

**BEFORE THE WASHINGTON STATE
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 (b)**

DOCKET NO. UT-083041

REBUTTAL TESTIMONY OF ROBERT H. WEINSTEIN

QWEST CORPORATION

(Disputed Issue Nos. 17, 19, 20, 21, 22, 23, and 24)

November 17, 2008

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I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.

A. My name is Robert Weinstein. I work for Qwest Corporation (“Qwest”) in the Wholesale Markets organization. My business address is 1801 California Street, 24th Floor, Denver, Colorado, 80202.

Q. ARE YOU THE SAME ROBERT WEINSTEIN WHO FILED DIRECT TESTIMONY IN THIS DOCKET?

A. Yes.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to the Charter Fiberlink WA-CCVII, LLC (“Charter”) testimony of Mr. Starkey. Specifically I reply to Mr. Starkey’s testimony as it relates to the following disputed issues:

- Disputed Issue No. 17: Miscellaneous Charges
- Disputed Issue No. 19: Limitation on Qwest’s Use of Charter Listing Information
- Disputed Issue No. 20: Prior Written Authorization to Release, Sell or Make Available Charter Listing Information
- Disputed Issue No. 21: Charges for Directory Listings
- Disputed Issue No. 22: Charges for Privacy Listings
- Disputed Issue No. 23: Classified (yellow pages) Listings
- Disputed Issue No. 24: Cost Responsibility for Audits

1 **III. DISPUTED ISSUE NO. 17: MISCELLANEOUS CHARGES**

2 **Q. PLEASE EXPLAIN DISPUTED ISSUE NO. 17.**

3 A. There are two separate sub-issues in dispute for Section 9.1.12 as reflected in the
4 proposals of the parties. The first is whether Qwest should be required to obtain
5 Charter’s approval before assessing a miscellaneous charge and the second is
6 whether language should be inserted that makes the obligation to pay “depend[]
7 on the specific circumstances.” In my direct testimony there was also a dispute
8 over whether the rate should be considered a market based rate. Qwest has
9 changed that position and is proposing the Commission approved rates for these
10 services.

11 **Q. PLEASE EXPLAIN THE DISPUTE AND QWEST’S POSITION ON**
12 **WHEN CHARGES APPLY.**

13 A. Qwest’s position is that Charter should be required to pay miscellaneous charges
14 for identified services that it causes Qwest to perform. Charter believes it should
15 be entitled to review the appropriateness of such charges and agree to them before
16 Qwest may impose such charges. While Qwest endeavors to obtain Charter’s
17 approval before providing these services, obtaining such approval is not always
18 practical or reasonable. For this reason, Qwest does not believe approval should
19 be a contractual precondition to such charges. Charter further attempts to weaken
20 its obligation to pay by making the obligation apply “depending on the specific
21 circumstances.”

22 **Q. EXPLAIN HOW QWEST HAS CHANGED ITS PROPOSED LANGUAGE**
23 **FOR SECTION 9.1.12?**

1 A. Qwest is proposing language **“Prices for this miscellaneous service are the**
2 **rate(s) specified in Exhibit A”** in specific areas of its language. This is a
3 clarification to address Mr. Starkey’s concerns since the rates for miscellaneous
4 charges are contained in Exhibit A to the ICA. Qwest’s proposal for this issue is
5 the following language, which contains the new language in bold type:

6 9.1.12 Miscellaneous Charges apply for miscellaneous services listed
7 below in this Section, if such miscellaneous services are available with
8 Unbundled Network Elements as noted under "Rate Elements" subsections
9 of this Section 9. Miscellaneous services are provided at CLEC's request
10 or are provided based on CLEC's actions that result in miscellaneous
11 services being provided by Qwest. Miscellaneous Charges are in addition
12 to recurring and nonrecurring charges that apply under this Agreement.
13 When more than one miscellaneous service is requested for the same
14 Unbundled Network Element(s), Miscellaneous Charges for each
15 miscellaneous service apply. Where applicable, basic rates apply for
16 miscellaneous services provided during Qwest's regular business hours, 8
17 a.m. to 5 p.m., local time, Monday through Friday, excluding holidays;
18 overtime Miscellaneous Charges apply for such services provided between
19 5 p.m. and 8 a.m., local time, Monday through Friday, or any time
20 Saturday, excluding holidays; and premium Miscellaneous Charges apply
21 for such services provided any time on Sundays or holidays.

22
23 a) Additional engineering – engineering work including: 1) additional
24 technical information after Qwest has already provided the technical
25 information normally on the design layout record; 2) customized service;
26 or 3) review of Qwest outside plant records. Basic or overtime rates
27 apply.

28 b) Additional labor – installation – installation work scheduled to be
29 performed outside of Qwest's regular business hours. Overtime or
30 premium rates apply.

31 c) Additional labor - other - work not included in "additional labor –
32 installation" above that involves labor only, including testing and
33 maintenance that are not part of initially requested installation or
34 maintenance, or, for example, for Optional Testing when CLEC reports
35 trouble and provides no test results and authorizes Qwest to perform tests
36 on CLEC's behalf. Basic, overtime, or premium rates apply.

37 d) Additional cooperative acceptance testing – performing specific

1 tests requested by CLEC. Qwest's participation in such testing is subject
2 to the availability of necessary qualified Qwest personnel and test
3 equipment at test locations, which normally include the Qwest Central
4 Office and may include CLEC's specified location. Tests include, but are
5 not limited to, loop back, attenuation, intermodulation, phase jitter, noise,
6 delay, echo, and frequency shift tests. Basic, overtime, or premium rates
7 apply.

8 e) Non-scheduled testing - performing specific tests requested by
9 CLEC as described above under "cooperative testing" or "manual testing"
10 on a non-scheduled basis. Tests include, but are not limited to, loss, noise,
11 slope, delay, and echo. Such tests are performed as the result of a repair
12 request and are in addition to tests required to isolate and repair trouble.
13 Basic, overtime, or premium rates apply.

14 f) Cancellation – cancellation of a pending order for the installation
15 of services at any time prior to notification by Qwest that service is
16 available for use. The cancellation date is the date Qwest receives notice
17 from CLEC that the order is cancelled. If CLEC or CLEC's End User
18 Customer is unable to accept service within thirty (30) Days after the
19 original Due Date, the order will be cancelled by Qwest. **Prices for this**
20 **miscellaneous service are the rate(s) specified in Exhibit A.**
21 Additional information concerning the application of prices for
22 cancellations can be found in Qwest's Tariff FCC No. 1, Section 5.

