

**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

**DIRECT TESTIMONY
OF
PEGGY GIAMINETTI
ON BEHALF OF
CHARTER FIBERLINK WA-CCVII, LLC**

October 8, 2008

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. DISCUSSION.....4

Issue 1: Should Qwest be required to seek the Commission’s authorization prior to taking any action to “disconnect” services which Charter may utilize under the agreement?4

Issue 2: Should the parties agree to a reasonable limitation as to the period of time by which either party can initiate back billing, or disputes of previously billed amounts?13

Issue 3: Should the security deposit provisions of the agreement apply mutually, to both parties, or only unilaterally to Qwest’s benefit?18

III. CONCLUSION24

I. INTRODUCTION

1
2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Peggy Giaminetti. My business address is 12405 Powerscourt Drive,
4 St. Louis, Missouri, 63131. I am filing this testimony on behalf of Charter.

5
6
7 **Q. BY WHOM ARE YOU EMPLOYED, AND WHAT IS YOUR POSITION**
8 **WITHIN THE COMPANY?**

9
10 A. I am a Vice President, and I am responsible for fiscal operations and financial
11 planning at Charter Communications, Inc., and its subsidiary Charter Fiberlink,
12 LLC, the petitioner in this case (collectively "Charter").

13
14 **Q. WHAT ARE YOUR DUTIES AT CHARTER?**

15 A. I am responsible for operational reporting and financial analysis of Charter's voice
16 service line of business. In that role various aspects of my responsibilities include
17 the preparation of annual budgets and projections and participation in decision-
18 making on the day-to-day aspects of Charter's voice service operations, in
19 particular as it relates to voice services cost of sales and capital planning.
20 Additionally, I am directly responsible for the audit and validation of all voice
21 service cost of sales invoices and the generation of monthly carrier access billings.
22 I have held this position since November of 2005 and have been fully involved in
23 Charter's voice services deployment. I therefore have a basis to testify to the facts
24

1 surrounding the disputed issues between Charter and CenturyTel.

2

3 **Q. PLEASE DISCUSS YOUR RELEVANT WORK EXPERIENCE AND**
4 **EDUCATION.**

5

6 A. Prior to my employment with Charter, I was employed by NuVox

7 Communications, a Missouri CLEC with operations in 16 states, where I held the

8 position of Vice President of Revenue and Cost Assurance. Before joining

9 NuVox, I was the founding financial officer for CoreExpress, an extranet service

10 provider where I was responsible for all of the financial aspects of the start-up

11 organization. In addition to these positions, my career has included various

12 diverse financial roles for several telecommunications ventures including Savvis

13 Communications and Access America Telemanagement. I have a Bachelor of

14 Science degree in Accounting and also a Masters of Business Administration

15 Degree from Maryville University in St. Louis. Additionally, I am a Certified

16 Public Accountant within the State of Missouri.

17

18 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE ANY STATE**
19 **REGULATORY COMMISSION?**

20

21 A. Yes. I testified before the Missouri Public Service Commission earlier this year in

22 Case No. LC-2008-0049, a proceeding concerning certain contract and billing

23 disputes between Charter and CenturyTel in Missouri. In addition, I recently

24 submitted testimony on behalf of Charter in an arbitration with Solarus (f/k/a

1 Wood County Telephone) before the Wisconsin Public Service Commission, in
2 Docket No. 05-MA-147. I have also submitted testimony in several current
3 arbitration proceedings between Charter and CenturyTel in Texas, Missouri and
4 Wisconsin.

5
6 **II. PURPOSE AND SUMMARY OF TESTIMONY**
7

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 A. This testimony is offered to explain Charter's position on disputed issues
10 numbered 1, 2, and 3 of this arbitration.
11

12 **Q. DO YOU OFFER TESTIMONY ON OTHER DISPUTED ISSUES?**

13 A. No. My colleagues and experts from QSI Consulting will be submitting separate
14 testimony on other issues.

15 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

16 A. My testimony explains why Charter's proposed language concerning potential
17 termination, limitations on back billing, and mutual security deposit requirements
18 are preferable to Qwest's proposed language. Specifically, in my testimony I will
19 explain, for Issue 1, that the interconnection agreement between the Charter and
20 Qwest (the "Agreement") may not be terminated without the Commission's prior
21 authorization. I will then explain, for Issue 2, what the parties should consider to
22
23

1 be a reasonable limitation on the time period by which a party can initiate a back
2 billing dispute for services invoiced or provided under the terms of the
3 Agreement. Finally, for Issue 3, this testimony will demonstrate why the security
4 deposit provisions of the Agreement should be applied mutually.

