BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Interconnection Agreement Between CHARTER FIBERLINK WA-CCVII, LLC. and QWEST CORPORATION Pursuant to 47 U.S.C. Section 252.	Docket No. UT-083041 PETITION FOR ADMINISTRATIVE REVIEW OF ARBITRATOR'S REPORT AND DECISION BY CHARTER FIBERLINK WA-CCVII, LLC

PETITION FOR ADMINISTRATIVE REVIEW OF ARBITRATOR'S REPORT AND DECISION BY CHARTER FIBERLINK WA-CCVII, LLC

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May 6, 2009

1. Pursuant to Order No. 08 in Docket No. UT-083041, Charter Fiberlink WA-CCVII, LLC ("Charter") hereby files the following exceptions to the recommended decision ("Decision") issued by the Honorable Administrative Law Judge and Arbitrator ("Arbitrator"), Marguerite Friedlander, on March 30, 2009 in the above referenced docket. Charter respectfully submits that the Arbitrator's Decision, and accompanying recommendations, with respect to the issues set forth below are in error and should be reversed, or modified, by the Commission.

Issue 5: Limitation of Liability for Directory Services

Section 10.4.2.6 – Limitation of Liability for Directory Services

2. On the question of how to limit the parties' respective liability, the Arbitrator's Decision properly ruled that Charter's proposed language in Section 5.8 of the agreement, concerning limitations of liability, should be adopted. In so ruling the Arbitrator explained that under Qwest's language, "the injured party to the ICA would receive damages in an amount unrelated to the substance [i.e., gravity] of the injury suffered." *Decision* at ¶ 35. In other words, the Arbitrator correctly recognized that because Charter doesn't order unbundled elements, collocation or resale services, adopting Qwest's language would likely not allow either party to be reimbursed for the actual damages caused by the other party. The Arbitrator's ruling also recognizes the inherent problems with Qwest's proposal, which would eliminate incentives to act rationally by disassociating damages caused by a party from the actual harm or injury suffered by the aggrieved party. As the Arbitrator noted, when there is "no rational relationship between the injury experienced and that damages instituted, the parties have little to no incentive to act with care..." *Id.*

3. Unfortunately, the Arbitrator did not apply that same principle to her decision concerning the inclusion of limitation of liability language related to directory listings. In approving Qwest's proposed language in Section 10.4.2.6 of the agreement, the Arbitrator did not recognize that Qwest's language suffers from the same flaw as Qwest's language for Section 5.8, concerning general limitations of liability. That is, under Qwest's language for Section 10.4.2.6, the injured party would receive damages in an amount ***unrelated to*** the substance of the injury suffered. This result is a product of the fact that the language adopted by the Arbitrator incorporates Qwest's state tariff provisions concerning Qwest's liability with regard to directory listings.

4. According to Qwest's witness, the applicable tariff provisions are Sections 2.4.4 and 5.7.1 (E and F) of the Qwest Washington Exchange and Network Services Tariff.[1] The terms of these tariff provisions would limit Qwest's liability to arbitrarily small amounts, which are ***unrelated to*** the actual damages that may be suffered by Charter. For example, Section 2.4.4 of the Qwest tariff states that for those listings that are "furnished for an additional charge" (i.e. non-primary listings), Qwest's liability is limited to "an amount not in excess of the charge for that listing during the effective life of the directory in which the error or omission is made."[2] Similarly, for those "primary" listings that Qwest provides without any charge, Qwest limits liability to an amount that will not exceed the charge for exchange service during the life of the directory.[3] Either way, these two provisions of the Qwest tariff have the effect of limiting Qwest's liability to amounts charged.

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[1] *See* Exhibit RA-2RT (Albersheim Rebuttal) at 19.

[2] Qwest Exchange and Network Services Washington Tariff, § 2.4.4.A.1.

[3] *Id.* at § 2.4.4.A.2.

5. These terms therefore suffer from the same problem as the Qwest liability limitation language already rejected by the Arbitrator: available damages (if any) are completely unrelated to the amount of actual damages that may be incurred. Should any injury or harm arise from a Qwest error or omission related to directory listings, the injured party would receive damages in an amount unrelated to the substance of the injury suffered. As a result, Qwest will have little incentive to ensure that it takes due care with respect to subscriber listings placed into published directories.

6. As noted above, the Qwest tariff states that for "primary" listings Qwest's liability is limited to the amount paid for "exchange service."[4] In other words, Qwest will not be liable for more than the amount charged to the subscriber for local telephone service. But the record reflects that Charter does not pay Qwest for "exchange service" –because it does not purchase local telephone service from Qwest. Therefore, under the language adopted by the Arbitrator, any damages arising from Qwest's error or omission associated with a subscriber's primary listing would be zero ($0), simply because Charter does not pay Qwest for exchange service.

7. But that result cannot be what the Arbitrator intended because the Arbitrator correctly rejected that result when considering Qwest's proposed language for Section 5.8. The Decision provides no rational basis why damages related to directory listings should be treated differently. This arbitrary distinction should be reversed by the Commission so that the liability of limitations provisions of the contract are internally consistent.

8. The Arbitrator also asserts that it is "unclear" how the parties would be able to calculate actual, direct damages for an error or omission in a directory listing. *Decision* at ¶ 41. The calculation of actual, direct damages arising from a directory listing error or omission could arise

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[4] *Id.*

in any number of circumstances. For example, a listing may be published with an incorrect address, or telephone number; or a listing with a nonlist or nonpublish designation that was submitted correctly by Charter may nevertheless be published due to an error by Qwest or its agent. If the subscriber ran a small business that relied upon the published listing to reach potential customers, and those potential customers were unable to reach the subscriber because of the directory listing error, then actual damages could be determined.[5] Likewise, if a police officer's family was injured by someone who was previously arrested by the officer, but now free from incarceration, and who found the officer's address through the negligent publication of the officer's directory listing, the resulting harm could be ascertained in court.

