

0013

1 BEFORE THE WASHINGTON STATE
2 UTILITIES AND TRANSPORTATION COMMISSION
3 In the Matter of the Petition)
4 for Arbitration of an) DOCKET UT-083041
5 Interconnection Agreement) Volume II
6 Between) Pages 13 to 191
7 CHARTER FIBERLINK WA-CCVII,)
8 LLC,)
9 with)
10 QWEST CORPORATION,)
11 Pursuant to 47 U.S.C. Section)
12 252(b).)
13 _____)

10 An arbitration hearing in the above matter
11 was held on December 16, 2008, from 9:30 a.m to 4:15
12 p.m., at 1300 South Evergreen Park Drive Southwest, Room
13 206, Olympia, Washington, before Administrative Law
14 Judge MARGUERITE FRIEDLANDER.

15 The parties were present as follows:

16 QWEST CORPORATION, by LISA ANDERL, Attorney
17 at Law, 1600 Seventh Avenue, Suite 3206, Seattle,
18 Washington 98191, Telephone (206) 345-1574, Fax (206)
19 343-4040, E-Mail lisa.anderl@qwest.com; and by TOM
20 DETHLEFS, Attorney at Law, 1801 California, 10th Floor,
21 Denver, Colorado 80202, Telephone (303) 383-6646, E-mail
22 tom.dethlefs@qwest.com.

20
21
22
23
24 Joan E. Kinn, CCR, RPR
25 Court Reporter

0014

1 CHARTER FIBERLINK WA-CCVII, LLC, by GREGORY
2 J. KOPTA, Attorney at Law, Davis, Wright, Tremaine, LLP,
3 1201 Third Avenue, Suite 2200, Seattle, Washington
4 98101, Telephone (206) 757-8079, Fax (206) 757-7079,
5 E-Mail gregkopta@dwt.com; and by K.C. HALM, Attorney at
6 Law, Davis Wright Tremaine, LLP, 1919 Pennsylvania
7 Avenue Northwest, Suite Number 200, Washington D.C.
8 20006, Telephone (202) 973-4287, Fax (202) 973-4499,
9 E-mail kchalm@dwt.com.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0015

1

2

INDEX OF EXAMINATION

3

4

WITNESS:

PAGE:

5

JAMES D. WEBBER

6

Cross-Examination by Ms. Anderl

40

7

Redirect Examination by Mr. Halm

146

8

Examination by Judge Friedlander

153

9

TIMOTHY J. GATES

10

Direct Examination by Mr. Halm

156

11

Cross-Examination by Mr. Dethlefs

159

12

Examination by Judge Friedlander

179

13

Cross-Examination by Mr. Dethlefs

181

14

Redirect Examination by Mr. Halm

185

15

16

17

18

19

20

21

22

23

24

25

0016

1 -----

2 INDEX OF EXHIBITS

3 -----

4	EXHIBIT:	MARKED:	ADMITTED:
5	JAMES D. WEBBER		
6	JDW-1T	21	34
7	JDW-2RT	21	34
8	JDW-3	21	34
9	JDW-4	21	52
10	JDW-5C	21	118
11	JDW-6	21	
12	JDW-7	21	65
13	PEGGY GIAMINETTI		
14	PG-1T	21	34
15	PG-2RT	21	34
16	PG-3	21	145
17	PG-4	22	145
18	PG-5	22	145
19	PG-6	22	145
20	TOM DEGNAN		
21	TD-1T	22	34
22	TD-2RT	22	34
23	TD-3T	22	34
24	TD-4	22	W/D
25	TD-5	22	W/D

0017

1	TD-6	22	145
2	TD-7	22	145
3	TD-8	22	145
4	TD-9	22	145
5	TD-10	22	145
6	TIMOTHY J. GATES		
7	TJG-1T	22	34
8	TJG-2	22	34
9	TJG-3RT	23	34
10	TJG-4	23	34
11	TJG-5C	23	34
12	TJG-6C	23	170
13	TJG-7	23	161
14	TJG-8	23	
15	TJG-9	23	
16	TJG-10	23	
17	TJG-11	23	
18	TJG-12	23	
19	TJG-13C	23	
20	TJG-14	24	170
21	TJG-15	24	
22	TJG-16	24	
23	TJG-17	24	
24	TJG-18	24	
25	TJG-19	24	

0018

1	TJG-20	24	
2	TJG-21	24	184
3	WILLIAM R. EASTON		
4	WRE-1T	24	34
5	WRE-2RT	24	34
6	WRE-3	24	34
7	WRE-4	25	34
8	WRE-5	25	
9	WRE-6	25	
10	WRE-7	25	
11	WRE-8	25	
12	WRE-9	25	
13	WRE-10	25	
14	WRE-11	25	
15	WRE-12C	25	
16	WRE-13	25	
17	WRE-14	25	
18	WRE-15	25	
19	WRE-16	25	
20	WRE-17	25	
21	WRE-18	25	
22	WRE-19	25	
23	WRE-20	25	
24	WRE-21	25	
25			

0019

1	PHILIP LINSE		
2	PL-1T	25	34
3	PL-2	26	34
4	PL-3	26	34
5	PL-4	26	34
6	PL-5	26	34
7	PL-6	26	34
8	PL-7RT	26	34
9	PL-8C	26	34
10	PL-9	26	34
11	PL-10	26	
12	PL-11	26	
13	PL-12	26	
14	PL-13	26	
15	PL-14	26	
16	PL-15	26	
17	ROBERT H. WEINSTEIN		
18	RHW-1T	26	34
19	RHW-2RT	26	34
20	RHW-3	26	
21	RHW-4	26	
22	RHW-5	27	
23	RHW-6	27	
24	RHW-7	27	
25	RHW-8	27	

0020

1	RHW-9	27	
2	RHW-10	27	
3	RHW-11	27	
4	RHW-12	27	
5	RHW-13	27	
6	RENEE ALBERSHEIM		
7	RA-1T	27	34
8	RA-2RT	27	34
9	RA-3	27	34
10	RA-4	27	34
11	RA-5	27	34
12	RA-6	27	34
13	RA-7	27	34
14	RA-8	27	
15	RA-9	28	
16	RA-10	28	
17	RA-11	28	
18	RA-12	28	
19	RA-13	28	
20	HEARING EXHIBITS		
21	HE-1	34	35
22	HE-2	35	35
23	HE-3	35	35
24	HE-4	35	35
25	HE-5	35	35

0021

EXHIBIT LIST

1

2 PARTY: CHARTER

3 Witness: James D. Webber

4 JDW-1T Direct Testimony of Michael Starkey (adopted)

5 (October 8, 2008).

6 JDW-2RT Rebuttal Testimony of James D. Webber

7 (November 17, 2008).

8 JDW-3 Curriculum Vitae of James D. Webber.

9 CROSS EXAMINATION EXHIBITS:

10 JDW-4 Excerpt from Charter Washington Tariff.

11 JDW-5C New Customer Questionnaire for Facility -
12 Based Competitive Local Exchange Carriers.

13 CONFIDENTIAL

14 JDW-6 ALJ's August 31, 2000, Order in UT-003022.

15 JDW-7 Table of Contents for WAC 480-120.

16 Witness: Peggy Giaminetti

17 PG-1T Direct Testimony of Peggy Giaminetti (October

18 8, 2008).

19 PG-2RT Rebuttal Testimony of Peggy Giaminetti

20 (November 17, 2008).

21 CROSS EXAMINATION EXHIBITS:

22 PG-3 Charter's Response to Qwest Data Request No.

23 13.

24 PG-4 Charter's Response to Qwest Data Request No.

25 14.

0022

1 PG-5 Charter's Response to Qwest Data Request No.

2 15.

3 PG-6 Charter's Response to Qwest Data Request No.

4 16.

5 Witness: Tom Degnan

6 TD-1T Direct Testimony of Allison Cosway (adopted).

7 TD-2RT Rebuttal Testimony of Allison Cosway

8 (adopted).

9 TD-3T Testimony Insert on Background of Tom Degnan.

10 CROSS EXAMINATION EXHIBITS:

11 TD-4 Best Ratings for Charter.

12 TD-5 Best Ratings for Washington.

13 TD-6 Charter's 10Q form.

14 TD-7 Charter's Response to Qwest Data Request No.

15 9.

16 TD-8 Charter's Response to Qwest Data Request No.

17 10.

18 TD-9 Charter's Response to Qwest Data Request No.

19 11.

20 TD-10 Charter's Response to Qwest Data Request No.

21 12.

22 Witness: Timothy J. Gates

23 TJG-1T Direct Testimony of Timothy J. Gates (October

24 8, 2008).

25 TJG-2 Biography of Timothy J. Gates.

0023

1 TJG-3RT Rebuttal Testimony of Timothy J. Gates
2 (November 17, 2008).

3 TJG-4 Diagram of Transport and Termination Elements
4 of Reciprocal Compensation Regulations.

5 TJG-5C Diagram regarding Charter's Operations.

6 CONFIDENTIAL

7 CROSS EXAMINATION EXHIBITS:

8 TJG-6C Mid-span meet point of interconnection
9 agreement, dated November 13, 2008.

10 CONFIDENTIAL.

11 TJG-7 Charter's Response to Qwest Data Request No.
12 1.

13 TJG-8 Charter's Response to Qwest Data Request No.
14 2.

15 TJG-9 Charter's Response to Qwest Data Request No.
16 3.

17 TJG-10 Charter's Response to Qwest Data Request No.
18 4.

19 TJG-11 Charter's Response to Qwest Data Request No.
20 5.

21 TJG-12 Charter's Response to Qwest Data Request No.
22 6.

23 TJG-13C Charter's Response to Qwest Data Request No.
24 7. CONFIDENTIAL

25

0024

1 TJG-14 Charter's Response to Qwest Data Request No.

2 8.

3 TJG-15 Charter's Response to Qwest Data Request No.

4 17.

5 TJG-16 Charter's Response to Qwest Data Request No.

6 18.

7 TJG-17 Charter's Response to Qwest Data Request No.

8 19.

9 TJG-18 Charter's Response to Qwest Data Request No.

10 20.

11 TJG-19 Charter's Response to Qwest Data Request No.

12 21.

13 TJG-20 Charter's Response to Qwest Data Request No.

14 22.

15 TJG-21 Charter's Response to Qwest Data Request No.

16 23.

17 PARTY: QWEST

18 Witness: William R. Easton

19 WRE-1T Direct Testimony of William R. Easton (October

20 8, 2008).

21 WRE-2RT Rebuttal Testimony of William R. Easton

22 (November 17, 2008).

23 WRE-3 Charter's Response to Qwest Data Request No.

24 5.

25

0025

1 WRE-4 Charter's Response to Qwest Data Request No.
2 2.

3 CROSS EXAMINATION EXHIBITS

4 WRE-5 Qwest Response to Charter Data Request No. 1.
5 WRE-6 Qwest Response to Charter Data Request No. 2.
6 WRE-7 Qwest Response to Charter Data Request No. 3.
7 WRE-8 Qwest Response to Charter Data Request No. 4.
8 WRE-9 Qwest Response to Charter Data Request No. 5.
9 WRE-10 Qwest Response to Charter Data Request No. 6.
10 WRE-11 Qwest Response to Charter Data Request No. 7.
11 WRE-12C Qwest Response to Charter Data Request No. 10.

12 CONFIDENTIAL

13 WRE-13 Qwest Response to Charter Data Request No. 12.
14 WRE-14 Qwest Response to Charter Data Request No. 15.
15 WRE-15 Qwest Response to Charter Data Request No. 17.
16 WRE-16 Qwest Response to Charter Data Request No. 50.
17 WRE-17 Qwest Response to Charter Data Request No. 51.

18 WRE-18 Minnesota PUC Decision Docket
19 No. P-421/EM-97-371.

20 WRE-19 WUTC Decision Docket UT-971063.

21 WRE-20 Selected CFR Provisions.

22 WRE-21 Washington Map.

23 Witness: Philip Linse

24 PL-1T Direct Testimony of Philip Linse (October 8,
25 2008).

0026

- 1 PL-2 Entrance Facilities Diagram.
- 2 PL-3 Mid-Span Meet Point Diagram.
- 3 PL-4 Collocation Diagram.
- 4 PL-5 Switch Port Diagram.
- 5 PL-6 Switch Port Diagram 2.
- 6 PL-7RT Rebuttal Testimony of Philip Linse (November
- 7 17, 2008).
- 8 PL-8C Memo to Qwest from NoaNet dated July 25, 2007.
- 9 CONFIDENTIAL
- 10 PL-9 Charter v. Qwest Transport Facilities.
- 11 CROSS EXAMINATION EXHIBITS:
- 12 PL-10 Qwest Response to Charter Data Request No. 52.
- 13 PL-11 Qwest Response to Charter Data Request No. 53.
- 14 PL-12 Qwest Response to Charter Data Request No. 54.
- 15 PL-13 Qwest Response to Charter Data Request No. 19.
- 16 PL-14 Qwest Response to Charter Data Request No. 21.
- 17 PL-15 Qwest Response to Charter Data Request No. 22.
- 18 Witness: Robert H. Weinstein
- 19 RHW-1T Direct Testimony of Robert H. Weinstein
- 20 (October 8, 2008).
- 21 RHW-2RT Rebuttal Testimony of Robert H. Weinstein
- 22 (November 17, 2008).
- 23 CROSS EXAMINATION EXHIBITS:
- 24 RHW-3 Qwest Response to Charter Data Request No. 26.
- 25 RHW-4 Qwest Response to Charter Data Request No. 29.

0027

1 RHW-5 Qwest Response to Charter Data Request No. 30.
2 RHW-6 Qwest Response to Charter Data Request No. 31.
3 RHW-7 Qwest Response to Charter Data Request No. 32.
4 RHW-8 Qwest Response to Charter Data Request No. 33.
5 RHW-9 Qwest Response to Charter Data Request No. 34.
6 RHW-10 Qwest Response to Charter Data Request No. 35.
7 RHW-11 Qwest Response to Charter Data Request No. 39.
8 RHW-12 Qwest Response to Charter Data Request No. 41.
9 RHW-13 Qwest Response to Charter Data Request No. 42.
10 Witness: Renee Albersheim
11 RA-1T Direct Testimony of Renee Albersheim (October
12 8, 2008).
13 RA-2RT Rebuttal Testimony of Renee Albersheim
14 (November 17, 2008).
15 RA-3 Best's Financial Strength Rating Sheet.
16 RA-4 Guide to Best's Financial Strength Ratings (2
17 pages).
18 RA-5 Charter's Response to Qwest Data Request No.
19 12.
20 RA-6 Marsh Minimum Financial Guidelines for
21 Insurers (2 pages).
22 RA-7 Qwest Advice No. 3157T, Original Sheet 62,
23 Section 2 & Section 5 (13 pages).
24 CROSS EXAMINATION EXHIBITS:
25 RA-8 Qwest Response to Charter Data Request No. 44.

0028

- 1 RA-9 Qwest Response to Charter Data Request No. 45.
- 2 RA-10 Qwest Response to Charter Data Request No. 46.
- 3 RA-11 Qwest Response to Charter Data Request No. 47.
- 4 RA-12 Qwest Response to Charter Data Request No. 48.
- 5 RA-13 Qwest Response to Charter Data Request No. 49.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0029

1 P R O C E E D I N G S

2 JUDGE FRIEDLANDER: Good morning, my name is
3 Marguerite Friedlander, and I am the Administrative Law
4 Judge who will be presiding over this proceeding. We
5 are here today before the Washington Utilities and
6 Transportation Commission Tuesday, December 16th, 2008,
7 to begin an arbitration hearing in Docket UT-083041
8 between Charter Fiberlink WA-CCVII, LLC, and Qwest
9 Corporation. The purpose of the hearing today is to
10 take testimony and evidence from the parties on the
11 issues in this proceeding. After taking abbreviated
12 appearances, we will address any preliminary
13 administrative matters and proceed to testimony from
14 Charter.

15 So let's go ahead and begin with appearances,
16 and we'll take short appearances today since we've
17 already met before, so just go ahead and give me your
18 name and who you represent, and we'll start with
19 Charter.

20 MR. KOPTA: Thank you, Your Honor, Gregory J.
21 Kopta of the law firm Davis Wright Tremaine, LLP, on
22 behalf of Charter.

23 MR. HALM: Thank you, K.C. Halm, H-A-L-M,
24 Davis Wright Tremaine, on behalf of Charter.

25 JUDGE FRIEDLANDER: Great, thank you.

0030

1 And on behalf of Qwest.

2 MS. ANDERL: On behalf of Qwest Corporation,
3 Lisa Anderl.

4 JUDGE FRIEDLANDER: Great, thank you.

5 MR. DETHLEFS: On behalf of Qwest
6 Corporation, Tom Dethlefs.

7 JUDGE FRIEDLANDER: Great, thank you.

8 And is there anyone on the bridge line who
9 could identify themselves for the record?

10 Hearing nobody, we'll go into the
11 administrative issues. Before we began today, I handed
12 out to the parties a draft exhibit list with each of the
13 proposed direct, rebuttal, and cross-examination
14 exhibits. Do the parties have any revisions or
15 additions to the list that they would like to make on
16 the record?

17 MR. KOPTA: Yes, Your Honor, we have a couple
18 of revisions. First, we had designated three
19 cross-examination exhibits for Mr. Easton that should be
20 for Mr. Linse.

21 JUDGE FRIEDLANDER: Okay.

22 MR. KOPTA: Those are Qwest's responses to
23 Data Requests Number 19, 21, and 22, which have been
24 premarked on the exhibit list as WRE-16, 17, and 18,
25 those should be moved to Mr. Linse's list of exhibits.

0031

1 JUDGE FRIEDLANDER: Okay, and I'll go ahead
2 and identify them for the record as PL-13, 14, and 15,
3 and I will move WRE-20, which, I'm sorry, WRE-19, which
4 is the Qwest response to Charter Data Request 50, and
5 all the subsequent exhibits up three so that we have
6 Mr. Easton's cross-exhibits will end with number 21,
7 WRE-21.

8 MR. KOPTA: Thank you, Your Honor.

9 And then there are a couple of exhibits that
10 were designated by Qwest as cross-examination exhibits
11 that should be marked as confidential.

12 JUDGE FRIEDLANDER: Okay.

13 MR. HALM: Starting page 1, yes, beginning on
14 page 1 under cross-exhibits for Mr. Webber, JDW-5, which
15 has been identified as the New Customer Questionnaire,
16 should be marked as confidential.

17 JUDGE FRIEDLANDER: Okay. And because it
18 wasn't filed confidential, we'll need you to file
19 according, yes, we will need Qwest to file according to
20 the confidential regulations.

21 MS. ANDERL: Yes, Your Honor, thank you, we
22 will send a notice to the records center withdrawing the
23 filing so they take the electronic posting down and
24 resubmitting it as confidential.

25 JUDGE FRIEDLANDER: Okay, thank you.

0032

1 MR. HALM: Thank you, Your Honor.

2 MS. ANDERL: May I ask --

3 MR. HALM: One more.

4 MS. ANDERL: -- before we go on, how when the
5 exhibits aren't designated with a party's initials or a
6 witness's initials ahead of time, the confidential
7 designation would just be the exhibit would be C5, how
8 are we going to do this, will it be JDW-5C?

9 JUDGE FRIEDLANDER: Yes.

10 And, Mr. Halm, did you have another
11 correction?

12 MR. HALM: Yes, Your Honor.

13 On page 2 under the cross-exhibits for
14 Mr. Gates.

15 JUDGE FRIEDLANDER: Okay.

16 MR. HALM: The exhibit identified as TJG-6,
17 mid-span meet point of interconnection agreement.

18 JUDGE FRIEDLANDER: Okay.

19 MR. HALM: It should also be designated as
20 confidential.

21 JUDGE FRIEDLANDER: Okay.

22 And, Ms. Anderl, I take it you'll go ahead
23 and do the same process with records center for that one
24 as well?

25 MS. ANDERL: We will, thank you.

0033

1 JUDGE FRIEDLANDER: Okay, thank you.

2 And does Qwest have any additions or
3 revisions to make to the draft exhibit list?

4 MS. ANDERL: I think Qwest and Charter do
5 jointly in terms of some general hearing exhibits that
6 we would like to stipulate be added, but we don't have
7 anything specific to the exhibits that we filed or that
8 were filed as cross-exhibits for our witnesses.

9 JUDGE FRIEDLANDER: Okay, great, thank you.

10 And do the parties wish to stipulate to the
11 admission of the exhibits as they're listed with those
12 modifications that we made on the record, or would you
13 like to do that witness by witness?

14 MS. ANDERL: The parties are willing to
15 stipulate the admission of the prefiled direct testimony
16 and exhibits and rebuttal testimony and exhibits.

17 JUDGE FRIEDLANDER: Okay.

18 MS. ANDERL: With regard to cross-exhibits, I
19 think we would like to handle those on an exhibit by
20 exhibit basis.

21 JUDGE FRIEDLANDER: Certainly.

22 Then if this is a joint request for the
23 direct testimony as well as exhibits and rebuttal
24 testimony with exhibits to be admitted, is there any
25 opposition, or are you joining in the motion?

0034

1 MR. KOPTA: No, we join.

2 JUDGE FRIEDLANDER: Okay, then the Commission
3 will admit the direct testimony and exhibits for both
4 parties as well as the rebuttal testimony and exhibits
5 for both parties, and we will hold off on the
6 cross-examination exhibits until we reach those
7 witnesses.

8 MR. KOPTA: Thank you, Your Honor.

9 JUDGE FRIEDLANDER: Okay, are there any other
10 issues that are administrative in manner which we need
11 to address before we get to the witness testimony?

12 MR. KOPTA: Yes, Your Honor, there are two
13 additional things we need to discuss. One is the
14 identification and I'm assuming at this point admission
15 of some exhibits that aren't specific to a particular
16 witness, and those would include the petition, the
17 interconnection agreement attached to the petition, the
18 answer, the interconnection agreement attached to the
19 answer, and the issues matrix attached to the answer.
20 Those five exhibits I think we ought to identify and
21 admit at this point.

22 JUDGE FRIEDLANDER: Certainly. Okay, well,
23 we'll go ahead and I will mark the petition for
24 arbitration as Hearing Exhibit 1, HE-1. And I will mark
25 the ICA, the interconnection agreement attached to the

0035

1 petition for arbitration as HE-2, Hearing Exhibit 2.
2 And I will mark the answer from Qwest as HE-3, Hearing
3 Exhibit 3. I will mark the interconnection agreement
4 attached to Qwest's answer as HE-4. And I will go ahead
5 and mark the matrix, the issues matrix, as HE-5 since no
6 party will, or no witness I should say is sponsoring any
7 of those.

8 MR. KOPTA: That would be great, Your Honor,
9 thank you. And I think we would have the same
10 stipulation about admission of those exhibits into the
11 record at this point.

