

Docket No. UT-033011  
Witness: Stephen C. Gray

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Petitioners,

v.

ADVANCED TELECOM GROUP, INC.,  
et al,

Respondents.

DOCKET NO. UT-033011

**RESPONSIVE TESTIMONY OF**

**Stephen C. Gray**

**ON BEHALF OF MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.**

**August 31, 2004**

1 **Q. Please state your name, current position and business address.**

2 **A.** My name is Stephen C. Gray. I am President of McLeodUSA Incorporated  
3 and its subsidiary, McLeodUSA Telecommunications Services, Inc.  
4 (McLeodUSA). My business address is McLeodUSA Technology Park, 6400  
5 C Street SW, P.O. Box 3177, Cedar Rapids, Iowa 52460-3177.

6 **Q. What is your education and professional background?**

7 **A.** I received my Bachelor of Business Administration degree, with minors in  
8 Finance and Public Administration, from the University of Tennessee at  
9 Knoxville in 1980. From 1981 to 1987, I was employed by ClayDesta  
10 Communications and WilTel in various management positions. From 1987  
11 to August 1990, I was employed as Senior Vice President of National  
12 Accounts and Carrier Services by Teleconnect Company (later  
13 TelecomUSA, Inc.). I later served as Vice President of Business Services for  
14 MCI Communications Corporation with responsibility for sales, marketing  
15 and customer service activities of a \$4 billion division. In that capacity I  
16 helped develop MCI's local access strategy.

17 In 1992 I joined McLeodUSA as its President and Chief Operating  
18 Officer. Following the Company's Chapter 11 restructuring in April 2002, I  
19 assumed my current position as President of McLeodUSA, reporting to our  
20 Chief Executive Officer, Chris A. Davis.

1 Q. What are your responsibilities with McLeodUSA?

2 A. I work with our Chief Executive Officer, Chris A. Davis, to develop overall  
3 corporate strategy and business development. I am also responsible for  
4 managing Carrier Sales, and oversee regulatory and public policy issues.

5 Q. What is the purpose of your testimony?

6 A. The purpose of my testimony is to provide information related to the  
7 agreements between McLeodUSA and Qwest that are identified in  
8 paragraph 9 of the Settlement Agreement between McLeodUSA and Staff.<sup>1</sup>  
9 Specifically, I intend to provide the following as set forth in Paragraph 15 of  
10 the Settlement Agreement:

11 (1) An account of the circumstances in which McLeodUSA entered into  
12 each of the Agreements and agreed to the confidential treatment of  
13 the Agreements, including any statements, positions, or  
14 requirements by Qwest that are not reflected in the written terms of  
15 the Agreements.

16 (2) The reasons for McLeodUSA's decision to enter into the Agreements  
17 with Qwest, including any problems or concerns with Qwest's  
18 performance of its obligations as an incumbent local exchange  
19 company at the time of these agreements;

---

<sup>1</sup> This Settlement Agreement was filed with the Commission on August 20, 2004.

- 1 (3) The nature of the business relationships among McLeodUSA, Qwest,  
2 Eschelon, and other respondents during the time the agreements  
3 were negotiated and entered into; and
- 4 (4) The effect on McLeodUSA and its success as a competitive local  
5 exchange company of the practices of Qwest, Eschelon, and other  
6 respondents with regard to entering into interconnection agreements  
7 that were not filed and made available to McLeodUSA pursuant to  
8 47 USC § 252(i).

9 **Q. Before you provide the information in the four areas you just identified,**  
10 **could you please briefly describe McLeodUSA?**

11 **A.** Yes. McLeodUSA is an independent competitive local telecommunications  
12 services provider, also commonly referred to within this industry as a  
13 "CLEC," headquartered in Cedar Rapids, Iowa. McLeodUSA currently  
14 provides telecommunications services in 25 Midwest, Southwest,  
15 Northwest and Rocky Mountain states, including the State of Washington.  
16 More specifically, we provide "integrated communications services," which  
17 include local, long distance, wireless, data, voice over Internet Protocol  
18 ("VoIP") and Internet access services, depending on the availability of  
19 underlying network facilities in a given state. In other words, we provide  
20 the full range of telecommunications services available in the marketplace

1 today. However, a primary focus continues to be, as it has always been, on  
2 providing *local* service to small and medium sized business customers and  
3 residential consumers.