5
6
7 **II. DISCUSSION**
8

9
10 **Issue 1: Should Qwest be required to seek the Commission’s authorization prior to**
11 **taking any action to “disconnect” services which Charter may utilize under the**
12 **agreement?**

13 **Q. PLEASE EXPLAIN CHARTER’S POSITION ON THIS ISSUE.**

14 **A.** Charter’s position is that the Agreement should include language that allows for
15 the potential termination of the Agreement only under certain circumstances.
16 Specifically, termination should occur only after this Commission has reviewed
17 the terms of the potential termination, and its impact on subscribers, and thereafter
18 orders, or approves, the termination.

19
20 **Q. PLEASE PROVIDE CHARTER’S PROPOSED LANGUAGE ON THIS**
21 **ISSUE.**

22 **A.** Charter’s proposed language for sections 5.4.3 and 5.13.1 of the interconnection
23 agreement is set forth below. Qwest’s original proposed language is shown as
24 normal text, while Charter’s additional language is shown in bold text.
25

1 **5.4.3 With the Commission’s authorization**, the Billing Party may disconnect
2 services for failure by the billed Party to make full payment within sixty (60)
3 Days following the payment due date, less any good faith disputed amount as
4 provided for in Section 5.4.4 of this Agreement, for **such** services provided
5 under this Agreement. The billed Party will pay the applicable reconnect charge
6 set forth in Exhibit A required to reconnect each service disconnected pursuant
7 to this paragraph. The Billing Party will notify the billed Party in writing and
8 the Commission on a confidential basis at least ten (10) business days prior to
9 disconnection of the service(s). In case of such disconnection, all applicable
10 undisputed charges, including termination charges, shall become due. If the
11 Billing Party does not disconnect the billed Party's service(s) on the date
12 specified in the ten (10) business days' notice, and the billed Party's
13 noncompliance continues, nothing contained herein shall preclude the Billing
14 Party's right to disconnect services of the non-complying Party without further
15 notice, **subject to the Commission’s authorization**. For reconnection of the
16 services to occur, the billed Party will be required to make full payment of all
17 past and current undisputed charges under this Agreement for the services.
18 Additionally, the Billing Party will request a deposit (or recalculate the deposit)
19 as specified in Section 5.4.5 and 5.4.7 from the billed Party, pursuant to this
20 Section. In addition to other remedies that may be available at law or equity,
21 each Party reserves the right to seek equitable relief, including injunctive relief
22 and specific performance.

23 **5.13.1** If either Party defaults in the payment of any amount due hereunder, or if
24 either Party violates any other material provision of this Agreement, and such
25 default or violation shall continue for thirty (30) Days after written notice
26 thereof, the other Party may seek relief in accordance with the Dispute
27 Resolution provision of this Agreement. The failure of either Party to enforce
28 any of the provisions of this Agreement or the waiver thereof in any instance
29 shall not be construed as a general waiver or relinquishment on its part of any
30 such provision, but the same shall, nevertheless, be and remain in full force and
31 effect. **Neither Party shall disconnect service to the other Party without**
32 **first obtaining Commission authorization.**

33
34
35
36
37
38
39
40
41
42

1 **Q. SO QWEST’S PROPOSED LANGUAGE IS SET FORTH ABOVE,**
2 **EXCEPT IT DOES NOT AGREE TO THE INCLUSION OF THE**
3 **LANGUAGE IN BOLD?**

4
5 A. Yes, that is correct.
6

7
8 **Q. HOW DOES CHARTER’S POSITION DIFFER FROM QWEST’S**
9 **POSITION?**

10
11 A. Qwest proposes that the Agreement allow for a party to “disconnect services for
12 failure by the billed Party to make full payment within sixty (60) Days following
13 the payment due date, less any good faith disputed amount.” Thus, Qwest does
14 not believe that this Commission should be involved in any event concerning the
15 disconnection of service under this Agreement. That is the primary dispute
16 between the parties: whether the Agreement should include language that would
17 allow for unilateral disconnection of service, as Qwest proposes; or, whether it
18 should include terms that ensure the Commission can play a role in any
19 disconnection of services or termination of the Agreement to ensure that no
20 actions taken by either party will adversely affect subscribers, as Charter proposes.
21

22 **Q. WHAT IS CHARTER’S CONCERN WITH QWEST’S POSITION?**

23 A. Charter’s concern with Qwest’s proposal is that Qwest could disconnect services
24 under the Agreement in a manner that could adversely affect subscribers of one, or
25 both, parties. If interconnection or other services are disconnected while
26 subscribers were still relying upon the physical connections used to send and

1 receive calls between the parties' networks, it would be possible for subscribers to
2 lose service altogether, or that some calls would fail because of the disconnection.

