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BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

MCLEOD USA TELECOMMUNICATIONS )  
SERVICES, INC., ) DOCKET NO. UT-063013  
 )  
Petitioner, ) Volume II  
 ) Pages 7 to 200  
vs. )  
 )  
QWEST CORPORATION, )  
 )  
Respondent. )  
\_\_\_\_\_ )

A hearing in the above matter was held on  
June 29, 2006, from 9:50 a.m to 4:55 p.m., at 600  
University Street, 30th Floor, Seattle, Washington,  
before Administrative Law Judge THEODORA MACE.

The parties were present as follows:

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MCLEOD USA TELECOMMUNICATIONS SERVICES, INC.,  
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Joan E. Kinn, CCR, RPR  
Court Reporter

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

2 JUDGE MACE: Let's be on the record in McLeod  
3 USA Telecommunications Services, Inc. versus Qwest  
4 Corporation, this is Docket Number UT-063013. This is  
5 June 29th, 2006, and we are convened at the offices of  
6 Stoel Rives in downtown Seattle. This is a hearing  
7 before the Washington Utilities and Transportation  
8 Commission, my name is Theodora Mace, I'm the  
9 Administrative Law Judge who has been assigned to hear  
10 this case.

11 I would like to have the oral appearances of  
12 counsel now beginning with the Petitioner.

13 MR. KOPTA: Thank you, Your Honor, Gregory J.  
14 Kopta of the law firm Davis, Wright, Tremaine, LLP, on  
15 behalf of McLeod USA Telecommunications Services, Inc.

16 MS. ANDERL: Thank you, Your Honor, Lisa  
17 Anderl, in-house attorney representing Qwest  
18 Corporation.

19 MR. GOODWIN: And Tim Goodwin, co-counsel  
20 with Ms. Anderl, in-house counsel for Qwest Corporation.

21 JUDGE MACE: Thank you.

22 MS. ANDERL: And, Your Honor, I believe we  
23 previously entered a full appearance.

24 JUDGE MACE: Yeah, I would assume that you  
25 have.

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1 MS. ANDERL: Okay.

2 JUDGE MACE: Let me indicate that while we  
3 were off the record this morning we discussed the  
4 witness list and made a couple of corrections to it, and  
5 that witness list will be revised and sent out after the  
6 hearing is over, it will reflect the exhibits that were  
7 admitted, et cetera. But counsel have a draft exhibit  
8 list at this point that we will work with today for  
9 purposes of the hearing.

10 The first thing we're going to address is the  
11 Qwest motion to strike Mr. Starkey's supplemental direct  
12 testimony, and we will deal with that briefly. I have  
13 read the motion and the response to the motion, but I  
14 will give counsel an opportunity briefly to address the  
15 motion on the record this morning. And after I have  
16 made the ruling, we will go ahead with the hearing, and  
17 I understand that Ms. Spocogee of McLeod will be first,  
18 then Mr. Morrison, then Mr. Starkey, and then after that  
19 Qwest, Mr. Easton, Ms. Million, and Mr. Ashton.

20 Is there anything of a preliminary nature  
21 before we go ahead with the motion that I need to  
22 address at this point? No?

23 All right, Ms. Anderl.

24 MS. ANDERL: Thank you, Your Honor. It's  
25 been a while since we filed the motion, I hope I won't

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1 be repeating too much of what we provided in writing.

2 JUDGE MACE: May I interrupt just one moment,  
3 I'm sorry to interrupt.

4 Referred to in this motion is a ruling made  
5 by an administrative law judge, and I assumed that that  
6 was Judge Wallis.

7 MS. ANDERL: It was Judge Moss actually.

8 JUDGE MACE: It was Judge Moss, okay. I was  
9 unable to locate on our record management system any  
10 copy of an order, and then I gleaned from reading that  
11 it was an oral ruling. Was it not made on the record,  
12 is that correct?

13 MR. KOPTA: That is correct.

14 MS. ANDERL: I can not recall, Your Honor,  
15 whether there was a tape recording made, I know there  
16 was no court reporter there.

17 Do you recall, Mr. Kopta?

18 MR. KOPTA: I don't recall whether there was  
19 a tape recording, but it was not a discussion that was  
20 before a court reporter, and so it was not transcribed  
21 officially.

22 JUDGE MACE: I just wanted to clear that up,  
23 because as I say, I couldn't find anything on RMS, and I  
24 take it neither of you have any kind of transcription.

25 MS. ANDERL: You take it correctly.

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1 MR. KOPTA: Only mentally.

2 JUDGE MACE: Okay, well, that leaves that  
3 open.

4 Okay, sorry to interrupt, I just wanted to  
5 clarify that.

6 MS. ANDERL: And frankly, Your Honor, I think  
7 at the time that Mr. Kopta and I presented that  
8 argument, we had no idea that Judge Moss was not going  
9 to be the assigned Administrative Law Judge, and so we  
10 had no reason to believe there wouldn't be kind of the  
11 continuum of knowledge.

12 JUDGE MACE: Well, I consulted with Judge  
13 Wallis because I actually thought that he had been  
14 assigned to the case, and I just consulted with the  
15 wrong administrative law judge.

16 Go ahead.

17 MS. ANDERL: In any event, not to repeat to  
18 any great extent what we filed in writing, but we do  
19 believe that the cost testimony of Mr. Starkey should be  
20 stricken and disregarded in this proceeding. This is a  
21 petition for enforcement of an interconnection  
22 agreement. The Commission has very recently ruled in  
23 both Pac West and Level 3 cases that petitions for  
24 enforcement of interconnection agreements are very  
25 narrowly drawn proceedings and are intended really only



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1 to address and enforce the terms of the interconnection  
2 agreement. And that is really what this case perfectly  
3 is, is a dispute on the language of the interconnection  
4 agreement, in this case an amendment to the  
5 interconnection agreement, and this case is at its heart  
6 a contract dispute.

7           The cost testimony, although McLeod will deny  
8 that the cost testimony is an attack on the power plant  
9 rates that were established in the cost docket, the cost  
10 testimony submitted by Mr. Starkey is in fact a bare  
11 attack on the rates and the rate design established by  
12 the Commission in the Part A Order in Docket Number  
13 UT-003013. That order was entered on January 31st,  
14 2001, in a docket in which McLeod participated, and  
15 challenges to the application of those rates are more  
16 appropriately brought in a cost docket type proceeding  
17 rather than in an individual complaint. We believe that  
18 the cost testimony as presented by Mr. Starkey  
19 inappropriately broadens the scope of this proceeding  
20 beyond that of an enforcement proceeding and  
21 inappropriately calls into question the propriety of how  
22 Qwest is assessing the power plant rate element on an  
23 as-ordered basis.

24           Now McLeod will tell you, Your Honor, that  
25 they're not doing that at all, all they're offering up

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1 is testimony and evidence with regard, extrinsic  
2 testimony and evidence in aid of the contract  
3 interpretation that will assist you in determining how  
4 to apply the amendment that was entered into in 2005.  
5 We would submit to you that the evidence of the cost  
6 study that was prepared and filed in 2000 and approved  
7 by the Commission in 2001 does not illuminate that  
8 question of how the power measuring amendment should  
9 apply and/or how -- which rates the power measuring  
10 amendment affected, and for that reason we believe that  
11 the cost testimony should not be admitted in this  
12 proceeding and should not be considered by the  
13 Commission in a complaint or petition of this nature.

14           And as we mentioned in our motion, we did of  
15 course because of the time schedule file responsive  
16 testimony to Mr. Starkey, but we would withdraw  
17 Ms. Million's testimony if this motion is granted. We  
18 don't believe it would be appropriate for Ms. Million's  
19 testimony to remain in the record if Mr. Starkey's  
20 testimony is stricken.

21           And I'm available for any questions if you  
22 have any.

23           JUDGE MACE: Mr. Kopta.

24           MR. KOPTA: Thank you, Your Honor. As  
25 Ms. Anderl predicted, we do disagree on all of the

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1 points that she raised. First of all, I want to clarify  
2 that there are two claims at issue here. One is for  
3 discrimination/undue preference, and another is for  
4 interpreting the amendment to the interconnection  
5 agreement between McLeod and Qwest. So we have to look  
6 at both claims to determine the extent to which the  
7 testimony is relevant, and our position is that it is  
8 relevant to both claims.

9           Certainly with respect first to the  
10 interpretation of the agreement, the agreement is about  
11 DC power usage and how that -- how the charges are to be  
12 applied under the amendment as it amends the parties'  
13 interconnection agreement. The cost study determined  
14 how those charges would be calculated. Both in the way  
15 that those charges were calculated and in the language  
16 that is used in the cost study itself, there is a tie  
17 between the cost study and the amendment to the  
18 interconnection agreement. First, as Mr. Starkey points  
19 out, the way that the costs are developed for the power  
20 plant charge is consistent with McLeod's interpretation  
21 that they be applied on a usage basis, as-used basis as  
22 opposed to any correspondence between the capacity of  
23 the power cables that run from the power plant to the  
24 collocated equipment.

25           In addition, the collocation cost study

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1    itself uses the term DC power usage and divides the  
2    total cost of a power plant by usage.  Again, that  
3    demonstrates that Qwest is interpreting the term usage  
4    either consistently with the language of the amendment,  
5    or it is using usage in the same way that they are using  
6    capacity interchangeably, and again that is language  
7    that is used in the interconnection contract amendment.  
8    So Mr. Starkey again explains that not only how the  
9    costs were developed but also the language that is used  
10   in the cost study is consistent with McLeod's  
11   interpretation of the amendment as opposed to Qwest's  
12   interpretation of the amendment.

13                With respect to the discrimination claim,  
14   again that directly supports McLeod's position that the  
15   way that Qwest applies the rates for DC power plant or  
16   DC power usage is discriminatory in that Qwest imposes  
17   those charges on CLECs, on collocating CLECs, based on  
18   the capacity of the power cables while Qwest itself pays  
19   or actually attributes or otherwise compensates itself  
20   for the power plant based on the, without trying to be  
21   too technical, List 1 Drain of its own equipment.

22                JUDGE MACE:  For the record, List 1 Drain,  
23   well, we don't know if it will come up I guess until I  
24   make a ruling, but my understanding of List 1 Drain is  
25   that it has to do with average usage of power as opposed

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1 to catastrophic, what might come as a catastrophic  
2 requirement of power, which is the List 2 Drain. Is  
3 that more or less --

4 MR. KOPTA: That's more or less what the  
5 anticipated usage --

6 JUDGE MACE: Maybe a witness later on, if we  
7 come to that, will, if we need to, talk about it.

8 MR. KOPTA: Which is why I was trying to  
9 avoid using the term at this point since we're still at  
10 the very beginning of the hearing.

11 But in any event, Mr. Starkey's analysis of  
12 the cost study supports McLeod's position on the  
13 discrimination/undue preference claim that Qwest charges  
14 CLECs differently for power than it effectively charges  
15 itself. So as to both claims, the testimony is directly  
16 relevant, supports McLeod's position, and therefore we  
17 would ask that the Commission deny Qwest's motion to  
18 strike.

19 JUDGE MACE: Anything else, Ms. Anderl?

20 MS. ANDERL: Your Honor, I would just  
21 reiterate our belief, and of course it will be your  
22 conclusion one way or the other, that the discrimination  
23 claim here is a flat out challenge to the rate. There  
24 can be no dispute, no debate that the rates that Qwest  
25 is charging and the method by which Qwest is applying

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1 power plant rates are consistent with the Commission's  
2 order, has been for five years in terms of charging the  
3 power plant rates on an as-ordered basis. To the extent  
4 that McLeod claims that this contract amendment even if  
5 it didn't affect that rate should have affected that  
6 rate so as not to work discrimination, that is not an  
7 appropriate challenge in a petition for enforcement, and  
8 it is not an appropriate challenge really outside of a  
9 cost docket. McLeod wants to litigate the costs  
10 previously established by the Commission, and that we  
11 believe is inappropriate.

12 JUDGE MACE: Well, thank you. I did spend  
13 some time thinking about this ahead of time after I read  
14 your filings on the motion, and of course I have heard  
15 your argument here this morning. I am inclined to deny  
16 the motion mainly because McLeod does contend that to  
17 some extent the cost study evidence supports its  
18 interpretation of the contract, and that is an issue  
19 here. It may well be after everything comes in and it's  
20 being considered by the Commission that it doesn't  
21 and/or that it is inappropriate, but at this point I  
22 think, this being an administrative hearing, I think I'm  
23 going to give some leeway, and I'm going to deny the  
24 motion, and let's hear what McLeod has to say.

25 I do want to point out though, this is not a

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1 rate investigation, and if somehow testimony appears to  
2 be veering in the direction of purely a rate  
3 investigation, that is not appropriate, and so, you  
4 know, I would want to be careful about that. I  
5 recognize there's a fine line when you're talking about  
6 discrimination, I do have some questions about how that  
7 discrimination claim fits in the petition for  
8 enforcement and the fact that the rates have been in  
9 effect, but I think that that will all be things that we  
10 consider as we are going forward after the hearing is  
11 over. So there you have it.

12 MR. KOPTA: Thank you, Your Honor.

13 MS. ANDERL: Thank you, Your Honor.

14 Ms. Million will be glad to know that her trip was not  
15 in vain.

16 JUDGE MACE: Well, I will be glad to hear  
17 Ms. Million testify. As I said, I have read some of her  
18 testimony, I just am not sure that you have ever  
19 testified before me, so it will be nice to hear from  
20 you. That's not the reason.

21 MS. ANDERL: We know that.

22 JUDGE MACE: All right, so let's see, we're  
23 at 5 minutes after 10:00 right now, let's go ahead with  
24 Ms. Spocogee, and then we'll probably break around 11:00  
25 or so for 10 minutes. I'm assuming we would do our

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1 normal hour and a half lunch break, but that could be  
2 negotiated. If you wanted it to be something a little  
3 shorter, we could do that too, but we'll talk about that  
4 at the end.

5 MR. KOPTA: Thank you, Your Honor, McLeod  
6 calls Ms. Spocogee to the stand.

7 (Witness TAMI J. SPOCOGEE was sworn.)

8 JUDGE MACE: I just wanted to remind you that  
9 we do have a reporter who is taking your testimony. If  
10 you have already testified on this issue in a couple of  
11 other jurisdictions, perhaps you're familiar with how  
12 things work, but you need to speak slowly and clearly,  
13 not nod your head for yes or no, and I think if you can  
14 do that, we will be in good shape.

15 Okay.

16 MR. KOPTA: Thank you, Your Honor.

17

18 Whereupon,

19 TAMI J. SPOCOGEE,  
20 having been first duly sworn, was called as a witness  
21 herein and was examined and testified as follows:

22

23 D I R E C T E X A M I N A T I O N

24 BY MR. KOPTA:

25 Q. Ms. Spocogee, would you state your name and



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1 business address for the record, please.

2 A. Tami Spocogee, business address is 15 East  
3 Fifth Street in Tulsa, Oklahoma.

4 Q. And do you have before you what has been  
5 identified as Exhibit 80-TC, which is the direct  
6 testimony of Tami Spocogee, Exhibit 81-T, which is the  
7 rebuttal testimony of Tami Spocogee, and Exhibit 82,  
8 which is Exhibit TS-1?

9 A. Yes, I do.

10 Q. Were those exhibits prepared by you or under  
11 your direction and control?

12 A. Yes.

13 Q. Are they true and correct to the best of your  
14 knowledge?

15 A. Yes.

16 Q. Do you have any corrections to make to any of  
17 those exhibits?

18 A. No, I don't.

19 Q. If I asked you the questions that are  
20 contained in Exhibit 80-TC and Exhibit 81-T, would your  
21 answers be the same as those contained in those  
22 documents?

23 A. Yes, they would.

24 MR. KOPTA: Your Honor, I move for admission  
25 of Exhibits 80-TC, 81-T, and 82.

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1                   JUDGE MACE: Any objection to the admission  
2 of those exhibits?

3                   MR. GOODWIN: None, Your Honor.

4                   MR. KOPTA: Thank you, Ms. Spocogee is  
5 available for cross-examination.

6                   JUDGE MACE: So then I gather that  
7 Mr. Goodwin is going to do the cross.

8                   MR. GOODWIN: Yes, Your Honor.

9                   JUDGE MACE: Go ahead.

10

11                   C R O S S - E X A M I N A T I O N

12 BY MR. GOODWIN:

13           Q.     Good morning, Ms. Spocogee.

14           A.     Hello.

15           Q.     You have testified on this matter in both  
16 Iowa and Utah and now here in Washington, correct?

17           A.     Correct.

18           Q.     And you have been McLeod's sole employee  
19 testifying on their behalf in these proceedings,  
20 correct?

21           A.     Yes, I have.

22           Q.     But you did not participate in any of the  
23 negotiations for the amendment that's being discussed  
24 here today?

25           A.     No, I did not.

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1 Q. And you did not directly support anyone that  
2 participated in those discussions?

3 A. No, not directly.

4 Q. Now Mr. Starkey and Mr. Morrison, who are  
5 outside consultants that are testifying in these  
6 proceedings, they are not McLeod employees, are they?

7 A. No.

8 Q. And they did not participate in the  
9 negotiations for this amendment, did they?

10 A. No.

11 Q. Now McLeod does have employees or former  
12 employees that were involved in the negotiation for this  
13 amendment, correct?

14 A. Yes.

15 Q. And in the internal decision process that led  
16 up to McLeod's decision to enter into this amendment,  
17 correct?

18 A. Correct.

19 Q. But none of those persons has provided any  
20 testimony as to the negotiations or what McLeod was  
21 considering in its decision to enter into the DC Power  
22 Measurement Amendment, correct?

23 A. Not directly, right.

24 Q. So no?

25 A. No.

0026

1 Q. And just so we're clear, McLeod USA is not  
2 disputing the power plant charges invoiced by Qwest  
3 before the DC Power Measuring Amendment was executed?

4 A. No, not in this hearing.

5 Q. Prior to the amendment in question in this  
6 case, Qwest billed McLeod USA for the power plant charge  
7 based on the number of amps McLeod USA requested for its  
8 power feed or feeds, correct?

9 A. Correct.

10 Q. And McLeod USA never objected to Qwest's  
11 interpretation of how the underlying interconnection  
12 agreement provided for power plant to be charged prior  
13 to this amendment, correct?

14 A. Correct.

15 Q. And McLeod USA is not objecting to that  
16 interpretation in this proceeding, correct?

17 A. Correct.

18 Q. We'll talk briefly about your direct  
19 testimony. Your testimony doesn't provide any direct  
20 evidence of the amount of overcharges, but just an  
21 estimate, correct?

22 A. Yes, correct.

23 Q. And that is based on an audit that you  
24 performed of Qwest billing information?

25 A. Yes, that my department performed.

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1 Q. And nationwide I believe you had testified  
2 before that the total amount of overcharges, not just in  
3 Washington but nationwide for Qwest, is somewhere near  
4 \$5 Million; is that correct?

5 A. Yes, I believe that was through possibly  
6 March or April bills through the --

7 JUDGE MACE: I'm sorry, would you repeat your  
8 question again, counsel.

9 Q. How about if I rephrase.  
10 On a nationwide basis, how much does McLeod  
11 claim that Qwest has overcharged for power plant  
12 charges?

13 A. Through the May invoices, approximately  
14 \$5.188 Million.

15 JUDGE MACE: And that's of this year through  
16 May?

17 THE WITNESS: Yes.

18 JUDGE MACE: Okay, thank you.

19 BY MR. GOODWIN:

20 Q. And that involves billing from the first  
21 point after the execution of these agreements, which was  
22 in the fall of 2004?

23 A. Yes, each state is a little bit different,  
24 but estimated, yes.

25 Q. And in Washington you have withheld some

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1 amounts in connection with this dispute, correct?

2 A. Yes.

3 Q. And McLeod has withheld about \$205,019.57 I  
4 think according to your direct testimony?

5 A. Yes.

6 Q. And if the Board were to agree with your  
7 interpretation of the DC Power Measurement Amendment,  
8 Qwest should only credit McLeod USA a maximum of your  
9 estimate of the overcharges in Washington less the  
10 \$205,000 some odd that McLeod has withheld, correct?

11 A. You would have to credit the entire amount to  
12 clear the balance on the bill because we did withhold  
13 it, but you would not, since McLeod has already withheld  
14 it, you wouldn't owe us any money for that amount, for  
15 the difference.

16 JUDGE MACE: But so I'm clear, in Washington  
17 the amount so far is roughly \$205,000, is that right?

18 THE WITNESS: That we have withheld today.

19 JUDGE MACE: That you have withheld?

20 THE WITNESS: Right.

21 JUDGE MACE: Okay.

22 THE WITNESS: As a result of an agreement  
23 between our two companies in December of last year, we  
24 agreed to stop withholding, and so the dispute has  
25 continued, we had just withheld a certain amount up to

0029

1 that point. And from the time we agreed upon, we have  
2 been paying the charges ongoing.

3 JUDGE MACE: So this is what has been upheld  
4 until January 1st?

5 THE WITNESS: Yes.

6 JUDGE MACE: From the time the amendment was  
7 signed, is that --

8 THE WITNESS: Well, what we did was we --  
9 when the disputes were first filed from the work that my  
10 group did was around 9-13 of '05, September 13th of '05,  
11 we back disputed, and so we started withholding the  
12 charges at that time.

13 JUDGE MACE: Okay, thank you.

14 BY MR. GOODWIN:

15 Q. And in your direct testimony, I believe you  
16 testified that you estimated that Qwest charged McLeod  
17 USA \$551,096.18 more than should have been billed for DC  
18 power?

19 A. Yes.

20 Q. I would like then to ask you some questions  
21 about some discovery responses that we have received  
22 lately, shifting subjects a little bit.

23 A. Okay.

24 Q. Are you familiar with the responses that  
25 McLeod provided to Qwest with respect to Request Number

0030

1 16 in Washington, which is being handed around and I  
2 think being marked for identification purposes.

3 JUDGE MACE: This will be 83.

4 A. Oh, yes, I am.

5 Q. All right. In some locations McLeod USA has  
6 its own facilities and power plants, correct?

7 A. Yes, we do.

8 Q. And in those, in some of those locations,  
9 although I think we have determined none in Washington,  
10 McLeod actually has collocators that share the  
11 facilities and the power plant and the power that is  
12 provided by McLeod, correct?

13 A. Correct.

14 Q. And when that happens, then McLeod charges  
15 those collocators for DC power usage and DC power plant  
16 and all the other incidents of collocation, correct?

17 A. Correct.

18 Q. Now in this Request Number 16 we asked McLeod  
19 USA about how you charge your collocation customers for  
20 DC power plant, your answer here is that there's a  
21 single rate that McLeod USA charges for both plant and  
22 usage?

23 A. Correct.

24 Q. And that usage and plant combined rate or  
25 blended rate is charged at the level of usage reported



0031

1 by the customer; is that a fair characterization?

2 A. Yes.

3 Q. Okay. Now we asked a follow-up question to  
4 that discovery request, and that is our Request Number  
5 19.

6 MR. GOODWIN: And while Ms. Anderl is handing  
7 that around, I would like to move the admission of  
8 Exhibit 83.

9 JUDGE MACE: Any objection?

10 MR. KOPTA: No objection.

11 JUDGE MACE: I will admit it.

12 MS. ANDERL: And, Your Honor, may I just ask  
13 a clarifying question, does the Bench only want one copy  
14 of these, or would you like a second?

15 JUDGE MACE: The Bench would prefer to have a  
16 second copy if it's possible.

17 MS. ANDERL: Here's the second copy of this  
18 one, and we'll get you the second copy of the one we  
19 just handed out in a minute.

20 BY MR. GOODWIN:

21 Q. Do you have that Exhibit 19, which I would  
22 like to mark as --

23 JUDGE MACE: It's 84.

24 Q. -- Exhibit 84?

25 A. Yes, I do.

0032

1 Q. Are you familiar with that discovery  
2 response?

3 A. Yes.

4 Q. Now I would like to focus your attention on  
5 the second sentence of your response, and it says -- do  
6 you see where it says:

7 The McLeod USA sales representative asks  
8 the collocation applicant what will be  
9 their anticipated DC power usage  
10 requirements (X amps).

11 A. Yes.

12 Q. Is this how the customer self reports the  
13 usage for which they will be billed as described in your  
14 answer to Data Request Number 16, which is marked as  
15 Exhibit Number 83?

16 A. Yes, it is.

17 Q. Now I would like you to turn to your -- the  
18 attachment that came along with your response to Data  
19 Request Number 19, which is the last page of what's been  
20 marked as Exhibit 84.

21 A. Okay.

22 Q. Do you have that?

23 A. Yes, I do.

24 Q. There is no place on this collocation form,  
25 application form that McLeod's collocation customers

0033

1 submit, to indicate the List 1 requirement for that  
2 collocator's collocation, is there?

3 A. No, we just ask for one, one place for the DC  
4 amps per feed.

5 Q. In fact, even on this form there's no place  
6 for the collocation customer to indicate their required  
7 usage, at least on the form, right?

8 A. Well, I kind of disagree. On the form it  
9 does say space and power information, and it does show  
10 the DC amps per feed on there.

