

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition for Arbitration
of an Interconnection Agreement between

CHARTER FIBERLINK WA-CCVII, LLC

and

QWEST CORPORATION

Pursuant to 47 U.S.C. Section 252.

DOCKET NO. UT-083041

REBUTTAL TESTIMONY

OF

ALLISON COSWAY

ON BEHALF OF

CHARTER FIBERLINK WA-CCVII, LLC

November 17, 2008

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1 **I. INTRODUCTION**

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3 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

4 A. My name is Allison Cosway. My business address is 12405 Powerscourt Drive,
5 St. Louis, Missouri, 63131. I am filing this testimony on behalf of Charter.

6 **Q. ARE YOU THE SAME ALLISON COSWAY WHO FILED DIRECT**
7 **TESTIMONY IN THIS PROCEEDING?**

8 A. Yes, I am.

9 **Q. ON WHOSE BEHALF WAS THIS TESTIMONY PREPARED?**

10 A. This testimony was prepared on behalf of Charter Fiberlink WA-CCVII, LLC
11 (“Charter”).

12 **Q. HAVE YOU REVIEWED QWEST’S DIRECT TESTIMONY**
13 **CONCERNING DISPUTED ISSUE NUMBER 4 (INSURANCE**
14 **REQUIREMENTS)?**

15 A. Yes, I have reviewed the testimony offered by Qwest witness Renee Albersheim
16 regarding disputed issue number 4, concerning the insurance provisions of the
17 draft Interconnection Agreement.
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19 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

20 A. This testimony responds to the direct testimony of Ms. Albersheim regarding the
21 disputed insurance terms.
22

1 **II. DISCUSSION**

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3 **ISSUE 4: Should Qwest be able to dictate the insurers that Charter must utilize, in**
4 **part by requiring that such insurer maintain a specific "ratings" or standard?**

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6 **Q. IN YOUR DIRECT TESTIMONY YOU DESCRIBED THE**
7 **DISAGREEMENT THAT EXISTS BETWEEN THE COMPANIES**
8 **SURROUNDING ISSUE 4. AFTER REVIEWING QWEST'S DIRECT**
9 **TESTIMONY ON THIS ISSUE, DO YOU BELIEVE THAT**
10 **DESCRIPTION IS STILL ACCURATE?**

11 **A.** Yes. I continue to believe that this issue deals with whether Qwest should be able
12 to dictate the insurance carrier that Charter uses by requiring that the insurer
13 maintain a specific industry rating pre-determined by Qwest. Charter's position is
14 that Qwest should not have the right to force Charter to use a specific carrier that
15 has a particular industry rating. Instead, the agreement should simply ensure that
16 the insurer used by Charter is an insurance carrier in good standing. Qwest wants
17 this Commission to order Charter to use only those insurance carriers that
18 maintain a rating of "A-VII" by the rating company known as A.M. Best
19 Company.

20 **Q. HOW DOES THE PARTIES' PROPOSED LANGUAGE DIFFER?**

21 **A.** The dispute is illustrated by a brief review of each party's proposed language.
22 Charter's proposed language for Section 5.6.1 is as follows:

23 Each Party shall at all times during the term of this Agreement, at its own cost
24 and expense, carry and maintain the insurance coverage listed below with
25 insurers **in good standing** with respect to liability arising from that Party's
26 operations for which that Party has assumed legal responsibility in this
27 Agreement. If either Party or its parent company has assets equal to or exceeding
28 ten billion dollars (\$10,000,000,000), that Party may utilize an Affiliate captive
29 insurance company in lieu of a "Best's" rated insurer. To the extent that the
30 parent company of a Party is relied upon to meet the ten billion dollar
31 (\$10,000,000,000) asset threshold, such parent shall be responsible for the
32 insurance obligations contained in this Section 5.6.1, to the extent its affiliated
33 Party fails to meet such obligations.

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Qwest's proposed language for Section 5.6.1 is as follows:

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Each Party shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers having a "Best's" rating of A-VII with respect to liability arising from that Party's operations for which that Party has assumed legal responsibility in this Agreement. If either Party or its parent company has assets equal to or exceeding ten billion dollars (\$10,000,000,000), that Party may utilize an Affiliate captive insurance company in lieu of a "Best's" rated insurer. To the extent that the parent company of a Party is relied upon to meet the ten billion dollar (\$10,000,000,000) asset threshold, such parent shall be responsible for the insurance obligations contained in this Section 5.6.1, to the extent its affiliated Party fails to meet such obligations.

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Q. PLEASE DESCRIBE YOUR GENERAL REACTION TO MS. ALBERSHEIM'S DIRECT TESTIMONY.

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A. I believe that Ms. Albersheim's testimony is based upon a fundamental misunderstanding of the purpose of the pending Interconnection Agreement, and the scope of Charter's proposal.

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Q. PLEASE EXPLAIN.

