Exhibit ___-T (TJG-1T)

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

TIMOTHY J GATES

ON BEHALF OF

CHARTER FIBERLINK WA-CCVII, LLC

October 8, 2008

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I. INTRODUCTION AND PURPOSE OF TESTIMONY

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE RECORD.

A. My name is Timothy J Gates. My business address is QSI Consulting, 10451 Gooseberry Court, Trinity, Florida 34655.

Q. WHAT IS QSI CONSULTING, INC. AND WHAT IS YOUR POSITION WITH THE FIRM?

A. QSI Consulting, Inc. ("QSI") is a consulting firm specializing in traditional and non-traditional utility industries, econometric analysis and computer-aided modeling. QSI provides consulting services for regulated utilities, competitive providers, government agencies and organizations (including public utility commissions, attorneys general and consumer counsels) and industry organizations. I currently serve as Senior Vice President.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK EXPERIENCE.

A. I received a Bachelor of Science degree from Oregon State University and a Master of Management degree, with an emphasis in Finance and Quantitative Methods, from Willamette University's Atkinson Graduate School of Management. Since I received my Masters, I have taken additional graduate-level courses in statistics and econometrics. I have also attended numerous courses and

seminars specific to the telecommunications industry, including both the National Association of Regulatory Utility Commissions ("NARUC") Annual and NARUC Advanced Regulatory Studies Programs.

Prior to joining QSI, I was a Senior Executive Staff Member at MCI WorldCom, Inc. ("MWCOM"). I was employed by MCI and/or MWCOM for 15 years in various public policy positions. While at MWCOM I managed various functions, including tariffing, economic and financial analysis, competitive analysis, witness training and MWCOM's use of external consultants. Prior to joining MWCOM, I was employed as a Telephone Rate Analyst in the Engineering Division at the Texas Public Utility Commission and earlier as an Economic Analyst at the Oregon Public Utility Commission. Exhibit __ (TJG-2) contains a complete summary of my work experience and education.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION ("WUTC" OR "COMMISSION")?

A. Yes. I testified before the WUTC in docket numbers UT-083025, UT-030614, UT-021569, UT-023043, UT-003013, Part D, UT-970325, UT-960338 and U-88-2052-P. In addition, I have testified more than 200 times in 45 states and Puerto Rico, and filed comments with the Federal Communications Commission ("FCC") on various public policy issues including costing, pricing, local entry,

universal service, strategic planning, mergers and network issues.

Q. DO YOU HAVE EXPERIENCE WITH THE ISSUES IN THIS PROCEEDING?

A. Yes. I have participated in dozens of arbitrations since the 1996 Telecommunications Act amending the Communications Act of 1934 (the "Act") was enacted, many of which have addressed issues related to network interconnection pursuant to § 251 of the Act, the mutual exchange of traffic between telecommunications carriers, and compensation arrangements related to the exchange of telecommunications traffic.

Q. ON WHOSE BEHALF WAS THIS TESTIMONY PREPARED?

A. This testimony was prepared on behalf of Charter Fiberlink WA-CCVII, LLC ("Charter").

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to provide the factual and policy underpinnings supporting Charter's positions on the following disputed issues in this arbitration:

- Issue 10: What standard should be used to excuse Qwest from the obligation to allow Charter to interconnect at certain points on the Qwest network?

- Issue 11: Should the agreement limit the methods by which Charter can establish interconnection with Qwest when using leased interconnection facilities?

- Issue 13: Is Charter required to compensate Qwest for so-called "direct trunk transport" circuits which carry traffic from the parties' POI to Qwest's tandem switch or end office switches, even where Charter has

already compensated Qwest under the reciprocal compensation provisions of the agreement (via bill and keep arrangements)?

- Issue 14: Should Qwest be entitled to impose non-recurring trunk installation and rearrangement charges upon Charter even where the parties have agreed to a bill and keep compensation scheme?

- Issue 15: Should the parties' agreed upon bill and keep compensation arrangement apply to both the transport and termination of Section 251(b)(5) traffic exchanged between the parties?

- Issue 16: Should either party have the right to utilize indirect interconnection as a means of exchanging traffic with the other party?

- Issue 18: Should Qwest be required to make 911 facilities available to Charter at cost-based rates pursuant to Section 251(c)?

For each issue, my testimony will describe the disagreement between Charter and Qwest, present the parties' proposed interconnection agreement ("ICA" or "agreement") language, and also explain why Charter's proposal on the issue should be adopted instead of Qwest's proposal.

Q. PLEASE EXPLAIN HOW CHARTER WILL ADDRESS THE OTHER ISSUES IN DISPUTE IN THIS PROCEEDING.

A. Yes, of course. There are three other witnesses offering testimony on behalf of Charter. First, Charter employee, Ms. Peggy Giaminetti, offers testimony on several billing and termination issues (numbers 1, 2, and 3) arising out of the parties' disputes over general terms and conditions in the interconnection agreement.

Second, Charter employee, Ms. Alison Cosway, offers testimony on disputed

issue number 4, concerning insurance obligations of the parties.

Finally, my colleague, Mr. Starkey, also from QSI, provides testimony for liability, indemnification, warranty and other ancillary issues which involve miscellaneous charges, directory listing obligations, and related issues. Generally, Mr. Starkey will testify on disputed issues 5 through 8, 17, and 19 through 24.

II. ISSUE BY ISSUE ANALYSIS

Q. BEFORE TURNING TO THE DISPUTED ISSUES, PLEASE EXPLAIN WHY CHARTER MAY HAVE A PERSPECTIVE THAT DIFFERS FROM OTHER CLECS ON CERTAIN COMPETITIVE ISSUES ARISING UNDER THE DISPUTED INTERCONNECTION AGREEMENT.

A. Charter is a facilities-based competitive LEC, with full certification authority here in Washington, that provides telecommunications services primarily to residential customers using the existing network facilities of its affiliated cable company. Notably, Charter does not resell any Qwest services. Nor does Charter lease unbundled network elements (UNEs) from Qwest. Instead, Charter deploys switches and other related equipment to provide voice services over the existing local network of its affiliated cable company.

Q. WHAT GENERAL PRINCIPLES DOES CHARTER SEEK IN ITS INTERCONNECTION AGREEMENT WITH QWEST?

A. To be in a position to provide competitive, cost effective services to its customers, Charter must be permitted to interconnect with Qwest on reasonable terms, rates and conditions. While Charter is relatively new to competitive telecommunications field, its experience with providing services to residential customers, over its own network facilities, puts Charter in a unique position to propose terms that are both commercially reasonable and technically sound. I note that a number of matters that I understand have been controversial in the industry in recent years, relating to unbundled network elements and resale of an ILEC's services, do not matter very much to Charter. Charter does not rely on Qwest's network to provide our own services. That allows Charter, in its dealings with Qwest, to focus on key matters regarding the exchange of traffic and the physical network interconnection architecture.

Q. FROM A BROAD PERSPECTIVE, WHAT ARE SOME OF THE CONCERNS WITH QWEST'S PROPOSED INTERCONNECTION AGREEMENT TERMS?

A. From that perspective, Qwest makes several proposals that reflect an extremely limited and one-sided view of interconnection. The provisions that Charter objects to would cause inefficiencies in Charter's network by, among other things, requiring Charter to build additional facilities and make significant changes to the manner in which Charter proposes to interconnect and exchange traffic with

Qwest under existing federal rules. As a result, Qwest's proposals will likely lessen, rather than improve overall network efficiency and quality of service rendered to Charter's and Qwest's respective customers when they communicate with each other. As explained in greater detail below, Qwest's one-sided proposals cause problems at several levels. Most significant, Qwest's proposals would unnecessarily inflate Charter's costs of interconnection, without any attendant improvement in network efficiency, and would thus impede Charter's ability to compete with Qwest in the provision of services to end user customers.

Issue 10: What standard should be used to excuse Qwest from the obligation to allow Charter to interconnect at certain points on the Qwest network?

Q. PLEASE SUMMARIZE THE DISAGREEMENT BETWEEN THE COMPANIES RELATED TO ISSUE 10.

A. Pursuant to the FCC's rules, Charter has the right to interconnect with Qwest's network at any technically feasible point (including a single point of interconnection[1] ("POI") per Local Access and Transport Area ("LATA")) and Qwest can only deny such interconnection if it demonstrates that the requested interconnection is technically infeasible. Under Issue 10, Charter and Qwest disagree about the terms that should apply when Qwest seeks to deny Charter's right to interconnect at a particular tandem switch due to switch exhaustion.[2] Charter's proposal states that Qwest may deny interconnection once it has demonstrated to a state commission that such interconnection would present an imminent risk of exhaust, while Qwest's proposal would allow Qwest to deny such interconnection where Qwest "can" demonstrate (but has not yet demonstrated) a risk of switch exhaust. The FCC's rules require an incumbent local exchange carrier ("ILEC") to prove to the state commission that the

[1] The agreed upon definition of the term "Point of Interconnection" in the parties' draft agreement is: "Point of Interconnection," or "POI" is a demarcation between the networks of two (2) LECs (including a LEC and CLEC). The POI is that point where the exchange of traffic takes place.

[2] Switch or tandem exhaust refers to a situation where a switch must be augmented or replaced because there are no longer a sufficient number of available ports. Augmenting or replacing switches, or in some cases actually adding additional switches, is a common occurrence in the telecommunications industry. As traffic grows or as traffic patterns change, carriers are required to update and sometimes expand network

requested form of interconnection is technically infeasible. Notably, the rules reject the notion that ILECs can deny a request for interconnection based solely on the ILEC's belief that it can make a showing of technical infeasibility.