12 MS. ANDERL: Yes, we agree.

13 JUDGE FRIEDLANDER: Okay, and they are so
14 admitted.

15 MR. KOPTA: And the other issue for
16 discussion is the parties have resolved four of the
17 issues that were presented in the testimony, the
18 prefiled testimony, and I think I will let Mr. Halm sort
19 of outline which ones those are since I don't have my
20 notes with me on that.

21 JUDGE FRIEDLANDER: Okay, great, thank you.

22 Mr. Halm.

23 MR. HALM: Yes, thank you, Your Honor. And
24 subject to Ms. Anderl's confirmation, Issue Number 1
25 concerning disconnection of services the parties have

0036

1 settled. Issue Number 4 concerning the insurance rating
2 requirements the parties have settled. Issue 21
3 concerning charges for directory listings the parties
4 have settled. And Issue 24 concerning audits.

5 JUDGE FRIEDLANDER: Okay, great, thank you.

6 MS. ANDERL: Your Honor, we agree that we
7 have settled those. We have E-mails, confirming
8 exchanges of E-mails. The actual settlement will be
9 implemented in language in a conforming ICA at the end
10 of the arbitration after we file that. I don't know if
11 Your Honor or the Commission is interested in knowing
12 what the settled results were or not, if you want us to
13 memorialize that now or at some later time but prior to
14 the filing of an ICA.

15 JUDGE FRIEDLANDER: I see. Well, I think
16 what I would like, and I will also remind you at the end
17 of the hearing, obviously we have opening and closing
18 posthearing briefs, so when those briefs get filed, I
19 would like a joint issues matrix, and I would like you
20 to include those issues that have been resolved as well
21 as what the resolution was, if you could do that.

22 MS. ANDERL: Sure, thank you.

23 JUDGE FRIEDLANDER: And like I said, I will
24 go ahead and remind you again at the close of hearing
25 just to include those with the briefs.

0037

1 Are there any other procedural matters that
2 we need to address before we get into testimony?

3 MR. KOPTA: I can't think of any at the
4 moment, Your Honor, but I'm sure there are some that
5 will come up as we proceed.

6 JUDGE FRIEDLANDER: Okay, well, we'll address
7 them as they arise.

8 MS. ANDERL: You Honor, I just wanted to make
9 sure, I could do this off the record, but to confirm
10 that Charter's witnesses have copies of our
11 cross-exhibits.

12 MR. KOPTA: Yes, they should.

13 MS. ANDERL: So I won't need to hand them out
14 to them?

15 MR. KOPTA: No.

16 JUDGE FRIEDLANDER: Okay, thank you.

17 With that, I will go ahead and have Charter
18 call their first witness.

19 MR. KOPTA: I'm sorry, I got distracted, Your
20 Honor.

21 JUDGE FRIEDLANDER: That's okay.

22 I will go ahead and have Charter call your
23 first witness.

24 MR. KOPTA: Oh, okay, thank you, Your Honor.
25 Charter calls Mr. James Webber.

0038

1 JUDGE FRIEDLANDER: If you will go ahead and
2 stand and raise your right hand.

3 (Witness JAMES D. WEBBER was sworn.)

4 JUDGE FRIEDLANDER: You may be seated.

5 MR. HALM: Just a moment, Your Honor, to make
6 sure we've got copies of all of the Qwest
7 cross-exhibits.

8 JUDGE FRIEDLANDER: Okay, sure.

9 We'll be off the record momentarily while
10 they look for the cross-exam exhibits.

11 (Discussion off the record.)

12 JUDGE FRIEDLANDER: I just want to verify
13 that the exhibits for Mr. Webber that have already been
14 admitted are JDW-1T, JDW-RT, and JDW-3, and we're
15 leaving the cross-exam for Qwest, that's correct?

16 MR. HALM: Yes, Your Honor.

17 JUDGE FRIEDLANDER: Okay.

18 So, Mr. Kopta, did you have any corrections
19 to make to Mr. Webber's testimony?

20 MR. KOPTA: Mr. Halm will be presenting
21 Mr. Webber.

22 JUDGE FRIEDLANDER: Okay.

23 MR. KOPTA: And I believe he does have some
24 corrections, but why don't you just go ahead and say
25 what those are, Mr. Webber, at this point.

0039

1 THE WITNESS: I have one correction, Your
2 Honor.

3 JUDGE FRIEDLANDER: Okay, go ahead.

4 THE WITNESS: In my rebuttal testimony at
5 page 4, we refer to an exhibit as JDW-2, that should
6 actually be JDW-3 if my counting is correct. That's the
7 CV which is attached to my rebuttal testimony.

8 JUDGE FRIEDLANDER: Great, thank you.

9 THE WITNESS: And that's it.

10 JUDGE FRIEDLANDER: Okay.

11 And, Mr. Halm, did you have anything, did you
12 want to just go into direct, or did you want to go into
13 cross?

14 MR. HALM: I understand we've stipulated that
15 well waive all the direct foundation questions.

16 JUDGE FRIEDLANDER: Okay, great.

17 MR. HALM: So I'll tender the witness for
18 cross-examination.

19 JUDGE FRIEDLANDER: Thank you.

20 Okay, Ms. Anderl.

21 MS. ANDERL: Thank you, Your Honor.

22

23

24

25

0040

1 Whereupon,

2 JAMES D. WEBBER,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5

6 C R O S S - E X A M I N A T I O N

7 BY MS. ANDERL:

8 Q. Good morning, Mr. Webber.

9 A. Good morning.

10 Q. My name is Lisa Anderl, and I'm an in-house
11 attorney for Qwest. I will be asking you some questions
12 today. Why don't we go ahead and start with you stating
13 your name and your position and your business address
14 for the record.

15 A. My name is James D. Webber, and I'm a Senior
16 Vice President at QSI Consulting.

17 Q. How long have you been at QSI?

18 A. I believe I joined in early 2003, so five and
19 a half, almost six years now.

20 Q. Have you testified on behalf of Charter
21 Fiberlink in any proceedings other than this one and in
22 Minnesota?

23 A. Yes, I have, I've testified in Missouri,
24 Texas, and Wisconsin.

25 Q. And were those arbitrations with the

0041

1 incumbent similar to these proceedings?

2 A. Yes.

3 Q. And have you testified on behalf of Charter
4 in any other proceedings?

5 A. No, I have not.

6 Q. Have you testified on behalf of any other
7 cable companies in the past five years?

8 A. No, I don't believe I have.

9 Q. Is it your understanding that the purpose of
10 the interconnection agreement between the parties that
11 is at issue in this proceeding is to interconnect
12 Charter's and Qwest's networks with each other?

13 A. Although I don't deal with the
14 interconnection issues in my testimony per se, my
15 understanding is that's one of the issues that would
16 come as a result of this interconnection agreement being
17 adopted.

18 Q. And in a supersimplified way of stating it,
19 that's just so that the companies' subscribers can talk
20 to each other?

21 A. Yeah, that's one benefit.

22 Q. And to your knowledge, Charter will generally
23 provide telephone services over its own cable
24 facilities?

25 A. Generally speaking, that's true.

0042

1 Q. Now you and other witnesses have testified
2 that Charter will not seek collocation from Qwest; is
3 that right?

4 A. I don't believe I testified as to whether
5 Charter will or will not collocate.

6 Q. Do you know?

7 A. I believe they will not.

8 Q. Okay.

9 And Hearing Exhibit Number 2 that we just
10 identified is the interconnection agreement that was
11 filed as a part of Charter's petition for arbitration;
12 do you have that document available to you?

13 A. That's the juxtaposed agreement?

14 Q. Yes, the one that was filed by Charter.

15 A. Dated August 7, 2008?

16 Q. You know, the footer says August 6th on my
17 copy, but I think we're talking about the same document.

18 A. Well, if you would like to see my copy, it's
19 here.

20 Q. Juxtaposed master draft Washington, it says
21 8-7-08 on the front of it?

22 A. Yes.

23 Q. Okay, so we have that same document.

24 A. Mm-hm.

25 Q. Now could you turn to page 76 of that

0043

1 document.

2 A. I'm there.

3 Q. And do you see the introduction to the
4 section on collocation there says that Charter does not
5 intend to collocate any equipment at Qwest premises and
6 that essentially if Charter does seek to do so, it will
7 negotiate terms and conditions with Qwest?

8 A. Yeah.

9 Q. And is it your understanding that that is the
10 parties' agreement on this issue?

11 A. Yeah, that would appear to be true based on
12 this agreement.

13 Q. And then for the next approximately 55 or so
14 pages through page 130, there are actually terms and
15 conditions in that ICA for the collocation section;
16 isn't that right?

17 A. Yeah, I'll take your word for it that you've
18 caught the right number of pages, et cetera. There seem
19 to be many pages regarding collocation.

20 Q. And as I just had this conversation with
21 Mr. Kopta, I can either ask you this as a
22 cross-examination question or ask counsel to stipulate
23 that indeed when the parties file a compliance
24 interconnection agreement that only this first paragraph
25 of Section 8 will be contained in that document; is that

0044

1 your understanding, or will counsel stipulate?

2 MR. HALM: Ms. Anderl, I think we can
3 stipulate that fact.

4 Q. Mr. Webber, you're not an employee of
5 Charter, right?

6 A. That's correct.

7 Q. Did you speak with any Charter employees in
8 preparation for giving this testimony today?

9 A. Sure.

10 Q. Do you know who, do you recall who you spoke
11 with?

12 A. Let me see, Michael Moore, Peggy Giaminetti,
13 Bill Pruitt, and a few of their other in-house counsel.

14 Q. Was it just lawyers that you spoke with then?

15 A. No, in fact one of the persons that I named
16 is an attorney, the other two are not.

17 Q. Is Mr. Pruitt an attorney?

18 A. No, not to my knowledge.

19 Q. Are you involved in any of the day-to-day
20 business operations of Charter?

21 A. No.

22 Q. Are you involved in any of the strategic
23 decisionmaking or planning for Charter's business?

24 A. No.

25 Q. And back in 2000, the year 2000, you were

0045

1 working for AT&T at that time?

2 A. Yes.

3 Q. Are you familiar with what is referred to as
4 the 271 process?

5 A. Yes.

6 Q. And is it your understanding that the 271
7 process is a shorthand way of referring to the
8 proceedings that RBOCs engaged in in order to receive
9 authorization to provide long distance service?

10 A. Yes.

11 Q. Did you participate in U.S. West or Qwest's
12 Section 271 processes in any of its 14 states?

13 A. No.

14 Q. Did you --

15 A. Just to be clear, when I worked for AT&T I
16 worked in the central region, so I was in the Ameritech
17 states.

18 Q. In the Ameritech states?

19 A. Yes.

20 Q. And did you participate in the Section 271
21 process in any of those states?

22 A. That's -- I'm going back to my testimony or
23 my CV to see if there is a case where I testified. I
24 don't believe that to be true, but if there is one, it
25 would be in here.

0046

1 MS. ANDERL: Your Honor, may I have a moment
2 off the record?

3 JUDGE FRIEDLANDER: Sure, that's fine.

4 We're off the record momentarily.

5 (Discussion off the record.)

6 BY MS. ANDERL:

7 Q. Mr. Webber, did you read any of the
8 Commission's 271 orders relative to Qwest's 271 process
9 in preparation for this hearing today?

10 A. I read portions of all the documents that are
11 cited in my testimony, and I think that's probably
12 correct.

13 Q. Are you generally aware that at the
14 conclusion of the 271 proceeding Qwest filed a statement
15 of generally available terms and conditions with the
16 Commission?

17 A. I assume that would be the case, but I don't
18 know it for a fact.

19 Q. And that that statement of generally
20 available terms implemented the Commission's decisions
21 on all of the disputed 271 issues?

22 A. I'm not certain quite frankly.

23 Q. And that the Commission found that statement
24 of generally available terms to comply with the Telecom
25 Act?

0047

1 A. If you could show me the order, I can confirm
2 if it says that, but I don't have recollection as I sit
3 here today that being the case. I have no reason to
4 dispute that it would be.

5 Q. Are you aware of whether Qwest was
6 subsequently authorized by the FCC to engage in
7 intraLATA long distance in the state of Washington?

8 A. I believe it was.

9 Q. You talk a little bit in your testimony about
10 the SGAT, which is the acronym for the statement of
11 generally available terms, and Qwest's template
12 interconnection agreement. Are you aware of whether
13 Qwest's template interconnection agreement has been
14 agreed to by any CLECs in the state of Washington?

15 A. Not specifically, no.

16 Q. Are you aware of whether -- well, let me
17 strike that question.

18 Did you engage in any of the negotiations
19 that Qwest and Charter had prior to the arbitration?

20 A. I did not, no.

21 Q. Are you aware of whether Qwest to resolve
22 certain issues with Charter agreed to modify some of its
23 template language on issues that are no longer disputed?

24 A. I'm sorry, can you say that again?

25 Q. I don't know. I will try to paraphrase what

0048

1 I just said, but I was not reading that question.

2 A. Sure.

3 Q. Are you aware of whether in the course of the
4 negotiations leading up to this arbitration Qwest agreed
5 to modify some of its template language --

6 MR. HALM: Your Honor --

7 Q. -- to reach an agreement with Charter?

8 MR. HALM: -- I would object because I think
9 this calls for the witness to speculate. He's just
10 testified that he was not involved in the negotiations.

11 MS. ANDERL: Well, Your Honor, he testified
12 that he wasn't involved in the negotiations but that he
13 did speak with many Charter employees in preparation for
14 the hearing today, so I'm just asking him if he is aware
15 of whether that happened.

16 JUDGE FRIEDLANDER: Okay, I will allow it.

17 A. Unfortunately I'm not, aware that is.

18 BY MS. ANDERL:

19 Q. Are you familiar with a company called
20 Comcast?

21 A. Yes.

22 Q. And do you know what business Comcast is in?

23 A. They largely provide cable services as well
24 as telecommunications services.

25 Q. And is that the same business that -- would

0049

1 that be an accurate description for the business that
2 Charter is in as well?

3 A. I haven't done anything to compare the two
4 companies, but as a loose matter you could say that
5 they're similar.

6 Q. Are you aware as you sit here today, are you
7 aware of any ways in which they are specifically
8 different from each other?

9 A. No. Like I said, I haven't done an analysis
10 to determine the extent to which the companies are
11 similar or not similar. If you were having a casual
12 conversation about telephone companies, you might say
13 that AT&T and Qwest are similar in that they provide
14 telephone services. Similarly you might say that
15 Comcast and Charter are similar in that they provide
16 video cable services and telephone services. But, you
17 know, I wouldn't be able to go beyond that point at this
18 particular moment.

19 Q. Do you know whether Comcast has an
20 interconnection agreement with Qwest in the state of
21 Washington?

22 A. Actually I don't, no.

23 Q. In preparation for this hearing, did you
24 review the excerpts from the Charter tariff that were
25 provided to you as a cross-examination exhibit and that

0050

1 are now marked for the record as Exhibit JDW-4?

2 A. Yes, I have that in front of me.

3 Q. And can you confirm that that is an accurate
4 copy of the pages, the excerpted pages for the tariff
5 under which Charter provides service to its end users in
6 the state of Washington?

7 A. Actually I don't have any way to verify
8 myself personally whether this is accurate.

9 Q. When you received the document from your
10 counsel, did you talk to your counsel about it?

11 A. Other than to suggest that I would read it
12 and be familiar with it, no.

13 Q. Did you confirm its accuracy with any of the
14 Charter employees with whom you spoke in preparation for
15 the hearing today?

16 A. No.

17 Q. Why not?

18 A. I assume that's your responsibility.

19 Q. Did you think that the terms and conditions
20 under which Charter would perform service to the public
21 in the state of Washington would be relevant to the
22 terms and conditions under which Qwest and Charter would
23 reach a commercial agreement today?

24 A. Not for purposes of the testimony that I've
25 sponsored here today, no.

0051

1 Q. Could you turn, Mr. Webber, to page 1 of the
2 Exhibit JDW-4.

3 A. The cover page?

4 Q. Yes.

5 A. Okay.

6 Q. The original title page.

7 A. Okay, so we're working, when you're using
8 page numbers, we'll be working on the lower right-hand
9 corner at the handwritten notes?

10 Q. That document has been hand numbered --

11 A. Okay.

12 Q. -- pages 1 through 15 I believe.

13 A. I see that, okay.

14 Q. Is Charter Fiberlink, well, is the entity
15 named on the title page the same entity on whose behalf
16 you're testifying here today?

17 A. That looks to be accurate, yes.

18 Q. When you look at the bottom and see that the
19 tariff states that it was issued by Carrie L. Cox, is
20 that someone you know to be employed by Charter?

21 A. Yes.

22 Q. And in your review of this document,
23 Mr. Webber, did you see anything in this document that
24 would lead you to believe it is in fact not a correct
25 copy of the excerpted pages for the Charter tariff?

0052

1 A. No.

2 MS. ANDERL: Your Honor, I will have some
3 questions on this document when I touch on another
4 subject. At this point I would offer it for admission
5 into the record.

6 JUDGE FRIEDLANDER: Okay, thank you.

7 Is there any objection to admission of
8 Exhibit JDW-4?

9 MR. HALM: Your Honor, could I take one
10 moment?

11 JUDGE FRIEDLANDER: Sure.

12 MR. HALM: Thank you, Your Honor, no
13 objections.

14 JUDGE FRIEDLANDER: Okay, so admitted.

15 MS. ANDERL: Thank you.

16 BY MS. ANDERL:

17 Q. Mr. Webber, I'm going to ask you some
18 questions about the disputed issues, and I will each
19 time I change issue numbers let you know that we're
20 moving around. I'm not going to necessarily ask you
21 about them in numerical order. So I would first like to
22 ask you some questions about Issue 6(b), and if we look
23 at your rebuttal testimony, which is JDW-2RT, I'm
24 looking at page 24.

25 A. I'm there.

0053

1 Q. And on the last two lines of that page, you
2 state that Charter's proposal would require the
3 indemnified party to assume the defense if it withholds
4 consent to a reasonable settlement offer. Do you see
5 that?

6 A. Yes, at line 17 and line 18?

7 Q. Yes.

8 A. I see that.

9 Q. Now you don't have the actual disputed
10 language here in your testimony, so I'm going to have
11 you turn to the language in Section 5.9.2.3.

12 A. Sure.

13 Q. So we can all take a look at that.

14 A. It should also be cited directly in my direct
15 testimony, but.

16 JUDGE FRIEDLANDER: What was that section
17 again, counsel?

18 MS. ANDERL: Yes, it's 5.9.2.3, and if you're
19 in the Hearing Exhibit 2, it will be on page 35.

20 JUDGE FRIEDLANDER: Great, thank you.

21 BY MS. ANDERL:

22 Q. Are you there, Mr. Webber?

23 A. Yes.

24 Q. Okay. Now you see there if you're looking at
25 the hearing exhibit that is the interconnection

0054

1 agreement that there's a boxed out section that says
2 that this is Issue 6(b), and the only difference in the
3 language between the parties is that Qwest proposes the
4 use of the word may and Charter proposes the use of the
5 word must; is that right?

6 A. That's right.

7 Q. And in your testimony you say that Charter's
8 language addresses the situation where Qwest refuses a
9 reasonable settlement offer, right?

10 A. Yes, that word's in my rebuttal at page 24.

11 Q. Now in Charter's proposed language for
12 5.9.2.3, does Charter use the term reasonable settlement
13 offer anywhere in there?

14 A. No, I don't think that is included in the
15 language proposed by either party at 5.9.2. The concept
16 that we're trying to get across here through my
17 testimony is we're in a circumstance where there is a
18 lawsuit, one party is indemnifying the other party, and
19 a reasonable offer has been put on the table. To the
20 extent that that offer is rejected by the indemnified
21 party because they want to pursue something better, the
22 concept would be that it's reasonable, whoever the
23 indemnifying or indemnified party is, for that party who
24 rejects the offer to pick up the additional costs of
25 litigation and bear that on a going forward basis such

0055

1 that possibly they could improve the outcome. And
2 Charter stands ready to do that if they're indemnified,
3 and, you know, they have proposed that Qwest would as
4 well.

5 Q. And would Charter be willing to modify the
6 proposed language in order to capture the concept that
7 the settlement offer must be reasonable by inserting the
8 records reasonable settlement or compromise?

9 MR. HALM: Your Honor, I'm not sure I need to
10 pose an objection here, but I just want to clarify the
11 question, Ms. Anderl is not asking the witness to
12 negotiate terms here on the stand, is she?

13 MS. ANDERL: She might be.

14 JUDGE FRIEDLANDER: Maybe you could rephrase
15 the question.

16 MS. ANDERL: Thank you, Your Honor.

17 BY MS. ANDERL:

18 Q. Does Charter's language contemplate that
19 Qwest could refuse an unreasonable settlement offer and
20 escape the responsibility to take over the defense?

21 A. I'm sorry, one more time just a little bit
22 slower.

23 Q. Sure.

24 Does Charter's language contemplate that
25 Qwest could refuse an unreasonable settlement offer and

0056

1 escape the responsibility to take over the defense?

2 A. It's not clear to me that the language per se
3 focuses on reasonable or unreasonable, and so I don't
4 know if anyone at Charter has contemplated that
5 circumstance you're describing here.

6 Q. Okay. But your testimony, you're not
7 recommending that a party be required to take over the
8 defense in a case where they refused an unreasonable
9 settlement offer, are you?

10 A. No, that's not my recommendation. I don't
11 foresee that circumstance coming about.

12 Q. Okay, that's it for 6(b), Mr. Webber, I just
13 need to put your testimony back together again.

14 Let's move, let's skip to Issue 8,
15 warranties.

16 A. Give me one moment, please.

17 JUDGE FRIEDLANDER: And I believe in the
18 rebuttal testimony that's on page 31, correct?

19 MS. ANDERL: Yes, Your Honor.

20 JUDGE FRIEDLANDER: Thank you.

21 MS. ANDERL: In fact, we hadn't talked about
22 all of us making sure we were on the same pages and the
23 same lines, but it does seem like everything's lining up
24 so far, so.

25 A. I'm at page 31, Issue Number 8.

0057

1 BY MS. ANDERL:

2 Q. Now there are two issues between the parties
3 with regard to Issue Number 8, and the first is the
4 as-is language, right?

5 A. That's an issue, yes.

6 Q. And the other issue is whether we cite to WAC
7 480-120 or if we just reference applicable Washington
8 law; is that right?

9 A. Close. I would note that the language that
10 Charter proposes includes applicable law, and it also
11 includes a more specific reference to 480-120.

12 Q. Charter wants to delete the as-is language;
13 is that right?

14 A. I don't know that delete is the right way to
15 say it. It was Qwest's proposal. Charter didn't accept
16 it. It didn't start in something to begin with.

