

**BEFORE THE WASHINGTON STATE
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 (b)**

DOCKET NO. UT-083041

**DIRECT TESTIMONY OF ROBERT H. WEINSTEIN
QWEST CORPORATION**

(Disputed Issue Nos. 17, 19, 20, 21, 22, 23, and 24)

October 8, 2008

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1 **I. IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS**
3 **ADDRESS.**

4 A. My name is Robert Weinstein. I work for Qwest Corporation (“Qwest”) in the
5 Wholesale Markets organization. My business address is 1801 California Street,
6 24th Floor, Denver, Colorado, 80202.

7 **Q. PLEASE GIVE A BRIEF DESCRIPTION OF YOUR EDUCATIONAL**
8 **BACKGROUND AND TELEPHONE COMPANY EXPERIENCE.**

9 A. I received a Bachelor of Science Degree in Business Administration from the
10 University of Colorado in 1985. In June 1990, I earned a Juris Doctorate from the
11 University Of Denver College Of Law. In 1998, I joined U S WEST (now known
12 as Qwest). In 2001, I left Qwest to implement and convert billing systems for
13 several national broadband companies as a consultant. I returned to Qwest in my
14 current capacity in July 2003.

15 **Q. HAVE YOU TESTIFIED PREVIOUSLY IN WASHINGTON?**

16 A. No.

17 **II. PURPOSE OF TESTIMONY**

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

19 A. The purpose of my testimony is to explain Qwest’s positions, and the policies
20 underlying those positions related to following Disputed Issues:

- 1 Disputed Issue 17: Miscellaneous Charges
- 2 Disputed Issue 19: Limitation on Qwest's Use of Charter Listing
3 Information
- 4 Disputed Issue 20: Prior Written Authorization to Release, Sell or Make
5 Available Charter Listing Information
- 6 Disputed Issue 21: Charges for Directory Listings
- 7 Disputed Issue 22: Charges for Privacy Listings
- 8 Disputed Issue 23: Classified (yellow pages) Listings
- 9 Disputed Issue 24: Cost Responsibility for Audits

10
11

III. DISPUTED ISSUE NO. 17: MISCELLANEOUS CHARGES

12 **Q. PLEASE EXPLAIN DISPUTED ISSUE NO. 17.**

13 A. Charter does not want to pay the miscellaneous charges that result from Qwest's
14 performance of one or more of the miscellaneous services listed in Section 9.1.12.
15 These services are provided only at a CLEC's request or based on a CLEC's
16 actions, not through Qwest's initiation. Charter's overbroad language requires
17 Qwest to seek approval of these charges in advance and allows Charter to only
18 pay the charges "depending on the specific circumstances." These proposed
19 requirements are not appropriate. Qwest's proposed language puts forth the basic
20 proposition - if Charter causes Qwest to perform a service, either by request or
21 action, Charter must pay for the service performed.

22 **Q. WHAT LANGUAGE IS QWEST PROPOSING FOR SECTION 19.1.12?**

23 A. Qwest is proposing the following language:

1 9.1.12 Miscellaneous Charges apply for miscellaneous services listed
2 below in this Section, if such miscellaneous services are available with
3 Unbundled Network Elements as noted under "Rate Elements" subsections
4 of this Section 9. Miscellaneous services are provided at CLEC's request
5 or are provided based on CLEC's actions that result in miscellaneous
6 services being provided by Qwest. Miscellaneous Charges are in addition
7 to recurring and nonrecurring charges that apply under this Agreement.
8 When more than one miscellaneous service is requested for the same
9 Unbundled Network Element(s), Miscellaneous Charges for each
10 miscellaneous service apply. Where applicable, basic rates apply for
11 miscellaneous services provided during Qwest's regular business hours, 8
12 a.m. to 5 p.m., local time, Monday through Friday, excluding holidays;
13 overtime Miscellaneous Charges apply for such services provided between
14 5 p.m. and 8 a.m., local time, Monday through Friday, or any time
15 Saturday, excluding holidays; and premium Miscellaneous Charges apply
16 for such services provided any time on Sundays or holidays.

17
18 a) Additional engineering – engineering work including: 1) additional
19 technical information after Qwest has already provided the technical
20 information normally on the design layout record; 2) customized service;
21 or 3) review of Qwest outside plant records. Basic or overtime rates
22 apply.

23 b) Additional labor – installation – installation work scheduled to be
24 performed outside of Qwest's regular business hours. Overtime or
25 premium rates apply.

26 c) Additional labor - other - work not included in "additional labor –
27 installation" above that involves labor only, including testing and
28 maintenance that are not part of initially requested installation or
29 maintenance, or, for example, for Optional Testing when CLEC reports
30 trouble and provides no test results and authorizes Qwest to perform tests
31 on CLEC's behalf. Basic, overtime, or premium rates apply.

32 d) Additional cooperative acceptance testing – performing specific
33 tests requested by CLEC. Qwest's participation in such testing is subject
34 to the availability of necessary qualified Qwest personnel and test
35 equipment at test locations, which normally include the Qwest Central
36 Office and may include CLEC's specified location. Tests include, but are
37 not limited to, loop back, attenuation, intermodulation, phase jitter, noise,
38 delay, echo, and frequency shift tests. Basic, overtime, or premium rates
39 apply.

40 e) Non-scheduled testing - performing specific tests requested by

1 CLEC as described above under "cooperative testing" or "manual testing"
2 on a non-scheduled basis. Tests include, but are not limited to, loss, noise,
3 slope, delay, and echo. Such tests are performed as the result of a repair
4 request and are in addition to tests required to isolate and repair trouble.
5 Basic, overtime, or premium rates apply.

6 f) Cancellation – cancellation of a pending order for the installation
7 of services at any time prior to notification by Qwest that service is
8 available for use. The cancellation date is the date Qwest receives notice
9 from CLEC that the order is cancelled. If CLEC or CLEC's End User
10 Customer is unable to accept service within thirty (30) Days after the
11 original Due Date, the order will be cancelled by Qwest. Prices for this
12 miscellaneous service are market-based, using Qwest's Tariffed,
13 cataloged, price listed, or other similarly documented prices, and are
14 subject to change. Additional information concerning the application of
15 prices for cancellations can be found in Qwest's Tariff FCC No. 1, Section
16 5.

17 g) Design change – information provided by CLEC or a request from
18 CLEC that results in an engineering review and/or a design change to
19 service on a pending service order, per order, per occurrence. Design
20 changes include, but are not limited to: 1) changes to the address on a
21 pending service order when the new address is in the same Qwest Wire
22 Center as the original address; or 2) conversions from an Unbundled
23 Network Element to a private line/Special Access circuit. In addition to a
24 design change Miscellaneous Charge, an address change may result in the
25 application of an expedite Miscellaneous Charge in order to retain the
26 original Due Date. Prices for this miscellaneous service are market-based,
27 using Qwest's Tariffed, cataloged, price listed, or other similarly
28 documented prices, and are subject to change.

29 h) Dispatch – 1) information provided by CLEC, or a request from
30 CLEC, in relation to installation of services, resulting in dispatch of a
31 Qwest technician(s) when dispatch is not required for Qwest to complete
32 its installation work; 2) information provided by CLEC resulting in
33 dispatch, or a request from CLEC for dispatch, of a Qwest technician(s) in
34 relation to a repair request where no trouble is found in Qwest's facilities;
35 and 3) a Qwest technician(s) is dispatched and CLEC or CLEC's End User
36 Customer is not available or ready. Prices for this miscellaneous service
37 are market-based, using Qwest's Tariffed, cataloged, price listed, or other
38 similarly documented prices, and are subject to change.

39 i) INTENTIONALLY LEFT BLANK

40 j) Maintenance of Service/Trouble Isolation – work performed by

1 Qwest when CLEC reports trouble to Qwest and no trouble is found in
2 Qwest's facilities. CLEC is responsible for payment of charges when the
3 trouble is in equipment or systems provided by a party(ies) other than
4 Qwest. Additionally, when CLEC reports trouble within a quantity of
5 services and circuits, but fails to identify the specific service and circuit
6 experiencing trouble, charges apply for the time spent by Qwest to isolate
7 the trouble. A call-out of Qwest technician at a time not consecutive with
8 that technician's scheduled work period is subject to a minimum charge of
9 four (4) hours. Failure of Qwest personnel to find trouble in Qwest
10 facilities will result in no charge if the trouble is subsequently found in
11 those facilities. Charges apply per Qwest technician, from the time of
12 dispatch until the work is complete. Trouble Isolation Charges (TIC)
13 apply for trouble isolation work on POTS and Maintenance of Service
14 charges apply for trouble isolation work on other services. Dispatch
15 Miscellaneous Charges may apply in addition to Maintenance of Service
16 charges or TIC. Basic, overtime, or premium rates apply. Prices for this
17 miscellaneous service are market-based, using Qwest's Tariffed,
18 cataloged, price listed, or other similarly documented prices, and are
19 subject to change.