4 **Q. When did McLeodUSA first begin providing local telecommunications**  
5 **services in the State of Washington?**

6 **A.** McLeodUSA first began offering local service in Washington State in or  
7 around May 2000 after the acquisition of company called Access Long  
8 Distance.

9 **Q. Are you familiar with the Complaint filed in this Docket, UT-033011?**

10 **A.** Yes, I am familiar with this case through discussions with our legal counsel  
11 and review of some of the documents related to this case.

12 **Q. What documents have you reviewed in preparing your testimony?**

13 **A.** I have reviewed (1) the documents attached as exhibits to my testimony,  
14 including the affidavits of Blake Fisher and Lori Deutmeyer and the  
15 exhibits appended to those affidavits; (2) the settlement agreement between  
16 McLeodUSA and Commission Staff; and (3) the agreements identified in  
17 this case as 8A, 9A, 44A and 45A.

18 **Q. Were you familiar with these four agreements before your reviewed them**  
19 **in preparing your testimony?**

1    **A.**    Yes, I was generally familiar with these agreements. I was McLeodUSA's  
2            President and Chief Operating Officer at the time these agreements were  
3            negotiated and entered into with U S WEST and Qwest. Our General  
4            Counsel at that time, Randall Rings, was primarily responsible for  
5            negotiating Agreement 8A. Blake Fisher, Group Vice President and Chief  
6            Planning and Development Officer, was the lead negotiator for  
7            McLeodUSA on Agreements 9A, 44A and 45A. Both gentlemen at the time  
8            reported directly to me.

9    **Q.**    Are any of the individuals who comprised the McLeodUSA negotiating  
10           team for these agreements currently employed by McLeodUSA?

11   **A.**    No.

12   **Q.**    Have you reviewed Mr. Wilson's direct testimony as it relates to these  
13           four agreements, 8A, 9A, 44A and 45A?

14   **A.**    Yes, I've reviewed the portions of Mr. Wilson's testimony that address each  
15           of these four agreements as set forth on pages 35 through 36, 52 through 53,  
16           103, 114 and 119 of that testimony.

17   **Q.**    Are you prepared to discuss Staff's testimony regarding each of these  
18           agreements and address the areas set forth in Paragraph 15 of the  
19           Settlement Agreement?

1 A. Yes, I'm prepared to address each one in order, beginning with Agreement  
2 8A.

3 Agreement 8A

4 Q. On page 103 of his testimony, Mr. Wilson summarizes Agreement 8A as  
5 an agreement in which "Qwest pays McLeodUSA \$29,700,000 in exchange  
6 for various concessions including dropping opposition to the merger."

7 Does this accurately characterize this agreement?

8 A. I would characterize Agreement 8A as an agreement to resolve numerous  
9 outstanding issues with U S WEST that predated Qwest's proposed  
10 acquisition of U S WEST. These issues related to billing concerns, which we  
11 believed resulted in substantial overcharges by U S WEST and  
12 disagreements over the applicability of true-ups for UNE rates. As  
13 consideration for Qwest addressing these outstanding concerns primarily  
14 through payment of the lump sum referred to in the agreement,  
15 McLeodUSA agreed to switch from usage billing to "bill-and-keep," to  
16 dismiss its FCC complaint against U S WEST for claims related to  
17 subscriber list charges, and to withdraw from state commission merger  
18 proceedings.

19 Q. Why and under what circumstances did McLeodUSA enter into this  
20 agreement with Qwest?

1 A. This agreement was entered into on April 28, 2000. As I previously noted,  
2 this agreement resolved a number of long-standing disputes with U S  
3 WEST. It is important to note that prior to this agreement, U S WEST had  
4 repeatedly forced McLeodUSA to litigate disputes, sometimes in multiple  
5 states on the identical issue, to enforce what we believed to be U S WEST's  
6 most basic legal obligations under the 1996 Telecommunications Act. For  
7 example, within two weeks after the '96 Act was signed into law, U S WEST  
8 made filings across its 14-state region to withdraw Centrex Plus service to  
9 new customers. Resale of the Centrex Plus product was a key component  
10 to McLeodUSA's initial market entry strategy. The proposed withdrawal of  
11 Centrex Plus service had no purpose other than to restrict competition by  
12 denying McLeodUSA and other competitors access to this platform used to  
13 provide a competitive choice for local service. Consequently, McLeodUSA  
14 was forced into an expensive and time-consuming effort opposing U S  
15 WEST, which included actually litigating the issue in numerous states,  
16 including South Dakota, North Dakota, Colorado, Wyoming, Idaho and  
17 Minnesota. Between 1995 and 2000, McLeodUSA had over a dozen  
18 significant additional problems with U S WEST failing to fulfill its most  
19 basic ILEC obligations under the Act. Some of those problems are  
20 identified in Exhibits A1 and A2.