23 g) Design change – information provided by CLEC or a request from
24 CLEC that results in an engineering review and/or a design change to
25 service on a pending service order, per order, per occurrence. Design
26 changes include, but are not limited to: 1) changes to the address on a
27 pending service order when the new address is in the same Qwest Wire
28 Center as the original address; or 2) conversions from an Unbundled
29 Network Element to a private line/Special Access circuit. In addition to a
30 design change Miscellaneous Charge, an address change may result in the
31 application of an expedite Miscellaneous Charge in order to retain the
32 original Due Date. **Prices for this miscellaneous service are the rate(s)**
33 **specified in Exhibit A.**

34 h) Dispatch – 1) information provided by CLEC, or a request from
35 CLEC, in relation to installation of services, resulting in dispatch of a
36 Qwest technician(s) when dispatch is not required for Qwest to complete
37 its installation work; 2) information provided by CLEC resulting in
38 dispatch, or a request from CLEC for dispatch, of a Qwest technician(s) in
39 relation to a repair request where no trouble is found in Qwest's facilities;
40 and 3) a Qwest technician(s) is dispatched and CLEC or CLEC's End User

1 Customer is not available or ready. **Prices for this miscellaneous service**
2 **are the rate(s) specified in Exhibit A.**

3 i) INTENTIONALLY LEFT BLANK

4 j) Maintenance of Service/Trouble Isolation – work performed by
5 Qwest when CLEC reports trouble to Qwest and no trouble is found in
6 Qwest's facilities. CLEC is responsible for payment of charges when the
7 trouble is in equipment or systems provided by a party(ies) other than
8 Qwest. Additionally, when CLEC reports trouble within a quantity of
9 services and circuits, but fails to identify the specific service and circuit
10 experiencing trouble, charges apply for the time spent by Qwest to isolate
11 the trouble. A call-out of Qwest technician at a time not consecutive with
12 that technician's scheduled work period is subject to a minimum charge of
13 four (4) hours. Failure of Qwest personnel to find trouble in Qwest
14 facilities will result in no charge if the trouble is subsequently found in
15 those facilities. Charges apply per Qwest technician, from the time of
16 dispatch until the work is complete. Trouble Isolation Charges (TIC)
17 apply for trouble isolation work on POTS and Maintenance of Service
18 charges apply for trouble isolation work on other services. Dispatch
19 Miscellaneous Charges may apply in addition to Maintenance of Service
20 charges or TIC. Basic, overtime, or premium rates apply. **Prices for this**
21 **miscellaneous service are the rate(s) specified in Exhibit A.**

22 **Q. IS QWEST'S NEW PROPOSAL APPROPRIATE?**

23 A. Yes. Miscellaneous Charges rate elements are contained in Exhibit A to the ICA
24 and thus referring there is appropriate language.

25 **Q. WHAT DEFINITION OF MISCELLANEOUS CHARGES IN THE**
26 **INTERCONNECTION AGREEMENT (ICA) HAVE THE PARTIES**
27 **AGREED TO?**

28 A. "Miscellaneous Charges" are defined in agreed upon language in Section 4.0 of
29 the draft Interconnection Agreement (ICA) to be charges that apply for

30 "Miscellaneous Charges" mean charges that apply for *miscellaneous*
31 *services provided at CLEC's request or based on CLEC's actions that*
32 *result in miscellaneous services being provided by Qwest, as described in*
33 *this Agreement. (emphasis added)*

1 **Q. IS MR. STARKEY’S TESTIMONY MISLEADING WHEN HE STATES**
2 **THAT “AGREED TO LANGUAGE UNDER THE DESCRIPTION OF THE**
3 **MISCELLANEOUS SERVICES STATES THAT THE MISCELLANEOUS**
4 **SERVICES ARE TO BE PERFORMED AT THE CLEC’S REQUEST.¹”?**

5 A. Yes. Mr. Starkey’s testimony is misleading because he selectively quotes a
6 portion of agreed to language and ignores agreed to language that precisely
7 matches Qwest’s proposal. Mr. Starkey quotes the language as follows:

8 "Miscellaneous Charges" mean charges that apply for miscellaneous
9 services provided at CLEC's request . . .”²

10 Mr. Starkey’s quote and subsequent testimony ignores the agreed to language in
11 the definition of Miscellaneous Charges in Section 4.0, which precisely matches
12 Qwest’s proposed language:

13 "Miscellaneous Charges" mean charges that apply for miscellaneous
14 services provided at CLEC's request **or based on CLEC's actions that**
15 **result in miscellaneous services being provided by Qwest, as described**
16 **in this Agreement. (emphasis added)**

17 **Q. DOES QWEST’S PROPOSED LANGUAGE FOR 9.1.12 ALSO USE THIS**
18 **DEFINITION?**

19 A. Yes. Qwest’s proposed language for Section 9.1.12 states:

20 Miscellaneous services are provided at CLEC's request or are provided
21 based on CLEC's actions that result in miscellaneous services being
22 provided by Qwest.

¹ Starkey Direct, page 35, line 17

² Starkey Direct, page 35, lines 18-20.

1 **Q. IS CHARTER’S PROPOSED DELETION OF THIS ALREADY AGREED**
2 **UPON LANGUAGE A PROBLEM?**

3 A. Yes. Charter approved the specific language in the definition of miscellaneous
4 charges. Deleting this language as Charter proposes creates a conflict between
5 the agreed upon definition of miscellaneous charges and Section 9.1.12. In fact
6 substituting Charters vague and undefined language only creates larger problems.
7 Since the language has already been agreed to, deleting it is not consistent with
8 the contract.

9 **Q. DOES AGREED UPON LANGUAGE REFLECT THE POSSIBILITY**
10 **THAT CHARTER’S ACTIONS COULD CAUSE QWEST TO PROVIDE**
11 **MISCELLANEOUS SERVICES?**

12 A. Yes. A close reading of Mr. Starkey’s testimony on page 36 beginning at line 1
13 demonstrates the point I am making – that miscellaneous services may occur
14 based on a CLEC’s actions. The first example Mr. Starkey uses on page 36 is the
15 language for “Additional cooperative acceptance testing³” that specifically
16 requires a CLEC request. However, Mr. Starkey’s second example uses different
17 language - a “Design change”⁴ is described as “information provided by CLEC or
18 a request from CLEC that results in an engineering review and/or a design change
19 to service...” Instead of only being made at a CLEC request, the language
20 specifically uses “information provided by CLEC” – information that would cause
21 Qwest to perform a miscellaneous service and incur additional expenses. Using
22 Mr. Starkey’s phrasing, there is *language that the parties have already agreed*

³ Although Mr. Starkey uses the term “additional cooperative testing” I assume he meant “Additional cooperative acceptance testing” from Section 9.1.12 (d)

⁴ Section 9.1.12 (g)

1 *upon regarding miscellaneous services specifically that uses the CLEC actions as*
2 *the triggering event for Qwest to perform the work. Another example is Section*
3 9.1.12, subsection (h) concerning “Dispatch” that contains the agreed upon
4 language:

5 h) Dispatch – 1) *information provided by CLEC*, or a request from
6 CLEC, in relation to installation of services, resulting in dispatch of a
7 Qwest technician(s) when dispatch is not required for Qwest to complete
8 its installation work; 2) information provided by CLEC resulting in
9 dispatch, or a request from CLEC for dispatch, of a Qwest technician(s) in
10 relation to a repair request where no trouble is found in Qwest's facilities;
11 and 3) a Qwest technician(s) is dispatched and CLEC or CLEC's End User
12 Customer is not available or ready. (emphasis added)

13 The specific distinction between a CLEC request and an action by the CLEC that
14 would cause miscellaneous charges to be incurred corresponds to the agreed upon
15 definition of Miscellaneous Services in Section 4.0 and Qwest’s proposed
16 language.

17 **Q. MR. STARKEY STATES HIS CONCERN THAT QWEST’S PROPOSED**
18 **LANGUAGE WOULD GIVE QWEST THE “RIGHT TO**
19 **UNILATERALLY DETERMINE WHEN IT WOULD ASSESS CHARGES**
20 **UPON CHARTER.⁵” IS THIS A LEGITIMATE CONCERN?**

21 **A.** No. Qwest does not unilaterally decide to perform miscellaneous services for
22 Charter. Work performed under this section only occurs if the CLEC has
23 requested Qwest to act. Qwest only performs these services after a CLEC has
24 submitted either a service order or a trouble ticket. Qwest trains its technicians
25 not to perform any work not authorized by a CLEC. If the situation occurred
26 where additional services were required, such as the need for additional labor, the

⁵ Starkey Direct, page 36, line 12.

