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STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

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In the Matter of the
Complaint of the
Minnesota Department of
Commerce Against Qwest
Corporation Regarding
Unfiled Agreements

Docket No. P-421/C-02-197

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DEPOSITION OF BLAKE FISHER

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APPEARANCES

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1 Appearances Continued
 2 .
 3 FOR THE WITNESS:
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9 Also Present:
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1 INDEX
 2 .
 3 Witness Page
 4 BLAKE FISHER
 5 EXAMINATION
 6 BY MR. NAZARIAN 5
 7 EXAMINATION
 8 BY MR. ALPERT 56
 9 FURTHER EXAMINATION
 10 BY MR. NAZARIAN 72
 11 FURTHER EXAMINATION
 12 BY MR. ALPERT 76
 13 .

14 EXHIBITS
 15 .
 16 Number Page
 17 1 21
 18 2 21
 19 3 44
 20 4 60
 21 .
 22 .

23 .
24 .
25 .

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1 Deposition of Blake Fisher
2 June 27, 2002
3 PROCEEDINGS

4 BLAKE FISHER, called as a witness for
5 and on behalf of Qwest, being first duly sworn,
6 was deposed and testified as follows:

7 EXAMINATION

8 BY-MR. NAZARIAN:

9 Q. Good afternoon, Mr. Fisher.

10 A. Good afternoon.

11 Q. We met a little while ago in the hall,
12 but my name is Doug Nazarian. I'm an attorney
13 with Hogan & Hartson. I'm here representing
14 Qwest. My colleague Martha Russo is here with
15 me. I guess before we get started, has everybody
16 who is in the room or their client, at least,
17 signed the protective order in this case?

18 MR. ALPERT: As far as I'm aware, for
19 the department, myself and Mr. Deanhardt have.

20 MR. NAZARIAN: And McLeod has executed
21 a protective order?

22 MR. LAVEY: I believe that's right.

23 MR. WEISS: I haven't.

24 MR. NAZARIAN: I believe they have,
25 too. I just wanted to--

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1 MR. WEISS: I haven't, so . . .

2 MR. ALPERT: I should clarify. To the
3 extent the department had to sign one, we've
4 complied.

5 MR. NAZARIAN: I want to make sure
6 we're clear on the record that there are going to
7 be topics covered in today's deposition that are
8 going to include material that's considered trade
9 secret. We could go back later and designate
10 line by line when we've done that or not done
11 that, but I want everybody to be aware that it is
12 subject to protective order and that Qwest
13 reserves it's rights under the protective order to
14 protect trade secret information that we talk
15 about today.

16 BY MR. NAZARIAN:

17 Q. Mr. Fisher, have you ever had your
18 deposition taken before?

19 A. Yes.

20 Q. So you're familiar, generally, with how
21 this all works?

22 A. Yes.

23 Q. And I will therefore spare you my long
24 spiel about deposition procedure. But I will
25 caution you that I can talk fast. And I will try

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1 not to do that for the sake of the reporter. But

2 if I do get going and you can't follow me,
3 please, don't hesitate to say so. And I'll stop
4 and calm down and--

5 A. Okay.

6 Q. --say everything again. If you don't
7 understand my question, would like me to rephrase
8 it or repeat it, just say so and we'll do that.
9 And if for any reason you need to take a break or
10 would like to stop for a little while, we can do
11 that. Just say the word. Okay?

12 A. Okay.

13 Q. Great.

14 MR. LAVEY: I'm Warren Lavey. I'm here
15 representing McLeod. And as you said, in terms
16 of Qwest's right to designate material as trade
17 secret, so too, McLeod would reserve its right to
18 designate some aspects of the testimony as trade
19 secret.

20 MR. ALPERT: And the department would
21 reserve its right to challenge such designations.

22 MR. NAZARIAN: Sure. Everybody
23 reserves everything and we're on our way.

24 BY MR. NAZARIAN:

25 Q. Mr. Fisher, I understand you're

0008

1 recently retired, is that true?

2 A. That's true.

3 Q. Congratulations.

4 A. Thank you.

5 Q. Before you retired, you worked at
6 McLeodUSA, correct?

7 A. Yes.

8 Q. How long had you been employed by
9 McLeod?

10 A. Since February of '96.

11 Q. And during the time you worked for
12 McLeod, you--I know you say in your affidavit--and
13 we'll show you that in a minute--that you held a
14 number of senior executive positions, is that
15 right?

16 A. Correct.

17 Q. Tell me, if you could, what positions
18 you held during your time at McLeod.

19 A. The first position I held was chief
20 financial officer. And following that, I became
21 regional president of what ultimately became known
22 as the western region. After that, I became
23 group vice president and chief planning and
24 development officer.

25 Q. Okay. And that was the position you

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1 held when you retired in May?

2 A. Yes.

3 Q. Is that right?

4 To whom did you report at McLeod in the
5 latter half of the year 2000?

6 A. I always reported to Steve Gray, who

7 was president.

8 Q. You reported directly to him?

9 A. Yes.

10 Q. And is there a chief executive officer
11 to whom Mr. Gray reported?

12 A. He reported to Clark McLeod.

13 Q. I've heard of him. And just so we're
14 clear, when you say he reported to Clark McLeod,
15 this is during the latter half of 2000, is that
16 right?

17 A. Yes.

18 Q. In your--in the latter half of 2000,
19 you held the regional president and group vice
20 president positions, is that right, or were you
21 just--just, to denigrate--you held one title--let
22 me start again. In the latter half of 2000, Mr.
23 Fisher, you were--were you the regional president
24 for the western region, or were you the group
25 vice president and the development officer?

0010

1 A. I became group vice president and chief
2 planning and development officer in December of
3 1999, so from that point on.

4 Q. So in connection with agreements that
5 were negotiated or signed in September, October of
6 2000, you were--your title was the group vice
7 president title?

8 A. That's correct.

9 Q. Okay. In your capacity as group vice
10 president--I won't spell the whole title out, but
11 we know what we're talking about--what was your
12 authority to enter agreements on behalf of McLeod?

13 A. The board of directors give--gave
14 authority to somebody at my level, authority up to
15 a limit which I don't recall. And over and above
16 that limit, we would have to go to the board of
17 directors and get authority.

18 Q. Do you have any rough understanding of
19 where the limit was?

20 A. My rough understanding would be in the
21 range of \$5 million of total commitment.

22 Q. Five million?

23 A. Yes.

24 Q. So for any--I'm not going to hold you
25 to the exact figure, but your sense, as you sit

0011

1 here is, if you had a deal in the works that had
2 a commitment value to McLeod, you know, in excess
3 plus or minus \$5 million, you would need to get
4 approval to go ahead with that transaction, is
5 that right?

6 A. That's correct.

7 Q. And you would need approval from the
8 board of directors or from Mr. Gray or from
9 somebody else?

10 A. I would need approval from either Mr.
11 Gray, Mr. McLeod, or the board, depending on the

12 level.

13 Q. At what point--do you know or have any
14 sense of what Mr. Gray's authority to enter into
15 agreements or to approve agreements on behalf of
16 McLeod might have been in that late 2000 time
17 frame?

18 A. I don't remember precisely, but I would
19 estimate in the range of 10 million, Mr. Gray
20 would have. Mr. McLeod would make a decision as
21 to whether he felt he needed to go to the board.
22 There's probably a defined number in the range of
23 25 million.

24 Q. So without, again, holding you to real
25 precise dollar figures, is it fair to say that a
0012

1 deal that had commitment value to McLeod of in
2 excess of 25, 30 million dollars would require the
3 commitment of the board of directors, as you
4 recall?

5 A. Yes.

6 Q. When you--well, make the predicate. In
7 the course of your time at McLeod, did you have
8 occasion to negotiate and enter agreements on
9 behalf of McLeod?

10 A. Yes.

11 Q. You did that many times, I imagine?

12 A. I did.

13 Q. Were there some of those agreements
14 that required you to seek advice or approval from
15 the legal department at McLeod?

16 A. As a matter of course, almost all
17 agreements I worked on at McLeod there would be a
18 legal representative involved.

19 Q. So it wouldn't be at all unusual--in
20 fact, it would be the normal course for the legal
21 department at least to have reviewed and weighed
22 in on agreements that you were involved in
23 negotiating for McLeod?

24 A. Yes.

25 Q. In the course of your time at McLeod--
0013

1 let me--strike that. What was your authority
2 during your time at McLeod to enter into oral
3 agreements on behalf of the company?

4 A. My agreements to enter--or my authority
5 to enter into oral agreements would parallel what
6 we talked about earlier.

7 Q. So there were no other restrictions on
8 your authority to enter into oral agreements
9 beyond those you described generally when we
10 talked a minute ago?

11 A. No other restrictions I can think of.

12 Q. In the course of your time at McLeod,
13 how many oral agreements did you enter into on
14 behalf of the company, or negotiate?

15 A. I don't know.

16 Q. Do you not know because the number is

17 so big you can't count, or you don't know because
18 you can't remember any?

19 A. I have never attempted to count the
20 oral agreements I entered into.

21 Q. Well, take a moment, if you can--and
22 again, I won't hold to you precise numbers, but I
23 want to get an estimate. Have you entered into
24 more than ten oral agreements or negotiated more
25 than ten oral agreements on behalf of McLeod

0014
1 during your time with the company?

2 A. Probably more than ten.

3 Q. Of those oral agreements, however many
4 exactly there were, how many of them required the
5 approval of Mr. Gray, Mr. McLeod, or the board of
6 directors?

7 A. I don't recall.

8 Q. Did any of them require the approval of
9 Mr. Gray, Mr. McLeod, or the board of directors?

10 A. I am--yes.

11 Q. So there is some number of oral
12 agreements with which you were involved during
13 your time at McLeod that rose to a level of
14 financial significance to the company that
15 required approval beyond your authority; is that a
16 fair statement?

17 A. Yes.

18 Q. And you--can you recall any of those
19 agreements specifically?

20 A. The agreements I can recall
21 specifically would normally have been with
22 investment bankers in my role as chief financial
23 officer.

24 Q. Those oral agreements related to fees
25 or the provision of financial services by those

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1 bankers to McLeod?

2 A. Yes.

3 Q. Can you recall negotiating or entering
4 into any oral agreement during your time at McLeod
5 that was not with an investment banker?

6 A. I can't at this time, no.

7 MR. LAVEY: Let me just clarify the
8 question. You're asking in addition to the oral
9 agreement that he's covering in his affidavit?

10 MR. NAZARIAN: No, sir. I asked the
11 question generally.

12 MR. LAVEY: Let's clarify that for the
13 witness and ask him to answer that question.

14 MR. NAZARIAN: Let me ask my follow-up
15 question, which I think might clarify.

16 BY MR. NAZARIAN:

17 Q. Is it fair to say, Mr. Fisher, then,
18 with the exception of agreements you might have
19 negotiated with investment bankers--putting them
20 aside--that every agreement you negotiated on
21 behalf of McLeod--McLeod entered into during your

22 time at the company was ultimately reduced to some
23 controlling writing or series of writings?

24 A. When I was answering the question
25 earlier, rightly or wrongly, I was excluding the

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1 agreement with Qwest that I discussed specifically
2 in the affidavit.

3 Q. So you--

4 A. That is the only one I recall having an
5 oral agreement on.

6 Q. Other than--

7 A. Other than the ones with investment
8 bankers.

9 Q. --with investment bankers?

10 A. Yes.

11 Q. So that we're all on the same page,
12 then, in your six years at McLeod, you can recall
13 negotiating and entering into exactly one oral
14 agreement other than those with investment
15 bankers?

16 A. Yes.

17 Q. Okay. So it's fair to say, then, it
18 would have been unusual, outside of the investment
19 banking context, for you to negotiate or McLeod to
20 enter into an oral agreement with another company;
21 is that right?

22 A. Yes, it would have been unusual for me
23 to do that.

24 Q. And it's--is it also fair to say that
25 it would generally be McLeod's practice to

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1 memorialize agreements with other companies,
2 particularly with telecommunications companies in
3 writing?

4 A. Yes.

5 Q. Isn't that correct?

6 A. Yes, it would be.

7 Q. Describe, if you can, Mr. Fisher, for
8 me, your perception of McLeod's relationship with
9 Qwest in the year 2000. Was it a--an amicable,
10 trusting relationship? Was it distrustful? Was
11 it strained? How would you describe it?

12 A. During the whole year of 2000, are you
13 asking?

14 Q. I've asked it that way, but if you
15 want--if it changed over the course of that year,
16 I'd ask you to break it out for me. I understand
17 there was a merger in that time period.

18 A. Yeah, so you are asking me about Qwest,
19 not US West. I'm just trying to understand your
20 question.

21 Q. That's fair. It's a fair distinction.
22 I guess the way I asked the question was by
23 referring to Qwest over the course of a year
24 where Qwest merged with US West. In my head, I
25 had both entities, Qwest and US West involved.

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1 But maybe rather than asking it that way, let's
2 go at it a different way.

3 In the time period following the
4 Qwest-US West merger, what was your perception of
5 McLeod's relationship with the new entity?

6 A. My perception, once the Qwest merged
7 with US West, is that we had a developing
8 positive relationship with Qwest. And it
9 developed from the time of the merger through that
10 year.

11 Q. So before the Qwest-US West merger,
12 your--is it fair to say McLeod's relationship with
13 Qwest or US West or both was less than positive?

14 A. Our relationship with Qwest prior to
15 the merger--I had very little involvement until
16 they announce the merger and once they announced
17 the merger, before it was completed, we had some
18 very--I'd say positive discussions with Qwest
19 management.

20 Q. Once you knew the merger was coming?

21 A. Once we new knew the merger was coming.
22 Prior to that, I had virtually no--I had very
23 little interaction with Qwest.

24 Q. How about US West?

25 A. With US West, from the time I became

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1 regional president, I would say it was--it was a
2 strained relationship, but we were starting to
3 have some productive discussions.

4 Q. And then things started to improve in
5 some fashion after the merger, is that what you
6 said?

7 A. The relationship with Qwest, after it
8 merged with US West, yes, our relationship
9 definitely improved.

10 Q. And it was in the--in that post merger
11 time frame, then, that McLeod sought to expand or
12 develop its business relationship with Qwest;
13 isn't that right?

14 A. No. We started to expand and develop
15 our relationship with US West well before the
16 merger.

17 Q. And then in the time period after the
18 merger, those talks continued and--and led us up--
19 I mean, they've continued to this day, but they
20 lead us up to the agreements that bring us here
21 in September and October of 2000; is that right?

22 A. Yes.

23 Q. And the--and those agreements--and
24 we'll talk in more specific terms in a minute
25 about what exactly what agreements we're talking

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1 about--they did represent an expansion of the
2 business relationship between McLeod and Qwest at
3 that time, did they not?

