as a "Party").

<u>WITNESSETH</u>:

WHEREAS, McLeodUSA and Verizon entered into an Interconnection, Resale and Unbundling Agreement for the State of Michigan, which became effective March 3, 1999 (the "Interconnection Agreement").

WHEREAS, the Parties desire to agree terms governing compensation for the exchange of Local Traffic (as defined in the Interconnection Agreement) and ISP-bound traffic (as defined herein) on a prospective basis;

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows:

1. <u>General</u>. This Amendment shall not become effective unless there are no outstanding billing disputes between the Parties as of the Effective Date between the Parties with respect to intercarrier compensation charges assessed by either Party with respect to Local Traffic, ISP-bound traffic, and Verizon originated intraLATA switched access traffic in Michigan. The following terms shall govern the Parties' rights and

obligations regarding the subject matter set forth herein notwithstanding any other provision of the Interconnection Agreement, any applicable tariff, any SGAT, or under applicable law, including but not limited to any provision governing the Parties' rights or obligations in the event of a change in applicable law.

1.1 Prospective Compensation for ISP-bound and Local Traffic. The Parties agree that in order for either of them to receive any compensation for ISP-bound traffic in accordance with the terms of this Amendment, that they shall mutually agree that the receiving Party was entitled to receive compensation for such traffic under an interconnection agreement during the first quarter of 2001.

1.1.1 ISP-bound Traffic. Notwithstanding any possible contrary construction of the Interconnection Agreement, ISP-bound traffic shall not be eligible for payment of reciprocal compensation.

For a period of two (2) consecutive twelve (12) month periods (each such consecutive 12 month period being called an "Annual Period") from the Amendment Effective Date (the "Amendment Term"), all traffic in excess of a 3:1 ratio of terminating to originating traffic received by either Party from the other in Michigan shall be presumed to be ISP-bound traffic and shall be compensated at a rate of $.0007 per minute of use during the Amendment Term. The ceiling on the total ISP-bound traffic minutes of use for which McLeodUSA may receive compensation during an Annual Period shall not exceed McLeodUSA's Compensable Base (as such term is defined herein). All presumed ISP-bound traffic minutes of use which McLeodUSA receives in excess of the Compensable Base during an Annual Period shall be treated on a bill and keep basis.

1.1.2 Local Traffic. During the Amendment Term, all traffic up to a 3:1 ratio of terminating to originating traffic received by either Party from the other in Michigan shall be presumed to be Local Traffic and shall be compensated at the rate of $ 0.0020 per minute, for end office termination and $0.0026 per minute, for tandem routed traffic, as applicable, until the Parties execute a replacement for the Interconnection Agreement, at which time the reciprocal compensation rates set forth in the replacement agreement shall apply.

1.1.3 Rebuttal of 3:1 Presumption. The Parties agree further that either Party may rebut the 3:1 presumption by demonstrating to the Michigan Public Service Commission (the "Commission") either that traffic above the 3:1 ratio is in fact Local Traffic or that traffic up to the 3:1 ratio is in fact ISP-bound traffic. During the pendency of any such rebuttal proceeding, the Parties shall remain obligated to pay the applicable reciprocal compensation rate (in accordance with the subsection 1.1.2 above) for traffic up to a 3:1 ratio of terminating to originating traffic and the applicable ISP-bound traffic rate (in accordance with subsection 1.1.1

above) for traffic in excess of a 3:1 ratio of terminating to originating traffic, subject to a ceiling equal to the Compensable Base and subject to true-up upon the conclusion of the rebuttal proceeding before the Commission.

1.1.4 Compensation for ISP-bound traffic Following the Amendment Term. Verizon will provide McLeodUSA at least 135 days prior written notice of expiration of the Amendment Term (the "Termination Notice"). The Parties shall negotiate in good faith for successor terms and provisions with respect to the subject matter of this Amendment for the period on and after July 1, 2006. The date of Verizon's Termination Notice shall be deemed the negotiations request date for the purpose of determining the arbitration window (under Section 252 of the Act) applicable to the Parties' negotiation of such successor terms. If the Parties fail to execute a written agreement containing such successor terms by the first day of the opening of the arbitration window applicable to the above referenced negotiations, then either Party may initiate an arbitration under Section 252 of the Act. Notwithstanding any other provision of this Amendment, and only to the extent permitted under the Act, McLeodUSA may elect to adopt the terms of any other interconnection agreement for terms and provisions to succeed to the terms of this Amendment for the period on and after July 1, 2006, ***provided however***, McLeodUSA may adopt any agreement that has at least twelve (12) months remaining in its initial term, but McLeodUSA shall not adopt the terms of any agreement that is expired, terminated or which is continuing in effect on a month-to-month or evergreen basis. Subject to the provisions of Section 3 of this Amendment, the terms of this Amendment shall remain in force and effect until replaced by successor terms to which the Parties either voluntarily agree, enter into pursuant to an arbitration order, or enter into as a result of an adoption under Section 252(i) of the Act.