1 Qwest technicians would require the CLEC to submit a new work order. Even if
2 the agreed upon language defining miscellaneous charges was not the same, Mr.
3 Starkey suggests that Qwest would unilaterally decide to perform services for
4 Charter which simply is not the case.

5 **Q. IS CHARTER UNEXPECTEDLY BILLED FOR MISCELLANEOUS**
6 **CHARGES?**

7 A. No. A CLEC should not receive an unexpected bill. If the CLEC doesn't request
8 the work, but causes the work, it is Qwest's process to contact the CLEC, quote
9 the charges and commence work once the customer accepts. When Qwest
10 completes the work, the close of the order/trouble ticket again advises the
11 customer of the charge.

12 **Q. DOES QWEST ATTEMPT TO NOTIFY CLECS THAT MISCELLANEOUS**
13 **CHARGES APPLY OR MAY APPLY PRIOR TO UNDERTAKING ANY**
14 **WORK?**

15 A. Yes. Qwest makes an effort to have all services approved prior to starting any
16 work related to a miscellaneous element. Qwest generally performs
17 Miscellaneous Services at CLEC's specific request with a Written Order/Trouble
18 Ticket. In a situation where Charter makes its original request by Written
19 Order/Trouble Ticket and Qwest discovers it may have to perform a
20 miscellaneous work as a result of this original request, Qwest will provide
21 notification and act with approval of the CLEC, if possible, before performing. In
22 other situations, Qwest would require the end-user to contact Charter, and Charter
23 would have to request of Qwest or provide approval to Qwest for the work to be
24 performed. If the authorization from Charter is verbal, the Qwest technician will

1 inform Charter of the charges before starting. Generally however, the tech will
2 leave and require Charter to re-submit trouble ticket with authorization to include
3 miscellaneous work. Before closeout of the ticket, the tech will again explain the
4 charge to Charter and if possible, do so in writing. Qwest trains technicians' not
5 to perform any work not specifically authorized by a CLEC.

6 **Q. ARE THERE SITUATIONS WHERE SUCH NOTICE CANNOT BE**
7 **GIVEN YET WORK IS PERFORMED DUE TO THE CLEC'S ACTION?**

8 A. Yes. There may be the situation where Qwest has performed work at Charter's
9 request and additional miscellaneous work occurs without separate notice such as
10 a dispatch for repair that results in isolation of trouble that is determined not to be
11 the fault of Qwest or where Qwest dispatches to install or repair and doesn't have
12 adequate access to completely isolate work (end-user not available). These
13 circumstances result in additional dispatches at a later point in time that would not
14 have been necessary but for the CLEC's actions such as having the end-user
15 advised to be available for access. An example might be where the CLEC has
16 asked Qwest to perform a repair at an end user's facility but when the Qwest
17 technician shows up at the scheduled time, the end-user is not there.

18 **Q. CAN YOU PROVIDE AN EXAMPLE OF WHAT THE TERM "BASED ON**
19 **A CLEC'S ACTIONS" THAT IS USED IN THE AGREED UPON**
20 **DEFINITION AND QWEST'S PROPOSED LANGUAGE MEANS?**

21 A. Yes. There could be the situation where a CLEC requests work be performed and
22 additional service is performed as a result of that request. For example, suppose a
23 CLEC notifies Qwest that there is a network issue that is a result of a problem on
24 Qwest's network. Qwest dispatches a Qwest technician to examine the facility

1 and the Qwest technician discovers that Qwest's network is working properly but
2 the issue is actually on the CLEC's side of the network. In such a circumstance,
3 Qwest would assess a miscellaneous charge for the dispatch. Qwest would not
4 have sought approval of the miscellaneous charge prior to the dispatch because it
5 was informed that it was a Qwest issue. The CLEC's action caused Qwest to
6 dispatch a technician. In fact, it was at the CLEC's request that the dispatch
7 occurred. Qwest should be paid for performing the service.

8 **Q. DOES CHARTER'S PROPOSED LANGUAGE ADDRESS ITS STATED**
9 **CONCERNS?**

10 A. No. Even though I believe Charters concerns are unfounded Charter's proposed
11 language is simply vague, and does nothing to further its concerns on these
12 charges, instead, their language creates vagueness regarding when and if Qwest
13 gets paid. Charter's language refers to "*specific circumstances*" where
14 Miscellaneous Charges "*may*" apply and because these terms are undefined,
15 Qwest would be unable to determine if it met the specific circumstances prior to
16 performing the service or if it should even perform the service. Even if prior
17 approval was given, there is nothing in Charter's proposal that limits the
18 circumstances for which it can deny payment after approval. Forcing Qwest to
19 perform services without knowing if it will get compensated is not appropriate.

20 **Q. DOES MR. STARKEY DEFINE THE "SPECIFIC CIRCUMSTANCES"**
21 **WHEN CHARGES "MAY" BE MADE?**

22 A. No. Mr. Starkey never addresses these terms in his direct testimony.

1 **Q. MR. STARKEY STATES “THERE IS SIMPLY NO REASON FOR THE**
2 **PARTIES’ ICA TO INCORPORATE LANGUAGE THAT PROVIDES A**
3 **UNILATERAL RIGHT TO ASSESS CHARGES UPON THE OTHER**
4 **PARTY, PARTICULARLY WHEN THAT LANGUAGE CONFLICTS**
5 **WITH OTHER AGREED TO LANGUAGE IN THE ICA.” DO YOU**
6 **AGREE?**

7 A. I agree with his suggestion that the contract should be consistent. As I discussed
8 above, Charter’s proposed language is inconsistent with Section 4.0. Charter’s
9 proposal should not be incorporated in the ICA. I disagree with his suggestion
10 that Qwest’ language creates a unilateral ability to charge Charter. Specific
11 contract language only gives Qwest that ability if a CLEC action caused Qwest to
12 provide such services. If Charter believes Qwest has improperly imposed such a
13 charge, Charter has the ability to dispute the charge under dispute resolution
14 provisions of the interconnection agreement.

15 **IV. DISPUTED ISSUE NO. 19 – WHITE PAGES DIRECTORY LISTINGS**

16 **Q. MR. STARKEY DESCRIBES CHARTER’S CONCERN ASSOCIATED**
17 **WITH THIS ISSUE AS “QWEST SHOULD NOT BE PERMITTED TO**
18 **MARKET TO CHARTER SUBSCRIBERS BY SEGREGATING, OR**
19 **OTHERWISE IDENTIFYING CHARTER’S SUBSCRIBERS . . .”⁷ DOES**
20 **QWEST’S PROPOSED LANGUAGE ADDRESS THIS CONCERN?**

21 A. Yes. Qwest’s language states:

⁶ Starkey Direct, page 37, lines 3-6.

⁷ Starkey Direct, page 42, line 33 – page 43, line 2.