20 **Q. WHAT CHANGES IS CHARTER PROPOSING TO THE SECTION 9.1.12**
21 **LANGUAGE?**

22 A. Charter proposes to modify the Qwest language with the following highlighted
23 changes:

24 9.1.12 Miscellaneous Charges apply for miscellaneous services listed
25 below in this Section, if such miscellaneous services are available with
26 Unbundled Network Elements as noted under "Rate Elements" subsections
27 of this Section 9. Miscellaneous services are provided at CLEC's request
28 **and CLEC must affirmatively agree to the charges for such services in**
29 **advance. ~~or are provided based on CLEC's actions that result in~~**
30 **~~miscellaneous services being provided by Qwest.~~** Miscellaneous
31 Charges are in addition to recurring and nonrecurring charges that apply
32 under this Agreement. When more than one miscellaneous service is
33 requested for the same Unbundled Network Element(s), Miscellaneous
34 Charges for each miscellaneous service apply. Where applicable, basic
35 rates apply for miscellaneous services provided during Qwest's regular
36 business hours, 8 a.m. to 5 p.m., local time, Monday through Friday,
37 excluding holidays; overtime Miscellaneous Charges apply for such
38 services provided between 5 p.m. and 8 a.m., local time, Monday through
39 Friday, or any time Saturday, excluding holidays; and premium

1 Miscellaneous Charges apply for such services provided any time on
2 Sundays or holidays. **Depending on the specific circumstances, the**
3 **items below are Miscellaneous Charges that may apply if requested by**
4 **CLEC:**
5

6 a) Additional engineering – engineering work including: 1) additional
7 technical information after Qwest has already provided the technical
8 information normally on the design layout record; 2) customized service;
9 or 3) review of Qwest outside plant records. Basic or overtime rates
10 apply.

11 b) Additional labor – installation – installation work scheduled to be
12 performed outside of Qwest's regular business hours. Overtime or
13 premium rates apply.

14 c) Additional labor - other - work not included in "additional labor –
15 installation" above that involves labor only, including testing and
16 maintenance that are not part of initially requested installation or
17 maintenance, or, for example, for Optional Testing when CLEC reports
18 trouble and provides no test results and authorizes Qwest to perform tests
19 on CLEC's behalf. Basic, overtime, or premium rates apply.

20 d) Additional cooperative acceptance testing – performing specific
21 tests requested by CLEC. Qwest's participation in such testing is subject
22 to the availability of necessary qualified Qwest personnel and test
23 equipment at test locations, which normally include the Qwest Central
24 Office and may include CLEC's specified location. Tests include, but are
25 not limited to, loop back, attenuation, intermodulation, phase jitter, noise,
26 delay, echo, and frequency shift tests. Basic, overtime, or premium rates
27 apply.

28 e) Non-scheduled testing - performing specific tests requested by
29 CLEC as described above under “cooperative testing” or “manual testing”
30 on a non-scheduled basis. Tests include, but are not limited to, loss, noise,
31 slope, delay, and echo. Such tests are performed as the result of a repair
32 request and are in addition to tests required to isolate and repair trouble.
33 Basic, overtime, or premium rates apply.

34 f) Cancellation – cancellation of a pending order for the installation
35 of services at any time prior to notification by Qwest that service is
36 available for use. The cancellation date is the date Qwest receives notice
37 from CLEC that the order is cancelled. If CLEC or CLEC's End User
38 Customer is unable to accept service within thirty (30) Days after the
39 original Due Date, the order will be cancelled by Qwest. Prices for this
40 miscellaneous service are **set forth in section [INSERT] of Qwest's**

1 [IDENTIFY APPLICABLE] Tariff. Additional information concerning
2 the application of prices for cancellations can be found in Qwest's Tariff
3 FCC No. 1, Section 5.

4 g) Design change – information provided by CLEC or a request from
5 CLEC that results in an engineering review and/or a design change to
6 service on a pending service order, per order, per occurrence. Design
7 changes include, but are not limited to: 1) changes to the address on a
8 pending service order when the new address is in the same Qwest Wire
9 Center as the original address; or 2) conversions from an Unbundled
10 Network Element to a private line/Special Access circuit. In addition to a
11 design change Miscellaneous Charge, an address change may result in the
12 application of an expedite Miscellaneous Charge in order to retain the
13 original Due Date. Prices for this miscellaneous service are **set forth in**
14 **section [INSERT] of Qwest's [IDENTIFY APPLICABLE] Tariff.**

15 h) Dispatch – 1) information provided by CLEC, or a request from
16 CLEC, in relation to installation of services, resulting in dispatch of a
17 Qwest technician(s) when dispatch is not required for Qwest to complete
18 its installation work; 2) information provided by CLEC resulting in
19 dispatch, or a request from CLEC for dispatch, of a Qwest technician(s) in
20 relation to a repair request where no trouble is found in Qwest's facilities;
21 and 3) a Qwest technician(s) is dispatched and CLEC or CLEC's End User
22 Customer is not available or ready. Prices for this miscellaneous service
23 are **set forth in section [INSERT] of Qwest's [IDENTIFY**
24 **APPLICABLE] Tariff.**

25 i) ~~INTENTIONALLY LEFT BLANK~~ **Expedite – a Due Date that**
26 **reflects a shorter service interval than is available in Qwest's Service**
27 **Interval Guide; or that is a request for an earlier Due Date than has**
28 **been established on a pending order; or that is required to meet a Due**
29 **Date on a pending order due to design or other changes submitted by**
30 **CLEC. Qwest will accommodate CLEC's request for an expedited**
31 **installation if it can do so without delaying Due Dates or orders of**
32 **other CLECs or End User Customers. Charges for expedited**
33 **installations are in addition to nonrecurring charges for the service**
34 **ordered. Prices for this miscellaneous service are set forth in section**
35 **[INSERT] of Qwest's [IDENTIFY APPLICABLE] Tariff**

36 j) Maintenance of Service/Trouble Isolation – work performed by
37 Qwest when CLEC reports trouble to Qwest and no trouble is found in
38 Qwest's facilities. CLEC is responsible for payment of charges when the
39 trouble is in equipment or systems provided by a party(ies) other than
40 Qwest. Additionally, when CLEC reports trouble within a quantity of

1 services and circuits, but fails to identify the specific service and circuit
2 experiencing trouble, charges apply for the time spent by Qwest to isolate
3 the trouble. A call-out of Qwest technician at a time not consecutive with
4 that technician's scheduled work period is subject to a minimum charge of
5 four (4) hours. Failure of Qwest personnel to find trouble in Qwest
6 facilities will result in no charge if the trouble is subsequently found in
7 those facilities. Charges apply per Qwest technician, from the time of
8 dispatch until the work is complete. Trouble Isolation Charges (TIC)
9 apply for trouble isolation work on POTS and Maintenance of Service
10 charges apply for trouble isolation work on other services. Dispatch
11 Miscellaneous Charges may apply in addition to Maintenance of Service
12 charges or TIC. Basic, overtime, or premium rates apply. Prices for this
13 miscellaneous service are **set forth in section [INSERT]** of Qwest's
14 **[IDENTIFY APPLICABLE]** Tariff.

15 **Q. PLEASE GENERALLY DESCRIBE THE NATURE OF THE ACTIVITIES**
16 **FOR WHICH MISCELLANEOUS CHARGES WOULD APPLY.**

17 A. "Miscellaneous Charges" are defined in Section 4.0 of the draft Interconnection
18 Agreement (ICA) to "mean charges that apply for miscellaneous services
19 provided at CLEC's request or based on CLEC's actions that result in
20 miscellaneous services being provided by Qwest, as described in this Agreement."
21 These would include cancellation charges, additional labor, engineering, testing
22 and maintenance. Miscellaneous Charges are not already included in Qwest's
23 recurring or nonrecurring rates. Miscellaneous Charges are listed in Exhibit A to
24 the Interconnection Agreement.