9. The decision to adopt Qwest's proposed Section 10.4.2.6 also rests upon the Arbitrator's incorrect assertion that "Charter would not appear to be the injured party," *Decision* at ¶ 41; but, instead, Qwest's error or omission would disadvantage the customer more than Charter. *Id.* This conclusion fails to recognize that Charter is also likely to be affected, in that it could face liability to its own end users for errors or omissions committed by Qwest.[6]

10. Further, because Qwest is required by federal law[7] to accept Charter's end user customer listings for submission in both white and yellow pages, there is a very real probability that Qwest could commit an error or omission with respect to a Charter end-user customer listing. In that case, the end-user customer will have contractual privity with Charter, and would likely seek

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[5] *See, e.g., Dial One of the Mid-South, Inc. v. BellSouth*, 401 F.3d 603 (5th Cir. 2005). Nor is there any basis in the record for the Arbitrator to conclude that "an error or omission in the transmittal of customer listings is not likely to rise to the same level of damages as gross negligence." *Decision* at ¶ 41.

[6] At the hearing Qwest argued that Charter's tariffs would protect it from any harm suffered by one of its end users as a result of the negligent publication of its listing in the directory (or from a failure to publish the listing). However, as this Commission knows, CLEC's local exchange tariffs in Washington are no longer accepted and approved by the Commission. *See* WAC 480-120-266. As such, the probability that CLECs like Charter may face greater liability to end users is a legitimate concern.

[7] *See U S West Communications v. Hix*, 93 F. Supp. 2d 1115 (D. Colo. 2000); *and MCI Telecommunications v. Michigan Bell Telephone,* 79 F. Supp. 2d 768 (E.D. Mich. 1999).

damages from Charter. If Charter then sought to implead Qwest into the dispute, Qwest would likely claim that the interconnection agreement language (referencing its retail tariff provisions)[8] would limit Qwest's liability to nothing. Given Qwest's obligations under federal law to facilitate this process of publishing listings, permitting Qwest to arbitrarily limit its liability to Charter, or Charter's end user customers, would effectively allow Qwest to avoid its obligations under federal law. Indeed, as noted above, it is likely that available damages would be zero ($0), or *de minimis*, because neither Charter nor its end user customer pay Qwest for the function associated with publishing primary listings

11. Finally, in the alternative, only if the Commission decides to affirm the Arbitrator's Decision on this issue, which Charter strongly opposes, the Commission should at least modify the ruling to ensure that the adopted contract language specifically references the provisions that will be incorporated into the agreement from the Qwest tariff. Qwest's witness, Ms. Albersheim, stated in her rebuttal testimony that Qwest would be "willing to make reference to the Washington Exchange and Network Services Tariff, sections 2.4.4. and 5.7.1 (E and F)..." [9] Thus, Qwest should have no objection to more specific language for Section 10.4.2.6, which Charter proposes (in the alternative):

> 10.4.2.6 To the extent that state Tariff(s) limit Qwest's liability with regard to Listings, **Sections 2.4.4 and 5.7.1 (E and F) of the Washington Exchange and Network Services Tariff, are** incorporated herein and supersede the Limitation of Liability section of this Agreement with respect to Listings only.[10]

[8] Section 10.4.2.6.

[9] *See* Exhibit RA-2RT (Albersheim Rebuttal) at 19.

[10] Consistent with the convention used by the parties in this proceeding, Charter's proposed additional language is shown in **bold**, while Qwest's proposed language is shown as double underline.

12. For all of these reasons, with respect to the adoption of Qwest's proposed language for Section 10.4.2.6, the Commission should reverse the Arbitrator's Decision and adopt Charter's proposed language for that provision.

Issue 10: Demonstration of Technical Infeasibility

13. Charter does not seek review of this aspect of the Arbitrator's Decision. Instead, Charter simply seeks to inform the Commission of the parties' agreed-upon final contract language to implement the Arbitrator's Decision on Issue 10. Accordingly, after reviewing the Arbitrator's Decision, and following discussions with Qwest, the parties have agreed upon the following language to reflect the Decision:

> 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. ... [[*text intentionally omitted*]] ... 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 can demonstrate that such connections present a 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 End User Customers, in accordance with Applicable Law.

14. This language incorporates all of the language recommended by the Arbitrator, while at the same time including an additional clause (shown in bold) to address Charter's concerns. Therefore, Charter respectfully requests that the Commission affirm the language set forth above upon the filing of a final conformed agreement by the parties.

Issue 11: Methods of Interconnection

15. Likewise, Charter does not seek review of this aspect of the Arbitrator's Decision. Instead, Charter simply wishes to inform the Commission of the parties' agreed-upon final contract language to implement the Arbitrator's Decision on Issue 11. After reviewing the Arbitrator's Decision, and following discussions with Qwest, the parties have agreed upon the following language to reflect the Decision:

> 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 Agreement 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 any Technically Feasible point: (1) a Qwest-provided Entrance 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.
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> 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.
>
> 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.
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> 7.1.2.4(b) Interconnection Facility 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.
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> **NOTE: Following definition to be included in Section 4 (Definitions):
> "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.

16. This language incorporates all of the language recommended by the Arbitrator, while at the same time addressing additional concerns raised by Qwest and Charter during subsequent discussions. Therefore, Charter respectfully requests that the Commission affirm the language set forth above upon the filing of a final conformed agreement by the parties.

Issues 13, 14, and 15: Reciprocal Compensation or Bill and Keep for Transport and Termination of Traffic

17. In deciding these three issues in Qwest's favor, the Arbitrator relied upon factual assertions that are inaccurate and that lack any evidentiary support. In addition, the Arbitrator incorrectly interpreted federal law, and the FCC's orders implementing interconnection obligations upon incumbent LECs like Qwest. Notably, the Arbitrator's Decision refers to "governing" law and principles, but fails to actually provide citations to any statute, rule or decision of the FCC.

18. Having applied the incorrect legal criteria to the compensation-related disputes arising under issues 13, 14 and 15, the Decision results in an inequitable outcome by recommending Qwest's language that requires Charter to pay Qwest for a significantly greater proportion of transport, and associated trunks, than Qwest will pay to Charter. The Decision forces Charter to pay Qwest for many miles of transport, while limiting Qwest's obligations to pay Charter for only a very limited amount of transport.

