

1 BEFORE THE WASHINGTON STATE
 UTILITIES AND TRANSPORTATION COMMISSION
 2 In the Matter of the Petition)
 for Arbitration of an) DOCKET UT-083041
 3 Interconnection Agreement)
 Between) Volume III
 4) Pages 192 to 365
 CHARTER FIBERLINK WA-CCVII,)
 5 LLC,)
)
 6 with)
)
 7 QWEST CORPORATION,)
)
 8 Pursuant to 47 U.S.C. Section)
 252(b).)
 9 _____)

10 An arbitration hearing in the above matter
 11 was held on December 17, 2008, from 9:30 a.m to 3:40
 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:

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 23
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 25 Court Reporter

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

2 JUDGE FRIEDLANDER: This is Wednesday,
3 December 17th, of 2008, and this is the continued
4 hearing in Docket UT-083041.

5 We have the conference bridge line available.
6 If there has been anybody calling in to the bridge line,
7 would you please identify yourselves for the record.

8 (Discussion off the record.)

9 JUDGE FRIEDLANDER: So if anybody is on the
10 conference bridge line, please identify yourself for the
11 record.

12 Okay, hearing nobody, I assume that there
13 isn't anybody.

14 Let's go ahead and get started, I believe we
15 left off with Qwest's first witness.

16 MR. DETHLEFS: That's correct, Your Honor,
17 Qwest would call Mr. William Easton.

18 JUDGE FRIEDLANDER: Okay, Mr. Easton, would
19 you stand and raise your right hand.

20 (Witness WILLIAM R. EASTON was sworn.)

21 JUDGE FRIEDLANDER: You may be seated.

22 And for the record, before we proceed any
23 further I would note that we admitted yesterday Exhibits
24 WRE-1T, WRE-2RT, WRE-3, and WRE-4, which were the direct
25 and rebuttal testimony and exhibits for Mr. Easton.

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1 You may proceed, Mr. Dethlefs.

2 MR. DETHLEFS: Your Honor, since his
3 testimony has been admitted, we would offer him for
4 cross-examination.

5 JUDGE FRIEDLANDER: Okay, he has no changes
6 or modifications?

7 MR. DETHLEFS: I didn't ask that.

8

9 Whereupon,

10 WILLIAM R. EASTON,
11 having been first duly sworn, was called as a witness
12 herein and was examined and testified as follows:

13

14 D I R E C T E X A M I N A T I O N

15 BY MR. DETHLEFS:

16 Q. Mr. Easton, do you have any corrections to
17 your testimony?

18 A. I do not.

19 MR. DETHLEFS: Then we offer him for
20 cross-examination.

21 JUDGE FRIEDLANDER: Okay, great, thank you.

22 Mr. Halm.

23 MR. HALM: Thank you, Your Honor.

24

25

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

2 BY MR. HALM:

3 Q. Good morning, Mr. Easton, how are you?

4 A. Good morning.

5 Q. My name is K.C. Halm, I'm counsel for Charter
6 Fiberlink. I would like to take just a moment to talk a
7 little bit about your position at Qwest which you
8 discuss in a little bit of detail in your direct
9 testimony at page 1. Your title is the Director of
10 Wholesale Advocacy; is that right?

11 A. That's correct.

12 Q. What exactly is wholesale advocacy?

13 A. I represent Qwest in various regulatory
14 proceedings, arbitration proceedings such as we have
15 here today, complaint proceedings, and cost dockets.

16 Q. And when you say you represent them, what do
17 you mean exactly?

18 A. Basically I represent policy and product
19 positions on the various issues in those proceedings.

20 Q. You testify as to their policy positions?

21 A. That's correct.

22 Q. Okay. And how often do you appear before
23 this Commission or other commissions?

24 A. Several times each year.

25 Q. Okay.

0200

1 A. Varies from year to year.

2 Q. Are you trained as a network engineer?

3 A. I am not.

4 Q. Do you have any formal education in network
5 engineering or other technical areas?

6 A. I do not.

7 Q. And are you an attorney?

8 A. I am not.

9 Q. You don't provide legal advice to the
10 company?

11 A. I do not.

12 Q. At page 2 of your direct testimony, you talk
13 about the way that Qwest approaches the issues in this
14 case, page 2, lines 16 through 20.

15 A. I'm there.

16 Q. And as I understand your testimony, you're
17 testifying that you're trying to strike a balance
18 between Charter's interconnection needs but compliance
19 with law and technical feasibility; is that right?

20 A. Correct.

21 Q. All right. Qwest's position on the disputed
22 issues in this case is essentially set by its proposed
23 contract language, isn't it?

24 A. It is.

25 Q. And that proposed language comes from Qwest's

0201

1 standard template agreement?

2 A. That is the starting point in the
3 negotiations, and then the parties negotiate from there.
4 To the extent they can't reach agreement on all sections
5 of language, we end up in an arbitration like we are
6 here today.

7 Q. Right. What is the standard template
8 agreement?

9 A. The standard template agreement is just as
10 the name implies, it's a standard agreement that Qwest
11 offers anyone who comes to us and asks for
12 interconnection as the standard terms and conditions for
13 interconnection.

14 Q. And those standard terms and conditions, were
15 they written in part to Qwest's benefit?

16 A. No. Actually the standard template is based
17 on what was called the SGAT, statement of generally
18 accepted terms, that was developed during the 271
19 proceedings. Those were collaborative proceedings with
20 the CLECs and with Qwest, developed consensus language
21 where possible. Where not, an administrative law judge
22 or commission weighed in on the issues, and that formed
23 the basis for the SGAT, which has now become the
24 standard template.

25 Q. And when was the 271 proceeding here in

0202

1 Washington?

2 A. I can't tell you, somewhere --

3 Q. More than five years ago?

4 A. Yeah, it would be 2000, 2001, somewhere in
5 that time frame.

6 Q. Seven or eight years ago, yeah. Have you
7 made any changes in your standard template since that
8 time, or is it what came out of that 271 process?

9 A. There have been changes. There have been
10 changes in law. There have also been changes as
11 decisions have been made by various commissions across
12 our region.

13 Q. So how and when do those changes to the
14 standard agreement get made, or when are they made?

15 A. Well, I mentioned changes in law, that would
16 be something that if the FCC were to come out with a new
17 order, we would change our standard template to reflect
18 that. If a commission made a ruling that had a bearing
19 on one of the issues in the standard template, we would
20 change that as well.

21 Q. Recognizing all of that, you would concede
22 though that there are provisions in Qwest's standard
23 template agreement which are written to enhance Qwest's
24 position vis a vis competing carriers, wouldn't you?

25 A. No, I wouldn't agree with that. I guess

0203

1 perhaps from a CLEC's standpoint they could argue that.
2 You know, from Qwest's standpoint I could argue that
3 there are some things in there that are extremely
4 favorable to the CLECs. And it might not have been
5 Qwest's preference to have that language in there, but
6 in fact as a result of the consensus process and the 271
7 proceedings, that is what ended up in the standard
8 template. And again, as I stated in my testimony, I
9 believe that standard template strikes a balance between
10 the needs of Qwest and the needs of the CLECs. That was
11 the intent, and that's why we have negotiations.

12 Q. But so it is a negotiations document, it's a
13 starting point for negotiations?

14 A. That's correct.

15 Q. I mean don't you understand generally that
16 when private enterprises engage in negotiations,
17 oftentimes the starting point for those negotiations is
18 drafted in the manner that favors them with the
19 expectation that they may have to give on certain
20 issues?

21 A. I think when you describe negotiations
22 between a private enterprise, that may be the case. I
23 would suggest it's somewhat different here because in
24 fact we did go through the 271 process where the intent
25 was that the balance would be struck there.

0204

1 Q. Okay.

2 A. And so in fact the starting point has already
3 gone through that vetting process, if you will.

4 Q. The 271 process that ended eight years ago?

5 A. Whatever the time frame is, correct.

6 Q. Okay.

7 And who drafts the standard template, is it
8 the company's attorneys?

9 A. We have a negotiations group that is
10 responsible for maintaining the standard template. They
11 work with the attorneys. They also work with the
12 product managers and with the network folks to make sure
13 all views are represented.

14 Q. And do you believe that all the terms in the
15 Qwest standard template comply with federal law?

16 A. Yes.

17 Q. Would you agree that reasonable people might
18 disagree as to whether a particular provision does in
19 fact comply with federal law?

20 A. I think that's possible.

21 Q. Okay.

22 And you mentioned that changes are made to
23 the standard template to reflect state commission
24 decisions in this state and other Qwest territory
25 states; is that right?

0205

1 A. Correct.

2 Q. When those decisions are made, do you conform
3 the agreement?

4 A. Yes.

5 Q. In every instance?

6 A. Yes.

7 Q. Do you know whether or not in the
8 negotiations between Qwest and Charter there was
9 language concerning limitations on fiber meet points
10 that might be established between the companies?

11 A. I was not directly involved with the
12 negotiations, and I quite frankly don't know whether
13 that was an issue or not.

14 Q. Have you reviewed the issue list in this
15 proceeding?

16 A. I have.

17 Q. Are you familiar with Issue 12 that has been
18 settled?

19 A. Yes.

20 Q. Do you understand what Qwest's position was
21 prior to settlement?

22 A. No, I don't.

23 Q. Do you understand what the language is now
24 with respect to the settled language?

25 A. This is on Issue 12?

0206

1 Q. Issue 12.

2 MR. DETHLEFS: Your Honor, I want to object,
3 Issue 12 was resolved, so it's not clear to me why
4 counsel is asking the witness about Issue 12.

5 MR. HALM: This goes to Mr. Easton's
6 testimony about how the standard template is drafted,
7 whether or not the standard template always conforms to
8 state law. Issue 12 as Qwest negotiations entering into
9 -- as Qwest's position entering into the negotiations
10 didn't reflect state law in other states, they have now
11 conceded that point and settled the issue in favor of
12 Charter.

13 MR. DETHLEFS: Your Honor, I would object to
14 that characterization of what we did. There was a
15 sentence in the language of Issue 12 that we agreed to
16 take out. We didn't agree to take it out because we
17 thought we were required to do it. We did it because it
18 was a concession to Charter. We negotiated it. And
19 there was no admission made, there was no letter or
20 anything sent to Charter saying we agree with Charter's
21 position on this. We simply took it out.

22 JUDGE FRIEDLANDER: Mr. Halm, which issue
23 that's still in dispute is this going to pertain to?

24 MR. HALM: Well, it goes to all of the issues
25 in dispute, because it addresses the question of whether

0207

1 or not their standard template agreement is always in
2 compliance with federal or state law.

3 JUDGE FRIEDLANDER: I think that if you're
4 going to address that, if you could just keep it to the
5 issues that are still in dispute, that would be helpful.

6 MR. HALM: Okay.

7 JUDGE FRIEDLANDER: Thank you.

8 BY MR. HALM:

9 Q. Mr. Easton, a couple more questions about the
10 271 process. Do you know whether or not Charter
11 Fiberlink, the petitioner in this case, participated in
12 any of those 271 proceedings here in Washington?

13 A. I do not know.

14 Q. Did you participate on Qwest's behalf in
15 those proceedings?

16 A. No, I did not.

17 Q. Anybody else here that participated in those
18 proceedings, anybody here from Qwest that participated
19 in those proceedings?

20 MR. DETHLEFS: Does counsel mean witnesses or
21 attorneys?

22 Q. Witnesses.

23 A. Mr. Weinstein was not involved. I'm not sure
24 whether Ms. Albersheim was involved or not.

25 Q. Okay.

0208

1 A. And Mr. Linse, I don't recall whether he was
2 involved or not.

3 Q. I wonder if when those witnesses take the
4 stand we might have the opportunity to ask that
5 question.

6 Do you know generally which carriers did
7 participate in Washington?

8 A. Well, you know, most of the major CLECs
9 participated, as I recall.

10 Q. And who were those CLECs?

11 A. We had AT&T, MCI. I, you know, would need to
12 go back and look. At one time I did know those.

13 Q. Do you know whether or not those carriers
14 owned their own loops, transport, their own switches,
15 their own local distribution networks?

16 A. It varied from carrier to carrier.

17 Q. Those carriers were not -- they don't have
18 the same business model as Charter Fiberlink and other
19 cable telephone providers, do they?

20 A. The business model would not be exactly the
21 same. But again, I think there was a number of
22 different business models represented during 271 from
23 resale carriers to facility based carriers.

24 Q. And do you understand Charter Fiberlink's
25 basic network architecture?

0209

1 A. To a certain extent, yes.

2 Q. Okay. And you understand that Charter owns
3 their own switches, their own transport, their own
4 "loops"?

5 A. I do.

6 Q. Okay. Are you aware of any participant in
7 that 271 proceeding that owned the same network
8 architecture that Charter does?

9 A. There were certainly facility based carriers
10 involved in the 271 proceedings.

11 Q. And they owned their own switch; is that
12 right?

13 A. There were certainly some who owned their own
14 switches, yes.

15 Q. And were those carriers primarily serving the
16 enterprise market or the residential market?

17 A. There were probably some of each.

18 Q. Okay. This arbitration proceeding, it's not
19 governed by Section 271, is it?

20 A. No.

21 Q. And do you understand that Qwest has an
22 obligation under Section 251(c) of the Act to negotiate
23 specific terms of an interconnection agreement?

24 A. Yes.

25 Q. Okay. And this Commission also has an

0210

1 obligation under Section 252 to arbitrate the specific
2 disputed issues between these two parties, doesn't it?

3 A. That's also correct.

4 Q. Okay. Mr. Easton, you reviewed or I should
5 say I believe you participated in the response to
6 Charter Fiberlink Request Number 1, is that right, it's
7 been marked as Cross-Exhibit WRE-5?

8 A. That's correct.

9 Q. And this identifies the basis for the
10 assertions by you and other Qwest witnesses concerning
11 the origin of Qwest's proposed interconnection language;
12 is that right?

13 A. Yes.

14 MR. HALM: Your Honor, I would like to move
15 for admission of WRE-5.

16 MR. DETHLEFS: No objection.

17 JUDGE FRIEDLANDER: Okay, so admitted.

18 BY MR. HALM:

19 Q. Mr. Easton, I would like to ask you a couple
20 questions about your rebuttal testimony at page 3, which
21 I believe goes to Issue 10.

22 A. I'm there.

23 Q. At lines 1 through 3, you discuss FCC rules
24 with respect to the ILEC's obligations under these types
25 of disputes. Do you acknowledge that the FCC rules

0211

1 require Qwest to prove to this Commission any claim of
2 technical infeasibility?

3 A. I do. However, the rule -- and why don't I
4 just read it so we have it into the record.

5 Q. I'm sorry, before you go on, you said you do
6 acknowledge that?

7 A. I do acknowledge that, but the way the rule
8 is written, it has that obligation after it has denied a
9 request.

10 Q. Okay.

11 A. And again, perhaps we can read the full rule
12 into the record here.

13 Q. Let me take a moment, if I could, to look at
14 the rule, and then maybe we could read it into the
15 record. What rule are you referring to?

16 A. I'm referring specifically to Rule 51.305(e).

17 Q. And that's codified at 47 CFR 51.305?

18 A. That's correct.

19 Q. Yes, please do read subsection (e) into the
20 record.

21 A. (Reading.)

22 An incumbent LEC that denies a request
23 for interconnection at a particular
24 point must prove to the state commission
25 that interconnection at that point is

0212

1 not technically feasible.

2 So you are correct, the rule does state that
3 the ILEC must prove to the state commission that
4 interconnection is not feasible, but that occurs after
5 the incumbent LEC has denied such a request.

6 Q. According to your interpretation?

7 A. No, that is what the rule itself says, and I
8 would be glad to read it again.

9 An incumbent LEC that denies a request
10 for interconnection at a particular
11 point must prove to the state commission
12 that interconnection at that point is
13 not technically feasible.

14 Q. I think you actually noted in your direct
15 testimony that Qwest is in the best position to make a
16 showing of technical feasibility, didn't you?

17 A. Yes.

18 Q. Does Qwest's proposed language on this issue
19 acknowledge its obligations under 51.305(e)?

20 A. The interconnection agreement itself provides
21 language that would allow for complete compliance with
22 this rule. What would happen is that the parties would
23 get together, Qwest would say that --

24 Q. I'm sorry, Mr. Easton, is there language in
25 this contract that acknowledges your obligations under

0213

1 the rule?

2 A. If I could finish my answer, what I was
3 saying is that in fact the language in this
4 interconnection agreement allows for the process laid
5 out in 51.305(e) to be followed. And the way that
6 process would work is that Qwest would get together in
7 this case with Charter and say what you've requested is
8 not technically feasible. Now as Mr. Gates indicated
9 yesterday, often the parties are able to work that out.
10 He talked about the engineers getting together and work
11 that out. To the extent that the parties were not able
12 to do that, there is language in Section 5.18 of the
13 agreement that would allow Charter to come before this
14 Commission and make Qwest prove as is required in
15 51.305(e) that that requested interconnection was not
16 technically feasible.

17 Q. And what was the section of the contract you
18 just referred to?

19 A. It was Section 5.18 I believe is the dispute.

20 Q. 5.18?

21 A. Yes.

22 Q. The dispute resolution?

23 A. Correct.

24 Q. Okay. So then your view is that Qwest can
25 make a claim of technical infeasibility, deny the

0214

1 request for interconnection, and then the burden then
2 falls upon Charter to file a petition with this
3 Commission asking the Commission to determine whether or
4 not its request is infeasible?

5 A. I would agree, and I would further add that
6 the burden would be on Qwest at that point to prove that
7 such interconnection was not technically feasible.

8 Q. But it's always going to be the burden upon
9 Charter to bring the petition in the first place?

10 A. Yes, I would agree with that. The problem if
11 you reverse it the other way and you have to come before
12 the Commission before you can deny it results in a
13 situation where it may be physically impossible to
14 interconnect, and yet Qwest would be required to do that
15 until this Commission held a proceeding and decided that
16 they were relieved of their obligation. I don't know
17 what happens in that intervening four to six months when
18 in fact it's technically not possible perhaps to provide
19 the interconnection that's been requested.

20 Q. Isn't it true that generally speaking a
21 petitioner at this Commission bears the burden of proof
22 in any claims it brings before the Commission?

23 A. I will leave that to the lawyers.

24 Q. You don't know?

25 MR. DETHLEFS: Your Honor, I think he's

0215

1 asking the witness for a legal conclusion.

2 MR. HALM: I'm asking the witness of his
3 understanding generally with respect to how that process
4 would work with respect to this particular issue.

5 JUDGE FRIEDLANDER: I will allow it to the
6 extent that you have appeared before the Commission,
7 whatever your experiences are, you can answer that.

8 A. I think generally that's true. I do think at
9 that proceeding Qwest would have the burden of proof to
10 demonstrate that the interconnection that was requested
11 is not technically feasible.

12 MR. HALM: Thank you, Mr. Easton.

13 We had identified this provision and other
14 provisions of the CFR as cross-exhibits, is it
15 appropriate to enter this into the record or simply take
16 administrative notice?

17 JUDGE FRIEDLANDER: And what is that?

18 MR. HALM: This is 47 CFR 51.305, the rule
19 that Mr. Easton was referring to.

20 JUDGE FRIEDLANDER: Right, why don't we go
21 ahead and take administrative notice of it.

22 MR. HALM: Okay.

23 JUDGE FRIEDLANDER: I will do that, and you
24 said the reference is to 47 CFR?

25 MR. HALM: Yes, 47 CFR 51.305.

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1 JUDGE FRIEDLANDER: Okay, great, I will take
2 administrative notice of that provision.

3 MR. HALM: Thank you, Your Honor.

4 JUDGE FRIEDLANDER: Mm-hm.

5 MR. DETHLEFS: Your Honor, I have a question,
6 I just assumed that if there's a regulation that is not
7 -- that the parties don't ask the Commission to take
8 administrative notice of that we would still be able to
9 cite that in our briefs, because there are a number of
10 regulations that may come into play depending on how the
11 briefing plays out, and we assume that we would just be
12 able to cite to those.

13 JUDGE FRIEDLANDER: Right, that's completely
14 acceptable, and that's typically how the Commission
15 works. I guess what I'm doing right now is Mr. Halm and
16 Charter wanted this specific provision to be -- that the
17 Commission would take administrative notice of it. It
18 doesn't go to the weight or anything of that sort. But
19 certainly in your briefs please feel free to cite to
20 case law or statutes or regulations that you feel are
21 applicable.

22 MR. DETHLEFS: Thank you, I was just making
23 sure that we weren't going to be foreclosed.

24 JUDGE FRIEDLANDER: Certainly. I just think
25 that because it was listed as a cross-examination

0217

1 exhibit, we don't typically use them as
2 cross-examination exhibits, it may just be cleaner to
3 take administrative notice of it.

4 MR. DETHLEFS: Thank you.

5 JUDGE FRIEDLANDER: Sure.

6 MR. HALM: There are two discovery requests,
7 discovery responses, I'm sorry, to which Mr. Easton
8 provided the response, they're listed as WRE-8 and
9 WRE-9, Responses to Charter Data Request Number 4 and 5.
10 I would like to simply move those into the record,
11 please.