11 Q. Okay, so if -- so the way that this form fits  
12 in to what you were telling me in response to Exhibit  
13 16, excuse me, Exhibit 19, your response there --

14 JUDGE MACE: It's actually, just so the  
15 record isn't confused, it's Exhibit 83 and 84.

16 MR. GOODWIN: I'm sorry, I misspoke.

17 JUDGE MACE: And DR 19 and 16.

18 MR. GOODWIN: Yes, let me start again with  
19 that question.

20 BY MR. GOODWIN:

21 Q. Now referring back to your response to Data  
22 Request Number 19, which is Exhibit 84, is it your  
23 testimony that this total DC amps per feed and -- is it  
24 your testimony that the DC amps per feed and then  
25 ultimately the DC amps needed in that box marked space

0034

1 and power information corresponds to the X amps in that  
2 second sentence of the text of your response?

3 A. Yes, I read it as the same thing, the DC  
4 power usage requirements is the same DC power usage  
5 needed.

6 Q. All right.

7 A. And feed.

8 Q. Now let's turn to your --

9 MR. GOODWIN: Oh, I would like to move the  
10 admission of Exhibit 84.

11 JUDGE MACE: Any objection to Exhibit 84?

12 MR. KOPTA: No objection.

13 JUDGE MACE: I will admit it.

14 BY MR. GOODWIN:

15 Q. Let's turn to your rebuttal testimony, and I  
16 want to ask you some questions about communications  
17 between McLeod USA and Qwest prior to the execution of  
18 this amendment. And I'm handing you what will be marked  
19 as Exhibit 85, which is your response to Request 1 from  
20 Iowa; do you see that?

21 A. Yes, I do.

22 MR. GOODWIN: And by the way, Your Honor, we  
23 have -- this is a multijurisdictional proceeding.

24 JUDGE MACE: Yes, I gathered that.

25 MR. GOODWIN: And so McLeod and Qwest have

0035

1 agreed that discovery requests from other jurisdictions  
2 can be used in every other jurisdiction to the extent  
3 that they are obviously relevant to that particular  
4 jurisdiction, and this is a request and a response from  
5 Iowa.

6 JUDGE MACE: Thank you.

7 BY MR. GOODWIN:

8 Q. Now this particular request which we have  
9 marked as Exhibit 85 asks for communications between  
10 McLeod USA and Qwest prior to the DC Power Measuring  
11 Amendment's execution, correct?

12 A. Correct.

13 Q. Now in this proceeding either in response to  
14 this discovery request or in McLeod USA's testimony,  
15 there is no evidence of any objective manifestation of  
16 intent communicated from McLeod USA to Qwest regarding  
17 the DC Power Measuring Amendment prior to its execution,  
18 correct?

19 MR. KOPTA: Objection, calls for a legal  
20 conclusion as to objective manifestation of intent.

21 MR. GOODWIN: Well, first of all, I think  
22 generally the objection to a legal conclusion is not  
23 really a valid one. When you object to a question that  
24 calls for a legal conclusion, really the objection is a  
25 foundation objection, and here I -- the meaning of

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1 objective, the meaning of manifestation, and the meaning  
2 of intent are all words that have clear meanings. If  
3 you like, I can lay more foundation to make sure that  
4 she understands what objective and manifestation and  
5 intent mean, I can provide that foundation.

6 JUDGE MACE: Yes, I would like to have you  
7 provide that foundation.

8 MR. GOODWIN: Okay.

9 JUDGE MACE: We do need to know a little bit  
10 about where this witness is in terms of drawing  
11 conclusions about those terms.

12 MR. GOODWIN: Sure.

13 BY MR. GOODWIN:

14 Q. With regard -- do you understand -- if I  
15 asked you the question of whether McLeod USA had  
16 communicated any objective manifestation of its intent,  
17 what types of communications, without answering the  
18 actual question itself, what would you understand that  
19 question to mean?

20 A. If I can ask a clarifying question first. If  
21 you're meaning that did McLeod understand completely  
22 what the amendment meant to do or did we object to  
23 anything in the amendment?

24 Q. All right, let me rephrase and ask the  
25 question in a different way.

0037

1                   Did McLeod USA ever tell Qwest prior to the  
2 execution of the amendment what McLeod USA thought the  
3 amendment would accomplish or what the amendment meant?

4           A.       McLeod USA expected, and this is through the  
5 investigation that I had to perform through the audits  
6 that we did to understand everything that was going on,  
7 McLeod USA had understood that the amendment was to  
8 reduce the power charges where they would be billed  
9 instead of an as-ordered basis, they would be billed as  
10 a per measure basis based on the usage that we actually  
11 used in the collocation. Through the trending or  
12 through the other things that have happened in other  
13 states through power usage amendments or power usage  
14 products that had been offered by other companies, the  
15 overall purpose was just to reduce the monthly costs and  
16 to only be billed by the usage being reduced based on  
17 the measure.

18                   McLeod had been in other states, for instance  
19 in Michigan, had been provided a usage amendment similar  
20 to this. But what had happened in that is it had  
21 actually ended up increasing McLeod's overall costs  
22 instead of just decreasing the power usage. The power  
23 usage was decreased in fact, but other elements within  
24 the collocation were increased. So the group that was  
25 responsible for this amendment, their sole purpose was

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1 to understand that we would have a reduction in our  
2 monthly collocation usage cost.

3           The group that signed the amendment or was  
4 responsible for the amendment did not understand all of  
5 the cost components involved and did not understand the  
6 billing information in detail to even question the  
7 information. So no, they didn't object, but to be  
8 honest with you, the amendment, as with other cases,  
9 were handed to you, from Qwest to McLeod, and either you  
10 take it or you don't take it. And they saw it was a  
11 benefit to at least sign it, because the costs did  
12 increase, but once additional audits were performed  
13 after the fact, we found that our -- what we looked at  
14 in the detail and through the interpretation after  
15 further investigation, we thought that the charges  
16 should be decreased further.

17       Q.     All right.

18       A.     I don't know if that answers it, but.

19       Q.     It was a pretty long response.

20       A.     Yes.

21       Q.     And actually there's some things in there  
22 that I want to talk about later, but really my question  
23 is simply, and I think you said this in your answer but  
24 I want to make sure that I have characterized it  
25 correctly, McLeod never told Qwest anything about its



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1 interpretation of the DC Power Measurement Amendment  
2 prior to it's execution, correct?

3 A. The interpretation meaning the power usage  
4 would be decreased, that was the interpretation.

5 Q. But McLeod USA never told that, never  
6 communicated that to Qwest, right?

7 A. The overall intent of the amendment to start  
8 with was the reduction of the power usage, so yes, they  
9 did communicate that, that's the whole purpose.

10 Q. Okay.

11 A. But specifically the power plant, no.

12 Q. And just to be clear, there's a dispute in  
13 this case about two different charges, one is the power  
14 usage charge and one is the power plant charge, right?

15 A. Well, the dispute is for the power plant,  
16 which McLeod considers part of the power usage rate  
17 elements. It's a rate element of the power usage  
18 component.

19 Q. But the question is between, I understand the  
20 dispute, but the question is there are those two rate  
21 elements or charges or rates, one is for power plant,  
22 one is for power usage, and McLeod now contends that the  
23 DC Power Measuring Amendment should have changed both of  
24 those rate charges elements to a measured basis, Qwest  
25 contends that those rates should only change for the

0040

1 power usage charges but not for the power plant charges,  
2 correct?

3 A. Yes.

4 Q. And that difference in opinion or difference  
5 in interpretation was never discussed between McLeod and  
6 Qwest, at least from McLeod's side, prior to entering  
7 the amendment itself, correct?

8 A. Correct.

9 MR. GOODWIN: I'm circulating another exhibit  
10 which is going to be marked or I would like to have  
11 marked as Exhibit --

12 JUDGE MACE: 86.

13 MR. GOODWIN: -- 86.

14 And by the way, if I haven't already, I would  
15 like to move the admission I think of 84 and 85.

16 JUDGE MACE: 85, any objection?

17 MR. KOPTA: No objection.

18 JUDGE MACE: Thank you, I will admit it.

19 BY MR. GOODWIN:

20 Q. Do you have 86 in front of you?

21 A. Yes, I do.

22 Q. And 86 is a request also from Iowa that asks  
23 Qwest to please produce, or excuse me, asks McLeod to:

24 Please produce all documents reflecting  
25 or relating to non-privileged internal

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1                   communications within McLeod --

2                   JUDGE MACE: Can I just ask you to slow down  
3 a little bit. You probably have your questions there  
4 and you may be reading them, but if you could just slow  
5 down, it will help the reporter probably.

6                   MR. GOODWIN: I apologize, Your Honor.

7                   JUDGE MACE: Go ahead.

8 BY MR. GOODWIN:

9           Q.       And Request 2 asks McLeod to provide or to  
10 produce all documents reflecting or relating to  
11 non-privileged internal communications within McLeod USA  
12 relating to the DC Power Measuring Amendment prior to  
13 its execution?

14           A.       Correct.

15                   JUDGE MACE: Is this another data request  
16 from the Iowa case?

17                   MR. GOODWIN: Yes, Your Honor, and McLeod's  
18 response is really the exhibit here.

19                   JUDGE MACE: Thank you.

20                   MR. GOODWIN: Not so much the request.

21                   JUDGE MACE: Thank you.

22                   MR. GOODWIN: I would like to move the  
23 admission then of Exhibit 86.

24                   JUDGE MACE: Any objection?

25                   MR. KOPTA: No objection.

0042

1 JUDGE MACE: I will admit it.

2 BY MR. GOODWIN:

3 Q. Also there are no documents provided either  
4 to the Commission or to Qwest in discovery that reveal  
5 any internal but unexpressed understanding or intent on  
6 McLeod USA's part that the power plant charges should be  
7 changed by the DC Power Measuring Amendment prior to its  
8 execution, are there?

9 A. No.

10 Q. You have some testimony in your rebuttal  
11 about the change management process or CMP, do you agree  
12 that the change management process is a forum between  
13 Qwest and CLECs like McLeod USA that discusses changes  
14 like products or billing or processes, among other  
15 things?

16 A. Yes.

17 Q. And one of the topics that is covered by the  
18 CMP forum is when for instance Qwest would introduce a  
19 new product like the DC Power Measuring Option or  
20 Amendment, correct?

21 A. Correct.

22 Q. And McLeod USA did participate in the CMP  
23 forums at least for some purposes, correct?

24 A. Yes, we had a representative there.

25 Q. And we know that specifically during the time

0043

1 that this DC Power Measuring Option was being discussed  
2 McLeod had a representative involved in the CMP forum?

3 A. Yes.

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

8 A. Correct, in addition to many others.

9 JUDGE MACE: I'm sorry, I didn't hear you.

10 A. In addition to many others.

11 Q. Now you say in addition to many other  
12 employees or many other E-mails?

13 A. Notifications, right, E-mails.

14 Q. Well, so you're saying that basically that  
15 Qwest and McLeod have a lot of communications between  
16 them?

17 A. We have a -- there are a lot of what we call  
18 notification, which is included in your CMP  
19 notifications, that are sent automatically out from  
20 Qwest to several of us within McLeod. Can receive  
21 hundreds of them, and that's what I was saying, in  
22 addition to the regular day-to-day information that we  
23 exchange.

24 Q. Sure, but McLeod has developed the  
25 organizational structure to make sure that McLeod

0044

1 addresses and deals with the topics that it receives  
2 notice on that are important to them?

3 A. Correct.

4 Q. And these important things, the things that  
5 are important to McLeod, McLeod should pay attention to  
6 those notices?

7 A. Yes.

8 Q. And charges for DC power, and that's DC power  
9 distribution and plant and usage, all those charges are  
10 an important topic for McLeod, correct?

11 A. Correct.

12 Q. In fact, you had discussed before in that  
13 long answer about how prior to the negotiations for this  
14 amendment McLeod had been involved in at least Michigan  
15 but also several other states in negotiating or  
16 litigating DC power charges, correct?

17 A. Correct.

18 Q. And the documents that are disclosed in the  
19 CMP are easily accessible if indeed it is important for  
20 a CLEC to find that information?

21 JUDGE MACE: What do you mean by that?

22 Q. It's easy to find the CMP documents if it's  
23 important to you to get them, right?

24 A. Yes.

25 Q. But in your rebuttal testimony, there is no

0045

1 evidence regarding whether McLeod USA's employees were  
2 aware of this CMP information contained and discussed in  
3 Mr. Easton's testimony either before or immediately  
4 after signing the DC Power Measurement Amendment, is  
5 there?

6 A. As I stated in my testimony, there was a  
7 person that did attend one of the CMP meetings where the  
8 initial product was I guess brought up by Qwest.

9 Q. And when you say the initial product, you  
10 mean the DC Power Measuring Option?

11 A. Yes, right.

12 Q. I'm sorry to have interrupted.

13 A. No problem.

14 However, that person that was the  
15 representative there was representing our service  
16 delivery organization, which is the biggest impact for  
17 the CMP process. The CMP process is actually mostly  
18 concerning your operational systems for ordering and  
19 provisioning, your billing operational systems, all of  
20 that. Not necessarily do we look at that for the  
21 financial impact to our company. We look at it more as  
22 a process to help with our day-to-day operations, and  
23 that's what that person was there for.

24 Q. But included in among those other process  
25 related things are product and finance affecting items

0046

1 like this DC Power Measuring Option, correct, that's a  
2 part of the CMP forum?

3 A. Well, the definition is not the financial  
4 side of the product. The definition of the CMP is  
5 actually the definition is showing about the operational  
6 support systems that support each product.

7 Q. All right. Now my question was that in your  
8 testimony there's -- you don't say whether or not any  
9 McLeod USA employee actually read this information,  
10 right?

11 A. Correct.

12 Q. Now I think, you know, before you have  
13 testified that, and you just discussed this a little  
14 bit, that the CMP process is not necessarily the  
15 contract, it's not determinative, and sometimes I think  
16 you have said that the process can be frustrating  
17 because Qwest doesn't always respond to the concerns  
18 that are raised in that forum, right?

19 A. Correct.

20 Q. But if McLeod USA had read the CMP document  
21 that's attached to Mr. Easton's testimony as Exhibit,  
22 it's WRE-3 I believe to his testimony but it is Exhibit  
23 63 tentatively in this proceeding, if McLeod had  
24 actually reviewed that document, McLeod USA would have  
25 known at least of the disagreement between the parties



0047

1 that now exists, correct?

2 A. McLeod could have read the document that's in  
3 the exhibit. However, in the CMP process it doesn't  
4 cover necessarily the end result of a contract. In  
5 fact, it clearly states in the exhibit that in case of  
6 conflict, the ICA will override what is decided in the  
7 CMP. And, in fact, there are instances in this exhibit  
8 where things were shown to be implemented or to be  
9 stated as a fact through the CMP that actually was  
10 changed in the end result product. So McLeod goes to  
11 the ICA's or to our amendments to understand what the  
12 end result is supposed to be. So we can look at them,  
13 but it doesn't necessarily mean that we take it for  
14 granted that that's the end result of what should  
15 happen.

16 Q. But if you had looked at them in this case,  
17 and by you I mean McLeod in general, you would have been  
18 able to discern that there was a difference in how Qwest  
19 believed the DC power measuring would affect the power  
20 plant charge compared to how McLeod now is arguing in  
21 this proceeding it should have operated?

22 A. Possibly.

23 Q. And in addition to the CMP documents, there  
24 is a separate document called the PCAT or product  
25 catalog, which is attached to Mr. Easton's testimony as

0048

1 Exhibit WRE-2 and marked tentatively in this proceeding  
2 as Exhibit 62.

3 A. Correct.

4 Q. And that is a separate document apart from  
5 the CMP forum, correct?

6 A. Correct.

7 Q. But quite often these product catalogs grow  
8 out of a CMP process, correct?

9 A. Correct.

10 Q. And again, the product catalog is another  
11 place that McLeod could have looked and possibly known  
12 of the difference in interpretation of this power  
13 measuring option prior to entering the agreement?

14 A. Yes.

15 Q. Do you have in front of you the Exhibits  
16 WRE-4 and 5, which are 64 and 65 in this proceeding?

17 A. Yes, I do.

18 Q. Okay. And you participated in the  
19 preparation of the discovery responses in this case that  
20 led to the production of those two documents to Qwest?

21 A. Yes.

22 Q. And I believe that response is number 50 to  
23 the fourth set of data requests to McLeod in Iowa?

24 A. I believe so.

25 Q. Okay. I'm handing you what I would like to

0049

1 have marked as Exhibit 87, which is actually titled  
2 Qwest Corporation's Fourth Set of Discovery Requests,  
3 but can you confirm that actually what happened here is  
4 that McLeod took the Word document that was E-mailed to  
5 McLeod that had this title and then just filled in its  
6 responses in the space provided electronically and  
7 returned that document to Qwest as its response?

8 A. Yes.

9 Q. And then I called your attention to request  
10 50, which has a handwritten or a copy of a handwritten  
11 interlineation of the number 50 on that; do you see  
12 that?

13 A. Yes.

14 JUDGE MACE: Where is that on this document?

15 MR. GOODWIN: Page 5 of 7.

16 JUDGE MACE: Where is the handwritten number  
17 50, is that what you're talking about?

18 MR. GOODWIN: Yes.

19 JUDGE MACE: Yes.

20 MR. GOODWIN: And I will represent to the  
21 Commission that that is an interlineation provided by  
22 counsel for Qwest, because the request numbers where it  
23 says Request 49, Request 48, were automatically  
24 generated by whatever fairies live inside the computer,  
25 and somehow when they came back from McLeod the

0050

1 responses kind of cut that off, and so we just put in a  
2 50 there for purposes of reference here in this hearing,  
3 and with that I would move the admission of Exhibit 87.

4 MR. KOPTA: No objection.

5 JUDGE MACE: I will admit it.

6 I think, I am not sure that I admitted 86, if  
7 I didn't --

8 MR. GOODWIN: I will move the admission of  
9 86.

10 JUDGE MACE: Any objection?

11 MR. KOPTA: No objection.

12 JUDGE MACE: I will admit it.

13 MR. GOODWIN: I think it was already  
14 admitted.

15 JUDGE MACE: It might have been, I had  
16 forgotten.

17 BY MR. GOODWIN:

18 Q. All right, now in request 50 we asked for a  
19 spreadsheet that was attached to the E-mail that is  
20 Exhibit B to the set of discovery requests, which is  
21 also attached here to Exhibit 87, correct?

22 A. Correct.

23 Q. And specifically if you will turn to the  
24 second to the last page of the entire Exhibit 87, about  
25 a third of the way down there is an icon there that

0051

1 refers to an Excel spreadsheet; do you see that?

2 A. Yes.

3 Q. And that Excel spreadsheet is Qwest Power  
4 Amendment Savings?

5 A. Yes.

6 Q. And the text immediately above that says, I,  
7 and that's referring to Mark McCune, correct, I built a  
8 spreadsheet that should work to track our estimate, add  
9 to it what you need; do you see that?

10 A. Yes.

11 Q. And it is that particular Excel spreadsheet  
12 that we asked you to produce in response to Exhibit 50,  
13 or excuse me, Request 50 in Exhibit 87?

14 A. Correct.

15 Q. And we also asked for any subsequent versions  
16 of that particular spreadsheet that had ever been  
17 produced, correct?

18 A. Correct.

19 Q. And in response to that request, you produced  
20 to us Exhibits WRE-4 and WRE-5, which are tentatively  
21 marked as 64 and 65 in this hearing, correct?

22 A. Correct.

23 Q. And the difference between Exhibit 64 and 65  
24 is that according to your response Exhibit 64 was  
25 renamed to a file name that is basically Exhibit 65,

0052

1 correct?

2 A. Correct.

3 Q. And no other versions of these spreadsheets  
4 exist, correct?

5 A. Correct.

6 Q. There is no populated version of Exhibit 64?

7 A. No, there is not.

8 Q. Now let's turn to that E-mail chain that is  
9 Exhibit B, and perhaps it would be more convenient if I  
10 marked that as a separate exhibit.

11 JUDGE MACE: Well, let's be off the record  
12 for a moment.

13 (Discussion off the record.)

14 JUDGE MACE: We will just refer to Exhibit  
15 87, and if you could just be so kind as to try to point  
16 us to the right pages of the exhibit.

17 MR. GOODWIN: Okay. Turn to the Exhibit A  
18 attached to Exhibit 87, which immediately follows page  
19 7, so it's the eighth page of Exhibit 87.

20 JUDGE MACE: And it shows at the bottom of  
21 the page Exhibit A; is that correct?

22 MR. GOODWIN: Yes, Your Honor.

23 JUDGE MACE: Thank you.

24 BY MR. GOODWIN:

25 Q. Are you there?

0053

1 A. Yes.

2 Q. Now within that Exhibit A, turn to the third  
3 page of Exhibit A.

4 A. Okay.

5 Q. And the first entry of this E-mail chain  
6 contains an attachment that is entitled DC Power  
7 Amendment 05-27-04.doc.

8 A. Yes.

9 Q. And the text of that particular E-mail says,  
10 Mark, are you interested in an amendment that provides  
11 for charges based on power usage, correct?

12 A. Correct.

13 Q. And turning back to Exhibit 87 a couple of  
14 pages to Request 49, you will see that we asked for that  
15 particular document, and you provided us what I would  
16 like to have marked as Exhibit 88, and I want you to  
17 verify for me that this Exhibit 88 is indeed what you  
18 provided in response to Request 49?

19 A. Yes, it was.

20 MR. GOODWIN: I would move the admission of  
21 88.

22 MR. KOPTA: No objection.

23 JUDGE MACE: I will admit it.

24 BY MR. GOODWIN:

25 Q. And so turning back to that page 3 of the

0054

1 Exhibit A, which would be the tenth page of the Exhibit  
2 87, now you aren't a party to any of these E-mail  
3 communications all the way up the chain back to the last  
4 entry on August 18th, 2004, correct?

5 A. Correct.

6 Q. Throughout this change, the parties were  
7 discussing the document that we have now admitted as  
8 Exhibit 88, correct?

9 A. Correct.

10 Q. And that particular amendment differs from  
11 the agreement in this case only in the fact that the  
12 blanks are filled in?

13 A. Correct.

14 Q. And, in fact, this identical agreement was  
15 entered into by McLeod and Qwest in all 14 of Qwest's  
16 states, correct?

17 A. In the states where we have collocations.

18 Q. Wasn't it also introduced, excuse me,  
19 executed and filed --

20 A. Oh, we did, I'm sorry, I apologize, yes, we  
21 signed them for all states.

22 Q. Right, even for a couple of states where --

23 A. We didn't have one, correct.

24 Q. And when you say you didn't have one, you  
25 mean --



0055

1 A. Didn't have a collocation, excuse me.

2 Q. Now turn to the July 28th, 2004, entry within  
3 that Exhibit A to Exhibit 87. It starts on the bottom  
4 of that page 1, which is the eighth page of Exhibit 87,  
5 and goes down to page 2 of Exhibit A or the ninth page  
6 of Exhibit 87.

7 A. Of Exhibit B?

8 Q. Exhibit A to Exhibit 87, I'm sorry, so it's  
9 the ninth page of Exhibit 87, second page of Exhibit A.  
10 Are you there?

11 A. No, just a second. Second page of Exhibit A,  
12 yes.

13 Q. Okay. Now the text actually begins on that  
14 second page of Exhibit A, and the date reference is on  
15 the first page, right?

16 A. Correct.

17 Q. Okay. And would you read the first sentence  
18 of that E-mail for that July 28th, 2004, entry?

19 A. (Reading.)  
20 Jimmy, can you (or an engineer) work  
21 with Jody to estimate what our savings  
22 could be at our Qwest sites after the  
23 amendment to bill on metered usage.  
24 This is only good for sites greater than  
25 60 amps ordered.

0056

1 Q. And this Jody Ochs is a person that was  
2 directed by Mark McCune to work with Sherry Krewett of  
3 McLeod USA to get the amendment?

4 A. Yes.

5 Q. And Sherry Krewett is who?

6 A. She was a member of our vendor management  
7 group.

8 Q. She is a contract administrator for McLeod?

9 A. Kind of.

10 Q. Turn back to page 2 of Exhibit 87, which is  
11 your response to Exhibit, or excuse me, Request 45.

12 A. I'm sorry, which page?

13 Q. Page 2 of Exhibit 87.

14 A. Mm-hm.

15 Q. It's just a few pages back in that exhibit,  
16 it's your response to Request Number 45.

17 A. Oh, yes.

18 Q. Okay. In that response you identified a  
19 Sherry Krewett as a contract administrator?

20 A. Yes.

21 Q. And that's a fair characterization of her  
22 duties?

23 A. It's her title.

24 Q. Or at least her title?

25 A. Yes, right.

0057

1 Q. And she was, this Sherry Krewett was working  
2 with this Jody Ochs to obtain the interconnection  
3 agreement or amendment from Qwest, right?

4 A. Correct.

5 Q. And it is Jody Ochs' position as an  
6 Engineering Analyst II, correct?

7 A. Correct.

8 Q. And we also see mention of a Mark McCune, who  
9 was also working on this project, and he is a Senior  
10 Engineer?

11 A. Correct.

12 Q. And these people and some others that are  
13 mentioned in this E-mail chain that is attached to  
14 Exhibit 87 were all working to determine what they  
15 thought the savings would be realized by the DC Power  
16 Measurement Amendment that we're now litigating?