3
4 **Q. PLEASE EXPLAIN.**

5 A. To understand Charter's position, one must recognize that interconnection
6 agreements are not standard commercial contracts. Instead, these agreements are
7 unique, in that they establish the basis for two carriers to interconnect their
8 respective networks for the express purpose of exchanging voice communications
9 traffic (i.e. voice calls). In addition, these agreements are not the product of
10 typical arms-length negotiations, as is true with commercial negotiations. Instead,
11 interconnection agreements are mandated by Section 251 of the Act.

12
13 **Q. CAN YOU EXPLAIN THE BASIC PURPOSE OF THESE**
14 **AGREEMENTS?**

15 A. Interconnection entails the connectivity of two parties' communications networks
16 for the purpose of exchanging traffic. Generally speaking, that connectivity
17 entails the physical connection of networks, and the establishment of call paths
18 between the parties' respective switches and related equipment. Once
19 connectivity of the networks is established, the two carriers will begin exchanging
20 traffic. In other words, voice calls will be sent from one carrier's subscribers to
21 the other carrier's subscribers. Practically speaking, this means that Qwest
22

1 subscribers will be calling Charter subscribers, and vice versa.

2

3 **Q. WHY IS THIS INTERCONNECTION IMPORTANT?**

4 A. Because once the networks are interconnected, each party's subscribers rely upon
5 the physical connection, and call paths, to send calls to and from one another.

6 This basic functionality, the ability to pick up your handset and place a voice call
7 to any other person on the public switched telephone network (PSTN), is one of
8 the most important aspects of physical interconnection mandated by Section 251
9 of the Act.

10

11 **Q. WHY IS IT IMPORTANT THAT THIS AGREEMENT INCLUDE A**
12 **TERMINATION PROCESS THAT IS DIFFERENT FROM THE**
13 **PROCESS ONE MIGHT EXPECT TO SEE IN OTHER COMMERCIAL**
14 **CONTRACTS?**

15

16 A. Because unilateral termination of an interconnection agreement, without
17 intermediary steps to ensure subscribers are protected, would create serious
18 problems for both parties' subscribers.

19

20 **Q. PLEASE EXPLAIN.**

21 A. Remember, these agreements establish the framework, and fundamental
22 obligations, that provide both parties' subscribers the ability to send calls to, and
23 receive calls from, the PSTN. The parties work very hard to ensure that this

1 critical functionality remains in place at all times. That is why a party cannot
2 unilaterally disconnect service or terminate this Agreement, like most commercial
3 contracts, without some process to ensure calls are not “dropped.” Under most
4 commercial contracts, the contracting parties recognize that there may be
5 circumstances where one party should be able to unilaterally terminate the
6 agreement, and be excused from any further obligation to perform. So, for
7 instance, if a supplier of widgets contracted with a manufacturing firm, the
8 contract may include a clause that allows the widget supplier to discontinue
9 delivery of its products, and unilaterally terminate the agreement, if the
10 manufacturing company failed to fulfill its terms of the bargain. If that happened,
11 then it would not be unreasonable for the widget supplier to cease delivery of its
12 goods, and unilaterally terminate the contract. The result would likely have an
13 impact on the manufacturer, and maybe its customers, such that delivery of the
14 product may be delayed, or prices may increase.

15
16 **Q. BUT THERE WOULD BE A DIFFERENT RESULT IF THIS**
17 **INTERCONNECTION AGREEMENT WERE TERMINATED?**

18
19 A. Yes, if the same events occurred between two carriers who have *interconnected*
20 their networks, the non-breaching party could not simply unilaterally terminate the
21 agreement and “walk away” – precisely because of the essential PSTN access that
22 is afforded by that interconnection. The reason is clear: if the non-breaching party

1 unilaterally terminated an interconnection agreement, or simply “walked away”
2 from its obligations under an interconnection agreement, then both parties’
3 subscribers could be affected in a negative manner. In that circumstance, the
4 breaching party’s subscribers would lose all access to the PSTN, and the non-
5 breaching party’s subscribers would not be able to call the other party’s
6 subscribers. Thus, in this way, subscribers of both parties would be harmed, as a
7 result of the actions of one party. That result is precisely what Charter’s proposal
8 is intended to avoid.

