STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., Complainant, v. QWEST CORPORATION, Respondent.	DOCKET NO. FCU-06-20

ORDER GRANTING REHEARING FOR PURPOSES OF RECONSIDERATION

(Issued September 12, 2006)

On February 9, 2006, McLeodUSA Telecommunications Services, Inc. (McLeodUSA), filed with the Utilities Board (Board) a complaint against Qwest Corporation (Qwest) pursuant to Iowa Code §§ 476.100 and 476.101. McLeodUSA alleged it is being overcharged by Qwest for collocation power charges in violation of Iowa law and the interconnection agreement between the parties. On July 27, 2006, the Board issued a final order finding, in summary, that the language of the amended interconnection agreement is ambiguous and that extrinsic evidence supported Qwest's proposed interpretation. The Board also determined that Qwest was treating McLeodUSA differently than it treats itself in terms of power supply, but found that the record was not sufficiently developed to support a conclusion that the difference in

treatment is discriminatory. Further, the Board expressed concerns regarding its authority to grant McLeodUSA immediate relief, if relief were shown to be appropriate.

On August 15, 2006, McLeodUSA filed an application for rehearing, pursuant to Iowa Code § 476.12. In its application, McLeodUSA requests reconsideration of the Board's final order. McLeodUSA argues that the interconnection agreement, as amended, is not ambiguous because it clearly prohibits discrimination when providing power. McLeodUSA argues it is entitled to power on terms equal to the terms Qwest provides to itself and the interconnection agreement should be interpreted to produce that result.

Next, McLeodUSA argues that the record before the Board is adequate to find unlawful discrimination on the part of Qwest. Once discrimination is found, then the Board has the authority to address the issue; McLeodUSA points to Attachment 1, § 2.1 of the Agreement as giving authority to the Board to resolve all disputes concerning the interconnection agreement.

Finally, McLeodUSA argues that the Board should consider and decide the question of what the amended interconnection agreement means when it says that McLeodUSA is to be billed for power capacity as ordered, but Qwest admits that there are no actual orders to be used for this purpose.

McLeodUSA asks that the Board reconsider its final decision and grant it the relief requested. McLeodUSA does not request additional hearings or briefing.

On August 17, 2006, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a joinder in McLeodUSA's application for rehearing. Consumer Advocate offers arguments supplementing and expanding upon McLeodUSA's arguments and also asks that the Board reconsider its final order, but does not request additional hearings or briefing.

On August 28, 2006, Qwest filed a motion for an extension of time to respond to the application for rehearing and the joinder. No objections have been filed and the Board will grant the motion for extension of time.

On August 31, 2006, Qwest filed its response. As an initial matter, Qwest argues that Consumer Advocate's application for rehearing was filed late and should not be considered. Qwest then generally argues that McLeodUSA and Consumer Advocate are asking the Board to change the interconnection agreement, not amend it, and this the Board should not, and cannot, do.

More specifically, Qwest argues that the Board interpreted the amended interconnection agreement correctly in its final order, for all of the reasons described in that order. Qwest also argues that its power plant charges are not discriminatory for a variety of reasons. First, Qwest says that McLeodUSA is basically arguing that it does not matter what the parties agreed to or intended when they negotiated and amended the interconnection agreement, that the Board should rewrite the agreement to avoid an alleged discriminatory outcome. Qwest says there is no legal or factual basis for this argument. Instead, Qwest notes that McLeodUSA agreed to

pay power plant charges on an as-ordered basis and there is no evidence that McLeodUSA is treated differently than other, similarly-situated competitive local exchange carriers (CLECs). Qwest argues that its practices do not give any preference or advantage to Qwest, even if it is treated differently and that the difference in treatment is a natural consequence of the fact that Qwest does not collocate in its own buildings. This difference in the manner in which the various parties are present in the buildings makes a meaningful comparison between Qwest's treatment of itself and its treatment of the CLECs difficult, at best.

With respect to McLeodUSA's claim that the Board must interpret the agreement's reference to billing for power capacity "as ordered," Qwest argues that orders for power feeds are orders for power plant capacity, according to Exhibit 127. This interpretation is supported by the fact that McLeodUSA paid Qwest on this basis for four years, according to Qwest.

Overall, Qwest asserts that this docket is not the appropriate vehicle for addressing what power rates would be just, reasonable, and non-discriminatory on a going-forward basis. Finally, Qwest asks for correction of the Board's final order in one respect, relating to the amount of money withheld by McLeodUSA during this dispute and the proper amount that should be paid by McLeodUSA to Qwest.

Iowa Code § 476.12 provides that when an application for rehearing is filed with the Board, the Board must either grant or refuse the application within 30 days or give the interested parties notice and opportunity to be heard and then consider all

facts, including but not limited to facts arising since the final order was issued, in determining whether to abrogate or modify the final order. In this case, McLeodUSA and Consumer Advocate have not asked for the opportunity to submit additional facts or argument; they ask only that the Board reconsider its final order in light of the arguments presented in their applications. Similarly, Qwest has not asked for the opportunity to submit additional facts or argument. Therefore, the Board will grant rehearing in this matter solely for the purpose of giving further consideration to the existing record and the arguments presented to date.

IT IS THEREFORE ORDERED:

1. The motion for extension of time filed by Qwest Corporation on August 28, 2006, is granted.

2. To the extent the joinder in application for rehearing filed on August 17, 2006, by the Consumer Advocate Division of the Department of Justice can be considered an untimely application for rehearing, the Board finds any possible prejudice to Qwest from that late filing is cured by granting Qwest's motion for extension of time, so the Board may consider the arguments presented by Consumer Advocate.

3. Pursuant to Iowa Code § 476.12, the Board will grant the application for rehearing filed on August 15, 2006, by McLeodUSA Telecommunications Services, Inc., solely for purposes of further consideration. No additional filings or submissions

by the parties are desired or authorized at this time. The Board will issue another order when it decides whether to modify its final order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 12th day of September, 2006.