



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

AUG 28 2007

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

DOCKETED BY [initials]

IN THE MATTER OF:

DOCKET NO. T-03267A-06-0105
DOCKET NO. T-01051B-06-0105

MCLEODUSA TELECOMMUNICATIONS
SERVICES, INC.,

DECISION NO. 69872

Complainant,

vs.

QWEST CORPORATION,

OPINION AND ORDER

Respondent.

DATE OF HEARING:

July 11 and 12, 2006

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Amy Bjelland and Jane L. Rodda¹

APPEARANCES:

Michael W. Patten, ROSHKA, DeWULF &
PATTEN and William H. Courter on behalf of
McLeodUSA Telecommunications Services,
Inc.; and

Lisa Anderl, Timothy J. Goodwin and Norman
G. Curtright on behalf of Qwest Corporation.

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On February 21, 2006, McLeodUSA Telecommunications Services, Inc. ("McLeod")

¹ Amy Bjelland conducted the hearing in this matter. Jane L. Rodda prepared the Recommended Opinion and Order.

1 filed with the Commission a Complaint against Qwest Corporation ("Qwest") alleging that Qwest
2 overcharged McLeod for collocation power charges under the terms of their Interconnection
3 Agreement ("ICA").

4 2. On March 16, 2006, Qwest filed its Answer to the Complaint and Counterclaim for
5 payment allegedly withheld by McLeod in connection with the dispute.

6 3. On March 28, 2006, McLeod filed its Reply to Counterclaim.

7 4. On March 30, 2006, the parties filed a Joint Stipulation containing proposed hearing
8 dates and filing deadlines.

9 5. On April 5, 2006, by Procedural Order, a hearing and filing deadlines were
10 established.

11 6. On May 12, 2006, McLeod filed the Direct Testimony of Michael Starkey, Sidney L.
12 Morrison and Tami J. Spocogee.

13 7. On June 2, 2006, the parties filed a Joint Stipulation of a revised procedural schedule
14 in order to allow McLeod to raise, and Qwest to respond to, issues not raised in the Direct Testimony
15 filed by McLeod on May 12, 2006. The parties requested that the original date for hearing remain the
16 same.

17 8. By Procedural Order dated June 6, 2006, revised filing deadlines were established.

18 9. On June 9, 2006, McLeod filed the Supplemental Direct Testimony of Michael
19 Starkey.

20 10. On June 22, 2006, Qwest filed a Motion to Strike the Supplemental Direct Testimony
21 of Mr. Michael Starkey. Qwest also filed the Direct Testimony of Teresa K. Million, William R.
22 Easton, and Curtis Ashton.

23 11. On July 5, 2006, McLeod filed the Rebuttal Testimony of Michael Starkey, Sidney L.
24 Morrison and Tami J. Spocogee. McLeod also filed its Opposition to Qwest's Motion to Strike the
25 Supplemental Direct Testimony of Michael Starkey.

26 12. On July 11 and 12, 2006, the hearing was held as scheduled. At hearing, Qwest's
27 Motion to Strike the Supplemental Direct Testimony of Mr. Michael Starkey was denied. At the
28 conclusion of the hearing, the parties agreed to brief the issues in lieu of making closing statements.

1 13. On September 8, 2006, the parties filed their Closing Briefs. The parties filed their
2 Reply Briefs on September 22, 2006.

3 14. On September 29, 2006, Qwest filed a Notice of Filing Supplemental Authority,
4 attaching the Report and Order of the Public Service Commission of Utah, in *In the Matter of the*
5 *Complaint of McLeodUSA Telecommunications Services, Inc. vs Qwest Corporation for Enforcement*
6 *of Commission-Approved Interconnection Agreement*, No. 06-2249-01, issued on September 28,
7 2006.

8 15. On October 2, 2006, Qwest filed a Second Notice of Filing Supplemental Authority,
9 attaching the "Initial Order: Recommended Decision to Deny Petition for Enforcement" of the
10 Washington State Utilities and Transportation Commission in *McLeodUSA Telecommunications*
11 *Services, Inc. v. Qwest Corporation*, No. UT-063013, dated September 29, 2006.

12 16. On October 25, 2006, McLeod filed its Response to Qwest's Filings of Supplemental
13 Authorities. McLeod argues both the Washington and Utah orders make the same legal error by
14 failing to consider the entire Interconnection Agreement.

15 17. On October 31, 2006, Qwest filed a Motion to Strike or in the Alternative Motion for
16 Leave to File Reply Brief. Qwest argues that the Commission should strike McLeod's Response to
17 Qwest's Supplemental Authorities because it is unauthorized. In the alternative, Qwest sought leave
18 to file a Reply. Qwest included its Reply with its Motion.

19 18. On November 16, 2006, McLeod filed a Response to Qwest's Motion to Strike or In
20 the Alternative Motion for Leave to File a Reply. McLeod argued its Response was appropriate, and
21 stated it did not object to Qwest's Reply.

22 19. On February 21, 2007, Qwest filed a Notice of Filing of Third Supplemental
23 Authority. Qwest attached the Final Order Affirming Initial Order; Denying Petition for
24 Enforcement of the Washington State Utilities and Transportation Commission in No. UT-063013.

25 20. On April 19, 2007, Qwest filed a Notice of Filing of Fourth Supplemental Authority,
26 comprised of the Rehearing Order, reaffirming the July 27, 2006 Order of the Iowa State Department
27 of Commerce Utilities Board, *In re McLeodUSA Telecommunications Services Inc. Qwest*
28 *Corporation*, No. FCU-06-20, dated April 17, 2007.

1 monitoring request until the next reading. The next reading date may be
 2 generated as a result of the CLEC request or a Qwest routine reading and
 Billing will be adjusted on whichever date comes first.

3 2.0 Rate Elements - All Collocation

4 2.1 -48 Volt DC Power Usage and AC Usage Charges. Provide -48
 5 volt DC power to CLEC collocated equipment and (sic) is fused at one
 6 hundred twenty-five percent (125%) of request. The DC Power Usage
 Charge is for the capacity of the power plant available for CLEC's use.
 7 The AC Usage Charge is for the power used by CLEC. Both the DC
 Power Usage Charge and the AC Usage Charge are applied on a per
 8 ampere basis.

9 2.2 The -48 Volt DC Power Usage Charge is specified in Exhibit A of
 the Agreement and applies to the quantity of -48 Volt Capacity specified
 10 by the CLEC in its order.