4 A. Yes.

5 Q. In general terms, Mr. Fisher, it's not

6 at all uncommon for companies to enter agreements
7 to settle disputes between them; is that right?
8 A. It's--I think it is common.
9 Q. It is common for them to do that, yes?
10 A. Yes.
11 Q. And those settlements, when companies
12 enter them, can include agreements to pay money,
13 right?
14 A. Yes.
15 Q. And they can include agreements to stop
16 fighting with each other, correct?
17 A. Correct.
18 Q. And is it also fair to say, Mr. Fisher,
19 that it is common for companies to enter into
20 agreements that contain confidentiality
21 provisions?
22 A. Yes, it is common.
23 Q. If you're going to trade sensitive
24 information, you want the other to honor that
25 confidentiality, correct?
0021
1 A. Yes.
2 MR. NAZARIAN: Let's mark this as
3 Exhibit 1, please.
4 Exhibit-1 marked
5 MR. WEISS: You didn't bring
6 eleven-teen copies.
7 MR. NAZARIAN: I brought five, plus
8 mine. Actually, Martha and I can share.
9 MR. LAVEY: Do you want the witness to
10 have his own?
11 MR. NAZARIAN: The witness will get the
12 one with the sticker.
13 Let's mark this as Exhibit No. 2.
14 Exhibit-2 marked
15 BY MR. NAZARIAN:
16 Q. Mr. Fisher, I'm going to hand you two
17 documents to see if our arms between us can get
18 across the table.
19 MR. WEISS: It was designed that way.
20 BY MR. NAZARIAN:
21 Q. I've handed you what--two documents the
22 reporter has marked as Exhibits 1 and 2 to your
23 deposition.
24 MR. LAVEY: Sorry, we only got one.
25 MR. DEANHARDT: We got one.
0022
1 MR. NAZARIAN: I'm sorry. That's
2 because I'm hoarding all the copies here in my
3 folder.
4 BY MR. NAZARIAN:
5 Q. I've had the reporter mark and we've
6 handed to you and now distributed in the room,
7 Mr. Fisher, the two documents the reporter has
8 marked as Exhibits 1 and 2 to your deposition.
9 Do you recognize these?
10 A. I recognize Exhibit 1 and Exhibit 2.

11 Q. These are--these are documents that are
12 both titled, "Purchase Agreement," correct?
13 A. Correct.
14 Q. And they were executed by Qwest and
15 McLeod on October 26, 2000, correct?
16 A. Yes. The specific companies--
17 Q. Yes.
18 A. --are McLeod Telecommunications Services
19 and Qwest Communications Corp.
20 Q. Fair enough.
21 A. Okay.
22 Q. And you executed both of these
23 documents on behalf of the relevant McLeod entity,
24 correct?
25 A. Correct.

0023

1 Q. There's your signature?
2 A. Yes.
3 Q. And you were the lead McLeod negotiator
4 for these two agreements, were you not?
5 A. Yes.
6 Q. It's fair to say, Mr. Fisher--and take
7 whatever time you need to go back over them, if
8 you need to--that the commitment value of these
9 agreements to McLeod exceed--exceeded your
10 authority to enter into them yourself, correct?
11 A. Correct.
12 Q. Were these agreements approved by the
13 board of directors of McLeod?
14 A. My understanding is, yes. I was not at
15 the board meeting, but I was told that they were.
16 Q. You were told by Mr. Gray or Mr. McLeod
17 that they were?
18 A. Mr. Gray.
19 Q. Mr. Gray?
20 A. Mr. Gray.
21 Q. Got it.
22 The word discount does not appear
23 anywhere in either of these documents, does it,
24 Mr. Fisher?
25 A. I don't remember.

0024

1 Q. Okay. Do you want to take a look, or
2 do you want to take my word for it?
3 A. I'd rather take your word, of course,
4 subject to check.
5 Q. That's fine.
6 A. I'm not real good at--I'd have to go
7 into a computer probably to check it.
8 MR. WEISS: Search.
9 THE WITNESS: Search, yeah. Search for
10 discount.
11 BY MR. NAZARIAN:
12 Q. Subject to check, then, will you--would
13 you agree with me--well, I guess anybody can read
14 the document. We can see for ourselves. But
15 you--since you negotiated these documents, you

16 wouldn't expect to see the word discount, refund,
17 rebate, or anything--any similar word contained in
18 these agreements, would you?

19 A. No, I wouldn't expect to see that word.

20 Q. These agreements committed Qwest and
21 McLeod--one agreement for Qwest and one for
22 McLeod--to purchase services from the other,
23 correct?

24 MR. WEISS: On your document Bates
25 stamped Q110116, last sentence on the page, I see
0025

1 the word, "discount."

2 MR. NAZARIAN: The word, "discount,"
3 does appear.

4 THE WITNESS: Thank you, Larry.

5 MR. WEISS: Thank you, Warren.

6 MR. LAVEY: You're welcome.

7 BY MR. NAZARIAN:

8 Q. Well, these--let's clarify that, then.
9 These documents are not--neither of these
10 agreements was designed or intended to memorialize
11 a discount that Qwest would give to McLeod against
12 the purchase of services, correct?

13 A. I can't agree with that
14 characterization.

15 Q. Is it fair to say--well, let's back up
16 a minute. When these agreements were negotiated
17 by you on behalf of McLeod, is it fair to say
18 that one of McLeod's business goals in negotiating
19 these agreements was to obtain the best possible
20 price for the services it needed from Qwest?

21 A. Yes.

22 Q. Okay. Is it fair to say that in the
23 course of those negotiations, McLeod asked Qwest
24 to enter into an agreement that specified McLeod
25 would get a discount for the services it bought
0026

1 from Qwest, in writing?

2 A. Could you repeat that?

3 MR. NAZARIAN: Can I ask the reporter
4 to read it back, please?

5 (The last question was read.)

6 MR. LAVEY: Doug, I think it would help
7 the witness if you could just define discount. I
8 think you'll get a better answer to your question
9 if you do that.

10 MR. NAZARIAN: Like him to try to
11 answer my question if he can. Then we'll unpack
12 it if we have to.

13 THE WITNESS: I asked Qwest--and before
14 that, US West--to provide us the best economic
15 transaction they could for the services that they
16 were providing to McLeod. And one of the
17 mechanisms that would have been acceptable to us,
18 from an economic perspective, would be to receive
19 discounts off of pricing it was currently paying.

20 BY MR. NAZARIAN:

21 Q. And that mechanism was proposed and
22 rejected, correct?

23 A. US West--and I can't remember the
24 precise timing relative to the merger, maybe
25 following the merger--did provide McLeod with
0027

1 various pricing proposals.

2 Q. But those never ripened into actual
3 agreements?

4 A. Not until the interconnection
5 agreements we entered into and the agreements
6 represented by Exhibit 1 and 2 and in oral
7 agreements that we entered into with Qwest.

8 Q. Let's take those one at a time. The
9 interconnection agreement deals with the nuts and
10 bolts of connecting the networks, right? That
11 doesn't deal specifically with price terms?

12 A. No, that's incorrect.

13 Q. What price terms are covered by the
14 interconnection agreement, just generally. I can
15 pull it out if you want to go through it,
16 but . . .

17 A. In the interconnection agreement, there
18 are pricings for what we refer to as UNE-M for
19 each of the 14 states that Qwest operates in and
20 provides local services.

21 Q. And so it laid out the terms of that
22 interconnection relationship and the UNE-M
23 pricing?

24 A. Correct.

25 Q. And then at the same time, Qwest and
0028

1 McLeod entered these agreements that are marked 1
2 and 2 to your deposition, correct?

3 A. Correct.

4 Q. And these agreements don't relate to
5 pricing of services Qwest is selling to McLeod or
6 McLeod is selling to Qwest, correct ?

7 A. No.

8 Q. These agreements numbers 1 and 2
9 obligate Qwest to purchase certain amounts of
10 services from McLeod and McLeod to purchase
11 certain amounts of services from Qwest, correct?

12 A. They provide for that. You used the
13 word relate in your initial question.

14 Q. Okay. They don't specifically--let me
15 step back, then. The agreements marked as
16 Exhibits 1 and 2 do not establish the price of
17 any particular Qwest or McLeod service to the
18 other, correct?

19 A. That is correct.

20 Q. They--these two agreements--and they--
21 one flows in one direction and one flows in the
22 other, but they represent commitments of the two
23 companies to buy certain amounts of
24 telecommunication services from the other,
25 correct?

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1 A. No.

2 Q. Where did I go wrong?

3 A. They are take-or-pay contracts that
4 provide for financial payments.

5 Q. I see. So if you don't meet the buy
6 commitment, then you pay the difference?

7 A. That's correct.

8 Q. Okay. Fair enough. Is it fair to say,
9 Mr. Fisher, that the purchase of services under
10 these agreements, or the payment in lieu of the
11 purchase, is a source of revenue to these
12 companies? In other words, if Qwest is agreeing
13 to buy some dollar figures worth of services from
14 McLeod each year and if it doesn't actually buy
15 them then to pay the difference, that that is
16 revenue to McLeod. Is that a fair statement?

17 A. Are you asking that question from an
18 accounting perspective, or just do I consider it
19 cash flow and revenue into the companies?

20 Q. I'm not sophisticated enough in
21 accounting terms to break--to be asking you at
22 that level of nuance. Is there--Qwest--Qwest is
23 agreeing, in the document marked as No. 1, to buy
24 things from McLeod and to pay money if it
25 doesn't, correct?

0030

1 A. That's correct.

2 Q. And to the extent that Qwest had not
3 previously been buying services from McLeod before
4 it entered into this agreement, that would be new
5 money to McLeod, correct, whether it's a purchase
6 or a payment in lieu of purchase?

7 A. It would be revenue that had not
8 occurred previously. That's correct.

9 Q. So it would be a new source of revenue,
10 and I'm using that term in a general sense.

11 A. Yes.

12 Q. Now, is it fair to say, Mr. Fisher,
13 that the commitment that Qwest made in the
14 agreement that's marked as Exhibit No. 1
15 represented a new commitment from Qwest to McLeod
16 at the time of this agreement?

17 A. To the best of my knowledge, yes.

18 Q. You were not aware that Qwest was
19 making, shall we say, significant purchases of
20 telecommunication services from McLeod at that
21 time?

22 A. No, I was not.

23 Q. So to the extent, then, that Qwest has
24 now committed, in the agreement that's marked as
25 No. 1, to either purchase a certain level of

0031

1 services or to pay the difference, Qwest has made
2 a new revenue commitment to McLeod, correct?

3 A. Correct.

4 Q. And that commitment comes in the

5 context of a broader series of agreements that
6 defined Qwest and McLeod's business relationship
7 at the time, correct?

8 A. Yes.

9 Q. You mention the interconnection
10 agreement, we just talked about the Qwest purchase
11 agreement No. 1, and then there's the McLeod
12 purchase agreement which is No. 2, right, in which
13 McLeod made a similar take-or-pay commitment to
14 Qwest, right?

15 A. They made a take-or-pay commitment that
16 was much larger.

17 Q. Yes. That's true. It's--over the
18 course of three years, it was **Trade Secret Begins** \$480 million,
19 **Trade Secret Ends** correct?

20 A. Correct.

21 Q. And Qwest's aggregate take-or-pay
22 commitment over that same time period was--I'm not
23 great at math, but somewhere in the **Trade Secret Begins** 53 million,
24 **Trade Secret Ends** plus or minus, range. Does that sound about
25 right?

0032

1 A. Yes.

2 Q. So, right, McLeod's take-or-pay
3 commitment to Qwest was greater than Qwest's,
4 correct?

5 A. Correct.

6 Q. Although at the time, Qwest--or McLeod
7 already was a customer of Qwest's, right?

8 A. Yes.

9 Q. And it's fair to say, is it not, that
10 McLeod anticipated in October 2000 that its
11 purchases from Qwest would increase along the
12 lines set forth in this agreement if it's business
13 continued to grow as it hoped?

14 A. Along the lines in what agreement?

15 Q. In the McLeod purchase agreement set
16 forth as No. 2?

17 A. Exhibit 2?

18 Q. Yes.

19 A. No. Our purchases were expected to be
20 substantially larger than specified in Exhibit 2.

21 Q. Okay. So at the very least, then, if
22 McLeod's business grew as you anticipated, McLeod
23 would be purchasing at least **Trade Secret Begins** \$480 million worth of
24 **Trade Secret Ends** services from Qwest over those three years in the
25 normal course?

0033

1 A. That was my expectation.

2 Q. All right. So we've talked about three
3 agreements. We've talked about the
4 interconnection agreement. We've talked about
5 these two purchase agreements 1 and 2. Now
6 you've mentioned an oral agreement. Tell me
7 exactly, Mr. Fisher, what the terms of this oral
8 agreement are. I'd be glad to show you a
9 writing, but it's oral, so I--and you were the

10 guy who negotiated it.

11 A. Yes, can I refer to my deposition?

12 Q. Oh, you mean--

13 A. Excuse me, affidavit.

14 Q. Your affidavit? I'd like you to do it
15 from your memory, since you were the guy who
16 negotiated it.

17 A. Okay. I'll do the best I can from my
18 memory. We received from Qwest a document that
19 was an exhibit to my affidavit that provided
20 approximately for the years beginning in October
21 of 2000 and specifically referring to 2001, 2002,
22 2003, an estimate--excuse me--not an estimate, an
23 amount of revenue that would run from McLeod to
24 Qwest. And starting in 2001, there was a--what
25 was referred to as a discount amount for purchases

0034

1 of up to about Trade Secret Begins \$200 million Trade Secret Ends in 2001
that would

2 give McLeod approximately a 6 1/2 percent
3 discount. And then there was an increment above
4 that--and I don't remember the specific number,
5 it's on the exhibit--of somewhere in the range of
6 Trade Secret Begins 220 million up to--between 200 and 220 million Trade
Secret Ends

7 that would provide for an 8 percent discount, and
8 then above a certain level, approximately Trade Secret Begins 200
9 million, Trade Secret Ends that would provide for a 10 percent
10 discount.

11 Then in 2002 and 2003, McLeod had to
12 purchase approximately Trade Secret Begins 200 million Trade Secret Ends to
qualify for

13 an 8 percent discount. In 2002, over Trade Secret Begins 230 million Trade
Secret Ends

14 approximately required to qualify for a 10 percent
15 discount and in 2003, over Trade Secret Begins 200 million Trade Secret
Ends for an 8

16 percent discount, and over about Trade Secret Begins 250 million Trade
Secret Ends for a

17 10 percent discount.

18 And the oral agreement provided that
19 the way that McLeod would receive those amounts
20 would be to look at the amount it received under
21 Exhibit 1 and received revenue either above or
22 below that according to that schedule I just
23 described.

24 Q. So in other words, this discount you've
25 described as this oral agreement was an umbrella

0035

1 discount. In other words, McLeod was entitled to
2 this tiered discount, as you've described it. And
3 it might capture some of that through the
4 performance of the take-or-pay marked as Exhibit
5 No. 1. To the extent it didn't then Qwest would
6 pay the difference in cash?