17 A. Correct.

18 Q. And the Exhibit WRE-3 or Exhibit, excuse me,  
19 WRE-4, which is Exhibit 64, is the spreadsheet that will  
20 help track your estimate in the words of the E-mail  
21 chain?

22 A. It's the spreadsheet template that Mark  
23 developed, yes.

24 JUDGE MACE: Mr. Goodwin, it's about 11:00,  
25 and I had hoped to take a break at that point, but if

0058

1 this is a crucial part of your cross-examination, we can  
2 keep going. Do you have much more?

3 MR. GOODWIN: Probably about 10 or 15  
4 minutes, but I don't care, we can take a break now or we  
5 can take a break later.

6 JUDGE MACE: I think I would like to take a  
7 break now, 10 minutes.

8 (Brief recess.)

9 BY MR. GOODWIN:

10 Q. Just to back up and kind of recatch our place  
11 from before the break, Exhibits 64 and 65 are, excuse  
12 me, specifically 64 is the spreadsheet that was  
13 developed to track McLeod's estimate of savings prior to  
14 entering into this amendment?

15 A. Correct.

16 Q. Now before we talked about two separate  
17 charges or rates that are at issue in this case, the  
18 power plant and the power usage charge.

19 A. Correct.

20 Q. And those two separate charges are also  
21 reflected in two separate USOC or U-S-O-C codes for  
22 billing purposes, right?

23 A. Correct.

24 Q. And what is USOC?

25 A. Universal Service Order Code.

0059

1 Q. And looking at Exhibit 65, that talks about  
2 the USOC amount in one of its columns, correct?

3 A. Correct.

4 Q. And back in 64, there is not a reference to a  
5 USOC code, but there is a single column listed for  
6 billing amount, right?

7 A. Correct.

8 Q. Now Exhibit 65 is actually dated in August of  
9 2005, which is after, almost a year after the  
10 interconnection agreement amendment that we're  
11 litigating today was executed, right?

12 A. Correct.

13 JUDGE MACE: I would like to interrupt for a  
14 moment. Can you point to me where on that document  
15 there's a date? I'm not seeing it other than the  
16 testimony filing date, am I missing it?

17 MR. GOODWIN: The name of the file, Your  
18 Honor, is -- it says, well, what is it called, it's  
19 called Qwest Power 081905.XLS.

20 JUDGE MACE: And where is that name? Is it  
21 on the document?

22 THE WITNESS: No, it's not, it's not on this  
23 per se.

24 MR. GOODWIN: But perhaps I can ask --

25 JUDGE MACE: Well, if the parties agree that

0060

1 that's what it is, it's fine.

2 THE WITNESS: Yes.

3 JUDGE MACE: I just don't see it on the  
4 document, and I wanted it identified.

5 MR. GOODWIN: Yes, there is a reference to it  
6 in their response to Request 50 in Exhibit 87.

7 JUDGE MACE: Very well, that's fine.

8 MR. GOODWIN: And also I can ask a couple of  
9 questions in there perhaps of the witness to clear that  
10 up.

11 BY MR. GOODWIN:

12 Q. We have estimated based on the file name that  
13 Exhibit 65 was prepared sometime in August of 2005. Are  
14 there also clues within the document itself of Exhibit  
15 65 that indicate that it was prepared in August of 2005?

16 A. The document itself doesn't state  
17 specifically.

18 Q. But I'm --

19 A. But I do know that it is 2005.

20 Q. And let me just ask the reason that you know  
21 that is because the third, fourth, and fifth columns  
22 contain references to the measured amounts of amps used?

23 A. Yes, by quarter, right.

24 Q. By quarter. And there would -- and this was  
25 done in response to the entry of the Power Measuring

0061

1 Amendment, right?

2 A. Correct.

3 Q. And that was entered into in late 2004, and  
4 so this sheet would have to contain references to 2005,  
5 correct?

6 A. Yes.

7 Q. But again, there is in -- that Exhibit 65  
8 contains a summary page that pertains to all states,  
9 right?

10 A. Correct.

11 Q. And then here for purposes of Washington we  
12 have included the second page of 65, which is the  
13 Washington specific information that contains the same  
14 information broken out by state, right?

15 A. Actually, I think it's Utah.

16 MS. ANDERL: I think we would like to correct  
17 that.

18 MR. KOPTA: It might be a good idea.

19 MR. GOODWIN: You mean there's not a Provo,  
20 Washington, Salt Lake City?

21 THE WITNESS: No, not that I know of.

22 MR. GOODWIN: Yeah, we will make a new  
23 breakout of the appropriate adjustments.

24 BY MR. GOODWIN:

25 Q. Let's just refer then to the first page of

0062

1 Exhibit 65 then, second line from the bottom refers to  
2 Washington, and there is a, if you move over to the  
3 column there that says USOC amount, do you see that?

4 A. Yes.

5 Q. There is a single USOC listed or a single  
6 item listed, and that is a price of \$3.13; do you see  
7 that?

8 A. Yes.

9 Q. Okay, now I'm getting a blowup here, but  
10 while Ms. Anderl is getting that, is it your  
11 understanding that that \$3.13 corresponds to the charge  
12 reflected for power usage in the Exhibit A to your  
13 interconnection agreement and not power plant?

14 A. Correct.

15 Q. And how about right on that --

16 JUDGE MACE: Let's take a moment to get this  
17 situated.

18 This is a diagram, for purposes of the  
19 record, that we already have somewhere in the testimony,  
20 I recall seeing something like this, and I can't put my  
21 finger on it right now.

22 MR. GOODWIN: It is I think reflected in at  
23 least two exhibits and also excerpted as charts in I  
24 know Mr. Starkey's testimony.

25 JUDGE MACE: Let's find one reference to it



0063

1 so that we don't have to in some way reproduce this for  
2 the record.

3 MR. GOODWIN: Okay, how about Starkey's  
4 rebuttal attached as Exhibit MS-4, which is the pricing  
5 appendix, that's the Exhibit A.

6 JUDGE MACE: Exhibit A is pretty big, let me  
7 just look here.

8 MR. GOODWIN: Right, turning over to page 3  
9 of 27.

10 JUDGE MACE: So where it refers to 8.1.4,  
11 power usage, on page 3 of Exhibit A, which is MS-4, that  
12 is the section that you have reproduced here on this  
13 chart that we're referring to during cross-examination?

14 MR. GOODWIN: Yes.

15 JUDGE MACE: All right, thank you.

16 MR. GOODWIN: And again, that's Exhibit MS-4,  
17 which for purposes of the hearing we have preliminarily  
18 marked as Exhibit 26.

19 JUDGE MACE: 26, correct.

20 BY MR. GOODWIN:

21 Q. Okay, now getting back to that specific  
22 charge that appears on Exhibit 65, in Exhibit 26 and  
23 also on the blowup here, the only charge that is  
24 referenced in this table that is Exhibit 65 is the usage  
25 charge at item 8.1.4.1.3 of the Exhibit A, correct?

0064

1 A. Correct.

2 Q. And there is no column reflecting the USOC or  
3 the charge for power plant at 8.1.4.1.1, correct?

4 A. That's correct, because this spreadsheet in  
5 WRE-5 or Exhibit 65, the purpose of this spreadsheet was  
6 to consolidate all of the Qwest price quotes that were  
7 sent after they did their measurements associated with  
8 after the amendment was signed. For every one of these  
9 which you have, although it says Utah for instance, for  
10 each one of the collocations that are shown in  
11 individual, we get an individual price quote from Qwest  
12 that shows this is the amount that will be decreased on  
13 your bill as a result of the measurement that will  
14 occur. All these spreadsheets in Exhibit 65 is doing is  
15 consolidating those price quotes.

16 Q. Right, because those price quotes which were  
17 sent to McLeod from the time the power measuring  
18 amendment went into effect, they included only the power  
19 usage charges and not the power plant charges, right?

20 A. Correct.

21 Q. And as you have told us in response to  
22 discovery, the Exhibit 64 was merely renamed into what  
23 became Exhibit 65, right?

24 A. Exhibit 64 was the original template that  
25 Mark McCune wanted the savings tracked, and the whole

0065

1 purpose of the savings tracked is just to be able to  
2 show this is the amount that the bill will be decreased  
3 from the amendment that was signed.

4 Q. Correct.

5 A. And the information that they put in there is  
6 they put the information that's fed by Qwest to them.  
7 This is just an updated, 65 is just an updated form of  
8 after all the quotes started coming in, just the purpose  
9 of tracking what they knew for sure would be quoted by  
10 Qwest. They then turned those forms over to my group to  
11 start the validation of did the charges decrease in  
12 these amounts, and yes, they did decrease by those  
13 amounts, and that's all that that was doing was just  
14 confirming what they were reporting by consolidating the  
15 individual price quotes.

16 Q. So you're saying that Qwest told McLeod prior  
17 to the execution of the interconnection agreement only  
18 to expect changes in the power usage charges, not the  
19 power plant charge?

20 A. No, I didn't say that. I said the price  
21 quotes that were sent after the measurements were done  
22 said that.

23 Q. Okay, I'm asking you about, and let's focus  
24 on the time beforehand, beforehand Mark McCune and Jody  
25 Ochs and Sherry Krewett and all the parties to this

0066

1 E-mail chain, which is Exhibit A to Exhibit 87 and a  
2 similar E-mail chain which is Exhibit B to Exhibit 87,  
3 are trying to figure out what the savings would be as a  
4 result of the amendment that we're litigating, right?

5 A. Correct.

6 Q. And there's only a single column for billing  
7 amount in Exhibit 64, correct?

8 A. But that doesn't mean anything, you can put  
9 multiple numbers for it to add to a total number in one  
10 column.

11 Q. But when the spreadsheet is renamed in  
12 Exhibit 65, there is only one USOC code put in there,  
13 correct?

14 A. As I said, Exhibit 65 was consolidating the  
15 price quotes that were given, which my exhibit shows  
16 that it ties exactly with the Utah collocation of  
17 course, but, you know, the examples where it shows, it's  
18 exactly the information that's passed from Qwest after  
19 the measurement. It was an entirely different purpose  
20 of just tracking it after it happened through these  
21 price quotes that were given.

22 Q. Okay, now let's -- you said they could have  
23 used that. Of course, if McLeod had ever developed a  
24 spreadsheet or an analysis of potential savings that  
25 would have resulted from changing the power plant charge

0067

1 to a measured basis as opposed to an ordered basis, that  
2 would have been responsive and should have been produced  
3 to us, correct?

4 A. Yes.

5 Q. Okay.

6 A. But it was not available, right.

7 Q. It was not available because no such analysis  
8 exists, right?

9 A. I can't say. It is just nothing was  
10 available during these -- between these two time frames.

11 Q. Now when the engineers were preparing the  
12 spreadsheets that reflected the savings they expected to  
13 see, they had the interconnection agreement that we have  
14 marked as Exhibit 88 and the Exhibit A which is Exhibit  
15 26 and we have excerpted as this blowup here, correct?

16 A. Correct.

17 Q. And based on that, they reported what they  
18 expected to see?

19 A. Correct.

20 Q. But the first time that McLeod USA ever  
21 looked at the power plant element and calculated power  
22 plant savings was in connection with the audit that you,  
23 your specific group, Tami Spocogee's group, performed  
24 around May 2005, several months after the agreement was  
25 entered?

0068

1 A. Correct.

2 Q. And to your knowledge, the first time anyone  
3 at McLeod USA came to the interpretation McLeod is now  
4 advancing in this case was in May 2005, again after your  
5 group conducted its audit?

6 A. Correct.

7 Q. Now based on Exhibit 65, how much has McLeod  
8 USA actually saved as a result of the DC Power Measuring  
9 Amendment compared to what it was being billed before on  
10 a monthly basis?

11 A. Estimated around \$184,000 a month.

12 Q. \$184,000 have been saved, and that's on a  
13 nationwide basis?

14 A. Yes.

15 Q. Just in Washington how much is that?

16 A. Around \$10,235.

17 Q. Now in order to get these savings, did McLeod  
18 USA give any consideration to Qwest, that is did McLeod  
19 have to give up something, agree to a higher rate, or  
20 make new promises, anything like that?

21 A. No.

22 Q. So basically at the end of the day, McLeod's  
23 case is that, well, we have saved \$100,000 a month for a  
24 year and a half roughly, but we should have saved  
25 several hundred thousand dollars more per month as a

0069

1 result of this agreement?

2 A. Correct.

3 MR. GOODWIN: No further questions.

4 JUDGE MACE: Mr. Kopta.

5 MR. KOPTA: Thank you, Your Honor.

6

7 R E D I R E C T E X A M I N A T I O N

8 BY MR. KOPTA:

9 Q. Ms. Spocogee, do you still have in front of  
10 you Exhibit 84, which is the Data Request Number 19 and  
11 response?

12 A. Yes.

13 Q. Would you turn to the last page of that  
14 exhibit, please?

15 A. Okay.

16 Q. And this is a form used by McLeod in  
17 connection with collocation by other carriers within its  
18 wire centers; is that correct?

19 A. Yes.

20 Q. And is this a form that is filled out by the  
21 customer, or is it filled out by someone within McLeod?

22 A. It's filled out by someone in McLeod.

23 Q. Okay, so do they do this based on a telephone  
24 call, or how do they get the information from the  
25 customer that's going to be collocating?

0070

1           A.     It's usually requested from our sales rep,  
2     could be via phone call or it could be a meeting  
3     depending on what's going on, so it could be face to  
4     face.

5           Q.     Okay.  And you discussed in connection with  
6     this form and some questions from Mr. Goodwin in the  
7     space and power information section of this form  
8     specifically the DC requirements?

9           A.     Yes.

10          Q.     Would those amounts be filled in by someone  
11     from McLeod who is filling out this form?

12          A.     Yes, they would be.

13          Q.     And so they would be getting the information  
14     on the number of DC amps from the customer directly,  
15     either by telephone or some other communication?

16          A.     Correct.

17          Q.     And do you know whether the information that  
18     they receive from the customer with respect to the  
19     number of amps is put directly on this form or is  
20     subject to the calculation that is referenced in the  
21     response that's on the first page?

22          A.     It's subject to the response on the first  
23     page.  The sales rep will ask the customer themselves,  
24     they will go in there and ask them what their  
25     anticipated DC usage is, and then they will round it up



0071

1 based on the calculations in the response.

2 Q. And that's the number that's put in the  
3 blanks here?

4 A. Yes.

5 Q. Mr. Goodwin also asked you some questions  
6 about Exhibit 64 which is attached to Mr. Easton's  
7 testimony.

8 A. Yes.

9 Q. And when this template was produced, what was  
10 the primary purpose for even producing the template in  
11 the first place?

12 A. To just ensure that the actions being taken  
13 by signing the amendment would reduce the cost to McLeod  
14 and not increase the cost to McLeod, such as the fact of  
15 what happened in Michigan.

16 Q. And what happened in Michigan?

17 A. A product was proposed to reduce the power  
18 usage in Michigan, and the group that, this same group  
19 that was working on this, started the investigation to  
20 -- actually they started to sign this, and it was  
21 noticed by other parties that when you looked at all of  
22 the components of that new product, that yes, the usage  
23 would be decreased, but other components in there would  
24 be increased as a result of the structure, and the end  
25 result of those actions taken would be an increase of

0072

1 costs to McLeod. So the sole purpose that these people  
2 were trying to make sure of was that this was going to  
3 be a reduction in cost and not an increase in cost.

4 Q. And were the same people looking at this  
5 amendment with Qwest as were looking at the Michigan  
6 amendment?

7 A. Yes.

8 Q. And in Michigan, do you know whether there  
9 was two separate rates for power plant and power usage  
10 or whether there was a single rate for DC?

11 A. It's a single rate.

12 Q. You also had some discussions with  
13 Mr. Goodwin about the development or I guess I should  
14 say the execution of the DC Power Measuring Amendment;  
15 do you recall having that discussion with him?

16 A. Yes.

17 Q. And there was some discussion about  
18 negotiations between McLeod and Qwest. Would you  
19 characterize the discussions between McLeod and Qwest  
20 leading up to the execution of the DC Power Measuring  
21 Amendment as negotiations?

22 A. No, I would not.

23 Q. How would you characterize those  
24 conversations?

25 A. The form, which is one of the exhibits, the

0073

1 Exhibit 88, was sent to McLeod and said if you would  
2 like your usage, your DC power usage to be measured,  
3 this is what would be signed. Through other activities  
4 that have occurred through such types of amendments or  
5 changes, we have never been given the option of making  
6 changes or anything, it's just either you sign this or  
7 you don't.

8 Q. So your understanding is that other than  
9 filling in the blanks that there was no real opportunity  
10 to make any changes to this amendment?

11 A. Correct.

12 MR. KOPTA: Thank you, those are all my  
13 questions.

14 JUDGE MACE: Anything else, Mr. Goodwin?

15 MR. GOODWIN: A couple of follow-up  
16 questions, if I may.

17

18 R E C R O S S - E X A M I N A T I O N

19 BY MR. GOODWIN:

20 Q. Prior to the entry of the DC Power Measuring  
21 Amendment, what other states had, other than Michigan,  
22 had McLeod been involved in either the negotiation for  
23 or litigation of DC power charges?

24 A. State of Illinois has been based on a power  
25 consumption or power measured basis for quite a while.

0074

1 State of Missouri and Texas have also been involved in  
2 those.

3 Q. And QSI has been involved with McLeod in  
4 those proceedings and issues as well?

5 A. Not in all of those.

6 Q. Which ones?

7 A. With us directly in, I don't know in  
8 Illinois, that was quite a while back so I couldn't say  
9 for sure, but with Missouri and Texas I don't believe  
10 so, it's just internal.

11 Q. Back to Michigan though, you would agree that  
12 the sole purpose of the engineering group as you have  
13 described it was to I guess for lack of a better  
14 description avoid another Michigan?

15 A. Correct.

16 Q. And even under Qwest's interpretation of the  
17 amendment, the group that obtained and signed the  
18 interconnection agreement amendment that we're  
19 litigating here today achieved that objective, correct?

20 A. Correct.

21 Q. And at the end of your redirect examination  
22 you were talking about the negotiation, and you said  
23 your understanding was that Qwest said to McLeod, if you  
24 would like your DC power usage to be measured, here's  
25 the agreement, right?

0075

1 A. Correct.

2 Q. Are you, well, are you talking about a  
3 specific communication that you're aware of, or is it  
4 just kind of your guess based on how you understand  
5 telecommunications contract negotiations often go?

6 A. On whether they were given an option or not  
7 to change anything?

8 Q. No, you said that Qwest -- you actually said  
9 that Qwest said to McLeod certain things, and I was  
10 wondering how did you know that Qwest said that?

11 A. Oh, by discussing with the group that were  
12 involved in those discussions through our investigation.  
13 When we performed our audit and started questioning the  
14 charges, we did go back to that group to understand what  
15 occurred. And through the discussions with those folks,  
16 that's where we came up with that. Their understanding  
17 was our usage would go down, and when we looked at the  
18 interconnection agreement in here, 8.1.4 is power usage,  
19 so the power usage components would be reduced as a  
20 result of being measured instead of ordered basis,  
21 except for those under 60 amps.

22 Q. Okay, so your testimony now is that Qwest  
23 actually told McLeod something about what the agreement  
24 would accomplish prior to its execution?

25 A. Yes, that the power usage would be reduced,

0076

1 it would now be measured instead of ordered.

2 Q. Turn back to Exhibit 85, and that request  
3 asks you to produce all the documents that reflected or  
4 related to communications between McLeod and Qwest.

5 A. Correct.

6 Q. Regarding the amendment before its execution.

7 A. Correct.

8 Q. And so what you're telling me, I guess you're  
9 telling me that these communications that you have  
10 learned about are not reflected in any document?

11 A. No, I mean you communicate every day via the  
12 phone on conference calls.

13 MR. GOODWIN: And that's all the questions I  
14 have.

15 JUDGE MACE: Thank you, Ms. Spocogee, you're  
16 excused.

17 Okay, let's be off the record for a moment.

18 (Discussion off the record.)

19 JUDGE MACE: We will adjourn now for our  
20 lunch recess and resume at 1:00.

21 (Luncheon recess taken at 11:45 a.m.)

22

23

24

25

0077

1                   A F T E R N O O N   S E S S I O N

2                                   (1:00 p.m.)

3

4                   (Witness SYDNEY L. MORRISON was sworn.)

5                   JUDGE MACE:   Next witness.

6                   MR. KOPTA:   Thank you, Your Honor, McLeod  
7   calls Mr. Sydney Morrison.

8                   JUDGE MACE:   And let the record reflect he  
9   has been sworn in.

10

11   Whereupon,

12                                   SYDNEY L. MORRISON,

13   having been first duly sworn, was called as a witness  
14   herein and was examined and testified as follows:

15

16                   D I R E C T   E X A M I N A T I O N

17   BY MR. KOPTA:

18           Q.    Mr. Morrison, would you state your name and  
19   business address for the record, please.

20           A.    My name is Sydney L. Morrison, my business  
21   address is 550 Sunset Lake Boulevard, Sunset Beach,  
22   North Carolina 28468.

23           Q.    And I will caution you or the Administrative  
24   Law Judge will to make sure that you keep your voice up  
25   and slow for the court reporter.

0078

1 A. Okay.

2 Q. Do you have before you what have been marked  
3 for identification as Exhibits 1-TC, which is the direct  
4 testimony of Sydney L. Morrison, Exhibits 2 through 4,  
5 which are the accompanying exhibits SLM-1 through SLM-3  
6 of your direct testimony, Exhibit 5-TC, which is the  
7 rebuttal testimony of Sydney L. Morrison, and Exhibits 6  
8 through 12, which are the accompanying Exhibits SLM-4  
9 through SLM-10?

10 A. Yes, I do.

11 Q. And were those exhibits prepared by you or  
12 under your direction and control?

13 A. Yes, they were.

14 Q. And are those exhibits true and correct to  
15 the best of your knowledge?

16 A. Yes, they are, with the exception of two  
17 corrections that I need to give.

18 Q. Okay, would you make those now?

19 A. Okay, the first correction is on page 33,  
20 line 744.

21 JUDGE MACE: Which piece of your testimony is  
22 this?

23 THE WITNESS: Direct.

24 JUDGE MACE: The direct, okay.

25 A. Line 744, the third word from the end of that



0079

1 line is distribution, that should be changed to plant.

2 BY MR. KOPTA:

3 Q. We're on the wrong page then, line 744?

4 MR. GOODWIN: Do you mean line 740,

5 Mr. Morrison?

6 THE WITNESS: That's not the way it's

7 indicated in my copy.

8 MS. ANDERL: Interesting, it's not what I

9 have either.

10 JUDGE MACE: Let's be off the record for a

11 moment.

12 (Discussion off the record.)

13 JUDGE MACE: Would you refer to the first few

14 words of the sentence where you're making the

15 correction.

16 A. Yes, another excerpt from Qwest engineering

17 manuals, and then you go on through that sentence until

18 you get to the word distribution.

19 JUDGE MACE: And that word should be plant?

20 A. Should be plant as opposed to distribution.

21 And the second correction is on page 47. Now

22 this is a confidential piece of information, McLeod

23 information, and it is a table, so the best way to do

24 that is to refer to a line and column number and give

25 the information that corrects the value. Is that

0080

1 acceptable?

2 BY MR. KOPTA:

3 Q. Will you endeavor to do that without saying  
4 what the number is, but do a multiplication so that we  
5 don't have to go into confidential mode here.

6 A. I think I can do that.

7 Q. Okay.

8 A. It is line 6 and column 4.

9 Q. The last column in the exhibit?

10 A. Yes, the last column in the exhibit, column  
11 4, and the value should be one third of what its present  
12 value is.

13 JUDGE MACE: I didn't hear the whole thing,  
14 you said one third of the?

15 THE WITNESS: The value should be one third  
16 of what its present value is.

17 JUDGE MACE: Thank you. And when you say  
18 present value, you mean what's marked down on that  
19 exhibit?

20 THE WITNESS: Yes, that's correct.

21 JUDGE MACE: Okay, thank you.

22 BY MR. KOPTA:

23 Q. And would the total then correspondingly  
24 change at the bottom of that column?

25 A. Yes, the total would change from its present

0081

1 value minus 1.

2 Q. And with those changes, are the exhibits true  
3 and correct to the best of your knowledge?

4 A. Yes, they are.

5 Q. And if I asked you the questions contained in  
6 Exhibits 1-TC and 5-TC, would your answers here be the  
7 same today as they are in those documents?

8 A. Yes, they would.

9 MR. KOPTA: I move admission of Exhibits  
10 1-TC, 2, 3, 4, 5-TC, and 6 through 12.

11 JUDGE MACE: Is there any objection to the  
12 admission of those exhibits?

13 MR. GOODWIN: No objection, Your Honor.

14 JUDGE MACE: All right, thank you, they're  
15 admitted.

16 MR. KOPTA: And with that, Mr. Morrison is  
17 available for cross-examination.

18 JUDGE MACE: Mr. Goodwin or Ms. Anderl?

19 MR. GOODWIN: It's Mr. Goodwin.

20 JUDGE MACE: Okay, go ahead.

21 MR. GOODWIN: Before I start, if I could take  
22 a brief moment off the record just to make sure that I  
23 understood his correction to the confidential part  
24 correctly.

25 JUDGE MACE: All right, let's be off the

0082

1 record.