11 2.2.1 -48 Volt DC Power Usage Charge - Applies on a per amp basis to
 all orders of greater than sixty (60) amps. Qwest will initially apply the -
 12 48 Volt DC Power Usage Charge from Exhibit A of the Agreement to the
 quantity of power ordered by CLEC. Qwest will determine the actual
 13 usage at the power board as described in Section 1.2 There is a one (1)
 14 amp minimum charge for -48 Volt DC Power Usage.

15 2.3 CLEC rates for Collocation must be included in CLEC's existing
 Interconnection Agreement with Qwest prior to amending with DC Power
 16 Monitoring (Measuring) Amendment.

- 17 23. Exhibit A to the Interconnection Agreement sets forth the rate elements at issue as
 18 follows:

			Recurring Charge
8.1.4	Power Usage		
8.1.4.1	-48 Volt DC Power Usage, per Ampere, per Month		
8.1.4.1.1	Power Plant		
	8.1.4.1.1.1	Greater Than 60 Amps	\$10.75
	8.1.4.1.1.2	Equal to 60 Amps	\$10.75
	8.1.4.1.1.3	Less Than 60 Amps	\$10.75
8.1.4.1.2	Power Usage		
	8.1.4.1.2.1	Less Than 60 Amps, per Amp	\$3.84
	8.1.4.1.2.2	More Than 60 Amps, per Amp	\$7.27

- 24 24. DC power is provided from the DC power plant in the incumbent local exchange
 25 carrier ("ILEC") central office ("CO") where AC power from the power utility is converted to DC
 26
 27
 28

1 power by rectifiers (backed up by batteries and generators) for use by all communications equipment
 2 housed in the CO. The DC power is delivered over distribution, or feeder, cables to McLeod and
 3 other competitive local exchange carriers ("CLECs") collocated in the CO.

4 25. According to the Amendment, the DC Power Usage Charge is for the capacity of the
 5 power plant made available to the CLEC. The AC Usage Charge is the power used by the CLEC.

6 26. Prior to entering into the Amendment, Qwest billed McLeod both the Power Usage
 7 charges and the DC Power Plant Charges based on the number of amps McLeod specified in the
 8 power feed orders. (Tr at 221-222)

9 27. Qwest and McLeod agree that the Amendment changed the billing method for the rate
 10 element "8.1.4.2.2 Power Usage – More than 60 Amps, per Amp" from an "as ordered" to an "as
 11 measured" basis. Thus, for power cables greater than 60 amps, Qwest would charge McLeod for the
 12 actual power used.

13 28. The parties disagree, however, as to how the Amendment affected the DC Power Plant
 14 rate element. McLeod argues that the Amendment requires that charges for "DC Power Plant –
 15 Greater than 60 amps" also be billed on an "as measured" basis. Qwest argues that the Amendment
 16 did not change the method of billing for any DC Power Plant rate element, but only affected the
 17 Power Usage rate element. McLeod claims that Qwest's billing of the DC Power Plant is
 18 discriminatory because Qwest charges McLeod more for the power plant than Qwest charges itself.

19 McLeod's Position

20 Language of the Amendment

21 29. McLeod argues that the language of the Amendment provides that DC Power Plant
 22 should be billed on an "as measured" use basis. McLeod relies on Subsection 2.2.1 of the
 23 Amendment which provides that "Qwest will determine the actual usage at the power board"
 24 McLeod states that the "actual usage" measured at the power board is applied to "-48 Volt DC Power
 25 Usage" as "specified in Exhibit A of the Agreement." McLeod notes that Exhibit A (the pricing
 26 index) shows that line item 8.1.4.1, the "-48 Volt DC Power Usage," covers both power plant and
 27 usage charges. Thus, according to McLeod, the Amendment is referring specifically to line 8.1.4.1
 28 when defining the rates to be billed on a "measured-use" basis.

1 30. According to McLeod, the language of the Rates Table in Exhibit A confirms that the
2 heading in 8.1.4.1 of “-48Volt DC Power Usage, per Ampere, per Month” must include and apply to
3 the Power Plant rates in 8.1.4.1.1. McLeod asserts that if 8.1.4.1 did not relate to the Power Plant
4 rates, the actual rate would simply be \$10.75 regardless of the amperes, that is, if they were not
5 connected, the Power Plant rates would be rendered meaningless because there would be no units of
6 power plant being billed. According to McLeod, treating 8.1.4.1 as a “mere heading” as Qwest
7 claims, would mean that Section 2.2.1 of the Amendment contains a meaningless reference. McLeod
8 argues that an interpretation that renders contract terms meaningless must be avoided.³

9 31. In addition, McLeod argues Section 2.1 of the Amendment removes all doubt as to
10 whether the Power Plant rate element should be billed on a measured-use basis when it states
11 unequivocally that “the DC Power Usage charge is for the capacity of the power plant available for
12 CLEC’s use.” (emphasis added).

13 32. McLeod also argues that past practice of the parties supports its reading of the plain
14 language of the Amendment. McLeod states that prior to the Amendment, Qwest billed all DC
15 power elements consistently based on the size of the power cable connecting McLeod’s collocation
16 arrangement to the DC power plant, and that the Amendment changed the manner in which DC
17 Power Usage was to be billed (i.e., on a going forward basis, usage would be billed on a measured-
18 use basis). McLeod states that the only rational conclusion is that all elements would continue to be
19 treated in the same fashion under the Amendment – i.e., all DC Power elements would be billed on
20 measured-use basis for collocations over 60 Amps. McLeod states that Qwest can point to no place
21 in the Amendment that excludes any elements from measured-usage billing. McLeod argues there is
22 no language in the Amendment or Exhibit A that plausibly suggests that the “-48 Volt DC Power
23 usage” element is to be charged on an “as ordered” basis, while the sub-rate element” (“Power Usage
24 – More than 60 Amps”), is meant to be charged on an “as measured” basis.

25 33. McLeod further asserts that Qwest’s attempt to interpret the plain language of the
26 Amendment improperly looks outside of the document, relies on strained and illogical interpretations,
27

28 ³ *Chandler Medical Building Partners v. Chandler Dental Group*, 175 Ariz. 273, 277, 855 P.2d 787, 791 (1993).

1 and has no merit. McLeod argues that the Amendment itself expressly states that any reliance on
2 external documents is inappropriate:

3 The Agreement as amended . . . constitutes the full and entire
4 understanding and agreement between the Parties . . . and supersedes any
5 prior understandings, agreements, or representations between the parties,
6 written or oral.

