

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of McLeodUSA	)	
Telecommunications Services, Inc.'s	)	Case No. TT-2006-047
Tariff Filing to Increase its	)	Tariff No. JC-2006-0788
Missouri Intrastate Access Rates	)	Tariff No. JC-2006-0789

**MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.'s MOTION TO COMPEL  
AND MOTION TO SUSPEND PROCEDURAL SCHEDULE**

COMES NOW McLeodUSA Telecommunications Services, Inc., (McLeodUSA), by and through counsel, and for its Motion to Compel and Motion to Suspend Procedural Schedule, states as follows:

McLeodUSA has sought discovery from AT&T Missouri in this case to which AT&T Missouri has objected. The parties have complied with the Commission's rules regarding discovery (4 CSR 240-2.080)(8) without reaching a resolution of this dispute. McLeodUSA thus files its Motion to Compel AT&T Missouri to respond to its Data Request dated August 16, 2006. Because preparation of McLeodUSA's surrebuttal testimony (currently due on Friday, October 13) cannot proceed until this information is made available, McLeodUSA also seeks suspension of the procedural schedule until this discovery matter can be determined.

1. On August 16, 2006, McLeodUSA submitted its First Set of Data Requests to AT&T Missouri, consisting of a single data request seeking "AT&T Missouri's most recent cost studies estimating costs associated with AT&T Missouri's switched access rates" (see Attachment 1). By letter dated August 25, 2006, AT&T Missouri objected to the Data Request on grounds of relevance, overbreadth and burdensomeness (See Attachment 2). Although McLeodUSA has considered AT&T Missouri's cost studies to be relevant at all times to this proceeding, the discovery dispute was not pursued further

until AT&T Missouri filed its rebuttal testimony on September 26 making reference to AT&T cost studies. Based on McLeodUSA's belief that these references constituted an admission that AT&T's cost studies were indeed relevant and thus mooted the objection of AT&T, counsel for McLeodUSA contacted counsel for AT&T by letter on September 28 (See Attachment 3) to seek a full response to the Data Request. Counsel for McLeodUSA and AT&T discussed this matter by phone on September 29, pursuant to 4 CSR 240-2090(8)(A), and counsel for McLeodUSA, the moving party, certifies compliance with that rule. Compromise was discussed but rejected, and the matter was escalated to a conference with a law judge per 4 CSR 240-2.090(8)(B). All parties were advised of the scheduling of the conference; the Office of the Public Counsel and Staff declined to participate. The conference took place on the afternoon of Tuesday, October 10, with Judge Morris Woodruff, McLeodUSA counsel Mary Ann Young, and AT&T counsel Leo Bub participating. The dispute remains unresolved and this Motion to Compel is filed as soon as possible after compliance with 4 CSR 240-2.090(8)(B).

2. The Data Request seeks:

AT&T Missouri's most recent cost studies estimating costs associated with AT&T Missouri's switched access rates. Your complete response will include electronic versions of any models, studies, supporting calculations or analysis that support the estimated costs (including any models that generate investments, expenses, engineering assumptions or other inputs into the studies or models.) Each study or model should be a fully functioning version whereby a cost analyst can revise assumptions and inputs and generate alternative results. For each relevant output of the studies or models provided, please identify the existing AT&T Missouri rate element(s) that correlate to each such cost.

The access rate cap has been the "rule" for CLEC access rates in Missouri since CLEC's first became eligible for certification. Any CLEC that wishes to implement access rates that exceed their cap, i.e. the access rates of the ILEC in whose service area the rates apply, will be measured against the benchmark of

the ILEC's access rates. Given that McLeodUSA's access charges are benchmarked to AT&T's rates, information pertaining to AT&T's underlying costs and cost study methodology are directly relevant. McLeodUSA should be permitted to show how its costs do not square with the AT&T costs that dictate the access rate cap level McLeodUSA is permitted to charge. Thus, it is inconceivable how the ILEC's access rate cost studies are beyond the scope of such a proceeding. The cost studies of AT&T Missouri are relevant to this proceeding, and AT&T Missouri should be compelled to provide them in response to McLeodUSA's Data Request. On this basis alone, AT&T should be compelled to provide the requested information.

3. Additionally, AT&T Missouri's testimony eliminates any question regarding relevance wherein its witness relies on the AT&T cost studies and methodology for calculating its access rates in rebuttal testimony. For example, reference AT&T witness Conwell's testimony at pages 24 and 25. Mr. Conwell is critical of McLeodUSA's cost study and its inclusion of what Mr. Conwell sees as loop-related costs. Though Mr. Conwell is mistaken in this regard, the fact is that he specifically references switched access cost studies filed by AT&T Missouri (SBC at the time) in Case No. TR-2001-65 as an authoritative source indicating that the inclusion of such costs are unreasonable. Relying on the AT&T cost studies as a basis for criticizing the McLeodUSA cost study makes those cost studies highly relevant, at a minimum, for purposes of verifying Mr. Conwell's assertions. Further, beginning at page 28, line 21 through page 29, line 7, and continuing on page 57, line 13 through page 61, line 13, of his rebuttal testimony, Mr. Conwell criticizes McLeodUSA's proposed factor for the recovery of common costs. In developing cost-based rates, common costs generally represent the

difference between the rate and any identifiable direct costs (i.e., Rate minus Direct Costs equal Common Costs). Without access to AT&T Missouri's cost studies, neither McLeodUSA nor the Commission can evaluate the level of common costs recovered by AT&T Missouri's switched access rates that currently serve as the cap on McLeodUSA's rates. As such, a comparison between McLeodUSA's proposed common cost factor and the factor used by AT&T in setting its rates isn't possible. This is problematic for several reasons. For example, the possibility exists that AT&T recovers common costs within its existing rates at levels far exceeding those proposed by McLeodUSA, a fact that would largely moot Mr. Conwell's complaints. Without access to AT&T's cost study, however, we simply cannot know. Finally, Mr. Conwell's testimony is full of complaints regarding various cost inputs and assumptions relied upon by McLeodUSA. Based upon its review of AT&T cost studies in other jurisdictions, McLeodUSA is confident that AT&T uses similar, if not identical, inputs and assumptions when it develops its cost studies. McLeodUSA is entitled to find out whether AT&T uses like inputs and assumptions in order to rebut Mr. Conwell's criticism of the McLeodUSA cost study.

4. Recognizing that there is not adequate time to allow this matter to be resolved prior to the October 13 deadline for McLeodUSA's surrebuttal testimony and the October 17 prehearing conference in this case, McLeodUSA moves the Commission to suspend the procedural schedule in this case, permit other parties to respond to this motion and instruct the parties to recommend a new procedural schedule within a week after the Commission issues an Order regarding this discovery dispute.

WHEREFORE, McLeodUSA Telecommunications Services, Inc. respectfully submits this Motion and requests the Commission suspend the procedural schedule in this case until this discovery matter is resolved and compel AT&T Missouri to respond to the Data Request in question.

Respectfully submitted,

/s/Mary Ann Young

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Attorneys for McLeodUSA  
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October 11, 2006

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document has been served electronically on the General Counsel's Office, the Office of the Public Counsel, and counsel for AT&T Missouri this 11<sup>th</sup> day of October 2006.

/s/Mary Ann Young

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Mary Ann (Garr) Young

**ATTACHMENTS 1-3  
WILL BE FILED  
AS ONE OR MORE SEPARATE FILES IN EFIS**