2 (Discussion off the record.)

3 MR. GOODWIN: Thank you, I appreciate that.

4

5 C R O S S - E X A M I N A T I O N

6 BY MR. GOODWIN:

7 Q. Good afternoon, Mr. Morrison.

8 A. Good afternoon.

9 Q. You have testified in this identical dispute  
10 or similar dispute in both Iowa and Utah and now are  
11 testifying here in Washington?

12 A. Yes, I have.

13 Q. And you have also submitted testimony in a  
14 similar dispute in Arizona and Colorado, correct?

15 A. Yes.

16 Q. Here in Washington you have filed both direct  
17 and rebuttal testimony, each of those about 60 some odd  
18 pages of testimony?

19 A. That would be approximately right.

20 Q. But within that testimony, you do not express  
21 any opinion as to what McLeod USA and Qwest actually  
22 agreed to in the DC Power Measurement Amendment,  
23 correct?

24 A. That's correct.

25 Q. And you did not participate in any of the

0083

1 negotiations for the amendment, correct?

2 A. No, I did not.

3 Q. You did not review any of the documents or  
4 conversations included in those negotiations, correct?

5 A. That's right, I did not.

6 Q. And you are not aware of any statements or  
7 manifestations of intent regarding this issue by either  
8 Qwest or McLeod USA, correct?

9 A. That's correct.

10 Q. Rather your testimony here is directed  
11 towards the engineering characteristics of power plant  
12 facilities and whether charging for those facilities on  
13 a measured basis is proper on an engineering basis,  
14 correct?

15 A. Yes.

16 Q. Before we get into the substance parts of  
17 your testimony, I note that in your direct testimony you  
18 mention and actually attach testimony filed by Qwest  
19 Communications Corporation, an affiliate of the  
20 defendant in this case or the respondent in this case,  
21 Qwest Corporation, right?

22 A. Yes.

23 JUDGE MACE: Mr. Goodwin, please slow down.

24 Q. And that was filed in Illinois, right?

25 A. Yes.

0084

1 Q. Now the rate for power plant and power usage  
2 and some other elements of DC power in Illinois is  
3 actually a single blended rate compared to the three  
4 different rates that are reflected in the Exhibit A in  
5 Washington that's governing this dispute, correct?

6 A. That's correct.

7 Q. Would you agree with Mr. Starkey's testimony  
8 in Iowa that the power plant and power usage charges are  
9 implemented very differently in Illinois compared to the  
10 Qwest states?

11 A. You're saying the charges are implemented  
12 differently?

13 Q. Yeah, the power plant and power usage charges  
14 are implemented very differently in Illinois compared to  
15 how they're implemented in the Qwest states?

16 A. Mr. Starkey would be the best person to that,  
17 but on the surface that's yes.

18 Q. Would you turn to figure 1 in your testimony,  
19 which I believe is at page 15.

20 JUDGE MACE: This is the direct testimony?

21 Q. Of your direct testimony.

22 A. Okay, I'm there.

23 Q. Okay. And figure 1 describes what you say is  
24 a typical central office power infrastructure, right?

25 A. Yes, sir.

0085

1 Q. And in that figure in what is blue in the  
2 original version of your testimony, that refers to the  
3 power plant portion?

4 A. Okay, my copy is not in color, but --

5 Q. I have a color copy if you want to refer to  
6 it.

7 A. That's okay, I think I know.

8 Q. (Indicates.)

9 A. Okay, yes, the power plant is blue.

10 Q. And your reference to the power plant as  
11 being the items in blue in figure 1 of your direct  
12 testimony does not reflect how those elements are  
13 charged for by the rate structure and rate design in  
14 Washington, but rather how those fit together from your  
15 perspective as an engineer, right?

16 A. That's correct.

17 Q. Now in figure 1 in that portion of the figure  
18 that you described as power plant, there is a box that  
19 is labeled rectifiers; do you see that?

20 A. Yes, I do.

21 Q. And there is also a reflection of that same  
22 portion of figure 1 in figure 3 that also mentions  
23 rectifiers?

24 A. In figure 3?

25 Q. Figure 3, which is on page 18 of your direct

0086

1 testimony.

2 A. Okay, yes, they're one and the same.

3 Q. Now within that box that is marked  
4 rectifiers, there are two diagrams which are symbolic  
5 reference to actual rectifiers, right?

6 A. You're looking at figure 1 or figure 3?

7 Q. It's the same in both.

8 A. Yeah, it is the same, but yes.

9 Repeat your question again, please.

10 Q. Okay, let's just keep it to figure 1. In  
11 figure 1, the box marked rectifiers within the power  
12 plant, there are two boxes there that are symbolically  
13 referencing actual rectifiers within the power plant,  
14 correct?

15 A. That's correct.

16 Q. And then there is a third box within the  
17 rectifier box that references a spare rectifier,  
18 correct?

19 A. Yes.

20 Q. And that spare appears in both figures 1 and  
21 3, right?

22 A. Yes.

23 Q. And the reason that you have referenced a  
24 spare rectifier in your testimony is because engineering  
25 standards require a power plant to have a spare



0087

1 rectifier in order to generate a certain level of power  
2 plant capacity, correct?

3 A. Yes, that's correct.

4 Q. So in order to engineer, for example, a 1,000  
5 amp power plant capacity, you would need under the  
6 applicable engineering standards 20% more rectifiers  
7 than that amount of capacity or  $N + 1$  rectifiers,  $N$   
8 being the number of rectifiers providing the capacity,  
9 whichever is greater, correct?

10 A. Yes,  $N + 1$ .

11 Q. And some engineers actually use  $N + 2$   
12 instead of  $N + 1$ ?

13 A. Not that I know of. It's  $N + 1$ .

14 Q. So, for example, in the hypothetical 1,000  
15 amp capacity power plant that we have discussed, if the  
16 rectifiers that are used to generate that amount of  
17 capacity are 200 amp rectifiers, you would need either 6  
18 or 7 possibly rectifiers in order to -- you would need  
19 either -- strike that.

20 For this hypothetical example of a 1,000 amp  
21 capacity power plant, if the power engineer was using  
22 200 amp rectifiers, the power plant would require either  
23 6 or 7 of those 200 amp rectifiers in order to provide  
24 1,000 amps of power plant capacity, correct?

25 A. It would not require 7, it would require 6,  $N$

0088

1 plus 1.

2 Q. In Utah when I asked you about this  
3 configuration, I think you said that there would be 6  
4 plus 1 more for a backup spare; do you recall that  
5 testimony?

6 A. Yes, I do.

7 Q. So that 6 plus 1 for a backup spare would be  
8 7, right?

9 A. Well, if that were factual, yes.

10 Q. So are you -- was there some confusion in the  
11 Utah testimony?

12 A. Yes, sir, there was.

13 Q. Okay.

14 A. And if you look at the transcript, I made a  
15 mental leap from a 1,000 amp power plant to 1,200  
16 because we had been talking about 1,200 just prior to  
17 that question being asked.

18 Q. Okay.

19 A. So that would have been an error on my part  
20 for a 1,000 amp power plant, but it would have been  
21 correct if we had been talking about a 1,200 amp power  
22 plant using 200 amp rectifiers.

23 Q. But in any event, now that we've got  
24 everything cleared up, in order to provide 1,000 amps of  
25 power plant capacity if 200 amp rectifiers are used, you

0089

1 would need 6 200-amp rectifiers or 1,200 amps of  
2 rectification in order to provide that capacity,  
3 correct?

4 A. Yes.

5 Q. Turn back a little bit to page 6 of your  
6 direct testimony, you state that power plant facilities  
7 are sized on an as-consumed basis; is that correct?

8 A. Which line are you looking at, sir?

9 Q. I'm looking at lines 137 through 140, but I  
10 didn't mention the line numbers given the differences  
11 that might --

12 A. Yeah, I understand. Would you give me a  
13 beginning sentence.

14 Q. The beginning of the sentence says, as my  
15 testimony will demonstrate; do you see that?

16 MR. KOPTA: Starts three lines down from the  
17 question, please summarize your conclusions.

18 A. Yes, I found it, yes, I'm there.

19 Q. Okay. But it is your testimony that power  
20 plant facilities are sized on an as-consumed basis,  
21 correct?

22 A. They are sized on an as-consumed basis, which  
23 is List 1 power.

24 JUDGE MACE: Mr. Morrison, it seems like you  
25 drop your voice, and I need to have you try to speak up

0090

1 a little bit. I'm having a little trouble understanding  
2 what you're saying, and I don't know if the reporter is  
3 or not, but if you could try to speak up a little bit,  
4 it would help us to understand what you're saying.

5 THE WITNESS: All right, thank you.

6 JUDGE MACE: So back to the question, I'm not  
7 sure, did he answer the question?

8 MR. GOODWIN: Would you just read back the  
9 question.

10 (Record read as requested.)

11 BY MR. GOODWIN:

12 Q. Is there anything you wish to add to your  
13 answer?

14 A. No, that will do.

15 Q. But power plant is not consumed as such,  
16 correct?

17 A. That's correct, the product of the power  
18 plant is what's consumed, that being power amperage.

19 Q. And in this case, the power that is consumed  
20 is reflected in the usage charges on the chart in back  
21 of you that are items 8.1.4.1.2 and 3, correct?

22 A. All three lines, 1, 2, and 3, right.

23 Q. Now when you say the power, the power that is  
24 consumed only refers to the bottom two lines, items 2  
25 and 3, not 1, right?

0091

1           A.     Well, the power is consumed from line 1  
2 because that is the power plant, and that is the device  
3 that produces the power to begin with.

4           Q.     Right, but the power that is produced is  
5 reflected in the charges in items 2 and 3, right?

6           A.     Well, the power passes through items 2 and 3,  
7 those are charges for the power distribution network the  
8 way I understand your example here.

9           Q.     Am I getting a little bit out of your depth  
10 when I refer to the charges and how they're figured?

11          A.     Yes, you are, that would be a much better  
12 question somewhere else.

13          Q.     Let me go about it this way. Referring back  
14 to the figures 1 and 3 in your testimony, the power  
15 plant portion.

16          A.     Mm-hm.

17          Q.     Specifically referencing figure 3 in your  
18 testimony, the items in figure 3, the batteries, the  
19 rectifiers, and the other elements of power plant are  
20 not consumed as such, they stay there regardless of the  
21 amount of power that is generated thereby, right?

22          A.     Yes, that's correct, those are pieces of  
23 hardware.

24          Q.     Let's talk about some of the list drains,  
25 first I want to talk about List 2, later we'll talk

0092

1 about List 1, but I think in your glossary there was  
2 also a reference to List 3 Drains. You would agree that  
3 List 3 Drain really doesn't have any impact on this  
4 particular case in dispute, right?

5 A. That would be correct.

6 Q. So in this case we're talking about List 2  
7 and List 1?

8 A. Yes, sir.

9 Q. And List 2 is you have described that as the  
10 peak current under worst case conditions of voltage and  
11 traffic distress, for example when the DC power plant's  
12 batteries are approaching a condition of total failure.

13 A. That would be one of the circumstances for  
14 List 2, yes.

15 Q. In fact, that's the circumstance that you  
16 described at page 20 of your direct testimony in this  
17 case.

18 I'm sorry, I have given an improper  
19 reference, I have referred back to, yes, page 21.

20 A. Again, you probably have the line.

21 Q. There may be a difference there, there is a  
22 question that begins on my copy at page 20, line 430,  
23 that says, how is DC power distribution priced.

24 A. Yes, I've got that.

25 Q. And the second sentence there is the List 2

0093

1 Drain is the maximum current --

2 JUDGE MACE: Please, when you're reading you  
3 go faster, you need to slow down, please.

4 Q. Okay.

5 The List 2 Drain is the maximum current  
6 that the equipment will draw when the  
7 power plant is in worst case condition  
8 of voltage and traffic distress - when  
9 the DC power plant's batteries are  
10 approaching a condition of total  
11 failure.

12 Is that a correct description of List 2  
13 Drain?

14 A. Yes, it is.

15 Q. And that List 2 Drain would be associated  
16 with events like the initial turnup of equipment, either  
17 on the initial install or some condition of failure as  
18 described in your testimony that we just discussed?

19 A. Yes.

20 Q. And these events, is it fair for us to call  
21 them a List 2 event?

22 A. That's a good description.

23 Q. These events are fairly rare, correct?

24 A. Yes, sir.

25 Q. But the fact that such events are rare

0094

1 doesn't change the engineering standards that require  
2 McLeod USA to order sufficient distribution capacity to  
3 accommodate a List 2 event, does it?

4 A. Yes, that would be correct.

5 Q. And when there is a List 2 event, for example  
6 when the batteries are approaching a condition of total  
7 failure, that event affects all carriers using the power  
8 plant at the same time, correct?

9 A. Yes.

10 Q. I think you have also testified elsewhere  
11 that List 2 corresponds to the level of amps in a CLEC's  
12 power feed or power distribution order; is that fair to  
13 say?

14 A. Yes, the CLEC orders power distribution, yes.

15 Q. And that power distribution is based on List  
16 2 Drain?

17 A. That's correct.

18 Q. And it's reasonable for a CLEC to order far  
19 more power distribution than it will need at most points  
20 in time because the CLEC might need that much power made  
21 available to it should a List 2 event occur, correct?

22 A. Not so much -- the CLEC is not looking at  
23 that distribution network so much from a perspective of  
24 a List 2 event, because it's rare, as they are the need  
25 for List 2 down the road at the maturity of that



0095

1 particular collocation site such that they have adequate  
2 power for both List 1 and its corresponding List 2  
3 needs.

4 Q. Right, but it's reasonable for a CLEC to  
5 order that much capacity because at some point that CLEC  
6 might need that List 2 Drain made available to it based  
7 on some event?

8 A. Potentially, yes.

9 Q. Okay. And when McLeod USA orders 200 amps of  
10 power distribution therefore, as an example, it does so  
11 with the expectation that that 200 amps of power will be  
12 available to it in a List 2 event as we have described,  
13 correct?

14 A. Yes.

15 Q. Now a few seconds ago I think you had talked  
16 about how McLeod at least orders power distribution to  
17 capacity to reflect ultimate demand at the end of the  
18 possible planning horizon?

19 A. Yes.

20 Q. But not every CLEC necessarily orders power  
21 distribution capacity using that approach, right?

22 A. I don't know about every CLEC, but the ones  
23 that I have dealt with, that would be their trend would  
24 be to order the what I tend to call the end game  
25 capacity, the end of the planning horizon needs.

0096

1 Q. Well, what power orders have you seen from  
2 CLECs placed to the ILEC's like this one?

3 A. Probably in the 1997, '98, '99 time frames,  
4 the number of orders that I would have to have seen  
5 would have been in the hundreds.

6 Q. And that was when you were working for Qwest?

7 A. Contracting back to Qwest, yes.

8 Q. And actually it was known as US West at that  
9 time?

10 A. Yes, that's right.

11 Q. But did you discuss with any of the parties  
12 that placed those orders their methodology and approach  
13 towards ordering the collocation power orders, whether  
14 they were ordering for ultimate List 2 Drain or some  
15 other amount?

16 A. Did I make direct contact with those CLECs?

17 Q. Yes.

18 A. No, I didn't, it was a policy that we were  
19 not allowed to do such.

20 Q. You were not allowed to?

21 A. To make contact with those CLECs.

22 Q. Thank you.

23 So you don't know based on those orders that  
24 you have seen whether those CLECs were ordering for  
25 ultimate demand or some other number?

0097

1           A.     Not directly, you're right.  Indirectly, you  
2     could make a fairly well educated engineering assumption  
3     as to what the CLEC's plans were based on the numbers  
4     that they provided.

5           Q.     But that would have to be an assumption?

6           A.     That's true.

7           Q.     Are you aware of any Qwest power plants in  
8     Washington --

9           A.     I'm sorry?

10          Q.     Are you aware of any Qwest power plants in  
11     Washington where McLeod USA does not have available to  
12     it power plant capacity at the number of amps specified  
13     in their power feed order?

14          A.     No, I'm not aware of any.

15          Q.     In general I think it's your testimony that  
16     CLEC power distribution orders constitute a small  
17     percentage of power plant capacity in Qwest's central  
18     offices in Washington?

19          A.     Yes, sir.

20          Q.     I would like you to turn to figure 6, which I  
21     believe is on page 47 of your testimony, at least as I  
22     have it.

23          A.     Yes.

24          Q.     And I mean direct testimony.

25          A.     Yes, that's correct.

0098

1 Q. Now this is a confidential exhibit, and so  
2 I'm going to try to ask you questions without revealing  
3 the confidential information. I just wanted you to be  
4 aware of that so that when I ask you those questions,  
5 also try to tell your answers so that no confidential  
6 information is disclosed, and that way we can avoid  
7 going into a closed session. Fair enough?

8 A. Fair enough.

9 Q. All right. Referring to figure 6, the List 2  
10 Drain you have reflected is the third column from the  
11 left?

12 A. Yes.

13 Q. And so for this typical collocation equipment  
14 design that you have specified in figure 6, McLeod would  
15 place a power feed order at the List 2 level or that  
16 same number that is in the last line of column 3 of  
17 figure 6, correct?

18 A. Place a power feed order for this amount in  
19 the total of List 2, column 3?

20 Q. Yes.

21 A. Probably not.

22 Q. What would be McLeod's power feed order based  
23 on this typical collocation equipment design? And if  
24 there's no way to express it as in relationship to some  
25 other number in the table, let us know, and we may just

0099

1 have to go into closed session.

2 A. I don't think we need to.

3 Q. Okay.

4 A. Yeah, the numbers that we are looking at are  
5 involved in the List 2 requirements for the initial  
6 installation of equipment in collocation, but McLeod is  
7 not going to order based on that initial requirement for  
8 equipment in that particular collocation space. They  
9 are going to order power initially, power distribution  
10 facilities initially based on their planning horizon  
11 needs. It may be a five year interval, it may be  
12 greater, it may be less, but it won't be this particular  
13 single installation of equipment.

14 Q. So based on their forecast of growth, it may  
15 be for an amount of List 2 Drain that would accommodate  
16 two or three or four sets of this typical equipment  
17 configuration?

18 A. Some unknown multiple at this point, yes.

19 Q. Okay. Now let's assume with me, if you will,  
20 that over the relevant planning horizon that you have  
21 described that McLeod believed that it would only  
22 install one of these typical collocation configurations  
23 reflected in figure 6, would the power feed order McLeod  
24 placed with Qwest be the same number that is the bottom  
25 line of column 3?

0100

1           A.     Would probably not be the exact number, but  
2 they would number, oh, excuse me, order a number of amps  
3 that would meet this immediate need and most likely  
4 round it off in terms of breaker sizes as an example or  
5 fuse sizes that they may have to use in turn in their  
6 BDFB.

7           Q.     Now Qwest fuses, takes the power distribution  
8 or feed order and fuses that up to 125% of that  
9 particular order, correct?

10          A.     Yes.

11          Q.     So the breakers and fuses then would be  
12 sized, for example, on a 100 amp order, the breakers and  
13 fuses would be sized at 125 amps?

14          A.     That would be right. And to get more  
15 directly to the number that they would order, they would  
16 order based on the number that we see in the second  
17 column, which is their fusing or breaker capability and  
18 their BDFB.

19                   JUDGE MACE: And their?

20                   THE WITNESS: BDFB, battery distribution fuse  
21 bay.

22                   JUDGE MACE: Battery distribution?

23                   THE WITNESS: Fuse bay.

24                   JUDGE MACE: Fuse bay?

25                   THE WITNESS: Yes, ma'am.

0101

1 JUDGE MACE: Thank you.

2 BY MR. GOODWIN:

3 Q. Now the second column is almost twice as much  
4 as the List 2, isn't it?

5 A. Yes, it is.

6 Q. And the way that you got to that second  
7 column is by determining the fuse sizes as they should  
8 be assigned to each piece of equipment standing alone,  
9 right?

10 A. Right.

11 Q. And the way you did that is to take each  
12 piece of equipment, figure out the List 2 Drain,  
13 multiply that times 125% as Qwest does for the power  
14 feed order, and then round up to the next common fuse  
15 size, right?

16 A. Assuming that the McLeod engineer is using  
17 the same percentage to increase the value back for  
18 nuisance tripping, yes, that's the way you do that. I  
19 do not right now know exactly what factor they use.

20 Q. So they may use -- your testimony is not that  
21 they use the same methodology that you have used in  
22 figure 6 necessarily?

23 A. Well, first off, figure 6 is not produced by  
24 me, figure 6 is produced by McLeod.

25 Q. But is it proper to size -- is it your

0102

1 testimony that it's proper -- strike that.

2           By figuring out the fuse size that is  
3 applicable to each individual piece of equipment  
4 standing alone and then adding 125% to that for each  
5 individual piece of equipment and then rounding up to  
6 the next common fuse size and then adding all of those  
7 together, you're going to get a much higher number than  
8 if you just took the total List 2 Drain for all of the  
9 equipment together and multiplied that by 125% and  
10 rounded up to the next fuse size, correct?

11       A.     Yes.

12       Q.     And again, even if you did it your way, you  
13 would order not at the number represented in column 2  
14 but a number that was divided by 125% for the  
15 distribution cable size, right?

16       A.     I'm sorry, I didn't follow that at all.

17       Q.     Okay, second column, the first fuse size.

18       A.     Mm-hm.

19       Q.     Qwest sizes its fuses based on 125% of  
20 distribution or cable or feed order, right?

21       A.     Of the feed order.

22       Q.     Right.

23       A.     Its distribution network feed order.

24       Q.     So if -- so the proper -- even under the way  
25 that you have done it, which is to add all the fuse



0103

1 sizes for each individual piece of equipment together,  
2 Qwest would only -- would not order the amount that's in  
3 69, excuse me, in column 2, but it would order a number  
4 -- but it would order a power cable size that would  
5 yield the number of amps reflected in column 2 once it  
6 was multiplied by 125%, right? Am I making sense yet?

7 A. Not a lot.

8 Q. Well, I've gotten that before.

9 JUDGE MACE: Let's be off the record for a  
10 moment.

11 (Discussion off the record.)

12 BY MR. GOODWIN:

13 Q. Okay, we have just had a brief discussion off  
14 the record to kind of help us clarify the line of  
15 questioning I was just pursuing, and I'm going to go in  
16 a little bit different direction to maybe cinch this  
17 thing up. If we assume that over the relevant planning  
18 horizon that all the collocation equipment that McLeod  
19 plans to put in its cage during that period is  
20 represented in one multiple of figure 6, the maximum  
21 size of distribution cable that McLeod would need would  
22 be a round number related to the number that's reflected  
23 at the bottom of column 3, correct?

24 A. Column 3?

25 Q. Column 3.

0104

1           A.     That would be the number that Qwest would  
2 get, is that what you're saying?

3           Q.     My question is that all the power  
4 distribution capacity that McLeod would need for this  
5 example would be the number at the bottom of the third  
6 column?

7           A.     No, I would not engineer it that way.

8           Q.     How much additional distribution capacity  
9 would McLeod need above the List 2 Drain reflected in  
10 column 3?

11          A.     I would order the bottom, the value, total  
12 value of column 2 plus a percentage factor, and that  
13 would be my order for distribution cables.

14          Q.     But that percentage factor would be related  
15 to column 2, not column 3?

16          A.     No, column 2, yeah, column 2.

17          Q.     And what is that percentage factor?

18          A.     I don't know the factor that McLeod uses.

19          Q.     Now in the fourth column of figure 6, that  
20 reflects an actual measurement of power capacity, excuse  
21 me, of power draw, not a List 1, for each piece of  
22 equipment, right?

23          A.     Yes, that's an actual measurement.

24          Q.     And figure 6 does not reflect the List 1  
25 Drain for these pieces of equipment, does it?

0105

1 A. No, it does not.

2 Q. But the actual measurements for items 1 and  
3 item -- or the item line 1 and the item line 10 of the  
4 chart are actually 90% or more of the List 2 Drain,  
5 correct?

6 A. Yes.

7 Q. Now you say that Qwest should engineer its  
8 power plant to an estimate of List 1 Drain or List 1  
9 capacity if data is not available from the manufacturer  
10 or from the collocator, correct?

11 A. Qwest would engineer the power plant to List  
12 1.

13 Q. Yeah, to an estimate of List 1 if that data  
14 is not available either from the collocator or the  
15 manufacturer?

16 A. Yes that's correct.

17 Q. And I think you testified that Qwest manuals  
18 say that that number should be somewhere around 30% or  
19 40%, right, excuse me, that the List 1 capacity Qwest  
20 should engineer to in this instance is 30% or 40% of  
21 List 2?

22 A. Those are the numbers that are in the Qwest  
23 documentation or Qwest manuals stated a number of  
24 different ways, but yes.

25 Q. Now if Qwest used that estimate procedure for

0106

1 this typical collocation example in figure 6, Qwest  
2 would significantly underestimate the List 1 necessary  
3 to meet the needs of this typical installation, right?