12 JUDGE FRIEDLANDER: Okay, is there any
13 objection?

14 MR. DETHLEFS: Let me just check, I don't
15 think so, but.

16 JUDGE FRIEDLANDER: Sure. I believe WRE-8 is
17 Data Request Number 4, and WRE-9 is Data Request Number
18 5; is that correct?

19 MR. HALM: Yes.

20 MR. DETHLEFS: No objection, Your Honor.

21 JUDGE FRIEDLANDER: Then I will admit those.

22 MR. HALM: Thank you.

23 BY MR. HALM:

24 Q. Mr. Easton, I would like to move to Issue 11
25 concerning methods of interconnection. Did you review

0218

1 Charter's proposed language prior to preparing your
2 testimony?

3 A. Yes.

4 Q. And at page 9 of your direct testimony, I
5 believe it's your direct testimony, yes, page 9, lines 7
6 and 8, you make reference to Charter's proposed language
7 in Section 7.1.2.

8 A. That's correct.

9 Q. You say it does not contain this important
10 limitation. What limitation are you talking about?

11 A. The limitation being that the requested
12 interconnection must be technically feasible.

13 Q. Do you have a copy of Hearing Exhibit 2 with
14 you, which is the draft interconnection agreement?

15 A. I do not.

16 MS. ANDERL: Your Honor, may I approach the
17 witness and give him my copy?

18 JUDGE FRIEDLANDER: Yes.

19 MR. HALM: Thank you, Ms. Anderl.

20 BY MR. HALM:

21 Q. On pages 49 and 50 of Hearing Exhibit Number
22 2, each party's proposed language for 7.1.1 is set
23 forth.

24 A. That's correct.

25 Q. Do you see that?

0219

1 A. Yes.

2 Q. Yes. And on page 49, Qwest's proposed
3 language is set forth all in plain text, there's no bold
4 or double underlined language there, correct?

5 A. Correct.

6 Q. And as you understand it, does that mean the
7 language is not disputed?

8 A. Correct.

9 JUDGE FRIEDLANDER: Actually, could I make a
10 clarification.

11 MR. HALM: Mm-hm.

12 JUDGE FRIEDLANDER: On page 49 I would say
13 the third line from the bottom of Qwest's Proposal, it
14 looks like the word can is underlined on my copy.
15 That's the only thing that I see that appears to be in
16 disagreement.

17 MR. HALM: Thank you, Your Honor, you're
18 right, I didn't see that.

19 BY MR. HALM:

20 Q. I was focused on the language that was right
21 in the middle of this very long paragraph, and it's on
22 the eleventh line down.

23 A. And you're in Section 7.1.1?

24 Q. Yes.

25 A. Okay.

0220

1 Q. It's 11 lines down, the sentence begins,
2 Qwest will provide.

3 A. Yes.

4 Q. Could you read the first clause up until the
5 semicolon.

6 A. (Reading.)

7 Qwest will provide interconnection at
8 any technically feasible point within
9 its network including but not limited
10 to.

11 Q. And that same language is shown at the very
12 top of page 50 in the first line.

13 A. Correct.

14 Q. Under Charter's proposal.

15 A. Correct.

16 Q. Charter's proposal does include the
17 limitation that any point of interconnection must be
18 technically feasible, doesn't it?

19 A. It does in this section, correct.

20 Q. This is Section 7 dealing with
21 interconnection; is that right?

22 A. I was referring specifically to Section
23 7.1.1, correct.

24 Q. So Charter's proposal includes that important
25 limitation in Section 7.1.1?

0221

1 A. Yes.

2 Q. Yes. And that is binding on the parties,
3 isn't it?

4 A. Yes.

5 Q. All right.

6 Okay, your testimony, again going back to
7 page 9 of your direct testimony, lines 10 through 19,
8 you discuss Charter's proposal, and you draw some
9 conclusions about the legal effect or the legal
10 implications of Charter's proposal. Is it your
11 testimony that Charter's proposal would require Qwest to
12 make available an entrance facility as an unbundled
13 network element?

14 A. It has that potential, yes.

15 Q. Let's take a moment and make sure we're on
16 the same page here. What is an entrance facility as you
17 understand it?

18 A. The entrance facility is a facility that runs
19 from the point of or from the CLEC's switch to the point
20 of interconnection.

21 Q. And the purpose of that facility is to
22 connect two parties' networks?

23 A. That's correct.

24 Q. To carry traffic from one network to another
25 and back?

0222

1 A. Correct.

2 Q. Yes.

3 A. Excuse me, actually let me restate that. It
4 actually would be from the point of interconnection to
5 the Qwest serving wire center.

6 Q. Would the point of interconnection be on the
7 Qwest network -- or let me rephrase that.

8 Doesn't the point of interconnection have to
9 be, quote, within the Qwest network?

10 A. It does.

11 Q. Yes. And what does that mean?

12 A. That means Qwest does not have an obligation
13 to establish a point of interconnection outside of the
14 Qwest network.

15 Q. And when you say outside of the network, the
16 network is a group of switches, transport links and
17 loops?

18 A. That's correct.

19 Q. It's got to be at some point physically on
20 that network; is that right?

21 A. Yes.

22 Q. Unless we're talking about a mid span meet,
23 correct?

24 A. Which would be somewhere in between the two
25 parties' networks.

0223

1 Q. All right.

2 I think you testified that the Triennial
3 Review Remand Order, the TRRO, does not require ILECs to
4 make entrance facilities available as unbundled network
5 elements or UNEs, U-N-E-S, correct?

6 A. That's correct.

7 Q. And does Qwest currently provide entrance
8 facilities to CLECs as UNEs?

9 A. No.

10 Q. I'm sorry, what?

11 A. No, we are not required to under that ruling
12 you just mentioned.

13 Q. Okay. And does Qwest currently provide
14 entrance facilities to CLECs for the purposes of
15 interconnection?

16 A. We do, that is in fact one of the options
17 that is being offered to Charter.

18 Q. And Charter's proposal is set forth in
19 Section 7 of this interconnection agreement; is that
20 correct?

21 A. Could you repeat the question, please.

22 Q. Charter's proposed language is set forth in
23 Section 7 of the interconnection agreement?

24 A. That's correct.

25 Q. Section 7 deals with interconnection, doesn't

0224

1 it?

2 A. It does.

3 Q. All right. Unbundled network elements or
4 UNEs are dealt with in a separate section of the
5 agreement, correct?

6 A. That's correct.

7 Q. Do you know what that section is?

8 A. Not off the top of my head. I believe it may
9 be Section 8.

10 Q. Subject to check, Section 8 is collocation,
11 Section 9 would be the unbundled network elements.

12 A. Okay.

13 Q. Did you review Charter's language, proposed
14 language, in Section 9?

15 A. No, I did not.

16 Q. Are you familiar with -- strike that, I'm
17 sorry.

18 If we could turn back to Hearing Exhibit 2,
19 the draft interconnection agreement, at the bottom of
20 page 50 is the Qwest proposed language for Section
21 7.1.2.

22 A. Correct.

23 Q. The second sentence of that provision
24 addresses the methods of interconnection that are
25 available to Charter; is that right?

0225

1 A. Yes.

2 Q. And subclause (1) identifies a Qwest provided
3 entrance facility as one method?

4 A. Correct.

5 Q. Does this Section 7.1.2 include any language
6 that allows for an entrance facility to be provided by
7 an entity other than Qwest?

8 A. Yes.

9 Q. Does 7.1.2 deal with methods of
10 interconnection?

11 A. Yes.

12 Q. Where is that language that you refer to that
13 allows an entrance facility to be provided by an entity
14 other than Qwest?

15 A. It would be element number 4, other
16 technically feasible methods of interconnection via the
17 bona fide request process. The intent of that language
18 is made clear that Qwest would interconnect at any
19 technically feasible point. In fact, there's further
20 language in the agreement that provides for facility,
21 interconnection facility provided by a third party,
22 but --

23 Q. And that's not in Section 7.1.2?

24 A. That's correct. But again, element number 4
25 would allow for any technically feasible form of

0226

1 interconnection. So you were suggesting an entrance
2 facility that was not provided by Qwest, that would fall
3 under element number 4.

4 Q. And there's a limitation to element number 4,
5 isn't there?

6 A. The limitation being that it must be
7 technically feasible.

8 Q. What about the clause, unless a particular
9 arrangement has been previously provided to a third
10 party or is offered by Qwest as a product, what does
11 that mean?

12 A. I believe it means if we've previously
13 provided this form of interconnection to a third party
14 or offered it as a product, we will offer it to the
15 party to this agreement.

16 Q. You reviewed Charter's proposed language at
17 Section 7.1.2; is that right?

18 A. I have.

19 Q. And that appears on page 51 of Hearing
20 Exhibit 2?

21 A. Correct.

22 Q. And Charter's proposed language in subclause
23 (1) specifically identifies a facility provided either
24 by CLEC, that would be Charter, or by a third party; is
25 that right?

0227

1 A. And where specifically are you looking at in
2 that Charter language?

3 Q. I'm looking at the bottom of the paragraph
4 following the term technically feasible point: (1) a
5 Qwest provided interconnection facility.

6 A. I've got it.

7 Q. Yes.

8 A. So if you could repeat the question, please.

9 Q. Charter's proposed language specifically
10 contemplates that a facility could be provided by
11 Charter or by a third party; is that right?

12 A. That does.

13 Q. That would have the same effect as Qwest's
14 proposed language, wouldn't it?

15 A. No, I would disagree. The Qwest language is
16 more specific. The way Charter defines an
17 interconnection facility, it could be an entrance
18 facility, it could be collocation, it could be a mid
19 span meet. It's a very, very broad definition. What
20 Qwest has attempted to do in its definition, again this
21 was the result of the 271 proceeding, is to lay out more
22 specifically what the various options are. There's a
23 Qwest provided entrance facility, in other words Qwest
24 will provide the facility to get to the point of
25 interconnection. There's a collocation where Charter

0228

1 would come right to Qwest's central office. Or there's
2 a mid span meet where each party would provide a portion
3 of that interconnection facility.

4 Q. Aren't those the three arrangements that you
5 just said that Charter proposed in its language?

6 A. No. What I was suggesting is Qwest very
7 specifically lays out the various alternatives. Charter
8 uses a term called interconnection facility, which could
9 be any one of those three, and what I'm suggesting is
10 the additional specificity proposed in the Qwest
11 agreement I would argue is more desirable.

12 Q. And the specificity being the reference to
13 other technically feasible methods?

14 A. No, the specificity being that I lay out, or
15 excuse me, the language lays out the specific options
16 available, with a fourth option being anything else
17 that's technically feasible. And what I'm suggesting is
18 that Charter by using a more generic term,
19 interconnection facility, doesn't provide as much
20 clarity as the Qwest proposed language.

21 Q. Okay. But on page 53 of the Hearing Exhibit
22 2 at the top, Charter's proposed alternative definition
23 is set forth; is that right, do you see that?

24 A. Page 53 at the top?

25 Q. Yes.

0229

1 A. Yes, I do.

2 Q. It's in brackets.

3 A. Yes.

4 Q. Could you read that definition for us out
5 loud, please.

6 A. Again this is the Charter proposed
7 definition.

8 Interconnection facility is a facility
9 used for the transmission and routing of
10 telephone exchange service and exchange
11 access service between Qwest's switched
12 location or equivalent facility and the
13 Qwest's switch location or serving wire
14 center.

15 Q. Didn't you tell us a little bit earlier today
16 that an entrance facility does just that, connects two
17 networks for the exchange of traffic?

18 A. An entrance facility does in fact do that,
19 but a collocation --

20 Q. But I want to just focus on the meaning of
21 the term at the moment.

22 A. And that's what I'm suggesting. In fact,
23 this definition here is not just limited to an entrance
24 facility. It would also apply equally well to a
25 collocation. It would apply to a mid span meet.

0230

1 Q. But it doesn't specifically say anything
2 about a collocation or mid span meet, does it?

3 A. No, it does not. But because it's a broad
4 enough definition, it would encompass those forms of
5 interconnection as well.

6 Q. And those forms of interconnection with
7 respect to Charter's proposal is set forth at page 52,
8 is that right, at the bottom of page 52 under Section
9 7.1.2.4?

10 A. They would be encompassed in that, that's
11 correct.

12 Q. Federal law entitles Charter to provision its
13 own entrance facility for the purposes of
14 interconnecting with Qwest, doesn't it?

15 A. It does.

16 Q. Okay. And an entrance facility provided by a
17 third party is also permitted by federal law?

18 A. That would be correct. However, it wouldn't
19 be possible for a third party to purchase an
20 interconnection or an entrance facility from Qwest to be
21 used for interconnection purposes and then turn around
22 and allow Charter to use that entrance facility to
23 interconnect with Qwest. That's what was prohibited by
24 the TRRO in part.

25 Q. If I could go back a moment to an issue we

0231

1 were just talking about five minutes ago concerning
2 inclusion of an important limitation in Charter's
3 proposed language, that limitation was that any
4 interconnection arrangement be technically feasible and
5 within Qwest's network; do you recall that discussion?

6 A. I do.

7 Q. And you acknowledged that Section 7.1.1 of
8 the contract includes that limitation, didn't you?

9 A. It does.

10 Q. Your testimony was pointing specifically to
11 Section 7.1.2 I believe; is that right?

12 A. Yes.

13 Q. Charter's proposed language at Section 7.1.2
14 is set forth at page 51 of Hearing Exhibit 2.

15 A. Yes.

16 Q. Does that also include the important
17 limitation that interconnection be at any technically
18 feasible point?

19 A. It's not specifically included in that
20 section, no.

21 Q. There is undisputed language that begins nine
22 lines down.

23 A. And you're on what page again?

24 Q. Page 51.

25 A. Okay, nine lines down.

0232

1 Q. The sentence begins with the word the.

2 A. Okay.

3 Q. That's the very last word at the end of line

4 9. Would you take a moment to read that sentence up

5 until the semicolon.

6 A. Okay.

7 The parties shall establish at least one

8 of the following interconnection

9 arrangements at any technically feasible

10 point.

11 So that's --

12 Q. So then Charter's proposed language does

13 include that?

14 A. It does contain that in 7.1.2, correct.

15 Q. Okay, thank you.

16 I would like to go to your rebuttal testimony

17 for a moment, page 4, line 13. Let me know when you're

18 there.

19 A. This is page 4, line 14?

20 Q. Yeah, line 13.

21 A. 13, I'm there.

22 Q. And you're quoting Qwest's proposed language

23 for 7.1.2; is that right?

24 A. Yes.

25 Q. And that says in part that CLECs shall

0233

1 establish at least one physical point of
2 interconnection.

3 A. Correct.

4 Q. Charter is entitled to interconnect at a
5 single point on the Qwest network; is that right?

6 A. That's correct.

7 Q. Okay. And the use of the term at least one,
8 does that imply that Charter may be required to
9 interconnect at additional points?

10 A. Again, I'm not a lawyer, the way I read the
11 language is that it can connect at one point or more
12 than one point.

13 Q. So do you know what the intent of the
14 language is?

15 A. The intent of the language is to say that
16 Charter can connect at one point or more than one point.
17 It says that they shall establish at least one physical
18 point of interconnection. So to me they can establish
19 one, they can establish two, however many they wish.

20 Q. It's at their discretion?

21 A. That's correct.

22 Q. Okay.

23 We've talked about the undisputed language in
24 Section 7.1.1 that refers to a technically feasible
25 point within the network.

0234

1 A. Correct.

2 Q. So that would be consistent with your
3 explanation, wouldn't it?

4 A. Yes.

5 Q. Okay.

6 Currently the parties have a point of
7 interconnection in Yakima; are you aware of that?

8 A. Yes.

9 Q. Would it be technically feasible to maintain
10 that point of interconnection under the new
11 interconnection agreement that we're arbitrating today?

12 A. Yes. Again, under the language, Charter will
13 choose where it wants its point of interconnection.

14 Q. Okay, thank you.

15 I've got one more question for you about
16 Section 7.1.2, Qwest's proposed language there, and
17 that's shown at page 50 of Hearing Exhibit 2.

18 A. Okay.

19 Q. There's a sentence in the middle that is
20 shown as double underlined, it's concerning an
21 obligation to represent a warrant as to certain facts.
22 Where in your testimony did you discuss this language?

23 A. I don't believe I addressed this language at
24 all in my testimony.

25 Q. Do you know whether another Qwest witness

0235

1 discussed this language?

2 A. I don't believe that Qwest addressed this in
3 our testimony.

4 Q. Okay, thank you.

5 If we could move to Issue 13 concerning each
6 party's transport obligations and your direct testimony,
7 page 16.

8 A. I'm there.

9 Q. And at the bottom of that page at lines 20
10 through 23, you describe what Qwest is willing to do
11 with respect to a bill and keep compensation
12 arrangement.

13 A. Correct.

14 Q. Could you tell us just very briefly what a
15 bill and keep compensation arrangement is?

16 A. Under a bill and keep arrangement, the
17 parties would not exchange compensation for those items
18 that are covered under the bill and keep.

19 Q. In other words, the parties would not bill
20 one another for the traffic that is delivered to their
21 network which they are responsible for terminating?

22 A. That's correct.

23 Q. And the underlying rationale for a bill and
24 keep arrangement is because both parties generally
25 derive value from the mutual exchange of traffic and the

0236

1 in kind compensation that is provided by termination of
2 that party's traffic; is that right?

3 A. I would go a step further and say if the
4 parties believe the traffic is going to be in balance
5 and that they would be exchanging the same amount of
6 compensation, from an administrative standpoint it makes
7 more sense that the parties would choose not to exchange
8 dollars.

9 Q. There's efficiencies there because you don't
10 have to go through the billing process, the
11 reconciliation process, et cetera, correct?

12 A. That's correct.

13 Q. Right. Would you agree based upon -- well,
14 let me take a step back here.

15 There are a number of proceedings pending
16 before the FCC regarding transport, reciprocal
17 compensation, many of the issues in dispute here. Are
18 you generally following those disputes or those
19 proceedings?

20 A. Yes.

21 Q. Yes. And would you agree that the industry
22 seems to be moving closer to those bill and keep
23 arrangements that you described?

24 A. There appears to be some movement in that
25 direction.

0237

1 Q. Okay. And your testimony at page 21 says
2 that Qwest is only willing to agree to bill and keep for
3 usage based charges?

4 A. Yes. Again we talked about if the parties
5 believe the traffic is going to be in balance, you know,
6 if Charter is going to be sending Qwest the same amount
7 of traffic that Qwest is going to be sending Charter,
8 then the usage based charges should equal each other.

9 Q. And do you know whether or not the parties do
10 expect that their traffic will be roughly in balance?

11 A. It's my understanding that they do.

12 Q. All right.

13 A. So, for example, when we talk about the usage
14 based charges, we're talking about tandem switching,
15 tandem transmission, and end office termination. If
16 Charter is sending Qwest the same amount of traffic that
17 Qwest is sending Charter, those charges should
18 counterbalance each other, should be the same amount of
19 minutes going in each direction.

20 Q. Okay, thank you.

21 Could you turn to page 17 of your direct
22 testimony.

23 A. Okay.

24 Q. At lines 12 through 14 you say that Qwest is
25 entitled to compensation for transport. You just told

0238

1 us that the parties expect traffic will be roughly
2 balanced, there are efficiencies in the bill and keep
3 arrangement. Are you saying that even if we agree to
4 bill and keep, Qwest expects Charter to pay Qwest for
5 transport?

6 A. Yes, and let me explain. What we were just
7 talking about was for usage based charges, so we talked
8 about tandem switching, we talked about tandem
9 transmission, and we talked about end office switching.
10 In addition to those three elements though, there's a
11 direct trunk transport element. And so under Qwest's
12 bill and keep proposal, the parties would not bill each
13 other for tandem transmission, tandem switching, and end
14 office call termination. But there's still that element
15 of direct trunk transport that has to be dealt with.

16 Q. Okay. The tandem transmission charge, tandem
17 transmission to me sounds like transmitting traffic from
18 or through the Qwest tandem switches; is that right?

19 A. It would be going from the Qwest tandem
20 switch out to the Qwest end office switch.

21 Q. Transporting that traffic?

22 A. That's correct.

23 Q. Okay. And the direct trunk transport is for
24 facilities to transport that traffic?

25 A. No. Let's back up a second. So that form of

0239

1 transport between the tandem switch and the Qwest end
2 office switch is what's called common transport. So in
3 addition to Charter and Qwest traffic going across that
4 facility, there would be traffic from any other number
5 of carriers. It's used by all carriers. It's called
6 common transport.

7 Q. And that's --

8 A. Or shared transport.

9 Q. Could I interject for one second.

10 A. Yes.

11 Q. That's over trunks that you've established on
12 your network to carry in part Qwest originated traffic;
13 is that right?

14 A. Qwest originated traffic, but also, you know,
15 traffic that's terminating through Qwest. So that's
16 common transport or shared transport you'll hear it
17 referred to. When I talk about direct trunk transport,
18 I'm talking about what's called dedicated transport.
19 These are facilities that have been established strictly
20 to carry traffic between Qwest and Charter, not used by
21 any other carrier.

