

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
GENERAL TERMS AND CONDITIONS, SECTION 5						
1.	[RESOLVED Agreed upon language at right.]	5.4.3, & 5.13.1		N/A	[Agreed upon language from Eschelon Arbitration once finalized; preliminary draft language provided below:] 5.4.2 One Party may discontinue processing orders for relevant services for the failure of the other Party to make full payment, less any disputed amount as provided for in Section 21.8 of this Agreement, for the relevant services provided under this Agreement within thirty (30) Days following the Payment Due Date (“Non-Compliance”). The Billing Party will notify the other Party in writing and the Commission on a confidential basis at least ten (10) business days prior to discontinuing the processing of orders for the relevant services. If the Billing Party does not refuse to accept additional orders for the relevant services on the date specified in the ten (10) business days notice, and the other Party's Non-Compliance continues, nothing contained herein shall preclude the Billing Party's right to refuse to accept additional orders for the relevant services from the non-complying Party without further notice. Additionally, the Billing Party may require a deposit (or additional deposit) from the billed Party, pursuant to Section 5.4.5. The Billing Party shall resume order processing without unreasonable delay upon receipt of full payment of all charges, and payment of a	N/A

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
					<p>deposit, if any, for the relevant services not disputed in good faith under this Agreement. ...</p> <p>5.4.3 The Billing Party may disconnect services for failure by the billed Party to make full payment, less any good faith disputed amount as provided for in Section 5.4.4 of this Agreement, for the services provided under this Agreement within sixty (60) Days following the payment due date (“Non-Compliance”). The billed Party will pay the applicable reconnect charge set forth in Exhibit A required to reconnect each service disconnected pursuant to this paragraph. The Billing Party will notify the billed Party in writing and the Commission on a confidential basis at least ten (10) business days prior to disconnection of the service(s). In case of such disconnection, all applicable undisputed charges, including termination charges, shall become due. If the Billing Party does not disconnect the billed Party's service(s) on the date specified in the ten (10) business days' notice, and the billed Party's Non-Compliance continues, nothing contained herein shall preclude the Billing Party's right to disconnect services of the non-complying Party without further notice. For reconnection of the services to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the services. Additionally, the Billing Party will request a deposit (or recalculate the</p>	

WASHINGTON
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<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
					<p>deposit) as specified in Section 5.4.5 and 5.4.7 from the billed Party, pursuant to this Section. If the billed Party is a new CLEC customer of Qwest, the application of this provision will be suspended for the initial three (3) Billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance.</p> <p>5.13.1 If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other material provision of this Agreement, and such default or violation shall continue for thirty (30) Days after written notice thereof, the other Party may seek relief in accordance with the Dispute Resolution provision of this Agreement. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect.</p>	
2.	[RESOLVED] Agreed upon language at	5.4.4.3 & 5.4.10	5.4.4.3 Failure by a Billed Party to dispute a rate, rate element, or charge within the period applicable to an invoice on which such rate, rate element or charge appears	N/A.	[Agreed upon language at left.]	N/A.

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
	<p>right.]</p> <p>Should the parties agree to a reasonable limitation as to the period of time by which either party can initiate backbilling, or disputes of previously billed amounts?</p>		<p>shall not constitute nor be construed as a waiver by the Billed Party of its right to dispute the same or similar rates, rate elements, or charges that may appear on subsequent invoices. If any portion of an amount paid to a Party under this Agreement is subject to a bona fide dispute between the Parties (“Disputed Paid Amount”), the Billed Party may provide written notice to the Billing Party of the Disputed Paid Amount, and seek a refund of such amount already paid, at any time prior to the date that is one (1) year after the date of the invoice containing the disputed amount that has been paid by the Billed Party (“Notice Period”). If the Billed Party fails to provide written notice of a Disputed Paid Amount within the Notice Period, the Billed Party waives its rights to dispute its obligation to pay such amount, and to seek refund of such amount.</p> <p>5.4.10 The Parties shall bill each other for all services and arrangements under this Agreement promptly and in any event shall use commercially reasonable efforts to render such bills. In the event that prompt billing is not possible, backbilling for unbilled charges shall be permitted for a period of up to twelve (12) months following the provision of service. Backbilling for services provided more than twelve (12) months following the provision</p>			

**WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List**

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			of service is not permitted, and each Party hereby waives any right to collect any fees or charges otherwise due under this Agreement (including charges for services under this Agreement that are provided via its tariffs) that are not billed to the other Party within such twelve (12) month period.			
3.	<p>[RESOLVED]</p> <p>Agreed upon language at right.]</p> <p>Should the security deposit provisions of the agreement apply mutually, to both parties, or only unilaterally to Qwest’s benefit?</p>	5.4.5 - 7	[Agreed upon language at right.]	N/A.	5.4.5 In the event of a material adverse change in CLEC’s financial condition subsequent to the Effective Date of this Agreement, Qwest may request a security deposit. A “material adverse change in financial condition” means the Party is repeatedly delinquent in making its payments, or is being reconnected after a disconnection of Service or discontinuance of the processing of orders by Qwest due to a previous failure to pay undisputed charges in a timely manner. Qwest may require a deposit to be held as security for the payment of charges before the orders from CLEC will be provisioned and completed or before reconnection of Service. "Repeatedly delinquent" means any payment of a material undisputed amount of total monthly Billing under the Agreement received after the Payment Due Date, three (3) or more times during the last twelve (12) month period. The initial deposit may not exceed the estimated total monthly charges for a two (2) month period based upon recent Billing. The deposit may be adjusted by CLEC’s actual monthly average charges, payment	N/A.

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
					<p>history under this Agreement, or other relevant factors,. The deposit may be an irrevocable bank letter of credit, a letter of credit with terms and conditions acceptable to Qwest, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within thirty (30) Days after demand and non-payment is subject to Sections 5.4.2 and 5.4.3 of this Agreement.</p> <p>5.4.6 Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission regulations. Cash deposits and accrued interest will be credited to CLEC's account or refunded, as appropriate, upon the earlier of the expiration of the term of the Agreement or the establishment of satisfactory credit with Qwest, which will generally be one full year of timely payments of undisputed amounts in full by CLEC. Upon a material change in financial standing, including factors referenced in Section 5.4.5 above, CLEC may request and Qwest will consider a recalculation of the deposit. The fact that a deposit has been made does not relieve CLEC from any requirements of this Agreement.</p> <p>5.4.7 Qwest may review CLEC's credit</p>	

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
					standing and modify the amount of deposit required but in no event will the maximum amount exceed the amount stated in 5.4.5 or another amount, if approved by the Commission.	
4.	<p>[RESOLVED</p> <p>Agreed upon language at right.]</p> <p>Should Qwest be able to dictate the insurers that Charter must utilize, in part by requiring that such insurer maintain a specific “ratings” or standard?</p>	5.6.1	Each Party shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers having a “Best’s” rating of B + XIII with respect to liability arising from that Party's operations for which that Party has assumed legal responsibility in this Agreement. If either Party or its parent company has assets equal to or exceeding ten billion dollars (\$10,000,000,000), that Party may utilize an Affiliate captive insurance company in lieu of a "Best's" rated insurer. To the extent that the parent company of a Party is relied upon to meet the ten billion dollar (\$10,000,000,000) asset threshold, such parent shall be responsible for the insurance obligations contained in this Section 5.6.1, to the extent its affiliated Party fails to meet such obligations	N/A.	[Agreed upon language at left.]	N/A.
5.	How should the parties agree to limit liability, and damages, arising from either party’s actions?	5.8	<p>5.8 Limitation of Liability</p> <p>5.8.1 Each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance under this Agreement, whether in contract, warranty, strict liability, or tort, including (without limitation) negligence of any kind, shall be</p>	The Parties should not limit their damages in a way that would preclude one Party from obtaining meaningful relief. Although Charter agrees that damages should be limited to “actual, direct” damages, it does not agree with Qwest’s proposal that damages be further limited to the total amount that is or would have been charged to the other Party by such	<p>5.8 Limitation of Liability</p> <p>5.8.1 Each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance under this Agreement, whether in contract, warranty, strict liability, or tort, including (without limitation) negligence of any kind, shall be limited to <u>the total amount that is or</u></p>	The limitation of liability reflects that Qwest is the entity which provides the facilities to the CLEC, and as the provider, faces the much greater risk of damage to its facilities. The CLEC s damages are actual direct damages, because these reflect the monetary value of the services provided to the CLEC.

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

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			<p>limited to actual, direct damages. Each Party's liability to the other Party for any other losses shall be limited to actual, direct damages. Payments pursuant to the QPAP shall not be counted against the limit provided for in this Section.</p> <p>5.8.2 Except as provided in Section 5.8.4, neither Party shall be liable to the other for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result. If the Parties enter into a Performance Assurance Plan under this Agreement, nothing in this Section 5.8.2 shall limit amounts due and owing under any Performance Assurance Plan or any penalties associated with Docket No. UT 991358.</p> <p>5.8.3 Intentionally Left Blank.</p>	<p>breaching Party for the service(s) or function(s) not performed or improperly performed. Because this Agreement contemplates primarily the exchange of traffic, without significant liabilities for leasing, resale or other services, the amount of monthly charges that the Parties are subject to is relatively small. For that reason, Qwest’s proposal to limit direct damages to no more than an amount equal to such monthly charges could effectively preclude recovery of the amount of direct damages that arise from a significant harm or error that occurred to one Party’s network, employees, or other assets.</p>	<p><u>would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed</u>. Each Party's liability to the other Party for any other losses shall be limited to <u>the total amounts charged to CLEC under this Agreement during the contract year in which the cause accrues or arises</u>. Payments pursuant to the QPAP shall not be counted against the limit provided for in this Section.</p> <p>5.8.2 Neither Party shall be liable to the other for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result. If the Parties enter into a Performance Assurance Plan under this Agreement, nothing in this Section 5.8.2 shall limit amounts due and owing under any Performance Assurance Plan or any penalties associated with Docket No. UT 991358.</p> <p>5.8.3 Intentionally Left Blank.</p>	<p>Qwest s language limits damages to the amount charged to the CLEC over the course of the year.</p> <p>All of the proposals that Charter has made with regard to liability and indemnity in section 5 create ambiguity in the contract and increase the likelihood that the parties will have to litigate any circumstance in which liability or damages are at issue.</p> <p>Each Party’s liability to the other should be limited to direct damages. Such damages shall be defined as the total amount that is or would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed</p>

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
			<p>5.8.4 Nothing contained in this Section 5.8 shall limit either Party's liability to the other for (i) acts of gross negligence, willful or intentional misconduct or (ii) damage to tangible real or personal property proximately caused solely by such Party's negligent act or omission or that of their respective agents, subcontractors, or employees. For purposes of this Section 5.8, “solely,” shall mean not contributed to by the negligent act or omission of the other Party, or its respective agents, subcontractors, or employees.</p> <p>10.4.2.6 Intentionally left blank.</p>	<p>The Parties agree that for some types of claims their potential liability should not be limited. Charter’s position is that neither Party should limit their liability for claims arising out of either Party’s acts which are deemed to be grossly negligent, or which constitute intentional or willful misconduct. In such circumstances, the Party engaging in such acts should be liable, and responsible for, the entire cost of any damages which arise.</p>	<p>5.8.4 Nothing contained in this Section 5.8 shall limit either Party's liability to the other for (i) willful or intentional misconduct or (ii) damage to tangible real or personal property proximately caused solely by such Party's negligent act or omission or that of their respective agents, subcontractors, or employees.</p> <p>10.4.2.6 <u>To the extent that state Tariff(s) limit Qwest's liability with regard to Listings, the applicable state Tariff(s) is incorporated herein and supersedes the Limitation of Liability section of this Agreement with respect to Listings only.</u></p>	

