

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

McLEODUSA TELECOMMUNICATIONS
SERVICES, INC.,

Petitioner,

v.

QWEST CORPORATION,

Respondent

Docket No. UT-

PETITION FOR ENFORCEMENT OF
INTERCONNECTION AGREEMENT

Pursuant to WAC 480-07-650, McLeodUSA Telecommunications Services, Inc. ("McLeodUSA") files this petition for Enforcement of its Interconnection Agreement with Qwest Corporation ("Qwest"). In support of its Petition, McLeodUSA alleges as follows:

PARTIES

1. Petitioner. McLeodUSA is a corporation that has been registered and classified by the Washington Utilities and Transportation Commission ("Commission") as a competitive telecommunications company.
2. Respondent. Qwest is an incumbent local exchange carrier ("ILEC") as defined in 47 U.S.C. section 251(h) and provides local exchange and other telecommunications services throughout the State of Washington.

JURISDICTION

3. Commission Jurisdiction. The Commission has jurisdiction over this Petition and Respondent Qwest pursuant to 47 U.S.C. sections 251-52, RCW 80.36.610, and WAC 480-07-650.

BACKGROUND

4. Interconnection Agreement. Pursuant to Section 252 of the Telecommunications Act of 1996 (“Act”), McLeodUSA opted into an Interconnection Agreement (the “Interconnection Agreement or “Agreement”) that was filed with the Commission on June 8, 2000, and approved by the Commission on August 30, 2000, in Docket No. UT-993007. McLeodUSA offers competitive local services in several markets in Washington using collocation space leased from Qwest pursuant to Section 251(c)(6) of the Telecommunications Act and the Interconnection Agreement, as amended, in combination with McLeodUSA’s network facilities. McLeodUSA has 32 active collocations out of which it offers telecommunications services in Washington.

5. McLeodUSA’s Services. McLeodUSA installs various equipment in its collocation sites that is used in the provision of telecommunications services to end users. Virtually every piece of collocated equipment requires power for operation. Most equipment is powered by direct current (“DC”), for which Qwest assess various power charges.¹ The amount charged by Qwest for providing DC power constitutes a significant percentage of the monthly operating cost for each collocation. Accordingly, excessive power charges have a significant impact on the profitability of offering facilities-based services in each market served from that wire center.

6. Power Charges. Under the original arrangements between the parties, Qwest billed McLeodUSA for DC power based on the amount of DC power originally ordered by McLeodUSA on the collocation application. For example, if McLeodUSA had originally ordered 100 amps for a collocation, Qwest billed DC collocation power charges at 100 amps

¹ Each collocation also has alternating current (AC) installed to power primarily equipment

each month. This charge was billed and paid regardless of whether the McLeodUSA equipment drew 20 or 90 amps in a particular month. The amount of collocation power originally ordered by McLeodUSA was made using engineering specifications designed to anticipate growth in power usage by the collocated equipment as McLeodUSA added lines being served by the equipment.

7. DC Power Amendment. Recognizing the excessive costs resulting from being billed for collocation power for ordered power, McLeodUSA requested an amendment to the Interconnection Agreements to reduce collocation power charges in 2004. Qwest provided McLeodUSA an amendment to the Interconnection Agreement entitled “DC Power Measuring Amendment to the Interconnection Agreement between Qwest Corporation and McLeodUSA Telecommunications Services, Inc.” (“DC Power Amendment”). The Parties executed the DC Power Amendment on August 18, 2004, and the Commission approved the amendment on September 29, 2004. A copy of the DC Power Amendment is attached as Exhibit A. In accordance with the DC Power Amendment, Qwest began to monitor power usage at the McLeodUSA collocations at which more than 60 amps had originally been ordered.

8. Charges for Power Plant Usage. While Qwest subsequently began billing one element of collocation power charges using the monitored power usage (in most instances), Qwest continued to bill for another power charge element – Power Plant Usage – at the “ordered” level of power.

9. Requirement to Charge for Actual Usage. Qwest’s continued billing of collocation power charges based on “ordered” rather than actual power usage is inconsistent

not used to provide services.

with the terms of the DC Power Amendment, which provides that Qwest will monitor power usage at the power board at least semi-annually. Once the actual use is known, Qwest must bill for power using the actual usage.

Based on these readings, if CLEC is utilizing less than the ordered amount of power, Qwest will reduce the monthly usage rate to CLEC's actual use. If CLEC is using more than the ordered amount, Qwest will increase the monthly usage rate to the CLEC's actual use.

The DC Power Amendment does not distinguish the charge for DC Power Plant from the amount of DC Power used.

10. Negotiations. After an audit revealed that Qwest was continuing to bill certain collocation power charges using "ordered" levels rather than based on actual usage, McLeodUSA initiated a billing dispute in September 2005 and began withholding disputed amounts equal to the amount of overcharges since the effective date of the DC Power Amendment. McLeodUSA ceased withholding disputed amounts in December 2005 while reserving its right to challenge all such billings. Qwest denied the billing dispute and insists the charges are valid. McLeodUSA has exhausted all available disputes remedies under the Interconnection Agreement.

11. Notice of Intent to File Petition. Pursuant to WAC 480-07-650(1)(c), McLeodUSA served a Notice of Intent to File Petition for Enforcement of the Interconnection Agreement ("Notice") on February 7, 2006, more than 10 days prior to the date on which this Petition is filed with the Commission. A copy of the Notice is attached as Exhibit B.

QWEST VIOLATIONS OF THE AGREEMENT

12. Qwest Overcharges. Under the DC Power Amendment, Qwest should charge McLeodUSA for the pro rata share actually used by McLeodUSA. Because Qwest has continued to charge McLeodUSA the “ordered” amount for DC Power Plant, Qwest has overcharged McLeodUSA in the approximate amount of \$27,000, and continues to overcharge McLeodUSA on a monthly basis. Accordingly, Qwest is in violation of DC Power Plant Amendment, and McLeodUSA is entitled to a refund of the overcharges. Further, Qwest’s continued billing of DC Power Plant at ordered levels charges McLeodUSA for more than its pro rata share for the costs of the DC Power Plant. As such, Qwest is discriminating against McLeodUSA in favor of itself and any other carrier that is using more amps of the DC Power Plant in a given month than McLeodUSA is using. Such discrimination violates RCW 80.36.180, 80.36.170, and 80.36.186.

PRAYER FOR RELIEF

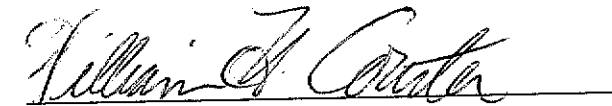
WHEREFORE, McLeodUSA prays for the following relief:

- A. An order from the Commission requiring that Qwest comply with the Interconnection Agreement, specifically that Qwest comply with the terms of the DC Power Measuring Amendment and charge McLeodUSA only for the power actually used for all elements, including the DC Power Plant.
- B. An order from the Commission ordering Qwest to refund the amount that Qwest overcharged McLeodUSA for the DC Power Plant from August 18, 2004, to the date of the Commission’s order.

C. Such other or further relief as the Commission finds fair, just, and reasonable.

Dated this ___ day of February, 2006.

McLEODUSA TELECOMMUNICATIONS
SERVICES, INC.


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