22 Q. And -- I'm sorry.

23 A. Go ahead.

24 Q. We were talking about the reciprocal
25 compensation arrangements today because federal law

0240

1 requires Qwest and Charter to engage in reciprocal
2 compensation, doesn't it?

3 A. Yes, it does.

4 Q. Right. Under Section 251(b)(5) of the Act;
5 is that right?

6 A. Yes.

7 Q. Yes. Section 251(b)(5), I know you don't
8 have a copy in front of you, but that generally requires
9 compensation for the transport and termination of
10 traffic.

11 A. Correct.

12 Q. Right. And do you know how the FCC defines
13 transport?

14 A. They would say that transport is the
15 transmission and ending any tandem switching of
16 telecommunications traffic.

17 Q. From the point of interconnection to an end
18 office switch?

19 A. Yes. So they would be covering both the
20 dedicated transport we talked about and the common
21 transport.

22 Q. Okay.

23 A. With tandem transmission.

24 Q. So when the FCC says transport, it's carriage
25 of traffic from the point of interconnection back to an

0241

1 end office switch?

2 A. Yes, but it would not include the end office
3 switch itself. That would be considered termination,
4 and the FCC makes a clear distinction between transport
5 and termination.

6 Q. And Qwest is proposing tandem transmission
7 and direct trunk transport charges; is that right?

8 A. Well, let's be clear. Under the Qwest's bill
9 and keep proposal, the parties would not bill each other
10 for tandem switching, tandem transmission, or end office
11 call termination.

12 Q. Okay.

13 You did offer alternative reciprocal
14 compensation language, didn't you?

15 A. Yes.

16 Q. Yes. And if that language were adopted,
17 Qwest would assess direct trunk transport and tandem
18 transmission charges?

19 A. And end office call termination charges.

20 Q. Right.

21 Do you know generally -- I'm sorry, strike
22 that.

23 We talked a moment ago about the current
24 point of interconnection between the two parties'
25 networks in Yakima.

0242

1 A. Correct.

2 Q. The point of interconnection, that may be
3 self evident, but that's the place where both parties
4 meet to interconnect their networks?

5 A. That's where the two networks connect, yes.

6 Q. And that is within Qwest's network as is
7 required by federal law?

8 A. Yes.

9 Q. Does that point of interconnection serve as
10 the demarcation point for the handoff of traffic from
11 one network to the other?

12 A. Yes.

13 Q. And the facilities located on Qwest's side of
14 the POI are Qwest network facilities, correct?

15 A. Correct.

16 Q. And those network facilities located on
17 Charter's side of the POI are Charter's network
18 facilities, correct?

19 A. Correct.

20 Q. Do you know whether or not Charter provides
21 competitive phone service in Kennewick, Pasco,
22 Waitsburg, those communities?

23 A. I believe in Mr. Gates' testimony he
24 indicated where they have local customers, and the
25 cities again you said were?

0243

1 Q. Kennewick, Pasco, Waitsburg.

2 A. Yes, I believe he also indicated in Walla
3 Walla and Yakima.

4 Q. Thank you. Qwest also provides telephone
5 service in those communities; is that right?

6 A. I believe so, yes.

7 Q. So in order for a Qwest customer located in
8 Pasco to call a Charter customer located in Pasco, Qwest
9 will take that call for Pasco, carry it to the parties'
10 current point of interconnection in Yakima, and deliver
11 it to Charter at that point; is that right?

12 A. That's correct.

13 Q. And then Charter's responsible for taking it
14 at the Yakima POI, bringing it back to Pasco, delivering
15 it to the Charter subscriber; is that right?

16 A. Yes.

17 Q. That carriage from the Yakima POI back to
18 Pasco, that's transport as the FCC has defined it?

19 A. Correct.

20 Q. Okay.

21 A. Let me be clear now, are we talking about
22 Pasco -- the switch is in Kennewick, correct, the
23 Charter switch, and you talk about coming back to Pasco,
24 I guess I'm unclear on what we're talking about there.

25 Q. Right. Some of this information has been

0244

1 designated as confidential, so I don't want to go too
2 far down the road.

3 A. Okay. But let me just say from the POI that
4 Qwest would hand off that traffic back to the Charter
5 switch, that would be transport as defined by the FCC.

6 Q. Okay. And so we just talked about calls that
7 begin on the Qwest network and are delivered to the
8 Charter network and which Charter then transports and
9 terminates, and I think the same would be true of calls
10 that begin on the Charter network. Charter customer in
11 Pasco calls his next door neighbor who may be a Qwest
12 customer in Pasco. Charter takes the call from the end
13 user in Pasco to the POI in Yakima, delivers it to Qwest
14 at the POI, and Qwest then transports the call back to
15 Pasco, delivers it to its customer?

16 A. That's correct.

17 Q. Okay. So then assuming that there are calls
18 going back and forth between these two networks, both
19 parties are providing transport and termination of the
20 other party's calls?

21 A. I agree. The issue between the parties here
22 is how much transport each party is providing. We
23 talked about if traffic is in balance, those usage
24 sensitive charges are going to wash each other out,
25 there will be the same number of minutes going each way.

0245

1 The traffic may well be in balance, but the parties
2 could still each be providing very different amounts of
3 transport.

4 Q. And you do agree that if Qwest is entitled to
5 compensation for the transport that it provides, Charter
6 is entitled to compensation for the transport that it
7 provides?

8 A. I would agree with that.

9 Q. Okay. Then the only question is how much
10 transport each party provides?

11 A. That's correct. And Qwest provides transport
12 to every tandem switch in every end office in the LATA.
13 And it's my belief that Qwest provides or will provide
14 more transport than Charter provides.

15 Q. You said Qwest provides transport to every
16 end user in the LATA?

17 A. End office.

18 Q. End office?

19 A. End office in the LATA.

20 Q. Do you know whether or not Charter delivers
21 or does Charter have customers in the localities where
22 each Qwest end office in the LATA resides?

23 A. Currently, at least as Mr. Gates has
24 indicated, they do not.

25 Q. Okay.

0246

1 A. They certainly have the potential of having
2 customers there. And in my testimony, I lay out an
3 example. If Charter had a customer in Spokane, I lay
4 out the amounts of transport that each party would
5 provide to handle a call between a local Charter
6 customer in Spokane and a local Qwest customer in
7 Spokane.

8 Q. That's purely hypothetical, isn't it?

9 A. That's purely hypothetical.

10 Q. Right, there's no reason -- Qwest -- Charter
11 does not have end user customers in Spokane as far as
12 you know; is that right?

13 A. They do have local interconnection trunks
14 that go into Spokane.

15 Q. But that wasn't my question.

16 Do you know whether or not they have end user
17 customers?

18 A. I do know that now. As I was explaining,
19 when I put together my testimony, that example was not
20 intended to be merely hypothetical. My understanding --

21 Q. Could I interrupt for one second.

22 Could you point us to what portion of your
23 testimony you're referring to?

24 A. Yes, I'm referring specifically to my
25 rebuttal testimony, page 12, lines 3 through 19. At the

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1 time I put that testimony together, it was based on the
2 fact that Charter has local interconnection trunks that
3 go to Spokane. Based on that, I believed they had
4 customers in Spokane. Mr. Gates now indicates that they
5 do not. So from your standpoint, yes, that may well be
6 a hypothetical, although there's nothing in the
7 interconnection agreement that would keep Charter from
8 serving customers in Spokane.

9 But we can take, you know, a more real life
10 example. We know that they have customers in Walla
11 Walla for example, Charter does, and we can look at what
12 the transport mileage --

13 Q. Before we go there, let's resolve the Spokane
14 hypothetical.

15 A. Okay.

16 Q. You said that there are local interconnection
17 trunks, meaning that there are some trunks that have
18 been provisioned between the parties for the exchange of
19 traffic in Spokane; is that right?

20 A. Yes.

21 Q. Do you know what the nature of that traffic
22 is?

23 A. I believe Mr. Gates in a data request
24 response, I don't believe it was in his testimony,
25 indicated it was to transit traffic on to mobile service

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1 providers. I believe that's what he said.

2 Q. And the dispute here concerning transport
3 obligations centers around the exchange of local
4 traffic, not transit traffic; is that right?

5 A. That's correct.

6 Q. Okay.

7 MR. HALM: At this point I would like to move
8 for admission of Qwest's confidential response to Data
9 Request Number 10, which is identified as Cross-Exhibit
10 WRE-12C.

11 JUDGE FRIEDLANDER: Any objection?

12 MR. DETHLEFS: No objection.

13 JUDGE FRIEDLANDER: Okay, that will be
14 admitted.

15 I also would like to ask, we should probably
16 be taking a morning break soon, do you have much more
17 cross-examination for Mr. Easton?

18 MR. HALM: I have probably 30 or 45 minutes
19 tops.

20 JUDGE FRIEDLANDER: Okay, why don't we go
21 ahead and take a break until 11:00, so 15 more minutes,
22 and we'll start sharply at 11:00.

23 MR. HALM: Okay.

24 JUDGE FRIEDLANDER: Thank you, we're off the
25 record.

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1 (Recess taken.)

2 JUDGE FRIEDLANDER: I believe Mr. Halm is
3 currently conducting cross-examination of Mr. Easton.

4 MR. HALM: Yes. And during the break we
5 discussed with Mr. Dethlefs and Ms. Anderl a potential
6 stipulation or administrative event actually. Let me
7 turn it over to my colleague, Mr. Kopta, to explain.

8 MR. KOPTA: Only because I've had more
9 practice.

10 As you will recall, Your Honor, last evening
11 there were some questions for Mr. Gates to accept some
12 distances subject to check, and Mr. Linse was going to
13 come and provide some additional information, and he may
14 yet do that. But we took that information, and we did
15 check on it and found some errors in the calculations in
16 one of the Exhibits, Exhibit TJG-5C, so we have some
17 corrected distances that we would want to include. What
18 we propose, and we've discussed this with Qwest, is to
19 correct those distances and file a corrected exhibit
20 after we've shared it with Qwest to make sure that they
21 don't have any more concerns about the accuracy of the
22 mileage calculation and then have that substituted for
23 the current exhibit that's on file with the Commission,
24 if that would be all right with Your Honor.

25 JUDGE FRIEDLANDER: That sounds fine with me.

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1 When were you thinking about filing that with the
2 Commission?

3 MR. KOPTA: Certainly as soon as we get out
4 of the hearing, weather permitting, we would just
5 recalculate or I mean correct these, run it by Qwest to
6 make sure that they don't have any concerns, hopefully
7 it would be, you know, the first part of next week.

8 JUDGE FRIEDLANDER: That sounds good.

9 MR. DETHLEFS: Qwest agrees with that. It's
10 our understanding the only things that are going to
11 change on the exhibit are the miles.

12 JUDGE FRIEDLANDER: Okay.

13 MR. DETHLEFS: I don't know if all of them
14 will change or just some of them, but that's what would
15 be changed.

16 JUDGE FRIEDLANDER: That sounds good, and the
17 Commission will look forward to early next week at the
18 latest, thank you.

19 MR. KOPTA: Thank you, Your Honor.

20 MR. DETHLEFS: Thank you, Your Honor.

21 MR. HALM: Your Honor, the last exhibit that
22 was admitted was WRE-12C?

23 JUDGE FRIEDLANDER: Yes, that's correct.

24 MR. HALM: There is another data response
25 request that accompanies that exhibit which is marked as

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1 Qwest's Response to Request Number 50, which is WRE-16 I
2 believe. I think I should have offered those together
3 at the same time, so I would like to move that for
4 admission after everybody has had a chance to review.

5 JUDGE FRIEDLANDER: So because of the
6 renumbering with the exhibits WRE-16 through 18, what
7 was formerly known as WRE-19 now 16, and that is the
8 data Request Number 50?

9 MR. HALM: Correct, Your Honor.

10 JUDGE FRIEDLANDER: Is there any objection
11 from Qwest as to that admission?

12 MR. DETHLEFS: I'm not clear on which data
13 request response it is. If it was numbered WRE-16, that
14 would be the response to Data Request Number 19 that's
15 been changed to Exhibit PL-13, is that --

16 JUDGE FRIEDLANDER: That's -- go ahead.

17 MR. HALM: It was originally marked as
18 WRE-19, and then we renumbered those yesterday, Judge
19 Friedlander renumbered that as WRE-16, Qwest's Response
20 to Charter 2-50.

21 MR. DETHLEFS: Okay, and that's WRE-16?

22 MR. HALM: 16, yes.

23 MR. DETHLEFS: No objection, Your Honor.

24 JUDGE FRIEDLANDER: Okay, then the Commission
25 will admit that exhibit.

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1 MR. HALM: Thank you, Your Honor.

2 BY MR. HALM:

3 Q. Mr. Easton, I would like to ask you about a
4 couple more questions on Issue 18, which I believe you
5 addressed in your direct testimony, page 29. At the
6 bottom of page 29 beginning at lines 26 and then going
7 over to page 30 of your direct testimony, line 1 and 2,
8 there's the last sentence in that paragraph which is
9 Paragraph 10.3.7.1.1.

10 A. Yes, I have it.

11 Q. Okay. And that language, that is Qwest's
12 proposed language for Issue 18; is that correct?

13 A. Yes. Now I should point out that that is a
14 change from the language that was filed with the
15 petition. In an attempt to perhaps settle this issue,
16 Qwest has changed this last sentence to make it more
17 clear.

18 Q. Okay, thank you.

19 The sentence uses the term LIS T1 facilities
20 there on the top of page 30.

21 A. Yes.

22 Q. All right.

23 And also uses the term private line T1
24 facilities?

25 A. Correct.

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1 Q. Could you describe generally what a LIS T1
2 facility is?

3 A. LIS, L-I-S, stands for local interconnection
4 service, so this would be an interconnection trunk.

5 Q. Okay.

6 And a private line T1 facility, what does
7 that mean?

8 A. That would be a private line facility
9 purchased out of the Qwest private line tariff.

10 Q. Generally speaking, those would be, could be
11 at least the same type of physical facility; is that
12 right?

13 A. Yes.

14 Q. Yes. But the key difference is that they're
15 priced differently?

16 A. They're priced differently. They could also
17 be used for different forms of traffic. The
18 interconnection facility would just be used to exchange
19 traffic between the two parties. Private line facility
20 could have whatever mix of traffic Charter or whoever
21 else purchased that private line chose to put on it.

22 Q. Okay. Do you know whether or not the term
23 LIS T1 facility is defined in the draft interconnection
24 agreement?

25 A. LIS I believe is defined. I don't know

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1 whether T1 is defined or not. But a T1 facility is, you
2 know, would handle a DS1 worth of traffic.

3 Q. Okay. And I think you said that Qwest
4 offered this language in an effort to resolve the issue?

5 A. Correct.

6 Q. Is that right?

7 A. What Qwest wanted to do is make clear that
8 Charter could choose either to purchase a LIS facility,
9 in which case they would pay the TELRIC prices, or they
10 could choose to purchase a private line facility for 911
11 purposes, in which case they would pay a private line
12 rate.

13 Q. Okay.

14 A. The concern Qwest has with the Charter
15 language as written is it would allow for the purchase
16 of a private line facility but would require that Qwest
17 only be compensated for LIS TELRIC prices.

18 Q. Do competitive LECs acquire LIS, I'm sorry,
19 private line T1 facilities from Qwest for the purposes
20 of delivery of their 911 traffic?

21 A. Not strictly for the purposes of delivery of
22 911 traffic, but a CLEC may have a private line service
23 they've purchased for non-interconnection purposes, and
24 they could choose to use the spare capacity on that for
25 their 911 trunking. But again, they have chosen to

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1 purchase that facility out of the private line tariffs,
2 and they are carrying other traffic on that, and from
3 Qwest's standpoint they should be paying private line
4 rates for that.

5 Q. Could you turn to Hearing Exhibit 2, which is
6 the draft interconnection agreement.

7 A. Okay.

8 Q. And I hope in the copy that you have all the
9 way at the end is the draft price list. Let me know if
10 you have that in your copy.

11 A. Yes, it is in here.

12 Q. Okay. My question is, if Qwest's proposed
13 language is adopted on this issue and Charter chooses to
14 obtain a LIS T1 facility, what rate elements would apply
15 in this price list?

16 A. There would be a nonrecurring charge for
17 setting those trunks up, and then -- and I will point
18 specifically.

19 Q. And could I interrupt you there?

20 A. Yes.

21 Q. You said a nonrecurring charge for setting
22 the trunks up. Under my hypothetical, Charter would be
23 acquiring a LIS T1 facility, so there would be both
24 trunks and facilities charges?

25 A. The facility is the physical facility. You

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1 also need to have trunks in order for that facility to
2 be able to carry traffic.

3 Q. Trunks are the dedicated circuits that run to
4 a facility?

5 A. Correct, provides a transmission path over
6 that facility.

7 Q. Okay, and thank you for that explanation.

8 So then there would be both a facility charge
9 and a trunk charge; is that right?

10 A. Correct.

11 Q. Okay. And so I interrupted you a moment ago,
12 you were going to point out the rate elements?

13 A. I was going to say Section 7.5, this is the
14 Exhibit A to the proposed interconnection agreement,
15 contains the trunk nonrecurring charges. And then there
16 would be the charge for the facility itself, the
17 recurring charge, which would be Section 7.3, direct
18 trunk transport.

19 Q. And the direct trunk transport charges vary
20 depending upon the length of the facility?

21 A. That's correct, there's a fixed and a per
22 mile rate.

23 Q. Those are recurring rates, correct?

24 A. Correct.

25 MR. HALM: Mr. Easton also provided the

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1 response to Charter Data Request Number 15 which is
2 marked as Cross-Exhibit 14, WRE-14, I would like to move
3 for the admission of that cross-exhibit.

4 MR. DETHLEFS: No objection, Your Honor.

5 JUDGE FRIEDLANDER: So admitted.

6 MR. HALM: Thank you.

7 Thank you, Mr. Easton, I have no further
8 questions.

9 No further questions, Your Honor.

10 JUDGE FRIEDLANDER: Any redirect?

11 MR. DETHLEFS: I do have just a little bit of
12 redirect.

13 JUDGE FRIEDLANDER: Sure.

14 MR. DETHLEFS: But it should not take very
15 long.

16 JUDGE FRIEDLANDER: That's fine, take your
17 time.

18

19 R E D I R E C T E X A M I N A T I O N

20 BY MR. DETHLEFS:

21 Q. Mr. Easton, I call your attention to page 7
22 of your direct testimony at the very bottom line.

23 A. I'm there.

24 Q. There was a discussion earlier with Mr. Halm
25 regarding the second sentence of Section 7.1.2 as

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1 proposed by Charter that says:

2 CLECs shall have the right to establish
3 one single physical point of
4 interconnection in Qwest's territory in
5 each LATA CLEC has local end user
6 customers.

7 Do you see that?

8 A. I do.

9 Q. Now you criticize that statement in your
10 testimony on page 9, correct?

11 A. Correct.

12 Q. And your criticism was that it did not have a
13 limitation for technical feasibility, correct?

14 A. Yes.

15 Q. When you made that point, were you trying to
16 make a point about anything other than that particular
17 sentence?

18 A. No.

19 Q. Now on page 7 of your direct testimony, lines
20 20 to 22.

21 A. Yes.

22 Q. It's the interconnection option, other
23 technically feasible methods of interconnection, and
24 then it says:

25 Via the bona fide request process unless

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1 a particular arrangement has been
2 previously provided to a third party or
3 is offered by Qwest as a product.

4 What does the, based on your understanding of
5 this particular paragraph, what does the phrase unless a
6 particular arrangement has been previously provided to a
7 third party or is offered by Qwest as a product modify?

8 A. The bona fide request process would not be
9 required if in fact Qwest had already provided, offered
10 that product or had provided that form of
11 interconnection to another party.

12 Q. Is it your understanding, does the phrase
13 unless a particular arrangement has been previously
14 provided to a third party or is offered by Qwest as a
15 product, does that in any way limit the option number 4
16 for other technically feasible methods of
17 interconnection?

18 A. No, it does not. And as I indicated in my
19 discussion with Mr. Halm, Qwest would offer that to a
20 requesting party.

21 Q. There was a discussion in terms of the next
22 page of your direct testimony, and I believe you were
23 looking at the actual interconnection agreement attached
24 to the petition when you were reviewing some of this
25 language, but I don't have a copy of that, so I will ask

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1 you this in reference to the Charter options involving
2 the term interconnection facility. Is the term entrance
3 facility that Qwest prefers a commonly understood term?

4 A. It is.

5 Q. Is the term interconnection facility as
6 defined by Charter commonly understood in the industry?

7 A. I don't believe so.

8 Q. Now there was some discussion as to tandem
9 transmission and direct trunk transport; do you recall
10 that discussion?

11 A. I do.

12 Q. Why is Qwest not willing to agree to bill and
13 keep for direct trunk transport?

14 A. As I mentioned earlier, Qwest is willing to
15 agree to bill and keep for the usage sensitive items,
16 tandem, switching tandem, transmission, and end office
17 call termination, because the traffic is going to be
18 roughly in balance. But as I also indicated, that does
19 not imply that each party is providing the same amount
20 of transport. And, in fact, from things I've looked at,
21 I believe that Qwest will be providing more transport
22 than Charter does even though the traffic is in balance.

