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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

QWEST CORPORATION,
Complainant,

v.

MCLEODUSA TELECOMMUNICATIONS
SERVICES, INC., d/b/a PAETEC BUSINESS
SERVICES
Respondent.

Docket No. 09-049-__

COMPLAINT OF QWEST
CORPORATION

Pursuant to Utah Code Ann. 54-7-9, 54-7-11 and 54-7-20, Qwest Corporation (“Qwest”) brings the following Complaint against McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services (“McLeod”).

I. INTRODUCTION

1. In support of its Complaint, Qwest alleges as follows: The names, addresses, and telephone numbers of the persons to whom communications should be addressed are:

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2. Pursuant to Administrative Code R 746-100-3, Qwest states that the name and address of the respondent is as follows: McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services, One Martha's Way, Hiawatha, Iowa 52233.

II. PARTIES

3. Qwest is a "telecommunications corporation" as defined in Utah Code Ann. § 54-8b-2 and a "public utility" as defined in Utah Code Ann. § 54-2-1, and is an "incumbent telephone corporation" as defined in Utah Code Ann. § 54-8b-2 and an "incumbent local exchange company" ("ILEC"), as defined in 47 U.S.C. § 251(h). Qwest provides local exchange and other telecommunications services in the State of Utah.

4. On information and belief, McLeod is an Iowa corporation and is registered with and classified by the Commission as a competitive local exchange company ("CLEC") and is also a "telecommunications corporation" as defined in Utah Code Ann. § 54-8b-2 and a "public utility" as defined in Utah Code Ann. § 54-2-1. On information and belief, McLeod is authorized to provide switched and non-switched local exchange and long distance services in Utah.

III. JURISDICTION

5. The Commission has jurisdiction over this Complaint and Respondent pursuant to Utah Code Ann. §§ 54-3-1, 54-4-1, 54-7-9, 54-7-11 and 54-7-20, and other statutes cited herein.

IV. SUMMARY OF COMPLAINT

6. McLeod charges Qwest a Wholesale Service Order Charge when an end-user customer switches its local telecommunications service from McLeod to Qwest. Qwest does not charge any fee in like circumstances. As far as Qwest is aware, McLeod does not assess this charge on any other

carrier who wins a customer away from McLeod. Thus, the Wholesale Service Order Charge operates to penalize Qwest for winning a customer from McLeod, but the same penalty is not assessed on any other carrier. McLeod's Wholesale Service Order Charge is unjust, unreasonable, discriminatory, and anti-competitive. The Wholesale Service Order Charge is not cost-based, and there is no legal, factual, or policy justification to impose this charge.

7. Qwest and McLeod had previously been engaged in settlement negotiations to resolve a number of business disputes between them. On or about October 10, 2008, Qwest and McLeod entered into a Settlement Agreement whereby they resolved a number of those disputes.

8. In order to reach settlement on certain disputed issues, Qwest and McLeod came to an agreement with regard to certain charges that McLeod had been assessing on Qwest, referred to herein as the Wholesale Service Order Charge(s). The Wholesale Service Order Charges are contained in McLeod's tariff, or price list, or catalog in Utah, Arizona, Iowa, New Mexico, and Washington, and possibly other states as well. The price list provisions in Utah addressing the Wholesale Service Order Charges are contained in Section 7 of McLeod's price list, effective April 12, 2004. The provisions of Section 7 are attached to this complaint at Exhibit A.

9. The parties' agreement with regard to the Wholesale Service Order Charges was memorialized in a "Wholesale Service Order Charge Amendment" ("Amendment") to the parties' interconnection agreement ("ICA"). The Amendment is attached to this complaint as Exhibit B. The Amendment was filed with this Commission and deemed approved on May 4, 2009.

10. The Amendment, in Attachment 1, paragraph 2, specifically preserves Qwest's rights to challenge the Wholesale Service Order Charge. If the Commission determines that the Wholesale

Service Order Charge is unjust, unreasonable, unlawful, or otherwise unenforceable, the Amendment is deemed terminated on the effective date of the Commission's final order.

V. FACTS

11. McLeod imposes the Wholesale Service Order Charge on Qwest when Qwest wins a customer from McLeod. This is the case regardless of whether Qwest solicited the customer or the customer decided to make the change on his or her own initiative.

12. Qwest does not charge McLeod to process a change order when a Qwest customer leaves Qwest to take service from McLeod. Rather, pursuant to its approved ICA, McLeod pays Qwest various charges for access to unbundled elements, if McLeod chooses to serve its new customer via unbundled elements leased from Qwest.

13. McLeod pays Qwest the Commission-approved disconnect charge when a customer disconnects from McLeod and McLeod tells Qwest to disconnect the unbundled loop. This disconnect charge is assessed regardless of whether the McLeod customer then takes service from Qwest, from another provider, or if the customer simply disconnects altogether.