25 **Q. YOU USE THE TERM "BASED ON A CLEC'S ACTIONS." CAN YOU**
26 **PROVIDE AN EXAMPLE OF WHAT THAT MEANS?**

27 A. Yes. As an example, suppose a CLEC notifies Qwest that there is a network issue
28 that is a result of a problem on Qwest's network. Qwest dispatches a Qwest

1 technician to examine the facility and the Qwest technician discovers that Qwest's
2 network is working properly but the issue is actually on the CLEC's side of the
3 network. Qwest will assess a miscellaneous charge for the dispatch as the cause
4 of the dispatch was the CLEC's notification. The CLEC's action caused Qwest to
5 dispatch a technician. Qwest should be paid for performing the service.

6 **Q. USING YOUR EXAMPLE ABOVE, WHAT EFFECT WOULD**
7 **CHARTER'S PROPOSED LANGUAGE HAVE ON THE SITUATION?**

8 A. Charter's proposed language inappropriately requires Qwest to get Charter's
9 approval for charges before knowing the specifics of the problem - before
10 discovering that the issue was Charter's and not Qwest's or what will be involved
11 in fixing the issue. This creates an unworkable situation. The proper order of
12 action is for Qwest to act on Charter's request, determine the issue or solution and
13 submit miscellaneous charges and any dispute can be submitted to the
14 Commission for resolution pursuant to the dispute resolution provisions of the
15 ICA. Qwest's language is clear that if the service results from a CLEC request or
16 action, the CLEC pays the miscellaneous charges.

17 **Q. CHARTER HAS PROPOSED LANGUAGE IN SUBSECTION (i)**
18 **REGARDING EXPEDITES WHILE QWEST HAS NOT. CAN YOU**
19 **EXPLAIN?**

20 A. Yes. Qwest does not offer "Expedites" as a miscellaneous service. Qwest only
21 provides expedites in emergency situations and those are at no charge.

1 Accordingly, the expedite language submitted by Charter is unnecessary and
2 should not be included in the ICA.

3 **Q. DOES QWEST AGREE WITH CHARTER’S PROPOSAL TO CITE**
4 **SPECIFIC SECTIONS OF A TARIFF IN THE SECTION 9.1.12?**

5 A. No. Particular sections of a tariff are prone to change. If such change occurs,
6 confusion would occur and the document would need to be amended.
7 Accordingly, it is inappropriate to modify Qwest’s proposed language with the
8 specific section reference.

9 **Q. HAS THE COMMISSION ADDRESSED “MISCELLANEOUS CHARGES”**
10 **PREVIOUSLY?**

11 A. Yes. Miscellaneous Charges language was developed in the 271 process and is
12 contained in subsequent Interconnection Agreements approved by the
13 Commission. Rates for Miscellaneous Charges were approved in Docket No. UT-
14 003013.¹

15 **Q. DO OTHER CLECS HAVE ICA LANGUAGE REQUIRING ADVANCE**
16 **CLEC AGREEMENT TO THE CHARGES?**

17 A. No. I could not find any other ICA that contained this requirement.

18 **Q. ARE MISCELLANEOUS SERVICES INITIATED BY QWEST?**

¹ In the Matter of the Continued Costing and Pricing of Unbundled Network Elements, Transport and Termination, 44th Supplemental Order; Part D Final Order Establishing Non recurring and recurring Rates for Unbundled Network Elements, 12/9/2002.

1 A. No. Qwest only performs these services after a CLEC who has submitted either a
2 service order or a trouble ticket. Qwest does not initiate the services, instead
3 relying on the CLEC for requests. The CLEC is in essence, “pre approving” the
4 charges by submitting the request.

5 **Q. WHY IS CHARTER’S PROPOSED LANGUAGE OBJECTIONABLE?**

6 A. Charter’s position statement states “Where one party performs work at the request
7 of the other party, then the party performing such work should be compensated.”
8 Charter’s proposed language is unclear and could cause just the opposite effect.
9 The undefined threshold for payment is “specific circumstances” for when
10 miscellaneous charge “may apply when requested by CLEC.” Thus, even if
11 Charter requests service, Charter’s language creates the possibility that Charter
12 could dispute miscellaneous charges for such services already performed. Such
13 vagueness may create more disputes and could leave Qwest uncompensated for
14 the work performed. This is not proper given that Qwest does not initiate these
15 charges. Charter is the party requesting the services and should be required to pay
16 for the services rendered.

17 **Q. WHAT ARE YOU REQUESTING THE COMMISSION DO IN REGARD**
18 **TO DISPUTED ISSUE NO. 17?**

19 A. Qwest’s proposed language sets out a simple and fair description and process for
20 Miscellaneous Charges and should be approved by the Commission. Charter’s
21 language creates an unclear, unfair and potentially burdensome process for

1 miscellaneous charges and the Commission should reject Charter’s proposed
 2 changes.

3 **IV. DISPUTED ISSUE NO. 19: WHITE PAGES DIRECTORY LISTINGS**
 4 **SERVICE**

5 **Q. PLEASE EXPLAIN THE WHITE PAGES DIRECTORY LISTINGS**
 6 **SERVICE?**

7 A. Section 10.4 describes the Qwest White Pages Directory Listings Service. This is
 8 the service Qwest provides that allows a CLEC who wants its end user listings
 9 used in the Qwest Directory Assistance (DA) Service and Directory Assistance
 10 List (DAL) service and published in white pages directory can provide them to
 11 Qwest. CLECs submit the names, addresses and telephone numbers of CLEC end
 12 user listings to Qwest which places them in Qwest's Listings database. Other
 13 CLEC’s listings and Qwest end user listings are also placed into the Qwest
 14 Listings database. Each CLEC is responsible for marking privacy indicators for
 15 each listing it submits. Qwest provides non private listings to DA providers upon
 16 request and the listings are also placed in Qwest’s DA service so it will be
 17 available when a customer calls “information”. Also, if allowed by the CLEC,
 18 Qwest will include the CLEC provided listings in lists furnished to directory
 19 publishers for the purpose of publishing the listings in directories. Section 10.4
 20 describes the terms and conditions of the Qwest White Pages Directory Service.

21 **Q. PLEASE EXPLAIN THE TERM “DA PROVIDER.”**

1 A. A DA provider is a company or organization that provides directory assistance to
2 callers who, for example, dial 411 seeking a number for an individual. Qwest
3 itself is a DA provider and others exist that are independent of Qwest. For
4 example, a mobile phone company may choose to provide its own directory
5 assistance service in competition with Qwest's DA service. DA providers may
6 purchase Qwest's DA listings database (a product called the DA List or DAL) to
7 incorporate the listings in its database.

8 **Q. PLEASE EXPLAIN THE TERM "DIRECTORY PUBLISHER."**

9 A. A directory publisher compiles listings for general or specialized directories.
10 Examples include localized yellow page directories like Yellowbook, industry
11 specific directories like the Criminal Law Yellow Pages or even online directories
12 such as Yellow.com. These publishers may purchase Qwest directory listings to
13 include in their service.

14 **Q. WHY WOULD A CLEC WANT ITS LISTINGS IN QWEST'S**
15 **DATABASE?**

16 A. Qwest provides a DA service where the public can call to get information on
17 listings. If a listing is not provided, Qwest's DA service will not have information
18 available if, for example someone calls 411 to get a listing of an acquaintance. If
19 the acquaintance is a Charter customer and Charter has not provided the listing to
20 Qwest, Qwest would be unable to provide any information to the caller. While
21 some end users may request to be non-listed or non-published, the majority want

1 to be listed. The same holds true for directory publishing, if Qwest does not
2 receive the listing, the information may not be in the paper directory or online. I
3 would note that a CLEC is not required to provide its listings to Qwest and
4 nothing prevents a CLEC from providing its listings to DA providers and
5 directory publishers directly.

6 **Q. WHAT IS THE PURPOSE OF SECTION 10.4.2.4?**

7 A. Section 10.4.2.4 describes the uses of the directory listings provided to Qwest by
8 a CLEC in providing the White Pages Directory Services. The dispute for Section
9 10.4.2.4 is over Charter's proposed language that improperly limits the lawful
10 uses of the directory listings.

11 **Q. ARE THE DIRECTORY LISTINGS PROVIDED TO QWEST**
12 **CATEGORIZED OR SEGREGATED BY SPECIFIC CLEC?**

13 A. No. Once the directory listings are received from a CLEC and put into Qwest's
14 Listing Database, the listings are not grouped by carrier. The end user listings,
15 including Qwest's listings are not segregated by carrier.

