

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of Qwest Corporation for Arbitration with Eschelon Telecom, Inc., Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act of 1996))))))	DOCKET NO. UT-063061
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**REBUTTAL TESTIMONY OF
CURTIS ASHTON
QWEST CORPORATION**

(Disputed Issues Nos. 8-21, 8-21(a), 8-21(b), 8-21(c), 8-21(d) and 8-22)

April 3, 2007

1 **I. IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION**
3 **WITH QWEST CORPORATION.**

4 A. My name is Curtis Ashton. I am employed by Qwest Corporation (“Qwest”) as a
5 senior staff technical support power maintenance engineer in the technical support
6 group, local network organization. My business address is 700 W. Mineral,
7 Littleton, Colorado, 80120.

8
9 **Q. ARE YOU THE SAME CURTIS ASHTON WHO PREVIOUSLY FILED**
10 **RESPONSIVE TESTIMONY IN THIS DOCKET?**

11 A. Yes.

12
13 **Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.**

14 A. The purpose of my testimony is to reply to certain portions of the Responsive
15 Testimony filed by Eschelon witness Michael Starkey, relating to charges for DC
16 Power. In particular, I address issue 8-21, including subsections (a) – (d),
17 relating to charges for DC Power Plant. I also address testimony from Eschelon
18 witness Douglas Denney on issue 8-22, relating to the Quote Preparation Fee
19 associated with Power Reduction and Power Restoration.

20
21 **II. DC POWER (ISSUES 8-21, 8-21(A-D) AND 8-22**

22 **Q. PLEASE PROVIDE AN OVERVIEW OF THE DISPUTED ISSUES IN**
23 **THE CONTRACT RELATING TO -48 VOLT DC POWER.**

24 A. There are several disputed issues in the ICA (issues 8-21, 8-21(a)-(d) and 8-22)
25 that relate to Qwest’s provisioning of -48 Volt DC Power to CLEC collocations

1 within Qwest's central offices. For each of these issues, beginning with Issue 8-
2 21, a core dispute is whether language in the ICA pertaining to billing on a
3 measured basis for the DC Power used by a CLEC should apply to both the DC
4 Power Plant and DC Power Usage charges described in the ICA , as Eschelon
5 contends, or only to DC Power Usage charge, as Qwest contends.

6

7 **Q. IN YOUR RESPONSIVE TESTIMONY YOU REFERENCED DECISIONS**
8 **FROM TWO OTHER COMMISSIONS AS WELL AS THIS**
9 **COMMISSION RELATING TO THIS CORE DISPUTE. CAN YOU**
10 **RECAP AND PROVIDE AN UPDATE ON THOSE DECISIONS?**

11 A. Yes. As I previously indicated in my responsive testimony, the arbitration
12 hearing in this matter has been completed in Minnesota, and the Arbitrator's
13 Report¹ recommended that Qwest's proposed language be adopted in the ICA.
14 The MN Arbitrator's Report found that "there is no evidentiary basis" for finding
15 that Qwest's DC power plant rates are discriminatory, and added that "[t]hese are
16 issues that should be examined" in a cost docket.² In complaint proceedings
17 brought by McLeod Telecommunications Services, Inc. ("McLeod") involving
18 this very same issue, two commissions have now rejected the same discrimination
19 argument made here by Eschelon. As previously indicated in my responsive
20 testimony, the Utah Public Service Commission held that "Qwest's billing to

¹ *In the Matter of Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. §252(b) of the Federal Telecommunications Act of 1996*, Minnesota Public Utilities Commission Docket No. P-5340, 421/IC-06-768, January 16, 2006 Arbitrator's Report (hereinafter, the "MN Arbitrator's Report"). The MN Arbitrator's Report has not yet been adopted by the Minnesota Public Utilities Commission.

² MN Arbitrator's Report, Paragraph 108, p. 27.

