

Melissa Thompson
Timothy J. Goodwin
Qwest Services Corporation
1801 California, Suite 1000
Denver, CO 80202
Telephone: (303) 383-6612
Fax: (303) 383-8512

ATTORNEYS FOR QWEST CORPORATION

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'S MOTION TO STRIKE PORTIONS OF THE SURREBUTTAL TESTIMONIES OF MR. MICHAEL STARKEY AND MR. SIDNEY MORRISON
--	--

Qwest Corporation ("Qwest") hereby moves to strike those portions of Mr. Starkey's Surrebuttal Testimony that address cost issues, specifically lines 270-435 of the testimony filed May 19, 2006. In addition, those portions of Mr. Morrison's testimony that reference cost testimony should also be stricken. Those references are at lines 581-621 of Mr. Morrison's rebuttal.

There are at least three reasons why this testimony should be stricken – the cost study testimony is irrelevant; it is an impermissible collateral attack on the Commission - approved Power Plant rates; and, even if it were otherwise permissible, it is late filed.

Because of the short time between the receipt of this testimony and the start of the hearing, Qwest will briefly outline those reasons herein, and is prepared to argue the motion orally prior to the start of the hearing.

First, and most importantly, testimony about the cost study and Qwest's Power Plant rates is irrelevant to determining the central issue in this case, which is the proper interpretation of the Power Measuring Amendment between the parties. The issue of relevance has already been addressed in connection with McLeod's motion to compel discovery. In the May 5, 2006 decision on that issue, the Administrative Law Judge denied discovery on the cost studies and ruled that this proceeding "is not a cost docket". The ALJ further noted, correctly, that McLeod's Complaint simply seeks Commission decision regarding the meaning of the parties' DC Power Amendment, and concluded that the information sought in Data Request No. 3 (the collocation cost studies) was not relevant to this dispute.

In complete disregard of this ruling, McLeod has nevertheless filed nine pages of testimony addressing the cost study. Because this information is not relevant to the dispute in this Complaint, as set forth in Qwest's opposition to McLeod's motion to compel discovery, it should be stricken.

Second, Mr. Starkey's cost testimony is nothing more than a thinly veiled, or perhaps not veiled at all, attack on the actual Commission – approved Power Plant rates. Though McLeod will deny that it is attacking the rate, this denial rings hollow in light of the actual testimony and the background of this proceeding.

McLeod's dispute ostensibly was triggered by the parties' differing interpretations of the Power Measuring Amendment. However, all of Mr. Starkey's discussion with

regard to the cost support for the Power Plant rates is based on the cost study itself, and that study dates from the cost docket in 2001, Docket No. 00-049-106. If in fact the costs were developed as Mr. Starkey claims (though Qwest strongly disagrees with Mr. Starkey's testimony, and believes that Mr. Starkey entirely misinterprets the study), then his criticisms would have been equally applicable to the rates as they existed before the amendment.

As such, it is readily apparent that Mr. Starkey's cost testimony does not shed any light on the language of the Amendment, or the parties' intent in entering into it. Rather, though allegations that Qwest is "overrecovering" its costs by charging the Commission-approved Power Plant rates, McLeod is simply challenging the rate already established in a contested cost proceeding. Indeed, Qwest's cost study was the subject of a long and detailed examination in that cost docket, and the Commission examined and modified the Power Plant rates prior to approval, specifically allowing Qwest to charge the rates on a "per amp ordered" basis. This complaint proceeding is not the proper venue in which to modify those rates.

Finally, this cost testimony is late filed. Even if cost testimony of this nature were permissible or relevant, McLeod's testimony is late filed. This is a complaint proceeding initiated by McLeod, and McLeod has the burden of presenting its entire direct case in its direct testimony. This cost testimony, if it was to be filed at all, should have been filed in McLeod's direct case, as it contains some of McLeod's primary arguments. By filing this testimony on rebuttal, McLeod has deprived Qwest of the opportunity to respond to it. And, as noted above, Qwest believes that Mr. Starkey has misinterpreted and misrepresented the study in some significant ways. This misinterpretation would be

best explained by a Qwest witness, but at this point in the proceeding Qwest has no opportunity to present such a witness. For this reason, even if the cost study testimony were relevant to the issues to be decided in this case, which it is not, it should not be allowed.

DATED this 23RD day of May, 2006.

Respectfully submitted,

Melissa Thompson
Timothy J. Goodwin
QWEST SERVICES CORPORATION
1801 California St., 10th Floor
Denver, CO 80202
Telephone: (303) 383-6612
Fax: (303) 383-8512
e-mail: tim.goodwin@qwest.com

ATTORNEYS FOR QWEST CORPORATION

CERTIFICATE OF SERVICE

I certify that the original and five copies of the foregoing were delivered on May 23, 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 UPS overnight mail on May 23, 2006 to:

Mark P. Trincherro
Davis Wright Tremaine LLP
1300 SW Fifth Ave., Suite 2300
Portland, OR 97201

and

Gregory J. Kopta
Davis Wright Tremaine LLP
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

and by email to: marktrincherro@dwt.com and gregkopta@dwt.com