19. The Decision also conflicts with the FCC's policy of adopting network interconnection and compensation regimes that encourage carriers to invest in efficient and advanced network technologies. The Decision, if left unchanged, actually reduces incentives for Qwest to build and

develop an efficient network, while at the same time unreasonably forcing Charter to pay for transport costs on Qwest's network.

The Decision Errs As a Matter of Law By Adopting Language Which Conflicts With the FCC's Rulings Concerning the Establishment of a Single POI and Concomitant Transport Obligations

20. In the Decision on Issue 11, concerning methods of interconnection, the Arbitrator correctly ruled that under well established federal policy, the FCC has repeatedly affirmed that competitive carriers, like Charter, have the right to establish a single point of interconnection ("POI") on the incumbent LEC's network.[11]

21. However, in granting Charter its right to a single POI, the Decision also undermines the utility or inherent value of granting that right to Charter. This is evidenced by the ruling that "Charter must be held accountable for the consequences of its decisions. Simply stated, Charter must be prepared to pay for Qwest's additional transport costs, including Qwest's direct trunk transport costs, if Charter chooses a POI outside of a local calling area where it exchanges local traffic with Qwest." *Decision* at ¶ 99. In other words, according to the Decision, Charter may only utilize a single POI if it pays for Qwest's costs of transporting traffic on Qwest's side of the POI, to and from, that single POI.

22. This ruling, however, thwarts the essential purpose of granting Charter the single POI right in the first place. The ruling does not recognize that in conferring this right upon competitors, the FCC explained that Congress established the right to a single POI per LATA, in part because it would permit the competitor to dictate each carrier's respective obligations concerning the transport of traffic to, and from, the POI. As the FCC explained:

> Section 251(c)(2) [of the Act] gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on

[11] *See* Decision at ¶ 89.

> that network, *rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points.*[12]

23. The FCC's statement reflects the fact that the establishment of a single POI will, by necessity, require the carriage of traffic to and from that location at some cost. Moreover, the FCC specifically explained that by giving *competitors* the right to choose a POI location, Congress intended that competitors would be able to minimize, or reduce, *the competitor's* obligation to carry traffic to less convenient or efficient POIs.[13] This holding recognizes that it is the incumbent who bears the obligation to "carry," or transmit, traffic to the single POI with the competitor. And, implicit in this statement is the conclusion that the incumbent may not avoid that obligation by shifting its costs of carriage to and from the POI back onto the competitor.

24. In adopting Qwest's language on this issue, the Decision does not properly account for the FCC's policy. There is no discussion, or even acknowledgment, of the FCC's decision that granting competitors the right to establish a single POI necessarily means that each carrier would have concomitant obligations to transport traffic on its network. Thus, the Decision errs, as a matter of law, in finding that Charter must pay for Qwest's additional transport costs, including Qwest's direct trunk transport costs, if Charter chooses a POI outside of a local calling area where it exchanges local traffic with Qwest.

The Decision's Conclusion That Traffic and Transport Obligations Are Imbalanced Constitutes Factual Error

25. The Decision also errs in concluding that traffic and transport obligations, two distinct concepts, are imbalanced. In rendering the ruling on Issue 15, concerning the use of bill and

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[12] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499 at ¶ 209 (1996) ("*Local Competition Order*") (emphasis added).

[13] *Local Competition Order* at ¶ 209.

keep for transport and termination of traffic, the Arbitrator concludes that Qwest provides more **transport** to Charter because "Qwest provides transport from Charter's POI to over 45 central office switches." *Decision* at ¶ 110. This conclusion concerning the balance of **transport** provided by each party is factually incorrect, as the record demonstrates. In addition, the Arbitrator also concludes that Charter did not "counter Qwest's assertion regarding the imbalance of traffic." *Id.* This conclusion concerning the balance of **traffic**, too, is incorrect. The Arbitrator's Decision thus relies upon factual errors.

26. With respect to the latter claim, concerning the imbalance of **traffic**, Charter presented evidence that both parties agreed that the traffic is balanced now and would likely be balanced in the future. [14] Thus, the conclusion that traffic is imbalanced is in error.

27. With respect to the former claim, that Qwest provides transport from Charter's POI to "over 45 central office switches," it was also refuted during the hearing. The statement appears to be based upon the exhibit introduced by Qwest witness, Mr. Linse, showing Qwest network facilities between the POI and Qwest's local distribution network in Spokane. However, Qwest's other network witness, Mr. Easton, admitted on the stand that this diagram was not informative because Charter ***does not send any local traffic to Qwest in Spokane.***[15] Indeed, Charter does not have any subscribers in Spokane, so there would be no reason for the parties to exchange local traffic in Spokane.[16] Therefore, although Qwest may maintain transport within

[14] *See* Section 7.3.4.1.2 of draft agreement ("The Parties agree that, based upon the fact that the traffic exchanged between the Parties historically has been ***roughly balanced***...") (emphasis added). *See also* Exh. TJG-3 (Gates Reb.) at 17.

[15] The Spokane example is not instructive because Qwest's witness admitted that Charter has no retail end user customers in Spokane, and therefore does not send local traffic to (or from) Qwest's network in Spokane. Tr. (Easton) 247:21-25; 248:1-5 (admitting that there is no local end user traffic delivered to, or from, the Spokane tandem).

[16] *Id.* Tr. (Easton) 247:23-25 (describing traffic to, or from, the Spokane tandem as transit traffic to mobile service providers –***not*** end user customer traffic).

its network to 45 central office switches in the state, the record shows that the transport used for exchanging traffic with Charter is directed to only a small portion of those switches.[17] The Arbitrator's reliance upon that assertion is therefore in error.

