STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., Petitioner, v. QWEST CORPORATION, Respondent.	DOCKET NO. FCU-05-49

FINAL DECISION AND ORDER

(Issued October 12, 2005)

On July 14, 2005, McLeodUSA Telecommunications Services, Inc. (McLeodUSA), filed with the Utilities Board (Board) a complaint against Qwest Corporation (Qwest) alleging that Qwest is providing inadequate signal strength to the McLeodUSA collocation space in Des Moines, Iowa. McLeodUSA alleges this is a violation of various provisions of Iowa Code §§ 476.100 and 476.101 (2005) because it results in 1) degradation of the quality of service provided to McLeodUSA, 2) an inferior interconnection, 3) discrimination in favor of Qwest and against McLeodUSA, 4) disadvantage to McLeodUSA's customers, and 5) violation of certain requirements of the interconnection agreement between McLeodUSA and Qwest. The complaint was filed pursuant to the expedited complaint procedures of § 476.101(8).

On July 20, 2005, Qwest filed an answer to the complaint, generally denying the alleged violations.

Section 476.101(8) provides that when the Board receives a written complaint requesting a determination of whether a local exchange carrier is complying with the requirements of §§ 476.95 through 476.102, or any Board rules implementing those sections, the Board shall render a decision in the proceeding within 90 days after the complaint was filed. The Board issued an order setting out a procedural schedule that would allow it to receive prefiled testimony, conduct a hearing, and allow the filing of post-hearing briefs before rendering its final decision within the 90 days allowed by statute.

Board member Stamp previously was an attorney with Dickinson, Mackaman, Tyler, & Hagen, P.C., Law Firm, which is representing McLeodUSA in this matter. However, during his time with the firm as it pertains to this matter, Board member Stamp did not do any work for McLeodUSA, was not involved in counseling or advising McLeodUSA, and was not privy to any confidential information involving McLeodUSA. After reviewing the relevant professional codes, General Counsel has advised Board member Stamp that he may participate in the decision-making in this docket.

A. IS QWEST IN VIOLATION OF THE INTERCONNECTION AGREEMENT?

1. McLeodUSA's case

McLeodUSA alleges that Qwest is violating certain provisions of the interconnection agreement between the parties. McLeodUSA states that the interconnection agreement provides at §§ 37.13 and 40.1, respectively, as follows:

> 37.13 The ILEC agrees to work cooperatively with the CLEC to provide Network Elements that will meet the CLEC's needs in providing services to customers;
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> 40.1 The ILEC shall provide to the CLEC, upon reasonable request, such engineering, design, performance and other network data sufficient for the CLEC to determine that the requirements of this Agreement are being met. In the event that such data indicates that the requirements of this Agreement are not being met, the ILEC shall, within 30 days, cure any design, performance or other deficiency and provide new data sufficient for the CLEC to determine that such deficiencies have been cured. The ILEC agrees to work cooperatively with the CLEC to provide Ancillary Functions that will meet the CLEC's needs in providing services to its customers.[1]

In order to provide services to its customers, McLeodUSA needs to receive from Qwest a signal strength that is sufficient to ensure that service disruptions do not occur on a routine basis. Although records are not available prior to 2002 to provide an exact date, McLeodUSA was initially made aware of the service degradation problem when a large customer served via a DS3 loop began reporting service outages. McLeodUSA began working with Qwest and the signal strength issues

[1] Exhibit 1.

were corrected for a period of time.[2] However, according to McLeodUSA the outages kept recurring, leading McLeodUSA to search for the underlying cause of the repeated outages.[3] According to the testimony, after contacting Qwest about the continuing problem with service disruptions, McLeodUSA opened its own trouble ticket on June 17, 2002, to track discussions with Qwest.[4] Qwest declined to open a trouble ticket of its own regarding the low signal issue, according to McLeodUSA.[5]

Over the next several months, McLeodUSA performed several tests of its own equipment, including changing out the equipment systematically to determine the functionality of each of its components.[6] Based on these tests and changes, McLeodUSA concluded that the problem was not the result of McLeodUSA's equipment.