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
						Qwest’s position is that liability limits should only exclude acts of willful or intentional misconduct, but that gross negligence should not be included in such exclusion.
6.	Indemnity Provisions					
6(a)	How should the parties’ respective indemnity obligations be established?	5.9	<p>5.9.1 The Parties agree that unless otherwise specifically set forth in this Agreement the following constitute the sole indemnification obligations between and among the Parties:</p> <p>5.9.1.1 Each of the Parties agrees to indemnify, defend and hold harmless (“Indemnifying Party”) the other Party and each of its officers, directors, employees and agents (“Indemnified Party”) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees) (collectively, “Claims”), whether suffered, made, instituted, or asserted by any third party, for invasion of privacy, bodily injury or death of any such third party, or for loss, damage to, or destruction of tangible property, whether or not owned by others, (collectively, “Losses”) resulting from the Indemnifying Party's negligence, gross negligence or willful misconduct, or breach of or failure to perform under this</p>	<p>Each Party’s obligations to indemnify the other Party should be limited where the indemnified Party bears some responsibility for the alleged harms which are the basis for the action for relief. Put simply, where one Party has caused the harm, whether due to negligent actions or intentional misconduct, then that Party should not be indemnified against any losses arising from an action against that Party. Charter’s proposal with respect to Section 5.9, and related provisions, introduces a concept of contributory negligence or, more accurately, comparative fault in to the indemnity obligations, such that indemnity obligations are limited where the indemnified Party has contributed to the alleged harm. The Commission should recognize that reasonable limitation and order the Parties to incorporate the principle in to the Agreement.</p>	<p>5.9.1 The Parties agree that unless otherwise specifically set forth in this Agreement the following constitute the sole indemnification obligations between and among the Parties:</p> <p>5.9.1.1 Each of the Parties agrees to <u>release</u> indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (<u>each an Indemnitee</u>) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees), whether suffered, made, instituted, or asserted by any <u>Person or entity</u>, for invasion of privacy, bodily injury or death of any <u>Person or Persons</u>, or for loss, damage to, or destruction of tangible property, whether or not owned by others, resulting from the Indemnifying Party's breach of or failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without limitation) negligence of any kind. <u>The</u></p>	<p>Qwest s language provides a market-based approach to address the possibility that one party may try to pass through excessive indemnification obligations to the other party. Sections 5.9.1.1 and 5.9.1.2 ensure that there is a nexus to the agreement between the parties when contractual indemnification rights apply. There is no basis for extending the exclusion to negligence. Adding an exception based on gross negligence has the effect of voiding indemnification and eliminating the purpose of this provision of the contract.</p>

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
			<p>Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without limitation) negligence of any kind, except to the extent that such Claims or Losses arise from the Indemnified Party’s negligence, gross negligence, or willful misconduct.</p> <p>5.9.1.2 In the case of Claims or Losses alleged or incurred by an End User Customer of either Party, arising out of or in connection with services provided to the End User Customer by the Party, the Party whose End User Customer alleged or incurred such Claims or Losses (the “Indemnifying Party”) shall defend and indemnify the other Party and each of its officers, directors, employees and agents (Indemnified Party) against any and all such Claims or Losses by the Indemnifying Party’s End User Customers regardless of whether the underlying service was provided or Unbundled Network Element was provisioned by the Indemnified Party, except to the extent that the Claims or Losses were caused by the negligence, gross negligence or willful misconduct of the Indemnified Party, including the employees, contractors, agents, or other representatives of the Indemnified Party.</p> <p>If the Indemnifying Party wishes to defend against such action, it shall give written notice to the Indemnified Party of</p>		<p><u>obligation to indemnify with respect to claims of the Indemnifying Party’s End User Customers shall not extend to any claims for physical bodily injury or death of any Person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, alleged to have resulted directly from the negligence or intentional conduct of the employees, contractors, agents, or other representatives of the Indemnified Party.</u></p> <p>5.9.1.2 In the case of <u>claims or loss</u> alleged or incurred by an End User Customer of either Party, arising out of or in connection with services provided to the End User Customer by the Party, the Party whose End User Customer alleged or incurred such <u>claims or loss</u> (the Indemnifying Party) shall defend and indemnify the other Party and each of its officers, directors, employees and agents (<u>collectively the</u> Indemnified Party) against any and all such <u>claims or loss</u> by the Indemnifying Party’s End User Customers regardless of whether the underlying service was provided or Unbundled Network Element was provisioned by the Indemnified Party, <u>unless the loss was</u> caused by the willful misconduct of the Indemnified Party.</p> <p>If the Indemnifying Party wishes to defend against such action, it shall give written notice to the Indemnified Party of acceptance of the defense of such action. In</p>	

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
			<p>acceptance of the defense of such action. In such event, the Indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, to the extent such action is based solely on the Indemnifying Party’s network and/or services, and the Indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event that the Indemnifying Party does not accept the defense of the action, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate with the other Party in the defense of any such action and, subject to Section 5.16 of this Agreement, the relevant, non-privileged records of each Party shall be available to the other Party with respect to any such defense.</p>		<p>such event, the Indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the Indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event that the Indemnifying Party does not accept the defense of the action, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate with the other Party in the defense of any such action and the relevant records of each Party shall be available to the other Party with respect to any such defense.</p>	
6(b)	<p>[RESOLVED Agreed upon language at right.] In indemnity situations, where the indemnified party unreasonably withholds</p>	5.9.2.3	<p>In no event shall the Indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the Indemnified Party. In the event the Indemnified Party withholds consent to a reasonable compromise or settlement, the Indemnified Party must, at its cost, take over such defense, provided that, in such event, the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the relevant Indemnified Party against, any cost or</p>	N/A.	[Agreed upon language at left.]	N/A.

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
	consent to settle claims, must the Indemnified Party then take over the action?		liability in excess of such refused compromise or settlement.			
7.	How should the parties’ respective indemnity obligations, as they relate to intellectual property rights, be established?	5.10	Subject to Section 5.9.2, each Party (the Indemnifying Party) shall indemnify and hold the other Party (the Indemnified Party) harmless from and against any Claim that the use of facilities of the Indemnifying Party or services provided by the Indemnifying Party provided or used pursuant to the terms of this Agreement misappropriates or otherwise violates the intellectual property rights of any third party. In addition to being subject to the provisions of Section 5.9.2, the obligation for indemnification recited in this paragraph shall not extend to infringement which results from (a) any combination of the facilities or services of the Indemnifying Party with facilities or services of the Indemnified Party, which combination is not made by, or at the direction, or with knowledge of the Indemnifying Party or (b) any modification made to the facilities or services of the Indemnifying Party by, on behalf of or at the request of the Indemnified Party and not required by the Indemnifying Party. In the event of any claim, the Indemnifying Party may, at its sole option (a) obtain the right for the Indemnified Party to continue to use the facility or service; or (b) replace or modify the facility or service to make such	The indemnity provisions related to intellectual property rights of both parties should not apply to the combination of facilities or services between the Indemnified Party, and the Indemnifying Party (rather than with “any other Person”), including where such combination is made with knowledge of the Indemnifying Party. Further, the Indemnifying Party should be permitted to request that the Indemnified Party take reasonable steps to mitigate damages.	Subject to Section 5.9.2, each Party (the Indemnifying Party) shall indemnify and hold the other Party (the Indemnified Party) harmless from and against any <u>loss, cost, expense or liability arising out of a claim</u> that the use of facilities of the Indemnifying Party or services provided by the Indemnifying Party provided or used pursuant to the terms of this Agreement misappropriates or otherwise violates the intellectual property rights of any third party. In addition to being subject to the provisions of Section 5.9.2, the obligation for indemnification recited in this paragraph shall not extend to infringement which results from (a) any combination of the facilities or services of the Indemnifying Party with facilities or services of <u>any other Person (including the Indemnified Party but excluding the Indemnifying Party and any of its Affiliates)</u> , which combination is not made by, or at the direction of the Indemnifying Party or (b) any modification made to the facilities or services of the Indemnifying Party by, on behalf of or at the request of the Indemnified Party and not required by the Indemnifying Party. In the event of any claim, the Indemnifying Party may, at its sole option (a) obtain the right for the Indemnified Party to continue to use the	Charter s proposed changes to this language have the effect of creating vagueness in the provision, shifting burdens to Qwest and increasing the likelihood of litigation. First, removing the lost, cost, expense or liability phrase, dramatically expands the potential claims for losses that could become the subject of litigation. Qwest s language specifically identifies what persons would be subject to this paragraph. Removing Qwest s language and adding the phrase or with knowledge creates ambiguity, and could expand litigation to include the question of how to define what knowledge is and who has/had such knowledge . Furthermore, Charter s proposal would place an indemnification obligation on one party for infringing activity of the other party if the innocent party had knowledge of the activity regardless of whether they directed or controlled that activity. This is improper.

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

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			<p>facility or service non-infringing. If the Indemnifying Party is not reasonably able to obtain the right for continued use or to replace or modify the facility or service as provided in the preceding sentence and either (a) the facility or service is held to be infringing by a court of competent jurisdiction or (b) the Indemnifying Party reasonably believes that the facility or service will be held to infringe, the Indemnifying Party shall notify the Indemnified Party and the Parties shall negotiate in good faith regarding reasonable modifications to this Agreement necessary to (1) mitigate damage or comply with an injunction which may result from such infringement or (2) allow cessation of further infringement. The Indemnifying Party may request that the Indemnified Party take reasonable steps to mitigate damages resulting from the infringement or alleged infringement including, but not limited to, accepting modifications to the facilities or services, and such request shall not be unreasonably denied.</p> <p>5.10.4 Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, trade name, trade secret or any other intellectual</p>	<p>This portion of the agreement should also include the limitation that neither party may use the other party’s intellectual property, or trade secrets, without first executing a separate “written” agreement.</p>	<p>facility or service; or (b) replace or modify the facility or service to make such facility or service non-infringing. If the Indemnifying Party is not reasonably able to obtain the right for continued use or to replace or modify the facility or service as provided in the preceding sentence and either (a) the facility or service is held to be infringing by a court of competent jurisdiction or (b) the Indemnifying Party reasonably believes that the facility or service will be held to infringe, the Indemnifying Party shall notify the Indemnified Party and the Parties shall negotiate in good faith regarding reasonable modifications to this Agreement necessary to (1) mitigate damage or comply with an injunction which may result from such infringement or (2) allow cessation of further infringement. The Indemnifying Party may request that the Indemnified Party take steps to mitigate damages resulting from the infringement or alleged infringement including, but not limited to, accepting modifications to the facilities or services, and such request shall not be unreasonably denied.</p> <p>5.10.4 Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, trade name, trade secret or any other intellectual</p>	<p>Qwest agrees to addition of the word reasonable in the last sentence of Section 5.10.</p>