7 Change Management Process

8 34. Qwest claims that based on an e-mail notification in the context of Qwest's Change
9 Management Process ("CMP"),⁴ and the content of the October 2003 exchange between Qwest and
10 another CLEC, that McLeod knew, or should have known, that the Amendment comports with,
11 Qwest's interpretation. McLeod believes such claim is not sustainable, and would require the
12 Commission to make several unrealistic leaps: (i) to ignore inconsistent statements contained in the
13 same CMP documentation, (ii) to discard the actual language of the Amendment, and (iii) to
14 generally cast a blind eye to the self-serving nature of Qwest's CMP forum.

15 35. According to McLeod, the former McLeod employee who attended the October 2003
16 CMP meeting in question was a member of the Service Delivery organization whose sole purpose
17 was to keep abreast of information regarding order processing issues.

18 36. Furthermore, McLeod notes that CMP documentation expressly states that ICAs and
19 associated amendments trump anything that is developed under the CMP process. The CMP
20 documentation also states that "no ICA amendment will be required to implement measured power . .
21 . ." Yet, McLeod notes, Qwest later changed its mind and determined an Amendment was required.
22 McLeod argues it is illogical to believe that the documentation of the CMP process some nine months
23 prior to the Amendment should be given weight as to Qwest's intentions, when that documentation
24 states that no amendment is required.

25 37. McLeod also relies on the statement set forth in Qwest's own CMP document, "Note:
26 in cases of conflict between the changes implemented through this notification and any CLEC
27 interconnection agreement, whether based on the Qwest SGAT or not, the rates, terms and conditions

28

⁴ The CMP is a forum in which Qwest provides information to CLECs, and the parties can engage in discussions, about
Qwest products and changes to products that Qwest offers.

1 of such interconnection agreement shall prevail as between Qwest and the CLEC party.” (Ex. WRE-
2 2)

3 38. Furthermore, McLeod argues the early language pertaining to power measurement in
4 the CMP process is not found in the Amendment.

5 39. McLeod states the CMP document discussed a “Capacity Charge” and indicates that
6 it would not be impacted by measured-use billing, while the Amendment does not include a reference
7 to “Capacity Charge” and does not exclude Power Plant from the elements billed on a measured-use
8 basis as the language in Qwest’s Product Catalogue (“PCAT”) does. (Ex Q-1 Response Testimony of
9 William Easton) McLeod argues that the Commission should presume these omissions in the
10 Amendment are intentional and instructive as to the intent of the Amendment.

11 40. Similarly, McLeod argues that Qwest’s reliance on spreadsheets prepared by McLeod
12 is misplaced.⁵ Although Qwest asserts the spreadsheets which Qwest claims purport to show that
13 McLeod intended that only the usage rate element would be billed on a measured-use basis, McLeod
14 asserts the spreadsheets were prepared by an engineering group comprised of members who were not
15 rate specialists and who were only summarizing data in Qwest’s initial spreadsheets.

16 Cost Study

17 41. McLeod also argues that Qwest’s reliance on its 2001 Collocation Cost Study is
18 misplaced. McLeod argues that although the test column of the cost study uses the term “as ordered,”
19 the substance of the Arizona cost study shows that the rate was developed to recover the DC power
20 plant investment based on amps used. (Ex M-7, Supplemental Direct Testimony of Michael Starkey
21 at 2-3)

22 42. McLeod believes that of greater significance is that the cost study labels are obviously
23 not controlling for although the cost study schedule provides that “DC Power Usage More than 60
24 amps” will be billed on an “as ordered” basis, given that McLeod and Qwest agree that the
25 Amendment changed that application for “Usage More Than 60 amps” on a going forward basis to be
26 applied on a measured-use basis. McLeod argues that a comment made by Qwest in its 2001 cost

27 _____
28 ⁵ At the time the Amendment was being proffered, McLeod performed an analysis of the expected savings of the proposed change.

1 study is not controlling on the meaning of the 2004 Amendment.

2 43. McLeod argues that no Commission order supports Qwest's application of the power
3 plant charge on an "as ordered" basis. According to McLeod, such interpretation is inconsistent with
4 how the cost study develops the power plant rate. (Ex M-7 Starkey Supplement Direct at 2-3)
5 McLeod notes that the cost study develops the power plant rate by using the amount of power plant
6 capacity actually "used", and that applying the Commission-approved rate based on the size of cable
7 ordered results in Qwest over-recovering power plant costs. According to McLeod, using usage to
8 set the rate, and then applying it to a larger measure of the quantity of which a CLEC is billed results
9 in a mismatch, and is inequitable.

10 44. McLeod argues further that in Phase II of the Cost Docket (T-00000A-00-0194) the
11 Commission did not expressly approve that the DC power plant rates are to be applied based on the
12 size of the power cables. McLeod states that the Excel spreadsheet on which Qwest relies and that
13 refers to cable size billing is meaningless because it was not part of the ICA, nor did the Commission
14 reference it when it approved the rates.

15 Engineering and Economic Support

16 45. McLeod argues that Qwest's interpretation of the Amendment to allow it to bill
17 McLeod for DC power plant based on distribution cable size amperage is inconsistent with sound
18 engineering principles and the proper sizing of Qwest's DC power plant. Qwest maintains that the
19 proper manner to recover its power plant investments is by means of a charge assessed on the size of
20 the CLEC's order for its power cables. McLeod argues, however, that in fact, Qwest does not size
21 its power plant on the basis of CLEC orders for distribution cables, but rather sizes its power plant
22 based on the peak usage under normal operating conditions (List 1 drain) of the entire central office
23 (including the List 1 drain of both Qwest and CLEC equipment).⁶ Thus, McLeod argues the proper
24 manner for Qwest to recover its investment in power plant is by assessing charges on the various
25 users of the power plant based on their relative power plant usage.

26 46. McLeod charges that Qwest's interpretation of how power plant capacity is to be
27

28 ⁶ List 1 drain is the peak usage under normal operating conditions. List 2 drain is the peak drain under worse case conditions of voltage, traffic, etc. List 2 drain is larger than List 1 drain.

1 billed is contrary to Qwest's own technical publications which show that "batteries and chargers"
2 (power plant) are to be sized based upon the List 1 drain, but that feeder cables (not power plant)
3 should be sized to the larger List 2 drain. McLeod identifies five separate Qwest engineering
4 manuals used to size DC power plant, which McLeod claims all focus on the List 1 drain, and not the
5 List 2 drain for sizing power plant.

