BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., Petitioner, v. QWEST CORPORATION, Respondent	Docket No. UT-063013 QWEST'S MOTION TO STRIKE THE SUPPLEMENTAL DIRECT TESTIMONY OF MR. MICHAEL STARKEY

1 Qwest Corporation ("Qwest") hereby moves to strike Mr. Starkey's Supplemental Direct Testimony regarding cost issues, filed June 5, 2006.

2 There are at least two reasons why this testimony should be stricken – first, the cost study testimony is irrelevant; second, it is an impermissible collateral attack on the Commission-approved Power Plant rate.

3 First, and most importantly, testimony about the cost study and Qwest's Power Plant rates is irrelevant to determining the central issue in this case, which is the proper interpretation of the Power Measuring Amendment between the parties. This case is first and foremost about the proper interpretation of the DC Power Measuring Amendment that the parties entered into in August of 2004. There is no reasonable dispute in this case that, prior to the execution of that amendment, the parties' interconnection agreement provided that Qwest would assess all DC

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power plant charges on an "as ordered" basis. The only issue raised in this petition for enforcement is whether the power measuring amendment is limited to the power usage charge, as is Qwest's position, or if it extends more broadly to encompass rates such as power plant (even though those rates are not mentioned in the amendment), as is McLeod's position.

4 Plainly, a case of this nature presenting a limited issue such as the one described above, does not lend itself to a full blown exploration of Qwest's costs or an examination of Qwest's cost studies, as McLeod seems to intend with this testimony. As McLeod is well aware, the Commission in Washington has engaged in extensive cost dockets and has ordered rates for many rate elements, including the collocation rates at issue in this case. These particular rates were the subject of Part A of Docket No. UT-003013.

5 The issue of relevance has already been addressed in connection with McLeod's motion to compel discovery. In the May 3, 2006 decision on that issue, the Administrative Law Judge denied discovery on the cost study, noting that McLeod's Complaint simply seeks Commission decision regarding the meaning of the parties' DC Power Amendment, and concluding that the information sought in Data Request No. 3 (the collocation cost studies) was not relevant to this dispute.

6 McLeod has nevertheless filed nine pages of testimony addressing the cost study, and impermissibly expanding the scope of this proceeding beyond that of a petition to enforce an interconnection agreement. Because the cost information is not relevant to the dispute in this Complaint, as previously set forth in Qwest's opposition to McLeod's motion to compel discovery, it should be stricken.

7 Second, Mr. Starkey's cost testimony is nothing more than a thinly veiled, or perhaps not veiled at all, attack on the actual Commission-approved Power Plant rates. Though McLeod will deny that it is attacking the rate, this denial rings hollow in light of the actual testimony

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and the background of this proceeding.

8 McLeod's dispute ostensibly was triggered by the parties' differing interpretations of the Power Measuring Amendment. However, all of Mr. Starkey's discussion with regard to the cost support for the Power Plant rates is based on the cost study itself. That study dates from the cost docket in 2000 – 2001, Docket No. UT-003013. If in fact the costs were developed as Mr. Starkey claims (though Qwest strongly disagrees with Mr. Starkey's testimony, and believes that Mr. Starkey entirely misinterprets the study), then his criticisms would have been equally applicable to the rates as they existed before the amendment.

9 As such, it is readily apparent that Mr. Starkey's cost testimony does not shed any light on the language of the Amendment, or the parties' intent in entering into it. Rather, through allegations that Qwest is "overrecovering" its costs by charging the Commission-approved Power Plant rates, McLeod is simply challenging the rate already established in a contested cost proceeding. Indeed, Qwest's cost study was the subject of a long and detailed examination in that cost docket, and the Commission examined and modified the Power Plant rates prior to approval, specifically allowing Qwest to charge the rates on a "per amp ordered" basis.

10 This complaint proceeding is not the proper venue in which to modify those rates. In two recent Commission decisions, *Pac West v. Qwest* and *Level 3 v. Qwest*, the Commission expressly declined to address counterclaims raised by Qwest because the Commission stated that those counterclaims were outside the scope of an enforcement proceeding.[1] The issues raised by McLeod in this case are much the same. McLeod, by seeking to introduce cost study information, is in fact attempting to broaden the scope of this debate beyond the mere enforcement of the interconnection agreement amendment into a rate investigation. Such an

[1] *PacWest v. Qwest*, Docket No. UT-053036, Order No. 05, ¶¶42-43; *Level 3 v. Qwest*, Docket No. UT-053039, Order No. 05, ¶¶39-40, 43.

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action is not appropriate in a petition for enforcement.

11 Contemporaneously with the filing of this motion, Qwest is filing its reply testimony. Included with that filing is the reply testimony of Teresa K. Million, which addresses the issues raised by Mr. Starkey. Qwest would withdraw that testimony upon the granting of this motion.

DATED this 14th day of June, 2006.

QWEST

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