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Services, Inc.

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Complaint of McLEODUSA TELECOMMUNICATIONS SERVICES, INC., against QWEST CORPORATION for Enforcement of Commission-Approved Interconnection Agreement	Docket No. <u>06-2249-01</u> COMPLAINT OF McLEODUSA TELECOMMUNICATIONS SERVICES, INC.
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Pursuant to Utah Code Ann. §§ 63-46b-3, 54-8b-2.2(1)(e), 54-8b-16 & 54-8b-17, McLeodUSA Telecommunications Services, Inc. ("McLeodUSA") files this Complaint against Qwest Corporation ("Qwest") for Enforcement of its Commission-Approved Interconnection Agreement. In support of its Complaint, McLeodUSA alleges as follows:

PARTIES

1. Complainant. McLeodUSA is a telecommunications corporation holding a certificate of public convenience and necessity to provide to provide, and currently provides, local exchange and other telecommunications services in Utah.
2. Respondent. Qwest is an incumbent telecommunications corporation and an incumbent local exchange carrier ("ILEC") as defined in 47 U.S.C. section 251(h) and provides local exchange and other telecommunications services throughout the State of Utah.

JURISDICTION

3. Commission Jurisdiction. The Commission has jurisdiction over this Complaint and Respondent Qwest pursuant to 47 U.S.C. sections 251-52 and Utah Code Ann. Sections 54-8b-2.2(1)(e), 54-8b-16 & 54-8b-18.

BACKGROUND

4. Interconnection Agreement. Pursuant to Section 252 of the Telecommunications Act of 1996 (“Act”), McLeodUSA opted into an Interconnection Agreement (the “Interconnection Agreement or “Agreement”) that was approved by the Commission on June 15, 1999. McLeodUSA offers competitive local services in several markets in Utah using collocation space leased from Qwest pursuant to Section 251(c)(6) of the Telecommunications Act and the Interconnection Agreement, as amended, in combination with McLeodUSA’s network facilities. McLeodUSA has numerous active collocations out of which it offers telecommunications services in Utah.

5. McLeodUSA’s Services. McLeodUSA installs various equipment in its collocation sites that is used in the provision of telecommunications services to end users. Virtually every piece of collocated equipment requires power for operation. Most equipment is powered by direct current (“DC”), for which Qwest assess various power charges.¹ The amount charged by Qwest for providing DC power constitutes a significant percentage of the monthly operating cost for each collocation. Accordingly, excessive power charges have a significant impact on the profitability of offering facilities-based services in each market served from that wire center.

¹ Each collocation also has alternating current (AC) installed to power primarily equipment not used to provide services.

6. Power Charges. Under the original arrangements between the parties, Qwest billed McLeodUSA for DC power based on the amount of DC power originally ordered by McLeodUSA on the collocation application. For example, if McLeodUSA had originally ordered 100 amps for a collocation, Qwest billed DC collocation power charges at 100 amps each month. This charge was billed and paid regardless of whether the McLeodUSA equipment drew 20 or 90 amps in a particular month. The amount of collocation power originally ordered by McLeodUSA was made using engineering specifications designed to anticipate growth in power usage by the collocated equipment as McLeodUSA added lines being served by the equipment.

7. DC Power Amendment. Recognizing the excessive costs resulting from being billed for collocation power for ordered power, McLeodUSA requested an amendment to the Interconnection Agreements to reduce collocation power charges in 2004. Qwest provided McLeodUSA an amendment to the Interconnection Agreement entitled “DC Power Measuring Amendment to the Interconnection Agreement between Qwest Corporation and McLeodUSA Telecommunications Services, Inc.” (“DC Power Amendment”). The Parties executed the DC Power Amendment on August 18, 2004, and the Commission approved the amendment. A copy of the DC Power Amendment is attached as Exhibit A. In accordance with the DC Power Amendment, Qwest began to monitor power usage at the McLeodUSA collocations at which more than 60 amps had originally been ordered.

