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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. 09-049-37

**AFFIDAVIT OF DAVID A. VOGEL IN
SUPPORT OF QWEST'S RESPONSE
TO McLEOD'S MOTION FOR
SUMMARY JUDGMENT**

I, DAVID A. VOGEL, being first duly sworn, depose and state as follows:

1. I am a Special Counsel at the Reston, Virginia office of the firm Cooley Godward Kronish LLP. My business address is One Freedom Square, Reston Town Center, 11951 Freedom Drive, Reston, VA 20190-5656.

2. Our commercial litigation practice group has represented Qwest Corporation ("Qwest") and its affiliates for many years. Starting in 2006, we represented Qwest and one of its affiliates in a federal lawsuit against McLeodUSA Telecommunications Services, Inc.

("McLeod"), styled as *McLeod Telecomm. Serv., Inc. v. Qwest Corp.*, Civil Action No. CV 06-35, United States District Court for the Northern District of Iowa, Cedar Rapids Division (the "*McLeod* litigation").

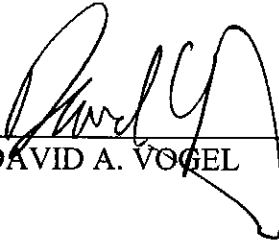
3. In the course of the *McLeod* litigation, I took a two-day deposition of Tami Spocogee on September 19 and 20, 2007, in part in her personal capacity and in part as McLeod's designated corporate representative on certain topics, pursuant to Fed. R. Civ. P. 30(b)(6).

4. During the deposition, Ms. Spocogee testified, among other things, about McLeod's Wholesale Service Ordering Charge. Attached as Exhibit A to my affidavit are certain pages of the transcript of Ms. Spocogee's deposition in that proceeding, specifically the cover page as well as pages 373-379, 392-395 and 405-407 (the "Relevant Deposition Pages").

5. I have determined that the Relevant Deposition Pages do not contain confidential information or would be otherwise restricted from dissemination. During the deposition, McLeod's counsel designated certain portions as "Highly Confidential," pursuant to a protective order entered by the Iowa federal court in the *McLeod* litigation. These portions were reconfirmed in writing in the weeks following the conclusion of the deposition. The Relevant Deposition Pages were not designated as "Highly Confidential." I found no other reference or statement by McLeod counsel that would indicate the information in the Relevant Deposition Pages should be deemed confidential under the protective order in the matter.

6. Furthermore, I am aware that the first page of the deposition transcript, and a legend at the top of every page, says "HIGHLY CONFIDENTIAL." These legends do not mean

that the entire contents of the deposition are highly confidential; instead, they reference the fact that portions were deemed highly confidential.

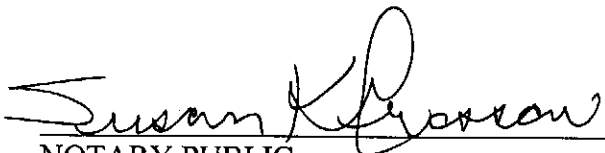


DAVID A. VOGEL

COMMONWEALTH OF VIRGINIA)
)
FAIRFAX COUNTY)

)
) ss.

SUBSCRIBED AND SWORN to before me the 1st day of March, 2010.



NOTARY PUBLIC

My Commission Expires:

4-30-2012

SUSAN KLARA CROSSON
NOTARY PUBLIC
REGISTRATION # 122340
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES APRIL 30, 2012

Tami Spocogee - Highly Confidential

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

MCLEODUSA TELECOMMUNICATIONS)
SERVICES, INC.,)
Plaintiff/Counterclaim)
Defendant,)
v.) Civil Action No.
QWEST CORPORATION, and QWEST) CV 06-35
COMMUNICATIONS CORPORATION,)
Defendants/Counterclaim)
Plaintiffs.)

VIDEOTAPED DEPOSITION OF TAMI SPOCOGEE
HIGHLY CONFIDENTIAL, PURSUANT TO PROTECTIVE ORDER
Wednesday, September 19, 2007

Reported by: Lori G. Mackenzie, RPR
Job No: 659790

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6 BY MR. VOGEL:

7 Q. Are you aware of a claim by McLeod
8 against Qwest concerning wholesale service
9 orders?

10 A. Yes.

11 Q. Sometimes called -- I've heard it
12 called the win-back service order?

13 A. Win-back, right.

14 Q. Is that a claim you have discussed
15 with people at Qwest?

16 A. We've discussed it at a high level
17 with Steve Hanson and Ken Beck.

18 Q. Anybody else you've discussed it
19 with at Qwest?

20 A. Not that I recall.

21 Q. These service order charges, are
22 they a type of access charge?

1 A. No.

2 Q. Are they -- they were charges that
3 McLeod's CLEC charges, correct?

4 A. Well, as I said, McLeod is McLeod,
5 so -- but, yes, they act on behalf of McLeod as
6 the line is turned back to Qwest.