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

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			<p>property right now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyright, logo, trademark, trade name, trade secret or other intellectual property rights of the other Party or its Affiliates without execution of a separate written agreement between the Parties.</p> <p>5.10.5 Neither Party shall without the express written permission of the other Party, state or imply that: 1) it is connected, or in any way affiliated with the other or its Affiliates; 2) it is part of a joint business association or any similar arrangement with the other or its Affiliates; 3) the other Party and its Affiliates are in any way sponsoring, endorsing or certifying it and its goods and services; or 4) with respect to its marketing, advertising or promotional activities or materials in connection with resold goods and/or services, that such resold goods and services are in any way associated with or originated from the other Party or any of its Affiliates. Nothing in this paragraph shall prevent either Party from truthfully describing the Network Elements it uses to provide service to its End User Customers, provided it does not represent the Network Elements as originating from the other Party or its Affiliates in any marketing, advertising or promotional activities or materials.</p>	<p>NOTE: Language at left represents a proposed grammatical revision, rather than a contested issue.</p>	<p>property right now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyright, logo, trademark, trade name, trade secret or other intellectual property rights of the other Party or its Affiliates without execution of a separate agreement between the Parties.</p> <p>5.10.5 Neither Party shall without the express written permission of the other Party, state or imply that: 1) it is connected, or in any way affiliated with the other or its Affiliates; 2) it is part of a joint business association or any similar arrangement with the other or its Affiliates; 3) the other Party and its Affiliates are in any way sponsoring, endorsing or certifying it and its goods and services; or 4) with respect to its marketing, advertising or promotional activities or materials in connection with resold goods and/or services, that such resold goods and services are in any way associated with or originated from the other or any of its Affiliates. Nothing in this paragraph shall prevent either Party from truthfully describing the Network Elements it uses to provide service to its End User Customers, provided it does not represent the Network Elements as originating from the other Party or its Affiliates in any marketing, advertising or promotional activities or materials.</p>	<p>Qwest is okay with this grammatical correction.</p>

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
8.	<p>[RESOLVED Agreed upon language at right.] How should the parties’ state their respective disclaimer of warranties?</p>	5.11	5.11 Warranties 5.11.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.	N/A.	[Agreed upon language at left.]	N/A.
9.	<p>Should the Agreement include terms that allow one party to terminate the Agreement as to a “specific operating area” without any assurance to the other party that the terms of the Agreement will continue uninterrupted with the new LEC that acquires the</p>	5.12.2	[Intentionally left blank.]		[Intentionally left blank.]	

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

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	operating area? [NOTE: Issue RESOLVED (included only as placeholder).]					
INTERCONNECTION, SECTION 7						
10.	What standard should be used to excuse Qwest from the obligation to allow Charter to interconnect at certain points on the Qwest network?	7.1.1	This Section describes the Interconnection of Qwest's network and CLEC's network for the purpose of exchanging Exchange Service (EAS/Local traffic), IntraLATA LEC Toll and Jointly Provided Switched Access traffic. Intercarrier traffic exchange will be mutual and reciprocal and all traffic exchanged between the Parties must be provisioned pursuant to this Agreement. A Party that has interconnected or gained access under sections 251 (a) (1), 251 (c)(2), or 251 (c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering Telecommunications Services through the same arrangement(s) as well. Enhanced or information service providers (providers or “Information Services” as that term is defined in 47 U.S.C. § 153 (20)) that do not also provide domestic or international telecommunications are not Telecommunications Carriers as defined by the Act and thus may not interconnect under this Agreement. Qwest will provide Interconnection at any Technically Feasible point within its network, including but not	Where Qwest seeks to deny Charter’s right to interconnect at a particular tandem switch location based upon a claim of potential switch exhaustion, it must first prove to the state commission that the switch exhaust is imminent and renders interconnection at that location technically infeasible. Qwest is obligated to provide interconnection at any technically feasible point on its network, and pursuant to 47 C.F.R 51.305 where Qwest seeks to deny interconnection at such point it must prove to the state commission that interconnection is technically infeasible. Therefore, the agreement should incorporate the same standard established by the FCC’s regulations, and federal law.	This Section describes the Interconnection of Qwest's network and CLEC's network for the purpose of exchanging Exchange Service (EAS/Local traffic), IntraLATA LEC Toll and Jointly Provided Switched Access traffic. Intercarrier traffic exchange will be mutual and reciprocal and all traffic exchanged between the Parties must be provisioned pursuant to this Agreement. A Party that has interconnected or gained access under sections 251 (a) (1), 251 (c)(2), or 251 (c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering Telecommunications Services through the same arrangement(s) as well. Enhanced or information service providers (providers or “Information Services” as that term is defined in 47 U.S.C. § 153 (20)) that do not also provide domestic or international telecommunications are not Telecommunications Carriers as defined by the Act and thus may not interconnect under this Agreement. Qwest will provide Interconnection at any Technically Feasible point within its network, including but not	Qwest has the right to deny interconnection at particular points if it is not technically feasible. Similarly, Qwest has the right to reject requests for connections between Qwest tandem switches where such connections would risk switch exhaust. Admittedly, Charter may dispute Qwest s claims of technical infeasibility or switch exhaust. However, the proper order of events is for Charter to request an interconnection point or switch connection, for Qwest to determine whether to accept or reject the request, and for any dispute to be negotiated and/or submitted to the Commission for resolution pursuant to the dispute resolution provisions of the ICA. Charter s proposed language inappropriately puts the Commission in the position of micromanaging Qwest s network.

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

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			<p>limited to; (i) the Line Side of a local Switch, (ii) the Trunk Side of a local Switch, (iii) the trunk connection points for a Tandem Switch, (iv) Central Office Cross Connection points, (v) out-of-band Signaling Transfer Points necessary to exchange traffic at these points and access call-related databases, and (vi) points of access to Unbundled Network Elements. "Interconnection" is as described in the Act and refers, in this Section of the Agreement, to the connection between networks for the purpose of transmission and routing of Telephone Exchange Service traffic and IntraLATA LEC Toll traffic at points (ii) and (iii) described above. Interconnection, which Qwest currently names "Local Interconnection Service" (LIS), is provided for the purpose of connecting End Office Switches to End Office Switches or End Office Switches to local or Access Tandem Switches for the exchange of Exchange Service (EAS/Local traffic); or End Office Switches to Access Tandem Switches for the exchange of IntraLATA LEC Toll or Jointly Provided Switched Access traffic. Qwest Tandem Switch to CLEC Tandem Switch connections will be provided where Technically Feasible. New or continued Qwest local Tandem Switch to Qwest Access Tandem Switch and Qwest Access Tandem Switch to Qwest Access Tandem Switch connections are not required where Qwest has demonstrated to the</p>		<p>limited to; (i) the Line Side of a local Switch, (ii) the Trunk Side of a local Switch, (iii) the trunk connection points for a Tandem Switch, (iv) Central Office Cross Connection points, (v) out-of-band Signaling Transfer Points necessary to exchange traffic at these points and access call-related databases, and (vi) points of access to Unbundled Network Elements. "Interconnection" is as described in the Act and refers, in this Section of the Agreement, to the connection between networks for the purpose of transmission and routing of Telephone Exchange Service traffic and IntraLATA LEC Toll traffic at points (ii) and (iii) described above. Interconnection, which Qwest currently names "Local Interconnection Service" (LIS), is provided for the purpose of connecting End Office Switches to End Office Switches or End Office Switches to local or Access Tandem Switches for the exchange of Exchange Service (EAS/Local traffic); or End Office Switches to Access Tandem Switches for the exchange of IntraLATA LEC Toll or Jointly Provided Switched Access traffic. Qwest Tandem Switch to CLEC Tandem Switch connections will be provided where Technically Feasible. New or continued Qwest local Tandem Switch to Qwest Access Tandem Switch and Qwest Access Tandem Switch to Qwest Access Tandem Switch connections are not required where Qwest <u>can</u> demonstrate that such connections present a risk of Switch exhaust</p>	<p>Qwest has the right and responsibility to monitor, engineer and manage its network. This necessarily means that Qwest is in the best position to make the first determination whether an interconnection point or connection between switches is technically feasible. If Qwest and Charter cannot resolve any dispute through negotiations, either party can then request that the Commission resolve the dispute. Charter s position is unreasonable and should be rejected.</p>

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

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			<p>Commission, and the Commission has determined in accordance with 47 CFR 51.305(e), that such connections present an imminent risk of Switch exhaust, and that Qwest does not make similar use of its network to transport the local calls of its own, or any Affiliate's, or any other LEC’s End User Customers. Disputes arising under this Section 7 shall be raised, and resolved, pursuant to the Dispute Resolution provisions of this Agreement.</p>		<p>and that Qwest does not make similar use of its network to transport the local calls of its own or any Affiliate's End User Customers.</p>	
11.	Should the agreement limit the methods by which Charter can establish interconnection with Qwest when using leased interconnection facilities?	7.1.2 & 7.1.2.4	<p>7.1.2 The Parties will negotiate the specific arrangements used to interconnect their respective networks. CLEC shall have the right to establish one (1) single physical Point of Interconnection (“POI”) in Qwest territory in each LATA CLEC has local End User Customers. At CLEC’s option, CLEC may establish additional Points of Interconnection in each LATA in which CLEC has local End User Customers. The Parties agree that this Section 7.1.2 shall not be construed as imposing any obligation upon Qwest to establish a physical Point of Interconnection with CLEC at a point that is outside of Qwest’s geographic service area or territory. CLEC shall serve End User Customers physically located within the areas associated with the NPA-NXX codes assigned to those End User Customers. The Parties shall establish, at least one (1) of the following Interconnection arrangements, at</p>	<p>No. The agreement should not limit the methods Charter may employ to establish interconnection arrangements with Qwest. Under FCC rule 51.305 incumbent LECs, like Qwest, must allow competitive LECs to interconnect via any technically feasible method. A common practice in the industry is to interconnect via the use of interconnection (or entrance) facilities. Such facilities are dedicated network facilities connecting each party’s respective networks, and may be provided by Qwest, the CLEC, or a third party provider. Qwest proposes to limit the means by which Charter can deploy its own facilities, or use those of a third party provider. Those limitations unreasonably limit Charter’s rights with respect to the use of interconnection facilities, when such facilities are deployed by Charter, or a third party provider.</p>	<p>7.1.2 The Parties will negotiate the specific arrangements used to interconnect their respective networks. CLEC shall establish at least one (1) physical Point of Interconnection in Qwest territory in each LATA CLEC has local End User Customers. <u>CLEC represents and warrants that it is serving End User Customers physically located within the areas associated with the NPA-NXX codes assigned to those End User Customers.</u> The Parties shall establish, at least one (1) of the following Interconnection arrangements, at any Technically Feasible point: (1) a Qwest-provided <u>Entrance Facility</u>; (2) Collocation; (3) Mid-Span Meet POI facilities; or (4) other Technically Feasible methods of Interconnection via the Bona Fide Request (BFR) process unless a particular arrangement has been previously provided to a third party, or is offered by Qwest as a product.</p>	<p>Section 7.1.2 of the ICA is intended to describe methods of interconnection. Qwest s proposed language for Section 7.1.2 clearly specifies the arrangements by which Charter can interconnect with Qwest. Qwest s proposed language is consistent with the language approved by the Commission in the Section 271 proceedings.</p> <p>Charter s proposed modifications to Section 7.1.2 overreach and are not supported by existing law. First, Charter does not have an unconditional right to establish a single point of interconnection in each LATA in which it has end user customers. The Act and FCC rules interpreting the Act qualify a CLEC s request for a single</p>