9
10 **Q. HOW DOES CHARTER’S PROPOSAL ENSURE THAT SUBSCRIBERS**
11 **WILL NOT BE HARMED IF THE AGREEMENT WERE TERMINATED?**

12
13 A. Charter’s proposal on this issue would ensure that each party’s subscribers are not
14 harmed, and therefore ensure that in the unlikely event of termination,
15 Washington consumers are not adversely affected. Under Charter’s proposal, a
16 decision by Qwest to disconnect services would need to be authorized, or
17 approved, by this Commission. That threshold requirement would ensure that end
18 user customers of either party are not adversely affected by a bill dispute that is
19 escalated by one party or another, and which leads to a unilateral action by Qwest
20 to stop performing certain functions under the agreement. Moreover, Charter’s
21 proposal would be likely to trigger a process whereby the parties meet to discuss,
22 and try to resolve, disputes that could lead to universal service-affecting actions

1 by Qwest.

2

3 **Q. HOW DOES COMMISSION OVERSIGHT ENSURE THAT**
4 **SUBSCRIBERS WILL NOT BE HARMED?**

5

6 A. Charter's proposal would require either party to escalate the most significant
7 disputes to the Commission. If the Commission determined that one party had
8 breached the agreement, and that disconnection of service or termination of the
9 agreement was appropriate, it could so direct the parties to act in a manner that
10 would not harm subscribers. For example, the Commission might order the
11 breaching party to provide notice to its subscribers, so that they could move to a
12 new provider. Or, the Commission might direct the parties to conduct certain pre-
13 disconnection or pre-termination coordinated activities to ensure that all phone
14 numbers are ported off of the breaching party's network. These are just two
15 examples of the type of action that this Commission might take if service were to
16 be disconnected or the Agreement were to be terminated. Also, I understand that
17 there is a procedure under existing state law which establishes a process to resolve
18 disputes arising out of interconnection agreements. Our counsel has explained to
19 me that the Commission's regulations (WAC 480-07-650) establish procedures
20 for the Commission to resolve disputes arising under, or pertaining to,
21 interconnection agreements approved by the Commission. As I understand it, this
22 rule provides for dispute resolution concerning the interpretation of terms and

1 conditions, implementation of activities contemplated in the interconnection
2 agreement, and enforcement of terms and conditions in such interconnection
3 agreements.

4
5 **Q. WHAT ARE THE BENEFITS OF CHARTER'S PROPOSAL?**

6 A. The benefits are obvious. First, if the Commission is involved in any termination
7 process, it would certainly consider the potential impact on Washington
8 consumers (including each party's subscribers), and order any necessary
9 intermediary steps to ensure that those consumers were not adversely affected.
10 Second, Charter's proposal allows for disconnection of service or termination of
11 the Agreement (which Qwest demands), but at the same time ensures that
12 Washington consumers will not be harmed by disputes between the parties to the
13 Agreement (which Charter insists upon). In this way, Charter's proposal
14 accommodates Qwest's demands, while at the same time ensuring that consumers,
15 especially the parties' subscribers, are not harmed.
16 Third, Charter's proposal is consistent with the practice in the industry, and the
17 actual experience of both parties. With respect to the experience of both parties,
18 Charter has never disconnected service or terminated any of its interconnection
19 agreements with another carrier based on an alleged default. Nor has any other
20 carrier disconnected service or terminated for default their interconnection

1 agreements with Charter. Charter's experience is consistent with industry
2 practice. These agreements are rarely terminated, precisely because of the
3 potential negative impact on consumers and subscribers.
4

5 **Q. WHAT RESULT DOES CHARTER SEEK ON THIS ISSUE?**

6
7 A. Charter seeks the Commission's assent to the principle that it must oversee any
8 potentially subscriber-affecting issues that arise out of disconnection of service or
9 the termination of the interconnection agreement between Qwest and Charter.
10 Further, to achieve that result, the Commission should order the parties to adopt
11 Charter's proposed contract language for this disputed issue.
12

13 **Q. WHAT IS YOUR RECOMMENDATION FOR ISSUE 1?**

14 A. My recommendation is that the Commission should adopt Charter's proposed
15 language on this issue, because it is likely to ensure a fair process that protects
16 against potential harm to end user customers.