1.2 V/FX Traffic. The Parties agree that reciprocal compensation shall not apply to Virtual Foreign Exchange Traffic (i.e., V/FX Traffic). As used in this Amendment, "Virtual Foreign Exchange Traffic" or "V/FX Traffic" is defined as calls in which a McLeodUSA Customer (as defined herein) is assigned a telephone number with an NXX Code (as set forth in the LERG) associated with an exchange that is different than the exchange (as set forth in the LERG) associated with the actual physical location of such Customer's station. For the avoidance of any doubt, McLeodUSA shall pay Verizon's originating access charges for all V/FX Traffic originated by a Verizon Customer, and McLeodUSA shall pay Verizon's terminating access charges for all V/FX Traffic originated by a McLeodUSA Customer.

2. <u>Definitions</u>. Notwithstanding any other provision of the Agreement, the terms set forth in this Section 2 shall have the meanings set forth herein:

2.1 "Act" means the Communications Act of 1934 (47 U.S.C. §151 et seq.), as from time to time amended (including, but not limited to, by the Telecommunications Act of 1996).

2.2 "Compensable Base" means 306,328,819 ISP-bound traffic minutes of use.

2.3 "Customer" means a third party residence or business end-user subscriber to Telephone Exchange Services provided by either of the Parties.

2.4 "ISP-bound traffic" means any traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission.

2.5 "Telephone Exchange Service" shall have the meaning set forth in the Act.

3. Waiver of Rights. Notwithstanding any other provision of this Amendment, each Party irrevocably waives, with respect to the other Party, any and all rights that it may have or that it may obtain, from the beginning of time through and including June 30, 2006, under the Act (including, but not limited to, under Section 252(i) thereof), under any other applicable law, under the Interconnection Agreement, or otherwise (i) to adopt the terms of any other interconnection agreement, law, regulation, order, arbitration award or the like relating to the subject matter of this Amendment; or (ii) to seek through negotiation (including negotiation of a replacement for the Interconnection Agreement), arbitration, or otherwise terms or provisions that would modify, replace, alter or otherwise change the terms and provisions of this Amendment prior to July 1, 2006. Further, the Parties agree that, if they establish new or replacement interconnection agreements for the Interconnection Agreement, they shall implement the terms of this Amendment into such new or replacement interconnection agreements.

4. Scope of Amendment. Except to the extent set forth in Sections 1, 2 and 3 of this Amendment, the rates, charges and other provisions of the Interconnection Agreement shall remain in full force and effect after the Amendment Effective Date. Nothing in this Amendment shall be deemed to amend or extend the term of the Interconnection Agreement. This Amendment is not intended to modify the term of the Interconnection Agreement or to affect either Party's right to exercise any right of termination it may have under the Interconnection Agreement.

5. Conflict Between this Amendment and the Interconnection Agreement. This Amendment shall be deemed to revise the rates, charges and other provisions of the Interconnection Agreement to the extent necessary to give effect to the rates, charges and other provisions of this Amendment. In the event of a conflict between a rate, charge or other provision of this Amendment and a rate, charge or other provision of the Interconnection Agreement, this Amendment shall govern.

6. Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be duly executed and delivered by their duly authorized representatives as of the Amendment Effective Date.

Verizon North Inc., Contel of the South Inc., d/b/a Verizon North Systems	McLeodUSA Telecommunications Services, Inc.
Jeffrey A. Masoner Signature	James E. Thompson Signature
JEFFREY A. MASONER Printed Name	JAMES E. Thompson Printed Name
VP- INTERCONNECTION SVCS. Title	SVP General Counsel & Secretary Title
7/20/04 Date	June 30, 2004 Date