

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 style="text-align:center">DOCKET NO. FCU-06-20</p>
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**ORDER DENYING PROTECTIVE ORDER AND
COMPELLING DISCOVERY**

(Issued April 13, 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 27, 2006, Qwest filed a motion for protective order requesting the Board direct that no responses were necessary to the Third Set of Discovery Requests served by McLeodUSA on March 23, 2006, which encompasses Data Request Nos. 15 through 37.

Qwest alleges that each of these requests seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence in that they fail to address any matter relevant to the interpretation of the contract, but simply seek to challenge the existing rates.¹ Qwest argues that the Board's March 6, 2006, order rejected any challenge to the existing rates.

On March 29, 2006, McLeodUSA responded to Qwest's motion for a protective order, asking the Board to deny the request and instead order Qwest to fully respond to the data requests. McLeodUSA argues that the contract language at issue should be interpreted in a manner that is consistent with the way each of the rate elements is constructed. This will allow proper cost recovery in a manner that is consistent with Section 252 of the Telecommunications Act of 1996. It will also reflect the totality of the parties' agreement, advance the law and policy of Iowa's 1995 act, and produce a just and reasonable result.² According to McLeodUSA, the only way to accomplish a proper interpretation is to review Qwest's cost study, discern the costs that are meant to be recovered by each element, and determine the extent to which the competing interpretations matches those underlying cost recovery assumptions.

McLeodUSA asserts that the information it is seeking serves as the basis for Qwest's -48V DC Power Usage charges and will be relevant to show whether the elements are to be billed on the basis of measured usage or ordered capacity. McLeodUSA asserts that Qwest bears the burden of substantiating its rates and rate

¹ Qwest Motion for Protective Order, p. 2.

² McLeodUSA Resistance, p. 3.

structures and proving that they are reasonably consistent with the Federal Communications Commission (FCC) rules for cost recovery. Therefore, McLeodUSA argues that any examination of the manner in which Qwest's charges should be applied in order to be consistent with the amended agreement is going to require that Qwest explain its studies and provide information that will assist McLeodUSA in understanding the inputs, the resulting costs, and how those relate to the language in the agreement.

On March 30, 2006, Qwest filed a reply in support of its motion for protective order. Qwest again asserts that the data requests are nothing more than a thinly veiled attempt to litigate the rates and charges, which, Qwest notes, the Board has dismissed from the complaint.

As the Board has previously stated, it 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. Qwest has argued, among other things, that if McLeodUSA's interpretation of the contract is adopted, Qwest will not recover the cost of providing collocation power to McLeodUSA. McLeodUSA is entitled to discovery to probe the validity of Qwest's argument. Therefore, the Board will deny the motion for protective order requested by Qwest and order Qwest to respond to Data Request Nos. 16-37. (Both parties agree that Data Request No. 15 has been answered).

In its previous order granting the motion to compel discovery, issued March 8, 2006, the Board directed Qwest to "immediately respond" to the data requests.

According to McLeodUSA's resistance to the motion for protective order, Qwest did not respond to the previous data requests until March 16, 2006, eight days after the order. The Board notes that 199 IAC 7.15(5) requires that responses be made within five days when the Board is required to issue a decision in six months or less. Because Qwest has already had these data requests since March 23, 2006, the Board will order that Qwest respond to Data Request Nos. 16-37 within three business days of this order. The Board's staff will transmit a copy of this order via electronic mail on the day of issuance to ensure there is no delay.

IT IS THEREFORE ORDERED:

1. The motion for protective order filed by Qwest Corporation on March 27, 2006, is denied.
2. Qwest Corporation is directed to respond to Data Request Nos. 16-37 within three business days of this 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 13th day of April, 2006.