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BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE)
 COMPLAINT OF McLEODUSA) Judge Steven Goodwill
 TELECOMMUNICATIONS)
 SERVICES, INC., AGAINST)
 QWEST CORPORATION FOR)
 ENFORCEMENT OF COMMISSION-) Docket No. 06-2249-01
 APPROVED INTERCONNECTION)
 AGREEMENT.)

ADMINISTRATIVE LAW JUDGE:

STEVEN GOODWILL

May 25, 2006 * 9:00 a.m.

Location: HEBER M. WELLS BUILDING

160 East 300 South, Room 451

Salt Lake City, Utah 84114

Reporter: Diana Kent, CSR, RPR, CRR

Notary Public in and for the State of Utah

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23				
24	23	Color Graph - Measured Drain, List 2 Capacity, List 1 drain	339	339

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

2

3 JUDGE GOODWILL: Back on the record. It's
4 the second day of hearings in docket number 06224901.
5 And before we get started with a Qwest witness, we
6 have a couple of administrative things to take up.
7 One is yesterday we had admitted Hearing Exhibit 11,
8 which in its form yesterday was a black and white
9 copy of a demonstrative exhibit that Mr. Goodwin had
10 been using. And he has handed me now a color version
11 of that exhibit and I think what we will go ahead and
12 do is substitute that as Hearing Exhibit 11 into the
13 evidence. And we will ask the court reporters to do
14 the same with the color copy.

15 MR. GOODWIN: Thank you, your Honor.

16 JUDGE GOODWILL: And then yesterday, in
17 response to some discussion of Hearing Exhibit 8
18 regarding USOC numbers, I had asked McLeod to provide
19 some information regarding the various USOC codes
20 that are contained on its billing documents from
21 Qwest for Utah. Mr. Kopta, you had handed me a
22 document which we can mark Hearing Exhibit 14 , I
23 believe. Or 15.

24 MR. KOPTA: 15, I believe, your Honor.

25 JUDGE GOODWILL: Okay. Hearing Exhibit
26

1 15.

2 (EXHIBIT-15 WAS MARKED.)

3 JUDGE GOODWILL: And if you would, please,
4 just kind of describe this. If we need to get any
5 testimony on the record, we can.

6 MR. KOPTA: Sure. Thank you. In response
7 to your questions, we prepared a chart rather than
8 just looking at Utah, but looking at all of the
9 states in which McLeod has collocation with Qwest, to
10 match up the USOC code with the power charges that
11 Qwest sends to McLeod. And in this chart we've
12 included each state, the USOC code, which is specific
13 to the state, the rate, the description on the bill
14 for that particular USOC code, and then the
15 description in the interconnection agreement. And
16 unfortunately in Utah the USOC description on the
17 bill does not indicate anything having to do with
18 power. So we went ahead and put in the USOC
19 descriptions for other states in which, in some cases
20 or in most cases, there's a reference to DC power.
21 So this is what McLeod sees on its bills from Qwest,
22 and so we are presenting it in response to your
23 inquiry.

24 JUDGE GOODWILL: Okay. And as I look at
25 this, I do have one or two questions. We can turn to
26

1 Ms. Spocogee if we need to. The USOC description on
2 the bill from Utah listed "DS Zero Terminations,
3 Cable Per Termination." The ICA description listed
4 on Exhibit 15, is that also on the bill or is that
5 something that McLeod has added for explanatory
6 purposes on this exhibit?

7 MR. KOPTA: That is something McLeod has
8 added for explanatory purposes.

9 JUDGE GOODWILL: Okay. Now, in Hearing
10 Exhibit 8 we've got the USOC code with the rate
11 element listed as indicated, "Minus 48 volt DC power
12 usage greater than 60 amps." I guess I just would
13 like to be clear. Does McLeod receive nothing else,
14 then, from Qwest? And we probably do need to get Ms.
15 Spocogee to talk to this, and I will remind you,
16 ma'am, you are still under oath from yesterday, of
17 course. Does McLeod get nothing else from Qwest that
18 has USOC codes on it?

19 MS. SPOCOGEE: No. The bills that we
20 receive are electronic. And we compare the USOCs up
21 against the Universal Service Order Code. There's a
22 database with all of the codes that everybody goes to
23 to assign them to. We pull the descriptions in from
24 that. Every USOC has a description in it, or should.
25 Every once in a while you have one that doesn't. But
26

1 for every "collo," we probably have anywhere up to 20
2 USOCs for every collocation, for every charge on
3 there. So you have to take the charge that's on the
4 bill, and if it's not clear on what it is via the
5 description, you back into it by looking at your
6 contracts and backing in from the rate backwards on
7 that. So every charge has a different USOC. And
8 there's, you know, industry-wide there's something
9 like over 12,000 that we see today.

10 MR. GOODWIN: Your Honor, may I ask a
11 follow-up question on that?

12 JUDGE GOODWILL: Sure.

13 MR. GOODWIN: Ms. Spocogee, did I
14 understand you correctly, did you say just the USOC
15 appears on the bill?

16 MS. SPOCOGEE: Yes.

17 MR. GOODWIN: And then McLeod has to go to
18 a database in order to gain the description that is
19 the fourth column on Hearing Exhibit 15?

20 MS. SPOCOGEE: Yes.

21 MR. GOODWIN: So the fourth column on
22 Hearing Exhibit 15 doesn't actually appear on the
23 bill but it is on the database that you search after
24 you see the USOC number on the bill.

25 MS. SPOCOGEE: Right. When you look at
26

1 the information on the electronic bill, you get --
2 there is -- if you look on a paper bill there could
3 be a glossary on the back of the paper bill, but you
4 can't pull it through the data because it is like
5 free flow. So what you do is go up against the
6 national information on there on the database to pull
7 the information to describe it. So we pull that into
8 our system to help us do that. But sometimes it
9 doesn't tie to what the exact charge is.

10 JUDGE GOODWILL: On Hearing Exhibit 15,
11 the rate, using the rate of \$7.79, that appears to
12 match up with the rate for the "Power Plant - Equal
13 or Greater Than 60 Amps," which is 8.1.4.1.1.2.

14 MS. SPOCOGEE: Yes.

15 JUDGE GOODWILL: On Utah Exhibit A which
16 is Hearing Exhibit 9 in this matter.

17 MS. SPOCOGEE: Yes.

18 JUDGE GOODWILL: So that specific rate
19 element.

20 MS. SPOCOGEE: Yes.

21 JUDGE GOODWILL: Is there nothing, then,
22 listed on the bills regarding the power usage
23 elements?

24 MS. SPOCOGEE: Yes, sir, there is. I
25 thought you just wanted the power plant. But yes,

26

1 there's another one on the bill, another USOC for the
2 bill for the power usage. Actually there's four
3 different USOCs. There's one for an over 60, under
4 60, over 60, under 60 for each one, for the power
5 plant and for the usage. So there's four different
6 USOCs for every one.

7 JUDGE GOODWILL: I guess I would like to
8 see those.

9 MS. SPOCOGEE: Okay.

10 JUDGE GOODWILL: And if we can get them
11 today prior to close of hearing, fine.

12 MS. SPOCOGEE: I can work on them while we
13 are doing this.

14 JUDGE GOODWILL: Okay. Super. And we can
15 take that up later in the day if you are not able to
16 get it before the close of hearing how we can handle
17 that.

18 MS. SPOCOGEE: Okay. No problem.

19 JUDGE GOODWILL: Thank you. At this
20 point, is there any objection to the admission of
21 Hearing Exhibit 15?

22 MR. GOODWIN: No, your Honor, subject to
23 our opportunity to double check this information,
24 particularly since she said she didn't see it on the
25 bill. What I'd like the opportunity to do is to

26

1 double check it against Qwest's records and Qwest
2 records of the bills that are actually sent, and if
3 necessary to submit a late filed exhibit to clarify.

4 JUDGE GOODWILL: That's fine. Any
5 objection to that, Mr. Kopta?

6 MR. KOPTA: No, your Honor.

7 JUDGE GOODWILL: Okay. We will go ahead
8 and admit this, then, with that understanding.
9 Anything further before we move on to Qwest's
10 witness?

11 MR. GOODWIN: Mr. Kopta, you had said that
12 you had --

13 MR. KOPTA: Yes. I don't know whether we
14 want to do this now or later, but Mr. Morrison has a
15 correction to his testimony that we need to have put
16 on the record while we are still here in the hearing.

17 JUDGE GOODWILL: To the written testimony
18 or something that he said yesterday?

19 MR. KOPTA: Both, actually.

20 JUDGE GOODWILL: Okay. I guess prior to
21 moving on, why don't we go ahead and take care of
22 that.

23 (Mr. Morrison takes the stand.)

24 JUDGE GOODWILL: Mr. Morrison, I will
25 remind you, you are still under oath from yesterday.

26

1 FURTHER REDIRECT EXAMINATION

2 BY MR. KOPTA:

3 Q. Mr. Morrison, would you turn to your
4 direct testimony, which is Exhibit McLeod 2, page 47.

5 A. I'm there.

6 Q. And you will recall that there was a
7 discussion yesterday about the numbers in the
8 confidential chart. And did you have occasion to
9 double check those numbers?

10 A. Yes, I did. And I checked with McLeod
11 U.S.A., Mr. Brian Banyo. The number in question
12 deals with line number 6, which was a question
13 yesterday in that McLeod's actual measurement, was
14 greater in column 3 than it appeared in -- excuse me,
15 in column 4 than it appeared in column 2. Mr. Banyo
16 did not understand why that number appeared that way
17 and he went into his lab with an engineer and they
18 put the equipment on line and ran a test on it using
19 a clamp-on power meter. And the results showed that
20 this really is a typo. That that should read a
21 fraction of what it reads at this point. Can I use
22 the number?

23 Q. Yes, since we have agreed that we can have
24 you look at numbers.

25 A. The typo number existed as 1.5, and when
26

1 it was checked in the lab this morning at about 7:45,
2 it tested out at .5.

3 Q. So then you would correct this number of
4 1.5 to 0.5?

5 A. That's correct.

6 Q. And was Mr. Banyo your original source for
7 this information for the chart?

8 A. That's correct. He is.

9 Q. Thank you. That's all I have.

10 JUDGE GOODWILL: Anything from Qwest on
11 that?

12 MR. GOODWIN: Briefly, if I might, your
13 Honor.

14 JUDGE GOODWILL: Certainly.

15

16 FURTHER RECROSS EXAMINATION

17 BY MR. GOODWIN:

18 Q. You filed this -- this is not the first
19 for Figure 6 that you have filed, correct?

20 A. That's correct.

21 Q. You filed similar Figure 6 with similar
22 numbers in Iowa, Utah, and now Washington, correct?

23 A. That's correct.

24 Q. And before -- each time, before you
25 prepared the testimony with the Figure 6, I assume

26

1 you were careful to make sure you had the correct
2 numbers in it.

3 A. Apparently not.

4 Q. But now, after the cross-examination
5 yesterday, which revealed that the numbers you had
6 placed actually put the actual drain above List 2,
7 you have corrected your testimony or changed it.

8 A. Yes.

9 Q. And that would apply to all the different
10 Figure 6s that you filed in the different states?

11 A. Yes, it would.

12 Q. Okay. No further questions.

13 MR. KOPTA: Nothing further.

14 JUDGE GOODWILL: Thank you, Mr. Morrison.

15 MR. MORRISON: Thank you.

16 JUDGE GOODWILL: Now I believe we are
17 ready for Qwest's first witness.

18 MR. GOODWIN: We will call William Easton.

19 JUDGE GOODWILL: Please stand to be sworn.

20

21 WILLIAM EASTON,

22 called as a witness, being first duly sworn,

23 was examined and testified as follows:

24

25 JUDGE GOODWILL: Mr. Goodwin.

26

1 MR. GOODWIN: Thank you, your Honor.

2

3 DIRECT EXAMINATION

4 BY MR. GOODWIN:

5 Q. Mr. Easton, good morning. Are you the
6 same William Easton who caused to be filed the
7 rebuttal testimony of William R. Easton that has been
8 marked and admitted in this proceeding as Exhibit 1?

9 A. I am.

10 Q. And attached to that testimony, were there
11 Exhibits WRE 1, 2, 3, and 4, which have now been
12 marked and admitted into evidence in this hearing as
13 Exhibits 1.1, 1.2, 1.3, 1.4?

14 A. There were.

15 Q. And if I asked you the same questions here
16 on the stand today that are presented in written form
17 in your rebuttal testimony, would your answers be the
18 same?

19 A. They would.

20 Q. Do you have any corrections at this point
21 to make to your testimony?

22 A. No, I do not.

23 MR. GOODWIN: With, that your Honor, we
24 would tender Mr. Easton for cross-examination.

25 JUDGE GOODWILL: Thank you. Mr. Kopta.

26

1 MR. KOPTA: Thank you, your Honor.

2

3 CROSS-EXAMINATION

4 BY MR. KOPTA:

5 Q. Morning, Mr. Easton.

6 A. Good morning.

7 Q. I just have a few questions. You discuss
8 the DC power measuring amendment that is Hearing
9 Exhibit 1; is that correct?

10 A. That's correct.

11 Q. Did you draft any of the language in that
12 amendment?

13 A. No, I did not.

14 Q. Is my understanding correct that Qwest
15 drafted this particular amendment?

16 A. I believe that's correct.

17 Q. And did you participate in any of the
18 discussions or negotiations between Qwest and McLeod
19 concerning this amendment prior to its execution?

20 A. No, I did not.

21 Q. Did you discuss the amendment at all with
22 any McLeod personnel prior to its execution?

23 A. No, I did not.

24 Q. Are you involved in negotiations on behalf
25 of Qwest for interconnection agreements and

26

1 amendments?

2 A. No.

3 Q. Have you ever worked for a CLEC?

4 A. No, I have not.

5 Q. Mr. Easton, I will represent to you that
6 this is a portion of the statement of generally
7 available terms and conditions that Qwest has on file
8 with the Utah Commission. Have you -- are you
9 familiar at all with this document?

10 A. Yes, I have seen this document.

11 Q. And if you would, please, turn to what's
12 on this Exhibit as page 97, which is the first page
13 after the cover page. And the heading 8.3 is rate
14 elements; do you see that?

15 A. I do.

16 Q. And on subheading 8.3.1 is rate elements
17 for all collocations.

18 A. Yes.

19 Q. Now, if you would turn to the next page,
20 please. And look at Section 8.3.1.6.

21 A. I see it.

22 Q. Do you see there it says negative 48 volt
23 DC power usage charge?

24 A. Yes.

25 Q. And that is singular, is it not?

26

1 A. It is.

2 Q. And indeed the sentence that follows that
3 uses the term "provides," which assumes a singular
4 subject. Does it not?

5 A. Yes.

6 Q. Do you have before you what's been marked
7 as Hearing Exhibit 9, which is the Exhibit A to the
8 Utah SGAT?

9 A. I have my copy here. Let's just check and
10 make sure it matches. Mine is dated May 17, 2005.

11 Q. I believe that's the correct one. Now, if
12 you would, please, look at Section 8.1.4, which is on
13 page 3 of 20 of Hearing Exhibit 9.