7 A. That's correct. Just for additional
8 clarification, you're right, that's for all

9 services purchased from Qwest, whether local, long
10 distance. If we paid them for any type of
11 service, then all of that was counted as revenue
12 towards that volume commitment.

13 Q. Who at Qwest entered into that oral
14 agreement?

15 A. Greg Casey and Audrey McKenney.

16 Q. Did you hear agreement to those terms
17 from both of their mouths directly?

18 A. Yes.

19 Q. And were you the only person on the
20 McLeod side who agreed to this?

21 A. No.

22 Q. Who else agreed to it from McLeod?

23 A. The other people involved in the
24 negotiations were Jim Balvanz, who was vice
25 president of finance Stacey Stewart, who was vice

0036

1 president of ILEC relations. I'm sorry. I-L-E-C
2 relations. I--I discussed this agreement with
3 Steve Gray, who was aware of the specifics of the
4 agreement.

5 Q. Who was present for that handshake
6 moment, or the--that precise point in time when
7 this agreement was formed? In other words, I
8 know that there was--over the course of over how
9 many months you all had been talking there was
10 talk about discounts, right?

11 A. Yes.

12 Q. But there came a point, you know--as I
13 understand your testimony--and please, correct me
14 if I don't have it right--that this discussion, in
15 your view, ripened into this oral agreement you've
16 described, correct?

17 A. Yes.

18 Q. Who exactly exchanged the handshake or
19 the words that turned it into an agreement, in
20 your view?

21 A. I have to describe three or four things
22 that happened that led to the final agreement.

23 Q. Well, you can do that, but please--

24 A. The final--the specific answer to your
25 question is the handshake agreement occurred over

0037

1 the telephone between Greg Casey and myself the
2 night before our board meeting. And I don't
3 remember the date. I think it was October 25,
4 but I'd have to check that.

5 Q. It was before these agreements were
6 signed by you and by Mr. Casey?

7 A. Yes. And on the phone at the time for
8 Qwest was Greg Casey, who I made the agreement
9 with, Audrey McKenney was on the phone as well,
10 and for McLeod, Jim Balvanz, Stacey Stewart, and
11 Randy Rings were on the phone.

12 Q. So it was a conference call?

13 A. It was a conference call.

14 Q. Why was McLeod willing to enter into an
15 agreement of this magnitude without a writing?

16 A. The interconnection agreement we
17 entered into that I described earlier provided for
18 pricing to McLeod that was--would save roughly two
19 and a half million dollars a month for McLeod as
20 compared to the pricing they previously had. So
21 the interconnection pricing, on a stand alone
22 basis, was an improvement economically.

23 For McLeod to enter into Exhibit 2,
24 which was a take-or-pay contract with certain
25 minimums, and in order to keep McLeod on what
0038

1 I'll call the Qwest network, by that, I include
2 their loops and their switches--the volume pricing
3 arrangement where we would receive what we've been
4 discussing as a discount, in my judgment,
5 economically was worthwhile for McLeod to continue
6 to use the Qwest network.

7 And I felt that Exhibit 1 provided
8 financially a commitment by Qwest to provide
9 McLeod a substantial part of that revenue. And I
10 had the word of Greg Casey that if we met the
11 amounts of revenue to Qwest, that we would get
12 the incremental revenue. And that I viewed, as
13 did the other members of my team, a good economic
14 arrangement for McLeod.

15 If, for some reason, that arrangement
16 broke down, then McLeod had the option of
17 continuing to build out its network, get off of
18 Qwest switches and use its own. So overall, the
19 business arrangement provided options to McLeod,
20 and assuming Qwest honored its oral agreement with
21 me, provided a good mechanism for us to stay on
22 Qwest network.

23 Q. So did McLeod not want the agreement in
24 writing because it wanted to retain the option to
25 build out its network?

0039

1 A. No. McLeod would have preferred to
2 have this agreement in writing.

3 Q. But Qwest would not enter into an
4 agreement like that in writing, correct?

5 A. That is correct.

6 Q. Did the McLeod board approve this oral
7 agreement, to your knowledge?

8 A. I do not know. I was not at the board
9 meeting.

10 Q. Did Mr. Gray approve the oral
11 agreement?

12 A. Yes.

13 Q. And he knew, as far as you know, that
14 it was oral and not written?

15 A. Yes, he did.

16 Q. You apprised him of that?

17 A. Yes.

18 Q. Did Mr. Gray tell you whether the board

19 had been advised that the agreement was oral?

20 A. I don't remember.

21 Q. Mr. Gray--would Mr. Gray have been the
22 person to advise the board on this agreement--this
23 oral--alleged oral agreement?

24 A. Yes.

25 Q. So he would know what the board was

0040

1 told or not told about it?

2 A. That's correct.

3 Q. So put your chief financial officer hat
4 back on, then, Mr. Fisher, if you would. If
5 Qwest made a payment to McLeod pursuant to this
6 oral agreement that you've described, which was an
7 agreement, as you described it, to give McLeod a
8 discount against the purchases McLeod had made
9 from Qwest, would you expect that--

10 MR. LAVEY: I'm sorry. I'm going to
11 object. I'm not sure if that properly
12 characterizes his testimony.

13 MR. NAZARIAN: Okay. Let me finish the
14 question. You can interpose your objection. The
15 record will sort it out.

16 BY MR. NAZARIAN:

17 Q. You've testified--and correct me if I'm
18 wrong--that McLeod and Qwest entered into this
19 oral agreement you described, the purpose of which
20 was to give McLeod a discount off of the services
21 that it purchased from Qwest, correct?

22 A. I've testified that it was--that we
23 have a combination of agreements.

24 Q. Okay.

25 A. Okay.

0041

1 Q. But the oral portion of it created an
2 overarching discount, some of which might be
3 satisfied by the take-or-pay, but not necessarily,
4 right?

5 A. That is correct.

6 Q. Okay. And under some set of facts,
7 if--if McLeod purchased more in services from
8 Qwest than the take-or-pay required, then as
9 you've described this series of agreements, Qwest
10 would owe McLeod a payment in cash, correct?

11 A. Yes.

12 Q. In your capacity as the former chief
13 financial officer of McLeod, would you expect that
14 payment to be booked as revenue or as reduction
15 costs?

16 A. My view would be you have to look at
17 the transaction as a whole. And the way this
18 transaction was structured was for Qwest, under
19 Exhibit 1, to make payments to McLeod, and to the
20 extent McLeod made purchases at a higher level,
21 then we would receive incremental revenue from
22 Qwest. That was the oral understanding. Up
23 to--up to the levels I described: 6 1/2, 8

24 percent, 10 percent levels. So that's the way
25 the agreement was structured. The impact from a
0042

1 business perspective was that we--you could say
2 that was an offset to the cost, but because of
3 the way it was structured, it was--I believe it
4 was revenue.

5 Q. So what you're really saying, then, is
6 that Qwest made a commitment to pay revenue above
7 and beyond what it said in the take-or-pay?

8 A. That's correct.

9 Q. Not to give McLeod a discount, that
10 this revenue contribution would be measured by
11 some percentage of the services that McLeod
12 purchased from Qwest. Is that your
13 characterization of it now?

14 A. That would be--yes, that's consistent
15 with my characterization.

16 Q. So you would resist, then, description
17 of your oral agreement as being a discount
18 agreement, correct?

19 A. I think you're playing with words.

20 Q. Well, I don't want to play with words.
21 I want--I want to get at this, but I also know
22 that Qwest is being accused of giving hidden oral
23 discounts to McLeod, so I want to hear--you're the
24 guy who negotiated this. I want to hear your
25 understanding. Is the oral agreement an agreement
0043

1 to provide a discount?

2 A. The oral agreement effect, okay, as
3 demonstrated by the exhibit to my affidavit, was
4 to compute a discount--a number of the total
5 purchases that McLeod made from Qwest. The
6 mechanism, which is different--the mechanism to
7 effect that agreement was to enter into the
8 purchase agreement that's Exhibit 1, and then
9 adjust the amounts that it would receive to equate
10 to that level of discount.

11 Q. So maybe--is it fair to say that the
12 oral agreement you're describing is an extension
13 of the take-or-pay commitment that Qwest made to
14 McLeod?

15 A. Yeah, I think--I think it's part of or
16 an extension of.

17 Q. Now, you mentioned in your affidavit,
18 Mr. Fisher, that one of the conditions that Qwest
19 put on McLeod to enter into this series of
20 agreements that we've just been talking about, was
21 that McLeod would have to agree to remain neutral
22 with respect to Qwest's application for Section
23 271 approval. Is that correct?

24 A. Yes.

25 Q. Is that agreement by McLeod to remain
0044

1 neutral vis-a-vis 271 written down anywhere, to
2 your knowledge?

3 A. The only place I recall it being
4 written down was in the term sheet that we
5 discussed. I think it was September 19.
6 Q. But in terms of finalized, signed
7 agreements, that--that provision or McLeod's
8 agreement to remain neutral as to Qwest's 271
9 applications is not contained in a written
10 agreement; is that correct?
11 A. That--that's correct. It was an oral
12 agreement.

13 MR. NAZARIAN: Let's mark this
14 document, please, as Exhibit No. 3.

15 Exhibit-3 marked

16 BY MR. NAZARIAN:

17 Q. Let me hand you now, Mr. Fisher, what's
18 been marked as Exhibit No. 3, which is your
19 affidavit. Do you recognize it?

20 A. Yes, I do.

21 Q. Take a look, if you would, Mr. Fisher,
22 on page .8 in paragraph number 24.

23 A. Page .8.

24 Okay.

25 Q. You say in the last sentence of

0045

1 paragraph 24 that, "McLeodUSA agreed to remain
2 neutral with respect to 271," which is what it
3 refers back to the prior sentences, "provided
4 Qwest complied with all of our agreements and with
5 all applicable statutes and regulations." Do you
6 see where I'm reading?

7 A. Yes, I do.

8 Q. Okay. And does that fairly
9 characterize McLeod's agreement to stay neutral
10 with respect to Qwest's 271 applications?

11 A. Yes.

12 Q. Okay. So McLeod's agreement was
13 conditioned on two things, as I read your
14 testimony. First of all, Qwest had to comply
15 with all of its agreements with McLeod. And
16 second, Qwest had to comply with all applicable
17 statutes and regulations, right?

18 A. Yes.

19 Q. Okay. And if Qwest failed, for
20 whatever reason, not to live up to one of its
21 agreements with McLeod, or failed to live up to
22 applicable law, McLeod was free at that point to
23 participate in Section 271 proceedings however it
24 saw fit, correct?

25 A. I wouldn't characterize them as free at

0046

1 that point.

2 Q. They wouldn't be bound by this
3 agreement, any way, not to participate?

4 A. No, that's not correct.

5 Q. Okay. Well, then what--what would have
6 bound McLeod to stay neutral?

7 A. As part of the overall agreements that

8 we--between McLeod and Qwest, there was an
9 escalation process. So if there was a dispute
10 that arose which could include a dispute as to
11 whether Qwest was complying with all statutes and
12 regulations, then our escalation agreement
13 provided that we go through that process--

14 Q. I see.

15 A. --before we'd be free.

16 Q. Okay. Fair enough. So--so if--you
17 know, you could analyze it one way or another, I
18 guess, but if there was a dispute that couldn't
19 be resolved through escalation mechanisms, or
20 Qwest couldn't satisfy McLeod in some fashion that
21 it was complying with applicable law after going
22 through that back-and-forth, then McLeod would
23 have the right to oppose 271 or participate
24 however it wanted in those proceedings, correct?

25 A. That would be my understanding, yes.

0047

1 Q. If Qwest was complying with its
2 agreements with McLeod and if Qwest was complying
3 with applicable law, can you imagine that McLeod
4 would have an objection to Qwest's 271
5 application?

6 A. Can I ask you to clarify? I mean,
7 would McLeod have an objection, or would it be
8 able to formally object?

9 Q. No, in business terms, not whether it
10 would have the right to or not. Put--put aside
11 whether there had been any agreements one way or
12 the other. If--if McLeod--if Qwest had agreements
13 with McLeod that it was living up to and if, in
14 McLeod's view, Qwest was complying with the law
15 and regulations that governed its business, would
16 McLeod as a business matter, have any objection to
17 Qwest's 271 application, do you think?

18 A. Assuming this agreement's in place, or
19 not in place.

20 Q. Assuming the set of agreements that are
21 in place.

22 A. If these agreements are in place, then
23 I do not believe McLeod would have a reason or
24 want to object.

25 Q. Now, put yourself back in time before

0048

1 these agreements are entered. McLeod and Qwest
2 did have other agreements going on at that time,
3 right?

4 A. Yes.

5 Q. Okay. If Qwest was complying with
6 those agreements and complying with the law, do
7 you imagine that, at that point, McLeod would have
8 had an objection to Qwest's 271 application?

9 A. I think it's very possible they would.

10 Q. On what grounds?

11 A. Well, there could be a number of
12 grounds.

13 Q. Well, which can you think of?
14 A. Ones I can think of is--primarily
15 relate to their level of performance in providing
16 services to McLeod. Whether they were consistent
17 with regulations or not, we still could have
18 considered them inadequate.

19 Q. Do you know that McLeod, in the time
20 prior to these agreements, did consider Qwest's
21 services inadequate or are you--are you saying
22 that that could have been an issue at that point
23 in time?

24 A. There's no question in my mind that we
25 considered their services inadequate.

0049

1 Q. Prior to these October of 2000
2 agreements?

3 A. Yes.

4 Q. Other than the service issues, what
5 else might McLeod have wanted to raise in a
6 Section 271 proceeding?

7 A. We thought they were not only providing
8 inadequate services, but they were not making best
9 pricing available to the company.

10 Q. What other issues?

11 A. I would say that most, if not all, of
12 our objections would fall into the adequate--
13 whether service was adequate or whether pricing
14 was adequate.

15 Q. And McLeod's decision to participate or
16 not in the Section 271 process, assuming these
17 agreements had not been entered into, would have
18 been a matter of McLeod's business judgment back
19 then, right?

20 A. Yes.

21 Q. Mr. Fisher, it's true, is it not, that
22 you did not author the first draft of your
23 affidavit, which is now marked as Exhibit 3,
24 correct?

25 A. That is correct.

0050

1 Q. That was drafted for you by Mr.
2 Deanhardt; is that right?

3 A. I received it from the attorney
4 general's department. It was represented to me
5 that Mr. Deanhardt did the first draft. I don't
6 know that for a fact.

7 Q. Before you received the first draft of
8 your affidavit from the attorney general's office,
9 what contacts had you had with the Minnesota
10 Department of Commerce?

11 A. I'm sorry. I didn't hear that.

12 Q. Before you received your draft--the
13 first draft of your affidavit from the attorney
14 general's office, what contacts had you had with
15 anyone from the Minnesota Department of Commerce?