Q. WHAT IS CHARTER'S PROPOSED LANGUAGE FOR ISSUE 10?

A. Charter proposes the following language for Section 7.1.1 of Section 7 (Interconnection):

> 7.1.1 This Section describes the Interconnection of Qwest's network and CLEC's network for the purpose of exchanging Exchange Service (EAS/Local traffic), IntraLATA LEC Toll and Jointly Provided Switched Access traffic....Qwest Tandem Switch to CLEC Tandem Switch connections will be provided where Technically Feasible. New or continued Qwest local Tandem Switch to Qwest Access Tandem Switch and Qwest Access Tandem Switch to Qwest Access Tandem Switch connections are not required where Qwest **has** demonstrated **to the Commission, and the Commission has determined in accordance with 47 CFR 51.305(e),** that such connections present a**n imminent** risk of Switch exhaust, and that Qwest does not make similar use of its network to transport the local calls of its own, or any Affiliate's, **or any other LEC's** End User Customers. **Disputes arising under this Section 7 shall be raised, and resolved, pursuant to the Dispute Resolution provisions of this Agreement**.

Q. WHAT IS QWEST'S PROPOSED LANGUAGE FOR ISSUE 10?

A. Qwest's proposal for Issue 10 is as follows:

> 7.1.1 This Section describes the Interconnection of Qwest's network and CLEC's network for the purpose of exchanging Exchange Service (EAS/Local traffic), IntraLATA LEC Toll and Jointly Provided Switched Access traffic...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

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assets, including switches.

> 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.

Q. WHAT ARE QWEST'S OBLIGATIONS REGARDING INTERCONNECTION?

A. Section 251(c)(2) of the Act imposes upon all ILECs, including Qwest, "the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network

> (A) for the transmission and routing of telephone exchange service and exchange access;
>
> (B) at any technically feasible point within the carrier's network;
>
> (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
>
> (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252."

47 U.S.C. 251(c)(2).

The FCC has interpreted this statutory obligation, in part, by promulgating Rule §51.321(a)),which provides in relevant part: "...an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of this part, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular

point upon a request by a telecommunications carrier."

Further, the FCC has stated that "[t]he incumbent LEC is relieved of its obligation to provide interconnection at a particular point in its network only if it proves to the state public utility commission that interconnection at that point is technically infeasible."[3] This principle is embodied in FCC Rule 51.305(e). 47 C.F.R. §51.305(e).[4]

Q. DO THESE LEGAL AUTHORITIES PROVIDE A BASIS FOR THIS COMMISSION TO RESOLVE ISSUE 10?

A. Yes, these authorities provide the legal test for the Commission to apply to the disputed language under this issue. As these authorities clearly establish, Qwest is required to provide interconnection that is at least equal in quality to that which Qwest provides to itself, or any other interconnecting carrier. This nondiscrimination principle is reflected in Charter's proposed language in Section 7.1.1. That language would require Qwest, before it attempted to deny interconnection at a tandem switch location, to first prove that it does not make similar use of its network to transport the local calls of it's own, or any affiliate's, or "any other LEC's" end user customers. This language is consistent with the nondiscrimination principles set forth in the statute.

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[3] *In the Matter of Application of SBC Communications Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18390, para. 78 (2000) ("Texas 271 Order") (footnotes omitted).

[4] 47 C.F.R. § 51.305(e) states: "An incumbent LEC that denies a request for interconnection at a particular

More significantly, FCC rules relieve Qwest of its obligation to provide interconnection at any technically feasible point in Qwest's network "***only*** if it proves to the state public utility commission that interconnection at that point is technically infeasible." 47 C.F.R. 51.305(e) (emphasis added). Notably, the FCC says that Qwest must "prove" this alleged technical infeasibility to the state commission. As a result, a Qwest showing, ***and*** a state commission decision of technical infeasibility, are both prerequisites to relieving Qwest of its interconnection obligations at a particular point.

Q. HAS THE FCC DEFINED THE TERM TECHNICAL INFEASIBILITY?

A. Yes. 47 C.F.R. §51.5 defines the term "technically feasible." This definition describes what constitutes technically feasible interconnection, and what would render an interconnection technically infeasible.

> *Technically feasible.* Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove

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point must prove to the state commission that interconnection at that point is not technically feasible."

> to the state commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts.
>
> 47 C.F.R. 51.5 ("Technically feasible")

This definition states that technical infeasibility arises when there are "technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods." Under Issue 10, the parties have agreed that when a tandem switch nears exhaust, there may be "technical or operational concerns" that could render interconnection at that switch technically infeasible.

Q. DOES THAT DEFINITION ALSO ESTABLISH HOW THE ILEC MUST PROVE TECHNICAL INFEASIBILITY?

A. Yes, the FCC's definition states that when an ILEC claims that an interconnection request is technically infeasible due to "adverse network reliability impacts" (as would be brought about by tandem switch exhaust), the ILEC must provide proof in the form of "clear and convincing evidence" that such interconnection would result in "specific and significant adverse network reliability impacts."

Q. SHOULD THE UTILITIES AND TRANSPORTATION COMMISSION APPLY THAT STANDARD TO THIS SITUATION?

A. Yes. In the case of tandem switch exhaust, Qwest should be required to prove to the Utilities and Transportation Commission by clear and convincing evidence

that tandem switch exhaust (and the network reliability impacts associated with this exhaust) is imminent, and that such exhaust would have a "specific and significant" impact on network reliability.

Q. WHAT IS YOUR RECOMMENDATION FOR ISSUE 10?

A. Federal law is clear on this point. Accordingly, I recommend that the Commission adopt Charter's proposal for Section 7.1.1. because Charter's proposal incorporates the standards established by Section 251 and applicable FCC regulations.

Issue 11: Should the agreement limit the methods by which Charter can establish interconnection with Qwest when using leased interconnection facilities?

Q. PLEASE DESCRIBE THE DISPUTE BETWEEN CHARTER AND QWEST ON ISSUE 11.

A. This dispute revolves around whether Qwest should be allowed to restrict the methods Charter may employ to establish interconnection arrangements with Qwest. Charter frequently interconnects with ILECs via interconnection (or "entrance") facilities. Charter often uses leased interconnection facilities as an initial method of traffic exchange with ILECs like Qwest. Indeed, Charter currently leases such facilities from Qwest to obtain interconnection. Qwest's proposal on Issue 11 would inappropriately limit Charter's interconnection options in this regard.

Q. WHAT IS CHARTER'S PROPOSED LANGUAGE FOR ISSUE 11?

A. Charter proposes the following language for Sections 7.1.2 and 7.1.2.4 for Section 7 (Interconnection):

> 7.1.2 The Parties will negotiate the specific arrangements used to interconnect their respective networks. CLEC shall **have the right to** establish one (1) **single** physical Point of Interconnection **("POI")** in Qwest territory in each LATA CLEC has local End User Customers. **At CLEC's option, CLEC may establish additional Points of Interconnection in each LATA in which CLEC has local End User Customers. The Parties agree that this Section 7.1.2 shall not be construed as imposing any obligation upon Qwest to establish a physical Point of Interconnection with CLEC at a point that is outside of Qwest's geographic service area or territory. CLEC shall serve** End User Customers physically located within the areas associated with the NPA-NXX codes assigned to those End User Customers. The

Parties shall establish, at least one (1) of the following Interconnection arrangements, at any Technically Feasible point: (1) a Qwest-provided **Interconnection** Facility, **or an Interconnection Facility provided by CLEC, or by a third party**; (2) Collocation; (3) Mid-Span Meet POI facilities, **including such arrangements provided to CLEC by a third-party who has an existing mid-span meet with Qwest**; or (4) other Technically Feasible methods of Interconnection via the Bona Fide Request (BFR) process unless a particular arrangement has been previously provided to a third party, or is offered by Qwest as a product.

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.**

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.**

** Please note here that Charter proposes using "Interconnection Facility" as an alternative definition to the Qwest proposed definition of "LIS Entrance Facility" in accordance with applicable FCC orders. Charter's proposed definition is as follows:

> **"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.**

Q. WHAT IS QWEST'S PROPOSED LANGUAGE FOR ISSUE 11?

A. Qwest's proposals for Sections 7.1.2 and 7.1.2.4 are shown below:

7.1.2 The Parties will negotiate the specific arrangements used to

interconnect their respective networks. CLEC shall establish at least one (1) physical Point of Interconnection in Qwest territory in each LATA CLEC has local End User Customers. CLEC represents and warrants that it is serving End User Customers physically located within the areas associated with the NPA-NXX codes assigned to those End User Customers. The Parties shall establish, at least one (1) of the following Interconnection arrangements, at any Technically Feasible point: (1) a Qwest-provided Entrance Facility; (2) Collocation; (3) Mid-Span Meet POI facilities; or (4) other Technically Feasible methods of Interconnection via the Bona Fide Request (BFR) process unless a particular arrangement has been previously provided to a third party, or is offered by Qwest as a product.

7.1.2.4 Intentionally Left Blank.

[NOTE: Qwest proposed definition defined term "LIS Entrance Facility":
"Local Interconnection Service or "LIS" Entrance Facility" is a Qwest-provided facility that extends from CLEC's Switch location or Point of Interconnection (POI) to the Qwest Serving Wire Center. A Qwest provided Entrance Facility shall not extend beyond the area served by the Qwest Serving Wire Center.