14 A. Yes, I see it.

15 Q. And would you identify for me which of
16 those charges is the DC volt or the 48 volt DC power
17 usage charge referenced in Section 8.3.1.6 of the
18 SGAT?

19 A. I believe it is referring to the grouping
20 which would include power usage and power plant.

21 Q. So even though it's a singular term, it
22 could include multiple charges; is that correct?

23 A. Well, again, that 48 volt DC power usage
24 charge, I would interpret that to cover both the
25 plant and usage in the SGAT.

26

1 Q. Okay. Thank you very much. Those are all
2 my questions.

3 JUDGE GOODWILL: Mr. Goodwin?

4

5 REDIRECT EXAMINATION

6 BY MR. GOODWIN:

7 Q. Were you --

8 Mr. Kopta, I didn't notice whether you had
9 offered to admit Hearing Exhibit 16. Did you do
10 that?

11 MR. KOPTA: I did not. But thank you for
12 the correction. I offer Hearing Exhibit 16.

13 JUDGE GOODWILL: I don't think we had
14 marked it. We will do so as 16.

15 (EXHIBIT-16 WAS MARKED.)

16 JUDGE GOODWILL: And there is no
17 objection, I take it, to the admission? Or is there?

18 MR. GOODWIN: Actually, a little bit.

19 JUDGE GOODWILL: Okay.

20 MR. GOODWIN: I don't know if it's exactly
21 an objection or not, but this is not the -- the SGAT
22 is not the interconnection agreement between the
23 parties. And so I don't have any objection to its
24 admission per se. I just think that its relevance is
25 somewhat limited and the commission should take that

26

1 for what it is.

2 Also, at the same time, I think it is
3 probably good, and we probably should have done this
4 before, we would ask the Commission to take official
5 or administrative notice of the actual inter-
6 connection agreement between the parties, which I
7 believe was executed in 2000.

8 JUDGE GOODWILL: And we can certainly do
9 that and I understand your point on this. And we
10 will go ahead and admit Hearing Exhibit 16. Okay.

11 MR. GOODWIN: All right.

12 Q. (By Mr. Goodwin) Mr. Easton, you heard
13 yesterday that Judge Goodwill had asked Mr. Starkey
14 about Section 2.1 of Hearing Exhibit 1, which is the
15 DC power measuring amendment?

16 A. Yes.

17 Q. How would you respond, if Judge Goodwill
18 asked you the same questions?

19 A. I would say that using Section 2.1 to
20 interpret how power measuring is to be applied is
21 problematic for several reasons. First of all,
22 Section 2.1 is a general contextual section that says
23 nothing about the rights or obligations of the
24 parties and, in fact, says nothing about how power
25 measurement is to affect the various power rates.

26

1 Secondly, the reliance on the particular
2 sentence having to do with "power plant," and
3 therefore interpreting it is power plant that is the
4 rate that is affected, conflicts with wording up in
5 Section 1.2 and Section 2.2.1 where specifically the
6 amendment mentions "power usage."

7 In addition, by relying solely on that
8 sentence in Section 2.1, it would imply that only the
9 power plant rate is to be affected, a position that
10 not even McLeod is advocating in this proceeding.

11 Finally, as we saw with Mr. Starkey
12 yesterday, attempting to take this one sentence in
13 this general section and then go over to an Exhibit A
14 and apply it, leads to, in my mind, a very strained
15 interpretation.

16 Q. Actually, how have you observed that
17 McLeod is interpreting the DC power measured
18 amendment in terms of the power plant charge at issue
19 in this case?

20 A. Well, what McLeod is saying is that the
21 power plant charge needs to be adjusted along with
22 the power usage charge. And if I could just follow
23 up on my previous answer, we don't need to rely on
24 Section 2.1 to determine what this amendment means.
25 Fortunately, if you drop down to Section 2.2.1, I

26

1 think it's laid out fairly clearly how the rates are
2 to be applied. It talks about a power usage charge
3 from the Exhibit A.

4 If you then turn to the Exhibit A and look
5 where there appear to be power usage charges, that
6 would be Section 8.1.4.2.1 and Section 8.1.4.2.2.
7 Now, clearly the amendment doesn't apply to
8 8.1.4.2.1, which is 60 amps or less. Specifically
9 spells that out in the amendment, which just leaves
10 the rate in 8.1.4.2.2. To me, pretty clearly that's
11 the rate that's affected by this amendment.

12 Q. And what's your understanding of how
13 McLeod believes that rate should be affected?

14 A. Well, it seems to me when it comes to
15 power plant, McLeod is basically saying three things.
16 They are saying, number one, "Qwest, you should
17 design your power plant to List 1 drain." Secondly,
18 they are saying, "Qwest, you should only charge us
19 for the power we actually use," which as we heard in
20 testimony yesterday is something less than List 1
21 drain. And then finally, they are saying, "Qwest, by
22 the way, in case of a catastrophic failure, we are
23 expecting you to make available to us the List 2
24 drain that we ordered."

25 Q. And how much, for a 200 amp order, what is
26

1 your understanding of how much power is made
2 available to CLECs?

3 A. 200 amps.

4 Q. Nothing further.

5 JUDGE GOODWILL: Mr. Kopta?

6

7 RECROSS-EXAMINATION

8 BY MR. KOPTA:

9 Q. Just one thing in terms of the third point
10 you made in terms of what McLeod's position is. Were
11 you in the hearing room when Mr. Starkey was being
12 cross-examination by counsel?

13 A. Yes, I was.

14 Q. Did you hear his response to the question
15 about whether McLeod expected the 200 amps to be
16 available?

17 A. Well, I was also in the hearing room in
18 Iowa and heard very clearly that the expectation
19 would be that the amps ordered would be the amps made
20 available in the List 2 drain situation.

21 Q. And that was in Iowa. This is Utah. So I
22 would ask the same question. Is your understanding
23 of what Mr. Starkey's response in Utah was in terms
24 of whether that was an expectation that McLeod has?

25 A. The response was not as clear here.

26

1 Again, my expectation would be, to the extent we did
2 not make available to McLeod what they ordered or any
3 CLEC, for that matter, that we may well find
4 ourselves in front of this commission in another
5 proceeding.

6 Q. Thank you. That's all I have.

7 JUDGE GOODWILL: Anything further, Mr.
8 Goodwin?

9 MR. GOODWIN: There's a line that I
10 probably should have asked in my first redirect. I'd
11 ask the Court's indulgence to follow up on this. And
12 it has to do with Hearing Exhibit 16.

13 JUDGE GOODWILL: Okay.

14

15 FURTHER REDIRECT-EXAMINATION

16 BY MR. GOODWIN:

17 Q. Mr. Easton, turn to Hearing Exhibit 16.
18 And Mr. Kopta had asked you some questions about that
19 exhibit.

20 A. Yes.

21 Q. Is it your understanding that that is the
22 interconnection agreement between McLeod and Qwest in
23 this particular case?

24 A. The exhibit Mr. Kopta asked me about was
25 the Utah SGAT.

26

1 Q. And so the answer to my question is no?

2 A. That's correct.

3 Q. McLeod has a separate interconnection
4 agreement that is different than the SGAT or
5 Statement of Generally Available Terms.

6 A. That's correct.

7 Q. What's your understanding of the -- well,
8 I think you had testified that the 8.3.1.6 had some
9 relevance for interpreting the Exhibit A to the --
10 Exhibit A, which we have marked as Exhibit 9. Is
11 that right? Hearing Exhibit 9?

12 A. Yes. Although I think you need to be a
13 little bit careful. The SGAT itself does not
14 describe in detail every rate element that is listed
15 on the Exhibit A. Exhibit A is where the rates
16 associated with each rate element are laid out and
17 the SGAT, as large as it is, does not get into
18 sufficient detail to describe each of those hundreds
19 and hundreds of rate elements.

20 Q. So on item 8.3.1.6, would you read the
21 description that follows the notation minus 48 volt
22 DC power usage charge?

23 A. "Provides minus 48 volt DC power to CLEC
24 collocated equipment and is fused at 125 percent of
25 request. Charged on a per ampere basis."

26

1 Q. Now, does the description in the SGAT
2 refer to -- well, we have talked about three
3 different elements or, yeah, I guess elements of DC
4 power in this case; power distribution, power plant,
5 and power usage. You understand those three
6 different elements?

7 A. Yes.

8 Q. That description, does that description
9 refer to power usage, power plant, or power
10 distribution?

11 A. Clearly does not refer to power
12 distribution. And it's unclear whether we are
13 talking about plant or usage or both.

14 Q. What I'm asking you is just the sentence
15 itself. Look at the sentence itself, without the
16 heading. "Provides minus 48 DC volt power to CLEC
17 collocated equipment and is fused as 125 percent of
18 request. Charged on per ampere basis." That
19 description standing alone, what does it refer to?

20 A. That is referring to plant, power plant.

21 Q. Now turn to 8.3.1.14. And that is, "Minus
22 48 volt DC power cable charge."

23 A. That's correct. That would be the
24 distribution we referred to previously.

25 Q. Read the description at 8.3.1.14.

26

1 A. "Minus 48 volt DC power cable charge.
2 Provides for the transmission of minus 48 volt DC
3 power to the collocated equipment and is fused at 125
4 percent of request." The same description that we
5 have for the element we went over previously.

6 Q. And the 8.3.1.14 in the SGAT refers to
7 power distribution or power plant or power usage?

8 A. When we are talking about the DC power
9 cable charge, we are talking about distribution.

10 Q. But I think you just said that the
11 description in 8.3.1.14 is the same as the
12 description in 8.3.1.6.

13 A. That's correct.

14 Q. Turn to your Exhibit WRE 1, which is
15 Hearing Exhibit 1.1. Qwest Exhibit 1.1. Do you have
16 that?

17 A. I do.

18 Q. And what is that document?

19 A. That document is the language in the Qwest
20 product catalog. This is language that was developed
21 as a result of the change management process.

22 Q. And like the SGAT, it's not actually the
23 interconnection agreement between the parties.

24 A. That's correct. It describes in detail
25 the product offerings that are made available in the

26

1 SGAT.

2 Q. And again, this was something that was
3 available prior to the execution of the actual
4 amendment that is at issue in this case.

5 A. That's correct. In fact, this document
6 was developed with input from the CLECs themselves.

7 Q. And within that PCAT, or product catalog,
8 there are descriptions of the different rate elements
9 or at least the rate elements for power plant and
10 power usage, correct?

11 A. Correct.

12 Q. And I want you to look down under the DC
13 Power Rate Element Descriptions in the product
14 catalog.

15 A. Yes.

16 Q. Okay. And it refers to the minus 48 volt
17 DC power usage charge. You see that?

18 A. I do.

19 Q. Okay. And then there's a description
20 there that follows it. Would you read that into the
21 record, please.

22 A. "The minus 48 volt DC power usage charge
23 is specified in Exhibit A and applies to the quantity
24 of minus 48 volt DC power capacity specified on your
25 order."

26

1 Q. Now, you have an understanding of the
2 rates that appear in Exhibit 9 which we have also had
3 blown up on this particular chart.

4 A. Yes.

5 Q. Okay. Now, between the description in the
6 SGAT, Section 8.3.1.6, the same description that's in
7 8.3.1.14, and the description of the minus 48 volt DC
8 power usage power charge in the product catalog of
9 Qwest, which most accurately reflects the power usage
10 charge that is reflected in the Exhibit A of the
11 Interconnection Agreement between McLeod and Qwest?

12 A. It is the product catalog. And I should
13 say --

14 Q. And why is that?

15 A. Well, before I answer that, let me just
16 point out that this exhibit, the SGAT that I was
17 handed, is dated October 31, 2002, which is a period
18 prior to when Qwest made available the power
19 measurement option. So at the time this SGAT came
20 out, both power plant and power usage were charged on
21 an as-ordered basis.

22 The product catalog that we just referred
23 to reflects the current offerings that Qwest had and
24 does, in fact, go into some detail explaining the
25 differences between power plant and power usage and

26

1 how the rates apply to those various elements.

2 Q. Again, you are not saying that either the
3 SGAT or this product catalog are the actual
4 Interconnection Agreement between the parties,
5 correct?

6 A. That's correct.

7 Q. What is the -- in your view, what is the
8 relevance of these documents?

9 A. Well, the product catalog is information
10 that is made available to the CLECs so they
11 understand what Qwest product offerings are. I would
12 anticipate, prior to a company ordering one of these
13 products, they would consult the product catalog to
14 see exactly what it is they are ordering and how the
15 rates and terms apply.

16 Q. And the product catalog description is
17 specific to the DC power measuring amendment,
18 correct?

19 A. That's correct. The language that appears
20 in the product catalog was, in fact, developed as
21 part of that process of introducing the power
22 measurement offering. Power measuring, excuse me,
23 offering.

24 Q. And the SGAT, is that specific to or does
25 it even address the DC power measuring amendment?

26

1 A. Again, as I mentioned previously, the SGAT
2 is dated October 31, 2002 and predates the
3 availability of that offering.

4 Q. Okay. Now, so when you testified that --
5 I think you testified in response to questioning from
6 Mr. Kopta that what is reflected in the SGAT, Exhibit
7 8.3.1.6 is a rate grouping; is that right?

8 A. Yes.

9 Q. Have I characterized your testimony
10 appropriately?

11 A. That's correct.

12 Q. How does that square and match in with the
13 interpretation of the DC power measuring amendment
14 and the Exhibit A that is actually attached to the
15 actual Interconnection Agreement between McLeod and
16 Qwest?

17 A. Well, again, since this is SGAT predates
18 the availability of the power measuring offering, I
19 think it's difficult to go from that to help
20 interpret the issue we have before us today.

21 Q. Now, have you reviewed the particular
22 Interconnection Agreement between McLeod and Qwest in
23 this case?

24 A. I believe I have looked at it, yes.

25 Q. And what does that Interconnection
26

1 Agreement say about the effect of headings or section
2 headings?

3 A. It says the section headings have no -- I
4 don't know what the correct legal term is. They have
5 no effect, in essence, and they should not be used to
6 interpret the meaning of the contracts.

7 Q. Now, how does that particular
8 Interconnection Agreement provision inform and relate
9 to your discussion of the items in 8.3.1.6 as a rate
10 grouping?

11 A. Well, again, I think what maybe is the
12 best thing to do is look at the Exhibit A, because I
13 think the Exhibit A is really the key to how we
14 interpret what this amendment means. And when we go
15 to the power Section, 8.1.4, what that Section 26.3
16 in McLeod/Qwest Interconnection Agreement regarding
17 headings would say is that we should be ignoring the
18 heading at 8.1.4, we should be ignoring the heading
19 at 8.1.4.1, we should be ignoring the heading at
20 8.1.4.1.1, we should be ignoring the heading at 8
21 .1.4.2.

