

**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
PEGGY GIAMINETTI
ON BEHALF OF
CHARTER FIBERLINK WA-CCVII, LLC**

November 17, 2008

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Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

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

Q. ARE YOU THE SAME PEGGY GIAMINETTI WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes, I am.

Q. ON WHOSE BEHALF WAS THIS REBUTTAL TESTIMONY PREPARED?

A. This Rebuttal Testimony was prepared on behalf of Charter Fiberlink WA-CCVII, LLC (“Charter”).

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS PROCEEDING?

A. This testimony is offered to rebut the testimony of Qwest witness Renée Albersheim on Issues 1, 2 and 3.

Q. DO YOU OFFER REBUTTAL TESTIMONY ON OTHER DISPUTED ISSUES?

A. No. My colleagues and experts from QSI Consulting will be submitting separate testimony on other issues.

1
2 **II. DISCUSSION**
3

4 **Issue 1: Should Qwest be required to seek the Commission's authorization prior to**
5 **taking any action to "disconnect" services which Charter may utilize under the**
6 **agreement?**
7

8 **Q. PLEASE EXPLAIN CHARTER'S POSITION ON THIS ISSUE.**

9 A. Charter's position is that the Agreement should include language that allows for
10 the potential termination of the Agreement only under certain circumstances.
11 Specifically, termination should occur only after this Commission has evaluated
12 the reasons for the potential termination, its impact on subscribers, and thereafter
13 orders, or approves, the termination of the Agreement.

14 **Q. PLEASE PROVIDE CHARTER'S PROPOSED LANGUAGE ON THIS**
15 **ISSUE.**

16 A. Charter's proposed language for Sections 5.4.3 and 5.13.1 of the interconnection
17 agreement (the "Agreement") between the parties is set forth below. Qwest's
18 original proposed language is shown as normal text, while Charter's additional
19 language is shown in bold text.
20

21 **5.4.3 With the Commission's authorization**, the Billing Party may disconnect
22 services for failure by the billed Party to make full payment within sixty (60)
23 Days following the payment due date, less any good faith disputed amount as
24 provided for in Section 5.4.4 of this Agreement, for **such** services provided
25 under this Agreement. The billed Party will pay the applicable reconnect charge
26 set forth in Exhibit A required to reconnect each service disconnected pursuant
27 to this paragraph. The Billing Party will notify the billed Party in writing and
28 the Commission on a confidential basis at least ten (10) business days prior to
29 disconnection of the service(s). In case of such disconnection, all applicable
30 undisputed charges, including termination charges, shall become due. If the

1 Billing Party does not disconnect the billed Party's service(s) on the date
2 specified in the ten (10) business days' notice, and the billed Party's
3 noncompliance continues, nothing contained herein shall preclude the Billing
4 Party's right to disconnect services of the non-complying Party without further
5 notice, **subject to the Commission's authorization.** For reconnection of the
6 services to occur, the billed Party will be required to make full payment of all
7 past and current undisputed charges under this Agreement for the services.
8 Additionally, the Billing Party will request a deposit (or recalculate the deposit)
9 as specified in Section 5.4.5 and 5.4.7 from the billed Party, pursuant to this
10 Section. In addition to other remedies that may be available at law or equity,
11 each Party reserves the right to seek equitable relief, including injunctive relief
12 and specific performance.

13 5.13.1 If either Party defaults in the payment of any amount due hereunder, or if
14 either Party violates any other material provision of this Agreement, and such
15 default or violation shall continue for thirty (30) Days after written notice
16 thereof, the other Party may seek relief in accordance with the Dispute
17 Resolution provision of this Agreement. The failure of either Party to enforce
18 any of the provisions of this Agreement or the waiver thereof in any instance
19 shall not be construed as a general waiver or relinquishment on its part of any
20 such provision, but the same shall, nevertheless, be and remain in full force and
21 effect. **Neither Party shall disconnect service to the other Party without**
22 **first obtaining Commission authorization.**

23
24 **Q. SO QWEST'S PROPOSED LANGUAGE IS SET FORTH ABOVE,**
25 **EXCEPT THAT IT EXCLUDES THE LANGUAGE IN BOLD?**

26
27 A. Yes, that is correct.

28
29 **Q. HOW DOES QWEST'S DIRECT TESTIMONY ADDRESS THIS ISSUE?**

30
31 A. The Direct Testimony of Qwest witness Renée Albersheim provides Qwest's
32 position on Issue 1.

