

- 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 GRANTING MOTION TO ADMIT
Approved Interconnection Agreement) LATE-FILED EXHIBITS
)

ISSUED: August 2, 2006

By The Commission:

On July 26, 2006, Qwest Corporation (“Qwest”) filed a Motion to Admit Late Filed Exhibits (“Motion”) moving the admission of the responses of McLeodUSA Telecommunications Services, Inc. (“McLeod”) to Qwest Data Requests 16 and 19 in a parallel Washington proceeding and nine pages of transcript from the Washington evidentiary hearing as late-filed exhibits, numbered Hearing Exhibit 25, 26, and 27, respectively.

On August 1, 2006, McLeod filed its Opposition to Qwest’s Motion (“Opposition”) arguing the evidentiary record has long been closed in this proceeding and Qwest has provided no compelling reason for reopening that record to admit additional evidence, particularly where said evidence is not relevant to the proceeding and where Qwest was aware of said evidence prior to the hearing in this docket.

In support of its Motion, Qwest argues the proposed exhibits should be admitted because they are relevant to McLeod’s claim of discrimination. According to Qwest, these documents tend to show that McLeod’s practices regarding collocation pricing are similar to

Qwest's in that McLeod charges for power usage and power plant based on the amount of amps reflected in their own collocators' power feed orders. Qwest also claims the proposed exhibits were not reasonably available to Qwest at the time of the hearing in Utah. Although Qwest learned during hearings in Iowa on May 10-12, 2006, that McLeod allows collocation in its own offices, Qwest did not believe that there was sufficient time to propound discovery on that issue prior to the Utah hearings scheduled for May 24-25, 2006. Qwest thereafter followed up with data requests in a parallel proceeding in Washington, receiving McLeod's timely responses to data requests 16 and 19 on May 31, 2006, and June 20, 2006, respectively. Thus, Qwest had this information and was able to question McLeod's witness about it during the Washington hearing on June 29-30, 2006, but not during the prior hearing in Utah. Qwest argues admission of these documents will not delay this proceeding and will not prejudice McLeod, noting the parties have previously agreed that discovery in one state proceeding may be used in the proceedings of other states. Qwest states the two data request responses were admitted in Washington without objection, the McLeod witness has been cross-examined concerning the responses, and McLeod has had an opportunity to address and respond to these requests and responses on the record. Qwest notes its offered exhibit 27 includes three pages of Washington hearing transcript reflecting McLeod's redirect examination of its witness concerning the data request responses.

In opposition, McLeod argues Qwest seeks to reopen the evidentiary record but fails to offer any compelling justification for doing so. McLeod notes Qwest was aware as early as May 10, 2006, that McLeod permits collocation in its office, but that Qwest failed to raise the issue in testimony filed in this docket on May 12, 2006, did not propound any Utah discovery

concerning this issue, and did not ask any McLeod witnesses at hearing in Utah about collocation in McLeod offices or otherwise raise the issue in Utah. Qwest now wants to correct this oversight by incorporating portions of the Washington evidentiary record into this proceeding. McLeod argues if Qwest were permitted to reopen the record in Utah just because it has obtained additional information in a later proceeding in another state, then nothing would prevent Qwest from effectively having the Commission hold this record open until the last proceeding in every other state has concluded. McLeod also challenges the relevance of the offered documents, claiming that how McLeod treats collocators in its offices is in no way probative of how Qwest treats collocators in its wire centers. Furthermore, McLeod claims Qwest mischaracterizes the offered documents as providing evidence that McLeod charges its collocation customers in a manner similar to Qwest. Finally, McLeod notes that if the record is reopened to permit the offered exhibits, McLeod will request 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 could leave open the possibility the parties would seek admission of additional information from proceedings in other states as those proceedings continue.

Having reviewed the offered exhibits and considered the parties' arguments, we find and conclude the exhibits are relevant to the issue of discriminatory treatment and that their admission will not prejudice McLeod. McLeod's responses to the Qwest data requests were provided in discovery and both parties had ample opportunity to inquire into their meaning and import at hearing, as evidenced by the offered transcript extract. We will therefore grant the

Motion and admit these documents into evidence as Hearing Exhibits 25, 26 and 27, respectively. McLeod has indicated that if Qwest's Motion is granted the current procedural schedule may need to be changed to permit the parties adequate opportunity to address the newly admitted exhibits in their reply briefs due August 7, 2006. While we do not extend the reply brief filing deadline herein, we understand McLeod's concerns and remain open, if requested, to adjusting the procedural schedule to ensure the parties a reasonable opportunity to address all relevant issues.

Therefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters this ORDER granting Qwest's Motion and admitting into evidence the offered McLeod response to Qwest Data Request 16, McLeod response to Qwest Data Request 19, and transcript extract from the parties' parallel Washington proceeding as Hearing Exhibits 25, 26, and 27, respectively.

DATED at Salt Lake City, Utah, this 2nd day of August, 2006.

/s/ Steven F. Goodwill
Administrative Law Judge

Attest:

/s/ Julie Orchard
Commission Secretary
G#49959