1 Qwest will not market to CLEC's End User Customer's Listings based on
2 segregation of CLEC listings.
3

4 This proposed sentence simply and directly addresses all of Charter's stated
5 concerns.

6 **Q. HAS CHARTER AGREED TO THIS LANGUAGE?**

7 A. No. Charter proposes deleting this sentence. I am unsure why.

8 **Q. MR. STARKEY STATES "ACCORDINGLY, CHARTER PROPOSES**
9 **LANGUAGE THAT APPROPRIATELY PROHIBITS QWEST FROM**
10 **USING CHARTER'S LISTINGS FOR MARKETING PURPOSES. AT**
11 **THE SAME TIME, CHARTER'S PROPOSAL ONLY LIMITS QWEST'S**
12 **ABILITY TO ENGAGE IN MARKETING, AND DOES NOT IMPOSE**
13 **LIMITS ON THIRD PARTY DIRECTORY ASSISTANCE PROVIDERS.⁸"**
14 **IS THIS STATEMENT BY MR. STARKEY TRUE?**

15 A. No. Charter's language does not focus on or deal with Qwest "identifying"
16 Charter customers for marketing purposes. It goes far beyond that concern and
17 prohibits any use of the information for marketing, even if the information is
18 combined with information from all other providers and in a format readily
19 available publicly.

20 **Q. MR. STARKEY DISCUSSES SECTION 251(B)(3) OF THE**
21 **TELECOMMUNICATIONS ACT.⁹ IS THIS THE ONLY SECTION**
22 **INVOLVED IN THE DIRECTORY LISTINGS ISSUES IN THIS**
23 **ARBITRATION?**

⁸ Starkey Direct, page 43, line 3.

⁹ Starkey Direct, page 43, line 9-16.

1 A. No. The two components of the Telecommunications Act involved with the
2 Directory Listings issues are Section 222(e) which requires carriers that provide
3 telephone exchange service to provide subscriber list information to requesting
4 directory publishers "on a timely and unbundled basis, under nondiscriminatory
5 and reasonable rates, terms, and conditions,"¹⁰ and Section 251(b)(3) of that Act,
6 which requires, among other things, that local exchange carriers (LECs) permit
7 competing providers of telephone exchange service "nondiscriminatory access to
8 ... directory assistance and directory listing."¹¹ Section 222(e) governs the
9 provision of listing information that will be used in publishing directories.¹²
10 Section 251 includes provisions for directory assistance as well.

11 **Q. ARE THE OBLIGATIONS UNDER 251(B) (3) AND 222(E) REGARDING**
12 **PROVISION OF DIRECTORY LISTINGS TO OTHER PARTIES**
13 **DISTINCT?**

14 A. Yes. In the *Second Order on Reconsideration* the FCC addressed issues regarding
15 nondiscriminatory access obligations and found nondiscriminatory access to
16 directory assistance and directory listing pursuant to 251(b)(3) requires Qwest to
17 accept a CLEC end user customer's listing information for use in a directory

¹⁰ 47 U.S.C. § 222(e).

¹¹ 47 U.S.C. § 251(b)(3).

¹² In the Matters of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended, CC Docket No. 96-115; CC Docket No. 96-98; CC Docket No. 99-273, September 9, 1999, ¶124 (SLI/DA Order and Notice) The SLI/DA Order and Notice is comprised of three parts - the *Third Report and Order* in CC Docket No. 96-11, the *Second Order on Reconsideration* in CC Docket No. 96-98 and a *Notice of Proposed Rulemaking* in CC Docket No. 99-273.

1 assistance database available to other DA providers or in directory assistance that
2 Qwest provides itself to callers:

3 154. As stated in paragraph 149, *supra*, section 251(b) (3) requires that
4 every LEC's customers be able to access each LEC's directory assistance
5 service and obtain a directory listing. We agree with U S WEST and MCI
6 that non-discriminatory access thus imposes a reciprocal obligation on all
7 LECs to accept the listings of competing providers' customers for
8 inclusion in their directory assistance and operator services databases.
9 n377 This requirement also ensures that a competing LEC that does not
10 wish to provide its own directory assistance service, but rather wishes to
11 use the incumbent LEC's service, will have its customers listed.¹³
12

13 However, in the *Third Report and Order*, the FCC ruled that Qwest's obligations
14 under Section 222(e) were different:

15 "We conclude that section 222(e) obligates all telecommunications
16 carriers, including competitive LECs, to provide subscriber list informa-
17 tion regarding their telephone exchange service customers to requesting
18 directory publishers. We also conclude that section 222(e) does not
19 obligate a carrier to provide subscriber list information of customers of
20 other LECs. An incumbent LEC therefore need not act as a clearinghouse
21 for providing subscriber list information to directory publishers, except to
22 the extent a State commission so requires."¹⁴
23

24 **Q. HOW DOES QWEST MEET ITS OBLIGATIONS UNDER THESE**
25 **SECTIONS OF THE ACT?**

26 A. Qwest provides several products and services to meet its obligations. The Qwest
27 White Pages Directory Listings Service is described in Section 10.4 of the ICA.
28 A CLEC is able to submit the names, addresses and telephone numbers of its end
29 user listings to Qwest. These listings are put into Qwest listing database along
30 with other CLEC's listings as well as Qwest end user listings. Each CLEC is

¹³ Id. at ¶154.

¹⁴ Id. at ¶8.

1 responsible for marking privacy indicators for each listing it submits. Qwest uses
2 this service to meet its obligations in several ways - by providing non private
3 listings to DA providers upon request; by providing a product called the Directory
4 Assistance List (DAL); by the listings being placed in Qwest's Directory
5 Assistance (DA) service so it will be available when a customer calls 411 or
6 "information"; and if allowed by the CLEC, Qwest will include the CLEC
7 provided listings in lists furnished to directory publishers for the purpose of
8 publishing the listings in printed directories which is a product called "Directory
9 Publisher Lists" (DPL). Section 10.4 describes the terms and conditions of the
10 Qwest White Pages Directory Service.

11 **Q. ARE THE WHITE PAGES DIRECTORY LISTINGS ONLY USED FOR**
12 **WHITE PAGES?**

13 A. No. I will admit the use of the term "White Pages" may be confusing but Section
14 10.4 involves more than just a white pages directory listing. Section 10.4 deals
15 with the directory listings as a whole and is not separated into, for example, a
16 white pages service versus a yellow pages service. It is simply the title of the
17 section. Directory Assistance (DA) Service, DAL service and DPL are all
18 products that utilize the White Pages Directory Listings and the DPL especially is
19 provided to both yellow and white pages publishers.

20 **Q. DOES QWEST USE LISTING INFORMATION TO ENGAGE IN**
21 **RETENTION OR WINBACK MARKETING ACTIVITIES BY**
22 **IDENTIFYING CHARTER'S SUBSCRIBERS?**

23 A. Absolutely not. Qwest does not use listing information for marketing purposes,
24 and does not segregate Charter's or any CLEC's customers for marketing

1 purposes. Qwest does not identify Charter's customers. White pages directory
2 listings for Charter end users are integrated with Qwest retail end user listings into
3 the Qwest system and treated in the same manner.

4 **Q. MR. STARKEY WANTS TO APPLY A VERIZON CASE¹⁵ TO THIS**
5 **ISSUE – WAS THE CIRCUMSTANCE DIFFERENT IN THAT CASE?**

6 A. Yes. In the case mentioned by Mr. Starkey, Verizon upon receiving a notice that
7 one of its customers was porting their number to a different carrier, would contact
8 that end user and offer incentives to stay with Verizon. The listing involved only
9 Verizon customers who were leaving Verizon and not simply a subscriber list
10 obtained from a CLEC. The FCC relied on Section 222(b) of the Act instead of
11 Section 251(b)(3).

12 **Q. MR. STARKEY CLAIMS QWEST HAS AN ADVANTAGE BY**
13 **ALLOWING IT THE OPPORTUNITY TO MARKET DIRECTLY TO**
14 **COMPETITORS USERS. IS HE CORRECT?**

15 A. Qwest's language eliminates the only potential advantage (segregation) Qwest
16 could have. Listings are generally publicly available today in all sorts of
17 directories and on the web. Absent an ability to segregate, Qwest has no
18 advantage and Qwest has proposed language prohibiting segregation.