16 **Q. CAN QWEST USE DIRECTORY LISTINGS FROM ITS LISTING**
17 **DATABASE TO MARKET TO END USER CUSTOMERS OF A SPECIFIC**
18 **CLEC?**

19 A. No. Qwest's directory listings process prevents Qwest from grouping the listings
20 in its database by carrier. Qwest cannot market to a specific carrier's customers
21 using lists from this database. Qwest does not use the listing database for any of

1 its internal or external marketing. Charter's directory assistance listings are
2 treated the same as Qwest's customer listings, providing no advantages to Qwest
3 for marketing purposes.

4 **Q. DOES QWEST USE ITS DIRECTORY LISTS FOR MARKETING TO**
5 **CLEC CUSTOMERS?**

6 A. No. Qwest does not use the Directory Listings in its marketing programs.

7 **Q. WHAT IS QWEST PROPOSING FOR SECTION 10.4.2.4?**

8 A. Qwest is proposing the following language:

9 10.4.2.4 If CLEC provides its End User Customer's Listings to
10 Qwest, CLEC grants Qwest access to CLEC's End User Customer Listings
11 information for use in its Directory Assistance Service as described in
12 Section 10.5, and in its Directory Assistance List Service as described in
13 Section 10.6. , and for other lawful purposes, except that CLEC's Listings
14 supplied to Qwest by CLEC and marked as nonpublished or nonlisted
15 Listings shall not be used for marketing purposes subject to the terms and
16 conditions of this Agreement. Qwest will incorporate CLEC End User
17 Customer Listings in the Directory Assistance Database. Qwest will
18 incorporate CLEC's End User Customer Listings information in all
19 existing and future Directory Assistance applications developed by Qwest.
20 Qwest will not market to CLEC's End User Customer's Listings based on
21 segregation of CLEC's Listings. Should Qwest cease to be a
22 Telecommunications Carrier, by virtue of a divestiture, merger or other
23 transaction, this access grant automatically terminates.
24

25 **Q. WHAT LANGUAGE IS CHARTER PROPOSING?**

26 A. Charter proposes to modify the Qwest language with the following highlighted
27 changes:

28 10.4.2.4 If CLEC provides its End User Customer's Listings to
29 Qwest, CLEC grants Qwest access to CLEC's End User Customer Listings

1 information for use in its Directory Assistance Service as described in
2 Section 10.5, and in its Directory Assistance List Service as described in
3 Section 10.6., ~~and for other lawful purposes, except that CLEC's~~
4 ~~Listings supplied to Qwest by CLEC and marked as nonpublished or~~
5 ~~nonlisted Listings shall not be used for marketing purposes subject to~~
6 ~~the terms and conditions of this Agreement.~~ CLEC's Listings supplied
7 to Qwest by CLEC shall not be used by Qwest for marketing
8 purposes. Qwest will incorporate CLEC End User Customer Listings in
9 the Directory Assistance Database. Qwest will incorporate CLEC's End
10 User Customer Listings information in all existing and future Directory
11 Assistance applications developed by Qwest. ~~Qwest will not market to~~
12 ~~CLEC's End User Customer's Listings based on segregation of~~
13 ~~CLEC's Listings.~~ Should Qwest cease to be a Telecommunications
14 Carrier, by virtue of a divestiture, merger or other transaction, this access
15 grant automatically terminates.
16

17 **Q. CHARTER'S PROPOSES TO DELETE QWEST LANGUAGE THAT**
18 **"QWEST WILL NOT MARKET TO CLEC'S END USER CUSTOMER'S**
19 **LISTINGS BASED ON SEGREGATION OF CLEC'S LISTINGS." IS THIS**
20 **IN CONFLICT WITH CHARTER'S STATED POSITION ON THIS**
21 **SECTION?**

22 **A.** Yes. Charter's position statement on this issue states:

23 Qwest should not be permitted to market to Charter subscribers by
24 segregating, or otherwise identifying, Charter's subscribers included in
25 Qwest's database of subscriber listings that is used for publishing white
26 pages directories.

27 Charter's proposal deletes the very language that matches its stated position. This
28 may simply be a typographical error by Charter in seeking to delete this language.

29 **Q. IS QWEST OPPOSED TO CHARTER'S ADDITIONAL PROPOSED**
30 **CHANGES?**

1 A. Yes. Charter's additional changes do not comply with FCC rulings because the
2 changes attempt to place limits on the lawful uses of the DA listing information
3 and should be rejected by the Commission.

4 **Q. PLEASE EXPLAIN QWEST'S POSITION.**

5 A. Section 251(b)(3) of the Telecommunications Act of 1996 (Act) requires local
6 exchange carriers (LECs) to provide nondiscriminatory access of their local
7 directory assistance (DA) databases to competing DA providers that are certified
8 as competitive LECs, are agents of competitive LECs, or offer call completion
9 services.² For Qwest, this means providing its end user directory listings along
10 with the end user listings of the CLECs that choose to provide them to Qwest.
11 Qwest's language allows the use of the listings for "lawful purposes." Charter
12 seeks to limit the right to use the listings for lawful purposes.

13 **Q. DOES CHARTER'S PROPOSED LANGUAGE "SHALL NOT BE USED**
14 **BY QWEST FOR MARKETING PURPOSES" COMPLY WITH THE FCC**
15 **RULINGS?**

16 A. No. Charter's proposed language imposes a "veto" of a lawful use of the listings
17 and violates the FCC rulings. The FCC has consistently ruled that the providing
18 carrier (in this case Charter) could not dictate how the listing information was to
19 be used:

² See Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended, CC Docket No. 99-273, First Report and Order, 16 FCC Rcd 2736 at 2744-50, paras. 15-29, (2001) (SLI/DA First Report and Order).

1 In addition, as the Commission has previously noted, “[s]ection 251(b)(3)
2 does not, by its terms, limit the use of directory assistance data solely to
3 the provision of directory assistance.”³

4 Furthermore, we conclude that section 251(b)(3)’s requirement of
5 nondiscriminatory access to a LEC’s DA database does not contemplate
6 continuing veto power by the providing LEC over the uses to which DA
7 information is put.⁴

8 In the *SLI/DA First Report and Order*, the Commission specifically
9 considered and rejected arguments that a competing DA provider should
10 be restricted from reselling DA information to third parties, finding that
11 commenters “offered no basis in the Act or our rules for imposing [a DA
12 only use] restriction on competing DA providers.” The Commission also
13 found that restrictions on the use of DA data would substantially increase
14 the costs of providing competitive DA services, thereby reducing the
15 benefits to consumers arising from the presence in the market of
16 competitive DA providers.⁵

17 Charter’s proposed language in this regard should be rejected by the Commission.

18 **Q. IS ELIMINATING LANGUAGE ALLOWING USE OF LISTINGS FOR**
19 **“OTHER LAWFUL PURPOSES” AN APPROPRIATE REQUEST?**

20 A. No. Charter would have the Commission approve elimination of language that
21 provides for the lawful use of directory listings. Besides not being given any
22 reason from Charter for the deletion, I believe the Commission should not remove
23 “lawful purposes” language as a matter of public policy. Regardless, the
24 information provided, absent privacy listings, is largely if not fully publicly

³ In the Matters of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Order on Reconsideration and Notice, 14 FCC Rcd 15550, 15646, para. 186.

⁴ SLI/DA First Report and Order. at 2748-49, paras. 28-29.

1 available. For example, a quick Google search for “white pages” returns
2 76,900,000 hits or listings including that term and many of the results such as
3 www.Whitepages.com, www.anywho.com or www.infospace.com contain white
4 pages listings for most of Washington. Barring lawful uses of the listings that are
5 already open to public consumption makes no sense.

6 **Q. HAS CHARTER PROVIDED ANY GROUNDS OR BASIS FOR THE**
7 **COMMISSION TO LIMIT THE USE OF DA LISTING INFORMATION**
8 **IN CONTRAST TO THE FCC RULING?**

9 A. No. Charter has provided no reason to vary from the FCC rulings.

10 **Q. WHAT ARE YOU ASKING THE COMMISSION TO DO IN REGARD TO**
11 **THIS ISSUE?**

12 A. The Commission should reject Charter’s language and accept Qwest’s proposed
13 language. Qwest’s language complies with the Act and FCC rulings and is
14 appropriate for this ICA.