17 **Issue 2: Should the parties agree to a reasonable limitation as to the period of time**
18 **by which either party can initiate back billing, or disputes of previously billed**
19 **amounts?**

20 **Q. WHAT IS CHARTER'S POSITION ON THIS ISSUE?**

21
22 A. Charter's position is that the Parties should agree to a reasonable limitation on the
23 time period by which a Party can initiate a bill dispute, or attempt to "backbill,"

1 for services invoiced, or provided, pursuant to the terms of the Agreement.
2 Specifically, Charter proposes that a party can initiate a dispute, and backbilling
3 for charges arising under the Agreement within one year of the date of the invoice.
4 As a result, any potential billing disputes and claims initiated under the
5 Agreement that are not brought by a Party prior to the expiration of that time-
6 frame would be deemed to be waived.

7
8 **Q. PLEASE PROVIDE CHARTER'S PROPOSED LANGUAGE WITH**
9 **RESPECT TO THIS ISSUE.**

10
11 A. Charter proposes to include the following:

12
13 5.4.4.3 Failure by a Billed Party to dispute a rate, rate element, or charge within
14 the period applicable to an invoice on which such rate, rate element or charge
15 appears shall not constitute nor be construed as a waiver by the Billed Party of
16 its right to dispute the same or similar rates, rate elements, or charges that may
17 appear on subsequent invoices. If any portion of an amount paid to a Party under
18 this Agreement is subject to a bona fide dispute between the Parties ("Disputed
19 Paid Amount"), the Billed Party may provide written notice to the Billing Party
20 of the Disputed Paid Amount, and seek a refund of such amount already paid, at
21 any time prior to the date that is **one (1) year** after the date of the invoice
22 containing the disputed amount that has been paid by the Billed Party ("Notice
23 Period"). If the Billed Party fails to provide written notice of a Disputed Paid
24 Amount within the Notice Period, the Billed Party waives its rights to dispute its
25 obligation to pay such amount, and to seek refund of such amount.

26
27 5.4.10 The Parties shall bill each other for all services and arrangements under
28 this Agreement promptly and in any event shall use commercially reasonable
29 efforts to render such bills. In the event that prompt billing is not possible,
30 backbilling for unbilled charges shall be permitted for a period of up to **twelve**
31 **(12) months** following the provision of service. Backbilling for services
32 provided more than **twelve (12) months** following the provision of service is not
33 permitted, and each Party hereby waives any right to collect any fees or charges
34 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

1 within such **twelve (12)** month period.
2

3 **Q. PLEASE PROVIDE QWEST'S PROPOSED LANGUAGE WITH**
4 **RESPECT TO THIS ISSUE.**

5
6 A. Qwest has proposed that the ICA include:

7 5.4.4.3 Failure by a Billed Party to dispute a rate, rate element, or charge within
8 the period applicable to an invoice on which such rate, rate element or charge
9 appears shall not constitute nor be construed as a waiver by the Billed Party of
10 its right to dispute the same or similar rates, rate elements, or charges that may
11 appear on subsequent invoices. If any portion of an amount paid to a Party under
12 this Agreement is subject to a bona fide dispute between the Parties ("Disputed
13 Paid Amount"), the Billed Party may provide written notice to the Billing Party
14 of the Disputed Paid Amount, and seek a refund of such amount already paid, at
15 any time prior to the date that is two (2) years after the date of the invoice
16 containing the disputed amount that has been paid by the Billed Party ("Notice
17 Period"). If the Billed Party fails to provide written notice of a Disputed Paid
18 Amount within the Notice Period, the Billed Party waives its rights to dispute its
19 obligation to pay such amount, and to seek refund of such amount.

20 4.10 The Parties shall bill each other for all services and arrangements under
21 this Agreement promptly and in any event shall use commercially reasonable
22 efforts to render such bills. In the event that prompt billing is not possible,
23 backbilling for unbilled charges shall be permitted for a period of up to twenty-
24 four (24) months following the provision of service. Backbilling for services
25 provided more than twenty-four (24) months following the provision of service
26 is not permitted, and each Party hereby waives any right to collect any fees or
27 charges otherwise due under this Agreement (including charges for services
28 under this Agreement that are provided via its tariffs) that are not billed to the
29 other Party within such twenty-four (24) month period.
30