22 Now, what that leaves us with is four
23 charges. We have two charges for power plant, and we
24 have two charges for power usage. And as I mentioned
25 previously, when we go back to the amendment and look
26

1 at the language there, the references are to power
2 usage. There aren't any references to power plant.
3 And that's why I say that the Qwest interpretation
4 here is a very reasonable interpretation that leads
5 from the amendment right into the Exhibit A.

6 Q. Okay. That's all the questions I have and
7 I appreciate the indulgence of Mr. Kopta and your
8 Honor in indulging my out-of-order kind of redirect
9 on that particular point.

10 JUDGE GOODWILL: That's okay. Mr. Kopta?

11 MR. KOPTA: Thank you, your Honor. A
12 couple things, not surprisingly.

13

14 FURTHER RECROSS EXAMINATION

15 BY MR. KOPTA:

16 Q. First, let's follow up on that last point
17 that you made. If you would, turn to Hearing Exhibit
18 16 and again to looking at Section 8.3.1.6. Is it
19 your understanding that negative 48 volts DC power
20 usage charge is a heading in your determination of
21 what a heading would be?

22 A. I would not interpret 8.3.1.6 to be a
23 heading, no.

24 Q. And if you would turn, while we are on
25 that same exhibit, to Section 8.3.1.14. And you were

26

1 discussing with your counsel about the extent to
2 which the description is the same as in 8.3.1.6. Do
3 you recall that discussion?

4 A. I do.

5 Q. Now, in the Section 8.3.1.14, you read the
6 first sentence but it also includes several
7 subsequent sentences, does it not?

8 A. It does.

9 Q. And would that not also be part of the
10 description of what the negative 48 volts DC power
11 cable charge includes?

12 A. That is all contained within that same
13 section, yes.

14 Q. You said, I believe in response to some
15 questions from your counsel, that the SGAT does not
16 describe each rate element. Did I characterize your
17 testimony accurately?

18 A. That's correct. It does not describe it
19 in great detail.

20 Q. But you would agree with me that it
21 describes the substantive requirements that are then
22 reflected by rates in Exhibit A?

23 A. Yes.

24 Q. And there would not be a rate in Exhibit A
25 that did not have some corresponding service or

26

1 facility that Qwest outlines its obligation to
2 provide in the body of the SGAT, would there?

3 A. No. Although it may be a rather general
4 description.

5 Q. If you would turn to Exhibit WRE 1, which
6 is Qwest Exhibit 1.1.

7 A. I have it.

8 Q. At the bottom of the first page I notice a
9 date effective January 2, 2004, is that correct?

10 A. Yes.

11 Q. And that is the date by which this
12 document was publicly available?

13 A. Yes. The change request that led to this
14 document I believe went into effect December 23, and
15 perhaps the document itself got posted on the web
16 site January 2. But in that time frame, yes.

17 Q. And if you would turn to Hearing Exhibit 1
18 which is the DC Power Measuring Amendment between
19 Qwest and McLeod.

20 A. I have it.

21 Q. And you will notice that that agreement,
22 the running footer, at least, has an August 5, 2004
23 date on it; is that correct?

24 A. Yes.

25 Q. And it was executed later in that month.

26

1 A. Yes.

2 Q. So the PCAT descriptions were available
3 several months before the amendment was offered to or
4 was provided to McLeod; is that correct?

5 A. Yes.

6 Q. And Qwest could have, had it so chosen,
7 included the provisions of the PCAT description in
8 the amendment, could it not?

9 A. It could. I would point out that this
10 document encompasses Qwest complete, and when I say
11 "this document" I'm referring to the PCAT document in
12 my testimony, encompasses Qwest complete suite of DC
13 power offerings. The amendment we have before us
14 today is only looking at the power measuring
15 offering.

16 Q. True. But on this first page of Exhibit
17 1.1, that is specific to the charges we are
18 discussing in the amendment; is that not correct?

19 A. Actually, it would be the second page of
20 1.1, which is where we get into the direct current
21 power measurement.

22 Q. I'm looking more specifically at DC Power
23 Rate Element Descriptions.

24 A. Those are contained on the first page of
25 1.1, yes.

26

1 Q. And at least some of those are included --
2 those charges would be the charges reflected in the
3 amendment, would they not?

4 A. Yes.

5 Q. Thank you. Those are all my questions.

6 MR. GOODWIN: Just two questions, your
7 Honor.

8 JUDGE GOODWILL: Go ahead.

9

10 FURTHER REDIRECT EXAMINATION

11 BY MR. GOODWIN:

12 Q. First, Mr. Kopta had asked you a question
13 about 8.3.1.6, and his question was is 8.3.1.6 a
14 heading. I think your answer was no, it's not. My
15 question is slightly different. And that is does
16 Section 8.3.1.6 of the SGAT contain a heading?

17 A. No.

18 Q. With reference to the question that Mr.
19 Kopta had asked you about the Exhibit 1.1, the
20 product catalog, and whether things could end up in
21 the amendment, could McLeod or Qwest have chosen to
22 include a reference to a power plant charge if either
23 party intended that power plant charges would be
24 affected by the DC Power Measuring Amendment?

25 A. I would expect that to be the case.

26

1 Q. And what inferences do you draw from the
2 differences, if any, between the product catalog rate
3 element descriptions - which I think you also
4 testified that isn't actually the power measurement
5 option - but between the rate element descriptions in
6 the product catalog and the DC power measuring
7 amendment as it ended up?

8 A. Well, again, the two documents have
9 different purposes, and I would expect some
10 differences as a result of that.

11 Q. But the fact that the power capacity
12 charge in the power rate element does not appear and
13 is not mentioned in the DC Power Measuring Amendment
14 in this case, what inference do you draw from that
15 difference?

16 A. Well, again, power plant or power capacity
17 is not impacted by the power measuring offering.

18 Q. No further questions.

19 JUDGE GOODWILL: Mr. Kopta?

20 MR. KOPTA: Nothing further. Thank you.

21 JUDGE GOODWILL: I've got just a few. Mr.
22 Easton, if you would turn in your rebuttal testimony,
23 Qwest 1, to page 4, line 16.

24 MR. EASTON: I have it.

25 JUDGE GOODWILL: If you would read that
26

1 sentence from line 16 down to line 19 out loud for
2 the record, please.

3 MR. EASTON: "Additionally, more than a
4 year before McLeod accepted the amendment without
5 comment, question, or proposed changes, Qwest made
6 McLeod aware of documents addressing Qwest's position
7 on the precise question of whether the DC Power
8 Measuring Amendment affects the DC power plant
9 charge."

10 JUDGE GOODWILL: Are the documents
11 referred to there the WRE 1, WRE 2 that have been
12 admitted here as 1.1 and 1.2? Is that the documents
13 you are referring to or are there other documents?

14 MR. EASTON: That's the document. And, in
15 fact, specifically it was WRE 2 which is a change
16 management process document. Again, I mentioned
17 earlier that in the change management process, the
18 CLECs have an opportunity to participate, suggest
19 changes, ask questions. This particular document
20 relates to questions asked by Allegiance with regard
21 to how rates would be affected under power measuring,
22 and includes Qwest responses to those questions.

23 And in fact, Allegiance asked exactly the
24 same question that is at the heart of this Complaint;
25 namely, whether power plant charges would be impacted

26

1 or not. And if you look, it begins on page 3 of that
2 document down at the bottom, and says, "For the
3 following questions, assume collocation is in
4 Arizona," and goes through and lays out the
5 assumption, concluding, "Likewise, if the new DC
6 power measurement was 87 we would be billed 120 amps
7 at \$10.75," referring there to the power plant
8 charges, "and 87 amps at \$7.27," there referring to
9 the power usage charges.

10 So in their request, Allegiance made
11 exactly the same interpretation of the Power
12 Measuring Amendment that Qwest has and that Qwest has
13 put forth here, namely that power plant charges are
14 not impacted by that measuring offering, but that
15 power usage itself is.

16 JUDGE GOODWILL: Okay. And back to your
17 testimony for a moment on that same sentence that you
18 just read. You say Qwest made McLeod aware of these
19 documents. In what manner did Qwest make McLeod
20 aware of them?

21 MR. EASTON: The change management process
22 consists of both meetings and documents. There were
23 regular monthly meetings during which all of the
24 change requests, including this particular change
25 request, were given a status update; where they were

26

1 at, when they were anticipating it would be
2 finalized. In addition, there are what they call ad
3 hoc meetings associated with particular change
4 requests. And, in fact, there were several ad hoc
5 meetings held to specifically address this change
6 request related to the power offerings. All of the
7 CLECs are invited to attend those monthly meetings.
8 All of the CLECs are invited to attend those ad hoc
9 meetings. They are made aware of those meetings by
10 notices sent out in a distribution to various
11 employees at each of those CLECs who participates in
12 change management.

13 In addition, as documents become available
14 throughout this process, such as the document we just
15 went over with the Allegiance question, the CLECs are
16 sent a notice noting that those documents are
17 available out on the Qwest web site for access.

18 JUDGE GOODWILL: So you are not testifying
19 that there was specific actual notice to McLeod so
20 much as the notice that all CLECs got with respect to
21 the change management process.

22 MR. EASTON: No. In fact, McLeod received
23 notice, 16 employees of McLeod received notices of
24 each of these meetings and notices of the
25 availability of all of the change management
26

1 documents.

2 JUDGE GOODWILL: Those are the e-mails
3 referred to yesterday in testimony?

4 MR. EASTON: That's correct.

5 JUDGE GOODWILL: If you would turn to WRE
6 1, Exhibit 1.1, the section on page 1 entitled DC
7 Power Rate Element Descriptions. As I read this, one
8 could reasonably interpret DC power capacity to
9 relate to the power plant charges on the SGAT,
10 Exhibit A, and DC power usage to referring to the
11 usage charges.

12 MR. EASTON: That's correct.

13 JUDGE GOODWILL: Now, in the first
14 indented paragraph entitled "Minus 48 volt DC Power
15 Capacity and Usage Charges," would you read the
16 second sentence there for me.

17 MR. EASTON: "The Capacity Charge recovers
18 the cost of the capacity of the power plant available
19 for your use."

20 JUDGE GOODWILL: And then the third
21 sentence.

22 MR. EASTON: "The usage charge recovers
23 the cost of the power used."

24 JUDGE GOODWILL: So if we interpret
25 capacity charge to mean power plant rate element, we

26

1 are saying that the power plant rate element is for
2 capacity, the usage charge is for usage.

3 MR. EASTON: Yes.

4 JUDGE GOODWILL: Now compare that for me,
5 if you would, to Hearing Exhibit 1, which is the DC
6 Power Amendment. The second sentence that I asked
7 Mr. Starkey about yesterday in Section 2.1, if you
8 can go ahead and read that second sentence again for
9 the record.

10 MR. EASTON: "The DC Power Usage Charge is
11 for the capacity at the power plant available for
12 CLEC's use."

13 JUDGE GOODWILL: Can you reconcile those
14 in any way?

15 MR. EASTON: I guess I would acknowledge
16 that that sentence is less than crystal clear. I
17 mentioned earlier, though, I think we don't need to
18 rely upon that sentence to interpret the meaning of
19 the Power Measuring Amendment, and instead I think
20 it's most appropriate to go down to Section 2.2.1
21 where the amendment actually lays out the rates to be
22 impacted by power measuring, and spells out fairly
23 clearly the power usage charge from Exhibit A.

24 JUDGE GOODWILL: Okay. If you would turn
25 to WRE 2, Exhibit 1.2. The first item referenced at

26

1 the bottom of page 1 in the series of Allegiance's
2 questions that you referred to earlier right after
3 the word "comment," if you would read that first --
4 not only the first question but also prefatory,
5 starting "in reference." If you would read that
6 first question and then Qwest's answer for me.

7 MR. EASTON: Could you repeat that? I was
8 having trouble locating this here.

9 JUDGE GOODWILL: I'm sorry. Page 1 of WRE
10 2, the first item. Beginning, "Allegiance September
11 22, 2003." Right after "comment." If you would read
12 down through the first question and then Qwest's
13 answer for me.

14 MR. EASTON: Okay. "In reference to the
15 'DC Power Rate Element Descriptions' section: If a
16 clerk is ordering more than 60 amps, will the change
17 from nonmeasured to measured be automatic or will the
18 CLEC be required to amend their Interconnection
19 Agreement an/or submit an order to initiate the
20 change?"

21 And Qwest's response is, "Qwest will
22 initiate the DC power reading process without the
23 CLEC having to amend their Interconnection Agreement
24 or submit an order."

25 JUDGE GOODWILL: Okay. Now this says, "In
26

1 reference to the DC Power Rate Element Description
2 section." Could you point me to that? Is there such
3 a section in the DC Power Measuring Amendment,
4 Hearing Exhibit 1?

5 MR. EASTON: No. They are referring here
6 to the product catalog.

7 JUDGE GOODWILL: To the product catalog.
8 And where in the product catalog?

9 MR. EASTON: Let's turn to the product
10 catalog, which is WRE 1.1. And I believe they are
11 referring to page 1 of that document, DC Power Rate
12 Element Descriptions.

13 JUDGE GOODWILL: So that question refers
14 in general to that entire section.

15 MR. EASTON: I believe so.

16 JUDGE GOODWILL: Okay. Now, on page 2 of
17 the WRE 2, if you would read that second question and
18 answer it for me.

19 MR. EASTON: Is it the one that begins
20 "page 1"?

21 JUDGE GOODWILL: Yes.

22 MR. EASTON: "Page 1, paragraph 3, refers
23 to a capacity charge; does capacity refer to the term
24 'power plant' listed in the SGATs?" The Qwest answer
25 is the capacity charge does refer to the power plant

26

1 as it is listed in the SGATs.

2 JUDGE GOODWILL: And again, page 1
3 paragraph 3, what does that refer to? What document?

4 MR. EASTON: I believe they are referring
5 back again to the product catalog, WRE 1.1. Let's
6 just see if that makes sense. Yes. They are
7 referring to the 48 volt capacity charge there.

8 JUDGE GOODWILL: The paragraph that begins
9 "48 volt DC power capacity and usage charges."

10 MR. EASTON: Or I believe they are
11 referring to the 48 volt capacity charge, which would
12 be the third paragraph under DC Power Rate Element
13 Descriptions.

14 JUDGE GOODWILL: Okay. That's all my
15 questioning. Does either party have any questioning
16 based on my questions?

17 MR. GOODWIN: A couple of questions.

18

19 FURTHER REDIRECT EXAMINATION

20 BY MR. GOODWIN:

21 Q. Mr. Easton, Judge Goodwill had asked you
22 some questions about CMP, the Change Management
23 Process documentation. Isn't it your testimony that
24 other than WRE 2, which is Qwest Exhibit 1.2 in this
25 hearing, there are several other documents that were

26

1 available on the web site which McLeod has been
2 notified of?

3 A. That's correct.

4 Q. And if I might, I'd like to mark this
5 particular document, one of these documents as
6 hearing Exhibit 17.

7 (EXHIBIT-17 WAS MARKED.)

