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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. 06-2249-01 MCLEODUSA'S MOTION TO COMPEL QWEST TO RESPOND TO DATA REQUESTS
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McLeodUSA Telecommunications Services, Inc. ("McLeodUSA") hereby moves the Commission for an order compelling Qwest Corporation ("Qwest") to respond to data requests seeking (1) the cost studies underlying the collocation rates at issue in this docket; and (2) the DC Power capacity in Qwest's central offices in Utah. As the Iowa Utilities Board previously concluded under the same circumstances, those requests seeks data that is reasonably calculated to lead to the discovery of admissible evidence, and Qwest should be required to produce that information.

ARGUMENT

On March 8, 2006, McLeodUSA filed its complaint against Qwest seeking to enforce the parties' interconnection agreement and alleging that Qwest is unlawfully discriminating against McLeodUSA. Specifically, McLeodUSA seeks to enforce Qwest's obligation under the DC Power Measuring Amendment to the interconnection agreement to charge for the DC

power plant used to provide electricity to McLeodUSA's collocated equipment in Qwest central offices according to the amount of power that McLeodUSA actually uses.

McLeodUSA also has alleged that Qwest's insistence on charging for DC power plant based on the amount of DC power capacity that McLeodUSA included in its original collocation application is unlawfully discriminatory because it results in McLeodUSA paying Qwest more for DC power than Qwest charges itself.

On March 22, 2006, McLeodUSA propounded its first set of data requests on Qwest. Request No. 3 in that set requests "copies of Qwest cost studies, and supporting documentation, supporting all collocation rates found at Section 8 of Exhibit A to the Qwest and McLeodUSA Utah interconnection agreement." Qwest objected and refused to provide the cost studies, claiming the request "is not reasonably calculated to lead to the discovery of admissible evidence concerning the interpretation of the DC Power Measuring Amendment at issue in this case." Request No. 8 requests, for each Qwest central office in Utah where McLeodUSA has collocation space, the total DC Power capacity, actual measured load, the most recently completed augmentation to the power plant, and any planned power plant augmentation. Again, Qwest objected to the request primarily on the grounds that the information requested "is not reasonably calculated to lead to the discovery of relevant or admissible evidence concerning the interpretation of the DC Power Measuring Amendment at issue in this case." A copy of the requests and Qwest's responses is attached as Exhibit A (without the limited confidential Attachment "A" to Request No. 8).

Qwest has improperly refused to provide any information in response to McLeodUSA's data requests. McLeodUSA has alleged that Qwest is violating the DC Power Measuring Amendment by charging for DC power plant based on the amount of DC

power that McLeodUSA originally ordered on its collocation application, rather than on the amount that McLeodUSA actually uses. Complaint §§ 6-9. Qwest has responded, in part, that such an interpretation of the Amendment is unreasonable because the charge for DC power plant is calculated to recover fixed equipment costs that are not usage sensitive:

[T]he underlying purpose of the charge was to recover the fixed costs of equipment required to provide the amount of DC power capacity requested by McLeod in its collocation application to Qwest. It would not have been appropriate to prorate the recovery of these fixed costs based on actual usage because they do not vary with usage.

Qwest Answer § 8.

Qwest thus has squarely raised the issue of DC power costs, including the nature of those costs and whether they vary with usage. This is precisely the type of information included in Qwest's collocation cost studies that McLeodUSA seeks in response to Request No. 3. In addition, those cost studies will bear on the issue of whether Qwest's interpretation of the DC Power Measurement Amendment is unreasonable and discriminatory. Specifically, the cost studies will demonstrate whether Qwest has modeled power plant costs based on the capacity of the total equipment used by various power users in the central office (including Qwest) – as McLeodUSA alleges is the case and consistent with its interpretation of the Amendment – or is based on the size of collocating carriers' collocation orders, regardless of the amount of power actually used, as Qwest contends. Such evidence thus will bear directly on the issues presented to the Commission for resolution.

Request No. 8, which seeks data on Qwest's DC power plant capacity, is also relevant to the issues in this proceeding. Qwest has taken the position that it often must invest in additional power plant capacity based upon the size of a McLeodUSA order because fulfilling the power capacity consistent with that order would somehow exhaust Qwest's

existing plant and require additional investment. Request No. 8 requests the information necessary to test this contention, *i.e.*, to determine the likelihood that a McLeodUSA order would exhaust the existing power plant in any Utah central office, given current power requirements from Qwest and other collocators. This request thus is reasonably calculated to lead to the discovery of relevant and admissible evidence, and Qwest should be required to provide it.¹

The Iowa Utilities Board recently reached the same conclusion. McLeodUSA propounded virtually identical data requests on Qwest in Iowa in the context of the same complaint filed with the Board, and Qwest objected and refused to respond on the same grounds. The Board, without awaiting a response from Qwest, required Qwest to provide the requested information:

Normally, the Board would wait for Qwest's response before ruling. However, the limited time available for this docket and the nature of the objections raised make it both necessary and possible for the Board to rule immediately. The Board finds that discovery rules should be liberally construed and discovery should be permitted when the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Each of the requests appears to fit within those parameters and the Board will grant the motion to compel requested by McLeodUSA and direct Qwest to immediately provide responses

In re McLeodUSA v. Qwest, Iowa Utils. Bd Docket No. FCU-06-20, Order Granting Motion to Compel Discovery at 3 (March 8, 2006) (attached as Exhibit B). The Commission should reach the same conclusion.

¹ Qwest also objects on the grounds that the requested data is "extremely confidential trade secret information," but the Commission has already issued a protective order limiting disclosure of that data. If Qwest believes that additional protections are warranted, Qwest should request an amendment to the protective order, not simply refuse to produce the information.

PRAYER FOR RELIEF

WHEREFORE, McLeodUSA prays for the following relief:

- A. An order from the Commission compelling Qwest to provide the information that McLeodUSA has requested in Data Request No. 3; and
- B. Such other or further relief as the Commission finds fair, just, reasonable, and sufficient.

Dated this 12th day of April, 2006.

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