

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Complaint of)
McLeodUSA Telecommunications) DOCKET NO. 06-2249-01
Services, Inc., against Qwest Corporation)
for Enforcement of Commission-) ORDER DENYING MOTION TO COMPEL
Approved Interconnection Agreement) DISCOVERY
)

ISSUED: May 5, 2006

By The Commission:

On March 8, 2006, McLeodUSA Telecommunications Services, Inc. (“McLeod”) filed a Complaint against Qwest Corporation (“Qwest”) for enforcement of its Commission-approved interconnection agreement (“Agreement”). Specifically, McLeod claims Qwest has improperly charged McLeod for Power Plant Usage (“DC Power Plant”) in violation of the parties’ DC Power Measuring Amendment (“DC Power Amendment”) to the Agreement and seeks a Commission order requiring Qwest to charge McLeod only for the power it actually uses. McLeod also seeks a refund of amounts Qwest has charged for the DC Power Plant element from August 18, 2004, to the date of the Commission’s order.

On March 20, 2006, Qwest filed its Answer and Counterclaim (“Answer”) denying it has billed McLeod in violation of the terms of the DC Power Amendment and seeking Commission order directing McLeod to immediately pay all amounts due Qwest under invoices for the DC Power Plant element, plus interest and late payment fees pursuant to the Agreement.

On March 21, 2006, the Commission issued a Protective Order in this docket pursuant to request of the parties.

On April 13, 2006, McLeod filed a Motion to Compel Qwest to Respond to Data Requests (“Motion”) seeking Commission order compelling Qwest to respond to data request numbers 3 and 8 seeking, respectively, (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. McLeod argues Qwest raised the issue of DC power costs, including the nature of those costs and whether they vary with usage, in its Answer by stating that the underlying purpose of the DC Power Plant charge was to recover fixed equipment costs required to provide the capacity requested by McLeod and that it would be inappropriate to prorate recovery of these costs based on actual usage because these costs do not vary with usage. With respect to Data Request No. 8, McLeod argues the requested information is necessary to analyze Qwest’s position that it must often invest in additional power plant capacity based on the size of a McLeod order because fulfilling that order would otherwise exhaust existing plant.

In its Response to Motion to Compel (“Response”) filed on April 24, 2006, Qwest argues it should not be required to respond to either data request as the information sought is not relevant to this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. Qwest notes McLeod’s Complaint is about the proper interpretation of the parties’ DC Power Amendment, specifically, whether its terms are limited to the power usage rate element or also extend to the DC Power Plant rate element.

Qwest argues the cost study information sought by Data Request No. 3 is irrelevant to this issue and represents an attempt by McLeod to launch a collateral attack on the DC Power Plant rate element. Qwest notes this rate element was established by the Commission

and was not modified by the DC Power Amendment. Qwest argues its Answer did not inject the cost issue into this proceeding; it merely sought to provide a context for its rate structure. Qwest also notes that in the cost docket establishing the DC Power Plant rate the Commission ultimately rejected Qwest's cost studies, models, and advocacy for the DC Power elements, and accepted the Division of Public Utilities' proposed rates. Therefore, Qwest argues, it is difficult to imagine how Qwest's cost study could be relevant to the current dispute. Finally, Qwest points out its cost studies are all a matter of record in Docket No. 00-049-106 and are available to McLeod via review of that docket's record.

With respect to Data Request No. 8, Qwest states that nowhere in this docket has it taken the position, as claimed by McLeod, that levying the DC Power Plant charge is justified by Qwest's need to invest in additional capacity due to the size of McLeod's order. Qwest notes that, because costs and prices for collocation and network elements are established under a total element long run incremental cost method not based on Qwest's embedded costs, whether Qwest invests or augments relative to a particular McLeod order has no relevance to the rate elements associated with the DC Power Amendment.

This Commission routinely construes the discovery process to permit liberal disclosure of relevant information. However, this is not a cost docket. McLeod's Complaint simply seeks Commission decision regarding the meaning of the parties' DC Power Amendment, whether that amendment permits Qwest to levy a DC Power Plant charge. Having reviewed the challenged data requests and considered the parties' arguments, the Administrative Law Judge

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concludes the information sought by McLeod Data Request Nos. 3 and 8 is not relevant to this narrow issue and is not reasonably calculated to lead to the discovery of admissible evidence.

Therefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters this ORDER denying McLeod's Motion to Compel.

DATED at Salt Lake City, Utah, this 5th day of May, 2006.

/s/ Steven F. Goodwill
Administrative Law Judge

Attest:

/s/ Julie Orchard
Commission Secretary
G#48871