8 Q. Do you have that document in front of you?

9 A. I do.

10 Q. And what is exactly this document?

11 A. Well, as I mentioned in response to Judge
12 Goodwill's questions, the CLECs who participate in
13 change management process are sent documents
14 informing them of meetings, informing them of the
15 availability of documents. This particular document
16 is a notice that was sent out to inform the CLECs of
17 a particular meeting being held in regard to the
18 power measurement change request. This document,
19 based on the notes down at the bottom, was sent to
20 several employees at McLeod U.S.A., and in the body
21 of the document it talks about the questions that
22 will be reviewed at this particular meeting.

23 JUDGE GOODWILL: If I could interrupt
24 quickly, I notice the document is marked
25 confidential. Is it confidential?

26

1 MR. GOODWIN: It should not be marked or
2 treated as confidential in this case.

3 JUDGE GOODWILL: Okay. Thanks. Sorry,
4 Mr. Easton.

5 A. If you look down at Sections 6 and 7, "How
6 will Qwest measure power?" It indicates that there's
7 going to be a discussion to talk about that during
8 that meeting. So again, this was a notice given to
9 the CLECs letting them know there were ongoing
10 discussions on this and welcoming them to
11 participate.

12 Q. So it's notifying them of the types of
13 questions that were actually addressed in Qwest
14 Hearing Exhibit 1.1?

15 A. Yes.

16 Q. Excuse me, 1.2.

17 A. Yes. And specifically if you look at
18 number 2, "How does this impact the monthly recurring
19 charges?"

20 Q. And these two aren't the only documents
21 that were exchanged or made available in connection
22 with the change management process?

23 A. No. In fact, this change request went on
24 for approximately seven or eight months. And during
25 the course of that there were a number of documents

26

1 made available to the CLECs.

2 Q. And what's the significance of the
3 Contacts Mail Log at the bottom of page 1 extending
4 to the second page of Hearing Exhibit 17?

5 A. The Contact Mail Log contains the list of
6 parties, in this case McLeod parties, who received
7 this particular notice.

8 Q. And within that list we see that Tami
9 Spocogee, who is a witness in this case here today,
10 and William Haas, who is counsel and also in the room
11 today, are listed as recipients of that
12 correspondence?

13 A. I see both those names, yes.

14 Q. And also do you see the name down at the
15 bottom where it says Stephanie Prull?

16 A. Yes, I do.

17 Q. And is that a third person that was
18 identified in Ms. Spocogee's testimony as
19 participating in the CMP process?

20 A. That's correct.

21 MR. GOODWIN: I'll move the admission of
22 Hearing Exhibit 17.

23 JUDGE GOODWILL: Any objection to Hearing
24 Exhibit 17?

25 MR. KOPTA: No exception, subject to

26

1 recall of Ms. Spocogee, if we feel it is necessary,
2 to explain McLeod's interpretation of this document.

3 JUDGE GOODWILL: Okay. It's admitted.

4 Q. (By Mr. Goodwin) And then in addition to
5 this particular notice, Hearing Exhibit 17 where the
6 CLECs were notified that the questions would be
7 addressed, were the CLECs also notified of the
8 availability of the answers -- actually, let me ask a
9 more specific question.

10 In addition to the notification to McLeod,
11 and the persons listed on the Contacts Mail Log of
12 Hearing Exhibit 17 of the fact that certain questions
13 would be addressed, was McLeod and those people
14 listed in the Contacts Mail Log on Hearing Exhibit 17
15 notified of the availability on the CMP web site of
16 the actual answers that are Hearing Exhibit 1.2, once
17 they were provided by Qwest?

18 A. Yes. If you look at that Exhibit 1.2,
19 it's got a notification number. And this is actually
20 a notification that was sent out -- no, they were
21 sent a notification that this particular document was
22 available on the web site and there would be the URL
23 contained within that document, so they would click
24 on that and it would bring up what I have here as WRE
25 2.

26

1 Q. And again, you heard Ms. Spocogee testify
2 that the charges for DC power were an important issue
3 to McLeod that they were pursuing not only in Qwest
4 states but in states outside of the Qwest region.

5 A. During that same time frame, yes.

6 Q. And in your opinion, is it reasonable for
7 a CLEC like McLeod, once they have determined that
8 this particular issue is important to them, to follow
9 the change management process and the product catalog
10 as they were made available prior to entering and
11 executing an Interconnection Agreement?

12 A. I believe that that would be a prudent
13 practice and I believe Ms. Spocogee herself indicated
14 that they would follow very closely matters that were
15 of interest to them as they made their way through
16 the CMP process.

17 Q. The judge asked you a few questions about
18 the Exhibit 1.2 where it was asked would an amendment
19 be required. And I think Qwest's answer in the
20 change management process was that one wouldn't be.
21 Do you recall that line of questioning?

22 A. Yes.

23 Q. Now, we said no, but as we can see from
24 Hearing Exhibit 1, an Interconnection Agreement was
25 actually required. Does that mean that the
26

1 information contained in the change management
2 process documents is unreliable?

3 A. No. In fact, as I mentioned earlier, the
4 change management process is designed so that all the
5 parties have a chance to input to the process. This
6 document, WRE 2, which is 1.2 here, is dated October
7 6, 2003. So it was a document prior to the close of
8 the change request, which happened again in the late
9 December, early January time frame. And based on the
10 documents that Qwest originally proposed, input, and
11 questions from the CLECs, what ultimately ended up on
12 that document in the December/January time frame
13 reflected those questions from the CLECs. And
14 ultimately Qwest backed off its original answer here
15 that there would not be an amendment required and, in
16 fact, an amendment was ultimately required from CLECs
17 interested in entering into a power measuring
18 process.

19 Q. Are you familiar with the Wholesale Action
20 Review Committee at Qwest, or the WARC?

21 A. No, I'm not.

22 Q. Are you familiar with the general policies
23 of Qwest as they pertain to the decision of whether
24 to make any type of agreement between Qwest and
25 competitive carriers formalized in a written document

26

1 and filed and approved with the state Commission?

2 A. I am, yes.

3 Q. And what is that general policy?

4 A. Again, Qwest would treat all carriers in a
5 nondiscriminatory fashion. In other words, would not
6 make available to one carrier terms it was not
7 willing to make available to another. And in
8 addition, all of the terms incorporated into an
9 agreement would be filed with this Commission.

10 Q. And in connection with that policy, what
11 is your understanding of how Qwest implements that
12 policy to make sure that agreements are written down,
13 filed, and approved by a Commission? Is Qwest
14 conservative or aggressive or --

15 A. I would suggest that Qwest is very
16 conservative in this process. There are a number of
17 checks and controls built into this. A number of
18 folks review the documents, sign the documents, and
19 ultimately submit the documents to the Commission for
20 final approval.

21 Q. No further questions.

22 JUDGE GOODWILL: Mr. Kopta?

23

24

25

FURTHER RECROSS EXAMINATION

26

1 BY MR. KOPTA:

2 Q. I just have one series. You discussed
3 with the bench Exhibit WRE 2, which is Exhibit 1.2,
4 the first and second question and Qwest responses.

5 A. Yes.

6 Q. And specifically with the second question
7 and response, the reference to page 1, paragraph 3
8 and how that shows up on the product catalog, do you
9 recall that?

10 A. Yes.

11 Q. If you would turn to Exhibit 1.1, which is
12 the product catalog that you mentioned here. I
13 notice this seems to be in legislative format. In
14 other words, it's got additional language and some
15 struck-through language, as well as language that is
16 not underlined. Is this a red line document?

17 A. What this document -- as I mentioned in a
18 previous answer, the documents changed as they moved
19 through the change management process based on
20 discussions between Qwest and the CLECs. What this
21 was intended to do was show changes from the previous
22 documents, as you note, using a red line convention.

23 Q. Sure. And the reason I'm asking is
24 because the date of Allegiance's request is September
25 22, 2003, and I don't know the vintage of this

26

1 document but it does say effective January 2, 2004.
2 So I guess the question is you were discussing
3 whether the questions in Exhibit 1.2 were referring
4 to the document, 1.1. But it appears as if it may be
5 that this language was developed after those
6 questions were asked, so we are talking about a
7 different document that Allegiance was referring to.

8 A. I believe Allegiance's questions were
9 related to a previous document. If you look at WRE
10 1, the second page, it says, "Optional DC Power
11 Measuring for feed greater than 60 amps." There's a
12 highlighted section that appears in the second line
13 under that, "Provided an amendment has been signed
14 between Qwest and the CLEC." This is language that's
15 been added after the document that Allegiance was
16 looking at. If you recall, I mentioned that based on
17 further discussions between Qwest and the CLECs, it
18 was discussed that an amendment would, in fact, be
19 required. And that language has been added in this
20 document and highlighted to indicate the change.

21 Q. So the language that you were referring to
22 on the first page of this with all of the
23 underscoring, that is generally my understanding of
24 the convention that that would be new language. Do
25 we know the date of that language, the nonhighlighted

26

1 underlined language?

2 A. I don't interpret that as being new
3 language because I believe that, in fact, in response
4 to a question from the Bench, Allegiance was
5 referring to this language. I can't tell you why it
6 is underlined.

7 Q. Well, let's turn to the third page of that
8 exhibit. And here we have, under Terms and
9 Conditions, there's language that has no strikeout or
10 underscore and also language that is stricken out and
11 also language that is underscored. And that's my
12 understanding of how red lining works. So if
13 language is underscored it means that it is new
14 language that is added into the existing language.
15 Are you saying that it is something different on the
16 first page than on the third page?

17 A. No. I think that is probably true. But
18 what we need to look at is what document it is
19 changing. And I would refer to this as changes to
20 the previous PCAT. In other words, it is adding all
21 this new language about direct current power
22 measurement which, again, this is a new power
23 offering. That would not have been in there
24 previously. So I'm interpreting that; that it is
25 underlined to identify to the CLECs this is new

26

1 language that was not in the PCAT previously.

2 Q. Thank you. That's all I have.

3 JUDGE GOODWILL: I'm sorry. I have to
4 have another question or two here.

5 Going back to WRE 2 and the second
6 question and answer which you read previously, the
7 question beginning page 1, paragraph 3.

8 MR. EASTON: Yes.

9 JUDGE GOODWILL: And the answer is, "The
10 capacity charge does refer to the power plant as it
11 is listed in the SGATs."

12 MR. EASTON: Yes.

13 JUDGE GOODWILL: Could you just point to
14 me -- I assume that is the SGATs as in Hearing
15 Exhibit 16. Could you point me to that reference
16 where it says that the capacity charge does refer to
17 the power plant as listed in the SGAT?

18 MR. EASTON: Okay. I'm going to go back
19 here. Yeah. I'm looking back at WRE 1, "Minus 48
20 volt capacity charge - The minus 48 volt capacity
21 charge is specified in Exhibit A and applies to the
22 quantity of minus 48 volt DC power Capacity specified
23 in your order." I believe probably their SGAT
24 reference there is to the Exhibit A.

25 JUDGE GOODWILL: Not to the SGAT text that
26

1 we have been talking about.

2 MR. EASTON: That's my interpretation.

3 JUDGE GOODWILL: So the -- is it fair,
4 then, to interpret the answer, the capacity charge
5 does refer to the power plant as it is listed in the
6 SGATs, as meaning the power rate element listed --

7 MR. EASTON: Yes. For power plant.

8 JUDGE GOODWILL: Exhibit A. Okay.

9 Any further questions of Mr. Easton?

10 MR. GOODWIN: Two questions. One of them
11 is actually for you, your Honor. Let me ask first a
12 foundational question for Mr. Easton.

13

14 FURTHER REDIRECT EXAMINATION

15 BY MR. GOODWIN:

16 Q. Do we have available the product catalog
17 as it existed when Qwest answered Allegiance's
18 questions?

19 A. I would assume that is available. We
20 would need to check. I'm not sure what the archiving
21 rules are around that document.

22 Q. Would you like us to search for it and
23 provide it if --

24 Would your Honor like us to search for it
25 and provide it if it's available?

26

1 JUDGE GOODWILL: I will turn that to Mr.
2 Kopta and see if he is satisfied with the answers he
3 got.

4 MR. KOPTA: I don't think we need to see
5 it. I was trying to get clarity on what the language
6 was.

7 JUDGE GOODWILL: Thank you.

8 Q. (By Mr. Goodwin) My only other question
9 is that for an SGAT, the Exhibit A is actually part
10 of the SGAT. It is not a separate agreement or --

11 A. That's correct. The two are to be used in
12 conjunction with each other.

13 Q. Okay. That's all the questions I have.

14 JUDGE GOODWILL: Mr. Kopta?

15 MR. KOPTA: No.

16 JUDGE GOODWILL: Thank you, Mr. Easton.

17 Probably a good time for a break. Let's
18 just take ten quick minutes and start up again.

19 (A break was taken.)

20 JUDGE GOODWILL: Back on the record. And
21 we were ready to question the next witness.

22 MS. ANDERL: Thank you, your Honor. Qwest
23 calls Curtis Ashton to the stand.

24

25 CURTIS ASHTON,

26

1 called as a witness, being first sworn, through the
2 interpreter, was examined and testified as follows:

3

4 JUDGE GOODWILL: Ms. Anderl.

5 MS. ANDERL: Thank you, your Honor.

6

7 DIRECT EXAMINATION

8 BY MS. ANDERL:

9 Q. Good morning, Mr. Ashton.

10 A. Good morning.

11 Q. Could you please state your name and
12 business address for the record.

13 A. Curtis Ashton, 700 West Mineral,
14 Littleton, Colorado, 80120.

15 Q. By whom are you employed and what is your
16 job title there?

17 A. Employed by Qwest and I work organization
18 as the senior staff power tech support engineer.

19 Q. And do you have before you the direct
20 testimony, or rebuttal testimony of Robert J.
21 Hubbard, which is Qwest Exhibit 2, as well as his
22 attachment Exhibit 2.1 and your own testimony, which
23 is Qwest Exhibit 3?

24 A. Yes, I do.

25 Q. Are those true and correct, to the best of
26

1 your knowledge?

2 A. Yes, they are.

3 Q. Other than the changes that you made to
4 Mr. Hubbard's testimony in your own testimony, do you
5 have any changes or corrections that you need to make
6 to any of those documents?

7 A. No further changes besides those two.

8 MS. ANDERL: Your Honor, I believe that
9 the documents have been stipulated for admission, and
10 before tendering this witness for cross examination,
11 we would like to do some direct examination with
12 regard to the cost study testimony proffered by Mr.
13 Starkey, as well as a few other issues.

14 JUDGE GOODWILL: Okay. Go ahead.

15 Q. (By Ms. Anderl) Mr. Ashton, could you
16 please describe your job responsibilities at Qwest.

17 A. My job responsibilities include being the
18 primary power subject matter expert for Qwest. In my
19 tech support role, it's my job to provide tech
20 support on power issues and grounding issues to
21 anyone within Qwest, and also external customers as
22 well.

23 Q. And in that -- in connection with those
24 job responsibilities, what is your involvement in the
25 engineering power plant for central offices?