1 McLeod for DC Power Plant does not constitute discriminatory conduct.”³ This
2 Commission has also now considered and adopted the Administrative Law
3 Judge’s Recommended Decision in the McLeod complaint proceeding before this
4 Commission, which had found that “[t]he record in this proceeding does not
5 support a claim that Qwest’s DC power plant rate or rate structure is
6 discriminatory.”⁴

7

8 **Q. WHAT SPECIFICALLY DID THIS COMMISSION STATE WITH**
9 **REGARD TO THIS ISSUE, WHEN IT ADOPTED THE**
10 **ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION IN**
11 **THE MCLEOD COMPLAINT PROCEEDING?**

12 A. This Commission adopted the ALJ’s Recommended Decision in an order entered
13 on February 15, 2007.⁵ The Commission found that McLeod had failed to meet
14 its burden to demonstrate that Qwest’s charges for DC Power were in any way
15 discriminatory.⁶ The Commission also found, as both I and Qwest witness
16 Theresa Million have previously testified in this docket, that the arguments
17 McLeod made there—the same arguments that Eschelon makes here—implicated
18 rates and belonged in a cost proceeding. The Commission described as
19 “disingenuous” McLeod’s “insistence that it is not challenging the DC power rate,

³ *In the Matter of McLeodUSA Telecommunications Services, Inc. v. Qwest Corporation for Enforcement of Commission-Approved Interconnection Agreement*, Public Service Commission of Utah Docket No. 06-2249-01, September 28, 2006 Report and Order, p. 28, (hereinafter the “Utah Report and Order”). The Utah Report and Order was provided as Exhibit CA-4 to my responsive testimony.

⁴ *McLeodUSA Telecommunications Services, Inc. v. Qwest Corporation*, Washington State Utilities and Transportation Commission, Docket UT-063013, Initial Order: Recommended Decision to Deny Petition for Enforcement, September 29, 2006, p. 24. (Previously provided as Exhibit CA-3 to my responsive testimony).

⁵ *McLeodUSA Telecommunications Services, Inc. v. Qwest Corporation*, Washington State Utilities and Transportation Commission, Docket UT-063013, Final Order Affirming Initial Order; Denying Petition for Enforcement, February 15, 2007. (Attached to my rebuttal testimony as Exhibit CA-6. Hereinafter, I refer to this as the “WA McLeod Final Order”).

⁶ WA McLeod Final Order, paragraph 24.

1 but rather merely the application of the rate. A good measure of McLeod's
2 testimony in this proceeding involves how Qwest developed the rate in question
3 and why the plant capacity rate is improper. The DC power rate structure as well
4 as the rates charged are intertwined with the actual application of the rate and
5 cannot be separated as McLeod contends."⁷ Eschelon witness Michael Starkey,
6 who was in fact McLeod's witness on these issues in that proceeding, makes those
7 very same arguments in this proceeding, contending that Eschelon is not
8 challenging Qwest's rate for DC power plant—just the application of that rate. In
9 the McLeod Final Order this Commission also confirmed that “a more appropriate
10 forum for determining a DC power rate is a rate proceeding,” rather than a case
11 involving “a petition for enforcement by a single carrier” where “the evidence
12 does not rise to the level that would allow us to determine a proper CLEC rate for
13 DC power.”⁸

14

15 **Q. HAVE THERE BEEN ANY OTHER DECISIONS ON THIS DC POWER**
16 **PLANT ISSUE SUBSEQUENT TO THE FILING OF RESPONSIVE**
17 **TESTIMONY IN THIS DOCKET?**

18 A. Yes. McLeod also brought is complaint action regarding these same issues in
19 Colorado, again with Mr. Starkey as the lead witness.⁹ While there is not yet a
20 final order from that commission, the Administrative Law Judge in that matter
21 issued a Recommended Decision on March 14, 2007 rejecting McLeod's claims
22 and granting Qwest's counterclaims on the amounts withheld by McLeod for

⁷ WA McLeod Final Order, paragraph 26.

⁸ WA McLeod Final Order, paragraph 28.

⁹ *McLeod Telecommunications Services, Inc., v. Qwest Corporation*, Public Utilities Commission of the State of Colorado, Docket No. 06F-124T.