19 **V. DISPUTED ISSUE NO. 20: PRIOR WRITTEN AUTHORIZATION TO**
20 **RELEASE, SELL OR MAKE AVAILABLE CHARTER LISTING**
21 **INFORMATION**

22 **Q. DESCRIBE THE DISPUTE UNDER SECTION 10.4.2.5.**

¹⁵ Starkey Direct, page 44, line 9.

1 A. The parties dispute as to whom and when listings can be released. Charter wants
2 restrictions on when Qwest provides listings to third parties that are vague,
3 burdensome to enforce and solve no problems for Charter.

4 **Q. DO YOU AGREE WITH MR. STARKEY ON WHAT THE DISAGREE-**
5 **MENT ON ISSUE 20 IS?**

6 A. No. Mr. Starkey states that the disagreement between the parties is:

7 “Charter and Qwest disagree as to whether Qwest should seek Charter’s
8 authorization before Qwest provides Charter’s listings to directory
9 assistance providers. Charter’s proposal would require such authorization,
10 while Qwest’s proposal would not.”¹⁶”

11 However, Mr. Starkey’s testimony on page 48, line 13 directly contradicts his
12 own statement:

13 However, Charter’s language then provides for an exception to this rule
14 for directory assistance providers whereby Qwest would be allowed to
15 sell, make available, or release Charter’s listings to directory assistance
16 providers without prior authorization.

17 **Q. DOES QWEST HAVE TO OBTAIN PRIOR AUTHORIZATION FROM**
18 **CHARTER IN ORDER TO RELEASE ITS LISTINGS TO DA**
19 **PROVIDERS?**

20 No. There is not a Section 251(b)(3) obligation to get prior authorization to
21 provide listings to DA providers. Qwest has to provide the listings to DA
22 providers in nondiscriminatory manner. Qwest’s language is clear and direct.

23 **Q. DO YOU AGREE WITH MR. STARKEY THAT CHARTER’S**
24 **LANGUAGE “IN SECTION 10.4.2.5 CREATES A GENERAL RULE**

¹⁶ Starkey Direct at page 46, line 12.

1 **THAT QWEST WILL NOT RELEASE CHARTER’S CUSTOMER**
2 **LISTINGS WITHOUT PRIOR WRITTEN CONSENT FROM**
3 **CHARTER?¹⁷”**

4 A. No. Charter’s language does not create a rule and an exception as Mr. Starkey
5 also claims – it only confuses the issues involved in this section. Charter’s
6 proposal first requires written permission for *any* release of information, then says
7 that it permission is not needed for DA providers and then prohibits release to
8 third parties without permission. This is confusing and inconsistent. Qwest’s
9 language on the other hand is direct and specific that written authorization is
10 required for release of listings to directory publishers and third parties that are not
11 DA providers.

12 **Q. IS QWEST’S LANGUAGE FOR SECTION 10.4.2.5 REDUNDANT AND**
13 **DUPLICATIVE LIKE MR. STARKEY CLAIMS ON PAGE 49 OF HIS**
14 **TESTIMONY AT LINE 9?**

15 A. No. Qwest’s language is just specific in describing the situations where written
16 authorization for release of listings is required. Under Qwest’s proposal, if the
17 listings are to be released to a directory publisher or third party, written
18 authorization is required. What Mr. Starkey does not recognize is that Qwest’s
19 language purposely excludes DA providers from being considered a third party.
20 This specificity in Qwest’s language is missing from Charter’s language.

21 **Q. WHY IS IT IMPORTANT TO DISTINGUISH THIRD PARTIES FROM**
22 **DA PROVIDERS?**

¹⁷ Starkey Direct, page 48, line 11.

1 A. Charter's additional proposal that listings "shall not be provided by Qwest for
2 marketing purposes to third parties" demonstrates the need for distinguishing the
3 two types. As the FCC rulings have stated, a DA provider can use the lists as it
4 chooses in a lawful manner. If the DA provider is not excluded from the third
5 party category, Charter could choose to deny permission for Qwest to release the
6 information leading to a conflict.

7 **Q. DOES CHARTERS LANGUAGE CLARIFY THE ISSUE?**

8 A. Charter's proposed language is confusing and creates issues rather than solving
9 them. First it states that written authorization is required for any release of
10 information. Then it agrees with Qwest that none is required for DA providers.
11 Then it bars all release to third parties for marketing purposes which arguably
12 includes DA providers. So under Charter's language, while Qwest can release the
13 information with Charter's permission to third parties, it has to ban those third
14 parties from marketing purposes. This is inappropriate and contrary to Qwest's
15 obligations. Qwest's language is specific and directly describes when written
16 permission is necessary and to whom.

17 **Q. IS QWEST OBJECTING TO COMPLYING WITH THE LAW AS MR.
18 STARKEY IMPLIES?**

19 A. No. Charter's proposed language is not necessary. Qwest seeks to comply with
20 applicable legal requirements. Qwest's proposed language in this section and in
21 practice complies with the law.

22 **Q. IS CHARTER FREE TO DECIDE WHETHER SUBSCRIBER
23 INFORMATION IT HAS PROVIDED TO QWEST MAY BE USED FOR**

1 **MARKETING PURPOSES CONTRARY TO MR. STARKEY'S**
2 **ASSERTIONS?**

3 A. Yes. Qwest does not decide who can use the listings for marketing purposes. DA
4 Providers can use the listings for whatever lawful purpose they choose. For third
5 parties and directory publishers, Charter, not Qwest, determines if its listings are
6 provided. At the current time, Charter has chosen to release its listings to third
7 parties and directory publishers. Qwest is not the party to impose limitations on
8 these third parties – that is up to Charter.

9 **VI. DISPUTED ISSUE NO. 21: CHARGES FOR DIRECTORY LISTINGS**

10 **Q. PLEASE DESCRIBE THIS DISPUTE.**

11 A. Issue 21 is about whether the current nonrecurring rate of “no charge” for a
12 primary directory listing should appear not only in Exhibit A to the contract but
13 also in the body of the contract.

14 **Q. IS QWEST TRYING TO UNILATERALLY CHANGE A RATE THAT IS**
15 **CONTAINED IN EXHIBIT A AS MR. STARKEY IMPLIES AT PAGE 51,**
16 **LINE 9?**

17 A. No. Qwest cannot unilaterally change the rate. Undisputed language in this
18 Section 2.2 of the contract explains the Exhibit A rates:

19 Rates in Exhibit A will be updated to reflect legally binding decisions of
20 the Commission and newly changed rates shall be applied on a prospective
21 basis from the effective date of the legally binding Commission decision,
22 unless otherwise ordered by the Commission.

23 The Commission must approve a rate increase. Qwest cannot put a different rate
24 into Exhibit A at its option. This provision is present in all agreements and has

1 been approved numerous times. It has resulted in Commission ordered increases
2 and Commission ordered decreases in the past to conform to changes in law.

3 **Q. WHAT IS THE CURRENT NONRECURRING CHARGE FOR A CLEC**
4 **SUBMITTING A PRIMARY LISTING?**

5 A. Rate elements are listed in Exhibit A to the ICA. The current nonrecurring charge
6 for a primary listing is listed in Exhibit A as “no charge.”