26

1 A. If a DC power engineer or even an AC power
2 engineer has questions that they can't answer, I'm
3 the final line of defense, so to speak.

4 Q. And they rely on your expertise for
5 answers to any questions or problems they may have?

6 A. Yes, they do.

7 Q. And what is it about your educational
8 background that qualifies you to be that final line
9 of defense?

10 A. I'm an electrical engineer. And my
11 degree -- I worked for an electric utility before I
12 came to work for Qwest and I have spent 14 years with
13 Qwest doing nothing but backup power.

14 Q. What role did you play -- well, are you
15 familiar with Qwest's collocation cost study that was
16 submitted in the Utah collocation proceeding in 2001?

17 A. Yes, I am.

18 Q. What role did you play in the development
19 of that collocation cost study for DC power elements?

20 A. I provided the base cost for all the
21 components to the cost group within Qwest.

22 Q. And did you work closely with the cost
23 group in developing that study?

24 A. Yes, I did.

25 Q. Did you also ensure that the engineering
26

1 assumptions in that study were proper?

2 A. Yes, I did.

3 Q. Could you please turn to Mr. Starkey's
4 surrebuttal testimony. You have that with you, do
5 you not?

6 A. Yes, I do.

7 Q. His cost testimony begins on line 270.

8 A. If you'll give me a second to turn there.

9 Q. Sure.

10 A. Okay. I'm there.

11 Q. Line 280, Mr. Starkey says, "The cost
12 study makes clear that as Qwest's central office
13 power users (including Qwest) consume more
14 electricity, Qwest's power plant costs increase
15 proportionately." Do you agree with that statement?

16 A. I do not.

17 Q. Can you explain why?

18 A. Well, as Mr. Starkey offered yesterday, in
19 a TELRIC cost model the entire plant is built at one
20 time, which is how this was modelled. As usage
21 increases, there's no reason to grow the power plant
22 just because usage has increased, just because
23 electric demand has increased. That is not, in and
24 of itself, a reason to grow the power plant. So
25 using a term Mr. Starkey used, the power plant costs

26

1 are sunk at the beginning, and no further costs are
2 added until the time the capacity has to be grown.

3 Q. And by using the term "sunk costs," you
4 heard Mr. Starkey say that that would be -- that
5 modeling sunk costs is a violation of TELRIC
6 principles. Is it your understanding that the cost
7 study was conducted in accordance with TELRIC
8 principles?

9 A. That's my understanding.

10 Q. And once Qwest has incurred the power
11 plant investment to provide a power plant with, say,
12 1000 amp capacity, do Qwest's costs decrease even if
13 there's no usage on that plant?

14 A. Not the cost for the power plant.

15 Q. And as long as Qwest does not need to
16 augment that plant, do its costs increase as usage
17 increases on that plant?

18 A. Not the cost for the plant.

19 Q. Would you turn to the next page of Mr.
20 Starkey's testimony, please, and look down at
21 footnote 3.

22 A. I'm there.

23 Q. Mr. Starkey claims that the cost study is
24 based on an anticipated load of 1000 amps upon a DC
25 power plant with actual capacity of 1200 amps; is he

26

1 correct?

2 A. Not about the capacity.

3 Q. What's the capacity of the power plant
4 that's modelled there?

5 A. It's 1000 amps.

6 Q. And Mr. Starkey relies for this testimony
7 on the fact that Qwest modelled six 200 amp
8 rectifiers; is that correct?

9 A. Yes, we did.

10 Q. And is it also your understanding that
11 that's why Mr. Starkey thinks that there's a 1200 amp
12 capacity in that power plant?

13 A. Based on his testimony, I believe so.

14 Q. Okay. And why is that? You have said
15 that that is not correct. Why is that?

16 A. Why is it not correct? As Mr. Morrison
17 described yesterday, when a power plant is built
18 there are two reasons to put in excess rectifiers
19 above and beyond the capacity of the plant. One of
20 those reasons is to ensure that if any rectifier
21 fails, that the capacity of the plant or the capacity
22 of the load can be met by the remaining rectifiers.

23 The other reason, as Mr. Morrison referred
24 to it, after a battery discharge of a fairly long
25 duration it's the desire and FCC best practice to try

26

1 to recharge the batteries to 90 percent capacity
2 within 24 hours. In doing so, you have to have
3 excess capacity above and beyond the load
4 requirements because the rectifiers, the batteries,
5 and the load are in parallel.

6 Q. Did you hear Mr. Morrison say yesterday
7 that for a power plant with 1000 amps of capacity, it
8 would be appropriate to model or to actually install
9 six 200 amp rectifiers?

10 A. Actually I heard him say it would be
11 appropriate to install seven.

12 Q. And again, that is the additional capacity
13 for the purposes you just explained?

14 A. Yes.

15 Q. And does that excess rectification change
16 the actual capacity of the power plant?

17 A. No, it does not.

18 Q. In the Qwest cost model, that capacity
19 is -- what amount is modelled?

20 A. One-thousand amps.

21 Q. Are there other elements of the actual
22 power plant that are included in the cost study that
23 affect the capacity of the power plant?

24 A. There are a lot of them; busbar, shunt,
25 generator size. But probably the most significant

26

1 one in this model question is batteries. The
2 batteries in this power plant, by Utah law and FCC
3 best practice, Qwest standard practices are designed
4 to provide four hours of battery backup. They cannot
5 provide 1200 amps for four hours.

6 Q. So the batteries that are modelled in the
7 Qwest cost model would not be sufficient to support a
8 DC power plant with actual capacity of 1200 amps. Is
9 that what you are saying?

10 A. Not for the four hours required by law.

11 Q. And are the batteries modelled -- well,
12 are they appropriate for the 1000 amp power plant
13 that Qwest did model?

14 A. Yes, they are.

15 Q. Now, staying on footnote number 3 which is
16 where we just were when we looked at Mr. Starkey's
17 testimony, he talks there about an 83 percent loading
18 assumption. Do you see that?

19 A. Yes.

20 Q. Are you familiar, also, with the document
21 that we marked as Hearing Exhibit Number 14 yesterday
22 which is Qwest's response to McLeod data request
23 number 32?

24 A. Yes.

25 Q. Can you explain how the loading
26

1 assumptions or what loading assumptions means when
2 used in Qwest's data request response?

3 A. The loading assumption is the same type of
4 loading that Mr. Morrison described in his glossary
5 as an attachment to his testimony. And the glossary
6 talks about a power loading. So, for example, a 200
7 amp rectifier, in this case there are six of them.
8 If I have 1000 amps of capacity, 1000 amps of usage,
9 I divide the six rectifiers into the thousand amps.
10 Each rectifier will carry 167 amps, approximately.
11 So 167 amps out of 200.

12 MR. GOODWIN: Might I approach?

13 JUDGE GOODWILL: Sure.

14 A. 167 amps out of 200 equals an 83 percent
15 load on the rectifier capacity. It's a power load.

16 Q. Is that the equivalent of a fill factor,
17 as Mr. Starkey describes on page 17 of his testimony?

18 A. No, it is not.

19 Q. And does that indicate to you that the
20 cost study models Qwest's costs on a usage sensitive
21 basis, or a consumption basis?

22 A. No.

23 Q. How does the cost study model costs?

24 A. Simply on a per amp basis.

25 Q. Now, are you aware of whether or not Qwest
26

1 explained to McLeod that the cost study did not model
2 costs on a usage sensitive basis?

3 A. Yes, I am.

4 MS. ANDERL: And I'm going to distribute
5 two documents, your Honor, that I'd like marked as
6 Hearing Exhibits 18 and 19.

7 (EXHIBITS-18-AND-19 WERE MARKED.)

8 MS. ANDERL: And by a good coincidence,
9 Exhibit 19 is Qwest's response to McLeod data request
10 number 19, and Exhibit 18 is Qwest's response to data
11 request number 15.

12 Q. (By Ms. Anderl) Mr. Ashton, do you have
13 before you the two documents we just discussed?

14 A. I do.

15 Q. And are those Qwest's data request
16 responses to McLeod questions with regard to whether
17 the power plant is modelled on a usage sensitive
18 basis?

19 A. Yes, it does answer the question.

20 Q. And just for the record, could you read
21 the first sentence of Qwest's response on number 15
22 into the record where it says --

23 A. "No"?

24 Q. Okay. No?

25 A. Sorry. I finished the question for you.

26

1 JUDGE GOODWILL: You didn't say please,
2 Counsel.

3 Q. (By Ms. Anderl) The record is going to
4 look a little funny on this.

5 Mr. Ashton, when you begin to read the
6 question, if you could introduce that by saying, "I'm
7 going to begin reading now."

8 A. Begin quotes, "No, the Power Plant modeled
9 at tab E.1.4 Power Equipment does not make any
10 assumption about what equipment will make use of the
11 power in any given central office. Rather, the model
12 is designed to develop an average investment per amp
13 of power plant assuming the power equipment necessary
14 to provide a hypothetical capacity of 1000 amps of
15 power. Regardless of the capacity of the power plant
16 the calculation is based on, the result is an average
17 amount of investment per amp."

18 Q. And then data request number 19 refers
19 McLeod back to number 15; does it not?

20 A. Yes, it does.

21 Q. And why don't you go ahead and read that
22 answer into the record, as well.

23 A. "Please see Qwest's response to McLeod
24 03-015 in this docket. Qwest's Collocation Model
25 does not make any assumptions regarding the amount of
26

1 power that will be used by consumers in a given
2 central office. The value in Cell B54 of the Power
3 Equipment tab is used to calculate the average
4 investment per amp based on the amount of power plant
5 needed for 1000 amps of capacity."

6 Q. And are those answers correct?

7 A. Yes, they are.

8 MS. ANDERL: Your Honor, we would move
9 Hearing Exhibit 18 and 19.

10 MR. KOPTA: No objection.

11 JUDGE GOODWILL: And just for clarity,
12 once again, Hearing Exhibit 18 is the request number
13 15, and Hearing Exhibit 19 is request number 19, and
14 we will go ahead and admit those.

15 MS. ANDERL: Yes. Thank you.

16 Q. (By Ms. Anderl) Now, could you turn next,
17 Mr. Ashton, to the tables on Mr. Starkey's
18 surrebuttal testimony on pages 15 and 16.

19 A. I'm there.

20 Q. Okay. Look at scenario A in Table 1.

21 A. Okay.

22 Q. Do you understand that the Qwest bill and
23 CLEC bill listed in Table 1 are supposed to represent
24 usage measured at any particular point in time?

25 A. I don't know that they represent usage.

26

1 They just represent the billed amount.

2 Q. And the billed amount, if a company has a
3 power measuring amendment, would be based on a
4 measurement taken at a point in time?

5 A. Yes.

6 Q. And if Qwest were, in fact, billing a CLEC
7 for 200 amps of power usage in a central office,
8 would Qwest -- and, in fact, if Qwest were using 800
9 amps for itself, under those circumstances would
10 Qwest have only 1000 amps of power plant capacity
11 available to -- would it have engineered a power
12 plant with only 1000 amps of capacity available?

13 A. No.

14 Q. Would it have engineered a power plant
15 that was larger than that?

16 A. Yes.

17 Q. And would that have then created a larger
18 investment than what Qwest shows in its cost study?

19 A. Yes.

20 Q. Look at Scenario B. You see there that
21 Mr. Starkey is purporting to represent Qwest's
22 position in that table. Does that represent Qwest's
23 position?

24 A. No.

25 Q. Can you tell me whether you believe that
26

1 the assumptions set forth in that table are
2 reasonable?

3 A. I don't believe so.

4 Q. And why not?

5 A. Well, I see two major problems with this
6 Scenario B. Number one, I'm unaware in the real
7 world of any plant -- as I believe it was Mr. Starkey
8 or Mr. Morrison yesterday testified, that the CLEC
9 portion of the usage is very small. I'm unaware of
10 any power plant in Qwest where more than half of the
11 requests are from the CLEC for power.

12 Q. Are you aware of any central office in
13 Utah or any other state where McLeod has ordered
14 power cable feeds sized anything close to 1176 amps?

15 A. No. The second problem that I have has to
16 do with the assumption of the total load of 1000
17 amps. Obviously if CLECs really had ordered 1176
18 amps, and there were 800 amps of Qwest, we would have
19 a power plant with a capacity to meet those two
20 needs.

21 Q. Would that be a capacity larger than 1000
22 amps?

23 A. Yes.

24 Q. Turn then to Table 2. And Scenario A
25 shows the same -- shows usage assumptions at 800 amps

26

1 for Qwest and 200 amps for CLECs, showing 1000
2 chargeable amps and a power plant investment of
3 \$448,000. Do you see that?

4 A. Yes, I do.

5 Q. Are the assumptions in that Scenario A
6 reasonable?

7 A. Relatively reasonable, yes.

8 Q. If, in fact, Qwest had chargeable amps of
9 1000 amps, would its power plant investment be
10 \$448,000?

11 A. Can you repeat the question?

12 Q. If Qwest had a central office where it was
13 using 800 amps and billing a CLEC for 200 amps, would
14 the capacity on that power plant be only 1000 amps?

15 A. No.

16 Q. Okay. And so would the power plant
17 investment be something greater or less than the
18 \$448,000 shown here?

19 A. Greater than.

20 Q. And in Scenario B in which Mr. Starkey
21 purports to represent Qwest's position, do you agree
22 that that table represents Qwest's position in this
23 case?

24 A. No.

25 Q. Do you find the assumptions or numbers
26

1 contained in that table to be reasonable?

2 A. I don't.

3 Q. Can you explain why not?

4 A. Yeah. If you look at the 200 amps, the
5 CLEC, quote/unquote, "usage," based on McLeod's
6 measurements and Qwest's measurements, McLeod in
7 their testimony basically says that their usage is
8 only approximately, on average, 17 percent of what
9 they ordered. So they take the 17 percent, divide it
10 into the 200 amps, and that's where they come up with
11 the 1176 amps that they would have ordered to get a
12 usage of 200 amps. They assume that Qwest would size
13 exactly the same way; that if we had 800 amps of
14 usage that we must have ordered six times that.

15 Q. And is that accurate?

16 A. That's not accurate.

17 Q. How would Qwest size its power feed cables
18 relative to the amount of power that Qwest thought it
19 needed?

20 A. As Mr. Morrison described yesterday, we
21 would take the List 2 drain, multiply it times 125
22 percent to find the fuser breaker size to feed it,
23 and size the cables at exactly the List 2 drain.

24 Q. Okay. So that links to a question that
25 the Administrative Law Judge yesterday asked Mr.

26

1 Morrison, and Mr. Morrison answered a question
2 regarding what Qwest would do if it were adding a
3 piece of equipment with 50 amps of List 2 drain, and
4 what cable sizing Qwest would use under those
5 circumstances. Can you describe, using that 50 amp
6 number, how Qwest would size its cables?