28. The Arbitrator also erred by failing to apply the mutual cost recovery standard under Section 252(d)(2)(A)(i) of the Act. That statute establishes that reciprocal compensation arrangements must provide for the *mutual* recovery by each carrier of costs associated with the transport and termination on each carrier's network of calls that originate on the network of the other carrier.[18] The Arbitrator's Decision allows Qwest to recover all of its transport costs, while at the same denying Charter the opportunity to recover all of its transport costs.

29. Consistent with the mandate of Section 252(d)(2)(A)(i), the Commission must recognize that both parties have ***equivalent*** obligations to carry traffic originated by the other party. For example, the record reflects that Charter provides service in several Qwest service areas, including Pasco, Waitsburg, Walla Walla, and Kennewick. In these areas, Charter is competing directly with Qwest to obtain telephone subscribers. As a result, both parties serve customers in these same service areas.[19] That fact, and the fact that the parties currently exchange traffic via a single POI in Yakima,[20] means that the parties' each have the same obligations to carry traffic to and from the POI in Yakima, back to their respective subscribers, who reside in the same communities (Pasco, Waitsburg, Walla Walla, and Kennewick).

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[17] The record reflects that Charter provides service in only a limited number of Qwest service areas, including Pasco, Waitsburg, Walla Walla, and Kennewick, and all of the traffic for those areas is exchanged via a single point of interconnection between Qwest and Charter. Tr. 242:20-25, 243:1-6 (Easton) (identifying communities where Qwest and Charter providing service in competition with one another).

[18] 47 U.S.C. § 252(d)(2)(A)(i) (emphasis added).

[19] Tr. 242:20-25, 243:1-6 (Easton) (identifying communities where Qwest and Charter providing service in competition with one another).

[20] *Id.* at 165:10-11.

30. Nevertheless, the Decision does not recognize that both parties have *equivalent* obligations to carry traffic originated by the other Party. The Arbitrator states, without citation to any record evidence, that Qwest will face transport costs far greater than Charter. *Decision* at ¶ 110. But there is no evidence in the record to support the conclusion that Qwest, in the aggregate, has greater transport costs. Further, the Arbitrator makes no mention of evidence in the record that shows each Party would carry traffic to and from their respective subscribers in Pasco, Waitsburg, Walla Walla and Kennewick, back to the Party's current POI in Yakima.[21] That fact helps to illustrate that, on any given route, Charter and Qwest are both required to transport and terminate (*i.e.*, transmit) the calls roughly the same distance (to and from the location of the calling Party to the POI with the other carrier).

31. The call flow of a single telephone call demonstrates this fact. The record reflects that both parties have subscribers in Pasco, and that the parties' existing single POI is in Yakima.[22] Thus, when a Qwest subscriber in Pasco phones a Charter subscriber in Pasco, the following steps occur: (1) Qwest picks up the call on its network in Pasco; (2) Qwest sends the call over its own network to the POI in Yakima; (3) Qwest hands off the call to Charter at the Yakima POI; (4) Charter then carries the call back to Pasco over Charter's own network; and (5) Charter delivers the call to the called party (a Charter subscriber) in Pasco, over its own local network in Pasco. Of course, the same steps occur (in reverse order) when a Charter subscriber in Pasco calls a Qwest subscriber in Pasco. A simple call flow diagram, set forth below, reflects the call flow of a single telephone call described in this paragraph.

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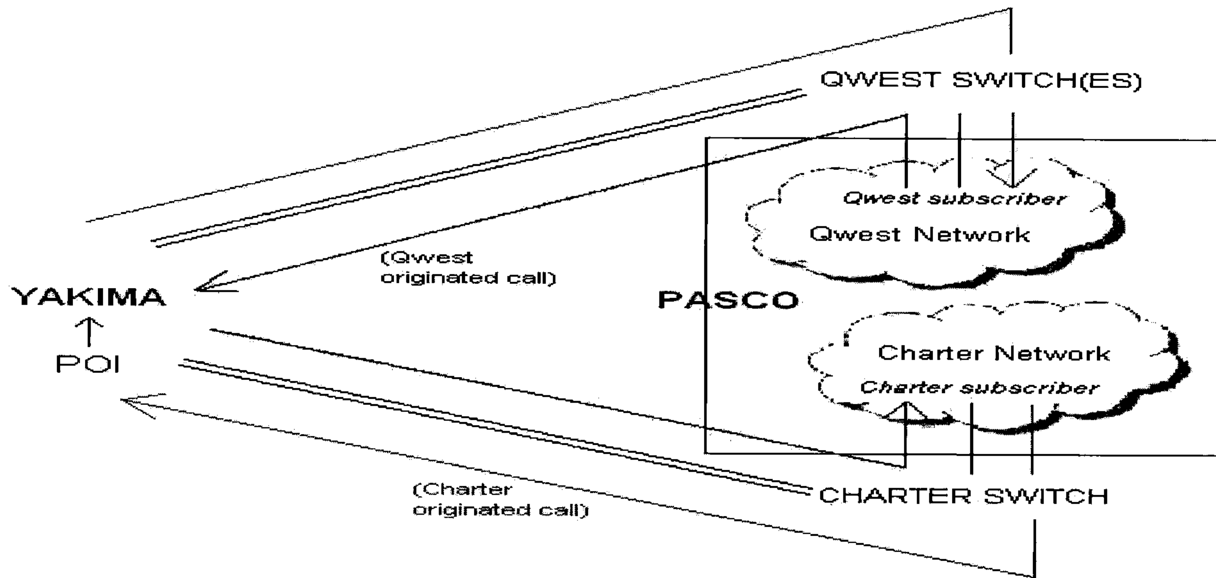
[21] Tr. 243:7-20, 244:10-21 (Easton) (affirming each party's obligation to carry calls to and from Pasco to the POI in Yakima).

[22] *Id.*

Call Flow Diagram



32. Thus, the parties have the same total, overall call delivery, or transmission, obligations when calls are sent to, and from, their respective networks. This means that each party incurs roughly the same costs in transmitting calls from the POI in Yakima back to their respective subscribers in Pasco. The mutual recovery of cost standard of Section 252(d)(2)(A)(i) mandates that each party be permitted to recover their entire costs of delivering such calls. Thus, the Arbitrator erred in adopting language which will not permit Charter to recover its entire costs of transmitting (transporting and terminating) calls delivered to its network by Qwest.

