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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 OPPOSITION TO QWEST'S MOTION TO ADMIT LATE FILED EXHIBITS

McLeodUSA Telecommunications Services, Inc. ("McLeodUSA") provides the following opposition to Motion of Qwest Corporation ("Qwest") to admit three documents as late filed exhibits in this proceeding. The evidentiary record has long been closed, and Qwest has provided no compelling reason for reopening that record to admit additional evidence, particular evidence related to an issue of no relevance and of which Qwest was aware prior to the hearings in this case. The Commission, therefore, should deny Qwest's Motion.

ARGUMENT

Qwest has provided the Commission with two exhibits and hearing transcript excerpts from a proceeding in Washington and asks that they be admitted as "late filed" exhibits in this docket. Qwest is actually requesting that the Commission reopen the evidentiary record

in this docket to include information that Qwest used in a later proceeding in another state. Qwest fails to justify that request.

With the exception of an exhibit requested by Judge Goodwill during the hearings, the evidentiary record was closed on May 25, 2006, and Qwest has not alleged any compelling circumstances that justify reopening that record. Qwest contends, "The proposed exhibits were not reasonably available to Qwest at the time of the Utah hearing." Qwest Motion at 2. By its own admission, however, Qwest was aware that McLeodUSA permitted collocation in its offices on approximately May 10, 2006, two weeks before the hearings began in this proceeding. Yet, Qwest did not raise that issue in the testimony it filed in this docket on May 12, 2006, nor did Qwest seek to supplement its testimony to do so. Qwest did not propound any discovery to McLeodUSA concerning that issue in Utah. Qwest did not ask questions of any McLeodUSA witness about collocation in McLeodUSA offices or otherwise raise that issue during the evidentiary hearings. In short, Qwest did nothing to inform the Commission or McLeodUSA that Qwest believed that this issue warranted additional investigation and possible supplementation of the record.

McLeodUSA and Qwest have been litigating Qwest's DC power charges in multiple states, and the parties have gathered additional data in each subsequent state proceeding. Qwest simply did not think to ask McLeodUSA about collocation in its offices until the evidentiary hearings in Iowa, and did not follow up on that line of inquiry until the proceedings in Washington. Qwest now wants to correct that oversight by incorporating portions of the Washington evidentiary record retroactively into this proceeding. Qwest, however, is not entitled to reopen the evidentiary record in this state just because it has obtained additional information in a later proceeding in another state. Indeed, if that were the

standard, nothing would prevent Qwest from effectively having the Commission hold this record open until the last proceeding in every other state has been concluded, just in case some new tidbit of information turns up. The Commission should reject that request.

Qwest also implicitly contends that the proposed exhibits are sufficiently probative that they should be admitted even though the record has been closed for over two months. Such a contention is also unsustainable. How McLeodUSA charges collocators for DC power is not relevant to McLeodUSA's discrimination claim against Qwest. McLeodUSA has alleged that Qwest treats itself more favorably than it treats McLeodUSA and other collocators in Qwest's central offices. How *McLeodUSA* treats collocators in its offices is in no way probative of how *Qwest* treats collocators in its wire centers.

Qwest, moreover, mischaracterizes the documents it is offering. Those documents clearly indicate that McLeodUSA asks collocators for the amount of power they anticipate needing (and for which they will be billed) and then McLeodUSA calculates the size of the fuses and feeder cables needed to supply that power. As explained in Washington Ex. 83, which Qwest proposes to admit as Hearing Exhibit 25 in this proceeding, "it is the policy of McLeodUSA to bill collocation customers for power on a usage basis, which usage is self-reported by the collocation customer. . . . For example, a customer that orders 20A of usage will be billed for 20A of usage but the breaker is typically sized for 30A and the feed size will typically support up to 60A." Such a procedure stands in sharp contrast to Qwest's procedure, under which Qwest never asks the CLEC how much power it will need but simply bills the CLEC for the much greater capacity of the power cables the CLEC orders. Or to use McLeodUSA's example, while McLeodUSA would bill the collocator for 20 amps of power, Qwest would bill the collocator for 60 amps. The documents Qwest proposes to reopen the

record to admit, therefore, fail to support even Qwest's purported use of those documents, in addition to being irrelevant.

Finally, if the record were reopened to permit these exhibits, McLeodUSA would request the right to file supplemental testimony to further explain its billing for collocation power to ensure that the record is complete, which would delay the conclusion of this proceeding. And as previously noted, since dockets remain open in other states, reopening the record for this evidence means that either party may find additional information later on that would require another reopening of the record, creating even further delay.

CONCLUSION

Qwest has provided no compelling reason for the Commission to reopen the record in this docket to admit exhibits and transcript excerpts from the later Washington proceeding. The Commission, therefore, should deny Qwest's Motion.

Dated this 31st day of July, 2006.

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