

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

QWEST CORPORATION,

Complainant,

v.

MCLEODUSA TELECOMMUNICATIONS  
SERVICES, INC., d/b/a PAETEC  
BUSINESS SERVICES.

Respondents.

Docket No. UT-

COMPLAINT OF QWEST  
CORPORATION

**I. INTRODUCTION**

- 1 Pursuant to RCW 80.04.110 and WAC 480-07-305, Qwest Corporation (“Qwest”) brings the following Complaint against McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services (“McLeod”).
- 2 In support of its Complaint, Qwest alleges as follows: The names, addresses, and telephone numbers of the persons to whom communications should be addressed are:

Lisa A. Anderl  
Adam L. Sherr  
1600 – 7th Ave. Room 3206  
Seattle, WA 98191  
206-345-1574

3 Pursuant to WAC 480-07-370(1)(a)(ii)(B), Qwest states that the names and addresses of the  
respondent is: McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business  
Services; One Martha's Way, Hiawatha, Iowa 52233.

## II. PARTIES

4 Qwest is a telecommunications company as defined in RCW 80.04.010 and is an incumbent  
local exchange company ("ILEC"), as defined in 47 U.S.C. § 251(h). Qwest provides local  
exchange and other telecommunications services in the State of Washington.

5 McLeod is an Iowa corporation and is registered with and classified by the Commission as a  
competitive local exchange company ("CLEC"). McLeod is authorized to provide switched  
and non-switched local exchange and long distance services in Washington.

## III. JURISDICTION

6 The Commission has jurisdiction over this Complaint and Respondents pursuant to RCW  
80.01.040, RCW 80.04.110, and other statutes cited herein.

## IV. SUMMARY OF COMPLAINT

7 McLeod charges Qwest a Wholesale Service Order Charge when a McLeod end-user customer  
switches its local telecommunications service from McLeod to Qwest. Qwest does not charge  
any fee in like circumstances. As far as Qwest is aware, McLeod does not assess this charge on  
any other carrier who wins a customer away from McLeod. Thus, the Wholesale Service Order  
Charge operates to penalize Qwest for winning a customer from McLeod, but the same penalty  
is not assessed on any other carrier. McLeod's Wholesale Service Order Charge is unjust,  
unreasonable, discriminatory, and anti-competitive. The Wholesale Service Order Charge is  
not cost-based, and there is no legal, factual, or policy justification to impose this charge.

8 On or about October 10, 2008, Qwest and McLeod entered into a Settlement Agreement

whereby they resolved a number of business disputes between them. In order to reach settlement on other disputed issues, Qwest and McLeod came to an agreement with regard to certain charges that McLeod had been assessing on Qwest, referred to herein as the Wholesale Service Order Charge(s). The Wholesale Service Order Charges are contained in McLeod's tariff, or price list, or catalog in Washington, Arizona, Utah, New Mexico, and Iowa, and possibly other states as well. McLeod does not have a tariff or a price list on file with the Commission in Washington. However, McLeod has what it calls a Price List for Washington available at <http://www.mcleodusa.com/TariffStateDetail?state=48&stateName=Washington>.<sup>1</sup> The document ("Local and LD Price List 1") posted at that location contains a Wholesale Service Order Charge in Section 7. The provisions of Section 7 are attached to this Complaint at Exhibit A. That Price List bears an effective date of April 10, 2004,

9 The parties' agreement with regard to the Wholesale Service Order Charges was memorialized in a "Wholesale Service Order Charge Amendment" ("Amendment") to the parties' inter-connection agreement ("ICA"). The Amendment is attached to this Complaint as Exhibit B. The Amendment was filed with this Commission and became effective on May 7, 2009.

10 The Amendment, in Attachment 1, paragraph 2, specifically preserves Qwest's rights to challenge the Wholesale Service Order Charge. If the Commission determines that the Wholesale Service Order Charge is unjust, unreasonable, unlawful, or otherwise unenforceable, the Amendment is deemed terminated on the effective date of the Commission's final order.

## V. FACTS

11 McLeod imposes a Wholesale Service Order Charge on Qwest when Qwest wins a customer from McLeod. Under the Amendment, the amount of the Charge is \$21.24 per occurrence.