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A. Ms. Albersheim makes two fundamental points in the page and a half of testimony she presents on this issue. First, she incorrectly states that the purpose of the pending Interconnection Agreement ("Agreement") between Qwest and Charter is "to give Charter access to Qwest's facilities." (Page 19, lines 8-10.) Based upon this inaccurate premise, she then claims that Qwest has the right to require Charter to obtain minimum levels of acceptable coverage to ensure protection of "the facilities to which Charter seeks access." (Page 19, lines 10-11.) Second, Ms. Albersheim asserts that Charter's proposal is vague because it is "not based on an industry standard." (Page 19, line 18.)

1 **Q. ON PAGE 19, LINES 7-8 OF HER TESTIMONY MS. ALBERSHEIM**
2 **STATES THAT CHARTER “SEEKS TO REDUCE THE STANDARDS**
3 **GOVERNING THE INSURANCE IT IS REQUIRED TO CARRY IN**
4 **ORDER TO HAVE ACCESS TO QWEST’S FACILITIES.” WHAT IS**
5 **YOUR RESPONSE?**

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7 A. As noted, I disagree with the premise of Ms. Albersheim’s statements. It appears
8 that she does not understand the relationship between Qwest and Charter, or the
9 manner in which Charter provides its telephone service in Washington.
10 Unfortunately, this fundamental misunderstanding of Charter’s operations, and
11 the purpose of the pending Agreement, seems to be the basis for Ms.
12 Albersheim’s testimony defending Qwest’s insurance language.

13 **Q. PLEASE EXPLAIN.**

14
15 A. Ms. Albersheim testifies, at page 19, lines 8-10, that “[t]he purpose of the
16 Interconnection Agreement ... is to give Charter access to Qwest’s facilities.”
17 Although she does not elaborate on this statement, it appears that she believes that
18 Charter will seek physical “access” to Qwest’s facilities by either: (1) leasing
19 unbundled network elements (“UNEs”) from Qwest through its own or another
20 CLEC’s collocation arrangement; or (2) collocating its equipment in Qwest’s
21 central offices for interconnection. But Ms. Albersheim is not correct on this
22 point because, as I stated on page 5, lines 8-12 of my Direct Testimony, Charter is
23 a facilities-based CLEC. As a result, Charter provides service over its **own**
24 facilities (or those of its cable company affiliate), and does not need to physically
25 “access” Qwest’s facilities in order to provide service to its own end user
26 customers. Therefore, Charter will **not** be leasing unbundled network elements

1 from Qwest or collocating its equipment in Qwest's central offices in
2 Washington.

3 **Q. WHY IS CHARTER'S STATUS AS A FACILITIES-BASED CLEC**
4 **RELEVANT TO THE QUESTION OF WHAT INSURANCE STANDARD**
5 **SHOULD BE USED IN THIS AGREEMENT?**
6

7 A. It is relevant to the question of how much risk exposure Qwest will face under
8 this Agreement. If you recognize that the purpose of the Agreement in this
9 proceeding is not "to give Charter [physical] access to Qwest's facilities," as Ms.
10 Albersheim seems to testify, but is simply to allow Charter and Qwest the ability
11 to physically interconnect their respective networks for the mutual exchange of
12 traffic outside of Qwest's central offices, then it is clear that Qwest's risk
13 exposure is minimal. This basic exchange of traffic does not create any
14 appreciable risks for either party and does not place disproportionate risk on
15 Qwest, because Charter does not need to physically "access" Qwest facilities in
16 the manner that Ms. Albersheim seems to suggest.

17 **Q. ON PAGE 19, LINES 10-12 MS. ALBERSHEIM STATES THAT "QWEST**
18 **HAS THE RIGHT AS THE OWNER OF THE FACILITIES TO WHICH**
19 **CHARTER SEEKS ACCESS TO REQUIRE MINIMUM LEVELS OF**
20 **ACCEPTABLE INSURANCE" AND CLAIMS THAT THIS RIGHT**
21 **"INCLUDES SETTING STANDARDS FOR THE TYPE OF INSURER."**
22 **WHAT IS YOUR RESPONSE?**

23 A. This is another fundamental misconception that Ms. Albersheim states in her
24 testimony. Charter is not seeking to reduce the coverage levels, or alter the types
25 of insurance that will be maintained by Charter under the Agreement. Charter has
26 already agreed to obtain the levels of coverage proposed by Qwest, and has

1 agreed to the types of insurance that must be maintained by Charter.¹ Charter,
2 however, *does* believe it is clear that the standard that Qwest is requiring of CLEC
3 insurers – AM Best “A-VII” – is unduly restrictive and burdensome on
4 competitive carriers like Charter. In place of Qwest’s unduly burdensome
5 proposal, Charter is proposing that the insurer that Charter maintains be an
6 insurer “in good standing,” and thereby qualified, and able, to satisfy the terms of
7 its policies. Qwest’s demand for a Best’s rating of “Excellent” or higher, and one
8 that doesn’t even include AM Best “Good” carriers, is not reasonable or
9 appropriate. In addition, and as I’ve testified, Charter business plan in
10 Washington doesn’t include collocating in Qwest’s central offices. Moreover,
11 Qwest’s proposal will unreasonably decrease Charter’s choices, while at the same
12 time increasing Charter’s costs of doing business.