6 47. In response to Qwest claims that it has to use List 2 drain (based on the size of the
7 power cable) to size its power plant because it does not know the CLECs' List 1 drains (actual
8 usage), McLeod asserts there are good reasons for McLeod to size its power cables larger than it
9 would ever require under normal operating conditions. (Ex M-3, Morrison Dir at 29-31) McLeod
10 argues that if Qwest relied on McLeod's power cable sizing as need for equivalent power plant
11 capacity, Qwest did so without consulting McLeod, in contravention of Qwest's technical manuals
12 and in contravention of sound engineering practices which dictate that power distribution cables far
13 exceed any expected normal load amperage.

14 48. McLeod states that Qwest never asked McLeod for its List 1 drain information, nor
15 provided any means for the CLEC to provide this information during the collocation application
16 process. McLeod asserts that Qwest's reliance on the amperage of the power cables to determine the
17 power plant capacity they require is incorrect and results in too much power plant being engineered.
18 McLeod argues Qwest should not be rewarded for failing to gather the necessary information.

19 49. McLeod argues that Qwest's claim that it cannot size DC power plant to List 1 drain
20 for CLECs because it does not have the List 1 drain information for all CLEC collocated equipment
21 is inconsistent with the facts. McLeod states that Qwest uses some of the same pieces of equipment
22 that are housed in a typical McLeod collocation for which Qwest knows the List 1 drain. But further,
23 the List 1 drain for equipment can be obtained from the manufacturer. McLeod states that Qwest's
24 manuals require it to make "every effort . . . to obtain the List 1 drains for suppliers." Where it
25 cannot, the technical publications explain that a List 1 drain proxy can be derived based on the known
26 List 2 drain data.

27 50. McLeod states that despite several large distribution cable orders placed by McLeod in
28 Qwest central offices, Qwest virtually never augmented its power plant to accommodate the List 2

1 drain. (Ex M-4, Morrison Rebuttal at 46-48).

2 51. McLeod believes that Qwest's claim that it must have the unique capacity available to
3 meet each CLEC's maximum List 2 demand is false. According to McLeod, central office power
4 plant capacity is pooled and shared by all telecommunications equipment in the central office, and
5 thus it is not possible for Qwest to "reserve" or "assign" a given level of power plant capacity for any
6 individual user(s). McLeod argues that all equipment in the central office has equal access to the
7 power plant capacity on an "as needed" basis, and as such, the cost of that equipment is best
8 distributed based upon the relative use of the equipment by each user on an "usage" or "as measured"
9 basis as opposed to an "as ordered" basis.

10 52. Further, McLeod asserts that the method McLeod uses to bill collocators in its own
11 central offices is irrelevant because McLeod and Qwest are not subject to the same legal requirements
12 for providing collocators access to DC power. McLeod notes that it is not subject to Section 251(c)
13 of the Telecommunications Act of 1996 (the "1996 Act") which requires Qwest to provide
14 nondiscriminatory access to DC power.⁷

15 Discrimination

16 53. Finally, McLeod argues that agreements are interpreted in light of the body of law
17 existing at the time the agreement was executed. Both the Act and Arizona law requires non-
18 discriminatory collocation, and competitive parity between ILECs and CLECs. In the *Local*
19 *Competition Order*⁸, the FCC provided that:

20 The duty to provide unbundled network elements on "terms, and
21 conditions that are just, reasonable, and nondiscriminatory" means, at a
22 minimum, that whatever those terms and conditions are, they must be
23 offered equally to all requesting carriers, and where applicable, they must
be equal to the terms and conditions under which the incumbent LEC
provisions such elements to itself.

24 54. McLeod asserts that courts recognize that ICAs are not traditional contracts but that an
25 ICA is an instrument arising in the contract of ongoing facilities competition and ensure that carriers

26 ⁷ McLeod states that it does not bill collocators for DC power the same way that Qwest bills McLeod. McLeod explains
27 that it asks collocators for the amount of power they anticipate needing and for which they will be billed. (McLeod Reply
Brief at 37-38)

28 ⁸ *Implementation of the Local Competition Provision in the Telecommunications act of 1996*, CC Docket No. 96-98,
FCC 96-325, First Report and Order, 11 FCC Rcd 15499 ¶ 315. (1999) ("*Local Competition Order*")

1 are not treated in a discriminatory manner. McLeod argues it must be presumed that the ICA and its
2 Amendment implement the Act and comparable state laws. Thus, the Amendment must be
3 interpreted consistent with state and federal requirements of nondiscrimination. Such interpretation,
4 McLeod argues, would not be an impermissible modification as Qwest argues.

5 55. McLeod argues that Qwest ignores the principle of contract interpretation that
6 provisions of a contract must be harmonized. McLeod claims the ICA is clear that Qwest must
7 provision collocation power on terms no worse than the terms Qwest provides power to itself:

8 Part D, Section (D)2.1 with respect to any technical requirements or
9 performance standards specified in this Section, US WEST shall provide
10 Collocation on rates, terms and conditions that are just, reasonable and
11 non-discriminatory.

12 56. McLeod believes that because Qwest provisions power plant to itself based on the List
13 1 drain, Qwest's interpretation of the Amendment as permitting it to bill McLeod based on List 2
14 drain creates an impermissible inconsistency within the ICA.

15 57. McLeod asserts the prohibition against discrimination in Section 251 of the Act is
16 unqualified. In ¶218 of the *Local Competition Order*, the FCC held "by providing interconnection to
17 a competitor in a manner less efficient than an incumbent LEC provides itself, the incumbent LEC
18 violates the duty to be "just" and "reasonable" under section 251(a)(2)(D). Paragraph 315 of the
19 *Local Competition Order* provides:

20 The duty to provide unbundled network elements on "terms, and
21 conditions that are just, reasonable, and nondiscriminatory" means, at a
22 minimum, that whatever those terms and conditions are, they must be
23 offered equally to all requesting carriers, and where applicable, they must
24 be equal to the terms and conditions under which the incumbent LEC
25 provisions such elements to itself.

26 58. Thus, McLeod asserts that the requirement to assure reasonable and unconditional
27 nondiscriminatory physical collocation, the Commission's decision interpreting the Amendment must
28 reflect terms and conditions for access to DC Power that will achieve competitive parity between
29 Qwest and McLeod.

30 59. McLeod argues the record shows that Qwest is unlawfully discriminating against

1 McLeod by: 1) not making any effort to engineer power plant for CLECs like it does for itself; and 2)
2 by charging for power plant based on amperage “as ordered” while it imputes power plant costs for
3 itself at no greater than the List 1 drain.