23 Q. What is it about Charter's network as you
24 understand it that leads there to be less transport than
25 Qwest's network?

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1 A. Charter currently only has the transport
2 between its switch in Kennewick and the POI in Yakima,
3 and so it provides, and I don't know whether you folks
4 have corrected this number or not, but about 71 miles of
5 transport.

6 Q. Based on the network interconnection point
7 today; is that correct?

8 A. Based on the network interconnection point
9 today. Now as was discussed yesterday in the hearing,
10 Charter has requested a new meet point in Pasco. Under
11 that new meet point in Pasco, they would be providing
12 somewhat less than 5 miles of transport. On the Qwest
13 side of the POI, however, as I indicated earlier, Qwest
14 will be providing transport to each tandem switch and
15 each end office with which the parties want to exchange
16 local traffic, so could be exceeding that Pasco mid span
17 meet point amount of transport by a considerable amount
18 and can in fact be exceeding the 71.4 miles of transport
19 that exists today.

20 Q. What is the effect of Charter's having one
21 switch on the length of its loops to its end user
22 customers?

23 A. By having only one switch, Charter ends up
24 having very long loops to its customers, because they
25 all need to get back to that central switch. So they've

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1 limited the amount of transport by their selection of
2 the point of interconnection, but they have very long
3 loops to get to the switch.

4 Q. Now the last line of questioning that
5 Mr. Halm asked you about was the option that Qwest is
6 proposing for 911 service; is that correct?

7 A. Correct.

8 Q. And there were some questions about the
9 option of a LIS facility, and I believe your testimony
10 was that Qwest language provided Charter with the option
11 of choosing between LIS facilities and private line
12 facilities, correct?

13 A. Correct.

14 Q. Why would Charter or a CLEC choose to order a
15 private line facility if it could get LIS facilities at
16 much lower rates?

17 A. They might have an existing private line
18 facility that had spare capacity on it, in which case
19 they wouldn't need to order an additional LIS facility,
20 they could already accommodate their need with their
21 existing private line facility.

22 MR. DETHLEFS: Your Honor, that's all the
23 redirect I have for Mr. Easton.

24 JUDGE FRIEDLANDER: Okay, thank you.

25 Is there any recross?

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1 MR. HALM: Just a couple questions.

2 JUDGE FRIEDLANDER: Okay.

3

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

5 BY MR. HALM:

6 Q. Mr. Easton, you said that one consequence of
7 Charter's decision to deploy a switch in Kennewick is
8 that it has long loops?

9 A. That's correct.

10 Q. And that arrangement, the fact that that
11 results in long loops, is that consistent with Charter's
12 rights under Section 251(c)?

13 A. It certainly is.

14 MR. HALM: Okay, thank you.

15 No further questions, Your Honor.

16 JUDGE FRIEDLANDER: Okay, thank you.

17 And I have no questions, so the witness is
18 dismissed.

19 THE WITNESS: Thank you.

20 JUDGE FRIEDLANDER: Thank you.

21 And Charter can call the next witness.

22 Oh, before we do that, just a point of
23 clarification. It's my understanding as far as the
24 cross-exhibits, cross-examination exhibits for
25 Mr. Easton, that WRE-6 and 7, WRE-10 and 11, WRE-13,

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1 WRE-15, WRE-16 through 18, and WRE-20 and 21 were not
2 admitted.

3 MR. DETHLEFS: Your Honor, I have as, I don't
4 know what you have, but I have as WRE-16 having been
5 admitted.

6 MR. HALM: And we should make just make sure,
7 the renumbered WRE-16?

8 MR. DETHLEFS: That's correct.

9 JUDGE FRIEDLANDER: Right. Oh, okay, yes, I
10 see what you're saying, yes, WRE-16 was admitted, that's
11 correct, thank you for that clarification.

12 Was there any other?

13 MR. HALM: I'm sorry, would you mind going
14 through that one more time.

15 JUDGE FRIEDLANDER: I will definitely do
16 that. WRE-6 and 7 have not been admitted, WRE-10 and 11
17 have not been admitted, WRE-13 has not been admitted,
18 WRE-15 has not been admitted, and newly numbered WRE-17
19 and 18 as well as 20 and 21 have not been admitted.

20 MR. HALM: Yes, Your Honor, that is accurate.

21 JUDGE FRIEDLANDER: Okay.

22 MR. DETHLEFS: Was WRE-19 admitted?

23 MR. HALM: It was not offered.

24 JUDGE FRIEDLANDER: WRE-19, no. No, that was
25 not admitted, thank you for clarifying that. And I

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1 believe that gives us an accurate list of what has been
2 admitted as far as cross-exam exhibits. The former
3 WRE-19 which is now 16 was admitted, WRE-19 which was
4 formerly WRE-22 was not admitted, just so we're clear.

5 MR. HALM: Thank you, Your Honor.

6 JUDGE FRIEDLANDER: Thank you.

7 (Discussion off the record.)

8 JUDGE FRIEDLANDER: Is counsel ready to call
9 their next witness?

10 MR. DETHLEFS: I am, Your Honor, Qwest would
11 call Mr. Phil Linse.

12 JUDGE FRIEDLANDER: Okay, thank you.

13 If you would stand and raise your right hand.

14 (Witness PHILIP LINSE was sworn.)

15 JUDGE FRIEDLANDER: Thank you, you can be
16 seated.

17 And before we begin, just to deal with his
18 direct and rebuttal testimony and exhibits, Mr. Linse's
19 Exhibit PL-1T, PL-2, PL-3, PL-4, PL-5, PL-6, and PL-7RT,
20 PL-8C, and PL-9 have already been admitted.

21 And counsel may proceed.

22

23

24

25

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1 Whereupon,

2 PHILIP LINSE,

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

4 herein and was examined and testified as follows:

5

6 DIRECT EXAMINATION

7 BY MR. DETHLEFS:

8 Q. Mr. Linse, do you have any corrections to
9 your testimony?

10 A. No, I do not.

11 MR. DETHLEFS: Your Honor, yesterday we
12 discussed putting into the record certain mileages that
13 we were going to try -- we had initially tried to put
14 through Mr. Gates and we decided it would be better to
15 do it through Mr. Linse, so I have five or six questions
16 to get those in.

17 JUDGE FRIEDLANDER: That's fine, please go
18 ahead.

19 BY MR. DETHLEFS:

20 Q. Mr. Linse, have you checked based on V&H
21 coordinates what the distance between the Qwest end
22 office in Pasco and the Kennewick end office is, or
23 excuse me, the Kennewick switch for Charter is?

24 A. Yes.

25 Q. And what is that distance?

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1 A. It's 5.2 miles.

2 Q. What is the distance between the end office
3 in Pasco to the Qwest end office in Waitsburg?

4 A. Approximately 45.1 miles.

5 Q. And based on V&H coordinates, what is the
6 distance from the Pasco end office for Qwest to the
7 Walla Walla end office for Qwest?

8 A. Approximately 37.9.

9 Q. And based on V&H coordinates, what is the
10 distance from the Pasco end office for Qwest and the
11 Yakima tandem for Qwest?

12 A. Approximately 76 miles.

13 Q. And based on V&H coordinates, what is the
14 distance from the Pasco end office for Qwest and the
15 Spokane tandem for Qwest?

16 A. Approximately 127.2 miles.

17 MR. DETHLEFS: Your Honor, we would offer
18 Mr. Linse for cross-examination.

19 JUDGE FRIEDLANDER: Okay, thank you.

20 Mr. Halm I believe is going to address
21 Mr. Linse's testimony.

22 MR. HALM: Yes, Your Honor.

23 JUDGE FRIEDLANDER: Thank you.

24 MR. HALM: Thank you.

25

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

2 BY MR. HALM:

3 Q. Mr. Linse, how are you today?

4 A. I'm fine, thank you.

5 Q. Good. Were you in the room during my

6 questions of Mr. Easton?

7 A. I think for the most part, yes, I was.

8 Q. At the beginning of those questions I had
9 some questions regarding Section 271 proceedings here in
10 Washington.

11 A. Yes, I recall those.

12 Q. You do, okay. Did you participate in those
13 proceedings on Qwest's behalf?

14 A. No, I did not.

15 Q. I would like to turn to your rebuttal
16 testimony at page 2.

17 A. I'm there.

18 Q. At the bottom on lines 16 and 17, you
19 describe certain methods of interconnection which you
20 believe would reduce the possibility of damages to
21 facilities used for interconnection. Do you see that
22 discussion?

23 A. Yes, I do.

24 Q. Those methods may reduce the possibility of
25 damages, but they would not eliminate the possibility,

1 would they?

2 A. I think through the history of the telecom
3 industry and the efforts of telecommunications
4 companies, including, you know, originally AT&T and, you
5 know, I don't know how old the telecom industry is but
6 well over 80 years of providing telecommunications
7 services, efforts have been taken to minimize the impact
8 of the acts of connecting the networks, and, you know,
9 they've -- it's basically been through about 80 years of
10 refinement, and it's they've done a pretty good job of
11 minimizing any kind of impact as far as interconnection
12 is concerned.

13 Q. Well, that's interesting, but it doesn't
14 really answer my question. I'm asking you about the
15 specific methods you're talking about there on page 2 of
16 your rebuttal testimony.

17 A. Yes.

18 Q. There still exists the possibility of damage
19 to either party's facilities, right?

20 A. You know, I can't really think of how that
21 would occur, but I suspect there could be some small
22 likelihood that damage could occur. However, I have
23 never heard of it or have ever been provided an example
24 of how that might happen.

25 Q. You're responding to testimony offered by

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1 Charter witness Mr. Starkey and later adopted by Charter
2 witness Mr. Webber; is that right?

3 A. That's correct.

4 Q. That testimony was not limited to
5 circumstances where the parties are only physically
6 interconnecting their networks, is it?

7 A. I believe that's what the testimony was
8 provided. Maybe I need a copy of Mr. Starkey's
9 testimony to look at that again.

10 Q. I'm not sure I have a copy here.

11 A. I do, but it's back at my chair.

12 Q. Well, let's move on to something that may be
13 a little bit more compelling for us here.

14 Page 3 of your rebuttal testimony at lines 17
15 and 18, you say that there is very little to disagree
16 about when a switch has reached its capacity. Assuming
17 that is true, then it wouldn't be difficult for Qwest to
18 demonstrate that fact to this Commission, would it?

19 A. I don't think it's a matter of demonstration,
20 the demonstration's not necessarily difficult. It's a
21 matter of providing interconnection until such time that
22 that demonstration is made. A switch exhaust situation
23 does not wait for a demonstration of a switch exhaust,
24 it's either exhausted or it's not.

25 Q. But I mean you understand that Qwest has the

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1 obligation to prove to the State Commission if there's a
2 question of technical infeasibility, don't you?

3 A. I think that's part of the rule once the
4 interconnection has been denied.

5 Q. Right. So then if there's little to disagree
6 about when a switch has reached its capacity, it should
7 be easy to make that proof to show that evidence to the
8 Commission?

9 A. It may be easy, but is it necessary? If the
10 parties understand that an exhaust situation occurs, is
11 it necessary to bring in the Commission and go through
12 the proceedings to demonstrate that if both parties
13 understand that there's an exhaust situation?

14 Q. Could we turn to page 3 of your direct
15 testimony.

16 A. I'm on page 3.

17 Q. At lines 12 through 14, you talk about the
18 available benefits of interconnection. Just to confirm,
19 the entrance facility option is only where a Qwest
20 provided entrance facility is established; is that
21 right?

22 A. Could you repeat that, please.

23 Q. Of the four methods of interconnection
24 described in your testimony at lines 13 and 14, a Qwest
25 provided entrance facility is the only option in which

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1 Charter could interconnect via -- strike that, let me
2 see if I can restate this.

3 Under Qwest's proposal, an entrance facility
4 must be provided by Qwest; is that right?

5 A. Under Qwest's proposal, it provides the three
6 main methods of interconnection, but it does not
7 prohibit Charter from using a third party to obtain an
8 equivalent to a Qwest entrance facility.

9 Q. Okay. Did you hear our discussion, our
10 discussion, my discussion with Mr. Easton concerning the
11 fact that any point of interconnection between Charter
12 and Qwest must be at a technically feasible point within
13 Qwest's network?

14 A. Yes, I recall some discussion on that.

15 Q. And do you agree with Mr. Easton that the
16 parties have essentially agreed to that point in
17 undisputed contract language?

18 A. In the sections that were cited, yeah, I
19 believe that was part of that discussion.

20 Q. I would like to turn to page 9 of your direct
21 testimony.

22 A. I'm there.

23 Q. You're there?

24 A. Yes.

25 Q. At lines 17 and 18, you conclude your

0273

1 statements by testifying that Charter's proposal could
2 be read to require Qwest to interconnect with Charter at
3 locations outside of Qwest's network. Do you see that
4 discussion?

5 A. Yes, I see that.

6 Q. Charter's proposal doesn't say that, does it?

7 A. I think when you look at their network and
8 the switches that they currently operate, they are
9 outside of the Qwest serving territory. At the time the
10 testimony was written, I believe there was a switch
11 located in California that they used.

12 Q. And you saw Mr. Gates' direct and rebuttal
13 testimony concerning the current location of the Charter
14 switch in Kennewick?

15 A. Yes, I recall that he stated that their
16 current location is in Kennewick.

17 Q. So then the switch in California is not
18 really relevant to this discussion, is it?

19 A. It's not relevant today, but that doesn't
20 mean it wasn't relevant back when the testimony was
21 written or that that situation where the network
22 configuration could change to where they may have a
23 switch well outside the state of Washington.

24 Q. You heard the discussion between Mr. Easton
25 and I concerning the fact that any point of

0274

1 interconnection must not only be technically feasible
2 but must be within Qwest's network; that's also a point
3 which is generally undisputed, isn't it?

4 A. I think it's been testified to. However, I
5 don't believe the language necessarily reflects that.
6 And with -- the challenges that Qwest is faced with with
7 negotiating interconnection agreements with Charter and
8 other companies like Charter is that once the agreement
9 has been reached that other service providers may also
10 then elect to use that Charter interconnection agreement
11 as their own interconnection agreement and may take a
12 different interpretation of what, you know, Charter may
13 today say that their intent is not to force Qwest to
14 interconnect outside of Qwest's territory or other
15 provisions that, you know, Qwest may feel there may be
16 an interpretation issue when other service providers
17 elect to use a contract such as Charter's, then they are
18 free to then interpret that language the way they feel
19 is proper for them.

20 Q. But --

21 A. And that's the challenge Qwest has when we
22 negotiate our interconnection agreements, so we have to
23 be real conscience of how it may be used, not just with
24 Charter but well beyond Charter.

25 Q. So you're saying that other CLECs could adopt

0275

1 this agreement?

2 A. That's correct.

3 Q. Right. And they could do so under federal
4 law?

5 A. I believe that's a federal law.

6 Q. Right. It's an obligation that Qwest has to
7 allow that adoption?

8 A. Sure.

9 Q. Right. And we're here today talking about
10 disputed issues and disputed contract language between
11 Qwest and Charter, correct?

12 A. That is correct.

13 Q. Right. And the Commission has before it
14 these questions of whether to adopt Charter's language
15 or Qwest language?

16 A. Right. And I think that it needs to be,
17 well, it needs to be looked at from the perspective of
18 that if the language -- if it can be interpreted
19 differently, then we need to take that into
20 consideration, which is why I think we're here today is
21 the disputed language is -- Qwest doesn't feel is
22 necessarily in its best interest with the fact that
23 other service providers may also opt in to these
24 agreements.

25 Q. So then the Commission has to consider how

0276

1 every other service provider in Washington may utilize
2 the terms of this contract?

3 A. I think Qwest, you know, through this
4 arbitration Qwest is pointing out the -- that for the
5 Commission so that the Commission doesn't have to
6 necessarily, you know, do that evaluation themselves. I
7 think Qwest has provided them with some of the concerns
8 that Qwest has if other service providers may opt in to
9 this agreement.

10 Q. So then it's all right for the Commission to
11 decide a disputed issue by considering the impact upon
12 Qwest, upon Charter, and then also whether or not
13 another CLEC in Washington, maybe a CLEC that serves
14 ISPs, dial up ISPs, how these terms might affect that
15 CLEC's operations?

16 A. I'm thinking it was with regard to how it may
17 impact Qwest and other's interpretation of that
18 agreement if it were to be opted in by those other
19 service providers.

20 Q. Do you have a copy of Hearing Exhibit 2, the
21 draft interconnection agreement?

22 A. I think this is it.

23 Q. Okay. Could you turn to page 51, please.

24 A. Of that draft?

25 Q. Of Hearing Exhibit 2, yes, the draft

0277

1 interconnection agreement. At the top of page 51 is
2 Charter's proposed language for Section 7.1.2.

3 A. I see it.

4 Q. In the third line there's a reference to
5 Qwest territory. Would you read that first and second
6 sentence and let me know when you're done.

7 A. (Reading.)

8 The parties will negotiate the specific
9 arrangements used to interconnect their
10 respective networks. CLECs shall have
11 the, and it's new language, CLECs shall
12 have the right to establish one single
13 physical point of interconnection
14 ("POI") in Qwest's territory in each
15 LATA CLEC has local end user customers.

16 Q. There's some language shown in bold, and that
17 is Charter's proposed language, correct?

18 A. I think that's correct, yes.

19 Q. And implicitly then Qwest opposes that
20 language?

21 A. I think Qwest does oppose that, I think that
22 was -- yeah.

23 Q. Right?

24 A. Right.

25 Q. So the language that's not shown in bold is

0278

1 undisputed language, correct?

2 A. I believe that's the case, yes.

3 Q. Right. And the second sentence says that any
4 point of interconnection will be in Qwest territory,
5 doesn't it?

6 A. Yes, in Section 7.1.2, that says what it
7 says.

8 Q. Do you have a copy of Qwest's response to
9 Charter Data Request Number 19 that is identified as
10 Exhibit Number, Cross-Exhibit PL-13?

11 A. I have that.

12 Q. And the response in that document is to the
13 effect that -- actually, could you go ahead and read the
14 response for the record, please.

15 A. The response is:

16 Yes, the facilities provided by CLECs
17 sometimes extend beyond Qwest's local
18 service area. Qwest does not track this
19 information.

20 Q. And that was in response to a question about
21 facilities used for interconnection between the Qwest
22 network and other CLECs in Washington; is that right?

23 A. Well, there's more to it than that, but
24 that's part of it.

25 Q. How is it that you know that facilities

0279

1 provided by CLECs sometimes extend beyond Qwest's local
2 service area if you don't track that information?

3 A. Qwest does not specifically track that
4 information, but that information is available in the --
5 you can kind of come to a conclusion based on the
6 publicly available information such as the local
7 exchange routing guide, which is an industry database,
8 if you will, that provides all of the routing
9 instructions for all carriers in the United States.
10 Through that guide, you can go in and identify or
11 determine where a particular carrier's switch is
12 physically located, so to -- in order for Qwest -- if a
13 particular carrier has interconnection with Qwest, in
14 order for a carrier that has a switch located somewhere
15 other than Qwest or outside of Qwest territory, you can
16 look in the LERG and it would show you that, you know,
17 where their switch is located, to the extent that switch
18 is interconnected with Qwest, you would have to assume
19 that there is some facility between that switch and
20 Qwest's network.

21 Q. And the facility is what, an entrance
22 facility?

23 A. It's some sort of transport that that CLEC
24 may purchase or provide themselves.

25 Q. And if they purchase it from Qwest, it's

0280

1 pursuant to an interconnection agreement, right?

2 A. If they purchase it from Qwest, it would be
3 within Qwest territory. They would have to find a way
4 to get that transport or to obtain transport from their
5 switch to some location within Qwest's territory. That
6 would not be provided by Qwest.

7 Q. Does Qwest provide local telephone service in
8 Kennewick?

9 A. I don't believe Qwest does provide local
10 service in Kennewick.

11 Q. Does Qwest provide local service in Pasco?

12 A. I believe that is an exchange that Qwest
13 provides local service in.

14 Q. And service to Waitsburg?

15 A. Waitsburg, yes.

16 Q. And Walla Walla?

17 A. That's correct.

18 Q. And in Yakima as well?

19 A. Yakima as well.

20 Q. And in Spokane?

21 A. Yes, sir.

22 Q. Do you know whether or not Charter provides
23 local telephone service in Pasco?

24 A. That's my understanding is they do.

25 Q. What about in Spokane?

0281

1 A. They have interconnection in Spokane, but I
2 have not seen that they have evidence of local
3 customers.

4 Q. Your Exhibit PL-9 that was attached to your,
5 is it your rebuttal testimony?

6 Am I right, that was attached to your
7 rebuttal testimony?

8 A. Yes, I think that is right.

9 Q. Mr. Easton and I discussed this a little bit
10 this morning, and I think he acknowledged that because
11 Charter has no local customers in Spokane, the
12 illustrative value of this exhibit is limited; would you
13 agree?