1           Given this background, we were concerned that the merger could  
2 further divert U S WEST's attention from wholesale issues and leave a  
3 number of outstanding issues unresolved. At the same time, we hoped that  
4 the change in ownership and control might lead to a better business  
5 relationship, allowing us to resolve historical issues and avoid expensive  
6 litigation at the state and federal levels. The combination of concern and  
7 hope for a better business relationship caused us to intervene in state  
8 merger proceedings.

9           Shortly after the Minnesota Commission's initial rejection of the  
10 merger petition, U S WEST and Qwest showed more interest in meaningful  
11 negotiations regarding our intervention in these state merger proceedings.  
12 Through those negotiations, we ended up with the agreement that has been  
13 labeled 8A. We entered into the agreement because it provided an  
14 economical way to resolve multiple, multi-million dollar disputes without  
15 the long delays, uncertainties and substantial expense of litigation.

16 **Q. What was the nature of McLeodUSA's relationship with Qwest and other**  
17 **CLECs at the time it entered into agreement 8A?**

18 **A.** As I've indicated, our relationship with U S WEST was unfortunately all too  
19 adversarial prior to the merger with Qwest. At the time, we had operations  
20 in a number of former Ameritech states, and Ameritech was far more

1 cooperative than U S WEST. I believe we had good working relationships  
2 with other competitive carriers at the time.

3 **Q. Are you aware of unfiled agreements between Qwest and other CLECs**  
4 **regarding state merger proceedings and, if so, what effect did those**  
5 **agreements have on McLeodUSA?**

6 **A.** I subsequently learned that Qwest reached confidential settlement  
7 agreements with other CLECs. In fact, I was in Minnesota to personally  
8 announce our merger settlement to the Minnesota Commission at a public  
9 Commission meeting when I became aware that other CLECs were entering  
10 into agreements with Qwest. Indeed, it became apparent during the course  
11 of the Minnesota Commission's agenda meeting on the merger that other  
12 parties had reached apparent settlements with Qwest. Parties that were  
13 arguing in opposition to the merger at the beginning of the meeting  
14 subsequently announced that they were no longer opposing the merger  
15 during the course of that meeting. I never became aware of the terms of  
16 those agreements until sometime after they were disclosed in state  
17 proceedings like this one. I have not, however, reviewed any of those  
18 agreements. Consequently, I am unable to opine on what, if any, impact  
19 those other confidential agreements had on McLeodUSA other than to say  
20 that we may have benefited from the opportunity to opt into the

1 performance measures in the agreement between Covad and Qwest that is  
2 labeled Agreement 7A in this proceeding.

3 **Q. Was Agreement 8A related in any way to Agreements 9A, 44A or 45A?**

4 **A.** No. Agreement 8A was entered into on April 28, 2000 specifically in  
5 connection with various state merger proceedings. The other three  
6 agreements were entered into approximately six months later. My  
7 recollection is that these later three agreements were not even under  
8 consideration at McLeodUSA on April 28 when we entered into Agreement  
9 8A.

10 **Q. Were Agreements 9A, 44A and 46A related to one another?**

11 **A.** Yes, those three agreements were all negotiated and entered into at  
12 approximately the same time and were intertwined with one another.

13 **Agreement 9A**

14 **Q. On page 36 of his direct testimony, Mr. Wilson refers to Agreement 9A as**  
15 **setting forth "an implementation plan, and terms and conditions**  
16 **concerning ongoing escalation procedures . . . ." Does this accurately**  
17 **characterize the agreement?**

18 **A.** Yes, this is an accurate description of the agreement in that Agreement 9A  
19 provided the particulars in the developing business relationship between  
20 McLeodUSA and Qwest at the time regarding the resolution of disputes.