17 Q. Okay, let's turn to, in Hearing Exhibit 2,
18 let's turn to --

19 A. Page 39?

20 Q. -- this issue which is blocked as Issue
21 Number 8 on Section 5.11 on page 39.

22 A. Mm-hm.

23 Q. And the Qwest language there which Qwest
24 would like to add a sentence or phrase that says:

25 And that all products and services

0058

1 provided hereunder are provided as-is
2 with all faults.

3 That's the way Charter's designated that; is
4 that right?

5 A. That's the way Charter has designated Qwest's
6 proposal, yes.

7 Q. And the double underscoring means what
8 exactly?

9 A. My understanding is that the double
10 underscore represents Qwest's proposed language on that
11 issue.

12 Q. And the bold language represents Charter
13 language, the bold language represents the Charter
14 proposal?

15 A. Yes.

16 Q. Okay. And the Charter proposal does not
17 contain the as-is with all faults?

18 A. That's correct.

19 Q. Now if Qwest's as-is with all faults language
20 was not accepted and Charter's position prevailed on
21 this issue, would Charter feel as though they had the
22 right to make a claim regarding the breach of an implied
23 warranty under this contract?

24 A. I'm not sure I know how Charter would feel,
25 but when you look at 5.11.1, the agreed upon language

0059

1 says there are no warranties, whether express or
2 implied. I don't know that the as-is would add anything
3 to that. There are no warranties.

4 Q. So it's Charter's position that the as-is
5 doesn't add anything to --

6 A. Yes.

7 Q. -- the language?

8 A. That's right.

9 Q. And that --

10 A. And they're --

11 Q. -- their taking it away does not change the
12 meaning of -- does not otherwise change the meaning of
13 the paragraph?

14 A. That's my understanding. Again, I'm not an
15 attorney, I've used contracts for years, but when I read
16 the agreed upon language, it's clear to me as a user of
17 contracts that there are no warranties, whether express
18 or implied. The as-is in my mind wouldn't add anything
19 to that.

20 Q. And do you understand that part of Charter's
21 objection to the use of the phrase as-is is because it
22 is Charter's position that that language is limited to
23 circumstances regarding the sale of goods?

24 A. Yes.

25 Q. Have you ever heard of the phrase as-is used

0060

1 to disclaim warranties in a lease agreement?

2 A. I don't believe I have, no.

3 Q. Can you turn to Section 10.6.2.1.1, and I
4 will tell you the page here in just one second.

5 A. 10.6.2?

6 Q. Yes, .1.1, and it's on page 182 of the
7 interconnection agreement.

8 A. I think I'm there, but let's confirm,
9 10.6.2.1 starts out, if CLEC purchases?

10 Q. It's the first subparagraph under that.

11 A. Oh, .1.1?

12 Q. .1.1, yes.

13 A. Okay.

14 Q. Are you there?

15 A. Yes.

16 Q. And just so that we're clear, can you just
17 read the second sentence into the record.

18 A. I'll try.

19 All third party DAL information is
20 provided as-is with all faults. Qwest
21 further represents that --

22 Q. Just that sentence was fine unless you want
23 to read more.

24 A. No, that's fine.

25 JUDGE FRIEDLANDER: And can we clarify too,

0061

1 DAL represents directory assistance listing.

2 MS. ANDERL: Directory assistance listing.

3 JUDGE FRIEDLANDER: Okay.

4 MS. ANDERL: And we're going to get to that
5 in just a minute.

6 JUDGE FRIEDLANDER: Okay, thank you.

7 BY MS. ANDERL:

8 Q. Mr. Webber, based on the lack of bold or
9 underscoring in that paragraph, do you understand that
10 to be agreed upon language?

11 A. I do.

12 Q. Now could you please turn to the document
13 that has been marked as cross-examination Exhibit JDW-7.

14 A. You're going to have to help me out, my
15 exhibits aren't all marked.

16 Q. Okay, this is the I think it's a three-page
17 document that is the table of contents for the
18 Washington Administrative Code 480-120.

19 A. And that's been marked as JDW-7?

20 Q. I don't know if your copy has been physically
21 marked.

22 A. Right, right, I want to mark it now.

23 Q. Right, it's been identified for the hearing
24 today as that.

25 A. Okay, I have that.

0062

1 Q. Okay.

2 A. Are we still on Issue Number 8?

3 Q. We are.

4 A. Okay.

5 Q. And we're going to talk about the second
6 component of Issue Number 8, which is Charter's desire
7 to reference this particular title and chapter of the
8 Washington Administrative Code; do you have that in
9 mind?

10 A. Sure.

11 Q. Now Charter would like to include a cite to
12 this particular provision, but you state at page 32 of
13 your rebuttal testimony that you -- and you think that
14 that's fine because the parties can tell which of these
15 provisions would apply to the agreement and which
16 wouldn't; is that right?

17 A. Well, I think it's a little bit more than
18 that. I mean first of all, the proposal made by
19 Charter, that goes back to Exhibit Number 2 at page 39
20 and 5.11.1, includes applicable Washington law, and it
21 also adds a more specific cite to the WAC which now
22 we've identified the table of contents for as JDW-7, so
23 we identify applicable law and then go here with a
24 little bit more of a focus to help in my opinion the
25 contract user look for places in the applicable

0063

1 Washington law that might be helpful when they're using
2 that contract.

3 Q. Okay. And now the Charter language says that
4 the Section 5.11.1 does not eliminate or limit the
5 parties' quality of service obligations pursuant to
6 applicable Washington law, including this provision of
7 the WAC; is that right?

8 A. I'm reading the language directly, it says,
9 this provision shall not serve to eliminate or otherwise
10 limit --

11 Q. The part.

12 A. -- the part, thank you.

13 Q. I think it means parties.

14 A. Yeah.

15 Quality of service obligations pursuant to
16 applicable Washington law including, and then it cites
17 the WAC specifically that we have here as JDW-7.

18 Q. And do you agree that there are some
19 provisions in WAC 480-120 that are not quality of
20 service obligations?

21 A. That may well be the case.

22 Q. And do you agree that there are some
23 provisions of the WAC that do not set, of this
24 particular title and chapter of the WAC, that do not set
25 forth obligations that carriers have to one another in

0064

1 the context of an interconnection agreement?

2 A. Yeah, there would be some provisions in here
3 that would apply in that circumstance and others that
4 would not. Just like when you're talking about
5 referencing laws in Washington, the phrase before that
6 says applicable law included here. So again, when I
7 look at this language, I don't necessarily think that in
8 terms of interpreting the contract every single
9 subsection in the WAC is going to be applicable here.

10 Q. And how would a person know which provisions
11 were or were not applicable?

12 A. I think again you would be at that point
13 whatever it is you're trying to interpret dealing with a
14 circumstance at hand with knowledge of the circumstance
15 that you're dealing with, and rather than identifying
16 only the applicable law, Charter's language points to
17 this as one place where you may find answers to address
18 the circumstance that you're dealing with.

19 Q. Do you think that there are quality of
20 service obligations under Washington law that are
21 contained in places other than WAC 480-120?

22 A. Sure, that may well be the case. And I don't
23 think it was Charter's intent to create here an
24 exhaustive list of everything. Rather the language says
25 applicable law, and it identifies one place to look.

0065

1 It's certainly not exclusive language.

2 MS. ANDERL: Your Honor, I would move the
3 admission of JDW-7.

4 JUDGE FRIEDLANDER: Any objections?

5 MR. HALM: No objections, Your Honor.

6 JUDGE FRIEDLANDER: Okay, so admitted.

7 THE WITNESS: Are we finished with 7?

8 MS. ANDERL: 8.

9 THE WITNESS: I'm sorry --

10 MS. ANDERL: And maybe.

11 THE WITNESS: -- the Exhibit JDW-7.

12 MS. ANDERL: Oh, JDW-7, I am through asking
13 you questions on JDW-7.

14 THE WITNESS: Okay.

15 MS. ANDERL: And I am through asking you
16 questions on Issue Number 8 warranties.

17 THE WITNESS: Okay.

18 BY MS. ANDERL:

19 Q. I'm going to ask you some questions now about
20 Issue Number 7, the intellectual property
21 indemnification issue, and in your testimony that would
22 start on page 27, your rebuttal. Mr. Webber, on the
23 question and answer that starts on page 27 and goes over
24 to page 28, is it your testimony that your change which
25 would strike loss, cost, expense, or liability and

0066

1 replace it with a defined term claim would not change
2 the meaning or intent of that sentence?

3 A. Let me read this Q&A.

4 (Reading.)

5 Okay, I've glanced over that Q&A to refresh
6 my memory. I think the language that Charter proposes
7 provides a little bit more clarity in using a definition
8 of claim which includes loss, debt, liability, damage,
9 obligation, claim, et cetera, that you will see on page
10 28. I hope that was responsive to your question.

11 Q. Well, my question was specifically, does your
12 change to the language change the meaning or intent of
13 the provision?

14 A. I think it clarifies. I have to look at the
15 two provisions to see if I think it changes the meaning
16 or the intent.

17 (Reading.)

18 I think it clarifies. I don't see anything
19 that would change the intent. I guess I would leave it
20 to the attorneys to see if somebody thinks it changes
21 the meaning or the value of the paragraphs in the
22 alternative forms.

23 Q. Okay. And on page 28 of your testimony at
24 lines 16 and 17, you say specifically that you don't
25 think that the change expands the potential claims for

0067

1 losses relative to Qwest's proposal; is that right?

2 A. Yeah, I think that's accurate.

3 Q. Okay. And do you think that the additional
4 detail narrows the potential claims for losses?

5 A. Not that I can readily see as I sit here. I
6 think it clarifies.

7 Q. Okay, that was the easy part of Issue 7. Now
8 let's talk about the with knowledge.

9 JUDGE FRIEDLANDER: Before with we do that,
10 does anyone have a preference for taking a break now or
11 waiting until cross-examination is finished?

12 MS. ANDERL: I may need the entire morning to
13 finish cross-examination.

14 JUDGE FRIEDLANDER: Okay.

15 MS. ANDERL: So now would be an absolutely
16 perfect time to break as far as I'm concerned.

17 JUDGE FRIEDLANDER: Okay.

18 Mr. Kopta, does that sound good to you?

19 MR. KOPTA: That's fine, Your Honor.

20 JUDGE FRIEDLANDER: Why don't we go off the
21 record for approximately 10 minutes, and we'll be back
22 on the record at approximately 10:40.

23 (Recess taken.)

24 JUDGE FRIEDLANDER: Ms. Anderl.

25 MS. ANDERL: Thank you.

0068

1 BY MS. ANDERL:

2 Q. Mr. Webber, when we broke, we were just about
3 to go to the with knowledge component of Issue 7. Are
4 you with me?

5 A. Well, I've got my direct testimony open,
6 where shall I be?

7 Q. Oh, you should be in your rebuttal.

8 A. Okay.

9 Q. Page 29.

10 A. I'm there.

11 Q. And you say that the basic principle that
12 underlies Charter's proposal is that one party should
13 indemnify another party for intellectual property
14 infringement only when the indemnifying party had
15 knowledge of the infringement or direction over the
16 infringing facility or service; is that right?

17 A. Well, I think that's part of what's in the
18 language. I think the language also contemplates that
19 they caused the facilities to be connected, they ordered
20 it to be connected, et cetera. So it really goes after
21 each of those facets of being involved and having
22 knowledge of the events.

23 Q. So to kind of explain this in English if we
24 can, because this is a fairly complex issue I think, are
25 you saying that if Charter infringes without knowledge

0069

1 that they are infringing, they have no indemnification
2 obligation?

3 A. Let me read the language, please.

4 (Reading.)

5 The language at 5.10.2 includes in part that
6 the combination -- I've lost my place, this text is so
7 small.

8 Which combination is not made by or at the
9 direction of or with the knowledge of the indemnifying
10 party, so that's really what it goes to, those three
11 together.

12 Q. Okay. So if Charter doesn't have knowledge
13 that they're infringing, but the infringement results
14 from some activity that was either done by Charter or at
15 Charter's direction, then they still would have
16 indemnification obligations?

17 A. I mean the concept that Charter has in
18 indemnification, whether it's for intellectual property
19 or not, is that each party will own up to, if you will,
20 the damage that it might cause or whatever claims come
21 against the company for their actions. And to the
22 extent that they've caused damage or harm, you know,
23 they'll pay, and they'll protect the other party. And I
24 hadn't contemplated a circumstance where they didn't
25 have knowledge of the event, so I'm not quite sure I can

0070

1 answer your question specifically.

2 Q. And when Charter wants to insert the
3 language, or with knowledge, are we talking -- what are
4 we talking knowledge of, knowledge of what; are we
5 talking about the knowledge of the action which results
6 in an infringement or knowledge that there is an actual
7 infringement?

8 A. It appears to me in reading the language that
9 it goes to the combination, request for the combination.

10 Q. So just as long as Charter had knowledge of
11 the activity, they would then not escape liability?

12 A. As opposed to knowledge that there was an
13 infringement?

14 Q. Yes.

15 A. I think that's right, but I'm not an
16 attorney, and that question really gets beyond what I
17 had contemplated when I wrote my testimony.

18 Q. And when you say with knowledge, in your mind
19 who would have to know about that in order for the
20 infringing party to be or the indemnifying party to be
21 charged as having knowledge? That's kind of the
22 overview question, I don't expect you to answer because
23 it's general, but that's just to set the stage. So let
24 me just ask you, what if one of Charter's technicians
25 knew about the activity, would that constitute with

0071

1 knowledge?

2 A. I think depending upon the circumstance that
3 question would be raised and answered, but it would seem
4 to me that somebody who is under the employ of Charter
5 causing something to be connected which would cause
6 infringements would be captured here.

7 Q. And what if that was a contractor that
8 Charter was using, not an employee?

9 A. Again you're getting into a legal question.
10 I think that would be answered in that setting, so I,
11 you know, I can't say for certain.

12 Q. And how would that be answered then?

13 A. To the extent that there's a claim against
14 the parties, my understanding the way these things
15 ultimately go is that there ends up being litigation
16 over who's covering whom and for how much, et cetera.
17 And that would just seem to me to be a question that was
18 answered within that context that was started as a
19 result of the event, the claim brought against the two
20 parties.

21 Q. So it would be another issue for the
22 litigation?

23 A. It might be. Not that it would be the cause
24 of the litigation, but rather it may be, you know, a
25 subissue addressed within that context.

0072

1 Q. Now if we're talking about just intellectual
2 property infringement, not indemnification in connection
3 with that infringement, so we're just talking about two
4 parties in a dispute; do you have that in mind?

5 A. Okay.

6 Q. The person alleging infringement and the
7 person alleging that they didn't.

8 A. Okay.

9 Q. Do you know if lack of knowledge is a defense
10 to a claim of infringement in that context?

11 MR. HALM: Objection, Your Honor, calls for a
12 legal conclusion. Mr. Webber said that he's not here to
13 testify as to the law, he's not an attorney.

14 MS. ANDERL: Your Honor, he's supporting
15 Charter's proposal that this language be added. I'm
16 wanting to explore the basis of knowledge that he has
17 that informs his recommendation.

18 JUDGE FRIEDLANDER: Why don't you go ahead
19 and rephrase it to cover that instead, because he's not
20 an attorney.

21 BY MS. ANDERL:

22 Q. Mr. Webber, in say for example a patent
23 infringement or any type of intellectual property
24 infringement case, do you know whether a person can
25 escape liability by claiming they did not know about the

0073

1 infringement?

2 A. No, I don't.

3 Q. And do you think that the language in this
4 contract with regard to indemnification should be
5 aligned with the standards for liability that exist if
6 there are only two parties to an infringement dispute?

7 A. I'm sorry, say that again.

8 MS. ANDERL: Joan, can you read that back.

9 (Record read as requested.)

10 A. As a matter of contract construction, I can't
11 say whether that makes, you know, whether that's the
12 appropriate thing to do, but it doesn't seem to be an
13 unreasonable idea.

14 BY MS. ANDERL:

15 Q. Thank you, Mr. Webber.

16 I will now direct your attention to Issue 5,
17 which is the limitation of liability issue, and in your
18 rebuttal testimony that starts on page 13. And actually
19 I'm also going to direct you then to the Hearing Exhibit
20 2, which is the ICA, and Section 5.8.4, and on the
21 interconnection agreement, Hearing Exhibit 2, that's on
22 page 33.

23 Do you have that, or just let me know when
24 you do?

25 A. I have that, I was just glancing at it.

0074

1 Q. Okay.

2 Now Charter's proposing to add a new sentence
3 to the end of that Section 5.8.4; is that right?

4 A. Charter has proposed language there. You
5 phrase it as adding. You know, I view it simply as
6 there are two parties, they've tried to negotiate
7 language, and they have alternate views as to what
8 language ought to be in place. It's not as though
9 there's language that's being added to something else.
10 But the bolded language at the end of 5.8.4 comprises
11 part of Charter's proposal on this issue.

12 Q. And this language adds an exclusion so that
13 the word solely, which I think might be misspelled there
14 but that's fine, solely means not contributed to by the
15 negligence of the other party; is that basically it?

16 A. Yeah, I think you could read that language
17 that way.

18 Q. Okay. So let me just see if I understand
19 what the proposal is here. If Charter was 90% negligent
20 and Qwest was 10% negligent in producing an ultimate
21 harm, then Charter under your language would not have
22 any liability to Qwest?

23 A. Well, first of all, let me state this. The
24 language that you're talking about here applies to both
25 parties regardless of which party may be indemnified or

0075

1 indemnifying, so we're looking at an approach which is
2 balanced and applies to both parties.

3 Q. Okay, well, Section 5.8.4 is just limitations
4 of liability generically; that's not in the indemnity
5 section, is it?

6 A. Right.

7 Q. Okay. So let's assume there is a harm that
8 results to Qwest caused 90% by Charter's negligence and
9 10% by Qwest's negligence; do you have that in mind?

10 A. I do.

11 Q. Is it --

12 A. And I would state also it could work the
13 other way.

14 Q. It could.

15 A. Just so we're on the same page.

16 Q. It could.

17 A. Okay.

18 Q. Under the circumstances I described though,
19 is it Charter's purpose in adding this last sentence to
20 say that under those circumstances where there was a
21 contributory negligence by one party that there would be
22 no liability in the example I gave you by Charter to
23 Qwest?

24 A. I had thought that this language was intended
25 to, if there was a harm and if somebody was partly at

0076

1 fault, to split the fault of the harm between the two
2 parties, not to take one party completely off the hook
3 if the other party was partly at fault. I may be
4 misinterpreting that, but that's how I read that
5 language.

6 Q. The next set of questions I have are also on
7 Issue 5, but they concern Section 5.8.1.

8 A. Okay.

9 Q. Which is just a little bit earlier in the
10 interconnection agreement, it's on page 32.

11 A. 5.8.1, I see that.

12 Q. And on the top of page 32 there's Qwest's
13 proposed language, and at the bottom half is Charter's
14 proposed language; is that right?

15 A. True.

16 Q. And you understand that Qwest's proposal is
17 to limit liability, the parties would limit liability to
18 each other for the amounts that were or would be charged
19 for a particular service or function?

20 A. Yes, I understand that to be Qwest's
21 proposal.

22 Q. And --

23 A. Charter's proposal would be to focus on the
24 value of the actual harm, whatever that may be, in
25 whichever party was harmed and whichever party was

0077

1 paying for the harm, to use those terms loosely.

2 Q. And when you say actual direct damages, is it
3 your belief that actual and direct damages would be an
4 amount that is larger than the amounts that were or
5 would have been charged for the services?

6 A. It may be an amount which is small and less
7 than the charges. It may be an amount which is larger
8 and greater than the total charges. And the idea here
9 is that whichever party causes damage to another party,
10 that second party would be made whole as a result of the
11 language, whatever that amount is.

12 Q. And what is Charter's proposal with regard to
13 what the measure of actual and direct damages would be?

14 A. I don't follow you.

15 Q. What constitutes actual and direct damages?

16 A. Well, I think in the rebuttal testimony,
17 perhaps it was the direct testimony, we talked about,
18 you know, a cable cut, and the cable would need to be
19 repaired and restored and made working again. Or let's
20 say a piece of central office equipment was somehow
21 damaged, to my mind the direct or actual damage there
22 would be to restore that situation as though it hadn't
23 taken place, and that would obviously entail an amount
24 of dollars to fix the issue.

25 Q. Let's say hypothetically that Qwest

0078

1 negligently failed to fulfill a Charter order for
2 services by the due date, how would you measure
3 Charter's actual and direct damages in that case?

4 A. I don't know.

5 Q. What if Charter breached the payment
6 provisions of the interconnection agreement and did not
7 pay properly billed amounts for services actually
8 received, what would the actual and direct damages be
9 for that breach?

10 A. If Qwest failed to pay a bill?

11 Q. If Charter breached the payment provisions
12 of the interconnection agreement and did not pay
13 properly billed amounts for services actually received
14 by Charter, what would Qwest's actual and direct damages
15 be?

16 A. I assume the amount of money at issue would
17 be the amount that wasn't paid. I don't know that that
18 applies here or not.

19 Q. Now if the Charter -- let's look at another
20 hypothetical. Let's say a Charter employee hit and
21 knocked over a Qwest telephone pole and the provisions
22 of Section 5.8.1 applied, what would Qwest's actual and
23 direct damages be in that case?

24 A. Again I can't speak to the actual dollar
25 amounts, but the harm of the situation would be the

0079

1 downed telephone pole and whatever cables went along
2 with it and whatever, you know, facilities needed to be
3 restored and those repair costs.

4 Q. So would it be the value of a replacement
5 pole or the depreciated value of the pole?

6 A. I think it would be the value or the cost
7 incurred to restore the situation to prior to the event,
8 and the idea of a depreciated pole or a replacement pole
9 doesn't really come into play. I mean if a pole were
10 knocked over, it may just be that it would be re-erected
11 and repaired, cables would be repaired. It's not like
12 we would have to go out and pay for the purchase of new
13 plant for example. Think of it as, you know, fixing a
14 car, you don't necessarily have to replace the car to
15 repair it.

16 Q. Are you aware whether there are any
17 provisions in any other Commission approved
18 interconnection agreements that measure -- that set the
19 limitation of liability as actual and direct damages
20 instead of the billed amount?

21 A. When I saw this issue in this case, I was
22 actually surprised that it was an arbitration issue.
23 You know, I've seen contracts for the past 15 years or
24 so, and in terms of the parties dealing with one
25 another, they don't usually limit their liability to

0080

1 each other based upon billed amounts for invoices, but
2 rather they usually agree that they will take care of
3 one another's costs in these circumstances, whether the
4 phrase actual or direct damage is used or some other
5 phrase used to get at that same concept. They're
6 usually causing the situation to be restored as opposed
7 to identifying a number out of invoices for a particular
8 period of time. And that's particularly true when two
9 carriers may have sets of invoices with one another that
10 are disparate, one company has high invoices, another
11 company has small invoices. Concept is that they ought
12 to be treated fairly and similarly.