14 A. No, actually I don't think it is all that
15 limited. It's an example. Qwest would also provide
16 similar transport to Walla Walla from Charter's POI
17 location in Yakima. That distance I believe is about
18 113, 114 miles.

19 Q. But --

20 A. So --

21 Q. -- why would you provide transport to a
22 location where Charter doesn't exchange any local
23 telephone traffic with you?

24 A. Well, actually Charter does exchange traffic
25 with Qwest in Spokane. They have local interconnection

0282

1 trunk groups pursuant to their interconnection agreement
2 to Spokane, so that 167.4 miles of transport between
3 Yakima and Spokane is provided by Qwest.

4 Q. Mr. Easton --

5 A. Pursuant to their agreement.

6 Q. Mr. Easton testified this morning that the
7 nature of the traffic was transit traffic; is that your
8 understanding?

9 A. That is correct.

10 Q. This is traffic that is delivered to third
11 parties, third party carriers?

12 A. That's my understanding.

13 Q. Right.

14 A. But it --

15 Q. It's not the local telephone traffic that is
16 at issue in this dispute, is it?

17 A. Well, I think transit is also part of the
18 interconnection agreement, so.

19 Q. We don't have disputes over transit
20 obligations of each party, do we?

21 A. Not necessarily transit traffic, but the
22 facilities over which that transit traffic travels is
23 part of this dispute.

24 Q. Which dispute?

25 A. The reason why we're sitting here today,

0283

1 which is the obligation for Qwest to pay or provide
2 transport to Charter.

3 Q. Do you know what provisions of the draft
4 agreement set forth each party's transit obligations?

5 A. I don't know the specific section of that.

6 Q. Do you know whether there are any specific
7 provisions that are in dispute?

8 A. Not with relation to transit traffic unless
9 you want to talk about the indirect interconnection
10 issue, which is Issue 16.

11 Q. Right. But I'm talking about traffic that
12 transits over Qwest's network, not traffic that is
13 exchanged between a Charter end user customer and Qwest
14 end user customer, but traffic that transits over the
15 Qwest network delivered to a third party. There's no
16 issue in dispute in this case, is there, or there's --
17 let me restate that, there's no disputed contract
18 language, is there?

19 A. It can be implicated through the contract
20 language.

21 Q. Which contract language?

22 A. The contract language we're talking today.

23 Q. Which provision?

24 A. Well, if you want to take a look at Issue
25 Number 16, which is -- allows for indirect

0284

1 interconnection, Charter's proposed language suggests
2 that they can deliver traffic to Qwest through any --

3 Q. Right, but my --

4 A. -- any provider, which may also include
5 traffic that transits Qwest's network destined for yet a
6 fourth network. So the call flow would look like it
7 starts with a Charter end user, Charter then hands it
8 through its indirect interconnection to a third party,
9 that third party then hands it to Qwest, which then
10 transits Qwest's network to yet a fourth party, that
11 would be in the implication with regard to Issue 16.

12 Q. Are you aware of any circumstance in which
13 traffic transits a second party's network, a Qwest
14 network, and then is delivered to a fourth network with
15 respect to Charter's traffic?

16 A. I have not specifically looked at the traffic
17 that Charter routes to Qwest today. Charter is
18 indirectly connected with Qwest, so it's very limited as
19 to that type of arrangement.

20 Q. So my --

21 A. And if we were to have had the ability to
22 negotiate that, those provisions on Issue 16, that kind
23 of stuff may have been brought up and resolved.

24 Q. Mr. Linse, my question originally was whether
25 or not there is disputed contract language concerning

0285

1 traffic that starts on the Charter network, transits the
2 Qwest network, and is delivered to a third party
3 carrier; do you know of any disputed contract language
4 under --

5 A. All I'm saying --

6 Q. -- that scenario?

7 A. -- is that the language that Charter proposes
8 implicates that type of an arrangement.

9 Q. But you can't --

10 A. It's not specifically stated in the contract,
11 but it implicates that type of an arrangement.

12 Q. So then there's no disputed contract
13 language?

14 A. I guess I can't say that there isn't because
15 of the implications.

16 Q. I guess if you can point us to some, please
17 do so now.

18 A. Issue 16.

19 Q. How about this, Mr. Linse, turn to page 71 of
20 Hearing Exhibit 2.

21 A. I'm at page 71.

22 Q. Do you see Section 7.3.7 there?

23 A. Yes, I see it.

24 Q. And what's the title of that section?

25 A. That section says transit traffic.

0286

1 Q. Is there any disputed language in this
2 section?

3 A. I see some bold language saying section and
4 then some brackets. I don't know if that's necessarily
5 disputed language.

6 Q. Mr. Linse, did you see Charter's response to
7 Qwest's Data Request Number 20 that was served on Qwest
8 counsel on December 9th?

9 A. I do not have that.

10 Q. Did you --

11 A. I don't believe --

12 Q. -- see that before you prepared your
13 testimony?

14 A. I would like to see the --

15 Q. Okay, I have a copy here.

16 MR. DETHLEFS: Do you have two copies?

17 MR. HALM: Yes, I've got several copies.

18 JUDGE FRIEDLANDER: And let me just break in
19 for a minute. I think your food is here, and also, and
20 I hate to interrupt your cross-examination because I
21 know you're probably on a roll, so I guess what I'm
22 asking is do the parties want to break now, or do you
23 have a lot more that you want to go into before we
24 break, because right now I have that it's 12:07
25 approximately, so we could take a break until 1:00.

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1 MR. HALM: That would be fine with me if it's
2 okay with everybody else.

3 MR. DETHLEFS: That would be fine for me.

4 JUDGE FRIEDLANDER: Okay, we'll break until
5 1:00, and then we'll pick up with Mr. Linse and your
6 cross-examination.

7 (Luncheon recess taken at 12:10 p.m.)

8

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

10 (1:10 p.m.)

11 JUDGE FRIEDLANDER: We left off with Mr. Halm
12 conducting cross-examination of Qwest's witness
13 Mr. Linse, so if counsel would like to proceed.

14 MR. HALM: Thank you, Your Honor.

15 BY MR. HALM:

16 Q. Before our break, Mr. Linse, I distributed a
17 copy of a data request. This is a response, Charter's
18 Response to Qwest's Second set of Data Requests
19 identified as Data Request Response Number 20 dated
20 December 9th, 2008. Did you have an opportunity to
21 review this response prior to your testimony today?

22 A. Yes, I have.

23 MR. HALM: And I've communicated with
24 Mr. Dethlefs that we're not going to try to offer this
25 into the record.

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1 JUDGE FRIEDLANDER: Okay. And which data
2 request response was that?

3 MR. HALM: This was a Charter response to a
4 Qwest request, so it's not identified on the
5 cross-exhibit list.

6 JUDGE FRIEDLANDER: Okay, do you have a copy
7 for me?

8 MR. HALM: Yes.

9 JUDGE FRIEDLANDER: Okay, thank you.

10 MR. DETHLEFS: It would have been identified
11 as Exhibit TJG-18.

12 MR. HALM: That was on your list?

13 MR. DETHLEFS: It was, I just decided not to
14 offer it.

15 JUDGE FRIEDLANDER: Okay, thank you.

16 BY MR. HALM:

17 Q. I would like to turn to what has been
18 identified as Cross-Exhibit Number PL-12, Qwest's
19 Response to Charter Data Request Number 54. Do you have
20 a copy of that, Mr. Linse?

21 A. Request Number 54?

22 Q. Yes.

23 A. Yes, I have it.

24 Q. 54(a), which is Charter's request of Qwest,
25 asks whether or not Qwest transports Charter originated

0289

1 traffic to each of the 31 central office switches
2 identified in the Exhibit PL-9, which was an exhibit to
3 your rebuttal testimony. And, frankly, I had a little
4 bit of trouble interpreting the response. The response
5 is listed at the bottom of the page as subsection (a),
6 and as I read that, your response is that essentially if
7 Charter's customers did originate traffic that were
8 destined for the Spokane tandem and the Spokane central
9 offices, then Qwest would provide that transport; is
10 that accurate?

11 A. Yes, that's accurate.

12 Q. Okay. The question was really, does it
13 happen today, and I would like you to tell us whether or
14 not you know whether it happens today?

15 A. I have not looked at the specific traffic
16 that routes across Qwest now for Charter, so it would be
17 speculation.

18 Q. And then the response in subsection (d),
19 which is on page 2, I'm sorry, subsection (e), there you
20 say the diagram provided in the exhibit to your rebuttal
21 testimony generally reflects facilities that may be
22 available to carry local traffic. That's consistent
23 with the response you just provided to me today that
24 these facilities are available to carry local traffic,
25 but you don't know that they actually do carry local

0290

1 traffic; is that right?

2 A. It's a little bit different context. With
3 regard to the first, the response to Request Number
4 54(a), it's with regard to the general traffic that is
5 exchanged between the parties. The response to subpart
6 (e) refers to either the traffic that is exchanged
7 between Qwest and Charter today or to the extent that
8 Charter may request like a direct trunk transport
9 facility in those areas.

10 Q. So essentially you're saying that Charter
11 could request a direct trunk transport over the Qwest
12 network in Spokane?

13 A. Correct, Qwest has a network that has a
14 facility that may be available for Charter to order
15 direct trunk transport.

16 Q. Charter has not ordered direct trunk
17 transport to Spokane at this time, has it?

18 A. Into Spokane, I believe there is a facility
19 that runs into Spokane.

20 Q. I think earlier you said there were some LIS
21 trunks?

22 A. That would be those facilities.

23 Q. Okay. But you're not aware of any local
24 traffic that's directed to the Qwest Spokane tandem
25 originated on the Charter network?

0291

1 A. I believe the traffic that is exchanged with
2 Qwest in Spokane is most likely local from a wireless
3 perspective. To the extent they exchange local traffic
4 with that wireless provider through Qwest as a transit
5 provider, that could be local.

6 Q. You're not aware of any traffic that
7 originates on the Charter network, terminates on the
8 Qwest network, and which would be rated as local under
9 this interconnection agreement that is carried over the
10 Spokane facilities in your exhibit, are you?

11 A. Not that exist today, but may or could exist
12 pursuant to this agreement.

13 Q. Thank you.

14 MR. HALM: I would like to move for admission
15 of PL-12, Cross-Exhibit PL-12.

16 MR. DETHLEFS: No objection.

17 JUDGE FRIEDLANDER: So admitted.

18 BY MR. HALM:

19 Q. Mr. Linse, does Qwest have tandem facilities
20 in Seattle?

21 A. Yes, I believe Qwest does have.

22 Q. Does Qwest have tandem facilities in Olympia?

23 A. I have not looked that closely at the Seattle
24 LATA and the switches there, but that would not surprise
25 me. And I believe if I recall correctly there might be

0292

1 a tandem in Olympia.

2 Q. Presumably those facilities would be
3 available to carry local traffic if Charter requested?

4 A. Absolutely.

5 Q. Charter hasn't requested that as far as you
6 know; is that right?

7 A. I don't believe Charter has. I don't know of
8 any request myself, no.

9 Q. Right. Because really the relevant traffic
10 at issue here is that which is exchanged between Charter
11 and Qwest in the Tri-Cities area, correct?

12 A. That appears to be what's relevant today, but
13 the interconnection agreement that Qwest and Charter
14 have negotiated does not prohibit Charter from serving
15 any or all of Qwest's serving territory.

16 Q. Right, okay. And the Tri-Cities area, are
17 you a Washington native?

18 A. No, I'm not.

19 Q. I'm not a Washington native, so we're a
20 little bit at a disadvantage. As I understand it, it's
21 Pasco, Kennewick, Waitsburg, and Walla Walla, those
22 communities, so we're all on the same page there.

23 A. I think I understand the area you're
24 referring to, yes.

25 Q. All right.

0293

1 The facilities reflected in Exhibit PL-9,
2 that's your Spokane network diagram, do you know whether
3 or not the facilities between the two tandems or between
4 the tandem and any one of these end offices are fiber
5 optic facilities?

6 A. I know fiber optic facilities do exist
7 between Qwest tandems and some of the end offices, but I
8 couldn't tell you specifically without having a map.

9 Q. And fiber optic facilities are generally
10 understood to be high capacity facilities; is that
11 right?

12 A. Higher capacity than like a copper facility.

13 Q. Right.

14 A. Yes.

15 Q. Right. The incremental costs of adding a
16 trunk group to a fiber optic facility are generally very
17 limited, aren't they?

18 A. I guess I'm not sure if I understand the
19 question.

20 Q. If a fiber facility is in place between two
21 Qwest tandems and it's already carrying traffic between
22 those two tandems over certain trunk groups that have
23 been established, adding another trunk group to carry
24 another carrier's traffic does not represent a
25 significant cost for Qwest, does it?

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1 A. I would suggest that for the switch
2 translations, it's a pretty constant cost. It's not a
3 -- it doesn't decline with additional trunking. The
4 transport, however, between the two locations, depending
5 on, like you said, the facility, like with a fiber
6 optics facility, and depending on the capacity of that
7 fiber optics facility and the fill of that fiber optics
8 facility, so in other words whether or not that fiber
9 optics facility is being used to capacity, and if
10 there's then additional trunking required, there may be
11 some significant costs associated with additional
12 trunking. However, if there is sufficient capacity
13 between -- transport capacity between those locations,
14 then it isn't as significant.

15 Q. Thank you, Mr. Linse.

16 Could we turn to the exhibits attached to
17 your direct testimony. The first exhibit is identified
18 as Exhibit PL-2. Do you have a copy there in front of
19 you?

20 A. Yes, I do.

21 Q. In that diagram on the right-hand side,
22 there's a circle with the two terms CLEC POI in the
23 middle.

24 A. Yes.

25 Q. Does that represent the point of

0295

1 interconnection between a Qwest network and a CLEC
2 network?

3 A. Yes.

4 Q. On this diagram, is that point of
5 interconnection within the Qwest network?

6 A. Could you repeat that again, I'm sorry.

7 Q. On this diagram, Exhibit PL-2, you show a
8 point of interconnection with a CLEC network on the
9 right-hand side as the line connected to the circle.
10 Does that constitute a point of interconnection within
11 Qwest's network?

12 A. That's an assumption that this drawing makes,
13 yes.

14 Q. So that if an entrance facility originates at
15 a CLEC location, terminates at a Qwest switch, you're
16 saying that the POI is designated at the CLEC location?

17 A. That's correct.

18 Q. And that is within Qwest's network?

19 A. That is a Qwest provided facility, yeah.

20 Q. But I'm asking about where the point of
21 interconnection would be deemed under this arrangement?

22 A. That is where it's -- where I've got it
23 depicted is where it is.

24 Q. And that would constitute within Qwest's
25 network, the POI would be within Qwest's network as

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1 shown on this diagram?

2 A. That's the assumption of this drawing is that
3 that location would be within Qwest's serving territory
4 and connected to a Qwest facility.

5 Q. And does the assumption in your drawing
6 include the fact that the circle on the right which
7 represents as I understand it the CLEC location would
8 also include a CLEC switch?

9 A. It may also be a location where the CLEC may
10 have a switch.

11 Q. Yes. And did you say it may be outside of
12 the Qwest service territory?

13 A. No.

14 Q. So you're assuming that this is within the
15 Qwest territory?

16 A. That is the assumption of this drawing is
17 that that POI is within the Qwest serving territory.

18 Q. But it doesn't actually show that on the
19 drawing itself?

20 A. No, but that was the assumption when I
21 developed this drawing.

22 Q. What was the purpose of this drawing?

23 A. The purpose of this drawing was to
24 demonstrate the association of the methods of
25 interconnection with the direct trunk transport that

0297

1 Qwest also provides.

2 Q. And the line connecting the CLEC POI and the
3 Qwest switch you've identified as Qwest provisions
4 entrance facilities between network; is that right?

5 A. That's correct.

6 Q. And so this reflects Qwest's proposal under
7 Section 7.1.2 I believe concerning the methods of
8 interconnection, this reflects a Qwest provided entrance
9 facility?

10 A. This does reflect a Qwest provisioned
11 entrance facility.

12 Q. Thank you.

13 The next diagram is identified as Exhibit
14 PL-3. The circle on the right, now it says CLEC POP,
15 the first diagram identified CLEC POI, why did you use
16 different terminology there?

17 A. Because the POP is typically a location of
18 the CLEC, and the POI is then a negotiated point in
19 between their point of presence and Qwest's serving wire
20 center.

21 Q. And the POP would generally reflect the
22 location of the CLEC switch; is that right?

23 A. It may or may not.

24 Q. Okay.

25 A. I believe it typically does.

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1 Q. And would it be reasonable to assume that
2 under this diagram the CLEC would also have transport
3 costs on its side of the primary connection?

4 A. In this particular arrangement, that's how
5 the method operates in that each party builds a portion
6 of that interconnection facility.

7 Q. But I'm referring to costs behind the CLEC
8 POP so that the transport that the CLEC would have to
9 provide in order to get its calls from its end user
10 subscribers to the mid span meet point or
11 interconnection, it's going to incur some transport
12 costs, wouldn't you expect?

13 A. I would expect that might be a possibility.

14 Q. Okay. Does Qwest's proposed interconnection
15 agreement allow for the CLEC to recover its transport
16 costs?

17 A. I don't know. You might be better off
18 talking with Mr. Easton about that.

19 Q. Okay.

20 A. I'm not a -- that arrangement is not what I'm
21 specializing in here.

22 Q. You don't know?

23 A. I don't know.

24 Q. Okay.

25 A. If there is a particular provision in the

0299

1 interconnection agreement.

2 Q. If you could look quickly at Exhibits PL-5
3 and PL-6, these lines in between the blue boxes, those
4 reflect the trunks that Qwest would provision for the
5 carriage of the CLEC's local traffic; is that right?

6 A. Yeah, they would be provisioned for the
7 exchange of traffic.

8 JUDGE FRIEDLANDER: Can I interrupt you for
9 just a second. My copy of PL-5 and PL-6 does not have
10 colored boxes, so which blue boxes are you referring to?

11 MR. HALM: On the color copy they're all
12 blue.

13 JUDGE FRIEDLANDER: Oh, okay.

14 MR. HALM: So between the boxes there.

15 JUDGE FRIEDLANDER: Okay. Thank you for the
16 clarification.

17 BY MR. HALM:

18 Q. So these are the trunks that are at issue
19 when we talk about direct trunk transport, is that
20 right, from a high level?

21 A. Not all of them.

22 Q. But it reflects in concept the arrangement
23 that Qwest is proposing here?

24 A. The only trunking that is considered direct
25 trunk transport on this particular -- on PL-5 would be

0300

1 the connections between the CLEC switch/POI and the
2 Qwest tandem switch, that would be considered direct
3 trunk transport. On the Exhibit PL-6, the connection
4 between the CLEC switch or POI and Qwest tandem and that
5 connection between the CLEC switch/POI and Qwest's end
6 office switch would be considered a direct trunk
7 transport connection.

8 Q. Okay. Let's stay with Exhibit PL-6 for a
9 moment then. CLEC switch/POI that's on the left-hand
10 side of this diagram, and the POI would be the
11 demarcation point between each party's network; is that
12 right?

13 A. That's my understanding, yes.

14 Q. And when I was discussing these questions
15 with Mr. Easton this morning, I believe that he agreed
16 with my characterization that the POI establishes the
17 demarcation point and that each party is responsible for
18 provisioning facilities to the point of interconnection;
19 do you remember that discussion?

20 A. I'm familiar with the discussion in general.
21 I don't know if that's a correct characterization of the
22 discussion though.

23 Q. Okay.

24 Does your diagram assume the traffic will
25 originate on the Qwest network and terminate on the CLEC

0301

1 network and vice versa?

2 A. Yes, the language basically says that each
3 party's origination or termination I believe.

4 Q. The language you're referring to is the
5 contract language?

6 A. Yeah. Maybe you can point me to which part
7 of this, what part of the contract we're referring to as
8 far as the dispute.

9 Q. Well, what were you referring to?

10 A. Well, as far as your cross on me with regard
11 to this drawing, is it with a particular issue, or is
12 it --

13 Q. No, I'm trying to understand the drawing.

14 A. Okay.

15 Q. So then if the CLEC delivered all of its
16 traffic to the POI, which is identified as the box on
17 the far left side of Exhibit PL-6, they would then be
18 required to purchase from Qwest facilities on Qwest's
19 side of the POI; is that right?

20 A. They would need to compensate Qwest for the
21 facilities that Qwest would provide.

22 Q. And those facilities are represented by the
23 line between the CLEC switch/POI and Qwest's end office
24 switch A?

25 A. Well, and I believe theoretically the

0302

1 compensation would also be provided for the remainder of
2 the drawing as well.

3 Q. Okay. Each of these lines represents
4 facilities that Qwest expects the CLEC to pay for?

5 A. In some form or another, yes.

6 Q. Okay. And those are facilities on Qwest's
7 side of the POI, correct?

8 A. That's correct.

9 Q. Okay. You don't show any facilities on the
10 CLEC side of the POI. Generally speaking, do you know
11 whether you compensate CLECs for facilities that they
12 provide on their side of the POI?