7 A. Yes. Qwest would look at the distance
8 from the power source, whether it be a BDFB or a
9 power board; look at the voltage drop requirement,
10 because it's different depending on what your power
11 source is; and then size the cables based on the List
12 2 drain of 50 amps to the appropriate voltage drop
13 from that power source.

14 Q. So Qwest would install a cable with a
15 capacity of 50 amps?

16 A. Yes.

17 Q. And then it would fuse it accordingly?

18 A. Yes. The fuse would probably be
19 approximately 70 amps. As Mr. Morrison described,
20 you take the List 2 drain, multiply it by 125 percent
21 so it never blows, at least under normal
22 circumstances. And that equals 62.5 amps. Since
23 there's no such thing as a commercially available
24 62.5 fuse, you go to the next commercially available
25 fuse size, which is typically 70 amps.

26

1 Q. And I believe that the circumstances under
2 which Mr. Morrison was discussing this with the
3 Judge, Mr. Morrison was talking in context of perhaps
4 McLeod adding or ordering a 180 amp cable. Do you
5 recall that that was the context?

6 A. That number seems to be right.

7 Q. Okay. And based on the description that
8 you've just given, do I understand correctly that
9 that is not the cable size that Qwest would use?

10 A. That's correct.

11 Q. And do I also understand correctly that
12 Qwest would not require McLeod to use a 180 amp cable
13 size?

14 A. That's correct.

15 Q. Now, how --

16 A. However, if they asked for it, that's what
17 we would give them.

18 Q. Mr. Starkey admitted, with his testimony,
19 an exhibit that is Hearing Exhibit McLeod 3SR.1, and
20 that's the photocopy of the Qwest collocation
21 application printed down from the Qwest web site.
22 Are you familiar with that document?

23 A. Relatively familiar, yes.

24 Q. Now, at the time the CLEC places an order
25 for a collocation cable power feed with Qwest, and

26

1 perhaps other collocation elements, as well, what
2 does Qwest know about the CLEC's power needs aside
3 from what the CLEC specifies as a cable feed size?

4 A. Nothing else.

5 Q. And is the power plant capacity available
6 to the CLEC for the size of the feed requested?

7 A. Yes, it is.

8 Q. Is that regardless of whether they enter
9 into a Power Measuring Amendment or not?

10 A. Regardless.

11 Q. Now, does Qwest know the List 1 drain for
12 all of the McLeod equipment?

13 A. Not for all of it, no.

14 Q. And so you stated that Qwest uses the List
15 2 drain that McLeod specifies in its engineering and
16 planning.

17 A. That's correct.

18 Q. Why is that?

19 A. Because we don't know the List 1 drain.

20 Q. Does Qwest believe it has an obligation to
21 make the List 2 available, should the CLEC ever need
22 it?

23 A. Yes. Because if we don't, we will be
24 right back here.

25 Q. Now, Mr. Morrison had, in his direct
26

1 testimony, a Figure 6 that we talked about yesterday.

2 And if you turn to that, maybe you don't need to,
3 maybe you remember. But there are eleven pieces of
4 equipment listed in that exhibit.

5 A. That's correct. I have it.

6 Q. Did you review all the pieces of
7 equipment?

8 A. I did.

9 Q. Do you understand or do you have an
10 understanding of which of those pieces of equipment
11 Qwest uses in its own network?

12 A. I do.

13 Q. And can you say which those are?

14 A. They are line numbers 4, 5, 9, and 10.

15 Q. And any of the others?

16 A. No.

17 Q. So there are seven pieces of equipment
18 that Qwest does not use in its own network?

19 A. That's correct.

20 Q. And with which Qwest is not familiar?

21 A. That's correct.

22 Q. With regard to Mr. Starkey's cost study
23 testimony, after having reviewed the testimony as
24 well as in the context of your understanding of the
25 cost study itself, what are your conclusions with

26

1 regard to Mr. Starkey's cost study testimony that he
2 set forth in his surrebuttal?

3 A. My conclusions are that based on my
4 testimony, he has made some assumptions about the way
5 we modelled the costs that are not correct.

6 Q. Specifically with regard to what?

7 A. Loading, fill factors, capacity versus
8 usage.

9 Q. Now, one last question, and this question
10 is a question that the Administrative Law Judge has
11 been asking some of the witnesses about, so we might
12 as well ask you about it, as well. Do you have
13 before you or available to you a copy of Hearing
14 Exhibit Number 1 which is the DC Power Measuring
15 Amendment itself? And if you don't, that's okay. I
16 can bring mine up to you.

17 A. I don't know where in my huge, thick
18 binder it is.

19 MS. ANDERL: May I, your Honor.

20 JUDGE GOODWILL: Certainly.

21 Q. (By Ms. Anderl) Do you have that
22 amendment in front of you?

23 A. I do.

24 Q. And I have put up on the easel for my own
25 purposes, since you now have my copy, a foam core
26

1 board that has some excerpts from that Power
2 Measuring Amendment, Attachment 1. Can you look at
3 the Section 2.1 and specifically refer to the second
4 sentence in that paragraph?

5 A. Okay.

6 Q. Can you read that into the record out
7 loud?

8 A. "The DC power usage charge is for the
9 capacity of the power plant available for the CLEC's
10 use."

11 Q. And now if a CLEC has ordered a 200 amp
12 cable feed from Qwest and enters into the Power
13 Measuring Amendment, what is the capacity of the
14 power plant that is available for the CLEC's use?

15 A. 200 amps.

16 Q. And is that true regardless of whether the
17 CLEC has entered into the amendment or not?

18 A. Yes, that's correct.

19 MS. ANDERL: Thank you, your Honor. I
20 have no further direct questions of this witness.

21 JUDGE GOODWILL: Mr. Kopta?

22 MR. KOPTA: Your Honor, at this point I
23 would ask that we be able to take a break, perhaps
24 early lunch so we can prepare to address this
25 testimony that's just been given today.

26

1 JUDGE GOODWILL: That seems all right.

2 MS. ANDERL: Seems fair.

3 JUDGE GOODWILL: Can we -- I'd like to
4 move as quickly as we can. Is 12:30 soon enough, or
5 do you need more time than that?

6 MR. KOPTA: How about if we do it at
7 quarter to 1:00?

8 JUDGE GOODWILL: Okay. We will reconvene
9 at a quarter to 1:00.

10 (The lunch break was held.)

11 JUDGE GOODWILL: Let's go back on the
12 record. Mr. Kopta, we will turn to you.

13 MR. KOPTA: Just as a preliminary matter,
14 I will have some questions for Mr. Ashton but we
15 would also like to recall Mr. Starkey at some point
16 when we are finished with Mr. Ashton to address some
17 of the issues that Mr. Ashton raised in his testimony
18 today.

19 JUDGE GOODWILL: Okay.

20

21 CROSS EXAMINATION

22 BY MR. KOPTA:

23 Q. Good afternoon, Mr. Ashton.

24 A. Hi.

25 Q. Some preliminary questions first. Did you

26

1 draft any of the language in the amendment between
2 Qwest and McLeod that is Hearing Exhibit Number 1?

3 A. I did not.

4 Q. Did you participate in any of the
5 discussions or negotiations between Qwest and McLeod
6 concerning that amendment before it was executed?

7 A. I did not.

8 Q. Are you involved in the negotiations of
9 interconnection agreements and amendments?

10 A. No, I am not.

11 Q. Are you a cost study expert?

12 A. No, I am not.

13 Q. Have you ever testified in any state
14 commission proceeding with respect to Qwest cost
15 studies?

16 A. No.

17 Q. Do you consider yourself an expert in
18 TELRIC?

19 A. No.

20 Q. Can you give me your understanding of what
21 TELRIC means from an engineering perspective?

22 A. My understanding, limited as it may be, is
23 that the entire plant is built all at once. That's
24 my limited understanding of what TELRIC means.

25 Q. Okay. Do you know what TELRIC, the
26

1 initials stand for?

2 A. Yes.

3 Q. Why don't you tell me.

4 A. Total Element -- I guess I don't know.

5 Q. Okay. How about Total Element Long-Run
6 Incremental Costs?

7 A. That sounds correct.

8 Q. That sounds correct. Okay. So do you
9 know what the term "long-run" means in the context of
10 determining whether a study is TELRIC?

11 A. No, I do not.

12 Q. How about "incremental"?

13 A. No, I don't know what that term means as
14 far as TELRIC.

15 Q. Are you familiar with the concept part of
16 TELRIC being, from an engineering perspective, that
17 you design the network to be least cost and most
18 efficient?

19 A. I'm not familiar with that, although I
20 have heard those terms used in this proceeding in
21 conjunction with TELRIC.

22 Q. From your actual experience as an engineer
23 with Qwest, does Qwest endeavor to engineer its
24 network to be least cost and most efficient?

25 A. Yes.

26

1 Q. When Qwest is engineering a power plant,
2 does the size of the power plant that's actually
3 engineered, is it the same or different if you
4 anticipate 500 amps of usage - and this is a
5 hypothetical example - as opposed to 2000 amps of
6 usage?

7 A. What do you mean by "size"?

8 Q. Number of rectifiers, amount of batteries
9 planned.

10 MS. ANDERL: And I'll object to the lack
11 of clarity in terms of the 500 versus 2000. It is
12 not specified as to what the 500 or 2000 amps is,
13 whether it's List 1 or List 2 or actual consumed on
14 any given day.

15 Q. Well, let's back up and do a little
16 foundation, then.

17 I believe we are up to Hearing Exhibits 20
18 and 21.

19 A. Which one are you marking as 20?

20 Q. Let's do the Data Request Responses as
21 Hearing Exhibit 20. And then the spreadsheet copy as
22 21.

23 (EXHIBITS-20-AND-21-WERE MARKED.)

24 Q. And if I could get you to do the same
25 thing as you did for Ms. Anderl, which is if you

26

1 would read the response to this Data Request Number
2 30, which is Hearing Exhibit number 20.

3 A. Okay.

4 MS. ANDERL: Your Honor, I'm going to
5 object at this point. The data request asks about
6 Tab E 1.4 Power Usage, and this Exhibit 21 is
7 Entitled E 1.4 Power Equipment. So I'm not sure to
8 the extent that these -- maybe my objection is
9 premature, but to the extent that these two documents
10 are meant to sync up, I believe on their face they do
11 not.

12 MR. KOPTA: That's not what we are going
13 to pursue, and I'm sure it will become more clear as
14 I proceed.

15 JUDGE GOODWILL: Go ahead.

16 THE WITNESS: Would you like me to go
17 ahead, then?

18 Q. (By Mr. Kopta) If you would, please.

19 A. "Admit. Similar to the methodology
20 described in response to Data request #03-015,
21 Qwest's power usage calculation is designed to
22 calculate average cost per amp of power usage in Iowa
23 based on 1000 amps of hypothetical capacity."

24 Q. And the reference there to 03-015 is to
25 the data request response that's been admitted as

26

1 Hearing Exhibit 18; is that correct?

2 A. That is correct.

3 Q. Now, if you would, please, turn to Hearing
4 Exhibit 21.

5 A. I'm there.

6 Q. And if you would look on line 10.

7 A. Okay.

8 Q. Where the list is identified as DC Power
9 Usage. Do you see that?

10 A. Yes.

11 Q. And does that term, DC Power Usage, mean
12 the same thing as it does when you use the term
13 "power usage" in Hearing Exhibit Number 20?

14 A. I didn't write the response to number 20,
15 but in my opinion the response to number 20, the term
16 "usage" would have been better served as "capacity."
17 And the same thing in 21.

18 Q. So you are interpreting the term "usage"
19 to also mean, or to mean "capacity"; is that correct?

20 A. On these two exhibits.

21 Q. So if the term "usage" were in another
22 document, are you saying it might be something else?

23 A. It might.

24 Q. So Qwest uses the term "usage" to mean
25 different things in different circumstances with

26

1 respect to DC power; is that correct?

2 A. I can't speak to what other people who do
3 other things do. I would use the term "usage" as
4 only usage. In other words, my definition of the
5 term "usage" is the actual amount being drawn.

6 Q. But you're saying that that's not how the
7 term "usage" is used in either Hearing Exhibit 21 or
8 Exhibit 20; is that correct?

9 A. Not in my opinion.

10 Q. And in the cost -- do you recognize --
11 first of all, I better ask you this: In Hearing
12 Exhibit 21, do you recognize this as a portion of the
13 cost study that Qwest submitted in this state in the
14 cost docket?

15 A. Which state?

16 Q. Utah.

17 A. I'm not sure this is for Utah. It might
18 be. It doesn't say. It's a portion of a cost docket
19 that was submitted in some states.

20 Q. Do you recognize this as something that is
21 part of a collocation cost study that Qwest has
22 prepared?

23 A. Yes.

24 Q. Do you know anywhere within that
25 collocation cost study where the term "DC power

26

1 usage," as used on line 10, is defined?

2 A. I do not.

3 Q. I believe you were discussing with Ms.
4 Anderl your involvement in the preparation of this
5 cost study, but let me ask you something more
6 specific. Did you prepare any of the information
7 that is on Hearing Exhibit Number 21?

8 A. I did not prepare Exhibit number 21. I
9 provided the cost. The base costs, let me put it
10 that way. I have no idea if these are the actual
11 costs. I provided the base costs for the components
12 such as DC plant, engine, commercial AC, rectifiers.
13 But I didn't prepare the spreadsheet.

14 Q. With respect to the cost study as a whole,
15 did you just provide what I would call inputs to the
16 study, as opposed to any part of the study itself?

17 A. That's correct. I provided the inputs.

18 Q. Were you the one that provided the input
19 for input value for DC power usage in line 10 of
20 Hearing Exhibit Number 21?

21 A. I provided the value that it was a plant
22 of 1000 amps of capacity. I didn't provide the label
23 in A 10.

24 Q. But you were the one that came up with the
25 value of 1000; is that correct?

26

1 A. Correct.

2 Q. If the DC power usage, instead of 1000 you
3 were to use 2000, how would that impact the remainder
4 of the values on this page?

5 A. Well, if I were to use a DC power capacity
6 of 2000 amps, I would have different rectifiers,
7 larger rectifiers, more batteries, a larger engine,
8 bigger fuel tank and so on and so forth. So each one
9 of those components would have a different cost,
10 which would affect the total cost of the power plant.
11 So the total cost of the power plant, which on this
12 sheet is represented as \$448,264, would increase.

13 Q. Would it roughly double, since the amount
14 or usage or capacity, as you used the term, doubles?

15 A. I don't think it would roughly double, no.

16 Q. So at this point you don't know what kind
17 of effect it would have, except it would have some
18 increase in values?

19 A. It would increase, yeah. I'd have to look
20 at the specifics of each individual component.

21 Q. And if you were to develop a per amp
22 price, whatever the number is that you came up with,
23 you would divide that by 2000, correct?

24 A. Correct.

25 MR. KOPTA: Your Honor, at this point I

26

1 move the admission of Hearing Exhibit numbers 20 and
2 21.

