

1 BEFORE THE PUBLIC SERVICE COMMISSION

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IN THE MATTER OF THE)

COMPLAINT OF McLEODUSA)

5

TELECOMMUNICATIONS)

SERVICES, INC., AGAINST) Judge Steven Goodwill

6

QWEST CORPORATION FOR)

ENFORCEMENT OF COMMISSION-)

7

APPROVED INTERCONNECTION) Docket No. 06-2249-01

AGREEMENT.)

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May 24, 2006 - 9:30 a.m.

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Location: HEBER M. WELLS BUILDING

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160 East 300 South, Room 451

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Salt Lake City, Utah 84114

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Reporter: Kathy Morgan, CSR, RPR

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Notary Public in and for the State of Utah

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A P P E A R A N C E S

Presiding

Administrative Law

Judge: STEVEN GOODWILL

Representing

McLeodUSA:

GREGORY J. KOPTA

DAVIS WRIGHT TREMAINE, LLP

1501 Fourth Avenue

Seattle, Washington 98101

(206) 628-7692

WILLIAM A. HAAS

VICE PRESIDENT, McLEODUSA

DEPUTY GENERAL COUNSEL

6400 C Street SW

Cedar Rapids, Iowa 52404

(319) 790-7295

Representing

Qwest:

TIMOTHY J. GOODWIN

QWEST

1801 California Street

10th Floor

Denver, Colorado 80202

(303) 383-6612

LISA A. ANDERL

QWEST

1600 7th Avenue

Room 3206

Seattle, Washington 98191

(206) 345-1574

GREGORY B. MONSON

STOEL RIVES

201 South Main Street

Suite 1100

Salt Lake City, Utah 84111

(801) 578-6946

I N D E X

Witness Page

Tami Spocogee

Direct Examination by Mr. Kopta 22

Cross-Examination by Mr. Goodwin 29

Redirect Examination by Mr. Kopta 64

Recross-Examination by Mr. Goodwin 72

Further Redirect Examination by Mr. Kopta 76

Further Recross-Examination by Mr. Goodwin 86

Further Redirect Examination by Mr. Kopta 87

Sidney Morrison

Direct Examination by Mr. Kopta 90

Cross-Examination by Mr. Goodwin 93

Redirect Examination by Mr. Kopta 144

Recross-Examination by Mr. Goodwin 156

Further Redirect Examination by Mr. Kopta 166

Michael Starkey

Direct Examination by Mr. Kopta 176

Cross-Examination by Ms. Anderl 177

Redirect Examination by Mr. Kopta 214

E X H I B I T S

Number	Description	Marked/ Admitted/Page
Hearing Exhibits		
1	DC Power Measuring Amendment	27
2	Response to data request 1	30
3	Response to data request 2	32
4	E-mail chain produced by McLeod in discovery	43
5	Qwest fourth set of discovery requests, Iowa case	45
6	E-mail from Kathy Battles to Mary Sullivan, Julie Radman-Carter and Jody Ochs	52
7	DC Power Measuring Amendment to Interconnect Agreement	54
8	Qwest price quote	67
9	Exhibit A to Qwest Utah SGAT	109
10	Listing of all central offices in Colorado serving as study for Figure 7	126
11	DC power for 100-amp order	174
12	Data request response numbers 13, 21, 24 and 35 in Iowa proceedings	178

1	13	Detailed summary of results	
2		for Utah interconnection	
3		services collocation	201
4	14	Request to Qwest number 32	
5		and Qwest's response	207

McLeod Exhibits

6	1	Tami Spocogee Direct	
7		1-SR Tami Spocogee surrebuttal	24
8	2	Sidney Morrison Direct	28
9		2.1 SLM-1	28
10		2.2 SLM-2	28
11		2.3 SLM-3	28
12		2-SR Morrison surrebuttal	28
13	3	Michael Starkey Direct	28
14		3.1 MS-1	28
		3-SR Starkey surrebuttal	28
		3-SR.1 SM-2	28

Qwest Exhibits

15	1	Rebuttal testimony of	
16		William R. Easton	29
17		1.1 William R. Easton	
18		Testimony Exhibit WRE-1	29
19		1.2 William R. Easton	
20		Testimony Exhibit WRE-2	29
21		1.3 William R. Easton	
22		Testimony Exhibit WRE-3	29
23		1.4 William R. Easton	
24		Testimony Exhibit WRE-4	29
25	2	Rebuttal testimony of	
26		Robert J. Hubbard	29
		2.1 Robert J. Hubbard	
		Confidential Exhibit RJH-1	29
	3	Rebuttal testimony of	
		Curtis Ashton	29

1 MAY 24, 2006 - 9:30 A.M. - SALT LAKE CITY, UTAH

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3 P R O C E E D I N G S

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5 JUDGE GOODWILL: Okay, let's go ahead
6 and go on the record. This is the Public Service
7 Commission hearing In the Matter of the Complaint
8 of McLeodUSA Telecommunication Services, Inc.,
9 against Qwest Corporation For Enforcement of
10 Commission-Approved Interconnection Agreement,
11 Public Service Commission docket number
12 06-2249-01. I'm Steve Goodwill, the
13 Administrative Law Judge for the Public Service
14 Commission and have been assigned by the
15 Commission to hear this matter. Notice of this
16 hearing was issued by the Commission via
17 scheduling order dated March 20th, 2006. At this
18 time we'll go ahead and take appearances. We'll
19 start with McLeod.

20 MR. KOPTA: Thank you, Your Honor.
21 Gregory J. Kopta of the law firm Davis Wright
22 Tremaine, LLP, on behalf of complainant McLeodUSA
23 Telecommunication Service s, Inc.

24 JUDGE GOODWILL: Thank you. For Qwest?

25 MR. MONSON: Gregory Monson of the law

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1 firm Stoel Rives, LLP, and with me is Tim Goodwin
2 on my right, and Lisa Anderl, who are attorneys
3 with Qwest Corporation on behalf of Qwest.

4 JUDGE GOODWILL: Okay, thank you.

5 MR. MONSON: And, Your Honor, I'm going
6 to be here for a short time but then would ask if
7 I could be excused.

8 JUDGE GOODWILL: Certainly.

9 MR. MONSON: Thank you.

10 JUDGE GOODWILL: Mr. Kopta?

11 MR. KOPTA: Yes, Your Honor.

12 JUDGE GOODWILL: If you'd like to go
13 ahead and proceed with your evidence or witnesses.
14 Do the parties to want make a statement at all
15 before we get started?

16 MS. ANDERL: Well, we -- good morning,
17 Your Honor. Lisa Anderl on behalf of Qwest. We
18 had filed yesterday a motion to strike portions of
19 the testimony of Mr. Starkey and Mr. Morrison,
20 their surrebuttal testimony that was filed only
21 last Friday, and we are prepared to argue that
22 orally this morning if Your Honor would like to
23 hear that. We've also brought an extra copy of
24 the written motion.

25 JUDGE GOODWILL: If I could see that. I

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1 didn't get a chance to see that motion yesterday.

2 Thank you. All right, Ms. Anderl, go ahead.

3 MS. ANDERL: Thank you, Your Honor.

4 Qwest received this surrebuttal
5 testimony from McLeod that we believe is
6 objectionable on Friday, May 19th. That was in
7 accordance with the schedule, of course, but we do
8 believe it is improper and should be stricken for
9 at least three reasons, as set forth in our motion
10 to strike.

11 First, and probably most importantly,
12 the testimony. Contained at lines 270 through 435
13 of Mr. Starkey's surrebuttal is cost study
14 testimony, and cost study testimony regarding how
15 Qwest power plant rates were formulated and
16 developed in the 2001 cost docket here at this
17 Commission is not proper for determining the
18 issues before the Commission in this matter.

19 The issue before the Commission in this
20 matter is the proper interpretation of the
21 contract amendment between the parties. And while
22 I believe the parties, through their litigation so
23 far, have expressed beliefs on each side that the
24 language of the amendment is clear and favors each
25 of their positions, I believe that the evidence,

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1 as it is developed, is such that each party is
2 attempting to admit extrinsic evidence to show the
3 formation of the contract, the intent of the
4 parties.

5 So we're not saying that extrinsic
6 evidence with regard to the formation of the
7 contract or the intent of the parties is
8 inadmissible or irrelevant -- indeed it could be
9 very relevant -- but this testimony with regard to
10 the 2001 cost docket and the development of the
11 power plant rates is not testimony of that nature.
12 In fact, Mr. Starkey's -- the first substantive
13 line of Mr. Starkey's testimony on this subject
14 says: "A review of the underlying nature by which
15 Qwest's power plant rates were originally
16 calculated leaves no doubt that the proper manner
17 by which they should be assessed is on a measure
18 of consumed power." That's at lines 276 through
19 278.

20 That is a collateral attack on the power
21 plant rate. That tells Your Honor and the
22 Commission nothing about the parties' intent when
23 they signed the power plant amendment, the Power
24 Measuring Amendment in 2004, and it tells you
25 nothing about the language, the meanings assigned
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1 by the parties to the language in the Power
2 Measuring Amendment.

3 Furthermore, we believe that Your Honor
4 has already initially ruled on the relevance of
5 the cost testimony of this nature in denying
6 McLeod's motion to compel discovery. In data
7 request number 3, McLeod asked Qwest to be
8 compelled to produce the cost study that supported
9 its power rates. Your Honor denied that as
10 irrelevant, stating this is not a cost docket, and
11 correctly noting that the issue before the
12 Commission was the interpretation of the contract
13 amendment.

14 Nevertheless, because the cost study is
15 publicly available, McLeod availed itself of its
16 ability to obtain that and has offered testimony
17 with regard to those issues. We think it's wholly
18 irrelevant and will unnecessarily extend the scope
19 of this proceeding. In addition to being
20 irrelevant, we believe that it is essentially a
21 collateral attack on a previously-established
22 Commission-ordered rate.

23 The cost docket in this case for these
24 rates that occurred in 2000 and 2001 took a very
25 close look at the power rates. In fact, the power
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1 plant rates that are in dispute here were very
2 specifically analyzed and modified from Qwest's
3 original proposal, in accordance with
4 recommendations made by the DPU and other parties.
5 That rate is a lawful rate established by the
6 Commission in an appropriate cost docket
7 proceeding. The rate design, as ordered by the
8 Commission, is such that the rate is to be charged
9 on a per-amp ordered basis, and McLeod's attempt
10 to produce a different rate design through this
11 docket is really a collateral attack on those
12 rates.

13 Finally, the third reason why we believe
14 that the testimony should be stricken is because
15 it is late filed. This is really a part of, or
16 should have been a part of, McLeod's direct case.
17 It is new information that is introduced in
18 surrebuttal, five days before the hearing. It is
19 information which, if otherwise admissible, Qwest
20 should have an opportunity to respond, and yet
21 because of the timing and the structure, Qwest
22 would have no opportunity to respond to, unless of
23 course we're allowed to present oral rebuttal
24 during the proceeding.

25 But because McLeod has shown that it had
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1 access to the cost study, was able to prepare this
2 testimony and present this evidence, McLeod could
3 also have done that in its case in chief, which
4 would have given Qwest the appropriate opportunity
5 to respond to it. So for those reasons, we
6 believe that the testimony should be stricken.

7 JUDGE GOODWILL: All right. Thanks.
8 Mr. Kopta?

9 MR. KOPTA: Thank you, Your Honor.
10 First, as a procedural matter, this motion was not
11 filed until yesterday afternoon. Our preference,
12 of course, would be to respond in writing after
13 we've had a chance to review it more thoroughly.
14 However, we understand that it may be a motion
15 that the Bench would prefer to consider at that
16 point, so we will do what we can to respond as we
17 sit here this morning.

18 We obviously oppose the motion. We
19 believe that the testimony is entirely improper
20 and is relevant. I think what we need to make
21 clear is that we're not challenging the rate.
22 We're not saying that instead of \$7.79 it ought to
23 be \$6.42. That's not at all what is going on
24 here, and in fact Mr. Starkey, in his surrebuttal
25 testimony, states upfront that McLeod is not
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1 challenging the rate that was established by the
2 Commission. McLeod is, however, challenging how
3 Qwest applies that rate, which was not an issue
4 that came up in the collocation cost docket, and
5 is not an issue that the Commission has issued any
6 order addressing.

7 There are a couple of ways that this
8 cost study is relevant. McLeod, in its complaint,
9 makes two claims, and that's something that is
10 tending to get lost here. The first is for
11 enforcement of or breach of the amendment that the
12 parties have signed that has been the focus of the
13 testimony.

14 The second claim is that Qwest is being
15 discriminatory in how it is applying the rate, and
16 as a result of the way it is applying the rate, is
17 shifting some of its costs for power in its
18 central offices to CLECs, to competitors, which we
19 allege is discrimination in violation of Utah
20 statutes. So we really do have -- it's not just
21 the amendment that we're looking at, but it's also
22 whether Qwest's behavior is a statutory violation,
23 and certainly the extents to which a rate is
24 charged on an as-ordered basis goes directly to
25 that particular issue, as to whether the rate, as

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1 applied, is, in fact, a violation of the statute,
2 not only inconsistent with the parties' amendment.

3 The second area in which the cost study
4 is relevant is that it shows how Qwest developed
5 the costs. So again, we're not talking about the
6 numbers here, we're talking about the process by
7 which the rate is developed. And the process is
8 consistent with how McLeod has put in testimony,
9 is how the central office is engineered for power
10 purposes.

11 So again, it supports McLeod's
12 interpretation or their testimony that buttresses
13 the engineering assumptions that would underlie
14 how central office power is determined, how the
15 level of power is determined, and how much
16 equipment Qwest needs to put in place to be able
17 to serve the demand for power in its central
18 offices.

19 And all of those assumptions and
20 engineering principles support, at least in our
21 view, our interpretation of the amendment and our
22 view that application of the rates for power plant
23 on an as-ordered basis is discriminatory and in
24 violation of Utah law.

25 The third basis on which the testimony
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1 is appropriate is that it responds to testimony
2 that Qwest put in the record. For example, in
3 Mr. -- well, Mr. Ashton, who is adopting
4 Mr. Hubbard's testimony, mentions several times
5 the concept of TELRIC, T-E-L-R-I-C, and what goes
6 into a TELRIC study and whether or not rates
7 developed as a result of the TELRIC are or are not
8 consistent with the way that things are in the
9 real world, and Mr. Morrison directly addresses
10 that issue in direct response to the testimony
11 that Qwest filed as part of its rebuttal. So
12 striking that testimony would mean that a portion
13 of Mr. Ashton's testimony is not responded to,
14 which we think is entirely inappropriate.

15 As far as Mr. Starkey's testimony goes,
16 he addressed the argument in Mr. Easton's
17 testimony that there would be essentially a
18 stranded investment if the rate were applied on an
19 as-ordered basis for a power plant, as opposed to
20 on an as-consumed basis. They're saying that
21 McLeod ordered this amount, this is how much Qwest
22 has available, and if McLeod pays for less than
23 that amount, then they will have excess capacity
24 in their central office for which they're not
25 receiving compensation.

1 In other words, they're not recovering
2 their costs. And certainly how the cost study was
3 developed to ensure that Qwest recovered its costs
4 through its rates is directly responsive to that
5 issue. So we believe that, again, striking that
6 portion of Mr. Starkey's testimony leaves a
7 portion of the rebuttal testimony unrebutted, and
8 inappropriate if we're not able to address it.

9 Finally, Qwest says that it's too late,
10 that we should have filed this before. Well, we
11 certainly tried to get the cost study directly
12 from Qwest. In fact, in Mr. Starkey's direct
13 testimony, he states that we -- that McLeod --
14 has been trying to get the cost study and had not
15 been able to.

16 But in his experience in general, this
17 is how the costs are developed for power plants,
18 based on his understanding from information that
19 he had from other states. And in this surrebuttal
20 testimony he simply confirms that understanding
21 with the specifics of the Utah cost study. We
22 were under the impression -- mistaken, as it turns
23 out -- that the cost study, as most cost studies
24 are confidential, and therefore that we need to
25 obtain that from Qwest to be able to use it in

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1 this proceeding.

2 As we pursued our motion, Qwest informed
3 us that the study was not confidential.

4 Therefore, we used publicly-available means to
5 obtain the cost study and were not able to do that
6 until after our direct testimony was filed.

7 Therefore, we tried to provide the information as
8 soon as we had it, and, in addition, this is
9 information that -- or our testimony, anyway --
10 certainly that Qwest was aware of from having
11 pursued this proceeding in other states, so it's
12 not as if this were a surprise.

13 And given that Mr. Starkey, in his
14 direct testimony, referenced cost studies and how
15 Qwest developed rates, certainly it was incumbent
16 on Qwest, if it desired to respond to that
17 particular line of testimony, to bring in its own
18 witness saying no, that's not the way that cost
19 studies are developed, or no, that's not accurate
20 in terms of Qwest's cost recovery for these
21 particular facilities. And they chose not to do
22 so, instead relying on their position that it's
23 not relevant, not part of this case.

24 So they had an opportunity to address
25 that issue. They chose not to. And that's

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1 certainly not a reason right now to strike
2 testimony that Mr. Starkey put in that merely
3 amplified what he had said in his direct testimony
4 largely in response to testimony positions that
5 Qwest has taken in its rebuttal testimony. Thank
6 you.

7 JUDGE GOODWILL: Okay. Ms. Anderl?

8 MS. ANDERL: Thank you, Your Honor.
9 Responding first to the relevancy question, the
10 Commission did approve these rates on an ordered
11 basis in the cost docket. There is abundant
12 evidence out of that docket which you or the
13 Commission can take official notice off, or we're
14 prepared to provide documentation from Commission
15 orders and filed exhibits showing that the rate
16 was developed and, in fact, approved on a
17 per-amp-ordered basis.

18 So when Mr. Kopta says that all the
19 Commission approved was the rate level, not how
20 Qwest was going to charge it, that's not correct.
21 In fact, the Commission approved both the rate
22 level and how Qwest was going to charge it. And
23 you cannot say oh, well, we're only attacking the
24 rate design, not the rate level. The rate design
25 and the rate level are integrated, are an
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1 integrated whole. If I were to tell one of my
2 employees that their rate for compensation for
3 driving somewhere on work time was 46 cents, and
4 then I said oh, later said, oh, well that wasn't
5 per mile, that's every 10 miles, that makes a big
6 difference in the terms of what the compensation
7 is, and in fact affects the rate.

8 That's what McLeod is trying to do here,
9 saying oh, well, we're not challenging the \$7.79,
10 but in fact by challenging the method of applying
11 that rate, they are challenging that rate. And
12 that is, in fact, on a per-ordered basis how Qwest
13 has applied for the rate ever since it was
14 approved in the cost docket.

15 If, in fact, the infirmities that McLeod
16 alleges about the development of these rates and
17 rate design do exist, which, of course, Qwest
18 disagrees with, those infirmities existed
19 beginning in the cost docket and continuing on
20 through. There is no linkage between the rate
21 design and what the parties intended when they
22 signed the Power Measuring Amendment. And, of
23 course, what the parties intended when they signed
24 the Power Measuring Amendment is what is before
25 the Commission for decision today.

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1 With regard to Mr. Kopta's allegation
2 that there will be testimony in Mr. Ashton's and
3 Mr. Easton's rebuttal that is unrebutted, it is
4 not -- Mr. Starkey's and Mr. Morrison's testimony
5 is not permitted to come in, I would say that
6 Mr. Easton and Mr. Ashton were simply replying to
7 some very, very general cost information that
8 Mr. Starkey did put in in his direct. We did not
9 feel at that point that it was worthy of a motion
10 to strike because it was so general and so high
11 level. We responded in a general and high-level
12 manner.

13 After Your Honor ruled on the motion to
14 compel the cost studies, we believed that the cost
15 information had been determined to be irrelevant,
16 and we would not have put in detailed rebuttal to
17 a position that we had not known that McLeod would
18 take in this case. And so I don't think that --
19 and so if there was a legitimate concern that
20 there would be truly unrebutted testimony from Mr.
21 Ashton and Mr. Easton that McLeod ought to have a
22 legitimate right to respond to, we would be
23 willing to work with McLeod to excise those
24 offending passages, because, again, we don't think
25 it's particularly material. We don't think that

1 our case would be prejudiced by having that
2 testimony removed.

3 If that would have formed a fair
4 balance, that's fine. But we do continue to
5 believe that, for the reasons stated, the
6 testimony ought not to be permitted, and really
7 nothing that McLeod has advanced today does
8 anything to change that view.

9 JUDGE GOODWILL: Thank you. I'm going
10 to go ahead and deny the motion to strike and not
11 strike the reference to testimony. Of course,
12 Qwest will have every opportunity throughout this
13 hearing to rebut those portions of the testimony
14 as it sees fit, and the Commission will be able to
15 take this testimony under consideration along with
16 all other evidence at the close of the hearing to
17 give it whatever weight it feels it needs.

18 Based on that, let's go ahead and
19 proceed with the evidentiary portion. I would
20 just like to remind everybody that there is
21 confidential material involved in this docket.
22 I'll rely on the parties to do their best to refer
23 to that material in such a way that we can keep
24 the hearing open to the public, and also rely on
25 the parties to give me forewarning if we're moving
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1 into an area that would require specific reference
2 to that confidential material so that we can close
3 the hearing to those who haven't signed the
4 protective order in this matter. Any questions on
5 that?

6 MR. KOPTA: No, Your Honor. Thank you.

7 JUDGE GOODWILL: And with that, we'll
8 turn to Mr. Kopta.

9 MR. KOPTA: Thank you, Your Honor. As
10 McLeod's first witness, we call Tami Spocogee.

11 JUDGE GOODWILL: Ms. Spocogee, if you
12 would please raise your right hand so you can be
13 sworn in.

14 (The witness was sworn)

15 JUDGE GOODWILL: Thanks. Please be
16 seated. Mr. Kopta?

17 MR. KOPTA: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. KOPTA:

20 Q. Would you state your name and business
21 address for the record, please.

22 A. Tami Spocogee, business address is 15
23 East Fifth Street, Tulsa, Oklahoma, with
24 McLeodUSA.

25 Q. And do you have in front of you what has
26

1 been marked for identification as McLeod Exhibit
2 1, which is the direct testimony of Tami Spocogee,
3 and Exhibit 1-SR, which is the surrebuttal
4 testimony of Tami Spocogee?

5 A. Yes, I do.

6 Q. Were these documents prepared by you or
7 under your direction and control?

8 A. Yes.

9 Q. And is the information contained in
10 these exhibits true and correct, to the best of
11 your knowledge?

12 A. Yes.

13 Q. If I asked you the questions that are
14 contained in these exhibits, would your answers
15 today be the same?

16 A. Yes.

17 Q. Do you have any corrections to make to
18 your testimony?

19 A. No, I do not.

20 MR. KOPTA: Your Honor, I move for the
21 admission of Exhibits McLeod 1 and 1-SR.

22 JUDGE GOODWILL: So McLeod 1 will be the
23 direct testimony?

24 MR. KOPTA: Yes, Your Honor.

25 JUDGE GOODWILL: And McLeod 1-SR will be
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1 the surrebuttal testimony of Ms. Spocogee?

2 MR. KOPTA: Yes, Your Honor.

3 JUDGE GOODWILL: Okay, they are
4 admitted.

5 MR. KOPTA: Thank you, Your Honor, and
6 with that, Ms. Spocogee is available for
7 cross-examination.

8 MR. GOODWIN: Your Honor, would you
9 prefer that we -- I haven't appeared before you
10 before, I just wanted to make sure.

11 JUDGE GOODWILL: Wherever you would be
12 more comfortable. Mr. Goodwin, correct? Wherever
13 you'd be most comfortable.

14 MR. GOODWIN: I think it would be easier
15 from here, if that's all right. I am speaking
16 through the podium. Is that okay with you, Ms.
17 Spocogee?

18 THE WITNESS: That's fine.

19 MR. GOODWIN: Actually, before I begin
20 my cross-examination, Your Honor, and perhaps I
21 should have brought this up beforehand, I may be
22 referring to exhibits that are part of testimony
23 that hasn't technically been offered as part of
24 the record yet, and specifically I'll be referring
25 to the exhibits attached to Bill Easton's

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1 testimony and Robert Hubbard's testimony now
2 adopted by Curtis Ashton.

3 And for that matter, I would offer to
4 stipulate to the admission of all the exhibits and
5 testimony that were offered and pre-filed by
6 McLeod, if they would be willing to reciprocate
7 and stipulate to that, and we could go through and
8 identify which exhibits are which and identify
9 them, if that would be more convenient.

10 JUDGE GOODWILL: Mr. Kopta, how does
11 that sound to you?

12 MR. KOPTA: Fine with me.

13 JUDGE GOODWILL: Let's go through, then,
14 before you begin your cross-examination, Mr.
15 Goodwin, since we're all on McLeod's case, let's
16 go ahead and go with McLeod. If we can identify
17 the exhibits and go ahead and get them admitted,
18 then we'll move to Qwest.

19 MR. KOPTA: Thank you, Your Honor, and
20 my apologies for not having prepared an exhibit
21 list in advance. McLeod 2 will be the direct
22 testimony of Mr. Morrison.

23 JUDGE GOODWILL: And just so I'm clear
24 as we go through, there have been confidential and
25 nonconfidential versions provided, pre-filed with

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1 the Commission. I take it we're admitting the
2 confidential versions when such exhibits contain
3 confidential information; is that right?

4 MR. KOPTA: That is my expectation, and
5 I have provided to the court reporter both the
6 public version of the testimony and the
7 confidential version of the testimony.

8 JUDGE GOODWILL: Okay, good. Thanks.
9 So McLeod 2 will be the direct testimony of Sidney
10 L. Morrison?

11 MR. KOPTA: Right. And just for the
12 record, that does contain confidential
13 information, as does McLeod 1. McLeod 2.1 will be
14 Exhibit SLM-1, which is attached to Mr. Morrison's
15 direct testimony. McLeod 2.2 will be SLM-2.
16 McLeod 2.3 is Exhibit SLM-3. And McLeod 2-SR is
17 the surrebuttal testimony of Sidney Morrison,
18 which also, for the record, contains confidential
19 information. McLeod 3 is the direct testimony of
20 Michael Starkey. McLeod 3.1 is Exhibit MS-1,
21 attached to that testimony. Exhibit McLeod 3-SR
22 is the surrebuttal testimony of Michael Starkey,
23 and Exhibit 3 SR.1 is Exhibit M-S2, which is
24 attached to that surrebuttal testimony.

25 Those are the pre-filed testimony that
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1 McLeod has submitted to the Commission. There is
2 one issue that I discussed with Ms. Anderl before,
3 and that is that neither party has actually
4 submitted as an exhibit the amendment itself.
5 Since it plays a key role in this case, I thought
6 that it might be most convenient to have that
7 designated as an exhibit. We can either use that
8 for McLeod 4 or Joint Parties 1, or whatever is
9 the preference.

10 MS. ANDERL: I have copies of those,
11 Your Honor, so we'll be prepared to distribute
12 that and mark that one as well.