4 A. I haven't done the math on that of this  
5 particular column, but probably not. And the reason I  
6 say that is the McLeod power requirements are such an  
7 insignificant percentage of the total power produced by  
8 the power plant that it would have very much an  
9 insignificant impact on the requirements in that power  
10 plant for List 1 values. Estimations are an accepted  
11 practice according to the Qwest engineering manuals that  
12 I have reviewed and used in the past, and those manuals  
13 that I have submitted with both my direct and rebuttal  
14 testimony reinforce that means of estimation. Also List  
15 1 information is required by those manuals, and it's  
16 required that Qwest go through the exercise to establish  
17 what those values are. I feel certain that Qwest has  
18 the tools to accomplish that. If nothing else in a case  
19 such as this, it's no more than pick up the telephone  
20 and call the equipment engineer who engineered the  
21 particular job if you're going to start talking about  
22 very specific List 1 requirements.

23 Q. Appreciate that, but the question I -- let me  
24 ask -- that's not exactly the question I asked, let me  
25 ask it in a simpler way.

0107

1 Column 3 is List 2, right?

2 A. Yes.

3 Q. You say the Qwest manuals require Qwest to  
4 estimate List 1 as a multiple of 30% to 40% of List 2?

5 A. Approximately, yes.

6 Q. And it's true also that when we talk about  
7 List 1, what we're talking about is the average busy  
8 day, busy hour current demanded by fully carded  
9 telecommunications equipment during normal plant  
10 operation, right?

11 A. The definition of List 1.

12 Q. And I have stated it correctly?

13 A. Yes.

14 Q. And in previous hearings we have actually  
15 used the example of the demand between 10:00 and 12:00  
16 a.m. on Mother's Day as a stereotypical level of List 1?

17 A. That's a synonym, yes.

18 Q. Okay. List 2 is always higher than List 1,  
19 which is almost always, except for Mother's Day, higher  
20 than actual usage at any point in time, right?

21 A. List 2 is higher than List 1.

22 Q. And List 1 is higher than measured usage at  
23 any point in time?

24 A. Not necessarily any point in time, but most  
25 of the time.

0108

1 Q. Any point in time except for that peak that  
2 we have described between 10:00 and 12:00 on Mother's  
3 Day?

4 A. Yes, for the fully carded out, fully  
5 trafficked piece of equipment.

6 Q. Now in column 4 of figure 6, what you have  
7 reflected is that last number, which is an actual  
8 measurement, which should be less than List 1 most  
9 likely and less than List 2, right?

10 A. Yes.

11 Q. Now you say that Qwest manuals require an  
12 estimate of 30% to 40% times List 2 in order to estimate  
13 List 1. If List 2 is represented in column 3, 30% to  
14 40% of that amount would actually be about half of the  
15 actual usage reflected in column 4, right?

16 A. Numerically that's correct.

17 Q. And so if Qwest used this estimating method  
18 you suggest to figure out the List 1 Drain for this  
19 typical collocation equipment, they would guess wrong,  
20 and significantly wrong?

21 A. I don't believe it would be significantly  
22 wrong and --

23 Q. What's, I'm sorry, significantly --

24 JUDGE MACE: Let's let him finish his answer.

25 A. I don't believe you would be significantly

0109

1 wrong, because you have to remember that when you look  
2 back through the Qwest documentation, it simply does  
3 state that that is an estimate. So the estimate would  
4 take into consideration the fact that it may not be 100%  
5 accurate, otherwise the instructions would have been  
6 written with an entirely different intent and an  
7 entirely different approach to solving that particular  
8 problem. So what that means is, in the context of the  
9 power plant, is that we have a concern for List 1 draw  
10 on the power plant, but it is not an overpowering  
11 concern, otherwise we would be doing this thing a lot  
12 differently than we do.

13           Also, in the application form that Qwest  
14 provided to the collocators in the 2000, 1999 time frame  
15 has sort of a provision, not sort of, it has a provision  
16 in it which is self correcting, and that provision is a  
17 statement in the power section that US West will measure  
18 feeds of 60 amps and greater and adjust for actual drain  
19 twice a year. So they're aware that there may be some  
20 differences in List 1 values that they used to power, to  
21 engineer the power plant. Knowing that that can happen,  
22 then it appears that this is a self correcting device  
23 that they use to reestablish what the correct drain will  
24 be, and they do it periodically.

25           Q.     But Qwest's own manuals say that estimates

0110

1 should be used sparingly, correct?

2 A. That's correct.

3 Q. In fact, at page 12 of your rebuttal  
4 testimony if you would turn there, you quote one of  
5 Qwest's manuals.

6 JUDGE MACE: This is a confidential page that  
7 I have.

8 MR. GOODWIN: Yes. It's not confidential,  
9 Qwest manuals are not confidential and we're not  
10 claiming that they're confidential, and we haven't  
11 claimed --

12 JUDGE MACE: So this page 12 is not  
13 confidential?

14 MR. GOODWIN: That's correct.

15 JUDGE MACE: Thank you.

16 BY MR. GOODWIN:

17 Q. Do you see that quotation, I have it on line  
18 293, where it quotes Section 2.1 of REGN 790-100-656RG;  
19 do you see that?

20 A. 2.1 determining drains?

21 Q. Yes.

22 A. Yes.

23 Q. And you quote the paragraph 2.1, correct?

24 A. Yes.

25 Q. Except you do not quote the last sentence of



0111

1 section or paragraph 2.1, do you?

2 A. That's correct.

3 Q. Handing you what will be marked as exhibit  
4 number --

5 JUDGE MACE: 13.

6 Q. -- 13, is this a copy of the page of the  
7 Qwest manual from which you got this quote?

8 A. Yes, it is.

9 MR. GOODWIN: Move the admission of Exhibit  
10 13.

11 JUDGE MACE: Any objection?

12 MR. KOPTA: No objection.

13 JUDGE MACE: I will admit it.

14 BY MR. GOODWIN:

15 Q. Now your quoted paragraph that's on page 12  
16 is just about the center paragraph of that page where it  
17 says, often if the equipment is new, right?

18 A. Yes.

19 Q. And you left off the last sentence in your  
20 quote, which says, "this is very much an estimate and  
21 should be used sparingly to obtain List 1 Drains,"  
22 correct?

23 A. That is correct.

24 Q. Now McLeod USA does not tell Qwest what its  
25 List 1 Drain is or is expected to be, do they?

0112

1           A.     That is correct, nor does Qwest ask for it.  
2     If List 1 Drain is a concern for Qwest, in my opinion  
3     that should be information that is requested on the  
4     collocation application forms, or at a minimum a  
5     follow-up call or some contact with the CLEC, in this  
6     case McLeod, to determine what that List 1 Drain  
7     requirement is.

8           Q.     Now at page 28 of your testimony, you quote  
9     the --

10           JUDGE MACE:   The direct or rebuttal?

11           MR. GOODWIN:   Rebuttal, I'm sorry.

12           JUDGE MACE:   Thank you.

13     BY MR. GOODWIN:

14           Q.     On page 28 of the rebuttal testimony, you  
15     quote from the Washington SGAT, which is the operative  
16     interconnection agreement between the parties here,  
17     right?

18           A.     Yes.

19           Q.     Within that quotation of Section 8.4.1.5 of  
20     the SGAT that you quote in your rebuttal testimony, none  
21     of the information that is required to be provided or is  
22     mentioned in that section includes disclosing the List 1  
23     Drain, does it?

24           A.     Yes, that is correct.

25           Q.     And that's true even for unfamiliar or

0113

1 unapproved equipment, right?

2 A. I'm sorry, I didn't follow your question.

3 Q. And the lack of a requirement in the SGAT to  
4 disclose List 1 Drain is true even for unfamiliar or  
5 unapproved equipment, isn't it?

6 A. If my memory serves me correctly here,  
7 doesn't Qwest require approved equipment within its  
8 collocation cages and if a, this will require a certain  
9 amount of research, if a piece of unfamiliar, unapproved  
10 piece of equipment comes up, Qwest I believe would  
11 require considerable more documentation than is  
12 discussed here. The statement I'm making right now is  
13 just based on my background and my experience, but I  
14 don't believe you're going to just allow anything into  
15 your collocation cages.

16 Q. Here I'm asking -- in the portion of the SGAT  
17 that you have quoted here, it says:

18 High level of equipment interface or  
19 connectivity schematic for equipment  
20 that is not on the approved equipment  
21 list or has not been used by a CLEC for  
22 similar purpose before must also  
23 accompany this application.

24 Do you see that?

25 A. Yes.

0114

1 Q. So there are specific requirements within the  
2 SGAT about what information has to be required for  
3 equipment that is unfamiliar or unapproved, aren't  
4 there?

5 A. Yes, there are.

6 Q. And at least in the SGAT, none of that  
7 information includes providing a List 1 Drain?

8 A. That's true, and this also is a Qwest  
9 document. If Qwest had decided that it needed that  
10 equipment, or excuse me, that information, as I get the  
11 impression they're doing now, they should have provided  
12 for a provision to acquire that information.

13 Q. Now with respect to what Qwest actually does  
14 tell, excuse me, McLeod actually does tell Qwest about  
15 the equipment that's in its collocation space, McLeod  
16 does not tell -- strike that.

17 McLeod tells Qwest what equipment is going to  
18 be in its collocation space, right?

19 A. Yes.

20 Q. But McLeod does not tell and you can not know  
21 from that information alone how much power will be used  
22 by that equipment on a day-to-day basis, right?

23 A. In that case, Qwest could not tell what that  
24 would be unless they go to further documentation and  
25 research to acquire the List 1 power for the

0115

1 configuration being offered.

2 Q. You would agree that with regards to most  
3 telecommunications equipment, the percent fill and the  
4 level of actual traffic generated by McLeod's customers  
5 will change over time, and as such the exact power  
6 requirements related to that equipment can be difficult  
7 to forecast?

8 A. That would be true.

9 Q. And Qwest may not know whether McLeod intends  
10 to ramp up the equipment that it has in its collocation  
11 space over the next year or quarter or even month,  
12 correct?

13 A. I believe in Mr. Starkey's testimony there  
14 are some forecasting requirements that McLeod and all  
15 CLECs are required to provide to Qwest.

16 Q. But those are forecasting requirements for  
17 how many lines they're going to purchase for  
18 connectivity purposes, there is no forecast of power  
19 usage purposes, right?

20 A. Well, the fact that you're ramping up the  
21 capability for connection tells you that there's going  
22 to be additional power needs.

23 Q. But even with respect -- but what that --  
24 even telling that information doesn't tell you at what  
25 point in time that is going to be realized, right?

0116

1 A. That would be true.

2 Q. For example, McLeod could land a big new  
3 account like a new corporate headquarters and place even  
4 a whole lot of new collocation equipment all at once?

5 A. They would place all of that particular  
6 equipment that you're talking about with the knowledge  
7 of Qwest.

8 Q. But it could happen very quickly where McLeod  
9 would land a new account, place a bunch of equipment,  
10 and use a lot more power if they landed a large account  
11 in the short term?

12 A. Well, they are not going to do that in any  
13 kind of time frame that would be unknown to Qwest just  
14 simply because of the requirements that Qwest has for  
15 equipment going into that space. You know that it's  
16 going in, you may know all of the circumstances around  
17 that. If those particular customers are in the boundary  
18 area of that central office, and they probably would be  
19 since that's the office that the CLEC is collocated in,  
20 then Qwest is aware of those customers out there as  
21 well. Those customers should be either existing Qwest  
22 customers, or they could be new customers going in,  
23 which Qwest would be well aware of and would probably be  
24 bidding to get the service as well.

25 Q. But even though -- and so though Qwest knows

0117

1 about the installation of that equipment because McLeod  
2 tells them, my question is, that installation and that  
3 whole process that you have just described could happen  
4 fairly rapidly, yes?

5 A. Potentially, depending on what your  
6 definition of rapidly is.

7 Q. Well, within a few weeks or a month?

8 A. Possibly.

9 Q. And assuming that Qwest's power plant was at  
10 its maximum capacity before McLeod USA landed this big  
11 new account, McLeod does not want to wait for Qwest to  
12 take several months to increase its capacity, does it?

13 A. You're talking about with respect to power I  
14 assume or is that --

15 Q. Power capacity.

16 A. I'm assuming that that's with respect to  
17 power capacity?

18 Q. Power plant capacity, yes.

19 A. Okay, well, first off, it's not a given that  
20 you absolutely don't have it there.

21 Q. Well, I'm asking you to assume that power  
22 plant capacity is maxed out at that particular point in  
23 time.

24 A. But you would have already -- if McLeod is  
25 not going to make an order for power and they're going

0118

1 to use the existing power configuration coming into its  
2 cage, you already know what you need to know.

3 Q. But my question is, McLeod would expect --  
4 would not expect to wait for several months for Qwest to  
5 increase the power capacity if it landed a new account  
6 of the type that we have been discussing in this  
7 hypothetical?

8 A. Yes.

9 Q. No, they wouldn't want to wait?

10 A. No, they would not want to wait.

11 Q. Okay, I just wanted to make sure.

12 Even though Qwest may know the precise  
13 equipment that McLeod has in its collocation space,  
14 Qwest can not know the precise power requirements of any  
15 particular piece of equipment in McLeod's collocation  
16 space, can they?

17 A. That's right, they can't.

18 Q. Because McLeod USA's customer profile may be  
19 different than Qwest's, right?

20 A. Somewhat different, most likely it's very  
21 similar.

22 JUDGE MACE: Mr. Goodwin, I need to ask you  
23 how you're doing with your cross.

24 MR. GOODWIN: How am I doing?

25 JUDGE MACE: Yes.



0119

1 MR. GOODWIN: Five more minutes.

2 JUDGE MACE: Five more minutes, okay.

3 BY MR. GOODWIN:

4 Q. Now notwithstanding the fact that Qwest  
5 doesn't know, your contention is that Qwest should  
6 engineer power plant capacity based on List 1, right?

7 A. Yes.

8 Q. Now in other proceedings we have used a chart  
9 which shows a general relationship between List 2, List  
10 1, and actual measured usage?

11 A. Yes.

12 Q. And --

13 JUDGE MACE: Let me ask you this, I noticed  
14 that Ms. Anderl is putting up another chart, does this  
15 chart show up anywhere in the testimony?

16 MR. GOODWIN: No, it doesn't, but we have  
17 copies.

18 JUDGE MACE: Excellent, and we'll make an  
19 exhibit of those copies?

20 MR. GOODWIN: Yes. However, they are black  
21 and white copies, and so this would be --

22 JUDGE MACE: Well, I think you denoted List  
23 2, List 1, and measured usage, if you just refer to  
24 those lines, I don't know that we necessarily have to  
25 have a color copy.

0120

1 MR. GOODWIN: Okay.

2 JUDGE MACE: So this is Exhibit 14.

3 MR. GOODWIN: And I would move its admission.

4 JUDGE MACE: Any objection?

5 MR. KOPTA: No objection.

6 JUDGE MACE: Okay, I will admit it.

7 BY MR. GOODWIN:

8 Q. Now as we have discussed in other  
9 proceedings, this chart here fairly reflects the  
10 relationship between List 2, List 1, and measured usage  
11 over time, correct?

12 A. Yes.

13 Q. And that is that measured usage varies over  
14 time, but at the condition of peak usage at the busy  
15 day, busy hour, which we have identified here as  
16 Mother's Day, it's going to be at or very near List 1?

17 A. Yes.

18 Q. But other than that, it's going to be much  
19 lower than List 1?

20 A. Yes.

21 Q. Now in this particular case, the DC Power  
22 Measuring Amendment that is being litigated does not  
23 provide for charging for power plant at List 1 in  
24 McLeod's interpretation, but at the measured usage  
25 level, correct, at least as McLeod interprets it?

0121

1 A. Yes.

2 Q. And that measured usage level is always lower  
3 than the number of amps that you say Qwest should  
4 engineer its power plant capacity to except for on  
5 Mother's Day, right?

6 A. That's correct.

7 Q. And, in fact, that's true because DC power  
8 plant is not sized based on actual power measurements,  
9 but what power engineers actually do is size DC power  
10 plant to the List 1 for all equipment drawing power in  
11 the office, correct?

12 A. Yes.

13 Q. In fact, consistent with that conclusion in  
14 your rebuttal testimony, you specifically state that you  
15 do not endorse the proposition that Qwest used the  
16 measurements it has conducted in connection with the DC  
17 Power Measuring Amendment in order to size DC power  
18 plant, correct?

19 A. That's correct.

20 MR. GOODWIN: No further questions.

21 JUDGE MACE: Before we go ahead with redirect  
22 examination, we're going to take a 10 minute recess.

23 (Recess taken.)

24 JUDGE MACE: Mr. Kopta, are you ready?

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

0122

1 R E D I R E C T E X A M I N A T I O N

2 BY MR. KOPTA:

3 Q. Mr. Morrison, you had a discussion with  
4 Mr. Goodwin concerning page 6 of your direct testimony,  
5 Exhibit 1-TC, and specifically the discussion centered  
6 on your use of the term as consumed as in power plant  
7 you determined on an as-consumed basis; do you recall  
8 that discussion?

9 A. Yes, I do.

10 Q. Would you explain what you mean by as  
11 consumed?

12 A. Well, as consumed, the way I use the term is  
13 synonymous with usage, usage of the current produced by  
14 the power plant in amps. So usage is the term that I  
15 would use that would be synonymous with consumption,  
16 consumed.

17 Q. So as used then would be a synonym for as  
18 consumed as you would use that term?

19 A. Yes, I would.

20 Q. You also discussed with Mr. Goodwin List 2  
21 events; do you recall that general discussion?

22 A. Yes, I do.

23 Q. And I believe there was a reference to  
24 turning up equipment in the collocation cage when it's  
25 first installed; do you consider that to be a List 2

0123

1 Drain event?

2 A. Not the initial turnup in the cage. The  
3 turnup in the cage is a controlled set of circumstances  
4 whereby individual pieces of equipment are turned up  
5 serially as opposed to parallel until all the equipment  
6 is coming up, comes up, and that minimizes the current  
7 drain on not only the power plant but on the  
8 distribution cables as well.

9 Q. So you wouldn't anticipate that McLeod would  
10 be using the full capacity of the power cables when it  
11 first turns up its equipment in a collocation cage?

12 A. No, I would not anticipate that.

13 Q. You also had a discussion about the extent to  
14 which a CLEC orders distribution power cables to get the  
15 full amount of List 2 Drain; do you recall that  
16 discussion with Mr. Goodwin?

17 A. Yes, I do.

18 Q. Is it your expectation that a CLEC expects to  
19 use the full amount of the capacity of the power cable  
20 at some point in time?

21 A. No, I don't believe they would expect to use  
22 that full capacity at all.

23 Q. And what is the expectation with respect to  
24 the capacity of the power cables?

25 A. With respect to the capacity of the power

0124

1 cable, the CLEC expects to use List 1 capability from  
2 that power cable.

3 Q. And is the expectation that the power plant  
4 would be designed for the same purposes as the design  
5 for the capacity of the power cables?

6 A. Not at all. The capacity of the power plant  
7 itself would be designed for the usage or draw or List 1  
8 of the equipment.

9 Q. Whereas the power cables are designed for  
10 what purpose?

11 A. The power cables are designed for List 2 in  
12 the unlikely event that that ever happens.

13 Q. Mr. Goodwin also asked you whether you were  
14 aware of any Washington wire centers where a CLEC does  
15 not have the amount of capacity that it's ordered for  
16 its DC power cables; do you recall that?

17 A. Yes, I recall that.

18 Q. Did Qwest provide you with enough information  
19 to determine whether there's sufficient capacity in any  
20 wire center in Washington to accommodate that order?

21 A. No, as a matter of fact they did not provide  
22 enough information to determine that.

23 Q. Did McLeod request that information?

24 A. Yes, McLeod did request that information.

25 Q. You also discussed with Mr. Goodwin figure 6

0125

1 in your direct testimony, Exhibit 1-TC, and specifically  
2 the discussion that I'm referring to is the use of a 30%  
3 or 40% of List 2 Drain calculation to determine an  
4 estimate of List 1 Drain; do you recall that discussion?

5 A. Yes, I do.

6 Q. And even more specifically in Exhibit 13,  
7 Mr. Goodwin pointed out the additional sentence at the  
8 end of the quotation that you included in your testimony  
9 that such a calculation is very much an estimate and  
10 should be used sparingly to obtain List 1 Drains; do you  
11 recall that?

12 A. Yes, I do.

13 Q. Does Qwest know the List 1 Drain of  
14 collocated equipment if that equipment is the same  
15 equipment that Qwest uses in its central offices?

16 A. Yes, they do.

17 Q. And McLeod provides a list of equipment that  
18 it's going to collocate in Qwest's central offices to  
19 Qwest, does it not?

20 A. They do.

21 Q. And if one of those pieces of equipment or  
22 one or more pieces of equipment on that list are not  
23 included in Qwest's equipment in the central office, as  
24 an engineer would you expect Qwest to try to obtain a  
25 List 1 Drain for that equipment from the manufacturer?

0126

1           A.     Yes, I would, up to and including a call to  
2 the CLEC if that's what it finally takes.

3           Q.     And is it your experience that manufacturers  
4 generally would provide that information to Qwest?

5           A.     General speaking, yes.

6           Q.     So is it your expectation that Qwest would  
7 have occasion to use the 40% of List 2 Drain calculation  
8 frequently to determine the List 1 Drain for collocated  
9 equipment?

10          A.     It would be used extremely sparingly, which  
11 is what this in fact states, so no, I would not expect  
12 them to use it frequently.

13          Q.     You also had a discussion with Mr. Goodwin  
14 about whether or not the SGAT which McLeod has adopted  
15 in Washington requires McLeod to tell Qwest the List 1  
16 Drain of its equipment; do you recall that?

17          A.     I do.

18          Q.     Are you aware of anything in the SGAT that  
19 prevents Qwest from asking McLeod for that information?

20          A.     No, I'm not aware of anything that would  
21 prevent that.

22          Q.     And if Qwest were to ask McLeod, is it your  
23 expectation that McLeod would refuse to tell them the  
24 List 1 Drain of equipment that it's collocating?

25          A.     I don't believe they would refuse at all, I



0127

1 think they would be very cooperative.

2 Q. Finally, you had a discussion with  
3 Mr. Goodwin about what would happen if McLeod or a CLEC  
4 obtains a large customer account and would require  
5 additional equipment to be collocated; do you recall  
6 that discussion?

7 A. I do.

8 Q. If this large customer were already a Qwest  
9 customer, would you expect that any additional power  
10 that was required by any additional equipment that  
11 McLeod collocated to increase or require that there be  
12 an increase in the overall size of the power plant in  
13 that central office?

14 A. No, I don't believe it would.

15 Q. And why is that?

16 A. Well, if all of those customers are currently  
17 Qwest customers, then when the customer moves from Qwest  
18 to McLeod there would be a loss of power within the  
19 Qwest equipment and the Qwest power plant, and that  
20 would be realized over on the McLeod side of the ledger  
21 so to speak as an additional load on McLeod's equipment,  
22 producing a minimal or near zero difference in real  
23 power.

24 Q. And if this were a new customer to the  
25 service territory that had never been served before,

0128

1 would you anticipate that the additional equipment that  
2 McLeod would need to collocate in its cage would be a  
3 sufficiently high number of amps that Qwest would need  
4 to augment its power plant?

5 A. That would not be my expectations at all. As  
6 an example, if McLeod had to duplicate what it had in  
7 the cage, using my figure 6 in my direct testimony on  
8 page 47, if they had to duplicate that one more time to  
9 serve that new customer base so to speak, then the real  
10 draw on that equipment would be, from this example,  
11 would be 26 amps, that's the measure that we have for  
12 this particular set of equipment.

13 JUDGE MACE: Now let's -- I need to have you  
14 go back, I'm afraid that you may have put something on  
15 the record that is confidential.

16 MS. ANDERL: I might suggest, Your Honor,  
17 that perhaps, and this isn't my information so I don't  
18 know, but I know what the testimony, the public version  
19 of the testimony, that table is completely blank, so  
20 knowing one number associated with one column without  
21 having any understanding of what the underlying  
22 equipment is may not be a disclosure that McLeod is too  
23 excited about.

24 MR. KOPTA: That's fine.

25 JUDGE MACE: Very well, it appears that this

0129

1 is not the problem I thought it might have been. I just  
2 want to caution you to be careful about the confidential  
3 material.

4 THE WITNESS: I apologize, Your Honor.

5 BY MR. KOPTA:

6 Q. And so to continue your answer, actually we  
7 have corrected this to be 25 as opposed to 26, so what  
8 significance would there be that there would be an  
9 additional 25 amps of power required?

10 A. Very insignificant to the total draw of that  
11 power plant.

12 Q. Would you expect Qwest to engineer its power  
13 plant to be within 25 amps of exhaust?

14 A. Most likely not, that would be a very unusual  
15 set of circumstances should that happen.

16 MR. KOPTA: Thank you, those are all my  
17 questions.

18 JUDGE MACE: Mr. Kopta, I'm wondering if  
19 there is anywhere in the testimony you could point me to  
20 right now where McLeod provides a sample of how they  
21 think this rate should be calculated, I mean how this  
22 rate should be applied. And I guess this was triggered  
23 by looking at the chart that you have there, DC Power  
24 for 100 amp order, I guess if there were a single rate  
25 or if there were a rate -- if the rate for both plant

0130

1 and usage were based on usage, is there an example of  
2 that anywhere?