4 **Qwest’s Position**

5 60. Qwest asserts that the Amendment only applies to the usage component of the power
6 charges, and not the Power Plant rate element. Qwest argues such interpretation is consistent with
7 the language of the Amendment, with information provided to all CLECs, including McLeod, prior to
8 its execution, and the evidence at the time McLeod entered into the Amendment shows that McLeod
9 did not seek an amendment to reduce the power plant charge and did not anticipate that the
10 Amendment would do so.

11 61. Furthermore, Qwest states the Commission approved the interconnection agreement
12 and specifically approved the Amendment. The rates contained in Exhibit A to the parties’ ICA were
13 approved in Docket No. T-00000A-00-0194, Phase II of the Cost Docket. Qwest asserts that once the
14 parties mutually assented to the terms of the ICA, the contract and rates have the “binding force of
15 law” under federal law and cannot be changed.

16 62. Qwest notes that the McLeod witnesses who testified that McLeod had an expectation
17 that the Amendment would result in measured billing for the power plant rate were retained experts
18 who were not employees of McLeod and who did not participate in the negotiations for or execution
19 of the Amendment. Qwest states that the only McLeod employee to testify at the hearing confirmed
20 that McLeod’s only issue prior to entering into the Amendment was a concern that rates not go up.
21 (Tr at 192-193) Qwest asserts that internal McLeod documentation establishes that no savings on
22 the Power Plant portion of the charge were anticipated. Further, Qwest notes that McLeod admitted
23 it did not reach its current interpretation of the Amendment until nine months after its execution in
24 May 2005. (Tr at 268)

25 **Amendment Language**

26 63. Qwest notes that its interpretation of the Amendment is the simplest, most
27 straightforward interpretation, as it gives effect to the entire agreement and requires no extrinsic
28 evidence. According to Qwest, the Amendment mentions “DC Power Usage Charge” five times and

1 the “usage rate” another two times, with no mention of a “power plant” charge. The Power Usage
2 and Power Plant charges are reflected as separate charges in Exhibit A. Thus, Qwest argues the
3 Amendment only affects the usage charge, and was not intended to affect the way the power plant
4 charge was to be applied.

5 64. Qwest argues the Amendment’s language read in the context of the entire agreement,
6 plainly excludes the power plant rate from the rates that would be affected by the Amendment.
7 According to Qwest, Section 1.2 of the Amendment describes generally how the measuring process
8 would be implemented. The first sentence of section 1.2 of the provides in relevant part that “the
9 power usage rate [for orders of 60 amps or less] reflects a discount from the rates for those feeds
10 greater than sixty (60) amps.” Qwest notes that Exhibit A to the underlying ICA indicates a rate of
11 \$3.64 per amp ordered for power usage for orders of 60 amps or less at item 8.1.4.1.2, and a rate of
12 \$7.27 per amp ordered for power usage for orders of more than sixty amps at item 8.1.4.1.3. This,
13 Qwest states, reflects a discount from rates for those feeds greater than sixty amps. In contrast,
14 Qwest notes, the rate for power plant is the same for all levels of ordered amperage, and does not
15 reflect a discount from the rate for “those feeds greater than sixty (60) amps.”

16 65. In addition, Qwest notes that later in Section 1.2, the Amendment indicates that
17 “Qwest will reduce the monthly usage rate to CLEC’s actual use” based on the measurements taken.
18 The reference to “usage rate” contains no reference to a power plant rate, and is also in the singular,
19 which indicates only one charge or rate would be affected. Qwest argues the plain meaning of “usage
20 rate” can only refer to the Power Usage Charge at item 8.1.4.1.3. Qwest asserts that including
21 “power plant” rates based on this reference simply does not make sense.

22 66. Qwest notes further that the reference to “Charge” in the Amendment is in the
23 singular, and if the parties had intended more than one charge to be impacted, they would have
24 referenced “Charges”. Qwest states its interpretation gives proper effect to the phrasing the parties
25 actually used, while McLeod’s interpretation ignores, or gives no effect to, the singular reference to
26 “Charge” throughout the Amendment. McLeod’s interpretation, Qwest argues, would violate a
27 cardinal principle of contractual interpretation.

28 67. In response to McLeod’s argument that the reference to “-48 Volt DC Power Usage

1 Charge” refers to the rates under the heading “Power Usage” in Exhibit A, Qwest notes that Section
2 (A) 3.28 of the ICA specifically provides that headings are for convenience or reference only and “in
3 no way define, modify or restrict the meaning or interpretation of the terms”. Qwest believes an
4 examination of Exhibit A shows that items 8.1.4 (“Power Usage”) and 8.1.4.1 (“DC Power Usage,
5 per ampere, per month”) are headings. No charge is associated with either item, the charges for
6 Power Plant and Usage are indented beneath these headings. Qwest states that in responding to
7 Qwest’s discovery requests, McLeod itself refers to these items as “headings”.

8 68. Finally, Qwest points out that Section 2.2.1 of the Amendment indicates that the
9 “Charge” to be modified “[a]pplies on a per amp basis to all orders of greater than sixty (60) amps.”
10 Qwest states that the Power Plant charge in Exhibit A clearly applies to all power orders, regardless
11 of whether the orders are less than or greater than 60 amps. In contrast, Qwest notes there are two
12 different Power Usage charges: one for orders less than 60 amps (item 8.1.4.1.2.1) and one for orders
13 greater than 60 amps (item 8.1.4.1.2.2). Qwest states this language would be rendered meaningless if
14 the “charge” being modified applied equally regardless of whether those orders were greater or less
15 than 60 amps.

16 CMP and PCAT

17 69. Qwest claims it made it very clear to all CLECs, including McLeod, through the CMP
18 and the Product Catalog (“PCAT”) what the Amendment would and would not accomplish. The
19 CMP forum includes discussions and information about Qwest’s products or changes to products that
20 Qwest offers. The changes are typically accompanied by a PCAT made available on Qwest’s
21 website.