13 JUDGE GOODWILL: We can mark that here
14 as Exhibit 1 for identification.

15 (Hearing Exhibit Number 1 marked.)

16 And I take it, Mr. Goodwin, no objection
17 to any of the exhibits McLeod just listed?

18 MR. GOODWIN: No. We would stipulate to
19 the admissibility of those exhibits plus hearing
20 Exhibit 1.

21 JUDGE GOODWILL: Okay.

22 MR. GOODWIN: Subject to our motion to
23 strike, which we understand that Your Honor has
24 denied.

25 JUDGE GOODWILL: Yes, thank you. Okay,
26

1 they are all admitted. Mr. Goodwin, I do have an
2 exhibit list, if you'd like to go over that, the
3 Qwest exhibits.

4 MR. GOODWIN: Yes. For Qwest, the
5 exhibits would be Exhibit 1 is the rebuttal
6 testimony of William R. Easton, and attached to
7 that testimony are four exhibits. Exhibit 1.1 is
8 Exhibit WRE-1, attached to Mr. Easton's testimony.
9 Exhibit 1.2 is Exhibit WRE-2, attached to that
10 testimony, and Exhibit 1.3 is Exhibit WRE-3,
11 attached to Mr. Easton's testimony, and
12 Exhibit 1.4 is Exhibit WRE-4, attached to
13 Mr. Easton's testimony.

14 Exhibit 2 is the rebuttal testimony of
15 Robert J. Hubbard, and Exhibit 2.1 is confidential
16 Exhibit RJH-1, attached to that testimony.
17 Exhibit 3 is the rebuttal testimony of Curtis
18 Ashton. There are only public versions of
19 Exhibits 1, 2 and 3. We did not file confidential
20 versions of that testimony, except for the
21 confidential Exhibit RJH-1, which we have now
22 identified as Exhibit 2.1. And I would move for
23 the admission of all of those identified exhibits.

24 JUDGE GOODWILL: Mr. Kopta?

25 MR. KOPTA: No objection.

26

1 JUDGE GOODWILL: Okay, they are
2 admitted. And with that, I think we can turn back
3 to your questioning, Mr. Goodwin, of Ms. Spocogee.

4 MR. GOODWIN: Yes. Thank you, Your
5 Honor.

6 CROSS-EXAMINATION

7 BY MR. GOODWIN:

8 Q. Ms. Spocogee, good morning. You are an
9 employee of McLeod that has been asked to testify
10 in this case, correct?

11 A. Yes, I am.

12 Q. And, however, you did not participate in
13 any of the negotiations for the amendment that's
14 at issue in this case, which has been marked now
15 as Hearing Exhibit 1?

16 A. No, I did not.

17 Q. And you did not directly support anyone
18 that participated in those discussions or
19 negotiations, correct?

20 A. Not directly.

21 Q. Now, Mr. Starkey, who is another witness
22 in this case, and Mr. Morrison, who also has
23 provided testimony in this case, neither of those
24 are McLeod employees, correct?

25 A. Correct.

26

1 Q. And neither of them were involved in the
2 negotiations for the amendment that's at issue in
3 this case, correct?

4 A. Correct.

5 Q. Now, McLeod does have employees or
6 former employees what were involved in the
7 negotiations for this amendment, correct?

8 A. Yes.

9 Q. But none of those persons has provided
10 any testimony as to the negotiations for what
11 Qwest and McLeodUSA communicated to each other
12 about their intent or understanding with regard to
13 this amendment, correct?

14 A. Correct.

15 MR. GOODWIN: I'd like to mark an
16 exhibit for cross-examination. Should we just
17 proceed and call that Hearing Exhibit 2?

18 JUDGE GOODWILL: That would be fine.

19 (Hearing Exhibit Number 2 marked.)

20 Q. (By Mr. Goodwin) Do you have that
21 testimony in front of you, Ms. Spocogee?

22 A. Yes, I do.

23 Q. And that is a copy of request 1 that was
24 provided or sent to McLeod in connection with the
25 identical dispute over the identical contract in
26

1 Iowa, correct?

2 A. Yes, it's a portion of it.

3 Q. And it actually is just the first
4 request, number 1?

5 A. Okay.

6 Q. And it also contains, or attached to
7 that request are the exhibits -- or excuse me --
8 the response and all the documents that were
9 responded to and provided to Qwest in connection
10 with that response. Yes?

11 A. It looks like it, yes.

12 MR. GOODWIN: And, Your Honor, just so
13 that you understand, counsel for Qwest and counsel
14 for McLeod have previously agreed that discovery
15 requests that have been exchanged, both the
16 request and the response, on both parties that
17 have been exchanged in other proceedings in other
18 states may be used in these proceedings, at least,
19 obviously, you know, if they are specific to
20 another state, their relevance will be limited.

21 But we have reached that agreement. Is
22 that correct, Mr. Kopta?

23 MR. KOPTA: That is accurate, yes.

24 MR. GOODWIN: So I would move the
25 admission of Hearing Exhibit Number 2.

26

1 MR. KOPTA: No objection.

2 JUDGE GOODWILL: It's admitted.

3 Q. (By Mr. Goodwin) Now, either in your
4 testimony or in this discovery response, which is
5 Hearing Exhibit Number 2, there is no evidence of
6 any objective manifestation of intent communicated
7 from McLeod to Qwest regarding the DC Power
8 Measuring Amendment prior to its execution,
9 correct?

10 A. Correct.

11 Q. And, in fact, the DC Power Plant
12 Amendment -- let's mark the data Qwest 2.

13 (Hearing Exhibit Number 3 marked.)

14 I'm handing to you what's been marked or
15 is being marked as Hearing Exhibit Number 3, and
16 I'd ask you to identify those when you get them as
17 Qwest's request and McLeod's response to data
18 request number 2 from Iowa.

19 A. Yes, it looks to be what was returned
20 through the data request.

21 MR. GOODWIN: I'd move the admission of
22 Hearing Exhibit Number 3.

23 MR. KOPTA: No objection.

24 JUDGE GOODWILL: We'll admit it.

25 Q. (By Mr. Goodwin) Now, Hearing
26

1 Exhibit Number 3 reflects a request and response,
2 in the request is please produce all documents
3 reflecting or relating to non-privileged internal
4 communications within McLeodUSA relating to the DC
5 Power Measuring Amendment prior to its execution,
6 correct?

7 A. Yes.

8 Q. Now, either within this document,
9 Hearing Exhibit 3, the documents that were
10 provided in response to that discovery request, or
11 in McLeod's testimony in exhibits filed today in
12 this proceeding, there are no documents that
13 reveal any internal but unexpressed understanding
14 or intent on McLeod's part that the power plant
15 charges should be changed by the DC Power
16 Measuring Amendments prior to its execution, are
17 there?

18 A. No, there's not.

19 Q. Now, initially you filed direct
20 testimony in this case. That testimony was filed
21 to report basically the monthly collocation power
22 charges that McLeodUSA seeks to recoup from Qwest
23 should the Commission agree with McLeod that Qwest
24 should be billing McLeod for DC power in a DC
25 power plant on a measured usage basis?

26

1 A. Yes.

2 Q. And your rebuttal testimony was filed to
3 respond to the testimony of William Easton?

4 A. Yes, it was.

5 Q. And just so we're clear, McLeodUSA is
6 not disputing the power plant charges invoiced by
7 Qwest before the DC Power Measuring Amendment was
8 executed, correct?

9 A. Correct, not in this hearing.

10 Q. And at least before the amendment in
11 question here was executed and approved, it was
12 proper under the orders of the Commission
13 approving the rates in the cost docket, and
14 McLeod's preexisting interconnection agreement for
15 Qwest to bill McLeodUSA for both the power usage
16 charges and the power plant charges at issue in
17 this case, based on the number of amps McLeodUSA
18 requested for its power feed in the collocation
19 orders in place?

20 MR. KOPTA: Objection, calls for a legal
21 conclusion on the interpretation of the
22 Commission's orders.

23 JUDGE GOODWILL: Why don't you go ahead
24 and rephrase, Mr. Goodwin.

25 Q. (By Mr. Goodwin) Is McLeodUSA disputing
26

1 the fact that prior to the execution of the DC
2 Power Measuring Amendment in this case, that Qwest
3 was to bill McLeodUSA for the power plant charge
4 based on the number of amps in McLeodUSA's
5 collocation power feed orders?

6 A. We have not disputed that in this
7 hearing.

8 Q. And up until the Power Measuring
9 Amendment was executed and approved, the operative
10 document that governs the prices and terms of
11 interconnection between McLeodUSA, was the
12 interconnection agreement between the parties
13 executed, oh, a few years prior to that?

14 A. I don't understand what you just asked.

15 Q. In other words, the dispute that we're
16 here about today doesn't come up until -- let me
17 rephrase. The dispute as to whether power plant
18 charges should be charged or assessed to McLeod
19 based on a measured usage basis doesn't come into
20 play until the power plant amendment or Power
21 Measuring Amendment was executed and approved by
22 the Commission, correct?

23 A. We did not bring the dispute forward
24 with Qwest until the amendment was signed.

25 Q. Okay. Now, in your direct testimony,
26

1 you do not provide any direct evidence of the
2 amount of overcharges, but rather only an estimate
3 of the overcharges to McLeod in Utah; is that
4 correct?

5 A. Correct. It was based on the review of
6 the bills that we had received from Qwest and the
7 calculation based on the measured usage instead of
8 the ordered usage, and the rates calculated back
9 to the time frame that the amendment went into
10 effect.

11 Q. And I believe that estimate was that
12 Qwest had overcharged McLeod by \$385,951; is that
13 correct?

14 A. That was through the March 2006
15 invoices, yes. That amount does change each month
16 as the charges are rendered going forward.

17 Q. And that \$385,000, that's just for Utah,
18 correct?

19 A. Correct.

20 Q. And approximately what is the total
21 amount of overcharges region-wide under these
22 contracts in all Qwest states?

23 A. Through the March invoices,
24 approximately \$4.863 million.

25 Q. 4.8?

26

1 A. Yes.

2 Q. 63 million?

3 A. And that's through the March invoices.

4 Q. And that is based on billings from
5 November of 2004 to April of 2006?

6 A. It's based on whatever date the original
7 measurement calculations went into effect in each
8 state. Some of them were varied, were a little
9 different, and so it went back to those dates.

10 Q. So give or take a month or two?

11 A. Yes.

12 Q. Based on when the measurements took
13 place, we're talking about a year and a half?

14 A. Approximately, yeah.

15 Q. Now, McLeodUSA, with respect to this
16 particular dispute in Utah of the \$385,951 that is
17 in your direct testimony, McLeod has withheld
18 \$146,493.12; is that correct?

19 A. That's correct.

20 Q. So if the Commission here agrees with
21 McLeod's interpretation of the amendment, then the
22 withholding should be taken into account, such
23 that that should offset any amount that has been
24 overcharged, correct?

25 A. Correct.

26

1 Q. Now, this amendment was entered and
2 executed in August of 2004; is that correct?

3 A. Yes, it was.

4 Q. And McLeodUSA's first communication to
5 Qwest disputing the power plant charges continuing
6 to assessed on an as-ordered basis was in
7 September of 2005, roughly a year later?

8 A. Yes. The official disputes that were
9 filed in writing were filed, I believe,
10 September 13th of 2005.

11 Q. But before that, McLeod had never
12 communicated to Qwest to say that -- before this
13 September of 2005 written dispute, McLeod had
14 never communicated to Qwest that we agreed -- "we"
15 McLeod -- agreed that we would be charged for
16 power plant on a measured basis, right?

17 A. McLeod had questioned Qwest regarding
18 the charges that were billed via the audits that
19 were being performed on the invoices. Questions
20 had started being formatted to Qwest approximately
21 in May of 2005, trying to find out why the charges
22 had not been shown as measured instead of ordered.
23 So we had not specifically stated we disagreed
24 with what was being billed, we started questioning
25 and trying to get information pertaining to that

26

1 before we sent in the official dispute.

2 Q. So the first time, but in any regard,
3 the first time that McLeodUSA ever communicated to
4 Qwest that McLeod's interpretation of the
5 amendment was that power plant charges should be
6 included as an item that was to be charged on a
7 measured basis, the first communication directly
8 was in September of 2005?

9 A. No, it was not. We actually had
10 conference calls held between several parties
11 within Qwest to discuss that, and we did discuss
12 the fact that that was what we had considered to
13 be incorrect on there.

14 Q. But there are no documents that reflect
15 those conference calls, correct?

16 A. Not that I know of. There are documents
17 or e-mails that state there were calls that were
18 held regarding this, but nothing that stated the
19 facts of the call.

20 Q. Let's turn to your rebuttal testimony.
21 Your rebuttal testimony talks about this change in
22 management process, or CMP, sometimes abbreviated
23 CMP process?

24 A. Yes.

25 Q. And that CMP process is a forum between
26

1 Qwest and CLECs like McLeod that discusses changes
2 like products or billing or processes. Is that a
3 fair characterization?

4 A. It discusses processes and procedures,
5 OSS system implementation, mostly surrounding the
6 overall -- mostly sounding the OSS system and what
7 has to be implemented to carry information forward
8 that CLECs require.

9 Q. But any time there's a change in the
10 relationship, like, for example, in this, there's
11 a lot of different topics that are covered in the
12 change management process form, correct?

13 A. Absolutely.

14 Q. And one of those topics is when, for
15 instance, Qwest would introduce a new product,
16 like the DC Power Measuring Option or Amendment,
17 correct?

18 A. Yes.

19 Q. And McLeodUSA participated in the CMP
20 process, correct?

21 A. Yes.

22 Q. And, in fact, we know that they were
23 participating in the process at the time this
24 particular DC Power Measuring Option was being
25 discussed in this CMP forum. Yes?

26

1 A. We did have an employee that was in
2 attendance when the product was first presented,
3 representing our service delivery organization.

4 Q. And 16 different employees within McLeod
5 get e-mail notifications of everything that
6 happens in the CMP when Qwest sends out a
7 notification of events that are occurring?

8 A. Along with several other hundreds of
9 e-mail notifications for that.

10 Q. Yes, but you wouldn't disagree with me
11 that McLeod is a large and sophisticated company,
12 right?

13 A. Yes.

14 Q. It's publicly-traded, has CLEC
15 operations across the country, right?

16 A. Across 25 states within the country,
17 yes.

18 Q. And so it's not unreasonable to expect
19 McLeod to be able to respond to the e-mails and to
20 the CMP topics that it believes are important, is
21 it?

22 A. Sometimes, unrealistically, it's
23 expected to have a response to every single e-mail
24 that is sent. When we have conversations, for
25 instance, with our representatives from Qwest, for
26

1 instance, that discusses a lot of these
2 communications, they do realize the amount or the
3 volumes that are sent to us on all these
4 notifications, and they try to, when there are
5 issues out there that may be of concern to us or
6 may be important to us, they do try to notify us
7 and let us know, give us a little bit of
8 additional help, because they are aware of all the
9 volumes that we do receive.

10 Q. Sure. So the important things McLeod
11 should pay attention to?

12 A. Yes.

13 Q. And charges for DC power, and that's DC
14 power, distribution and plant and usage, all those
15 charges are an important topic for McLeod,
16 correct?

17 A. Yes, they are.

18 Q. And, in fact, McLeod has been active in
19 proceedings and in agreements in other states
20 outside of Qwest's region in order to manage its
21 DC power charges. Is that a fair statement?

22 A. Yes, we have.

23 Q. And a lot of that activity pre-dated the
24 2004 amendment that we are discussing today?

25 A. Yes.

26

1 Q. And the documents that are disclosed in
2 the CMP process are easily accessible, if, indeed,
3 it is important for a CLEC to find information on
4 the process?

5 A. Yes. They are exposed on the web site
6 from Qwest.

7 Q. Now, do you have in front of you a copy
8 of Mr. Easton's testimony?

9 A. Yes, I do.

10 Q. Would you turn to Exhibits WRE-3 and
11 WRE-4, which, for purposes of this hearing, have
12 been admitted as Exhibits 1.3 and 1.4. Do you
13 have those two documents?

14 A. WRE-3?

15 Q. Yes.

16 A. And WRE-4, yes, I do.

17 Q. Now, I want to ask you about -- some
18 questions about those documents, so keep them
19 handy. But I would like to mark for
20 identification purposes Hearing Exhibit 4.

21 (Hearing Exhibit Number 4 marked.)

22 Hearing Exhibit 4 is an e-mail chain
23 that was produced by McLeod to Qwest in discovery;
24 is that correct?

25 A. Yes, it was.

26

1 MR. GOODWIN: I would move for the
2 admission of Hearing Exhibit 4.

3 MR. KOPTA: No objection.

4 JUDGE GOODWILL: It's admitted.

5 Q. (By Mr. Goodwin) Now, in that e-mail
6 chain there is an e-mail that is dated -- one is
7 dated July 28th, 2004. That's the second one.
8 One is dated August 10th, 2004. That's the first
9 one in this exhibit. Do you see that?

10 A. Yes, I do.

11 Q. And in that first message, and also
12 referenced in the second message is an attachment
13 called Qwest Power Amendment Savings. Do you see
14 that reference to the attachment in that e-mail?

15 A. Yes, I do.

16 Q. Now, did you participate in the
17 preparation of discovery responses in this case?

18 A. Yes, I did.

19 Q. And specifically you participated in
20 McLeod's response to Qwest Corporation's fourth
21 set of discovery requests filed in Iowa?

22 A. Yes, I think I did.

23 MR. GOODWIN: I'd like to mark this as
24 Hearing Exhibit, for identification purposes, as
25 Hearing Exhibit 5, which is that Fourth Set of
26

1 Discovery Requests and Responses.

2 (Hearing Exhibit Number 5 marked.)

3 Q. (By Mr. Goodwin) Do you have that?

4 A. Yes, I do.

5 Q. I'd like to focus your attention on
6 request number 50, which is on page 5.

7 A. Okay.

8 Q. And actually, before I go any further on
9 question 50, this document, even though the
10 caption on it says Qwest Corporation's Fourth Set
11 of Discovery Requests, it is actually responses
12 that were filed by McLeod; is that right?

13 A. Yes.

14 MR. GOODWIN: I'd move the admission of
15 Hearing Exhibit 5.

16 MR. KOPTA: No objection.

17 JUDGE GOODWILL: We'll go ahead and
18 admit it, and just for clarity sake, the
19 handwritten "50" that appears there on page 5, was
20 that something that had been written in by McLeod
21 when it provided this response? Was that
22 something that somebody did in preparation for the
23 hearing?

24 MR. GOODWIN: Actually that's something
25 that we -- the attorneys for Qwest -- put on

26

1 there, because when -- because the way that this
2 was actually provided to McLeod, the requests were
3 e-mailed to McLeod in Word format, and I believe
4 McLeod just put their responses in the space that
5 we had marked for response. And for some reason,
6 some of the formatting -- because the request --
7 the items where it says request 48, 49, whatever,
8 that was an automatically-generated item, and that
9 must have gotten deleted in the process of the
10 McLeod responses. And so we just put the 50 on
11 there by hand to clarify that it was actually
12 request 50.

13 JUDGE GOODWILL: Great. Thanks. And I
14 forget if I did so, so if I didn't, we'll go ahead
15 and admit this.

16 Q. (By Mr. Goodwin) Now, you have request
17 50 of Hearing Exhibit 5?

18 A. Yes.

19 Q. Now, in Hearing Exhibit 5, this request
20 50 asked for that particular Qwest Power Amendment
21 Savings that we've looked at in Hearing Exhibit 4,
22 correct?

23 A. Correct.

24 Q. And Hearing Exhibit -- or excuse me --
25 Exhibits 1.3 and 1.4, which are attached to
26

1 Mr. Easton's testimony, those are the two
2 documents that McLeod provided to Qwest in
3 response to this request number 50, correct?

4 A. Correct.

5 Q. And I believe -- tell me if this is
6 fair, and that is that Exhibit 1.3 is the
7 spreadsheet, at least according to your discovery
8 responses, Exhibit 1.3 is the spreadsheet, which
9 is unpopulated, that was attached to these
10 July 28th and August 10th e-mails in Hearing
11 Exhibit Number 4?

12 A. Correct.

13 Q. And then Exhibit 1.4 is a file that was,
14 according to your response, a file that was
15 renamed to Qwest Power 8, 081905.XLS?

16 A. Yes. It was a spreadsheet that was kept
17 ongoing. As new numbers were updated, the old
18 spreadsheets were deleted and overlaid, the old
19 information was overlaid.

20 Q. So the Exhibit 1.4 is an updated version
21 from sometime in August of 2005, of the
22 Exhibit 1.3?

23 A. Yes.

24 Q. Now, do you have any reason to believe
25 that McLeod's response to request 50 in Iowa was

26

1 incomplete?

2 A. The version that existed on August 10th
3 of 2004, or any changes that had been input from
4 the template that was blank to the version August
5 19th of '05, that information just was not
6 available. The group that formatted those
7 spreadsheets didn't keep old copies of them, and
8 so we provided whatever the latest version was
9 that they had obtained.

10 Q. So in other words, no? The answer is
11 not -- your response is not incomplete, the other
12 documents just don't exist?

13 A. Right, they don't exist.

14 Q. And there is no populated version of
15 Exhibit 1.3 that exists, other than the modified
16 version which appears at 1.4?

17 A. No, there's not.

18 Q. Now, if there ever existed -- well,
19 let's go back to Hearing Exhibit 4 and look at the
20 context in which this particular spreadsheet was
21 created. Would you read for the record the
22 statements in the July 28th e-mail where this
23 spreadsheet is first, I guess, attached?

24 A. It says: "Jimmie, can you (or an
25 engineer) work with Jody to estimate what our

26

1 savings could be at our Qwest sites after the
2 amendment to bill on metered usage. This is only
3 good for sites greater than 60 amps ordered.

4 "Jody is pulling together the caged
5 sites, the total bulk power ordered, and the
6 billing amount.

7 "From the Power & CFA cost savings
8 project, we did gain metered information. This
9 data can be used to more accurately estimate our
10 savings. The other sites will require reviewing
11 CAD to determine the current equipment on site,
12 then total the usage based on our 'worst case'
13 power draws for that equipment to estimate our
14 usage. I have provided from Remedy the power
15 draws for equipment to assist.

16 "I built a spreadsheet that should work
17 to track our estimate, add to it what you need.
18 Find a common location so folks can update and
19 process in parallel.

20 "See above sheet.

21 Then "Element power data I pulled from
22 Remedy."

23 This is from Mark McCune to James
24 Gabbert and Jody Ochs.

25 Q. And Mark McCune is an engineer in the
26

1 McLeod organization?

2 A. Yes, he is.

3 Q. And the Jody that is referred to in the
4 first line of the August -- or excuse me -- the
5 July 28th e-mail and also the August 10th e-mail,
6 that is Jody Ochs, O-c-h-s, that is referenced as
7 another recipient of these e-mails?

8 A. Yes. She was a McLeod employee. She
9 was a clerk that tracked paperwork on all of the
10 collocations, applications, rendering the checks
11 for the bills, etc.

12 Q. But this says here, in the July 28th
13 e-mail, it talks about the power and CFA cost
14 savings project?

15 A. Yes.

16 Q. Now, is that kind of related to what
17 we'd talked about before, which is that before
18 McLeod had entered into the amendment with Qwest,
19 they were active in other agreements in other
20 states and other proceedings in other states in
21 order to manage their DC power billing?

22 A. Well, this specifically was not. It was
23 a result of just optimization projects that they
24 could look at the network for our collocations
25 within the Qwest territory to see if they could

26

1 reduce any of the CFAs to help reduce our cost for
2 power, anything like that where we would
3 physically have to augment or reduce the equipment
4 in the collocation site. That was what this
5 specifically was looking at.

6 Q. But this whole e-mail chain is
7 related -- this whole e-mail chain is discussing
8 we're going to seek a Power Measuring Amendment
9 from Qwest, that's related to that project?

10 A. Yes, it is.

11 Q. And that's related to the project that
12 McLeod was involved in to manage its DC power
13 costs?

14 A. That's correct.

15 Q. And getting back to Jody, Jody, at least
16 in this particular instance, if you turn to the
17 second page, there's an e-mail dated July 22nd
18 from Mark McCune to that Jody Ochs. Do you see
19 that?

20 A. Yes, I do.

21 Q. And Mark McCune has directed -- it says:
22 "Jody, please work with Sherry on this Qwest
23 Amendment For Power Measurement. You will likely
24 need to get in touch with Kathy Battles." Do you
25 see that?

26

1 A. Yes.

2 Q. So Jody was directed to work with Kathy
3 Battles from Qwest on the Power Measuring
4 Amendment?

5 A. Yes, to gather the information
6 associated with the amendment from her.

7 Q. And that's on July 22nd, 2004. Do you
8 see that?

9 A. Yes.

10 Q. What exhibit are we on?

11 (Hearing Exhibit Number 6 marked.)

12 I'm going to hand you what's been marked
13 for identification purposes as Exhibit 6. Do you
14 have that in front of you?

15 A. Yes, I do.

16 Q. Now, this is a document that Qwest has
17 produced to McLeod in discovery?

18 A. Yes.

19 Q. Have you seen this in Qwest's discovery
20 responses?

21 A. I think I have.

22 MR. GOODWIN: I'd move the admission of
23 Hearing Exhibit 6.

24 MR. KOPTA: No objection.

25 JUDGE GOODWILL: We'll admit it.

26

1 MR. GOODWIN: Oh, by the way, for some
2 reason there's a notation, and actually I think it
3 obscures part of the e-mail, but it says
4 attachment A, confidential, and then down lower it
5 says proprietary and confidential. Qwest does not
6 consider this to be a confidential exhibit.

7 JUDGE GOODWILL: Okay.

8 MR. GOODWIN: I think it was marked that
9 way in discovery but shouldn't have been.

10 JUDGE GOODWILL: Thank you.

11 Q. (By Mr. Goodwin) And this is an e-mail
12 from Kathy Battles, and it is directed to Mary
13 Sullivan, who is a Qwest employee, but also to
14 Julie Radman-Carter and Jody. Do you see that?

15 A. Yes.

16 Q. And this is dated July 28th, 2004?

17 A. Yes, it is.

18 Q. And so six days after Jody was directed
19 to work with Kathy Battles to get this DC Power
20 Measuring Amendment, Kathy Battles is handling
21 that request within Qwest, correct?

22 A. Correct.

23 Q. And copying Jody and Julie Radman-Carter
24 on her e-mail?

25 A. Correct.

26

1 Q. Now, go back to Hearing Exhibit 4,
2 because I want to talk about what amendment it is
3 that we're talking about. That comes from a
4 discussion, the first e-mail in the chain, on
5 July 19th, 2004, correct?

6 A. Yes.

7 Q. And the first e-mail in that chain says
8 it's from Sherry Krewett, who is a McLeod
9 employee. Yes?

10 A. Yes.

11 Q. To a Mark McCune. It says: "Mark, are
12 you interested in an amendment that provides for
13 charges based on power usage? Take a look and let
14 me know." And it attaches a file called
15 DCPowerAmendment05-27-04.doc. Yes?