16 A. We had a conference call that lasted--
17 my recollection is about an hour and a half prior

18 to that draft being prepared.

19 Q. Okay. Who participated in that
20 conference call?

21 A. Would you allow me to refer to the--

22 Q. I'm sorry?

23 A. Would you allow me to refer to some
24 notes? I'd be happy to give them to you. I just
25 wrote down who participated.

0051

1 Q. If you will produce the notes to us--

2 A. Sure.

3 Q. --I don't have any objection to you
4 referring to them.

5 A. Sure.

6 Dan Lipschultz, Steve Alpert, Clay
7 Deanhardt, and Tony Mendoza, on 6/6 of '02.

8 Q. You had a conference call with those
9 people to discuss these agreements that you've
10 testified about today?

11 A. Yes.

12 Q. What did the department representatives
13 tell you they wanted to know about these
14 agreements?

15 A. In general terms, they wanted me to
16 explain to them how the agreements we'd entered
17 into on October 26--well, I guess they're
18 effective October 2, but entered into on October
19 26--interacted.

20 Q. Did they tell--I'm sorry. I didn't
21 mean to interrupt you.

22 A. No, I'm done.

23 Q. Did they tell you how they'd come to
24 learn about this cluster of agreements?

25 A. I don't remember if they told me, but I

0052

1 knew.

2 Q. How did you know?

3 A. I knew because I was still at McLeod
4 when the company received discovery requests from
5 the state of Minnesota.

6 Q. And so when you learned that the
7 department had served discovery requests on
8 McLeod, you came to learn that they were
9 interested in these agreements?

10 A. Yes.

11 Q. And did you provide any information in
12 response to those discovery requests at that time?

13 A. Yes.

14 Q. And do you remember when that was?

15 A. I do not remember exactly. I left the
16 company on May 15. I believe it was within 60
17 days prior to that.

18 Q. Was it closer to your end date than 60
19 days before your end date?

20 A. I don't know.

21 Q. Sixty days in the life of this case
22 covers filing to hearing. So I'm trying to get a

23 feel.

24 A. I don't remember the dates.

25 MR. ALPERT: I would like the record to

0053

1 show that the filing of the complaint was February
2 14, so I don't think 60 days is an accurate
3 representation, if I understood your statement.

4 BY MR. NAZARIAN:

5 Q. Well, it was--February 14 was the
6 filing, and the first hearing was April 24, so
7 whatever. The case is moving on a fast track.
8 I'm just trying to get a feel, but you can't
9 place it at any point in time?

10 A. I can't remember.

11 Q. Fair enough. Fair enough. So you--
12 what else did you discuss with the department?
13 You said you explained how these agreements all
14 fit together. Tell me what else you discussed
15 with the--with the department during this
16 telephone call on June the 6.

17 A. I think my affidavit covers everything
18 I can remember we discussed.

19 Q. Did the department provide you with any
20 documents before you talked on the phone with the
21 folks from the state?

22 A. No.

23 Q. Did you review any documents before you
24 reviewed the draft of your affidavit?

25 A. No.

0054

1 Q. Did you select the documents that would
2 be attached to your affidavit?

3 A. No.

4 Q. Did the department attach drafts of
5 other documents--or attach other documents to
6 earlier drafts of your affidavit that were--let me
7 start the question again.

8 Did the earlier--well, let me ask the
9 predicate. How many drafts of your affidavit were
10 there between the first one that you saw and the
11 one that you executed?

12 A. There might have been three drafts.

13 Q. Did the earlier drafts of your
14 affidavit provided to you by the department attach
15 any documents other than the ones attached to the
16 final version?

17 A. Not that I recall.

18 Q. Did you review the documents that were
19 attached--that are attached to your affidavit
20 before you executed the affidavit?

21 A. Yes.

22 Q. And they were sent to you by the
23 department?

24 A. Yes.

25 Q. Did the earlier drafts of the affidavit

0055

1 contain allegations or statements with which you

2 did not agree that you took out and--that you
3 took out?

4 A. I made edits to the document. If that
5 represents disagreement, then the answer is yes.

6 Q. Can you recall whether your edits were
7 extensive or minor or somewhere in between?

8 A. I would characterize them as minor.

9 MR. NAZARIAN: This might be a good
10 time to take a five-minute break.

11 (Recess taken, 1:29-1:52 p.m.)

12 MR. NAZARIAN: We have a--have some
13 outstanding discovery issues with McLeod. We have
14 not yet received interrogatory responses or
15 documents from McLeod that we've asked for. We
16 may, after we see those documents, have additional
17 things to raise with Mr. Fisher. Subject to
18 reopening the deposition, if necessary, after we
19 get those materials, I have no further questions
20 today. And I thank you, Mr. Fisher, for your
21 time.

22 THE WITNESS: You're welcome.

23 MR. ALPERT: I just have a few, if I'm
24 next.

25 MR. WEISS: It sounded like Columbo,

0056

1 didn't it?

2 MR. ALPERT: Just one more thing. Just
3 one more thing.

4 EXAMINATION

5 BY-MR. ALPERT:

6 Q. Your affidavit--

7 MR. WEISS: Where's the raincoat?

8 MR. ALPERT: Is the suit sloppy enough?

9 MR. DEANHARDT: It is. Let me clean
10 you off.

11 BY MR. ALPERT:

12 Q. The affidavit and exhibits that you
13 submitted--the signed affidavit and the exhibits
14 that were attached to it, were those all true and
15 correct to the best of your knowledge?

16 A. Yes.

17 Q. And do you have any changes, additions
18 or corrections that you became aware of since that
19 time, except for, I think, there might have been
20 a blank referring to--in a reference to an exhibit
21 number in the affidavit. Other than that being
22 filled in at some point, were there any changes?

23 A. No.

24 Q. Counsel asked you about board approval
25 and your authority to enter into agreements. Did

0057

1 you have a dollar limit authority on agreements
2 where other companies were agreeing to pay McLeod
3 for services as opposed to McLeod committing to
4 purchase from other companies?

5 A. No. When I referred to the limits,
6 those would have been commitments McLeod would be

7 making to somebody else.

8 Q. So when the board--when you went to the
9 board for approval for a take-or-pay agreement and
10 in this case the exhibit, I believe 2, was a
11 substantial commitment without the oral agreement,
12 if the board approved that, would the board need
13 to approve a reduction from that amount?

14 A. To clarify, are you asking me if we
15 amended Exhibit 2 to some different number, would
16 we need board approval?

17 Q. If you amended Exhibit 2 for a lower
18 number, for example, if Exhibit 2 required you to
19 spend so much money for services but you had some
20 type of an amendment that would actually require
21 the company to spend less--and again, I'm not an
22 accountant either, but the net effect would be
23 that the company would not be on the hook for as
24 much. It's not very artful, but I guess it's the
25 only way I can say it--would you expect to have

0058
1 to go back to the board for additional approval?

2 A. If the only impact was to reduce the
3 commitment, the answer would be we would not have
4 a policy that required me to go back to the
5 board.

6 Q. During your negotiations with Qwest for
7 the best pricing that you could obtain for your
8 company, and during your negotiations for this
9 volume discount that you say you entered into with
10 Qwest on behalf of McLeod, did you ask Qwest for
11 its agreement for the volume discount to be
12 reduced to writing at some point?

13 A. Yes, when we negotiated the term sheet
14 that's dated September whatever it is--I forget--
15 my request was to have those agreements be
16 reflected in writing.

17 Q. Who did you make that request to, if
18 you can recall?

19 A. The people present in those
20 negotiations were Greg Casey and Audrey McKenney.

21 Q. What, if anything, did either Ms.
22 McKenney or Mr. Casey respond regarding your
23 request?

24 A. The response really occurred over a
25 period of time from that date when we negotiated

0059
1 the term sheet until we finalized the agreements
2 we entered into. And in effect, the response
3 was, they preferred to use the mechanism of
4 Exhibit 1 and our oral agreement rather than have
5 a discount agreement that resulted from our volume
6 purchases put in writing.

7 Q. Did they ever say--I'm sorry. I
8 apologize.

9 A. Put in writing.

10 Q. Did they ever explain to you or state
11 to you any reasons why they would prefer to have

12 it in that manner?

13 A. They believed that the overall volume
14 purchase agreements--this is what they indicated
15 to me--were confidential. They were entering into
16 it at the parent level, and that they felt they
17 could do that and they would rather not put any
18 writing because then they might be dealing with
19 other CLEC or similar companies--C-L-E-C, all
20 capitals--that might want to claim they were
21 entitled to something similar.

22 Q. And those discussions were with both
23 Ms. McKenney and Mr. Casey?

24 A. Yes.

25 Q. The term sheet that you have referred

0060

1 to in our discussion, is that Exhibit 2?

2 A. Exhibit 2--no. It's an exhibit to--

3 Q. I'm sorry--exhibit to your affidavit.
4 Let me see if I can find those.

5 A. If you could--I don't have that with
6 me.

7 Q. I might have it here.

8 I think I might have it.

9 Exhibit-4 marked

10 THE WITNESS: Yes, it is Exhibit 2.

11 BY MR. ALPERT:

12 Q. And what I've had marked as Exhibit--
13 Sorry, Mr. Court Reporter.

14 THE REPORTER: Number 4.

15 BY MR. ALPERT:

16 Q. --No. 4, these are--this is a copy of
17 your four exhibits to your affidavit?

18 A. Yes.

19 Q. And so the Exhibit 2 to your affidavit,
20 which is now Exhibit 4 to this deposition, is the
21 term sheet that you were referring to in our
22 discussion?

23 A. That is correct.

24 Q. Thank you. Prior to entering or
25 executing Exhibits 1 and 2 in October of 2000,

0061

1 and prior to entering into the oral agreement that
2 was part and parcel of those agreements, had you
3 and Qwest already discussed volume discounts?

4 A. Yes.

5 Q. Prior to October 26, when those three
6 agreements were entered into, had you had
7 discussions with both Audrey McKenney and Greg
8 Casey wherein--either discussions or
9 correspondence wherein Qwest had made offers to
10 McLeod of volume discounts for services to be
11 purchased by McLeod from Qwest?

12 A. Yes, we had discussions about that.

13 Q. And Audrey McKenney was integrally
14 involved in those discussions?

15 A. Yes.

16 Q. So even if there hadn't been an

17 agreement entered into, Ms. McKenney was part of
18 offers made by Qwest to enter into volume
19 discounts. Would that be a fair statement?

20 A. She was involved in discussions with
21 McLeodUSA and my team, yes.

22 Q. Mr. Nazarian was asking you about the
23 handshake moment and when that occurred, and you
24 indicated that you needed to explain your answer
25 by talking about a series of agreements is the

0062

1 way I recall it. Did you still feel a need to
2 give any further explanation, or do you feel that
3 you've had the opportunity to discuss that fully?

4 A. What I was referring to was--Mr.
5 Nazarian asked me for the moment. I gave him
6 that, which was the evening before the board
7 meeting--is that between September 19 and October
8 26, Greg Casey and I, and Audrey McKenney, with
9 my team, had discussions about what the amount of
10 the volume purchases would be and what level of
11 benefit McLeod could realize from those. And so
12 there were--there was a moment in which we came
13 to a final agreement, but there were a series of
14 discussions that led up to that--I mean,
15 effectively negotiations to get to those numbers.
16 That was the augment that I was thinking about.

17 Q. Why would Qwest care about whether
18 McLeod stayed on its network or not? You talked
19 about that being something that brought about
20 these discussions, brought about this agreement?

21 MR. NAZARIAN: I object to asking this
22 witness what Qwest would want or care about.

23 BY MR. ALPERT:

24 Q. From a business perspective, do you
25 have an opinion as to why Qwest would care

0063

1 whether McLeod stayed on its network or not?

2 A. I do have an opinion.

3 Q. What is it?

4 A. My opinion is that McLeod had several
5 hundred thousand--a couple hundred thousand lines
6 that it effectively leased from Qwest--it was
7 lines and switchboards. So if McLeod took all of
8 its then business as of, say, middle of 2000, and
9 it moved all of those customers off of Qwest's
10 switch on to our new switches, that would have
11 substantially reduced Qwest's revenue. And it is
12 my personal belief that would have had a big
13 negative economic impact on Qwest.

14 Q. Did Qwest--anyone from Qwest ever
15 express that to you?

16 A. Yes.

17 Q. And who was that?

18 A. Greg Casey.

19 Q. And when--was that during these
20 negotiations?

21 A. Yes.

22 Q. Mr. Nazarian was asking you about
23 McLeod's agreement to stay neutral on 271. Did
24 Qwest express to McLeod at any time during the
25 discussions whether or not that part of the

0064
1 agreement was essential to anything else in terms
2 of your discussions? In other words, did Qwest
3 ever state anything to the effect to McLeod that
4 unless we have some type of an agreement on 271,
5 we're not going to have agreement on other
6 matters?

7 A. Yes. And if you refer to the term
8 sheet that I talked about earlier, which was
9 Exhibit 2--

10 Q. Exhibit 2 now to--

11 A. I'm sorry. Exhibit 2 to my affidavit,
12 now Exhibit 4. Condition--the No. 7 item in that
13 term sheet indicated that this was a material
14 provision of this overall--of this agreement.

15 Q. I understand that's what the document
16 says, but were there conversations specifically
17 related to that where it was expressed to you by
18 either Ms. McKenney or Mr. Casey that they really
19 meant it when they said that?

20 A. Yes. They really meant it.

21 Q. And was that from both of them?

22 A. Yes.

23 Q. Early on, Mr. Nazarian was asking you
24 about how many oral agreements you had entered
25 into on behalf of McLeod that didn't relate to

0065
1 banking. And you had indicated one. But I have
2 now heard you testify about the oral agreement
3 that you entered into whereby Qwest would provide
4 McLeod a volume discount. And I've also heard
5 about an oral agreement whereby McLeod agreed to
6 remain neutral in 271 proceedings. Are those two
7 separate oral agreements?

8 A. I viewed those as two parts of one
9 overall agreement.

10 Q. He was asking you about this agreement
11 to stay neutral in 271 proceedings, and I think
12 he was asking you something about the fact that
13 if Qwest complied with their contractual
14 arrangements with McLeod, would McLeod expect not
15 to have to go into 271 proceedings, or there
16 would be no need for it. Do you recall that
17 question and that discussion?

18 A. Yes.

19 Q. This oral agreement to pay McLeod--or
20 to return to McLeod the 8 to 10 percent volume
21 discount, is that one of those agreements that
22 McLeod expected Qwest to comply with in order for
23 McLeod to stay neutral in 271?

24 A. Yes.

25 Q. You indicated that after the merger,

0066

1 there still was a problem in terms of McLeod
2 obtaining adequate service levels from Qwest, or
3 am I misstating what you had to say?