13 **Q. MS. ALBERSHEIM STATES ON PAGE 19, LINES 17-22 THAT**
14 **CHARTER’S PROPOSED “IN GOOD STANDING” LANGUAGE IS**
15 **VAGUE AND MORE LIKELY TO BE SUBJECT TO DISPUTE AND**
16 **THAT CHARTER’S LANGUAGE IS UNREASONABLE IN THAT IT IS**
17 **NOT DEFINED. SHE FURTHER STATES THAT CHARTER’S**
18 **LANGUAGE IS ARBITRARY AND NOT QUANTIFIABLE. WHAT IS**
19 **YOUR RESPONSE?**

20 A. Obviously, I disagree. In response to Qwest Data Request No. 12, Charter
21 provided Qwest with a standard definition of an insurer “in good standing.”
22 Charter believes that an insurer in good standing will have obtained necessary
23 authorizations from state insurance regulators to provide coverage and engage in
24 the provision of related services. In other words, such insurers will be subject to

¹ Specifically, Charter has agreed to Qwest’s proposed levels of coverage for workers compensation, commercial general liability, business automobile liability, and umbrella/excess liability insurance, as shown in Sections 5.6.1.1 through 5.6.1.5 of the Agreement.

1 all applicable rules, regulations, and standards governing the provision of
2 insurance in the state of Washington, and other jurisdictions where they do
3 business. This standard is not vague, and is commonly used in a variety of
4 different contracts. If a state has authorized an insurer to provide service in a state
5 and they continue to provide insurance services consistent with all applicable
6 rules and regulations there is little room for dispute. The parties can easily review
7 the state government website to determine if a particular insurer is currently
8 meeting the insurance requirements of that state and is still authorized to provide
9 insurance services there. Therefore, I do not think that Charter's proposed
10 standard is arbitrary, since it is clearly based upon a common principle in
11 commercial contracts. In addition, the standard is not vague in that Charter has
12 provided Qwest, and this Commission, an explanation of the "good standing"
13 standard.

14 **Q. DOES MS. ALBERSHEIM'S TESTIMONY INDICATE THAT QWEST**
15 **SEEKS TO IMPOSE UPON CHARTER A BUSINESS DECISION AS TO**
16 **THE CARRIER AND RATING THAT A CHARTER INSURANCE**
17 **CARRIER SHOULD HAVE?**

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19 A. No, her testimony does not explicitly state that. However, that is the practical
20 effect of Qwest's proposal. Specifically, Qwest seeks to impose upon Charter an
21 obligation to only use insurance coverage provided by certain companies with
22 specific "ratings" (*i.e.*, AM Best "A-VII") that is not justified by the services that
23 the parties provide to each other, and that is an arbitrary selection of rating by
24 Qwest with no real justification provided. As I stated in my Direct Testimony on
25 page 4, lines 21-28, Charter's view is that the parties should be prepared to
26 provide the other party proof of adequate insurance coverage. However, Ms.

1 Albersheim has not explained why there is a need to require that the insurance
2 carrier utilized by Charter should only be rated AM Best “Excellent” or better.
3 Further, Ms. Albersheim does not explain how these ratings provide the level of
4 assurance that Qwest seeks in the pending Agreement. For example, she does not
5 explain whether the A-VII rating is the only acceptable rating, whether a lower
6 rating may be applicable, or precisely how this rating would actually provide the
7 assurance that Qwest demands of Charter.

8 **Q. MS. ALBERSHEIM’S TESTIMONY SUGGESTS THAT CHARTER MAY**
9 **CHOOSE AN INSURER THAT IS UNABLE OR UNWILLING TO PAY**
10 **ANY POTENTIAL CLAIMS (PAGE 19, LINES 12-13). IS IT IN**
11 **CHARTER’S INTEREST TO OBTAIN ADEQUATE INSURANCE FROM**
12 **AN INSURANCE CARRIER THAT IS ABLE TO PAY ITS CLAIMS?**

13
14 A. Absolutely. Charter has every incentive to maintain adequate insurance, and to
15 obtain such insurance from a carrier that is able to pay any potential claims. At
16 the same time, Charter must be free to choose among different insurance
17 providers, based on Charter’s specific insurance requirements, and at costs that fit
18 into Charter’s overall business plans. This freedom to make the correct business
19 decision should not be unreasonably constrained by Qwest’s pre-determined, and
20 unilaterally chosen, insurer ratings requirement. Qwest should not be permitted to
21 interfere in Charter’s internal business decisions nor unilaterally increase
22 Charter’s underlying business costs.

1 **III. CONCLUSION**

2 **Q. WHAT SHOULD THIS COMMISSION'S DECISION BE WITH REGARD**
3 **TO THE LANGUAGE PERTAINING TO INSURANCE?**

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5 A. The Commission should accept the Charter proposed language on this topic,
6 which would allow either party to select its preferred insurance carrier, provided
7 that the insurance carrier is in good standing as defined in my testimony above. I
8 continue to recommend that the Commission adopt Charter's proposed language
9 for Section 5.6.1.

10 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

11 A. Yes, it does.