1 **Q. ON PAGE 6, LINES 19 & 20 OF HER TESTIMONY, MS. ALBERSHEIM**
2 **STATES THAT THIS ISSUE CONCERNS THE STANDARD BUSINESS**
3 **PRACTICE OF DISCONNECTING SERVICE TO A CUSTOMER THAT**
4 **HAS NOT PAID ITS UNDISPUTED BILLS FOR THAT SERVICE. WHAT**
5 **IS YOUR RESPONSE?**

6
7 A. I disagree. Ms. Albersheim relates the process for a simple disconnection of
8 services for non-payment of retail end user customers to the mutual exchange of
9 traffic services that co-carriers (Qwest and Charter) are providing to each other
10 under the Agreement. If Qwest were to disconnect the services provisioned for
11 the mutual exchange of traffic that is, in effect, terminating the entire agreement –
12 which would impact not only Charter, but also the end user customers of both
13 Charter and Qwest. To apply the same rules to interconnected networks of co-
14 carriers that Qwest applies to individual retail end user customers is clearly not
15 appropriate, as the effect of disconnecting the services would impact a much
16 greater number of parties and a wider public interest.

17 **Q. ON PAGE 7, LINES 3-9 OF HER DIRECT TESTIMONY, MS.**
18 **ALBERSHEIM STATES HER BELIEF THAT IT IS NOT APPROPRIATE**
19 **TO INVOLVE THE COMMISSION IN “NORMAL BUSINESS**
20 **PROCESSES” BECAUSE CHARTER HAS DISPUTE RIGHTS UNDER**
21 **THE AGREEMENT. DO YOU AGREE?**

22
23 A. No. The termination of interconnection arrangements that impacts all of Charter’s
24 customers in an area, and also the ILEC customers in that same service area, is not
25 and should not be considered to be a “normal business process.” Giving one party
26 (to a given state-regulated interconnection arrangement) a unilateral right to

1 terminate the entire interconnection arrangement places the continuity of critical
2 telephone services – that all end user customers expect today – at risk. It is
3 essential that the Commission be able to review the facts associated with Qwest’s
4 desire to terminate service and to make a determination based on the facts of
5 whether a disconnection of the Agreement is appropriate. If the Commission
6 determines that a disconnection for nonpayment is an appropriate remedy, then a
7 process can be put in place so that an orderly transition of the interconnection
8 arrangements can take place and any negative impacts on the parties and the end
9 users of both companies can be minimized.

10 **Q. ON PAGES 7 AND 8 OF HER DIRECT TESTIMONY, MS. ALBERSHEIM**
11 **MAKES THE ARGUMENT THAT THE RESULTS OF THE 271**
12 **WORKSHOPS SHOULD BE CONSIDERED AS THEY ARE THE**
13 **RESULT OF INSUSTRY CONCENSUS. WHAT IS YOUR RESPONSE?**

14
15 A. The 271 workshops were initiated in an environment and time period much
16 different than today. In addition, the interconnection arrangements at issue in this
17 case are solely for the mutual exchange of traffic between Qwest and Charter.
18 Charter is a facilities-based carrier and does not purchase unbundled network
19 elements (“UNEs”) from Qwest or resell Qwest services. While the language that
20 Qwest proposes may have resulted from “numerous negotiations, hearings, and
21 commission orders,” that does not require that this Commission order unilateral
22 disconnection rights for non-payment language in an interconnection agreement

1 between Qwest and a facilities-based carrier like Charter. In today's environment,
2 it clearly makes sense to have the Commission authorize a disconnection of
3 interconnection arrangements that could impact many thousands of customers.

4 **Q. ON PAGES 8 AND 9 OF HER TESTIMONY, MS. ALBERSHEIM**
5 **REFERENCES A SINGLE INSTANCE IN MINNESOTA WHERE CP**
6 **TELECOM HAD AN ISSUE WITH ONE RESELLER THAT FILED**
7 **BANKRUPTCY. WHAT IS YOUR RESPONSE?**