13 A. I don't know the details around compensation
14 on the CLEC side of the POI, so.

15 Q. Is that generally an issue in the
16 negotiations or arbitration proceedings you've been
17 involved with?

18 A. You know, it's been a while since I've been
19 involved in negotiations, and I don't recall that being
20 a significant issue.

21 Q. Thank you.

22 Could we turn to page 14 of your direct
23 testimony.

24 A. Of direct?

25 Q. Direct, yes.

0303

1 A. Thank you.

2 Q. At the top of page 14 at line 1, you make a
3 reference to phantom traffic.

4 A. Yes.

5 Q. There's no evidence that Charter exchanges
6 any so-called phantom traffic with Qwest, is there?

7 A. Not that I'm aware of.

8 Q. This was speculation on your part, wasn't it?

9 A. It was deductive reasoning I think is what I
10 would call it.

11 Q. Okay.

12 MR. HALM: I would like to move for admission
13 Qwest's Response to Data Request Number 21, which is
14 marked as Exhibit PL-14, renumbered PL-14.

15 JUDGE FRIEDLANDER: And is there any
16 objection?

17 MR. DETHLEFS: I'm just trying to make sure
18 I've got the right one here.

19 JUDGE FRIEDLANDER: Okay.

20 MR. DETHLEFS: Data Request 21?

21 MR. HALM: Correct.

22 MR. DETHLEFS: No objection.

23 JUDGE FRIEDLANDER: So admitted.

24 MR. HALM: Thank you.

25 BY MR. HALM:

0304

1 Q. And on the next page of your direct testimony
2 at page 15, lines 6 through 8, you refer to revenue
3 sharing agreements that might be set up between Charter
4 and the transit provider.

5 A. Yes, I see that.

6 Q. You don't have any evidence that there are
7 any revenue sharing agreements between Charter and any
8 transit provider, do you?

9 A. Again, this language goes to kind of the
10 impact to Qwest with regard to the ability of other
11 carriers to opt in. I do not have any specific evidence
12 of Charter, nor do I think that Charter might do
13 something like that.

14 Q. Good, thank you.

15 A. It's not really --

16 Q. It's not really a concern?

17 A. -- a concern with Charter. However, there
18 are opportunities once this agreement is --

19 Q. Understood. But you said it's not a concern
20 with Charter; is that right?

21 A. Not that I'm aware of. We have no evidence
22 of that.

23 Q. Okay.

24 MR. HALM: And I would also like to move for
25 admission Qwest's Response to Data Request Number 22,

0305

1 which is marked as PL-15.

2 MR. DETHLEFS: No objection.

3 JUDGE FRIEDLANDER: So admitted.

4 MR. HALM: Finally, I would like to move for
5 admission Qwest's Response to Data Request Number 52,
6 which is marked as PL-10.

7 MR. DETHLEFS: No objection.

8 JUDGE FRIEDLANDER: So admitted.

9 MR. HALM: I have nothing further for
10 Mr. Linse, Your Honor.

11 Thank you, Mr. Linse.

12 THE WITNESS: Thank you.

13 JUDGE FRIEDLANDER: Just for clarification
14 purposes, you're not requesting PL-13 to be admitted?

15 MR. HALM: That's correct.

16 JUDGE FRIEDLANDER: Or PL-11?

17 MR. HALM: That is correct.

18 JUDGE FRIEDLANDER: Okay.

19 MR. HALM: I am not offering them.

20 JUDGE FRIEDLANDER: Okay, thank you.

21 And is there any redirect?

22 MR. DETHLEFS: Yes, Your Honor, I do have a
23 few questions.

24 JUDGE FRIEDLANDER: Okay.

25 MR. DETHLEFS: It won't take very long.

0306

1 JUDGE FRIEDLANDER: Okay.

2

3

4 R E D I R E C T E X A M I N A T I O N

5 BY MR. DETHLEFS:

6 Q. Mr. Linse, do you recall the discussion about
7 the California Charter switch?

8 A. Yes, I do.

9 Q. And is your concern about that switch that
10 Charter might use that switch to serve Washington?

11 A. Washington, yes, that could change at any
12 time. It's not something that would be necessarily
13 expected to be a permanent arrangement.

14 Q. Is Charter's switch in Kennewick located in
15 Qwest's service territory?

16 A. No, it's located in Kennewick I believe.

17 Q. Is there anything that you're aware of that
18 would prevent Charter from providing local service in
19 Spokane?

20 A. There is nothing that I am aware of.

21 Q. Is there anything that you're aware of that
22 would prevent another CLEC that opted in to Charter's
23 interconnection agreement to provide service in Spokane?

24 A. Not that I am aware of.

25 Q. There was some questions asked of you

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1 concerning testimony that Mr. Easton had given earlier
2 today, and one of the things that was referred to in
3 Mr. Easton's testimony was tandem transmission.

4 A. Yes.

5 Q. Can you tell us what tandem transmission
6 involves?

7 A. It's my understanding that tandem
8 transmission involves the shared transport that exists
9 between a Qwest tandem switch and a Qwest end office.
10 And that shared transport basically allows for multiple
11 carriers to send traffic into the tandem switch. The
12 tandem switch then combines that traffic destined for a
13 particular end office and terminates to that end office.

14 Q. So is it fair to say that to have tandem
15 transmission, you have to have a tandem switch and
16 another switch?

17 A. That's correct, yes.

18 Q. For the traffic that's at issue?

19 A. That's correct.

20 Q. You were asked some questions about Exhibit
21 PL-6 which was attached to your direct testimony, and in
22 particular the compensation that would be paid to Qwest
23 for the trunks connecting the various switches that are
24 indicated on the diagram PL-6; is that correct?

25 A. That's correct.

0308

1 Q. And your testimony was that Qwest would
2 expect to be compensated in one way or another for that
3 transport, correct?

4 A. That's correct.

5 Q. If the facilities are dedicated facilities
6 between Qwest, or excuse me, between Charter and Qwest,
7 would that compensation be based on relative use?

8 A. I believe that would be the case.

9 MR. DETHLEFS: No further questions, Your
10 Honor.

11 JUDGE FRIEDLANDER: Thank you.

12 And do you have any recross?

13 MR. HALM: No, recross, Your Honor.

14 JUDGE FRIEDLANDER: Okay, and I don't have
15 any questions, so the witness is dismissed.

16 MS. ANDERL: Your Honor, may we go off the
17 record while counsel and I change places and we call our
18 next witness?

19 JUDGE FRIEDLANDER: Sure.

20 MS. ANDERL: And we would call Robert
21 Weinstein.

22 JUDGE FRIEDLANDER: Okay, thank you.

23 And we're off the record.

24 (Discussion off the record.)

25 JUDGE FRIEDLANDER: I believe we left off

0309

1 with Qwest's witness, Mr. Weinstein.

2 MS. ANDERL: And has he been sworn?

3 JUDGE FRIEDLANDER: No, not yet.

4 (Witness ROBERT H. WEINSTEIN was sworn.)

5 JUDGE FRIEDLANDER: Thank you, you can be
6 seated.

7 Counsel may proceed.

8 MS. ANDERL: Thank you, Your Honor.

9

10 Whereupon,

11 ROBERT H. WEINSTEIN,

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

13 herein and was examined and testified as follows:

14

15 DIRECT EXAMINATION

16 BY MS. ANDERL:

17 Q. Mr. Weinstein, do you have any changes or
18 corrections or clarifications that you would like to
19 make to your testimony at this time?

20 A. Yes, just a few.

21 Q. Go ahead, testimony, page, and line.

22 A. In my direct testimony on page 12, line 20,
23 the very last word is service, and right before there it
24 should say listings service.

25 Q. Listings plural?

0310

1 A. Yes.

2 Q. Okay.

3 A. In my rebuttal testimony on page 9, on line
4 9, on the sentence on that line that begins with the
5 word the charges and commence work once the customer
6 accepts, there should be a comma and then say if
7 possible, period.

8 And then in terms of clarification on Issue
9 17, Qwest proposed additional language in my rebuttal
10 testimony that was different than what was submitted
11 originally in my direct testimony, and the changes are
12 on page 4 beginning on line 19 where it says prices for
13 this miscellaneous service are the rates specified in
14 Exhibit A. And there's three more changes of that same
15 language, one on page 4, line 32, another one on page 5,
16 line 1, and another one on page 5, line 20. And that's
17 just to clarify that we had proposed different language.

18 Q. And Qwest's current position on this Issue 17
19 is set forth then in your rebuttal testimony, not your
20 direct?

21 A. Correct.

22 Q. Any other changes or corrections to make?

23 A. No.

24 MS. ANDERL: Okay, thank you, Your Honor, we
25 would tender the witness for cross-examination. And I

0311

1 might mention we have stipulated with Charter to the
2 extent they want to offer them the admissibility of the
3 cross-exhibits identified for this witness.

4 JUDGE FRIEDLANDER: Okay, great, thank you.
5 And for clarification purposes, I would also remind
6 everybody that Exhibits RHW-1T and RHW-2RT have already
7 been admitted.

8 So, counsel, you may proceed.

9 MR. KOPTA: Thank you, Your Honor. And just
10 for ease of reference, we would go ahead and move for
11 admission of Exhibits RHW-3 through RHW-13.

12 JUDGE FRIEDLANDER: And there's been no
13 opposition, so those will be admitted, thank you.

14 MR. KOPTA: Thank you, Your Honor.

15

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

17 BY MR. KOPTA:

18 Q. Good afternoon, Mr. Weinstein.

19 A. Good afternoon.

20 Q. Just to follow up on the clarification that
21 you made with your counsel on prices, which is as you
22 indicated on pages 4 through 5 of your rebuttal
23 testimony, are there any prices for miscellaneous
24 charges that Qwest is proposing that are not contained
25 in Exhibit A to the ICA?

0312

1 A. The position that I've proposed or the prices
2 for these or the language for these elements reflect
3 that the prices are the ones contained in Exhibit A.
4 I'm not aware of the other or prices outside of Exhibit
5 A that we're proposing for this specific issue or these
6 specific sections. That's where I'm proposing the
7 prices be listed.

8 Q. Okay. Well, I know that one aspect of this
9 issue was where prices are located, if they're in the
10 tariff, and I just wondered whether that's still a bone
11 of contention between the parties from Qwest's
12 perspective, which it would be from Charter's
13 perspective if there are any miscellaneous charges that
14 would be found in the tariff as opposed to Exhibit A,
15 which is the source of my question.

16 A. For the language we've proposed, these would
17 be the -- the rates that we are proposing here are the
18 ones contained or -- the language we're proposing here
19 is for the rates in Exhibit A.

20 Q. Okay, so at this point --

21 A. I'm not aware of any issue involving or any
22 section involving Issue 17 where the rates are tariffed
23 rates.

24 Q. Okay.

25 A. I'm not aware of them.

0313

1 Q. All right, well, obviously we can hash that
2 out if we need to later.

3 Mr. Weinstein, were you involved in the
4 negotiations between Qwest and Charter over this
5 interconnection agreement?

6 A. No.

7 Q. Have you been involved in interconnection
8 agreement negotiations between Qwest and other CLECs?

9 A. Not directly.

10 Q. While we're talking about miscellaneous
11 charges, let's look in your rebuttal testimony, if you
12 would, beginning on page 8.

13 A. Okay.

14 Q. At this point through page 10, you were
15 describing Qwest's process or policies for notification
16 of miscellaneous charges. Is that a fair
17 characterization of this portion of your testimony?

18 A. I'm discussing how Qwest contemplates using
19 this section in terms of assessing miscellaneous
20 charges.

21 Q. Okay. And similarly if you look on Exhibit
22 RHW-3, which is Qwest's Response to Charter's Data
23 Request Number 26, this is again a description of what
24 notice Qwest provides of miscellaneous charges; is that
25 correct?

0314

1 A. It's what Qwest -- the notice Qwest tries to
2 provide, yes.

3 Q. Am I correct that this description either in
4 RHW-3 or in pages 8 through 10 of your rebuttal
5 testimony is not contained in any contract language in
6 the interconnection agreement?

7 A. The specific language that I use on pages 8
8 through 10 or in my answer there is not included. It's
9 describing, yeah, the processes that are part of the
10 miscellaneous services that are described.

11 Q. And that concept is also not included in the
12 interconnection agreement, is it?

13 A. I'm not sure what concept you mean.

14 Q. There aren't any provisions in the
15 interconnection agreement that describe the notice that
16 Qwest will provide to Charter if it's going to impose
17 miscellaneous charges?

18 A. There's certain language that talks about
19 charges that will apply and when. But specifically the
20 language that I use in terms of describing when Qwest
21 will notify or attempt to notify is not in there.

22 Q. Okay. And the language that is at issue for
23 Issue Number 17 has been set out in your direct
24 testimony beginning on page 2 through page 8; is that
25 correct?

0315

1 A. With the changes I clarified earlier.

2 Q. Right, of course.

3 And you took issue with, or Qwest, excuse me,
4 takes issue with the language that Charter has proposed,
5 and it's reflected on page 6 of your direct testimony in
6 bold on lines 2 through 4; is that correct?

7 A. And also on line or page 5 on line 28 through
8 30 with their proposed deletion.

9 Q. And what I'm trying to get at here, I don't
10 want to hide the ball, is if Charter's concern is to
11 make sure that it receives notification from Qwest
12 before these charges are imposed and that's the import
13 of the language that Charter has proposed, do we have a
14 disagreement in concept, or is it just a disagreement on
15 contract language?

16 A. Part of it, of what you just said to me,
17 relates to what our disagreement is, and that is you
18 speak of when these charges are imposed. It's really
19 when is the service performed, and at the time the
20 service is performed, is the party that is responsible
21 for the cost able to be determined, and that's where the
22 issue lies. Should Qwest have to always affirmatively
23 have to or receive affirmative agreement from Charter
24 that they're going to approve the charges, that they're
25 -- that these services can be performed and charged, and

0316

1 that is not always possible.

2 Q. In most cases as I read your testimony,
3 however, it's possible, and in fact that's Qwest's
4 policy to inform Charter if it submits an order that
5 these charges are going to apply and you're going to
6 have to pay for them, and Charter has to say yes before
7 you go forward with the service; is that correct?

8 A. That's correct, yes.

9 (Discussion off the record.)

10 BY MR. KOPTA:

11 Q. And in those instances in which Qwest is able
12 to provide that kind of notice, does Qwest have any
13 opposition to including language in the contract that
14 would indicate that that process will be followed?

15 MS. ANDERL: And I will just interpose a
16 possible objection here as Charter did yesterday to
17 negotiating language on the stand, but I don't -- I
18 think it's a little premature because I don't
19 specifically object to this question, it's just if it
20 goes further there may be an objection with regard to
21 trying to craft contract language on the fly on the
22 stand.

23 MR. KOPTA: And that's not my intention. I
24 certainly always try to be consistent, although a
25 foolish consistency as the Hob Goblin had in mind, which

0317

1 is absolutely apropos of nothing, I just had to throw it
2 in there. I've got 700 pages to fill in.

3 JUDGE FRIEDLANDER: Okay, you can proceed
4 with that warning.

5 MR. KOPTA: All right, I am forewarned.

6 BY MR. KOPTA:

7 Q. And, Mr. Weinstein, don't mention any
8 particular language, but in concept would Qwest be
9 willing to include contract language that reflects
10 Qwest's policy of providing notification when it's
11 possible?

12 A. I would have to speculate on what the
13 language was and what it could say, so I really can't
14 give you an answer on that.

15 Q. Well, again, I guess this goes back to my
16 overarching question for this issue, which is do we have
17 a disagreement over principle, or do we have a
18 disagreement over contract language, and I'm trying -- I
19 guess this is my way of saying if Charter's concern is
20 to make sure that it gets notice and has a chance to say
21 yes, go ahead and do that whenever possible, and that's
22 something that Qwest already does, would this be
23 something that Qwest would be willing to reflect in the
24 contract?

25 A. Again, if there was language that was crafted

0318

1 that said Qwest will attempt to do it and it was agreed
2 to by lawyers and stuff, then I don't think there's a
3 problem. But I don't know what the language is, and I
4 don't want to -- wouldn't be able to say what the legal
5 ramifications would be.

6 Q. Oh, sure.

7 A. I don't think there is a -- I think there is
8 some substance to the disagreement here, it's not just
9 language, unless Charter says or agrees that there are
10 times that Qwest can not provide notice before
11 performing services.

12 Q. Okay, and that's the next thing that I wanted
13 to get to.

14 A. Okay.

15 Q. Because you do mention instances in which
16 prior approval may be difficult, if not impossible. I
17 think if you look at your rebuttal testimony at page 10
18 beginning on line 18, I think you provide an example of
19 that kind of a situation; is that correct?

20 A. Rebuttal testimony, yes.

21 Q. Okay. And this is a situation in which
22 Charter if it calls up Qwest and says, there's a
23 problem, we think it's on your network, would you go
24 check it out, and Qwest goes and checks it out and finds
25 out that the issue isn't on Qwest's network, and you

0319

1 would propose that there would be a charge in that
2 circumstance but wouldn't necessarily have a charge up
3 front that you would know that you were going to impose
4 before you even get there to find out where the trouble
5 is; is that correct?

6 A. Yeah. At the time that Qwest was notified by
7 Charter that there was a problem, Qwest doesn't know who
8 the cost responsibility is going to fall on, because it
9 could be on the Qwest side of the network and Qwest
10 would absorb the cost of the dispatch or the trouble
11 isolation or whatever it took. But if we go out and we
12 find that it's on the Charter side of the network, we
13 have incurred that cost of the dispatch and the trouble
14 isolation. But when we first went out, we don't know,
15 it could be -- on whose side and who's going to be
16 responsible for the cost, so we would have -- we would
17 be in the situation of having to ask permission for
18 something we don't know whose side it's going to fall
19 on. So that would be the situation, yes.

20 Q. Okay. Does Qwest inform the CLEC at the time
21 that they receive this call that, you know, gee, if we
22 go out there and we find that the trouble is not on our
23 network, it's going to cost you a dispatch charge?

24 A. That's already included in the agreed upon
25 contract language.

0320

1 Q. Okay. So I guess if you already notify
2 Charter in those circumstances, are there any other
3 circumstances you can think of in which you would not be
4 able to provide notice in advance that there was at
5 least the possibility of a charge if Charter wants you
6 to undertake some activity?

7 A. I'm sure there's something out there that I
8 can't think of at this time. There could be a situation
9 where there was a dispatch at a certain time, and the
10 end user wasn't able to allow us or allow us in, we
11 would have to do a second dispatch or a continued
12 dispatch or something like that, but I can't think of
13 any other specific instance at this time, but I'm sure
14 there are some.

15 Q. And for Qwest's retail customers, if there is
16 a possibility of a charge, don't you inform them in
17 advance before you do any particular work in response to
18 an order that they place?

19 A. To our retail end user customers?

20 Q. Yes.

21 A. I don't know.

22 Q. Are you willing to do -- is Qwest willing to
23 do for Charter what it does for its own retail end users
24 in terms of providing notice of charges?

25 A. Are you suggesting --

0321

1 MS. ANDERL: Object, Your Honor, there's
2 insufficient foundation for that question since this
3 witness has testified that he does not know what Qwest
4 does for its retail end users.

5 MR. KOPTA: I'm simply asking whatever it is,
6 would Qwest be willing to provide the same kind of
7 notice to Charter. I'm not asking them what they are,
8 because he -- well, I did ask him what they are and he
9 didn't know.

10 JUDGE FRIEDLANDER: I think because he
11 doesn't know, we'll just leave it at that.

12 MR. KOPTA: Okay.

13 JUDGE FRIEDLANDER: Thank you.

14 BY MR. KOPTA:

15 Q. Well, I think we've had enough fun with that
16 issue.

17 How about Issue 19, which is white pages
18 directory listings. If you would, please turn to your
19 direct testimony at page 15.

20 A. I'm there.

21 Q. Specifically line 6, and at that point you
22 testify, Qwest does not use the directory listings in
23 its marketing programs; is that correct?

24 A. That's correct.

25 Q. And then also if you look at your rebuttal

0322

1 testimony at page 16, specifically line 23, you testify,
2 Qwest does not use listing information for marketing
3 purposes; is that also correct?

4 A. And it continues and says and does not
5 segregate Charter's or any CLEC customers for marketing
6 purposes.

7 Q. Correct, yes.

8 A. Yes.

9 Q. And just for ease of reference for Charter's
10 proposed language, if you would look at your direct
11 testimony at page 16.

12 A. Okay.

13 Q. Beginning on line 6, Charter has proposed
14 that the contract state:

15 CLEC's listings supplied to Qwest by
16 CLEC shall not be used by Qwest for
17 marketing purposes.

18 Is that correct?

19 A. That's correct.

20 Q. Isn't that statement the same as the
21 statements that you're making in your testimony?

22 A. No. That statement is a broad prohibition on
23 Qwest using these listings for marketing purposes. At
24 this time, Qwest does not use the directory listings for
25 marketing purposes, but that doesn't mean they can't in

0323

1 the future or wouldn't in the future. This statement
2 says they can not.

3 Q. So Qwest's position is that although they
4 don't use the listings for marketing purposes today,
5 they want to be able to possibly use them for marketing
6 purposes in the future to the extent that they're
7 permitted to do so under applicable law; is that fair?