16 A. Yes.

17 Q. And we asked you in discovery, in
18 Hearing Exhibit Number 5, in request number 49,
19 for that particular document, correct?

20 A. Correct.

21 Q. And I'm going to hand you what's being
22 marked for identification purposes as Hearing
23 Exhibit 7.

24 (Hearing Exhibit Number 7 marked.)

25 Do you have that?

26

1 A. Yes, I do.

2 Q. That is the document that McLeod
3 produced in response to Exhibit -- or excuse me --
4 request 49 in Exhibit 5, Hearing Exhibit 5,
5 correct?

6 A. Yes.

7 Q. And this document, that is Hearing
8 Exhibit 7, is substantially the same, without the
9 state-specific and McLeod-specific information
10 filled in, as the amendment that McLeod ultimately
11 signed, which is Hearing Exhibit 1?

12 A. Yes, it is.

13 MR. GOODWIN: Move the admission of
14 Hearing Exhibit 7.

15 MR. KOPTA: No objection.

16 JUDGE GOODWILL: We'll admit it.

17 Q. (By Mr. Goodwin) And again, getting back
18 to Exhibit 1.3, 1.3 is the spreadsheet that was
19 attached to this message, quote: "That should help
20 to track our estimate," unquote, in the words of
21 the e-mail, of the savings presented by Hearing
22 Exhibit 7.

23 A. Yes.

24 Q. And actually that spreadsheet is the
25 last page of Hearing Exhibit 4, in addition to be

26

1 being Exhibit 1.3?

2 A. Yes, I believe so.

3 Q. Now, in this case there are two separate
4 charges that McLeod claims should be changed.
5 There's the power plant charge and the power usage
6 charge, right?

7 A. Correct.

8 Q. And McLeod believes that both of those
9 charges should be changed. Qwest believes that
10 only the power usage charge should be changed.
11 That's your understanding of the dispute in this
12 case?

13 A. Yes, it is.

14 Q. And those two separate charges are also
15 reflected in two separate USOC or USOC codes for
16 billing purposes?

17 A. Yes, they are.

18 Q. What is a USOC code?

19 A. The Universal Service Order Code. It
20 just gives an abbreviated code to show what
21 charges -- identify specific charges that are
22 billed.

23 Q. Now, in Exhibit 1.3, or the last page of
24 Hearing Exhibit 4, there's only one column that
25 reflects a billing amount, correct?

26

1 A. Correct.

2 Q. And fast-forward to Exhibit 1.4, which
3 was created later, and there's only one column for
4 the USOC amount related to the savings, correct?

5 A. That's correct.

6 Q. And that one column and the USOC amount
7 reflected in that column reflect the power usage
8 amount for Utah, not the power plant amount?

9 A. This spreadsheet, 1.4, was basically
10 pulled together as a result of a price quote
11 spreadsheet that was sent to McLeod from Qwest.

12 Q. Right, but it's an update of
13 Exhibit 1.3.

14 A. It's an -- not specifically. If you'll
15 notice in 1.3, there wasn't a USOC amount in
16 there. What is in this one is a tracking of the
17 price quotes that had been received. There was
18 another piece to this, which is, I believe, WRE-4
19 -- or excuse me -- there's another piece of this
20 that actually tracks -- actually, there's two
21 WRE-4s.

22 There's a page 2 that tracks at the
23 specific state level. That spreadsheet is pulled
24 together as a result of the price quotes sent from
25 Qwest directly, and just pulls each individual

26

1 collo together and puts it on one individual
2 spreadsheet per state, is what it does. So it's
3 not necessarily the exact from Exhibit 3 -- or
4 from WRE-3, it's actually a tracking of the price
5 quotes received from Qwest.

6 Q. But both documents are similar in the
7 fact that they have a single column for the
8 billing amount, whether that's under the USOC code
9 or just called billing amount, and a single column
10 for tracking the particular savings?

11 A. That's correct, but on your WRE-3, you
12 can take the billing amount, and in this WRE-3 it
13 is just -- it wasn't split by USOC. You have a
14 total power billing. You can combine multiple
15 USOCs in that column.

16 Q. You could.

17 A. So it was the intent for -- I think it
18 was Mark that developed this -- Mark had the
19 intent of tracking what's the total power billing
20 and what's the savings that we're going to see as
21 a result of that. It was not USOC-specific.

22 Q. But the Exhibit 4, at least, says USOC
23 code. It only indicates one code?

24 A. Actually, yes, it does, because it's
25 from the price quotes.

26

1 Q. And we know that what you've told us is
2 that there's no other version of this particular
3 spreadsheet, right?

4 A. Correct.

5 Q. And what you have also just said is that
6 it could have included two columns, or it could
7 have included the two different USOC amounts
8 combined?

9 A. Yes, absolutely.

10 Q. But Qwest -- or excuse me -- McLeod has
11 never produced any version of this document,
12 whether that exists in hard copy or
13 electronically, that has two columns?

14 A. That's correct. This was an internal
15 document that is not retained for financials, it's
16 not retained from there. We didn't have to -- I
17 mean, it wasn't available.

18 Q. But it was the document, at least in its
19 original incarnation, in Exhibit 1.3, this was the
20 document that the people that were charged with
21 obtaining and negotiating the DC Power Measuring
22 Amendment were to use to track the savings that
23 they thought they would get, correct?

24 A. Yes. Yes.

25 Q. What are the savings that McLeodUSA
26

1 actually has realized from the DC Power Measuring
2 Amendment?

3 A. We have realized the savings as far as
4 the individual USOC for the specific rate element
5 where Qwest has decided that it was going to be
6 reduced. It would be measured instead of ordered.
7 So there is a specific USOC, and to be honest,
8 some of them are a little bit different by state.

9 Q. Right.

10 A. But it's the specific rate element
11 that's associated in our interconnection
12 agreement, in the rates. There was one specific
13 rate that was reduced, and it was actually in this
14 one from Utah, the rate from 8.1.4.2.2.

15 Q. And I have, actually, here, I have a
16 blowup of the Exhibit 8. This blowup here, is it
17 a fair representation of at least a part of
18 Exhibit A that McLeod operates under in Utah?

19 A. Yes, it is.

20 Q. And when you say that the 8.1.4.2.2 rate
21 has been reduced?

22 A. Yes, it has.

23 Q. That's the \$3.89 amount here?

24 A. Yes. The rate has not been reduced, but
25 the quantities of the rate have been reduced.

26

1 Q. Yes, so they match actual measured usage
2 according to the measurements that Qwest makes on
3 a periodic basis?

4 A. Yes, they do.

5 Q. And also Exhibit 1.4, just to be clear,
6 it's this \$3.89 figure that appears in that USOC
7 amount column?

8 A. Yes, it is.

9 Q. Now, based on that reduction in the
10 charges for power usage, how much has McLeod
11 actually saved?

12 A. I don't have that total amount in there,
13 but for the Utah-specific, actually your WRE-4
14 should give the correct amount. It's not the
15 correct amount on this spreadsheet. But the
16 calculated, the old billing was actually \$15,420
17 per month for that cost element. The new billing
18 is actually \$2,446.81, which is a savings amount
19 for that specific cost component of \$12,973.15.
20 It's not calculated correctly on this spreadsheet.

21 Q. I'm not sure I follow. Are you saying
22 it's about \$13,000 a month, is how much McLeod is
23 saving?

24 A. Estimated, yes.

25 Q. Just in Utah?

26

1 A. Yes.

2 Q. And so if we look on the first page of
3 WRE-4, which is exhibit, Qwest Exhibit 1.4, that's
4 a region-wide calculated monthly savings based on
5 the power usage amounts?

6 A. Yes.

7 Q. And just to be clear, the USOC amount on
8 the summary page for all states reflects the power
9 usage rate in each state, not the power plant
10 rate?

11 A. The power usage as shown, yes, that we
12 just talked about, yes.

13 Q. So there's different amounts on the
14 first page there, like, there's \$7.27 for Arizona,
15 \$4.37 for -- and they're all different, but they
16 all pertain to the same charge in that particular
17 state for power usage, not for power plant?

18 A. Yes.

19 Q. And based on a region-wide, Qwest-wide
20 calculation, McLeod is saving almost \$165,000 per
21 month as a result of this particular amendment?

22 A. Actually it's more like 162 because of
23 the miscalculation in there, but yes.

24 Q. But \$162,000 a month that McLeod is
25 saving?

26

1 A. Yes.

2 Q. And basically this dispute is about
3 McLeod believes it should be saving more?

4 A. Yes.

5 Q. Now, in order to save this \$162,000 a
6 month, did McLeodUSA give any consideration to
7 Qwest? That is, did McLeodUSA have to give up
8 something or make new promises or do anything
9 extra?

10 A. We had to sign the amendment.

11 Q. But in signing the amendment, there were
12 no additional promises or considerations that
13 McLeodUSA had to provide to Qwest in order to sign
14 it?

15 MR. KOPTA: Objection to the extent it
16 calls for a legal conclusion on what is or is not
17 consideration sufficient to support a document or
18 contract.

19 MR. GOODWIN: Let me rephrase.

20 Q. (By Mr. Goodwin) But in connection with
21 signing this amendment, McLeodUSA made no new
22 promises, or the rate didn't go up, or they didn't
23 have to do anything in trade for this amendment?

24 A. No, we did not.

25 MR. GOODWIN: No further questions at
26

1 this time.

2 JUDGE GOODWILL: Mr. Kopta?

3 MR. KOPTA: Do we want to take a break
4 this morning or go straight through?

5 JUDGE GOODWILL: I'd be happy to take a
6 break if the parties want to. We can recess and
7 reconvene at 11:00.

8 (Recess)

9 JUDGE GOODWILL: Let's go back on the
10 record. Mr. Kopta, any redirect?

11 MR. KOPTA: Yes, Your Honor, thank you.

12 REDIRECT EXAMINATION

13 BY MR. KOPTA:

14 Q. Ms. Spocogee, do you recall a line of
15 questions from Mr. Goodwin concerning when Qwest
16 first raised the billing dispute related to this
17 proceeding?

18 A. You mean McLeod?

19 Q. I mean when McLeod first did, I'm sorry.

20 A. Yes. Yes, I do.

21 Q. Can you tell me, is this something that
22 your organization is responsible for?

23 A. Yes, it is.

24 Q. And in your experience, is it unusual
25 for it to take six months to a year before a
26

1 formal dispute is made over particular charges?

2 A. No, not at all. In fact, that's one of
3 the reasons why the statute of limitations has
4 been established. Normally, normal procedures are
5 you have two years to go back to file disputes
6 because of not only the magnitude of, you know,
7 and the volume of the information that you're
8 billed for, the difficulty in understanding it and
9 relaying charges back to tariffs, interconnection
10 agreements, other contracts, whatever, with many
11 different vendors.

12 For instance, my organization currently
13 today has over 700 vendors. With those 700
14 vendors, you have to understand all of the
15 tariffs, all of the interconnection agreements,
16 all of the contracts associated with charges,
17 multiple charges from each one of them. And
18 because of the magnitude and all of that, it's
19 very typical that disputes can be filed up to the
20 two years, and sometimes, you know, if attempts
21 are even made to do it even after that fact.

22 And it's done by all customers, you
23 know. Most customers, most vendors, that receive
24 disputes are used to this. In fact, I also
25 have -- another part of my organization is on the

26

1 revenue side where McLeod renders bills to other
2 carriers. In fact, we have disputes today where
3 Qwest has actually disputed charges with McLeod.
4 And many times those disputes are filed much later
5 than after they're billed. Could be actually back
6 two years also. So that's a common practice
7 between everybody in the information that we deal
8 with today.

9 Q. Do you also recall a line of questions
10 from Mr. Goodwin about the spreadsheet, the
11 internal spreadsheet that McLeod prepared and
12 Mr. Easton attached to his testimony as Exhibit
13 WRE-4?

14 A. Yes, I do.

15 MR. GOODWIN: Objection. I didn't
16 prepare it. Did you say -- just to be clear, we
17 did not prepare that spreadsheet.

18 JUDGE GOODWILL: Understood.

19 MR. GOODWIN: Otherwise I have no
20 objection.

21 MR. KOPTA: If I said that, it was a
22 slip of the tongue. It was a spreadsheet that
23 McLeod prepared, that's correct.

24 THE WITNESS: Yes, it was.

25 MR. GOODWIN: Okay. Perhaps I misheard.

26

1 Q. (By Mr. Kopta) Why did McLeod prepare
2 this spreadsheet?

3 A. Basically it was to track the
4 information that was passed to McLeod from Qwest
5 from the price quotes. They're called price
6 quotes. When Qwest goes in and does the
7 measurements from the amendment, they send a price
8 quote to McLeod from every collocation where those
9 measurements are obtained.

10 Those price quotes go in and tell McLeod
11 this is the measurement that was done, the number
12 amps that we measured, this is the rate that is
13 going to be decreased, for instance, in this case
14 it was the \$3.89 rate, and the new billing that
15 would be obtained. It shows you the collocation
16 information. All that this spreadsheet was doing
17 was tracking these price quotes that were obtained
18 from Qwest.

19 MR. KOPTA: Would Your Honor maybe mark
20 this for identification as Hearing Exhibit 8?

21 JUDGE GOODWILL: These two pages as
22 Hearing Exhibit 8?

23 MR. KOPTA: Yes.

24 (Hearing Exhibit Number 8 marked.)

25 JUDGE GOODWILL: Okay, so marked.

26

1 Q. (By Mr. Kopta) Ms. Spocogee, do you have
2 before you what has been marked for identification
3 as Hearing Exhibit 8?

4 A. Yes, I do.

5 Q. And are you familiar with this document?

6 A. Yes, I am.

7 Q. Would you describe what this document
8 is?

9 A. Yes. These are just a couple of
10 examples of collos out of Utah, the price quotes
11 that have been sent from Qwest to McLeod to show
12 the measurement that was done and the decrease
13 that is going to be shown on the bill as a result
14 of that. You can see it came from the wholesale
15 collocation service manager, which is Kathy
16 Battles, who is a Qwest employee. On the
17 left-hand corner it shows the date. It actually
18 says August 11th, 2004, but it's really an
19 August 11th, 2005 document.

20 And it shows the effective billing date
21 down in the second box down there as 7/26/05, so I
22 believe the 04 was just a typo in there. The
23 effective billing date is 7/26/05. It's for the
24 Murray CO in Utah, and gives the CLLI code on
25 there associated with the Murray collocation.

26

1 Down at the bottom it shows the USOC that Qwest
2 was going to reduce the billing on, explains the
3 quantity of the amps that were measured, which was
4 33, the per-amp description, the rate, which was
5 \$3.89, and then the total price, which is \$128.37,
6 which is the quantity times the rate.

7 When you look at this price sheet here
8 and you compare it to the WRE-4, page 2, which is
9 the detail backup for the Utah-specific tracking
10 on this, if you were to look down on -- a little
11 bit further than the middle of the page of this
12 spreadsheet for Murray, you can see the CLLI code,
13 you can see the CO name.

14 You can go on and see where it shows
15 total amps of 170. That's populated by a McLeod
16 person that shows these were the number of amps
17 that were ordered.

18 This estimated amp draw, this was an
19 amount that McLeod actually estimated, but then
20 the USOC amount here is \$3.89, which was tracked
21 on the price quote that is shown there. With the
22 Qwest metered amps used in first quarter, which
23 was 32, again it shows the update of the Qwest
24 metered -- excuse me -- metered amps for third
25 quarter, and that one is 33, which ties with this

26

1 schedule here, with the price quote, and shows the
2 calculated monthly billing of \$661, the old, and
3 the new billing is the \$128.37, which came from
4 the total price on the price quote.

5 The calculated monthly savings
6 associated with that, that's a percentage monthly
7 savings which are just formulas built into the
8 spreadsheet. It shows that the effective billing
9 date is 7/25/2005, which came from the price
10 quote, and then -- or excuse me, I think it says
11 7/26 -- and then it shows the date it received the
12 new quotes received, which shows 8/11/2005, which
13 should be the date, where it states 8/11/2004
14 instead, it should be 2005.

15 All that was being done was these price
16 quotes, when they were sent to McLeod, they just
17 tracked them to one solid thing so they could
18 track the estimated dollar amounts that were going
19 to be coming forward by state on a spreadsheet
20 together, instead of having all these different
21 pieces of paper. And that's what was established
22 to track for their management.

23 Q. And to your knowledge, did anyone at
24 McLeod go outside of the Qwest price quotes to
25 determine whether there might be additional
26

1 savings or potential savings?

2 A. The group that did this spreadsheet, no,
3 they did not.

4 MR. KOPTA: Your Honor, I'd move for
5 admission of Hearing Exhibit 8.

6 MR. GOODWIN: No objection.

7 JUDGE GOODWILL: It's admitted.

8 Q. (By Mr. Kopta) Just one point of
9 clarification, Ms. Spocogee. The "sili" code you
10 referred to, that's the CLLI code?

11 A. Oh, yes, it is. I apologize.

12 Q. And one last line of questions that I
13 wanted to ask you about. Mr. Goodwin referred to
14 negotiations between McLeod and Qwest over the
15 amendment. Do you recall that line of questions?

16 A. Yes.

17 Q. Is it your understanding that the manner
18 in which McLeod executed this amendment was a
19 result of negotiations between McLeod and Qwest?

20 A. No, there were no negotiations involved.
21 The amendment that was provided to McLeod was an
22 overall template for all states involved with --
23 where McLeod had collocations. In fact, the
24 template was the very same, regardless of whether
25 the cost components within all the states were the
26

1 same or not, even within Qwest's own territories.
2 The group that did this, I mean, through normal
3 practice that we see, when an amendment is handed
4 to us from Qwest, usually no negotiation is
5 involved. It's either you take the amendment as
6 it is or you leave it.

7 MR. KOPTA: Thank you. Those are all my
8 questions.

9 JUDGE GOODWILL: Mr. Goodwin?

10 RECROSS-EXAMINATION

11 BY MR. GOODWIN:

12 Q. On the negotiations point, again, you
13 weren't involved in any of the negotiations, and
14 you don't know whether, in this particular
15 instance, there were any questions asked about the
16 agreement or any negotiations one way or the
17 other, right?

18 A. I was not involved in the negotiations
19 upfront or what you would say is "per se
20 negotiations." I was not involved with it prior
21 to the signing of this. However, in our
22 investigation, through the audits that we
23 performed on the billing, we did go back to the
24 group that was involved with it, and the
25 information I was provided was that there were no
26

1 negotiations involved.

2 Q. Now, it's not that -- you're not saying
3 that Qwest prevented any negotiations from
4 happening in this specific instance, you're just
5 saying that Qwest gave the amendment, which we've
6 already marked as Hearing Exhibit 7, and that was
7 a draft, then later filled it in with the McLeod
8 information. McLeod didn't have any changes, and
9 so they accepted it, and that's all there was to
10 it?

11 A. Correct.

12 Q. If you're saying that there were no
13 negotiations, the most you're saying is just that
14 the agreement was accepted as it was?

15 A. The agreement was accepted as it was as
16 a result of a couple of things, and the people
17 that were involved with this negotiation really
18 had no idea that on the bills from the
19 collocations, that there were actually two
20 different cost components really billed.

21 Q. Hold it.

22 MR. GOODWIN: I'm going to object and
23 move to strike this part of the testimony. Number
24 one, there hasn't been any testimony regarding
25 what the people intended or thought or hoped in

26

1 any of their direct or rebuttal testimony. I
2 didn't ask that question just now. It didn't come
3 up even in the oral cross-examination or redirect.
4 Moreover, that information was hearsay.

5 She said she wasn't involved in the
6 negotiation, and for her to testify as to what
7 they thought they were agreeing to back in 2004
8 when that information wasn't presented in the
9 direct or rebuttal or cross-examination or
10 redirect phases of the testimony of this case, I
11 think it's highly improper, particularly because
12 it's hearsay and it's secondhand information.

13 JUDGE GOODWILL: I'm not going to strike
14 the testimony. I understand your objection. You
15 asked the question, and if you'd like to rephrase
16 it and ask her to limit her answer, you certainly
17 can. And, of course, the Commission does consider
18 hearsay as evidence before it, and we'll give it
19 the weight it deserves.

20 Q. (By Mr. Goodwin) But again, as we've
21 discussed in our initial cross-examination, no one
22 from McLeod ever indicated -- made any objective
23 manifestation of McLeod's intent to Qwest prior to
24 raising the dispute some months after the
25 amendment was executed and approved?

26

1 A. They didn't even understand to know to
2 question or object at all.

3 Q. And internally, if you'll turn back to
4 Hearing Exhibit 3, Hearing Exhibit 3 is the
5 request that asked McLeod to produce all documents
6 reflecting or relating to non-privileged internal
7 communications within McLeodUSA related to DC
8 Power Measuring Amendment prior to its execution,
9 correct?

10 A. Correct.

11 Q. And there are no documents in this
12 discovery response that tell or that show that
13 McLeod was communicating an intent to be billed on
14 a measured basis for power plant prior to the
15 execution of the DC Power Measuring Amendment,
16 correct?

17 A. Not specifically for power plant versus
18 power usage itself.

19 Q. Now, you talked a little bit about
20 statutes of limitation?

21 A. Yes.

22 Q. And so the statutes of limitation, at
23 least as you testified, in the contract is
24 two years?

25 A. I don't know that it's specifically
26

1 listed in the contract. I may be incorrect.
2 However, we go by the Telecommunications Act that
3 states two years, and it's normal practice between
4 our two companies.

5 Q. But it's important, if there is a
6 contractual limitations period, to observe that
7 limitations period for raising disputes about
8 bills?

9 A. Yes.

10 MR. GOODWIN: I have no further
11 questions.

12 JUDGE GOODWILL: Mr. Kopta?

13 MR. KOPTA: Yes, one additional question
14 if I might, Your Honor.

15 JUDGE GOODWILL: Sure.

16 FURTHER REDIRECT EXAMINATION

17 BY MR. KOPTA:

18 Q. You were just discussing with Mr.
19 Goodwin that there's no reference in the documents
20 appended to the data request response that's been
21 admitted as Hearing Exhibit 3 for distinction
22 between a power plant rate and a power usage rate.
23 Do you recall that discussion?

24 A. Correct.

25 Q. At the time that this amendment was
26

1 being considered by McLeod, were there other
2 states -- or let me put it differently. Would the
3 engineers necessarily know that there would be two
4 different rates, one for power plant and one for
5 power usage?

6 A. No, they would not. We had just
7 recently gone through -- McLeod had recently gone
8 through some activities in another state to reduce
9 our collocation power to -- from ordered to a
10 metered basis. In the state of Michigan, which
11 was one of those states that we were going to do
12 that on, trying to get a reduction in our charges
13 overall for power, we had gone through the
14 activities on that to reduce it.

15 And yes, our usage would have been
16 reduced, and the usage was only one rate
17 component. There was not a power plant and a
18 power usage component associated with the power
19 usage on there. So our engineers, which are
20 engineers and not the people that do the bills,
21 did not even know to question that there could be
22 a power plant charge in addition to the power
23 usage charge that would not be shown as a metered
24 or measured basis. Their overall objective was to
25 make sure that our costs overall on a collocation
26

1 would not be increased, the reason being, in
2 Michigan, as an example, even though the power
3 usage would have been decreased, the overall cost
4 for the power collocation itself -- or not the
5 power collocation, but the collocation itself --
6 would have been an overall increase in cost to
7 McLeod.

8 If we would have gone forward with those
9 activities, our cost would have increased.
10 There's actually, I believe, in the Exhibit 3 that
11 was handed out here, it notes, says: "Make sure
12 this cost is not going to increase," and the end
13 result was no, there would be no increase, but we
14 did see a decrease in cost. But they had no idea
15 to even ask about the two billing elements
16 associated.

17 MR. KOPTA: Thank you. That's all I
18 have.

19 JUDGE GOODWILL: Mr. Goodwin, anything
20 further?

21 MR. GOODWIN: Just one followup. No,
22 nothing further.

23 JUDGE GOODWILL: I do have a few
24 questions, and then I'll give the parties a chance
25 to ask any questions generated by my own.
26

1 Ms. Spocogee, I just want to make sure I
2 understand Hearing Exhibit 8, the Qwest price
3 quotes, the two sheets of the Qwest price quotes.
4 Are these actually part of bills that McLeod
5 received?

6 THE WITNESS: No, sir.

7 JUDGE GOODWILL: What generated these?

8 THE WITNESS: These are just
9 communications that come from Qwest to advise us
10 that these are the new measurements that we took.
11 In the amendment it said that they would take two
12 measurements a year, and when these measurements
13 are done, they send this to us and say okay, our
14 measurements were completed, this is just our
15 notification. It will say effective with this
16 bill date, which is 7/26/05, for instance, your
17 cost of the amps will now be shown as 33 instead
18 of whatever it was before.

19 It's just a notification from them to
20 tell us, and then we use this to follow up and
21 say -- to make sure that this piece here did
22 decrease on the bill. That's what that group was
23 tracking.

24 JUDGE GOODWILL: So these were generated
25 essentially because of the DC Power Amendment?

26

1 THE WITNESS: Absolutely.

2 JUDGE GOODWILL: Now, let's look at
3 these together. Both of these sheets with the
4 USOC code, with rate element described as minus 48
5 volt DC power usage (greater than 60 amps) with
6 the unit price of \$3.89. That, I take it, refers
7 to the rate element in the demonstrative exhibit
8 that Mr. Goodwin used of 8.1.4.2.2?

9 THE WITNESS: Yes, sir.

10 JUDGE GOODWILL: And McLeod, I take it
11 McLeod receives bills dealing with rate elements
12 for the power plant charges?

13 THE WITNESS: Yes, we do.

14 JUDGE GOODWILL: And those are under
15 separate USOC code?

16 THE WITNESS: Yes.

17 JUDGE GOODWILL: Do you know the
18 description that is used for those rate elements,
19 the text description that is used? As I say, for
20 instance, here, this one the power usage was minus
21 48 volt DC power usage.

22 THE WITNESS: Uh-huh (affirmative).

23 JUDGE GOODWILL: Do you know how Qwest
24 describes that?

25 THE WITNESS: On the bill?

26

1 JUDGE GOODWILL: Yes, the power plant
2 rate element.

3 THE WITNESS: Yes, sir, I do. Hold on a
4 second. Oh, I don't have this one in front of me.
5 I've got some other information that tells me on
6 my computer, but I don't have it right here in
7 front of me. I can find that and get it to you.

8 JUDGE GOODWILL: That would be good.
9 I'd appreciate that.

10 THE WITNESS: Okay.

11 JUDGE GOODWILL: And I take it that
12 these Qwest price quotes in Hearing Exhibit 8,
13 Qwest only provided those for this specific USOC
14 rate element?

15 THE WITNESS: Yes. Yes.

16 JUDGE GOODWILL: When did you first
17 become involved in this dispute, the whole
18 question of what rate elements are covered by the
19 amendment?