13 Q. Mr. Webber, I asked you whether you were
14 aware of whether there are any provisions in any other
15 Commission approved interconnection agreements that
16 limit damages to the actual and direct damages instead
17 of the billed amount?

18 A. Yes, that's the general concept that I've
19 seen in the industry for the past 15 years.

20 Q. What Commission approved interconnection
21 agreements, and let's limit it to Washington now, are
22 you aware of that contain a limitation of damages to
23 actual and direct damages instead of the billed amount?

24 A. Oh, I don't have a list.

25 Q. Are you aware of any in Washington?

0081

1 A. With specificity, no. I'm just telling you
2 that over the past 15 years that's what I've seen
3 generally. The language that Qwest proposes here is
4 more akin to the language that carriers put in their
5 tariffs, and that would apply to end users, not
6 co-carriers.

7 Q. And Charter believes that it's appropriate to
8 limit its liability to end users to the billed amounts?

9 A. I think language to that effect is in their
10 tariff, as it is most parties' tariffs. I haven't
11 talked to them about their beliefs on the issue
12 necessarily.

13 Q. Now Charter would also like to eliminate the
14 provision in Qwest's proposal that limits damages for
15 directory listings. Do you have that in mind?

16 A. Can you point me to that?

17 Q. Yes.

18 I'm trying to figure out whether it's better
19 to point you to the interconnection agreement or to your
20 testimony or to Ms. Albersheim's testimony, so hang on,
21 let me find the best place for it.

22 A. All right, why don't you choose your best
23 place, and then I'll choose a different one.

24 Q. Perfect.

25 A. Actually I don't recall addressing DIL

0082

1 specifically in my rebuttal testimony, on this point
2 that is.

3 Q. Why don't you look then at Mr. Starkey's
4 direct that you adopted, I think it's on page 13, so
5 that would be Exhibit JDW-1T, and then that testimony
6 refers us to Section 10.4.2.6.

7 MR. HALM: And was there a page number you
8 have for Mr. Starkey's testimony?

9 MS. ANDERL: 13.

10 MR. HALM: 13, thank you.

11 A. Yeah, so that just points back to the
12 contract language. I don't see -- because there isn't
13 proposed contract language there.

14 BY MS. ANDERL:

15 Q. Well, on the interconnection agreement if you
16 look at that exhibit, Hearing Exhibit 2, it's on page
17 173.

18 A. And Charter had proposed language there.

19 Q. Right.

20 A. Okay.

21 Q. So if the Commission were to accept Charter's
22 proposal there and not include Qwest's language at
23 10.4.2.6, how would that change Qwest's potential
24 liability to Charter with regard to errors or omissions
25 in directory listings?

0083

1 A. Without something specific to deal with
2 liability in that circumstance, I think you would have
3 to go back to the general liability section, which I
4 think we had identified previously as 5.8.

5 Q. So we would go back to actual and direct
6 damages?

7 A. Again, I'm not an attorney, but I think
8 that's probably where you would have to go in the
9 contract to find how you would deal with DAL.

10 Q. And so what would the -- what would -- let's
11 just take a hypothetical and explore this. If, for
12 example, Qwest negligently failed to transmit a group of
13 listings to the directory publisher, some of Charter's,
14 some of Qwest's, some of other carriers' listings, what
15 would Charter's actual and direct damages be under
16 Charter's proposal?

17 A. I don't know, and likewise I don't know what
18 the standard would be in how you would determine the
19 number of dollars at issue on Qwest's side either. It
20 speaks to charges for those issues, and I don't know
21 that there are charges that would be applicable and how
22 we would determine what those are. So I think in both
23 cases it's an issue that the parties would have to come
24 together and take a look at it and figure out how to
25 solve it. I don't think one set of language clearly

0084

1 addresses the issue that you're seeking to get answered.

2 Q. And do you know what Charter's liability to
3 its end users for errors or omissions in directory
4 listings is?

5 A. Not specifically, no.

6 Q. Okay, thank you, Mr. Webber, I have now
7 finished with my cross-examination on Ms. Albersheim's
8 issues, and I'm going to turn to the miscellaneous
9 charges and directory listings upon which you have given
10 us testimony and upon which Mr. Weinstein testifies for
11 Qwest. So if you need to get a different set of
12 testimony in front of you, now would be the time.

13 I think we'll generally go through these in
14 numerical order, but I'll tell you if we're going to do
15 something different. My first set of questions is about
16 Issue Number 17 though, miscellaneous charges.

17 A. Thank you.

18 Q. And that's your testimony starting on page
19 34. And then we might as well get the reference in the
20 ICA as well.

21 A. I believe that begins at page 134.

22 Q. Oh, thank you.

23 A. Section 9.1.2, Your Honor.

24 Q. And did you mean 9.1.12?

25 A. That's what it says. I'm not quite sure if

0085

1 that's what I said.

2 Q. Okay, I think you said 9.1.2, but I think we
3 are all in the same place now.

4 A. Yeah, page 134. This is what happens when
5 you put four to a page, those of us who have crossed a
6 certain mark in our years can't read this for very long.

7 Q. I wondered how you had gotten an
8 interconnection agreement that was that small.

9 A. It's probably the last time I'll do it.

10 Q. Based on your prior work history with various
11 carriers, do you have any direct experience with the
12 imposition of miscellaneous charges?

13 A. Yes, but they wouldn't have been called
14 necessarily miscellaneous charges as Qwest calls them
15 here in this state.

16 Q. Now you say that, well, Charter's proposed
17 language contains a sentence that Qwest's language does
18 not, and that is the last sentence of that paragraph:

19 Depending on the specific circumstances
20 the items below are miscellaneous
21 charges that may apply if requested by
22 CLEC.

23 A. I see that language in the interconnection
24 agreement as identified in Exhibit 2 at page 135.

25 Q. What does Charter hope to accomplish by

0086

1 insertion of the reference to depending on the specific
2 circumstances?

3 A. When I look at this language within the
4 context of 9.1.2, I see a couple of things. First,
5 depending upon the circumstances, so if Charter makes a
6 request for something which causes one of these events A
7 through E I guess it is to occur, then that might
8 trigger the language in the charge.

9 Q. When would it not trigger the language in the
10 charge?

11 A. Well, if Charter hadn't requested something
12 here.

13 Q. Well, I thought the predicate to your
14 sentence was that Charter had requested?

15 A. Yes.

16 Q. Okay. But then you said that it might
17 trigger the charge.

18 A. Yes, perhaps I was unclear. If Charter makes
19 a request which calls into play the miscellaneous
20 services for which there are charges here, then the
21 charges would apply.

22 Q. Okay.

23 Now you read Mr. Weinstein's rebuttal
24 testimony?

25 A. I have.

0087

1 Q. And his data request responses?

2 A. I believe so.

3 Q. And would it be fair to summarize the data
4 request response on that issue as saying most of the
5 time we do get a CLEC's consent or a direct request, but
6 there are some very limited circumstances under which we
7 can not do so?

8 A. Why don't you show me that request, and I'll
9 read it.

10 Q. Sure. Why don't you take a look at, this is
11 a cross-examination exhibit of course that I think your
12 counsel has designated for Mr. Weinstein, but I think
13 you also actually quoted it in your testimony, so let me
14 -- no, I'm misremembering that.

15 I think it was Qwest's response to Charter
16 Data Request Number 26, RHW-3 on the cross-examination
17 exhibit list, but let me confirm that before everybody
18 starts paging.

19 MR. KOPTA: Is that it?

20 MS. ANDERL: That's the one.

21 MR. KOPTA: Jim, do you have this?

22 THE WITNESS: Actually I don't. I've got it
23 electronically.

24 Thank you.

25 MR. KOPTA: Sorry, go ahead.

0088

1 BY MS. ANDERL:

2 Q. Okay, so the record is clear, I will be
3 referring you to the document that's been marked as
4 cross-examination Exhibit RHW-3. It's Qwest's response
5 to Charter's Data Request Number 26; do you have that?

6 A. I do.

7 Q. And I had tried to paraphrase it to see if we
8 could come to a kind of a shorthand understanding of
9 what Qwest had said in that response, but I don't know
10 if I'm going to go back and do that again.

11 Charter asked Qwest to describe the
12 circumstances under which it provides notice to CLECs
13 that miscellaneous charges may apply; is that right?

14 A. Yes.

15 Q. And would you agree with me the gist of
16 Qwest's answer is Qwest does provide notice to CLECs
17 that charges will apply except in limited circumstances?

18 A. In part, yes.

19 Q. And Qwest went on to describe the limited
20 circumstances or the few exceptions where work is
21 performed without having obtained the specific consent
22 of the CLEC?

23 A. Now there are you referring to the last
24 paragraph?

25 Q. Yes.

0089

1 A. With respect to 9.1.12(h), (g), and (j)?

2 Q. Yes.

3 A. I see that.

4 Q. Okay. And so how would Charter handle a
5 situation as described in that response where a
6 dispatch, Qwest dispatches a technician to repair a
7 service without having first obtained Charter's consent
8 to charge because Qwest did not know that it would be
9 Charter's liability to pay? Would Charter still agree
10 that they would be responsible to pay the miscellaneous
11 charges incurred in that circumstance?

12 A. First of all, I think as everybody here is
13 aware, Charter has its own network. These two parties
14 are doing this interconnection agreement to interconnect
15 their networks to exchange traffic with one another.
16 Charter is not purchasing unbundled network elements
17 from Qwest, and Charter is not going to be seeking
18 design changes. They're not going to be seeking
19 dispatch. They're not going to be seeking maintenance
20 of service for trouble isolation on unbundled network
21 elements as this language here in 9.1.12 within Section
22 9 which goes to unbundled network elements would
23 suggest. So it's highly unlikely that these
24 circumstances would ever come to pass.

25 To the extent that Qwest felt compelled to do

0090

1 something on Charter's behalf where Qwest would then
2 intend to assess charges on Charter, this language would
3 require that Qwest does what it says it normally does,
4 which is contact Charter, let them know what they're
5 doing, let them know what the charges are going to be.
6 Again, but it doesn't seem as though this circumstance
7 is going to come about often, if ever, and requesting
8 that Qwest lets Charter know that there are going to be
9 charges apply in some circumstance and at Charter's
10 request is only reasonable.

11 Q. Could you turn to page 131 of the
12 interconnection agreement.

13 A. I'm there.

14 Q. Do you see Section 9.1?

15 A. Yes.

16 Q. Section 9.1 provides that Charter may
17 purchase on-premises subloops and network interface
18 devices as unbundled network elements under the
19 interconnection agreement; is that right?

20 A. Yes, it says that.

21 Q. Is it your testimony that Charter doesn't
22 believe that it will ever incur, ever have any
23 circumstances under which miscellaneous charges could be
24 incurred in connection with the provision of those two
25 unbundled network elements?

0091

1 A. If they purchase those two unbundled network
2 elements, it's possible, sure.

3 Q. And turn then to page 137 of the
4 interconnection agreement.

5 A. I'm sorry, was that 137?

6 Q. Yes, 137.

7 A. Thank you.

8 Q. And look at Charter's proposed language under
9 (h) for dispatch; do you see that?

10 A. I see dispatch, yes.

11 Q. Charter's proposed language under dispatch
12 subpart (h)(2) states that:

13 Information provided by CLEC resulting
14 in dispatch or a request from CLEC for
15 dispatch of a Qwest technician in
16 relation to a repair request where no
17 trouble is found in Qwest's facilities.

18 Do you see that?

19 A. I do.

20 Q. So do you understand that Charter proposed
21 language to allow Qwest to assess miscellaneous charges
22 even if Charter has not affirmatively agreed to those
23 miscellaneous charges?

24 A. There's a couple of things going on here.
25 First of all, the language that you just read, sub part

0092

1 (2), isn't Charter's proposal per se. That's agreed
2 upon language, and it looks to me like it's from Qwest's
3 language generically.

4 Q. Okay, well, let me stop --

5 A. But it's agreed to.

6 Q. Let me stop you right there.

7 A. I'd like to finish my answer.

8 Q. It's under Charter's proposal though, isn't
9 it?

10 A. The Charter proposal as we talked about
11 before is the bolded language in each section.

12 Q. Well --

13 A. This language repeats --

14 Q. -- I want to make sure we're on the same page
15 though, are we on page 137?

16 A. Yes.

17 Q. And above (f), what does it say right above
18 (f)?

19 A. Charter proposed.

20 Q. And then we're talking about (h) under
21 Charter proposed?

22 A. Yes, but the proposal where the language is
23 different is the bolded language, which is that last
24 sentence.

25 Q. In 9.1.12 or in (h)?

0093

1 A. I'm looking at page 137.

2 Q. Mm-hm.

3 A. (H) dispatch.

4 Q. Right.

5 A. That last sentence has bolded language,
6 that's Charter's proposal in that section.

7 Q. Okay.

8 A. And if you go to page 136 under dispatch or
9 (h), you're going to find that the language that Qwest
10 shows is the same language except for that last
11 sentence.

12 Q. Okay. So (h)(2) the parties have agreed to?

13 A. Yes.

14 Q. Okay. And (h)(2) sets forth circumstances
15 under which Qwest can assess miscellaneous charges,
16 right?

17 A. After Charter has requested that they do
18 work.

19 Q. Okay, well --

20 A. It says in 2 --

21 Q. -- it says --

22 A. -- or a request from CLEC for dispatch.

23 Q. Okay.

24 A. So a CLEC has made that request. And
25 according to Mr. Weinstein's testimony as I understand

0094

1 it, at that point Charter will be advised that charges
2 may apply depending upon the circumstances. And in this
3 case, to the extent that the trouble is found to be on
4 Charter's side of the network, then the charges would be
5 applied. So it's perfectly consistent with what we've
6 said in the testimony and the proposal.

7 Q. Okay, and when you go to the very first
8 provision under (2), which says information provided by
9 CLEC resulting in dispatch.

10 A. I see that.

11 Q. How is that consistent with Charter's bolded
12 language in 9.1.12?

13 A. At 9.1.12, the agreed upon language says in
14 part:

15 Miscellaneous services are provided at
16 CLEC's request. CLEC must affirmatively
17 agree.

18 So the way I look at these two sections
19 flowing together is in (h) CLEC has made a request. As
20 Mr. Weinstein testifies, Qwest will advise that charges
21 may apply in the circumstance if the trouble is found to
22 be on Charter's side of the network, and then the
23 charges may apply.

24 Q. Now you said that the agreed upon language
25 said the CLEC must affirmatively agree; that's not

0095

1 correct, is it?

2 A. No, the CLEC must affirmatively agree, that's
3 Charter's language. Before that, I'm sorry,
4 miscellaneous services are provided at CLEC's request,
5 that's agreed upon.

6 Q. Yes.

7 A. And then starting in the bolded text, and
8 CLEC must affirmatively agree, et cetera, that is
9 Charter's clarification or proposal in that paragraph.

10 Q. Okay. And if information is provided by the
11 CLEC that results in dispatch and it ultimately turns
12 out to be a situation where no trouble is found in
13 Qwest's facilities but Qwest did not obtain Charter's
14 affirmative agreement, is it Charter's position that
15 under its language Charter would not have to pay those
16 miscellaneous charges?

17 A. Well, first of all, it's the CLEC request
18 that triggers the service call. The information
19 provided at that point along with the request would be
20 parameters describing what is wrong with the network and
21 what Charter's diagnosis has identified. They would put
22 in their request and give that information to Qwest so
23 that they can investigate on their side. At that point,
24 I think it's incumbent upon Qwest to indicate that we're
25 going to go run this call based on your request with the

0096

1 information that you provided us, and if we identify the
2 trouble on your side, you know that the ordinary trip
3 charge is going to apply, it's 75 bucks, approve or not
4 approve. If there's no approval, then the truck doesn't
5 roll.

6 Q. So Charter would prefer language in the
7 contract that states that Qwest will not perform any
8 miscellaneous services unless Charter specifically
9 requests them and authorizes billing for those services?

10 A. The language that's in there now as I
11 understand it says that the CLEC has got to agree, and
12 if Qwest is going to do something where there's going to
13 be a charge, Qwest needs to notify the CLEC, and the
14 CLEC needs to have the opportunity to agree. They don't
15 want to see a circumstance where Qwest is out in the
16 network and sending invoices for something that the CLEC
17 didn't request, the CLEC doesn't know about, and then
18 they get invoiced. That's a circumstance they're trying
19 to prevent with this language.

20 Q. And how would you address the situation where
21 the party who is liable for the miscellaneous service
22 call isn't identified until after the service is
23 performed?

24 A. The situation that we're talking about?

25 Q. A situation where nobody knows whose side of

0097

1 the network the trouble is on, but simply that the
2 trouble should be diagnosed and fixed.

3 A. What's your question?

4 Q. If Qwest doesn't get Charter's specific
5 agreement, is it your position that even if Qwest finds,
6 diagnoses, and fixes the trouble on Charter's side of
7 the network or finds that the trouble is not on Qwest's
8 side of the network that Charter will not pay the
9 miscellaneous charges associated with Qwest's activity?

10 A. Following Mr. Weinstein's testimony, to the
11 extent that Qwest is called or requested to isolate
12 trouble at Charter's request, it's incumbent upon Qwest
13 to indicate that if they find trouble on Charter's side
14 of the network, there will be charges and what the fee
15 schedule is for those charges. I don't know how to
16 answer your question any other way.

17 Q. Why doesn't Charter know that ahead of time,
18 that if it's not on Qwest's side, then the charges will
19 be assessed to Charter if Charter calls in a trouble
20 report?

21 A. Charter doesn't call in trouble reports
22 generally with Qwest, because they generally don't buy
23 UNEs. So, you know, it's not this thing which happens
24 every day. The two networks are interconnected, they
25 operate both on their side. You're now addressing a

0098

1 very limited circumstance that is very unlikely to
2 happen. Bottom line is that Charter doesn't want
3 contract language allowing somebody to operate without
4 their request and then cause charges to be incurred.

5 The language proposed by Charter, I'm sorry,
6 by Qwest also describes an ambiguous phrase, something
7 like based on CLEC's actions. You know, we don't know
8 what that means necessarily. If it's not a request,
9 what is it, what would Charter do to cause that
10 circumstance wherein they would be billed.

11 Q. Go back to the agreed upon language under (h)
12 dispatch, and we're looking at (h)(2).

13 A. I'm there.

14 Q. Okay. Do you see that says:

15 Information provided by CLEC resulting
16 in dispatch or a request from CLEC for
17 dispatch.

18 Do you see those two phrases?

19 A. I do.

20 Q. What is the difference between those two?

21 A. The way I look at (2) in its totality is that
22 it's a request for dispatch, and the information would
23 be the information that's provided along with the
24 request. Like I said, Charter would test its network.
25 It would know the results of certain tests. It would

0099

1 give that information to Qwest. That's how I view it.
2 Again though, this isn't language that I drafted or that
3 Charter drafted, this is language that Qwest drafted
4 that the parties agreed to.

5 Q. You would agree with me, Mr. Webber, that the
6 two phrases have the word or in between them?

7 A. Sure.

8 Q. And or is generally disjunctive, meaning one
9 or the other, not both?

10 A. Not to be pedantic, but yes, that's accurate.

11 Q. So what is the difference between information
12 provided by a CLEC resulting in a dispatch and a request
13 from CLEC for dispatch?

14 MR. HALM: Objection, Your Honor, asked and
15 answered.

16 MS. ANDERL: Asked, Your Honor, yes, but --

17 JUDGE FRIEDLANDER: I think I'm going to go
18 ahead and allow it.

19 If you could just answer the question.

20 A. Unfortunately I can't. I don't know what the
21 difference would be. The way I see this is that a
22 request will cause a dispatch. I don't know what
23 information outside of a request would cause Qwest to
24 take action and dispatch.

25 JUDGE FRIEDLANDER: Okay.

0100

1 A. I just don't know the circumstance where that
2 would happen. That's not consistent with my experience
3 in the industry.

4 JUDGE FRIEDLANDER: Okay, thank you.

5 BY MS. ANDERL:

6 Q. What method or methods would be acceptable to
7 Charter for Qwest to obtain the CLEC affirmative
8 agreement to the charges?

9 A. I don't know that that's addressed in the
10 testimony, I'm sorry, in the proposed language.

11 Q. I'm trying to explore with you how, if
12 Charter were to prevail, how Qwest would implement that
13 proposed language?

14 A. Well, Mr. Weinstein's discovery response and
15 testimony as I understand it indicates that when these
16 certain requests are made, the CLEC is informed at that
17 time as to what may or may not apply depending upon what
18 happens. He also testifies that, again I'm recalling
19 and paraphrasing a little bit, once the work is
20 completed, the CLEC is notified, the ticket is closed,
21 and there's an indication as to what the charges were,
22 so everybody's on the same page. I'm not down in the
23 business operations on a daily basis between these two
24 companies to know what vehicles they're using to convey
25 this information back and forth, whether it's faxes,

0101

1 computers, or people, I'm not sure.

2 Q. Thank you.

3 Let's move on to directory listings, Issue
4 19, and turn to Section 10.4.2.4 in the interconnection
5 agreement.

6 JUDGE FRIEDLANDER: Before we do that, let's
7 go ahead and talk a little bit about when you want to go
8 ahead and break for lunch.

9 THE WITNESS: Or the bathroom.

10 MS. ANDERL: Or that would be all right as
11 well.

12 JUDGE FRIEDLANDER: Any type of break. How
13 long will the cross for Issue 19 take?

14 MS. ANDERL: Issue 19 is kind of long. I
15 might be able to skip ahead and do a short one before
16 lunch, or we could --

17 JUDGE FRIEDLANDER: It's totally up to
18 counsel. If you would rather do a shorter issue now or
19 if you would rather break and we can come back at 1:15.

20 MR. HALM: And, Mr. Webber, do you need a
21 break?

22 THE WITNESS: I was just about to say that,
23 thank you for interpreting my request.

24 MS. ANDERL: You know, I think it would make
25 sense to break right now.

0102

1 JUDGE FRIEDLANDER: Okay.

2 MS. ANDERL: And then come back, because that
3 lets us all get out before the crowds.

4 JUDGE FRIEDLANDER: Okay, then let's go ahead
5 and go off the record, and we'll be back at 1:15.

6 (Luncheon recess taken at 11:45 a.m.)

7

8 A F T E R N O O N S E S S I O N

9 (1:20 p.m.)

10 JUDGE FRIEDLANDER: I believe we left off
11 with cross-examination of Mr. Webber by Ms. Anderl.

12 MS. ANDERL: Thank you, Your Honor.

13 BY MS. ANDERL:

14 Q. We're going to now move to Issue Number 19,
15 Mr. Webber.

16 A. Direct, rebuttal, or contract?

17 Q. Issue 19 will be the reference is of course
18 Section 10.4.2.4, so in the contract that is page 172,
19 and in your rebuttal it starts on page 41.