8 A. That's fair.

9 Q. Okay.

10 Let's look at the language that Qwest has
11 proposed on your direct testimony, page 15.

12 A. Yes.

13 Q. Beginning on line 20, and the sentence that
14 starts on that line states:

15 Qwest will not market to CLEC's end user
16 customers' listings based on segregation
17 of CLEC's listings.

18 A. Yes.

19 Q. Is that correct?

20 A. Yes.

21 Q. Okay. And I'm, being the contract, part-time
22 contract lawyer that I am, I'm going to focus on this
23 language for a bit. How would Qwest market to listings?

24 A. If Qwest chose to use -- well, I'm not sure I
25 understand your question, maybe I'm confused.

0324

1 Q. It's a bit of a cute question, and let me be
2 more open about it. Wouldn't you be actually marketing
3 to customers, not to listings?

4 A. Yes.

5 Q. And what does the term based on segregation
6 of CLEC's listings mean?

7 A. That would mean separating out Charter's
8 customers from all the other CLECs and Qwest end user
9 customers.

10 Q. Would it include segregating out Qwest's
11 listings and marketing just to CLEC listings?

12 A. That would be segregating.

13 Q. That's Qwest's intent?

14 A. Qwest's intent is to not segregate any of the
15 listings, but to have them as a pool without being able
16 to separate them out by carrier for marketing purposes.

17 Q. Or by carrier type?

18 A. You know, I hadn't thought about that, but I
19 would guess so.

20 Q. Okay. I mean that's the other concern
21 obviously is you may not want to just market to Charter
22 customers, you may want to market to Charter and XO and
23 AT&T and anybody else that's a competitor.

24 A. Maybe I misunderstood when you meant type of
25 carrier. The language is meant to convey that the

0325

1 listings, whose ever had been compiled into the
2 directory listings database, are non-segregated by
3 carrier, so I couldn't go in and pull a list of all
4 Charter's customers or all competitors' customers or
5 even just all Qwest's customers from the directory
6 listings database.

7 Q. But Qwest is capable of doing that?

8 A. Yes. Let me just clarify. The Qwest
9 listings, lack of a better word, division or the IT
10 people could do it. The marketing people in the retail
11 side can't go in to this database and pull a list of
12 Qwest business.

13 Q. All right, that's a fair clarification, thank
14 you.

15 While we're talking about listings, would you
16 turn in your rebuttal testimony to page 19.

17 A. Yes.

18 Q. And specifically it's the question and answer
19 that begin on line 12.

20 A. Okay.

21 Q. And even more specifically beginning on line
22 16, the sentence that says:

23 Under Qwest's proposal, if the listings
24 are to be released to a directory
25 publisher or third party, written

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1 authorization is required.

2 Would you explain to me the process that

3 Qwest goes to to obtain such written authorization?

4 A. When Charter begins doing business with
5 Qwest, they fill out a New Customer Questionnaire, and
6 they have a choice of two options. One is to release
7 their directory listings information to directory
8 publishers and third parties, and the other is to not
9 release them without a letter of authorization from the
10 publisher or third party to whom Charter chooses to have
11 the listings, their listings included, when Qwest
12 provides listings.

13 Q. And if a company selects option 2, how does
14 Qwest obtain or request written authorization?

15 A. How does Qwest obtain written authorization?

16 Q. Yes.

17 A. Either Charter or the CLEC would have to
18 notify Qwest. I believe there's an LOA form, a letter
19 of authorization form they use, or the third party or
20 publisher would provide that letter of authorization to
21 Qwest.

22 Q. And is this done on a request by request
23 basis in terms of a third party requesting the listings,
24 does Qwest each time say I need a letter of
25 authorization from you, third party, before I can give

0327

1 you listings that include Charter's listings?

2 A. Well, you know, if Crocodile Company came to
3 us and said, you know, here's a letter of authorization,
4 and then Penultimate Company came to us and said, we
5 want these listings too, we would tell Penultimate that
6 we won't release those without a letter of authorization
7 from Charter.

8 Q. And it would be a letter that's specific to
9 Penultimate Company?

10 A. Yes. And I'm not certain whether you could
11 say any publisher is allowed to do it or something like
12 that, I'm not certain about that.

13 Q. So is there any communication between Qwest
14 and Charter in this process? For example, does Qwest
15 notify Charter, we've gotten a request from Penultimate
16 Company for directory listings, is that okay?

17 A. I don't know. I believe there is. I believe
18 that Qwest would. I believe Qwest is going to verify
19 the letter of authorization, and if there is no letter
20 of authorization, we're going to direct Crocodile,
21 Penultimate, whoever the company is to go check with
22 Charter and get a letter of authorization.

23 Q. Okay.

24 So, and tell me if you don't know this.

25 A. Sure.

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1 Q. But it sounds to me as if Qwest kind of puts
2 the burden on the third party to obtain the
3 authorization, but also provides notice to Charter when
4 that request is made?

5 A. I'm not certain.

6 Q. And if Charter doesn't authorize, either you
7 don't have a letter of authorization or when you contact
8 them Charter says we didn't authorize that, then what
9 does Qwest do in terms of providing listings to that
10 requesting carrier?

11 A. If it's a publisher that came to us and said,
12 we want Bellingham, Washington, all the listings for
13 Bellingham, Washington that's included in your database,
14 and there wasn't authorization for Charter listings, the
15 file that would be provided, whether it's electronic or,
16 I don't think they do hard copy any more, but however
17 it's provided would not include Charter's listings in
18 there.

19 Q. So as far as you know, there aren't any
20 categories, for example, of letters of authorization,
21 for example, we'll give you a blanket authorization to
22 provide it to any of a certain kind of person, certain
23 kind of third party?

24 A. There could be, but I don't know.

25 Q. Okay.

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1 Well, let's change colors, Issue 23, yellow
2 pages listings, and if you would please turn in your
3 rebuttal testimony to page 28.

4 A. Okay.

5 Q. And specifically the question and answer that
6 begins on line 9. And I just want to understand your
7 testimony at this point. Are you saying that Section
8 10.4 of the interconnection agreement requires Qwest to
9 provide Charter listings in the same manner as Qwest
10 listings for both white pages and yellow pages
11 directories?

12 A. What it says is that when Qwest provides a
13 set of listings to a directory publisher, it doesn't
14 say, oh, this is going to a yellow pages provider or
15 this is going to a white pages provider, it provides the
16 same set of listings to the publisher. And that listing
17 will include Qwest listings, CLEC listings, it could
18 include Charter's listings, and they're treated in the
19 same manner as Qwest listings.

20 Q. Okay. So on the following page of your
21 rebuttal testimony, page 29, and following through onto
22 page 30, you have quoted some provisions from Section
23 10.4 of the interconnection agreement that govern
24 directory listings. Is it your understanding that those
25 would apply both to white pages directory listings and

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1 to yellow pages directory listings?

2 A. As a general sense, yes, unless some of the
3 specific language here directly deals with white pages
4 or yellow pages.

5 Q. Okay, well, and that's the source of my
6 confusion. Because if you will look on page 34 of your
7 direct testimony, and this is the language that Qwest
8 proposes for this issue, it begins, the quote begins on
9 line 8, Qwest and CLEC agree that certain issues are
10 outside the provision of basic white page directory
11 listings, and you list several things, and it also
12 includes yellow pages listings. So by including this,
13 the way I read this section would be that all of those
14 contract provisions that you were just talking about in
15 your rebuttal testimony would not apply to yellow pages
16 listings. Is that Qwest's intent?

17 A. I'm not sure I understand what you're asking.

18 Q. Well, I can reask it.

19 A. Rephrase it for me.

20 Q. Sure.

21 Qwest's proposed language says that the
22 parties agree that certain issues are outside of the
23 white pages directory listings, and it lists what they
24 are, and one of those is yellow pages listings. So my
25 concern, Charter's concern, is that by including yellow

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1 pages listing among the issues that are not addressed in
2 the agreement, that means that all of the provisions
3 that are specific to white pages are in fact specific to
4 white pages, which is different than what you seemed to
5 testify to.

6 A. And so your question is, are yellow pages
7 included within the sections I cite in Section 10.4?

8 Q. I guess you've said in your testimony that
9 they are just now, and but then I look at the contract
10 language, and the contract language seems to say no,
11 that they aren't.

12 A. Okay.

13 Q. I'm trying to reconcile the two differences.

14 A. Okay. What Section 15 is, or Qwest's
15 proposed language for Section 15 is, is that dealing
16 with things other than the listings themselves. You
17 know, the ABC at such and such address with such and
18 such testimony, which is the listings, and those are
19 provided by Qwest in a nondiscriminatory fashion on the
20 database list that they provide. What we're saying in
21 Section 15 is that other than the basic directory
22 listings, which is the listings of the information,
23 they're going to be in the same font, format, and
24 everything when they're provided, everything else is
25 outside of the contract, such things as advertising,

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1 coverage, call guy pages, and stuff listed there.

2 Q. So I guess I'm still puzzled about the
3 inclusion of yellow pages listings in that list in
4 Section 15. Are there some aspects of yellow pages
5 listings that are included in Section 10.4 and some
6 aspects that are not?

7 A. I think when you talk about yellow pages
8 listings, I think what we're talking about is issues
9 that don't involve the provision of the listings
10 themselves. So Section 10.4 is dealing with the file of
11 listings. Section 15 deals with things other than what
12 we're talking about, which is just the listings
13 themselves. So, you know, yellow pages has their own
14 separate issues that have to be dealt with. Qwest will
15 provide the listings in the same manner it provides its
16 own listings to a yellow pages publisher. Everything
17 else is outside of the scope of that.

18 Q. Okay.

19 A. Is what we're trying to say.

20 Q. All right. And it sounds to me like again
21 this is one of those issues where perhaps we agree in
22 concept, but the contract language is what's kind of
23 holding us up.

24 A. If you agree with our contract language, I
25 don't think there will be a disagreement.

0333

1 Q. Well, I could say the same thing about our
2 contract language.

3 A. You would be wrong though.

4 Q. Okay, well, then, you know, I guess we can't
5 resolve that one right here on the stand today.

6 But there is one other thing I wanted to ask
7 you about.

8 A. Okay.

9 Q. While we're talking here about Qwest's
10 language in Section 15, and that's the last sentence
11 which begins on line 14. It says:

12 Qwest acknowledges that CLEC may request
13 Qwest to facilitate discussions between
14 CLEC and Qwest's official directory
15 publisher.

16 Of what utility is that, why is that sentence
17 in there?

18 A. I can give you an example. Recently in
19 Washington, Charter's directory assistance contractor,
20 whoever they use, released some listings to a publisher,
21 I believe it might have even been Dex, that were
22 supposed to be non-listed or non-published, and they did
23 it by mistake. And they came to Qwest and said, what's
24 going on with this. And Qwest said, you know, that's
25 not our issue, but we'll help, we'll get you in contact,

0334

1 we'll facilitate negotiations to try and get a
2 settlement. So that's the use of it is we have an
3 official directory publisher Dex that we sign a contract
4 with, and that we will try and facilitate if any type of
5 issue that comes up in discussions.

6 Q. Okay.

7 Do you have specific policies for when you
8 kind of help out and when you don't?

9 A. I don't know if we have specific policies,
10 but we try and help out when we could.

11 Q. Okay.

12 I guess one concern is that the language by
13 just saying that Qwest acknowledges that CLEC may
14 request, just says okay, you can ask, without any kind
15 of obligation to do anything whatsoever, and so I just
16 wondered, it sounds like Qwest as a matter of policy
17 will facilitate some discussions and --

18 A. I don't know if there's an official policy,
19 but I think we'll help out as best we can.

20 MR. KOPTA: Thank you, Mr. Weinstein. Is it
21 Weinstein or Weinstein?

22 THE WITNESS: Weinstein like Einstein.

23 MR. KOPTA: Or beer stein.

24 THE WITNESS: Everyone should have a wine
25 stein and a beer stein.

0335

1 MR. KOPTA: Either way.

2 Thank you.

3 THE WITNESS: Thank you.

4 JUDGE FRIEDLANDER: Do we have any redirect?

5 MS. ANDERL: I do not have any redirect for
6 this witness.

7 JUDGE FRIEDLANDER: Okay.

8 And I do not have any questions, so the
9 witness is dismissed, thank you.

10 THE WITNESS: Thank you.

11 MS. ANDERL: Your Honor, Qwest's next and
12 last witness is Renee Albersheim.

13 JUDGE FRIEDLANDER: Okay.

14 (Witness RENEE ALBERSHEIM was sworn.)

15 JUDGE FRIEDLANDER: You may be seated.

16 And you may proceed.

17 MS. ANDERL: Thank you, Your Honor.

18

19 Whereupon,

20 RENEALBERSHEIM,

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

22 herein and was examined and testified as follows:

23

24 DIRECT EXAMINATION

25 BY MS. ANDERL:

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1 Q. Ms. Albersheim's testimony and exhibits have
2 been marked RA-1T through RA-7. Ms. Albersheim, do you
3 have any changes or corrections to make to the prefiled
4 material?

5 A. No.

6 MS. ANDERL: Your Honor, since those
7 documents have been stipulated as admitted, we would
8 tender the witness for cross.

9 JUDGE FRIEDLANDER: Okay.

10 And have the parties stipulated to any of the
11 cross-exam exhibits?

12 MS. ANDERL: All of them, Your Honor.

13 JUDGE FRIEDLANDER: Okay, then those are
14 admitted as well.

15 MR. KOPTA: Thank you, Your Honor.

16 JUDGE FRIEDLANDER: And the witness is ready
17 for cross.

18

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

20 BY MR. KOPTA:

21 Q. Well, Ms. Albersheim, you broke my heart, I
22 was expecting Mr. Brotherson.

23 A. I tried.

24 Q. I don't know how I'm going to fill those 700
25 pages now.

0337

1 Well, good afternoon.

2 A. Good afternoon.

3 Q. Nice to see you anyway.

4 A. You too.

5 Q. Let's start with Issue Number 5, limitation
6 of liability. We tried to resolve all of your issues,
7 but we weren't able to quite get them all. And if you
8 would, please turn in your rebuttal testimony to page
9 14.

10 A. I'm there.

11 Q. And here we're talking about gross
12 negligence.

13 A. Yes.

14 Q. One of those funny things that we learned in
15 law school, yes?

16 A. Yes, which is seeming a long time ago.

17 Q. Speak for yourself, although you're
18 absolutely right.

19 Speaking of which, I guess I will ask you my
20 preliminary questions. Were you involved in the
21 negotiations between Charter and Qwest over this
22 interconnection agreement?

23 A. Indirectly. I received a couple of questions
24 from Qwest's lead negotiator, but I was not in the
25 negotiations themselves.

0338

1 Q. And is that something you do as part of your
2 duties with Qwest to be involved with interconnection
3 contract negotiation?

4 A. Yes. And sometimes I have actually
5 participated in negotiations directly as a what they
6 would call a subject matter expert.

7 Q. Okay. Were you sorry not to be involved in
8 these? You don't have to answer that.

9 A. I won't.

10 Q. Wise woman.

11 Okay, gross negligence, if you would on page
12 14 look at line 18.

13 A. Yes.

14 Q. And you state that it is not possible to
15 provide training on how to avoid gross negligence; is
16 that correct?

17 A. Well, that's a very end of what I said, but
18 basically we teach our employees how to behave according
19 to the standards of corporate conduct and the duties
20 that they are assigned. We don't teach them what gross
21 negligence is.

22 Q. Well, but I mean if you look at your
23 definition of gross negligence, which is a conscious
24 voluntary act or omission in reckless disregard of a
25 legal duty and of the consequences to another party, et

0339

1 cetera, isn't by training them to follow their legal
2 duties essentially training them not to be grossly
3 negligent?

4 A. That is our intent.

5 Q. And you do provide training on compliance
6 with legal duties?

7 A. By legal duties, there are certain
8 requirements we have as a corporation to train our
9 employees, but I guess legal duties is rather broad, so
10 I'm not sure I would go that broadly.

11 Q. Okay. Well, let's do it this way, Qwest has
12 certain policies and procedures; is that correct?

13 A. Yes.

14 Q. And those policies and procedures are
15 developed as far as you know in the legal department
16 consistent with Qwest's obligations under applicable
17 law; is that correct?

18 A. Well, I don't know if they're developed in
19 the legal department, but I'm sure they review them,
20 yes.

21 Q. And so but the intent is to make sure that
22 those policies and procedures are consistent with
23 applicable law?

24 A. Yes.

25 Q. So then by training Qwest employees to adhere

0340

1 to Qwest policies and procedures, to that extent you are
2 training your employees to act consistent with their
3 legal duties?

4 A. Within the confines of the training
5 materials, yes.

6 Q. Okay. And has Qwest established disciplinary
7 measures for ensuring compliance with company policies
8 and procedures?

9 A. Yes.

10 Q. And you enforce those?

11 A. Yes.

12 Q. Does Charter have any control over the hiring
13 or management of Qwest personnel?

14 A. No.

15 Q. So as between Qwest and Charter, if one of
16 Qwest's employees engages in gross negligence, is it
17 Qwest's position that Charter should be responsible for
18 whatever damages result from that gross negligence?

19 A. Would you say that again.

20 Q. Sure.

21 As between Qwest and Charter, if a Qwest
22 employee engages in activity that's determined to be
23 gross negligence, is it Qwest's position that Charter
24 rather than Qwest should be responsible for the damages
25 caused by that gross negligence?

0341

1 A. I see. No, the problem is the determination
2 of gross negligence, and that's our concern with that
3 language, that must be determined first. And as with
4 the other issues we have in this section, we believe
5 this adds to the potential for litigation between the
6 parties, determining what that gross negligence --
7 whether or not an act is grossly negligent.

8 Q. I'm trying to remember where the language is
9 that we're talking about here. It's in your direct
10 testimony I'm sure, let me just be sure.

11 If you would look on page 22 of your direct
12 testimony, I believe we're discussing Section 5.8.2.

13 A. I'm there.

14 Q. And this is Qwest's proposed language, is it
15 not, beginning on line 4?

16 A. No, I believe this is Charter's proposed
17 language.

18 Q. You're right, the bulk is Charter's. Well,
19 the agreed language, let's focus on that, that's still
20 in, that would neither be underscored nor bolded; is
21 that correct?

22 A. That's correct, yes.

23 Q. Okay. So about 4 lines down, don't you just
24 love contract language that has sentences that run on
25 for lines and lines, but it's talking about regardless

0342

1 of the form of action, whether in contract or as a
2 strict liability toward including without limitation
3 negligence of any kind, so there may be even under
4 agreed language some determination of whether or not
5 there's been negligence?

6 A. There may be. This language is discussing
7 the kinds of damages that will not be included.

8 Q. Right, but I'm focusing just on the fact
9 that --

10 A. There may be some determination of
11 negligence, yes.

12 Q. Even under the parties' agreed language?

13 A. That's true.

14 Q. And in your rebuttal testimony at page 15.

15 A. Yes.

16 Q. You acknowledge that the Commission
17 previously has required gross negligence to be included
18 among the exceptions on limitations for liability, and
19 that question and answer begins on line 5, yes?

20 A. That's correct.

21 Q. Has Qwest ever been sued for acts of gross
22 negligence by an interconnected carrier in Washington
23 since this Commission decision?

24 A. I don't know.

25 Q. Fair enough.

0343

1 Also in your rebuttal testimony, the next
2 subissue which is damages, page 17, if you would.

3 A. I'm there.

4 Q. And it's the lines 6 through 8, and you
5 testify:

6 No matter where it takes place, Charter
7 is entering Qwest facilities in order to
8 connect to Qwest's network, not the
9 other way around.

10 Did I read that correctly?

11 A. Yes, that's what I said.

12 Q. And you're aware that in this interconnection
13 agreement there are no provisions for collocation; is
14 that correct?

15 A. Yes, I understand those were just removed,
16 that was after this testimony was written.

17 Q. Okay. So you would agree with me that
18 Charter will not be entering Qwest facilities under this
19 interconnection agreement?

20 A. I still think there may be some Qwest
21 facilities involved, but we won't be talking about
22 central offices.

23 Q. Okay. And it may be that Qwest may be on a
24 Charter premises under the interconnection agreement?

25 A. I've been told by our network people

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1 including Mr. Linse that that isn't likely.

2 Q. If the parties have a meet point
3 interconnection arrangement, are you familiar with what
4 that is?

5 A. At a high level. I would defer to Mr. Linse
6 for details.

7 Q. Okay. Well, my understanding lawyer to
8 lawyer is that we're talking about both networks coming
9 together and having a sort of commonly decided area to
10 join their networks. So at some point, each party may
11 have access to the other's facilities to be able to
12 connect those two at the meet point?

13 A. Yes, and that depends on where they choose to
14 meet.

15 Q. Right, exactly. So I mean my only point is
16 that Qwest will have some access to Charter facilities,
17 and Charter will have some access to Qwest facilities in
18 order to at least be able to facilitate any meet point
19 arrangements?