8
9 **A.** I find it interesting that the only support that Qwest could muster for its argument
10 is a 2006 Application from CP Telecom against a single reseller that filed
11 bankruptcy. Apparently, Qwest could not find any situations in which Qwest was
12 unable to recover billed, undisputed, amounts due to bankruptcy where it was
13 required to ask a Commission for approval to discontinue service. Charter
14 believes that the approach taken in Minnesota is the correct approach because the
15 service impact on end users is minimized and the Commission can ensure that the
16 critical communications needs of end users are fulfilled. This is a paramount
17 concern of Charter and has to be a public interest concern of the Commission. A
18 decision to terminate service between Qwest and Charter that would disrupt the
19 mutual exchange of traffic between Qwest and Charter should only occur with
20 Commission approval, regardless of the billing and dispute resolution processes
21 that Qwest and Charter may have gone through. As I stated earlier in this
22 testimony, Charter is not purchasing UNEs or reselling Qwest services so the
23 financial risk to Qwest is greatly overstated by Qwest. Moreover, what should not

1 be forgotten is that Qwest wants the contractual right to unilaterally terminate
2 services and, if that termination were to happen without Commission approval,
3 both Qwest and Charter end users could experience serious negative impacts.

4 **Q. WHAT SHOULD BE THE COMMISSION'S DECISION WITH REGARD**
5 **TO THE LANGUAGE PERTAINING TO TERMINATING SERVICE**
6 **ONLY UPON COMMISSION AUTHORIZATION?**

7
8 A. The Commission should adopt Charter's proposed language as it provides
9 reasonable assurance that one party may not take a unilateral action to disconnect
10 that could severely impact the other party and the end user customers of both
11 Charter and Qwest. The language of the Agreement should require Commission
12 approval prior to either Party terminating services under the Interconnection
13 Agreement.

14
15 **Issue 2: Should the parties agree to a reasonable limitation as to the period of time**
16 **by which either party can initiate back billing, or disputes of previously billed**
17 **amounts?**

18
19 **Q. WHAT IS CHARTER'S POSITION ON THIS ISSUE?**

20
21 A. Charter's position is that the parties should agree to a reasonable limitation on the
22 time period by which a party can initiate a bill dispute, or attempt to "backbill,"
23 for services invoiced, or provided, pursuant to the terms of the Agreement.
24 Specifically, Charter proposes that a party can initiate a dispute, and backbill for
25 charges arising under the Agreement, within one year of the date of the invoice.

1 As a result, any potential billing disputes and claims initiated under the
2 Agreement that are not brought by a party prior to the expiration of that time-
3 frame would be deemed to be waived.

4 **Q. PLEASE PROVIDE CHARTER'S PROPOSED LANGUAGE WITH**
5 **RESPECT TO THIS ISSUE.**

6
7 A. Charter proposes to include the following:

8
9 5.4.4.3 Failure by a Billed Party to dispute a rate, rate element, or charge within
10 the period applicable to an invoice on which such rate, rate element or charge
11 appears shall not constitute nor be construed as a waiver by the Billed Party of
12 its right to dispute the same or similar rates, rate elements, or charges that may
13 appear on subsequent invoices. If any portion of an amount paid to a Party under
14 this Agreement is subject to a bona fide dispute between the Parties ("Disputed
15 Paid Amount"), the Billed Party may provide written notice to the Billing Party
16 of the Disputed Paid Amount, and seek a refund of such amount already paid, at
17 any time prior to the date that is **one (1) year** after the date of the invoice
18 containing the disputed amount that has been paid by the Billed Party ("Notice
19 Period"). If the Billed Party fails to provide written notice of a Disputed Paid
20 Amount within the Notice Period, the Billed Party waives its rights to dispute its
21 obligation to pay such amount, and to seek refund of such amount.

22 5.4.10 The Parties shall bill each other for all services and arrangements under
23 this Agreement promptly and in any event shall use commercially reasonable
24 efforts to render such bills. In the event that prompt billing is not possible,
25 backbilling for unbilled charges shall be permitted for a period of up to **twelve**
26 **(12)** months following the provision of service. Backbilling for services
27 provided more than **twelve (12)** months following the provision of service is not
28 permitted, and each Party hereby waives any right to collect any fees or charges
29 otherwise due under this Agreement (including charges for services under this
30 Agreement that are provided via its tariffs) that are not billed to the other Party
31 within such **twelve (12)** month period.