20 THE WITNESS: My group, just as an
21 overall responsibility, my group is the group
22 responsible for the audits, the payments,
23 disputing, resolution disputes with our vendors
24 for all of our network costs. As part of our
25 ongoing job efforts, we do perform audits on our
26

1 bills, and because of the volumes that we have, we
2 can't audit every single bill in detail every
3 single month in order to get them paid within the
4 due date that they're expected to be paid by.

5 So what we try to do is we go through,
6 and try to do it at least once a year, and hit
7 every type of charge that we have, you know, and
8 do what we call an embedded base audit on it where
9 we go through and we look in detail at the charges
10 that are billed, compare it to our contract, our
11 tariffs, whatever it is that's associated, because
12 we may have multiples in there.

13 We do the audits and look at the network
14 to understand how the network is designed and
15 compare it to the bills to make sure our billing
16 is designed associated with the network, because
17 so much of this type of cost is associated with
18 how the network works also. My group was
19 performing an embedded base audit. We do -- one
20 purpose is helping show that the savings that
21 these network groups or these engineering groups
22 look at and say these are the savings we're going
23 to see from doing this amendment.

24 We make sure that they had shown up, and
25 yes, those credits did show up. They showed up on

26

1 these spreadsheets because they tracked. However,
2 in our other efforts, where we were performing the
3 audits, my group started going through and we
4 chose -- just happened to choose our collocations
5 as part of our embedded base audits at the time.
6 We were going through those, the April-May time
7 frame of 2005. In that, we started reviewing
8 every charge that we're billed from our vendors
9 for all of our charges on our collocations.

10 We started looking at the
11 interconnection agreements we had, we started
12 looking at the amendments that had gone into
13 effect since the last time we had performed one of
14 these, and started questioning why did we not have
15 the other usage element that was shown in our
16 SGAT, which is shown under the power usage.

17 For instance, it shows under the
18 exhibit, just as the 8.1.4, it showed the DC power
19 usage charges -- it doesn't say charges, but it
20 says "DC Power Usage." In the amendment, we
21 looked at the amendment and said, well, everything
22 under the DC Power Usage is supposed to be
23 measured. I've still got this other component
24 that is not.

25 With that, we started asking questions.

26

1 We went back to the engineering group first that
2 started the, you know, started with the amendment,
3 that had the amendment and went to it and had it
4 signed, actually.

5 I started asking them questions. Did
6 you realize that we had these other charges
7 associated with the usage? No, they did not
8 realize that. Did you, you know, did you talk to
9 Qwest? Did you discuss it in any way with what
10 was going on? And they said no, we had this
11 amendment to be signed. Then we found out it
12 wasn't going to be an increase in cost like we
13 almost did in Michigan, and so we had the
14 amendment signed.

15 So with that, we started going -- we
16 went back to that engineering group. Then we went
17 back to Qwest and we asked several questions there
18 also. They provided their information that's been
19 presented in this hearing, the CMP information.
20 They provided the PCAT information, just their
21 processes and procedures that were posted on their
22 web site, all of that.

23 But through that analysis and all those
24 questions, we still felt like that amendment told
25 us that the power plant should be on a measured
26

1 basis also. So with that, we filed disputes in
2 September, and we took those disputes back to the
3 amendment date, so whatever the effective date was
4 is where we went back to the measurement.

5 JUDGE GOODWILL: So then to be clear, I
6 take it it was your group, you specifically, as
7 the person in charge of the group, who said wait a
8 minute. The way I read this amendment, we should
9 be -- usage should be measured from two elements,
10 not just one?

11 THE WITNESS: Yes, which is part of my
12 job. That's what I do.

13 JUDGE GOODWILL: But nobody from outside
14 your group came to you and said hey, look at this
15 and make sure that they've reduced it for both
16 elements?

17 THE WITNESS: No, sir. We went back to
18 them and started questioning them on why it was
19 not done and what their understanding was.

20 JUDGE GOODWILL: Okay, thank you. Any
21 questions from either party based on my questions?

22 MR. KOPTA: No, Your Honor.

23 MR. GOODWIN: I have possibly one or
24 two.

25

26

1 FURTHER RECROSS-EXAMINATION

2 BY MR. GOODWIN:

3 Q. Judge Goodwill asked you some questions
4 about Hearing Exhibit Number 8, the price quotes,
5 and I just wanted to make sure that you were
6 getting the price quotes from Qwest all along, as
7 soon as the measuring process began, after the
8 Measuring Amendment was executed.

9 A. Somebody within McLeod was, yes.

10 Q. And the only quotes you were getting
11 were for the power usage charges for each state?

12 A. In the USOC shown on these, yes.

13 Q. Then the other thing, the other item
14 that Judge Goodwill was asking about was the issue
15 of the audit. So the first time, really, that
16 McLeod attempted to calculate the savings for the
17 power plant element was in connection with and
18 after your audit of the collocation charges?

19 A. No, that's not exactly true. The
20 estimated savings -- not the calculations, but the
21 savings that were rendered from our engineering
22 group, which was basically something similar to
23 this spreadsheet that you showed in your example
24 that was put together from the price quotes, the
25 responsibility for that component or that piece of

26

1 the function or the job is they say that this is
2 going to be -- or the engineering group said this
3 is going to be the estimated savings associated.

4 We do look at the bills to make sure
5 that credit or that reduction in the bill has been
6 received, associated specifically for that, that
7 it's not a specific audit associated with the
8 entire bill.

9 Q. Right. So you said the engineering
10 group had made those calculations and determined
11 they were going to save money, but that was the
12 first time that you ever looked at the specific
13 power plant element and calculated power plant
14 savings was in connection with your audit?

15 A. Correct.

16 MR. GOODWIN: No further questions.

17 MR. KOPTA: One to follow up, Your
18 Honor.

19 FURTHER REDIRECT EXAMINATION

20 BY MR. KOPTA:

21 Q. Is your group the only group within
22 McLeod that gets these Qwest price quotes in
23 Hearing Exhibit 8?

24 A. No. In fact, my group, it's kind of
25 split, depending on the group that actually sends
26

1 this out from Qwest. My group actually gets some
2 of the states, and then our engineering group gets
3 some of the other states. So it's kind of a
4 connection between our engineering group and my
5 group, where they get these.

6 Q. And do you know where Utah falls in that
7 responsibility?

8 A. Utah falls within this report. These
9 reports go to our engineering group. I do not get
10 those.

11 MR. KOPTA: Thank you. That's all I
12 have.

13 JUDGE GOODWILL: Thank you. Before we
14 move on -- maybe I ought to turn my mike off.
15 McLeod -- actually in Qwest's answer to McLeod's
16 complaint, the attachment to the answer has an
17 actual copy. I believe it's just a copy of the
18 copy of the Qwest SGAT, which is also the document
19 used in the interconnection agreement for listing
20 Qwest rates. Does either party intend to admit
21 this? I mean, we've got it in the record, but I'd
22 like to go ahead and have it admitted. I don't
23 know if either party was planning on doing that.
24 I think for completeness sake, it would be good to
25 have it in evidence. I know it's in the SGAT. We
26

1 could take administrative notice of it. But I'd
2 like to go ahead and put a copy in the record.

3 MR. KOPTA: I believe we have copies of
4 the Exhibit A of the SGAT, which is, as you say,
5 incorporated into all the interconnection
6 agreements, so we can certainly provide copies and
7 have that be an exhibit.

8 JUDGE GOODWILL: Okay. Let's do that.
9 We can get copies after lunch and go ahead and do
10 that. Questions on this, though, and this can be
11 to the attorneys, if we need to have anybody
12 testify, we certainly can, but I just want to make
13 sure that Exhibit A to SGAT is the rates as they
14 existed prior to the amendment and after the
15 amendment, and that there were no changes to this
16 Exhibit A, the wording or the rates, and they're
17 all accurate. Is that everyone's understanding?

18 MR. GOODWIN: With respect to the rates
19 that are at issue here, that's my understanding.

20 MR. KOPTA: Okay. There have been
21 subsequent filings to revise the price list for
22 various reasons since that time, but none that
23 affect the rates that are at issue here.

24 JUDGE GOODWILL: Okay, or the
25 nomenclature referring to the rates?

26

1 MR. KOPTA: Or the nomenclature, that's
2 right. These have remained unchanged since before
3 the Power Amendment.

4 JUDGE GOODWILL: Thanks. Sorry for that
5 interruption. Mr. Kopta?

6 MR. KOPTA: Oh, I was just going to say,
7 I'm sorry, Your Honor, so we'll just go ahead and
8 make it Exhibit 9 right now while we're talking
9 about it?

10 JUDGE GOODWILL: Let's go ahead and wait
11 and take it in order when we get copies presented
12 to the court reporter.

13 MR. KOPTA: McLeod, as its second
14 witness, calls Mr. Sidney Morrison to the stand.

15 JUDGE GOODWILL: Sir, if you'll go ahead
16 and raise your right hand, I'll swear you in.

17 (The witness was sworn.)

18 Thank you. Mr. Kopta, you may proceed.

19 MR. KOPTA: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. KOPTA:

22 Q. Mr. Morrison, state your name and
23 business address for the record, please.

24 A. My name is Sidney L. Morrison. My
25 business address is 550 Sunset Lakes Boulevard,

26

1 Sunset Beach, North Carolina, 28468.

2 Q. And do you have before you what has been
3 marked as and actually submitted into the record
4 as Exhibits McLeod 2, 2.1, 2.2, 2.3 and 2-SR?

5 A. Yes, I do.

6 Q. And were these exhibits prepared by you
7 or under your direction and control?

8 A. They were.

9 Q. And are they accurate as far as you
10 know?

11 A. They are, with only a couple of
12 corrections.

13 Q. Would you make those at this time,
14 please.

15 A. In my direct testimony, page 44, the
16 line 1021 should read "Mr. Hubbard" as opposed to
17 Mr. Qwest. (Laughter) And page 48, line 1106
18 should read, instead of just "relay," should read
19 "relay rack" in both appearances where you have
20 relay on that line, both appearance should read
21 "relay rack."

22 And in my surrebuttal testimony,
23 page 16, line 350, between "conceivable" and
24 "McLeod" should be, "way," w-a-y. "There is no
25 conceivable way McLeod." Those are the

26

1 corrections.

2 JUDGE GOODWILL: I'm sorry, what line
3 was that again?

4 THE WITNESS: 350.

5 JUDGE GOODWILL: Thank you. Mr. Kopta,
6 before you move on, I just realized that I don't
7 have copies of 2.1, 2.2, 2.3. Do you happen to
8 have any extras of those?

9 MR. KOPTA: We will get one. If you'd
10 like ones that are full page on that, we can do
11 that.

12 JUDGE GOODWILL: For my reference, this
13 is fine.

14 MR. KOPTA: Thank you.

15 Q. (By Mr. Kopta) Mr. Morrison, if I asked
16 you the questions contained in Exhibits McLeod 2
17 and 2-SR today, would your answers be the same as
18 they are set forth here, as corrected?

19 A. Yes, they would.

20 MR. KOPTA: And since these are
21 admitted, then those are all my questions, and
22 Mr. Morrison is available for cross-examination.

23 JUDGE GOODWILL: Thank you. Mr.
24 Goodwin?

25 MR. GOODWIN: Thank you, Your Honor.

26

1 CROSS-EXAMINATION

2 BY MR. GOODWIN:

3 Q. Mr. Morrison, thank you for -- I'll just
4 talk towards one microphone. Is that okay?

5 JUDGE GOODWILL: That's fine, thank you.

6 Q. (By Mr. Goodwin) Thank you for
7 correcting that testimony about Mr. Hubbard. I
8 think he was getting a big head from being called
9 Mr. Qwest. But on the substance of your
10 testimony, I just wanted to make clear before we
11 started talking about that, you don't know and
12 aren't testifying here as to what McLeodUSA and
13 Qwest actually agreed to in connection with this
14 DC Power Measuring Amendment, correct?

15 A. That's right. That's correct.

16 Q. And you didn't participate in the
17 negotiations for the amendment and didn't review
18 any of documents or conversations included in
19 those negotiations?

20 A. No, I did not.

21 Q. And you were not aware of any statements
22 or manifestations of intent regarding this issue
23 by either Qwest or McLeodUSA, correct?

24 A. No, I'm not aware.

25 Q. Rather, your testimony here is directed
26

1 towards the engineering characteristics of power
2 plant facilities and whether charging for those
3 facilities on a measured usage basis is proper on
4 an engineering basis. Is that fair to say?

5 A. That's fair to say.

6 Q. In your testimony you talk about four
7 primary components of a typical central office
8 power infrastructure. I believe that's page 13 of
9 your direct testimony. Do you recall that?

10 A. Yes, I recall that.

11 Q. That's AC power, standby AC power, DC
12 power plant, and DC power distribution. Those are
13 the four primary components of a typical central
14 office power infrastructure?

15 A. Yes, it is.

16 Q. Now, none of those seem to include DC
17 power usage. Is that included in the item 1,
18 which is AC power?

19 A. DC power usage?

20 Q. DC power itself, yes.

21 A. DC power itself is within the power
22 plant.

23 Q. Well, the DC power actually comes from
24 the AC power, gets converted by the DC power plant
25 into DC power, right?

26

1 A. That's right. The chain is from the AC
2 utility provider to rectifiers, the rectifiers
3 then convert AC to DC power. Then the DC power is
4 applied to both the batteries for flow voltage and
5 power to the bus bars for distribution to the
6 power equipment on the distribution network.

7 Q. Now, in this case there's a charge --
8 there's two charges at issue. One is called the
9 power plant charge, one is called the power usage
10 charge. Do you understand that?

11 A. That's right.

12 Q. And for the power plant charge, that
13 is -- that basically applies to, with some
14 exceptions, that basically applies to item 3 and
15 the blue parts of your diagram, which is Figure 1,
16 correct?

17 A. Yes, that's correct.

18 Q. And in addition to the blue items in
19 Figure 1, for some orders, for some levels of
20 orders, the BDFB that is shown as part of the
21 distribution phase and the generator is also
22 included in the items for which the power plant
23 gets recovery?

24 A. I didn't follow your question.

25 Q. I don't blame you. You have identified
26

1 a part of the power plant in these blue items in
2 Figure 1?

3 A. Rectifiers, bus bars, batteries, DC
4 power board. That's the power plant.

5 Q. The power plant charge for Qwest also
6 recovers BDFB for some orders, and also the
7 generators that are in different portions of your
8 diagram, correct?

9 A. I'm here to testify on the technical
10 engineering issues around the power plant. Those
11 cost issues would be involved with testimony that
12 Mr. Starkey should give later.

13 Q. Okay, so we'll talk with Mr. Starkey
14 about that. But I wanted to talk with you about
15 how you talk about power plant facilities being
16 sized on an as-consumed basis. You mention that,
17 I think, on page 6 of your testimony, that power
18 plant facilities are sized on an as-consumed
19 basis?

20 A. When you're using "as-consumed," you're
21 using it synonymous with the usage level of the
22 equipment that's being powered.

23 Q. I'm not -- but just to be clear, power
24 plant facilities are not consumed, right?
25 Electricity is consumed.

26

1 A. Right. The product of that equipment is
2 consumed, that being a DC current.

3 Q. And you're not here to testify as to
4 what the charges actually apply to under the cost
5 docket and the orders and the Exhibit A, whether
6 the certain charge applies to the plant or the
7 product of it?

8 A. No, I'm not responding to anything on
9 charges.

10 Q. But in any event, the Commission should
11 not get the impression that the power plant is
12 consumed?

13 A. Not the physical part of the power
14 plant, that's correct.

15 Q. But it's the electricity that is
16 consumed, because it flows in from the power
17 company, is converted to DC power, and powers
18 telephones or telecommunications equipment,
19 generates power in telecommunications activity and
20 also heat, and then is gone, right?

21 A. That's correct. It's expended as work
22 energy.

23 Q. Some concepts within your testimony I
24 wanted to talk about. First of all, List 2 drain.
25 List 2 drain is the drain or the peak current
26

1 under worst-case conditions of voltage and traffic
2 distress. For example, when the DC power plant's
3 batteries are approaching a condition of total
4 failure. Is that a fair characterization?

5 A. It is approaching, but by definition the
6 List 2 drain is, if I remember the numbers
7 correctly from the testimony, 42.75 volts would be
8 the terminal voltage that the power plant has
9 descended to. So it's not zero, and it's not a
10 total discharge. Obviously, if you get below
11 that, you're still in a List 2 condition, but
12 that's where it begins.

13 Q. So it starts where the batteries are, to
14 use a layman's term, when the batteries are really
15 bad off, and then there's also List 2 as the
16 batteries get worse and worse in their condition
17 as far as the discharge is concerned?

18 A. That would be correct. There are some
19 other events relative to batteries that cause
20 their condition to deteriorate, but because of the
21 definition of List 2, you're correct at this
22 point.

23 Q. Now, a List 2 situation is a rare event?

24 A. Very rare.

25 Q. Very rare. But the fact that it is rare

26

1 doesn't change the engineering standards that
2 require McLeodUSA to order sufficient distribution
3 capacity to accommodate a List 2 event, correct?

4 A. That's correct.

5 Q. Even though it's rare, you're still
6 supposed to accommodate it in your design of power
7 plant, power distribution and those items?

8 A. Yes. They accommodate that in the very
9 same way that Qwest provides that necessary need
10 for their equipment as well.

11 Q. Sure. But in any event, when the
12 batteries are approaching a condition of total
13 failure, for whatever reason, and that can be
14 caused by a number of rare but serious events,
15 correct?

16 A. That's right.

17 Q. For whatever reason the batteries are
18 approaching a condition of total failure, it would
19 affect all carriers using that particular power
20 plant, such that all carriers will be using List 2
21 drain at the same time after that rare and
22 terrible condition is cured?

23 A. Since the power plant is a common pool
24 of power for all distribution cables and equipment
25 connected to it, all of that equipment sees the

26

1 impact of the power plant. The drop in the
2 terminal voltage that you're describing, the
3 degeneration of the power plant itself is
4 reflected through that common pool of energy or
5 power to every piece of equipment in that central
6 office, whether it be CLEC A, CLEC B, McLeod,
7 Qwest or anybody else.

8 Q. You also testified that List 2
9 corresponds to the number of amps in a CLECs order
10 for power distribution or power feed, right?

11 A. That's correct.

12 Q. And it's reasonable for a CLEC like
13 McLeod to order far more power distribution than
14 it will actually need, because the CLEC might
15 actually need that level of power should this
16 catastrophic event occur, correct?

17 A. Well, they're not ordering it totally
18 predicated on the List 2 event. What they're
19 ordering initially is enough power to empower
20 their collocation as it matures and to its full
21 capacity at the end of its expected forecasted
22 life expectancy.

23 Q. And when you say "they," you mean
24 McLeod?

25 A. I mean McLeod, yes.

26

1 Q. You're not saying and it's not your
2 testimony today that that is how all collocators
3 order collocation power or collocation space?

4 A. I wouldn't say all, but based on my
5 experience, the vast majority of them do do that.

6 Q. Would you expect the List 2 capacity to
7 be available to all CLECs during a List 2 event,
8 such as total battery failure?

9 A. If you're talking about total battery
10 failure, that extreme situation, there is no power
11 available to anybody for much of anything.

12 Q. Well, after the condition has been
13 cured, then all the equipment is going to be
14 turned back up, and that's going to have to be
15 turned back up for all CLECs and Qwest at the same
16 time, correct?

17 A. The equipment will be turned back up as
18 the power plant is capable of supporting that
19 turnup. For instance, if you discharge a power
20 plant all the way down to, let's say the terminal
21 voltage is zero. Zip. Not a thing designed at
22 home to be served or to run equipment. The
23 general rule of thumb is that you want to be able
24 to recharge your batteries to 90 percent of
25 capacity within a 24-hour window.

26

1 That being the case, terminal voltage is
2 going to come up pretty slow. And as you begin to
3 see a terminal voltage that will support
4 equipment, you can put that equipment online.
5 However, in that particular scenario, you probably
6 are not going to have everything online. You've
7 got a crisis on your hands.

8 You may very well -- you being Qwest,
9 you own the power plant -- you may very well be
10 going through a recovery procedure that may
11 include flipping breakers or pulling fuses so that
12 you don't do what you're talking about, as far as
13 dump a full load onto a power plant all at one
14 time. So then you end it by pushing it back into
15 that downward spiral.

16 Q. So would you expect that as that
17 recovery is made, though, that as soon as it's
18 needed, McLeod would have the List 2 drain
19 available to it in terms of capacity in the power
20 plant?

21 A. Yes, assuming their fuses are in place.
22 They would have it within the power plant -- and
23 this is really, really an extraordinary
24 situation -- but by virtue of the way the
25 rectifiers and the batteries are designed, they're
26

1 designed in parallel, and the combined effect of
2 the batteries and rectifiers is that they meet the
3 momentary peak currents that can be drawn, given
4 those List 2 events.

5 And that particular design
6 characteristic is in one of Qwest's documents, the
7 790 100654 document on page 12. And it tells the
8 parallel design, it tells that you design to
9 120 percent rectifier capacity to manage both
10 power delivery flow level on your batteries, and
11 that that, in turn, provides the momentary List 2
12 drain.

13 Q. I noticed you were reading from a
14 document there in connection with giving your
15 answer. What document were you reading from?

16 A. Oh, you can have a copy of this if you'd
17 like.

18 Q. Well, what is it?

19 A. That's my personal notes, my notes.

20 Q. Let me see a copy of that. I'm not sure
21 we need to necessarily mark it or anything, but
22 seemed like you might be reading from a document
23 or something.

24 A. Well, I was. Paraphrasing, more or
25 less.

26

1 Q. So these are just your notes on the
2 manual?

3 A. Uh-huh (affirmative).

4 Q. Okay, we don't need to mark that. Does
5 McLeodUSA order power feed based on -- you said
6 they order power feed based on List 2 of whatever
7 they think the ultimate demand will be in that
8 collocation?

9 A. That's correct.

10 Q. I want to ask you some questions about
11 Figure 6, which is a confidential figure. And it
12 will be very difficult for me to ask questions
13 about that without revealing some of the
14 confidential information that's included in there,
15 so we may need to close the session. But before
16 we do that, perhaps it will be helpful, since
17 we're around the lunch hour, perhaps it would be
18 helpful for me to go back to Figure 1 and ask you
19 a couple of questions about that. Can you turn
20 back to Figure 1?

21 A. Okay, I'm back to Figure 1.

22 Q. Figure 1, you say, is a typical central
23 office power infrastructure. Do you see that?

24 A. Yes.

25 Q. And when you say this is a typical
26

1 central office power infrastructure, and you
2 reflect, in Figure 3, the power plant component of
3 that infrastructure, right?

4 A. One of the components of that
5 infrastructure.

6 Q. Okay. Now, I notice both in Figure 1
7 and in Figure 3, you have a box that says
8 "rectifiers." Do you see that box?

9 A. Yes, I do.

10 Q. And there are two diagrams, and those
11 are supposed to reflect kind of in symbolic form a
12 rectifier?

13 A. Yes. The presence of two or more
14 rectifiers.

15 Q. Right. And then also in that box
16 there's a third box which says "spare." Do you
17 see that?

18 A. Yes.

19 Q. And that appears in both Figure 1 and
20 Figure 3?

21 A. Yes.

22 Q. And that is because proper engineering
23 standards require you to have a spare rectifier in
24 order to generate a certain level of power plant
25 capacity, correct?

26

1 A. That's correct. That particular
2 rectifier has to represent or equal the largest
3 rectifier in service. Its purpose is backup. If
4 any given rectifier fails, this rectifier, in
5 turn, replaces its capacity, and now you have
6 uninterrupted power capacity to serve the
7 end-users.

8 Q. So in order to engineer, say, for
9 example, a 1,000-amp power plant capacity, you
10 would need -- I guess the standards say that you
11 need N-plus-1 rectifiers, N being the number of
12 the largest rectifier, correct?

13 A. Yes. There's a little more to it than
14 that, though.

15 Q. It's either N-plus-1 or 20 percent?

16 A. Well, if you're a 1,000-amp power plant,
17 you're going to engineer it to a 1.2, which means
18 engineering it to 1,200 amps, which means that if
19 these are 200-amp power rectifiers, now you're
20 going to have six in line.

21 Q. Right, and you would need six 200-amp
22 power -- excuse me -- six 200-amp rectifiers in
23 order to generate a power plant with 1,000 amps of
24 capacity, correct?

25 A. Yes, that would be correct.

26

1 Q. Now, I think --

2 A. Plus one more for a backup spare.

3 Q. Yes.

4 MR. GOODWIN: Now I think I'm going to
5 go to Figure 6, and I have some questions on
6 Figure 6. And since it's straight-up noon and I
7 think I'm going to be asking to close the session,
8 and I don't know who's -- well, I'll just welcome
9 Your Honor's guidance as far as do you want to
10 take a lunch break now and just come back to a
11 closed session, close the session now and then go
12 to lunch, or how would you like to proceed?

13 JUDGE GOODWILL: How long do you think
14 your questioning will take on this figure?

15 MR. GOODWIN: Not very long. Just a few
16 minutes.

17 JUDGE GOODWILL: What page is that?

18 MR. GOODWIN: 47. 10 or 15 minutes. 10
19 or 15 minutes at the most, I would imagine, for
20 the closed topic, and then I probably have 10 or
21 20 minutes more after that.

22 JUDGE GOODWILL: Okay. Do we have folks
23 in here right now who have not signed the
24 protective order in this docket or who are not
25 otherwise entitled to hear or see confidential
26

1 information?

2 MR. GOODWIN: Yes. We have one person
3 who is a Qwest employee, Georgia Weisenbach, who
4 actually -- she works with Qwest and she is
5 actually on the team that works, I think,
6 occasionally works with McLeod, but she's a Qwest
7 employee.

8 JUDGE GOODWILL: And I take it this is
9 McLeod that sees confidentiality for this
10 information contained in this figure?

11 MR. KOPTA: That's correct.

12 JUDGE GOODWILL: And you want to
13 maintain that confidentiality?

14 MR. KOPTA: We do, Your Honor.

15 JUDGE GOODWILL: Mr. Goodwin, there's no
16 way you can ask your questions without referring
17 specifically to the data or the amounts contained
18 in the table?

19 MR. GOODWIN: I don't think so. I will
20 try.

21 JUDGE GOODWILL: Let's do this. We can
22 break for lunch. Maybe you can think about it
23 over lunch. If you come back and you haven't been
24 able to work out a way that meets your needs,
25 great, we'll begin with a closed session after
26

1 lunch. Otherwise, we'll try to work through it,
2 and we can close it at any time during the
3 questioning, if you think we need to.

4 MR. GOODWIN: In my preparation for the
5 cross-examination, I did try to think about it,
6 but I'll think about more ways at lunch.

7 JUDGE GOODWILL: We'll be back at 1:15.

8 (Lunch recess)

9 JUDGE GOODWILL: All right, let's go
10 back on the record. The first thing I want to
11 take up is before going back on the record,
12 Mr. Kopta has handed me a 20-page document which
13 is Exhibit A to Qwest Utah SGAT, and I notice that
14 on page 3 it's got the element 8.1.4, the 48-volt
15 DC power usage element that we referred to prior
16 to taking our lunch break, and that I had
17 requested that the parties provide so we can just
18 enter it into the record.