2. Qwest's case

Qwest argues that because McLeodUSA accepted the collocation space in March 2000, but did not raise any complaint about signal strength until 2002, serious doubts are raised about the significance of the problem and indicates, according to Qwest, that "the root of the difficulty is in the McLeod equipment within the collocation cage."[7] Further, Qwest points out that McLeodUSA raised signal strength complaints on only 14 of the 192 DS3 cables linking McLeodUSA's collocation space to Qwest's

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[2] Transcript p. 23.
[3] Transcript p. 23.
[4] Exhibit 7.
[5] Transcript p. 43-44.
[6] Transcript pp. 98, 118-19.
[7] Transcript p. 263.

network.[8] This also shows the problem is not that serious and probably the result of McLeodUSA's equipment, according to Qwest.

In the end, Qwest's position is that Qwest is only responsible for the signal from Qwest's equipment to Qwest's interconnection frame, at which point the design and performance of the circuit becomes the responsibility of McLeodUSA.[9] Further, Qwest asserts that if it delivers a signal to its own interconnection frame that meets American National Standards Institute (ANSI) standards, it has fulfilled its responsibilities.[10] This ANSI issue will be addressed in a subsequent section of this order.

3. Analysis

The testimony shows that, at a minimum, McLeodUSA and Qwest worked together to try to reach a solution starting in June of 2002.[11] Following several months of discussions, joint testing was conducted on April 15, 2004, with representatives from both Qwest and McLeodUSA present. The results of that joint testing were presented to the Board by both Qwest and McLeodUSA.[12] The results show that several of the tests were not passed. Although the parties argued at the hearing about the relevance of each of the failures shown in the results, the test results nonetheless indicate that failures were reported when tests were performed to "measure and record the results of the DS3 signal on the coax that connects to the receive port of the McLeodUSA transport equipment" and "at the DSX in the

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8 Transcript pp. 74-78 and Exhibit 105.
9 Transcript p. 257.
10 Id.
11 Exhibit 7.

McLeodUSA case measure and record the results of the DS3 signal coming from the Qwest equipment."[13] This appears to be sufficient to establish that there is a problem and it is significant, even if it is intermittent. The Board rejects Qwest's position that the timing and number of complaints indicates the problem is not a serious one.

The Board agrees with McLeodUSA that the interconnection that is being provided is not in compliance with the interconnection agreement. If McLeodUSA cannot use the service it is receiving from Qwest pursuant to the interconnection agreement to provide reliable service to its end users without purchasing channel regeneration or some other additional service, then the service Qwest is providing does not comply with the provisions of the interconnection agreement, specifically §§ 37.13 and 40.1.

B. IF QWEST IS IN VIOLATION, WHAT IS THE APPROPRIATE REMEDY?

Having determined that Qwest is not complying with the interconnection agreement, the Board will look at the proposed solutions. As an initial matter, Qwest argues that the Board has already addressed the appropriate remedy in this situation, in its proceedings pursuant to 47 U.S.C. § 271. Next, Qwest argues that the ANSI standards prohibit any additional remedy at Qwest's expense. Finally, McLeodUSA has proposed four possible alternative solutions, and Qwest has suggested one additional possible solution. The Board will address each of these points in turn.

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[12] Exhibits 3 and 102.
[13] Exhibit 3.

1. Has the Board already addressed the question of remedies?

Qwest argues that the Board has already decided the question of appropriate remedies in situations like this one when the Board considered issues related to Qwest's application for authority, pursuant to 47 U.S.C. § 271, to enter the InterLATA market.[14] However, a review of the record shows that this specific issue was explicitly excluded from the decision made by the Board.