15 **V. DISPUTED ISSUE NO. 20: PRIOR WRITTEN AUTHORIZATION TO**
16 **RELEASE, SELL OR MAKE AVAILABLE CHARTER LISTING**
17 **INFORMATION.**

18 **Q. CAN YOU PROVIDE SOME BACKGROUND ON SECTION 10.4.2.5?**

19 A. Yes. Section 10.4.2.5 provides the terms and conditions for Qwest to release
20 directory listings to other parties. As discussed above, directory publishers may

⁵ Id.

1 seek Qwest's directory listings (including the CLEC provided listings). In
2 addition, other third parties may also want to purchase the listings. Qwest must
3 provide nondiscriminatory access to its directory listings to directory publishers.⁶
4 However, Qwest is not required to provide CLEC listings to the directory
5 publishers but will if the CLEC grants permission to do so.⁷ Section 10.4.2.5 lists
6 the conditions by which Qwest will release the information.

7 **Q. HOW DOES A CLEC PROVIDE PERMISSION FOR QWEST TO**
8 **RELEASE THE DIRECTORY LISTINGS TO DIRECTORY**
9 **PUBLISHERS OR OTHER THIRD PARTIES?**

10 A. When first doing business with Qwest, a CLEC will complete Qwest's "New
11 Customer Questionnaire" that covers among other things, the CLEC's choice on
12 whether to release directory listings to "directory publishers or other third
13 parties." Section G.7 of the questionnaire gives the CLEC two options on how
14 directory listings will be provided to directory publishers and third parties:

15 Option 1 - Permission to provide listings to directory publishers or other
16 third parties to which Qwest supplies its own listings.

17 Option 2 – Restrictions on providing listings to directory publishers and
18 other third parties unless Qwest receives your letter of authorization from
19 a directory publisher or third party.

⁶ In the Matters of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Third Report and Order, Docket No. 96-115 14 FCC RCD 15550 (1999), para. 53.

⁷ Id. at para. 54.

1 By picking an option, the CLEC controls who can receive this information (other
2 than DA providers.) Charter has the choice to allow Qwest to provide the listings
3 to all publishers and third parties or Charter can choose to select those specific
4 publishers or third parties to receive their end user listings. If a CLEC chooses
5 Option 2, its directory listings will be removed from the listings provided to
6 directory publishers and third parties.

7 **Q. WHAT IS QWEST PROPOSING FOR SECTION 10.4.2.5?**

8 A. Qwest is proposing the following language:

9 10.4.2.5 CLEC End User Customer Listings will be treated the same
10 as Qwest's End User Customer Listings. Prior written authorization from
11 CLEC, which authorization may be withheld, shall be required for Qwest
12 to sell, make available, or release CLEC's End User Customer Listings to
13 directory publishers, or other third parties other than Directory Assistance
14 providers. No prior authorization from CLEC shall be required for Qwest
15 to sell, make available, or release CLEC's End User Customer Directory
16 Assistance Listings to Directory Assistance providers. Listings shall not
17 be provided or sold in such a manner as to segregate End User Customers
18 by Carrier. Qwest will not charge CLEC for updating and maintaining
19 Qwest's Listings databases. CLEC will not receive compensation from
20 Qwest for any sale of Listings by Qwest as provided for under this
21 Agreement.
22

23 **Q. WHAT LANGUAGE IS CHARTER PROPOSING?**

24 A. Charter proposes to modify the Qwest language with the following highlighted
25 changes:

26 10.4.2.5 CLEC End User Customer Listings will be treated the same
27 as Qwest's End User Customer Listings. **Qwest will not release CLEC's**
28 **End User Customer Listings without CLEC's prior written consent**
29 **and only to the extent required by Applicable Law. ~~Prior written~~**

1 ~~authorization from CLEC, which authorization may be withheld,~~
2 ~~shall be required for Qwest to sell, make available, or release CLEC's~~
3 ~~End User Customer Listings to directory publishers, or other third~~
4 ~~parties other than Directory Assistance providers.~~ No prior
5 authorization from CLEC shall be required for Qwest to sell, make
6 available, or release CLEC's End User Customer Directory Assistance
7 Listings to Directory Assistance providers, **provided that Qwest does so**
8 **in accordance with Applicable Law.** Listings shall not be provided or
9 sold in such a manner as to segregate End User Customers by Carrier **and**
10 **shall not be provided by Qwest for marketing purposes to third**
11 **parties.** Qwest will not charge CLEC for updating and maintaining
12 Qwest's Listings databases. CLEC will not receive compensation from
13 Qwest for any sale of Listings by Qwest as provided for under this
14 Agreement.
15

16 **Q. WHY IS QWEST OBJECTING TO CHARTER'S CHANGES FOR**
17 **SECTION 10.4.2.5?**

18 A. Charter's language does not acknowledge Qwest's 251(b)(3) obligation to provide
19 directory listings to DA providers. Qwest's language carves out the DA provider
20 exception that, as described above in Issue 19, Charter cannot legally limit the
21 lawful uses of the directory listings provided to DA providers. Charter's proposal
22 however, requires "prior written consent" and bans marketing uses for all entities
23 provided with listings, including DA providers violating the FCC rulings
24 discussed in Issue 19.

25 **Q. QWEST'S PROPOSED LANGUAGE EXCLUDES DA PROVIDERS**
26 **FROM THE PRIOR WRITTEN AUTHORIZATION REQUIREMENT –**
27 **DOES CHARTER'S LANGUAGE DO THE SAME?**

28 A. No. The two proposals impose different limits on the release of directory listings.
29 Charter's proposed blanket requirement calls for prior written consent for all

1 releases of directory listings. Qwest's proposal limits the written authorization to
2 directory publishers and third parties, excluding DA providers.

3 **Q. IS THE DISTINCTION IMPORTANT?**

4 A. Yes. Qwest has an obligation under Section 251(b)(3) to provide
5 nondiscriminatory access to its DA listings and to provide them upon request to
6 DA providers. The FCC did not require consent prior to providing listings to DA
7 providers. Qwest does not require prior written consent for its own or other
8 CLEC's listings for release to DA providers. Thus, where Qwest specifically
9 proposed language that removes DA providers from the approval requirement,
10 Charter did not. Charter's language fails to exclude DA providers, instead simply
11 requiring it for all releases of directory listings. This is not in compliance with the
12 FCC rulings on directory listings as cited above.

13 **Q. DOES CHARTER STILL HAVE AN ABILITY TO LIMIT WHO**
14 **RECEIVES THE INFORMATION?**

15 A. Except for DA providers, Charter can limit who receives their end user listings.
16 Charter is provided with a choice on which, if any, directory publishers or third
17 parties can receive the directory listings. Charter's choice of Option 1 or Option 2
18 constitutes the "prior written approval" for release to directory publishers or third
19 parties.

20 **Q. DOES CHARTER CURRENTLY ALLOW QWEST TO PROVIDE**
21 **LISTINGS TO DIRECTORY PUBLISHERS OR OTHER THIRD**

1 **PARTIES TO WHICH QWEST SUPPLIES ITS OWN LISTINGS?**

2 A. Yes. Charter has chosen Option 1 since they began doing business with Qwest.
3 Charter is allowed to change its choice at any time.

4 **Q. DO YOU AGREE WITH CHARTER’S PROPOSED LIMITATION THAT**
5 **LISTINGS “SHALL NOT BE PROVIDED BY QWEST FOR**
6 **MARKETING PURPOSES TO THIRD PARTIES”?**

7 A. No. Charter puts forth the same blanket limitation on the uses of the directory
8 listings as before. Charter again fails to acknowledge that a limitation on the
9 lawful use of directory listings by DA providers is improper. Even if the failure
10 to exclude DA providers from the limits is ignored, the language still is
11 inappropriate since Charter *already* has the ability to keep the directory listings
12 away from third parties, whatever purpose they may have in mind. Charter’s
13 proposed language is really just a complicated choice of “Option 2.” Instead of
14 putting improper language in the contract, Charter should and easily could,
15 change its current choice of Options so it can properly limit which, if any, third
16 parties received the directory listings from Qwest.