Q. PLEASE DESCRIBE CHARTER'S PROPOSAL AS REFLECTED IN THE LANGUAGE SHOWN ABOVE AND EXPLAIN WHY IT SHOULD BE ADOPTED BY THE COMMISSION.

A. First, Charter's language preserves Charter's right to decide whether to establish a single POI per LATA, or, if Charter chooses, more than one POI per LATA, in which Charter serves local end user customers. At the same time, Charter's proposal makes clear that Qwest has no obligation to establish a POI with Charter outside of Qwest's geographic territory or service area. Qwest's competing language on this point states that Charter will "establish at least one" POI.

Charter's language is in absolute alignment with federal law because it expressly allows *Charter* to decide whether one or more POI(s) will be established per LATA. Qwest's language does not grant Charter the discretion to make this decision.

Second, Charter's proposal allows Charter to self-provision an interconnection facility, or obtain interconnection facilities from a third party, in order to interconnect with Qwest. In contrast, Qwest attempts to limit Charter's ability to interconnect via an interconnection facility. Specifically, Qwest proposes that Charter should only be allowed to use a Qwest-provided entrance (interconnection) facility. Similarly, Charter's proposal would allow Charter to utilize the mid-span meet POI facilities of a third party who has an existing mid-span meet POI with Qwest, while Qwest's proposal would not allow this arrangement. Charter's proposals are clearly preferable to Qwest's proposals in this regard because the FCC's rules *require* Qwest to allow any technically feasible method of interconnection, and Qwest's proposal would preclude certain technically feasible methods of interconnection. The agreement should not limit the methods Charter may use to establish interconnection arrangements with Qwest. Charter's proposed interconnection methods are technically feasible and in use elsewhere, which is proof of their technical feasibility.

Q. PLEASE EXPLAIN WHY CHARTER PROPOSES TO USE THE TERM: "INTERCONNECTION" FACILITY WHILE QWEST PROPOSES TO USE THE TERM "ENTRANCE" FACILITY?

A. Charter proposes using the term "Interconnection Facility," and proposes to define the term as a facility Charter uses to exchange traffic between Charter's switch and Qwest's switch location (regardless of whether that facility is leased from Qwest, self-provisioned, or leased from a third party). Qwest proposes to use the term "LIS Entrance Facility," which it defines in a manner that limits the facility that connects the parties' respective switches to a Qwest-provided facility. Note that Charter's proposed definition tracks the FCC's orders affirming that interconnection facilities are still available for the connection of CLEC switches with ILEC switches. In its Triennial Review Order the FCC reaffirmed that: "to the extent that requesting carriers need facilities in order to 'interconnect[] with the [incumbent LEC's] network,' section 251(c)(2) of the Act expressly provides for this and we do not alter the Commission's interpretation of this obligation."[5]

Q. WHY DOES CHARTER NEED THE FLEXIBILITY TO DECIDE WHEN TO ESTABLISH EITHER A SINGLE POI, OR MULTIPLE POINTS OF INTERCONNECTION, IN A PARTICULAR LATA?

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[5] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications act of 1996*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 at para. 366 (2003).

A. The flexibility to establish a single POI in a LATA is critical in areas where customers and traffic volumes cannot justify the costs incurred in creating additional POIs. In other areas, customers and traffic volumes may justify more than one POI. In order to compete effectively, a CLEC must have flexibility to establish either a single POI or multiple POIs in a given LATA and to configure and deploy its network efficiently based on customers and traffic volumes. Each carrier needs to assess the costs of installing transmission facilities and equipment to deliver its originating traffic to each POI, and to receive terminating traffic.

Q. WHO SHOULD BEAR THE COSTS OF INTERCONNECTION?

A. The FCC recognized, when it codified Rule 703(b), that the financial responsibilities for interconnection for the exchange of traffic should be borne solely by each carrier on its side of the POI. This rule prohibits carriers from shifting to other carriers the costs of transporting that carrier's own traffic to the POI. In other words, each carrier is responsible for the costs of delivering its traffic to other carriers for termination. Several Federal Circuit Courts of Appeal have specifically upheld this interpretation. For example, as the Fourth Circuit stated in a dispute between SBC and MCI on this very point,

> In sum, we are left with an unambiguous rule, the legality of which is unchallenged, that prohibits the charge that SBC seeks to impose. Rule 703(b) is unequivocal in prohibiting LECs from levying charges for traffic originating on their own networks, and, by its own terms, admits of no exceptions. Although we find some surface appeal in SBC's suggestion that the charge here is not reciprocal compensation, but rather the permissible shifting of

> costs attending interconnection, the FCC, as noted above, has endorsed cost-shifting related to interconnection only as it relates to the one-time costs of physical linkage, and in doing so, expressly declined the invitation to extend the definition of "interconnection" to include the transport and termination of traffic.[6]

These decisions confirm the fact that a carrier's financial obligations extend from each point on that carrier's network to the POI, but never beyond. These decisions are also consistent with the accepted economic principle of cost-causation: that is, assignment of cost responsibility to the party that causes the costs. Cost shifting is unnecessary, uneconomic and anti-competitive, and, most importantly, contrary to existing federal law. This point is central to the FCC and the Federal Circuit Courts of Appeal decisions that have addressed the issue. Those decisions stand for the principle that each carrier pays its own costs of delivering its traffic to the POI.

Q. IS CHARTER ENTITLED TO CHOOSE WHEN TO ESTABLISH A SINGLE POI PER LATA UNDER THE GOVERNING RULES AND ORDERS?

A. Yes. When interpreting the governing statute, Section 251(c)(2) of the Act, the FCC has made this point clear. For example, the FCC has stated: "As previously mentioned, an ILEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect

[6] *MCImetro Access Transmission Services, Inc. v. SBC Telecommunications, Inc.*, No. 03-1238 2003 US

at a single POI per LATA."[7] The fact that the FCC speaks about a single POI as an "option" means that the requesting carrier (Charter, in this instance) has the option to choose multiple POIs or a single POI per LATA. Likewise, the FCC has stated: "Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only *one* technically feasible point in each LATA."[8] This latter statement confirms that a single POI per LATA is an option that the Telecom Act and the FCC have mandated, and at the same time makes it crystal clear that it is the competitive LEC who selects whether to take this option (or establish multiple POIs).

Q. DO ILECS SUCH AS QWEST HAVE THE RIGHT TO SELECT POIs?

A. No. That right is limited to CLECs and does not extend to ILECs. The FCC explained why this right is provided to the CLECs and not to the ILECs in the *Local Competition Order* as follows:

> Given that the incumbent LEC will be providing interconnection to its competitors pursuant to the purpose of the 1996 Act, the LEC has the incentive to discriminate against its competitors by providing them less favorable terms and conditions of interconnection than it provides itself.[9]

App. LEXIS 25782, *24-5 (4th Cir. Dec 18, 2003).

[7] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, FCC 01-132, CC Docket No. 01-92, released April 27, 2001, ¶ 112. *See also, id.* at ¶ 72 ("Under our current rules, interconnecting CLECs are obligated to provide one POI per LATA.")

[8] *Texas 271 Order* at para. 78.

[9] *See Local Competition Order* at ¶ 218.

The FCC recognized that one of the goals of the Act and competition in general was to eliminate this ILEC incentive and ability to impose financial and operational burdens on CLECs that multiple POIs could create. At paragraph four of the *Local Competition Order* the FCC states:

> Competition in local exchange and exchange access markets is desirable, not only because of the social and economic benefits competition will bring to consumers of local services, but also because competition eventually will eliminate the ability of an incumbent local exchange carrier to use its control of bottleneck local facilities to impede free market competition. Under section 251, incumbent local exchange carriers (LECs), including the Bell Operating Companies (BOCs), are mandated to take several steps to open their networks to competition, including providing interconnection, offering access to unbundled elements of their networks, and making their retail services available at wholesale rates so that they can be resold.

Q. PLEASE DESCRIBE THE IMPACT UPON CHARTER IF THIS COMMISSION ALLOWED QWEST TO DICTATE MULTIPLE POIs IN A LATA?

A. If Qwest were allowed to dictate to Charter the choice of a single POI or multiple POIs in a LATA, Qwest would be able to force Charter to build out a ubiquitous network based on the same geographic reach as the Qwest network, even before there is a Charter customer base or traffic volumes sufficient to justify the investment. This would raise barriers to entry for Charter and benefit Qwest at the expense of Charter, of competition, and of consumers.

Q. PLEASE ELABORATE.

A. The ILEC tandem network design is intended to minimize the number of connection points or trunk groups within its network. This is especially true in the initial deployment of facilities. Initially network traffic is typically lower dictating the efficiencies of a low number (e.g., one) of connections and trunk groups. Only later, when customer acquisition results in traffic volumes that have a community of interest that is diverse enough to make multiple connections efficient from an engineering perspective, would multiple POIs be economically efficient. Qwest designed its tandem network over time with this as one of the primary considerations. By forcing CLECs to use multiple POIs in a LATA, Qwest could deprive the CLEC the efficiencies Qwest built into the network for its own use and improperly shift the costs of building out the Qwest network to its competitor. Nothing about this approach represents an equitable or efficient balance of costs between the ILEC's existing network dominance and a CLEC's investment to compete in the market. In short, allowing Qwest to determine the number and location of POIs would allow Qwest to have control over Charter's investment decisions and could force Charter to invest in facilities that are not justified from a financial or engineering standpoint. This forced investment would disadvantage CLECs and impose additional and unwarranted costs on them. Specifically, Qwest could force CLECs to build or lease facilities (or even switches) to reach into every local calling area, regardless of how many customers

a CLEC might actually have in a given local calling area. Such a result would be contrary to this Commission's stated intent to encourage competition and contrary to the Telecom Act and the FCC's Rules.