1 **Q. When did McLeodUSA and Qwest begin negotiating Agreement 9A?**

2 **A.** This agreement, as well as the other related agreements, had its origin in a  
3 meeting between Qwest and McLeodUSA executives in Cedar Rapids,  
4 Iowa, sometime during the late summer of 2000. Those attending that  
5 meeting included Qwest's Chief Executive Officer Joe Nacchio and myself,  
6 as well some of the individuals who later comprised the negotiating teams  
7 for our respective companies. Importantly, Qwest representatives at that  
8 meeting told us that they were meeting with many of Qwest's large  
9 customers and that they intended to treat McLeodUSA as a large customer.  
10 We were obviously encouraged at the tenor of these comments by Qwest's  
11 new leadership team.

12 **Q. What was discussed at this meeting in Cedar Rapids?**

13 **A.** Our discussion focused primarily on improving our working relationship,  
14 especially in terms of operational interactions. Qwest emphasized its desire  
15 to strengthen its wholesale business and relationships with its wholesale  
16 customers. We also discussed, in very general terms, the concept of volume  
17 pricing and the need for a better escalation process to resolve disputes short  
18 of litigation.

19 **Q. Why and under what circumstances did McLeodUSA enter into**  
20 **Agreement 9A with Qwest?**

1 A. As I've already indicated, we had a long history of unresolved disputes  
2 with U S WEST regarding interconnection and access to U S WEST's  
3 services and facilities. In particular, we had experienced what we viewed  
4 as unacceptable delays getting wholesale services and facilities from U S  
5 WEST. As you can see in Exhibit B of my testimony, Qwest's wholesale  
6 performance for McLeodUSA in Minnesota in 2000 was well below what  
7 we considered acceptable and was often worse than Qwest's performance  
8 for its own retail customers. This was the case throughout much of the  
9 Qwest region at the time. These unacceptable levels of wholesale service  
10 quality were harming our ability to serve and retain customers and were  
11 potentially devastating to the Company's long-term viability.

12 Coextensive with these performance issues were, as I generally  
13 recall, difficulties our staff experienced getting timely responses from U S  
14 WEST and Qwest. We did not believe that U S WEST's account team was  
15 an effective advocate for us within US WEST. Our issues tended to linger at  
16 levels within US WEST where decisions that could meaningfully resolve  
17 an issue could not be made. We had consistently tried to address and  
18 resolve these ongoing performance issues with U S WEST and subsequently  
19 Qwest, but those efforts never succeeded. Therefore, at a minimum, we  
20 needed some commitment from Qwest to resolve disputes in a timely

1 manner. The best we could do was agree with Qwest on terms to escalate  
2 disputes to specific individuals at Qwest that would give our issues  
3 executive level visibility within Qwest, that we believed would make  
4 Qwest more responsive. Agreement 9A provided some assurance that the  
5 problems we were experiencing with Qwest's wholesale services would get  
6 relatively prompt and serious attention. This agreement fell short of  
7 providing the performance standards we sought, but we considered it a  
8 start to an improving business relationship. Given our dependence on  
9 Qwest and the historical non-responsiveness of U S WEST to our needs as a  
10 wholesale customer, we felt fortunate to obtain the limited commitments  
11 set forth in this agreement.

12 **Q. What was the nature of McLeodUSA's relationship with Qwest and other**  
13 **CLECs at the time it entered into Agreement 9A?**

14 **A.** Our relationship with Qwest was somewhat strained if only because of U S  
15 WEST's history of non-cooperation. But the relationship with Qwest was  
16 improving if only because of Qwest's willingness to negotiate issues that  
17 were important to McLeodUSA and its willingness to settle issues in lieu of  
18 forcing McLeodUSA to resort to multi-state litigation, which we considered  
19 costly, time- consuming and without any guarantee that we would actually  
20 resolve all of these issues. As our relationship with Qwest appeared to be

1 improving, we continued to maintain a positive and cooperative  
2 relationship with other CLECs when we entered into Agreement 9A.