17 **Q. WHAT ARE YOU ASKING THE COMMISSION TO DO IN REGARD TO**
18 **ISSUE 20?**

19 A. There is already a process in place to allow Charter to determine what third
20 parties receive directory listings from Qwest. Charter fails again to recognize the

1 FCC rules regarding DA providers. Accordingly, the Commission should
2 approve Qwest's language.

3 **VI. DISPUTED ISSUE NO. ISSUE 21: CHARGES FOR DIRECTORY**
4 **LISTINGS**

5 **Q. PLEASE EXPLAIN THE DISPUTE IN ISSUE 21.**

6 A. Issue 21 is a dispute over whether the contract should prohibit Qwest from ever
7 assessing a nonrecurring charge for a primary directory listing. Charter wants the
8 contract itself to include a ban while Qwest believes the rates are set by the
9 Commission and placed in Exhibit A. If Qwest sought a rate change through a
10 cost docket and the rate was approved, there would then be conflicting provision
11 in the document.

12 **Q. WHAT IS QWEST PROPOSING FOR ISSUE 21?**

13 A. Qwest is proposing the following language:

14 10.4.2.1.1 Qwest will accept one (1) primary Listing for each main
15 telephone number belonging to CLEC's resale and facilities-based End
16 User Customers at no monthly recurring charge. Additional terms
17 regarding application of rates is provided in Section 10.4.3.

18 10.4.3.3 INTENTIONALLY LEFT BLANK

19 **Q. WHAT LANGUAGE IS CHARTER PROPOSING?**

20 A. Charter proposes to modify the Qwest language with the following highlighted
21 changes:

22 10.4.2.1.1 Qwest will accept one (1) primary Listing for each main
23 telephone number belonging to CLEC's resale and facilities-based End
24 User Customers at no **non-recurring or** monthly recurring charge.

1 Additional terms regarding application of rates is provided in Section
2 10.4.3.

3 **10.4.3.3 There shall be no charge (recurring or non-recurring) to**
4 **CLEC for the inclusion of a Primary Listing for CLEC's End Users-**
5 **~~INTENTIONALLY LEFT BLANK~~**

6

7 **Q. WHAT IS A PRIMARY LISTING?**

8 A. A Primary or Main Listing is end user information that includes the name(s),
9 address (listed and premises address where service is located), and the telephone
10 number of the exchange access line service for each end-user. The listing is
11 provided to Qwest in a standard format for inclusion in Qwest's listing database.
12 CLEC's provide end-user directory listing information to Qwest to ensure that the
13 end-user listings are available for directory assistance use and for publication in
14 published directories. Maintaining a comprehensive listing database, regardless
15 of each end-user's Local Service Provider, ensures that end-users have access to
16 complete DA information and the option to appear in a published White Page
17 Directory.

18 **Q. WHAT IS MEANT BY THE TERMS "RECURRING" AND "NON-**
19 **RECURRING" WHEN DESCRIBING THE RATES IN YOUR**
20 **TESTIMONY?**

21 A. A recurring charge is one that is applied monthly for the product or service
22 provided by Qwest. For example, there may be a monthly maintenance fee for
23 space leased by a CLEC in a central office. On the other hand, a non-recurring
24 charge is a one time fee for the product or service provided to the CLEC by

1 Qwest. An example of a non-recurring charge would be a setup fee for cable
2 splicing.

3 **Q. WHAT IS THE CURRENT NONRECURRING CHARGE FOR A CLEC**
4 **SUBMITTING A PRIMARY LISTING?**

5 A. Rate elements are listed in Exhibit A to the ICA. The current nonrecurring charge
6 for a primary listing is listed in Exhibit A as “no charge.”

7 **Q. DOES THIS MEAN QWEST CAN NEVER HAVE A CHARGE FOR A**
8 **PRIMARY LISTING?**

9 A. No. Rates are set by the Commission in a cost proceeding. Qwest could petition
10 for a rate change.

11 **Q. WHAT IS QWEST’S OBJECTION TO CHARTER’S LANGUAGE?**

12 A. Charter’s language states there is no charge for primary listings. This proposal
13 creates a conflict with Qwest’s right to request the Commission order a
14 nonrecurring charge for primary listings for which the Commission has the
15 authority. The language is improper and not necessary.

16 **Q. DOES ANY OTHER CLEC CONTRACT CONTAIN A BAN ON THE**
17 **NONRECURRING CHARGE FOR PRIMARY LISTINGS?**

18 A. No. My review of Qwest’s contracts did not discover any other CLEC with this
19 prohibition in its contract.

20 **Q. WHAT ARE YOU ASKING THE COMMISSION TO DO IN REGARD TO**

1 **ISSUE 21?**

2 A. The Commission should approve Qwest's proposal.

3 **VII. DISPUTED ISSUE NO. 22: CHARGES FOR PRIVACY LISTINGS**

4 **Q. WHAT IS THE BASIC DISPUTE BETWEEN CHARTER AND QWEST**
5 **ON ISSUE 22?**

6 A. Privacy Listing is an option that includes non-published and non-listed listings.
7 Qwest offers Privacy Listing as an option to its end users. Privacy Listing is
8 available to CLECs for use by their customers, at the same Commission approved
9 rate listed in Exhibit A to the ICA that Qwest end users pay. The dispute in this
10 issue stems from Charter's not wanting to pay for Privacy Listings and its
11 proposal that deletes the rate element itself.

12 **Q. WHAT IS A "PRIVACY LISTING?"**

13 A. Privacy Listing is a service offered by Qwest that provides options for end user
14 listings that are not included in a primary listing. Non-published and non-listed
15 listings are two of the Privacy Listing options available. Non-published listings
16 are not included in white page directories and are not available to DA users. Non-
17 listed listings are not included in white page directories but are included for DA
18 service. Additional privacy options are also available, (e.g., omit listed address,
19 no solicitation, omit from direct mail, etc.). These options are provided by the
20 CLEC to Qwest through specific indicators submitted per listings. The optional
21 Privacy Listing is available at the Commission approved rate.

1 **Q. ARE PRIVACY LISTINGS A STANDARD FEATURE?**

2 A. No. Privacy Listings are the exception, not the norm. The large majority of end
3 user listings are published. For Privacy Listings, the CLEC must submit the
4 listings with specific indicators marked representing what options it seeks for that
5 listing. Qwest must perform services to ensure that these indicators are noted,
6 processed and implemented.

7 **Q. WHAT IS QWEST PROPOSING FOR ISSUE 22?**

8 A. Qwest is proposing the following language:

9 10.4.2.1.2 CLEC will be charged for its facilities-based premium
10 Listings (e.g., additional, foreign, cross-reference) and Privacy Listings
11 (i.e., nonlisted and nonpublished) at market-based prices contained in
12 Exhibit A. Primary Listings and other types of Listings are defined in the
13 Qwest General Exchange Tariffs.

14
15 10.4.3 The following rate elements apply to white pages directory Listings
16 and are contained in Exhibit A of this Agreement.

17 10.4.3.1 Primary Listings; and

18 10.4.3.2 Premium and Privacy Listings.

19 10.4.3.4 [INTENTIONALLY LEFT BLANK]

20 **Q. WHAT LANGUAGE IS CHARTER PROPOSING?**

21 A. Charter proposes to modify the Qwest language with the following highlighted
22 changes:

23 10.4.2.1.2 CLEC will be charged for its facilities-based premium
24 Listings (e.g., additional, foreign, cross-reference) ~~and privacy Listings~~
25 ~~(i.e., nonlisted and nonpublished)~~ at ~~market-based~~ prices contained in

1 Exhibit A. Primary Listings and other types of Listings are defined in the
2 Qwest General Exchange Tariffs.

3
4 10.4.3 The following rate elements apply to white pages directory Listings
5 and are contained in Exhibit A of this Agreement.

6 10.4.3.1 Primary Listings; and

7 10.4.3.2 Premium ~~and Privacy~~ Listings.

8 10.4.3.4 ~~INTENTIONALLY LEFT BLANK~~ CLEC
9 shall have no obligation to provide Qwest directory
10 listing information related to CLEC End User
11 Customers that have requested non-list or non-publish
12 status within the directory. Qwest will not assess a
13 charge upon CLEC for providing, maintaining, storing,
14 or otherwise processing information related to End
15 User Customers Listings, that have requested non-list
16 or non-publish status, or for any other act associated
17 with such End User Customers.
18

19 **Q. WHAT QWEST'S OBJECTIONS TO CHARTER'S PROPOSED**
20 **LANGUAGE?**

21 A. Charter can achieve the result its proposed language seeks by merely not
22 submitting a specific listing to Qwest instead of attempting to get away with not
23 paying for Privacy Listings. Charter's proposal instead seeks to remove any
24 charge for Privacy Listing from the ICA. Charter's proposal is a mishmash of
25 concepts that are wholly unnecessary.