In that docket, the Board made certain determinations related to circumstances in which one or more of the following situations occurred: 1) Qwest assigned collocation spaces beyond the ANSI distances; 2) the CLECs would be required to order channel regeneration; and 3) a CLEC ordered channel regeneration that was not needed. However, these general determinations by the Board do not address the specific circumstances presented in this docket. The report filed with the Board specifically notes that McLeodUSA raised in that docket the issue the Board is considering in this docket and Qwest argued it did not need to be addressed at that time:

> In response to McLeodUSA, Qwest said that, because CLECs have the right to request alternate collocation locations where available, the issue of location necessity/preference need not be separately addressed.[15]

The § 271 Report, which was prepared by The Liberty Consulting Group, discussed this issue as follows:

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[14] Qwest Brief pp. 2-5, 20, citing *In Re: U S West Communications, Inc., n/k/a Qwest Corporation*, Docket No. INU-00-2, "Conditional Statement Regarding May 15, 2001, Report," issued October 12, 2001.

[15] *In Re: U S West Communications, Inc., n/k/a Qwest Corporation*, Docket No. INU-00-2, "Report on Checklist Items 1, 11, 13 and 14," p. 87, filed May 15, 2001 (hereinafter referred to as § 271 Report).

> Qwest cited the right of CLECs to request alternate collocation locations, but did not explicitly provide the criteria for deciding whether to grant such a request. Qwest also cited the obligation to route connections reasonable, but did not address at least one relevant case; i.e., if a particular collocation location requires regeneration even with efficient routing, but an alternate collocation would not, what cost responsibility for regeneration would exist.

The Board subsequently adopted this recommendation of the § 271 Report, which specifically excluded the exact situation now before the Board. Thus, Qwest's argument that this issue has previously been determined by the Board is incorrect.

2. Do the ANSI standards preclude any additional remedy?

Next, the Board will consider the ANSI standards related to the provision of this service.[16] Qwest argues that if it is in compliance with the relevant ANSI standards, it has no further obligation. In this situation, the relevant ANSI standards are contained within T1.102-1993 "Digital Hierarchy – Electrical Interface; Annex B" and T1.404-2002 "Network and Customer Installation Interfaces – DS3 Metallic Interface Specification."

Qwest argues that the ANSI standards dictate that McLeodUSA's equipment must be able to work with a compliant signal at the Qwest DS3 Digital Cross Connect (DSX) frame when connected to the Qwest DS3 DSX by 0 to 450 feet of cable. Although an exact measurement of the length of the cable was never conclusively established at the hearing, the testimony indicated that it was approximately 430 feet.

[16] Both parties have asserted that the ANSI standards for Telecommunications – Digital Hierarchy – Electrical Interfaces should be applied by the Board in this docket. This standard describes the electrical interfaces for the various levels of the North American digital telecommunications hierarchy to achieve satisfactory interworking of the telecommunications network.

According to Qwest, if the length of the cable is less than 450 feet, it has no further responsibility to McLeodUSA.[17]

McLeodUSA argues that the 450-foot standard is only the starting point in determining compliance with the ANSI standards.[18] ANSI T1.404-2002 provides a scope paragraph for the overall standard that states:

> The requirements in this standard are written to establish a functional and practical interface. Compliance with them provides a satisfactory interface in most installations. If problems arise that have not been addressed in this standard, they should be resolved through the cooperation of the customer, carrier, and equipment supplier.[19]

If, as Qwest suggests, the 450-foot requirement in the ANSI standards were intended to be an absolute answer, it would not be necessary to include this language concerning how to handle problems that meet the standards but do not provide a satisfactory interface. The Board agrees with McLeodUSA that the 450-foot requirement is merely a starting point, and the ANSI standards contemplate that additional steps may be required even in situations that satisfy the standards. Thus, while Qwest has apparently complied with a strict reading of the standard, the interface is not satisfactory and additional steps are necessary. It is now time for the parties to cooperate to find a solution, as envisioned in the scope section of the ANSI standard.

3. What actions should be required?

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[17] Transcript p. 257.
[18] Transcript p. 149.
[19] Exhibit 101, p. 1.

Several different solutions were discussed during this proceeding to accomplish the goal of ensuring that adequate signal strength is delivered to the McLeodUSA collocation space from the Qwest DSX frame, including:

- Move the McLeodUSA collocation cage to a different location that would allow interconnection cable lengths to be shortened.
- Provide finished services for the termination of McLeodUSA collocated services experiencing signal strength related failure problems.
- Place regeneration equipment at the Qwest DSX3 DSX frame to remedy the service signal problem.
- Change the Network Interface (NI) type used by Qwest by adjusting the Electric Line Build Out (LBO) from a setting of "short" to "long." That would result in the requirements of the non-equal level NI with DSX3 being met and the signal strength issue being resolved.