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

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			<p>any Technically Feasible point: (1) a Qwest-provided Interconnection Facility, or an Interconnection Facility provided by CLEC, or by a third party; (2) Collocation; (3) Mid-Span Meet POI facilities, including such arrangements provided to CLEC by a third-party who has an existing mid-span meet with Qwest; or (4) other Technically Feasible methods of Interconnection via the Bona Fide Request (BFR) process unless a particular arrangement has been previously provided to a third party, or is offered by Qwest as a product.</p> <p>7.1.2.4 Interconnection Facility provided a Third-Party. For purposes of this Section 7.1.2, CLEC may also interconnect with Qwest by leasing an Interconnection Facility from a third-party provider.</p> <p>7.1.2.4 (a) Interconnection via an Interconnection Facility provided by a Third Party without a Mid-Span Meet Arrangement with Qwest. This arrangement may consist of the use of a private line facility supplied to CLEC by a third party that has leased private line transport service from Qwest with LOA supplied by CLEC.</p> <p>7.1.2.4(b) Interconnection Facility</p>		<p><u>7.1.2.4 Intentionally left blank.</u></p>	<p>interconnection point by requiring that the interconnection point be technically feasible. In addition, the interconnection point must be within Qwest’s network. Charter’s first proposed change to Section 7.1.2 does not contain these limitations and thus overreaches.</p> <p>Charter’s second set of proposed changes seek to replace the commonly understood term entrance facility with the new term interconnection facility. This is merely an attempt by Charter to avoid the limitations the FCC has imposed on the use of entrance facilities. Other CLECs and third parties are not entitled to use entrance facilities they have obtained from Qwest to provide transport for Charter.</p>

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

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			<p>provided a Third-Party provider on the CLEC side of the Collocation POI. CLEC may use, as an Interconnection facility, third party- provided transport terminated in a collocation space supplied to CLEC by a third party that has leased collocation space from Qwest with LOA supplied by CLEC.</p> <p>[NOTE: Charter proposed alternative definition to Qwest proposed defined “LIS Entrance Facility” term: “Interconnection Facility” is a facility used for the transmission and routing of telephone exchange service and exchange access service between CLEC’s Switch location, or equivalent facility, and the Qwest Switch location or Serving Wire Center.</p>		<p>[NOTE: Qwest proposed definition defined term “LIS Entrance Facility”: <u>“Local Interconnection Service or “LIS” Entrance Facility” is a Qwest-provided facility that extends from CLEC’s Switch location or Point of Interconnection (POI) to the Qwest Serving Wire Center. A Qwest provided Entrance Facility shall not extend beyond the area served by the Qwest Serving Wire Center.</u></p>	
12.	<p>[RESOLVED Agreed upon language at right.] Should the agreement limit Qwest’s obligations with respect to facilities it will establish when the parties establish a mid-span meet POI?</p>	7.1.2.3	<p>Mid-Span Meet POI. A Mid-Span Meet POI is a Point of Interconnection in a LATA between Qwest’s network and CLEC. The actual physical Point of Interconnection and facilities used, including the use of fiber optic facilities, will be subject to negotiations between the Parties. The negotiations shall be guided by (a) Qwest’s obligation to permit any Technically Feasible form of interconnection; (b) CLEC’s obligation to interconnect at a point “within” Qwest’s network; (c) Qwest’s obligation to make reasonable accommodations in its network to allow interconnection. In a Mid-Span</p>	N/A.	[Agreed upon language to the left.]	N/A.

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

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			<p>Meet POI, each Party will be responsible for its portion of the build to the Mid-Span Meet POI. If the Parties cannot agree on the specific arrangements for a Mid-Span Meet POI desired by one of the Parties, the Dispute Resolution provisions of the Agreement shall apply. A Mid-Span Meet POI shall only be used for the exchange of traffic between the Parties and joint provisioning of telecommunications services, and may not be used to gain access to Unbundled Network Elements.</p>			
13.	<p>Is Charter required to compensate Qwest for so-called “direct trunk transport” circuits which carry traffic from the parties’ POI to Qwest’s tandem switch or end office switches, even where Charter has already compensated Qwest under the reciprocal</p>	<p>7.2.2.1.2.2, 7.2.2.1.4, 7.3.2.1, 7.3.2.1.1, 7.3.2.1.2, 7.3.2.1.3, 7.3.2.1.4, 7.3.2.2, 7.3.2.3</p>	<p>7.2.2.1.2.2 CLEC may purchase transport services from Qwest or from a third party, including a third party that has leased the private line transport service facility from Qwest, to connect any POIs between the networks with CLEC’s network. Subject to Section 7.2.2.1.3 below, a delivering Party may at its option direct the receiving Party to establish trunks from the POI either to the receiving Party’s Tandem Switch(es), to its End Office Switch(es), or both. The delivering Party shall be responsible for paying the receiving Party the appropriate Transport and Termination charges for traffic delivered. Termination charges shall consist of terminating local switching. Transport</p>	<p>The parties have agreed that the traffic exchanged under this agreement will be subject to section 251(b)(5) of the Act. For such traffic FCC regulations permit a terminating carrier to recover from the originating carrier the cost of the transport and termination of traffic from an “interconnection point” (or POI) to the called party. <i>See, e.g., In the Matter of Developing a Unified Inter-carrier Compensation Regime</i>, Notice of Proposed Rulemaking, 20 FCC Rcd 4685 at para. 87 (2000). Specifically, FCC rules permit each party to recover of the costs of transport and termination of telecommunications traffic that the other party originates, and delivers to the POI for delivery to the called party by the</p>	<p>7.2.2.1.2.2 CLEC may purchase transport services from Qwest or from a third party, including a third party that has leased the private line transport service facility from Qwest. Such transport provides a facility for the LIS trunk to be provisioned in order to deliver the originating Party’s Exchange Service EAS/Local traffic to the terminating Party’s End Office Switch or Tandem Switch for call termination, and may be purchased from Qwest as Tandem Switch routed (i.e., tandem switching, tandem transmission and direct trunked transport) or direct routed (i.e., direct trunked transport). This Section is not intended to alter either Party’s obligation under Section 251(a) of the Act.</p>	<p>Section 7.2.2.1.2.2 is intended merely to describe transport services Charter may obtain from Qwest or from a third party. Qwest’s proposed language is essentially the same language that came out of the 271 proceedings and is commonly used in interconnection agreements with CLECs.</p> <p>Charter’s proposed changes to Section 7.2.2.1.2.2 are inappropriate. Charter’s first change purports to limit the transport Qwest offers such that it would be used only to connect any POIs between the networks</p>

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
	compensation provisions of the agreement (via bill and keep arrangements)?		<p>consists of carrying traffic from the POI to the terminating End Office Switch and may be purchased as Tandem Switch routed (i.e., tandem switching, tandem transmission and direct trunked transport) or direct routed (i.e., direct trunked transport). This Section is not intended to alter either Party’s obligation under Section 251(a) of the Act</p> <p>7.2.2.1.4 Where the Parties do not utilize the bill and keep arrangements set forth in Section 7.3 as the method for fulfilling their reciprocal compensation obligations under 47 U.S.C. § 251(b)(5), then LIS ordered from Qwest to a Tandem Switch will be provided as direct trunked transport between the Serving Wire Center of CLEC’s POI and the Tandem Switch. Tandem transmission rates, as specified in Exhibit A of this Agreement, will apply to the transport provided from the Tandem Switch to Qwest’s End Office Switch. For Qwest-originated traffic, Qwest will pay CLEC’s applicable trunking and tandem switching rates from the POI at which the traffic is exchanged to CLEC’s End Office Switch or equivalent device.</p> <p>7.3.2.1 Either Party may elect to use direct trunked transport to connect its network to the other Party’s End Offices. Direct</p>	<p>terminating carrier. 47 C.F.R. § 51.701. The rules define “transport” as the “transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier’s end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.” <i>Id.</i> § 51.701(c). The rules define “termination” as the “switching of telecommunications traffic at the terminating carrier’s end office switch, or equivalent facility, and delivery of such traffic to the called party’s premises.” <i>Id.</i> § 51.701(d).</p> <p>Furthermore, in addition, section 252(d)(2) states that, for the purpose of an incumbent LEC’s compliance with section 251(b)(5), the terms and conditions for reciprocal compensation must provide for the “mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the carrier”... 47 U.S.C. § 252(d)(2).</p> <p>Based upon these governing principles Charter has proposed that the parties adopt a bill and keep compensation mechanism which will apply to both parties costs associated with the transport and</p>	<p>7.2.2.1.4 LIS ordered to a Tandem Switch will be provided as direct trunked transport between the Serving Wire Center of CLEC’s POI and the Tandem Switch. Tandem transmission rates, as specified in Exhibit A of this Agreement, will apply to the transport provided from the Tandem Switch to Qwest’s End Office Switch.</p> <p>7.3.2.1 Either Party may elect to purchase direct trunked transport <u>from the other Party.</u></p>	<p>with CLEC s network. This change is completely ambiguous because a point of interconnection is by definition the point where Charter s network connects to Qwest s network. Charter s second change inappropriately seeks to transform Section 7.2.2.1.2.2 into a provision prescribing reciprocal compensation terms and conditions. Furthermore, this second change contradicts Charter s bill and keep proposal.</p> <p>Charter s proposed changes to Section 7.2.2.1.4 are also ambiguous and internally inconsistent. Charter s first change qualifies 7.2.2.1.4 with the clause where the parties do not use the bill and keep arrangement set forth in Section 7.3 but does not specify when that will be the case. Thus, it is completely ambiguous. Charter s subsequent changes to Section 7.2.2.1.4 violate the FCC s rule that reciprocal compensation rates be symmetrical by stating that Charter s applicable trunking and tandem switching rates will apply. Furthermore, these changes should be rejected because Charter is not entitled to charge tandem</p>