The Ninth Circuit and This Commission Have Affirmed That Bill and Keep Is an Efficient Method for Assigning Cost Responsibility

33. The Arbitrator's Decision also does not reconcile the record evidence showing that a bill and keep arrangement for the transport **and** termination of all traffic would be a more efficient and equitable compensation arrangement. In addition, the Decision attempts to distinguish

existing law in the Ninth Circuit and Washington that supports the use of bill and keep compensation where traffic is roughly balanced.[23]

34. The Ninth Circuit has expressly affirmed the imposition of bill and keep arrangements, in lieu of direct payments between Qwest and competitive providers. In *MCI Telecomms. Corp. v. U.S. West Comms.*,[24] the Ninth Circuit affirmed this Commission's decision to order Qwest's predecessor, U.S. West, to enter into a bill and keep arrangement with competitor MCImetro Communications.[25] In so doing the Ninth Circuit explained that bill and keep represents an equitable arrangement (a sort of "rough justice approach"), and that the adoption of such an arrangement was appropriate given the Washington UTC's "general policy favoring bill and keep arrangements."[26] The same considerations apply in this instance, and demand the same result as that ordered by this Commission, and affirmed by the Ninth Circuit.

35. The Arbitrator attempts to distinguish the Ninth Circuit's ruling by asserting that the issue in *MCI Telecommunications* was "whether assumptions that transport costs will be roughly equal 'as long as individual customers make about as many calls as they receive' was sufficient for the arbitrator to impose a bill and keep arrangement." *Decision* at ¶ 100 (quoting *MCI Telecommunications* at 1270). But this analysis incorrectly confuses *traffic* balance with *transport* costs. The court's ruling affirmed this Commission's imposition of a bill and keep arrangement because the Commission (and its ALJ) assumed that ***traffic*** would be in balance,

[23] As noted above, the parties have already agreed that traffic is in balance now, and is likely to remain in balance in the foreseeable future. *See* Section 7.3.4.1.2 of draft agreement ("The Parties agree that, based upon the fact that the traffic exchanged between the Parties historically has been ***roughly balanced…***") (emphasis added).

[24] 204 F.3d 1262 (9th Cir. 2000) (affirming district court's decision to affirm the Washington UTC arbitration ruling between Qwest and MCImetro on several issues).

[25] *Id.* at 1270-71.

[26] *Id.*

and that, under that circumstance, bill and keep would provide a sort of "rough justice."[27] In this case, there is no assumption at all, the parties agree that the traffic is in balance. Thus, the basis for applying bill and keep here is even stronger than it was in the *MCI Telecommunications* case.

36. Although the *MCI* decision did not address the issue of balanced transport costs, the same underlying principle of applying an equitable arrangement ("rough justice") can, and should, be invoked by this Commission in this case. A bill and keep arrangement provides that the two interconnected carriers will not charge one another for their respective costs of delivering traffic from the POI to the called party. This arrangement is appropriate where the traffic exchanged between the parties is roughly balanced. Indeed, FCC rules specifically authorize state commissions to impose a bill and keep arrangement if "traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so, ..."[28] The record reflects that the parties agree that traffic is, and will be, roughly balanced.[29]

37. Moreover, Qwest's own witness Mr. Easton admitted on the stand that, "[i]f the traffic is going to be in balance and the parties agree to a bill and keep arrangement, from each party's perspective, they're being made whole."[30] Mr. Easton added that although "[t]here hasn't been compensation changing hands, but, in a sense, each party has been compensated."[31] In addition, this type of arrangement also provides significant efficiencies, and associated cost benefits,

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[27] *Id.*

[28] 47 C.F.R. § 51.713(b). This rule is conditioned on the fact that "no showing has been made pursuant to § 51.711(b)." Rule 51.711(b) addresses the potential for asymmetrical rates, and is not at issue here (nor has any "showing" been made by Qwest).

[29] *See* Section 7.3.4.1.2 of draft agreement; *and* H.E. 10 (Gates Reb.) at 39:14-16.

[30] 1 Tr. 204:2-5 (Easton).

[31] *Id.* at 204:7-8 (Easton). As noted, under a bill and keep compensation arrangement, the parties are compensated by their own end users and do not have to pay transport and termination costs to the other party.

because neither Party will have to generate invoices, review and pay the invoices of the other Party, and resolve potential disputes.

38. The merits of these elements of a bill and keep arrangement, equity and efficiency, are lost in the Arbitrator's Decision. In fact, the erroneous conclusion that Qwest "will face additional transport costs" indicates that the Decision does not recognize the equities of the bill and keep arrangement proposed by Charter.

The Decision Contradicts Federal Policy Encouraging the Deployment of Efficient Networks and Technology

39. More fundamentally, the Decision perpetuates a flawed interconnection regime in that it forces competitors like Charter into one of two equally untenable situations. Competitors can either: (1) pay Qwest for transporting traffic on Qwest's side of the POI for traffic that is delivered outside of the calling area where the POI is located; or, (2) establish multiple POIs with Qwest. That, in turn, would require Charter to build and deploy a network that essentially mirrors the Qwest network in Washington. Both options result in a situation that increases a competitor's costs of interconnection, while simultaneously reducing incentives to compete with Qwest in multiple locations in the state.

40. By reversing the Arbitrator's ruling, the Commission can take this opportunity to eliminate these competitive burdens by establishing a network interconnection regime which supports competitive options, and encourages the deployment of efficient, rather than duplicative, network architectures. As the FCC recently noted in its 2008 Intercarrier Compensation NPRM, "[a]s carriers shift from circuit-switched telephone-only networks to packet-switched broadband networks supporting numerous services and applications, it is important that intercarrier compensation rules create the proper incentives for carriers to invest in

new broadband technology and that consumers have the opportunity to take full advantage of the new capabilities of this broadband world."[32]

41. In its intercarrier compensation proceedings the FCC's stated goal has been to reform the current intercarrier compensation regimes by creating a compensation "regime that promotes efficient facilities-based competition in the marketplace."[33] This goal will be served by creating a "technologically and competitively neutral"[34] intercarrier compensation and interconnection regime that keeps pace with network developments.[35] This Commission should support, rather than undermine that national policy goal, by reversing the Arbitrator's Decision in this proceeding.