19 (Hearing Exhibit Number 9 marked.)

20 And with that, I've gone ahead and
21 marked it as Hearing Exhibit 9. Are there any
22 objections from either party to me admitting this
23 at this time.

24 MR. KOPTA: No, Your Honor.

25 MR. GOODWIN: No, Your Honor.

26

1 JUDGE GOODWILL: Okay, it's admitted.

2 And just, again, for clarity's sake, it's my
3 understanding that the operative provision is
4 8.1.4 and the subparts contained therein on
5 page 403 of this document, the parties agree that
6 with respect to the rates at issue, this is the
7 operative one. Is that correct?

8 MR. KOPTA: That is correct.

9 MS. ANDERL: Yes, Your Honor.

10 JUDGE GOODWILL: Thanks. With that,
11 I'll turn to Mr. Goodwin.

12 MR. GOODWIN: Thank you, Your Honor. I
13 have, on the Figure 6 testimony, I have come up
14 with a way that may work, and I'm not sure. There
15 are different types, different types of equipment
16 listed in Figure 6 in Mr. Morrison's testimony.
17 If I can refer to those by line number. I still
18 may need to refer to the numbers associated with
19 that line. Is that sufficient, or do you need to
20 close the proceedings? If I ask some questions,
21 for example, about the equipment listed on line 4,
22 is that sufficient?

23 JUDGE GOODWILL: Line number 1 would be
24 the line immediately under the Collocated
25 Equipment heading?

26

1 MR. GOODWIN: Yes. I'm just wondering,
2 is that sufficient, for McLeod's purposes, to
3 maintain its interest in confidentiality in that
4 information?

5 JUDGE GOODWILL: If you were to refer to
6 the actual numbers in the columns as DC amps,
7 power draw, etc.?

8 MR. GOODWIN: Yes, and I may be talking
9 about how those three numbers relate to each
10 other.

11 MR. KOPTA: I think that would be fine,
12 as long as there's no connection between the
13 number and the type of equipment.

14 JUDGE GOODWILL: And again, I appreciate
15 your working on that, Mr. Goodwin, and if at any
16 time you really feel the need that we need to go
17 closed, I want to make sure you have that
18 opportunity, so just let me know.

19 MR. GOODWIN: Okay.

20 Q. (By Mr. Goodwin) Mr. Morrison, do you
21 have Figure 6 handy?

22 A. Yes, I do.

23 Q. Just so we're clear in terms of the
24 column of Figure 6, the first column represents an
25 identification of different equipment that McLeod

26

1 uses in a typical collocation installation?

2 A. That's true.

3 Q. Then the second column refers to fuse
4 size associated with that equipment?

5 A. Yes.

6 Q. What is the source of the derivation of
7 those numbers in that column?

8 A. The McLeodUSA engineering department.

9 Q. Okay. Well, how did the McLeodUSA's
10 engineering department reach those numbers? In
11 other words, decide that those particular fuse
12 sizes would be assigned to each particular item of
13 equipment in Figure 6?

14 A. They use the same design process for
15 their distribution network that Qwest uses for
16 their distribution network.

17 Q. Not all of this equipment is used in
18 Qwest's network, correct?

19 A. I'm sorry?

20 Q. Not all of this equipment listed in
21 Figure 6 is actually used in Qwest's network,
22 right?

23 A. In Qwest's network?

24 Q. Yes.

25 A. I don't know what the mix of equipment
26

1 is in Qwest's network.

2 Q. So if there was a particular piece of
3 equipment in Figure 6, your typical collocation
4 installation, that was not in Qwest's network, how
5 would you determine the fuse size for that
6 particular piece of equipment? You couldn't use
7 the same method that Qwest uses?

8 A. Yes, you could.

9 Q. Could you explain that for me? Perhaps
10 we've had a disconnect in terms of what you're
11 explaining.

12 A. Yes, okay. Why don't you restate your
13 question one more time to make sure we're
14 together.

15 Q. How do you determine the fuse sizes?
16 What goes in the fuse size column?

17 A. What goes in the fuse size column? Oh,
18 okay. You have to start with data on the
19 equipment and the load it's going to carry, the
20 traffic load it's going to carry, which translates
21 into the total current required for that piece of
22 equipment. That's done when, in this case, McLeod
23 purchases the equipment from the vendor and then
24 begins to design the equipment installation. They
25 will determine at that point what the List 1 and

26

1 List 2 drains are for that particular piece of
2 equipment.

3 Q. Now, the List 2 drain is represented in
4 the third column, which is called Manufacturer's
5 Maximum Power Draw, correct?

6 A. Yes, sir.

7 Q. So that's the List 2 drain. How do you
8 derive the other column, the fuse-size column?
9 I'm not sure if that follows, necessarily, from
10 what you had talked about, how the List 2 column
11 is derived.

12 A. The List 2 column is derived by
13 taking -- excuse me -- the column, the second
14 column is derived by taking the List 2, which is
15 in the third column, and multiplying that by
16 125 percent. Now you come out with a fusing size
17 that is -- or a number that is greater than the
18 number indicated in the third column. Then, since
19 there probably is not a fuse that meets that exact
20 requirement, then you fuse it up to the next
21 available fuse.

22 Q. Is there such a thing as a 10-amp fuse?

23 A. Yes, there is.

24 Q. So that would be available as a fuse
25 size to be listed in that fuse size column?

26

1 A. It could well be.

2 Q. And the reason you picked 125 percent of
3 the List 2 column to use for the fuse size column
4 is because that is how Qwest fuses power
5 distribution feeds, correct?

6 A. Yes. They take List 2 drain and then
7 they multiply it by 125 percent, and that would be
8 the fuse size. If that exact fuse size is not
9 available, then it's rounded up to the next larger
10 size.

11 Q. Right. And even more specifically, they
12 take the total power distribution cable order and
13 multiply that by 125 percent, correct?

14 A. Yes, sir. Yes, sir.

15 Q. So if, in this particular chart, you
16 have added together the fuse sizes and come up
17 with a total, you have added together the List 2
18 and come up with a total, isn't it true that if
19 Qwest's sizes, based on the List 2 or the power
20 cable order, what should happen for determining
21 fuse size is you multiply the total number in
22 column 3, which is the manufacturer's maximum
23 power, or List 2, you multiply that times 125
24 percent, not the individual pieces of equipment?

25 A. I'm not sure I follow that lengthy
26

1 question there.

2 Q. Okay. Qwest takes the fuse size based
3 on the List 2 order for power distribution that
4 McLeod makes, correct?

5 A. You're talking in terms of the List 2,
6 what we have been traditionally using as the
7 as-ordered amount?

8 Q. Yes.

9 A. Let's say in this particular example it
10 might be 100 amps. Let's use that for
11 illustrative purposes. Then you take that
12 100 amps and you multiply that by 125, and you're
13 going to come up with the fuse sizes for the
14 breakers, and you're going to use the distance and
15 amperage carried, which is going to be the same
16 amperage for the cables, to size the cables out.

17 MR. GOODWIN: Okay. I'm trying to
18 manage this. Since he said a number, I'm trying
19 to manage the need to go into a closed session.
20 Is it acceptable if we talk about the total DC
21 requirement in amps, that line, without going into
22 closed session, or will we need to go into closed
23 session to discuss that particular line? And by
24 the way, I think everybody in the room has signed
25 the protective agreement now.

26

1 JUDGE GOODWILL: I think we probably
2 still need to keep those numbers confidential.
3 Let's go ahead and do that, then. We will go off
4 the record in our open session, and let's see.
5 Everybody in the room has signed a protective
6 order or is otherwise entitled to hear the
7 following information claimed as confidential.

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10 CLOSED SESSION PROCEEDINGS

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13 (Separate transcript provided)

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1 JUDGE GOODWILL: Okay, let's go ahead
2 and go back into open session. Mr. Goodwin, is
3 that what you said?

4 MR. GOODWIN: Yes. I think we can go
5 into or return to open session.

6 JUDGE GOODWILL: Okay. We'll go ahead
7 and close, then, this closed session and go back
8 on the record in open session. Mr. Goodwin?

9 MR. GOODWIN: Okay.

10 Q. (By Mr. Goodwin) Now, the final column
11 on the right of Figure 6, what is that supposed to
12 represent?

13 A. That represents the actual power draw in
14 this illustrative case as it was measured by
15 McLeodUSA, let's say, technicians.

16 Q. So that means a power draw at a
17 particular point in time?

18 A. Yes, sir.

19 Q. So that's different than List 1, which
20 would be a peak consumption, correct?

21 A. Yes, it would be different than List 1.

22 Q. Now, except for the peak hour --
23 actually, let's talk a little bit about that List
24 1 peak for a second before I ask you that
25 question, just to make sure that it makes sense

26

1 for the Commission. List 1 power drain refers to
2 peak consumption of fully-carded
3 telecommunications equipment on the busy hour,
4 busy day of the year, correct?

5 A. Well, to expand that definition, without
6 looking it up, there are some traffic load
7 circumstances that are associated with identifying
8 that List 1.

9 Q. Right, but that's -- that List 1 is the
10 most that that particular piece of equipment would
11 use under normal operating circumstances?

12 A. That would be correct.

13 Q. And I think before you had identified
14 this busy-day busy-hour as representative of that
15 peak of current that represents List 1?

16 A. Yes.

17 Q. And that busy-day busy-hour can vary by
18 central office, but for common, stereotypical
19 purposes, it refers to, say, Mother's Day between
20 10:00 and 12:00 p.m., although that can vary by
21 central office?

22 A. Yes. And Mother's Day or Christmas or
23 one of those can be considered an extraordinary
24 event, too, and that's being considered for List
25 1. It may or may not be a consideration. It

26

1 could be busy season, busy day. It could be
2 another set of circumstances that happened to
3 demonstrate a peak load or List 1 load on the
4 office.

5 Q. But it's appropriate, in your
6 estimation, for Qwest or any other designer of a
7 DC power plant to accommodate for the load that
8 would occur on the peak hour of consumption during
9 the year, in other words, in our example, Mother's
10 Day?

11 A. If we want to use that as a chosen busy
12 day, that's fine, we can use that one.

13 Q. And with respect to back to Figure 6 and
14 the fourth column, the actual power draw is going
15 to be, at any particular point in time, is going
16 to be somewhat less than it would be on Mother's
17 Day?

18 A. Are you talking with reference to
19 specific equipment here?

20 Q. Well, with regard to any particular
21 equipment at times that are lower than the peak,
22 the actual consumption is going to be less, right?

23 A. Well, the actual consumption is going to
24 be less than List 1. Is that what you're saying?

25 Q. Yes.

26

1 A. Yes.

2 Q. And then we've talked about List 2
3 before, and to bring that back into the equation,
4 List 2 is greater than either List 1 or actual
5 consumption at any point in time?

6 A. That's correct.

7 Q. And I think in Iowa we had talked about
8 a particular chart, and if Your Honor will permit
9 me, I brought it with me. Here we've used a
10 100-amp order in this particular example, but the
11 numbers don't really matter. Generally, List 2 is
12 higher than List 1, which is higher than measured
13 usage as we proceed through time. Is that a fair
14 characterization?

15 A. Yes, it is.

16 Q. And depending on the point in time,
17 that's where we are, whether we're close to the
18 peak of List 1 or far from it, the numbers in your
19 column, the right column of Figure 6, will be
20 somewhere along this red curve that's at the
21 bottom of this particular chart.

22 A. That would be correct.

23 Q. Now, with that in mind -- oh. The top
24 line, the green line is List 2, which is the third
25 column, right? In your chart, the green line is

26

1 the third column, which is the manufacturer's
2 maximum power draw?

3 A. Yes, List 2.

4 Q. Okay. Now, look at the first item, the
5 first item of equipment listed there. Would you
6 agree with me that the List 2, corresponding to
7 the green line, is -- let me put that differently.
8 The right-hand column is listed at 90 percent of
9 List 2. In other words, the actual measurement at
10 one particular point in time was listed at 90
11 percent of what the List 2 was for that particular
12 equipment?

13 A. Yes, that's right.

14 Q. And for the sixth piece of equipment,
15 the actual measurement for that piece of equipment
16 was greater than even the List 2 drain, correct?

17 A. Yes, that's what it indicates.

18 Q. And then the tenth piece of equipment,
19 that's the next-to-the-last piece of equipment,
20 the actual measurement, which is represented as a
21 red line in this chart, and List 2 are almost the
22 same, about 95 percent similar?

23 A. Yes, those would -- are closest to List
24 2, List 1 being closest to List 2, would probably
25 be equipment that is not as sensitive to traffic

26

1 changes or differing power requirements under the
2 circumstances.

3 Q. But at least those particular pieces of
4 equipment have measurements at one particular
5 point in time that are very, very close, if not
6 greater than, List 2 drainage, which is supposed
7 to be the drainage under the worst possible
8 conditions, rarest events that you can imagine?

9 A. That would be correct.

10 Q. I want you to turn over in your
11 testimony to Figure 7.

12 JUDGE GOODWILL: What page is that,
13 counsel?

14 MR. GOODWIN: That is page 50 of your
15 direct testimony. It's just a couple pages over,
16 I'm sorry.

17 Q. (By Mr. Goodwin) Now, in column B of --
18 well, again, I'm going to try, since this is a
19 confidential figure, Mr. Morrison, I'm going to
20 try and discuss this without any particular
21 reference to the specifics in the chart. So if
22 you could do the same, we can avoid closing this
23 session.

24 A. Okay. If you want to use line numbers,
25 I will use line numbers.

26

1 Q. I'll try. I'll use line numbers and
2 column numbers.

3 A. Where's line 1?

4 Q. Line 1 will refer to this first central
5 office identified in Figure 7.

6 A. Okay.

7 Q. And there's three different ones, so
8 we'll talk about lines 1, 2 and 3 as being the
9 first, second and third central office that you've
10 identified. Column B, you have headed that,
11 quote, "As-Ordered," end quote, amperage. Do you
12 see that?

13 A. Yes.

14 Q. Now, the reason that you've put
15 quotations around the statement, quote,
16 "as-ordered," end quote, is because you didn't
17 actually look at the ordered amounts of cable
18 distribution contained in McLeod's collocation
19 order for these particular central offices, right?

20 A. I did not -- are you saying that I did
21 not look at the specific ordered amount for those
22 offices?

23 Q. Yes.

24 A. At some point I probably did, but I
25 don't remember the numbers.

26

1 Q. In your testimony, what you say you did
2 is you looked at the power distribution cable tags
3 at the McLeodUSA mini-BDFB.

4 A. That's right, and when I'm referring to
5 finally looking at the "as-ordered," at that some
6 point after that I ended up looking at as-ordered.
7 When this was done, what I was looking at is
8 strictly the cable tags that were the result of
9 the as-ordered amperage. In other words, the
10 cables and breakers as installed.

11 Q. So is it your testimony that the data in
12 column B in Figure 7 is based on the actual orders
13 that McLeod submitted for power distribution
14 cable, or your examination of the power
15 distribution capable tags in the central offices?

16 A. My examination of the power distribution
17 cables in the central offices.

18 Q. I'm going to hand you what's being
19 marked as Hearing Exhibit 10.

20 (Hearing Exhibit Number 10 marked.)

21 Hearing Exhibit 10 is a listing of all
22 the central offices, and by the way, this exhibit
23 should be confidential. This exhibit is -- this
24 confidential exhibit is -- a listing of all the
25 different offices, central offices in Colorado

26

1 where you conducted the study for Figure 7, and a
2 reflection from Qwest's records of what McLeod has
3 ordered in terms of power distribution cable. Do
4 you have that in front of you?

5 A. Yes, I do.

6 MR. GOODWIN: I would move the admission
7 of Hearing Exhibit Number 10.

8 MR. KOPTA: No objection.

9 JUDGE GOODWILL: It's admitted.

10 Q. (By Mr. Goodwin) In line 1 of Figure 7,
11 there's a Qwest central office identified. Can
12 you find the same central office identified in
13 Hearing Exhibit 10?

14 A. I couldn't catch the last of that.

15 Q. Can you find the same central office
16 identified in Hearing Exhibit 10?

17 A. Yes, I found it, yes. You're talking
18 about the first line?

19 Q. Yes. So for that particular central
20 office, what McLeod has actually ordered is about
21 half of what you indicate in Figure 7; isn't that
22 correct?

23 A. I'm missing the point. Why are we
24 comparing Arvada to -- excuse me. Why are we
25 comparing this particular different office to one
26

1 of the offices in Figure 7?

2 Q. I'm looking at -- look at line 1 on
3 Figure 7. That identifies a specific Qwest
4 central office.

5 A. Okay, Figure 7.

6 Q. Now, there's a similar line in Hearing
7 Exhibit 10 that identifies that same Qwest central
8 office.

9 A. Okay. I believe I have found it, unless
10 it's listed more than once.

11 Q. Not line 1, it's 10 lines down.

12 A. Right.

13 Q. I don't know the exact number. Are you
14 there?

15 A. I count it as 12.

16 Q. Okay. But for that particular central
17 office in Hearing Exhibit 10, it reflects a power
18 order of about half what you reflect in your
19 Figure 7 as what the cable tags showed?

20 A. That's correct.

21 Q. And then for the central office, that is
22 line 2 of Figure 7, if you'll find the
23 corresponding entry for the central office in
24 Hearing Exhibit 10.

25 A. Looks like line 10.

26

1 Q. Yes. Actually, in that particular
2 instance there are two feeds ordered by McLeod in
3 that particular central office?

4 A. That's right.

5 Q. And both of those feeds are less than
6 indicated in your Figure 7?

7 A. And you're talking with respect to the
8 column B?

9 Q. Yes.

10 A. Yes.

11 Q. In fact, one of them is much less than
12 half of what you've listed at the as-ordered
13 amperage in Figure 7?

14 A. Yes.

15 Q. And then finally, the last item in
16 Figure 7.

17 A. Yes.

18 Q. And the corresponding entry in Hearing
19 Exhibit 10 shows that what McLeod has ordered is
20 about two-thirds of what your Figure 7, column B
21 shows?

22 A. Yes.

23 Q. I think your testimony is that you
24 believe that Qwest does or should engineer its
25 power plant capacity to satisfy List 1 drain; is
26

1 that correct?

2 A. Did you say power plant capacity?

3 Q. Yes.

4 A. Yes, List 1 drain.

5 Q. And at least according to your
6 testimony, this is done by adding all the List 1
7 drains for Qwest equipment to all the List 1
8 drains or all the CLEC equipment to get an
9 aggregate List 1 drain for the entire office; is
10 that correct?

11 A. That's correct.

12 Q. Now, is it also fair to say that when
13 McLeod places an order for distribution cables in
14 its collocation order for, say, 200 amps, that
15 information in itself is not sufficient to tell
16 Qwest what List 1 drain is?

17 A. That alone, you're correct. You need
18 more information.

19 Q. Yes. And specifically you would need to
20 know what equipment is or will be located in the
21 collocation space over the planning horizon?

22 A. You mean that Qwest would need to know
23 that?

24 Q. Qwest would need to know that in order
25 to understand what List 1 was, based on the order

26

1 placed by McLeod, right?

2 A. Yes.

3 Q. And not only would you need to know what
4 equipment is, but you would also need to know how
5 it is being used, or Qwest would need to know
6 that, correct?

7 A. Well, to a certain extent, yes. What
8 Qwest needs is they do need to acquire the List 1
9 information for that particular equipment.

10 Q. And --

11 A. Then as a result of that, they would
12 need to acquire that information from information
13 sources that would have that particular
14 information. For instance, Qwest engineers the
15 same way. They do their equipment the same way
16 they do for Qwest. If they have a need to find
17 out what List 1 is for a piece of equipment, then
18 they will go to anything from their own equipment,
19 own detail engineer, equipment engineer within
20 Qwest who's handling the equipment, to vendors, to
21 data sheets that they may have on site. They may
22 go to NEBS documentation. In the case of a CLEC
23 collator, they could obviously pick up a phone and
24 make a contact and find out what List 1 is going
25 to be. There are multiple resources out there

26

1 that you can acquire List 1. The best way to
2 acquire it is talk to the guy that's dealing with
3 the equipment. But the other sources will work.

4 Q. When you say talk to the guy that's
5 dealing with the equipment, who's that guy?

6 A. Well, in this case when you are talking
7 about CLEC, you would have to go to McLeodUSA,
8 their engineering department, and talk to the
9 engineer that placed the order, that designed the
10 collo.

11 Q. Does McLeodUSA ever tell Qwest what its
12 List 1 drain in any central office was, to your
13 knowledge?

14 A. Probably not, but also, in defense of
15 that, Qwest has not put themselves in a position
16 where they offered an alternative method to make
17 that contact. They've not really asked for the
18 information. They've asked only for what is List
19 2. They haven't made arrangements to either
20 acquire on the collocation order the equipment
21 plus the List 1 drain. They've only asked for the
22 aggregate List 2 drain to size cables and
23 breakers. The appropriate way to do that would be
24 if there is additional information that you need,
25 ask for it. Put it on the forms.

26

1 Q. But Qwest does not put on its forms
2 "please tell us your List 1 drain," or "please
3 tell us your actual usage." That's not a slot on
4 the collocation form, right?

5 A. That's right, and that's by Qwest's
6 choice.

7 Q. And I think also, just to be clear,
8 regardless of whether it's on the collocation form
9 or not, McLeod has not, on its own, offered this
10 information to Qwest?

11 A. Qwest hasn't expressed any desire to
12 have it, or expressed a need for it.

13 Q. But no, McLeod hasn't offered it on its
14 own?

15 A. Not that I know of.

16 Q. But Qwest needs to know, also getting
17 back to the question that I think we might have
18 missed a couple questions ago, which is Qwest
19 needs to know not just what equipment is there,
20 but also how it's being used, because how it's
21 being used in the customer profile that it's
22 serving may end up with a different power
23 requirement related to that equipment, correct?

24 A. Well, Qwest is quite aware of the
25 customer profiles of all of this equipment.

26

1 McLeod is purchasing -- or excuse me -- is
2 acquiring customers out of the same pool that
3 Qwest has. The central office has a serving area.
4 That's why McLeod is located there, so they can
5 access those customers. Those are Qwest customers
6 just like some number of them are going to end up
7 being McLeod customers. So they know the general
8 profile of those customers.

9 Q. But with regard to a particular piece of
10 equipment -- let's say a DSLAM which provides
11 DSL service. If a particular CLEC is aiming its
12 DSL service offering at businesses, or a
13 particular type of business, that may present a
14 different power requirement for that DSLAM than it
15 would if a particular CLEC was offering its
16 services primarily to residential customers,
17 correct?

18 A. It's possible. In that particular case,
19 if there is doubt in Qwest's mind, they need to
20 pick up a telephone and make a call or request the
21 information.

22 Q. Do you know whether all this research
23 and telephone calls that Qwest is supposed to
24 make, do you know whether there's a provision in
25 the cost docket that was set up for Qwest to

26

1 conduct this research and ask McLeod these
2 questions?

3 A. I'm not an expert in those calls.

4 MR. KOPTA: Objection; misstates
5 testimony.

6 Q. (By Mr. Goodwin) Now, do you have
7 Mr. Hubbard's testimony? And specifically Exhibit
8 RJH-1, which we've had admitted into this hearing
9 as Qwest Exhibit 2.1. Do you have that?

10 A. RJH-1?

11 Q. Yes.

12 A. Yes, I have it.

13 Q. Okay. Now, I want to focus your -- this
14 is a confidential exhibit. I want to focus your
15 attention on the third column. This particular
16 column talks about the date of the power order for
17 collocation. Do you see that?

18 A. I see it.

19 Q. Now, the power plant would be engineered
20 at that point in time, and all those dates are
21 six years ago, correct?

22 A. Approximately, yes.

23 Q. And after Qwest has engineered that
24 capacity in that six-years-ago time frame, its
25 investigation in that is basically sunk. In other

26

1 words, its costs don't change as McLeod's actual
2 usage either increases or decreases with respect
3 to the power plant it installed back in the
4 1999-2000 time frame, correct?

5 A. I don't believe so. Back in the --
6 let's say 2000-1999 time frame, Qwest recovered
7 its cost for distribution cables under
8 non-recurring costs and some recurring costs. The
9 power plant, they were recovering that investment,
10 and this question is probably much more
11 appropriate for Mr. Starkey under "other charges."

12 Q. Would it be easier for you to just defer
13 that whole question to Mr. Starkey?

14 A. Definitely.

15 Q. I don't want to get you beyond your
16 area.

17 A. That needs to go to Mr. Starkey, yes.

18 Q. Okay, I want to be fair to you. In your
19 rebuttal testimony you said that QC's engineers
20 can know that McLeodUSA is winning customers away
21 from Qwest and factor that into their planning.
22 Do you recall that testimony?

23 A. Which one? Surrebuttal?

24 Q. Yes.

25 A. Which page?

26

1 Q. Page 24, lines 528 through 531.

2 A. Which one did you say? 538?

3 Q. Lines 528 through 531. My question on
4 that is a simple one. Well, maybe it's not that
5 simple, but it's only one, and that is, are you
6 aware --

7 A. Let me read it, please.

8 Okay, I read it.

9 Q. Now, did you factor into your opinion
10 that's reflected at these lines that we've
11 indicated here the legal restrictions on the
12 information that McLeod provides to Qwest's
13 wholesale group regarding customers that may be
14 won over, and prevent and limit its disclosure
15 from that group to the engineering group, and
16 prevent Qwest from using that information to plan
17 the construction of its facility and networks?

18 MR. KOPTA: Objection; calls for a legal
19 conclusion. I don't know what the restrictions
20 are and there's no information and there's no
21 foundation that this witness has any knowledge
22 about that.

23 MR. GOODWIN: Right. Actually, that's
24 the point of my question, to say that he's just
25 testifying from a lay point of view and has not
26

1 factored into his testimony -- or I'm just trying
2 to find out whether he has factored into his
3 testimony the legal lay of the land with regard to
4 that particular issue.

5 MR. KOPTA: And that question assumes
6 that there is such a legal lay of the land, so if
7 you'll rephrase the question, then I think that
8 would be more appropriate than asking this witness
9 if he factored in a legal restriction that the
10 witness didn't even know whether or not it exists.

11 JUDGE GOODWILL: I think it's fair to
12 ask the question if he's factored that in. We'll
13 allow the question.

14 Q. (By Mr. Goodwin) Do you need the
15 question read back or repeated?

16 A. No, I understand the question. No, I
17 did not factor that in.

18 Q. I want to get back to this chart with
19 the different colors on it. I think you
20 testified, and we talked about this a little bit
21 before, that the actual consumption at any
22 particular point in time will fall below List 1
23 drain. In fact, I think your testimony was
24 sometimes far below List 1 drain.

25 A. That's correct.

26

1 Q. And with exception of the single point
2 in time corresponding with the busy day, busy
3 hour, in other words, in our example Mother's Day,
4 no carrier is using the DC power plant anywhere
5 close to the List 1 drain?