26 **Q. IS CHARTER OBLIGATED TO PROVIDE ITS END USER LISTINGS TO**
27 **QWEST?**

28 A. No. Charter does not have to provide its listings to Qwest. White Pages
29 Directory Listings Service only involves listings provided to Qwest by the CLEC

1 voluntarily. Charter does not have a duty to provide any of its directory listings to
2 Qwest unless Qwest requests them as a “DA provider” which is no the case here.
3 White Pages Directory Listings Service is defined in Section 10.4.1 as

4 Qwest placing the names, addresses and telephone numbers of CLEC's
5 End User Customers in Qwest's Listings database, based on End User
6 Customer information **provided to Qwest by CLEC**. (emphasis added)
7

8 Qwest only places those listings provided by Charter into the listings database.

9 These listings are provided so a CLEC’s end users are included in directory
10 assistance databases, available for directory assistance services and included in
11 published directories. If Charter does not want its end users listed in Qwest’s
12 directory listings database, it simply does not have to submit them to Qwest.
13 Since it is up to Charter to decide what listings to provide to Qwest, Charter’s first
14 sentence proposed for 10.4.3.4 is redundant and unnecessary.

15 **Q. IS QWEST ALLOWED TO CHARGE FOR PRIVACY LISTINGS,**
16 **INCLUDING NON-PUBLISHED AND NON-LISTED LISTINGS?**

17 A. Yes and this makes Charter’s second sentence proposed for Section 10.4.3.4 more
18 problematic. Charter wants something for nothing. Charter’s language proposes
19 that Qwest not be able to charge for any act connected to its end users who
20 request Privacy Listings, in other words, Charter wants something for nothing.
21 Charter itself describes in its proposal some of the services or work Qwest may
22 provide for a Privacy Listing: “maintaining, storing, or otherwise processing
23 information.” Yet Charter believes this should all be done for free. Charter’s

1 proposal fails to recognize that the Commission has set an approved rate for
2 Privacy Listings and that Qwest is permitted to charge this Commission approved
3 rate that is contained in Exhibit A to the ICA. If Charter submits a directory
4 listing to Qwest and Charter indicates that it should be a Privacy Listing, Qwest
5 can and should charge the approved rate.

6 **Q. ARE CHARTER'S PROPOSALS FOR SECTIONS 10.4.2.1.2 AND 10.4.3.2**
7 **APPROPRIATE?**

8 A. No. Simply put, Charter just wants to erase Privacy Listings from the ICA and
9 thus not pay for Privacy Listings. Section 10.4.2.1.2 provides that there is a
10 charge for privacy and premium listings that is contained in Exhibit A to the ICA.
11 Similarly, Section 10.4.3.2 registers Privacy Listings as a Rate Element contained
12 in Exhibit A. Charter wants to delete these references but provides no basis for
13 the Commission to act in that way. In fact, Charter fails to acknowledge that the
14 Commission has approved Privacy Listings as a rate element and approved a rate
15 for such listings. The approved rate currently in Exhibit A to the ICA is "General
16 Exchange Tariff Rate, Less Wholesale Discount." The Qwest Washington
17 Exchange and Network Services Tariff defines Privacy Listings and sets the rate
18 in Sections 5.7.1 (G) (6) and (7) for non-listed and non-published listings.
19 Notwithstanding, Charter proposes to just remove "Privacy Listings" from
20 Sections 10.4.2.1.2 and 10.4.3.2. Charter offers no basis for obtaining this type of
21 special treatment.

1 However, if the listing is supplied and the listing is marked with a privacy
2 indicator, Qwest will charge Charter for this optional service at the Commission
3 has approved a rate.

4 **Q. DOES THE QWEST WASHINGTON EXCHANGE AND NETWORK**
5 **SERVICES TARIFF ALLOW CHARTER TO GET PRIVACY LISTINGS**
6 **WITHOUT CHARGE?**

7 A. No. Sections 5.7.1 (G) (5) and (6) provide rates for non-listed and non-published
8 listings. Charter gets this rate less the wholesale discount. Charter does not get
9 the optional service for free.

10 **Q. WHAT ARE YOU ASKING THE COMMISSION TO DO FOR ISSUE 22**

11 A. Charter should pay for Privacy Listings for those directory listings it submits to
12 Qwest. The Commission should approve Qwest's language.

13 **VIII. DISPUTED ISSUE NO. 23: CLASSIFIED (YELLOW PAGES) LISTINGS**

14 **Q. WHAT IS THE BASIC DISPUTE BETWEEN CHARTER AND QWEST**
15 **ON ISSUE 23?**

16 A. Charter wants terms and conditions in the ICA requiring Qwest to negotiate on its
17 behalf for yellow pages publishing. Qwest is not required to publish yellow page
18 directories or cause them be published. Qwest has an obligation to have a white
19 pages directory published in the locations where it provides local service,
20 including Washington. Qwest provides directory listings to the publisher that it
21 chooses to publish the white pages directory, which is currently Dex. Qwest

1 provides directory listings to requesting directory publisher on nondiscriminatory
2 terms. Charter has agreed to have its end user listings commingled with others in
3 the listings provided by Qwest.

4 **Q. WHAT LANGUAGE IS QWEST PROPOSING?**

5 A. Qwest is proposing the following language:

6 10.4.5 Intentionally Left Blank

7
8 15. Qwest and CLEC agree that certain issues outside the provision of
9 basic white page Directory Listings, such as yellow pages advertising,
10 yellow pages Listings, directory coverage, access to call guide pages
11 (phone service pages), applicable Listings criteria, white page
12 enhancements and publication schedules will be the subject of
13 negotiations between CLEC and directory publishers, including Qwest's
14 Official Directory Publisher. Qwest acknowledges that CLEC may
15 request Qwest to facilitate discussions between CLEC and Qwest's
16 Official Directory Publisher.

17 **Q. WHAT LANGUAGE IS CHARTER PROPOSING?**

18 A. Charter proposes to modify the Qwest language with the following highlighted
19 changes:

20 **10.4.5 ~~Intentionally Left Blank~~ Classified (yellow pages) Primary**
21 **Listings**

22
23 **The same provisions and requirements that apply to white pages**
24 **directory treatment of CLEC Listings also apply to the provision of a**
25 **classified listing in any classified (Yellow Pages) directory published**
26 **by or on behalf of, or under contract to, Qwest. Arrangements for**
27 **listings in a classified directory other than primary listings, including**
28 **bold-faced listings, multiple listings, and advertisements, shall be**
29 **arranged between any affected End User and Qwest's contractor.**
30

1 **15.1 Qwest shall provide CLEC with directory listing functions**
2 **(that is, inclusion of CLEC numbers in printed white and yellow**
3 **pages directories) to the same extent that Qwest provides its own End**
4 **Users with such listing functions, irrespective of whether Qwest**
5 **provides such functions itself or relies on a third party to do so.**
6 **Qwest shall promptly cause any contracts or agreements it has with**
7 **any third party with respect to the provision of these services and**
8 **functions to be amended, to the extent necessary, so that CLEC may**
9 **provide its own End Users' information for inclusion in such printed**
10 **directories on the same terms and conditions that Qwest End User**
11 **information is included. Notwithstanding the foregoing, CLEC**
12 ~~**acknowledges that Qwest and CLEC agree that certain issues outside**~~
13 ~~**the provision of basic white page Directory Listings, such as yellow**~~
14 ~~**pages advertising, yellow pages Listings, directory coverage, access to**~~
15 ~~**call guide pages (phone service pages), applicable Listings criteria,**~~
16 ~~**white page enhancements and publication schedules will be the**~~
17 ~~**subject of negotiations between CLEC and directory publishers,**~~
18 ~~**including Qwest's Official Directory Publisher. Qwest acknowledges**~~
19 ~~**that CLEC may request Qwest to facilitate discussions between CLEC**~~
20 ~~**and Qwest's Official Directory Publisher.**~~
21 **arrangements will be**
22 **established directly between Qwest's Official Directory Publisher and**
23 **any End Users seeking to place such advertising.**

24 **Q. WHAT DOES QWEST OBJECT TO?**

25 A. Charter's proposed language confuses Qwest's role in white pages directory
26 publishing. Qwest contracts with a directory publisher to publish the white pages
27 directory.⁸ Charter's proposes a "yellow pages" obligation on Qwest that is
28 improper and unnecessary. Qwest's proposed language for Section 15 correctly
29 defines the scope of Qwest's yellow page directory role.