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
			<p>trunked transport is a form of Transport service as that term is used in this Section 7 and is provided by the Parties to each other on a bill-and-keep basis.</p>	<p>termination of traffic originated by the other party. In other words, Charter will transport and terminate all traffic that Qwest originates on its network, and in return, Qwest should be obligated to transport and terminate all traffic that originates on Charter’s network. Because the parties expect that the volume of traffic will be roughly balanced, their respective costs of transporting and terminating the other party’s traffic should also be roughly balanced. Therefore, the parties can provide in-kind compensation to one another by performing these transport and termination functions without charge to the other party (i.e. a bill and keep arrangement). That arrangement is consistent with governing law, mutually beneficial, and cost effective because it eliminates the need for the parties to invoice the other party for transport and termination costs that each party incurs (and which will generally be equal, and offsetting).</p>		<p>switching rates where its switch does not qualify as a tandem switch.</p>
			<p>7.3.2.1.1 Direct trunked transport (DTT) is available between the terminating Party’s Serving Wire Center for the POI and that Party's Tandem Switch or End Office Switches. DTT facilities are provided as dedicated DS3, DS1 or DS0 facilities.</p>	<p>transport and terminate all traffic that originates on Charter’s network. Because the parties expect that the volume of traffic will be roughly balanced, their respective costs of transporting and terminating the other party’s traffic should also be roughly balanced. Therefore, the parties can provide in-kind compensation to one another by performing these transport and termination functions without charge to the other party (i.e. a bill and keep arrangement). That arrangement is consistent with governing law, mutually beneficial, and cost effective because it eliminates the need for the parties to invoice the other party for transport and termination costs that each party incurs (and which will generally be equal, and offsetting).</p>	<p>7.3.2.1.1 Direct trunked transport (DTT) is available between the Serving Wire Center of the POI and the terminating Party's Tandem Switch or End Office Switches. The applicable rates are described in Exhibit A. DTT facilities are provided as dedicated DS3, DS1 or DS0 facilities.</p>	<p>Charter s changes to Section 7.3.2.1 should be rejected because the Parties have not agreed to a bill and keep arrangement applicable to direct trunk transport. Consistent with FCC Rule 51.709(b) and paragraph 1096 of the FCC s Local Competition Order, Qwest is willing to agree to bill and keep for usage-based charges but not for the dedicated transport between the Qwest and Charter networks. 47 CFR §51.709(b); First Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15590, ¶1096 (Aug. 8, 1996)(subsequent history omitted).</p>
			<p>7.3.2.1.2 [INTENTIONALLY LEFT BLANK.]</p>		<p>7.3.2.1.2 <u>When DTT is provided to a local or Access Tandem Switch for Exchange Service (EAS/Local) traffic, or to an Access Tandem Switch for IntraLATA LEC Toll, or Jointly Provided Switched Access traffic, the applicable DTT rate elements apply between the Serving Wire Center and the Tandem Switch. Additional rate elements for delivery of traffic to the terminating End Office Switch are tandem switching and tandem transmission. These rates are described below.</u></p>	
			<p>7.3.2.1.3 Where relevant, mileage shall be measured for DTT based on V&H coordinates between the Serving Wire Center and the local/Access Tandem Switch or End Office Switch.</p>	<p>In contrast, Qwest proposes that the parties adopt bill and keep compensation only for the costs associated with the termination of traffic. Specifically, for the costs associated with the delivery of traffic from each party’s respective end office switch to the called party. With respect to transport costs, Qwest proposes a compensation arrangement which would apply unilaterally to its benefit.</p>	<p>7.3.2.1.3 Mileage shall be measured for DTT based on V&H coordinates between the Serving Wire Center and the local/Access Tandem Switch or End Office Switch.</p>	<p>Charter s changes to Section 7.3.2.1.1 should be rejected because direct trunk transport can exist on both the originating and terminating sides of the point of interconnection. Charter s change to 7.3.2.1.3 should be rejected because mileage is part of the DTT charge. Finally, Charter s change</p>
			<p>7.3.2.1.4 [INTENTIONALLY LEFT BLANK.]</p>		<p>7.3.2.1.4 <u>Fixed Charges per DS0, DS1 or DS3 and per mile charges are defined for DTT in Exhibit A of this</u></p>	

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
			<p>7.3.2.2 [INTENTIONALLY LEFT BLANK.]</p>	<p>Specifically, Qwest proposes that Charter pay Qwest for transporting traffic from the POI to its tandem and end office switches, by purchasing so-called direct trunked transport circuits. However, it is not at all clear that Qwest will in fact compensate Charter for its costs of transporting traffic from the POI to its tandem and end office switch equivalents.</p> <p>Qwest’s proposal therefore imposes cost burdens on Charter which are not consistent with the Section 252(d)(2) of the Act, and FCC regulations. Specifically, Qwest’s proposal does not allow Charter to recover its transport costs, and therefore does NOT allow for the “mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the carrier” as is required by Section 252(d)(2).</p>	<p><u>Agreement.</u></p> <p>7.3.2.2 <u>If the Parties elect to establish LIS two-way DTT trunks, for reciprocal exchange of Exchange Service (EAS/Local) traffic, the cost of the LIS two-way DTT facilities shall be shared among the Parties by reducing the LIS two-way DTT rate element charges as follows:</u></p> <p>7.3.2.2.1 <u>The provider of the LIS two-way DTT facility will initially share the cost of the LIS two-way DTT facility by assuming an initial relative use factor of fifty percent (50%) for a minimum of one (1) quarter if the Parties have not exchanged LIS traffic previously. The nominal charge to the other Party for the use of the DTT facility, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other Party will be according to this initial relative use factor for a minimum of one (1) quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor. If CLEC’s End User Customers are assigned NPA-NXXs associated with a rate center other than the rate center where the End User Customers are physically located, traffic that does not originate and terminate within the same Qwest Local Calling Area, regardless of the called and calling NPA-NXXs involving those End User Customers, is referred to as</u></p>	<p>to Section 7.3.2.3 should be rejected because Qwest is entitled to charge for multiplexing used in connection with Direct Trunk Transport.</p> <p>In addition to modifying certain language, Charter has proposed the elimination of Section 7.3.2.1.2, 7.3.2.1.4 and 7.3.2.2. These proposed sections are appropriate and should be included in the Parties interconnection agreement as Qwest has proposed.</p>

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
			<p>7.3.2.3 Multiplexing arrangements (DS1/DS3 MUX or DS0/DS1 MUX) shall be established by each Party in connection with the Transport of traffic delivered by the other Party in accordance with standard industry practices. Multiplexing is part of the Transport function and is provided by the Parties to each other on a bill-and-keep basis.</p>		<p><u>"VNXX traffic." For purposes of determining the relative use factor, the terminating carrier is responsible for VNXX traffic. If either Party demonstrates with data that actual minutes of use during the previous quarter justifies a new relative use factor that Party will send a notice to the other Party. The new factor will be calculated based upon Exhibit H. Once the Parties finalize a new factor, bill reductions and payments will apply going forward from the date the original notice was sent. Qwest has never agreed to exchange VNXX traffic with CLEC.</u></p> <p>7.3.2.3 <u>Multiplexing options (DS1/DS3 MUX or DS0/DS1 MUX) are available at rates described in Exhibit A.</u></p>	
14.	Should Qwest be entitled to impose non-recurring trunk installation and rearrangement charges upon Charter even	7.3.3.1 – 2	7.3.3.1 Because the Parties will exchange traffic on a bill-and-keep basis, trunk installation nonrecurring charges shall be waived, except that if (a) a Party seeks to establish trunks substantially in excess of forecast capacity requirements and (b) the newly established trunks remain significantly underutilized six (6) months	For the reasons described immediately above, both parties should recover their respective trunk installation costs through a bill and keep mechanism, rather than by assessing charges on the other party. That mechanism is consistent with Section 252(d)(2) and FCC regulations which provide for both parties’ right to mutually	7.3.3.1 Installation nonrecurring charges may be assessed by the provider for each LIS trunk ordered. Qwest rates are specified in Exhibit A.	Qwest disagrees with Charter s proposal to have nonrecurring charges for transport facilities dedicated to the transmission of traffic between the Qwest and Charter networks waived. Qwest s position that dedicated transport not be provided on a bill

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
	where the parties have agreed to a bill and keep compensation scheme?		<p>after installation, the Party that installed the trunks may assess the other Party Qwest trunk installation (nonrecurring) rates as specified in Exhibit A.</p> <p>7.3.3.2 Nonrecurring charges for rearrangement requested by one Party for its own convenience may be assessed by the provider for each trunk rearrangement ordered, at one-half (1/2) the rates specified in Exhibit A.</p>	recover the costs of transporting and terminating traffic originating on the other party’s network.	<p>7.3.3.2 Nonrecurring charges for rearrangement may be assessed by the provider for each LIS trunk rearrangement ordered, at one-half (1/2) the rates specified in Exhibit A.</p>	and keep basis is consistent with paragraph 1096 of the FCC’s Local Competition Order which states that a bill and keep approach for termination of traffic does not, however, preclude a positive flat-rated charge for transport of traffic between carriers’ networks. Charter’s proposed changes to Sections 7.3.3.1 and 7.3.3.2 are not appropriate.
15.	Should the parties’ agreed upon bill and keep compensation arrangement apply to both the transport, and termination, of Section 251(b)(5) traffic exchanged between the parties?	7.3.4	<p>7.3.4.1.1.2 47 C.F.R. § 51.713 defines bill-and-keep arrangements for reciprocal compensation as arrangements in which neither of two interconnecting carriers charges the other for the Transport and Termination of Exchange Service (EAS/Local) telecommunications traffic that originates on the other carrier’s network.</p> <p>7.3.4.1.2 The Parties agree that, based upon the fact that the traffic exchanged between the Parties historically has been roughly balanced, compensation for the Transport and Termination of Exchange Service (EAS/Local) Traffic shall be based upon the bill and keep compensation</p>	Yes. Section 251(b)(5) provides that each LEC has the duty to “establish reciprocal compensation arrangements for the transport and termination of telecommunications.” ¹ In addition, section 252(d)(2) states that, for the purpose of ILEC compliance with section 251(b)(5), the terms and conditions for reciprocal compensation must provide for the “mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the carrier.” Section 252(d)(2)(B)(i) further provides that the foregoing language shall not be construed “to preclude arrangements that afford the <i>mutual recovery</i> of costs through the offsetting of reciprocal	<p>7.3.4.1.1.2 47 C.F.R. § 51.713 defines bill-and-keep arrangements for reciprocal compensation as arrangements in which neither of two interconnecting carriers charges the other for the Termination of Exchange Service (EAS/Local) telecommunications traffic that originates on the other carrier’s network.</p> <p>7.3.4.1.2 The Parties agree that, based upon the fact that the traffic exchanged between the Parties historically has been roughly balanced, compensation for the Termination of Exchange Service (EAS/Local) Traffic shall be based upon the bill and keep compensation mechanism, whereby neither Party charges the other</p>	<p>FCC Rule 51.713 addresses circumstances in which a state commission can impose a bill and keep arrangement on two interconnecting parties. This rule states that [f]or purposes of this subpart, bill and keep arrangements are those in which neither of the two interconnecting carriers charges the other for the termination of telecommunications traffic that originates on the other carrier’s network. 47 C.F.R. §51.713(a).</p> <p>Qwest’s proposal to exclude transmission facilities dedicated to the transmission of traffic between the Qwest and Charter networks</p>

¹ 47 U.S.C. § 251(b)(5).