7 **Q. DOES THIS MEAN QWEST COULD NEVER HAVE A NON**
8 **RECURRING CHARGE FOR A PRIMARY LISTING?**

9 A. No. Rates are set by the Commission in a cost proceeding. Qwest could petition
10 for a rate change.

11 **Q. WHAT IS QWEST’S OBJECTION TO CHARTER’S LANGUAGE?**

12 A. Qwest is simply proposing language that 1) does not prohibit it from exercising its
13 right to request a rate increase in the future 2) continues to mark and refer to the
14 rate in Exhibit A and 3) provides an efficient way to implement Commission
15 orders related to rates. Charter’s language would create an inherent conflict with
16 Exhibit A should the rate change and would require negotiation of a contract
17 amendment even though the parties would know what rate has been set.

18 **Q. IS THERE LANGUAGE IN THE CONTRACT THAT WILL TAKE CARE**
19 **OF CHARTER’S CONCERNS?**

20 A. Yes. Agreed upon language in Section 2.2 states:

21 It is expressly understood that this Agreement will be corrected, or if
22 requested by CLEC, amended as set forth in this Section 2.2, to reflect the
23 outcome of generic proceedings by the Commission for pricing, service
24 standards, or other matters covered by this Agreement. Rates in Exhibit A
25 will be updated to reflect legally binding decisions of the Commission and

1 newly changed rates shall be applied on a prospective basis from the
2 effective date of the legally binding Commission decision, unless
3 otherwise ordered by the Commission.
4

5 Thus, a negotiation/amendment would not necessarily be required to implement
6 the results of a cost docket.

7 **VII. DISPUTED ISSUE NO. 22: CHARGES FOR PRIVACY LISTINGS**

8 **Q. PLEASE DESCRIBE THIS DISPUTE.**

9 A. Charter and Qwest dispute whether Charter should be required to pay the
10 Commission ordered rate for privacy listings. Qwest believes Charter should be
11 required to pay that rate and should not use an arbitration as a vehicle to try to
12 reverse Commission cost orders.

13 **Q. MR. STARKEY STATES THE DISAGREEMENT IN ISSUE 22 IS**
14 **“WHETHER QWEST SHOULD BE ALLOWED TO CHARGE CHARTER**
15 **FOR NONLISTED AND NONPUBLISHED LISTINGS WHEN A**
16 **CHARTER CUSTOMER CHOOSES NOT TO INCLUDE THEIR LISTING**
17 **INFORMATION IN DIRECTORIES.¹⁸” IS THIS AN ACCURATE**
18 **STATEMENT?**

19 A. No. Charter’s proposed language creates a situation where Charter provides
20 listings to Qwest, including those with privacy indicators, but Charter does not
21 wish to pay for the Privacy Listings option for those listings. In fact, Charter’s
22 proposal deletes the rate element for Privacy Listings itself. Qwest’s position is
23 that it is allowed to charge the Commission-approved rates for listings that
24 Charter submits to Qwest with privacy indicators.

¹⁸ Starkey Direct, page 52, line 13.

1 **Q. DO YOU AGREE WITH MR. STARKEY’S SUMMARIZATION OF ISSUE**
2 **22 ON PAGE 53 OF HIS TESTIMONY THAT CHARTER SHOULD NOT**
3 **PAY FOR PRIVACY LISTINGS?**

4 A. No. It is Charter’s position that Qwest should not be allowed to charge Charter
5 for nonlisted and nonpublished listings when a Charter customer chooses not to
6 include their listing information in directories. The answer is straightforward: in
7 the case of nonlisted or nonpublished listings (what is referred to as privacy
8 listings), Qwest provides a service and undertakes activities for which it should be
9 compensated and for which it may assess a charge. If Charter wants to avoid such
10 charges, it need not submit the listings to Qwest. Charter may take responsibility
11 for keeping track of them on their own. In addition, the Commission has
12 approved charges for privacy listings.

13 **Q. PLEASE EXPLAIN THE SCENARIOS AVAILABLE TO CHARTER.**

14 A. Charter has three basic options in regard to privacy listings:

15 a. Charter has the option to submit its end user customer listings to Qwest for
16 use in directory assistance and directory publishing products. If Charter
17 does not submit a listing to Qwest, Qwest obviously will not charge
18 Charter for these listings as it has not performed any activity.

19 b. If Charter provides a standard listing to Qwest, the standard rate in Exhibit
20 A applies. The current rate listed in Exhibit A is “No Charge”

21 c. If Charter provides a listing to Qwest and wants the listing to be
22 nonpublished or nonlisted, standard rates, if any, apply and the privacy
23 listing charge applies. The current Commission approved rate listed in

1 Exhibit A for privacy listings is “General Exchange Tariff Rate, Less
2 Wholesale Discount.”

3 Charter’s language and Mr. Starkey’s testimony seek to remove Commission
4 approved rates.

5 **Q. IN PROCESSING PRIVACY LISTINGS FOR CHARTER, DOES QWEST**
6 **PERFORM WORK AT THE REQUEST OF CHARTER?**

7 A. Yes. The services include maintaining, storing, updating and processing the
8 listing data. Standard listings are passed through the systems and produced upon
9 request for certain subscriber list products. Privacy listings have an indicator that
10 is read by the computer system and extra effort is undertaken. For example,
11 Qwest programs that create the DAL and Subscriber List products have to
12 recognize a specific code to ‘exclude’ the privacy data such as the Non-publish
13 indicator so the program can strip the telephone number from the product. If it
14 didn’t do that, the telephone number would be passed with the product resulting in
15 a published number. The Subscriber List process has to recognize the nonpublish
16 and nonlisted indicators and exclude the entire listing from the product. Listings
17 are updated frequently and require additional processing to capture any changes
18 that have occurred since the previous update.

19 **Q. IS CHARGING FOR PRIVACY LISTINGS A NEW CONCEPT?**

20 A. No. The privacy listings charge is not a brand new type of charge. The
21 Commission approved charging for Privacy Listings in Docket # U79-66, Advice
22 # 1247, filed August 11, 1980, effective August 21, 1980 in Pacific Northwest
23 Bell Telephone Company Tariff WN U-14. Those charges continue to be tariffed
24 rates.

1 **Q. DOES CHARTER’S PROPOSED LANGUAGE ACT IN ACCORDANCE**
2 **WITH MR. STARKEY’S COMMENT ON COMPENSATION FOR**
3 **WORK?**

4 A. No. Charter’s proposed language for Section 10.4.3.4 states:

5 Qwest will not assess a charge upon CLEC for providing, maintaining,
6 storing, or otherwise processing information related to End User
7 Customers Listings, that have requested non-list or non-publish status, or
8 for any other act associated with such End User Customers.

9 In other words, Charter wants “providing, maintaining, storing, or otherwise
10 processing information” on privacy listings for free. This is not a “fair and
11 equitable approach to compensation¹⁹” as Mr. Starkey advocates in his testimony.

12 **VIII. DISPUTED ISSUE NO. 23: CLASSIFIED (YELLOW PAGES) LISTINGS**

13 **Q. ON PAGES 66, MR. STARKEY STATES “THE ISSUE IS THE EXTENT**
14 **TO WHICH CHARTER CUSTOMERS WILL RECEIVE A PRIMARY**
15 **LISTING IN BOTH WHITE AND YELLOW PAGES JUST AS QWEST**
16 **CUSTOMERS DO.” DO YOU AGREE?**

17 A. No. The issue is not about what Charter wants its customers to receive but instead
18 is about whether Qwest provides Qwest and Charter’s listings to directory
19 publishers in the same fashion. Charter’s language improperly outlines and
20 expands Qwest’s role in providing nondiscriminatory access to directory listings.
21 In addition, Charter’s language incorrectly assumes Qwest “causes” its own
22 listings to be published in a yellow pages directory.