Q. HAS THE IMPORTANCE OF ALLOWING CHARTER TO DECIDE WHEN A SINGLE POI PER LATA IS APPROPRIATE INCREASED SINCE THE FCC MADE THE STATEMENTS IN THE *LOCAL COMPETITION ORDER* REFERENCED ABOVE?

A. Yes. Since the decline of the CLEC industry in 2000, it has become increasingly difficult for CLECs to attract capital necessary to enter markets or to expand. Forcing CLECs to build or lease facilities where margins are slim or nonexistent would only worsen the CLECs' prospects for attracting capital. Indeed, if CLECs are not allowed the discretion to choose a single POI per LATA, Qwest may force CLECs to essentially duplicate the incumbent's network. Such a result would be inefficient from both an economic and operational standpoint and has consequently been regularly rejected by regulators as contrary to the public interest. A more likely result of such a finding would be that CLECs would choose not to enter the market.

Q. DOES QWEST HAVE ADDITIONAL INCENTIVES TO REQUIRE MULTIPLE POIs?

A. Yes. Simply because Qwest's network has been in place for decades does not mean that it is the most efficient network, or that other carriers should develop similar networks. Requiring multiple POIs per LATA would force investment by CLECs in a network design that is no longer optimal.

Q. PLEASE ELABORATE.

A. CLECs utilizing new technology and information should not be limited or hampered by the historic decisions of Qwest network planners who established switch locations and local calling areas decades ago based upon more limited technology.[10] Those decisions, which were justifiable and supportable then, would certainly be different today given the changes in technology. As such, forcing CLECs to conform to a specific network topology would be inconsistent with the goals of the *Local Competition Order* and the Act. Rather, the promotion of efficient markets dictates that CLECs such as Charter only be required to interconnect in a specific area where traffic volumes and customer demand justify investment in facilities needed to reach that area. Charter is not required to extend its facilities to multiple POIs unilaterally identified by Qwest; instead, Qwest is obligated to provide interconnection for Charter facilities at a single POI or multiple POIs, whichever Charter properly determines best serve its network architecture and business plans in a particular LATA. This concept actually allows

[10] In the past, switching was relatively cheaper than transport, so a switch-centric PSTN was developed.

Qwest to continue to design a network around its own needs while allowing the CLEC to do the same thing. This is really a "win/win" situation for both parties. Qwest is managing only a single POI per LATA and its consequences, while the CLEC is doing very much the same thing when deploying its network.

Q. DOES THE SINGLE POI PER LATA RULE ALLOW FOR EFFICIENT DEPLOYMENT OF NETWORK FACILITIES AND MORE EFFICIENT ENTRY INTO MARKETS?

A. Yes. From an economic standpoint, the single POI allows CLECs to have a minimal, yet efficient, presence until its customer base and traffic patterns warrant the further expansion of its own network. In other words, a single POI allows Charter to operate efficiently and offer services to customers without having to uneconomically duplicate an outdated network design (the ILEC network). This is especially important since engineering options are much more robust today than when the ILECs deployed their traditional circuit switched network with hierarchical intelligence. Indeed, the economics of telecommunications engineering – especially with respect to transport and switching technologies – have changed dramatically in the last ten years.

Q. QWEST STATES THAT "CHARTER DOES NOT HAVE AN UNCONDITIONAL RIGHT TO ESTABLISH A SINGLE POINT OF

Today, with fiber and electronics making transport very inexpensive, and packet switching increasing efficiencies even more, carriers can serve very large areas with only one switch.

INTERCONNECTION IN EACH LATA." DO YOU AGREE?

A. Qwest states in its positions statement:

> Charter does not have an unconditional right to establish a single point of interconnection in each LATA in which it has end user customers. The Act and FCC rules interpreting the Act qualify a CLEC's request for a single interconnection point by requiring that the point be technically feasible.[11]

On this point – i.e., that a CLEC's right to interconnection is limited by one exception, technical infeasibility – I agree with Qwest. According to the FCC, and as I have previously explained, for an ILEC to be relieved of its interconnection obligations, the burden rests with the ILEC to prove that a particular request is technically infeasible.

Thus, if an ILEC proves to the state commission that a request for a single POI per LATA is technically infeasible (as that term is interpreted by the FCC), then the ILEC may be relieved of its obligation to provide interconnection at that particular point. And that is why the parties have agreed to language in Section 7.1.2, which states: "The Parties shall establish, at least one (1) of the following Interconnection arrangements, at any Technically Feasible point..." Given this language, and the repeated references[12] throughout the ICA to "technically feasible" interconnection arrangements, it is clear that Qwest's criticism is unwarranted.

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[11] Exhibit A to Qwest's Arbitration Response, pp. 19-20.
[12] *See, e.g.*, Section 7.1.1 and the definition of the term "Technically Feasible" in the ICA.

Q. ARE THERE OTHER QWEST CRITICISMS THAT DON'T SQUARE WITH THE ICA LANGUAGE?

A. Yes Qwest states:

> the interconnection point must be 'within' Qwest's network. Charter's first proposed change to Section 7.1.2 does not contain these limitations and thus overreaches.

However, Charter's proposed language in Section 7.1.2 states: "The Parties agree that this Section 7.1.2 shall not be construed as imposing any obligation upon Qwest to establish a physical Point of Interconnection with CLEC at a point that is outside of Qwest's geographic service area or territory." Again, the provisions that Qwest says are missing from Charter's proposal for Section 7.1.2 are already in that section in either agreed upon, or Charter-proposed, language.

Q. YOU HAVE EXPLAINED THAT QWEST SHOULD NOT BE ALLOWED TO LIMIT CHARTER'S ABILITY TO USE SELF-PROVISIONED OR THIRD PARTY-PROVIDED INTERCONNECTION FACILITIES IN ORDER TO INTERCONNECT CHARTER'S NETWORK WITH QWEST'S. IS THIS SUPPORTED BY THE FCC'S RULES?

A. Yes. As discussed above in Issue 10, 47 CFR §51.321(a) states in relevant part:

> ...an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of this part, ***any technically feasible method of obtaining interconnection*** or access to unbundled network elements at a particular point upon a request by a

telecommunications carrier.[13]

Using self-provided or third-party provided interconnection facilities are both technically feasible methods of obtaining interconnection at a particular point in Qwest's network, and therefore, per the FCC's rules, it is appropriate to include these options in the companies' ICA. Further, the FCC defines "Interconnection" simply as "the linking of two networks for the mutual exchange of traffic"[14] and does *not* suggest that this linking of the two networks (in this case Charter's and Qwest's networks) must be accomplished via a Qwest-provided facility.

Q. WHAT IS YOUR RECOMMENDATION FOR ISSUE 11?

A. I recommend that the Commission adopt Charter's proposals for Sections 7.1.2 and 7.1.2.4.

[13] Emphasis added.
[14] 47 CFR § 51.5. The definition of Interconnection also states "This term does not include the transport and termination of traffic."

Issue 13: Is Charter required to compensate Qwest for so-called "direct trunk transport" circuits which carry traffic from the parties' POI to Qwest's tandem switch or end office switches, even where Charter has already compensated Qwest under the reciprocal compensation provisions of the agreement (via bill and keep arrangements)?

Q. PLEASE DESCRIBE THE DISPUTE UNDER ISSUE 13?

A. Charter and Qwest disagree on the terms and conditions that should apply for the mutual recovery of costs (i.e., reciprocal compensation) associated with transporting and terminating traffic originated by the other party. Charter proposes that the parties employ a bill and keep arrangement for mutual recovery of transport *and* termination costs. Qwest, on the other hand, proposes bill and keep for termination, but not for transport, and provides only for Qwest's recovery of transport costs, and not Charter's recovery of such costs.

Q. WHAT LANGUAGE IS IN DISPUTE UNDER ISSUE 13?

A. The parties are disputing language under Sections 7.2.2.1.2.2, 7.2.2.1.4, 7.3.2.1, 7.3.2.1.1, 7.3.2.1.2, 7.3.2.1.3, 7.3.2.1.4, 7.3.2.2, and 7.3.2.3. Charter's proposed language for these sections is shown below:

> 7.2.2.1.2.2 CLEC may purchase transport services from Qwest or from a third party, including a third party that has leased the private line transport service facility from Qwest, **to connect any POIs between the networks with CLEC's network. Subject to Section 7.2.2.1.3 below, a delivering Party may at its option direct the receiving Party to establish trunks from the POI either to the receiving Party's Tandem Switch(es), to its End Office Switch(es), or both. The delivering Party shall be responsible for paying the receiving Party the appropriate Transport and Termination charges for traffic delivered. Termination charges shall consist of terminating local**

switching. Transport consists of carrying traffic from the POI to the terminating End Office Switch and may be purchased as Tandem Switch routed (i.e., tandem switching, tandem transmission and direct trunked transport) or direct routed (i.e., direct trunked transport). This Section is not intended to alter either Party's obligation under Section 251(a) of the Act

7.2.2.1.4 **Where the Parties do not utilize the bill and keep arrangements set forth in Section 7.3 as the method for fulfilling their reciprocal compensation obligations under 47 U.S.C. § 251(b)(5), then** LIS ordered **from Qwest** to a Tandem Switch will be provided as direct trunked transport between the Serving Wire Center of CLEC's POI and the Tandem Switch. Tandem transmission rates, as specified in Exhibit A of this Agreement, will apply to the transport provided from the Tandem Switch to Qwest's End Office Switch. **For Qwest-originated traffic, Qwest will pay CLEC's applicable trunking and tandem switching rates from the POI at which the traffic is exchanged to CLEC's End Office Switch or equivalent device.**

7.3.2.1 Either Party may elect to **use** direct trunked transport **to connect its network to the other Party's End Offices. Direct trunked transport is a form of Transport service as that term is used in this Section 7 and is provided by the Parties to each other on a bill-and-keep basis.**

7.3.2.1.1 Direct trunked transport (DTT) is available between the **terminating Party's** Serving Wire Center **for** the POI and **that** Party's Tandem Switch or End Office Switches. DTT facilities are provided as dedicated DS3, DS1 or DS0 facilities.