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

Issue No.	Issues(s)	ICA Section(s)	Charter’s Language	Charter’s Position	Qwest’s Language	Qwest’s Position
			<p>mechanism, whereby neither Party charges the other Party reciprocal compensation for the Transport and Termination of Exchange Service (EAS/Local) traffic originated by the one Party and terminated by the other Party. Under this bill-and-keep scenario neither Party will bill the other Party for any call Transport and Termination costs associated with delivery of the Exchange Service (EAS/Local) call to the terminating carrier’s end-user.</p> <p>7.3.4.1.3 Pursuant to Section 7.3.4.1.2 above, when CLEC chooses to interconnect and exchange traffic with Qwest utilizing a single POI within the LATA, neither party will bill the other Party any usage sensitive monthly recurring or nonrecurring charges (including trunks and/or facilities and switch related charges) for Transport or Termination costs that the terminating party may incur when delivering the originating Party’s EAS/Local Traffic to end users within the same LATA.</p>	<p>obligations, including arrangements that waive mutual recovery (such as bill-and-keep).”² Therefore, any bill and keep arrangement must ensure that there is a mutual recovery of costs, such that both Parties can recover their respective costs of transporting and terminating the other party’s traffic.</p> <p>Qwest’s proposal to remove transport functions (what Qwest calls “direct trunked transport” service) from this arrangement precludes the mutual recovery of costs because it would require Charter to compensate Qwest for direct trunk transport, without providing the same opportunity for Charter to recover its own transport costs from Qwest. Note that for purposes of dispute, the parties agree that “transport” shall have the same meaning as that term is defined under FCC regulations: the transmission and any necessary tandem switching of traffic from the interconnection point to the terminating carrier’s end office switch that directly serves the called party.</p>	<p>Party reciprocal compensation for the Termination of Exchange Service (EAS/Local) traffic originated by the one Party and terminated by the other Party. Under this bill-and-keep scenario neither Party will bill the other Party for and Termination costs associated with delivery of the Exchange Service (EAS/Local) call to the <u>carrier’s</u> end-user.</p> <p>7.3.4.1.3 Pursuant to Section 7.3.4.1.2 above, when CLEC chooses to interconnect and <u>deliver</u> traffic <u>to</u> Qwest utilizing a single POI within the LATA, neither party will bill the other Party any usage sensitive charges <u>associated with Exchange Service (EAS/Local) traffic.</u></p>	<p>from bill and keep has been authorized by the FCC in paragraph 1096 of its Local Competition Order.</p> <p>Because it chooses the point of interconnection within Qwest’s network, Charter has the ability to shift transport costs to Qwest. Excluding direct trunked transport from bill and keep ensures that Charter’s choice of the point of interconnection does not increase Qwest’s transport costs to Charter’s benefit. Thus, Qwest’s proposal is more fair and balanced.</p>
16.	Should either party have the right to utilize indirect interconnection	7.1.2.6 - 9	7.1.2.6 Either Party may deliver Local Traffic and ISP-bound Traffic indirectly to the other for termination through any carrier to which both Parties’ networks are interconnected directly or indirectly.	Charter has the right to avail itself of indirect interconnection pursuant to Section 251(a). There are no limitations on such right, and Charter should be entitled to utilize indirect interconnection	[INTENTIONALLY LEFT BLANK]	Charter’s proposed language for Issue No. 16 should be rejected. Charter does not have a legal right under Section 251(c) of the Act to have indirect interconnection

² 47 U.S.C. § 252(d)(2)(B)(i).

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

Issue No.	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
	as a means of exchanging traffic with the other party?		<p>The Originating Party shall bear all charges payable to the transiting carrier(s) for such transit service with respect to Local Traffic and ISP-bound Traffic.</p> <p>7.1.2.7 Unless otherwise agreed, the Parties shall exchange all Local Traffic and ISP-bound Traffic indirectly through one or more transiting carriers until the total volume of Local Traffic and ISP-bound Traffic being exchanged between the Parties’ networks exceeds 240,000 minutes per month for three (3) consecutive months, at which time either Party may request the establishment of Direct Interconnection. Notwithstanding the foregoing, if either Party is unable to arrange for or maintain transit service for its originated Local Traffic upon commercially reasonable terms before the volume of Local Traffic and ISP-bound Traffic being exchanged between the Parties’ networks exceeds 240,000 minutes per month, that Party may unilaterally, and at its sole expense, utilize one-way trunk(s) for the delivery of its originated Local Traffic to the other Party.</p> <p>7.1.2.8 After the Parties have established Direct Interconnection between their networks, neither Party may continue to transmit its originated Local Traffic and ISP-bound Traffic indirectly except on</p>	<p>as a means of exchanging EAS, and other traffic, with Qwest’s network.</p> <p>To break down barriers to competition in the local phone market, the Act requires all carriers to "interconnect, directly or indirectly" with other carriers. <i>See</i> 47 U.S.C. § 251(a)(1). The FCC and the courts have both reaffirmed that a competing carrier has the right to choose to avail itself of either the right of indirect interconnection under Section 251(c), or the right of indirect interconnection under Section 251(a). Further, the use of direct interconnection in one instance does not preclude the use of indirect interconnection in another instance. <i>See Atlas Tel. v. Okla. Corp. Comm’n</i>, 400 F.3d 1256, 1268 (10th Cir. 2005).</p> <p>Further, if Charter desires to exchange local traffic with Qwest from an existing point of interconnection, and the indirect traffic exchange threshold for the switch serving that POI has been satisfied, Charter will establish a direct interconnection arrangement between such switch and Qwest’s network or to interconnect its switch to another Charter switch in order to utilize an existing direct interconnection arrangement already established between Charter and Qwest.</p>		<p>imposed upon Qwest. Section 251(c)(2) requires Qwest to provide for the facilities and equipment of the requesting telecommunications carrier (here, Charter) interconnection with the local exchange carrier’s network (here, Qwest’s network). Qwest has no obligation under Section 251(c) to provide for the facilities and equipment of a third carrier’s network as Charter requests.</p> <p>In addition, Charter’s proposed language does not address significant issues that arise with respect to indirect interconnection. Indeed, Charter does not so much as identify the third party carrier it intends to use. Numerous other issues concerning the terms and conditions of interconnection and traffic exchange between Qwest and the third party carrier are not even addressed. For example, Charter’s language contains no provisions that address how traffic routed through the hypothetical third party carrier will be segregated, identified or tracked so that the applicable intercarrier compensation, if any, will be applied to Charter’s traffic and not to other carriers’ traffic with which Charter’s traffic happens to be commingled.</p>

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
			<p>an overflow basis to mitigate traffic blockage, equipment failure or emergency situations.</p> <p>7.1.2.9 Local Traffic and ISP-bound Traffic exchanged by the Parties indirectly through a transiting carrier shall be subject to the same Reciprocal Compensation, if any, as Local Traffic and ISP-bound Traffic exchanged through Direct Interconnection.</p>			
UNEs, SECTION 9						
17.	Should Charter be liable for miscellaneous charges assessed by Qwest, even where Charter does not request that Qwest perform any work?	9.1.12	Miscellaneous Charges apply for miscellaneous services listed below in this Section, if such miscellaneous services are available with Unbundled Network Elements as provided under "Rate Elements" subsections of this Section 9. Miscellaneous services are provided at CLEC's request, and CLEC must affirmatively agree to the charges for such services in advance. Miscellaneous Charges are in addition to recurring and nonrecurring charges that apply under this Agreement. When more than one miscellaneous service is requested for the same Unbundled Network Element(s), Miscellaneous Charges for each miscellaneous service apply. Basic rates apply for miscellaneous services provided during Qwest's regular business hours, 8 a.m. to 5 p.m., local time, Monday through Friday, excluding holidays; overtime Miscellaneous Charges apply for such	Where one party performs work at the request of the other party, then the party performing such work should be compensated. However, neither party should be liable for charges to the other party where the first party has not requested that the other party perform work. Qwest’s proposed language would establish a process that gives Qwest the right to determine when it would assess charges upon Charter. There is no reason for the parties to incorporate language that provides a unilateral right to assess charges upon the other party. If Qwest performs work on Charter’s behalf, and at Charter’s request, it should be compensated for such work. However, Qwest should not have the right to unilaterally assess charges when Charter does not request that work be performed.	Miscellaneous Charges apply for miscellaneous services listed below in this Section, if such miscellaneous services are available with Unbundled Network Elements as provided under "Rate Elements" subsections of this Section 9. Miscellaneous services are provided at CLEC's request <u>or are provided based on CLEC's actions that result in miscellaneous services being provided by Qwest.</u> Miscellaneous Charges are in addition to recurring and nonrecurring charges that apply under this Agreement. When more than one miscellaneous service is requested for the same Unbundled Network Element(s), Miscellaneous Charges for each miscellaneous service apply. Basic rates apply for miscellaneous services provided during Qwest's regular business hours, 8 a.m. to 5 p.m., local time, Monday through Friday, excluding holidays; overtime Miscellaneous Charges apply for such services provided between 5 p.m. and 8	A miscellaneous charge covers the instance where Qwest incurs a cost that is not covered by the typical NRC or RC associated with the product or service and is a result of a request by Charter or as a result of actions by Charter. Seeking advance approval for these charges is not practical as in many circumstances Qwest will have already performed the service resulting in the miscellaneous charges. For example, if it is assumed that Charter calls in a problem with a facility and Qwest discovers the problem is on Charters portion of the circuit, Qwest should be able to charge for the work it performed to determine this based on Charter s original request,

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
			<p>services provided between 5 p.m. and 8 a.m., local time, Monday through Friday, or any time Saturday, excluding holidays; and premium Miscellaneous Charges apply for such services provided any time on Sundays or holidays. Depending on the specific circumstances, the items below are Miscellaneous Charges that may apply if requested by CLEC:</p> <p>a) Additional engineering – engineering work including: 1) additional technical information after Qwest has already provided the technical information normally on the design layout record; 2) customized service; or 3) review of Qwest outside plant records. Basic or overtime rates apply.</p> <p>b) Additional labor – installation – installation work scheduled to be performed outside of Qwest's regular business hours. Overtime or premium rates apply.</p> <p>c) Additional labor - other - work not included in "additional labor – installation" above that involves labor only, including testing and maintenance that are not part of initially requested installation or maintenance, or, for example, for Optional Testing when CLEC reports trouble and provides no test results and authorizes Qwest to perform tests on CLEC's behalf. Basic, overtime, or premium rates apply.</p>		<p>a.m., local time, Monday through Friday, or any time Saturday, excluding holidays; and premium Miscellaneous Charges apply for such services provided any time on Sundays or holidays.</p> <p>a) Additional engineering – engineering work including: 1) additional technical information after Qwest has already provided the technical information normally on the design layout record; 2) customized service; or 3) review of Qwest outside plant records. Basic or overtime rates apply.</p> <p>b) Additional labor – installation – installation work scheduled to be performed outside of Qwest's regular business hours. Overtime or premium rates apply.</p> <p>c) Additional labor - other - work not included in "additional labor – installation" above that involves labor only, including testing and maintenance that are not part of initially requested installation or maintenance, or, for example, for Optional Testing when CLEC reports trouble and provides no test results and authorizes Qwest to perform tests on CLEC's behalf. Basic, overtime, or premium rates apply.</p> <p>d) Additional cooperative acceptance testing – performing specific tests requested by CLEC. Qwest's participation in such testing is subject to the</p>	<p>because it was Charter s responsibility to isolate the problem prior to engaging Qwest (12.3.4.1). Dispute resolution processes are available if Charter believes Qwest has improperly imposed these charges.</p>

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
			<p>d) Additional cooperative acceptance testing – performing specific tests requested by CLEC. Qwest's participation in such testing is subject to the availability of necessary qualified Qwest personnel and test equipment at test locations, which normally include the Qwest Central Office and may include CLEC's specified location. Tests include, but are not limited to, loop back, attenuation, intermodulation, phase jitter, noise, delay, echo, and frequency shift tests. Basic, overtime, or premium rates apply.</p> <p>e) Non-scheduled testing - performing specific tests requested by CLEC as described above under “cooperative testing” or “manual testing” on a non-scheduled basis. Tests include, but are not limited to, loss, noise, slope, delay, and echo. Such tests are performed as the result of a repair request and are in addition to tests required to isolate and repair trouble. Basic, overtime, or premium rates apply.</p> <p>f) Cancellation – cancellation of a pending order for the installation of services at any time prior to notification by Qwest that service is available for use. The cancellation date is the date Qwest receives notice from CLEC that the order is cancelled. If CLEC or CLEC's End User Customer is unable to accept service within thirty (30) Days after the original Due Date, the order will be cancelled by Qwest.</p>		<p>availability of necessary qualified Qwest personnel and test equipment at test locations, which normally include the Qwest Central Office and may include CLEC's specified location. Tests include, but are not limited to, loop back, attenuation, intermodulation, phase jitter, noise, delay, echo, and frequency shift tests. Basic, overtime, or premium rates apply.</p> <p>e) Non-scheduled testing - performing specific tests requested by CLEC as described above under “cooperative testing” or “manual testing” on a non-scheduled basis. Tests include, but are not limited to, loss, noise, slope, delay, and echo. Such tests are performed as the result of a repair request and are in addition to tests required to isolate and repair trouble. Basic, overtime, or premium rates apply.</p> <p>f) Cancellation – cancellation of a pending order for the installation of services at any time prior to notification by Qwest that service is available for use. The cancellation date is the date Qwest receives notice from CLEC that the order is cancelled. If CLEC or CLEC's End User Customer is unable to accept service within thirty (30) Days after the original Due Date, the order will be cancelled by Qwest. <u>Prices for this miscellaneous service are the rate(s) specified in Exhibit A.</u></p>	