4 A. I don't remember saying that.

5 Q. After the merger, was there still a
6 problem in McLeod receiving adequate service
7 levels?

8 A. In my view, Qwest needed to improve its
9 service levels.

10 Q. After you entered into the agreements
11 in October of 2000, if not sooner, there was
12 a--an escalation mechanism that McLeod was bound
13 by; is that correct?

14 A. There was an escalation mechanism
15 agreed to between Qwest and McLeod.

16 Q. So McLeod would have had to have gone
17 through the escalation process, even if there were
18 terrible problems between the--between McLeod and
19 Qwest in terms of civil--service levels, before
20 they could have done anything further?

21 A. You'd have to ask a lawyer if we had to
22 or not. As a business matter, I felt that we
23 should use our escalation process before we took
24 any other action.

25 Q. If McLeod had bypassed the escalation
0067

1 process and gone to a regulatory body as part of
2 271 or otherwise, would you have expected Qwest to
3 comply with its oral agreement to pay McLeod the
4 volume discount it had agreed to?

5 A. I think the circumstances--the specific
6 circumstances I'd have to understand before I
7 could answer that question.

8 Q. If I could just sit out a moment here.

9 During the negotiations that you had
10 with Qwest, did Qwest ever provide you with any
11 estimations as to which services of McLeod's they
12 might be purchasing as part of the--I believe it's
13 the Exhibit 1 we'll call the McLeod purchase
14 agreement. I'm sorry, the Qwest purchase
15 agreement.

16 A. I understand your question to be, did
17 Qwest ever indicate to me what services they would
18 purchase from McLeod--

19 Q. That would be correct.

20 A. --under Exhibit 1 prior to us signing
21 the agreement?

22 Q. Yes.

23 A. I do not recall any discussion of any
24 specific services that Qwest was going to buy.

25 Q. And so would it be fair to say that
0068

1 there was no discussion or any documentation
2 provided to McLeod by Qwest that would indicate
3 any particular volumes that Qwest anticipated that
4 it would be--that it would be purchasing from
5 McLeod?

6 A. I don't think that would be fair to
7 say, because I am not the only person that Qwest
8 had dealings with at McLeod. I am personally not
9 aware of any services that they were contemplating
10 buying.

11 Q. You were not provided anything from
12 Qwest during your negotiations or as part of your
13 negotiations?

14 A. Not that I recall.

15 Q. You entered--you had an agreement, in
16 principle, with Qwest for a take-or-pay agreement,
17 Exhibit 2. You had an agreement, in principle,
18 with an oral agreement to get an 8-to-10 percent
19 discount off of the purchase price of all of
20 those services you were going to be buying out of
21 Exhibit 2. When did the discussion of the
22 purchase agreement that is Exhibit 1 first come
23 into being in relationship to your oral agreement
24 for the 8-to-10 percent discount?

25 A. My recollection is that the discussions
0069

1 about the amount of volume purchase we would have
2 to make in order to qualify for the discount
3 occurred first, then following that, not long
4 before October 26, the specific process or
5 procedure for dealing with it evolved. In other
6 words, Exhibit 1 evolved late in the discussions.

7 Q. Can you kind of walk through that just
8 a little bit, though, so that we can kind of
9 understand how the oral agreement and Exhibit 1
10 evolved from the discussions that resulted in
11 Exhibit 2? And again, Exhibit 1 being the McLeod
12 purchase agreement from Qwest, and Exhibit 2 being
13 the Qwest purchase agreement from McLeod. I'm
14 sorry, reverse--I'll get it right yet.

15 MR. LAVEY: Do you want to say it, just
16 for the record.

17 BY MR. ALPERT:

18 Q. Yeah, for the record, we'll say that
19 again. I believe that Exhibit 1 is the agreement
20 that required Qwest to purchase services from
21 McLeod. Exhibit 2 was the agreement that required
22 McLeod to purchase services from Qwest.

23 Thank you.

24 A. Okay. Now I know which exhibit is
25 which, can you--
0070

1 MR. WEISS: What's your question?

2 THE WITNESS: --can you restate the
3 question?

4 BY MR. ALPERT:

5 Q. Yes, if you can kind of walk through a
6 little bit of the time line of how those three
7 agreements became one or how they became executed
8 and/or agreed to on or about October 26.

9 A. Okay. In my mind, the time will start
10 with September 19.

11 Q. Okay.

12 A. That's when we had the outline of ten
13 items that we were going to attempt to document.
14 At that point in time, the concept of McLeod
15 entering into a take-or-pay agreement with Qwest,
16 Exhibit 2, was fairly well understood. Okay? We
17 knew that we would make some level of minimum
18 commitment to Qwest. And in exchange for meeting
19 certain minimum targets--not--not the minimum
20 take-or-pay, because at the minimum take-or-pay,
21 there wasn't going to be any reduction, okay--any
22 discount or any volume. That was not an adequate
23 value commitment, from Qwest's perspective, to
24 entitle us to payments back. So at that point,
25 we had understood that Exhibit 2 would be a part

0071

1 of the arrangement.

2 The level--then next, the business
3 discussion revolved around how much would McLeod
4 have to buy from Qwest in total services--local
5 services, long distance services, the whole
6 works--in order to entitle McLeod to what at that
7 time was considered a reduction or a discount.
8 The last concept that came into being was Exhibit
9 1, okay? Exhibit 1, then, was a mechanism to
10 assure McLeod that it would get a certain amount
11 of revenue. And the amount of revenue that was
12 pegged in Exhibit 1 was at about the 8 percent
13 discount level for certain targeted revenues.

14 And the oral agreement, then, evolved
15 from that to say, okay, if we exceed this amount,
16 then instead of getting an 8 percent discount,
17 we'll get a 10, if our levels are below a certain
18 level, then we're getting a 6 1/2 percent
19 discount. Or if it's lower than that, we won't
20 get any discount. So that was the order that
21 things occurred.

22 Q. And again, these were discussions
23 between you and Audrey McKenney and Greg Casey?

24 A. And on McLeod's side, each of the other
25 people I've identified in my affidavit.

0072

1 Q. But you had specific conversations with
2 both Audrey McKenney and Greg Casey regarding,
3 first of all, offers of this volume discounts to
4 McLeod?

5 A. We had specific discussions of
6 receiving discounts tied to a certain volume of
7 purchases and growth in our business with Qwest.

8 Q. And then you also had discussions
9 specifically related to the agreement itself,
10 that--the agreements themselves came into being
11 including the oral agreement with both Audrey
12 McKenney and Greg Casey?

13 A. Yes.

14 MR. ALPERT: I have no further
15 questions.

16 MR. WEISS: Just a couple more.

17 FURTHER-EXAMINATION

18 BY-MR. NAZARIAN:

19 Q. I just have one. I just have one, Mr.
20 Fisher, if you'll indulge me for a second. If
21 the purpose of the Qwest purchase agreement,
22 Exhibit No. 1, was to permit McLeod to capture
23 this revenue stream that I know has been
24 characterized as a discount, but what you
25 characterized to me earlier as revenue--

0073

1 A. Yes.

2 Q. --if the purpose of the agreement was
3 to capture that revenue, why didn't McLeod insist
4 that Qwest's revenue commitment in Exhibit 1 reach
5 this whole target--reached this whole, you know,
6 discount, these higher purchase levels that
7 you--that you were certain that McLeod would
8 reach?

9 A. Because the oral agreement was
10 effectively two-way. If we exceeded the amount
11 that would generate an 8 percent discount, then
12 Qwest was orally agreeing to give us additional
13 revenue payments. If we didn't reach that level,
14 McLeod was agreeing to give back the rebate down
15 to the oral agreement. So it was, in effect,
16 both of us taking risk by entering into the oral
17 agreement.

18 Q. I thought if McLeod did not meet its
19 minimum purchase obligations, that Qwest's
20 obligations under the take-or-pay went away. Is
21 that incorrect?

22 A. I'm sorry. I didn't understand.

23 Q. I thought these agreements were set up
24 so that if McLeod didn't meet its purchase
25 obligation to Qwest, then Qwest's purchase

0074

1 obligation to McLeod evaporated. Is that correct?

2 A. I can't remember if the agreements
3 operate that way, but there's an intermediate
4 step. Okay? We could very easily meet our
5 obligations under Exhibit 2, the hundred fifty,
6 hundred sixty, hundred seventy million, but if--
7 let's--let me use an example that that's exactly
8 how much we purchased from them. Then Exhibit 1,
9 which still would have required, by my
10 understanding, Qwest to make the payments to
11 McLeod, my oral agreement would have been, if
12 that's all I spent with Qwest, I would have had
13 to pay them back the amounts that they paid me in
14 Exhibit 1, because I wouldn't have met the level
15 of revenue commitment that we'd made under our
16 oral agreement.

17 Q. So the oral agreement, as you're
18 characterizing it now, flows in both directions
19 pegged to McLeod's purchases from Qwest?

20 A. Yes.

21 Q. Correct?
22 A. That's correct.
23 Q. And you testified a minute ago in
24 response to Mr. Alpert's questions that the oral
25 agreement also encompassed McLeod's agreement not
0075

1 to participate in Qwest's 271 proceedings,
2 correct?

3 A. To remain neutral.

4 Q. To remain neutral, correct. Are there
5 any other aspects of the oral agreement that you
6 recall that you've not testified about today?

7 A. The only other aspects of our oral
8 agreement was to continue to build our business
9 relationship in any manner we could, both by Qwest
10 working to improve its level of service to McLeod
11 and for us looking at revenue opportunities in
12 both directions.

13 Q. Okay. Were there specific--

14 A. There were no specifics around that,
15 except as it related to their performance. There
16 was a lot of specific negotiation about
17 performance indicators and what we thought they
18 should obtain and what they thought they should
19 get and those occurred for many months post
20 October.

21 MR. NAZARIAN: Subject, again, to
22 possibility of reopening, I don't have any further
23 questions.

24 MR. ALPERT: I just had a couple
25 unless, Larry, you had something in between.

0076

1 MR. WEISS: No. Not surprising.

2 FURTHER-EXAMINATION

3 BY-MR. ALPERT:

4 Q. Mr. Fisher, when you were, I think,
5 answering one of Mr. Nazarian's first questions
6 after I got done, you were talking about these
7 agreements, and I think you might have said
8 something about McLeod giving something back to
9 Qwest. If you said McLeod giving back, did you
10 really mean Qwest giving back?

11 A. No, I meant--there were circumstances
12 under which the payments that Qwest was making to
13 McLeod under Exhibit 1, our verbal agreement
14 provided that we pay back to Qwest.

15 Q. Maybe I'd have to go back. I don't
16 have real time, I'd have doing back and look at
17 it, but performance indicators, is that the same
18 thing as saying something about service quality
19 standards?

20 A. Yes.

21 Q. And so there were discussions
22 continuing on with McLeod between Qwest and McLeod
23 after October regarding service quality standards
24 and specific performance indicators between the
25 two companies?

0077

1 A. Yes.

2 Q. And so McLeod was working on trying to
3 get some level of commitment to service quality
4 from Qwest that was more than just parity as we
5 call it? It was benchmarks and service quality
6 standards?

7 A. McLeod, because of its neutrality
8 stand, was having discussions specifically with
9 Qwest about how many customers would be brought
10 back into service within 24 hours, for example,
11 and the level of service that we would like to
12 obtain. We had discussions back and forth.
13 Never, to my knowledge, had arrived at a final
14 agreement. And we certainly were aware that there
15 were ongoing activities within each of the 14
16 states. And in some cases, groups of states, in
17 order to establish that. That was moving at a
18 snail's pace, from my perspective. And so we
19 were continuing to try to work with Qwest to see
20 if we could work out certain levels of service
21 and the consequences associated with them not
22 meeting certain levels.

23 MR. ALPERT: I have nothing further.

24 MR. NAZARIAN: I have no additional
25 questions.

0078

1 MR. WEISS: I have none. I presume
2 we're adjourned.

3 THE REPORTER: Who all wanted copies?

4 MR. NAZARIAN: As soon as you could
5 conceivably do it.

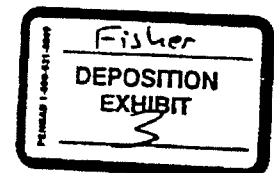
6 MR. ALPERT: I would like to get an
7 electronic and a written copy and if you could
8 just send it to that, I'll give an e-mail
9 address, steve.alpert@state.mn.us. So it's my
10 name, with a dot in between the first and last
11 name, @state.mn.us.

12 MR. LAVEY: I'd like to get a copy.
13 And there's my e-mail down here.

14 (Deposition concluded at 2:25 p.m.)
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AFFIDAVIT OF BLAKE O. FISHER

1. My name is Blake Fisher. I retired in May 2002 from McLeodUSA where I held a variety of senior executive positions, including, at relevant times. Regional President for the Western Region as well as Group Vice President and Chief Planning and Development Officer. I now live in Park City, Utah.
2. This affidavit explains the circumstances surrounding the negotiation and implementation of an agreement with Qwest Corporation ("Qwest") to provide McLeodUSA with volume pricing for all purchases made by McLeodUSA from Qwest. The events described in my affidavit took place when I worked for McLeodUSA.
3. I was McLeodUSA's lead negotiator for the negotiations that resulted in a series of agreements, including the volume purchase agreement. Initially, I was negotiating with John Kelley at U S WEST. Later I was negotiating with my counterpart at Qwest, Greg Casey. Following the merger with U S WEST, Mr. Joe Nacchio, Qwest's CEO attended a meeting in Cedar Rapids, Iowa, where, among other things, the possibility of volume pricing was discussed. I also attended that meeting. Qwest representatives at that meeting informed us that they were meeting with many of Qwest's large customers. They also told us that Qwest intended to treat us as a large customer. Mr. Nacchio explained that Mr. Casey was responsible for our wholesale relationship with Qwest. Mr. Casey told me that Mr. Nacchio had to give final approval to any significant transactions between Qwest and McLeodUSA.