7.3.2.1.2 **Intentionally Left Blank.**

7.3.2.1.3 **Where relevant, m**ileage shall be measured for DTT based on V&H coordinates between the Serving Wire Center and the local/Access Tandem Switch or End Office Switch.

7.3.2.1.4 **Intentionally Left Blank.**

7.3.2.2 **Intentionally Left Blank.**

7.3.2.3 Multiplexing **arrangements** (DS1/DS3 MUX or DS0/DS1 MUX) **shall be established by each Party in connection with the Transport of traffic delivered by the other Party in accordance with standard industry practices. Multiplexing is part of the Transport function and is provided by the Parties to each other on a bill-and-keep basis.**

Q. WHAT IS QWEST'S PROPOSED LANGUAGE FOR THESE SECTIONS?

A. Qwest proposes the following language:

7.2.2.1.2.2 CLEC may purchase transport services from Qwest or from a third party, including a third party that has leased the private line transport service facility from Qwest. Such transport provides a facility for the LIS trunk to be provisioned in order to deliver the originating Party's Exchange Service EAS/Local traffic to the terminating Party's End Office Switch or Tandem Switch for call termination, and may be purchased from Qwest as Tandem Switch routed (i.e., tandem switching, tandem transmission and direct trunked transport) or direct routed (i.e., direct trunked transport). This Section is not intended to alter either Party's obligation under Section 251(a) of the Act.

7.2.2.1.4 LIS ordered to a Tandem Switch will be provided as direct trunked transport between the Serving Wire Center of CLEC's POI and the Tandem Switch. Tandem transmission rates, as specified in Exhibit A of this Agreement, will apply to the transport provided from the Tandem Switch to Qwest's End Office Switch.

7.3.2.1 Either Party may elect to purchase direct trunked transport from the other Party.

7.3.2.1.1 Direct trunked transport (DTT) is available between the Serving Wire Center of the POI and the terminating Party's Tandem Switch or End Office Switches. The applicable rates are described in Exhibit A. DTT facilities are provided as dedicated DS3, DS1 or DS0 facilities.

7.3.2.1.2 When DTT is provided to a local or Access Tandem Switch for Exchange Service (EAS/Local) traffic, or to an Access Tandem

Switch for IntraLATA LEC Toll, or Jointly Provided Switched Access traffic, the applicable DTT rate elements apply between the Serving Wire Center and the Tandem Switch. Additional rate elements for delivery of traffic to the terminating End Office Switch are tandem switching and tandem transmission. These rates are described below.

7.3.2.1.3 Mileage shall be measured for DTT based on V&H coordinates between the Serving Wire Center and the local/Access Tandem Switch or End Office Switch.

7.3.2.1.4 Fixed Charges per DS0, DS1 or DS3 and per mile charges are defined for DTT in Exhibit A of this Agreement.

7.3.2.2 If the Parties elect to establish LIS two-way DTT trunks, for reciprocal exchange of Exchange Service (EAS/Local) traffic, the cost of the LIS two-way DTT facilities shall be shared among the Parties by reducing the LIS two-way DTT rate element charges as follows:

7.3.2.2.1 The provider of the LIS two-way DTT facility will initially share the cost of the LIS two-way DTT facility by assuming an initial relative use factor of fifty percent (50%) for a minimum of one (1) quarter if the Parties have not exchanged LIS traffic previously. The nominal charge to the other Party for the use of the DTT facility, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other Party will be according to this initial relative use factor for a minimum of one (1) quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor. If CLEC's End User Customers are assigned NPA-NXXs associated with a rate center other than the rate center where the End User Customers are physically located, traffic that does not originate and terminate within the same Qwest Local Calling Area, regardless of the called and calling NPA-NXXs involving those End User Customers, is referred to as "VNXX traffic." For purposes of determining the relative use factor, the terminating carrier is responsible for VNXX traffic. If either Party demonstrates with data that actual minutes of use during the previous quarter justifies a new relative use factor that Party will send a notice to the other Party. The new factor will be calculated based upon Exhibit H. Once the Parties finalize a new factor, bill reductions and payments will apply going forward from the date the original notice was sent. Qwest has never agreed to exchange VNXX traffic with CLEC.

7.3.2.3 Multiplexing options (DS1/DS3 MUX or DS0/DS1 MUX) are

available at rates described in Exhibit A.

Q. HAVE THE PARTIES AGREED THAT TRAFFIC EXCHANGED UNDER THIS AGREEMENT WILL BE SUBJECT TO SECTION 251(B)(5) OF THE ACT?

A. Yes. Section 251(b)(5) addresses reciprocal compensation and states: "RECIPROCAL COMPENSATION- The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."

Q. WHAT IS A RECIPROCAL COMPENSATION ARRANGEMENT?

A. Reciprocal compensation is defined in 47 CFR §51.701(e) as follows:

> *Reciprocal compensation.* For purposes of this subpart, a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier.

Q. "TRANSPORT" AND "TERMINATION" ARE KEY TERMS IN BOTH SECTION 251(B)(5) OF THE ACT AND IN THE DEFINITION OF RECIPROCAL COMPENSATION. HOW ARE THESE TERMS DEFINED?

A. "Transport" and "Termination" are terms defined in the FCC's rules[15] as follows:

[15] 47 CFR § 51.701(c) and (d).

> (c) *Transport.* For purposes of this subpart, transport is the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.
>
> (d) *Termination.* For purposes of this subpart, termination is the switching of telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.

Q. HAS THE FCC ESTABLISHED SPECIFIC OBLIGATIONS RELATED TO THE RECIPROCAL COMPENSATION FOR TRANSPORT AND TERMINATION OF TRAFFIC SUBJECT TO SECTION 251(B)(5) OF THE ACT?

A. Yes. For traffic subject to Section 251(b)(5), FCC regulations permit a terminating carrier to recover from the originating carrier the cost of the transport and termination of traffic from the interconnection point (or POI) to the called party. The FCC has explained that "[f]or traffic subject to section 251(b)(5) of the Act, our rules permit a terminating carrier to recover from the originating carrier the cost of certain facilities from an 'interconnection point' to the called party."[16]

Further, the FCC explained that the "certain facilities" to which it refers are the facilities involved in transporting and terminating traffic as those terms are

[16] *In the Matter of Developing a Unified Intercarrier Compensation Regime, Further Notice of Proposed*

defined by the FCC:

> Specifically, our rules permit recovery of the costs of transport and termination of telecommunications traffic between LECs and other telecommunications carriers. 47 C.F.R. § 51.701. The rules define "transport" as the "transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC." *Id.* § 51.701(c). The rules define "termination" as the "switching of telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises." *Id.* § 51.701(d).

2005 Intercarrier Compensation FNPRM at 87, n. 278.

Furthermore, Section 252(d)(2) states that for terms and conditions related to reciprocal compensation to be just and reasonable, they must "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." Notably, the Act specifically allows for mutual recovery to be implemented through the offsetting of reciprocal obligations such as bill and keep arrangements.[17]

Q. WHAT IS CHARTER'S PROPOSAL FOR RECIPROCAL COMPENSATION OF TRANSPORT AND TERMINATION?

A. Based upon the governing principles discussed above, Charter has proposed that

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Rulemaking, 20 FCC Rcd 4685, at para. 87 (2005) ("*2005 Intercarrier Compensation FNPRM*").
[17] Section 252(d)(2)(B)(1).

the parties adopt a bill and keep compensation mechanism which will apply to both parties' costs associated with transport and termination of traffic originated by the other party.

Q. PLEASE EXPLAIN.

A. Under its proposal, Charter would transport and terminate on its network all traffic that Qwest originates; and in return, Qwest would transport and terminate on its network all traffic that Charter originates. Both parties would therefore transport and terminate the traffic originated by the other party, and they would each do so without charge to the other party. In other words, both parties will provide in-kind compensation (transporting and terminating each other's traffic) consistent with the bill and keep practices used in the industry today.