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
			<p>Prices for this miscellaneous service are set forth in section [INSERT] of Qwest's [IDENTIFY APPLICABLE] Tariff. Additional information concerning the application of prices for cancellations can be found in Qwest's Tariff FCC No. 1, Section 5.</p> <p>g) Design change – information provided by CLEC or a request from CLEC that results in an engineering review and/or a design change to service on a pending service order, per order, per occurrence. Design changes include, but are not limited to: 1) changes to the address on a pending service order when the new address is in the same Qwest Wire Center as the original address; or 2) conversions from an Unbundled Network Element to a private line/Special Access circuit. In addition to a design change Miscellaneous Charge, an address change may result in the application of an expedite Miscellaneous Charge in order to retain the original Due Date. Prices for this miscellaneous service are set forth in section [INSERT] of Qwest's [IDENTIFY APPLICABLE] Tariff.</p> <p>h) Dispatch – 1) information provided by CLEC, or a request from CLEC, in relation to installation of services, resulting in dispatch of a Qwest technician(s) when dispatch is not required for Qwest to complete its installation work;</p>		<p>Additional information concerning the application of prices for cancellations can be found in Qwest's Tariff FCC No. 1, Section 5.</p> <p>g) Design change – information provided by CLEC or a request from CLEC that results in an engineering review and/or a design change to service on a pending service order, per order, per occurrence. Design changes include, but are not limited to: 1) changes to the address on a pending service order when the new address is in the same Qwest Wire Center as the original address; or 2) conversions from an Unbundled Network Element to a private line/Special Access circuit. In addition to a design change Miscellaneous Charge, an address change may result in the application of an expedite Miscellaneous Charge in order to retain the original Due Date. <u>Prices for this miscellaneous service are the rate(s) specified in Exhibit A.</u></p> <p>h) Dispatch – 1) information provided by CLEC, or a request from CLEC, in relation to installation of services, resulting in dispatch of a Qwest technician(s) when</p>	

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

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			<p>2) information provided by CLEC resulting in dispatch, or a request from CLEC for dispatch, of a Qwest technician(s) in relation to a repair request where no trouble is found in Qwest's facilities; and 3) a Qwest technician(s) is dispatched and CLEC or CLEC's End User Customer is not available or ready. Prices for this miscellaneous service are set forth in section [INSERT] of Qwest's [IDENTIFY APPLICABLE] Tariff.</p> <p>i) Expedite – a Due Date that reflects a shorter service interval than is available in Qwest's Service Interval Guide; or that is a request for an earlier Due Date than has been established on a pending order; or that is required to meet a Due Date on a pending order due to design or other changes submitted by CLEC. Qwest will accommodate CLEC's request for an expedited installation if it can do so without delaying Due Dates or orders of other CLECs or End User Customers. Charges for expedited installations are in addition to nonrecurring charges for the service ordered. Prices for this miscellaneous service are set forth in section [INSERT] of Qwest's [IDENTIFY APPLICABLE] Tariff.</p> <p>j) Maintenance of Service/Trouble Isolation – work performed by Qwest when CLEC reports trouble to Qwest and no trouble is found in Qwest's</p>		<p>dispatch is not required for Qwest to complete its installation work; 2) information provided by CLEC resulting in dispatch, or a request from CLEC for dispatch, of a Qwest technician(s) in relation to a repair request where no trouble is found in Qwest's facilities; and 3) a Qwest technician(s) is dispatched and CLEC or CLEC's End User Customer is not available or ready. <u>Prices for this miscellaneous service are the rate(s) specified in Exhibit A.</u></p> <p>i) INTENTIONALLY LEFT BLANK</p> <p>j) Maintenance of Service/Trouble Isolation – work performed by Qwest when CLEC reports trouble to Qwest and no trouble is found in Qwest's facilities. CLEC is responsible for payment of charges when the trouble is in equipment or systems provided by a party(ies) other than Qwest. Additionally, when CLEC reports trouble within a quantity of services and circuits, but fails to identify the specific service and circuit experiencing trouble, charges apply for the time spent by Qwest to isolate the trouble. A call-out of Qwest technician at a time not consecutive with that</p>	

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

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			<p>facilities. CLEC is responsible for payment of charges when the trouble is in equipment or systems provided by a party(ies) other than Qwest. Additionally, when CLEC reports trouble within a quantity of services and circuits, but fails to identify the specific service and circuit experiencing trouble, charges apply for the time spent by Qwest to isolate the trouble. A call-out of Qwest technician at a time not consecutive with that technician's scheduled work period is subject to a minimum charge of four (4) hours. Failure of Qwest personnel to find trouble in Qwest facilities will result in no charge if the trouble is subsequently found in those facilities. Charges apply per Qwest technician, from the time of dispatch until the work is complete. Trouble Isolation Charges (TIC) apply for trouble isolation work on POTS and Maintenance of Service charges apply for trouble isolation work on other services. Dispatch Miscellaneous Charges may apply in addition to Maintenance of Service charges or TIC. Basic, overtime, or premium rates apply. Prices for this miscellaneous service are set forth in section [INSERT] of Qwest's [IDENTIFY APPLICABLE] Tariff.</p>		<p>technician's scheduled work period is subject to a minimum charge of four (4) hours. Failure of Qwest personnel to find trouble in Qwest facilities will result in no charge if the trouble is subsequently found in those facilities. Charges apply per Qwest technician, from the time of dispatch until the work is complete. Trouble Isolation Charges (TIC) apply for trouble isolation work on POTS and Maintenance of Service charges apply for trouble isolation work on other services. Dispatch Miscellaneous Charges may apply in addition to Maintenance of Service charges or TIC. Basic, overtime, or premium rates apply. <u>Prices for this miscellaneous service are the rate(s) specified in Exhibit A.</u></p>	
ANCILLARY SERVICES, SECTION 10						
18.	RESOLVED Agreed upon language shown	10.3.7.1.1	The Parties shall establish a minimum of two (2) dedicated trunks from CLEC's Central Office to each Qwest 911/E911 Selective Router (i.e., 911 Tandem Office)	N/A.	[Agreed upon language at the left.]	N/A.

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

Issue No.	Issues(s)	ICA Section(s)	Charter’s Language	Charter’s Position	Qwest’s Language	Qwest’s Position
	<p>at right].</p> <p>Should Qwest be required to make 911 facilities available to Charter at cost-based rates pursuant to Section 251(c)?</p>		<p>that serves the areas in which CLEC provides Exchange Service, for the provision of 911/E911 services and for access to all subtending PSAPs (911 Interconnection Trunk Groups). Qwest will provision diverse routing for 911/E911 circuits, if facilities are available. When Qwest facilities are available, Qwest will comply with diversity of facilities and systems as ordered by the State/PSAP. Where there is alternate routing of 911/E911 calls to a PSAP in the event of failures, Qwest shall make that alternate routing available to CLEC. When 911/E911 underlying transport is ordered by the State/PSAP, CLEC will not be subject to Qwest transport charges. In the event that CLEC doesn’t self-provision 911/E911 facilities between Qwest's 911/E911 Selective Router location and Charter's switch location, 911/E911 DS0 trunks may be provisioned on either multiplexed LIS T1 facilities or multiplexed private line T1 facilities at the CLEC's discretion.</p>			
19.	<p>Should Qwest be permitted to undertake marketing of its own activities based upon the identify of Charter’s subscriber listings?</p>	10.4.2.4	<p>If CLEC provides its End User Customer's Listings to Qwest, CLEC grants Qwest access to CLEC's End User Customer Listings information for use in its Directory Assistance Service as described in Section 10.5, and in its Directory Assistance List Service as described in Section 10.6. CLEC's Listings supplied to Qwest by CLEC shall not be used by Qwest for marketing purposes. Qwest will</p>	<p>Qwest should not be permitted to market to Charter subscribers by segregating, or otherwise identifying, Charter’s subscribers included in Qwest’s database of subscriber listings that is used for publishing white pages directories. Qwest’s obligations to provide nondiscriminatory access to directory listing, pursuant to 47 U.S.C. § 251(b)(3),</p>	<p>If CLEC provides its End User Customer's Listings to Qwest, CLEC grants Qwest access to CLEC's End User Customer Listings information for use in its Directory Assistance Service as described in Section 10.5, and in its Directory Assistance List Service as described in Section 10.6, <u>and for other lawful purposes, except that CLEC's Listings supplied to Qwest by CLEC and marked as nonpublished or nonlisted</u></p>	<p>Section 10.4 pertains to Qwest s White Pages Directory Listings Service that consists of Qwest placing the names, addresses and telephone numbers of CLEC's End User Customers in Qwest's Listings database, based on End User Customer information provided to Qwest by CLEC. Section 251(b)(3) does not allow</p>

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

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			<p>incorporate CLEC End User Customer Listings in the Directory Assistance Database. Qwest will incorporate CLEC's End User Customer Listings information in all existing and future Directory Assistance applications developed by Qwest. Should Qwest cease to be a Telecommunications Carrier, by virtue of a divestiture, merger or other transaction, this access grant automatically terminates.</p>	<p>requires Qwest to accept a customer's listing information in a directory assistance database or in a directory compilation for external use (such as the white pages). <i>In Re Implementation of the Telecommunications Act of 1996</i>, Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273, 14 FCC Rcd 15550, ¶ 160 (1999) ("Directories Order"). Where Qwest is obligated to provide such access pursuant to its duties under federal law, it should not be allowed to use such information to engage in improper, or unlawful, retention or win-back marketing activities by identifying Charter’s subscribers through the listing information submitted to Qwest.</p>	<p><u>Listings shall not be used for marketing purposes subject to the terms and conditions of this Agreement.</u> Qwest will incorporate CLEC End User Customer Listings in the Directory Assistance Database. Qwest will incorporate CLEC's End User Customer Listings information in all existing and future Directory Assistance applications developed by Qwest. <u>Qwest will not market to CLEC’s End User Customer’s Listings based on segregation of CLEC’s Listings.</u> Should Qwest cease to be a Telecommunications Carrier, by virtue of a divestiture, merger or other transaction, this access grant automatically terminates.</p>	<p>the LEC providing the directory listings (in this case Charter)to impose restrictions that limit the lawful uses, including marketing and does not give that LEC the right to prohibit specific uses of the directory listings information it provided. Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended, CC Docket No. 99-273, First Report and Order, 16 FCC Rcd 2736 at 2749-51, paras. 28-29, (2001) (SLI/DA First Report and Order).</p> <p>Once the directory assistance listings are received from Charter and put into Qwest s listing database, the carrier of an end user is not identifiable to the users of the Qwest listing database and Qwest cannot market to specific carrier s customers. Charter s directory assistance listings are treated the same as Qwest s customer listings, providing no advantages to Qwest for marketing purposes.</p>
20.	Whether prior written authorization to release, sell, or make available,	10.4.2.5	CLEC’s End User Customer Listings will be treated the same as Qwest's End User Customer Listings. Qwest will not release CLEC’s End User Customer Listings without CLEC’s prior written consent	Qwest should be required to seek Charter’s prior written authorization before Qwest sells, makes available, or releases CLEC’s End User Customer Listings to directory publishers, or to other	CLEC End User Customer Listings will be treated the same as Qwest's End User Customer Listings. <u>Prior written authorization from CLEC, which authorization may be withheld, shall be</u>	Qwest s language encompasses the statutory distinctions in the Act that warrant different regulatory treatment of directory assistance and directory publishing. Charter s