20 A. Okay, so you want to look at both?

21 Q. The contract and your testimony, sure.

22 A. Okay.

23 Q. Now on page 172 of the interconnection
24 agreement, do you see Qwest's proposed language, there
25 is a sentence, the next to last sentence that is double

0103

1 underscored, that says:

2 Qwest will not market to CLEC's end user
3 customers listings based on segregation
4 of CLEC's listings.

5 A. Yes, I can barely make that out with this
6 copy, but I see it.

7 Q. That language would not be -- is not in
8 Charter's proposal; is that right?

9 A. That appears to be correct, yes.

10 Q. What is Charter's opposition to that
11 language?

12 A. I think the competing language on this issue
13 really gets to the point that Charter is seeking to make
14 certain that Qwest does not market to Charter's
15 customers based upon the information that Charter
16 provides to Qwest. And the way I look at Qwest's
17 language, Qwest says it will not, and then it says based
18 on segregation of listings. It doesn't say that Qwest
19 will not market.

20 Q. Okay.

21 A. And I really see that as sort of the crux of
22 the issues here on this particular point.

23 Q. Well, and do you contend that Qwest can not
24 market to Charter subscribers?

25 A. No.

0104

1 Q. And if Qwest obtains listing or other
2 subscriber information through publicly available data
3 sources, Qwest is free to market to either existing
4 Qwest customers or customers of other CLECs; is that
5 right?

6 A. Qwest is free to do its marketing based upon
7 information that it obtains publicly. In your question
8 you talked about obtaining listing information, and so I
9 want to be clear that I'm not suggesting here that you
10 can use the listing information provided by Charter for
11 that purpose. But in terms of whatever Qwest is able to
12 obtain publicly, Qwest is free to market as far as I
13 know.

14 Q. And if Qwest obtains listing information from
15 Charter and from some other CLECs and from itself, you
16 understand that Qwest then puts together directory
17 assistance list information?

18 A. Well, I understand that having obtained all
19 that information provides them a database, and so they
20 maintain that information. They don't put it together
21 so to speak.

22 Q. And Qwest makes that database available to
23 directory assistance providers?

24 A. Certain output from that database, yes.

25 Q. And would you consider that to be publicly

0105

1 available information?

2 A. It depends what the database providers would
3 do with it.

4 Q. Well, if a directory assistance provider asks
5 for the database information and Qwest provides it to
6 the directory assistance provider, is it publicly
7 available information?

8 A. It would depend on what the database provider
9 does with it at that point. If they make it publicly
10 available, I presume it would be publicly available.
11 The information that Qwest provides to the database
12 provider is provided pursuant to certain provisions in
13 the Telecom Act, and those provisions don't indicate
14 that anybody can have that information. Rather my
15 understanding is that it limits to certain parties. So
16 I don't know that the information is publicly available
17 until the database provider makes it such.

18 Q. Okay. So does the database provider have any
19 restrictions on what it's allowed to do with the
20 information once it obtains it from Qwest?

21 A. Not to my knowledge, no.

22 Q. So I'm trying to understand what Qwest could
23 and couldn't do with its directory listing information
24 under the Charter's proposed language. When you say
25 CLEC's listings supplied to Qwest by CLEC shall not be

0106

1 used by Qwest for marketing purposes, kind of explain to
2 me what that means.

3 A. I think the language is pretty clear.

4 Q. Okay, well --

5 A. Qwest will not use the information for its
6 marketing purposes.

7 Q. Okay. But Qwest is allowed to use the CLEC
8 listing information to compile a database; is that
9 right?

10 A. Yes, we've talked about that.

11 Q. And it's allowed to provide that database to
12 a directory assistance provider; is that right?

13 A. Parts of it, yes.

14 Q. And that directory assistance provider is
15 then free to make that list and directory information
16 publicly available; is that right?

17 A. Yes.

18 Q. And once that information became publicly
19 available, could Qwest use it for marketing purposes?

20 A. If they were to obtain information from the
21 database provider in whatever form that database
22 provider provides it, they could use it.

23 Q. Including Charter subscriber information?

24 A. If that's the information that was provided
25 back to them, then yes.

0107

1 Q. So --

2 A. And we're not trying to stop that.

3 Q. Okay. Can Charter use its own directory
4 assistance listings for marketing purposes?

5 A. Hadn't thought about that. I don't know.

6 Q. Does Charter provide directory assistance?

7 A. As part of its Telco services, it has access
8 to directory assistance products for its customers.

9 Q. Could --

10 A. I don't know that they're the facilities
11 based provider. I'm not sure if they contract that out
12 to a third party who offers that product or not. I'm
13 not quite sure how the product is offered. So when you
14 ask do they provide, I'm not certain.

15 Q. Could Charter obtain a directory assistance
16 list from Qwest?

17 A. Yes, under 251(b)(3).

18 Q. And could Charter market from that list?

19 A. I'm not sure. I'm not sure if there would be
20 a prohibition on that or not.

21 Q. And would your language, would Charter's
22 language with regard to Issue 19 prohibit Qwest from
23 marketing from its own directory assistance list?

24 A. To the extent that it was using that list to
25 market to Charter's customers, then I believe the

0108

1 language would prohibit Qwest from using that database
2 for that purpose. In other words, you can't take the
3 information that was provided by Qwest, I'm sorry, by
4 Charter and turn around and market back to those Charter
5 customers directly.

6 Q. What about if the Charter customer
7 information was then compiled in a directory assistance
8 list that contained subscriber information for all
9 carriers, would Qwest be prohibited from using the
10 directory assistance list on a non-segregated basis for
11 marketing?

12 A. If they were to take that information,
13 provide it to a database provider, and then go to that
14 database provider and buy a product which includes
15 presumably names and telephone numbers for anybody, then
16 yeah, they can use that. I think we've covered that
17 territory.

18 Q. So you're saying Qwest could sell it to a
19 database provider, yes, sell the list information to a
20 database provider?

21 A. They provide it to the database providers.
22 I'm not quite sure if it's sold or not sold.

23 Q. Qwest could provide the list information to a
24 database provider, yes?

25 A. That's correct.

0109

1 Q. And Qwest could buy it back in some altered
2 form from that database provider?

3 A. Presumably with other information from other
4 carriers, but yes, they could buy that back information.

5 Q. And then --

6 A. Excuse me, buy back that information.

7 Q. And use that information for marketing
8 purposes?

9 A. Yes, we've covered that.

10 Q. And so what is it about the information that
11 Qwest provides to the database provider, assuming it's
12 non-segregated and contains listings from all carriers,
13 what is it about the information at that stage of the
14 game that Charter would say Qwest ought to be prohibited
15 from using that information for marketing?

16 A. Can you rephrase that question, I just -- I
17 don't think I understand it.

18 Q. And I don't know if you're following me or
19 not, but I --

20 A. No, I'm certainly not.

21 Q. Let's say you understand that Charter is not
22 the only CLEC with whom Qwest interconnects?

23 A. Yes, that's my assumption.

24 Q. And you understand that Charter's subscriber
25 listings are not the only listings that Qwest obtains

0110

1 and compiles into a directory assistance list?

2 A. That would be my assumption also. I don't
3 have proof positive of that fact today, but that's a
4 fair assumption.

5 Q. Okay. But you're familiar with other CLECs
6 in the state of Washington, yes?

7 A. Yes.

8 Q. XO, Verizon Business, Comcast?

9 A. Is that a question?

10 Q. Yes, are you familiar with those companies
11 operating as CLECs in this state?

12 A. I will take your word for that. It's not
13 surprising to me.

14 Q. And so assume with me that the customer
15 listings that Qwest is going to provide to the directory
16 assistance provider is a non-segregated list. In other
17 words, it contains Qwest's subscriber information as
18 well as subscriber information for all of the other
19 CLECs. Do you have that in mind?

20 A. Yes.

21 Q. Okay. And at the point that Qwest provides
22 that list to the directory assistance provider, are you
23 saying that Charter's language would prohibit Qwest from
24 using that same information at that same point in time
25 for marketing purposes?

0111

1 A. Yes, I think it would. I don't see an out in
2 the language which would necessarily allow Qwest to take
3 the information, add it to other information, and then
4 turn around and use it.

5 Q. So even though it is not segregated at that
6 point in time, Charter's language would still prohibit
7 its use?

8 A. As I sit here today and read this language,
9 that's what I believe would be the case.

10 Q. But the moment it was provided to the
11 directory assistance provider, Charter would allow Qwest
12 to obtain it back from the directory assistance provider
13 and use it at that point?

14 A. Well, at that point Charter has no control
15 over what the other party does with it, who it gives it
16 to.

17 Q. And so --

18 A. The contract doesn't speak to that.

19 Q. But if that is the case, what exactly does
20 Charter's language accomplish other than adding some
21 extra steps to the process for Qwest to obtain the
22 information?

23 A. Ultimately Qwest will get to the point where
24 it can market in a non-segregated basis with whatever
25 information they get back from that other party.

0112

1 Whether it's an entire state, an entire city, whatever
2 information is there, they'll get to use that
3 information mixed in with all the other carriers that
4 come back from the database provider.

5 Q. Okay. And if that's the same information, in
6 other words mixed in with all of the other carriers,
7 that Qwest gave to the directory assistance provider in
8 the first place, then there wouldn't be any difference?

9 A. Well, I mean you're assuming that they would
10 buy back exactly the same information that Qwest had
11 just sent over. And given that there are other
12 incumbent local carriers here, I would assume that the
13 database providers have access to many other carriers'
14 information as well, so the list that would come back
15 would be a larger list. The list that Qwest had
16 provided would coincidentally be a subset of that list,
17 and within that list, a subset of that would happen to
18 belong to Charter. So the information that came back
19 wouldn't be exactly the same, it would be of the same
20 pool of numbers that everybody else has access to if
21 they're going to go that route to get information for
22 marketing purposes.

23 Q. But it could be exactly the same --

24 A. So in essence you would be put on the same
25 playing field that anybody else who would go to those

0113

1 providers for purposes of marketing was on.

2 Q. But the information that Qwest got back from
3 the directory assistance provider could be the same as
4 what it provided?

5 A. I don't know that to be true.

6 Q. Do you know it to be untrue?

7 A. No. I don't think either one of us can say
8 as we sit here today with specificity. But the way
9 these database providers work is that they put together
10 listing information from everybody that's available, and
11 I don't expect they would sell a product back to Qwest
12 that's just limited to the Qwest operating territory,
13 just limited to the information that Qwest provided to
14 that provider. Their goal is to put together as wide a
15 footprint as they can, and they market products that are
16 comprehensive of all those carriers to the extent that
17 they can get that information.

18 Q. Can Qwest provide the directory assistance
19 information to its own directory assistance division for
20 the purposes of the provision of directory assistance
21 service?

22 A. Yes, I believe they can.

23 Q. And could Qwest take a list that it obtained
24 through publicly available sources and sort that list to
25 eliminate its own subscribers?

0114

1 A. Yeah, I assume that Qwest has database folks
2 that are capable of doing that sort of work.

3 Q. And is it Charter's position that if Qwest
4 were to want to use the directory assistance list that
5 it compiles and provides to directory assistance
6 providers for marketing purposes, is it Charter's
7 position that that use would be unlawful?

8 A. I don't know that that would be unlawful.

9 Q. Now on page 44 of your rebuttal, you have an
10 answer there that ties to a question on the prior page
11 with concern about the --

12 A. I'm sorry, counsel.

13 Q. Page 43 and 44 of your rebuttal, and
14 specifically the answer on page 44. Let me know when
15 you're ready for the question.

16 A. I'm ready.

17 Q. Is it fair to say that the concern that you
18 express in this answer is that the phrase other lawful
19 purposes is overly broad and open ended?

20 A. Yes.

21 Q. Can you turn to Section 10.5.2.1 of the
22 contract, and you'll find that, oh, 2.11, sorry, page
23 180, 10.5.2.11.

24 A. (Reading.)

25 Q. And, Mr. Webber, I know you probably have

0115

1 your copy marked up, but would you like a full sized
2 copy of this agreement?

3 A. Thank you, but no, I'll get by.

4 Q. Okay.

5 A. And I'm at 10.5.2.11.

6 Q. Okay, thanks. And that's agreed upon
7 language, isn't it?

8 A. Yes, it appears to be.

9 Q. And do you see there's a reference there that
10 states that Qwest is to use the CLEC listings for
11 purposes of providing directory assistance service and
12 for other lawful purposes?

13 A. I do see that, yes.

14 Q. And then if you would turn to Section
15 10.6.2.1, which is on page 182.

16 A. 10.6.2.1?

17 Q. Yes.

18 A. I'm there.

19 Q. And that provision is a provision under which
20 Qwest grants to Charter access to directory assistance
21 list information for purposes of providing directory
22 assistance services and for other lawful purposes; is
23 that right?

24 A. That appears to be right.

25 Q. And can you tell, is this agreed upon

0116

1 language?

2 A. Yeah, I don't see any markings there, so it
3 must be.

4 Q. Thank you.

5 Mr. Webber, I'm ready to move on to Issue
6 Number 20. Issue Number 20 is one in which I want to
7 ask you some questions about cross-examination Exhibit
8 JDW-5C, which is a confidential exhibit.

9 A. So that's the New Customer Questionnaire?

10 Q. It is.

11 A. Okay.

12 And that was JDW-5C?

13 Q. Yes.

14 A. Thank you.

15 JUDGE FRIEDLANDER: And I guess I have a
16 question for counsel. Because the exhibit has been
17 marked confidential, I hope we're not going to -- okay,
18 we're not going to get into any territory that will
19 cover the confidential information?

20 MS. ANDERL: I hope not, Your Honor. I
21 intend to ask questions only on a very small section,
22 and I believe I've gotten a preliminary indication from
23 Charter that we can do that on the public record.

24 JUDGE FRIEDLANDER: Okay, if Charter could
25 say that on the record.

0117

1 MR. HALM: The very small section goes to the
2 directory list election.

3 MS. ANDERL: Yes.

4 MR. HALM: Is that right?

5 MS. ANDERL: Yes.

6 MR. HALM: And let me just pull it up
7 quickly, page 8, Section (g)(7).

8 MS. ANDERL: Except that page 8 isn't (g)(7),
9 wait.

10 THE WITNESS: Probably page 6.

11 MS. ANDERL: Yes.

12 JUDGE FRIEDLANDER: And for that limited
13 section, it's fine by Charter for Qwest to ask
14 questions?

15 MR. HALM: Yes, Your Honor.

16 Can I take one moment?

17 JUDGE FRIEDLANDER: Sure.

18 MR. HALM: Yes, page 6, Section (g)(7) of
19 Exhibit JDW-5C is not confidential.

20 JUDGE FRIEDLANDER: Okay, thank you.

21 Qwest, you can go ahead.

22 MS. ANDERL: Thank you.

23 BY MS. ANDERL:

24 Q. Mr. Webber, referring to your rebuttal
25 testimony on page 53, you reference this New Customer

0118

1 Questionnaire. Is this document JDW-5C the same New
2 Customer Questionnaire that you are talking about in
3 your rebuttal testimony on page 53?

4 A. Well, I was referring to Mr. Weinstein who
5 was referring to the customer questionnaire, but it
6 likely is the one that he was referring to and I
7 therefore referred to.

8 Q. You didn't disagree with Mr. Weinstein's
9 characterizations of the Section (g)(7) of that customer
10 questionnaire?

11 A. I didn't write about that in particular.

12 MS. ANDERL: And I don't actually know if
13 Mr. Webber based on his response can authenticate this
14 document or not, but perhaps Charter would be willing to
15 stipulate its admission and I could save some time in
16 going through that.

17 MR. HALM: Yes, we can stipulate its
18 admission.

19 JUDGE FRIEDLANDER: Okay, so admitted.

20 MS. ANDERL: Thank you.

21 JUDGE FRIEDLANDER: That was JDW-5C?

22 MS. ANDERL: Yes.

23 JUDGE FRIEDLANDER: So admitted.

24 MS. ANDERL: Thank you.

25 BY MS. ANDERL:

0119

1 Q. And just briefly, Mr. Webber, on that
2 questionnaire (g)(7), which is the directory listings
3 option on page 6, you would agree that Charter selected
4 option number 1; is that right?

5 A. Yes, that appears to be the case. And I
6 would note that this is a document that was completed
7 apparently if you turn to page 5 on March 19, 2007,
8 under an existing interconnection agreement. I don't
9 know how that selection necessarily comports with the
10 company's plans for the next three years, so I don't
11 know that they would make that same selection.

12 Q. And did --

13 A. I would also note that in (g)(3) it
14 contemplates the company buying --

15 MR. HALM: Mr. Webber, most of this is
16 designated confidential, so if we're going to talk about
17 it, it's got to be in camera session other than the
18 election section.

19 THE WITNESS: Thank you.

20 BY MS. ANDERL:

21 Q. Mr. Webber, do you know if Charter will be
22 either required or permitted to complete a New Customer
23 Questionnaire under the new interconnection agreement
24 that results from this arbitration?

25 A. I don't know what Qwest's plan in that regard

0120

1 is.

2 Q. And if Charter were either required or
3 permitted to do so, would the selection of option 2
4 under (g)(7) address Charter's concerns with regard to
5 Issue 20 in this arbitration?

6 A. No, I don't believe so.

7 Q. Selection of option 2 on that form would
8 restrict Qwest's ability to release directory
9 information or listing information to directory
10 publishers unless Qwest receives a letter of
11 authorization; is that right?

12 A. Yes, it says that.

13 Q. And Issue Number 20 in this arbitration
14 addresses the question of whether or not Qwest should be
15 required to have prior written authorization from
16 Charter for the release of directory information,
17 doesn't it?

18 A. In part, yes, it does.

19 Q. Okay. And so what circumstances under Issue
20 20 would not be addressed by the selection of option 2
21 on the New Customer Questionnaire?

22 MR. HALM: Excuse me, Ms. Anderl, would you
23 object if Mr. Webber had a copy of the disputed issues
24 list?

25 MS. ANDERL: Not at all.

0121

1 MR. HALM: That might help answer the
2 question.

3 Do you have that with you, Mr. Webber?

4 THE WITNESS: I think I do.

5 MR. HALM: Okay.

6 THE WITNESS: Thank you.

7 A. I was looking for the right location in my
8 direct testimony, I couldn't find it quickly, but as I
9 look into the DPL, the issue that comes to my mind
10 quickly is the third party's use of those lists for
11 marketing purposes.

12 BY MS. ANDERL:

13 Q. Well, if Charter selected option 2 and did
14 not give Qwest prior written authorization to release
15 the listing information, wouldn't that address that
16 concern?

17 A. It would create another problem though,
18 because the information wouldn't go to other parties
19 necessarily who weren't trying to do marketing, so you
20 sort of limit the universe of places where the numbers
21 go. What Charter is looking to do is limit the places
22 where it's just going to be for purposes of marketing.

23 Q. Now I thought that your testimony earlier was
24 that once a directory assistance provider obtained a
25 list that they could do with it whatever they wanted.

0122

1 A. And as to directory assistance providers,
2 that's true. At least that's my understanding. But the
3 language speaks to other parties. So you may have
4 publishers or other parties that would have the
5 information and may seek to use it for marketing
6 purposes, and that's what Charter is trying to preclude
7 here.

8 Q. And how would Qwest prevent that?

9 A. Had the parties come to resolution on this
10 issue, I think a procedure would have been worked out.

11 Q. Well, no, I mean how would Qwest prevent
12 third parties from using the information for marketing
13 purposes once it's publicly available?

14 A. Well, I think you're asking two questions
15 now. Once the information is publicly available, Qwest
16 isn't going to stop somebody from using it. But in a
17 circumstance where Qwest may be asked to provide the
18 information to somebody other than a directory
19 assistance provider, Qwest at that point has the ability
20 to say that it can't be used for marketing purposes.

21 And again, had this language been agreed to,
22 there's a possibility that this issue could have been
23 resolved and worked out so that the parties sitting here
24 would understand what the procedure would be. But given
25 that we're at an impasse on this issue, you know, there

0123

1 isn't a protocol in place to answer that question
2 specifically.

3 Q. So under this language, would Qwest be
4 permitted or prohibited from releasing Charter listing
5 information to directory publishers?

6 A. I think there's agreed to language that says
7 you can provide the information for purposes -- let me
8 find it, I'm not going to guess, hang on a second.

9 Yes, so the agreed upon language at 10.4.2.4
10 identifies Sections 10.5 and 10.6 as purposes for which
11 the information can be released. 10.5 is directory
12 assistance, and 10.6 begins at page 181 of Exhibit 2,
13 and that's directory assistance list.

14 Q. And where does it say that Qwest can provide
15 the CLEC listing information to directory publishers?

16 A. I thought that was the DAL product at 10.6.

17 Q. Now Qwest's language in 10.4.2.5 --

18 A. I'm sorry, 10.4?

19 Q. 10.4.2.5, the Qwest language makes --

20 A. Slow down, please.

21 Q. Page 173.

22 A. 10.4.2.5?

23 Q. Right.

24 A. Qwest's language or Charter's?

25 Q. Qwest's language.

0124

1 A. Okay.

2 Q. Qwest's language has a sentence in there that
3 says:

4 In order for Qwest to release CLEC end
5 user customer listings to directory
6 publishers, prior written authorization
7 from the CLEC is required, and that
8 authorization may be withheld.

9 Do you see that?

10 A. Yes.

11 Q. And so both parties are proposing prior
12 written authorization, right?

13 A. Yes.

14 Q. And Qwest's language expressly says that the
15 CLEC can withhold that authorization?

16 A. It does.

17 Q. Okay. And if Charter were to select option 2
18 on the New Customer Questionnaire, couldn't Charter
19 tailor letters of authorization and the prior written
20 consents to ensure that its end user customer listings
21 were only released in the manner that Charter desires?

22 A. That's certainly a possibility.

23 Q. Now one other question on this subject, and
24 this is on Charter's language, the bold language in the
25 second sentence.

0125

1 A. Which section now?

2 Q. Sorry, same one, 10.4.2.5.

3 Do you see the last phrase or clause in that
4 sentence where it says, only to the extent required by
5 applicable law?

6 A. I'm sorry, which sentence?

7 Q. Second sentence in Charter's proposed
8 language or second sentence in the section.

9 A. Beginning with Qwest will not release?

10 Q. Right.

11 A. Okay.

12 Q. And it says, only to the extent required by
13 applicable law.

14 A. I do see that.

15 Q. Okay. Is that different from only to the
16 extent permitted by applicable law?

17 A. I think that sometimes contracts are written
18 such that required and permitted have two different
19 meanings.

20 Q. What would be the case here?

21 A. Well, Charter's proposal says that the
22 information won't be used unless it's required by law.

23 Q. And so --

24 A. So in the case of directory assistance for
25 example, you're required by law to provide that

0126

1 information to the directory assistance providers, and
2 you wouldn't have to go to Charter for authorization,
3 written authorization, at that point to turn the
4 information over.

5 Q. But if there's no affirmative requirement to
6 turn the information over but it would be permissible to
7 turn it over, would Charter's language prohibit it?