7 Q. All right. And this is Qwest RBOC?

8 A. Yes.

9 Q. So, these are charges that would be
10 from one local carrier to another?

11 A. Right.

12 Q. And when you say line turned back,
13 what do you mean?

14 A. When a line is being ported back to
15 Qwest, it was a McLeod line and it's -- they,
16 Qwest has gotten the customer and they're porting
17 it to them.

18 Q. So, you're not talking about
19 physically moving the line?

20 A. Well, it's physically porting to
21 another network. I mean, the, in a way it's
22 moving, but the line itself is not being moved.

1 Q. The wire itself is not actually --

2 A. Right.

3 Q. -- being physically moved?

4 A. Correct.

5 Q. This is where the -- there's a wire
6 to some customer's phone.

7 A. Right.

8 Q. And the customer is changing its
9 local service provider.

10 A. Correct.

11 Q. So, this is somebody who starts out
12 as a McLeod customer?

13 A. Yes.

14 Q. And then decided to go to Qwest?

15 A. Right.

16 Q. And McLeod is imposing a charge for
17 that?

18 A. Well, to keep their charge -- to
19 keep their number, for us to port their number
20 over.

21 Q. This is just if they want to keep
22 the number?

1 A. Yes.

2 Q. So, this is solely related to
3 porting?

4 A. Yes.

5 Q. And what -- McLeod is performing
6 some kind of service regarding the porting?

7 A. Yes. There's physical work that has
8 to be done and I'm not sure exactly what that
9 work is in the switch.

10 But, someone in the switch or
11 somehow it happens the porting work has to be
12 done. Service orders have to be issued, and
13 physical work has to occur to make this change
14 happen.

15 Q. You don't know whether it's, for
16 example, just changing some data in a table?

17 A. No. I know it's not that and I know
18 service orders do have to be issued.

19 Q. Service orders --

20 A. Within our own internal systems and
21 so forth.

22 Q. Okay. And what initiates that

1 process, some kind of communication from Qwest?

2 A. Yes.

3 Q. And what's that communication?

4 A. You know, I'm not sure if it is a
5 service order may be rendered from Qwest, or if
6 it's another type of request that's sent through.

7 It may be another informal report or
8 something. I'm just not sure about that. I'm
9 not in that group.

10 Q. Are you familiar with the term LSR?

11 A. Yes.

12 Q. What is that?

13 A. Local service order -- record.

14 Q. Is that related to this somehow?

15 A. Yes. I mean, it's an LSR where you
16 were talking earlier about an ASR, that's an
17 order for the LD environment.

18 An LSR is for the local environment,
19 but it's an LSR which would be the order that has
20 to be issued.

21 So if an LSR is sent possibly maybe
22 from Qwest to McLeod to change the number to port

1 the number, then that's the way it happens.

2 I wasn't sure. But, that's the
3 order I would talk about.

4 Q. And this type of service order
5 charge is billed, is it monthly to Qwest?

6 A. No. It's only based on a service
7 order basis.

8 Q. So, if -- well, how often are these
9 bills sent to Qwest?

10 A. The bills are sent monthly.

11 Q. That's what I'm getting at.

12 A. Okay.

13 Q. This is a monthly type of bill.

14 Each request only results in a
15 single charge?

16 A. Right.

17 Q. And these bills are under your
18 auspices?

19 A. No.

20 Q. They're from another organization?

21 A. Yes.

22 Q. Which organization is responsible

1 for those bills?

2 A. Billing operations. I mean, there's
3 another system that's not an access system and we
4 have only got the one other one.

5 Q. That's not something within your
6 department?

7 A. No.

8 Q. Who is in charge of those bills?

9 A. The orders themselves that are
10 issued and processed, that the charges would be
11 rendered from, would be from our service delivery
12 organization.

13 And I'm assuming that would be Patty
14 Lynott, L-Y-N-O-T-T.

15 Q. Okay. That's the orders -- which,
16 is that the order into McLeod from Qwest?

17 A. Well, no. It's the orders received
18 from Qwest. She's -- her group is the one that
19 would process those orders and render something
20 throughout our systems that would advise the
21 billing to occur.

22 The billing isn't manual. It's an

1 cherry-picked and paid some, but disputed others?

2 A. I believe it's the entirety.

3 Q. So, it's the same thing Qwest is
4 doing?

5 A. I think so.

6 Q. Let's stop asking about that so you
7 can cease the confidential designation.

8 You've reviewed these tariff
9 provisions as part of your learning about the
10 dispute with Qwest?

11 A. Yes. I believe so.

12 Q. And if you look at the first one, at
13 least for Arizona, do you see where it refers in
14 Paragraph 7.1 to an LSR?

