

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

In the Matter of McLeodUSA)	
Telecommunications Service, Inc.'s Tariff)	Case No. TT-2006-0474
Filing to Increase its Missouri Intrastate)	Tariff No. JC-2006-0789
Access Rates.)	

**AT&T MISSOURI'S RESPONSE TO
MOTION TO COMPEL**

The Missouri Public Service Commission ("Commission") should deny McLeodUSA Telecommunications Services, Inc.'s ("McLeodUSA's") Motion to Compel because AT&T Missouri's¹ costs to provide switched access service have absolutely no bearing on any determination the Commission will make in this proceeding.

Introduction

Here, McLeodUSA is attempting to demonstrate that its switched access costs exceed the incumbent ILEC AT&T Missouri's intrastate switched access rates. Thus, the only costs that have any relevance for this comparison are McLeodUSA's costs. Contrary to McLeodUSA's representations, AT&T Missouri's intrastate switched access rates that serve as the CLEC access rate cap were not based on the cost study McLeodUSA seeks. AT&T Missouri's criticisms of McLeodUSA's cost study focus on substantial flaws in costing methodology and McLeodUSA's utter failure to substantiate various inputs into its study. At no point did AT&T Missouri compare its costs to those of McLeodUSA. And in any event, the Commission has previously examined AT&T Missouri's cost to provide the switching and transport functions at issue here and set unbundled network element prices for these functions at levels substantially below the rates for switched access which McLeodUSA proposes in its tariff.

It is patently absurd for McLeodUSA to claim that it is unable to prepare its testimony without having access to AT&T Missouri's switched access cost studies. McLeodUSA did not

¹ Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri will be referred to in this pleading as "AT&T Missouri." It previously conducted business as "SBC Missouri."

have access to AT&T Missouri's cost studies when it made its tariff filing and was not relying on them at that time. Certainly McLeodUSA cannot be claiming that it would have been unable to meet its burden of proof had AT&T Missouri not intervened in the case (potentially making its cost studies subject to discovery). Clearly, lack of access to AT&T Missouri cost studies is completely irrelevant to the issues which McLeodUSA must prove.

Background

McLeodUSA submitted the data request at issue here to AT&T Missouri on August 16, 2006. McLeodUSA's data request stated:

Please produce 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.

AT&T Missouri timely objected to this data request on August 25, 2006. AT&T Missouri's objection stated:

AT&T Missouri objects to this Data Request on the ground that it is overbroad, burdensome and seeks the production of information that is neither relevant nor calculated to lead to the discovery of relevant evidence.

McLeodUSA did not seek to compel a response until October 11, 2006,² more than six weeks after the objection was made and only two days before its surrebuttal testimony was due. In its Motion, McLeodUSA claims it "cannot proceed until this information is provided."³ Based on McLeodUSA's representations, the Commission suspended the procedural schedule in this case to resolve this discovery dispute.

² The discovery conference was held with Judge Woodruff on October 10, 2006.

³ McLeodUSA Motion to Compel, p. 1.

The Scope of Discovery

Pursuant to 4 CSR 240-2.090(1), “discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court.” As the Commission has previously stated, the scope of discovery in its proceedings is the same as in civil cases generally.

⁴ Quoting Rule 56.01(b)(1) of the Missouri Rules of Civil Procedure, the Commission stated:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.⁵

The Commission explained that “relevant evidence” is “that which tends to prove or disprove a fact of consequence to the pending matter,”⁶ and that relevance must be determined by reference to the pleadings.⁷

Argument

1. McLeodUSA’s Costs are the Only Costs that have any Relevance - In its attempt to avoid the Commission-ordered cap on CLEC intrastate switched access rates, the “fact of consequence” McLeodUSA seeks to prove is its claim that its costs to provide the service exceed the rate cap, which is set at the rate of the incumbent ILEC, AT&T Missouri. In this context, any attempt to show that its costs exceed the incumbent’s costs proves nothing. As the comparison McLeodUSA must make is between its claimed costs and AT&T Missouri’s rates, AT&T

⁴ In the Matter of an Investigation of the Actual Costs Incurred in Providing Exchange Access Service and the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri, Case No. TR-2001-65, 2002 MoPSC LEXIS 399 at *13-*14 (March 14, 2002).

⁵ Id.

⁶ Id., citing W. Scroeder, 22 Missouri Practice-Missouri Evidence, Section 401-1(a) (1992).