3 MS. ANDERL: I'm going to object to 21,
4 your Honor. Contrary to Mr. Kopta's representation,
5 he did, in fact, try to link Hearing Exhibit 20 and
6 Hearing Exhibit 21. And clearly Hearing Exhibit 20
7 asks questions about a tab in the cost study that is
8 not reflected in Hearing Exhibit 21. So I don't
9 think there's anything objectionable about Hearing
10 Exhibit 20. I do believe that Hearing Exhibit 21 is
11 not, on its face, what it purports to be through the
12 questioning.

13 MR. KOPTA: Your Honor, they use the same
14 terms, "DC power usage." That's the only link. It
15 comes from the collocation cost study that was
16 submitted in this proceeding. And I believe Qwest
17 has, if I'm not mistaken, provided in Hearing Exhibit
18 13, a portion of Qwest's own proposed study. So I
19 don't see that putting in another printout from that
20 cost study is in any way objectionable. In fact,
21 it's consistent with what Qwest has already done with
22 respect to its cross-examination of Mr. Starkey.

23 JUDGE GOODWILL: You don't purport, do
24 you, Mr. Kopta, that the Tab E.1.4 Power Usage
25 referred to in Exhibit 20 is, in fact, what has been
26

1 marked Exhibit 21?

2 MR. KOPTA: I do not.

3 JUDGE GOODWILL: Okay.

4 MR. KOPTA: We are simply exploring the
5 extent to which these two documents are tied, and I
6 think I have used them independently as well as tied
7 together. But simply to the extent they are tied
8 together, it is in usage of the term "usage" and how
9 that is used throughout the cost study, or how Qwest
10 interprets that term as it is used throughout the
11 cost study.

12 JUDGE GOODWILL: Your objection is noted,
13 Ms. Anderl. We will go ahead and admit both 20 and
14 21.

15 MS. ANDERL: I understand, your Honor.

16 Q. (By Mr. Kopta) Mr. Ashton, as I
17 understand your testimony, Qwest engineers its power
18 plant according, at least in part, to the List 2
19 drain of the CLECs that are collocating at central
20 office; is that correct?

21 A. We engineer our power plant to the highest
22 historical load on the power plant over the last
23 year, plus the List 1 drains of expected Qwest
24 equipment over the next 18 to 36 month forecast, plus
25 the List 2 drain of the collocators.

26

1 Q. Why doesn't Qwest engineer the power plant
2 to the List 2 drain of its own equipment?

3 A. Because we happen to know the List 1
4 drain. In our documents, as Mr. Morrison pointed out
5 over and over, we said we should engineer to the List
6 1 drain. So because we know it, we engineer to it.

7 Q. So if you knew the List 1 drain of the
8 CLEC's equipment, should you engineer the power plant
9 to the List 1 drain of the CLEC's equipment?

10 A. I would agree with that statement, yes.

11 Q. If you would, please, turn to Mr.
12 Morrison's direct testimony, which is Exhibit McLeod
13 2. Specifically, page 47.

14 A. I'm there.

15 Q. And I believe you were discussing with Ms.
16 Anderl which pieces of equipment in Figure 6 also
17 appear in Qwest's central offices; is that not
18 correct?

19 A. That's correct.

20 Q. And I believe that you said they were
21 items on lines 4, 5, 9, and 10; is that correct?

22 A. That's correct.

23 Q. So does Qwest, then, know the List 1
24 drains of those pieces of equipment?

25 A. Yes, we do. I don't know them off the top
26

1 of my head right now.

2 Q. I won't ask you. You could tell me
3 anything and I'd believe you. Are there any other
4 pieces of equipment listed on Figure 6 that Qwest has
5 in its central offices that's the same type of
6 equipment but that are manufactured by a different
7 manufacturer?

8 A. Well, in a generic sense, yes. For
9 example, the first -- well --

10 Q. I just need you to be careful.

11 A. In a generic sense, yes. There is
12 equipment that perform similar functions such as
13 multiplexers, DSLAMs, so on and so forth. However,
14 the drains from manufacturer to manufacturer even for
15 the same capacity vary widely. For example, one
16 DSLAM that serves 100 customers, to pick a number out
17 of the air, might draw half as much power as a
18 competitor's DSLAM that serves the same number of
19 customers.

20 Q. Mr. Ashton, I will represent that I have
21 put before you a document that is an excerpt of a
22 much longer document that has the title page Qwest
23 Technical Publication, and additional language on
24 there. Do you recognize this document?

25 A. Yes, I do.

26

1 Q. And in fact, on the second page of that
2 document your name appears.

3 A. I'm the author.

4 Q. Even better. May we mark this for
5 identification as Hearing Exhibit 22.

6 JUDGE GOODWILL: Yes.

7 (EXHIBIT-22 WAS MARKED.)

8 Q. Now, on the third page of this document,
9 the page number is actually 4-3.

10 A. Yes.

11 Q. First let me ask you, do manufacturers
12 provide List 1 drains for the equipment that they
13 provide?

14 A. Oftentimes it has to be extracted at the
15 price of a pound of flesh, but usually it can be
16 obtained, eventually.

17 Q. Uncooperative vendors. Are there any
18 circumstances in which, you know, even with a pound
19 of flesh you can't get the List 1 drain from
20 manufacturers?

21 A. That has happened on rare occasions.

22 Q. And if you would look on this Exhibit,
23 Hearing Exhibit 22, on the third page, about
24 two-thirds of the way down the sentence begins,
25 "Sometimes the vendor." Would you read that sentence

26

1 for me, please.

2 A. "Sometimes the vendor will only give List
3 2 (peak) power drains."

4 Q. And the next sentence?

5 A. "A rough estimate of List 1 drains is 30
6 to 40 percent of the List 2 drain."

7 Q. So in the rare event that the manufacturer
8 does not provide List 1 drains, could Qwest develop a
9 List 1 drain based on the List 2 drain using this
10 type of a formula?

11 A. Qwest could roughly estimate a List 1
12 drain. As it says, roughly.

13 Q. If you have a choice between engineering
14 the power plant between a List 2 drain or the rough
15 estimate, which would you choose?

16 A. For whose equipment?

17 Q. Well, let's start with Qwest's equipment.

18 A. In my engineering experience, typically an
19 engineer will pick a factor of between 40 and 50
20 percent if they cannot get a List 1 drain.

21 Q. So 40 and 50 percent of the List 2 drain?

22 A. Yes.

23 Q. And that's what you would engineer your
24 power plant to?

25 A. Yes.

26

1 Q. I believe you also discussed with Ms.
2 Anderl the collocation application that is attached
3 as an exhibit to Mr. Starkey's surrebuttal testimony.
4 Do you recall that discussion?

5 A. Yes.

6 Q. And I believe you were discussing the fact
7 that nowhere on that application is there a category
8 or a question for the List 1 drain of the CLEC
9 collocated equipment; is that correct?

10 A. That is correct.

11 Q. Why doesn't Qwest ask for that
12 information?

13 A. I have no idea. I didn't develop the form
14 so I don't know.

15 Q. As a power plant engineer, is that the
16 type of information that you would want to know?

17 A. That would be nice to have.

18 Q. And if you had that information, would you
19 design the power plants to the List 1 drain of the
20 CLEC's collocated equipment?

21 A. Yes.

22 Q. You also discuss with Ms. Anderl your
23 understanding that there is a legal requirement to
24 make a List 2 drain available to CLECs. Do you
25 recall that discussion?

26

1 A. I don't recall talking about a legal
2 requirement. Perhaps I used those terms, but I don't
3 recall that.

4 Q. Okay. Well, that was what I was going to
5 ask is whether you were aware of or what the source
6 of any requirement was that you're aware of that
7 Qwest make power available to the List 2 drain of
8 CLECs' collocated equipment?

9 A. I don't know of a legal requirement. My
10 only experience is with collocators who have
11 complained that we have not made that available to
12 them, have not made available to them the amount that
13 they have requested.

14 MR. KOPTA: If I may have a moment, your
15 Honor.

16 JUDGE GOODWILL: Certainly.

17 MR. KOPTA: Thank you, Mr. Ashton, those
18 are all my questions.

19 JUDGE GOODWILL: Ms. Anderl?

20 MS. ANDERL: Thank you, your Honor. Did
21 Mr. Kopta wish to move to admit Exhibit Number 22?

22 MR. KOPTA: I did, in fact. Thank you for
23 reminding me.

24 MS. ANDERL: No problem. We can extend
25 those.

26

1 JUDGE GOODWILL: Any objection?

2 MS. ANDERL: There is no objection to the
3 document my witness offered.

4 MR. KOPTA: That's a tough objection to
5 make.

6 JUDGE GOODWILL: Exhibit 22 will be
7 admitted.

8

9 REDIRECT EXAMINATION

10 BY MS. ANDERL:

11 Q. Mr. Ashton, I am going to hand up to you a
12 document that Mr. Kopta just referenced generally a
13 little bit earlier, and that's Hearing Exhibit Number
14 13. I don't know if you have that document. It's a
15 detailed summary of results from the Utah cost study.
16 Do you have that?

17 A. Not that I know of.

18 Q. Are you familiar with that sheet, or
19 sheets like that?

20 A. I have seen one of them before.

21 Q. And in Section 1.4 on the second page, can
22 you indicate for me what Qwest described there with
23 regard to how the stated costs would apply for a
24 power plant?

25 A. Well, under 1.4.1 the first line says,
26

1 "Power plant per amp ordered," and gives TELRIC costs
2 of \$10.7954 cents per amp ordered.

3 Q. And then it carries out to a TELRIC plus
4 common amount of \$11.28?

5 A. Correct.

6 Q. And is it your understanding that the
7 rates, the power plant rates that are at issue in
8 this proceeding were developed in a TELRIC cost
9 docket in front of the Utah Commission?

10 A. That's my understanding.

11 Q. And that that TELRIC cost docket
12 ultimately adopted rates that permitted Qwest to
13 charge on a per amp order basis for the cable feeds
14 in the power plant?

15 A. Yes. That's what's been ordered in every
16 state. In Qwest local service territory.

17 Q. You indicated in response to Mr. Kopta's
18 question -- well, you talked with Mr. Kopta about his
19 question with regard to whether if you had a rough
20 estimate of List 1 drain, a rough estimate of List 1
21 drain versus an actual List 2 drain, which would you
22 choose to engineer to. And I believe you answered
23 with regard to Qwest network. But you did not have
24 an opportunity to answer with regard to CLEC
25 collocated equipment. Would your answer be any

26

1 different?

2 A. Yes, it would.

3 Q. Different for collocated equipment?

4 A. Yes.

5 Q. Your answer with regards to Qwest
6 equipment was that you would choose the rough
7 estimate for List 1; is that right?

8 A. Correct.

9 Q. And what would you do for CLEC equipment?

10 A. I would choose the List 2.

11 Q. And why is that?

12 A. Because I don't want to come back in front
13 of the Commission if I fail to provide them the power
14 that they have requested.

15 Q. And Mr. Kopta asked you with regard to
16 whether you had an understanding of any legal
17 requirement to make List 2 drains available. With
18 regard to the response that you just gave, do you
19 have an understanding of whether or not Qwest is
20 obligated to make available to the CLECs power plant
21 capacity that they place an order for?

22 A. I would assume so, since we have been
23 called before commissions or had interrogatories to
24 the effect. "Why didn't you make my power plant
25 capacity available?"

26

1 Q. And based on your understanding of that
2 requirement, to the extent that one exists, is that
3 why Qwest engineers its power plant to make List 2
4 drain available?

5 A. Yes. For collocators.

6 Q. And in fact, even if you designed your
7 power plant to -- let's just say hypothetically a
8 CLEC gave Qwest a List 1 disclosure.

9 A. Okay.

10 Q. And we believed that it was reliable and
11 were therefore able to use it for engineering
12 purposes, and CLEC went ahead and ordered a 200 amp
13 cable power feed. Based on the information they have
14 given you, can you answer as to whether or not a
15 power plant capacity would be made available at the
16 200 amp level?

17 A. I can't answer that because I don't know
18 what the company policy would be in that case.

19 Q. I have nothing else. Thank you.

20 JUDGE GOODWILL: Mr. Kopta?

21 MR. KOPTA: Thank you, your Honor. Just a
22 couple of things.

23

24

25

RE CROSS EXAMINATION

26

1 BY MR. KOPTA:

2 Q. You did discuss this time with Ms. Anderl
3 whether there was a legal obligation for Qwest to
4 make the power ordered available. And I just want to
5 clarify that the power that -- by "power ordered,"
6 you were referring to the distribution or the power
7 cables that are ordered; is that correct?

8 A. Correct.

9 Q. Do CLECs actually order a certain power
10 capacity separate from the power cable capacity?

11 A. No. That's the capacity they order.

12 Q. And you also referred to having received
13 some complaints about not having power available.
14 Are you aware of whether any of those complaints have
15 come from CLECs that have executed an amendment
16 comparable to the amendment at issue here that's been
17 marked or admitted as Hearing Exhibit 1?

18 A. No, I'm not aware of that.

19 Q. Thank you. Those are all my questions.

20 MS. ANDERL: Nothing else, your Honor.

21 JUDGE GOODWILL: Thank you, Mr. Ashton.

22 You're all set.

23 MS. ANDERL: That concludes the
24 presentation of Qwest's witnesses at this time, your
25 Honor.

26

1 JUDGE GOODWILL: Thank you. Mr. Kopta,
2 you indicated you want to recall the witness?

3 MR. KOPTA: I do, your Honor. Thank you.
4 We would like to recall Mr. Starkey to the stand.

5 JUDGE GOODWILL: Mr. Starkey, I remind you
6 you are still under oath from yesterday.

7 MR. Starkey: Yes, sir.

8

9 FURTHER REDIRECT EXAMINATION

10 BY MR. KOPTA:

11 Q. Good afternoon, Mr. Starkey.

12 A. Good afternoon.

13 Q. I'll remind you that you are still under
14 oath from yesterday.

15 A. Yes.

16 Q. You were present in the hearing room when
17 Mr. Ashton was responding to your written prefiled
18 surrebuttal testimony?

19 A. Yes, I was.

20 Q. And you were aware of several of the
21 criticisms that he made of your assumptions and your
22 conclusions based on what you wrote in your
23 testimony?

24 A. Yes.

25 Q. Do you have any response?

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1 A. Yes. I think it's important to keep in
2 mind that the criticisms or concerns that Mr. Ashton
3 had with the testimony, my testimony, relating to the
4 cost of the information could be broken down into two
5 parts. One of those is really the answer to two
6 questions, two different questions. The first
7 questions being, are the costs in the cost study
8 divided by usage such that the rate must be applied
9 on a usage basis? And the second question being, if
10 McLeod pays on a measured basis, will that allow
11 Qwest to recover its List 1 drain? Those are really
12 two separate questions that you shouldn't confuse,
13 and I'm afraid there was some confusion in Mr.
14 Ashton's discussion about those. In fact, I think we
15 have a -- we get to use our power boards.