42. The inefficiencies associated with the current intercarrier compensation regime are well documented. As the FCC itself has explained, "[b]ecause carriers currently can receive significant revenues from charging above-cost rates to terminate telecommunications traffic, they have a reduced incentive to upgrade their networks to the most efficient technology or to negotiate interconnection agreements that are designed to accommodate the efficient exchange of IP traffic, as both actions would likely lead to reduced intercarrier payments."[36] The same principle applies to the inequitable transport charges proposed by Qwest, and adopted by the Arbitrator. By shifting the burden of transporting traffic on Qwest's side of the POI to Charter, the Arbitrator's Decision has the perverse effect of eliminating any incentive for Qwest to

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[32] *In the Matter of High Cost Universal Service Support and Developing a Unified Intercarrier Compensation Regime*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 09-262 at ¶ 93 (rel. Nov. 5, 2008) (*2008 Intercarrier Compensation NPRM*).

[33] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 10 FCC Rcd 4685 at ¶¶ 31, 146 (2005) (*2005 Intercarrier Compensation NPRM*).

[34] *Id.* at ¶ 146.

[35] *Id.*

[36] *2008 Intercarrier Compensation NPRM* at ¶ 184.

upgrade its networks by establishing more efficient and cost-effective technology to transport calls on its network. Indeed, what rational actor would deploy more efficient network technology if its primary competitor is forced to pay for the transport on its network?

43. In contrast, Charter's proposal would have just the opposite effect. If the Commission ordered the parties to adopt a bill and keep approach for the transport *and* termination of all traffic exchanged on their respective networks, then both carriers would each bear the direct costs of transporting and terminating such traffic. Unable to recover those costs from the other, Charter and Qwest would have no option but to absorb such costs or recover those costs from their own end users. By making each carrier responsible to *its own* customers for the recovery of its network costs, Charter's proposal will force both carriers to compete for customers on the basis of the efficiency and value of the services provided, and their networks, not on the basis of the comparative ability to exploit arbitrary regulatory distinctions. Put differently, Charter's proposal will permit competition, rather than regulation, to drive consumer choice in the provision of voice services. That result would incorporate the well-accepted principle that end-users should be required "to bear a greater proportion of the cost of the local network [because that] encourages them to make rational choices in their use of telephone service."[37] Likewise, providers must implement efficient networks in order to capture and retain the customer base. Accordingly, when carriers and Commissions are in alignment with that policy the cost to the customer is actually lowered because providers are forced to build more efficient networks.

44. The FCC has repeatedly affirmed the need to reform network interconnection rules and decisions (like the Arbitrator's Decision) that encourage inefficient network architectures. Indeed, in 2001 the FCC asked whether requiring LECs to bear the cost of transport outside the

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[37] *Id.*

local calling area leads to inefficient network design, and whether requiring competitors to establish multiple POIs or pay for transport beyond the local calling area could force competitive carriers to replicate the incumbent LEC network.[38] In response to these assertions, competitive carriers demonstrated that interconnection regimes that effectively require competitors to pay for transport to the POI outside the local calling area, or force the competitor to interconnect in every local calling area, effectively requires new entrants to replicate the existing incumbent LEC network, regardless of whether it is efficient to do so.[39]

45. Thus, the record in the FCC's intercarrier compensation proceeding demonstrates that it is both inefficient and anticompetitive to require CLECs to establish points of interconnection in every local calling area, or to pay for the transport of traffic over the ILEC networks. More significantly, that result conflicts with the FCC's prior determinations that CLEC networks employing a single switch may be more efficient than ILEC legacy networks.[40] Those efficiencies are lost when the States impose unnecessary and disproportionately burdensome interconnection costs upon CLECs.

46. When a CLEC initially enters a market, it generally deploys a single switch and establishes one POI with the incumbent near the focus of its initial entry. When it seeks to

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[38] *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 at ¶ 114 (2001) (*2001 Intercarrier Compensation NPRM*).

[39] *See* Comments filed in FCC docket, CC Docket No. 01-92, of: Cablevision Lightpath Comments at 3; PCIA Comments at 31; AT&T Reply at 36; Focal *et al.* Reply at 43; Taylor Communications Reply at 36 in FCC Docket 01-92 (regarding intercarrier compensation reform) CC Docket No. 01-92. *See also* Letter from Patrick H. Merrick, Director, Regulatory Affairs, AT&T, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 01-92, at 11 (filed May 1, 2002) (claiming that mirroring the incumbent LEC network is not economic for new entrants and will stifle competition) (AT&T May 1 *Ex Parte* Letter).

[40] Indeed, in its First Report and Order on Local Competition the FCC recognized that there would be instances in which a competitor could serve comparable geographic areas to that served by an incumbent when interconnecting via a single point and thru the deployment of a fiber ring. *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 at ¶ 1090 (1996).

expand to surrounding communities, the most efficient option for the CLEC will often be to continue to use its initial POI, at least until its volume of customers and traffic in the surrounding areas will support another POI. The interaction between the location of the POI and the costs that a CLEC must bear provides the CLEC with strong incentives, once its volume of distant customers increases sufficiently, to establish an additional POI closer to the more distant communities. When the traffic being transported to and from distant customers rises to significant levels, the CLEC may reconsider its single POI configuration, as some CLECs do today. As explained above, adoption of the Arbitrator's Decision by this Commission, however, would hinder Charter's ability to compete effectively with Qwest by eliminating the opportunity to provide competitive services from a network platform built on technologically innovative, efficient, network equipment.