6 A. Refresh my recollection of the
7 testimony. Where are you?

8 Q. Well, would you agree with that?
9 Regardless of where your testimony is -- it's on
10 page 22 -- but would you agree with that
11 statement?

12 A. Restate it.

13 Q. Okay. With the exception of the single
14 point in time corresponding with the busy day,
15 busy hour -- and here's my assertion, which in our
16 example has been Mother's Day -- no carrier is
17 using the DC power plant anywhere close to the
18 List 1 drain?

19 A. Of the carriers that I had looked at,
20 that would be true.

21 Q. And this is because the DC power plant
22 is not based or not sized based on actual power
23 measurement, but what power engineers actually do
24 is they engineer and size DC power plant based on
25 the power requirement needed at that List 1

26

1 moment?

2 A. Yes, they are designed, the power plant,
3 based on List 1.

4 Q. In fact, even in your testimony, your
5 rebuttal testimony, I think you noted that, on
6 footnote 10, page 10, you said, I'm not
7 recommending that we use actual measured usage to
8 size power plant. Qwest shouldn't do that. Is
9 that a fair statement?

10 A. List 2?

11 Q. List 1. Excuse me, I didn't actually
12 mean either one. I think it's your testimony that
13 Qwest should not use the actual measured usage to
14 size its power plant.

15 A. What page is that?

16 Q. Footnote 10, page 10, your rebuttal
17 testimony. Do you see that? It says: "I should
18 also note that I am not endorsing this data be
19 used by Qwest to size DC power plant." And that
20 data, when you referred to that "data," what
21 you're referring to is the actual measurements
22 contained in confidential Exhibit RJH-1, which
23 we've identified as Exhibit 2.1 in this hearing?

24 A. I'm not endorsing that particular data
25 because it's more for illustrative purposes. The

26

1 footnote 10 goes on to read -- I'll read the whole
2 thing. "I should also note that I am not
3 endorsing this data be used by Qwest to size DC
4 power plant. The purpose of this data is to show
5 that Mr. Hubbard's claim that Qwest must size DC
6 power plant for CLECs based on CLEC power cables
7 only or List 2 drain, because it would have no
8 idea what to expect in terms of power usage is
9 factually inaccurate."

10 They do know what to expect, but there
11 are other exercises that Qwest would have to go
12 through to engineer this power plant to acquire
13 the necessary List 1 drain. In those cases where
14 you could acquire some measured drain, you may
15 choose to use it. There are also techniques for
16 estimating the drain, and Qwest constantly runs
17 measurement on its existing power plants.

18 Q. But you are not suggesting that Qwest
19 should use the actual measurement data as an
20 engineering standard in order to engineer the
21 capacity of the power plant, correct?

22 A. I'm saying that they use the actual
23 measured data to engineer the power plant. I'm
24 not -- what I'm saying is that they're not
25 necessarily going to use this data, because I

26

1 don't know its source and the detailed information
2 about it.

3 Q. But this data -- what you're saying is
4 that Qwest should not use any point on this red
5 line in order to engineer its power plant, right?
6 There's other information that it uses, the
7 properties of the equipment and the other
8 information that gives you the List 1, right?

9 A. What I'm saying is they shouldn't use
10 the data on the red line. I'm specifically
11 addressing this. They may not choose to use this.
12 They may have to do some additional measurements.

13 Q. Now, when you are referring to "this,"
14 what you're referring to is the actual
15 measurements that were done pursuant to the DC
16 Power Measuring Amendment, right?

17 A. That's right.

18 Q. So you are not suggesting and it is not
19 your testimony that Qwest should use the actual
20 measurements conducted pursuant to this agreement
21 in order to engineer its power plant capacity?

22 A. I'm not recommending that they do it.
23 They may in fact choose to do it.

24 Q. Now, with regard to those measurements,
25 if those measurements are taken here, if those
26

1 measurements are taken somewhere, unless they are
2 taken on Mother's Day, unless the measurements are
3 taken on Mother's Day, McLeodUSA -- at a time when
4 McLeodUSA's equipment is fully carded up, even
5 under your theory, McLeodUSA would be paying less
6 or for less at the power point than your testimony
7 indicates that Qwest bills at List 1 and is
8 available for them, correct?

9 A. You're going to have to rephrase that.
10 I did not follow that altogether.

11 Q. Unless the measurements for this
12 particular contract are taken on Mother's Day,
13 even under your theory, McLeodUSA would be paying
14 for less of the power plant that is constructed,
15 even under your theory of this case, which is
16 power plant at List 1 levels?

17 A. They would be paying for the power plant
18 that is actually used or utilized, which is going
19 to be . . .

20 Q. But your testimony is that Qwest should
21 build power plant capacity at List 1 levels,
22 correct?

23 A. That's right.

24 Q. And those levels that Qwest builds and
25 makes available to McLeodUSA don't change over

26

1 time like actual usage does, correct?

2 A. That's correct.

3 Q. And that equipment that Qwest has
4 installed in the power plant costs money, and
5 those costs don't go away depending on the
6 measured usage, right?

7 A. I'm a little reluctant to get into cost
8 issues around List 1. I think that's a more
9 appropriate question for a cost witness.

10 Q. But the level at which you say Qwest
11 should construct power plant capacity is going to
12 be greater in every instance, except on Mother's
13 Day, than the level of actual power used by
14 McLeod?

15 A. Yes.

16 MR. GOODWIN: No further questions.

17 JUDGE GOODWILL: Mr. Kopta?

18 MR. KOPTA: Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. KOPTA:

21 Q. Mr. Morrison, do you recall a discussion
22 with, very early in your discussion with Mr.
23 Goodwin, about List 2 drain and what McLeod would
24 do in terms of preparing its power plant
25 distribution towards the rare event of a List 2

26

1 occurrence?

2 A. I remember that discussion.

3 Q. And do you recall whether or not -- let
4 me ask that differently. Is it your testimony
5 that McLeod, or Qwest for that matter, would size
6 its power plant according to List 2 drain?

7 A. No, no, I never intended to testify to
8 that. Qwest and McLeod engineer the power plant
9 to List 1.

10 Q. And when you were discussing with Mr.
11 Goodwin ordering power, when McLeod orders power
12 from Qwest, does McLeod order power per se, or is
13 it something else that McLeod actually orders from
14 Qwest to be able to get power?

15 A. The only way they can get power to their
16 collocation is by virtue of or the existence of
17 the distribution network.

18 Q. So your discussion with Mr. Goodwin,
19 when you were discussing McLeod's order for power,
20 you were discussing McLeod's order for
21 distribution or power feed?

22 A. That's correct.

23 Q. Would you turn to Figure 6 in your
24 direct testimony. I believe it's on page 47.

25 A. I'm there.

26

1 Q. And I believe you walked through an
2 exercise with Mr. Goodwin about how McLeod would
3 order power based on this typical configuration in
4 a central office. Do you recall that discussion?

5 A. I recall that.

6 Q. And Mr. Goodwin asked you to assume as
7 part of his questioning that McLeod would not
8 consider future usage or growth within its
9 collocation space for power feeds. Do you recall
10 that?

11 A. I recall that.

12 Q. Is that a reasonable assumption in terms
13 of what McLeod would do in determining how much
14 power feed to order from Qwest?

15 A. It's not a reasonable assumption. I'm
16 not aware of even any circumstances where Qwest
17 considers that standard.

18 Q. Mr. Goodwin also asked you about your
19 computations and walked you through where you took
20 the List 2 drain, which I believe is the second
21 column of numbers in this exhibit. Does that
22 represent List 2 drain?

23 A. Yes, it does.

24 Q. And then you discussed with him how the
25 fuse size is developed based on the List 2 drain;

26

1 is that correct?

2 A. That's correct.

3 Q. And that you would then take the total
4 of all of the fuse sizes, under his example of not
5 considering future growth, and increase that by --
6 or multiply that by 125 percent and round up to
7 the next fuse size to determine what the order is;
8 is that right?

9 A. That's right.

10 Q. And what Mr. Goodwin was asking you also
11 was if you're doing essentially 125 percent
12 multiplication twice, that you're starting with
13 the List 2 drain and multiplying that by
14 125 percent, then getting that total and then
15 multiplying that again by 125 percent, is that the
16 computation?

17 A. That's not the computation I went
18 through.

19 Q. If you have a List 2 drain amount in
20 your collocation of your collocated equipment, as
21 shown in this figure, how is it determined, based
22 on that List 2 drain amount, how much to order?

23 A. For that individual circuit?

24 Q. For the power feeds going to that
25 collocation space.

26

1 A. You take the List 2 value for that piece
2 of equipment, multiply it by 125 percent, and then
3 you acquire the next fuse size to protect that
4 particular power feed.

5 Q. And would you do that after you had
6 totaled up the entire List 2 drain of all of the
7 equipment, or would you do it on a
8 piece-of-equipment by piece-of-equipment basis?

9 A. Well, in this case you're doing it on an
10 equipment-by-equipment basis, because you have
11 individually fused and fed equipment.

12 Q. So McLeod, in making its power peak
13 orders to Qwest, considers its own needs to fuse
14 its equipment within its collocation space; is
15 that correct?

16 A. That's correct. The distribution
17 network power that McLeod's ordering is from the
18 power board to the BDFB that they have, and
19 they're looking for that BDFB to be protected,
20 those breakers in the BDFB and power cables, the
21 breakers to protect the power cables. After that
22 they go to their own design of their equipment
23 within their collocation.

24 Q. Mr. Goodwin also pointed out some
25 examples in which the List 2 drain, which again is

26

1 represented by the second column of numbers, is
2 close to, or in at least one case, less than the
3 McLeod estimated power drain. Would you consider
4 that -- would that be List 1?

5 A. If it was less than List 2?

6 Q. Well, first let me ask you, in the last
7 column of numbers, does that represent List 1
8 drain?

9 A. That represents the actual.

10 Q. That represents the actual?

11 A. Yes.

12 Q. So Mr. Goodwin pointed out some
13 examples, three examples in which the actual draw
14 is very close to, or in one case, more than the
15 List 2 drain. Do you recall that discussion?

16 A. Yes, I recall that.

17 Q. Why would that be the case?

18 A. You could have two possibilities: One is
19 that the List 1 in fact is that close to the List
20 2. That may in fact be equipment that is not that
21 sensitive to those things that cause variations in
22 power demand on equipment. The next is there may
23 very well be some extraordinary load on some piece
24 of equipment for some unusual reason. In the
25 particular case where it went above, it could be a

26

1 fault or it could be a traffic issue. There's a
2 number of things it could be.

3 But the point is that it's sunken or
4 hidden in the mass of the current here, the power
5 being supplied aggregately to all these
6 equipments -- all this equipment, that it's not
7 that detectable. Probably, if it's a fault in the
8 equipment, it probably will come to the surface in
9 customer reports or come up on an alarm monitoring
10 system that McLeod may have attached to that
11 particular piece of equipment.

12 Q. And would the circumstances in which the
13 actual draw approaches List 2 drain be common, or
14 would it be unusual to have that happen?

15 A. Very unusual, even though we do have one
16 example of it here. As you distribute out into
17 the world of smaller and smaller pieces of
18 equipment, it's possible that for some period of
19 time you could hit a List 2, or above List 1,
20 anyway, drain. But in the aggregate of the power
21 that McLeod purchases from Qwest, this is
22 virtually undetectable.

23 Q. And if you have a circumstance in which
24 the actual power draw either approaches or exceeds
25 the List 2 drain for one or two or three pieces of
26

1 equipment, would it, in your judgment, be
2 appropriate to size the power plant based on List
3 2 drain for all equipment?

4 A. Certainly not, not from this list of
5 equipment, because that particular problem would
6 most likely only be observable by McLeod and not
7 Qwest, and would have no significant impact on the
8 real drain across the distribution network that
9 McLeod has ordered from Qwest.

10 Q. You also discussed with Mr. Goodwin
11 about what Qwest would need to know once they had
12 the List 2 drain information from McLeod, what
13 Qwest would need to know to be able to develop a
14 List 1 drain for McLeod's equipment. Do you
15 recall that discussion?

16 A. Yes, I do.

17 Q. And in the course of that discussion,
18 you were talking about whether or not Qwest would
19 need to know the type of equipment that McLeod
20 would have in its collocation space. Do you
21 recall that?

22 A. Yes.

23 Q. And I believe that one of the questions
24 that Mr. Goodwin asked you is whether or not you
25 would need to know the equipment that McLeod would

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1 forecast to have included in its collocation
2 space. Would you agree or disagree that Qwest
3 would need to know how much equipment, or the type
4 of equipment, or the actual equipment, that McLeod
5 would forecast to be used in its collocation in
6 developing a List 1 amount?

7 A. Relative to the List 2 that they're
8 ordering for the distribution cable, no, they
9 would not need to know that equipment in detail
10 for that power that's forecasted toward the end of
11 the life. They had the equipment to meet the
12 immediate List 1 requirements in the order.

13 Q. So Qwest would not need to know today,
14 if you were placing an order for cable feeds, what
15 equipment McLeod forecasts it will put into that
16 collocation space five years from now?

17 A. That's correct.

18 Q. I'm not sure you need to turn to it, but
19 you had a discussion with Mr. Goodwin about the
20 figures in Exhibit RJH-1, which is the attachment
21 to Mr. Ashton's rebuttal testimony, and he focused
22 your attention on when McLeod ordered its
23 collocation in the various central offices of
24 Utah. Do you recall that discussion?

25 A. Yes, I do.

26

1 Q. And Mr. Goodwin asked you whether or not
2 the power equipment was engineered at the time of
3 the order, which was over six years ago. Do you
4 recall that question?

5 A. Yes.

6 Q. And in your view, does it make a
7 difference that it was six years ago that McLeod
8 placed its order for power feed cables in terms of
9 what Qwest should have done or should have known
10 six years ago in sizing its power plant to
11 accommodate the power needs for its equipment?

12 A. No. The time frame, this time frame
13 should have absolutely no bearing on that. All
14 these practices have been around, that we're
15 referring to, in some form back to that point in
16 time.

17 Q. And in your view, six years ago, did
18 Qwest have the ability to either know or have the
19 ability to find out what it needed to know to
20 develop List 1 drain level of power for the
21 equipment that McLeod was collocating at that
22 time?

23 A. Yes, it did.

24 Q. While we're on this exhibit, Mr. Goodwin
25 asked you some questions about whether it was your

26

1 testimony that Qwest should use the measures of
2 current measurement of power that McLeod is
3 actually drawing in these collocated spaces in
4 Qwest's central offices, whether Qwest should use
5 that in terms of developing the List 1 drain. Do
6 you recall that series of questions?

7 A. Yes, I do.

8 Q. Are these measurements wholly irrelevant
9 to what Qwest would need to do to develop a List 1
10 drain for equipment?

11 A. Yes, it is in one sense. A couple of
12 reasons. There are ways to acquire the List 1
13 range. Measuring it is definitely one of the
14 better ways. However, this particular list of
15 measurements goes back to February of this year.
16 I wouldn't recommend that they use data that old
17 to engineer the power plant. I would be more
18 interested that they take measurements that are
19 more current.

20 Q. And is that consistent with your
21 understanding of what Qwest does with its own
22 equipment?

23 A. Yes, it is.

24 Q. Does Qwest use actual measurements of
25 the power used by its equipment in developing the

26

1 List 1 drain for the central office?

2 A. Yes, they do have that capability. They
3 use the actual List 1 drain that they're measuring
4 off of the power plant itself.

5 Q. And would that include the power that's
6 used and collocated from the equipment that is
7 collocated in their central office?

8 A. That would include collocation power as
9 well.

10 Q. So rather than individually using the
11 measurements for McLeod, is it your testimony that
12 Qwest should use measurements of the entire power
13 plant draw, which includes both Qwest equipment
14 and CLEC equipment?

15 A. Yes, that's the most immediate and most
16 defining definition of List 1.

17 MR. KOPTA: Thank you, Your Honor.
18 That's all I have.

19 JUDGE GOODWILL: Mr. Goodwin, do you
20 have any more questions?

21 MR. GOODWIN: I do, but I didn't know
22 whether you had questions yourself.

23 JUDGE GOODWILL: No. Go ahead.

24 MR. GOODWIN: Okay.

25

26

1 RECROSS-EXAMINATION

2 BY MR. GOODWIN:

3 Q. It is not your testimony, Mr. Morrison,
4 is it, that McLeod did not order any power plant
5 capacity from Qwest?

6 A. That's right, they did not order any
7 power plant capacity. They did order distribution
8 network delivery.

9 Q. But McLeod has power plant capacity
10 available to it, right?

11 A. That's correct.

12 Q. Well, how did they get it if they didn't
13 order it?

14 A. Qwest designed the distribution network
15 from the power plant collocation based on List 2,
16 then determined one of two things -- or at least
17 one of two things: That they have existing
18 capacity to manage the equipment that the
19 collocater is putting in place in the collocation
20 cage, and/or they actually determined what the
21 List 1 requirements of that equipment were, and
22 may or may not have had to augment the power plant
23 to reach the requirement for that List 1.

24 Q. But the only order that we're aware of
25 relating to DC power at all that was made by

26

1 McLeod is its order for DC power distribution of
2 feeds, correct?

3 A. Distribution feeder?

4 Q. Yes.

5 A. Is that what you said?

6 Q. Yes.

7 A. Yes, that's what McLeod told you that
8 their order was.

9 Q. And that's the DC power order?

10 A. That's the DC power order, and along
11 with that order goes the equipment that they have
12 in that collocation site.

13 Q. And along with that collocation order
14 the only number -- the only place where there's a
15 number of amps in that collocation application and
16 order is for the power capacity -- excuse me --
17 the power distribution?

18 A. That's right.

19 Q. Now, Mr. Kopta asked you some questions
20 about Figure 6 and asked you to say well, I think
21 you said it wasn't reasonable to assume there
22 would never be any growth, all right? Let's take
23 that a step further and say okay, if -- I'm trying
24 to figure out how to ask the question without
25 going back into closed session. You remember the

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1 answer that you gave me in closed session about
2 the number of amps that McLeod would order for the
3 equipment represented in Figure 6, the number of
4 amps they would order in DC power? Do you
5 remember that number?

6 A. Yes, I remember that number.

7 Q. Now, without referring specifically to
8 that number, if, for example, McLeod's forecast
9 for growth would be to add two sets of this
10 equipment into its collocation space, and that was
11 its forecast for growth over time, McLeod's order
12 for power distribution or feed would be twice the
13 number that we discussed in closed session,
14 correct?

15 A. Well, if you use that linear
16 extrapolation, that would be correct.

17 Q. And if the forecast for growth was
18 basically to get 20 percent more of some of the
19 same type of equipment that is reflected in Figure
20 6 over the planning horizon, then McLeod would
21 order 120 percent of the number we talked about in
22 closed session, correct?

23 A. That would be correct.

24 Q. You don't order power cable based on
25 fuse size, do you, Mr. Morrison? In other words,

26

1 the distribution is based on the List 2 drain of
2 the equipment, not the fuse sizes that are
3 associated with that equipment, right?

4 A. Step through that again.

5 Q. When you order -- when McLeod orders
6 power distribution, it orders to List 2 drain,
7 correct?

8 A. That's right.

9 Q. And List 2 drain has nothing to do with
10 the fuse sizes associated with the second column
11 of Figure 6, right?

12 A. Fuse size has nothing to do with the
13 second column of Figure 6?

14 Q. No. Fuse size does not inform the
15 decision of McLeod to order power distribution
16 cable, does it?

17 A. No. They're concentrating on the total
18 List 2 drain they anticipate using in the future.

19 Q. Right. So in other words, if,
20 hypothetically, the List 2 drain for a particular
21 piece of equipment was 50, then the fuse size
22 associated with that would be 50 times
23 125 percent, which is 62 and a half, right? And
24 then the next common fuse size up from 62 and a
25 half is how much?

26

1 A. Maybe 65. We don't know. It would
2 depend on the vendor of the equipment.

3 Q. A 65- or 70-amp fuse would be the next
4 common size? So you would fuse that piece of
5 equipment that we've talked about in this
6 hypothetical at 70 amps, correct?

7 A. Conceivable.

8 Q. But you only need 50 amps of power to
9 run that equipment on List 2, so you'd only order,
10 in a rational, reasonable environment, you'd only
11 order 50 amps of power distribution capacity for
12 that particular piece of equipment, right? Not
13 the 75 which is reflected by the maximum capacity
14 of the fuse?

15 A. McLeod is engineering from its BDFB
16 forward toward its equipment based on the needs of
17 that individual equipment. They are ordering
18 power in aggregate from Qwest from the power board
19 to the BDFB intending to use, however they use it
20 downstream from that point, no more than the
21 maximum of the as-ordered List 2 drain.

22 Q. But if you order according to fuse size,
23 you'll end up ordering more than a List 2 drain,
24 right?

25 A. For that particular piece of equipment?

26

1 Q. Yes.

2 A. If you order based on fuse size?

3 Q. Yes.

4 A. Well, obviously you're going to order
5 higher than List 2.

6 Q. But the fuse itself is not something
7 that draws power, it's something that prevents
8 either the equipment or the power plant from being
9 damaged if too much power goes through that
10 particular passageway where the fuse is, right?

11 A. That's correct. It's a protection
12 device.

13 Q. And you size your power distribution
14 order based on the amount of power that will be
15 used, not the protection device, correct?

16 A. Well, if the protection device ever sees
17 an amount greater than 15 amps, we want it to
18 operate.

19 Q. Right, so you always order a lower
20 amount than the fuse size so that you would make
21 sure not to exceed the amount of power that the
22 fuse can handle, right?

23 A. Well, not necessarily, because we're
24 still talking about ordering power in aggregate
25 for future use.

26

1 Q. Well, I think we're kind of going around
2 and around on that one a little bit. Let's move
3 on. Now, you need to know -- Qwest would need to
4 know -- McLeod's forecast of the amount of
5 equipment that it planned to put in its
6 collocation space, plus the activity that was
7 expected with respect to that equipment over a
8 relevant planning horizon in the future in order
9 to properly size its power plant, correct?

10 A. Qwest should be only looking at the List
11 1 power that CLEC is ordering at that point in
12 time. Qwest doesn't need to be concerned with
13 what equipment will finally be installed in that
14 space. They have to service the List 1
15 requirements of the existing equipment for that
16 particular order. Any subsequent equipment orders
17 that come along from Qwest will be ordered on the
18 Qwest collocation order, and at that time they'll
19 see the additional equipment, they'll know we have
20 X number of amps, so the List 1 power requirement,
21 the list that exists in the collocation space, and
22 now CLEC is augmenting that with additional
23 equipment in its List 1 capabilities.

24 So they're going to add to the List 1
25 capability of that power plant as the demand

26

1 requires, as the usage requires.

2 Q. Right, but when McLeod puts that new
3 equipment in their collocation space, they're
4 going to expect sufficient power capacity to power
5 that equipment immediately when they put that
6 power equipment in, right?

7 A. List 1. They'll require List 1.

8 Q. So yes?

9 A. Yes.

10 Q. Now, in order for Qwest to make sure
11 that they can provide that much power capacity at
12 the exact moment that McLeod puts its new
13 equipment in, they're going to have to know
14 McLeod's forecast for putting that equipment in a
15 sufficient amount of time in advance in order to
16 plan and construct that power capacity if it's
17 needed, right?

18 A. Yes, that's right.

19 Q. And constructing a power plant can't be
20 done just like add an amp here, add an amp there,
21 in a day or so, right?

22 A. Well, that's true, but augmentations and
23 collo space going in can have turnover horizons of
24 about 90 days as well, so there is a long-range
25 period there.

26

1 Q. In other words, and just to be more
2 specific, if Qwest has to augment a power plant in
3 response to new equipment being placed in, under
4 your theory, new equipment being placed in the
5 collocation space, A, they would have to augment
6 that power plant in, say, 100-, 200-, 400-amp
7 increments?

8 A. Yes, those are typical augmentation
9 requirements. But if you look at the kind of
10 equipment and the kind of performance that CLECs
11 typically have, they're a very small percentage of
12 that power plant, and the augmentations are not
13 unheard of, but in most cases I've looked at so
14 far in Utah, about 2 percent of the power plant
15 was utilized by Qwest.

16 Q. But at some point, at least for purposes
17 of making sure that the CLEC has the power it
18 needs when it needs it, McLeod is going to expect
19 that Qwest has planned for the demand that
20 presents itself well enough in advance to build
21 that power plant, right?

22 A. And as that equipment ramps up over a
23 long period of time and is part of the aggregate
24 draw on that particular power plant, yes, Qwest
25 sees that continuous ramping up of power

26

1 requirements, and based on that, then they will
2 determine whether they need to augment the power
3 plant with rectifiers.

4 Q. And it takes three to six months in
5 order to construct or augment a power plant in
6 this scenario, correct?

7 A. I don't know if that's factual.

8 Q. You don't know the particular time frame
9 that it would take?

10 A. Not necessarily.

11 Q. In the 1999-2000 time frame when McLeod
12 placed all its collocation orders with Qwest,
13 Qwest could not possibly know McLeod's usage
14 patterns for purposes of planning power plant
15 capacity, correct? Back at that time frame.

16 A. They would not know specifically
17 McLeod's profile, so they would have to use the
18 same planning mechanisms for McLeod that they use
19 for their own equipment to determine what the
20 power requirements are.

21 Q. So no, they couldn't know McLeod's usage
22 patterns?

23 A. Not as specifically -- they would not
24 recognize them specifically as McLeod's, but they
25 do know that those customers are coming from the
26

1 aggregate of those served by the boundaries of
2 that central office.

3 Q. So Qwest is going to have to make a
4 guess in that particular instance?

5 A. Yes, and there's a procedure in the
6 documentation that tells Qwest how to go through
7 an estimation process to calculate List 1.

8 MR. GOODWIN: Nothing further.

9 JUDGE GOODWILL: Mr. Kopta?

10 MR. KOPTA: Thank you, Your Honor. Just
11 a few things.

12 FURTHER REDIRECT EXAMINATION

13 BY MR. KOPTA:

14 Q. Mr. Goodwin was asking you some more
15 questions about Figure 6 on page 47 of your direct
16 testimony, and specifically was asking you whether
17 or not you would order power feed based on List 2,
18 not on the fuse size, for each piece of equipment.
19 Do you recall that line of questioning?

20 A. Yes, I do.

21 Q. And you may have mentioned this, but I
22 just want to make sure that it's clear. When
23 McLeod is ordering power feeds to its collocation,
24 does it do so for each individual piece of
25 equipment, or does it do so for all power needs

26

1 for the collocation space?

2 A. They consider all of the power needs for
3 the collocation space, based on all of their List
4 2 requirements from equipment for that particular
5 collocation space, and that's the sum of that List
6 2, is how they determine what their List 2 order
7 will be, as well as what they're going to
8 determine for future needs.

9 Q. And that takes into account also the
10 extent to which they need to put in their own
11 fuses with the collocation space for the BDFB
12 that's collocated for each individual piece of
13 equipment that's in their collocation space?