8 A. I think that's the point at which you would
9 have to get the authorization.

10 Q. Well, the way I read this sentence, it
11 requires both the prior written consent and only to the
12 extent required by applicable law, so maybe you could
13 help me understand what that means. Even if there is
14 written consent, is Qwest permitted to release the
15 information unless there's written consent and a legal
16 requirement?

17 A. (Reading.)

18 Well, the next sentence says, no prior
19 authorization from CLEC shall be required for Qwest to
20 sell, make available, or release CLEC's end user
21 customer directory assistance listings to the directory
22 assistance providers, provided that you do so in
23 accordance of the law. So I think that then acting in
24 relationship to the sentence prior to that releases the
25 requirement that you give prior written authorization to

0127

1 give the information to the directory assistance
2 providers. So I don't think that it's incumbent upon
3 you to take action to get written release at that point.

4 Q. Are there --

5 A. And that's the way I read the language.

6 Q. Are there entities other than directory
7 assistance providers to whom Qwest could lawfully
8 release the information?

9 A. My understanding of the Act is that you're
10 required to provide the information to directory
11 assistance providers, to directory publishers. And I
12 don't know beyond that what other third parties are able
13 to receive the information. So assuming that there are
14 other third parties who can get that information, then
15 you would be allowed to provide that information to
16 them.

17 Q. Even if the law doesn't require Qwest to
18 provide it but rather just permits Qwest to provide it?

19 A. I think that's the point at which you would
20 have to get written consent.

21 Q. And --

22 A. That's the way I understand it.

23 Q. And by selecting option 2 on the New Customer
24 Questionnaire, Charter could determine the extent to
25 which it wanted to provide that written consent or

0128

1 letter of authorization for its customer listings; is
2 that right?

3 MR. HALM: Objection, Your Honor, I believe
4 this question has been asked and answered.

5 JUDGE FRIEDLANDER: Joan, could you reread
6 the question.

7 (Record read as requested.)

8 JUDGE FRIEDLANDER: Thank you.

9 I think it has been asked and answered unless
10 you want to go ahead and rephrase that.

11 MS. ANDERL: Your Honor, I think I would tend
12 to agree that it's been asked. I do think I did get an
13 answer. We covered a lot of ground in between, and I
14 wanted to just loop back and confirm that the witness
15 and I still had the same understanding, if that was the
16 case.

17 JUDGE FRIEDLANDER: Mr. Webber, is that still
18 your understanding?

19 THE WITNESS: I'm sorry, can I have the
20 question read back again.

21 JUDGE FRIEDLANDER: Joan, can you read that
22 back again.

23 (Record read as requested.)

24 A. According to Qwest's design for option number
25 2, that option would be available to Charter.

0129

1 BY MS. ANDERL:

2 Q. Thank you.

3 Let's move on to Issue Number 22, which is
4 the whether Qwest is entitled to charge for non-listed
5 and non-published listings, and in your testimony that
6 starts at page 59, your rebuttal testimony, and in the
7 contract we would be at Issue 22, page 177, Section
8 10.4.3.4. Let me know --

9 A. I see that.

10 Q. All right. Now this particular topic
11 concerns the final cross-examination exhibit that we
12 have marked. It is identified for the record as JDW-6,
13 and it is the Administrative Law Judge's August 31st,
14 2000, order in Docket Number UT-003022. Let me know
15 when you have that document.

16 A. I have it.

17 Q. Did you familiarize yourself with that order
18 prior to the hearing today after Qwest provided it as a
19 cross-examination exhibit?

20 A. Briefly, yes.

21 Q. Could you turn to page 30 of that order,
22 Paragraph 108.

23 A. Page 30, Paragraph 108?

24 Q. Yes.

25 A. I see that.

0130

1 Q. What is your understanding of the nature of
2 this order, if you have one?

3 A. It was one of the orders in the 271 process
4 some years ago.

5 Q. And do you understand this Paragraph 108 to
6 be one of a series of paragraphs that's describing
7 Qwest's position on the same issue that we're talking
8 about here as Issue Number 22?

9 A. That would appear to be the case.

10 Q. Okay. The third sentence in that paragraph
11 that starts, all listings after the first primary
12 listing.

13 A. I see that.

14 Q. Can you please just read that.

15 A. (Reading.)

16 All listings after the first primary
17 listing are offered at the retail rate
18 less the applicable wholesale discount.

19 And then it has a citation.

20 Q. And so you understand that to be a recitation
21 of what Qwest's position in that proceeding was?

22 A. Yes. Like I said, that appears to be the
23 case.

24 Q. And do you know what the result in that 271
25 proceeding was on that issue?

0131

1 A. No.

2 Q. Would you accept subject to your check that
3 Qwest's position was adopted?

4 A. Sure.

5 Q. And do you have any reason to believe that
6 Qwest has been doing anything in Washington since 2000
7 other than charging the retail rate less the wholesale
8 discount for listings after the primary listing?

9 A. That's actually a good question. I mean this
10 document goes to the 271 process and presumably brought
11 about a statement of generally available terms and
12 conditions, an SGAT contract. We've identified in my
13 testimony and we've identified Qwest witnesses who have
14 indicated that these contracts aren't used any more and
15 they're outdated. So while this points at something
16 that might be in one of those contracts, the extent that
17 they're not in use, I don't know what Qwest's practice
18 is at this point. I can't say one way or another.

19 Q. Do you have any reason to believe that Qwest
20 has charged any CLEC an amount other than how it's
21 described in Paragraph 108?

22 A. I don't know one way or another.

23 Q. Okay. And do you know if there are any
24 provisions in any contracts in the state of Washington
25 that provide for a different method of charging for

0132

1 privacy listings?

2 A. I don't know.

3 Q. Does Charter charge its own customers for
4 privacy listings?

5 A. I believe it may. I'm not sure.

6 Q. Do you know how those rates were developed,
7 Charter's rates?

8 A. No.

9 Q. Now Charter's proposed language in 10.4.3.4
10 says that:

11 Qwest will not assess a charge upon CLEC
12 for providing, maintaining, storing, or
13 otherwise processing information related
14 to end user customer listings that have
15 requested non-list or non-published
16 status, or for any other act associated
17 with such end user customers.

18 Did I read that correctly?

19 A. It looks that way.

20 Q. Okay. So in crafting this language, Charter
21 agrees that Qwest processes information related to
22 customer listings that have requested non-list or
23 non-published status?

24 MR. HALM: Objection, Your Honor, the
25 question is ambiguous. Are you asking him what the

0133

1 contract says or what Qwest's actions constitute?

2 MS. ANDERL: I will clarify the question,

3 Your Honor.

4 JUDGE FRIEDLANDER: Thank you.

5 BY MS. ANDERL:

6 Q. Does Charter believe that Qwest processes
7 information related to end user customer listings that
8 have requested non-list or non-published status?

9 A. The parties have agreed that Qwest is going
10 to take listing information from the CLEC, Charter in
11 this case, and accept that information, process it,
12 store it, and maintain it for multiple purposes. When
13 we get to this issue of privacy related listings, it's
14 my belief that there isn't additional or incremental
15 work necessary except and only possibly to the extent
16 that the information which is marked as privacy has to
17 be queried out or filtered out when the information is
18 provided. But in terms of storing, maintaining, et
19 cetera, that's not an incremental function of this
20 listing, privacy listing circumstance.

21 Q. Do you know what Qwest's proposed rates for
22 privacy listings were?

23 A. No, I don't recall that off the top of my
24 head.

25 Q. Do you recall that those rates were ones that

0134

1 were referenced to be in Qwest's tariff that the
2 wholesale discount would then be applied to?

3 A. Yes, I think that's right. That's the retail
4 tariff, and then a wholesale discount would be applied
5 against that.

6 Q. Do you know where the retail rates came from?

7 A. I believe they were set back in the 1980's,
8 and I'm not quite sure how they were developed at that
9 time.

10 Q. Okay. But they were set by filing a tariff
11 with the State Commission?

12 A. I don't know.

13 Q. Okay.

14 Do you believe that something different has
15 to happen with a customer listing for it to be treated
16 as a published listing versus a non-published listing?

17 A. If you look at the rebuttal testimony at page
18 60, at about lines 15 and 16, the data request response
19 provided by Qwest to Charter indicates that privacy
20 listings have an indicator that's read by the computer.
21 I spoke to that issue a minute ago. Typically there's a
22 field that would indicate whether it's private or not,
23 and the computer would read that field. And when
24 information is provided, a query running on that
25 information would just simply not grab that row or

0135

1 record that has that indicator.

2 Q. Is it your testimony that none of this
3 segregation or differentiation is ever done manually
4 even on a kind of a fallout basis?

5 A. There's no evidence in this record as to that
6 issue. I've got no reason to believe that would be
7 true.

8 Q. What does Charter do to differentiate its
9 customer listings as either published or non-published?

10 A. I would imagine when they take a customer's
11 order, it's one of the questions that they ask, and they
12 complete a field in an order form somewhere that would
13 then mark that record in that manner. But I haven't sat
14 with their representatives to figure out how that
15 process works. It's a pretty common issue.

16 Q. Let me turn your attention to the final issue
17 that I'm going to ask you questions about, which is
18 Issue 23.

19 MS. ANDERL: I am reminded though that I
20 didn't offer the order, Exhibit JDW-6, for admission.
21 Your Honor, I would either offer that to be admitted or
22 ask that the Commission take official notice, or
23 probably doesn't even need to take official notice of
24 its own orders, but if it's administratively more
25 convenient to have it as an exhibit, I would offer it.

0136

1 JUDGE FRIEDLANDER: Okay, thank you. I think
2 it would be administratively more convenient just to
3 have an exhibit number to refer to in case anyone wants
4 to refer to it.

5 Does Charter have any opposition to admitting
6 this exhibit?

7 MR. HALM: Just with one clarification.

8 JUDGE FRIEDLANDER: Sure.

9 MR. HALM: So you will just take
10 administrative notice of the order itself?

11 JUDGE FRIEDLANDER: Exactly. We typically
12 don't admit pleadings or filings or our own orders. We
13 usually just take administrative notice, and that's what
14 I'll do in this case. However, for identification
15 purposes, it would probably be better to have a number
16 attached to it.

17 MR. HALM: Okay.

18 JUDGE FRIEDLANDER: As long as you don't mind
19 us numbering it, then I will go ahead and leave it
20 unadmitted, but I will take administrative notice of it.

21 MR. HALM: No objection, Your Honor.

22 JUDGE FRIEDLANDER: Okay, thank you.

23 MS. ANDERL: Thank you.

24 So, Your Honor, if we cite it, we can either
25 cite it as the order or JDW-6?

0137

1 JUDGE FRIEDLANDER: Exactly.

2 MS. ANDERL: Either way?

3 JUDGE FRIEDLANDER: Either way is fine.

4 MS. ANDERL: Thanks.

5 BY MS. ANDERL:

6 Q. Mr. Webber, Issue 23 begins in your rebuttal
7 testimony on page 66, and the contract language is on
8 pages 177 and 178 of the interconnection agreement. Do
9 you see that?

10 A. I do.

11 Q. Okay. And is it correct that Charter's
12 proposal would require, if adopted, would require Qwest
13 to go out and renegotiate contracts with any or all of
14 its directory publishers?

15 MR. HALM: Your Honor, I would like to
16 object, I'm not sure that Mr. Webber has a basis for
17 knowing what Qwest's contracts with its directory
18 publishers say or don't say. I'm not sure how he could
19 answer that question.

20 JUDGE FRIEDLANDER: Ms. Anderl, do you have a
21 response?

22 MS. ANDERL: Well, Your Honor, I'm asking
23 Mr. Webber based on the Charter language that's proposed
24 here and based on his testimony whether Charter believes
25 that this language either would or could operate to

0138

1 require Qwest to renegotiate its contracts with its
2 directory publishers.

3 MR. HALM: And, Your Honor --

4 JUDGE FRIEDLANDER: Assuming that Qwest has
5 contracts with directory customers.

6 MR. HALM: Assuming facts not in evidence,
7 asking the witness to speculate as well.

8 MS. ANDERL: All right, let me just strike
9 that question, withdraw that question, Your Honor, and
10 take another approach here.

11 JUDGE FRIEDLANDER: Thank you.

12 BY MS. ANDERL:

13 Q. Mr. Webber, do you see your testimony on page
14 66?

15 A. Yes, I have that.

16 Q. Starting at line 10?

17 A. Yes.

18 Q. You state there that Charter's proposed
19 Section 10.4.5 states that:

20 To the extent that any yellow pages
21 directory is published by or on behalf
22 of or under contract to Qwest, then the
23 same provisions and requirements that
24 apply to CLEC listings for white pages
25 would apply to classified listings.

0139

1 Is that right?

2 A. I see that, yes.

3 Q. Does Charter know whether any yellow pages
4 directories are published under contract to Qwest?

5 MR. HALM: Objection, Your Honor, she's
6 asking the witness to speculate.

7 MS. ANDERL: Your Honor, I'm asking a
8 question very directly related to this testimony at
9 lines 10 through 12. Charter states that to the extent
10 that any directory is published in that manner, I'm
11 simply asking Mr. Webber whether he knows whether any
12 such directories are.

13 JUDGE FRIEDLANDER: Right, and I think I'm
14 going to allow it. He can answer yes or no whether it's
15 in his knowledge.

16 So please answer.

17 A. I don't have specific knowledge. It seems as
18 though Mr. Weinstein says that Qwest doesn't contract
19 for that purpose, but I'm not quite sure, you know, to
20 what extent Qwest is involved with Dex.

21 BY MS. ANDERL:

22 Q. All right, turn, please, in the
23 interconnection agreement to page 223. Do you see on
24 that page there's a Section 15?

25 A. I do.

0140

1 Q. And that's proposed contract language that is
2 another component of this Issue 23; is that right?

3 A. Yes.

4 Q. And the second sentence there, can you just
5 review that second sentence that starts, Qwest shall
6 promptly cause. Let me know when you have that in mind,
7 and I will have a question or two for you.

8 A. (Reading.)

9 I see that.

10 Q. Okay. This goes back to the question that I
11 was attempting to ask you earlier, and that is if
12 Charter intends by this language to require Qwest to
13 renegotiate any contracts it might have with third
14 parties if those contracts don't currently contain the
15 terms as contemplated by this Section 15?

16 A. I don't know if renegotiate is the right
17 word, but it would require Qwest to go to that party or
18 those parties and seek to have the same terms and
19 conditions made available to Charter in this case.

20 Q. What happens --

21 A. I've seen exactly the same thing done. In
22 fact, I was testifying last week in Wisconsin, and
23 Century Tel indicated that on the DA issues they went to
24 their directory assistance provider and made that a term
25 in their contract with the directory assistance

0141

1 provider. So now the CLECs can go straight to the
2 directory assistance provider, and they don't have to
3 work through the ILEC, you know, sort of a third route
4 basis.

5 MS. ANDERL: Your Honor, I move to strike the
6 answer as nonresponsive to my question. Mr. Webber took
7 the opportunity to interject something that was
8 completely off the point that I had asked him.

9 JUDGE FRIEDLANDER: Joan, could you read back
10 the response.

11 (Record read as requested.)

12 MR. HALM: Your Honor, I would submit that
13 Mr. Webber was responding to the question in that
14 Ms. Anderl asked what Charter's intent was, and I think
15 his response was an illustration of the type of action
16 that Charter would expect Qwest would undertake.
17 Ms. Anderl has also repeatedly asked Mr. Webber about
18 his experience in the industry, and I think certainly
19 his experience in the industry would inform the question
20 that Ms. Anderl put to him, put to Mr. Webber.

21 JUDGE FRIEDLANDER: Actually, I think I would
22 like you to ask the question again, because I don't
23 think it was answered. My understanding of what
24 Ms. Anderl was asking is how does Qwest go about what
25 Mr. Webber had stated, which is amending contracts that

0142

1 are already in existence. He does not use the word
2 renegotiate, but Ms. Anderl is asking him how Qwest
3 would go about renegotiating these contracts, and I
4 would like to have Mr. Webber answer that question.

5 MS. ANDERL: Would you like me to reask then,
6 Your Honor?

7 JUDGE FRIEDLANDER: If you would.

8 BY MS. ANDERL:

9 Q. And let me take it from a little bit of a
10 different approach. The language that Charter proposes
11 requires Qwest to promptly cause any contracts or
12 agreements to be amended. Is it Charter's belief that
13 Qwest could cause those amendments unilaterally?

14 A. No.

15 Q. Is it likely then that Qwest would have to
16 renegotiate those contracts in order to obtain
17 amendments?

18 A. Again, I wouldn't use the phrase renegotiate.
19 I think amend is probably more likely. And when you say
20 those contracts, I don't know if there are zero, one, or
21 many. Let's assume there are one or there is one. You
22 would go to that provider, indicate that you have an
23 order out of this Commission requiring that you go to
24 that party and cause the contract to be amended such
25 that in this case Charter is able to get the same rates,

0143

1 terms, and conditions that are already made available,
2 if you will, to Qwest, but in this case to Charter.

3 Q. And what if the party with whom Qwest has a
4 contract refuses to do that?

5 A. As I stated earlier, I've seen circumstances
6 in the industry where this same thing happens.

7 Q. But I'm asking --

8 A. In Wisconsin, Century Tel went to its
9 directory assistance provider, asked that this be part
10 of the contract, and it now is, and the CLECs are now
11 able to use it. It's not an unreasonable request. It's
12 not something that ought to be surprising to this party.
13 And to the extent that this party wants to continue to
14 do business with Qwest, who is a pretty large player in
15 14 states, I should think that that party would want to
16 accommodate a big client's request in resolving this
17 issue in one state for Charter.

18 Q. And what if the third party should refuse to
19 do so?

20 A. I don't know.

21 Q. And are there any current restrictions on
22 Charter's ability to go directly to the third party and
23 request a separate agreement of their own?

24 A. I'm not aware of any legal restrictions.

25 Q. And are you aware of any examples where

0144

1 yellow pages directory publishers in the Qwest 14 state
2 region did not provide access to Charter end users on
3 the same terms, rates, and conditions as received by
4 Qwest end users?

5 A. I'm not aware either way.

6 Q. Are you aware of any circumstance in the
7 Qwest 14 state region where yellow pages publishers did
8 not provide Charter subscribers with the same
9 complimentary yellow page listing as is provided to
10 Qwest business end users?

11 A. Again I'm not aware either way.

12 Q. So you're not aware of any circumstances in
13 which Charter end users were denied access on the same
14 terms and conditions as Qwest end users?

15 A. Yeah, I think that's what I stated.

16 MS. ANDERL: Thank you, those are all my
17 questions.

18 JUDGE FRIEDLANDER: Okay, thank you.

19 Mr. Kopta, do you have any redirect, I'm
20 sorry, Mr. Halm?

21 MR. HALM: That's all right. Would it be
22 appropriate to take a break at this moment?

23 JUDGE FRIEDLANDER: Yeah, we can go ahead and
24 take a 10 minute break, we'll go off the record.

25 MR. HALM: Thank you.

0145

1 (Recess taken.)

2 JUDGE FRIEDLANDER: While we were at break, I
3 learned from counsel that two additional issues have
4 been resolved, Issues 2 and 3, which will no longer
5 necessitate the testimony of Charter's witnesses Peggy
6 Giaminetti and Tom Degnan. However, counsel have both
7 agreed to stipulate to the admission of the exhibits for
8 Ms. Giaminetti and Mr. Degnan, which would be PG-1T,
9 PG-2RT, PG-3, PG-4, PG-5, and PG-6 for Ms. Giaminetti,
10 and for Mr. Degnan it's TD-1T, TD-2RT, TD-3T, TD-4
11 through 10. Is that stipulation correct?

12 MR. KOPTA: All except for TD-4 and TD-5,
13 we're not -- I believe Qwest is not offering those, and
14 so those would not be stipulated, but the remainder of
15 TD-6 through TD-10 would be stipulated.

16 JUDGE FRIEDLANDER: Okay.

17 MS. ANDERL: That's correct, Your Honor.

18 JUDGE FRIEDLANDER: Okay, so did Qwest want
19 to withdraw those two exhibits?

20 MS. ANDERL: Yes.

21 JUDGE FRIEDLANDER: So we will take those
22 out. Will you be submitting something to the records
23 center for those as well just to have them withdrawn?

24 MS. ANDERL: Typically, Your Honor, if
25 they're not reflected in the final exhibit list as

0146

1 admitted, we don't do anything to pull them out.

2 JUDGE FRIEDLANDER: That's fine. But the
3 rest of the exhibits have been stipulated to their
4 admission, okay, great.

5 And I believe Mr. Halm was up to do redirect.

6 MR. HALM: Thank you, Your Honor.

7

8 R E D I R E C T E X A M I N A T I O N

9 BY MR. HALM:

10 Q. Mr. Webber, at the beginning of your
11 conversation with Ms. Anderl and at the end as well,
12 there was some reference to the term SGATs.

13 A. There was, yes.

14 Q. Do you remember the question from Ms. Anderl?

15 A. I do, yes.

16 Q. Okay. Do you know whether or not -- well,
17 let me ask this other question.

18 The questions from Ms. Anderl first came up
19 in the context of her reference to the so-called 271
20 Order; do you recall those questions?

21 A. I do, yes.

22 Q. Do you know whether or not the Qwest
23 Washington SGAT is still available to CLECs?

24 MS. ANDERL: Objection, Your Honor, this
25 information is contained in the prefiled testimony and

0147

1 is duplicative of information that's already on the
2 record.

3 JUDGE FRIEDLANDER: I'm going to -- go ahead.

4 MR. HALM: I'm sorry.

5 Could you identify whose prefiled testimony?

6 MS. ANDERL: It is in Mr. Webber's testimony,
7 and the discussion takes place on pages 7, 8, and 9, and
8 particularly the question on page 7 starting on line 12.

9 MR. HALM: And are you referring to his
10 direct testimony or rebuttal?

11 MS. ANDERL: Mr. Webber, I'm sorry, his
12 rebuttal. It's the only one with his name on it, page
13 7, line 12.

14 JUDGE FRIEDLANDER: Mr. Halm, did you
15 disagree that that isn't reflected in the record as is?

16 MR. HALM: I don't disagree with that, I just
17 wanted to clarify, because there may have been some
18 implications by Ms. Anderl's questions.

19 JUDGE FRIEDLANDER: Okay, then go ahead and
20 answer the question.

21 A. Yes, my understanding is that the SGAT is no
22 longer available, has not been available for several
23 years now, and that Qwest has indicated that it's really
24 an outdated document. I think I also may have mentioned
25 while answering questions earlier that SGAT was a

0148

1 contract, that's not accurate, it's more of a common
2 offering akin to a tariff as opposed to a contract.

3 BY MR. HALM:

4 Q. Thank you.

5 Ms. Anderl asked you several questions about
6 Charter's proposed language on Issue 5, Section 5.8 of
7 the interconnection agreement.