22 70. Qwest offered several documents on its CMP website regarding the power measuring
23 product and associated changes, and notified 16 McLeod employees of their availability. Qwest
24 offered evidence of an exchange between Qwest and another CLEC in the CMP concerning how
25 Qwest would measure power. (Ex Q-1, Easton testimony, Ex WRE-2) Another CLEC posed the
26 following question:

27 For the following question, assume the collection is in AZ, we’re
28 ordering 120 Amps, the DC Power measurement is 53, the Power
Plant per amp rate is \$10.75, the power usage < 60 amps, per amp
is \$3.64 and Power Usage > 60 amps, per Amp is \$7.27. Currently

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we are billed 120 Amps at \$10.75 and 120 Amps at \$7.27. Per this proposal I interpret that we would be billed 120 Amps at \$7.27. Per this proposal I interpret that we would be billed 120 Amps @\$10.75 and 53 Amps @3.64(sic). Likewise, if the new DC Power Measurement was 87, we would be billed 120 Amps at \$10.75 and 87 Amps at \$7.27. Is that correct?

Qwest responded:

The rate that will be applied to the measured amount will be dependent on the amount that was ordered not the amount measured. In other words you would be billed 120 Amps at \$10.75 per amp and the measures of 53 amps and 87 amps would have the usage rate or (sic) \$7.27 per amp because the ordered amount was greater than 60 amp (120). Qwest Opening Brief at 15.

71. Qwest claims that the PCAT, which followed the CMP process, delineated and defined the "Capacity Charge" to "recover[] the cost of the capacity of the power plant available for your use," and the "Usage Charge" to "recover[] the cost of the power used." (Ex Q-1, WRE-1, p 1) Qwest asserts that the PCAT language is substantively identical to the Amendment and specifically separates the definitions of the -48 DC Volt Power Usage Charge from the definitions of the -48 Volt Capacity Charge.

72. Qwest argues that if, as McLeod claims, it never saw the CMP and PCAT documents McLeod's failure was unreasonable, such that it had reason to know of Qwest's interpretation and Qwest had reason to suppose that McLeod was aware of Qwest's expression of intent. Relying on the RESTATEMENT (SECOND) CONTRACTS § 201(2)(b),⁹ Qwest's argues the Commission only need resolve the question of whether McLeod had "reason to know the meaning attached by" Qwest. Qwest states further that evidence is clear that McLeod never communicated the intent it now claims to Qwest prior to the Amendment's execution. (Tr at 229, 4-15)

⁹ Section 201 of the RESTATEMENT (SECOND) OF CONTRACTS provides:
(1) Where the parties have attached the same meaning to a promise of term thereof, it is interpreted in accordance with that meaning.
(2) Where the parties have attached different meanings to a promise or agreement or a term thereof, it is interpreted in accordance with the meaning attached by one of them if at the time the agreement was made
a. That party did not know of any different meaning attached by the other, and the other knew the meaning attached by the first party; or
b. That party had no reason to know of any different meaning attached by the other, and the other had reason to know the meaning attached by the first party.
(3) Except as stated in this Section, neither party is bound by the meaning attached by the other, even though the result may be a failure of mutual assent.

1 73. Qwest further argues the evidence shows that McLeod found power charges and
2 understanding the provisions of the ICA were important to it. (Tr 192 – 193) Thus, Qwest argues,
3 with such importance given the issue, McLeod should have given the matter sufficient interest to
4 discover Qwest’s intent. Thus, Qwest states it cannot be burdened with McLeod’s unexpressed intent.

5 74. Qwest asserts that the evidence shows that not only did McLeod never express an
6 intent contrary to Qwest’s prior to executing the Amendment, but that McLeod’s understanding of the
7 Amendment at the time was that the Amendment would only affect the power usage charge and not
8 the power plant charge. Qwest notes that no McLeod communications relating to the Amendment
9 prior to its execution contains any reference to potential savings on power plant charges. Qwest
10 states such communications show a specific understanding that the Amendment would only affect
11 power usage charges. A spreadsheet prepared by McLeod employees at the time tracked savings
12 only for the Power Usage Charge rate element. McLeod admits that McLeod “never calculated any
13 potential savings on the power plant charges” until an audit performed around May 2005, several
14 months after the Amendment was executed. (Tr at 245-246)

15 Cost Study

16 75. Qwest does not believe the cost study is relevant to determining the central issue of
17 this case, which is the interpretation of the contract. The collocation cost study was filed in 2000 and
18 Qwest believes it has no connection to the parties’ discussions of the Amendment in 2004. Qwest
19 notes that McLeod does not claim that it relied on the cost study, only that the study supports its
20 interpretation of the Amendment. In any case, Qwest argues the cost study, in fact, supports Qwest’s
21 position.

22 76. Qwest argues its cost study requested that the Power Plant rates would be charged on a
23 “per amp ordered” basis, and that the Commission reviewed Qwest’s requested rates in rate structure
24 in Phase II of Docket No, T-00000A-00-0194 prior to approval of those rates.

25 77. Qwest’s cost study disclosed that the rates for Power Plant would be based on the size
26 of the feeds that the CLECs orders. The comment attached to Qwest’s cost study for Power Usage
27 provides:

28 1.4 Power Usage
 Recurring Monthly charge

1 There are recurring monthly charges for power usage. Power usage
2 includes the cost of purchasing power from the electric company and the
3 cost of the power plant. Power usage is broken down into three rates:

- 4 1. A rate for the use of the power plant that is charged based on
5 the size of the power feed of (sic) feeds that the CLEC orders;
- 6 2. A flat monthly power usage rate for each type of power feed
7 that is smaller than 100 AMPs; and
- 8 3. A per AMP rate for power usage that is delivered on power
9 feeds that are larger than 60 AMP.

10 The power plant consists of the backup power generator, rectifiers, power
11 boards, battery distribution frame boards ("BDFB's); batteries and the
12 cable and support structure that connects all these components. The power
13 plant generates and stores power for use during potential outages converts
14 standard AC power to the DC power used by the telecommunications
15 equipment and distributes the power to those areas of the central office
16 where the power is to be used. The monthly charge reflects the capital and
17 maintenance costs associated with maintaining this system. The monthly
18 charge is based on the size of the power feed requested by the CLEC. (Ex
19 Q-2, Million testimony, ex TKM-1 at p 5 of 8)

20 78. Qwest asserts the power plant rate and method of charging were confirmed when the
21 Commission approved Qwest's power costs in Phase II of the Cost Docket in Decision No. 64922
22 (June 12, 2002). Qwest states that in order to approve the requested rates and rate design, the
23 Commission necessarily concluded that Qwest's power plant rate was TELRIC-compliant, as well as
24 just, reasonable and non-discriminatory. Qwest states that McLeod could have argued in the Phase II
25 Cost Docket that charging for the power plant based on amps ordered was not just and reasonable and
26 non-discriminatory, but that McLeod did not so argue. (Ex Q-2, Million testimony at 6)

27 79. Qwest argues that the Commission's Orders in Docket No. T-00000A-00-0194
28 preclude both the contract claims and the "discrimination" claims raised by McLeod in its Complaint.
Because the Commission approved the power plant rates, at as-ordered levels, in both the Cost
Docket and in Qwest's compliance filings, Qwest argues that McLeod's Complaint is a collateral
attack on approved rates. Qwest asserts the cost study shows that the power plant rate is a lawful
rate, approved after full disclosure and is evidence of the parties' intent regarding costs.