14 A. That's right. They're breaking power
15 down to smaller denominations from that BDFB,
16 distributing it to their equipment.

17 Q. Mr. Goodwin also asked you some
18 questions about whether Qwest needs to provide
19 power capacity to McLeod whenever it puts a new
20 piece of equipment in its collocation space. Do
21 you recall that discussion?

22 A. Yes.

23 Q. Is it appropriate engineering practice
24 to build a power plant to be able to meet
25 forecasted demands five years in the future, to

26

1 build that plant today so that it will be
2 available five years from today?

3 A. From a capacity perspective, no, it's
4 not, because you'll have, for instance,
5 rectifiers, maybe batteries depending on the
6 circumstances, that are not going to be used for
7 five years. Your investment's going to sit idle
8 for a long time. And again, that question
9 probably belongs to Mr. Starkey.

10 Q. And when Qwest locates a new piece of
11 equipment in its central office is it your
12 understanding that Qwest would expect to be able
13 to power that piece of equipment?

14 A. Yes, they would.

15 Q. And if that power would require -- would
16 exceed the amount of power available that Qwest
17 would need to augment the power plant to operate
18 that piece equipment?

19 A. That would be correct.

20 Q. And do you know whether Qwest's
21 forecast, the extent to which it's going to be
22 placing new equipment in its central offices?

23 A. Based on my experience, Qwest does
24 forecast.

25 Q. And does Qwest today build power plants
26

1 for equipment that they forecast that they're
2 going to be placing in that central office two or
3 three years from now?

4 A. No, they don't. They will size a power
5 plant for an ultimate size, but not as charging
6 capability. They will augment that, since that's
7 the easier of all the augmentations to do, with
8 additional rectifiers as they're needed.

9 Q. And with specific respect to a
10 collocation request from a competitor for CLEC, if
11 Qwest does not have the power capacity available,
12 do you know whether Qwest could or would simply
13 deny the request for collocation, or delay the
14 request for collocation until any additional power
15 plant is constructed that will accommodate the
16 power needs of that collocated equipment?

17 A. Yes, that's been done before.

18 MR. KOPTA: Thank you. That's all I
19 have.

20 JUDGE GOODWILL: I might ask a few
21 questions just to, again, make sure I understand
22 your testimony. And as kind of a general
23 hypothetical, any numbers I use are just random
24 and may not have any basis in engineering reality,
25 but it's my understanding that you say McLeod
26

1 looks at the List 2 values for the equipment it
2 intends to collocate in a Qwest facility, adds
3 those together, on top of that determine its
4 future needs, and then place an order for
5 distribution to Qwest?

6 THE WITNESS: That's correct.

7 JUDGE GOODWILL: So today, the List 2
8 values for the equipment it wants to put in today
9 might be 50 amps. It looks to the future and
10 says, gee, we might really want to ultimately go
11 to 180 amps, so we're going to order a 180-amp
12 cable from Qwest.

13 THE WITNESS: That's correct.

14 JUDGE GOODWILL: But I believe you
15 testified that despite that order, you would
16 expect Qwest to look to the List 1 values of the
17 equipment that's actually going to be located in
18 that space and size its power plant based on those
19 values.

20 THE WITNESS: Yes, I would, and the
21 reason for that is if you go through all of the
22 Qwest documentation relative to planning, power
23 plant and distribution of power, it refers to the
24 power plant as being sized at List 1 requirement.
25 That's my testimony before that you've just

26

1 repeated. And then the distribution network is
2 sized at List 2. So yes, I'm saying that you do
3 size the power plant based on List 1 for those
4 reasons, which gets into the world of engineering
5 economics.

6 JUDGE GOODWILL: In referencing the
7 Qwest engineering manuals and so forth that talk
8 about List 1 values, are you then testifying that
9 that's how Qwest treats its own equipment when
10 sizing its power plant?

11 THE WITNESS: Yes, I am.

12 JUDGE GOODWILL: That that's somehow
13 different than how it would treat the CLECs.

14 THE WITNESS: Yes, I am, and that's
15 really what CLECs are asking for. The CLECs are
16 asking for Qwest to treat their power orders the
17 same way that they treat Qwest power orders for
18 equipment.

19 McLeod is not asking for anything
20 additional, other than just equal treatment on the
21 engineering side as to how the power plant usage
22 is determined, meaning List 1, and then they want
23 to be able to manage the distribution and its
24 ultimate configuration to avoid a lot of service
25 problems and costs that can be associated with

26

1 that.

2 JUDGE GOODWILL: Then help me
3 understand. It's my belief -- I believe you
4 testified, or I think it's in the testimony, that
5 McLeod orders 180-amp cable, and so has
6 historically been billed for that 180 amps
7 ordered?

8 THE WITNESS: That's right. They pay
9 for that under nonrecurring charges and recurring
10 charges, and Mr. Starkey would be a good one to
11 discuss that with.

12 JUDGE GOODWILL: You have some
13 experience working with and for Qwest.

14 THE WITNESS: That's correct.

15 JUDGE GOODWILL: So in the same
16 circumstance, if Qwest wants to locate some
17 equipment in its central office that has a List 1
18 value of 50 amps, Qwest doesn't bill itself for --
19 I mean, what does Qwest do in that circumstance?
20 Are you saying that they wouldn't put in a 180-amp
21 cable to power that equipment, they would put in
22 something more narrowly-tailored to that 50-amp
23 service?

24 THE WITNESS: They would probably do
25 very much the same thing that the CLEC is doing.

26

1 They would look at it from a little different
2 perspective. They would pull -- well, not really
3 a different perspective. They would be pulling
4 power off the BDFB or off the power bay. They
5 would haul the power to those relay racks or BDFBs
6 required to run that equipment for its service
7 horizon. Then they would have the ability to add
8 additional equipment as it grows in. That way
9 they can then add equipment incrementally over
10 time, managing their costs and equipment, without
11 having to touch the power and cause themselves
12 additional expense on the power side.

13 JUDGE GOODWILL: So they would not be
14 sizing their plant at that point based on the size
15 of the cable that they installed?

16 THE WITNESS: That's correct. They
17 would be sizing it based on List 1 needs.

18 JUDGE GOODWILL: And yet in the case of
19 McLeod, you testified that they would bill McLeod
20 based on the size of cable they put in.

21 THE WITNESS: That's right.

22 JUDGE GOODWILL: Okay. Any questions
23 from any party based on my questioning?

24 MR. GOODWIN: No, Your Honor.

25 MR. KOPTA: No, Your Honor.

26

1 JUDGE GOODWILL: Let's go ahead. We're
2 through with Mr. Morrison?

3 MR. GOODWIN: Oh, before we're through
4 with Mr. Morrison, I referred to a chart. I have
5 copies of the actual chart which I'd like to mark
6 and have admitted as Hearing Exhibit 11.

7 (Hearing Exhibit Number 11 marked.)

8 Now, the copies that I have made here
9 are black and white, and I'm sure it would be
10 better and easier for the record and for Your
11 Honor if we made color copies available, since the
12 transcript will indicate the color.

13 JUDGE GOODWILL: I think we can just
14 refer to it as, for instance, List 2 is green,
15 List 1 is blue, and the measured usage is red. So
16 anytime you're referring to those colors in the
17 transcript, I think it's adequately marked on the
18 exhibit itself.

19 MR. GOODWIN: We can also make these
20 available in color tomorrow.

21 JUDGE GOODWILL: I think for now, why
22 don't we go ahead and mark those as 11.

23 MR. GOODWIN: I think we're up to 11.
24 Is that right? I'd move for the admission of
25 Hearing Exhibit 11.

26

1 MR. KOPTA: No objection.

2 JUDGE GOODWILL: Okay, it's admitted.

3 Anything further for this witness? Thank you,
4 Mr. Morrison. We'll go ahead and -- what do the
5 parties foresee for the rest of the day? Wrapping
6 up about 5:00?

7 MS. ANDERL: Sure. That would be
8 reasonable, Your Honor. I should be able to
9 complete my cross-examination as well as allow
10 time for redirect and your questions so that I
11 would hope that we could finish with Mr. Starkey
12 today.

13 JUDGE GOODWILL: Great. We'll go ahead
14 and take a 10-minute recess.

15 (Recess)

16 JUDGE GOODWILL: Back on the record.
17 Mr. Kopta?

18 MR. KOPTA: Thank you, Your Honor.
19 McLeod now calls Michael Starkey as its third and
20 final witness.

21 JUDGE GOODWILL: Mr. Starkey, if you'd
22 please raise your right hand.

23 (The witness was sworn.)

24 Thank you. Please be seated.

25

26

1 DIRECT EXAMINATION

2 BY MR. KOPTA:

3 Q. Mr. Starkey, please state your name and
4 business address for the record.

5 A. My name is Michael Starkey. My business
6 address is 243 Dardenne Farms Drive, in
7 Cottleville, Missouri, 63304.

8 Q. And Mr. Starkey, do you have before you
9 what has been marked for identification and
10 actually admitted into the record as Exhibit
11 McLeod 3, 3.1, 3-SR and 3-SR.1?

12 A. Yes, I do.

13 Q. And were those documents created by you
14 or under your direction or control?

15 A. Yes, they were.

16 Q. Are those exhibits true and correct, to
17 the best of your knowledge?

18 A. They are. I do have a few -- three
19 corrections to my surrebuttal.

20 Q. Would you make them at this time,
21 please?

22 A. Yes. The first one begins at page 7,
23 line 180. After the word "amendment," the word
24 "within" should be inserted, such that it reads
25 "within Exhibit WRE-1." The next one is at page
26

1 9, line 218. Again, after the word "amendment,"
2 the words "an agreement," a-n agreement, should be
3 inserted such that it reads "an agreement that
4 would supersede." And finally, on page 12, line
5 297, where you see the number 11.78, that should
6 actually be 7.79. And that is all of my
7 corrections.

8 Q. And if I asked you the questions
9 contained in Exhibits 3 and 3-SR, would your
10 answers as so corrected be the same as you gave
11 here today?

12 A. Yes.

13 MR. KOPTA: Your Honor, these exhibits
14 have already been admitted to the record, so I
15 would make Mr. Starkey available for
16 cross-examination.

17 JUDGE GOODWILL: Thank you. Ms. Anderl?

18 MS. ANDERL: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. ANDERL:

21 Q. Prior to the break I had asked Mr. Kopta
22 if he would stipulate to the admission of some
23 exhibits, which I would like to admit through this
24 witness, but on which I do not have any questions,
25 and I'd like to get that out of the way right off.

26

1 It's four separate data request responses, again
2 from the Iowa proceedings, data request response
3 numbers 13, 21, 24 and 35. And I can either admit
4 those as a single exhibit or I can give them four
5 separate numbers, assuming Mr. Kopta has no
6 objection to those.

7 MR. KOPTA: I have no objection, Your
8 Honor.

9 JUDGE GOODWILL: I think we can just
10 mark them as Hearing Exhibit 12.

11 MS. ANDERL: All right.

12 (Hearing Exhibit Number 12 marked.)

13 JUDGE GOODWILL: Let me just make sure
14 the record is complete. We've got request 13,
15 which is a single sheet. Request 21 is two
16 sheets. Request 24 is two sheets, and request 35
17 is a single page. All those are marked together
18 as Hearing Exhibit 12. There being no objection,
19 we'll go ahead and admit those.

20 MS. ANDERL: Thank you, Your Honor.
21 There is only one minor amendment to one of those
22 responses that I think McLeod would like to amend
23 the question. I don't think McLeod would have any
24 problem with this, and that is on question
25 number 21. Somebody asked McLeod to identify
26

1 every fact, etc., etc., supporting Mr. Starkey's
2 assertion on page 5 of his testimony. In Utah,
3 that's actually page 6.

4 JUDGE GOODWILL: Any objection to the
5 change on that?

6 MR. KOPTA: No, Your Honor, and I need
7 to make the same correction in the response. The
8 question on page 5, and then the first line of the
9 response on the very bottom page says page 5 and
10 should also be page 6, changed to page 6.

11 JUDGE GOODWILL: Yes, thank you.

12 Q. (By Ms. Anderl) Good afternoon,
13 Mr. Starkey.

14 A. Good afternoon.

15 Q. I'm Lisa Anderl and I'll be asking you
16 some questions on behalf of Qwest today. We've
17 spoken once before in Iowa; is that right?

18 A. That's true.

19 Q. By the time we get to Arizona, it may be
20 like "Groundhog Day," but not quite yet.

21 A. I think that's probably true.

22 Q. When did you first become involved in
23 the power measuring dispute on behalf of McLeod?

24 A. I think I began having discussions with
25 McLeod about the issue in the fall of '05, and I
26

1 think in Iowa we discussed that the amendment was
2 sent to me sometime in November. I reviewed the
3 invoices in detail sometime in January of '06.

4 Q. All right. You did not consult with
5 McLeod on the Power Measuring Amendment before
6 McLeod signed it, did you?

7 A. I did not.

8 Q. Did you advise McLeod in any way
9 regarding the Power Measuring Amendment before
10 McLeod sign it?

11 A. No, I wouldn't say specifically.
12 Certainly, as I think Ms. Spocogee related
13 earlier, questions about collocation power, we've
14 been discussing with McLeod many years as to how
15 it should be appropriately billed and what it
16 should expect when it sees its bills for collo
17 power. The specifics of the Qwest amendment, no.

18 Q. And you have been advising McLeod on one
19 issue or another, you or QSI in general, since
20 about 2001; is that right?

21 A. You know, I did read that in the Iowa
22 transcript, and I think it's probably earlier than
23 that, although I can't be -- it's probably, like,
24 2000, 1999. It's been a long time.

25 Q. QSI has testified in a number of states
26

1 outside of the Qwest region on collocation power
2 issues; isn't that right?

3 A. That's correct.

4 Q. Now, you made some corrections to your
5 surrebuttal testimony. Please turn to your direct
6 examination, if you would for a moment, which is
7 McLeod Hearing Exhibit Number 3. And page 7, the
8 second table, table number 2, the last line on
9 that. Well, let's back up. This is your
10 representation of how Qwest is billing McLeod; is
11 it not?

12 A. It is.

13 Q. And isn't it correct that the last line
14 on that table, under the scenario that you set
15 out, should read 24, not 180?

16 A. I apologize. Yes, that's true. That
17 should have been corrected. That should be 24.

18 Q. And would that change flow-out into the
19 invoice amount that you have set forth there?

20 A. Yes, it would.

21 Q. And it would change that by about how
22 much?

23 A. Let me do the math. If somebody has a
24 calculator and can calculate 156 times 3.89, it
25 might save us some time. If not, I can do it, but

26

1 it will take a minute.

2 Q. I heard from the audience \$606.84.

3 Would you accept that, subject to check?

4 A. I would.

5 Q. And that's the amount that that \$700.20
6 figure should be reduced by; is that right?

7 A. Yes, that's true.

8 Q. So that amount then comes out to be
9 about somewhere under \$100?

10 A. Yes.

11 Q. And then that negative \$606.84 would
12 also flow out into the \$2,102.89 figure?

13 A. That's correct. It would be around
14 \$1,500. I can correct this and we can provide it
15 later, if you'd like.

16 Q. And then also, just to complete my
17 question on that, it would also flow out into the
18 calculation on the next page through line 172?

19 A. Yes, it would.

20 Q. Okay. I have some questions for you
21 with regard to the Power Measuring Amendment
22 that's at issue today. You're here supporting
23 McLeod's interpretation of the amendment; is that
24 right?

25 A. Yes.

26

1 Q. You're not giving any testimony about
2 McLeod's intent with regard to the amendment at
3 the time it entered into the amendment, are you?

4 A. In my testimony I describe what was
5 relayed to me in terms of McLeod's intention, but
6 that's the only testimony I've provided in
7 relation to that.

8 Q. Mr. Starkey, in McLeod's view, is the
9 Power Measuring Amendment that is disputed in this
10 case so clear that no one could reasonably have a
11 different interpretation of it than McLeod?

12 A. I think it's probably difficult to find
13 language that two people couldn't disagree about,
14 but I think McLeod's position certainly is that
15 it's clear with respect to when they read it, what
16 they thought it meant.

17 Q. Now, you said a couple of things in your
18 testimony, and I can refer you there if you'd
19 like. But let me just see if I understand this
20 correctly. At one point in your testimony, I
21 believe you said that it would be necessary to
22 look only at the language of the amendment to
23 interpret it, and that would be in your
24 surrebuttal testimony at line 186. Is that
25 language which must be reviewed to understand the
26

1 intention of the parties? In other words, the
2 language of the amendment. Is that your
3 testimony?

4 A. It is the language of the amendment
5 which must be reviewed to understand the intention
6 of the parties, yes.

7 Q. But is it also your testimony, at lines
8 23 and 24, that it is relevant and informative for
9 the Commission to look at additional information
10 outside the language of the amendment?

11 A. I think that's a fair characterization,
12 yes.

13 Q. Mr. Starkey, are you aware whether or
14 not other carriers in Qwest states have the
15 amendment language for power measuring that's
16 identical to the language that McLeod has in its
17 amendment?

18 A. Only to the extent I think it was
19 described in Mr. Easton's testimony.

20 Q. You don't have any reason to dispute
21 that, do you?

22 A. I don't know either way.

23 Q. And are you aware of any carrier in any
24 Qwest state who has advanced the interpretation of
25 that language McLeod is advancing?

26

1 A. No. I don't know either way.

2 Q. In your opinion, is it important for the
3 Commission to consider the meaning of the terms of
4 the contract that each party attached to those
5 terms in interpreting the contract?

6 A. I don't think I understand your
7 question. The meaning of the terms as expressed
8 by what?

9 Q. As expressed by nothing at this point,
10 just the meaning of the terms that each party
11 attached to the contract. Is that important for
12 the Commission to consider?

13 A. Potentially, if the language bears
14 through on those intentions. I mean, you can't
15 suggest that I intended X, write Y, and then
16 suggest that X is the operative agreement.
17 Obviously, what you agreed to is the operative
18 language.

19 Q. And if the language is not susceptible
20 to absolute determination as to what the parties
21 meant when they entered into the agreement, would
22 what each party intended by that language be
23 something that would be important for the
24 Commission to consider?

25 A. Again, potentially. If the language is
26

1 unclear, then, I think, if there is a dispute
2 related to the language, then I think, as I
3 described in my testimony, it's reasonable to
4 review other information; i.e., could the language
5 be implemented in the way in which one party
6 describes it when that isn't consistent with
7 underlying law or economic policy? I do think
8 that those things are relevant.

9 Q. And in your opinion, for negotiation on
10 a contract to be successful, would it be important
11 for both parties to have attached the same meaning
12 to the terms of the agreement?

13 A. In a perfect world, it would.

14 Q. And if the parties do not attach the
15 same meaning to the terms of the agreement, would
16 it be important for one party to communicate with
17 the other party the meaning that it attaches to
18 its terms?

19 A. Is this a hypothetical question?

20 Q. It's not meant necessarily -- it's just
21 a general question. It's not a hypothetical
22 question, no. It's a question in general with
23 regard to successful contract negotiations.

24 A. I'm sorry, can I hear it again, then?

25 Q. If the parties do not attach the same
26

1 meaning to the terms of the agreement, would it be
2 important for one party to communicate to the
3 other party the meaning that it attaches to the
4 terms?

5 A. I think the idea here is that if two
6 parties sign an agreement, they at least expect
7 that the meaning they're attributing to the
8 language is the same as the other party signing
9 the agreement. If afterwards they were to find
10 out that the meaning -- that the other party was
11 interpreting that meaning differently, then I
12 think we'd end up with a dispute like we have here
13 today.

14 Q. You've reviewed the contract amendment
15 that's at issue; have you not?

16 A. I have.

17 Q. And that's been marked as Hearing
18 Exhibit Number 1. Could you please take a look at
19 that?

20 A. Okay.

21 Q. Now, in section 2.1 of that agreement,
22 there's a reference to AC usage charges; is there
23 not?

24 A. There is.

25 Q. And then there's further reference two
26

1 additional times to an AC usage charge, singular.

2 Is that also right?

3 A. Correct.

4 Q. Is that rate element contained anywhere
5 in the agreement between Qwest and McLeod?

6 A. It's not described on the Utah Exhibit

7 A. You can find it in other Exhibit A's from
8 other states.

9 Q. In Minnesota?

10 A. You're testing my memory. Perhaps.

11 Q. But it's not in Utah, is it?

12 A. It's not on the Exhibit A.

13 Q. What is your understanding of the effect
14 of the references in this amendment to a chart
15 that doesn't exist in the Utah Exhibit A?

16 A. I'm not sure I attribute any specific
17 meaning to it.

18 Q. Now, the amendment references in section
19 2.2 the negative, or minus 48-volt DC usage
20 charged; is that correct?

21 A. Yes.

22 Q. And that references to a charge,
23 singular, not plural?

24 A. The word is "charge."

25 Q. And in fact the verb that's used

26

1 thereafterward [sic] is a singular verb. Is that
2 also correct?

3 A. Now you're testing my grammar. I think
4 with my corrections, I've already proved that
5 that's not my strong point. Potentially.

6 Q. If in fact it had read "power usage
7 charges," it would probably say "power usage
8 charges are"?

9 A. It could have said "as."

10 Q. "48-volt power usage charges are
11 specified"?

12 A. Or "as specified."

13 Q. But it probably wouldn't say "is," would
14 it?

15 A. Well, if it were talking about a group
16 of charges, the group, if my grammar is correct,
17 would be treated as singular, when you're
18 describing it as a group. Only if you describe
19 individual components would you describe it in the
20 plural.

21 Q. Now, we had previously identified -- had
22 shown a large chart that's the extract from the
23 Utah Exhibit A. Now, Exhibit A, in its entirety,
24 is marked as Hearing Exhibit 9, and I believe that
25 Ms. Spocogee looked at this large chart and agreed

26

1 that it fairly represented the power rate element
2 that we're talking about. So I'll have you take a
3 look at it, and I hope, now, with this chart we're
4 not going to also test your eyesight, but I'll
5 just ask you a few questions about that. These
6 things always look bigger in my office.

7 A. I can see it, thank you.

8 Q. And you probably have the same document
9 in front of you, so it doesn't matter whether you
10 look at the large one or the small one. Section
11 8.1.4 there reads 48-volt DC power usage; does it
12 not?

13 A. It does.

14 Q. And is there a charge on line 8.1.4?

15 A. There is not a rate, if you will, on
16 that line, as it's the grouping of the other rate
17 elements.

18 Q. And the 8.1.4 reads "minus 48-volt DC
19 power usage ampere per month"; does it not?

20 A. It does.

21 Q. Is there a charge or a rate on line
22 8.1.4.1?

23 A. No, it appears to be a subcategory.

24 Q. And on 8.1.4.1.1, what is the indication
25 there?

26

1 A. It says "power plant."

2 Q. Does it say "usage" on that line?

3 A. No, it just says "power plant."

4 Q. And on either of the two lines below
5 that, power plant less than 60 amps, or power
6 plant equal to or greater than 60 amps, does it
7 say "usage" on any of those lines?

8 A. No.

9 Q. Now, look back at Hearing Exhibit 1, and
10 we'll look at section 1.2 at this point. Would
11 you agree that section 1.2 establishes certain
12 duties and obligations that Qwest has in
13 connection with power measuring?

14 A. I think, as I described in my direct
15 examination, this paragraph deals with sort of the
16 physical process by which it will be effectuated.

17 Q. Okay, but is there a reason why you
18 wouldn't agree that it establishes certain duties
19 and obligations on Qwest?

20 A. Not necessarily, no.

21 Q. Now, about halfway through that
22 paragraph, and we have, I think, an excerpt just
23 as an aid for a visual aid. We'll recognize it
24 from Iowa. It has yellow highlighting. Just to
25 direct you to the sentence that I would like you

26

1 to read, it's in the middle of the paragraph and
2 it starts with: "Based on these readings." Just
3 to lead in, the paragraph indicates that Qwest
4 will have certain obligations to take readings at
5 certain points in time during the year, either on
6 its own or on the CLEC's request. Then the
7 sentence says: "Based on these readings," and if
8 you would go ahead and read the rest of that
9 sentence into the record.

10 A. It says: "Based on these readings, if
11 CLEC is using less than the ordered amount of
12 power, Qwest will reduce the monthly usage rate to
13 CLEC's actual use."

14 Q. And the reference there is to a "monthly
15 usage rate;" is that correct?

16 A. It says "monthly usage rate."

17 Q. And that is "rate," singular, not
18 "rates," plural. Is that also correct?

19 A. It is "rate," singular.

20 Q. And does it say anywhere in section 1.2
21 that Qwest will reduce the monthly power plant
22 rate?

23 A. No, but it says that in 2.1.

24 Q. I understand that that's your position,
25 Mr. Starkey. Let me ask you, and we talked about
26

1 this a little bit in Iowa. When McLeod places an
2 order for a 200-amp power feed with Qwest, is it
3 reasonable for Qwest to assume that McLeod may, at
4 some point, need 200 amps of power?

5 A. I think Mr. Morrison discussed this
6 earlier, and I think potentially an
7 instantaneous -- given that the 200 amps is a List
8 2 drain situation, in a moment of -- and I think
9 the terminology Mr. Morrison used was a
10 "catastrophic event" -- the catastrophic event
11 wherein all of the McLeod power equipment -- the
12 equipment is powered -- were to go and draw a List
13 2 drain at the same time, potentially. So that's
14 a highly unlikely scenario.

15 The more likely scenario is that a
16 single piece of equipment would become distressed
17 via a short or some other mechanism, and draw a
18 List 2 drain, such that only a portion in addition
19 to the general measured usage would go above List
20 1, but not the total amount that McLeod ordered.

21 Q. I want to see if I understand your
22 answer, because I believe that it is different
23 from the answer that you gave me in Iowa, and I
24 want to make sure that we're not talking across
25 each other. I believe that the question that I

26

1 asked you in Iowa is: "Whenever McLeod places an
2 order for cable, power distribution cables must
3 have a 200-amp capacity, is it reasonable for
4 Qwest to assume that McLeod may at some point need
5 to draw 200 amps of power?" Do you believe that
6 that is the same question that I just asked you?

7 A. Seems to be a similar question, yes.

8 Q. And do you recall that your answer in
9 Iowa was no, it is not reasonable?

10 A. And was that my entire answer?

11 Q. Your answer was no.

12 A. Potentially, I don't know what I may
13 have said after that or in relationship to some
14 other question. What I'm suggesting to you now is
15 that -- I guess I could stick with no, I don't
16 think it is a reasonable assumption. Might it
17 happen at some point in the future? Only in the
18 most bizarre of catastrophic events, as
19 Mr. Morrison described. The more likely scenario
20 is the one I just described where a single piece
21 of equipment requires a List 2 draw, which doesn't
22 bring the entire McLeod draw anywhere near the
23 List 2 order.

24 Q. And if you had subsequent conversations
25 with Mr. Morrison that would cause you to want to

26

1 change your answer from no, I'm not trying to hold
2 you to it, I'm just trying to find out what your
3 answer is today about whether such an assumption
4 by Qwest would be reasonable or not.