4. The U S WEST negotiating team, and later the Qwest negotiating team, also included Audrey McKenney, who reported to Mr. Casey, and Arturo Ibarra, who reported to Ms. McKenney. Stephen Davis was occasionally involved in the negotiations, particularly when the topic turned to regulatory matters.
 5. The McLeodUSA negotiating team included Jim Balvanz, who was a Vice President of Finance and Stacey Stewart, who was a Vice President of ILEC Relations and Performance Measurements at the time. This is the same team that had negotiated with U S WEST before the merger. Once Mr. Casey and I negotiated broad agreement parameters, the other members of our teams would work on negotiating the details of the agreements.
 6. The genesis of the agreements that include the volume pricing occurred well before the Qwest / U S WEST merger. Prior to the passage of the Telecommunications Act of 1996, McLeodUSA purchased Centrex Common Blocks from U S WEST under various state retail tariffs and re-sold the services to our customers. On the eve of the signing of the Telecommunications Act of 1996, U S WEST withdrew its offering of Centrex Common Blocks to new customers in all of its 14 states. McLeodUSA sought state regulatory action to stop or reverse U S WEST's unilateral withdrawal of its wholesale Centrex product. We were largely successful in these regulatory cases in retaining our right to resell U S WEST's Centrex product. McLeodUSA continued reselling U S WEST (and then Qwest) Centrex products in those states in which our right to resell the product was upheld. We also began reselling IFR and IFB under the resale provisions of the Telecommunications Act. Later, we began to avail ourselves of UNE-Platform products.
-

7. Financially, the Centrex Common Block products and the subsequent resale products would not work for McLeodUSA over the long term. The margins on both forms of resale were too thin to sustain and grow the company.
 8. Before the merger, we approached U S WEST and told them that we wanted to convert all of our customers to UNE-P, which had much better margins. U S WEST said that we could not just convert our customers – that there would be a lot of work and cost involved – and that the conversion would be difficult and time consuming.
 9. I explained to U S WEST that all we really wanted to do was to leave our customers on the same lines that they currently had, with the same features, but to get the best pricing available. At the time that was UNE-P pricing and we told U S WEST we were entitled to such pricing for the services we were using.
 10. U S WEST responded that it believed it could provide McLeodUSA with an acceptable product at pricing that worked across its region, so we began negotiating the parameters of the product and its pricing.
 11. Prior to the Qwest / U S WEST merger, we were unable to agree on pricing that made economic sense for McLeodUSA. After the merger, however, Qwest expressed a desire to improve its relationship with McLeodUSA as a customer. Joe Nacchio indicated at the meeting in Cedar Rapids referenced above that Qwest recognized competition was developing in its local markets. Therefore, Qwest intended to strengthen its wholesale business and relationships with its wholesale customers. Specifically, Qwest indicated that it hoped to find a way to make it economically and operationally attractive to keep our traffic on Qwest's network if possible.
-

12. The result of our continued negotiations was a product that Qwest calls UNE-M or UNE Star. UNE-M was intended to be a flat-rated, UNE platform product that allowed us to convert our resold Centrex lines directly to UNE-M lines. As we continued to discuss pricing, however, it was clear that the pricing Qwest offered was not good enough for McLeodUSA to warrant keeping our traffic on Qwest's network.
 13. When we pointed this out to Qwest, the concept of Qwest providing McLeodUSA with improved pricing on all of our purchases – based on volume commitments – was developed during our negotiations. I do not now recall whether Qwest or McLeodUSA first proposed the idea, but it became a central component of the agreements we were discussing.
 14. After substantial negotiations with U S WEST first, and then with Qwest, Qwest agreed to provide McLeodUSA the benefit of volume pricing on all of McLeodUSA's purchases from Qwest. The volume pricing applies to all products and services purchased by McLeodUSA from Qwest, including access, wholesale long distance, capacity trunking, private line, unbundled network elements ("UNEs"), collocation, resale services, and tariffed products and services. The volume pricing applies to all purchases made by McLeodUSA from Qwest inside and outside of Qwest's 14-state ILEC territory.
 15. As a result of our negotiations, McLeodUSA and Qwest entered into a number of written agreements between September 19, 2000 and October 26, 2000, including three that are essential to understanding the volume pricing:
-

- a. Purchase Agreement signed October 26, 2000 and effective October 2, 2000 covering purchases by McLeodUSA from Qwest (the "McLeodUSA Purchase Agreement").
 - b. Purchase Agreement signed October 26, 2000 and effective October 2, 2000 covering purchases by Qwest from McLeodUSA (the "Qwest Purchase Agreement").
 - c. The 8th Amendment to the McLeodUSA/Qwest interconnection agreement.
16. The 8th Amendment to the McLeodUSA interconnection agreement with Qwest set out the terms and conditions for the UNE Star product, including state-specific flat rate pricing negotiated by Qwest and McLeodUSA.
17. The McLeodUSA Purchase Agreement is a take or pay agreement. That is, McLeodUSA committed to purchase a specified volume of products from Qwest during specified time periods. If McLeodUSA fails to make the requisite purchases, it is still obligated to pay Qwest the difference between the dollar amount of purchases it actually made and the minimum commitment amount in the purchase agreement. In Year 1 of the contract (ending on December 2001), the commitment was [TRADE SECRET BEGINS]\$150,000,000[TRADE SECRET ENDS]. By the end of 2002, the cumulative commitment is [TRADE SECRET BEGINS]\$310,000,000[TRADE SECRET ENDS] and, by the end of 2003, it is [TRADE SECRET BEGINS]\$480,000,000[TRADE SECRET ENDS]. We believed we could exceed these commitments and shared that view with Qwest. Exhibit 1 is a true copy of the McLeodUSA Purchase Agreement, which was entered into by McLeodUSA and kept by it in the normal course of business.

18. The Qwest Purchase Agreement is also a "take or pay" agreement. In addition, Qwest orally agreed to increase its commitment to give McLeodUSA a volume purchase discount of up to 10%, to provide an incentive for additional purchases under the McLeodUSA Purchase Agreement. In order to obtain a higher percentage, McLeodUSA had to increase its purchases.
19. The percentage reduction depends on the volume of purchases by McLeodUSA from Qwest. The table below shows generally out how the volume pricing works:

October 2000 through December, 2001		2002		2003	
Aggregate Purchases	Percentage Reduction	Aggregate Purchases	Percentage Reduction	Aggregate Purchases	Percentage Reduction
[TRADE SECRET BEGINS] 178-188 [TRADE SECRET ENDS]	6.5% 8%	[TRADE SECRET BEGINS] \$199-230m [TRADE SECRET ENDS]	8%	[TRADE SECRET BEGINS] \$199-250m [TRADE SECRET ENDS]	8%
[TRADE SECRET BEGINS] \$189-199m [TRADE SECRET ENDS]					
[TRADE SECRET BEGINS] > \$199m [TRADE SECRET ENDS]	10%	[TRADE SECRET BEGINS] > \$230m [TRADE SECRET ENDS]	10%	[TRADE SECRET BEGINS] > \$250m [TRADE SECRET ENDS]	10%

20. The volume pricing is applied to every purchase made by McLeodUSA, not just the purchases above the minimum. So, for example, if McLeodUSA spends [TRADE SECRET BEGINS] \$200,000,000 [TRADE SECRET ENDS] with Qwest in 2002 it

will be entitled to a [TRADE SECRET BEGINS]\$16[TRADE SECRET ENDS] million payment, calculated by multiplying 8% times every dollar spent. If McLeodUSA spends [TRADE SECRET BEGINS]\$250,000,000[TRADE SECRET ENDS] with Qwest, then it will be entitled to receive [TRADE SECRET BEGINS]\$25[TRADE SECRET ENDS] million, calculated by multiplying 10% times every dollar spent. If McLeodUSA purchases fall below certain levels, there is no guaranteed payment.

21. I asked Qwest how I could be sure that it would live up to its agreement to provide the discount if McLeodUSA signed the Purchase Agreement. Qwest responded by suggesting a mechanism to guarantee that McLeodUSA would receive a payment of at least a portion of the agreed-to discount each year in return for its minimum purchase requirements, that increased over time.
22. That mechanism suggested by Qwest is the combination of the Qwest and McLeodUSA Purchase Agreements. The Qwest Purchase Agreement requires Qwest to purchase [TRADE SECRET BEGINS]\$15.84[TRADE SECRET ENDS] million in products from McLeodUSA in 2001, [TRADE SECRET BEGINS]\$18.32[TRADE SECRET ENDS] million in products in 2002, and [TRADE SECRET BEGINS]\$19.92[TRADE SECRET ENDS] million in products in 2003.
23. The Qwest Purchase Agreement identifies products offered by McLeodUSA. We did not discuss any specific products that Qwest would purchase from McLeodUSA. Thus, McLeodUSA viewed the Qwest Purchase Agreement as a mechanism to insure that McLeodUSA would receive some, if not all, of the benefit it was entitled to

under the oral volume pricing agreement. The commitment amounts in the Qwest Purchase Agreement were calculated by applying an 8% volume discount percentage (from Qwest and McLeodUSA's oral agreement) to the maximum McLeodUSA projected expenditures for that percentage.


24. Another component to completing the transaction that gave McLeodUSA access to UNE-M and the purchase volume pricing was McLeodUSA's agreement to remain neutral regarding Qwest's Section 271 application. Qwest made it clear to me that for Qwest to enter into the UNE-M and volume pricing arrangements, McLeodUSA had to agree to remain neutral on Qwest's Section 271 applications. McLeodUSA agreed to remain neutral provided Qwest complied with all of our agreements and with all applicable statutes and regulations.
 25. Exhibit 2 to this affidavit is a true copy of a document titled "Outline of Major Terms" and dated September 19, 2000. This document was created jointly by Qwest and McLeodUSA at the September 19, 2000 meeting. It is an accurate description of the terms that had been discussed between the parties as of that date, including the terms hammered out during an all-day negotiation session.
 26. Exhibit 3 to this affidavit is a true copy of an e-mail I sent to Jim Balvanz, who forwarded it to Stacey Stewart on October 23, 2000. Attached to Mr. Balvanz's e-mail is an October 21, 2000 e-mail from Audrey McKenney to Mr. Balvanz, Randall Rings (McLeodUSA's General Counsel) and me. Ms. McKenney's e-mail included the attachment printed out on the second page of Exhibit __. Exhibit __ was received and kept by me in the ordinary course of business.
-

27. The second page of Exhibit 3 is an Excel spreadsheet prepared by Qwest showing Qwest's counterproposal to a volume pricing proposed by McLeodUSA during the negotiations discussed above. In this spreadsheet, Qwest proposed a discount rate ranging from 6.5% to 10%.
28. Exhibit 4 to this affidavit is a true copy of an e-mail found by McLeodUSA in Mr. Balvanz's files in the course of responding to information requests from the Department of Commerce. Mr. Balvanz no longer works with McLeodUSA. I was copied on this e-mail.
29. Exhibit 4 contains five questions asked of Mr. Balvanz by Gary Dupler, then our Group Vice President of Network Development, and Mr. Balvanz's handwritten responses to those questions. The questions all relate to the discount agreement with Qwest. At the time, Mr. Dupler was responsible for network planning at McLeodUSA. I have read through each of the questions and responses on Exhibit 4. I am familiar with Mr. Balvanz's handwriting and recognize the handwriting on Exhibit 4 to be his. Based on my personal knowledge, Mr. Balvanz's handwritten responses to each question are accurate and correct.

I declare under penalty of perjury under the laws of the United States of America and the state of Minnesota that the foregoing is true and correct.

Further affiant sayeth not.

Signed this 12th day of June, 2002


Blake O. Fisher

27. The second page of Exhibit 3 is an Excel spreadsheet prepared by Qwest showing Qwest's counterproposal to a volume pricing proposed by McLeodUSA during the negotiations discussed above. In this spreadsheet, Qwest proposed a discount rate ranging from 6.5% to 10%.
28. Exhibit 4 to this affidavit is a true copy of an e-mail found by McLeodUSA in Mr. Balvanz's files in the course of responding to information requests from the Department of Commerce. Mr. Balvanz no longer works with McLeodUSA. I was copied on this e-mail.
29. Exhibit 4 contains five questions asked of Mr. Balvanz by Gary Dupler, then our Group Vice President of Network Development, and Mr. Balvanz's handwritten responses to those questions. The questions all relate to the discount agreement with Qwest. At the time, Mr. Dupler was responsible for network planning at McLeodUSA. I have read through each of the questions and responses on Exhibit 4. I am familiar with Mr. Balvanz's handwriting and recognize the handwriting on Exhibit 4 to be his. Based on my personal knowledge, Mr. Balvanz's handwritten responses to each question are accurate and correct.

I declare under penalty of perjury under the laws of the United States of America and the state of Minnesota that the foregoing is true and correct.

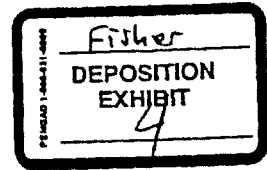
Further affiant sayeth not.

Signed this ___ day of June, 2002

Blake O. Fisher

Signed before me this ____ day of June, 2002.

Notary Public



Docket No. P421/CI-01-1371

Exhibit #1

Contains Trade Secret Information

SUBJECT TO RULE OF EVIDENCE 408

18

Purchase Agreement

[Trade Secret Data Begins

This Purchase Agreement ("PA") is made and entered into by and between McLeodUSA Telecommunications Services, Inc. and its subsidiaries and affiliates ("McLeodUSA") and Qwest Communications Corp. and its subsidiaries ("Qwest") (collectively, the "Parties") effective on the 2nd day of October, 2000.

The Parties have entered in to enter into this PA to facilitate and improve their business and operational activities, agreements and relationships. In consideration of the covenants, agreements and promises contained below the Parties agree to the following:

1. This PA is entered into between the Parties based on the following conditions, which are a material part of this agreement:

1.1 This PA shall be binding on Qwest and McLeodUSA and each of their respective subsidiaries, affiliated corporations, successors and assigns.

1.2 This PA may be amended or altered only by written instrument executed by an authorized representative of both Parties.

1.3 The Parties, intending to be legally bound, have executed this PA effective as of October 2, 2000, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

1.4 Unless terminated as provided in this section, the initial term of this PA is from the date of signing until December 31, 2003 ("Initial Term") and this PA shall thereafter automatically continue until either party gives at least six (6) months advance written notice of termination. This is Amendment can only be terminated during the Initial Term, or at any time thereafter, in the event of:

1.4.1 a material breach of the terms of the Agreements or this Amendment which remains unresolved and uncompensated following application of the dispute resolution provisions of this agreement;

1.4.2 a material change in the telecommunications industry pricing structure that is so adverse to McLeodUSA so as to make this PA useless; or

1.4.3 a termination of that certain Purchase Agreement with a like effective date pursuant to which McLeodUSA purchases Products (defined below) from Qwest.

1.5 All factual preconditions and duties set forth in this PA are, are intended to be, and are considered by the Parties to be, reasonably related to, and dependent upon each other.

1.6 If either party's performance of this PA or any obligation under this PA is prevented, restricted or interfered with by causes beyond such Parties reasonable control,

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- 1 - CONTAINS TRADE SECRET DATA

0110115

SUBJECT TO RULE OF EVIDENCE 408

including but not limited to acts of God, fire, explosion, vandalism which reasonable precautions could not protect against, storm or other similar occurrence, any law, order, regulation, direction, action or request of any unit of federal, state or local government, or of any civil or military authority, or by national emergencies, insurrections, riots, wars, strike or work stoppage or vendor failures, cable cuts, shortages, breach or delays, then such party shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction or interference (a "Force Majeure").