1 power plant charges, finding that: “McLeodUSA failed to meet its burden of
2 proof to demonstrate the basis upon which rates were approved in [a prior
3 Colorado cost docket], how such rates are discriminatory, and how they result in
4 McLeodUSA paying more than its share for the costs of the DC Power Plant. . .”¹⁰

5
6 **Q. MR. STARKEY STATES SEVERAL TIMES IN HIS RESPONSIVE**
7 **TESTIMONY THAT CLECS ORDER POWER DISTRIBUTION CABLES,**
8 **NOT POWER PLANT. PLEASE COMMENT.**

9 A. Mr. Starkey understands all too well that CLECs expect power plant to be made
10 available to them when they order a power distribution cable. And the amount of
11 power plant capacity they expect to be made available is the full amount of the
12 power distribution cable ordered. Quite obviously, a power distribution cable
13 without available power plant would provide no power. When CLECs order
14 power distribution cables they expect that power capacity will be made available
15 over those cables, and the capacity they expect to be made available is the amount
16 they order. The power plant provides that capacity. The Utah Commission
17 recognized this fact:

18
19 McLeod effectively orders “power plant” by means of its
20 power distribution cable order and sizes these cable orders
21 based on both the List 2 drain of the equipment it intends to
22 collocate in the short-term and the List 2 drain of additional
23 equipment it may collocate in the future in that space. The
24 only power plant order McLeod then provides to Qwest is
25 its order for distribution cable. It is therefore reasonable
26 Qwest uses this order to bill McLeod for its power plant.
27 Utah Report and Order, p. 25.

28

29 **Q. WOULD YOU COMMENT ON MR. STARKEY’S RESPONSIVE**

¹⁰ *Id.*, 3/14/2007 Recommended Decision, paragraph 100 (Attached as Exhibit CA-7).

1 **TESTIMONY, AT PAGES 61-62, REGARDING MR. HUBBARD’S**
2 **TESTIMONY IN THE MCLEOD PROCEEDING IN IOWA TO THE**
3 **EFFECT THAT QWEST DEFINITELY BUILDS POWER PLANT BASED**
4 **ON A CLEC ORDER.**

5 A. As is readily apparent from my testimony, any demand for additional power plant
6 capacity, either by a CLEC or by Qwest, will necessarily move the power plant
7 closer to exhaust and create an earlier need for augmentation than if that demand
8 was not present. While it often does construct additional power plant in response
9 to a CLEC collocation order, Qwest is not required to demonstrate that it actually
10 constructed power plant in response to each and every collocation order to be
11 entitled to charge for power plant capacity. What matters is that the CLEC places
12 an order for power and that Qwest makes the power plant capacity available in
13 accordance with the amperage requirements specified in that order. Ms. Million
14 discusses this in greater detail in her testimony.

15
16 **Q. MR. STARKEY SUGGESTS IN HIS RESPONSIVE TESTIMONY THAT**
17 **QWEST IS DISCRIMINATORY IN ITS TREATMENT OF CLECS WITH**
18 **REGARD TO CHARGES FOR POWER PLANT. WOULD YOU LIKE TO**
19 **COMMENT ON HIS REMARK?**

20 A. As I previously stated, both the Utah Commission and this Commission have now
21 flatly rejected Mr. Starkey’s contention, and found that Qwest does not
22 discriminate when it bills for power plant based upon the power feed ordered by
23 the CLEC. The ALJ that heard this matter in Colorado has also rejected Mr.
24 Starkey’s contention in a Recommended Decision that will now be considered by
25 that commission.

1 **Q. DO YOU AGREE WITH MR. STARKEY’S STATEMENT THAT**
2 **QWEST’S INVESTMENT IN POWER PLANT FACILITIES IS**
3 **INCREMENTAL TO POWER USAGE?**

4 A. No, and as I pointed out in my responsive testimony, Mr. Starkey is purposefully
5 vague when he uses the term “usage.” I explained in my responsive testimony
6 that the “usage” on which Eschelon wants to be billed for power plant—namely,
7 the usage that would be captured at various times throughout a year under the
8 power measuring option—is no part of Qwest’s power plant augment planning.
9 The amount of power capacity ordered by CLECs is, however, a part of that
10 power plant augment planning. In similar fashion, Mr. Starkey is very vague
11 when he uses the term “usage” throughout his responsive testimony to claim that
12 Qwest sizes power plant based on “usage.” For instance, Mr. Starkey contends
13 that Qwest sizes power plant based on “usage” for the entire central office at the
14 busy hour. The “usage” to which Mr. Starkey refers there, however, is not the
15 same “usage” on which Eschelon is asking to be billed here. The “usage” on
16 which Eschelon proposes it should be billed for power plant is the measured
17 usage, discrete to Eschelon, captured at various times throughout the year in
18 power measurements. That is a completely different thing than the combined
19 peak busy hour usage for the entire central office. Further, as I described in my
20 responsive testimony, the combined central office busy hour “usage” is, in any
21 event, only one factor in Qwest’s power plant planning. Mr. Starkey continues to
22 ignore these critical points in order to support his contention that “usage drives
23 power plant investment.”