5 A. I think I'll stick with my answer.

6 Q. You'll stick with no, okay. Now, in
7 connection with your testimony today, you obtained
8 a copy of the Utah-specific cost study that Qwest
9 had filed in the 2001 cost docket; is that right?

10 A. Yes.

11 Q. And you obtained that from the
12 Commission?

13 A. Mr. Kopta sent it to me.

14 Q. And do you know what vintage that cost
15 study was? Was it as Qwest originally filed it,
16 or after adjustments proposed by the DPU and other
17 parties in that cost docket?

18 A. I got a really big Zip file from Mr.
19 Kopta, and I think there were probably six
20 different cost studies in there, and I think they
21 included both of the ones you just described. In
22 neither circumstance was the overall investment in
23 the power plant changed, so it really didn't
24 matter.

25 Q. Did McLeod have an opportunity to
26

1 participate in that cost docket?

2 MS. ANDERL: And I apologize, Your
3 Honor. I need to refresh my recollection on that
4 docket number so I can refer to it appropriately
5 here. Utah docket number 00-049-106.

6 A. I don't know.

7 Q. (By Ms. Anderl) You don't know if McLeod
8 had an opportunity to do that?

9 A. No, I don't know.

10 Q. And you don't know if McLeod did, in
11 fact, participate?

12 A. I read the orders from the case and I
13 don't recall seeing McLeod's name in it as a
14 participant.

15 Q. Do you know if McLeod was prevented in
16 any way from participating in that docket?

17 A. I don't.

18 Q. Before we talk about the cost study
19 itself, let me ask you another question about the
20 200-amp cable feed that I just talked to you about
21 a moment ago. If McLeod placed an order to Qwest
22 for 200-amp cable feed at a particular central
23 office, is McLeod's expectation at whatever point
24 in time it does need that ultimate amount of power
25 that it would be available for McLeod's use?

26

1 A. That question assumes that it will need
2 it, and I'm not sure that it does. As I said
3 earlier, I don't think necessarily that it will.
4 You have to keep in mind, as Mr. Morrison
5 described, the way in which McLeod determines that
6 cable size is it takes the individual List 2
7 drains and the pieces of equipment it will locate
8 in the central office and aggregate them for those
9 particular cables.

10 In order to draw that entire List 2
11 drain, all of its equipment would have to be in a
12 List 2 event at the same time, which is the very
13 unlikely scenario that we just discussed a second
14 ago. And I think Mr. Morrison described early in
15 that scenario, and the only one that anybody in
16 this case or in Iowa was even able to come up with
17 so far is this notion that somehow the batteries
18 fully discharged and equipment had to be
19 restarted, such that the restart power would pull.

20 And I think Mr. Morrison described
21 earlier in that situation that Qwest would likely
22 cycle power in through its equipment. And I think
23 Mr. Hubbard described some of that related to the
24 Qwest switch in Iowa. So that's a little bit of
25 the basis for why I don't think it's reasonable,

26

1 necessarily, to suggest that McLeod would ever
2 draw that 200 amps, and certainly, Mr. Morrison
3 points out, you shouldn't engineer your capacity
4 of your plant to accommodate it.

5 Q. Well, I understand your answer, but I
6 think that it's not -- the question was not with
7 regard to whether or not McLeod would ever need
8 that amount of power, frankly. It was directed to
9 McLeod's expectations. And let me ask the
10 question again. Is McLeod's expectation that at
11 whatever point in time it does need that ultimate
12 amount of power, it would be available to it?

13 A. Again, your question assumes that it
14 does need it, and I was taking exception to that
15 assumption. I don't think it suggested that it
16 will need it.

17 Q. Ever?

18 A. Not that I'm aware of, but that's a
19 better question for Mr. Morrison.

20 Q. And maybe we can address that a little
21 bit later in the hearing, but if the answer is
22 never, do you have an engineering background to
23 explain why McLeod would place an order of that
24 nature?

25 A. No. That's why I referred it to
26

1 Mr. Morrison.

2 Q. And, Mr. Starkey, I asked you this
3 question in Iowa, the same question that I just
4 read to you, and I will represent to you -- and
5 I'm happy to share the transcript -- that in Iowa
6 your answer was yes, it was McLeod's expectation
7 that at whatever point in time it does need the
8 ultimate amount, it would be available to it. Is
9 there a reason why you've changed your answer
10 today?

11 A. I'm not sure that I have, and if you
12 would share the transcript with me, I could
13 probably better answer.

14 Q. Look at page 282. I missed the line
15 number, but I think it's toward the bottom of the
16 page.

17 MR. GOODWIN: Page 17 for the question.

18 Q. (By Ms. Anderl) Could you go ahead and
19 just, for clarity in the record, read the question
20 and answer into the record slowly.

21 A. Sure. It's a little long, but I will.

22 "Is it McLeod's expectation that at
23 whatever point in time it does need that ultimate
24 amount, it will be available to it?

25 "Yes, from the overall power plant, none

26

1 of which is allocated specifically to McLeod. The
2 important point there being that if you've got a
3 1,000-amp power plant and a McLeodUSA collocation
4 in List 2 drain, all that has to be available --
5 the List 1 drain, which is engineered for the
6 entire central office is going to be or is likely
7 to be sufficient to meet List, the static drain
8 for the remainder of the office and the List 2
9 drain for the McLeod central office.

10 So I don't want to be left with the
11 impression that you've engineered a List 2 drain
12 for each individual user. Mr. Polk and
13 Mr. Morrison have testified that's not the case."

14 Q. Let me ask you, how much time did you
15 spend reviewing the Utah-specific cost model, cost
16 studies that were provided to you by Mr. Kopta,
17 approximately?

18 A. If you include the model and the
19 supporting documentation, the orders and
20 everything else, it was probably in one morning.
21 Four hours, maybe three to four hours.

22 Q. And you just mentioned the orders. Did
23 you in fact review the Commission orders in that
24 cost docket?

25 A. Yes.

26

1 Q. And you say in your testimony, your
2 surrebuttal testimony, at line 243 you claim that
3 Qwest's interpretation of its Power Measuring
4 Amendment conflicts with the manner by which the
5 Commission set those rates. It actually says
6 "those rates," but you meant rate?

7 A. I did. Yes, I see that.

8 Q. And is that your testimony?

9 A. Yes.

10 Q. Is that based on any particular passage
11 out of any particular Commission order?

12 A. No, because it's based on the cost study
13 itself, which the Commission ultimately approved.

14 MS. ANDERL: I'd like to distribute,
15 Your Honor, the next Hearing Exhibit in line,
16 which would be Number 13.

17 (Hearing Exhibit Number 13 marked.)

18 Q. (By Ms. Anderl) Mr. Starkey, do you
19 recognize this document?

20 A. I don't know if I recognize the document
21 itself. If it's an extract from the cost study, I
22 recognize this spreadsheet from the cost study.

23 Q. Is it likely that you've only ever
24 looked at this extract on the screen, as opposed
25 to a hard copy?

26

1 A. That is the case, yes.

2 Q. Thank you. And do you see on page 2,
3 section 1.4, Power Usage?

4 A. Yes.

5 Q. And then section 1.4.1 says -- what does
6 that say?

7 A. It says: "Power plant per amp ordered."

8 Q. And at the top of this page, this
9 document indicates that it's Utah-specific; does
10 it not?

11 A. It says "Utah" at the top.

12 Q. And do you recognize that in the far
13 column after "power plant per amp ordered," you
14 see \$11.28, \$11.2814, which is rounded to \$11.28?
15 Do you recognize that as Qwest's proposal for its
16 rate in the cost docket for that rate element?

17 A. Yes.

18 Q. And that rate element was subsequently
19 modified through proceedings to be split into 60
20 amps and less, and greater than 60 amps; is that
21 right?

22 A. That's my understanding.

23 Q. Mr. Starkey, are you fairly conversant
24 with or fluent in Excel?

25 A. Yes.

26

1 Q. And are you familiar with how, when you
2 open Excel, sometimes in a cell you see a little
3 red triangle in the upper right-hand corner?

4 A. Yes. It means there's a note there, or
5 a comment.

6 Q. And would you accept that if you tell
7 Excel to show the comment and print it out, that
8 you get something that looks like the last four
9 pages of this document?

10 A. I guess I could accept that. I just
11 don't know, I didn't do that myself.

12 Q. You didn't look at the comments in
13 connection with this detailed summary of results?

14 A. I didn't print them out.

15 Q. Did you look at them on the screen?

16 A. I don't think I did in Utah. I did in
17 Iowa.

18 Q. Do you see on page 6 of this document
19 there's a comment for 1.4 power usage?

20 A. Yes.

21 Q. And there are Arabic numerals in there,
22 1, 2 and 3?

23 A. Yes.

24 Q. And you see that the intro to that says
25 "power usage is broken down into three rates"?
26

1 A. Yes.

2 Q. And could you just read the first one
3 for us, please, out loud.

4 A. "A rate for the use of the power plant
5 that is charged based on the size of the power
6 feed of feeds that the CLEC orders."

7 Q. And do you think that that word "of"
8 there might be a typographical error and should
9 say "or," or do you not know?

10 A. I don't know, but that would make sense.

11 Q. In your review of the Iowa cost study
12 and a similar sheet in Iowa, do you recall this
13 comment existing in the Iowa documentation, or do
14 you just not recall?

15 A. I don't recall. If I can tell from
16 page 6, this a printout of all of the comments in
17 the file with a number of different cell numbers.
18 And so it looks like there were probably roughly
19 20 or 30 different comments. I looked at a number
20 of them. I'm not sure I looked at them all.

21 MS. ANDERL: Your Honor, we'd move the
22 admission of Hearing Exhibit 13.

23 MR. KOPTA: No objection.

24 JUDGE GOODWILL: It's admitted.

25 Q. (By Ms. Anderl) In your surrebuttal
26

1 testimony, I have a few questions for you about
2 your cost testimony there. You discuss, starting
3 at -- I believe your cost estimate is starting at
4 line 270.

5 A. Okay.

6 Q. And these are also some questions that I
7 asked you in Iowa. Would you agree that that
8 study, the cost study for Utah, calculates a
9 per-amp rate on the power plant?

10 A. Yes.

11 Q. And the study states that the power
12 plant is charged on an as-ordered basis?

13 A. The only part in the cost study where
14 that exists is in this file, no other places where
15 it's calculated.

16 Q. And you're holding up Hearing Exhibit
17 13?

18 A. I am. I'm sorry, yes.

19 Q. And Exhibit 13 states that the rates
20 will be charged on a per-amp-ordered basis; is
21 that right?

22 A. Yes.

23 Q. And in the comments it clarifies that
24 it's actually per-amp ordered in the CLEC order
25 for the power feed?

26

1 A. It does say that, among other things.

2 Q. And does the study assume that the full
3 capacity of the power plant that is modeled is
4 installed all at once?

5 A. I don't think it makes any reference to
6 that either way.

7 Q. It calculates an investment figure of
8 about \$448,000 for the model power plant; is that
9 right?

10 A. It does.

11 Q. Does it indicate that that investment is
12 incurred over time or all at once?

13 A. I think my answer is the same. I don't
14 think it says either way. I think, to be fair to
15 your question, I think it's a fair assumption, but
16 I don't think the model says either way.

17 Q. Would it be reasonable for the model to
18 assume that the power plant was installed all at
19 once to provide the model capacity?

20 A. The reason I hesitate is because rather
21 than it being fair that it be modeled that way,
22 the TELRIC requirements would suggest that you
23 should model the entire facility needed to
24 accommodate the entire output as if it were being
25 built anew, so you might consider that at the same
26

1 time, but I don't know if it truly is meaning that
2 it's built to accommodate the total demand.

3 Q. Thank you. That's a better answer than
4 the question I asked, I think. The study makes no
5 assumption about any usage by McLeod, does it?

6 A. No.

7 Q. Or really anyone who would use the power
8 plant. It makes no usage assumption?

9 A. Doesn't identify who would use it, no.

10 Q. Now, turn to page 12 of your surrebuttal
11 testimony. In footnote 3, you reference a Qwest
12 data request number 32. Do you see that?

13 A. I do.

14 Q. And you did not include that Qwest
15 response as an exhibit to your testimony, did you?

16 A. I didn't, but I now wish I would have.
17 I have it here. But no, I didn't.

18 Q. Your wish will be granted.

19 A. Excellent.

20 Q. I'd like to mark as Hearing Exhibit
21 Number 14 McLeod's request to Qwest number 32 and
22 Qwest's response. You always have to wonder, if
23 both parties want it in, what that could mean.

24 (Hearing Exhibit Number 14 marked.)

25 Mr. Starkey, is the document I just
26

1 handed you appearing in Exhibit 14 the same data
2 request number 32 that you refer to in your
3 footnote 3?

4 A. Yes.

5 MS. ANDERL: Your Honor, I'd move the
6 admission of 32 -- or 14, rather, sorry.

7 MR. KOPTA: Since my witness wishes that
8 it had been part of his testimony, I suppose I
9 don't have any basis to object.

10 JUDGE GOODWILL: It's admitted.

11 Q. (By Ms. Anderl) Now, both your footnote
12 and the data request response talk about an
13 83 percent loading. Do you see that?

14 A. Yes.

15 Q. What does "loading" mean to you there?

16 A. I'm trying to figure out how to best
17 answer your question. The way it's calculated in
18 the model is 1,000 amps divided by 1,200 amps, and
19 the way it's described in request number 32 is --
20 I think it can be construed two different ways,
21 both of which bring us to the same place, which is
22 it can be the load on the power plant; i.e.,
23 83 percent of its capacity, or it can be a load,
24 as we generally consider it to be, a fill factor
25 in the cost study, which is 83 percent of its

26

1 capacity over which you must recover the entire
2 investment. Either interpretation gets you to the
3 same place, which is 83 percent of the total
4 capacity.

5 Q. And at page 17 of your surrebuttal, you
6 discuss the 82 percent as a fill factor; is that
7 right?

8 A. Yes.

9 Q. Did you do any investigation or ask
10 Mr. Morrison for any help with regard to
11 evaluating whether other elements in the cost
12 study were sized for 1,200 amps of capacity versus
13 1,00 amps of capacity?

14 A. Yes.

15 Q. Do you have any independent engineering
16 background or knowledge that would enable you to
17 make that evaluation yourself, or did you ask
18 Mr. Morrison to do it?

19 A. I think your question assumes that it's
20 only an engineering analysis, but it's not. It is
21 a little a combination of engineering and an
22 economic analysis based on the way it's used in
23 the cost study. I have substantial experience
24 with respect to how fill factors and loading
25 factors are used in cost studies, which is what's

26

1 at issue here. But I did ask Mr. Morrison whether
2 my solutions with regard to the engineering aspect
3 were correct.

4 Q. Specifically did you talk to him about
5 whether the batteries that were modeled in the
6 cost study would be sufficient to produce 1,200
7 amps for the amount of time required by applicable
8 engineering standards?

9 A. I'm not sure I know what you mean by the
10 applicable amount of time.

11 Q. That's fine. Mr. Starkey, once a power
12 plant of a certain amperage capacity is installed
13 and the costs have been incurred to install that
14 power plant, if no power plant equipment is
15 removed, costs don't decrease depending on usage
16 of that plant, do they?

17 A. It's a similar question in the data
18 request response -- data request that you sent us
19 and we responded to. Our response was that
20 depends on what you mean by cost. If you're
21 referring to a TELRIC environment wherein you're
22 determining TELRIC costs, those are incremental
23 changes in demand and would have no impact either
24 way, because you would be modeling, if you were
25 doing it correctly, based upon an assumption of

26

1 total demand.

2 So just the question wouldn't jibe, if
3 you will, with a TELRIC understanding. Now, if
4 you're talking about some kind of incremental cost
5 or shorter marginal costs, potentially. But
6 that's not really relevant, at least in my mind,
7 here.

8 Q. And looking at the cost study itself, if
9 in fact \$448,000 of investment was necessary to
10 produce, create a power plant of the listed
11 capacity, that \$448,000 of investment doesn't
12 increase or decrease after the power plant is
13 installed based on usage, does it?

14 A. I want to be fair to your question. No,
15 but your assumption that after it's installed
16 infers that it's a sunk cost; i.e., it's sunk and
17 its demand doesn't influence its sizing. That's
18 the very assumption TELRIC doesn't allow you to
19 make, which is it doesn't allow you to assume sunk
20 cost, it requires that you take the total demand
21 anticipated and size your plant accordingly, not
22 the other way around, which is what your question
23 really asks.

24 Q. But if you take the total to be
25 anticipated and size your plant accordingly,

26

1 whatever investment is expended to produce a plant
2 of that size is then an investment that is not
3 modified in any way by any subsequent usage or
4 lack of usage on that plant?

5 A. In a TELRIC study, if you built the
6 plant to accommodate, let's say 1,000 amps, and I
7 understand your question to be, let's say you only
8 had \$500, well, then you made the wrong
9 assumption, and if you were to do a cost study
10 that was right, you would have anticipated \$1,000.
11 You can't built it in a TELRIC environment and
12 then change the demand assumption.

13 By doing that you're really turning it
14 from a forward-looking total element cost study to
15 a total shorter marginal cost study where you're
16 saying what's the cost of the next element?
17 What's the cost of the next amp of power I have to
18 produce? And when you add the reason the SEC
19 doesn't allow you to do you that is because they
20 adopt the very much first mentality, which is if
21 you had to invest, let's say your power plant was
22 old. You were producing, let's say, 5,000 amps,
23 and you just couldn't squeeze another amp out, and
24 McLeod put in a collo order for 100 amps.

25 Under the scenario you just described,

26

1 the investment associated with the next, let's say
2 400-amp increment, would be saddled on McLeod. So
3 it doesn't allow you to do that, because what it
4 understands is it's the average cost per amp
5 that's relevant, not individual circumstances of
6 demands.

7 Q. Well, and I want to be fair to you and
8 tell you that I'm asking you questions that I
9 asked you in Iowa, and I'm again getting something
10 different in response. So let me refresh your
11 recollection on the Iowa question and answer. And
12 it's the transcript page from Iowa 289. If Mr.
13 Goodwin would be so good as to take that up to
14 you. It's page 289. Would you please read the
15 question and answer that start up on line 19 and
16 goes through line 24.

17 A. Yes. I'm sorry, 19?

18 Q. Yes, and out loud.

19 A. Okay. "So once the power plant is
20 installed and the costs have been incurred and no
21 power plant is removed, the costs don't increase,
22 decrease, depending on the usage; isn't that
23 right?"

24 And I said: "Yeah." I said, "That's
25 largely correct, yes, given that assumption."

26

1 MS. ANDERL: Thank you. Mr. Starkey, I
2 don't have any other questions for you at this
3 time.

4 JUDGE GOODWILL: Mr. Kopta?

5 MR. KOPTA: Just a couple of questions.

6 REDIRECT EXAMINATION

7 BY MR. KOPTA:

8 Q. Mr. Starkey, do you recall a discussion
9 with Ms. Anderl about the notes in the collocation
10 cost study that you reviewed?

11 A. Yes.

12 Q. Was there any reference to this note or
13 to this particular issue in any of the Commission
14 orders that you reviewed in preparing your
15 testimony?

16 A. No.

17 MR. KOPTA: Those are all my questions.
18 Thank you.

19 JUDGE GOODWILL: Ms. Anderl, anything
20 further?

21 MS. ANDERL: No followup on that, no.

22 JUDGE GOODWILL: I've got just a quick
23 question, Mr. Starkey. On Hearing Exhibit 1, the
24 DC Power Measuring Amendment, paragraph 2.1, the
25 second line states: "The DC power usage charge is

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1 for the capacity of the power plant available for
2 CLEC's use." How do you interpret that sentence?

3 THE WITNESS: I think it defines what
4 the DC power usage charge is. The DC power usage
5 charge is the charge throughout this amendment
6 that is described as being applied on a measured
7 basis. I think if you go to 2.1 -- 1.2 tells you
8 about how they're going to effectuate the
9 agreement. They're going to measure it, they're
10 going to do it four times per year, so on and so
11 forth.

12 When you get to 2.0, which is entitled
13 Rate Elements, the very first thing it does is it
14 defines the DC power usage charge at the capacity
15 of the power plant. And I have to admit to you
16 that that is a large portion of our interpretation
17 of why the DC power usage charge, why we believe
18 the DC power usage charge must be assessed on a
19 measured basis. That's why we believe that's what
20 this agreement meant.

21 JUDGE GOODWILL: I just want to make
22 sure that I understand that. I guess I'm focusing
23 on the word "capacity" and how that relates to
24 various rate elements. Based on your experience,
25 in 8.1.4 of Utah Exhibit A, we've got power plant

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1 rate, power plant rate elements, and the power
2 usage rate elements. Where does capacity fit into
3 that, into those elements?

4 THE WITNESS: The only place that
5 capacity makes any sense is a situation where you
6 have a common pool of something and you are
7 suggesting that you're going to be using part of
8 it. So the capacity of that common pool is
9 available to you. That only makes sense in
10 relation to the power plant element.

11 Power usage really is a strict
12 pass-through from the electric utility to Qwest to
13 us. The electricity really flows through some
14 Qwest equipment. It's accommodated by a power
15 plant and turned into DC power, but then largely
16 flows through. There's no capacity constraint or
17 requirement or characteristic, if you will, in any
18 of the usage charges. Only the power plant has a
19 capacity component associated with it.

20 JUDGE GOODWILL: So by that
21 interpretation, why wouldn't it be reasonable to
22 apply the DC Power Measuring Amendment to the
23 power plant charge but not to the 8.1.4.2 power
24 usage charge, just the reverse of what Qwest did?

25 THE WITNESS: I'll admit to you I've
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1 asked myself that same question. I think the
2 answer is that the amendment speaks about 48-volt
3 DC power usage in general, and what it's talking
4 about is that entire category, because that's the
5 title. The title of that category of rates is
6 48-volt DC power usage. It uses that term
7 specifically.

8 So I believe it's referring to the
9 entire category, both power plant and power usage,
10 and it is, in section 2.1, specifically ensuring
11 that the power plant is included as well, that
12 using the term "usage," because that's the way the
13 category is entitled, doesn't confuse people such
14 that it doesn't also include power plant. I think
15 it didn't want to confuse people, so it said
16 specifically.

17 JUDGE GOODWILL: But if we read that
18 second sentence of 2.1 for its plain meaning, "DC
19 power usage charge is for the capacity of the
20 power plant," and you say that would only apply to
21 the power plant rate element in Exhibit A, then it
22 wouldn't necessarily exclude arguing the power
23 usage charge.

24 THE WITNESS: Potentially. I might add
25 one more thing. Notice the 2.1 entitled 48-Volt

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1 DC Power Usage and AC Usage Charges, okay? In
2 some states -- and I think Ms. Anderl will remind
3 me that Minnesota is one of them -- where you see
4 DC power usage, it's actually AC usage. It's
5 actually described as AC usage in those exhibits.
6 So I think what 2.1 is saying is both the power
7 usage and AC usage, where that's relevant, but we
8 want to include both the power plant by this
9 sentence but also the usage charges associated
10 with the actual electricity.

11 What I would suggest to you is that I
12 think part of the issue here is because we're
13 using very specific terms, hour usage versus AC
14 usage charges, the amendment had to be very
15 specific when it was talking about what it is
16 going to be charging for, and I think when you
17 look across the Qwest region you see that in some
18 states the rate structure is very different. It
19 was trying to accommodate that. It was trying to
20 make sure, because this attachment is verbatim in
21 every state McLeod signed it, which I think was, I
22 don't know, 13 states. Does that ring a bell?
23 Eight, 10, 13, something like that.

24 And so they -- some of them had very
25 different rate structures in that section of
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1 Exhibit A. I think it was trying to accomplish,
2 including all of them, being overly inclusive and
3 then also trying to be specific, and in doing so,
4 perhaps it's somewhat, you know, torturous to
5 read, but I think it's difficult to read it -- let
6 me just flip that around -- it's difficult to read
7 it such that the power plant charge wouldn't be on
8 a measured basis, given this sentence. I think we
9 all agree with that.

10 So the question of power plant seems to
11 be specifically identified. I think usage has
12 been accommodated in this AC usage charge, which
13 is probably more applicable in other states and
14 probably somewhat confusing here.

15 JUDGE GOODWILL: Thank you. Any
16 questions based on my questions?

17 MR. KOPTA: No, Your Honor.

18 MS. ANDERL: No, Your Honor.

19 JUDGE GOODWILL: Thank you, Mr. Starkey.
20 Before I forget to ask the questions, will the
21 witnesses who testified and finished today be
22 available in here tomorrow in case there are any
23 additional questions for those witnesses, or are
24 they planning on flying out of here?

25 MR. KOPTA: I believe they will all be
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1 here.

2 JUDGE GOODWILL: Okay, thanks. Mr.
3 Kopta, anything further?

4 MR. KOPTA: No, Your Honor, those are
5 all of our witnesses and all of the exhibits that
6 at this point we are prepared to place into the
7 record.

8 JUDGE GOODWILL: You guys have done this
9 more than I have in this particular dispute, and
10 what do you want to do timing-wise? Shall we
11 close up and start fresh in the morning, or would
12 you like to get started with Qwest?

13 MS. ANDERL: I think that we'll
14 probably -- I don't know what Mr. Kopta's cross
15 looks like, but I think we would have plenty of
16 time to finish tomorrow if we stop now.

17 MR. KOPTA: I don't have that much
18 cross, so it's just going to be -- at least at
19 this point, but as we have discussed earlier,
20 Qwest wanted to ask some additional questions
21 directed toward the cost information in
22 Mr. Starkey's surrebuttal testimony. And I have
23 no way of knowing how much that's going to be and
24 how much cross that's going to engender.

25 JUDGE GOODWILL: Well, I do want to
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1 finish tomorrow rather than Friday, so as long as
2 we think we can do that, and we'll go as late as
3 we need to tomorrow and make that happen.

4 MS. ANDERL: I don't anticipate much
5 more than 15 minutes to a half hour of oral
6 questioning.

7 JUDGE GOODWILL: Great. We'll go ahead
8 and recess for the evening, then, and reconvene at
9 9:30 tomorrow.

10 MR. KOPTA: Thank you, Your Honor.

11 (Whereupon, the proceedings were concluded for the
12 day at 4:33 p.m.)

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C E R T I F I C A T E

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

 This is to certify that the
foregoing public hearing held before Judge Steven
Goodwill was held in the State of Utah;

 That the above-named proceedings were
taken by me in stenotype, and thereafter caused by
me to be transcribed into typewriting, and that a
full, true, and correct transcription of said
testimony so taken and transcribed is set forth in
the foregoing pages.

 I further certify that I am not of kin or
otherwise associated with any of the parties to
said cause of action, and that I am not interested
in the event thereof.

 Witness my hand and official seal at Salt
Lake City, Utah, this 9th day of June, 2006.

My commission expires:
May 24, 2007

Kathy H. Morgan, CSR, RPR