80. Qwest contends the cost study is clear that the Power Plant rate element is a capacity
charge, and thus consistent with charging on a per-amp ordered basis. Qwest asserts there is no basis
to claim the cost study supports charging the power plant rate element on a usage basis.

81. Qwest claims that McLeod's interpretation of the cost study, as allowing charging

1 power plant on a measured basis, violates TELRIC costing and pricing principles.

2 Engineering

3 82. Qwest states it makes the ordered amount of power plant capacity available to
4 McLeod if McLeod should ever demand it. (Ex Q-3, Ashton Rebuttal at 7) Qwest asserts that it
5 makes decisions about building power plant capacity based on the need to be able to provide the
6 ordered amount. Qwest argues that McLeod's attempts to pay for less than the ordered amount of
7 capacity should be rejected as an "after-the-fact" challenge to the DC Power Plant rate and not an
8 interpretation of the Amendment itself.

9 83. Qwest argues that its interpretation of the Amendment is consistent with Qwest's
10 actual network and with McLeod's own charges for power plant when it allows collocation in its own
11 facilities. Qwest asserts that the evidence shows that McLeod's collocators must report and be billed
12 for "usage" at the level of the desired cable size. (Tr at 226-228)

13 84. Qwest argues it is reasonable for Qwest to size its power plant based on CLEC power
14 orders. Qwest states it does not know the List 1 drain of the CLEC equipment, is not familiar with all
15 of the equipment the CLECs use and cannot know how quickly the CLECs will grown or when to
16 anticipate the amount of power they may need.

17 85. Qwest notes that 47 CFR § 51.323(f)(3) requires that "[w]hen planning renovations of
18 existing facilities or constructing or leasing new facilities, an incumbent LEC shall take into account
19 projected demand for collocation of equipment." Qwest argues that when constructing power plant
20 facilities, Qwest is required to take into account the fact that the DC power demands of McLeod and
21 other collocators will not always be at current, measured levels.

22 86. Qwest asserts that charging for power plant "as consumed" as opposed to "as ordered"
23 would allow McLeod to pay for less capacity than is available to McLeod for its use.

24 87. Qwest contends that if McLeod is billed for power plant on the basis of actual
25 measured power usage, that actual measured usage will fall below List 1 drain. Qwest asserts that
26 List 1 drain can be approximated by the busy day/busy hour drain on the power plant during normal
27 operations, but unless Qwest is able to take a measurement at the exact time of the List 1 drain, the
28 number of amps measured will be less than the List 1 drain. The agreement requires Qwest to

1 measure at least twice, and up to four times, per year, which guarantees that the measured amounts
2 will not always be the List 1 drain. Qwest points out that McLeod's own witness does not endorse
3 using actual measurements to size DC power plant. (Tr at 173 – 174)

4 Discrimination Charge

5 88. Qwest argues that it is not violating the language of the Amendment and is not
6 discriminating against McLeod by applying the Power Plant rate on an as-ordered basis. Qwest
7 argues that McLeod's discrimination claim fails because: 1) McLeod agreed to pay the Power Plant
8 charges on an as-ordered basis; 2) there is no evidence to establish that Qwest treats McLeod
9 differently from other similarly situated CLECs; 3) Qwest makes available to CLECs the amount of
10 power plant capacity they ordered and charges in accordance with Commission-approved rates; 4)
11 McLeod charges its collocators for power plant capacity in accordance with the size of their power
12 cables in the same way that Qwest's Power Plant rates are structured; 5) McLeod has failed to take
13 advantage of Qwest's offer to re-fuse its existing power cables in order to lower the "ordered
14 amount" of capacity; and 6) the Commission cannot and should not make conclusions about
15 discriminatory impacts based on the experience of only one CLEC. (Qwest Reply Brief at 22-23)

16 89. Qwest asserts that McLeod consented to the application of the power plant rates on an
17 as-ordered basis in the ICA. Qwest asserts further there is no evidence that McLeod tried to obtain a
18 different rate or rate design at the time the contract was formed, that Qwest failed to apply the rate as
19 originally agreed or that Qwest changed the way it operates between the execution of the ICA and the
20 present. Qwest states that it does not agree that the Power Plant rate is discriminatory, but assuming,
21 *arguendo*, that it is, McLeod's voluntary agreement to that rate structure, makes it non-
22 discriminatory. Qwest looks to Section 252(a)(1) of the 1996 Act which provides that "an incumbent
23 local exchange carrier may negotiate and enter into a binding agreement with the requesting
24 telecommunications carrier or carriers without regard to the standards set forth in subsection (b) and
25 (c) of section 251 of this title." Qwest notes that subsections (b) and (c) of Section 251 contain the
26 non-discrimination standards upon which McLeod relies.

27 90. In response to McLeod's claim that the ICA prohibits discrimination in any form and
28 requires Qwest to provide power plant capacity to McLeod at parity with how it provides such

1 capacity to itself, Qwest asserts that Qwest does not “charge” itself power plant rates. It engineers for
2 its own needs at List 1 drain. Qwest engineers for CLEC power plant needs at a superior level, not
3 merely at parity, and these terms and conditions are not less favorable for the CLECs, and provides
4 the CLECs with the power plant capacity they order and expect.

5 91. Qwest asserts that because it owns the central office in which CLECs are collocated it
6 is difficult to draw comparisons with how Qwest provisions collocation to itself. Nevertheless,
7 Qwest claims the provision of power plant capacity to itself is not preferential vis-a-vis its provision
8 of capacity to CLECs. Qwest argues that the law does not require that Qwest treat McLeod in a
9 manner that is identical to how it treats itself. If anything, Qwest asserts it makes available to CLECs
10 a higher level of confidence and security that the requested power plant capacity will be available,
11 which it argues does not constitute granting a preference to itself. Qwest claims it provided McLeod
12 full disclosure of how the new power plant rates would be applied and received McLeod’s consent.
13 Qwest asserts that requiring CLECs to pay for the power plant capacity made available to them does
14 not disadvantage them, especially since Qwest offers a way to reduce the ordered amount.