15 A. Yes.

16 Q. Now, I don't see it defined here,
17 but that would you read to be the local service
18 request?

19 A. Yes.

20 Q. And basically this tariff is saying
21 that when an LSR is submitted then the charge
22 would apply?

1 A. Yes.

2 Q. Where in here does it say it's
3 specific to the porting of a number?

4 A. See, I think it's -- well, one thing
5 down at the bottom, very bottom it says "charged
6 by the ILEC after customer conversion to
7 requesting customer service."

8 It doesn't say specifically porting,
9 but when a customer converts to a requesting
10 carrier, that's the same thing.

11 Q. Does that necessarily mean porting
12 of a number?

13 A. Usually.

14 Q. Again, this is a situation where a
15 McLeod customer has chosen to stop using McLeod
16 local and go to Qwest.

17 A. I understand that.

18 Q. Right. And I'm just trying to make
19 sure I'm understanding it.

20 A. Right.

21 Q. Does that -- that doesn't
22 necessarily mean the customer is keeping the same

1 phone number?

2 A. Usually when they're converting
3 over, they're, it's usually a porting of the
4 number. Otherwise it's just a disconnect and the
5 customer places a disconnect.

6 Q. And this charge will not apply to a
7 disconnect?

8 A. No. And if it was just a
9 disconnect, the end user customer would be the
10 one to call in and place a disconnect on it.

11 Q. And -- okay. McLeod would not be
12 charging some other carrier for that?

13 A. Right.

14 Q. Does -- it's Patty's group, I think
15 you said, that receives the LSRs?

16 A. Yes.

17 Q. Do you know if her group maintains
18 copies of them?

19 A. Of the LSRs, most of them are
20 electronic from, especially from Qwest. They're
21 electronic through EDI feeds.

22 So, they're held in there. They --

1 it's not a paper copy you can look at. But, the
2 EDI feeds I believe are held somewhere.

3 Q. Do you know if they keep archived
4 copies for some period of time.

5 A. I'm sure they do.

6 Q. Do you know how far --

7 A. I think it is a couple of years.

8 Q. Have you ever talked to Patty about
9 that or anybody in her group?

10 A. Not specifically. But, I think her
11 documentation for the company it says the service
12 orders are supposed to be retained for two years.

13 Q. Do you know if those documents are
14 searchable like by requesting carrier?

15 A. You know, I have no idea. My
16 assumption is it would be stored similar to like
17 CDRs, and they are stored for all EDI or all
18 orders, you know, based within a certain date.

19 And then you'd have to restore them
20 all by date and recover them by vendor. But, I
21 don't know for sure. I have not asked that
22 specific question.

1 the rate that was in the tariff, or we looked at
2 the rate that is in our interconnection agreement
3 for the RBOC billing the same rate to us and so
4 we compared those rates.

5 Q. And sometimes you look at the rates
6 in the ICAs?

7 A. Yes.

8 Q. Are you familiar with the term loop
9 installation in the context of the rates in the
10 ICAs?

11 A. In general speaking.

12 Q. What do you understand a loop
13 installation to be?

14 A. Well, loop installation is when we
15 install a -- basically when we install a loop.
16 Maybe not the wire to the loop isn't installed,
17 it's usually just the porting of the loop that's
18 being done.

19 Q. What do you mean by the porting of
20 the loop?

21 A. The numbers being assigned to that
22 loop. In most cases, like I said, the loop's

1 already there.

2 Q. And the loop is being some kind of a
3 physical line?

4 A. Yes. The physical line that goes
5 from the switch to the customer.

6 Q. And so are these service order
7 charges in any way related to loop installation
8 charges?

9 A. Not specifically. Every state is
10 different. In every state the wording is
11 different in the interconnection agreement.

12 I don't remember the specific names
13 set for each one because they are, they do vary.

14 And, at this moment, I can't even
15 recall what they're called. But, I mean, there
16 are different names in all of the different
17 states and we did pull all of those to look at
18 them.

19 I just don't remember what they are
20 right now.

21 Q. Are you telling me that in some
22 states the charge would be called a loop

1 installation charge?

2 A. No. I don't know that for sure.
3 I'm telling you I don't remember what they're
4 called, but they're all called different things.

5 Q. So --

6 A. Not every single state, but --

7 Q. What are some of the other things
8 that they're called in different states?

9 A. I just said I don't remember.

10 Q. You don't remember any of the things
11 that they're called?

12 A. No, I don't. I'm blank. I could
13 look them up, but we've got the information back
14 at home.

15 MR. VOGEL: Hilarie, could we have
16 1005. Oh, and change the tape.

17 THE VIDEOGRAPHER: This ends Tape
18 Number 3 of the Spocogee deposition.

19 The time is 16:13:45. Off the
20 record.

21 (Recess -- 4:13-4:15 p.m.)

22 THE VIDEOGRAPHER: On the record