47. In addition to reducing incentives to deploy efficient networks, the Arbitrator's Decision also creates strong disincentives for Charter to expand its service into those areas outside of the most densely populated subscriber groups. That result cannot be what the FCC or the state commission envisioned upon the advent of competitive entry. Expansion of service into new areas would, under the Arbitrator's Decision, require Charter to incur the significant cost of purchasing additional transport from Qwest, or deploying additional POIs in that area. That result is not warranted given that currently-deployed network facilities are fully capable of handling additional network capacity. Thus, affirmation of the Arbitrator's Decision would dampen incentives to expand competitive residential service offerings.

48. There is no real dispute that the deployment of transport facilities by CLECs requires the expenditure of substantial fixed costs. The further into the ILEC network that the CLEC must build, the smaller the volume of traffic carried by each individual facility and, consequently, the

higher the unit costs. This is particularly problematic because ILECs employ many more switches than do CLECs to serve a comparable geography. Instead, as the Arbitrator recognized, competitors like Charter generally rely on relatively fewer switches and longer transport links.[41] Therefore, if implemented, the Arbitrator's Decision will (over time) require Charter to take the inefficient action of replicating Qwest's network architecture in order to reduce its monthly recurring costs. Charter simply does not have sufficient traffic volumes to justify the building of transport facilities to each and every Qwest central office or local calling area in a LATA, nor does Congressional or FCC policy require or support that approach.

49. Charter believes this Commission has the unique opportunity to understand and promote the FCC's national policy goals, which "encourage the efficient use of, and investment in, telecommunications networks, and the development of efficient competition."[42] Indeed, this Commission has noted the efficiencies associated with a bill and keep compensation scheme. The UTC has explained that "bill and keep is a fair compensation method ... [and] [w]here there is no gain to be achieved from anticompetitive or inefficient behavior, companies have elected bill and keep because of its inherent simplicity and inefficiencies."[43] A policy that encourages the development of competition via support of the most efficient network configurations and cost assignment is consistent with the goals of the 1996 Act, which was intended to both open markets to competitive entry and promote increased competition in telecommunications markets.

50. Accordingly, for these reasons the Commission should modify the Arbitrator's Decision and recommended language for Issues 13, 14 and 15, and instead adopt Charter's proposed

[41] *Decision* at ¶ 89.

[42] *2005 Intercarrier Compensation NPRM at ¶ 31 (citing 2001 Intercarrier Compensation NPRM,* 16 FCC Rcd at 9612, ¶ 2).

[43] *Washington Utilities and Transportation Commission v. U.S. West Communications, Inc., Fourth Supplemental Order*, Docket Nos. UT-941464, UT-941465, UT-950146, & UT-950265 at p. 38 (WUTC October, 1995).

language for those issues, to require both parties to utilize a bill and keep compensation arrangement for the transport and termination of all traffic exchanged between their respective networks.

Issue 19: Limitations on Qwest Marketing to Charter Subscriber Listings

51. Charter does not seek review of this aspect of the Arbitrator's Decision. Instead, similar to Issues 10 and 11, Charter simply seeks to inform the Commission of the parties' agreed upon final contract language to implement the Arbitrator's Decision on Issue 19. After reviewing the Arbitrator's Decision, and following discussions with Qwest, the parties have agreed upon the following language to reflect the Decision:

> 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, and for other lawful purposes, except that CLEC's Listings supplied to Qwest by CLEC and marked as nonpublished or nonlisted Listings shall not be used for marketing purposes subject to the terms and conditions of this Agreement. 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. Qwest will not market to CLEC's End User Customers~~'s Listings~~ based on segregation of CLEC's Listings. Should Qwest cease to be a Telecommunications Carrier, by virtue of a divestiture, merger or other transaction, this access grant automatically terminates.

52. This language incorporates all of the language recommended by the Arbitrator, while at the same time addressing a potential drafting error that was discussed during the hearing. Therefore, Charter respectfully requests that the Commission affirm the language set forth above upon the filing of a final conformed agreement by the parties.

Issue 23: Qwest Obligations With Respect to Yellow Pages Functions

53. On this issue Charter seeks review of only a limited portion of the Arbitrator's Decision. Specifically, Charter seeks review of the Arbitrator's Decision, at paragraph 141, to adopt Qwest's language in proposed Section 15, concerning its yellow page directory obligations.

54. As for the other disputed language under this issue, in Section 10.4.5 of the agreement, the Arbitrator declined to adopt either party's proposed language. Therefore, the parties negotiated language intended to reflect the Arbitrator's findings and direction concerning Qwest's provision of Charter listings to yellow pages publishers, as follows:

> Qwest will provide CLEC's Directory Listings to white and yellow pages directory publishers in a non-discriminatory manner, and commingled and integrated with Qwest's and other CLEC Listings, pursuant to the terms of this Agreement.

55. With respect to the language for Section 15, in deciding what obligations that Qwest must bear with respect to the provision of yellow pages directory obligations, the Arbitrator did not apply applicable law. The Arbitrator's Decision rests solely on perceived impracticalities with each party's proposal, rather than the respective legal obligations of both parties. *Decision* at ¶¶ 142-43. The Decision does not analyze, or apply, Section 251(b)(3), FCC regulations, or federal court precedent interpreting and applying that statute to Qwest (or its predecessor, U S West).

56. Also, the Decision does not recognize that as a matter of law Qwest bears the affirmative duty under Section 251(b)(3) to arrange for the publication of yellow pages listings for Charter customers. This is precisely the holding of the United States District Court for the District of Colorado, when it affirmed an arbitration decision by the Colorado Public Utilities Commission ("PUC"). In *U S West Communications v. Hix,*[44] the federal court affirmed the Colorado PUC's conclusion that Section 251(b)(3), and FCC regulations implementing that statute, required

[44] 93 F. Supp. 2d 1115 (D. Colo. 2000).