⁷ Id., citing State ex rel. Anheuser v. Nolan, 692 S.W.2d 325, 237 (Mo. App., E.D. 1985).

Missouri's costs in providing its switched access service have no bearing on the determination the Commission must make and are beyond the scope of this proceeding.

In any event, production of AT&T Missouri's switched access cost studies would not lead to the discovery of admissible evidence. The Commission has already examined AT&T Missouri's TELRIC costs for the switching and transport functions at issue here when it established unbundled network element prices and set rates for those elements substantially below AT&T Missouri's access rates and substantially below the rates which McLeodUSA proposes here.

2. AT&T Missouri's Intrastate Switched Access Rates were not Based on the Cost Study McLeodUSA Seeks - In an attempt to support its claim that AT&T Missouri's cost study is relevant, McLeodUSA asserts that "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."⁸

McLeodUSA is mistaken. The AT&T Missouri cost study McLeodUSA seeks did not "dictate the access rate cap level," and in fact has no relation to AT&T Missouri's intrastate switched access rates. As the Commission is aware, AT&T Missouri's intrastate switched access rates were initially set over 20 years ago at divestiture in Case No. TO-83-253. These rates were set above the then-existing interstate level. AT&T Missouri later restructured those rates to their present form in Case No. TR-86-84. Since that time, AT&T Missouri's switched access rates have been revised as a result of rate cases⁹ and becoming a price cap company. Under the price cap statute,¹⁰ AT&T Missouri since January 1, 2000, has been required to change its intrastate switched access rates annually by the change in the telephone service component of the

⁸ McLeodUSA Motion to Compel, p. 3.

⁹ See e.g., Case No. TR-89-14.

¹⁰ Section 392.245.4(a) RSMo (2000)

Consumer Price Index (“CPI-TS”) for the preceding 12 months and has made the following rate adjustments:

Year	Percent Change
2000	-0.92%
2001	-0.75%
2002	0.90%
2003	-0.05%
2004	-2.68%
2005	-1.95%
2006	0.23%

These regulatorily-imposed price adjustments to AT&T Missouri’s switched access rates had nothing to do with AT&T Missouri’s cost of providing the service, but instead resulted from the gradual decline of long distance and wireless service pricing, which caused the CPI-TS to trend downward.

3. AT&T Missouri Witness Conwell Referenced Only AT&T Missouri’s Costing Methodology, not its Costs - McLeodUSA claims that AT&T Missouri’s switched access cost studies are relevant here because “its witness relies on the AT&T cost studies and methodology for calculating its access rates in rebuttal testimony.”¹¹

Again, McLeodUSA is mistaken. As seen from the portion of AT&T Missouri witness Craig Conwell’s testimony that McLeodUSA cited, Mr. Conwell referenced only the methodology AT&T Missouri employs in performing a switched access cost study, not AT&T Missouri’s specific costs. Mr. Conwell pointed out that McLeodUSA has inappropriately included loop costs (i.e., costs for the “AnyMedia” access system, which provides an integrated digital loop carrier or “DLC” function) in its switching cost study. To support this criticism, Mr. Conwell pointed to a 2002 presentation QSI Consulting (which prepared McLeodUSA’s cost study) made to McLeodUSA recognizing that such DLC costs are part of loop costs, not

¹¹ McLeodUSA Motion to Compel, p. 3.

switching costs. Mr. Conwell also pointed to AT&T Missouri witness David Barch's testimony in Case No. TR-2001-65 explaining that AT&T Missouri (then known as Southwestern Bell Telephone Company) does not include loop costs, including DLC equipment in its switched access cost studies. Mr. Conwell, however, made no reference to AT&T Missouri-specific costs. Rather, his point was that because the loop is not directly attributable to switched access service, there is no justification for the inclusion of loop equipment in a properly conducted switched access cost study.¹²

While AT&T Missouri vehemently opposes the production of its highly confidential switched access cost study from Case No. TR-2001-65, it is willing to provide an unpopulated version of its switched access cost study model. McLeodUSA could use this model to confirm that AT&T Missouri's switched access cost studies do not include loop costs, like the cost of DLC systems, as represented by Mr. Conwell. But Mr. Conwell's criticism of McLeodUSA's methodological approach has not opened the door for McLeodUSA to access all of the highly confidential inputs that are included in AT&T Missouri's switched access cost studies and AT&T Missouri should not be required to provide them.