Q. WHY DOES CHARTER PROPOSE BILL AND KEEP FOR TRANSPORT AND TERMINATION OF BOTH PARTIES' TRAFFIC?

A. Since the parties expect that the volume of traffic will be roughly balanced,[18] the parties' respective costs of transporting and terminating the other party's traffic should be roughly balanced. Therefore, since, each party is entitled to recover its costs of transporting traffic, and since such costs should be roughly balanced, the parties' respective transport charges should be offsetting. For that reason a bill and keep arrangement for the mutual recovery of transport and termination costs is

mutually beneficial, and cost effective, because it can minimize administrative burdens and transaction costs.[19]

Q. WHAT IS QWEST'S PROPOSAL?

A. Qwest's proposal would apply a bill and keep arrangement only for the costs for termination of traffic, which is the switching of traffic at the carrier's end office or equivalent, and delivery to the end user. For transport – or the transmission and tandem switching of traffic from the parties' POI to the terminating carrier's end office or equivalent – Qwest proposes a compensation arrangement wherein Charter would be required to pay Qwest for transporting traffic from the POI to its tandem and end office switches by purchasing so-called direct trunked transport circuits from Qwest.[20]

Q. WHY DOES CHARTER DISAGREE WITH QWEST'S PROPOSAL?

A. Qwest is proposing an arrangement that requires Charter to pay Qwest for "transport" in a manner that is not equitable, and seems to be in conflict with the statutory principle of mutual cost recovery. As I have just explained, it is Charter's position that bill and keep should be employed for both the termination ***and*** transport of traffic under Section 251(b)(5). But Qwest's proposal is to apply

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[18] *See,* Section 7.3.4.1.2 of the ICA: "The Parties agree that, based upon the fact that the traffic exchanged between the Parties historically has been roughly balanced…"

[19] *Local Competition Order*, ¶ 1112. For example, bill and keep eliminates the need for the parties to invoice the other party.

[20] Each party has its own definition of "direct trunked transport" in Section 7.3.2.1.1. Qwest's proposed Direct Trunk Transport charges are set forth at Section 7.3.2 (and related provisions), and in the Price List

bill and keep only to termination, but not to transport. More importantly, however, under Qwest's proposed language is not at all clear that Qwest will in fact compensate Charter for Charter's cost of transporting Qwest-originated traffic (from the POI to Charter's tandem and end office switch equivalents). So it appears that Qwest is proposing that Charter pay Qwest for transport of Charter's traffic on Qwest's side of the POI. At the same time, Qwest is apparently disclaiming its obligation to pay Charter, when Charter transports Qwest's traffic on Charter's side of the POI. However, even if Qwest agreed that Charter has a right to bill it an additional charge – beyond reciprocal compensation – on Charter's side of the POI, it doesn't change the fact that federal law doesn't permit Qwest to invoice Charter an additional transport charge on Qwest's side of the POI.

Q. WHY IS QWEST'S PROPOSAL A CONCERN?

A. Qwest's inequitable proposal is a concern because it does not "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." Specifically, Qwest's proposal does not allow Charter to recover its costs to transport (on its network) Qwest-originated traffic.

Q. DOES CHARTER INCUR COSTS RELATED TO TRANSPORTING

QWEST-ORIGINATED TRAFFIC?

A. Yes. Charter incurs significant costs related to transport (or "backhaul") for Qwest-originated traffic between and among Charter's various network locations. Even when Charter establishes a single POI per LATA, it must still incur transport costs related to Qwest-originated traffic. Though a single POI per LATA provides network efficiencies and allows Charter (and Qwest) to reduce its costs of network interconnection, such efficiencies also require Charter to transport Qwest-originated traffic on its side of the POI. Further, a single POI may involve more transport than a multiple POI scenario, given that a single POI trades off costs of establishing and maintaining additional points of interconnection with more transport to connect various network locations.

Q. HOW DOES THIS DISCUSSION IMPACT ISSUE 13?

A. This means that Charter incurs similar costs in transporting, on its network, Qwest-originated traffic as Qwest incurs in transporting Charter-originated traffic on Qwest's network. As such, it is not fair or equitable (nor is it just and reasonable under Section 252) to establish terms that allow Qwest – but not Charter – to recover its costs of transport, as Qwest has proposed. Charter's proposal, on the other hand, which would provide for *mutual* recovery (by both Qwest and Charter) through bill and keep of termination and transport costs, is equitable to both parties and is just and reasonable.

Q. IF THE COMMISSION DECIDES NOT TO IMPOSE BILL AND KEEP FOR TRANSPORT AND TERMINATION, IS IT STILL POSSIBLE TO ENSURE THAT THE COMPENSATION ARRANGEMENT COMPLIES WITH THE "MUTUAL RECOVERY" PRINCIPLE OF SECTION 252?

A. Yes. If the Commission decides that Qwest is entitled to assess direct trunk transport charges on Charter for carrying traffic from the POI to Qwest's end offices, then the Commission should also permit ***Charter*** to assess direct trunk transport charges on ***Qwest*** for carrying traffic from the POI to Charter's end office equivalents. Since both parties incur transport costs, both parties should be permitted to recover those transport costs.

Q. WHAT RATES WOULD CHARTER USE FOR SUCH CHARGES?

A. During negotiations over the terms of this agreement Charter has informed Qwest that it would be willing to use the same rates that Qwest proposes to assess upon Charter for direct trunk transport. So, the parties would likely use the rates set forth in Exhibit A to the draft agreement (the price list). In that way, the rates assessed by each party would be symmetrical, consistent with Section 252(d)(2) and associated FCC regulations (47 C.F.R. 51.711(a)).

Q. IS THAT WHY CHARTER PROPOSED LANGUAGE SUGGESTING THAT IT COULD ASSESS "APPLICABLE TRUNKING AND TANDEM SWITCHING" RATES.

A. Yes, in Section 7.2.2.1.4 Charter proposed to assess, for Qwest-originated traffic, the "applicable trunking and tandem switching rates." As I just explained, Charter would expect that the "applicable" trunking and tandem switching rates that the parties would assess one another would be identified in the current price list.

Q. IS CHARTER ALLOWED TO ASSESS TANDEM SWITCHING RATES UPON QWEST?

A. Under the FCC's regulations, Charter is entitled to assess a tandem switching rate when Charter's switch serves a comparable geographic area to Qwest's tandem switch. 47 C.F.R. 51.711(a)(3). To serve its customers in Washington Charter uses a single switch that serves all of Charter's customers in the state of Washington. Given that this switch serves a geographic area greater than the area served by Qwest's tandem switches, it satisfies the comparable geographic area test under the FCC's rules.

Q. WHAT IS YOUR RECOMMENDATION FOR ISSUE 13?

A. I recommend that the Commission adopt Charter's proposed language for Sections 7.2.2.1.2.2, 7.2.2.1.4, 7.3.2.1, 7.3.2.1.3, and 7.3.2.3, and reject Qwest's proposed Sections 7.3.2.1.2, 7.3.2.1.4, 7.3.2.2 and 7.3.2.2.1.

Issue 14: Should Qwest be entitled to impose non-recurring trunk installation and rearrangement charges upon Charter even where the parties have agreed to a bill and keep compensation scheme?

Q. WHAT IS THE DISPUTE UNDER ISSUE 14?

A. This issue pertains to trunk installation and rearrangement charges Qwest proposes to assess on Charter. As described above, the parties should be responsible for the costs on its side of the POI(s) when establishing points of interconnection between the parties. Trunk installation and rearrangements are part of the process of establishing POI arrangements between the parties, and per the authorities discussed above, Qwest (and Charter) should be responsible for all costs on its side of the POI, including non-recurring costs associated with trunk installation activities. Accordingly, Charter opposes the Qwest-proposed trunk installation/rearrangement non-recurring charges.

Q. WHAT IS CHARTER'S PROPOSED LANGUAGE FOR ISSUE 14?

A. Charter proposes the following language for Sections 7.3.3.1 and 7.3.3.2 of Section 7 (Interconnection):

> 7.3.3.1 **Because the Parties will exchange traffic on a bill-and-keep basis, trunk** installation nonrecurring charges **shall be waived, except that if (a) a Party seeks to establish trunks substantially in excess of forecast capacity requirements and (b) the newly established trunks remain significantly underutilized six (6) months after installation, the Party that installed the trunks may** assess **the other Party** Qwest **trunk installation (nonrecurring)** rates **as** specified in Exhibit A.
>
> 7.3.3.2 Nonrecurring charges for rearrangement **requested by one Party for its own convenience** may be assessed by the provider for each

trunk rearrangement ordered, at one-half (1/2) the rates specified in Exhibit A.

Q. WHAT IS QWEST'S PROPOSED LANGUAGE FOR ISSUE 14?

A. Qwest proposes the following language for Sections 7.3.3.1 and 7.3.3.2:

> 7.3.3.1 Installation nonrecurring charges may be assessed by the provider for each LIS trunk ordered. Qwest rates are specified in Exhibit A.
>
> 7.3.3.2 Nonrecurring charges for rearrangement may be assessed by the provider for each LIS trunk rearrangement ordered, at one-half (1/2) the rates specified in Exhibit A.

Q. AS STATED, CHARTER OPPOSES QWEST'S PROPOSAL TO ASSESS TRUNK INSTALLATION AND REARRANGEMENT NON-RECURRING CHARGES ON CHARTER BECAUSE CHARTER BELIEVES EACH PARTY SHOULD BE RESPONSIBLE FOR COSTS ON ITS SIDE OF THE POI. WOULD CHARTER'S PROPOSAL PROHIBIT THESE NON-RECURRING CHARGES IN ALL INSTANCES?

A. No. As shown above, Charter's proposed language would allow one party to assess the installation non-recurring charge (or "NRC") on the other party if the other party caused unnecessary or inefficient trunks to be installed, and would allow one party to assess the rearrangement NRC on the other party if it is requested by the other Party for that party's convenience. These provisions will provide each party the incentives to continue to forecast and operate the points of interconnection between the parties efficiently and without requiring the other

party to incur unnecessary or inefficient costs on its side of the POI.