3 **Q. Are you aware of any unfiled agreements between Qwest and other**  
4 **CLECs regarding escalation procedures or performance standards and, if**  
5 **so, what effect did those agreements have on McLeodUSA?**

6 **A.** I am generally aware of two agreements that I learned about at some point  
7 subsequent to the filing of the Minnesota Department of Commerce case  
8 against Qwest. I recognize those agreements as Agreement 3A between  
9 Qwest and Eschelon and Agreement 7A between Qwest and Covad. I have  
10 not reviewed these agreements, but it is my understanding that the  
11 Eschelon agreement is very similar to Agreement 9A between Qwest and  
12 McLeodUSA in that it provides an escalation procedure that includes  
13 review at various levels and eventually CEO review. I also understand that  
14 the Covad agreement includes specific performance standards for service  
15 intervals and firm order confirmations. McLeodUSA had been attempting  
16 for some time to negotiate performance standards with U S WEST and then  
17 Qwest, but without success. We may have wanted the opportunity to opt  
18 into the Covad Agreement, but it is very difficult to speculate on the impact  
19 that the failure to file the Covad Agreement or any other agreement may  
20 have had on McLeodUSA.

1 Agreements 44A and 45A

2 Q. On page 119 of his testimony, Mr. Wilson describes Agreements 44A and  
3 45A as “preferential purchase agreement[s], which affect the net rate paid  
4 for noncompetitive telecommunications services.” Is this an accurate  
5 description of these agreements?

6 A. I would describe these agreements more precisely as volume-based “take or  
7 pay” agreements in which Qwest and McLeodUSA each agreed to purchase  
8 a specified volume of products from one another during certain time  
9 frames. A “take or pay” contract, like these two purchase agreements,  
10 requires each party to pay the amount specified in the contract even if the  
11 party fails to actually order any or all of the products associated with the  
12 payment. In other words, you pay what you agreed to pay, even if you  
13 don’t actually order the products you are ostensibly paying for.

14 In Agreement 44A, McLeodUSA agreed to purchase a cumulative  
15 total of \$480 million in products from Qwest through December 31, 2003.

16 In Agreement 45A, Qwest agreed to purchase \$15.84 million in products  
17 from McLeodUSA in 2001, \$18.32 million in 2002 and \$19.92 million in year  
18 2003.

1 Q. On page 53 of his testimony, Staff refers to these "take or pay"  
2 agreements as "a device that modifies the rates under the existing  
3 interconnection agreement." Is this characterization accurate?

4 A. I would say, more precisely, that the *implementation* of these two  
5 agreements had the net effect of modifying the rates McLeodUSA paid  
6 under its existing interconnection agreement. By that I mean that Qwest  
7 ended up making payments to McLeodUSA under Agreement 45A without  
8 ordering any services. As a result, McLeodUSA did not incur costs to  
9 provide services to Qwest and the payments received from Qwest,  
10 therefore, had the indirect effect of reducing the overall amount that  
11 McLeodUSA paid for the products it purchased from Qwest.

12 Q. Was there any guarantee that Qwest would not order services to which it  
13 was entitled under Agreement 45A?

14 A. Not to my knowledge. At the time of the agreement, Qwest had substantial  
15 operations outside its new 14-state ILEC region due to its original long  
16 distance fiber investments used to support its long distance operations. We  
17 believed there was a business opportunity for Qwest to lease our network  
18 capabilities to enter local markets outside its ILEC region. But we had an  
19 oral agreement with Qwest that we believed entitled McLeodUSA to a  
20 volume discount of between 6.5% and 10% on the products we purchased

1 from Qwest. Blake Fisher negotiated that volume discount agreement with  
2 Qwest and he describes the terms, as I recall them, accurately in his  
3 affidavit, which I've attached as Exhibit C to my testimony. As explained  
4 by Mr. Fisher on page 7 of his affidavit, these two "take or pay" agreements  
5 were the mechanism proposed by Qwest through which the benefit of the  
6 oral volume discount agreement would be at least partially realized.

7 **Q. Why wasn't this oral agreement memorialized in writing?**

8 **A.** Mr. Fisher informed me that Qwest was unwilling to put the agreement in  
9 writing out of concern that other carriers might seek the same agreement.  
10 Agreement 45A was designed to provide some guarantee that we would  
11 receive volume discount pricing that we expected to get through the oral  
12 agreement.