3 MR. KOPTA: Well, I don't know that there's  
4 anything that's been done numerically, but perhaps it  
5 might be helpful to look at Mr. Ashton's Exhibit CA-2C,  
6 which has been marked for identification as Exhibit  
7 42-C. And in this exhibit you will see that there are  
8 two columns, one is previous measurement in amps, and  
9 the other is current measurement in amps, that's the  
10 actual measurement amounts. And so that number would be  
11 multiplied by, well, we don't have -- Mr. Morrison, can  
12 you move that chart off of there.

13 THE WITNESS: (Complies.)

14 MR. KOPTA: As it stands right now, both  
15 sides agree that you would multiply the number in that  
16 column by the \$3.13 of the usage. What McLeod would say  
17 is you would also multiply that number by the power  
18 plant. Right now what Qwest says --

19 JUDGE MACE: But Qwest applies that to the  
20 as-ordered, applies the power plant charge to the  
21 as-ordered for things over 60 amps or under the way  
22 Qwest would propose this. I just wanted to make sure in  
23 my mind after seeing that chart that I am clear about  
24 exactly what McLeod is looking for here.

25 MR. KOPTA: To use a hypothetical example,

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1 let's assume that McLeod is -- the measured usage is 30  
2 amps, but they have a 100 amp power cable feed.  
3 McLeod's position is that you multiply the power plant  
4 rate of \$9.34 by 30 to get the monthly rate for power  
5 plant. Qwest's position, and they can correct me if I'm  
6 mistaken, is that you would multiply that \$9.34 times  
7 100 amps.

8 JUDGE MACE: I understand now, and I'm  
9 assuming that that is a correct representation.

10 MR. GOODWIN: Yes.

11 JUDGE MACE: It makes sense, but I just  
12 didn't recall seeing a specific sort of graphic  
13 calculation of how McLeod would want to see the rate  
14 calculated.

15 MR. KOPTA: I don't think that there is, so  
16 it wasn't as if you missed it, I think that it may be in  
17 Mr. Starkey's testimony that there's some discussion of  
18 that, but that's sort of a boiled down simplified way of  
19 doing it.

20 JUDGE MACE: Okay. Yes, in a way I recognize  
21 it's not testimony coming from you either, but if you  
22 both agree on it, I just wanted to get a feel for what  
23 that calculation would be.

24 All right, do you have anything further of  
25 Mr. Morrison?

0132

1 MR. GOODWIN: Just a brief follow up to that,  
2 and then I'm done.

3

4 R E C R O S S - E X A M I N A T I O N

5 BY MR. GOODWIN:

6 Q. Mr. Kopta just pointed to Exhibit CA-2C and  
7 the data in that exhibit that points out the actual  
8 measurements done in Washington pursuant to this  
9 amendment, correct; do you remember that discussion?

10 A. Yes.

11 Q. It is that precise exhibit and that same data  
12 that you were referring to in Footnote 21 of your  
13 testimony when you say, I should also note that I am not  
14 endorsing this data be used by Qwest to size DC power  
15 plant, right, that's the data that you were referring  
16 to?

17 A. That's right.

18 MR. GOODWIN: No further questions.

19 JUDGE MACE: Thank you, you're excused.

20 THE WITNESS: Thank you.

21 MR. KOPTA: Just one more clarification. As  
22 I referenced, there is in Mr. Starkey's testimony an  
23 example of the application of that rate, and that would  
24 be on page 7 of his direct testimony which has been  
25 marked for identification as Exhibit 20-T.

0133

1 JUDGE MACE: Right, thank you.

2 Let's be off the record while we switch  
3 counsel and witnesses.

4 (Discussion off the record.)

5

6 Whereupon,

7 MICHAEL STARKEY,

8 having been first duly sworn, was called as a witness  
9 herein and was examined and testified as follows:

10

11 D I R E C T E X A M I N A T I O N

12 BY MR. KOPTA:

13 Q. Good afternoon, Mr. Starkey.

14 A. Good afternoon.

15 Q. Would you state your name and business  
16 address for the record, please.

17 A. My name is Michael Starkey, and my business  
18 address is 243 Dardenne Farms Drive, Cotterville,  
19 Missouri.

20 Q. And do you have before you what's been marked  
21 for identification as Exhibit 20-T, which is the direct  
22 testimony of Michael Starkey, and Exhibit 21, which is  
23 Exhibit MS-1 attached to that testimony, Exhibit 22-T,  
24 which is the supplemental direct testimony of Michael  
25 Starkey, Exhibit 23-T, which is the rebuttal testimony

0134

1 of Michael Starkey, and Exhibits 24 through 27, which  
2 are attached Exhibits MS-2 through MS-5?

3 A. Yes, I do.

4 Q. Were those documents prepared by you or under  
5 your direction and control?

6 A. Yes, they were.

7 Q. And are those documents true and correct to  
8 the best of your knowledge?

9 A. They are with one exception, I have a  
10 correction that I need to make.

11 Q. All right, could you make that now, please.

12 A. Yes, it's on my direct testimony that you  
13 identified as Exhibit 20-T. Actually, I apologize, it's  
14 on my rebuttal testimony, it's at page 41, line 1036.

15 Q. Is that the last line of the page?

16 A. It is on my copy, yes, I believe.

17 Q. Okay.

18 A. I hope it's the same as everyone else's.

19 The sentence begins, were that true (which it  
20 is not), at the very end of that sentence that ends  
21 right now with the word them, I would add a comma and  
22 then add, I am sure. I didn't mean to be thinking for  
23 the Commissioners.

24 Q. I'm sure they appreciate that.

25 A. That's the only correction I have.



0135

1 Q. And if I asked you the questions contained in  
2 Exhibits 20-T, 22-T, and 23-T today, would your answers  
3 be the same as those contained in those exhibits?

4 A. Yes, they would.

5 MR. KOPTA: Your Honor, I move admission of  
6 Exhibits 20-T, 21, 22-T, 23-T, and 24 through 27.

7 JUDGE MACE: Any objection to the admission  
8 of those exhibits?

9 MS. ANDERL: Your Honor, understanding that  
10 you have ruled on our motion to strike and with that  
11 exception of course, continuing objection, no objection.

12 JUDGE MACE: I will admit them, thank you.

13 MR. KOPTA: And Mr. Starkey is available for  
14 cross-examination.

15 JUDGE MACE: Go ahead, Ms. Anderl.

16 MS. ANDERL: Thank you.

17

18 C R O S S - E X A M I N A T I O N

19 BY MS. ANDERL:

20 Q. Good afternoon, Mr. Starkey.

21 A. Good afternoon.

22 Q. Mr. Starkey, you're here testifying as an  
23 expert on behalf of McLeod; is that right?

24 A. Yes.

25 Q. You're not a McLeod employee?

0136

1 A. I'm not.

2 Q. And what exactly is your area of expertise  
3 that's important for this particular case?

4 A. In this particular case there are a couple.  
5 One of them is my expertise in dealing with  
6 interconnection agreements between competitors and  
7 incumbent local exchange carriers and other types of  
8 contracts and agreements that those two types of  
9 carriers enter into amongst themselves. And the second  
10 one is the application of rates in telecommunications  
11 and costs that underlie those rates.

12 Q. Now you're not a power engineer; is that  
13 right?

14 A. I'm not.

15 Q. And you have never engineered a power plant?

16 A. I have not.

17 Q. And to the extent that there is any  
18 engineering testimony or assumptions underpinning your  
19 testimony, you're relying on Mr. Morrison's testimony  
20 for the support of those engineering assumptions or  
21 conclusions?

22 A. To some extent, yes. I also rely on some of  
23 the technical documentation provided by Qwest itself.

24 Q. When were you retained by McLeod to assist  
25 McLeod in this complaint case? I know we have had this

0137

1 conversation a couple times before, and I'm not really  
2 looking for an inconsistent answer, I'm just trying to  
3 get it clear for the record.

4 A. Good, because it was only a month ago and I  
5 think I have already forgotten the exact dates again.  
6 It was sometime in the end of 2005, I believe it was the  
7 January time frame, I'm sorry, January -- December time  
8 frame of 2005 or January of 2006.

9 Q. And it's your understanding that the  
10 amendment that is being litigated here today was signed  
11 by McLeod and Qwest in August of 2004; is that right?

12 A. I believe so.

13 Q. So you did not advise McLeod in any way  
14 regarding the Power Measuring Amendment before it was  
15 executed?

16 A. That's correct, not specific to the Power  
17 Measuring Amendment.

18 Q. And you didn't consult with McLeod on the  
19 specific Power Measuring Amendment before McLeod signed  
20 it?

21 A. That's correct, I think that as we have  
22 talked about in other states, we have a long  
23 relationship with McLeod stretching even before that  
24 time frame, and we advised them on a number of different  
25 topics, including unbundled network element costs and

0138

1 collocation costs.

2 JUDGE MACE: Mr. Starkey, I would like to  
3 have you speak more slowly and speak up a little bit.

4 THE WITNESS: Okay, thank you.

5 A. We advised McLeod on a number of different  
6 topics, including unbundled network element costs and  
7 rates and collocation costs and rates, but we did not  
8 advise them specific to that amendment at the time it  
9 was signed.

10 BY MS. ANDERL:

11 Q. And so just to be clear, I think that your  
12 testimony suggests the answer to this question, but you  
13 did not participate directly or indirectly in any of the  
14 negotiations that led up to the amendment that's at  
15 issue in this case?

16 A. That is true.

17 Q. Were you advising McLeod with regard to  
18 collocation power costs specifically in any state in the  
19 2004 time frame?

20 A. Probably, and the reason I say that is we  
21 often participate on behalf of McLeod and other  
22 competitors in total element long run incremental cost  
23 or TELRIC proceedings wherein we advocate for particular  
24 positions with respect to collocation and collocation  
25 power costs and rates, and probably during 2004 we were

0139

1 doing that on behalf of McLeod.

2 Q. And would your involvement with McLeod in  
3 those other states then have included providing advice  
4 to McLeod in terms of collocation of power billing and  
5 rate elements?

6 A. Probably not specifically, but potentially.  
7 And I'm sorry that's not a great answer. We, like I  
8 said, we participate on behalf of McLeod and other  
9 carriers in proceedings that set these types of rates,  
10 so we have discussions with them about, you know, does  
11 this particular way to recover this cost make sense to  
12 you, does it make sense for the rate to be applied in  
13 this way, we have those general conversations. But  
14 again, we didn't have a general conversation with  
15 respect to that at the time this amendment was signed  
16 about this amendment.

17 Q. Now in this case did you assist McLeod in the  
18 preparation of its discovery responses?

19 A. Some of them, yes.

20 Q. Okay. And did you review all of the  
21 discovery responses, even the ones you didn't assist in  
22 preparing, did you review all of the discovery responses  
23 that McLeod provided to Qwest?

24 A. I believe I did.

25 Q. Did you review all of the discovery responses

0140

1 that Qwest provided to McLeod?

2 A. I believe I have.

3 Q. Mr. Starkey, I would like to turn first to  
4 your rebuttal testimony, and you talk starting at page  
5 35, I will just wait and make sure everyone is there,  
6 and in my testimony it starts at line 866, the sentence  
7 that starts, however, the second component; are our line  
8 numbers matched up?

9 A. I believe they are.

10 Q. Now that testimony through line 904, would it  
11 be fair to characterize or summarize that testimony as  
12 an attack on Ms. Million's credibility?

13 A. Well, beginning on line 866 it simply talks  
14 about the second component of McLeod's complaint, which  
15 is a discrimination complaint, so no is the answer to  
16 your question with respect to that particular question.

17 Q. Okay, on these --

18 A. That particular component of the testimony,  
19 sorry.

20 Q. On pages 35 and 36, is there any testimony  
21 that you gave there that you would characterize as a  
22 criticism of Ms. Million's credibility?

23 A. I think I would describe it as a rebuttal to  
24 Ms. Million's discussion about McLeod's attempt to get  
25 the confidential information or the cost study that at

0141

1 the time McLeod believed to be confidential.

2 Q. On line 903 there is a sentence that starts,  
3 it also bears; could you please read that sentence into  
4 the record.

5 A. Yes, it says:

6 It also bears on the credibility of  
7 Ms. Million's testimony as she bases her  
8 criticism of McLeod USA on a false  
9 premise.

10 Q. Would you characterize that as an attack on  
11 Ms. Million's credibility?

12 A. I don't think I would characterize it at all,  
13 it is what it says.

14 Q. And on line 894, could you please read the  
15 sentence that starts on line 894 into the record.

16 JUDGE MACE: Counsel, I appreciate I guess  
17 what you want to do here, I'm not, you know, this is in  
18 the record, I'm not sure what you want to accomplish  
19 here, I'm not sure it's that beneficial for the record.  
20 I will let you go ahead with it, but I question, you  
21 know, why we need to do it.

22 MS. ANDERL: Well, Your Honor, I will skip  
23 the part of having the witness read this out loud, and I  
24 will ask Mr. Starkey more directly.

25 BY MS. ANDERL:

0142

1 Q. Did you write this segment of your testimony,  
2 Mr. Starkey?

3 A. I did.

4 Q. And you state in this testimony that in Iowa  
5 Qwest objected to providing the Iowa cast study and  
6 backup information on the basis that it was confidential  
7 information; is that your testimony?

8 A. That was one of the reasons that they denied  
9 or objected to providing it to us, yes.

10 Q. And at line 886 you state that Ms. Million  
11 was the respondent on the data request that contains  
12 that objection, did you not?

13 A. Yes, the objection that I -- the response  
14 that I include with my testimony as Exhibit MS-3.

15 Q. Okay, could you please turn to Exhibit MS-3,  
16 which is of course for the record in this case Exhibit  
17 Number 25.

18 A. Okay, I'm there.

19 Q. Can you please point to me where it indicates  
20 on the data request response that Ms. Million is the  
21 respondent?

22 A. My apologies, this seems to be the wrong --  
23 MS-3 had both a direct, I'm sorry, an initial and a  
24 supplemental response. When I was writing this  
25 testimony, I was looking at the supplemental response,



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1 and it appears that the initial response got attached.

2 MS. ANDERL: Let me have a document  
3 distributed that we would like to have marked as the  
4 next exhibit in line, which I believe for Mr. Starkey  
5 would be 28.

6 JUDGE MACE: Let me see here, it would be,  
7 yes, 28, correct.

8 And could I have two copies of this, please.

9 MR. GOODWIN: I'm sorry.

10 JUDGE MACE: Thank you.

11 BY MS. ANDERL:

12 Q. Mr. Starkey, do you recognize the document  
13 that has just been marked for identification as Exhibit  
14 Number 28?

15 A. Yes, this is the one I had pulled up on my  
16 computer when I was writing the testimony and intended  
17 to incorporate as Exhibit MS-3.

18 MS. ANDERL: Your Honor, we move the  
19 admission of Exhibit 28.

20 MR. KOPTA: No objection.

21 JUDGE MACE: I will admit it.

22 BY MS. ANDERL:

23 Q. And, Mr. Starkey, with regard to the  
24 objection that Qwest has set forth on Exhibit Number 28,  
25 who is indicated as the respondent on the objection?

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1 A. Qwest legal.

2 Q. Does that say that Ms. Million is the  
3 respondent who set forth the objection to producing the  
4 cost study?

5 A. No, it appears Ms. Million is the respondent  
6 to the supplemental response to this same request.

7 Q. And the supplemental response is a response  
8 that actually provided the cost study; is that right?

9 A. Yes, much later in the process.

10 Q. Actually on March 16th; is that right?

11 A. Yes, which was much after we asked for the  
12 cost study.

13 Q. And do you see how that Attachment A is  
14 designated?

15 A. Yes, I do.

16 Q. Is it designated as confidential or  
17 non-confidential?

18 A. It says, please see non-confidential  
19 Attachment A below.

20 Q. Is it still your testimony, Mr. Starkey, that  
21 Ms. Million is the witness who propounded the objection  
22 to the production of the cost study in Iowa?

23 A. I'm not sure that ever was my testimony.  
24 Where was that in my rebuttal that we were working from?

25 Q. The question that I had last asked you about

0145

1 that was on line 886. You say there:

2           It is worth noting that the respondent  
3           responsible for this response was Terry  
4           Million, Staff Director.

5           Is that still your testimony?

6       A.    It is.

7       Q.    And upon what do you base that?

8       A.    The point of this testimony was to suggest  
9       that Ms. Million was critical of McLeod USA in her  
10       testimony for not knowing that we should have been able  
11       to get the cost study on a non-confidential basis from  
12       the Commission presumably and that Qwest -- we shouldn't  
13       have been, as I think I say in my testimony, bothering  
14       Qwest about getting it from them. In my testimony I  
15       describe the fact that McLeod USA went about that  
16       process because Qwest had provided it in Iowa, the first  
17       case wherein we undertook this undertaking that it was  
18       so confidential as to be confidential trade secret  
19       information. I assumed Ms. Million, and perhaps it's an  
20       assumption that's misplaced, that Ms. Million was aware  
21       of that particular objection on the part of Qwest  
22       because she signed a document or was responsible for a  
23       document upon which that objection is based. If she did  
24       not read that particular component of Qwest's objection  
25       before writing her testimony in that regard, then I will

0146

1 apologize to Ms. Million, but my assumption is that she  
2 did.

3 Q. Well, your testimony, your first round of  
4 testimony in Washington was filed on April 28; is that  
5 right?

6 A. I'm not sure, perhaps.

7 JUDGE MACE: It was.

8 A. It was.

9 Q. And this supplemental response in Iowa as of  
10 March 16, 2006, had already communicated to McLeod that  
11 the cost studies were non-confidential; isn't that  
12 right?

13 A. Yes.

14 Q. And isn't it also true that Qwest's data  
15 request response to this identical question in  
16 Washington set forth an objection on relevancy grounds  
17 but did not advance a confidentiality objection?

18 A. I don't know.

19 MS. ANDERL: Your Honor, we will distribute  
20 another document that we would identify, please, as  
21 Exhibit Number 29.

22 BY MS. ANDERL:

23 Q. Mr. Starkey, you stated that you had reviewed  
24 the data request responses that Qwest provided to McLeod  
25 in this case; do you recognize Exhibit Number 29 as one

0147

1 of those data request responses?

2 A. Yes.

3 Q. And do you recognize it as the Data Request  
4 Number 3 that is parallel to the Data Request Number 3  
5 in Iowa that we have just been talking about?

6 A. It appears to be.

7 Q. Do you see whether there is a confidentiality  
8 objection made to that data request?

9 A. There is not.

10 Q. And that was provided to McLeod on April 6th;  
11 is that right?

12 A. That's what the cover letter says.

13 Q. And that was approximately three weeks before  
14 you filed your direct testimony?

15 A. If we filed on the 28th, yes, that's about  
16 right.

17 Q. And can you tell me what steps, if any,  
18 McLeod took between the 6th of April and the 28th of  
19 April to obtain a copy of the cost study through means  
20 other than asking Qwest for it in discovery?

21 A. I apologize in advance if the states kind of  
22 roll together here as we're fighting these battles in at  
23 least four or five states, but I believe that McLeod USA  
24 filed a motion to compel to compel Qwest to provide the  
25 information.

0148

1 Q. Okay. Other than trying to get the cost  
2 study from Qwest, did McLeod make any effort to obtain  
3 it from the Commission or from other publicly available  
4 means?

5 A. Yes, well, when you say McLeod, I believe we  
6 undertook a specific effort to try to search the web  
7 site in the docket information available on the  
8 Washington Utilities Commission web site and were unable  
9 to find it.

10 Q. Going back to Exhibit Number 28, the Iowa  
11 data request response, do you understand that the  
12 supplemental response was subsequent to the original  
13 response?

14 A. I do.

15 Q. And do you understand whether the subsequent  
16 response to the extent that there was a confidentiality  
17 objection lifted or waived that objection?

18 A. I think as a practical matter, it likely did.  
19 The extent to which that's how it works in objecting to  
20 data request responses or not, I don't know. We got the  
21 cost study.

22 Q. On a non-confidential basis?

23 A. Yes.

24 Q. Let's turn to the contract amendment,  
25 interconnection agreement amendment that's at issue in

0149

1 this case. You have some testimony in both your direct  
2 and your rebuttal with regard to McLeod's expectations  
3 and the intent of the agreement, and let me just kind of  
4 begin by asking you some questions about that. If you  
5 turn to Exhibit Number 20, your direct testimony, now I  
6 have it on lines 59 and 60, and you use the phrase,  
7 McLeod's interpretation, on each of lines 59 and 60; do  
8 you see that?

9 A. Yes.

10 Q. McLeod's interpretation of the contract  
11 amendment or the document that's being litigated here  
12 today?

13 A. Yes.

14 Q. From what source do you base your  
15 understanding of McLeod's interpretation of the  
16 contract?

17 A. I personally base my interpretation, my  
18 understanding of McLeod's interpretation from  
19 discussions with the folks at McLeod. That rationale  
20 was ultimately put into pleadings that were filed in  
21 cases like this.

22 Q. And when you say the personnel at McLeod,  
23 does that include Ms. Spocogee?

24 A. It does, but more prominently probably  
25 Mr. Haas and Mr. Courter.

0150

1 Q. Mr. Haas and Mr. Courter, is that what you  
2 said?

3 A. Yes.

4 Q. And both of those men are in-house attorneys  
5 for McLeod?

6 A. Yes.

7 JUDGE MACE: Could you spell Mr. Haas's name,  
8 I'm assuming Porter is P-O-R-T-E-R?

9 MS. ANDERL: Actually it's H-A-A-S for  
10 Mr. Haas, and Courter is C-O-U-R-T-E-R, C as in Charlie.

11 JUDGE MACE: Thank you.

12 BY MS. ANDERL:

13 Q. And turning to page 7 of your direct, you  
14 state there that McLeod, I believe it's page 7, I'm  
15 looking for the right word, I'm sorry, it's on page 6,  
16 line 144, you say, McLeod expected its monthly invoice  
17 to look similar to table 1 below, and where did you gain  
18 your understanding of what McLeod's expectation was?

19 A. The same source.

20 Q. And finally turning to, I'm sorry to make  
21 everyone flip around like this but it is contained in  
22 multiple places in different testimonies, so let's look  
23 at your rebuttal testimony, Exhibit 23, and page 5,  
24 lines 123 and 129, starting at line 123 on to 124 you  
25 use the phrase, the entire purpose, and at line 128 and



0151

1 129 you use the phrase, the overarching purpose of the  
2 amendment. When you use the word purpose in those two  
3 places, what do you mean by that?

4 A. I'm struggling a little bit with how to break  
5 it down more than to purpose, that was its intention.

6 Q. And you have already testified that you were  
7 not a party to the negotiations for this contract; is  
8 that correct?

9 A. That's correct.

10 Q. And Ms. Spocogee confirmed that you were not  
11 consulting with McLeod or advising McLeod or a party to  
12 any of the negotiations that led up to the execution of  
13 this amendment; is that also correct?

14 A. She probably has, I heard her say that in  
15 other states.

16 Q. And so when you testify with regard to the  
17 intention of the amendment, are you basing that  
18 testimony on the conversations you had with Mr. Haas and  
19 Mr. Courter or on something else?

20 A. Well, I think you have to differentiate  
21 between the different places in which I have used the  
22 word intention or purpose for interpretation. For  
23 example, on page 5 of my rebuttal when I talk about the  
24 purpose of the Power Measuring Amendment was to change  
25 the manner by which the DC power rate elements were

0152

1 being assessed, I think I can base that particular  
2 purpose on Qwest's own position in this case. Qwest has  
3 taken the position that the Power Measurement Amendment  
4 was meant to change the way in which the power usage  
5 rate was to be applied. So yes, to some extent I base  
6 some of my interpretations to McLeod's intent on my  
7 discussions with McLeod. In some cases I base my  
8 discussion of the purpose of the Power Measuring  
9 Amendment on things I have learned in this case,  
10 including Qwest's own documents describing its position.

11 Q. And is some of the testimony also based then  
12 in part on the actual language that's contained in the  
13 contract?

14 A. Yes.

15 Q. Now with regard to contract negotiations in  
16 general or interconnection agreement amendment  
17 negotiations in general, would you agree that for a  
18 negotiation to be successful it will be necessary for or  
19 at least important for both parties to have attached the  
20 same meaning to the terms of the agreement?

21 A. That would be helpful.

22 Q. And if parties do not attach the same  
23 meanings to the terms of the agreement, would it be  
24 necessary or helpful for parties to communicate with one  
25 another the differences in understanding that they had

0153

1 between the terms?

2 A. To the extent they understand that they are  
3 not interpreting them in the same way, yes, that would  
4 be helpful.

5 Q. Now you're not aware of any direct  
6 communication from McLeod to Qwest prior to the  
7 execution of the amendment where McLeod expressed a  
8 desire to be billed on a usage sensitive basis for both  
9 power consumption and power plant, are you?

10 A. I'm not, I was not involved at that point in  
11 the discussion.

12 Q. And you have read Mr. Easton's testimony,  
13 have you not?

14 A. I have.

15 Q. And from his testimony, have you gotten an  
16 understanding that Qwest has entered into this amendment  
17 with multiple other carriers in Washington and other  
18 states?

19 A. Yes.

20 Q. And that would be either this amendment  
21 specifically or interconnection agreements in total that  
22 have these same terms in them, or do you not know?

23 A. It's easy for me to assume that, I'm trying  
24 to remember whether I know that as a fact based on  
25 anything Mr. Easton said, and I don't know that I do.