¹⁹ Starkey Direct, page 56, lines 6-7.

1 **Q. DOES QWEST CAUSE ITS LISTINGS TO BE PUBLISHED IN A**
2 **YELLOW PAGES DIRECTORY?**

3 A. No. Qwest is not a directory publisher and does not cause a yellow pages
4 directory to be published on its behalf. It is critical to note that Qwest does have
5 an official White Pages directory publisher, Dex.²⁰ Qwest provides its Directory
6 Publishing List (DPL) to Dex for the white pages and the DPL includes its
7 customer listings along with CLEC's including Charter. Qwest does not offer or
8 pay for a yellow pages directory to be published.

9 **Q. IS DEX AN AFFILIATE OF QWEST?**

10 A. No. Dex is not owned by Qwest, Qwest has no business control in Dex, and
11 receives no revenue from Dex other than through Dex purchasing Qwest products.
12 The relationship between Qwest and Dex is simple - Dex is the directory
13 publisher Qwest chose to publish its white pages directory. Dex publishes yellow
14 pages directories and can, if it wants, purchase DPL products from Qwest for such
15 use. However, Qwest has no say in what Dex chooses to do. Qwest provides the
16 DPL to Dex and includes Charter's listings. Further, listings provided to Dex if it
17 purchased a DPL product would be provided in a nondiscriminatory fashion.

18 **Q. DOES QWEST TREAT YELLOW PAGE PUBLISHERS DIFFERENT**
19 **THAN WHITE PAGE PUBLISHERS?**

20 A. No. Qwest is required to provide nondiscriminatory access to its directory listings
21 to Directory Publishers. Qwest must provide subscriber list information to:
22 ... requesting directory publishers at the same rates, terms, and conditions
23 that the carrier provides the information to its own directory publishing

²⁰ Dex is the trademark of the R.H. Donnelly Company

1 operation, its directory publishing affiliates or another directory
2 publisher.²¹

3 Qwest offers the Directory Publisher's List (DPL) product to all directory
4 publishers, yellow and white pages, on the same terms and conditions. If for
5 example, a publisher requested listings for a geographic area – such as just those
6 for the Spokane Washington area – Qwest does not inquire whether the list is for
7 yellow pages directory or a white pages directory – the list provided would be the
8 same for either.

9 **Q. DOES QWEST TREAT CLEC LISTINGS DIFFERENT THAN QWEST IN**
10 **TERMS OF PROVIDING THEM TO A WHITE OR YELLOW PAGES**
11 **PUBLISHER?**

12 A. No. The whole of Section 10.4 compels Qwest to treat Charter listings in the
13 same manner as Qwest listings. Although called White Pages Directory Listings
14 Service, the service provides directory publishers of white or yellow pages the
15 same list in the same manner and treats Charter listings in the same manner as
16 Qwest listings.

17 **Q. ON PAGE 61 OF HIS TESTIMONY, MR. STARKEY STATES THAT**
18 **CHARTER'S PROPOSAL FOR 10.4.5 "REQUIRES QWEST TO**
19 **PROVIDE THE SAME TREATMENT FOR CLEC LISTINGS IN**
20 **RELATION TO CLASSIFIED DIRECTORIES." NOTWITHSTANDING**
21 **WHETHER THIS IS ACCURATE, IS CHARTER'S PROPOSED**

²¹ In the Matters of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Third Report and Order, Docket No. 96-115 14 FCC RCD 15550 (1999), para. 58..

1 **LANGUAGE REDUNDANT OF LANGUAGE ALREADY IN THE**
2 **CONTRACT?**

3 A. Yes. There is no need for Charter's language as Qwest does not distinguish the
4 white and yellow pages publishers. The point I want to make is that the
5 conditions Charter proposes for Section 10.4.5 are already present in the language
6 of the contract in Section 10.4. Specifically agreed upon language in Section
7 10.4.2.24 states:

8 10.4.2.24 Qwest represents and warrants that any arrangement for the
9 publication of white pages Directory Listings with an Affiliate or
10 contractor, requires such Affiliate or contractor to publish the Directory
11 Listings of CLEC contained in Qwest's Listings database so that CLEC's
12 Directory Listings are non-discriminatory in appearance and integration,
13 and have the same accuracy and reliability that such Affiliate or contractor
14 provides to Qwest's End User Customers.

15 In addition, the parties have agreed upon language that ensures Charter's end user
16 listings are treated the same as Qwest's

17 10.4.2.8 Qwest provides non-discriminatory appearance and
18 integration of white pages directory Listings for all CLEC's and Qwest's
19 End User Customers. All requests for white pages directory listings,
20 whether for CLEC or Qwest End User Customers, follow the same
21 processes for entry into the Listings database.

22 10.4.2.9 Qwest will take all reasonable steps to ensure that CLEC's
23 nonpublished and nonlisted Listings receive the same degree of protection
24 from public disclosure as Qwest provides to its own End Users' requests
25 for nonpublished and nonlisted Listings, provided that CLEC has supplied
26 Qwest the necessary privacy indicators on such Listings.

27 10.4.2.10 CLEC's white pages directory listings will be in the same
28 font and size as Listings for Qwest End User Customers, and will not be
29 separately classified.

30 10.4.2.11 Qwest processes for publication of white pages Directory
31 Listings will make no distinction between CLEC's and Qwest's

1 subscribers. CLEC's Listings will be provided with the same accuracy and
2 reliability as Qwest's End User Customer Listings. Qwest will ensure
3 CLEC's Listings provided to Qwest are included in the white pages
4 directory published on Qwest's behalf using the same methods and
5 procedures, and under the same terms and conditions, as Qwest uses for its
6 own End User Customer Listings.

7 10.4.2.12 For CLEC's End User Customers whose Listings CLEC
8 provides to Qwest for submission to its official directory publisher, Qwest
9 shall ensure its third party publisher distributes appropriate alphabetical
10 and classified directories (white and yellow pages) and recycling services
11 to such CLEC End User Customers at Parity with Qwest End User
12 Customers, including providing directories a) upon establishment of new
13 service; b) during annual mass distribution; and c) upon End User
14 Customer request.

15 Charter's proposal for Section 10.4.5 is duplicative of what is already present in
16 the ICA and unnecessary.

17 **Q. MR. STARKEY CLAIMS ON PAGE 61 THAT "CHARTER'S PROPOSED**
18 **SECTION 15 REQUIRES QWEST TO INCLUDE CHARTER'S**
19 **CUSTOMERS' LISTINGS IN WHITE AND YELLOW PAGES**
20 **DIRECTORIES TO THE SAME EXTENT IT PROVIDES TO ITS OWN**
21 **CUSTOMERS." IS THIS ACCURATE?**

22 A. No. There are numerous problems with this language and it goes well beyond Mr.
23 Starkey's statement. Charter proposes:

24 Qwest shall promptly cause any contracts or agreements it has with any
25 third party with respect to the provision of these services and functions to
26 be amended, to the extent necessary, so that CLEC may provide its own
27 End Users' information for inclusion in such printed directories on the
28 same terms and conditions that Qwest End User information is included.