Q. WHAT IS YOUR RECOMMENDATION FOR ISSUE 14?

A. I recommend that the Commission adopt Charter's proposals for Sections 7.3.3.1 and 7.3.3.2.

Issue 15: Should the parties' agreed upon bill and keep compensation arrangement apply to both the transport and termination of Section 251(b)(5) traffic exchanged between the parties?

Q. IS ISSUE 15 CLOSELY RELATED TO ISSUE 13 DESCRIBED ABOVE?

A. Yes. As explained above under Issue 13, Charter proposes a bill and keep reciprocal compensation arrangement between the parties for transport and termination pursuant to Section 251(b)(5) of the Act and the FCC's implementing rules and orders. Qwest, on the other hand, proposes bill and keep only for termination, but proposes that Charter make payments to Qwest for transport by purchasing dedicated trunks. Similar to Issue 13, the language implicated by Issue 15 revolves around the issue of which of these approaches is appropriate.

Q. WHAT IS CHARTER'S PROPOSAL FOR ISSUE 15?

A. Charter's proposed language for Issue 15 is found in Section 7.3.4, shown below:

> 7.3.4.1.1.2 47 C.F.R. § 51.713 defines bill-and-keep arrangements for reciprocal compensation as arrangements in which neither of two interconnecting carriers charges the other for the **Transport and** Termination of Exchange Service (EAS/Local) telecommunications traffic that originates on the other carrier's network.
>
> 7.3.4.1.2 The Parties agree that, based upon the fact that the traffic exchanged between the Parties historically has been roughly balanced, compensation for the **Transport and** Termination of Exchange Service (EAS/Local) Traffic shall be based upon the bill and keep compensation mechanism, whereby neither Party charges the other Party reciprocal compensation for the **Transport and** Termination of Exchange Service (EAS/Local) traffic originated by the one Party and terminated by the other Party. Under this bill-and-keep scenario neither Party will bill the other Party for **any call Transport** and Termination costs associated

with delivery of the Exchange Service (EAS/Local) call to the **terminating** carrier's end-user.

7.3.4.1.3 Pursuant to Section 7.3.4.1.2 above, when CLEC chooses to interconnect and **exchange** traffic **with** Qwest utilizing a single POI within the LATA, neither party will bill the other Party any usage sensitive **monthly recurring or nonrecurring** charges **(including trunks and/or facilities and switch related charges) for Transport or Termination costs that the terminating party may incur when delivering the originating Party's EAS/Local Traffic to end users within the same LATA**.

Q. WHAT IS QWEST'S PROPOSAL FOR ISSUE 15?

A. Qwest proposes the following language for Issue 15:

7.3.4.1.1.2 47 C.F.R. § 51.713 defines bill-and-keep arrangements for reciprocal compensation as arrangements in which neither of two interconnecting carriers charges the other for the Termination of Exchange Service (EAS/Local) telecommunications traffic that originates on the other carrier's network.

7.3.4.1.2 The Parties agree that, based upon the fact that the traffic exchanged between the Parties historically has been roughly balanced, compensation for the Termination of Exchange Service (EAS/Local) Traffic shall be based upon the bill and keep compensation mechanism, whereby neither Party charges the other Party reciprocal compensation for the Termination of Exchange Service (EAS/Local) traffic originated by the one Party and terminated by the other Party. Under this bill-and-keep scenario neither Party will bill the other Party for and Termination costs associated with delivery of the Exchange Service (EAS/Local) call to the carrier's end-user.

7.3.4.1.3 Pursuant to Section 7.3.4.1.2 above, when CLEC chooses to interconnect and deliver traffic to Qwest utilizing a single POI within the LATA, neither party will bill the other Party any usage sensitive charges associated with Exchange Service (EAS/Local) traffic.

Q. PLEASE DESCRIBE CHARTER'S PROPOSAL.

A. Charter's proposed language in these sections reflects its proposal to apply bill

and keep to both transport and termination of traffic originating on the other party's network. Qwest's proposed language in these sections reflects its proposal to apply bill and keep only to termination of traffic originating on the other party's network.

Q. WHY SHOULD BILL AND KEEP BE ADOPTED FOR TRANSPORT AND TERMINATION AS BETWEEN CHARTER AND QWEST?

A. As explained above under Issue 13, Section 251(b)(5) of the Act provides that each LEC has the duty to "establish reciprocal compensation arrangements for the transport and termination of telecommunications" and Section 252(d)(2) requires reciprocal compensation arrangements to provide for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." Moreover, Section 252(d)(2)(B)(i) further provides that bill and keep arrangements that provide the mutual recovery required by Section 252(d)(2) are expressly permitted for this purpose. Importantly, the statute's reference to "mutual recovery" requires that both parties recover their respective costs of transporting and terminating the other party's traffic.

Q. WHAT IS THE PROBLEM WITH QWEST'S PROPOSAL?

A. Qwest proposes to provide for bill and keep only for termination – but not transport. For transport, which the parties have agreed has the same definition as

in the FCC's rules (see Issue 13 above), Qwest proposes that Charter compensate Qwest for what it calls "direct trunked transport," but does not provide for the same opportunity for Charter to recover its costs of transport from Qwest. Therefore, Qwest's proposal does not provide for the "mutual recovery" of transport costs, as required by statute.

Q. WHAT IS YOUR RECOMMENDATION FOR ISSUE 15?

A. I recommend that the Commission adopt Charter's proposed versions of Sections 7.3.4.1.1.2, 7.3.4.1.2, and 7.3.4.1.3.

Issue 16: Should either party have the right to utilize indirect interconnection as a means of exchanging traffic with the other party?

Q. PLEASE SUMMARIZE THE DISAGREEMENT BETWEEN THE COMPANIES RELATED TO ISSUE 16.

A. This issue revolves around Qwest's attempt to inappropriately restrict Charter's ability to avail itself of indirect interconnection. Indirect interconnection – which is specifically authorized by Section 251(a) of the Act – can be an efficient form of traffic exchange in certain circumstances, such as when parties serve contiguous service areas with EAS/extended local calling with de minimis amounts of traffic exchange. In this scenario, indirect interconnection is a preferred method of traffic exchange due to cost savings and other efficiencies – primarily because the small amount of traffic does not justify establishing a direct interconnection. Accordingly, Charter proposes ICA language addressing indirect interconnection which should be adopted.

Q. IS TRANSITING A METHOD OF INDIRECT INTERCONNECTION?

A. Yes. Transit traffic is defined in the parties' ICA as "any traffic that originates from one (1) Telecommunications Carrier's network [Carrier A] and/or its end user(s), transits another Telecommunications Carrier's network [Carrier B], and terminates to yet another Telecommunications Carrier's network [Carrier C]

and/or its end user(s)."[21] In the above scenario, Carrier A and Carrier C have an indirect interconnection of their networks via Carrier B.

Q. WHAT LANGUAGE IS CHARTER PROPOSING REGARDING INDIRECT INTERCONNECTION?

A. Charter proposes (and Qwest opposes) the following language for Sections 7.1.2.6, 7.1.2.7, 7.1.2.8, and 7.1.2.9:

> **7.1.2.6 Either Party may deliver Local Traffic and ISP-bound Traffic indirectly to the other for termination through any carrier to which both Parties' networks are interconnected directly or indirectly. The Originating Party shall bear all charges payable to the transiting carrier(s) for such transit service with respect to Local Traffic and ISP-bound Traffic.**
>
> **7.1.2.7 Unless otherwise agreed, the Parties shall exchange all Local Traffic and ISP-bound Traffic indirectly through one or more transiting carriers until the total volume of Local Traffic and ISP-bound Traffic being exchanged between the Parties' networks exceeds 240,000 minutes per month for three (3) consecutive months, at which time either Party may request the establishment of Direct Interconnection. Notwithstanding the foregoing, if either Party is unable to arrange for or maintain transit service for its originated Local Traffic upon commercially reasonable terms before the volume of Local Traffic and ISP-bound Traffic being exchanged between the Parties' networks exceeds 240,000 minutes per month, that Party may unilaterally, and at its sole expense, utilize one-way trunk(s) for the delivery of its originated Local Traffic to the other Party.**
>
> **7.1.2.8 After the Parties have established Direct Interconnection between their networks, neither Party may continue to transmit its originated Local Traffic and ISP-bound Traffic indirectly except on an overflow basis to mitigate traffic blockage, equipment failure or emergency situations.**

[21] Section 7.2.1.2.4.

7.1.2.9 Local Traffic and ISP-bound Traffic exchanged by the Parties indirectly through a transiting carrier shall be subject to the same Reciprocal Compensation, if any, as Local Traffic and ISP-bound Traffic exchanged through Direct Interconnection.

Q. WHAT LANGUAGE DOES QWEST PROPOSE REGARDING INDIRECT INTERCONNECTION?

A. Qwest's template language includes the following sentence in section 7.2.1.1 concerning the use of indirect interconnection arrangements:

> Unless otherwise agreed to by the Parties, via an amendment to this Agreement, the Parties will directly exchange EAS/Local traffic between their respective networks without the use of third party transit providers.

Although indirect interconnection is not explicitly prohibited in this sentence, it certainly conveys Qwest's position that indirect interconnection should be used in only limited circumstances and only after having to go through the amendment process. It is Charter's right under the statute and implementing federal rules to request *both direct and indirect* interconnection. *See* 47 U.S.C. 251(a) and 47 C.F.R. 51.100(a)(1).