24
25 **Q. HOW DOES MR. STARKEY ATTEMPT TO DEFEND HIS VAGUE USE**

1 **OF THE TERM “USAGE” THROUGHOUT HIS TESTIMONY?**

2 A. Mr. Starkey seems to acknowledge that Eschelon’s discrete usage, as captured in
3 random measurements, and the combined busy hour usage of all equipment in the
4 central office are completely different things, but his response is that Qwest’s
5 claims in this regard are “exaggerated.” Mr. Starkey’s solution, as he attempts to
6 gloss over this clear flaw in his theory, is that Qwest could, if it so chose, measure
7 Eschelon’s random usage “at times when Eschelon’s usage is at its greatest.”
8 That is not really an alternative, as I’m sure Mr. Starkey understands all too well.
9 First, Qwest has no way of knowing when Eschelon will experience peak usage,
10 and could not possibly know that unless it monitored all usage in the central office
11 24 hours a day every day of the year. Qwest does not and cannot reasonably do
12 that, and that is not the way power measurement works in the central office. Mr.
13 Starkey’s next suggestion is even more disingenuous. He contends that Qwest
14 knows or reasonably should be able to estimate busy day busy hour for its central
15 offices (typically Mother’s Day or Christmas), and therefore should just measure
16 Eschelon’s usage at that time. Of course, the busy day busy hour typically occurs
17 on Mother’s Day or Christmas because of increased residential voice traffic.
18 Eschelon is a business-based CLEC. Most people are not at work using their
19 business phone to call their mother on Mother’s Day. Given that Mother’s Day
20 always falls on Sunday, and that most businesses are closed on Christmas,
21 Eschelon’s call volume traffic, and therefore its power usage, is actually probably
22 lower on Mother’s Day and Christmas than on a typical weekday.

23
24 **Q. EVEN IF QWEST COULD SOMEHOW CAPTURE ESCHELON’S PEAK**
25 **POWER USAGE EACH YEAR, WOULD THAT BE RELEVANT?**

1 A. No. As I stated in my responsive testimony, even if Qwest could capture
2 Eschelon's peak usage and treat that as a proxy for the combined List 1 drain of
3 Eschelon's equipment, that is NOT the basis on which Qwest charges for power
4 plant, it is NOT the basis on which the power plant rate was designed, and it is
5 NOT the basis on which Eschelon seeks to be charged for power plant in this
6 proceeding. For the same reason, even if Qwest could obtain the actual combined
7 List 1 drain for all of Eschelon's equipment, whether by forecasting, as Mr.
8 Starkey suggests, or otherwise, that number is similarly irrelevant based on the
9 way that Qwest's power plant rate was designed. If Eschelon wants to take issue
10 with that, the proper place to do so is in a cost docket with cost evidence, as Ms.
11 Million testifies, and as this Commission, along with the Minnesota and Utah
12 commissions, have already determined.

13

14 **Q. CAN YOU SUMMARIZE ISSUE 8-22, RELATING TO THE QUOTE**
15 **PREPARATION FEE FOR POWER REDUCTIONS AND POWER**
16 **RESTORATIONS?**

17 A. Yes. As I previously testified in responsive testimony, the dispute here concerns
18 the Quote Preparation Fee ("QPF") that Qwest charges associated with the
19 planning, engineering and administrative work related to these requests. As Ms.
20 Million testifies, contrary to Mr. Denney's contention, this QPF recovers different
21 costs than the nonrecurring charge ("NRC") to actually do the work to complete
22 the request. Mr. Denney suggests that Qwest's NRC already recovers these costs.
23 He is wrong, as Ms. Million testifies, but again, the place to test Mr. Denney's
24 completely unsupported contentions is in a cost docket.

25

1 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

2 **A. Yes.**

3