8 A. She did, several.

9 Q. Concerning the phrase actual direct damages.

10 A. I see that, 5.8.1.

11 Q. And that is on page, 5.8.1, page 32 of the
12 interconnection agreement, which is Hearing Exhibit 2 I
13 believe.

14 A. That's correct.

15 Q. And there were some questions about how
16 actual direct damages would be calculated. Do you
17 remember those questions?

18 A. I do.

19 Q. And if I could turn your attention to Section
20 5.8.2, does that section state in part that the parties
21 won't be liable to each other for incidental, indirect,
22 consequential, or special damages?

23 A. It does. I think it also adds lost profits,
24 lost revenues, lost savings, and a few other items as
25 well, so that would really sort of limit what the

0149

1 possibility for actual direct could include.

2 Q. So those types of damages listed in 5.8.2
3 would not be included in the calculation of actual
4 direct damages?

5 A. That's right. The way I would say it is
6 they're off the table for that set of calculations.

7 Q. Thank you.

8 Ms. Anderl also asked you several questions
9 about Section 5.8.4 of the interconnection agreement
10 which falls on page 33.

11 A. Yes.

12 Q. And her questions focused on the last
13 sentence of that section and Charter's proposed
14 definition of the term solely.

15 A. Yes.

16 Q. All right. The undisputed language in 5.8.4,
17 does that also include the term solely?

18 A. Yes, it does. I think that the language at
19 the bottom half there is really meant to sort of clarify
20 what that means there, because it doesn't appear to be
21 defined elsewhere in this section.

22 Q. So you read Charter's proposed language as
23 clarifying the scope of the term solely rather than
24 altering the overall meaning of Section 5.8.4?

25 A. Yes. As somebody who uses contracts, that's

0150

1 how I would understand that.

2 Q. Thank you.

3 If I could turn your attention to Section
4 5.9.1.1, that falls on page 34 of the interconnection
5 agreement.

6 A. I'm there.

7 Q. Under Charter's proposed language, there's a
8 parenthetical which includes the clause collectively,
9 claims; do you see that?

10 A. I do.

11 Q. Yes.

12 A. It's about halfway down the paragraph.

13 Q. And what do you understand to be the purpose
14 of that clause?

15 A. As we often do in the telecom business, we
16 try and sometimes economize words or consolidate
17 meanings, and I understand within this paragraph we have
18 a list of things which could be claims. And by putting
19 collectively claims in the paragraph at that point, what
20 we've done is economize so that when we use the word
21 claims later, we're referring back to these claims as
22 described at 5.9.1.1. And I don't think that having
23 done that, at least it appears to me as I look at it, it
24 doesn't change anything, but rather this just helps to
25 describe and economize on words later.

0151

1 Q. Thank you.

2 There was another set of questions with
3 respect to Section 5.10.2 which falls on page 36 of the
4 interconnection agreement.

5 A. I see that.

6 Q. The question surrounded the inclusion of the
7 clause or with knowledge?

8 A. Yes, there were a lot of questions on that
9 issue.

10 Q. Do you understand the inclusion of that
11 clause as addressing the question of the knowledge of
12 the combination of facilities or the knowledge of a
13 potential infringement of some party's intellectual
14 property rights?

15 A. I think it goes to the word combination.
16 Following on combination, it indicates is not made or at
17 the direction of or with the knowledge of. I understand
18 knowledge referring back to combination.

19 Q. Thank you.

20 I think my last question goes to what has
21 been marked as Exhibit JDW-4, and that was an excerpt
22 from a document which Ms. Anderl referred to as
23 Charter's Washington tariff.

24 A. JDW-4 I have that.

25 Q. Yes.

0152

1 A. Yes.

2 Q. Do you have a copy there with you?

3 A. I do, yes.

4 Q. Would you read for us the sentence that is in
5 the paragraph under Charter Fiberlink and the Company's
6 address, it's the sentence that is within the
7 parenthetical.

8 A. It says:

9 This document is not filed with the
10 Washington Utilities and Transport
11 Commission.

12 And so when we talked about this earlier, it
13 wasn't my intention to sound like a wisenheimer
14 indicating that I didn't know where the document
15 necessarily came from, whether it was on file with the
16 Commission, et cetera. And although I failed to see
17 this earlier, this was -- it's not on file with the
18 Commission.

19 Q. And in preparing for your testimony here
20 today, do you recall speaking with counsel for the
21 company about the fact that this document is no longer
22 filed with the Commission nor approved by the
23 Commission?

24 A. Yes, that's my understanding. My
25 understanding is for some reason that CLECs can not file

0153

1 and have approved tariffs before the Washington
2 Commission at this point in time.

3 Q. And is that reason to the best of your
4 knowledge because the Washington Commission no longer
5 permits that action?

6 A. Yes.

7 Q. Okay. And do you know whether or not the
8 terms in this document are posted on the company's Web
9 site at this time?

10 A. I'm not certain if they are.

11 MR. HALM: Thank you, Mr. Webber.

12 No further questions, Your Honor.

13 JUDGE FRIEDLANDER: Thank you.

14 Did Qwest have any recross?

15 MS. ANDERL: No recross, no.

16 JUDGE FRIEDLANDER: Okay, thank you.

17

18 E X A M I N A T I O N

19 BY JUDGE FRIEDLANDER:

20 Q. I have just one question.

21 A. Sure.

22 Q. And it deals with Issue 8, and I believe in
23 the exhibit marked HE-2 on page 39 there are the
24 different proposed languages regarding warranties.

25 A. Just are you referring to the DPL, which

0154

1 exhibit number?

2 Q. It's HE-2.

3 MR. HALM: That's the draft interconnection
4 agreement?

5 JUDGE FRIEDLANDER: Exactly.

6 A. All right, thank you.

7 Page 39, I'm there.

8 BY JUDGE FRIEDLANDER:

9 Q. The question that I have is with regards to
10 the last phrase where it lists the Commission's rule at
11 480-120.

12 A. Mm-hm.

13 Q. What would be your understanding of this
14 clause should the Commission change its rules or
15 renumber them? Because as happens a lot with different
16 agencies, we tend to remove sections or amend sections.
17 If we did that and this reference was no longer valid,
18 what impact do you see that having on the warranties
19 clause?

20 A. My understanding is, and I've seen this
21 happen in other circumstances, most contracts have
22 change of law provisions in them. And so in this case,
23 if the parties became aware that 480-20 was moved
24 elsewhere, one of the two parties would likely come to
25 the other and say, we've got to update this reference in

0155

1 the tariff, and they would simply file an amendment
2 before the Commission that would be added to or attached
3 to the agreement. And the understanding here would be
4 that it would be redirected to the new point, whatever
5 that might be.

6 JUDGE FRIEDLANDER: Okay, thank you, that was
7 all that I had.

8 THE WITNESS: Sure.

9 JUDGE FRIEDLANDER: Since there's nothing
10 further, you're dismissed.

11 THE WITNESS: Thank you, Your Honor.

12 JUDGE FRIEDLANDER: You're welcome.

13 And who will be handling Mr. Gates?

14 MR. KOPTA: (Indicating.)

15 JUDGE FRIEDLANDER: Mr. Halm.

16 MS. ANDERL: And, Your Honor, this will
17 necessitate a swap in the positions between me and
18 Mr. Dethlefs.

19 JUDGE FRIEDLANDER: Sure.

20 And while we're switching places, just for
21 the record I will go ahead and indicate that Exhibits
22 TJG-1T, TJG-2, TJG-3RT, TJG-4, and TJG-5C have already
23 been admitted into the record.

24 MR. KOPTA: Thank you, Your Honor.

25 JUDGE FRIEDLANDER: Sure.

0156

1 Actually, let's just go ahead and go off the
2 record briefly while we switch bodies, that would
3 probably be the best way, thank you.

4 (Discussion off the record.)

5 (Witness TIMOTHY J. GATES was sworn.)

6 JUDGE FRIEDLANDER: You may be seated.

7 And, Mr. Halm, did you have any corrections
8 that you wanted to make with Mr. Gates to his testimony?

9 MR. HALM: I believe so.

10 MR. DETHLEFS: Could we be off the record for
11 a minute, because I found one too, and they may not know
12 about it.

13 JUDGE FRIEDLANDER: Well, we can just make it
14 on the record if you would like.

15 MR. DETHLEFS: Okay.

16

17 Whereupon,

18 TIMOTHY J. GATES,
19 having been first duly sworn, was called as a witness
20 herein and was examined and testified as follows:

21

22 D I R E C T E X A M I N A T I O N

23 BY MR. HALM:

24 Q. Mr. Gates, are there any corrections you
25 would like to make to your testimony today?

0157

1 A. Yes, I have two.

2 On my direct at page 6 at line 3, between the
3 words to and competitive, please insert the word the, so
4 that fragment of the sentence would read, while Charter
5 is relatively new to the competitive.

6 And then down on line 10, please strike the
7 word our, O-U-R, and replace it with its, I-T-S, so that
8 fragment would read, Qwest's network to provide its own
9 services.

10 Those are the only corrections I have.

11 MR. HALM: And Mr. Dethlefs had indicated he
12 had another correction to your testimony.

13 MR. DETHLEFS: Let me see if I can find it
14 real quick here.

15 MR. KOPTA: Do you want to do it in cross?

16 MR. DETHLEFS: I could do it in cross, but
17 this will work.

18 On page 16, lines 16 and 17, in the paragraph
19 numbered 7.1.2.4(a), it refers to an interconnection
20 facility provided by a third party, and then it says
21 without a mid span meet arrangement, and I thought that
22 what they meant to say was with a mid span meet
23 arrangement, but I don't know for sure.

24 MR. HALM: I don't think so, I mean subject
25 to check. Let's just look at the draft contract

0158

1 language. Referring to my copy of the disputed issues
2 list, the term without should be included in that
3 section.

4 Yes, I believe this, and, Mr. Gates, subject
5 to your review, I believe that your testimony accurately
6 reflects what is Charter's proposed language for Issue
7 11.

8 JUDGE FRIEDLANDER: That's also what I have
9 in the HE-2 exhibit on page 52, it's listed as without.

10 MR. HALM: Yes, thank you, Your Honor.

11 JUDGE FRIEDLANDER: And, Mr. Gates, is that
12 your testimony, that it should be without or with?

13 THE WITNESS: I don't have the document that
14 would allow me to check that. I thought I did, but
15 evidently I don't.

16 MR. HALM: You don't have Hearing Exhibit 2,
17 the draft interconnection agreement?

18 THE WITNESS: No, I do not.

19 MR. HALM: And do you have the disputed
20 issues matrix?

21 THE WITNESS: I do.

22 MR. HALM: All right, I believe Mr. Kopta is
23 going to provide Hearing Exhibit 2 to you.

24 MR. KOPTA: May I approach?

25 JUDGE FRIEDLANDER: Sure.

0159

1 MR. HALM: So on page 52 of that exhibit.

2 THE WITNESS: Yes, I see that, I agree with
3 the Judge that without does appear there.

4 MR. HALM: Thank you.

5 So no further corrections I understand, and
6 therefore I will tender the witness for
7 cross-examination.

8 JUDGE FRIEDLANDER: Okay, thank you.

9 Mr. Dethlefs.

10 MR. DETHLEFS: Thank you.

11

12 C R O S S - E X A M I N A T I O N

13 BY MR. DETHLEFS:

14 Q. Good afternoon, Mr. Gates.

15 A. Good afternoon.

16 Q. I would like to ask you first a few general
17 questions about Charter's network. As I understand it,
18 you've testified that Charter is a facilities based
19 provider, correct?

20 A. Yes.

21 Q. And that means that they've got their own
22 loops, switches, and transport, correct?

23 A. Generally speaking that's correct. And I
24 assume you're talking about for telephone service, and
25 we're being very general here, but that's correct,

0160

1 Charter does not buy UNEs, does not resale, it has its
2 own facilities out there. Invests about a billion
3 dollars a year in its network.

4 Q. Now Charter for purposes of serving
5 Washington uses one switch in Kennewick; is that
6 correct?

7 A. Yes, I believe they recently installed a new
8 switch in Kennewick to serve the state.

9 Q. Do you have your response to Data Request
10 Number 1, which we have marked as Exhibit TJG-7?

11 A. Is this the Data Request Number 1 dated
12 October 31st, 2008?

13 Q. That's correct.

14 A. Yes, I have that in front of me.

15 Q. Now one of the things I noticed in Charter's
16 responses to data requests is that when we asked
17 questions directed toward your testimony, the answers we
18 got were supplied often enough by a Mr. Bill Pruitt.
19 Did you review the answers to these data request
20 responses that were directed at your testimony?

21 A. Yes, I did.

22 Q. Before they were filed?

23 A. That's correct.

24 Q. Okay. So this Data Request Response Number
25 1, did you approve of the answer that's in the response

0161

1 to that data request?

2 A. Well, let me be clear, I did rely on Charter
3 to give me the correct CLLI code and address for that
4 switch location. I did not go out and verify personally
5 that yes indeed the switch is at 1619 West John Day
6 Avenue in Kennewick. But in terms of the policy
7 responses, some of the other responses, absolutely, I
8 reviewed them. This one obviously I had to rely on
9 Mr. Pruitt for the factual nature of that location.

10 Q. You don't have any reason as you sit here
11 today to believe that the response to Data Request
12 Number 1 which we've marked as Exhibit TJG-7 is wrong in
13 any respect, do you?

14 A. No, I do not.

15 MR. DETHLEFS: Your Honor, we would move for
16 the admission of Exhibit TJG-7.

17 JUDGE FRIEDLANDER: Any opposition?

18 MR. HALM: No, Your Honor.

19 JUDGE FRIEDLANDER: Okay, so admitted.

20 BY MR. DETHLEFS:

21 Q. Now I believe you testified in your testimony
22 that you believe that this switch in Kennewick qualifies
23 as a tandem switch under the FCC's regulations; is that
24 correct?

25 A. Could we go to that point in my testimony? I

0162

1 might quibble a little bit with your description of my
2 testimony. I think what I really said was that it
3 serves a geographic area comparable to a tandem switch
4 or comparable to Qwest's switch.

5 Q. I guess going to your testimony really won't
6 help the line of questioning I have here, because what
7 I'm interested in knowing is, this switch, is it your
8 belief that it serves both as a tandem switch and as an
9 end office switch?

10 A. Well, perhaps just a little explanation might
11 help me answer that question, if I may. You're asking
12 me about a circuit switch, a traditional end office
13 switch, and a tandem switch, whereas new technology
14 today using soft switches, you don't really have those
15 specifications or those characterizations any more. But
16 it is clear that this soft switch that Charter has
17 deployed can perform the same activities as say a Qwest
18 traditional Class 5 local switch or a tandem switch.

19 Q. Could you --

20 A. But it's clearly not the same technology.

21 Q. So it's not a Class 5 switch, is it a soft
22 switch?

23 A. It is a soft switch, yes.

24 Q. Okay. Does this Kennewick switch perform the
25 function that you've defined in your testimony as

0163

1 termination? I mean is it the switch that terminates
2 calls to Charter end user customers?

3 MR. HALM: And, I'm sorry, Mr. Dethlefs, is
4 there a point in his testimony that you're relying upon?

5 MR. DETHLEFS: Well, I will get to that in a
6 moment, but at this juncture I'm just asking him if he
7 believes that this switch is a switch that terminates
8 calls to Charter end user customers.

9 A. Well, you did refer to my testimony, I would
10 much prefer to talk specifics rather than generalities,
11 but clearly this switch switches traffic, routes traffic
12 for termination. I don't know what else I can say.

13 BY MR. DETHLEFS:

14 Q. Well, let's go to in your rebuttal testimony
15 page 19, lines 4 to 7, and that's been marked as Exhibit
16 TJG-3RT.

17 A. I'm there.

18 Q. Now in lines 6 and 7, you say:

19 Termination is the switching and
20 transmission of traffic from the end
21 office to the called party's premise.

22 And so what I'm getting at is, is the
23 Kennewick switch the switch that performs that function
24 for Charter in Washington?

25 A. Generally, yes. Obviously that is the switch

0164

1 that switches the calls, and then Charter uses its local
2 distribution facility to terminate at the premise.

3 Q. And those local distribution facilities that
4 you're referring to would be in the telecom world the
5 equivalent of Charter's loops; is that correct?

6 A. Generally speaking distribution can be more
7 than loops, but yes. I think we can agree generally if
8 you want to talk in generalities. We're talking about a
9 hybrid fiber coaxial network between this switch and the
10 premise. It's clearly different from the technology
11 that Qwest is using today. Be happy to draw that up on
12 the board if it would be helpful to the judge. But
13 generally speaking, it performs the termination
14 functionality that you're addressing.

15 Q. That switch, stated a different way, that
16 switch has a transmission facility that connects it to
17 Charter's end user customers, correct?

18 A. Yes.

19 Q. And then directly above in your testimony,
20 you say:

21 Transport is the function of delivering
22 and switching traffic from the parties'
23 point of interconnection to the
24 terminating carrier's end office switch.

25 So in your testimony you state that Charter

0165

1 has interconnected with Qwest in Yakima; is that
2 correct?

3 A. And where do I address that in my testimony?

4 Q. On the next page, line 10.

5 A. Yes, the current POI with Qwest in Yakima,
6 yes.

7 Q. Okay. So today the transport that Charter
8 provides is for purposes of this definition that you
9 have on page 19, lines 4 to 5 of your testimony,
10 transport consists of the transport from the Yakima
11 point of interconnection to the Charter switch in
12 Kennewick; is that correct?

13 A. Well, that's one small piece of the
14 transport, but yes, that is an example of transport.

15 Q. Well, that's the transport that you have
16 defined on lines 4 to 6, isn't it?

17 A. Yes.

18 Q. Now in your rebuttal testimony marked as
19 Confidential Exhibit TJG-5C, I'm not going to ask you
20 any specific questions about this diagram because it has
21 been marked confidential, but do you have that in front
22 of you?

23 A. Yes, I do.

24 Q. There are various distances that are listed
25 between various points in this diagram. Can you tell me

0166

1 what method was used to calculate those distances?

2 A. Yes. After our discussion during a break, we
3 called Charter employees and confirmed that these
4 distances were determined based on V&H coordinates, the
5 standard methodology that we use in telecommunications.

6 Q. Could you tell us very briefly what V&H
7 coordinates refer to?

8 A. Sure. V&H refers to vertical and horizontal
9 coordinates. And each CLLI code, that's by CLLI I mean
10 C-L-L-I, common location indicator code, there is a CLLI
11 code associated with each switch in the network, and
12 there's also a vertical and horizontal coordinate
13 associated with each switch. So you can use those
14 coordinates and the Pythagorean Theorem to calculate a
15 straight line distance between those two points, and
16 that's a term to calculate distances for purposes of
17 billing.

18 Q. And so when you were preparing Confidential
19 Exhibit TJG-5C, you had somebody perform that
20 calculation to come up with those distances that are
21 referred to on that page?

22 A. Yes.

23 Q. I would like to ask you subject to check if
24 you would agree that the distance using V&H coordinates
25 between Pasco to Kennewick, the end office switch or

0167

1 Charter's switch in Kennewick, if you would accept
2 subject to check that that distance is approximately 5.2
3 miles?

4 A. Are you pointing to something on my exhibit?

5 Q. No, what I'm doing is asking you subject to
6 check whether you would agree that that's a correct
7 distance?

8 A. As the crow flies or are you talking about on
9 roads or --

10 Q. Using V&H coordinates.

11 A. I could agree subject to check, of course.

12 Q. Okay. And would you agree subject to check
13 that the distance between the Qwest end office in Pasco
14 and the Waitsburg end office, Qwest's end office, is
15 approximately 45 miles?

16 A. I would agree subject to check.

17 Q. And would you agree subject to check that the
18 distance from the Pasco end office for Qwest and the
19 Walla Walla end office for Qwest is approximately 38
20 miles?

21 A. I don't know, but I would agree subject to
22 check.

23 Q. And would you agree subject to check that the
24 distance between the Pasco end office for Qwest and the
25 Yakima tandem for Qwest is approximately 76 miles?

0168

1 MR. HALM: Objection, Your Honor.

2 Is it possible, Mr. Dethlefs, that your
3 witness could offer this evidence directly?

4 MR. DETHLEFS: Sure, we could do that.

5 MR. HALM: Rather than having Mr. Gates
6 subject to check verify this information.

7 MR. DETHLEFS: If they don't have an
8 objection to us putting it in through Mr. Linse, it was
9 intended as a line of questioning regarding Charter's
10 rebuttal testimony, so we didn't really have an
11 opportunity to include it in our direct or rebuttal
12 testimony, we would be glad to put those numbers in that
13 way if that makes more sense.

14 MR. HALM: Well, I guess my concern is that
15 Mr. Gates doesn't at this point have -- he may have an
16 opportunity to check this information after the hearing
17 today, but if the cross is finished at that time, I'm
18 not sure, I guess he can get back up on the stand, but
19 asking him to verify this information at this point in
20 time, it's not in his direct testimony, I'm not sure he
21 has a basis to be able to verify it at this time.

22 MR. DETHLEFS: Your Honor, the rebuttal
23 testimony does include a number of distance
24 calculations. What he did in his calculations was
25 obtain that information from somebody else. The subject

0169

1 to check procedure that is provided for in the
2 Washington rules gives him a certain number of days to
3 go and check to make sure the distances are right. And
4 if they're wrong, they get to file a document that says
5 they're wrong, so that's why I was doing it through that
6 procedure. But we can put it through Mr. Linse if
7 counsel would prefer we do it that way.

8 JUDGE FRIEDLANDER: Why don't we go ahead and
9 do that. And then if you need to, we can always just
10 call Mr. Gates again for some further questions if you
11 would like to rebut that.

12 MR. HALM: So then we are using the subject
13 to check procedure?

14 JUDGE FRIEDLANDER: No, we're not, we're
15 going to have Qwest provide this line of questioning
16 through Mr. Linse.

17 BY MR. DETHLEFS:

18 Q. Do you have a response to Data Request Number
19 8, which we've marked as Exhibit TJG-14?

20 A. I believe I do. Is this the one that refers
21 to end office equivalents?

22 Q. Yes.

23 A. Yes, I do have that.

24 Q. Did you review this response in connection
25 with reviewing the data request responses that Charter

0170

1 supplied?

2 A. Yes, I did.

3 Q. And so you approve of the answer that's
4 provided in this Exhibit TJG-14?

5 A. Yes.

6 MR. DETHLEFS: Your Honor, we would move for
7 the admission of Exhibit TJG-14.

8 JUDGE FRIEDLANDER: Okay, any objections?

9 MR. HALM: I'm sorry, just for clarification,
10 this is Charter's response to Data Request Number 8; is
11 that right?

12 MR. DETHLEFS: Yes.

13 MR. HALM: No objections, Your Honor.

14 JUDGE FRIEDLANDER: Okay, so admitted.

15 MR. DETHLEFS: And we had a discussion off
16 line about what Qwest had previously marked as a
17 cross-exhibit, which was a letter of intent. It's been
18 redesignated as Exhibit TJG-6 Confidential, or I guess
19 it's TJG-6C for confidential, and we would offer that
20 cross-exhibit into evidence.