Q. PLEASE SUMMARIZE CHARTER'S PROPOSED LANGUAGE FOR ISSUE 16.

A. Charter's proposed Section 7.1.2.6 allows either party to deliver local traffic to the other party for termination by the other party through a third party (i.e., transiting carrier), and requires the originating party to bear all charges payable to the transiting carrier. Charter's proposed language for Section 7.1.2.7 states that the parties will exchange local and ISP-bound traffic indirectly until the traffic

volume exchanged between the companies' networks exceeds a reasonable threshold of 240,000 minutes per month for three consecutive months. Once this threshold is met, Charter's proposal would allow either party to request a direct interconnection. Charter's proposal also provides for the ability of a party that is not able to establish transit arrangements to establish at its own expense one-way trunks for delivering its traffic to the other party. Charter's proposed Section 7.1.2.8 requires that once a direct interconnection is established between the parties, the indirect interconnection may no longer be used except in overflow conditions to mitigate traffic blockage. Charter's proposed Section 7.1.2.9 requires the same reciprocal compensation arrangement for local/ISP-bound traffic that is exchanged over an indirect interconnection is used for traffic exchanged over direct interconnections.

Q. WHY NOT SIMPLY USE QWEST'S LANGUAGE, AND AMEND THE AGREEMENT IF EAS/LOCAL TRAFFIC IS EXCHANGED IN THE FUTURE?

A. Well, given that the parties are negotiating and arbitrating an agreement right now, and that several of the contested issues concern traffic exchange, it seems like the best time to resolve any disputes over this language is now, before the Commission. Although Charter does not disagree with the concept of amending the agreement to reflect future changes in law, or either party's network or

facilities arrangements, it seems appropriate to address this issue now so that an amendment will not be necessary in the future.

Q. YOU MENTION ABOVE THAT INDIRECT INTERCONNECTION IS REQUIRED BY SECTION 251(a) OF THE TELECOMMUNICATIONS ACT. PLEASE ELABORATE.

A. Section 251(a) of the Act establishes as a general duty of telecommunications carriers "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers..." The requirement of indirect interconnection lowers barriers to entry in the telecommunications market by avoiding the need and substantial expense to establish direct interconnections in every circumstance, particularly in areas where the parties exchange a relatively small amount of traffic. The FCC and the courts have both affirmed that a competing carrier has the right to choose to avail itself of direct interconnection under Section 251(c) or indirect interconnection under Section 251(a).[22] Further, as found in *Atlas Telephone v Oklahoma Corporation Commission*,[23] the use of direct interconnection in one instance does not preclude the use of indirect interconnection in another instance. The court stated: "...the affirmative duty established in § 251(c) runs solely to the ILEC, and is only triggered on request

[22] *Local Competition Order*, 11 FCC Rcd at 15991, at para. 997 (defining interconnection obligations under section 251(a)).
[23] *Atlas Telephone Company, et al. v Oklahoma Corporation Commission, et al.*, 400 F.3d 1256 (10th Cir. 2005).

for direct connection. The physical interconnection contemplated by § 251(c) in no way undermines telecommunications carriers' obligation under § 251(a) to interconnect "'directly or *indirectly*.'"[24] Accordingly, Charter has the right to avail itself of indirect interconnection pursuant to the Act, which is what Charter's proposal for Issue 16 calls for.

Q. DOES CHARTER'S PROPOSAL ALLOW EITHER PARTY AN UNLIMITED RIGHT TO USE INDIRECT INTERCONNECTION TO DELIVER TRAFFIC TO THE OTHER PARTY'S NETWORK?

A. No. Charter's proposal puts reasonable limits on the ability of either party to deliver traffic to the other party's network via an indirect interconnection. Once local/ISP bound traffic being exchanged exceeds 240,000 minutes per month for three consecutive months, either party may request a direct interconnection, and once a direct interconnection is established, indirect interconnection can no longer be used (except in the case of overflow traffic that may occur, for example, during an emergency situation). Therefore, per Charter's proposal, once the parties are consistently exchanging an amount of traffic that may justify a direct interconnection, either party may request one. Until that point, however, it makes no sense to disallow indirect interconnection and force the parties to rely on uneconomic direct interconnection.

[24] *Id.* at p. 1268.

Q. WHAT IS YOUR RECOMMENDATION FOR ISSUE 16?

A. I recommend that the Commission adopt Charter's proposed language for Sections 7.1.2.6 through 7.1.2.9.

Issue 18: Should Qwest be required to make 911 facilities available to Charter at cost-based rates pursuant to Section 251(c)?

Q. WHAT IS THE DISAGREEMENT BETWEEN THE COMPANIES RELATED TO ISSUE 18?

A. Qwest objects to language proposed by Charter that would require Qwest to provide Charter 911/E911 facilities at the same rates as Qwest charges for Local Interconnection Services or "LIS" facilities – i.e., at Total Element Long Run Incremental Cost ("TELRIC")-based rates. Charter often leases 911 facilities from Qwest to establish connectivity to Qwest-controlled selective routers,[25] which are connected to the Public Service Answering Point ("PSAP").[26] These facilities are necessary for Charter to convey its subscribers' emergency calls (i.e., 911 calls) to the appropriate PSAP and are, therefore, fundamental building blocks of Charter's ability to provide access to emergency services to its customers.

Q WHAT IS CHARTER'S PROPOSED LANGUAGE FOR ISSUE #18?

A. Charter proposes the following language for Section 10.3.7.1.1 of Section 10 (Ancillary Services):

> 10.3.7.1.1 The Parties shall establish a minimum of two (2) dedicated trunks from CLEC's Central Office to each Qwest 911/E911 Selective

[25] Selective routers route 911 calls from the caller's serving central office to the appropriate public safety answering point.

[26] A PSAP is a location where "the PSAP operator verifies or obtains the caller's whereabouts (called locational information), determines the nature of the emergency and decides which emergency response teams should be notified." *Newton's Telecom Dictionary*, 20th Ed.

> Router (i.e., 911 Tandem Office) that serves the areas in which CLEC provides Exchange Service, for the provision of 911/E911 services and for access to all subtending PSAPs (911 Interconnection Trunk Groups). Qwest will provision diverse routing for 911/E911 circuits, if facilities are available. When Qwest facilities are available, Qwest will comply with diversity of facilities and systems as ordered by the State/PSAP. Where there is alternate routing of 911/E911 calls to a PSAP in the event of failures, Qwest shall make that alternate routing available to CLEC. When 911/E911 underlying transport is ordered by the State/PSAP, CLEC will not be subject to Qwest transport charges. Otherwise, **rates for 911/E911 facilities shall be the same as rates for LIS facilities.**

Q. WHAT IS QWEST'S PROPOSAL FOR ISSUE #18?

A. Qwest's proposed language for Section 10.3.7.1.1 is as follows:

> 10.3.7.1.1 The Parties shall establish a minimum of two (2) dedicated trunks from CLEC's Central Office to each Qwest 911/E911 Selective Router (i.e., 911 Tandem Office) that serves the areas in which CLEC provides Exchange Service, for the provision of 911/E911 services and for access to all subtending PSAPs (911 Interconnection Trunk Groups). Qwest will provision diverse routing for 911/E911 circuits, if facilities are available. When Qwest facilities are available, Qwest will comply with diversity of facilities and systems as ordered by the State/PSAP. Where there is alternate routing of 911/E911 calls to a PSAP in the event of failures, Qwest shall make that alternate routing available to CLEC. When 911/E911 underlying transport is ordered by the State/PSAP, CLEC will not be subject to Qwest transport charges. Otherwise, DS0 LIS facilities may be ordered for 911/E911 per section 7.2.2.9.4.

Q. IS CHARTER'S PROPOSAL FOR QWEST TO PROVIDE 911/E911 FACILITIES AT THE SAME TELRIC-BASED RATES AS QWEST PROVIDES INTERCONNECTION FACILITIES SUPPORTED BY THE FCC?

A. Yes. Qwest is generally required to provide to Charter interconnection trunks and facilities for the provision of 911 services at TELRIC-based rates at Charter's

request – a requirement made clear by the FCC. The FCC has stated:

> We note that the Commission currently requires LECs to provide access to 911 databases and interconnection to 911 facilities to all telecommunications carriers, pursuant to sections 251(a) and (c) and section 271(c)(2)(B)(vii) of the Act. We expect that this would include all the elements necessary for telecommunications carriers to provide 911/E911 solutions that are consistent with the requirements of this Order, including NENA's I2 or wireless E911-like solutions.[27]

The reference to Section 251(c) of the Act in the quote from the FCC's order is key, because Section 251(c) of the Act requires all ILECs to provide interconnection facilities at rates in accordance with section 252 of the Act. The pricing standard in Section 252(d) of the Act that applies to interconnection and unbundled network elements is TELRIC.[28] Accordingly, Qwest's obligation to provide 911/E911 facilities to Charter at TELRIC-based rates is unambiguous and Qwest should not be allowed to ignore that obligation in the parties' ICA.

Q. WHAT IS YOUR RECOMMENDATION FOR ISSUE 18?

A. I recommend that the Commission adopt Charter's proposed language in Section 10.3.7.1.1.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

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[27] *In the Matters of IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, at para. 38 (2005).

[28] Section 252(d) states: "Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section ...shall be...based on cost..." The cost standard adopted by the FCC and upheld by the Supreme Court for pricing