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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

**QWEST CORPORATION'S
ANSWER AND
COUNTERCLAIM**

Qwest Corporation (“Qwest”) hereby answers the Complaint for Enforcement of Commission-Approved Interconnection Agreement (“Petition”) filed by McLeodUSA Telecommunication Services, Inc. (“McLeod”), and files a Counterclaim for amounts McLeod has improperly withheld from Qwest pursuant to the disputes discussed in McLeod’s Complaint. Qwest generally denies all of the allegations of McLeod’s Complaint, except as specifically admitted herein. The following numbered responses by Qwest correspond to the numbering in the Complaint.

1. Qwest admits the allegations contained in paragraph one.
2. Qwests admits the allegations contained in paragraph two.
3. Qwests admits that the Commission has jurisdiction over this matter. Except as so admitted, Qwest states that the allegations contained in paragraph three constitute legal

conclusions and, therefore, contain no factual allegations for which Qwest must admit or deny.

4. Qwest admits that Qwest and McLeod are parties to an interconnection agreement approved by the Commission in Utah. Qwest is without sufficient knowledge regarding McLeod's service offerings and, therefore, denies the remainder of the allegations in paragraph four.

5. Qwest admits that McLeod installs various pieces of equipment in its collocation spaces, and admits that most equipment requires power for operation. Qwest denies the remainder of paragraph five because Qwest does not know the monthly operating costs for each McLeod collocation, and Qwest's power charges are not excessive.

6. Qwest admits the allegations contained in paragraph six.

7. Qwest admits that McLeod and Qwest negotiated for and entered into the DC Power Measuring Amendment attached as Exhibit A to McLeod's Complaint. The charges for these services are established in Exhibit A to both McLeod's Interconnection Agreement ("ICA") with Qwest, and Qwest's Statement of Generally Available Terms ("SGAT"), sections 8.1.4.1.1.1 (titled "Power Plant - Less than 60 Amps"), 8.1.4.1.1.2 (titled "Power Plant - Equal to or Greater Than 60 Amps"), 8.1.4.2.1 (titled "Power Usage - 60 Amps or Less, per Amp"), and 8.1.4.2.2 (titled "Power Usage - More Than 60 Amps, per Amp). The relevant page of the Exhibit A is attached to this Answer as Attachment 1. The prices for these elements were established in a contested cost docket proceeding, and approved by the Commission in Docket No. 00-049-106. The evidence in that proceeding established the Power Plant charges as rates to cover the fixed costs of equipment required to provide the amount of DC power capacity requested by McLeod in its collocation application to Qwest. Variable costs such as the cost of

electricity to power the equipment are covered by the two power usage charges. The DC Power Measuring Amendment affected only one of these charges: the Power Usage charge for orders greater than sixty amps, section 8.1.4.2.2 of the SGAT. Qwest denies the remainder of paragraph seven.

8. Qwest admits the allegations contained in paragraph eight and states: the allegations in this paragraph correctly describe what McLeod's ICA and the DC Power Measuring Amendment require. Section 2.2.1 of the DC Power Measuring Amendment changed the Power *Usage* charge for "all orders of greater than sixty (60) amps" to reflect usage at the time of measurement, but did not affect the Power Plant charges or the Power Usage charges associated with orders of less than sixty amps. The Power Plant charge was not affected by the amendment because, as referenced in paragraph eight of the Complaint, the 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 denies any allegation or implication that its billing for power charges ever varied from the requirements of the DC Power Measuring Amendment after that agreement was approved by the Commission.

9. Qwest states that the allegations in paragraph nine constitute conclusions of law and contractual interpretation and, as such, contain no factual allegations for which Qwest must admit or deny. Subject to the foregoing, Qwest denies the allegations contained in paragraph nine, and states: As noted above, there are four different "power charges" in the Exhibit A: (1) Power Usage charges for orders greater than sixty amps, (2) Power Usage charges for orders less than sixty amps, (3) Power Plant charges for orders less than 60 amps; and (4) Power Plant

charges for orders equal to or greater than 60 amps. The DC Power Measuring Amendment affected only one of these charges: the Power Usage charge for orders greater than sixty amps.

10. Qwest admits the allegations contained in paragraph 10.

11. There is no paragraph numbered 11 in the Complaint.

12. Paragraph 12 is an incorporation of McLeod's preceding allegations and requires no response from Qwest. To the extent paragraph 12 requires a response, Qwest incorporates its responses to paragraphs 1-10 as though fully set forth herein.

13. Qwest states that the allegations in paragraph 13 constitute conclusions of law and contractual interpretation and, as such, contain no factual allegations for which Qwest must admit or deny. Subject to the foregoing, Qwest denies the allegations contained in paragraph 13.

14. Qwest states that the allegations in paragraph 14 constitute conclusions of law and contractual interpretation and, as such, contain no factual allegations for which Qwest must admit or deny. Subject to the foregoing, Qwest denies the allegations contained in paragraph 14.

15. Paragraph 15 is an incorporation of McLeod's preceding allegations and requires no response from Qwest. To the extent paragraph 15 requires a response, Qwest incorporates its responses to paragraphs 1-14 as though fully set forth herein.

16. Qwest states that the allegations in paragraph 16 constitute conclusions of law and, as such, contain no factual allegations for which Qwest must admit or deny.

17. Qwest denies the allegations contained in paragraph 17.

QWEST'S AFFIRMATIVE DEFENSES

1. McLeod's Complaint is barred in whole or in part by its failure to state a claim upon which relief can be granted.

2. McLeod's Complaint is barred in whole or in part by the doctrines of waiver, release, and estoppel.

COUNTERCLAIM

1. McLeod admitted in paragraph 10 of its Complaint that it withheld disputed amounts Qwest had billed it pursuant to the DC Power Measuring Amendment.

2. Qwest's records indicate that McLeod has withheld at least \$139,917.12 in connection with this dispute.

3. As set forth in Qwest's responses to paragraphs seven and eight of McLeod's Complaint, Qwest properly billed these amounts pursuant to the DC Power Measuring Amendment.

4. McLeod has improperly failed to pay these withheld amounts in breach of the DC Power Measuring Amendment, which amounts are past due and owing.

WHEREFORE, Qwest requests that the Commission enter an order:

- (1) Denying McLeod's Complaint in its entirety; and
- (2) Directing McLeod to immediately pay all amounts due under Qwest's invoices for the Power Plant element, plus interest and late payment fees pursuant to the ICA between the parties; and

(3) Granting Qwest such other relief as the Commission deems just and proper.

RESPECTFULLY SUBMITTED this _____ day of March, 2006.

Melissa K. Thompson
QWEST SERVICES CORPORATION

Attorney for Qwest Corporation

CERTIFICATE OF SERVICE

I certify that the original and five copies of **QWEST CORPORATION'S ANSWER AND COUNTERCLAIM** were sent by overnight delivery on March _____, 2006 to:

Julie P. Orchard
Commission Administrator
Utah Public Service Commission
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, UT 84111

and a true and correct copy was sent by U.S. mail, postage prepaid, on March _____, 2006, to:

Mark P. Trincherro
DAVIS WRIGHT TERMAINE LLP
1300 SW Fifth Ave., Suite 2300
Portland, OR 97201

and by email to: marktrincherro@dwt.com