21 JUDGE FRIEDLANDER: Okay, any objections?

22 MR. HALM: No objection, Your Honor.

23 JUDGE FRIEDLANDER: So admitted.

24 BY MR. DETHLEFS:

25 Q. Now one of the subjects that comes up in your

0171

1 testimony, Mr. Gates, is this whole issue about
2 technically feasible points of interconnection, so I
3 have a few questions about that subject. If I could get
4 you to turn to page 11, lines 14 and 15 of your direct
5 testimony, which we have marked as Exhibit TJG-1T.

6 JUDGE FRIEDLANDER: And you said page 11, was
7 that correct?

8 MR. DETHLEFS: That's correct.

9 JUDGE FRIEDLANDER: Okay, thank you.

10 BY MR. DETHLEFS:

11 Q. Now I believe it's your testimony that before
12 Qwest can deny interconnection at a particular point,
13 it's got to go to the State Commission and prove that
14 it's not technically feasible; is that correct?

15 A. Yes, generally that's correct.

16 Q. And that is in fact what you believe that
17 Charter's contract language requires, correct?

18 A. Yes, in Section 7.1.1.

19 Q. And on lines 14 and 15 of your direct
20 testimony, you say:

21 That language would require Qwest before
22 it attempted to deny interconnection at
23 a tandem switch location to first prove
24 that it does not make similar use of its
25 network to transport the local calls of

0172

1 its own or any affiliates, or any other
2 LEC's end user customers.

3 What you're referring to there is before it
4 denies request to interconnect at a particular point,
5 correct?

6 A. That's correct. It's really the
7 discrimination issue that I was addressing, but
8 obviously the technical feasibility or infeasibility
9 issue is a burden that Qwest must bear.

10 Q. So it's your position that Qwest can not deny
11 interconnection at a particular point until after it's
12 proven to the State Commission that it's not technically
13 feasible to do it there?

14 A. That's correct. I think I've said that a few
15 times, and I hope that's what my testimony makes clear
16 is that the rules are very specific. Qwest can
17 certainly claim that it's technically infeasible, and
18 that's fine, but it has to make that showing and get an
19 order from the Commission or finding from the Commission
20 that supports that suggestion that it's technically
21 infeasible.

22 Q. So let me ask you a question, let's assume
23 that Charter requests an interconnection at a point
24 that's indisputably infeasible today, and that it will
25 take six months for Qwest to bring a proceeding to

0173

1 convince the State Commission and to get an order from
2 the State Commission saying that it's technically
3 infeasible to interconnect there, what's supposed to
4 happen during that six month period?

5 A. Well, I do not agree with that hypothetical.
6 Charter has no incentive to seek interconnection at some
7 indisputably infeasible area or location. It wouldn't
8 do that. I think we all know that interconnection
9 occurs where it's generally convenient for both parties
10 to interconnect, traditionally at a tandem or a mid span
11 meet. So your suggestion that Charter would ask for
12 that sort of an interconnection on the Qwest network, I
13 don't think it's a very good hypothetical, because it's
14 not in anybody's best interest to delay interconnection
15 for any period of time, let alone six or eight months.

16 Q. Well, let's assume that Charter did in fact
17 do that, regardless of what you believe that they would
18 do, let's assume that they did in fact do that. What
19 would happen during that six months period of time,
20 would Qwest have an obligation to go forward and try to
21 make something impossible happen?

22 A. I wouldn't assume your question. I just
23 think it's completely flawed, and I wouldn't accept the
24 hypothetical. But if Charter did make a suggestion like
25 that or a request to Qwest, I would expect Qwest

0174

1 engineers to come back and say, come on, guys, what are
2 you proposing here. You know, you're asking to
3 interconnect in a ditch 40 miles outside of town, it's
4 not close to my switch, why are you doing this? And the
5 engineers would work it out. I'm not aware of any
6 interconnection request that Charter has made around the
7 country where the ILEC came back and said, this is
8 unreasonable, we don't want to interconnect here, it's
9 technically infeasible. So your suggestion that this
10 might happen, while it's interesting I guess from a
11 theoretical perspective, just doesn't bear out in real
12 life.

13 MR. DETHLEFS: Your Honor, I would ask that
14 the witness be directed to answer the hypothetical. It
15 is a permissible hypothetical, and he's basically said
16 I'm not going to answer it because I don't agree it
17 could ever happen, and I don't think that's an
18 acceptable response to the question.

19 MR. HALM: I thought that the witness just
20 did answer the hypothetical.

21 JUDGE FRIEDLANDER: Joan, could you read back
22 what Mr. Gates' answer was for that last question.

23 (Record read as requested.)

24 JUDGE FRIEDLANDER: I think he did, while he
25 disagrees with the question, I think he did answer it to

0175

1 the extent that he indicated that he would think that,
2 not to put words in your mouth, but he would think that
3 the engineers would work it out. If you would like to
4 ask it in a different way using a different fact
5 pattern, I think that's okay, but I think he did answer
6 this question.

7 MR. DETHLEFS: Okay, I will ask it a
8 different way.

9 BY MR. DETHLEFS:

10 Q. Let's assume that we have a good faith
11 dispute about whether it's technically feasible to
12 interconnect in a particular way. So Qwest says that
13 it's not technically feasible, Charter says that it is,
14 it's your testimony that Qwest would have to go bring a
15 proceeding before the Commission, correct?

16 A. I don't know the procedural aspects. Maybe
17 it could be a request for a summary judgment, ask the
18 Staff to get involved to mediate the disagreement, but
19 somehow get a decision from this Commission saying that
20 it is technically infeasible based on the FCC's rules to
21 interconnect in the way that Charter has proposed.

22 Q. So in that circumstance, would Qwest have an
23 obligation to proceed to attempt the interconnection
24 while that proceeding was pending before the Commission?

25 A. I don't know. One good solution would be to

0176

1 use indirect interconnection until that dispute is
2 resolved.

3 Q. You would agree, wouldn't you, that Charter's
4 going to try to choose points of interconnection that
5 minimize its own costs, all other things being equal?

6 A. I would hope that would be the goal of the
7 engineers and the business folks would be to try to
8 minimize costs, yes.

9 Q. Now if you will look at page 17 of your
10 direct testimony, lines 31 to 33, you make the
11 statement:

12 At the same time, Charter's proposal
13 makes clear that Qwest has no obligation
14 to establish a POI with Charter outside
15 of Qwest's geographic territory or
16 service area.

17 Is that correct?

18 A. That's correct.

19 Q. So are you speaking categorically about all
20 of Charter's language, or in other words are you saying
21 that none of Charter's language would require Qwest to
22 establish a point of interconnection with Qwest outside
23 of Qwest's geographic territory or service area?

24 A. My reading of the language indicates that
25 Charter is willing to have the POI on the Qwest network

0177

1 or within the Qwest network. So I don't read any of
2 this language to suggest that Charter wants a POI
3 outside of the Qwest network.

4 Q. Well, the actual language you use is, outside
5 of Qwest's geographic territory or service area,
6 correct?

7 A. That is my language. I was trying to
8 paraphrase my testimony. Is there something about that
9 language that gives you pause? I mean perhaps we could
10 clear it up.

11 Q. Well, I guess what I'm getting at is if you
12 will look on page 15 of your testimony, lines 22 through
13 26, you're quoting Charter's proposed addition or
14 modification to Section 7.1.2; do you see that?

15 A. Yes.

16 Q. And you make the statement the language that
17 Charter's proposing is that the parties agree that this
18 Section 7.1.2 shall not be construed as imposing any
19 obligation upon Qwest to establish a physical point of
20 interconnection with a CLEC at a point that is outside
21 of Qwest's geographic service area or territory. Now
22 are you saying on page 17 that none of Charter's
23 proposed contract language would require Qwest to
24 establish a point of interconnection with Charter at a
25 point that is outside of Qwest's geographic service area

0178

1 or territory?

2 A. Well, first of all, this testimony at page 17
3 refers specifically to Section 7.1.2, and I believe the
4 language that you read into the record, the bold
5 language there which is Charter's proposal, is exactly
6 as it reads, that Charter is not attempting to require
7 Qwest to establish a POI at a point that is outside of
8 Qwest's geographic service area or territory. Now if
9 you think there's some language or some of my testimony
10 that suggests otherwise, I would be happy to look at it.

11 Q. Well, let me ask you this. If we changed, on
12 line 22, if we change the phrase that the parties agree
13 that this Section 7.1.2 shall not be construed to read
14 that the parties agree that this agreement shall not be
15 construed, would you be okay with that?

16 MR. HALM: Objection, Your Honor, I'm not
17 sure, we're again engaging in some contract negotiations
18 here with the witness.

19 MR. DETHLEFS: It's not contract
20 negotiations, Your Honor, I'm trying to get to the point
21 that by the literal language of this provision the only
22 thing that doesn't require Qwest to create a point of
23 interconnection outside of its service territory is
24 Section 7.1.2. Two pages later, the witness says
25 Charter's proposal does not require Qwest to create a

0179

1 point of interconnection with Charter outside of Qwest's
2 geographic territory or service area. And so it seems
3 to me reading this precisely that there may be some
4 trick here, and I'm just trying to find out is Charter
5 saying that none of its proposed contract language
6 requires Qwest to create a point of interconnection
7 outside of its service territory.

8 MR. HALM: Your Honor, I believe that
9 Mr. Gates did respond a moment ago and explain that his
10 response on page 17 directly refers to Charter's
11 proposal, which is the language Mr. Dethlefs is focusing
12 on now.

13

14 EXAMINATION

15 BY JUDGE FRIEDLANDER:

16 Q. So let me just understand what you're saying,
17 Mr. Gates. Does the language that Mr. Dethlefs had read
18 in your testimony regarding page 17 of your direct
19 testimony such that Charter's proposal makes clear that
20 Qwest has no obligation to establish a POI with Charter
21 outside of Qwest's geographic territory or service area
22 only apply as far as your testimony goes to Section
23 7.1.2, is that my understanding, or is my understanding
24 correct I should say?

25 A. This testimony, as I said earlier, does refer

0180

1 back to that. It is our attempt to provide some comfort
2 to Qwest as to whether or not Charter will ask for a POI
3 outside of its network, and it's my understanding that
4 Charter will not.

5 Q. But see, I think that's where our confusion
6 is coming in. Charter will not ask for it is pretty
7 broad. What Mr. Dethlefs I think is trying to ask is,
8 does this apply to the entire contract, or is it only
9 under this section?

10 A. I just hate to speculate on behalf of my
11 client.

12 Q. Well, I think he's just asking as far as your
13 understanding goes.

14 A. My understanding is that Charter is not
15 asking Qwest to establish any POI outside of Qwest's
16 service territory.

17 And, Mr. Dethlefs, however that is defined,
18 you know, the geographic area, and that the purpose of
19 this proposed language and the purpose of my testimony
20 two pages later was to reinforce that point, and we
21 thought that would give Qwest some comfort. And you
22 seem to think it's some sort of trickery, but it clearly
23 is not, and I apologize if my drafting raised some
24 concerns, but that was not our intent.

25 MR. DETHLEFS: Thank you.

0181

1 C R O S S - E X A M I N A T I O N

2 BY MR. DETHLEFS:

3 Q. Let me ask you a question. You live now in
4 Florida, it's fair to say that Qwest is not an incumbent
5 local exchange carrier in Florida, correct?

6 A. I don't believe they are, but I know Qwest
7 serves nationally and internationally now, and they're
8 not limited to their 14 state region.

9 Q. So you don't know as you sit here today
10 precisely where Qwest is an ILEC and where it's not an
11 ILEC?

12 A. Oh, well, Qwest is not an ILEC in Florida.

13 Q. On page 42 of your direct testimony, wait a
14 minute, let me just make sure this is right, yes, on
15 page 42 of your direct testimony, lines 15 to 17, you
16 make the statement:

17 In that way, the rates assessed by each
18 party would be symmetrical consistent
19 with Section 252(b)(2) and associated
20 FCC regulations.

21 Correct?

22 A. Yes.

23 Q. And the rule on symmetry generally speaking
24 means that the rate that a CLEC gets to charge an ILEC
25 for reciprocal compensation is the rate that the ILEC is

0182

1 entitled to charge for reciprocal compensation, correct?

2 A. Generally yes. I mean symmetrical can also
3 refer to bill and keep, but yes, generally you're
4 correct.

5 Q. Okay.

6 A. And to be clear though on this piece of
7 testimony, Charter's proposal, its first proposal and
8 first position is that bill and keep should apply. And
9 this proposal only occurs if Qwest prevails and wants to
10 charge Charter for direct trunk transport and then
11 Charter requests the ability to symmetrically charge
12 Qwest for the same functionality.

13 Q. Now if you go to page 32 of your direct
14 testimony, lines 16 through 19, do you see that?

15 A. Yes.

16 Q. You make the statement:

17 For Qwest originated traffic, Qwest will
18 pay CLEC's applicable trunking and
19 tandem switching rates.

20 Isn't that correct?

21 A. Yes, it does.

22 Q. And that's what you've just described as
23 your, for lack of a better description, alternative
24 reciprocal compensation proposal; is that correct?

25 A. Yes. But I believe also in the language in

0183

1 the proposals we identify that CLEC's applicable
2 trunking and tandem switching rates are in fact the
3 Qwest rates.

4 Q. Okay. So by this language that you proposed
5 for Section 7.2.2.1.4, even though you say, even though
6 Charter's language says, CLEC's applicable trunk and
7 tandem switching rates, what you really mean are the
8 symmetrical rates that both Charter and Qwest are
9 required to use when there's reciprocal compensation,
10 correct?

11 A. Yes, that's correct.

12 Q. If you could look at the response to Data
13 Request Number 23, which we have marked as Exhibit
14 TJG-21.

15 A. Yes, I see that.

16 Q. Did you review this response before it was
17 submitted to Qwest?

18 A. I did.

19 Q. And is this response true and accurate to the
20 best of your belief?

21 A. Yes. And the key is that -- the key to this
22 response and for the mutual understanding of the parties
23 is that Charter will not seek transit through an end
24 office switch.

25 MR. DETHLEFS: Your Honor, I would move for

0184

1 admission of Exhibit TJG-21.

2 JUDGE FRIEDLANDER: Objections?

3 MR. HALM: No objections, Your Honor.

4 JUDGE FRIEDLANDER: So admitted.

5 MR. DETHLEFS: Your Honor, the only other
6 thing I have is I didn't mark down whether I had moved
7 for the admission of Exhibit TJG-6C, the confidential
8 letter of intent. I believe I did but --

9 JUDGE FRIEDLANDER: You did.

10 MR. DETHLEFS: Okay.

11 JUDGE FRIEDLANDER: As well as TJG-7, TJG-14,
12 and TJG-21.

13 MR. DETHLEFS: Your Honor, those are all the
14 questions I have for Mr. Gates.

15 JUDGE FRIEDLANDER: Okay. Would you like to
16 admit the rest of the cross-exam exhibits?

17 MR. DETHLEFS: No, Your Honor.

18 JUDGE FRIEDLANDER: Okay, great, thank you.

19 Is there any redirect?

20 MR. HALM: Yes, Your Honor, if I could take
21 just one moment.

22 JUDGE FRIEDLANDER: Sure.

23 And actually while you're taking a moment,
24 maybe I can ask Mr. Dethlefs about the other cross-exam
25 exhibits. Are you wishing that they, they're not

0185

1 admitted into the record, however, are you asking that
2 they still be relied upon or no?

3 MR. DETHLEFS: No, Your Honor.

4 JUDGE FRIEDLANDER: Okay.

5 MR. DETHLEFS: The ones that I offered today
6 are the only ones we intend to offer into evidence.

7 JUDGE FRIEDLANDER: Okay, great, thank you.

8

9 R E D I R E C T E X A M I N A T I O N

10 BY MR. HALM:

11 Q. Mr. Gates, Mr. Dethlefs had asked you several
12 questions surrounding Issue 10 and Charter's proposed
13 language in Section I believe it's 7.1.1, which is shown
14 at page 50 of Hearing Exhibit 2.

15 A. Yes, I recall that.

16 Q. That's the interconnection agreement. Do you
17 have a copy of that in front of you, Mr. Gates?

18 A. Yes, I do.

19 Q. Mr. Gates, can you explain why Charter
20 believes it necessary to have its proposed language in
21 this section?

22 A. Yes. Perhaps one of the most important
23 things that a carrier can do is to select and establish
24 its point of interconnection. Absent that POI, it's
25 obviously impossible to provide service. The location

0186

1 of the POI dramatically impacts the cost, the
2 networking, the efficiencies that a carrier can see in
3 its operations. So Charter, as Mr. Dethlefs suggested,
4 Charter does seek to find the optimal location for its
5 POI. And if Qwest is allowed to simply say, sorry, it's
6 not technically feasible to interconnect at that point
7 without some proof, then that forces Charter to then try
8 to find yet another location, incur additional costs,
9 additional time, time out of the market that it could be
10 serving customers trying to resolve the dispute. The
11 FCC rules are very specific, and specifically 47 CFR
12 51.305(e) that says that an ILEC can be relieved of its
13 obligation to develop a POI at the requested location
14 only if it proves to the state public utility commission
15 that interconnection at that point is technically
16 infeasible. So it takes more than just a claim for
17 Qwest to prevail on that issue.

18 Q. Thank you.

19 Charter's proposed language in that section
20 also includes reference to dispute resolution provisions
21 of the agreement. Do you see that proposed language at
22 the end of Section 7.1.1?

23 A. Yes. In the bold there I believe it says:
24 Disputes arising under this Section 7
25 shall be raised and resolved pursuant to

0187

1 the dispute resolution provisions of
2 this agreement.

3 Q. And in response to a question from
4 Mr. Dethlefs, you had suggested that there may be times
5 when the network engineers could get together and work
6 out any potential concerns about switch exhaust or
7 technical infeasibility. In those circumstances, would
8 you expect that the parties may rely upon the dispute
9 resolution provisions of the agreement?

10 A. They may very well. I would hope they
11 wouldn't have to, but they certainly could, and that's
12 available to both parties.

13 Q. And would you expect that that would
14 generally occur before Qwest formally denied the request
15 for interconnection?

16 A. Yes.

17 Q. Okay.

18 Mr. Dethlefs also asked you a question about
19 your rebuttal testimony at page 19, there's several
20 sentences at line 4 through 7. Please let me know when
21 you're there.

22 A. I'm there.

23 Q. His questions focused on the distinction
24 between transport and termination based in part upon
25 your statements on lines 4 through 7. Is it true that

0188

1 termination as that term is used in your testimony and
2 as that term is used under the FCC's rules involves both
3 switching and transmission or transport of traffic?

4 A. Yes, it does, and I think that's really the
5 key to the dispute here. Qwest witnesses have pointed
6 to 51.713 suggesting that the only thing that is
7 mentioned there is termination, but the FCC in that rule
8 uses termination as a verb referring to the termination
9 of traffic. Well, the termination includes not just
10 termination but termination and transport, and that is
11 absolutely consistent with all of the other rules for
12 reciprocal compensation that occur in Section 51.705,
13 701, 703, 705, I mean all of those specific rules that
14 refer to bill and keep for transport and termination.
15 The FCC was very careful to say transport and
16 termination. And when Qwest identified 51.713(a), I
17 believe it was referring to just termination of traffic,
18 well, it really wasn't -- I mean it was creative, but it
19 wasn't a correct reading of the rule, because the FCC
20 used it as a verb and not a noun.

21 Q. And the FCC used those terms transport and
22 termination because the statute uses those terms; is
23 that right?

24 A. That's correct.

25 Q. And which statute am I referring to; do you

0189

1 know?

2 A. 251(c), and it refers specifically to 251(b)
3 traffic.

4 Q. And is 251(b)(5) that provision of the
5 statute which requires parties to enter into reciprocal
6 compensation arrangements?

7 A. Yes, it is.

8 Q. Yes.

9 And Mr. Dethlefs also asked about your
10 explanation of Charter's proposed language. I'm sorry,
11 I don't have the reference here.

12 MR. HALM: One moment, Your Honor, if I
13 could?

14 JUDGE FRIEDLANDER: Sure.

15 BY MR. HALM:

16 Q. Okay, his questions related to direct
17 testimony at page 42, lines 14 through 17. And I
18 believe your testimony here today in response to
19 Mr. Dethlefs' questions was that your testimony at page
20 42, lines 15 through 17, was in response to or applied
21 to Charter's proposed language for Section 7.2.2.1.4
22 which is shown on page 32.

23 A. Yes.

24 Q. So could you clarify, Charter's not proposing
25 that the parties use -- that the parties engage or that

0190

1 the -- I'm sorry, strike that.

2 Is it Charter's position that the parties
3 should use reciprocal compensation arrangements in the
4 first instance?

5 A. Only if you consider bill and keep the
6 reciprocal compensation arrangement that we're
7 proposing, which Charter is. The first instance, the
8 first proposal, the best solution would be bill and keep
9 for all of those reasons that the FCC pointed out and
10 because the traffic is roughly balanced. It's much more
11 efficient for these two providers to simply exchange
12 traffic and avoid the administrative issues associated
13 with billing and reviewing and disputing perhaps bills
14 for this traffic. It's much simpler, much more
15 efficient, saves everybody money, and ultimately
16 consumers too if we use bill and keep in this
17 environment. But in the absence of that, it certainly
18 is not fair for Qwest to be able to charge Charter
19 direct trunk transport, and Rule 51.711 requires that
20 recip comp be symmetrical, so it can't be one sided. So
21 in the absence of bill and keep for both transport and
22 termination, Charter requests, and equity demands I
23 would suggest, that both parties be able to charge the
24 Qwest rate for the direct trunk transport.

25 MR. HALM: Thank you, Mr. Gates.

0191

1 No further questions, Your Honor.

2 JUDGE FRIEDLANDER: Thank you.

3 Is there any recross?

4 MR. DETHLEFS: No, Your Honor.

5 JUDGE FRIEDLANDER: Okay, and I have no
6 questions, so the witness is dismissed subject to recall
7 depending on what Mr. Linse says.

8 And this might be a good time to take a break
9 and possibly discuss off the record how we want to
10 proceed with the rest of the testimony, so we'll go off
11 the record.

12 (Discussion off the record.)

13 JUDGE FRIEDLANDER: Okay, so after discussing
14 with the parties cross-examination estimates for Qwest's
15 witnesses, we have determined that it would be best to
16 continue for the rest of this day or continue the
17 hearing for the rest of this day and start back up again
18 tomorrow at 9:30, so at this time I will continue the
19 hearing until tomorrow at 9:30, thank you.

20 (Hearing adjourned at 4:15 p.m.)

21

22

23

24

25