14. Similarly, Qwest imposes an installation or new connection charge on McLeod, again in accordance with Commission-approved rates, when McLeod orders new service from Qwest. This is true regardless of whether McLeod has won the customer from Qwest, from another CLEC, or if the customer has never received service before and is a new connection. In both cases, Qwest performs a service for McLeod – disconnection or installation – and thus may charge McLeod for those services.

15. Qwest does not purchase or lease unbundled network elements from McLeod in Utah, and does not order retail or wholesale services from McLeod. Accordingly, McLeod incurs no costs that McLeod may properly impose on Qwest when a customer switches providers away from McLeod.

16. McLeod's Wholesale Service Order Charge does not relate to any "wholesale service order" that Qwest places with McLeod,¹ does not apply to other carriers in the state, and works as a disincentive for Qwest to compete for customers who might be served by McLeod.

17. Qwest and McLeod are parties to an ICA, and to the Amendment attached hereto as Exhibit B. As part of the resolution of litigation involving several issues, the parties agreed to delay the resolution of the issue and that Qwest has the right to challenge the charge imposed by the Amendment, and in some states contained in McLeod's tariffs or price lists as well.

18. McLeod's Wholesale Service Order Charge tariff has previously been found to be unlawful by the Minnesota Public Utilities Commission in that state. A copy of the Minnesota Order is attached hereto as Exhibit C.

19. McLeod attempted to file a tariff in Colorado containing the Wholesale Service Order Charge, but withdrew that filing when Qwest filed a challenge to that tariff.

VI. CAUSE OF ACTION

A. Violation of State Law

20. Qwest reasserts and realleges the statements set forth in paragraphs 1-19.

21. McLeod's assessment of its Wholesale Service Order Charge violates Utah Code Ann. § 54-3-1, which requires that all charges made, demanded or received by any public utility, including CLECs like McLeod, must be just and reasonable, and Utah Code Ann. § 54-8b-2.2(1)(b) and Utah

¹ Qwest does notify McLeod when a McLeod customer moves to Qwest or to another service provider, but does not place an order for wholesale products or services with McLeod.

Code Ann. § 54-8b-3.3, which require that telecommunications services be offered on a nondiscriminatory basis.²

B. Violation of Federal Law

22. Qwest reasserts and realleges the statements set forth in paragraphs 1-19.

23. McLeod's imposition of the Wholesale Service Order Charge through a price list or tariff violates Telecommunications Act of 1996, 47 U.S.C. 151, et seq., specifically sections 251 and 252 which require such charges to be negotiated or arbitrated and services to be provided on a nondiscriminatory basis.

² Utah Code Ann. § 54-3-1 provides, in pertinent part, as follows:

All charges made, demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful.

Utah Code Ann. § 54-8b-2.2(1)(b) provides, in pertinent part, as follows:

(b)(i) Whenever the commission grants a certificate to one or more telecommunications corporations to provide public telecommunications services in the same or overlapping service territories, all telecommunications corporations providing public telecommunications services in the affected area shall have the right to interconnect with the essential facilities and to purchase the essential services of all other certificate holders operating in the same area on a nondiscriminatory and reasonably unbundled basis.

(ii) Each telecommunications corporation shall permit access to and interconnection with its essential facilities and the purchase of its essential services on terms and conditions, including price, no less favorable than those the telecommunications corporation provides to itself and its affiliates.

Utah Code Ann. § 54-8b-3.3 provides, in pertinent part, as follows:

(2) Except with respect to a price regulated service offered in a promotional offer, or market trial, or to meet competition and notwithstanding any other provision of this chapter:

(a) a telecommunications corporation with more than 30,000 access lines in the state that provides a public telecommunications service may not:

(i) as to the pricing and provisioning of the public telecommunications service, make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality; or

(ii) in providing services that utilize the local exchange network:

(A) make or give any undue or unreasonable preference or advantage to any person, corporation, or locality; or

(B) subject any person, corporation, or locality to any undue or unreasonable prejudice or disadvantage;

VII. RELIEF REQUESTED

24. Accordingly, Qwest respectfully requests the Commission enter an order:

(1) holding that McLeod's Wholesale Service Order Charge is discriminatory in violation of Utah and federal law;

(2) holding that McLeod's Wholesale Service Order Charge is anti-competitive in violation of Utah and federal law;

(3) holding that McLeod's Wholesale Service Order Charge is unjust or unreasonable, or otherwise in violation of law and public policy;

(4) requiring McLeod to repay all Wholesale Service Order Charges paid by Qwest to McLeod for a period of one year prior to the filing of this Complaint; and

(5) such other and further relief that the Commission may deem appropriate.

DATED this 8th day of June, 2009

Respectfully submitted,

QWEST CORPORATION

By _____
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