32
33 **Q. PLEASE PROVIDE QWEST'S PROPOSED LANGUAGE WITH**
34 **RESPECT TO THIS ISSUE.**

35
36 A. Qwest has proposed that the Agreement include:

37 5.4.4.3 Failure by a Billed Party to dispute a rate, rate element, or charge within

1 the period applicable to an invoice on which such rate, rate element or charge
2 appears shall not constitute nor be construed as a waiver by the Billed Party of
3 its right to dispute the same or similar rates, rate elements, or charges that may
4 appear on subsequent invoices. If any portion of an amount paid to a Party under
5 this Agreement is subject to a bona fide dispute between the Parties (“Disputed
6 Paid Amount”), the Billed Party may provide written notice to the Billing Party
7 of the Disputed Paid Amount, and seek a refund of such amount already paid, at
8 any time prior to the date that is two (2) years after the date of the invoice
9 containing the disputed amount that has been paid by the Billed Party (“Notice
10 Period”). If the Billed Party fails to provide written notice of a Disputed Paid
11 Amount within the Notice Period, the Billed Party waives its rights to dispute its
12 obligation to pay such amount, and to seek refund of such amount.

13 4.10 The Parties shall bill each other for all services and arrangements under
14 this Agreement promptly and in any event shall use commercially reasonable
15 efforts to render such bills. In the event that prompt billing is not possible,
16 backbilling for unbilled charges shall be permitted for a period of up to twenty-
17 four (24) months following the provision of service. Backbilling for services
18 provided more than twenty-four (24) months following the provision of service
19 is not permitted, and each Party hereby waives any right to collect any fees or
20 charges otherwise due under this Agreement (including charges for services
21 under this Agreement that are provided via its tariffs) that are not billed to the
22 other Party within such twenty-four (24) month period.

23
24 **Q. HOW DOES QWEST’S DIRECT TESTIMONY ADDRESS THIS ISSUE?**

25
26 A. The Direct Testimony of Qwest witness Renée Albersheim provides the Qwest
27 position on Issue 2. Ms. Albersheim generally states in her Direct Testimony that
28 two years is the standard billing period and that this time period is contained in
29 Qwest’s negotiation template.

30 **Q. MS. ALBERSHEIM STATES THAT THE TWO-YEAR BACK BILLING**
31 **PERIOD EXISTS IN SECTION 415(A) OF THE ACT. DO YOU AGREE?**

32
33 A. No.

34 **Q. PLEASE EXPLAIN YOUR ANSWER.**
35

1 A. I am not an attorney. But Charter's lawyers have explained to me that the FCC
2 has said, in at least three separate proceedings, (two involving AT&T) that
3 Section 415(a) of the Communications Act is not to be used as a backbilling
4 statute. I also understand that the FCC has suggested that it may be an
5 unreasonable practice for carriers to engage in backbilling as far back as two
6 years. I suspect that point will be addressed, more fully, in each party's briefs.

7 **Q. DOES MS. ALBERSHEIM PROVIDE ANY ADDITIONAL SUPPORT**
8 **FOR THE QWEST POSITION ON THIS ISSUE?**

9 A. Yes. Qwest states that two-years is the "standard" backbilling period contained in
10 Qwest's interconnection agreement negotiation template.

11 **Q. DO YOU BELIEVE THAT THE FACT THAT A PARTICULAR TIME**
12 **PERIOD FOR BACKBILLING IS IDENTIFIED IN QWEST'S**
13 **NEGOTIATION TEMPLATE IS RELEVANT?**

14 A. No, I don't. What Qwest may or may not have in their negotiation template is not
15 relevant, in any way, to the Commission's consideration of this issue. It is merely
16 a starting point for Qwest, and another carrier, to negotiate terms of an
17 interconnection agreement. The negotiating carriers discuss the various terms and
18 conditions and either reach agreement or take the unresolved issue to arbitration.
19 Simply having language in a party's generic template should have no
20 determinative value. I believe that Charter witness Mr. Webber explains in
21 greater detail why it is not reasonable to assume that Qwest's "template" contract
22

1 language is reasonable, or acceptable. Further, as I stated on Pages 16 and 17 of
2 my Direct Testimony, “[t]he fact that no other carrier has proposed an alternative
3 time frame does not demonstrate that Qwest’s proposal is legitimate.” With a
4 downsized CLEC industry and a changed competitive environment, where
5 competitive carriers are even more cost conscious, they are also less willing to
6 tackle Qwest’s negotiation template. The Commission should look at the current
7 state of the competitive environment and not rely on an assumption that Qwest’s
8 language is appropriate simply because the language is found in its generic
9 interconnection template.