13 **Q. Did you actually receive these discounts and, if so, how were they**  
14 **implemented?**

15 **A.** I have only a general understanding of how the implementation was  
16 actually carried out. To the best of my knowledge, the discounts were  
17 implemented through a true-up mechanism. Based on my general  
18 knowledge, I believe, the description of this mechanism provided by Lori  
19 Deutmeyer in paragraphs 3 through 12 of her affidavit, which I've attached  
20 as Exhibit D to my testimony, is accurate. As Ms. Deutmeyer explains, she

1 would apply the applicable discount factor to the corresponding volume of  
2 McLeodUSA's purchases from Qwest each quarter and submit that  
3 calculation to Qwest. Qwest would, in turn, make payments to  
4 McLeodUSA consistent with those discount factors.

5 **Q. Why and under what circumstances did McLeodUSA enter into these**  
6 **take or pay and oral discount agreements?**

7 **A.** We entered into these agreements in conjunction with the 8<sup>th</sup> Amendment  
8 to the McLeodUSA/Qwest interconnection agreement, which was filed in  
9 November of 2000. Under the 8<sup>th</sup> Amendment (which I will refer to as the  
10 "UNE-M Agreement"), Qwest agreed to provide McLeodUSA with what  
11 Qwest called "UNE-M" as an alternative to UNE-P. From our perspective  
12 the UNE-M agreement was the critical factor that led us to enter into these  
13 other agreements. By late summer of 2000, we had reached a critical  
14 juncture as a company. We realized we could not achieve the margins we  
15 needed without transitioning our lines from resale and onto a UNE  
16 platform. There was a very substantial capital investment required to  
17 convert our lines to our own switching facilities and there was limited  
18 access to capital markets for CLECs at that time. Qwest presented us with  
19 unacceptable conditions for transitioning McLeodUSA lines from resale to  
20 UNE-P. Those conditions included a manual conversion process that was

1 administratively cumbersome and likely to result in long delays,  
2 unacceptable customer outages and high non-recurring charges ("NRCs").

3 As an alternative to UNE-P, Qwest offered UNE-M. In effect, Qwest  
4 was willing to treat Centrex Plus resale as a variant of UNE-P. This made  
5 sense since we had always considered Centrex resale as the forerunner to  
6 UNE-P in that, through the lease of the Centrex Plus common block, we  
7 were able to have access to numerous vertical features for each access line  
8 assigned to the common block. Thus, we took the position that conversion  
9 of a line from Centrex Plus Resale to UNE-P should consist of nothing more  
10 than a billing change. Such a conversion should certainly not require time-  
11 consuming, risky and costly line disconnection and re-installation NRCs as  
12 proposed by US WEST. Nevertheless, the wholesale pricing Qwest offered  
13 for UNE-M was inferior to the pricing of UNE-P and not adequate in our  
14 judgment. Moreover, UNE-M presented unique administrative billing  
15 problems because Qwest never changed its billing system to mechanize the  
16 UNE-M billing process. As a result, we began discussing the concept of  
17 volume pricing as a way to make the UNE-M platform economical. The  
18 volume-pricing concept was ultimately reflected in the oral discount and  
19 take or pay agreements.

1 Q. Did other CLECs face the same UNE-P conversion problems as  
2 McLeodUSA?

3 A. I'm not certain because I am not familiar with the situations other CLECs  
4 faced at the time. But McLeodUSA's situation may have been relatively  
5 unique because of our heavy reliance on Centrex Plus resale. I suspect that  
6 most resellers at the time relied on plain 1FB and 1FR resale for which, I  
7 believe, Qwest was in the process of developing an electronic ordering  
8 process called "Electronic Data Interchange ("EDI"). U S WEST and then  
9 Qwest had no plan for developing an EDI process to directly convert  
10 Centrex Plus resale lines to UNE-P. McLeodUSA made several attempts,  
11 without success, to convince US WEST and Qwest to include a Centrex Plus  
12 EDI for a direct conversion to UNE-P in the OSS development and testing  
13 scenarios. This left McLeodUSA with no foreseeable alternative to Qwest's  
14 two-step conversion process, with its related delays, outages and high  
15 costs, for transitioning our customers to the UNE-P platform.

16 Q. What did this mean to McLeodUSA at the time?

17 A. It meant that, in late summer 2000, McLeodUSA faced a lose-lose scenario.  
18 On the one hand we could accept the benefits of UNE-P, but face the  
19 unacceptable conversion constraints imposed by Qwest as I just described.  
20 Or we could litigate the uneconomic terms of conversion in every state,

1 which would not only have required a substantial commitment of  
2 resources, but would have also delayed conversion of our lines for at least a  
3 year, even if we were to have prevailed. If state commissions had ended up  
4 ordering Qwest to develop EDI for direct Centrex to UNE-P conversions,  
5 the delay would have been even longer.

