

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>McLEODUSA TELECOMMUNICATIONS SERVICES, INC.,</p> <p style="text-align:center">Complainant,</p> <p style="text-align:center">v.</p> <p>QWEST CORPORATION,</p> <p style="text-align:center">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-06-20</p>
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**ORDER GRANTING MOTION TO COMPEL DISCOVERY AND
ESTABLISHING PROTECTIVE MEASURES**

(Issued March 8, 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. On March 6, 2006, the Board issued an order docketing the complaint, granting partial dismissal, and setting a procedural schedule.

On March 6, 2006, McLeodUSA filed a motion to compel responses from Qwest to certain data requests. McLeodUSA indicates that it served Qwest its first set of data requests, numbered 1-8, on February 17, 2006. According to

McLeodUSA, Qwest served its responses on February 22, 2006, those responses consisting almost entirely of objections. Specifically, McLeodUSA requests the Board compel Qwest to immediately respond to Data Request Nos. 1, 3, 4, 5, 6, 7, 8(c), and 8(d).

It appears that Qwest makes two objections to each of the requests.¹ The first of these objections states:

Qwest objects to this request because it seeks information that is reasonably calculated to lead to the discovery of relevant or admissible evidence only as to its challenge to the Board-approved rate for the rate element DC Power Plant. This request is not reasonably calculated to lead to the discovery of relevant or admissible evidence concerning the interpretation of the DC Power Measuring Amendment at issue in this case.

Qwest also objects to the requests on the grounds that the information is "extremely confidential trade secret information."

McLeodUSA maintains that the information sought through these data requests is just as relevant to Count I of its initial complaint as it is to Count II, noting that the subject matter of Count I is the nature of the allocation of the DC Power Plant costs. Underlying cost data may potentially be relevant to the allocation of those costs. As to the question of confidentiality, McLeodUSA points out that this can be addressed with an appropriate protective agreement.

¹ "Qwest Corporation's Responses to McLeodUSA's First Set of Discovery Requests," dated February 22, 2006, is attached to McLeodUSA's motion to compel.

Normally, the Board would wait for Qwest's response before ruling. However, the limited time available for this docket and the nature of the objections raised make it both necessary and possible for the Board to rule immediately. The Board finds that discovery rules should be liberally construed and discovery should be permitted when the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Each of the requests appears to fit within those parameters and the Board will grant the motion to compel requested by McLeodUSA and direct Qwest to immediately provide responses to Data Request Nos. 1, 3, 4, 5, 6, 7, 8(c), and 8(d).

Qwest's second objection relates to the confidentiality of the information. In previous proceedings, parties before the Board have routinely executed confidentiality agreements to facilitate the exchange of information. In order to enable production while an agreement is negotiated and executed in this case, the Board will enter an interim order that the information produced by Qwest pursuant to this order may be viewed only by counsel and witnesses for McLeodUSA and may be used only for purposes directly related to this docket.

IT IS THEREFORE ORDERED:

1. The motion to compel responses filed by McLeodUSA Telecommunications Services, Inc., on March 6, 2006, is granted. Qwest Corporation is directed to immediately respond to Data Request Nos. 1, 3, 4, 5, 6, 7, 8(c), and 8(d).

2. The information produced by Qwest pursuant to this order may be viewed only by counsel and witnesses for McLeodUSA and may be used only for purposes directly related to this docket. This protective order shall continue until modified by the Board or until the parties have negotiated and executed a protective agreement for this purpose.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 8th day of March, 2006.