10 **Q. DOES MS. ALBERSHEIM DISCUSS THE IMPACT THAT A TWO-YEAR**
11 **BACKBILLING LIMITATION PERIOD WILL HAVE ON QWEST AND**
12 **CHARTER?**

13
14 A. No. She simply states the company’s belief that federal law supports their
15 proposed two-year standard. Ms. Albersheim also testifies that the Charter
16 proposal “eliminates Qwest’s opportunity to prove that two years may be
17 reasonable under any circumstances and effectively modifies the applicable statute
18 of limitations, contrary to federal law.” (Page 14, lines 2-5) As stated earlier in
19 this testimony, at page 9, lines 33-34, and page 10, lines 1-6, Charter believes that
20 Qwest’s assertions regarding federal law on this issue are incorrect.

21 **Q. WHAT ARE CHARTER’S PROBLEMS WITH THE QWEST PROPOSED**
22 **TWO-YEAR BACKBILLING AND DISPUTE LIMITATION?**

23
24 A. First, we believe that the practice of backbilling for two years is contrary to

1 current federal law, which our attorneys will address in our briefs. Second, the
2 more time that passes, there is a greater chance for billing errors, which may have
3 been what the FCC was concerned about in its prior orders. Third, in the case of a
4 two-year period to dispute prior invoices, the parties may be required to establish
5 reserves, and accruals, which creates an environment of uncertainty over an
6 extended period of time.

7 With that said, if Qwest really wants the parties to have up to two years to dispute
8 a prior invoice, Charter could accept that compromise as being in accordance with
9 federal law. We proposed the one-year limitation on both backbilling and the
10 time period to dispute prior-issued invoices so there would be some symmetry but
11 the two don't have to be the same. One thing we cannot agree to, however, is a
12 two-year backbilling period when something much less than that would likely not
13 be supported by the FCC.

14 **Q. HOW SHOULD THE COMMISSION RULE WITH REGARD TO THE**
15 **LANGUAGE PERTAINING TO ESTABLISHMENT OF A REASONABLE**
16 **TIME PERIOD TO INITIATE BACKBILLING OR DISPUTES OF**
17 **BILLED AMOUNTS?**

18
19 **A.** My recommendation is that the Commission adopt Charter's proposed language
20 as Charter's language would create an environment that drives Qwest and Charter
21 to be more vigilant in their billing and bill investigation and audit practices.

1 **Issue 3: Should the security deposit provisions of the agreement apply mutually, to**
2 **both parties, or only unilaterally to Qwest's benefit?**

3 **Q. WHAT IS CHARTER'S POSITION ON THIS ISSUE?**

4
5 A. Charter's position is that the deposit provisions of this Agreement should be
6 applied mutually, and should include criteria that will be used to determine when
7 *both parties* will be required to provide a security deposit. Specifically, both
8 parties should only be required to provide a deposit upon the occurrence of a
9 "material adverse change in the financial condition," not simply when Qwest
10 unilaterally deems it necessary.

11 **Q. PLEASE PROVIDE CHARTER'S PROPOSED LANGUAGE WITH**
12 **RESPECT TO THIS ISSUE.**

13
14 A. Charter proposes to include the following:

15
16 5.4.5 In the event of a material adverse change in a **Party's** financial
17 condition subsequent to the Effective Date of this Agreement, **the other Party**
18 may request a security deposit. A "material adverse change in financial
19 condition" means the Party is repeatedly delinquent in making its payments, or is
20 being reconnected after a disconnection of Service or discontinuance of the
21 processing of orders by **the other Party** due to a previous failure to pay
22 undisputed charges in a timely manner. **The other Party** may require a deposit
23 to be held as security for the payment of charges before the orders from **the**
24 **Party** will be provisioned and completed or before reconnection of Service.
25 "Repeatedly delinquent" means any payment of a material, **undisputed** amount
26 of total monthly Billing under the Agreement received after the Payment Due
27 Date, three (3) or more times during the last twelve (12) month period. The
28 initial deposit may not exceed the estimated total **net** monthly charges (**that is,**
29 **the amounts the Party owes, less amounts owed to the other Party**) for a two
30 (2) month period based upon recent Billing. The deposit may be adjusted by **the**
31 **Party's** actual monthly average charges, payment history under this Agreement,
32 or other relevant factors. The deposit may be an irrevocable bank letter of credit,
33 a letter of credit with terms and conditions **reasonably** acceptable to **the other**

