

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

McLEODUSA TELECOMMUNICATIONS  
SERVICES, INC.,

Petitioner,

v.

QWEST CORPORATION,

Respondent

Docket No. UT-063013

QWEST'S ANSWER TO PETITION  
FOR ENFORCEMENT OF  
INTERCONNECTION AGREEMENT

**I. INTRODUCTION**

1 Qwest Corporation, (“Qwest”), hereby answers the Petition for Enforcement (“Petition”) filed  
by McLeodUSA Telecommunication Services, Inc. (“McLeod”), and files a Counterclaim for  
amounts McLeod has improperly withheld from Qwest pursuant to the disputes discussed in  
McLeod’s Petition. Qwest generally denies all of the allegations of McLeod’s Complaint,  
except as specifically admitted herein. This answer is supported by the Declaration of Robert  
J. Hubbard, attached hereto as Attachment 1.

2 Answering paragraph 1 of the Petition, Qwest admits the allegations contained therein.

3 Answering paragraph 2 of the Petition, Qwest admits the allegations contained therein.

4 Answering paragraph 3 of the Petition, Qwest admits the allegations contained therein.

5 Answering paragraph 4 of the Petition, Qwest admits that Qwest and McLeod are parties to an interconnection agreement approved by the Commission in Washington. Qwest is without sufficient knowledge regarding McLeod's service offerings, and therefore denies the remainder of the allegations in this paragraph.

6 Answering paragraph 5 of the Petition, Qwest admits that McLeod installs various pieces of equipment in its collocation spaces, and admits that most equipment requires power for operation. The remainder of paragraph 5 is denied, as Qwest does not know the monthly operating costs for each McLeod collocation, and Qwest's power charges are not excessive.

7 Answering paragraph 6 of the Petition, Qwest admits the allegations contained therein.

8 Answering paragraph 7 of the Petition, Qwest admits that McLeod and Qwest negotiated for and entered into the DC Power Measuring Amendment attached as Exhibit A to McLeod's Petition. The charges for these services are established in Exhibit A to both McLeod's Interconnection Agreement ("ICA") with Qwest, and Qwest's Statement of Generally Available Terms ("SGAT"), sections 8.1.4.1.1 (titled "Power Plant, per Amp"), 8.1.4.1.2 (titled "Power Usage Less Than 60 Amps, per Amp"), and 8.1.4.1.3 (titled "Power Usage More Than 60 Amps, per Amp). The relevant page of Exhibit A is attached to this Answer as Attachment 2. The prices for these elements were established in a contested cost docket proceeding, and approved by the Commission in Docket No. UT-003013, Part A. The evidence in that proceeding established the Power Plant charges as rates to cover the fixed costs of equipment required to provide the amount of DC power capacity requested by McLeod in its collocation application to Qwest. Variable costs such as the cost of electricity to power the equipment, are covered by the two power usage charges. The DC Power Measuring Amendment affected only one of these charges: the Power Usage charge for orders

greater than sixty amps, section 8.1.4.1.3 of the SGAT. The remainder of paragraph 7 is denied.

9 Answering paragraph 8 of the Petition, Qwest admits the allegations contained therein. The allegations in this paragraph correctly describe what McLeod's ICA and the DC Power Measuring Amendment require. Section 2.2.1 of the DC Power Measuring Amendment changed the Power *Usage* charge for "all orders of greater than sixty (60) amps" to reflect usage at the time of measurement, but did not affect the Power Plant charges or the Power Usage charges associated with orders of less than sixty amps. The Power Plant charge was not affected by the amendment because, as referenced in paragraph 8 above, the underlying purpose of the charge was to recover the fixed costs of equipment required to provide the amount of DC power capacity requested by McLeod in its collocation application to Qwest. It would not have been appropriate to prorate the recovery of these fixed costs bases on actual usage because they do not vary with usage. Qwest denies any allegation or implication that its billing for power charges ever varied from the requirements of the DC Power Measuring Amendment after that agreement was approved by the Commission.

10 Answering paragraph 9 of the Petition, Qwest states that the allegations in paragraph 9 constitute conclusions of law and contractual interpretation, and as such contain no factual allegations for which Qwest must admit or deny. Subject to the foregoing, denied. As noted above, there are three different "power charges" in the Exhibit A: (1) Power Usage charges for orders greater than sixty amps, (2) Power Usage charges for orders less than sixty amps, and (3) Power Plant charges. The DC Power Measuring Amendment affected only one of these charges: the Power Usage charge for orders greater than sixty amps.

11 Answering paragraph 10 of the Petition, Qwest admits the allegations contained therein.

12 Answering paragraph 11 of the Petition, Qwest admits the allegations contained therein.

13 Answering paragraph 12 of the Petition, Qwest states that the allegations in paragraph 12  
constitute conclusions of law and contractual interpretation, and as such contain no factual  
allegations for which Qwest must admit or deny. Subject to the foregoing, denied.

## II. QWEST'S AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

14 McLeod's Petition is barred in whole or in part by the doctrines of waiver, release, and  
estoppel.

15 McLeod's Complaint is barred in whole or in part by the doctrines of accord and satisfaction.

16 McLeod admitted in paragraph 10 of its Petition that it withheld disputed amounts Qwest had  
billed pursuant to the DC Power Measuring Amendment.

17 Qwest's records indicate that McLeod has withheld at least \$160,586.82 in connection with  
this dispute.

18 As set forth in Qwest's responses to paragraphs 7 and 8 of McLeod's Petition, Qwest properly  
billed these amounts pursuant to the DC Power Measuring Amendment.

19 McLeod has improperly failed to pay these withheld amounts in breach of the DC Power  
Measuring Amendment, which amounts are past due and owing.

WHEREFORE, Qwest requests that the Commission enter an order:

- (1) Denying McLeod's Petition in its entirety;
- (2) Directing McLeod to immediately pay all amounts due under Qwest's invoices for the  
Power Plant element, plus interest and late payment fees pursuant to the ICA between the  
parties.

DATED this 28th day of February, 2006.

QWEST

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