6 Qwest's offer to provide economic terms on a UNE-M platform  
7 provided our only viable option at the time. This UNE-M product, with  
8 volume discounts, provided the essential pricing we were seeking through  
9 UNE-P. The pricing of UNE-M was never as good as UNE-P, and UNE-M  
10 billing involved a cumbersome true-up process described in paragraphs 13  
11 through 19 of Ms. Deutmeyer's affidavit. Nevertheless, it was the only  
12 reasonable alternative we had at the time.

13 **Q. Were there any other agreements between McLeodUSA and Qwest that**  
14 **were related to Agreements 9A, 44A and 45A?**

15 **A.** Yes. We had an oral agreement with Qwest in which we agreed to remain  
16 neutral in Qwest's 271 proceedings. Qwest made clear, as indicated in  
17 paragraph 7 of the September 19, 2000 "Outline of Major Terms" attached  
18 to Mr. Fisher's affidavit, that these other agreements were contingent upon  
19 McLeodUSA's neutrality in section 271 proceedings.

1 Q. **Did McLeodUSA insist on not filing or disclosing any of these**  
2 **agreements you have been discussing?**

3 A. No. We understood that the negotiations would be confidential, but we  
4 never insisted or even suggested that these Agreements not be filed or that  
5 they be kept confidential. The impetus for secrecy came from Qwest. This  
6 is apparent in Qwest's refusal of our request to memorialize the oral  
7 discount in a written agreement and in the handwritten notes of Jim  
8 Balvanz in an email attached to Mr. Fisher's testimony in which Mr.  
9 Balvanz wrote: "Confidentiality stressed BY Q . . ." I actually referred  
10 publicly to the existence of these agreements in our October 26, 2000  
11 Quarterly Earnings Conference Call, which was broadcast live over the  
12 Internet and transcribed. The transcribed reference to these agreements is  
13 attached to my testimony as Exhibit E.

14 Q. **Did you believe McLeodUSA would benefit from keeping these**  
15 **agreements confidential and unavailable to other CLECs?**

16 A. No. Our sole focus was getting our lines converted onto a more economical  
17 platform. At the time, we never concerned ourselves with what other  
18 CLECs might be doing with Qwest. Moreover, we always had a general  
19 understanding that other CLECs were negotiating with Qwest. As Mr.  
20 Fisher recounts in his affidavit, Joe Nacchio announced at our meeting in

1 Cedar Rapids that Qwest was "meeting with many of Qwest's large  
2 customers." Mr. Nacchio also indicated, as Mr. Fisher recalled, that  
3 "Qwest intended to strengthen its wholesale business and relationships  
4 with its wholesale customers." Not surprisingly, we presumed that Qwest  
5 was negotiating with other wholesale customers.

6 **Q. Was McLeodUSA harmed by any of the unfiled agreements Qwest**  
7 **entered into with other CLECs?**

8 **A.** I really have no way of knowing. As we subsequently learned, Qwest gave  
9 Eschelon better discount terms than we received. Eschelon received a  
10 straight 10% discount in return for what I believe was a \$170 million  
11 volume commitment, while McLeodUSA received an 8% discount in return  
12 for a much larger \$480 million commitment. In addition, Eschelon reached  
13 agreements under which Qwest agreed to provide significant per line  
14 credits for access billing issues, while never offering any such credits to  
15 McLeodUSA in our discussions about access billing problems.

16 Nevertheless, it is still impossible to say whether or to what extent those  
17 agreements with Eschelon had a negative impact on McLeodUSA. I have  
18 no way of knowing exactly what problems Eschelon faced or what  
19 concessions Eschelon made in conjunction with its agreements. I suspect  
20 that Eschelon was in the same predicament as we were and felt the same

1           pressure to enter into the agreements on the terms presented by Qwest. As  
2           a CLEC, you are never truly in an arms-length negotiation with an ILEC  
3           because the ILEC has what you need to operate your business and you do  
4           not really have anything crucial to the ILEC's business. That's just the  
5           nature of the beast for all UNE-based CLECs in this industry.

6   **Q.   Does that conclude your testimony?**

7   **A.   Yes.**