0154

1 Q. Are you aware of any other carrier in  
2 Washington or any other state who has advanced the same  
3 interpretation of the Power Measuring Amendment as  
4 McLeod has?

5 A. I'm not aware either way, I don't know.

6 Q. Mr. Starkey, you attached a copy of the  
7 amendment itself to your rebuttal testimony helpfully as  
8 MS-2 which is Exhibit Number 24; is that correct?

9 A. Yes, that is correct.

10 Q. And do you agree that for our purposes in  
11 terms of interpreting the amendment, the page that the  
12 parties find relevant to look at, and at least agree on  
13 this one thing, that the relevant page is the third  
14 page; is that right?

15 A. That's fair.

16 Q. Now in Section 2.2, that amendment references  
17 the minus 48 DC Power Usage Charge; is that right?

18 A. Yes.

19 Q. And says that that is specified in Exhibit A  
20 of the agreement?

21 A. Yes.

22 Q. And that is a reference to a charge,  
23 singular?

24 A. The word is charge.

25 Q. And that's singular, not plural?

0155

1 A. It is in this particular circumstance.

2 Q. And do you attach any particular significance  
3 to the fact that the initial letters of the words being  
4 48 Volt DC Power Usage Charge are capitalized?

5 A. Oh, yes, I do.

6 Q. What significance do you attach to that?

7 A. Sorry, I was catching up.

8 Generally though not an expert in contract  
9 interpretation, I understand that when terms are  
10 capitalized they are meant to refer to a term that has a  
11 particular definition as interpreted by the agreement.

12 Q. And you have reproduced in your testimony,  
13 and I just need to find it here, the portion of Exhibit  
14 A which contains the rate elements that are in dispute,  
15 did you not? And I would reference you to page 8 of  
16 your rebuttal, Exhibit 23.

17 A. Yes.

18 Q. And if you would turn and look over your  
19 right shoulder, would you agree that the chart that is  
20 up there for illustrative purposes substantially  
21 reflects the same information, although I will caveat it  
22 by saying I'm just realizing that 8.1.4.1.2 and  
23 8.1.4.1.3 have some of the words cut off of them?

24 A. Yes, to both of those questions.

25 Q. But other than that, you agree that the

0156

1 numbering is correct?

2 A. Yes, it is.

3 Q. And the words that are there, not the words  
4 that are omitted, are also correct?

5 A. Yes.

6 Q. And the rate elements are reproduced  
7 correctly?

8 A. Yes.

9 Q. Now the amendment that we're discussing is  
10 the same in all 14 states; is that right?

11 A. Yes.

12 Q. The interconnection agreement amendments, the  
13 interconnection agreements that underlie this amendment  
14 are not identical in each state, are they?

15 A. Certainly the Exhibit A's are not, I just  
16 don't know the extent to which the ICA's are.

17 Q. That's fine, the Exhibit A's are not  
18 identical?

19 A. That's correct.

20 Q. And you also attached to your rebuttal  
21 testimony as Exhibit 26, you don't need to look at it,  
22 but it's the entirety of the Exhibit A for Washington;  
23 is that right?

24 A. Yes, as pulled from the Qwest web site  
25 recently.

0157

1 Q. And that same rate structure is shown on that  
2 document as well on page 3; is that right?

3 A. Yes.

4 Q. Now referencing either the large chart or  
5 your excerpt of Exhibit A on page 8 of your rebuttal  
6 testimony or this Exhibit Number 26, do you see any  
7 heading or charge or other designation that is labeled  
8 minus 48 Volt DC Power Usage?

9 A. No, and I describe why not at page 10 of my  
10 rebuttal.

11 Q. Where is that?

12 A. I either do it there, I might be mistaken, I  
13 might be describing it at page 8. In my rebuttal  
14 testimony I described the extent to which the Exhibit  
15 A's are different. In most states we see at 8.1.4 in  
16 this larger chart that rate element entitled as minus 48  
17 Volt DC Power Usage. In Washington it's just been  
18 truncated to power usage. It appears that when Qwest  
19 drafted the amendment, it tried to draft it generically  
20 and didn't capture all the nuances of each state.

21 Q. But even though it doesn't say negative 48  
22 Volt DC Power Usage Charge, McLeod nevertheless agrees  
23 that this is the section that this amendment applies to;  
24 is that right?

25 A. Yes, 8.1.4.

0158

1 Q. Even though the terms don't match up  
2 identically?

3 A. Well, I think, if I'm not mistaken, just give  
4 me a second, I think somewhere in here it talks about a  
5 simple power usage charge. It certainly talks about a  
6 DC Power Usage Charge. So I think there's little  
7 question that when we talk about power usage and DC  
8 power usage or minus 48 Volt DC Power Usage, we're  
9 referring at least in Washington to Section 8.1.4.

10 Q. And really the heart of the disagreement  
11 between Qwest and McLeod in this case is whether the  
12 amendment applies to the entire section or only to one  
13 rate element in that section.

14 A. That's a fair characterization.

15 Q. Now reading across on line 8.1.4 where it  
16 says power usage, is there a rate element or a charge  
17 associated with that designation on that line?

18 A. 8.1.4?

19 Q. Yes.

20 A. No.

21 Q. And reading along the line that is labeled  
22 8.1.4.1 that says DC Power Usage per amp per month, is  
23 there a rate or a charge on that line associated with  
24 that designation?

25 A. No.



0159

1 Q. And on line 8.1.4.1.1, that indicates power  
2 plant; is that right?

3 A. Yes.

4 Q. And does it say usage anywhere on that line?

5 A. No, it does not.

6 Q. And McLeod and Qwest agree that 8.1.4.1.2,  
7 usage less than 60 amps, is not affected by the  
8 amendment in the sense that the amendment causes that to  
9 be a measured rate; is that right?

10 A. Right, I think Section 1.2 of the agreement  
11 makes that clear.

12 MS. ANDERL: I have another illustrative  
13 exhibit, Your Honor, that we have used in other states,  
14 but maybe now would be a good time to make that  
15 transition.

16 JUDGE MACE: Well, yes, and I did say 3:30,  
17 but I'm wondering if we can hold out for another 15  
18 minutes or so before breaking. Everybody all right with  
19 that? All right, let's go ahead.

20 MS. ANDERL: I'm going to have Mr. Goodwin  
21 put up a chart, but really we will be looking at Section  
22 1.2 in the Power Measuring Amendment. This is just for  
23 purposes of illustration, this language is already in  
24 the record. And as I have said in every state so far  
25 and I'm going to say it again, these always look bigger

0160

1 in my office.

2 BY MS. ANDERL:

3 Q. Mr. Starkey, do you recognize that as a  
4 replication of the language in section, at least some of  
5 the, no, I think it is all of it, all of the language in  
6 Section 1.2?

7 A. I can accept that it is, yeah.

8 Q. And would you agree that Section 1.2  
9 establishes certain duties and obligations on Qwest?

10 A. Yes.

11 Q. And in the segment that is highlighted and  
12 bold, would you agree that the obligation upon Qwest  
13 there is that based on the power readings that Qwest is  
14 going to take, if a CLEC is utilizing less than the  
15 ordered amount of power, Qwest will reduce the monthly  
16 usage rate to the CLEC's actual use?

17 A. That is what it says.

18 Q. And is that also a reference to a usage rate,  
19 singular not plural?

20 A. It uses the word rate, singular, yes.

21 Q. And --

22 A. But I would also point out that those terms  
23 aren't capitalized there, so I think it's speaking  
24 generically.

25 Q. It does not reference the power plant rate in

0161

1 that paragraph, does it?

2 A. You mean in that highlighted section?

3 Q. Actually anywhere in that paragraph, but we  
4 can start with the highlighted section.

5 A. Well, it's a good place to start, because  
6 when you talk about the usage rate and then you go back  
7 to Section 8.1.4, you will note that it talks about DC  
8 power usage generally as a grouping of those three  
9 particular rate elements, so I would say yes, it does  
10 actually.

11 Q. That's your position?

12 A. Yes, that's my position.

13 Q. Now I'm still going to talk to you about  
14 Section 1.2, but I also need you to look at page 10 of  
15 your rebuttal testimony, and on page 10 you talk about  
16 the different rate structure in Utah to illustrate a  
17 point there, and I would like you to take a look at the  
18 Qwest Utah DC power usage rates.

19 A. I see it.

20 Q. Now the language in Section 1.2 in the first  
21 sentence says, since the power usage rate, and I'm going  
22 to say paren here and insert this, since the power usage  
23 rate (for less than 60 amps) reflects a discount from  
24 the rates for those feeds greater than 60 amps,  
25 essentially that less than 60 amps rate will not be

0162

1 measured. Is that right, is that how you would  
2 interpret Section 1. -- the first sentence of Section  
3 1.2?

4 A. I'm not sure I was keeping up with you.

5 Q. Okay.

6 A. It's pretty clear the way it's written, I'm  
7 not sure we have to interpret.

8 Q. Why don't you go ahead and read the first  
9 sentence of Section 1.2, and let me know when you have  
10 read it through, and I will ask maybe the question  
11 again.

12 A. (Reading.)

13 Okay.

14 Q. Okay.

15 A. I have read it.

16 Q. So that section says that the 60 amp or less  
17 orders are discounted from the rates for those feeds  
18 greater than 60 amps; is that right?

19 A. It uses those words, yes, I mean I can read  
20 it to you if you would like to.

21 Q. No.

22 A. I mean it's right here.

23 Q. Let's look at the power plant rates for Utah.

24 A. Okay.

25 Q. And Section 8.1.4.1.1.1 shows a power plant

0163

1 rate for less than 60 amps; is that right?

2 A. It does.

3 Q. And that's \$11.78?

4 A. Roughly, yes.

5 Q. And it also shows a power plant rate for  
6 equal to or greater than 60 amps at \$7.79; is that also  
7 right?

8 A. Yes.

9 Q. Now is that rate for the less than 60 amps or  
10 power plant, does that reflect a discount off of the  
11 rate for the power plant at greater than 60 amps?

12 A. It's a lower number.

13 Q. Does the rate for the less than 60 amps  
14 reflect a discount off of the rate for the greater than  
15 60 amps?

16 A. I'm sorry, does the -- maybe I didn't hear  
17 your question correctly, does the -- the rate for the  
18 equal to or greater than 60 amps is lower than the rate  
19 for less than 60 amps.

20 Q. Right, and so to ask it another way, does the  
21 rate for less than 60 amps reflect a discount from the  
22 rate for the feed greater than 60 amps?

23 A. No, it doesn't.

24 Q. In fact, it represents an upcharge from that  
25 rate, does it not?

0164

1 A. It's more expensive on a per amp basis.

2 Q. Thank you.

3 Now are you familiar with the rate structures  
4 in South Dakota and Oregon?

5 A. Generally, yes.

6 Q. You talk about them in your rebuttal  
7 testimony on page 12, don't you?

8 A. I do, I have reviewed them.

9 Q. And in those states, the power plant -- power  
10 is charged under a single rate element; isn't that  
11 right?

12 A. Yes.

13 Q. And in those states Qwest has applied the  
14 amendment in such a way as to measure the usage and  
15 apply the measured amount to that single rate; isn't  
16 that right?

17 A. From my review of McLeod USA's bills, yes, I  
18 believe that is correct.

19 Q. So Qwest applied the measuring amendment to a  
20 single charge in South Dakota and in Oregon?

21 A. Right, it applied a measured assessment to a  
22 combined charge that includes both the electrical usage  
23 and the power plant.

24 Q. But a single charge?

25 A. Yes, a combined charge.

0165

1 Q. One last question on the Utah power usage  
2 rates where we were talking about the power plant, and  
3 in Utah the power plant rate is split between less than  
4 60 amps and equal to or greater than 60 amps; is that  
5 right?

6 A. Yes.

7 Q. And in Washington that's not the case; is  
8 that also right?

9 A. That is not the case.

10 Q. And so there is no distinction between the  
11 charge for power plant on a per amp basis regardless of  
12 whether the feed is a 40 amp feed or a 100 amp feed; is  
13 that right?

14 A. In Washington that is correct, the rate per  
15 amp is the same.

16 Q. So the 60 amps or less is neither discounted  
17 from or upcharged over the rate for greater than 60 amps  
18 in Washington?

19 A. Correct, the rate is the same on a per amp  
20 basis regardless.

21 MS. ANDERL: Your Honor, that kind of wraps  
22 an area for me.

23 JUDGE MACE: Sure, why don't we take a -- if  
24 we take a 15 minute recess now, do you think you're  
25 still on track to finish this witness today?

0166

1 MS. ANDERL: Yes.

2 JUDGE MACE: All right.

3 (Brief recess.)

4 JUDGE MACE: Ms. Anderl.

5 MS. ANDERL: Thank you, Your Honor.

6 Mr. Kopta just very courteously reminded me that I have  
7 not yet offered Exhibit Number 29, which I would do at  
8 this point.

9 JUDGE MACE: Any objections?

10 MR. KOPTA: No objections.

11 JUDGE MACE: Very well, I will admit Exhibit  
12 29.

13 MS. ANDERL: I would like to have a standing  
14 offer, and at the end of the hearing we'll do one  
15 sweeping motion.

16 JUDGE MACE: Actually, that's often the way  
17 we do it just so that we avoid missing from time to  
18 time.

19 BY MS. ANDERL:

20 Q. Mr. Starkey, let's talk a little bit about  
21 TELRIC costs. When you discuss TELRIC costs, can you  
22 just for the record give us a very brief explanation of  
23 what your understanding of TELRIC costs are?

24 A. I have often thought the best way to describe  
25 TELRIC is by taking each one of the letters of the



0167

1 acronym and just talking a little bit about what it  
2 means.

3 JUDGE MACE: Can you slow down, please.

4 A. TELRIC stands for total element long run  
5 incremental cost, so TELRIC is an incremental cost  
6 method, which means it defines and studies costs for  
7 some increment of production. That increment is the  
8 total element as defined in the first part of the word,  
9 which means the production of all of the elements that  
10 are demanded over a reasonable forecasted time frame for  
11 purposes of developing a forward looking cost upon which  
12 rates are ultimately based.

13 Q. And are you aware that the power plant rates  
14 that are at issue in this case in Washington were  
15 established in a cost docket in Washington that extended  
16 over the years 2000 and 2001?

17 A. That's my understanding.

18 Q. And did you read the 13th Supplemental Order  
19 in Docket 003013?

20 A. Yes.

21 Q. And would it be fair to say that Qwest's  
22 power plant -- strike that.

23 Would it be fair to say that Qwest's  
24 collocation rates in general were the subject of dispute  
25 and examination in that docket?

0168

1 A. I think that's fair.

2 Q. And do you agree that some of Qwest's  
3 collocation rates were actually rejected in that docket?

4 A. The rates themselves, yes.

5 Q. Yes. And they were either ordered by the  
6 Commission to be modified or in some cases Verizon rates  
7 or inputs to the cost study were ordered in place of the  
8 Qwest inputs?

9 A. The first part, yes. The extent to which  
10 Verizon information was input into the Qwest models, I  
11 don't recall as much as the other way around where I  
12 believe Qwest information was put into Verizon models,  
13 but yes, I remember reading about that.

14 Q. And you have had access to the cost study  
15 that was in evidence in that docket; is that correct?

16 A. That's correct.

17 Q. And did you recognize the document that's  
18 attached to Ms. Million's testimony as Exhibit TKM-2 or  
19 potential Exhibit 52 in this case as one of the tabs in  
20 that cost study?

21 A. I reference one of her exhibits in my  
22 testimony, and I just want to make sure that is the one,  
23 I believe it is, I believe it's the tabs from the rate  
24 summary section?

25 Q. Yes.

0169

1 A. Okay, yes.

2 Q. She only has one exhibit.

3 A. Okay.

4 Q. And would you disagree that to the extent  
5 that that document was in evidence in the cost docket,  
6 that document contains an explanation from Qwest that it  
7 will assess the power plant rates on the basis of the  
8 size of the power feed the CLEC orders?

9 A. Let me just catch up with you and get there  
10 so I can speak about it more specifically. I know her  
11 testimony is in here somewhere.

12 Yes, included beginning at page 5 of  
13 Ms. Million's Exhibit TKM-2 is a printout of certain  
14 comments, "comments" is the way Excel refers to them,  
15 that were inserted into the cells in the cost study that  
16 was provided to me.

17 Q. And you don't have any reason to believe that  
18 that's different from the cost study that was provided  
19 to the Commission in the cost docket, do you?

20 A. No.

21 Q. And would you agree then that Qwest  
22 explained, or US West at the time, explained in that  
23 cost study that it would apply the power plant rates  
24 based on the as-ordered amount in the CLEC's cable feed  
25 or feeds?

0170

1           A.     It does say that, though I think I would add  
2 two comments to that answer, the first being that when  
3 you look at an Excel spreadsheet, the comments don't  
4 show up unless you specifically go to those cells and  
5 ask Excel to show them to you. So given that particular  
6 peculiarity of the way in which this information was  
7 inserted in the cost study, I don't think it is safe to  
8 assume that the Commission read this or that the Staff  
9 read this prior to discussing the cost model. I don't  
10 know the extent to which they did or didn't. It  
11 wouldn't surprise me if this information was completely  
12 overlooked.

13                 Secondly, the other comment I would make on  
14 this is, yes, it does say that. It also says that uses  
15 will be assessed on the basis of the size of the order,  
16 which was even by the agreement of Qwest changed by the  
17 amendment. So the purpose of the amendment was to  
18 change the way in which these things, these particular  
19 rates were going to be assessed. It doesn't surprise me  
20 that it would change the way one rate was going to be  
21 assessed and the way both rates were going to be  
22 assessed.

23           Q.     Actually, the comments indicate that the  
24 power consumption will be on a measured basis, do they  
25 not?

0171

1           A.     I wasn't necessarily referring to the  
2     comments as much as I was Section 1.4 I think of that  
3     same exhibit, page 2, where it discusses power usage  
4     more than 60 amps per amp ordered.

5           Q.     And where it says power plant per amp ordered  
6     there, not power usage but power plant per amp ordered,  
7     that is not something that was in the comments, that's  
8     not hidden, is that right, that was available for anyone  
9     to see who opened that tab?

10          A.     Anybody who looked on that tab, yes.

11          Q.     And so if anybody had a question about what  
12     per amp order meant, they certainly could have inquired  
13     further; is that right?

14          A.     I assume they could have.

15          Q.     And McLeod was a party to that cost docket?

16          A.     That's a question I should know the answer to  
17     but do not, I don't know.

18          Q.     And if, in fact, Qwest in the cost docket  
19     provided a paper copy of TKM-2 with the comments  
20     showing, no one would have had to click on anything in  
21     Excel to have access to the same information that's  
22     before us today in Exhibit TKM-2; isn't that right?

23          A.     That's true.

24          Q.     Do you know if McLeod challenged the power  
25     plant rate in the cost docket?

0172

1 A. I don't know.

2 Q. And do you know if Qwest filed a compliance  
3 filing after the cost docket concluded memorializing the  
4 rates that the Commission approved?

5 A. I'm sure they did. I'm trying to remember  
6 whether I know that as a matter of fact from having read  
7 the order or not, and I just don't know, it would not  
8 surprise me if they did.

9 Q. And would you accept subject to your check  
10 that the compliance filing would have contained a  
11 representation that the power plant would be charged on  
12 an as-ordered basis?

13 A. Can I hear that again?

14 Q. Would you accept subject to your check that  
15 any compliance filing that Qwest submitted would have  
16 indicated that the power plant charge would be assessed  
17 on an as-ordered basis?

18 A. If you assert for me that that is the case, I  
19 would not disagree.

20 Q. And would you also agree that to the extent  
21 that McLeod has had power orders in its collocation  
22 spaces in Washington since the conclusion of this cost  
23 docket, that Qwest has in fact assessed the power plant  
24 rate on an as-ordered basis with as-ordered being  
25 equivalent to the size of the power cable feeds?

0173

1           A.     Did that begin with subject to my check? I'm  
2 trying to understand the extent to which I know that or  
3 not.

4           MS. ANDERL: I don't know, Joan, may I have  
5 the question back, I can't remember if I asked it  
6 subject to check or not.

7           (Record read as requested.)

8           A.     The only information I know with respect to  
9 that is having reviewed McLeod's billing information  
10 received from Qwest relative to Washington in the  
11 December 2005 time frame, and power plant was assessed  
12 on what Qwest defines as an as-ordered basis in those  
13 dockets.

14 BY MS. ANDERL:

15          Q.     And to the extent that McLeod is alleging  
16 that the rate as applied is discriminatory, and I'm  
17 correct that that is an allegation in this case, isn't  
18 it?

19          A.     Yes, the application of the rate is  
20 discriminatory.

21          Q.     To the extent that McLeod is making that  
22 allegation, that allegation would have had just as much  
23 basis on the day that the rate was approved as it does  
24 today; isn't that right?

25          A.     Yes, for both the power plant and the usage

0174

1 rate element, given the way Qwest assessed them.

2 Q. So --

3 A. It was our understanding that that was one of  
4 the reasons, at least partial reason why this amendment  
5 was meant to correct.

6 Q. But even if there were no Power Measuring  
7 Amendment, McLeod's dispute with regard to the  
8 application of the power plant rate would be the same on  
9 the discrimination count; is that right?

10 A. I don't know, I'm more comfortable answering  
11 your previous question with respect to the basis would  
12 have been the same, and yes the basis would have been  
13 the same.

14 Q. When McLeod places an order for a 200 amp  
15 power feed, is it reasonable for Qwest to assume that  
16 McLeod may at some point in time need 200 amps of power?

17 A. Probably a question better suited for  
18 Mr. Morrison, because he would be able to probably  
19 explain to you the extent to which that's an unlikely  
20 scenario that all of McLeod's equipment would go into a  
21 List 2 Drain situation at the same time, and that's what  
22 would be required to draw the entire 200 amps, but I  
23 think my answer would be not necessarily.

24 Q. If McLeod orders, let's change the number  
25 here to a 100 amp power feed, if McLeod orders a 100 amp



0175

1 power feed from Qwest in a particular central office,  
2 and if Qwest makes available 100 amps of power plant  
3 capacity to McLeod, is it McLeod's position that Qwest  
4 should not be allowed to charge McLeod for 100 amps of  
5 power plant capacity?

6 A. Are we taking those first two assumptions as  
7 a hypothetical, because I don't think they are true in  
8 the normal course of things?

9 Q. Well, you can answer hypothetically if you  
10 would like, however, and then we will explore the extent  
11 to which the assumptions are true. So if McLeod orders  
12 a 100 amp power feed in a particular central office, and  
13 if Qwest makes available 100 amps of power plant  
14 capacity, is it McLeod's position that Qwest should not  
15 be allowed to charge McLeod for 100 amps of power plant  
16 capacity?

17 A. Yes.

18 Q. Look at your supplemental direct, please, and  
19 that is Exhibit number 22, let me know when you're  
20 there.

21 A. I'm there.

22 Q. On page 6 you have a Table 1. Indicated at  
23 the top of the Table 1 you give an example of a DC power  
24 plant capacity of 1200 amps and an average usage or load  
25 of 1000 amps; do you see that?

0176

1 A. Yes.

2 Q. Are you representing to the Commission that  
3 that is what Qwest's cost study does, model a DC power  
4 plant capacity of 1,200 amps and an average usage or  
5 load of 1,000 amps?

6 A. This example has no particular significance  
7 to the cost study. It's meant to describe the way in  
8 which Qwest assesses the power plant rate results in a  
9 discriminatory outcome. The rate is assumed.

10 Q. So you're not contending through this example  
11 that Qwest's cost study models a DC power plant with  
12 1,200 amps of capacity, are you?

13 A. Not through this example, no.

14 Q. And linking to that, kind of stay where you  
15 are in this supplemental direct but turn to pages 49 and  
16 50 of your rebuttal testimony, Exhibit Number 23. Are  
17 you there?

18 A. I am.

19 Q. And you have a table there where you explain  
20 a fill factor adjustment; is that right?

21 A. Yes.

22 Q. And by that example, are you meaning to  
23 contend that Qwest's cost study for power plant employs  
24 a fill factor?

25 A. No, at this point in my rebuttal testimony

0177

1 I'm rebutting Ms. Million's contention that because  
2 usage is less than the List 1 Drain, Qwest can't know  
3 what usage is and can't adjust for the notion that yet  
4 while it engineers on List 1 Drain it should assess its  
5 rate based on usage given the amendment. I'm describing  
6 a simple and common means by which to overcome that same  
7 problem.

8 Q. Okay. And so it's not your testimony in  
9 these two places or anywhere else that Qwest's power  
10 plant cost study employs a fill factor; is that right?

11 A. Kind of a broad question, so I'm trying to  
12 make sure I answer it accurately, anywhere else in my  
13 testimony do I describe the extent to which Qwest's cost  
14 study employs a fill factor?

15 Q. Are you contending -- I'm sorry, if that was  
16 my question, I didn't mean it to be.

17 A. I was just thinking aloud. My testimony  
18 doesn't discuss the extent to which Qwest's cost study  
19 employs a fill factor or not.

20 Q. Now Qwest's cost study, you did review it  
21 though; is that right?

22 A. The cost study?

23 Q. Yes.

24 A. Yes.

25 Q. About how much time did you spend reviewing

0178

1 that cost study?