8. Charges for Power Plant Usage. While Qwest subsequently began billing one element of collocation power charges using the monitored power usage (in most instances), Qwest continued to bill for another power charge element – Power Plant Usage – at the “ordered” level of power.

9. Requirement to Charge for Actual Usage. Qwest's continued billing of collocation power charges based on "ordered" rather than actual power usage is inconsistent with the terms of the DC Power Amendment, which provides that Qwest will monitor power usage at the power board at least semi-annually. Once the actual use is known, Qwest must bill for power using the actual usage.

Based on these readings, if CLEC is utilizing less than the ordered amount of power, Qwest will reduce the monthly usage rate to CLEC's actual use. If CLEC is using more than the ordered amount, Qwest will increase the monthly usage rate to the CLEC's actual use.

The DC Power Amendment does not distinguish the charge for DC Power Plant from the amount of DC Power used.

10. Negotiations. After an audit revealed that Qwest was continuing to bill certain collocation power charges using "ordered" levels rather than based on actual usage, McLeodUSA initiated a billing dispute in September 2005 and began withholding disputed amounts equal to the amount of overcharges since the effective date of the DC Power Amendment. McLeodUSA ceased withholding disputed amounts in December 2005 while reserving its right to challenge all such billings. Qwest denied the billing dispute and insists the charges are valid. McLeodUSA has exhausted all available disputes remedies under the Interconnection Agreement.

COUNT I

BREACH OF CONTRACT

(QWEST OVERCHARGES FOR DC POWER)

12. Reallegations: McLeodUSA incorporates and realleges the allegations in paragraphs 1-11 as though fully set forth herein.

13. Governing Provision of the Interconnection Agreement: Under the DC Power Amendment, Qwest should charge McLeodUSA for the pro rata share actually used by McLeodUSA.

14. Qwest Overcharges: Because Qwest has continued to charge McLeodUSA the “ordered” amount for DC Power Plant, Qwest has overcharged McLeodUSA in the approximate amount of \$24,000 per month, and continues to overcharge McLeodUSA on a monthly basis. Accordingly, Qwest is in violation of DC Power Plant Amendment, and McLeodUSA is entitled to a refund of the overcharges.

COUNT II

STATUTORY VIOLATION

(DISCRIMINATION AGAINST MCLEODUSA)

15. Reallegations: McLeodUSA incorporates and realleges the allegations in paragraphs 1 through 14 as though fully set forth herein.

16. Applicable Law. Utah Code Ann. section 54-8b-3.3(a) provides: “in providing services that utilize the local exchange network”:

(A) make or give any undue or unreasonable preference or advantage to any person, corporation, or locality; or

(B) subject any person, corporation, or locality to any undue or unreasonable prejudice or disadvantage;

Section 54-8b-3.3(b) further provides:

[P]ublic telecommunications services provided by a telecommunications corporation with more than 30,000 access lines in the state shall be nondiscriminatory, cost-based, and subject to resale as determined by the commission.

17. Qwest’s Discriminatory Conduct. Qwest’s continued billing of DC Power Plant at ordered levels charges McLeodUSA for more than its pro rata share for the costs of

the DC Power Plant. As such, Qwest is discriminating against McLeodUSA in favor of itself and any other carrier that is using more amps of the DC Power Plant in a given month than McLeodUSA is using. Such discrimination violates Utah Code Ann. section 54-8b-3.3.

PRAYER FOR RELIEF

WHEREFORE, McLeodUSA prays for the following relief:

A. An order from the Commission requiring that Qwest comply with the Interconnection Agreement, specifically that Qwest comply with the terms of the DC Power Measuring Amendment and charge McLeodUSA only for the power actually used for all elements, including the DC Power Plant.

B. An order from the Commission ordering Qwest to refund the amount that Qwest overcharged McLeodUSA for the DC Power Plant from August 18, 2004, to the date of the Commission's order.

C. Such other or further relief as the Commission finds fair, just, and reasonable.

Dated this 7th day of March, 2006.

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By: _____
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