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<sup>1</sup> McLeod's website, <http://www.mcleodusa.com/TariffStates>, contains the following statement: "This site provides access to effective tariff documents of McLeodUSA. The word "tariff", as used on this site, is a generic term that applies to all tariff and tariff-like documents, e.g., tariffs, catalogs, and price schedules."

This is the case regardless of whether Qwest solicited the customer or the customer decided to make the change on his or her own initiative.

- 12 In Washington, Qwest is permitted to charge McLeod a “disconnect charge.” McLeod pays Qwest the Commission-approved disconnect charge when a customer disconnects from McLeod and McLeod tells Qwest to disconnect the unbundled loop over which the service was provided. This disconnect charge is assessed regardless of whether the McLeod customer then takes service from Qwest, from another provider, or if the customer simply disconnects altogether.
- 13 In addition, pursuant to its approved ICA, McLeod pays Qwest various charges for access to unbundled elements, if McLeod chooses to serve a new customer via unbundled elements leased from Qwest. Qwest imposes an installation or new connection charge on McLeod in accordance with Commission-approved rates, when McLeod orders new service from Qwest. This is true regardless of whether McLeod has won the customer from Qwest, from another CLEC, or if the customer has never received service before and is a new connection.
- 14 Qwest does not purchase or lease unbundled network elements from McLeod in Washington, and does not order retail or wholesale services from McLeod. Accordingly, McLeod incurs no costs that McLeod may properly impose on Qwest when a customer switches providers away from McLeod.
- 15 McLeod’s Wholesale Service Order Charge does not relate to any “wholesale service order” that Qwest places with McLeod,<sup>2</sup> does not apply to other carriers in the state, and works as a disincentive for Qwest to compete for customers who might be served by McLeod.

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<sup>2</sup> Qwest does notify McLeod when a McLeod customer moves to Qwest or to another service provider, but does not place an order for wholesale products or services with McLeod.

- 16 Qwest and McLeod are parties to an ICA, and to the Amendment attached hereto as Exhibit B. As part of the resolution of litigation involving several issues, the parties agreed to delay the resolution of the issue and that Qwest has the right to challenge the charge imposed by the Amendment, and in some states contained in McLeod's tariffs or price lists as well.
- 17 McLeod's Wholesale Service Order Charge tariff has been found to be unlawful by the Minnesota Public Utilities Commission. A copy of the Minnesota Order is attached hereto as Exhibit C.
- 18 McLeod attempted to file a tariff in Colorado containing the Wholesale Service Order Charge, but withdrew that filing when Qwest filed a challenge to that tariff.

## VI. CAUSE OF ACTION

### A. Violation of State Law

- 19 Qwest reasserts and realleges the statements set forth in paragraphs 1-18.
- 20 McLeod's assessment of its Wholesale Service Ordering Charge violates RCW 80.04.110<sup>3</sup>, which prohibits conduct by a competitor that is unreasonable, discriminatory, illegal, unfair or intending or tending to oppress the complainant, or to stifle competition.

### B. Violation of Federal Law

- 21 Qwest reasserts and realleges the statements set forth in paragraphs 1-18.

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<sup>3</sup> RCW 80.04.110(1) provides, in pertinent part, as follows: [W]hen two or more public service corporations, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into consideration the rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state.

22 McLeod's imposition of the Wholesale Service Order Processing charge through a price list or tariff violates Telecommunications Act of 1996, 47 U.S.C. 151, *et seq.*, specifically sections 251 and 252 which require such charges to be negotiated or arbitrated.

## VII. RELIEF REQUESTED

23 Qwest respectfully requests the Commission enter an order:

(1) holding that McLeod's Wholesale Service Order Charge is discriminatory in violation of state and federal law;

(2) holding that McLeod's Wholesale Service Order Charge is anti-competitive in violation of state and federal law; and

(3) holding that McLeod's Wholesale Service Order Charge is unjust or unreasonable, or otherwise in violation of law and public policy;

24 Qwest also requests that the Commission grant such other and further relief that the Commission deems appropriate.

DATED this 8th day of June, 2009.

QWEST CORPORATION



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