2 A. The Washington specific example, probably an  
3 hour primarily to make sure that it was identical to the  
4 Iowa cost study and the Utah cost study where I had  
5 spent significantly more time.

6 Q. Now that study assumes that the full capacity  
7 of 6 rectifiers is installed all at one time; is that  
8 right?

9 A. It assumes, well, there's two parts to your  
10 question. The first part is, are there 6 rectifiers,  
11 and the second part of your question is, or the capacity  
12 of 6 rectifiers, the second part of your question  
13 appears to me to be, are they employed at the same time.  
14 The answer to the second part of your question is, yes,  
15 because TELRIC requires that you develop from the ground  
16 up a network, it assumes that you purchase and employ  
17 the equipment at one point in time to accommodate the  
18 forecasted demand. With respect to your first part of  
19 your question, I don't know that the cost study is  
20 specific to the fact that it employs the capacity of 6  
21 rectifiers, no.

22 Q. But it assumes investment for 6 rectifiers?

23 A. I don't know that that's true.

24 Q. Do you know that it's not true?

25 A. We asked Qwest in Iowa -- in the cost study

0179

1 there's a line that says rectifiers, and then there's a  
2 number for material investment, and that number is not  
3 confidential, it's about \$29,000. We asked Qwest in  
4 Iowa, and those discovery requests as I understand it by  
5 agreement are relevant here, to break that \$29,000  
6 number down for us so we could figure out what the  
7 investment was on a per rectifier basis, how many  
8 rectifiers there really were and the costs associated  
9 with installing them and everything else. Qwest  
10 provided us data eventually from a contract it had with  
11 an equipment manufacturer in the '04 time frame.  
12 Obviously this cost study was constructed in the 2000,  
13 2001 time frame, so we pointed that out to Qwest and  
14 said, this can't be the support for these numbers, these  
15 documents come after the cost study was constructed, and  
16 by the way they don't match up, I can't calculate this  
17 \$29,000 figure. Qwest responded saying that the  
18 document that originally supported the cost study and  
19 that \$29,000 figure couldn't be found or didn't exist  
20 any longer, and this was the most reasonable information  
21 they had responsive to the request. So I don't know the  
22 extent to which that \$29,000 accommodates 5, 6, 7, 9  
23 rectifiers, I just don't, I can't get to the bottom of  
24 it. Qwest has suggested that the information doesn't  
25 exist.

0180

1 Q. Whatever equipment is assumed to be installed  
2 to produce the capacity stated for this particular power  
3 plant, leaving aside differences about whether you  
4 verified which equipment is or is not used, the  
5 equipment that is assumed to be installed is assumed to  
6 be installed not incrementally over time but all at  
7 once?

8 A. Yes, the second part of your question is  
9 true, TELRIC requires that they be installed at once.

10 Q. And Qwest's cost study calculates a per amp  
11 rate on the power plant; is that right?

12 A. It does.

13 Q. And the study contains no assumptions about  
14 usage by either McLeod or any other CLEC; is that right?

15 A. No, it assumes usage of the power plant in  
16 total, so it doesn't identify any individual user, it  
17 identifies 1,000 amps of usage.

18 Q. The power plant cost study states that the  
19 power plant is to be charged on an as-ordered basis, not  
20 an as-used basis; is that right?

21 A. Yes, as we discussed earlier, the rate  
22 summary describes it on an as-ordered basis, as it does  
23 for the other usage element.

24 Q. In a TELRIC environment, once, or even in --  
25 well, let me just ask it this way.

0181

1                   Once a 1,000 amp power plant such as that  
2 Qwest has modeled is installed and the costs to install  
3 that power plant have been incurred, if no power plant  
4 equipment is removed, the costs that Qwest has incurred  
5 don't decrease depending on usage, do they?

6           A.     Your TELRIC costs do, yes. The notion here  
7 is that you model a capacity necessary to accommodate  
8 your demand, so to the extent your demand changes, which  
9 you're describing there, you would develop a new TELRIC  
10 study, and you would likely develop a power plant with a  
11 lower capacity, and your costs would be reduced.

12          Q.     But with regard to the cost of the power  
13 plant that you assumed at first, the costs don't change  
14 depending on whether there is usage on that plant or  
15 not, do they, the costs are the costs?

16          A.     Well, the fixed costs don't change, the  
17 variable costs certainly do, and TELRIC is a variable  
18 cost concept.

19                   MS. ANDERL: Sorry, Your Honor just take me a  
20 minute here.

21 BY MS. ANDERL:

22          Q.     Mr. Starkey, you and I had a conversation in  
23 Iowa similar to the conversation that we have just had a  
24 moment ago; do you recall that?

25          A.     Not specifically.

0182

1 Q. Okay, well, that might explain a lot then.

2 A. It wouldn't surprise me.

3 Q. Let me hand up to you a document that I will  
4 represent to you is page 289 out of the Iowa transcript.  
5 There's a question and an answer that starts at line 19.  
6 I will read to you the question that I asked you in  
7 Iowa. The question reads:

8 So once the power plant is installed and  
9 the costs have been incurred, if no  
10 power plant is removed, the costs don't  
11 decrease depending on the usage; isn't  
12 that right?

13 Would you please read your answer,  
14 Mr. Starkey.

15 A. (Reading.)

16 That's largely correct, yes, given that  
17 assumption.

18 Q. Thank you.

19 Let's go back to your supplemental direct  
20 testimony, where you may still be, on page 6, table 1,  
21 are you there?

22 A. Yes.

23 Q. If I have done the math correctly, the column  
24 entitled order size, if you just added up CLEC A, CLEC  
25 B, and McLeod USA usage, that would total 1,673 amps; is



0183

1 that right?

2 A. Yes, it would be the 2,373 minus the 700 for  
3 Qwest.

4 Q. So in that scenario, you're assuming that  
5 those three CLECs in total placed orders for 1,673 amps  
6 of power feeds?

7 A. Of power feeds, that's right. They order  
8 cables that would be sufficient to carry that amount of  
9 amperage.

10 Q. And in ordering those cables to carry that  
11 amount of amperage, they were placing an order for power  
12 plant, they were placing an order that would be used to  
13 assess their power plant charges; isn't that right?

14 A. No, I certainly don't think they realized  
15 that. And my understanding is that's Qwest's position,  
16 but it -- that's poorly said, let me say it this way.  
17 They are placing orders for power feeds based on their  
18 engineering guidelines for ensuring that those feeder  
19 cables are capable of carrying at least their List 2  
20 Drain in a situation where they're fully utilized and  
21 all of their equipment is in place to serve their  
22 ultimate demand. The extent to which that in their  
23 minds corresponds to some amount of power plant that  
24 they're going to require or should be required to pay  
25 for I think is a leap of dramatic proportions.

0184

1 Q. But you don't disagree that Qwest represented  
2 that that is how it would assess the power plant  
3 charges?

4 A. I do disagree that that's what this says.

5 JUDGE MACE: When you say what this says.

6 A. The amendment.

7 Q. You don't disagree that that is how Qwest  
8 represented in the cost docket that that is how it would  
9 assess the power plant charges?

10 A. That's how it said it would assess the power  
11 plant charges and also how it said it would assess the  
12 power usage charges.

13 Q. And you don't disagree that that's how Qwest  
14 has been assessing the power plant charges for the last  
15 six years?

16 A. Right, it said in the cost docket, from the  
17 cost docket it assessed both usage and power plant on an  
18 as-ordered basis, then this Amendment, Exhibit 88 is  
19 what I have here which can't be right, the Amendment was  
20 issued that changed in our mind both of those and in  
21 your mind at least one of those.

22 MR. GOODWIN: The amendment is 24.

23 THE WITNESS: Thank you.

24 MR. GOODWIN: No, no, no, 88 is the template  
25 amendment that we had marked earlier.

0185

1 THE WITNESS: Thank you.

2 MR. GOODWIN: It's a different exhibit.

3 THE WITNESS: Got you, thank you.

4 BY MS. ANDERL:

5 Q. Are you aware of any central office in  
6 Washington where McLeod has placed an order for power  
7 feeds of 557 or even 500 amps?

8 A. No, I'm not, nor am I aware of one where  
9 they're drawing 100 amps of power that you see in the  
10 measured usage column. Obviously I was attempting to  
11 make the numbers work such that it could work to 1,000  
12 amps. My guess is on a 1,000 amps plant, CLECs would  
13 use far less than this total percentage of power.

14 Q. So it's your testimony that the CLEC  
15 utilization is typically less than 23.5%?

16 A. Utilization of what?

17 Q. I'm sorry, utilization is typically less than  
18 17.93% of the ordered amount?

19 A. No, it's my --I speculate based in part on  
20 the information provided by Mr. Ashton in his testimony  
21 and in data request responses to McLeod that if you had  
22 a power plant with 1,000 amp capacity that CLECs in  
23 general would be less -- would use less than the 30%  
24 that I have included in this particular example.

25 Q. Okay.

0186

1           A.     And as their usage went down, so would the  
2 size of the order.

3           Q.     Do you think that McLeod has any expectation  
4 when it places an order for a 200 amp feed that it may  
5 ever need 200 amps of power plant capacity, or do you  
6 not know the answer to that?

7           A.     I think I do know the answer to that, but let  
8 me see if I can break it into two pieces. The order of  
9 power feeder cable that will accommodate 200 amps on  
10 let's say, using the same example, a power plant that  
11 has 1,000 amps available in it, and let's assume that  
12 1,000 amps is, as we discussed earlier, the List 1 Drain  
13 of that particular central office. We have already  
14 talked about the fact, we don't have the diagram up here  
15 any more, that the measured usage at any point in time  
16 is likely to be less than the List 1 Drain. So McLeod  
17 could pull in a catastrophic event that's very unlikely  
18 those 200 amps of power to fill up its cables, yet the  
19 capacity of the total power plant would not have to be  
20 increased, because that power would be available from  
21 the difference between the actual usage at that time and  
22 the List 1 Drain. It's a long way of saying that even  
23 if McLeod did expect to get its 200 amps, you wouldn't  
24 have to size the power plant larger because of that  
25 expectation.

0187

1 Q. Let me just ask you a few questions about  
2 your rebuttal testimony, pages 17 through 21 of your  
3 rebuttal testimony, Mr. Starkey. There you talk about  
4 what you believe is an inconsistency between Mr. Ashton  
5 and Mr. Easton's testimony; do you have that testimony  
6 of yours in mind?

7 A. Yes, I do.

8 Q. Do you have any reason to believe that after  
9 a CLEC avails itself of a power reduction that Qwest  
10 does not consider the freed up capacity as being  
11 available for other customers?

12 A. I have no reason to believe either way, I  
13 don't know. I do know that Mr. Ashton in his testimony  
14 has suggested that just because there is a reduction in  
15 the power need in a central office that Qwest doesn't  
16 necessarily remove equipment to reduce the power  
17 capacity.

18 Q. Right, doesn't necessarily remove equipment,  
19 but to the extent that Qwest has demand of its own or  
20 other potential customers who may make demands on the  
21 power plant, do you have any reason to believe that  
22 Qwest doesn't consider the available capacity on the  
23 power plant to meet those needs and specifically doesn't  
24 consider any capacity that might be freed up by virtue  
25 of a CLEC having availed itself of a power reduction?

0188

1           A.     No, I'm sure it does, I'm sure that to the  
2     extent Qwest understands that some amount of power usage  
3     on its power plant is going to go away that it assumes  
4     that that additional freed up capacity, if you will, is  
5     available for other uses.  It's a very different thing  
6     then, very different thing though than suggesting that  
7     because someone reduced the size of their power feed  
8     that their usage is going to drop accordingly, and  
9     that's the whole point, the usage is not likely to drop  
10    accordingly, there's not likely to be any freed up  
11    capacity on the power plant, because the power plant  
12    wasn't engineered in any way in relation to the size of  
13    the power feeder cable.

14          Q.     Do you agree that the amount of power plant  
15    capacity that a CLEC might demand is defined in some way  
16    by the size of the CLEC's feeder cables?

17          A.     You could potentially find a correlation, but  
18    it wouldn't be your best correlation.

19          Q.     For example, if the CLEC has cables at 100  
20    amps and fuses at 130 amps, it would be pretty safe for  
21    Qwest to assume under those circumstances that the CLEC  
22    will not ever be drawing 300 amps?

23          A.     On those feeder cables?

24          Q.     Yes.

25          A.     I think it's physically impossible for that

0189

1 to happen.

2 Q. So the size of the cables would define an  
3 upper limit in some way at a minimum?

4 A. Upper limit of what?

5 Q. Of the amount of power that a CLEC might  
6 demand.

7 A. On that set of cables?

8 Q. Yes.

9 A. Yes, on that set of cables.

10 Q. Now you talk a little bit about the  
11 collocation application that Qwest has CLEC customers  
12 fill out. Do you know, well, is it your contention that  
13 anywhere on that application Qwest provides or the CLEC  
14 provides information to Qwest concerning the timing of  
15 its power demand?

16 A. I guess I have to -- I guess I have to start  
17 with saying I don't know that there's anywhere on this  
18 document that the CLEC defines its power demand, let  
19 alone the timing of it. All this document asks us for  
20 is the size of our feeder cables.

21 Q. I wanted to ask you a clarifying question all  
22 the way over on page 43, 44.

23 A. Okay.

24 Q. 44, line 1106, you say that the substantial  
25 information provided by McLeod USA showing that there is

0190

1 a direct correlation between power plant capacity and  
2 usage, and then you go on. What information are you  
3 referring to there?

4 A. I'm not sure I'm referring to any  
5 information, I'm not sure I understand your question.

6 Q. Line 1106 references substantial information  
7 provided by McLeod; what information are you referring  
8 to there?

9 A. Oh, I'm talking about the substantial  
10 information with relation to List 1 Drain usage at the  
11 peak period and its -- and the fact that it drives the  
12 need for power plant capacity as dictated by numerous  
13 Qwest technical documents.

14 Q. So when you say usage, you don't mean actual  
15 usage there?

16 A. Yes, I do.

17 Q. Do you mean List 1 Drain, or do you mean  
18 actual usage at another point in time that is not  
19 reflective of List 1 Drain?

20 A. I mean both, because List 1 Drain is defined  
21 by a level of usage. It's simply that level of usage at  
22 the peak period, but the two have a strong correlation.  
23 In fact, they are identical at that one point in time.

24 Q. What is the correlation between the List 1  
25 Drain and usage at other periods of time on that same



0191

1 equipment that McLeod has provided to Qwest? I guess  
2 I'm not understanding that correlation that you're  
3 describing.

4 A. Well, I'm not necessarily suggesting at a  
5 point in time beyond the peak demand that there is a  
6 strong correlation there. I just haven't done the  
7 analysis to determine if there is or not. What you have  
8 to do is that chart you showed earlier which has actual  
9 usage and List 1 Drain, you would have to run statistics  
10 to determine the extent to which they have a  
11 correlation. But what I do know is that they are  
12 perfectly correlated at the point in time of peak  
13 demand.

14 Q. And is it McLeod's position in this case that  
15 they would like to pay based on List 1 Drain as a  
16 correlation of usage or based on actual measured usage?

17 A. It's McLeod's position that they should pay  
18 for the amount of power that they use. The amount of  
19 power that they use is the measured usage discussed in  
20 Exhibit 24 in the amendment. The extent to which that  
21 differs from List 1 Drain should have been and I believe  
22 is accommodated for in the cost study such that the rate  
23 that results from the cost study can be and should be  
24 applied to the usage that McLeod draws on the equipment.

25 Q. And could you please turn to the document

0192

1 that Mr. Ashton has included as his Exhibit CA-2C,  
2 hearing Exhibit 42-C.

3 A. What is that, that might speed me up?

4 Q. Excuse me?

5 A. What is that, that might speed me up?

6 Q. It's the table of the central offices, the  
7 ordered amounts and the measured amounts.

8 JUDGE MACE: And this is confidential.

9 MS. ANDERL: We're not going to talk about  
10 the numbers.

11 JUDGE MACE: Thank you.

12 A. Mr. Goodwin has been kind enough to provide  
13 me a copy, so I have it in front of me.

14 BY MS. ANDERL:

15 Q. Can you identify whether the usage  
16 measurements shown on any of those lines is the  
17 equivalent to List 1 Drain?

18 A. There's not enough information here to tell.

19 Q. But for each of these measurements that is  
20 shown here for the six month period subsequent to that  
21 measurement, it is McLeod's position that they would be  
22 paying \$9.34, which is the power plant rate multiplied  
23 by these usage amounts?

24 A. Right, no single number here would represent  
25 List 1 Drain in any circumstance, because List 1 Drain

0193

1 is the peak demand of all users in the central office.  
2 This is just McLeod's usage as I understand in this  
3 particular table. So yes, McLeod USA's position is that  
4 they would pay \$9.34 per amperage used in this  
5 particular table.

6 Q. From the point in time when McLeod began  
7 collocating in 1999 to the present, has McLeod  
8 identified any point in time where the ordered amount of  
9 power plant capacity was not available to it?

10 A. You and I differ on the term ordered power  
11 capacity. You interpret that to be the size of the  
12 feeder cable that McLeod places on its order for  
13 collocation. I disagree that that is an order for power  
14 capacity in any sense. But if we remove that difference  
15 of opinion, I'm not aware of any point in time wherein  
16 McLeod USA has drawn power sufficient to max out its  
17 feeder cables, and that's by design, they're engineered  
18 that way.

19 Q. So there was no point in time that you're  
20 aware of that the power plant capacity reflected in the  
21 feeder cable orders was not available to McLeod?

22 A. I don't know frankly, because a number of  
23 scenarios would have to be visited to understand if  
24 that's the case or not. If everyone in the office was  
25 in a List 2 Drain situation at the same time, I believe

0194

1 there are situations where McLeod would not get its full  
2 amperage consistent with its power cable. Given the  
3 information I have seen in the most recent discovery you  
4 have sent us, specifically 10-S-2, your response to  
5 10-S-2, where we asked to provide the total CLEC orders  
6 for power in addition to McLeod's and then the Qwest  
7 size of the power plant in that particular office, there  
8 is at least one situation I see in that document wherein  
9 the size of the power orders exceeds the size of the  
10 power plant. In that situation, those CLECs would not  
11 in a List 2 Drain situation relative to the entire  
12 office be able to pull the power associated with their  
13 power feeder cable feeder capacity.

14 Q. You don't know that though, do you, because  
15 you're not a power plant engineer?

16 A. Which part do I not know?

17 Q. Whether the power plant would be capable of  
18 providing List 2 Drain for the short period of time it  
19 would be necessary in a List 2 situation.

20 A. You would have to tell me more, are you  
21 talking about a List 2 situation for the entire office  
22 or a List 2 situation for that particular collocator?

23 Q. Either one, Mr. Starkey.

24 A. The answer would differ depending on the  
25 answer to that question.

0195

1 Q. For that particular collocator.

2 A. It's likely that the power capacity would  
3 exist for that particular collocator in a List 2  
4 situation, because as I described before you would have  
5 the necessary capacity that exists between a List 1  
6 Drain for which the power plant was engineered and the  
7 actual usage of the other collocators who are using it.  
8 That difference is likely enough to support the List 2  
9 Drain situation for McLeod without having to add any  
10 capacity.

11 Q. And has McLeod identified any point in time  
12 in evidence in this record where it demanded List 2  
13 Drain and that was not available to it?

14 A. I'm not aware that it's ever demanded List 2  
15 Drain. As we discussed earlier, that's a very rare  
16 event.

17 MS. ANDERL: Your Honor, may I have a moment.  
18 That concludes my cross, thank you, Your  
19 Honor.

20 JUDGE MACE: Mr. Kopta.

21 MR. KOPTA: Thank you, Your Honor.

22

23 R E D I R E C T E X A M I N A T I O N

24 BY MR. KOPTA:

25 Q. Just a couple of areas, Mr. Starkey. You had

0196

1 a conversation with Ms. Anderl about the difference  
2 between List 1 Drain and actual measured usage; do you  
3 recall that discussion?

4 A. Yes.

5 Q. Do you have a copy of Exhibit 24 before you,  
6 which is the DC Power Measuring Amendment?

7 A. Yes.

8 Q. And I will draw your reference specifically  
9 to Section 1.2. In that section, am I correct that that  
10 provides for Qwest's ability to measure the DC power  
11 usage of McLeod's collocated equipment?

12 A. Yes.

13 Q. Are you aware of anything in this paragraph  
14 or in the amendment as a whole that would preclude Qwest  
15 from measuring DC power usage at what it believes is the  
16 peak period for usage of that equipment?

17 A. No, it doesn't.

18 Q. So it's possible that as part of the  
19 measuring process McLeod would pay actually for List 1  
20 Drain if Qwest measured at the peak period for the usage  
21 of McLeod's equipment?

22 A. Yes, Section 1.2 provides Qwest ultimate  
23 latitude actually as to when it will measure the usage  
24 in any particular collocation site. Could be at the  
25 List 1 Drain event.

0197

1 Q. Ms. Anderl also asked you a question whether  
2 it's McLeod's position that if McLeod orders a 100 amp  
3 power feed and Qwest makes 100 amps of power plant  
4 available whether Qwest should be able to charge for 100  
5 amps of power plant; do you recall that question?

6 A. Yes.

7 Q. And you responded that McLeod's position is  
8 that Qwest should not be able to charge in those  
9 circumstances for 100 amps?

10 A. Right, I think she asked it in the negative,  
11 so I said yes, but the result is the same, yes, I  
12 remember it.

13 Q. And would you explain why that is McLeod's  
14 position?

15 A. Two reasons really. First, because the  
16 amendment 24 suggests that McLeod -- that Qwest will  
17 assess it based on McLeod's usage, the power plant rate  
18 based on McLeod's usage. So the size of the cable, the  
19 feeder cable, shouldn't come into play as to how Qwest  
20 assesses McLeod those rates. So given that it's based  
21 on usage, 100 amps worth of power feeder cable would  
22 have no relevance as to how the rate should be applied.

23 Secondly though, it's the point I made  
24 earlier, which is List 1 Drain is the target that the  
25 power plant is engineered to. That's the List 1 Drain

0198

1 for the entire central office, for all users of the  
2 central office. List 2 Drain situations can happen  
3 catastrophically across the central office, which I  
4 think Mr. Morrison would tell you is substantially rare,  
5 or it can happen for one particular piece of equipment  
6 or user at a time. Given that the actual usage at any  
7 point in time except for the peak demand period is less  
8 than the List 1 Drain, i.e., the capacity of the power  
9 plant, any individual collocater or piece of equipment  
10 could draw the List 2 Drain without a need to increase  
11 the size of the power plant. Hence the size of the  
12 power plant is not incremental to any List 2 Drain  
13 situation, it's incremental to the office's List 1. As  
14 such, the costs on a per amp basis, and this is the way  
15 they're constructed in the cost study, is based upon the  
16 capacity of the power plant based on the List 1 Drain.  
17 As such, the rates must be assessed based on usage of  
18 that capacity relative to individual users.

19 MR. KOPTA: Thank you, Mr. Starkey, those are  
20 all my questions.

21 JUDGE MACE: Anything further, Ms. Anderl?

22

23 R E C R O S S - E X A M I N A T I O N

24 BY MS. ANDERL:

25 Q. Mr. Starkey, if Qwest measures twice a year



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1 and List 1 Drain is defined as the busy day, busy hour  
2 for the year, in other words Mother's Day, is Qwest  
3 going to be able to measure on two Mother's Days in one  
4 year?

5 A. No, there will be only one List 1 Drain event  
6 per year.

7 Q. Okay. And if Qwest is required by this  
8 amendment to measure at least twice a year, an  
9 additional two times based on CLEC request, it could  
10 only ever possibly hit the List 1 Drain on one of those  
11 measurements; isn't that right?

12 A. Yes, that's largely true, though as I  
13 described earlier the cost study takes that into  
14 account.

15 Q. Now I thought you just said to Mr. Kopta that  
16 the costs in the cost study are based on the capacity of  
17 the power plant?

18 A. They are.

19 MS. ANDERL: I have no further questions.

20 JUDGE MACE: Thank you, you're excused.

21 We will resume tomorrow at 9:30, and we will  
22 be in this room.

23 Let's be off the record.

24 (Discussion off the record.)

25 JUDGE MACE: We will resume tomorrow at 9:30,

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1 and I am assuming you have been around the block on this  
2 enough that you know we're going to be able to finish  
3 tomorrow.

4 MS. ANDERL: Yes.

5 JUDGE MACE: Do you have any idea whether you  
6 think we'll finish at a given time, or would you prefer  
7 not to discuss that at this point?

8 MR. KOPTA: My expectation is that we would  
9 take no more than the morning.

10 MS. ANDERL: I was going to say Greg did it  
11 by 1:00 in Utah.

12 MR. KOPTA: We do have one more witness.

13 MS. ANDERL: We didn't have Ms. Million.

14 MR. KOPTA: We also don't have Mr. Ashton.

15 MS. ANDERL: Mr. Ashton gave a little bit of  
16 direct testimony in Utah, so it should all balance  
17 itself out.

18 JUDGE MACE: All right, well, that helps.

19 Is there anything else we need to discuss  
20 before we adjourn?

21 All right, thank you, we are adjourned until  
22 tomorrow morning.

23 (Hearing adjourned at 4:55 p.m.)

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