20 A. I think that's true. I don't know where
21 those meet points will be.

22 Q. Okay, well, I won't ask you that.

23 A. Okay.

24 Q. And let's stick with that meet point example.
25 If, and I don't mean to beat up on Qwest, but let's just

0345

1 use Qwest for a minute as an example.

2 A. Yes, you do.

3 Q. Okay, I'll admit it, you got me. Where are
4 those tissues? Sorry, it's the end of the day.

5 A. It is.

6 Q. But it's not snowing, right.

7 Let's say through the process of putting this
8 meet point together, the Qwest technician gets a little
9 overzealous and causes some damage to Charter
10 facilities.

11 A. Okay.

12 Q. Is it your understanding that under meet
13 point arrangement, neither party pays the other for the
14 interconnection facilities, they each pay up to the
15 point of the meet point; is that your understanding of
16 how that works?

17 A. I would have to defer to Mr. Linse as to the
18 details there. I think that's right, I don't know for
19 sure.

20 Q. Okay. Well, let's assume for purposes of
21 this hypothetical that under those circumstances neither
22 party pays for the facilities that interconnect their
23 network, that instead each is responsible for the
24 facilities up to the meet point.

25 A. Okay.

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1 Q. And if there's a limitation on liability of
2 whatever the annual charges are, in this case there
3 would be no charges.

4 A. Okay.

5 Q. So under Qwest's proposal, does that mean
6 then that the limitation on liability is zero?

7 A. I need to refer to the language about that
8 limitation, because I'm not sure it's limited to that
9 specific type of service or if it's all annual charges.

10 Q. Okay.

11 A. So I think we need to look back at the
12 language.

13 Q. Okay, I'm happy to do that, we just need to
14 find it.

15 A. Sure, let's see here, that would be Section
16 5.8.4, is that it, no, 5.8.1.

17 Q. I think that's correct, it's reflected in
18 your direct testimony beginning on page 21.

19 A. Actually 20 is where Qwest's language is.

20 Q. Oh, I'm just stuck on Charter's language, go
21 figure.

22 A. Okay, then in your example, in reading this
23 language, that's correct.

24 Q. Okay. So whatever damage was charged or was
25 caused by the Qwest employee while they were engaging in

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1 this meet point activity, Charter would not be able to
2 recover anything from Qwest in compensation?

3 A. That's correct, and the same would be true if
4 the situation were reversed and damage were caused to
5 Qwest's facility, and I would submit that is why both
6 companies should be carrying insurance.

7 Q. Well, that's an interesting concept. Are you
8 saying that an insurance company would cover a loss for
9 which Qwest is not liable?

10 A. A loss that Charter suffers that Qwest is not
11 liable for, Charter's insurance company should cover,
12 yes.

13 Q. I see. So you're saying not Qwest's
14 insurance should cover that, but Charter's insurance?

15 A. Charter's insurance, yes.

16 Q. Okay.

17 A. And the reverse if the damage is suffered by
18 Qwest, then Qwest's insurance should cover it.

19 Q. But doesn't that at least pose the
20 possibility that Charter is going to have to pay more
21 for insurance if they have to have the insurance company
22 cover damage caused by Qwest as opposed to caused by
23 Charter?

24 A. I think that would depend on Charter's
25 insurance company and their arrangements, I don't know.

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1 Q. Now on to the third aspect of this issue,
2 which is directory listings, and that's in your rebuttal
3 testimony beginning on page -- it begins on page 18, but
4 I think you reference the tariff itself on page 19.

5 A. Yes, I see that.

6 Q. And that's -- and before we go on, let me ask
7 you one other question about what we were just talking
8 about.

9 Do you know whether or not Charter's
10 insurance would pay for any damage that's been caused by
11 Qwest to Charter's facilities?

12 A. I don't know.

13 Q. Do you know whether Qwest's insurance pays
14 for damage caused to Qwest facilities by other
15 interconnecting carriers?

16 A. I don't know. I don't know the terms of the
17 insurance, no.

18 Q. Okay.

19 And it might make sense to refer to Exhibit
20 RA-7, which are the provisions of the Qwest exchange of
21 network services tariff for Washington, specifically the
22 excerpts that you have on directory listings. Do you
23 know whether this tariff excludes limitations on
24 liability for gross negligence?

25 A. I don't know.

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1 Q. And same answer for intentional misconduct?

2 A. I don't know.

3 Q. So the limitations, let's assume for purposes
4 of this discussion that there is no such exclusion in
5 the tariff. Based on that assumption, would it be your
6 understanding that regardless of the cause of the error
7 or omission that the liability would be limited as set
8 forth in this tariff? And I'm looking specifically at
9 Section 2.4.4(a), which is page 1 I think --

10 A. 1, yes.

11 Q. -- of your --

12 A. Would you repeat the question.

13 Q. Sure.

14 We're assuming that there are no exclusions
15 in the limitations on liability for gross negligence or
16 intentional misconduct. So my question was, from
17 whatever source, whether intentionally or grossly
18 unintentionally, there are errors or omissions, Qwest's
19 liability under the tariff is limited to what's set
20 forth in this provision of the tariff?

21 A. That's correct.

22 Q. And as I'm looking at (a)(1), that is an
23 amount not in excess of the charge for exchange service.
24 Is that Qwest's charge for exchange service?

25 A. Qwest's charge for exchange service, yes.

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1 Q. And is it the exchange service that Qwest
2 provides to the customer?

3 A. Yes.

4 Q. And under this tariff, Charter is not or
5 ordinarily would not be a customer; is that correct?

6 A. Charter would be a customer like any other
7 with reference to directory listings. That's all this
8 is about.

9 Q. Well, but you're not charging exchange
10 service to Charter.

11 A. No, we're charging TELRIC rates to Charter.

12 Q. So I guess I'm wondering how this would play
13 out in terms of a limitation on liability if it's
14 somehow incorporated into the parties' interconnection
15 agreement?

16 A. I believe then it would not be in the amount
17 in excess for the charge of the listing.

18 Q. Which is even less than the charge for
19 exchange service?

20 A. That's true.

21 Q. So, not that Qwest would ever do this, of
22 course, if they decided that they wanted to make
23 numerous errors in Charter listings and publish these
24 erroneous listings in their database, the most that
25 Charter would be able to get in compensation from Qwest

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1 would be whatever charges Qwest is imposing for
2 directory listings?

3 A. I believe that's true. I don't believe that
4 would ever happen.

5 Q. Going back to the language of the contract
6 that deals with this particular aspect of the issue,
7 which is 10.4.2.6.1, and only Qwest has proposed
8 language for this, but it essentially incorporates the
9 state tariff, is it Qwest's intent that it would only be
10 the limitation of liability provisions that would be
11 incorporated into the interconnection agreement, or
12 would the entire tariff provisions dealing with
13 directory listings?

14 A. I believe it's just the limitation of
15 liability section of the tariff.

16 Q. Okay. And as far as you're aware, Section
17 10.4 of the interconnection agreement governs the
18 provision of directory listings by Qwest to Charter; is
19 that correct?

20 A. 10.4 deals with white pages directory listing
21 service.

22 Q. And the terms and conditions governing
23 Qwest's provisioning of directory listings to Charter
24 are governed under the interconnection agreement, not
25 the tariff?

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1 A. Except with this reference, yes.

2 And the intent here is to place Charter
3 evenly with all customers of directory listings as
4 regard to limitations of liability.

5 Q. Okay.

6 Let's talk about indemnification, and for
7 that we'll go to your rebuttal testimony at page 20.
8 And specifically I'm looking at the question and answer
9 that begins on line 9 and even more specifically the
10 sentence that begins on line 17 that states, Qwest's
11 language limits indemnification to acts to, I'm assuming
12 that probably should be of, breach or failure to perform
13 under the interconnection agreement; is that correct?

14 A. Yes.

15 Q. Okay. So let's go back to our hypothetical
16 meet point situation.

17 A. Okay.

18 Q. We've got a Qwest technician and a Charter
19 technician that have gone and they've done what they
20 need to do to interconnect the network. The Qwest
21 employee for whatever reason is leaving the job site,
22 flicks his cigarette into a dumpster that catches fire
23 and burns down a building.

24 A. Okay.

25 Q. And the building owner sees this, sees the

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1 Qwest truck, sees the Charter truck, says, I don't know
2 who did it, but it's one of you two guys, and sues Qwest
3 and Charter for gross negligence for burning down his
4 building.

5 A. So this is a third party's building?

6 Q. Third party's building.

7 A. Not a Qwest or Charter building?

8 Q. Third party's building.

9 A. All right.

10 Q. Am I correct that under those circumstances
11 you're saying that Qwest would have no obligation to
12 indemnify Charter?

13 A. I'm not sure I can answer that. I need to
14 look at the language.

15 Q. Sure, always a good idea.

16 A. Yes.

17 JUDGE FRIEDLANDER: And I guess I would also
18 take a moment to suggest that after a couple more
19 questions maybe we should go ahead and take a break.

20 MR. KOPTA: Sure.

21 JUDGE FRIEDLANDER: Okay, thank you.

22 MS. ANDERL: And perhaps I could ask for
23 clarification on the question. I know we're on Issue 6,
24 indemnification. Mr. Kopta, are you asking
25 Ms. Albersheim about a particular subsection in 5.9 with

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1 regard to your hypothetical?

2 MR. KOPTA: No.

3 BY MR. KOPTA:

4 Q. I was just saying under Qwest's proposal, and
5 I don't know, if there's a particular provision that
6 Ms. Albersheim believes would govern that circumstance,
7 I'm more than happy to discuss which one it is.

8 A. Qwest language specifically relates to breach
9 or failure to perform the duties under the agreement, so
10 your scenario is a little hard to determine. I think it
11 would have to be determined whether or not that
12 cigarette butt was flung during performance of the
13 technician's duties. It seems to me it would, because
14 the technician wouldn't be there otherwise. So I'm not
15 sure that Qwest would be indemnified in that situation.

16 Q. That Charter would be indemnified or Qwest
17 would?

18 A. That Charter would be indemnified in that
19 situation, I don't know.

20 Q. Okay. But let's just say it's possible that
21 under those circumstances under Qwest's proposal that
22 Qwest would not be obligated to indemnify Charter in
23 that particular lawsuit.

24 A. I don't think so, because I don't think the
25 Qwest technician would have been there otherwise. So if

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1 he's smoking and he's careless with his cigarette, I
2 think that it's more likely that Qwest would have to
3 indemnify Charter.

4 Q. Well, if it were gross negligence, if it were
5 determined that that action was attributable to gross
6 negligence, would Qwest be obligated to indemnify
7 Charter?

8 A. Well, again, if the act is seen as directly
9 related to the technician's actions in performing his
10 duty, which is what the language here is referring to,
11 breach in the duty to perform the function we've been
12 asked to perform for Charter, under this agreement I
13 don't think that would matter.

14 Q. But I thought that Qwest was proposing that
15 gross negligence and intentional misconduct be excluded
16 from the provisions of indemnification?

17 A. No, that is in the provisions on limitations
18 -- exceptions to the limitations on liability, which is
19 a little different. We're talking about whether or not
20 Qwest would have to pay Charter the indemnification.
21 These are in different sections of the agreement.

22 Q. Well, then explain to me why Qwest disputes
23 in Section 5.9.1.1, if you look at Charter's proposed
24 language beginning on page 25 of your direct testimony,
25 that provision or with Charter's proposed language is

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1 set forth, and then on the top of the following page
2 there's the inclusion of language, and I will start
3 reading from line 39 of page 25, resulting from the
4 indemnifying party's negligence, gross negligence, or
5 willful misconduct, that's language that Charter has
6 proposed that Qwest --

7 A. That's correct, and that is language which
8 this Commission has previously said did not belong here
9 in this part of the agreement, so you're right about
10 that there. The difference is whether or not we're
11 trying to make a finding of gross negligence or not or
12 if this technician simply incorrectly performed his
13 duties. I can't imagine that smoking is acceptable
14 while connecting, so it seems like that would not be
15 appropriate performance of duties. But this Commission
16 has already found that that language should not be added
17 here, because what we're talking about is the activities
18 that these companies are undertaking to do business with
19 each other.

20 Q. So you would interpret breach or failure to
21 perform under this current agreement as encompassing any
22 act or omission that occurs by a Qwest employee in the
23 course of his performance of duties to perform under
24 this agreement?

25 A. No, I think that's too broad. I think it

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1 would depend on what his duties are in performing the
2 job, and there I don't know if smoking is permitted.

3 Q. Okay. But you would agree with me that under
4 this particular scenario, we're likely to have a fair
5 amount of litigation over whether or not there's an
6 obligation to --

7 A. I think that's likely.

8 MR. KOPTA: I think this is a good place to
9 take a break.

10 JUDGE FRIEDLANDER: Okay, we'll be off the
11 record for 10 minutes, is that enough for everybody?

12 MR. KOPTA: Yes.

13 JUDGE FRIEDLANDER: Okay, great, 10 minutes
14 we'll be back.

15 (Recess taken.)

16 JUDGE FRIEDLANDER: When we last broke, we
17 had witness Ms. Albersheim.

18 THE WITNESS: That's close, Albersheim.

19 JUDGE FRIEDLANDER: Albersheim, good. Good,
20 I'm learning new names today, this is good, Albersheim.

21 And, Mr. Kopta, do you have
22 cross-examination?

23 MR. KOPTA: I do, just a little bit more.

24 BY MR. KOPTA:

25 Q. Ms. Albersheim, I just wanted to ask you sort

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1 of a general question, which is under this
2 interconnection agreement, does Qwest consider Charter
3 to be a customer or to be a co-carrier?

4 A. That's a good question. I would say a
5 customer.

6 Q. Okay. But if we are a customer, you would
7 agree that we're not an end user customer?

8 A. No.

9 Q. Could we be both a co-carrier and a customer?

10 A. I guess that would depend on what you mean by
11 co-carrier.

12 Q. Okay, well, if we were interconnecting our
13 networks, isn't Charter essentially providing an
14 interconnection service to Qwest and Qwest providing an
15 interconnection service to Charter?

16 A. For the transmission of traffic back and
17 forth.

18 Q. Yes.

19 A. I would say that's true, yes.

20 Q. And in that sense at least they are
21 co-carriers?

22 A. In that sense.

23 Q. Okay, I just have so much fun with
24 indemnification, I guess I'll stick with it.

25 A. Oh, great.

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1 Q. Let's go with Issue 7 and specifically in
2 your direct testimony at page 34.

3 A. I'm there.

4 Q. Okay. And here we're talking about not just
5 indemnification but also intellectual property, for
6 those that weren't already falling asleep, and
7 specifically the question and answer that begins on line
8 5. And I think it actually might be beneficial, I'll do
9 this without even your saying so, for us to look at the
10 language, and that is on page 32 of your direct
11 testimony, at least this is Charter's proposed language,
12 and those three little words "or with knowledge" seem to
13 be what we're focused on in terms of this agreement
14 between the parties. Is it your understanding that this
15 phrase or with knowledge refers to knowledge of the
16 combinations referred to earlier in this sentence?

17 A. Yes.

18 Q. Okay, so it's not knowledge of infringement,
19 it's knowledge of the combination of facilities?

20 A. Yes.

21 Q. Okay. And what combination of facilities or
22 services are you aware of that will be occurring under
23 this interconnection agreement?

24 A. I don't know exactly what will occur under
25 this interconnection agreement, but I do have an example

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1 of a combination that would illustrate our concern, and
2 that may be the best way for me to explain why we're
3 concerned about or with knowledge.

4 Q. Okay, well, let me ask you more specifically.

5 A combination that I can think of obviously is in our
6 meet point billing example where we're combining
7 transport, interconnection transport facilities; would
8 that be one combination?

9 A. Again, I don't know enough about the
10 engineering to tell you in that circumstance. Mr. Linse
11 could tell you.

12 Q. Okay.

13 A. I don't know enough about meet point to tell
14 you.

15 Q. Okay. Well, you do give an example, and that
16 was where I was referring you to initially, which is on
17 page 34 of your direct testimony and your reference to
18 Qwest operations support systems or OSS.

19 A. Yes, and I don't think that's the best
20 example.

21 Q. Well, I was going to say, I don't know how
22 that would be combined with anything, and so I don't see
23 that that's really what we're talking about here. Would
24 you agree with that?

25 A. I would agree with that.

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1 MR. KOPTA: I hate to say it, but I think
2 that's all we can talk about.

3 How many words am I up to, or pages? You
4 don't have to answer that. Cross-examining the court
5 reporter, what will we do next.

6 Sorry, I'm punchy.

7 JUDGE FRIEDLANDER: Okay, is there any
8 redirect?

9

10 R E D I R E C T E X A M I N A T I O N

11 BY MS. ANDERL:

12 Q. Ms. Albersheim, can you describe what you
13 think a better example would be of the issue with regard
14 to the with knowledge language in connection with the
15 indemnification on intellectual property issues?

16 A. I can. The example I'm thinking of involves
17 use of remote terminals. For example, we could have
18 digital loop carrier from a Qwest end office out to a
19 remote terminal, and then Charter could have facilities
20 out to its end users and then -- from that remote
21 terminal, and there could be the use of line cards in
22 that remote terminal. Qwest has agreements with its
23 vendors to only use their line cards in those remote
24 terminals. Charter could insert its own line card in
25 that terminal.

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1 Q. Would that insertion then be a combination?

2 A. That would be a combination, and that would
3 be in violation of Qwest's agreements with its vendors
4 for the use of the remote terminal. The or with
5 knowledge language then raises the question of whether
6 there is anyone at Qwest with knowledge of that
7 combination, which then could disqualify Qwest from the
8 terms that Qwest language proposes on indemnification.
9 That is Qwest's concern about the or with knowledge
10 provision, and that creates a question for litigation.

11 Q. So if Charter's or with knowledge language is
12 accepted, Qwest's concern is what?

13 A. Under this language, Qwest would maintain its
14 indemnification obligation as opposed to being exempt
15 from it for that combination or could be because of that
16 language.

17 Q. So in other words, if Qwest knew about the
18 combination, Charter could claim that it was no longer
19 obligated to indemnify Qwest?

20 A. Yes.

21 MS. ANDERL: I have no further redirect.

22 JUDGE FRIEDLANDER: Any recross?

23 MR. KOPTA: Just a little bit.

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

2 BY MR. KOPTA:

3 Q. Are you familiar with what unbundled network
4 elements or UNEs are provided for under this agreement?

5 A. I understand that under this agreement the
6 unbundled network elements included are subloops and
7 NIDs.

8 Q. And would we or would Charter be accessing
9 subloops at a remote terminal?

10 A. I don't know.

11 Q. So to the extent that they would not be
12 accessing subloops at a remote terminal, then that
13 example also would not apply at least to Charter; is
14 that correct?

15 A. It might not, that's true.

16 MR. KOPTA: Thanks, that's all I have.

17 JUDGE FRIEDLANDER: Okay, thank you, and I
18 have no questions, so you are dismissed.

19 THE WITNESS: Thank you.

20 MS. ANDERL: Thank you, Your Honor, that
21 concludes Qwest's witnesses today.

22 JUDGE FRIEDLANDER: Okay, thank you.

23 Do the parties have any procedural matters
24 before we close the hearing for today?

25 MS. ANDERL: Could we go off, I don't care if

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1 we do it on the record or off the record, Your Honor, I
2 was just going to ask to be reminded of what the
3 posthearing dates are in terms of briefing.

4 JUDGE FRIEDLANDER: Sure.

5 MR. KOPTA: I was going to do the same thing,
6 wow, separated at birth.

7 JUDGE FRIEDLANDER: I have that the
8 posthearing opening briefs are due on January 22nd of
9 2009. And what I would like to have both parties do for
10 the opening briefs is to include an updated issues
11 matrix, and I will designate that as Hearing Exhibit
12 HE-6, if you will go ahead and file that with the
13 opening briefs. And closing briefs will be due February
14 9th of 2009. And I believe we discussed my decision
15 being rendered before the end of March.

16 MS. ANDERL: May we confer with Charter about
17 those dates?

18 JUDGE FRIEDLANDER: Sure.

19 MS. ANDERL: Off the record.

20 JUDGE FRIEDLANDER: Yes, that's fine, we're
21 off the record.

22 (Discussion off the record.)

23 JUDGE FRIEDLANDER: While we were off the
24 record, parties and I discussed possibly extending or
25 modifying the procedural schedule with regard to opening

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1 and closing briefs due to the fact that schedules can be
2 here but may be otherwise in different locations. The
3 parties will file no later than Monday a joint motion
4 revising the procedural schedule dealing with those
5 briefs. And so just a reminder that the opening briefs
6 should include that joint issues matrix.

7 And also I had a request from records center
8 before they left for the day that we need, we've added
9 two more people to our internal distribution, so when
10 you do file documents, if you could include two more
11 copies, that would be great.

12 MR. KOPTA: So that would be the original and
13 five copies, Your Honor?

14 JUDGE FRIEDLANDER: Exactly, yes.

15 And if there's nothing further, then we are
16 adjourned, thank you.

17 MS. ANDERL: Thank you, Your Honor.

18 MR. KOPTA: Thank you, Your Honor.

19 (Hearing adjourned at 3:40 p.m.)

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