Although each of these solutions was discussed in testimony and at the hearing, most of the discussion centered around variations of the final two suggested solutions. Qwest also asserts that its late-filed Exhibit 111 shows that McLeodUSA can remedy the signal strength problem by changing the "design-to" point in the affected circuits from the Qwest DS3 DSX to the McLeodUSA collocation cage. This can be done by purchasing Qwest's "Expanded Interconnection Channel Termination" service. According to Exhibit 111, there would be a one-time, non-recurring charge of $164.50 for this change.[20]

McLeodUSA prefers the change in the LBO setting, which involves nothing more than a software setting change on the part of Qwest. At the hearing, in

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[20] The Board notes that the parties have been working on this problem intermittently for 3 years or more, but Qwest has apparently never before offered this inexpensive proposed solution to McLeodUSA in connection with this problem. This may indicate that Qwest has not taken this problem seriously.

response to questions from Board Member Munns, Qwest witness Mr. Hubbard testified that changing the LBO from "short" to "long" might cause problems for Qwest with its other customers.[21] However, the record also shows that Qwest has previously implemented this change on a temporary basis without any adverse effects on its other customers being noted.[22] Other than the minimal cost of making the initial software setting change, no specific testimony was given as to any other ongoing costs or problems with this solution.

The Board finds that Qwest should be responsible for finding a workable solution in this situation and bearing the cost of that solution. This finding is based on a number of facts in the record. First, the testimony is that Qwest unilaterally decided that McLeodUSA's collocation space would be on the fifth floor, even though there was space available on the third floor, closer to Qwest's facilities, at the time of the installation.[23] Qwest argues that McLeodUSA accepted the collocation space after an onsite inspection and walkthrough, but that process did not include testing the signal strength received at the collocation space, inspecting the cable run from Qwest's interface panel, or inspection of anything outside of the proposed collocation cage.[24] Under these circumstances, it cannot be said that McLeodUSA is the cause of this problem.

Moreover, the Board is concerned about Qwest's refusal to open a trouble ticket for this long-term problem and Qwest's decision, after the LBO setting was

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[21] Transcript pp. 314-16.
[22] Transcript pp. 32-33, 170, 265.
[23] Transcript p. 26.
[24] Transcript p. 40.

changed to fix the problem, to reset the LBO in a manner that decreased the signal strength and resulted in recurrence of the problem.[25] Qwest has not identified any reason for this action, other than internal Qwest standards.[26] All of these factors lead the Board to conclude that the signal strength problem exists; it causes significant difficulties for McLeodUSA; it is a violation of the interconnection agreement; it is not the fault of McLeodUSA; it is Qwest's responsibility to fix the problem; and Qwest has, at a minimum, failed to take the problem as seriously as it should have. Accordingly, the Board will direct Qwest to solve this problem, at its own expense.

Based on the record before the Board at this time, it appears there are at least two reasonable solutions: changing the LBO setting from "short" to "long" or the solution described in Exhibit 111. The Board will not decide which of these two solutions Qwest must implement in order to bring itself into compliance with the requirements of its interconnection agreement. Rather, the Board will allow Qwest to choose either the solution outlined in its late-filed exhibit, at no charge to McLeodUSA, or changing the LBO from "short" to "long," also at no charge to McLeodUSA. If, however, the first solution chosen by Qwest fails to solve the problem, then Qwest should implement the other solution, and keep trying until the problem is fixed.

Finally, pursuant to Iowa Code § 476.101(10), the Board will assess the costs of this proceeding to Qwest.

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[25] Transcript p. 32.
[26] Transcript p. 265.

IT IS THEREFORE ORDERED:

Qwest Corporation is ordered to comply with the requirements of its interconnection agreement with McLeodUSA as discussed in the body of this order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 12th day of October, 2005.