31
32 **Q. HOW DOES CHARTER'S POSITION DIFFER FROM QWEST'S**
33 **POSITION?**

34
35 A. Qwest proposes that the Agreement allow backbilling by either party for a period
36 of two years. Qwest contends that the two year period meets Charter's need for a
37 time limit and gives Charter the certainty that backbilling will not occur beyond
38 the two year period. Qwest also asserts that Charter should agree to this time

1 frame because it is part of Qwest's standard negotiation template, and is included
2 in other agreements that the Commission has approved. Finally, Qwest claims
3 that even though the FCC states that the two year period may be unreasonable,
4 setting a one year limit, as proposed by Charter, would eliminate Qwest's
5 opportunity to prove that the two year limit is reasonable under certain
6 circumstances.

7
8 **Q. WHAT IS CHARTER'S CONCERN WITH QWEST'S POSITION?**

9 **A.** Qwest's proposal is too broad because it unnecessarily delays the process for
10 resolving billing disputes between the parties. Although Qwest's proposal
11 provides some level of certainty in the sense that it establishes a time limitation
12 for initiating billing disputes, the time period proposed by Qwest is twice as long
13 as the period proposed by Charter. This extended time frame is problematic
14 because it will not lead the parties to reach a resolution on disputed matters in a
15 timely manner. Because the communications industry is rapidly evolving it is a
16 good idea to address disputes as quickly as possible, to avoid having potential
17 disputes lingering on for an unreasonable period of time.

18 Further, Qwest's claims that Charter should agree to a two year time period
19 because other carriers have done so is not compelling. The fact that no other
20 carrier has proposed an alternative time frame does not demonstrate that Qwest's
21 proposal is legitimate. Indeed, the reality is that the CLEC industry has been

1 dramatically downsized in the past few years and as a result, there are far fewer
2 carriers in the marketplace that are in a financial position to undertake the often
3 prohibitive expenses associated with challenging these types of provisions.
4 Consequently, most CLECs simply adopt, and accept, the template language as
5 presented in the interconnection agreements provided by ILECs such as Qwest.
6 Thus, it would be a mistake to adhere to the notion that Qwest's proposal should
7 be adopted in this case simply because other carriers have not opposed to it.

8
9 **Q. WHAT ARE THE BENEFITS OF CHARTER'S PROPOSAL?**

10 **A.** Charter's proposal eliminates the need for reserves, and accruals, with
11 longstanding disputes that are unresolved between the parties. This is important
12 because it ensures that the parties can operate under an environment of certainty,
13 such that there are not a number of unresolved disputes pending for longer than
14 necessary (i.e. no longer than one year).

15 In addition, Charter's proposed language would provide the business and
16 operations units of each Party with greater assurance in the resolution of
17 intercompany disputes. Charter needs certainty and reliability to plan and manage
18 its business so that it can effectively compete.

19
20 **Q. WHAT IS YOUR RECOMMENDATION FOR ISSUE 2?**

21 **A.** My recommendation is that the Commission adopt Charter's proposed language

1 for the reasons I just provided.

2 **Issue 3: Should the security deposit provisions of the agreement apply mutually, to**
3 **both parties, or only unilaterally to Qwest's benefit?**

4 **Q. WHAT IS CHARTER'S POSITION ON THIS ISSUE?**

5
6 **A.** Charter's position is that the deposit provisions of this Agreement should be
7 applied mutually, and should include criteria that will be used to determine when
8 *both parties* will be required to provide a security deposit. Specifically, both
9 parties should only be required to provide a deposit upon the occurrence of a
10 "material adverse change in the financial condition," not simply when Qwest
11 unilaterally deems it necessary.

12
13 **Q. PLEASE PROVIDE CHARTER'S PROPOSED LANGUAGE WITH**
14 **RESPECT TO THIS ISSUE.**

15
16 **A.** Charter proposes to include the following:
17
18 5.4.5 In the event of a material adverse change in a **Party's** financial
19 condition subsequent to the Effective Date of this Agreement, **the other Party**
20 may request a security deposit. A "material adverse change in financial
21 condition" means the Party is repeatedly delinquent in making its payments, or is
22 being reconnected after a disconnection of Service or discontinuance of the
23 processing of orders by **the other Party** due to a previous failure to pay
24 undisputed charges in a timely manner. **The other Party** may require a deposit
25 to be held as security for the payment of charges before the orders from **the**
26 **Party** will be provisioned and completed or before reconnection of Service.
27 "Repeatedly delinquent" means any payment of a material, **undisputed** amount
28 of total monthly Billing under the Agreement received after the Payment Due
29 Date, three (3) or more times during the last twelve (12) month period. The
30 initial deposit may not exceed the estimated total **net** monthly charges (**that is,**