29 The result of this language would be Qwest changing its contracts with third
30 parties so Charter can provide its own listings to publishers- "CLEC may provide
31 its own End User's information." There is no rule requiring Qwest to amend its

1 contracts so Charter can act on its own and submit its own listings. Charter has
2 already agreed that Qwest can provide its listings to directory publishers and third
3 parties.²² If Charter wants to submit its listings directly to a publisher, it can do so
4 but must negotiate a contract on its own. Qwest is required to accept Charter's
5 listings and submit them to a publisher. Charter already has the ability to provide
6 its listings directly to publishers without any interaction with Qwest. Charter's
7 language is not necessary. Charter's language goes well beyond the scope of
8 Qwest's responsibility under 222(e) or even 251(b)(3).

9 **Q. CAN QWEST FORCE A PUBLISHER TO ACCEPT TERMS AND**
10 **CONDITIONS IN A CONTRACT BETWEEN CHARTER AND A**
11 **PUBLISHER?**

12 A. No. This is why Charter's proposal is unnecessary and improper.

13 **Q. DOES QWEST HAVE CONTROL OVER WHAT A DIRECTORY**
14 **PUBLISHER CHOOSES TO PUBLISH?**

15 A. No. Qwest provides the DPL product. The publisher determines the directories it
16 wants to publish. For example, if a publisher wanted to only publish a directory
17 of funeral homes, Qwest could not force it not to.

18 **Q. QWEST PROPOSES IN SECTION 10.4.5 THAT CERTAIN ISSUES ARE**
19 **OUTSIDE THE PROVISION OF BASIC WHITE PAGE DIRECTORY**
20 **LISTINGS. IS THAT APPROPRIATE?**

21 A. Yes. These are issues that should be between a publisher and the end user without
22 Qwest's involvement. For example, Yellow Book offers space for advertising in

²² Weinstein Direct, page 24, line 2.

1 its yellow pages directory. Yellow Book representatives contact an end user who
2 is an attorney to sell a half page ad. The attorney and Yellow Book negotiate the
3 rate and terms - Qwest is not involved. This is true for Qwest's Official Publisher
4 as well. Qwest provides the listings but is not involved in these issues.

5 **Q. MR. STARKEY QUOTES TWO LEGAL CASES FOR SUPPORT – ARE**
6 **THE CASE RELEVANT IN THIS CASE?**

7 A. No. I will allow my lawyers to address those cases in legal briefs.

8 **Q. ARE THE WHITE PAGES DIRECTORY LISTINGS ONLY USED FOR**
9 **WHITE PAGES?**

10 A. No. As I stated above, the "White Pages Directory Listings" does not distinguish
11 between white and yellow pages publishers. Section 10.4 is not limited to white
12 page listings or publishers.

13 **Q. QWEST PROPOSES THAT CERTAIN ISSUES ARE OUTSIDE THE**
14 **PROVISION OF BASIC WHITE PAGE DIRECTORY LISTINGS. IS**
15 **THAT APPROPRIATE?**

16 A. Yes. These are issues that should be between a publisher and the end user
17 without Qwest's involvement. For example, Yellow Book offers space for
18 advertising in its yellow pages directory. Yellow Book representatives contact an
19 end user who is an attorney to sell a half page ad. The attorney and Yellow Book
20 negotiate the rate and terms - Qwest is not involved. This is true for Qwest's
21 Official Publisher as well. Qwest provides the listings but is not involved in these
22 issues.

1 **Q. WHAT ARE YOU ASKING THE COMMISSION TO DO IN REGARD TO**
2 **ISSUE NO. 23?**

3 A. The Qwest proposal should be accepted by the Commission for Issue No. 23.

4 **IX. DISPUTED ISSUE NO. 24: COST RESPONSIBILITY FOR AUDITS**

5 **Q. DO YOU AGREE WITH CHARTER'S POSITION ON THE**
6 **PERCENTAGE THRESHOLD FOR SHIFTING COST**
7 **RESPONSIBILITY?**

8 A. No. Mr. Starkey appears to claim that because the amount it owes Qwest may be
9 less than other CLECs, Charter is entitled to a higher percentage of error. This
10 argument is not convincing. There should be a reasonable expectation of
11 accuracy independent of billing amounts. Establishing the 5% threshold
12 encourages both parties to insure their billing is accurate which is the ultimate
13 objective of this provision. While Qwest has no empirical studies that support
14 that a customer would consider a bill with only a 5% variance more preferable
15 than a bill with a 10% variance, Qwest believes this is self evident. More to the
16 point is the question of whether it is reasonable to expect this level of accuracy.
17 And the reasonableness of this expectation is born out by the hundreds of
18 contracts the have been executed by Qwest and CLECs wherein both sides have
19 signed up for this standard. While some errors may be inevitable, a 5% threshold
20 for determining who pays for the audit serves as a positive motivation for both
21 Qwest and Charter to continue monitor and insure accurate billing.

22 **Q. DO AUDITS OCCUR FREQUENTLY?**

23 A. No. The parties are generally limited to one audit per year, making it is an

1 infrequent occurrence.²³ Considering that audit charges will not be a frequent
2 consideration, Charter's theory that overall billing amounts *may* be smaller than
3 other CLECs and thus, a higher variance threshold should be assigned is not
4 reasonable. If the difference between amounts billed and amounts owed is only a
5 factor at most once a quarter, then the smaller percentage for triggering the
6 payment shift makes sense. A party should not get a benefit because its
7 accounting is flawed over such a long time period.

8 **Q. DO YOU AGREE WITH MR. STARKEY ON PAGE 71 OF HIS**
9 **TESTIMONY THAT QWEST'S PROPOSAL FOR SECTIONS 18.2.9 AND**
10 **18.2.10 SHIFTS THE COSTS TO THE AUDITED PARTY?**

11 A. Only to the extent that the audited party requests an Independent Auditor or upon
12 findings of improper billing. What Qwest's proposed language does is provide
13 either party with the opportunity to request an independent auditor, and having the
14 party requesting the independent auditor pay at minimum, half the costs of the
15 independent auditor. This way, one party cannot force the other to incur great
16 expense unless they make the business decision to have an independent auditor or
17 have a problem with the accounting. With Qwest's language, the party who did
18 not ask for the audit can still compel an independent auditor to be involved.,
19 giving it the opportunity to make the choice and in doing so, incur only half the
20 cost. Thus, a party can exercise its rights and have an independent auditor
21 conduct the audit. In the same vein, if the auditing party wants the Independent
22 Auditor, it will pay the cost.

²³ Weinstein Direct, page 39, line 9.

1 **Q. DOES MR. STARKEY'S TESTIMONY ADDRESS WHAT HAPPENS**
2 **WHEN THE AUDITED PARTY WANTS AN INDEPENDENT AUDIT**
3 **AND THE REQUESTING PARTY DOES NOT?**

4 A. No. The reason this is important is that one party may want an audit but not want
5 to incur the expense of an independent auditor. Charter's proposed language
6 allows the other party to force an independent audit without cost, thus
7 discouraging the party from exercising its right to have an audit. Qwest's
8 proposal eliminates this issue, instead allowing the party requesting the audit to
9 have the choice to use and pay for an independent auditor or to choose to use its
10 own employees to conduct the audit. The party who is not requesting the audit is
11 still protected by being able to request an independent auditor but with both
12 parties splitting the costs. A party can still have an independent audit if it so
13 chooses and still enjoy the protection of Section 18.2.8.2 that if the threshold is
14 exceeded, the other party pays for the audit. This is fair and reasonable.

15 **Q. HOW SHOULD THE COMMISSION RULE ON ISSUE NO. 24?**

16 A. The Commission should adopt Qwest's proposed audit language on Issue No. 24.

17 **X. CONCLUSION**

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

19 A. Yes.