15 92. Qwest argues that its collocation power provisioning is non-discriminatory because
16 the CLECs are getting what they pay for, and paying for what they get. Qwest makes available to
17 CLECs the amount of power plant capacity that they order, and Qwest then charges for the power
18 plant in accordance with Commission-approved rates. Qwest asserts that both it and CLECs incur
19 power plant costs relative to the amount of power plant capacity made available to them. In the real
20 world, Qwest incurs costs for the spare capacity of the plant, and costs for the central office to house
21 the plant, and costs associated with planning for future power needs, which all benefit the CLECs in
22 some non-quantifiable way. Thus, Qwest claims there is simply insufficient basis to find that
23 Qwest’s pricing structure for power plant is discriminatory.

24 93. Qwest asserts that although McLeod says it bills on a “usage” basis, the evidence in
25 this proceeding shows that “usage” is really “size of the cable feed.” (Tr at 225-228) Qwest points to
26 Exhibit Q14 to show that in order to obtain a power feed or cable of a certain size, McLeod’s
27 collocators must report usage at X amps in order to obtain a cable size of X amps. Thus, Qwest
28 believes that McLeod’s claim that it offers usage-based power pricing is illusory.

1 94. Qwest argues that the Commission should not make decisions about a pricing scheme
2 outside of a cost docket with broad participation. McLeod's power ordering practices may or may
3 not be reflective of what other CLECs do, and Qwest states McLeod may be over-sizing its cables,
4 and may not be reflective of the larger CLEC community.

5 **Discussion and Resolution**

6 95. We find that the evidence supports Qwest's interpretation of the meaning of the
7 Amendment, i.e. that the Amendment only changed the method of billing for power usage greater
8 than 60 amps, and did not change the method of billing for power plant capacity. This interpretation
9 is supported by the language of the Amendment itself, as further supported by extrinsic evidence.

10 96. We find further that McLeod has not demonstrated that the Amendment is
11 discriminatory against McLeod.

12 97. Section 1.2 of the Amendment appears to address only the power usage rate.
13 However, ambiguity is introduced into the Amendment from the language and interrelationship of
14 several provisions in section 2 of the Amendment. Section 2.1 provides in part: "The DC Power
15 Usage Charge is for the capacity of the power plant available for CLECs use." Section 2.2 provides:
16 "The -48 Volt DC Power Usage Charge is specified in Exhibit A of the Agreement and applies to the
17 quantity of -48 Volt Capacity specified by the CLEC in its order." Section 2.2.1 provides in relevant
18 part: "Qwest will initially apply the -48 Volt DC Power Usage Charge from Exhibit A of the
19 Agreement to the quantity of power ordered by CLEC. Qwest will determine the actual usage at the
20 power board as described in Section 1.2."

21 98. The only time the term "-48 Volt DC Power Usage" appears in Exhibit A is as a
22 heading, designated as line item 8.1.4.1. There is no rate element associated with item 8.1.4.1, it is
23 clearly a heading, under which there appear two distinct charges: "Power Plant" and "Power Usage."

24 99. Qwest's interpretation, that the Amendment only affects the Power Usage component
25 for cables greater than 60 amps, is consistent with the language of the Amendment. However,
26 because Section 2.2.1 appears to reference "as measured billing" to the entire scope of "-48 Volt DC
27 Power Usage" which encompasses both the Power Plant and Power Usage rate elements, we cannot
28 find that the Amendment is without ambiguity, or that McLeod is wrong in its interpretation solely by

1 looking at the language of the Amendment.

2 100. Extrinsic evidence supports Qwest's interpretation.

3 101. Prior to entering into the Amendment, Qwest billed McLeod for DC Power based on
4 two separate charges, one for capacity and one for usage. Each were billed on an "as ordered" basis.
5 McLeod was, or should have been aware, there were two separate charges. When it was analyzing
6 the Amendment, and concerned about the effect it would have on its power costs, McLeod focused
7 solely on the Power Usage portion of the charges. McLeod did not object to Qwest's billing method
8 until several months after the Amendment was executed. There is no evidence that McLeod had any
9 belief that the Power Plant portion of the charges would change under the Amendment, but there is
10 evidence that McLeod understood there would be a change in the Power Usage charge for orders
11 greater than 60 amps. In analyzing the affect of the Amendment, McLeod personnel prepared a
12 spreadsheet that focused solely on the Power Usage Charge.

13 102. None of the McLeod witnesses reviewed the Amendment prior to its execution. *See*
14 *Tr. Vol. I, pp. 34, 35 (Starkey), pp. 103, 104 (Morrison), Tr. Vol. II, p. 268 (Spocogee)*. According to
15 *Ms. Spocogee*, the first time any McLeod employees did a cost analysis of the Amendment was
16 months after the parties executed the Amendment. *Tr. Vol. II, p. 268 (Spocogee)*. Nor were there
17 any negotiations between Qwest and McLeod regarding the amendment. *Tr. Vol. I, p. 35 (Starkey)*.

18 103. The evidence surrounding Qwest's CMP and PCAT indicate that Qwest had an intent
19 that only the application of the Power Usage rate element would change. Other than a minor conflict
20 concerning whether an amendment would be required to effect the changes as discussed in the CMP,
21 there is no evidence that Qwest had an intent prior to the execution of the Amendment other than its
22 current interpretation of the Amendment. The argument of whether an Amendment would be
23 required is not determinative of the ultimate disposition of the intent of how charges would be
24 applied.

25 104. The collocation cost study that was submitted in Phase II of the Cost Docket is
26 consistent with Qwest's interpretation of how McLeod has been billed under the ICA and
27 Amendment. The rates were developed on an "as-ordered" basis. However, the 2001 cost study has
28 little bearing on what Qwest and McLeod intended when they entered into the Amendment.

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IT IS FURTHER ORDERED that McLeodUSA Telecommunications Services, Inc. shall pay to Qwest Corporation the amounts withheld in connection with the disputed collocation DC power charges.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

David S. Ellison
CHAIRMAN
Walter Miller
COMMISSIONER

Debra H. Hatch-Miller
COMMISSIONER
Gary L. Purr
COMMISSIONER

IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 28 day of August, 2007.

Dean S. Miller
DEAN S. MILLER
INTERIM EXECUTIVE DIRECTOR

DISSENT *[Signature]*

DISSENT _____

1 SERVICE LIST FOR: MCLEODUSA TELECOMMUNICATIONS
2 SERVICES, INC. V. QWEST CORPORATION

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