1 **Party**, or some other form of mutually acceptable security such as a cash
2 deposit. Required deposits are due and payable within thirty (30) Days after
3 demand and non-payment is subject to Sections 5.4.2 and 5.4.3 of this
4 Agreement

5
6 5.4.6 Interest will be paid on cash deposits at the rate applying to deposits
7 under applicable Commission regulations. Cash deposits and accrued interest
8 will be credited to **the depositing Party's** account or refunded, as appropriate,
9 upon the earlier of the expiration of the term of the Agreement or the
10 establishment of satisfactory credit with **the other Party**, which will generally
11 be one full year of timely payments of undisputed amounts in full by **the**
12 **depositing Party**. Upon a material change in financial standing, including
13 factors referenced in Section 5.4.5 above, **the depositing Party** may request and
14 the **other Party** will consider a recalculation of the deposit. The fact that a
15 deposit has been made does not relieve **the depositing Party** from any
16 requirements of this Agreement

17
18 5.4.7 A **Party** may review **the other Party's** credit standing and modify the
19 amount of deposit required but in no event will the maximum amount exceed the
20 amount stated in 5.4.5 or another amount, if approved by the Commission.

21
22 **Q. PLEASE PROVIDE QWEST'S PROPOSED LANGUAGE WITH**
23 **RESPECT TO THIS ISSUE.**

24
25 **A. Qwest has proposed that the Interconnection Agreement include:**

26 5.4.5 In the event of a material adverse change in CLEC's financial condition
27 subsequent to the Effective Date of this Agreement, Qwest may request a
28 security deposit. A "material adverse change in financial condition" means the
29 Party is repeatedly delinquent in making its payments, or is being reconnected
30 after a disconnection of Service or discontinuance of the processing of orders by
31 Qwest due to a previous failure to pay undisputed charges in a timely manner.
32 Qwest may require a deposit to be held as security for the payment of charges
33 before the orders from CLEC will be provisioned and completed or before
34 reconnection of Service. "Repeatedly delinquent" means any payment of a
35 material amount of total monthly Billing under the Agreement received after the
36 Payment Due Date, three (3) or more times during the last twelve (12) month
37 period. The initial deposit may not exceed the estimated total monthly charges
38 for a two (2) month period based upon recent Billing. The deposit may be
39 adjusted by CLEC's actual monthly average charges, payment history under this
40 Agreement, or other relevant factors,. The deposit may be an irrevocable bank
41 letter of credit, a letter of credit with terms and conditions acceptable to Qwest.

1 or some other form of mutually acceptable security such as a cash deposit.
2 Required deposits are due and payable within thirty (30) Days after demand and
3 non-payment is subject to Sections 5.4.2 and 5.4.3 of this Agreement.
4

5 5.4.6 Interest will be paid on cash deposits at the rate applying to deposits
6 under applicable Commission regulations. Cash deposits and accrued interest
7 will be credited to CLEC's account or refunded, as appropriate, upon the earlier
8 of the expiration of the term of the Agreement or the establishment of
9 satisfactory credit with Qwest, which will generally be one full year of timely
10 payments of undisputed amounts in full by CLEC. Upon a material change in
11 financial standing, including factors referenced in Section 5.4.5 above, CLEC
12 may request and Qwest will consider a recalculation of the deposit. The fact that
13 a deposit has been made does not relieve CLEC from any requirements of this
14 Agreement.
15

16 5.4.7 Qwest may review CLEC's credit standing and modify the amount of
17 deposit required but in no event will the maximum amount exceed the amount
18 stated in 5.4.5 or another amount, if approved by the Commission.
19

20 **Q. HOW DOES QWEST'S DIRECT TESTIMONY ADDRESS THIS ISSUE?**

21
22 A. The Direct Testimony of Qwest witness Renée Albersheim provides the Qwest
23 position on Issue 3. In her testimony, Ms. Albersheim provides little insight to the
24 Qwest position on this issue, other than to state that unilateral security deposits are
25 the norm in the industry and are an industry standard. She goes on to state that
26 Qwest is the primary entity whose facilities are being used to provide services
27 under this contract.