1 **the amounts the Party owes, less amounts owed to the other Party)** for a two
2 (2) month period based upon recent Billing. The deposit may be adjusted by **the**
3 **Party's** actual monthly average charges, payment history under this Agreement,
4 or other relevant factors. The deposit may be an irrevocable bank letter of credit,
5 a letter of credit with terms and conditions **reasonably** acceptable to **the other**
6 **Party**, or some other form of mutually acceptable security such as a cash
7 deposit. Required deposits are due and payable within thirty (30) Days after
8 demand and non-payment is subject to Sections 5.4.2 and 5.4.3 of this
9 Agreement
10

11 5.4.6 Interest will be paid on cash deposits at the rate applying to deposits
12 under applicable Commission regulations. Cash deposits and accrued interest
13 will be credited to **the depositing Party's** account or refunded, as appropriate,
14 upon the earlier of the expiration of the term of the Agreement or the
15 establishment of satisfactory credit with **the other Party**, which will generally
16 be one full year of timely payments of undisputed amounts in full by **the**
17 **depositing Party**. Upon a material change in financial standing, including
18 factors referenced in Section 5.4.5 above, **the depositing Party** may request and
19 the **other Party** will consider a recalculation of the deposit. The fact that a
20 deposit has been made does not relieve **the depositing Party** from any
21 requirements of this Agreement
22

23 5.4.7 A **Party** may review **the other Party's** credit standing and modify the
24 amount of deposit required but in no event will the maximum amount exceed the
25 amount stated in 5.4.5 or another amount, if approved by the Commission.
26
27

28 **Q. PLEASE PROVIDE QWEST'S PROPOSED LANGUAGE WITH**
29 **RESPECT TO THIS ISSUE.**

30
31 A. Qwest has proposed that the ICA include:

32 5.4.5 In the event of a material adverse change in CLEC's financial condition
33 subsequent to the Effective Date of this Agreement, Qwest may request a
34 security deposit. A "material adverse change in financial condition" means the
35 Party is repeatedly delinquent in making its payments, or is being reconnected
36 after a disconnection of Service or discontinuance of the processing of orders by
37 Qwest due to a previous failure to pay undisputed charges in a timely manner.
38 Qwest may require a deposit to be held as security for the payment of charges
39 before the orders from CLEC will be provisioned and completed or before
40 reconnection of Service. "Repeatedly delinquent" means any payment of a
41 material amount of total monthly Billing under the Agreement received after the
42 Payment Due Date, three (3) or more times during the last twelve (12) month

1 period. The initial deposit may not exceed the estimated total monthly charges
2 for a two (2) month period based upon recent Billing. The deposit may be
3 adjusted by CLEC's actual monthly average charges, payment history under this
4 Agreement, or other relevant factors,. The deposit may be an irrevocable bank
5 letter of credit, a letter of credit with terms and conditions acceptable to Qwest,
6 or some other form of mutually acceptable security such as a cash deposit.
7 Required deposits are due and payable within thirty (30) Days after demand and
8 non-payment is subject to Sections 5.4.2 and 5.4.3 of this Agreement.
9

10 5.4.6 Interest will be paid on cash deposits at the rate applying to deposits
11 under applicable Commission regulations. Cash deposits and accrued interest
12 will be credited to CLEC's account or refunded, as appropriate, upon the earlier
13 of the expiration of the term of the Agreement or the establishment of
14 satisfactory credit with Qwest, which will generally be one full year of timely
15 payments of undisputed amounts in full by CLEC. Upon a material change in
16 financial standing, including factors referenced in Section 5.4.5 above, CLEC
17 may request and Qwest will consider a recalculation of the deposit. The fact that
18 a deposit has been made does not relieve CLEC from any requirements of this
19 Agreement.
20

21 5.4.7 Qwest may review CLEC's credit standing and modify the amount of
22 deposit required but in no event will the maximum amount exceed the amount
23 stated in 5.4.5 or another amount, if approved by the Commission.
24

25
26 **Q. WHAT IS QWEST'S POSITION ON THIS ISSUE?**
27

28 A. In contrast to Charter's proposal, Qwest has proposed language that would give
29 Qwest the unilateral right to decide, and demand: when Charter must provide a
30 deposit; the amount of the deposit; and when the deposit should be modified, or
31 adjusted. Qwest justifies its one-sided language by asserting that unilateral
32 deposit provisions are industry standard, and the norm for Qwest. Qwest also
33 claims that because it considers itself to be the primary provider of service to
34 Charter it should therefore be entitled to require a deposit when Charter poses a
35 risk of nonpayment for services.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Q. HOW DOES CHARTER’S POSITION DIFFER FROM QWEST’S POSITION?