4. Mr. Conwell Criticized McLeodUSA Study Inputs as Unsubstantiated - McLeodUSA claims that "Mr. Conwell criticizes McLeodUSA's proposed factor for the recovery of common costs" and that "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."¹³ But as noted above, neither AT&T Missouri's common cost factor, nor its switched access cost studies, have any relation to AT&T Missouri's switched access rates because those rates are not based on the cost study McLeodUSA seeks.

¹² Conwell Rebuttal, pp. 24-25.

¹³ McLeodUSA Motion to Compel, pp. 3-4.

Moreover, as seen in the specific pages of Mr. Conwell's testimony that McLeodUSA cites in its Motion, Mr. Conwell makes no comparison of McLeodUSA's proposed common cost factor with that used in AT&T Missouri's cost studies. Rather, his conclusion that McLeodUSA's factor is "very high" is based on his observation that McLeodUSA's factor is insufficiently supported:

- No information is provided to show that the amounts treated as common are indeed "common" to all services rather than being attributable to individual services or service lines;
- No information is provided to demonstrate that using 2003-2004 expense levels is indicative of the company's forward-looking common costs.

As the face of his testimony makes clear, Mr. Conwell based his opinion on his analysis of McLeodUSA's methods and input values, not those in any AT&T Missouri cost study.¹⁴

McLeodUSA also claims that Mr. Conwell has raised "complaints regarding various cost inputs and assumptions relied upon by McLeodUSA."¹⁵ McLeodUSA, however, has completely failed to identify the inputs and assumptions to which it is referring. The Commission should accordingly disregard this unsupported claim. AT&T Missouri would nevertheless note that McLeodUSA's claim is misplaced. A general review of Mr. Conwell's testimony shows that his general complaint with regard to McLeodUSA's inputs and assumptions are that they are simply unsubstantiated. At no point does Mr. Conwell make any attempt to compare McLeodUSA's proposed inputs to those of AT&T Missouri.

5. McLeodUSA's Request is Impermissibly Overbroad -In its Motion to Compel, McLeodUSA has utterly failed to justify its demand that AT&T Missouri produce its entire set of highly confidential switched access cost studies, including "electronic versions of any models, studies, supporting calculation or analysis that support the estimated cost (including any models

¹⁴ Rebuttal Testimony of W. Craig Conwell, filed September 26, 2006 at pp. 28-29. Mr. Conwell expands on these criticisms at pp. 57-61.

¹⁵ McLeodUSA Motion to Compel, p. 4.

that generate investments, expenses, engineering assumptions or other inputs into the studies or models).”

Despite AT&T Missouri’s objection that McLeodUSA’s request is overbroad, McLeodUSA has only identified two specific things it claims it needs from AT&T Missouri’s cost studies:

- Inclusion of Loop-Related Costs (the AnyMedia Equipment)
- Common Cost Factor

But as demonstrated above, McLeodUSA has not provided any basis for an order compelling the production of these materials.

Conclusion

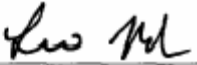
The Commission should deny McLeodUSA’s Motion to Compel because AT&T Missouri’s costs to provide switched access service have absolutely no bearing on any comparison the Commission will make in this proceeding between McLeodUSA’s switched access costs and AT&T Missouri’s intrastate switch access rates. Contrary to McLeodUSA’s representations, AT&T Missouri’s intrastate switched access rates that serve as the CLEC access rate cap were not based on the cost study McLeodUSA seeks.

AT&T Missouri’s criticisms of McLeodUSA’s cost study focus on substantial flaws in costing methodology and McLeodUSA’s utter failure to substantiate various inputs into its study. At no point did AT&T Missouri compare its costs to those of McLeodUSA. And in any event, production of AT&T Missouri’s switched access cost studies will not lead to the discovery of relevant evidence because the Commission has previously examined AT&T Missouri’s cost to provide the switching and transport functions at issue here and set unbundled network element prices for these functions at levels substantially below AT&T Missouri’s tariffed intrastate access rates for these elements.

WHEREFORE, AT&T Missouri respectfully requests the Commission to deny
McLeodUSA's Motion to Compel.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.,
D/B/A AT&T MISSOURI

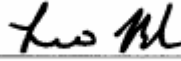
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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on October 23, 2006.



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