

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.,</p> <p style="text-align:right">Complainant</p> <p style="text-align:center">v.</p> <p>QWEST CORPORATION</p> <p style="text-align:right">Respondent</p>	<p>DOCKET NO. FCU-06-20</p>
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**ORDER DOCKETING COMPLAINT, GRANTING PARTIAL DISMISSAL,
AND SETTING PROCEDURAL SCHEDULE**

(Issued March 6, 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 alleges it is being overcharged by Qwest for collocation power charges in violation of Iowa law and the interconnection agreement between the parties.

Specifically, McLeodUSA alleges that Qwest, in violation of its amended interconnection agreement with McLeodUSA, has continued to bill certain collocation power charges using "ordered" levels rather than based on actual usage.

McLeodUSA suggests that this constitutes a violation of Iowa Code §§ 476.100(2),

476.100(3), 476.100(5), and 476.100(7). Additionally, McLeodUSA claims Qwest's action violates 47 U.S.C. §§ 201(b) and 251(c)(3)(D).

In addition to its allegation that the method of calculating the direct current power charges is incorrect, McLeodUSA alleges in Count II of its complaint that the rate per amp is not reasonable.

On February 20, 2006, Qwest filed its answer to the complaint. Qwest admits that it entered into an amendment to its interconnection agreement with McLeodUSA on August 18, 2004. However, Qwest argues that only one element of the direct current power charges was addressed by that amendment. According to Qwest, there are three separate charges related to direct current power that are listed in its Statement of Generally Available Terms (SGAT) including "Power Plant," "Power Usage Less Than 60 Amps," and "Power Usage More Than 60 Amps." Qwest posits that the interconnection agreement amendment only affected one of the three separate charges related to direct current power.

Qwest also filed a motion for partial dismissal, directed at Count II of the complaint. Qwest argues that a two-party complaint docket is not the proper venue for contesting a rate. Instead, Qwest suggests that McLeodUSA should initiate a formal objection to the rate pursuant to Iowa Code § 476.3(1) to begin a limited cost docket proceeding.

Qwest also filed a counterclaim on February 20, 2006, alleging that McLeodUSA has improperly failed to pay amounts withheld from invoices and

requests the Board direct McLeodUSA to immediately pay all amounts due under Qwest's invoices, plus interest and late payment fees pursuant to the interconnection agreement between the parties.

On February 27, 2006, McLeodUSA filed an answer to Qwest's counterclaim and a response to the motion to dismiss the rate element portion of its complaint.

In response to the counterclaim filed by Qwest, McLeodUSA asserts that, as noted in its initial complaint, McLeodUSA began withholding disputed amounts in September of 2005 when it initiated its billing dispute. McLeodUSA also indicates that it ceased withholding disputed amounts in December 2005 while still reserving its right to challenge all the billings.

McLeodUSA urges the Board to deny the partial motion to dismiss, arguing that Iowa Code § 476.3(1) specifically provides for formal complaints to be used to challenge a rate. Further, McLeodUSA reasons that the numerous provisions of § 476.101(8) are to ensure interconnecting competitors are treated fairly. Because improperly high rates for collocation power interfere with the provision of adequate and non-discriminatory interconnection and can serve as a barrier to competitors, the rate challenge is entitled to expedited treatment under § 476.101(8).

Iowa Code § 476.101(8) states, in relevant part; as follows:

8. Any person may file a written complaint with the board requesting the board to determine compliance by a local exchange carrier with the provisions of section 476.96 through 476.100, 476.102, and this section, or any board rules implementing those sections.

In its complaint, McLeodUSA bases its claims on alleged violations of Iowa Code §§ 476.100(2), 476.100(3), 476.100(5), and 476.100(7). Iowa Code § 476.100(2) states, in part, that a local exchange carrier shall not:

2. Discriminate against another provider of communications services by refusing or delaying access to essential facilities on terms and conditions no less favorable than those the local exchange carrier provides to itself and its affiliates.

This provision does not provide a basis for reviewing the rates charged by Qwest. It could support a claim of rate discrimination, i.e., that Qwest is charging different rates to different providers, but success on that claim would only entitle a claimant to use the lower rate; it would not support a rate case.

Iowa Code § 476.100(3) provides that a local exchange carrier shall not "degrade the quality of access or service provided to another provider of communications services." McLeodUSA has not alleged that the quality of the service provided is less than adequate. Further, McLeodUSA has not suggested that Qwest's action has delayed interconnection or provided inferior interconnections, as Iowa Code § 476.101(5) prohibits. Neither of these sections provides a basis for a rate proceeding.

Iowa Code § 476.101(7) prohibits a local exchange carrier from "discriminate[ing] in favor of itself or an affiliate in the provision and pricing of, or extension of credit for, any telephone service." Again, this prohibition is directed at discrimination, not at determining the absolute price level.

The Board finds that the statutory violations alleged by McLeodUSA do not support a rate review proceeding as part of a § 476.101(8) complaint. If McLeodUSA wants to challenge the rate being charged in Qwest's SGAT, it must allege a different statutory basis. The Board will grant Qwest's motion to dismiss Count II of the complaint, asking the Board to review the rate being charged by Qwest for direct current power.

On February 28, 2006, Qwest filed a motion for a procedural conference to address scheduling matters in this case. This complaint has been filed pursuant to Iowa Code § 476.101(8), which places a time restriction of 90 days for the Board to issue a final determination. This leaves little time for additional procedures to take place. Therefore, the Board will deny the motion for procedural conference and will set a procedural schedule.

IT IS THEREFORE ORDERED:

1. The complaint filed by McLeodUSA Telecommunications Services, Inc., against Qwest Corporation on February 9, 2006, is docketed as Docket No. FCU-06-20 for consideration of the issues raised in Count I of the complaint and such further issues as may develop during the course of the proceeding.
2. The motion for partial dismissal filed by Qwest Corporation on February 20, 2006, is granted as discussed in this order.
3. The following procedural schedule is established:

a. Prepared direct testimony, with the underlying workpapers and exhibits, shall be filed by McLeodUSA on or before March 9, 2006. If a data request is referenced in its prepared testimony, the data request shall be filed as an exhibit.

b. Prepared reply testimony, with the underlying workpapers and exhibits, shall be filed by Qwest on or before March 23, 2006. If a data request is referenced in its prepared testimony, the data request shall be filed as an exhibit.

c. Prepared rebuttal testimony, with the underlying workpapers and exhibits, shall be filed by McLeodUSA on or before March 31, 2006. If a data request is referenced in its prepared testimony, the data request shall be filed as an exhibit.

d. A hearing shall be held beginning at 9 a.m. on April 14, 2006, for the purpose of receiving testimony and the cross-examination of all testimony. The hearing shall be held in the Utilities Board Hearing Room, 350 Maple Street, Des Moines, Iowa. The parties shall appear one-half hour prior to the time of the hearing for the purpose of marking exhibits, discussing order of witnesses, and cross-examination, etc. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request

that appropriate arrangements be made. The parties are advised that only one day has been set aside for this hearing.

e. Simultaneous briefs shall be filed on or before April 24, 2006.

4. In the absence of objection, all underlying workpapers shall become a part of the evidentiary record of these proceedings at the time the related testimony and exhibits are entered into the record.

5. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination, which have not been previously filed, shall become a part of the evidentiary record of these proceedings. The party making reference to the data request shall file an original and six copies of the data request and response with the Board at the earliest possible time.

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 6th day of March, 2006.