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

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	Charter listing information should be obtained by Qwest?		and only to the extent required by Applicable Law. No prior authorization from CLEC shall be required for Qwest to sell, make available, or release CLEC's End User Customer Directory Assistance Listings to Directory Assistance providers, provided that Qwest does so in accordance with Applicable Law. Listings shall not be provided or sold in such a manner as to segregate End User Customers by Carrier and shall not be provided by Qwest for marketing purposes to third parties. Qwest will not charge CLEC for updating and maintaining Qwest's Listings databases. CLEC will not receive compensation from Qwest for any sale of Listings by Qwest as provided for under this Agreement	third parties.	<u>required for Qwest to sell, make available, or release CLEC's End User Customer Listings to directory publishers, or other third parties other than Directory Assistance providers.</u> No prior authorization from CLEC shall be required for Qwest to sell, make available, or release CLEC's End User Customer Directory Assistance Listings to Directory Assistance providers. Listings shall not be provided or sold in such a manner as to segregate End User Customers by Carrier. Qwest will not charge CLEC for updating and maintaining Qwest's Listings databases. CLEC will not receive compensation from Qwest for any sale of Listings by Qwest as provided for under this Agreement	explicit approval is required for directory listings to be provided to directory publishers or parties other than DA providers, allowing Charter the ability to limit who receives this information. Pursuant to the FCC rulings, directory listings provided to DA providers does not contain the approval limitation. Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended, CC Docket No. 99-273, First Report and Order, 16 FCC Rcd 2736 at 2749, para. s 28-29, (2001).
21.	[RESOLVED] Agreed upon language at right.] Given that the parties have agreed that there should be no charges for directory listings, it is appropriate to include language reflecting the parties'	10.4.2.1.1	Qwest will accept one (1) primary Listing for each main telephone number belonging to CLEC's resale and facilities-based End User Customers at no non-recurring or monthly recurring charge. Additional terms regarding application of rates is provided in Section 10.4.3.	N/A.	[Agreed upon language at left.]	N/A.

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

Issue No.	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
	understanding in the agreement?	10.4.3.3				
22.	Should the agreement include language establishing that Qwest is prohibited from assessing charges upon Charter when Charter submits non-publish or non-list information to Qwest?	10.4.3.4	<p>10.4.2.1.2 CLEC will be charged for its facilities-based premium Listings (e.g., additional, foreign, cross-reference) at prices contained in Exhibit A. Primary Listings and other types of Listings are defined in the Qwest General Exchange Tariffs.</p> <p>10.4.3 The following rate elements apply to white pages directory Listings and are contained in Exhibit A of this Agreement.</p> <p style="padding-left: 40px;">10.4.3.1 Primary Listings; and</p> <p style="padding-left: 40px;">10.4.3.2 Premium Listings.</p> <p>10.4.3.4 CLEC shall have no obligation to provide Qwest directory listing information related to CLEC End User Customers that have requested non-list or non-publish status within the directory. Qwest will not assess a charge upon CLEC for providing, maintaining, storing, or otherwise processing information related to End User Customers Listings, that have requested</p>	<p>Where Charter subscribers choose not to include their listing information in the directories, there should be no charge assessed upon Charter for not publishing that listing information. Where one party undertakes certain actions on behalf of the other party, charges may be appropriate. However, the agreement should establish fair and equitable principles surrounding the obligation to compensate the other party. Where one party takes no action, it should not be entitled to assess charges upon the other party. Accordingly, when Charter subscribers are not published in a Qwest directory, there should be no charge assessed against Charter.</p>	<p>10.4.2.1.2 CLEC will be charged for its facilities-based premium Listings (e.g., additional, foreign, cross-reference) <u>and privacy Listings (i.e., nonlisted and nonpublished)</u> at prices contained in Exhibit A. Primary Listings and other types of Listings are defined in the Qwest General Exchange Tariffs.</p> <p>10.4.3 The following rate elements apply to white pages directory Listings and are contained in Exhibit A of this Agreement.</p> <p style="padding-left: 40px;">10.4.3.1 Primary Listings; and</p> <p style="padding-left: 40px;">10.4.3.2 Premium <u>and Privacy</u> Listings.</p> <p>10.4.3.4 [Intentionally left blank.]</p>	<p>Non list and non publish services are available as an optional additional service to a primary listing and not a standard service. Commission approved Qwest interconnection agreements contain these charges. Qwest customers pay for this option and Charter s customers should not receive special treatment.</p> <p>Charter has no obligation to provide directory listing information to Qwest for listing in its DA database. Section 10.4 pertains to listings provided to Qwest by the CLEC.</p>

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

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			<p>non-list or non-publish status, or for any other act associated with such End User Customers.</p>			
23.	<p>Should the agreement reflect the fact that Qwest has the obligation under Section 251(b)(3) to provide directory listings for both white pages and yellow pages listings?</p>	<p>10.4.5 & 15</p>	<p>10.4.5 The same provisions and requirements that apply to white pages directory treatment of CLEC Listings also apply to the provision of a classified listing in any classified (Yellow Pages) directory published by or on behalf of, or under contract to, Qwest. Arrangements for listings in a classified directory other than primary listings, including bold-faced listings, multiple listings, and advertisements, shall be arranged between any affected End User and Qwest’s contractor.</p> <p>15. Qwest shall provide CLEC with directory listing functions (that is, inclusion of CLEC numbers in printed white and yellow pages directories) to the same extent that Qwest provides its own End Users with such listing functions, irrespective of whether Qwest provides such functions itself or relies on a third party to do so. Qwest shall promptly cause any contracts or agreements it has with any third party with respect to the provision of these services and functions to be amended, to the extent necessary, so that CLEC may provide its own End Users’ information for inclusion in such printed directories on the same terms</p>	<p>As noted above, Qwest’s obligation under Section 251(b)(3) includes the obligation to provide non-discriminatory access to directory listings, which refers to the act of listing a customer in a directory.</p> <p>The FCC’s regulations define "directory listings" broadly as any information "that <i>the telecommunications carrier or an affiliate</i> has published, <i>caused to be published</i>, or accepted for publication in any directory format." 47 C.F.R. § 51.5. Thus, the duty to publish competitors' business customers in a yellow pages directory on a nondiscriminatory basis extends to incumbent carriers, like Qwest, who have caused their own customers listings to be published in a yellow pages directory. Moreover, the issue of whether the publishing company is an affiliate of Qwest is not relevant because the regulation is drafted more broadly. "Directory listings" include those that an incumbent carrier has "caused to be published." <i>Id.</i> Qwest causes its own customers to be published in the Yellow Pages book published by Qwest’s former affiliate, DEX Publishing. Therefore, Qwest has the duty to provide nondiscriminatory access to such yellow pages publication to MCI’s customers.</p>	<p>10.4.5 [INTENTIONALLY LEFT BLANK.]</p> <p>15. Qwest and CLEC agree that certain issues outside the provision of basic white page Directory Listings, such as yellow pages advertising, yellow pages Listings, directory coverage, access to call guide pages (phone service pages), applicable Listings criteria, white page enhancements and publication schedules will be the subject of negotiations between CLEC and directory publishers, including Qwest's Official Directory Publisher. Qwest acknowledges that CLEC may request Qwest to facilitate discussions between CLEC and Qwest's Official Directory Publisher.</p>	<p>Qwest provides lists to both yellow and white pages publishers that include Charter listings, Qwest listings and other CLEC listings in a non discriminatory manner. Charter s additional language is not necessary because Qwest provides its directory listings database that includes Qwest and CLEC customers, to directory publishers in the industry standard OBF approved format that does not contain font or print formats, type of business classifications, page placements and does not specify white or yellow pages. This type of individual requests and specific requirements are negotiated between the publisher and the end-user and Qwest need not be involved in Charter s direct dealings with publishers for Charter to submit its listings, not through Qwest, but directly to a publisher. . Qwest will facilitate discussions upon request but the agreements on placement, classifications and listing specifications is between the</p>

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

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			<p>and conditions that Qwest End User information is included. Notwithstanding the foregoing, CLEC acknowledges that yellow pages advertising arrangements will be established directly between Qwest’s Official Directory Publisher and any End Users seeking to place such advertising.</p>	<p>See <i>MCI Telecommunications Corp. and MCIMetro Access Transmission Services, Inc. v. Michigan Bell Telephone Company d/b/a Ameritech Michigan, Inc.</i>, 79 F. Supp 2d 768, 802 (E.D. Mich. 1999) (reconsideration order reversing earlier decision after FCC order resolved issue) and <i>US West Communications, Inc. v. Hix</i>, 93 F. Supp. 2d 1115, 1132 (D. Colo. 2000).</p>		<p>publisher and the end user.</p>
<p>24.</p>	<p>[RESOLVED Agreed upon language at right.] Should the party that initiates an audit assume cost responsibility for the audit where such audit: (a) the audit reveals minimal differences in amount billed and amounts owed; and, (b) an independent auditor is selected by both</p>	<p>18.2.8 - 10</p>	<p>18.2.8.2 Notwithstanding the foregoing, the non-requesting Party shall pay all of the requesting Party's commercially reasonable expenses in the event an Audit or Examination identifies a difference between the amount billed and the amount determined by the Audit to be owed that exceeds ten percent (10%) of the amount billed and results in a refund and reduction of at least ten percent (10%) in the Billing to the requesting Party.</p> <p>18.2.9 Either Party may require that an Audit be conducted by a mutually agreed-to independent auditor, which agreement will not be unreasonably withheld or delayed by the other Party. Under this circumstance, the costs of the independent auditor shall be paid for by the Party requesting the Audit subject to Section 18.2.8.2.</p> <p>18.2.10 In the event that the non-</p>	<p>N/A.</p>	<p>[Agreed upon language at left.]</p>	<p>N/A.</p>

WASHINGTON
JOINT REVISED Charter – Qwest Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues(s)</u>	<u>ICA Section(s)</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>Qwest’s Language</u>	<u>Qwest’s Position</u>
	parties?		requesting Party requests that the Audit be performed by an independent auditor, the Parties shall mutually agree to the selection of the independent auditor. Under this circumstance, the costs of the independent auditor shall be shared equally by the Parties However , the portion of this expense borne by the requesting Party shall be borne by the non-requesting Party if the terms of Section 18.2.8.2 are satisfied.			