1.7 Without the prior written consent of the other party and except as set forth below or to the extent required by law, neither party will disclose to any person the existence or content of this agreement, or material terms of the agreement. In the event that either party concludes that disclosure is required by applicable law, including but not limited to the regulations of the Securities and Exchange Commission, such party will provide the other party with prompt notice thereof and an opportunity to comment on such disclosure prior to such disclosure and such party will disclose only the information that, in the opinion of its counsel, it is required by such law to disclose. In the event that either party or any of its Representatives is required by a governmental authority or in connection with a legal proceeding or pursuant to legal process to disclose any of the Evaluation Material with respect to which such party is the receiving party or any other matter referred to in the immediately preceding paragraph, it is agreed that such party will provide the other party with prompt notice of each such request or requirement so that such other party may seek promptly an appropriate protective order or other appropriate remedy and/or waive compliance by such party subject to such request or requirement with the provisions of this PA and the party giving notice shall use its commercially reasonable efforts to assist the party seeking protection. In the event that such protective order or other remedy is not obtained promptly, such party subject to such requirement may furnish that portion (and only that portion) of the PA or other information with respect to such matter that, in the opinion of its counsel, it is legally compelled to disclose and will exercise its commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any information so furnished. The term "person" as used in this Agreement shall be broadly interpreted to include without limitation any corporation, company, partnership, organization, bank, group, individual or other entity.

1.8 Neither party will present itself as representing or jointly marketing services with the other, or market its services using the name of the other party, without the prior written consent of the other party.

2. In consideration of the agreements and covenants set forth above and the entire group of covenants provided in section 3, McLeodUSA agrees to purchase from Qwest, or one of its affiliate corporations, during the Initial Term of this PA, at least \$480 million worth of telecommunications, enhanced or information services, network elements, interconnection or collocation services or elements, capacity, termination or origination services, switching or fiber rights (the "Products"), at prices previously quoted by Qwest, including but not limited to, on any products or updated products for wholesale long distance services purchased, the highest discount level available for that product, subject to the terms of this section 2.

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- 2 -

CONTAINS TRADE SECRET DATA

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SUBJECT TO RULE OF EVIDENCE 408

2.1 Subject to the provisions of this section 2, by December 31, 2001, McLeodUSA will purchase a minimum of \$150 million of Products and in the event purchases by McLeodUSA do not meet this minimum, McLeodUSA agrees to make a payment to Qwest, no later than January 15, 2002, in an amount equal to the difference between actual purchases and the minimum.

2.2 Subject to the provisions of this section 2, from January 1, 2001 through December 31, 2002, McLeodUSA will purchase a cumulative minimum of \$310 million of Products, and in the event purchases by McLeodUSA do not meet this minimum, McLeodUSA agrees to make a payment to Qwest, no later than January 15, 2003, in an amount equal to the difference between actual purchases and the minimum.

2.3 Subject to the provisions of this section 2, From January 1, 2001 through December 31, 2003, McLeodUSA will purchase a cumulative minimum of \$480 million of Products, and in the event purchases by McLeodUSA do not meet this minimum, McLeodUSA agrees to make a payment to Qwest, no later than January 15, 2004, in an amount equal to the difference between actual purchases and the minimum.

2.4 The minimum purchase requirements provided above shall be changed proportionally, but in no event to exceed \$480 million in the cumulative aggregate, if the following occur to a material degree:

2.4.1 A reduction in the rates for any of the Products.

2.4.2 Products are no longer offered without adequate substitution.

2.4.3 Any sale of current Qwest exchanges where McLeodUSA is doing business.

2.4.4 Delays in the delivery of an ordered Product that cause McLeodUSA difficulty in meeting its minimum commitments.

2.4.5 Release, sale, transfer or relinquishment of any current collocation back to Qwest by mutual agreement.

2.4.6 McLeodUSA's business is prevented, restricted or interfered with by a Force Majeure as described in section 1.7.

2.4.7 Changes in technology eliminating the need for certain services provided by Qwest, provided Qwest has the right of first refusal to provide the technology.

2.5 The Parties will meet to discuss all proposed changes in requirements or payments pursuant to this section 2, and will resolve any disputes pursuant to Escalation Procedures to be developed by the Parties, before any payment or change in requirement is made.

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SUBJECT TO RULE OF EVIDENCE 408

2.6 The take or pay purchase requirements of this section are specifically conditioned on the rates offered for the Products as of the date of this PA remaining in effect at levels no higher than the rates quoted.

3. In consideration of the agreements and covenants set forth above and the entire group of covenants provided in section 2, all taken as a whole, with such consideration only being adequate if all such agreements and covenants are made and are enforceable, Qwest agrees to make the Products available for purchase by McLeodUSA at such rates and on such terms and conditions as agreed.

[Remainder of page intentionally blank]

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CONTAINS TRADE SECRET DATA

SUBJECT TO RULE OF EVIDENCE 408

Trade Secret Data Ends]

Made and entered into on the date written above by McLeodUSA and Qwest

McLeodUSA Telecommunications
Services, Inc.

Qwest Communications Corp.


Authorized Signature

Authorized Signature

Blake O. Fisher, Jr.
Name Printed/Typed

Name Printed/Typed

Group Vice President
Title

Title

October 26, 2000
Date

October 26, 2000
Date

H:\Qwest\QTOP\102500

NONPUBLIC DOCUMENT

CONTAINS TRADE SECRET DATA

Q110119

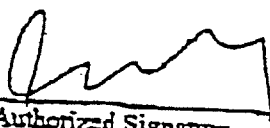
SUBJECT TO RULE OF EVIDENCE 408.

Made and entered into on the date written above by McLeodUSA and Qwest.

McLeodUSA Telecommunications
Services, Inc.

Qwest Communications Corp.

Authorized Signature



Authorized Signature

Blake O. Fisher, Jr.
Name Printed/Typed

GREGORY M. CASEY
Name Printed/Typed

Group Vice President
Title

EXEC. V.P.
Title

October 26, 2000
Date

October 26, 2000
Date

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Docket No. P421/CI-01-1371

Exhibit #2

Contains Trade Secret Information

PRIVILEGED & CONFIDENTIAL – FOR DISCUSSION PURPOSES

Outline of Major Terms
September 19, 2000

1. Q will provide billing tapes to allow M to bill access charges starting with usage for the month of October (or possibly September – Q to confirm) and going forward. M will not charge Q access rates on M platform lines at a rate higher than the rate Q charges M. Q will pay M [\$18 million] to settle a past billing dispute over access charges for the [2d & 3d] quarter of 2000 and a release of claims for a new M platform from the date of M's request. M will pay Q [\$29 million] for conversion and termination fees associated with the changes to a new M platform created by the parties. (Judy and Stacey to work on platform issues and details) (Audrey needs to confirm whether 2d quarter settlement is available).
2. Q will offer v.m. & DSL (& .net – to be confirmed by Q) to M region-wide at retail rates, subject to paragraph 6. In addition, if any new products offered by Q the parties will meet to discuss product offerings through a business-to-business relationship.
3. Q will develop state-by-state M local platform pricing for services (including & not limited to loops, ports, features, etc.) for a 36 month period (M to identify features it desires to sell and provide to Q by 9/22) (Q to provide pricing by 9/29).
4. M will provide information to allow Q to develop LD rates by 9/22 and Q will provide LD pricing by 9/29.
5. Within 2 days after receipt of pricing, M will deliver a forecast based on the rate information and will propose a 36 month total revenue commitment to Q (including revenue from all services and products purchased by M from Q, including & not limited to new M platform, resale, LD, Private line, v.m., DSL, DIA, etc.) with a firm, substantial portion of the total commitment in the form of "take or pay." In the event of significant competitive pressures, the parties agree to provide for a review of the pricing. The parties will address a review of the 'take-or-pay' amount in the event Q can not or does not provide services substantially in accordance with the agreement.
6. Based on the proposed commitment by M, within 5 business days, Q will propose volume and term discounts based on quarterly revenue targets, to be paid back to M by Q on a quarterly basis.
7. As a condition to Q completing this transaction, M must take a neutral stance on Q 271 relief and agree to develop a joint press release with Q announcing this arrangement. M and Q will work jointly on service standards. This is a material provision of this agreement.
8. The parties will continue to work on a program for securitization of receivables to allow capitalization by M (Audrey is working on these details and will provide input by 9/29).
9. The parties will continue work on an agreement to address M trunking needs. (Audrey to investigate pricing issues and provide ideas for how M can help address these issues and M needs to update LIS forecast by 9/29).
10. The parties will develop a clear escalation process to address problems, issues, disputes and concerns raised by the parties.

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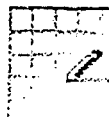
Docket No. P421/CI-01-1371

Exhibit #3

Contains Trade Secret Information

From: James T. Balvanz on 10/23/2000 09:39 AM
To: Stacey D. Stewart/MCLEOD@MCLEOD
cc:
Subject: Another proposal - with attachments

Forwarded by James T. Balvanz/MCLEOD on 10/23/2000 09:43 AM



Blake O. Fisher
10/21/2000 04:19 PM

To: James T. Balvanz/MCLEOD@MCLEOD
cc:
Subject: Another proposal - with attachments

Jim,

I have agreed to this. We will be having additional conversations about DSL and Voice Mail after this agreement is signed.

I concluded we couldn't get anymore right now, but I think if we can find out of region stuff we have a great opportunity to get more. Please give me a call at 435-658-3338.

Forwarded by Blake O. Fisher/MCLEOD on 10/21/2000 03:21 PM

Audrey McKenney <axmcken@uswest.com> on 10/21/2000 02:46:46 PM



To: Randall E. Rings/MCLEOD@MCLEOD, Blake O. Fisher/MCLEOD@MCLEOD, James T. Balvanz/MCLEOD@MCLEOD
cc:
Subject: Another proposal - with attachments

Hi Folks - Here's the proposal with the attachment.

Thanks Audrey



- 10_21_00 Qcounter.xls

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QWEST COUNTERPROPOSAL

Mutual Preferred Vendor Plan

	2000	2001	2002	2003	Total 2001-2003
Projected Growth Rate	0%	28%	24%	17%	
"Base"/Projected revenue	155	198	246	288	732
Preferred Vendor -- "Take or Pay"	-	150	160	170	480
% of Projected Revenue		76%	65%	59%	66%

McLeod to Qwest - Before Split Rock / other acquisitions

Qwest to McLeod
Preferred Vendor -- "Take or Pay" commitment ranges
Minimum for discount to apply

	\$M's		
Tier 1 Revenue ranges Discount Rate	2001 Based on McLeod's Proposal to Qwest	178-188 6.5%	Over 199 8.0%
Tier 2 Revenue ranges Discount Rate		189-198 8.0%	Over 230 10.0%
Tier 3 Revenue ranges Discount Rate		over 199 10.0%	Over 250 10.0%

The above level is an interim default level. Both Parties agree to negotiate final rates based on market conditionson an annual basis and for the integration of Split Rock / other acquisitions.

Attorney Client Privilege

For Discussion Purposes Only. Data Exchanged Between The Parties Does Not Constitute Offers. Qwest Reserves The Right to Revise/Supplement Any Term or Condition Contained Herein

Docket No. P421/CI-01-1371

Exhibit #4

Contains Trade Secret Information

From: James T. Balvanz on 03/01/2001 06:08 AM
To: Gary E. Dupler/MCLEOD
cc:
Subject: Re: Qwest agreement

From: Gary E. Dupler on 02/28/2001 02:24 PM

CONFIDENTIALITY - only people who
should know. Assume add'l
8.0% discount (min)

From: Gary E. Dupler on 02/28/2001 02:24 PM
To: James T. Balvanz/MCLEOD@MCLEOD
cc: Roy A. Wilkens/MCLEOD@MCLEOD, Eric W. Wilkens/MCLEOD@MCLEOD, Howard W. Vernon/MCLEOD@MCLEOD, Todd M. Lechtenberg/MCLEOD@MCLEOD, Tami J. Spocogee/MCLEOD@MCLEOD, Blake O. Fisher/MCLEOD@MCLEOD, jbarnett@splitrock.net@MCLEOD, Lori A. Coventon/MCLEOD@MCLEOD, Larry C. Littlefield/MCLEOD@MCLEOD, Jay D. Gulick/MCLEOD@MCLEOD
Subject: Qwest agreement

Jim,

i have the following questions related to the subject agreement and am copying a limited number of individuals with the understanding that this is considered highly confidential information. As i understand it there is a 6-10% additional discount on the prices we pay for all qwest services. As such i need to understand and all of those copied need to understand at least the following:

1) How and under conditions does this discount apply?

1. We need to spend 150M, 160M, 170M in 2001, 2002, 2003.
2. Then there is a check
YR1 up to 200M = 8% disc 200M+ = 10% RR Today = 210M
YR2 230 8% 230M+ = 10% 15% growth
YR3 250 8% 250M+ = 10% 9% growth
3. Calculated based on 90% UNE by YE2002 + add'l 700 LO's + 25% growth > 3 yrs in Ice

2) Are you sure that it has already been incorporated in all of our network access budgets? for example how did it get applied to qwest IXC products we buy?

YES, separate line item in Savings document we reviewed a month ago
= 18.0M, in reality s/b 200.0M x 10% = 20.0M
over the top calculation

3) How do we determine if this discount has been applied to new services we get quotes on from Qwest or do we know that it has not?

- The line people @ Q shouldn't know
- Gregg Casey knows, but he said, "w/sale group will give MCLD" but available pricing
- Confidentiality is stressed BY Q - not to be in any contract.
- Planning a 8.0% minimum

4) who makes sure that we are receiving the discount since it is not applied to a specific bill?

Quarterly true-up. Total up all checks to Q + multiply by 10%.
We can do since so much is related to local.

5) Are we sure it was included in the CO break-even analysis?

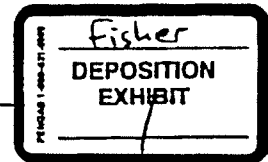
Yes, 10% aggressing given the 80%? The 20% = .50/line not that material

these are basic questions, that all of us need to understand. Please advise how you wish to handle the response to these either in an email or a meeting. However, i must make sure that at least certain people in the network organization knows this information.

Gary

f/u 3/6

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Purchase Agreement

(Trade Secret Data Begins)

This Purchase Agreement ("PA") is made and entered into by and between McLeodUSA Telecommunications Services, Inc. and its subsidiaries ("McLeodUSA") and Qwest Communications Corp. and its subsidiaries ("Qwest") (collectively, the "Parties") effective the 2nd day of October, 2000.

The Parties have entered in to enter into this PA to facilitate and improve their business and operational activities, agreements and relationships. In consideration of the covenants, agreements and promises contained below the Parties agree to the following:

1. This PA is entered into between the Parties based on the following conditions, which are a material part of this agreement:

1.1 This PA shall be binding on Qwest and McLeodUSA and each of their respective subsidiaries, affiliated corporations, successors and assigns.

1.2 This PA may be amended or altered only by written instrument executed by an authorized representative of both Parties.