16 I prepared this in conjunction with the
17 exhibit that Qwest prepared that looks similar, with
18 the List 1, List 2 drain and the measured usage
19 underneath. But I just added a few things to try to
20 make this point. It's important to remember, and I
21 think Mr. Ashton just confirmed, that Qwest's
22 documentation requires it to engineer its power plant
23 at a List 1 drain. And that's the engineered
24 capacity of the power plant.

25 In a cost study, what that basically means

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1 is that that's the maximum usage that could be
2 accommodated by that particular power plant. In the
3 cost study, Qwest assumes that's 1000 amps, according
4 to Mr. Ashton. It then divides the entire investment
5 associated with that power plant by the thousand
6 amps. That's 1000 amps of usage. When you go to
7 apply the rate, then, the results from that, if you
8 don't apply it to usage but you apply it to some
9 subset of orders, then you are going to be
10 over-recovering that investment. Now, that's the
11 first point.

12 The second point that I think Mr. Ashton
13 was getting to is, "If we charge you on measured
14 usage we will never recover our List 1 drain." And
15 in my testimony I described the fact that there was a
16 fill factor in the cost study, what Qwest described
17 in its data request response as a loading of about 83
18 percent. On this diagram, what I have done is shaded
19 in grey where the fill factor comes in to play. And
20 its purpose is to recover spare capacity that is
21 required to exist beyond just the measured usage,
22 such that you are able to recover the total
23 investment associated with the List 1 drain.

24 What I understand from Mr. Ashton's
25 testimony is that they assumed six amplifiers of 200
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1 amps apiece. And I'm interpreting what he is saying
2 now. One of those amplifiers must be held in spare
3 on the in plus 1 basis, such that that amplifier or
4 rectifier is available to accommodate the failure in
5 one of the other rectifiers. So the total capacity
6 is only 1000 amps, not 1200 amps.

7 First of all, I don't believe that's the
8 way the cost study is constructed. But even if we
9 were to accept what Mr. Ashton has said, the issue
10 then becomes has Qwest assumed a proper fill factor
11 in its cost study. And that's a question I guess
12 that can really only be answered if you do look at
13 the cost study and try to figure out if the rate is
14 correct or not, which is exactly what Qwest said we
15 are not supposed to be doing in this case.

16 To sort of wrap that up, I guess what I
17 would say is that I don't think we can be left with
18 any other opinion except that these costs are
19 calculated on a usage basis and then must be
20 assessed, therefore, on a usage basis. The only
21 question that remains is did the cost study use the
22 proper fill factor. Mr. Ashton would suggest that
23 there's not a fill factor in there, I think. That
24 it's a hundred percent capacity they divide by. We
25 disagree with that. But frankly, that doesn't matter

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1 at the end of the day. Because that would simply say
2 that the cost study was done incorrectly, which
3 shouldn't be an issue in the case. The bottom line
4 is that these have to be assessed on a usage basis.

5 MR. KOPTA: Thank you, Mr. Starkey.

6 JUDGE GOODWILL: I want to jump in real
7 quickly before I forget the thought, because I'm
8 prone to doing that. When you say, Mr. Starkey, that
9 the key is that these costs must be assessed on a
10 usage basis, help me tie that to McLeod's complaint.

11 MR. Starkey: Okay.

12 JUDGE GOODWILL: What does that mean with
13 respect to what McLeod is seeking?

14 MR. Starkey: What that means is McLeod's
15 position is that the amendment requires that Qwest
16 recover its power plant investment based upon the
17 amount of that power plant investment McLeod actually
18 uses, not an amount for a feeder order that it made
19 that is really irrelevant to the size of the power
20 plant, the List 2 drain for the feeder cables. Such
21 that the amendment -- or McLeod's position is that
22 they should recover that power plant investment on a
23 usage basis. The cost study, because it divides the
24 total investment by usage, corroborates the point
25 that usage is the proper denominator over which those
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1 costs should be recovered. So the cost study and the
2 way it's constructed is completely consistent with
3 McLeod's interpretation of the amendment.

4 JUDGE GOODWILL: Okay. Thanks.

5 Ms. Anderl?

6 MR. KOPTA: Your Honor, excuse me. I
7 think it's important to follow this up since it's
8 your question, if you don't mind.

9 MS. ANDERL: That's fine.

10

11 FURTHER REDIRECT EXAMINATION

12 BY MR. KOPTA:

13 Q. McLeod has two claims in its Complaint.
14 You address one of them. Does this cost study have
15 any effect on the other claim in McLeod's complaint?

16 A. Yes, it does.

17 MS. ANDERL: Objection, your Honor, to the
18 extent that this question calls for or Mr. Starkey is
19 about to give a legal analysis with regard to a
20 discrimination claim. I do not believe that would be
21 appropriate from a lay witness.

22 MR. KOPTA: It's just how the facts
23 support the particular claim. I don't know that --
24 discrimination is both a legal term and a term of
25 usage, and I think if there's anything clear from

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1 this record it's that every witness has given legal
2 opinions on what language means in contracts and what
3 obligations there are. So I would ask that there be
4 some latitude since there has been, throughout this
5 proceeding in terms of allowing witnesses to discuss
6 their understanding of what particular documents may
7 mean, in this case the complaint that McLeod has
8 made.

9 JUDGE GOODWILL: I'll allow it. You can
10 go ahead and answer.

11 A. And I think I would start, and it's to the
12 point that discrimination is actually as much an
13 economic term as it is a legal term. What I was just
14 describing earlier with respect to the notion that
15 the cost study supports McLeod's interpretation of
16 the amendment, the power measuring amendments, does
17 go to the first claim of McLeod's complaint.

18 The second claim is that the way in which
19 Qwest currently assesses, consistent with its
20 interpretation of the Power Measuring Amendment, is
21 discriminatory toward McLeod. And the reason for
22 that is described in my surrebuttal testimony. But
23 to reiterate here is the fact that if you determine
24 the costs and recover the investment by 1000 units of
25 usage, but then you assess rates to McLeod based on
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1 the size of an order for power feeds that may be five
2 times the amount of usage it actually uses, you
3 recover substantially more of the power plant
4 capacity from McLeod than you do from Qwest. And as
5 a result, McLeod's cost per amp or power cost per
6 customer is significantly in excess of Qwest's, which
7 in the marketplace provides a discriminatory cost
8 structure and discriminates the way in which Qwest
9 recovers its power plant costs from both itself and
10 its competitor.

11 JUDGE GOODWILL: Would you agree, though,
12 that if Qwest is found to be charging CLECs in accord
13 and with the Commission's order in the prior cost
14 study docket, then it is not acting in a
15 discriminatory manner toward McLeod for the reasons
16 you allege.

17 A. No. For the following reasons. If you
18 look at the documentation, and I have forgotten the
19 exhibit number, that is the first three or four pages
20 of the cost study where it says "as ordered."
21 Someone refresh my memory as to what exhibit that is.

22 MS. ANDERL: Exhibit 13.

23 A. When Ms. Anderl showed this to me
24 yesterday, she pointed out the fact that the power
25 plant per amp ordered, in her opinion, meant the

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1 Commission had adopted a requirement that Qwest
2 assess power plant charges on an ordered basis. But
3 if you look at the two lines below that, specifically
4 the power usage more than 60 amps per amp, it also
5 says "ordered."

6 Yet even under Qwest's opinion and
7 interpretation of the Power Measuring Amendment, they
8 are backing off of that and they are saying, "We are
9 not going to base it on the order. We are going to
10 base it on usage." The entire purpose, in my
11 understanding, of the power measurement amendment was
12 to change the way things were being done. To suggest
13 that they could change one and still be consistent
14 with the Commission's order but not change the other
15 doesn't seem to make much sense.

16 JUDGE GOODWILL: Okay. Thanks. I'm sorry
17 for interrupting there.

18 MS. ANDERL: That's fine.

19

20 RE CROSS EXAMINATION

21 BY MS. ANDERL:

22 Q. Mr. Starkey, if, in fact, Qwest's
23 application of the DC power plant rate is
24 discriminatory to McLeod, that claim of
25 discrimination was not necessarily triggered by the

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1 Power Measuring Amendment, was it? The power plant
2 rates did not change when the Power Measuring
3 Amendment was signed.

4 A. No. That's true. They just were applied
5 through the amendment more accurately.

6 Q. So, in fact, and this is of course a
7 premise with which Qwest disagrees and we will
8 address it in the brief, but if the rates were
9 discriminatory, wouldn't they have been, under your
10 theory, discriminatory from the moment they were
11 ordered into effect by the Commission?

12 A. Yes. For the following reason: If you
13 look at the power usage as again it says "ordered" on
14 here, as well, I don't think there's any debate in
15 this particular complaint that usage should be based
16 on usage and not on the ordered amount. And that's
17 because that's how it is incurred. Even though this
18 particular piece of the cost study which was
19 apparently, I guess -- I don't know the exact
20 details, but I guess approved by the Commission, it
21 says it should be assessed on an ordered basis. You
22 had to correct that in the Power Measuring Amendment.
23 And I think we all agree that the Power Measuring
24 Amendment was assessing usage on a better basis than
25 it had been assessed.

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1 And I guess I would say one more thing
2 about that. I don't know the extent to which the
3 Commission specifically approved, and I have read the
4 orders and it doesn't address this issue, the extent
5 to which it specifically approved the application of
6 this rate. It certainly does not do so explicitly in
7 the order.

8 Q. McLeod paid the power plant rates on a per
9 amp order basis for all applicable collocations after
10 the cost docket order became effective; isn't that
11 right?

12 A. I believe it paid its bills, yes, with
13 respect to the way Qwest billed them.

14 Q. And McLeod did not make a claim of
15 discrimination with regard to the power plant rates
16 in either 2001 or 2002 or 2003 or 2004; isn't that
17 also right?

18 A. I don't know. But I take it on face
19 value. It should be a matter of record.

20 Q. Mr. Starkey, are you an electrical
21 engineer?

22 A. No.

23 Q. Have you ever engineered power plant
24 capacity?

25 A. No.

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1 Q. I don't have any other questions.

2 JUDGE GOODWILL: Mr. Kopta?

3 MR. KOPTA: I don't have anything further,
4 either, your Honor.

5 JUDGE GOODWILL: Thank you, Mr. Starkey.
6 Anything further from the parties?

7 MR. KOPTA: Not from McLeod.

8 MS. ANDERL: Not from Qwest, other than to
9 discuss post hearing process. I don't know if we
10 should do that on the record or off.

11 JUDGE GOODWILL: We can do that on the
12 record. It should be fine. I think the current
13 scheduling orders indicates post-hearing briefs to be
14 filed by July 7. Is that still good with the
15 parties?

16 MR. KOPTA: I believe so.

17 MS. ANDERL: May I inquire when we will
18 get the transcript?

19 We are running through the six states in
20 which we have the proceedings pending and trying to
21 see if July 7 is a conflict with any other filing. I
22 believe that's a Friday.

23 JUDGE GOODWILL: I believe it is.

24 MS. ANDERL: That should be fine with
25 Qwest. Is it a single round of simultaneous closing

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1 briefs or two rounds?

2 JUDGE GOODWILL: We haven't talked about
3 that previously. I would anticipate simultaneous,
4 one round. But I'm open to what the parties want to
5 do on this.

6 MR. KOPTA: It might be beneficial to have
7 a reply.

8 MS. ANDERL: Hardly anything you have ever
9 said, Greg, that I haven't wanted to respond to.

10 MR. KOPTA: Ditto, Lisa.

11 JUDGE GOODWILL: See, aren't you glad we
12 got that on the record?

13 MS. ANDERL: But all kidding aside, I
14 think probably the issues will be joined in the
15 opening briefs and better explained for both parties'
16 sake with a reply.

17 JUDGE GOODWILL: So the July 7 date for
18 the initial briefs, what kind of time would parties
19 want for the rely?

20 MS. ANDERL: We have hearings in Arizona
21 on the 17th and 18th of July. 21st might be a little
22 tight. 25th? June 28 and 29 are the hearings in
23 Washington. And I can't remember the filing dates.

24 JUDGE GOODWILL: Let's go off the record
25 for a second.

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1 (Discussion off the record.)

2 JUDGE GOODWILL: We discussed the
3 scheduling a little bit more and we decided that the
4 parties will confer and let me know what date after
5 July 7 they have agreed to for the reply round of
6 briefs, and then we will amend the schedule
7 accordingly. Anything else we need to take up before
8 we adjourn?

9 MR. KOPTA: I would ask whether, since we
10 used this demonstrative exhibit, and since we have
11 hard copies to provide, if we want to make that an
12 exhibit.

13 JUDGE GOODWILL: I think that's a good
14 idea. Let's do that. It will be Hearing Exhibit 23.
15 Does Qwest have any objection to the admission of
16 Exhibit 23?

17 MS. ANDERL: No, your Honor.

18 JUDGE GOODWILL: We will go ahead and
19 admit it.

20 (EXHIBIT-23 WAS MARKED.)

21 MR. KOPTA: And one other matter, you had
22 asked Ms. Spocogee to provide an updated exhibit that
23 she is still working on. We may have to provide it
24 to you later.

25 JUDGE GOODWILL: Okay.

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1 MR. KOPTA: I don't know if you want to --

2 JUDGE GOODWILL: If you can just provide
3 that to the commission with a copy to Qwest, and
4 Qwest will certainly have the time, given the round
5 of briefing and everything, to respond to that
6 submission if they feel there's anything that needs
7 to be responded to. I'm just basically looking for
8 the various USOC codes and alpha descriptions of the
9 codes that McLeod has received on bills or price
10 quotes from Qwest. And again, Qwest can -- I don't
11 really need any analysis or interpretation of that
12 unless to explain what a line might mean. Qwest can
13 respond if they feel it is necessary, but I will go
14 ahead and use that as evidence in this proceeding
15 absent any objection from the parties.

16 MS. ANDERL: Okay. Thank you, your Honor.
17 Should we give it an exhibit number?

18 JUDGE GOODWILL: Why don't we go ahead and
19 give it Exhibit Number 24. And we can mark it as
20 such when we receive it from McLeod.

21 MS. ANDERL: And your Honor, if we have an
22 objection or response, we will provide that
23 expeditiously after we receive it.

24 JUDGE GOODWILL: Okay. Fine. Anything
25 else?

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1 MR. KOPTA: I don't think so.

2 JUDGE GOODWILL: From Qwest?

3 MS. ANDERL: No, your Honor.

4 JUDGE GOODWILL: We are adjourned. Thank

5 you.

6 (The proceeding concluded at 1:43 p.m.)

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REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, Diana Kent, Registered Professional Reporter and Notary Public in and for the State of Utah, do hereby certify:

That prior to being examined, the witness, were duly sworn to tell the truth, the whole truth, and nothing but the truth;

That said proceeding was taken down by me in stenotype on May 25, 2006 at the place therein named, and was thereafter transcribed and that a true and correct transcription of said testimony is set forth in the preceding pages;

I further certify that I am not kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the outcome thereof.

WITNESS MY HAND AND OFFICIAL SEAL this 5th day of June, 2006.

Diana Kent, RPR, CRR
Notary Public
Residing in Salt Lake County