A. Qwest asserts that Charter is not entitled to require a security deposit. According to Qwest’s position statement in its the disputed issues list (“DPL”), Qwest characterizes itself as the “primary” service provider, that is entitled to require a deposit from Charter where necessary to minimize the risks of nonpayment for services. And Qwest also suggests that if the parties entered another agreement where Charter provides service to Qwest, then deposits can be negotiated into that agreement. Charter believes that this reasoning is flawed for several reasons.

Q. PLEASE EXPLAIN.

A. First, although it is not clear precisely what “services” Qwest refers to, it is quite possible that Charter will have a basis to bill Qwest for terminating traffic, or for other function that Charter undertakes in conjunction with the exchange of traffic. For example, if the parties decided to move away from the current bill and keep compensation arrangement, it is possible that Charter could terminate more traffic than Qwest terminates, and therefore have a basis to bill reciprocal compensation. Therefore, although the billings between the parties should be limited, Qwest’s language completely ignores the fact that there may be circumstances where Charter renders bills to Qwest for certain functions associated with the exchange

1 of traffic and, thus, may be subject to risk of nonpayment. Second, in the event
2 that such circumstances come to pass, there is no valid reason for the deposit
3 provisions in the agreement to be one-sided (to Qwest's benefit). Rather, such
4 provisions should apply mutually, to both parties. It is not equitable to grant only
5 one party the unilateral authority to require security deposits from the other party.
6

7 **Q. DO YOU HAVE ANY OTHER CONCERNS WITH QWEST'S POSITION?**

8 A. Yes. Qwest claims that its proposal is the "norm" in Qwest interconnection
9 agreements, and is the industry standard. The fact that other carriers have agreed
10 to unilateral security deposit provisions is not a good reason to force Charter to do
11 the same here. As I noted in my testimony on back billing, most carriers adopt,
12 and accept, the template language as presented in the interconnection agreements
13 provided by Qwest. This is primarily due to the financial burdens associated with
14 challenging these types of provisions. Because many carriers are unlikely to
15 undertake the costly process of attempting to negotiate or arbitrate changes to
16 Qwest's language, the inevitable result is that many carriers are forced to operate
17 under Qwest's standard language. The Commission should not use the fact that
18 other carriers have been forced to accept this language as a finding that Qwest's
19 proposal is reasonable.

20 Further, Qwest's contention that its proposal is "industry standard" is also not
21 persuasive. The fact is that the industry has changed quite a bit in the last ten

1 years. Initially, most CLECs were resale and UNE-based competitors who would
2 have reasonably expected to have significant liability for resale and UNE services
3 acquired from Qwest. However, facilities-based competitors like Charter rely
4 upon their own network and switching facilities to provide service to their end
5 users. Therefore, Charter does not provide resale or UNE-based competitive
6 services, and therefore does not expect to have any significant liabilities to Qwest.
7 And, to the extent that Charter incurs any significant liabilities for
8 interconnection and traffic exchange, such liabilities would likely be offset by
9 Qwest's liabilities to Charter for the same functions. As such, Qwest's contention
10 that its contract language reflects the "industry norm" seems somewhat outdated.

11
12 **Q. HAS CHARTER EVER DEFAULTED ON ANY OBLIGATION TO**
13 **QWEST?**

14
15 A. No. Charter has never defaulted on any obligation to Qwest or any other carrier.
16 Despite that fact, Qwest proposes that it can require a unilateral security deposit.
17 Such unilateral language does not permit Charter's business to have any certainty
18 in dealing with Qwest. Consequently, the Commission should adopt Charter's
19 proposal that seeks to apply the deposit provisions mutually.

20
21 **Q. WHAT IS YOUR RECOMMENDATION FOR ISSUE 3?**

22 A. My recommendation is that the Commission adopt Charter's language because it

1 is mutual, and not unilateral, and more accurately reflects the parties' relative
2 positions in the market.

3
4
5

III. CONCLUSION

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

7 A. Yes.

8