28 **Q. DO YOU AGREE WITH MS. ALBERSHEIM'S ASSERTIONS?**

29
30 A. No. Ms. Albersheim incorrectly attempts to tie the unilateral deposit to an
31 argument related to Qwest providing facilities under this contract. Specifically,
32 she states that "Qwest is the primary entity whose facilities are being used to

1 provide services under this contract.” (page 17, lines 14-15.) As Charter witness
2 Ms. Cosway has testified, that is simply not true. Charter is a facilities-based
3 CLEC and does not purchase UNEs or resell Qwest services. Because Charter is a
4 facilities-based provider, it has its own transport, switches and other facilities
5 necessary to provide service to its own end user customers. Except for
6 interconnection facilities to facilitate the mutual exchange of traffic between the
7 parties, Charter generally does not lease, or otherwise use, similar facilities from
8 Qwest.

9 **Q. MS. ALBERSHEIM STATES THAT “QWEST IS ENTITLED TO**
10 **REQUIRE A DEPOSIT FROM CARRIERS WHO POSE A RISK OF**
11 **NONPAYMENT FOR SERVICES.” WHAT IS YOUR RESPONSE?**

12 A. Ms. Albersheim ignores the “mutual exchange of traffic” concept in her response.
13
14 Under this Agreement, Qwest and Charter both provide traffic termination
15 services to each other on a bill and keep basis. Because the primary basis of the
16 Agreement is the reciprocal exchange of traffic between Qwest and Charter there
17 is an equal, though minimal, amount of risk borne by both parties.

18 **Q. MS. ALBERSHEIM CLAIMS THAT UNILATERAL SECURITY**
19 **DEPOSITS ARE NOT ONLY THE NORM IN QWEST**
20 **INTERCONNECTION AGREEMENTS, BUT ARE ALSO AN INDUSTRY**
21 **STANDARD. DO YOU BELIEVE THAT THESE STATEMENTS ARE**
22 **RELEVANT TO THE RESOLUTION OF THIS ISSUE?**

23 A. No, I do not. Many of these agreements are based on incumbent and legacy
24 carrier views of the relationships between interconnecting carriers and the services
25

1 that CLECs might order from an incumbent LEC. Historically, it was typical for a
2 CLEC to request UNEs, resale services, and other services from incumbent LECs
3 to compete for local telephone services in a CLEC's service area. However,
4 Charter is a facilities-based provider that orders interconnection arrangements to
5 effectuate the mutual exchange of traffic between Qwest and Charter. If an
6 incumbent LEC such as Qwest has the ability to impose unilateral security
7 deposits on Charter when their risks are essentially the same, that puts Charter at a
8 competitive disadvantage because Charter will have funds tied up that could
9 otherwise be utilized to compete. In today's competitive environment, it would
10 be unfair to give Qwest this advantage.

11 **Q. MS. ALBERSHEIM STATES ON PAGE 17, LINES 17-18 THAT "IF**
12 **THERE IS ANOTHER AGREEMENT UNDER WHICH CHARTER IS**
13 **PROVIDING SERVICE TO QWEST, THE APPROPRIATE PLACE TO**
14 **NEGOTIATE SUCH DEPOSITS IS WITHIN THAT AGREEMENT." IS A**
15 **DISCUSSION OF OTHER AGREEMENTS RELEVANT?**

16
17 **A.** No. While I agree that Charter and Qwest can deal with deposit language in any
18 other commercial agreements that may exist or that may be required in the future,
19 I believe that Ms. Albersheim still does not understand the current relationship
20 between Qwest and Charter and how the unilateral deposit language is not
21 appropriate for this Agreement. The issue being discussed is the relationship
22 between Qwest and Charter and how the parties share risk under the Agreement.
23 Since Qwest and Charter are engaged in the mutual exchange traffic, the terms of

1 the Agreement should be defined in a manner that is equitable and recognizes the
2 risks that both parties undertake. The Commission should not rely on legacy,
3 archaic, RBOC standards to make a decision on mutual deposit requirements. The
4 Commission should look at the specific circumstances of the interconnection
5 arrangements between the parties in the current competitive environment.

6 **Q. WHAT SHOULD BE THE COMMISSION'S DECISION WITH REGARD**
7 **TO THE LANGUAGE PERTAINING TO MUTUAL SECURITY DEPOSIT**
8 **PROVISIONS?**

9
10 A. My recommendation is that the Commission adopt Charter's language because it
11 is mutual, and not unilateral, and more accurately reflects the parties' relative
12 risks in the market.

13
14 **III. CONCLUSION**
15

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

17 A. Yes.
18