Qwest's predecessor, U S West, to arrange for the publication of yellow pages listings for CLEC customers. The United States District Court for the Eastern District of Michigan reached the same conclusion with respect to another incumbent LEC in *MCI Telecommunications v. Michigan Bell Telephone*.[45] There the court, in construing the scope of the FCC's regulations promulgating Section 251(b)(3), explained:

> [T]he issue of whether [the directory publisher] is an affiliate of [the ILEC] is not relevant because the regulation is drafted more broadly. "Directory listings" include those that an incumbent carrier has "***caused to be published***." [The ILEC] causes its own customers to be published in the ... Yellow Pages. Therefore, [the ILEC] has the duty to provide nondiscriminatory access to such yellow pages publication to [the CLEC's] customers.[46]

57. These duties, established by Congress, promulgated into regulations by the FCC, and affirmed by at least two federal district courts, are clear and unequivocal. The non-discrimination obligations of Section 251(b)(3) require incumbent LECs, like Qwest, to ensure that competitor's subscriber listings are included in the appropriate yellow pages, where requested.

58. In addition, Qwest's position also conflicts with its duty under Washington law to publish yellow pages listings. As one Washington court has explained, "under Washington law, the initial yellow-page listing in standard-size print is an essential part of the telephone company's directory service in aid of its primary business of transmitting messages and is subject to public regulation."[47] Thus, because Qwest is required by Washington law to arrange for yellow pages listings for its own customers, the nondiscrimination principle of Section 251(b)(3) require Qwest do the same for Charter's customers.

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[45] 79 F. Supp. 2d 768 (E.D. Mich. 1999).

[46] *Id.* at 802 (citation omitted) (emphasis added).

[47] *Allen v. General Telephone Company of the Northwest, Inc.*, 578 P.2d 1333, 1337 (Wash. Ct. App. 1978).

59. The record actually supports this proposition. Qwest has acknowledged that it already engages in the very practice that is at the heart of Charter's proposal: submitting yellow page listings on behalf of itself and Charter to the yellow pages publisher. As Qwest witness Mr. Weinstein explained, "Qwest provides its Directory Publishing List (DPL) to Dex for the white pages and the DPL includes its customer listings along with CLEC's [*sic*] including Charter;"[48] and Qwest's White Pages Directory Listings Service "provides directory publishers of white ***or yellow pages*** the same list in the same manner and treats Charter listings in the same manner as Qwest listings."[49] Indeed, Qwest admits that it "has negotiated with Dex to provide a complementary yellow page listing for those business listings Qwest provides in its directory listings." *Qwest Brief* at ¶ 102. In other words, Qwest "causes its own customers to be published in the … Yellow Pages," and thus "has the duty to provide nondiscriminatory access to such yellow pages publication to [Charter's] customers," on the same terms and conditions as both the *Michigan Bell* and *Hix* courts have ruled.

60. The problems are illustrated by a review of each party's proposed language. To ease the Commission's review, each party's language follows.

Charter proposed language:[50]

> 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 and~~

[48] RHW-2RT (Weinstein Reb.) at 27:5-7.

[49] *Id.* at 28:13-16 (emphasis added).

[50] As noted in its prior pleadings, Charter is willing to withdraw the second sentence of its proposed section 15, in part to address the Arbitrator's concerns about the scope of the obligations imposed upon Qwest. That language is therefore shown as deleted (strikethrough) language here.

~~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.

Qwest proposed language (emphasis added):

> 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.

61. When analyzed in this way it is clear that Qwest's proposed language for Section 15 is overreaching, and conflicts with its basic obligations under Section 251(b)(3). Specifically, by attempting to exclude "certain issues" from the scope of their obligations under the interconnection agreement, Qwest is attempting to contract away its federal duty to provide Charter subscriber's yellow page listings, and ancillary functions, to publishers on the same terms and conditions that Qwest provides such functions to its own subscribers.

62. For example, Qwest's language above attempts to exclude "yellow pages Listings" from Qwest's contractual obligations even though Qwest's own witness acknowledged that the company already provides competitor's listings, including Charter's, to yellow pages publishers.[51] Indeed, as noted above, Charter and Qwest have just negotiated language which provides that Qwest will submit Charter's subscribers listings to both white and yellow pages publishers.[52]

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[51] RHW-2RT (Weinstein Reb.) at 27:5-7.

[52] The agreed upon language for section 10.4.5 is as follows: Qwest will provide CLEC's Directory Listings to white ***and yellow pages*** directory publishers in a non-discriminatory manner, and commingled and integrated with Qwest's and other CLEC listings, pursuant to the terms of this Agreement. (Emphasis added).

63. Also, Qwest's language for Section 15 attempts to exclude "white page enhancements" from Qwest's contractual obligations. However, section 10.4.2.1.4 of the agreement includes reference to price terms for the assessment of charges upon Charter for premium listings, which are analogous to "white pages enhancements." Further, with respect to additional listing criteria, section 10.4.2.3 establishes that Qwest will provide "listings criteria" and "publication schedules" to Charter. Thus, the already agreed-upon contract language in Section 10.4 contradicts the language in Qwest's proposed Section 15, which suggests that those terms are "outside" of the scope of obligations under this agreement.

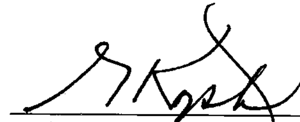
64. These contradictory terms create ambiguity in the contract, and also illustrate the fact that Qwest's proposed Section 15 is overreaching in its attempt to carve out any obligations with respect to yellow pages. The language is therefore imprecise and inaccurate, and should be rejected by this Commission.

65. For these reasons the Commission should modify the Arbitrator's Decision and recommended language for Section 15 of the Agreement by adopting Charter's revised language that addresses the Arbitrator's Decision at Paragraph 143 (which no longer requires Qwest to negotiate with any publishers on Charter's behalf), and which is internally consistent with the parties agreed-upon language, to ensure (i) that the Agreement properly reflects Qwest's obligations under the law; and (ii) that the agreement's provisions on this issue are consistent.

Conclusion

66. For the reasons set forth herein, Charter respectfully requests that the Commission revise and modify the Arbitrator's Decision in the manner described above.

Respectfully submitted:



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May 6, 2009