1.3 The Parties, intending to be legally bound, have executed this PA effective as of October 2, 2000, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

1.4 Unless terminated as provided in this section, the initial term of this PA is from the date of signing until December 31, 2003 ("Initial Term") and this PA shall thereafter automatically continue until either party gives at least six (6) months advance written notice of termination. This PA can only be terminated during the Initial Term, or at any time thereafter, in the event of:

1.4.1 a material breach of the terms of the Agreements or this Amendment which remains unresolved and uncompensated following application of the dispute resolution provisions of this agreement;

1.4.2 a material change in the telecommunications industry pricing structure that is adverse to Qwest so as to make this PA useless; or

1.4.3 a termination of that certain Purchase Agreement with a like effective date pursuant to which McLeodUSA purchases Products (defined below) from Qwest.

1.5 All factual preconditions and duties set forth in this PA are, are intended to be, and are considered by the Parties to be, reasonably related to, and dependent upon each other.

1.6 If either party's performance of this PA or any obligation under this PA is prevented, restricted or interfered with by causes beyond such Parties reasonable control, including but not limited to acts of God, fire, explosion, vandalism which reasonable precautions

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CONTAINS TRADE SECRET DATA

Q110121

could not protect against, storm or other similar occurrence, any law, order, regulation, direction, action or request of any unit of federal, state or local government, or of any civil or military authority, or by national emergencies, insurrections, riots, wars, strike or work stoppage or vendor failures, cable cuts, shortages, breach or delays, then such party shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction or interference (a "Force Majeure").

1.7 Without the prior written consent of the other party and except as set forth below or to the extent required by law, neither party will disclose to any person the existence or content of this agreement, or material terms of the agreement. In the event that either party concludes that disclosure is required by applicable law, including but not limited to the regulations of the Securities and Exchange Commission, such party will provide the other party with prompt notice thereof and an opportunity to comment on such disclosure prior to such disclosure and such party will disclose only the information that, in the opinion of its counsel, it is required by such law to disclose. In the event that either party or any of its Representatives is required by a governmental authority or in connection with a legal proceeding or pursuant to legal process to disclose any of the Evaluation Material with respect to which such party is the receiving party or any other matter referred to in the immediately preceding paragraph, it is agreed that such party will provide the other party with prompt notice of each such request or requirement so that such other party may seek promptly an appropriate protective order or other appropriate remedy and/or waive compliance by such party subject to such request or requirement with the provisions of this PA and the party giving notice shall use its commercially reasonable efforts to assist the party seeking protection. In the event that such protective order or other remedy is not obtained promptly, such party subject to such requirement may furnish that portion (and only that portion) of the PA or other information with respect to such matter that, in the opinion of its counsel, it is legally compelled to disclose and will exercise its commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any information so furnished. The term "person" as used in this Agreement shall be broadly interpreted to include without limitation any corporation, company, partnership, organization, bank, group, individual or other entity.

1.8 Neither party will present itself as representing or jointly marketing services with the other, or market its services using the name of the other party, without the prior written consent of the other party.

2. In consideration of the agreements and covenants set forth above and the covenants provided in section 3, all taken as a whole, with such consideration only being adequate if all such agreements and covenants are made and are enforceable, McLeodUSA agrees to make telecommunications, enhanced or information services, network elements, interconnection or collocation services or elements, capacity, termination or origination services, switching and fiber rights ("the Products") available for purchase by Qwest.

3. In consideration of the agreements and covenants set forth above and the covenants provided in section 2, all taken as a whole, with such consideration only being adequate if all such agreements and covenants are made and are enforceable, Qwest agrees to purchase from

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McLeodUSA, or one of its affiliate corporations, during the Initial Term of this PA, Products at prices established by McLeodUSA, subject to the terms of this section 3.

3.1 Subject to the provisions of this section 3, Qwest will purchase quarterly a proportional amount of additional Products to aggregate no less than \$15.84 million between January 1, 2001 and December 31, 2001 and in the event the quarterly purchases by Qwest do not meet this minimum, Qwest agrees to make a payment to McLeodUSA, in an amount equal to the difference between actual purchases and the proportional amount of the minimum.

3.2 Subject to the provisions of this section 3, Qwest will purchase quarterly a proportional amount of additional Products to aggregate no less than \$18.32 million between January 1, 2002 and December 31, 2002 and in the event the quarterly purchases by Qwest do not meet this minimum, Qwest agrees to make a payment to McLeodUSA, in an amount equal to the difference between actual purchases and the proportional amount of the minimum.

3.3 Subject to the provisions of this section 3, Qwest will purchase quarterly a proportional amount of additional Products to aggregate no less than \$19.92 million between January 1, 2003 and December 31, 2003 and in the event the quarterly purchases by Qwest do not meet this minimum, Qwest agrees to make a payment to McLeodUSA, in an amount equal to the difference between actual purchases and the proportional amount of the minimum.

3.4 The minimum purchase requirements provided in this Attachment shall be adjusted proportionally for each of the following which occur:

- 3.4.1 A reduction in the rates for any of the Products.
- 3.4.2 Any of the Products are no longer offered.
- 3.4.3 Any substantial increase or decrease in the operations of, including but not limited to the scope or geography of services offered by, McLeodUSA.
- 3.4.4 Any delay in the delivery of an ordered Product.
- 3.4.5 Any outage or state of "out of service" when Products have been ordered or requested.
- 3.4.6 The business of Qwest or McLeodUSA is prevented, restricted or interfered with by a Force Majeure as described in section 1.9.
- 3.4.7 Changes in technology eliminating the need for certain services provided by McLeodUSA.

3.5 The Parties will meet to discuss all proposed changes in requirements or

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payments pursuant to this section 3, and will resolve any disputes pursuant to Escalation Procedures to be developed by the Parties, before any payment or change in requirement is made.

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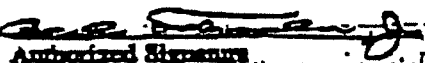
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SUBJECT TO RULE OF EVIDENCE 408

Made and entered into on the date written above by McLeodUSA and Qwest.

McLeodUSA Telecommunications
Services, Inc.

Qwest Communications Corp.


Authorized Signature

Authorized Signature

Blake O. Fisher, Jr.
Name Printed/Typed

Name Printed/Typed

Group Vice President
Title

Title

October 26, 2000
Date

October 26, 2000
Date

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- 3 -

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CONTAINS TRADE SECRET DATA

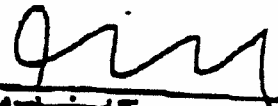
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Made and entered into on the date written above by McLeodUSA and Qwest.

McLeodUSA Telecommunications Services, Inc.

Qwest Communications Corp.

Authorized Signature


Authorized Signature

Blake G. Fisher Jr.
Name Printed/Typed

GREGORY M. CASEY
Name Printed/Typed

Group Vice President
Title

EXEC. V.P.
Title

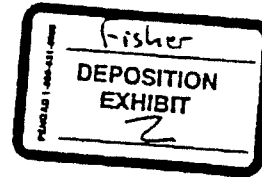
October 26, 2000
Date

October 26, 2000
Date

REGISTRATION

SUBJECT TO RULE OF EVIDENCE 403

Purchase Agreement



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Trade Secret Data Begins

This Purchase Agreement ("PA") is made and entered into by and between McLeodUSA Telecommunications Services, Inc. and its subsidiaries and affiliates ("McLeodUSA") and Qwest Communications Corp. and its subsidiaries ("Qwest") (collectively, the "Parties") effective on the 2nd day of October, 2000.

The Parties have entered in to enter into this PA to facilitate and improve their business and operational activities, agreements and relationships. In consideration of the covenants, agreements and promises contained below the Parties agree to the following:

1. This PA is entered into between the Parties based on the following conditions, which are a material part of this agreement:

1.1 This PA shall be binding on Qwest and McLeodUSA and each of their respective subsidiaries, affiliated corporations, successors and assigns.

1.2 This PA may be amended or altered only by written instrument executed by an authorized representative of both Parties.

1.3 The Parties, intending to be legally bound, have executed this PA effective as of October 2, 2000, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

1.4 Unless terminated as provided in this section, the initial term of this PA is from the date of signing until December 31, 2003 ("Initial Term") and this PA shall thereafter automatically continue until either party gives at least six (6) months advance written notice of termination. This is Amendment can only be terminated during the Initial Term, or at any time thereafter, in the event of:

1.4.1 a material breach of the terms of the Agreements or this Amendment which remains unresolved and uncompensated following application of the dispute resolution provisions of this agreement;

1.4.2 a material change in the telecommunications industry pricing structure that is so adverse to McLeodUSA so as to make this PA useless; or

1.4.3 a termination of that certain Purchase Agreement with a like effective date pursuant to which McLeodUSA purchases Products (defined below) from Qwest.

1.5 All factual preconditions and duties set forth in this PA are, are intended to be, and are considered by the Parties to be, reasonably related to, and dependent upon each other.

1.6 If either party's performance of this PA or any obligation under this PA is prevented, restricted or interfered with by causes beyond such Parties reasonable control,

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including but not limited to acts of God, fire, explosion, vandalism which reasonable precautions could not protect against, storm or other similar occurrence, any law, order, regulation, direction, action or request of any unit of federal, state or local government, or of any civil or military authority, or by national emergencies, insurrections, riots, wars, strike or work stoppage or vendor failures, cable cuts, shortages, breach or delays, then such party shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction or interference (a "Force Majeure").

1.7 Without the prior written consent of the other party and except as set forth below or to the extent required by law, neither party will disclose to any person the existence or content of this agreement, or material terms of the agreement. In the event that either party concludes that disclosure is required by applicable law, including but not limited to the regulations of the Securities and Exchange Commission, such party will provide the other party with prompt notice thereof and an opportunity to comment on such disclosure prior to such disclosure and such party will disclose only the information that, in the opinion of its counsel, it is required by such law to disclose. In the event that either party or any of its Representatives is required by a governmental authority or in connection with a legal proceeding or pursuant to legal process to disclose any of the Evaluation Material with respect to which such party is the receiving party or any other matter referred to in the immediately preceding paragraph, it is agreed that such party will provide the other party with prompt notice of each such request or requirement so that such other party may seek promptly an appropriate protective order or other appropriate remedy and/or waive compliance by such party subject to such request or requirement with the provisions of this PA and the party giving notice shall use its commercially reasonable efforts to assist the party seeking protection. In the event that such protective order or other remedy is not obtained promptly, such party subject to such requirement may furnish that portion (and only that portion) of the PA or other information with respect to such matter that, in the opinion of its counsel, it is legally compelled to disclose and will exercise its commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any information so furnished. The term "person" as used in this Agreement shall be broadly interpreted to include without limitation any corporation, company, partnership, organization, bank, group, individual or other entity.

1.8 Neither party will present itself as representing or jointly marketing services with the other, or market its services using the name of the other party, without the prior written consent of the other party.

2. In consideration of the agreements and covenants set forth above and the entire group of covenants provided in section 3, McLeodUSA agrees to purchase from Qwest, or one of its affiliate corporations, during the Initial Term of this PA, at least \$480 million worth of telecommunications, enhanced or information services, network elements, interconnection or collocation services or elements, capacity, termination or origination services, switching or fiber rights (the "Products"), at prices previously quoted by Qwest, including but not limited to, on any products or updated products for wholesale long distance services purchased, the highest discount level available for that product, subject to the terms of this section 2.

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2.1 Subject to the provisions of this section 2, by December 31, 2001, McLeodUSA will purchase a minimum of \$150 million of Products and in the event purchases by McLeodUSA do not meet this minimum, McLeodUSA agrees to make a payment to Qwest, no later than January 15, 2002, in an amount equal to the difference between actual purchases and the minimum.

2.2 Subject to the provisions of this section 2, from January 1, 2001 through December 31, 2002, McLeodUSA will purchase a cumulative minimum of \$310 million of Products, and in the event purchases by McLeodUSA do not meet this minimum, McLeodUSA agrees to make a payment to Qwest, no later than January 15, 2003, in an amount equal to the difference between actual purchases and the minimum.

2.3 Subject to the provisions of this section 2, From January 1, 2001 through December 31, 2003, McLeodUSA will purchase a cumulative minimum of \$480 million of Products, and in the event purchases by McLeodUSA do not meet this minimum, McLeodUSA agrees to make a payment to Qwest, no later than January 15, 2004, in an amount equal to the difference between actual purchases and the minimum.

2.4 The minimum purchase requirements provided above shall be changed proportionally, but in no event to exceed \$480 million in the cumulative aggregate, if the following occur to a material degree:

2.4.1 A reduction in the rates for any of the Products.

2.4.2 Products are no longer offered without adequate substitution.

2.4.3 Any sale of current Qwest exchanges where McLeodUSA is doing business.

2.4.4 Delays in the delivery of an ordered Product that cause McLeodUSA difficulty in meeting its minimum commitments.

2.4.5 Release, sale, transfer or relinquishment of any current collocation back to Qwest by mutual agreement.

2.4.6 McLeodUSA's business is prevented, restricted or interfered with by a Force Majeure as described in section 1.7.

2.4.7 Changes in technology eliminating the need for certain services provided by Qwest, provided Qwest has the right of first refusal to provide the technology.

2.5 The Parties will meet to discuss all proposed changes in requirements or payments pursuant to this section 2, and will resolve any disputes pursuant to Escalation Procedures to be developed by the Parties, before any payment or change in requirement is made.

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2.6 The take or pay purchase requirements of this section are specifically conditioned on the rates offered for the Products as of the date of this PA remaining in effect at levels no higher than the rates quoted.

3. In consideration of the agreements and covenants set forth above and the entire group of covenants provided in section 2, all taken as a whole, with such consideration only being adequate if all such agreements and covenants are made and are enforceable, Qwest agrees to make the Products available for purchase by McLeodUSA at such rates and on such terms and conditions as agreed.

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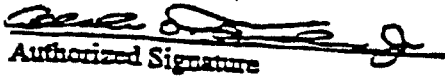
SUBJECT TO RULE OF EVIDENCE 408

Trade Secret Data Ends)

Made and entered into on the date written above by McLeodUSA and Qwest

McLeodUSA Telecommunications
Services, Inc.

Qwest Communications Corp.


Authorized Signature

Authorized Signature

Blake O. Fisher, Jr.
Name Printed/Typed

Name Printed/Typed

Group Vice President
Title

Title

October 26, 2000
Date

October 26, 2000
Date

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Aug-30-01 11:01am From-QWEST LEGAL DEPARTMENT
FROM QWEST-LITIGATION SUPPORT

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SUBJECT TO RULE OF EVIDENCE 408

Made and entered into on the date written above by McLeodUSA and Qwest.

McLeodUSA Telecommunications
Services, Inc.

Qwest Communications Corp.

Authorized Signature


Authorized Signature

Blake O. Fisher, Jr.
Name Printed/Typed

GREGORY M. CASEY
Name Printed/Typed

Group Vice President
Title

EXEC. V.P.
Title

October 26, 2000
Date

October 26, 2000
Date

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