30 **Q. DOES QWEST HAVE A YELLOW PAGES DIRECTORY PUBLISHED**
31 **ON ITS BEHALF?**

⁸ Qwest's current directory publisher is DEX, which is a separate company from Qwest.

1 A. No. Qwest does not contract to publish yellow pages. Qwest has negotiated with
2 Dex to provide a complementary yellow page listing for those business listings
3 Qwest provides in its directory listings. However, that is the extent to which
4 Qwest is involved with the yellow pages business other than providing listings
5 upon request. Qwest does not publish or have published a yellow pages directory.
6 Qwest provides its directory list information to requesting directory publishers at
7 the same rates, terms, and conditions that it provides the information to its
8 contracted directory publisher. These publishers could offer white pages or
9 yellow pages directories – it makes no difference to Qwest. Qwest provides its
10 directory listings in a format that does not contain font or print formats, “type of
11 business” classifications, page placements and does not specify white or yellow
12 pages. Qwest simply provides the directory listings and Charter has provided
13 Qwest with written permission to include its end user customers in these listings.

14 **Q. SHOULD QWEST BE REQUIRED TO NEGOTIATE WITH YELLOW**
15 **PAGES PROVIDERS ON CHARTER’S BEHALF?**

16 A. No. However, that would result from Charter’s proposed language. Charter’s
17 language provides that Qwest should negotiate with the directory publisher so
18 “that CLEC may provide its own End Users’ information for inclusion in such
19 printed directories on the same terms and conditions that Qwest End User
20 information is included.” If Charter wants to provide its listings to a publisher,
21 Charter can do so without Qwest’s approval and certainly without Qwest’s
22 involvement. Qwest’s obligation is to provide directory listings to requesting

1 publishers, both yellow and white pages and does so. For example, if McLeod
2 requests Qwest's directory listings for publishing McLeod's yellow pages, Qwest
3 will sell the listings to McLeod and include Charter's end user listings as well.
4 Other directory issues, such as those listed in Qwest's proposed language for
5 Section 15.0 above are strictly between the publisher and Charter.

6 **IX. DISPUTED ISSUE NO. 24: COST RESPONSIBILITY FOR AUDITS**

7 **Q. WHAT SECTIONS ARE INVOLVED IN ISSUE 24?**

8 A. Issue 24 involves three sections of the ICA-Sections 18.2.8.2, 18.2.9 and Section
9 18.2.10.

10 **Q. IT APPEARS THE ISSUES IN SECTION 18.2.8.2, 18.2.9 AND SECTION**
11 **18.2.10 ARE RELATED. PLEASE DESCRIBE THE ISSUE.**

12 A. Section 18.2.8.2, 18.2.9 and 18.2.10 are part of the section on Audits or
13 Examinations Expenses. Charter proposes language requiring a 10% differential
14 between amounts billed and amounts actually owing as the trigger point for the
15 non requesting party to pay the costs of the audit. Charter also proposes allowing
16 the "audited" party as the only party entitled to request an independent auditor
17 and to force the requesting party to pay the costs of the audit.

18 **Q. WHAT IS THE DIFFERENCE BETWEEN QWEST'S AND CHARTER'S**
19 **LANGUAGE FOR SECTIONS 18.2.8.2, 18.9 AND 18.10?**

20 A. Charter proposes to modify the Qwest language with the following highlighted
21 changes:

1 18.2.8.2 Notwithstanding the foregoing, the non-requesting Party
2 shall pay all of the requesting Party's commercially reasonable expenses in
3 the event an Audit or Examination identifies a difference between the
4 amount billed and the amount determined by the Audit **to be owed** that
5 exceeds **ten five percent (10 5%)** of the amount billed and results in a
6 refund and/or reduction **of at least ten percent (10%)** in the Billing to the
7 requesting Party.

8
9 18.2.9 The **Audited Party may require**~~requesting the Audit may~~
10 ~~request~~ that an Audit be conducted by a mutually agreed-to independent
11 auditor, which agreement will not be unreasonably withheld or delayed by
12 the **either non-requesting** Party. Under this circumstance, the costs of
13 the independent auditor shall be paid for by the Party requesting the Audit
14 subject to Section 18.2.8.2.

15
16 18.2.10 In the event that the non-requesting Party requests that the
17 Audit be performed by an independent auditor, the Parties shall mutually
18 agree to the selection of the independent auditor. Under this circumstance,
19 the costs of the independent auditor shall be **established pursuant to the**
20 **terms set forth in Section 18.2.9, above.** ~~shared equally by the Parties.~~
21 **However,** ~~t~~he portion of this expense borne by the requesting Party shall
22 be borne by the non-requesting Party if the terms of Section 18.2.8.2 are
23 satisfied.
24

25
26 **Q. WHAT IS QWEST'S POSITION ON SECTION 18.2.8.2?**

27 **A.** Already agreed upon language in Section 18.2.8.1 provides that "each Party shall
28 bear its own expenses in connection with conduct of the Audit or Examination."
29 This changes when there is a variance in the amount billed and the amount owed.
30 This allows a party to reasonably choose whether to have an audit, in other words,
31 when it believes there is enough of a difference to warrant the costs. The purpose
32 of Section 18.2.8.2 allows a party to balance the cost of an audit with its belief
33 that there is a variance in the amount billed and the amount owing. 5% is the
34 proper percentage of variance and should not be changed absent compelling

1 reasons. The 5% figure can be thousands of dollars and Charter should not be
2 able to impose its belief of what constitutes a “large amount” onto Qwest.
3 Commission approved ICAs contain this 5% figure as well as Qwest’s proposed
4 language. In my search, I could not find any CLEC ICA that contained a 10%
5 variance provision. The 5% figure is the fair and reasonable threshold for shifting
6 cost responsibility.

7 **Q. HAVE THE PARTIES AGREED TO LANGUAGE REGARDING AUDITS**
8 **THAT USES A LOWER PERCENTAGE OF VARIANCE THAN 5%?**

9 A. Yes. The parties have agreed to Section 18.2.4 that limits the number of audits a
10 party can do to one per year unless “the immediately preceding audit found
11 previously uncorrected net variances, inaccuracies or errors in invoices in the
12 audited Party's favor with an aggregate value of at least two percent (2%) of the
13 amounts payable for the affected services during the period covered by the
14 Audit.” In other words, Charter has agreed to additional audits if the variance is
15 just 2%, but does not want to pay for it unless it is 5 times higher. As I stated
16 before, 5% is a reasonable percent of variance.

17 **Q. DO YOU AGREE WITH CHARTER’S POSITION THAT “THE 5%**
18 **THRESHOLD PROPOSED BY QWEST MAY BE MORE EASILY**
19 **TRIGGERED, EVEN THOUGH THE TOTAL AMOUNTS IN QUESTION**
20 **ARE STILL RELATIVELY LIMITED” ?**

21

1 A. Obviously, since 5% is lower than 10%, the chances for this provision to be
2 effective are greater. That however, is not the issue – it is what is reasonable.
3 Qwest’s proposed language allows the party initiating the audit to make a choice
4 on whether to spend the money on an audit. Charter’s argument assumes there is
5 going to be a variance; they simply do not want to have to pay the expense if their
6 books are incorrect. This is not a situation that is going to arise frequently. The
7 parties agreed to a 1 audit per year standard making it is an infrequent occurrence.
8 The maximum number of audits allowed per year is one per quarter based on a
9 lower variance percentage. Charter’s concern that this 5% threshold may be
10 triggered more easily is not realistic. Setting the higher bar rewards Charter for
11 having their books a bit off. Audit charges will not be an everyday occurrence.

12 **Q. WHAT IS QWEST’S POSITION FOR SECTIONS 18.2.9 AND 18.2.10?**

13 A. Qwest’s proposed language for these sections is discretionary, allowing either
14 party to request an independent auditor, and having the party requesting the
15 independent auditor pay at minimum, half the costs of the independent auditor.
16 Under this language, the parties do not incur great expense unless they believe it
17 is absolutely necessary and under their responsibility. With Qwest’s language,
18 the party who did not ask for the audit can still compel an independent auditor to
19 be involved. Thus, under all possible situations, a party can exercise its rights
20 and have an independent auditor conduct the audit.

21 **Q. WHAT DOES QWEST PROPOSAL ACCOMPLISH?**

1 A. Simply put, Qwest's proposed language allows a party to evaluate the need for an
2 independent auditor. Charter's proposed language doesn't provide the ability for
3 a party to determine its particular needs, but allows the other party to force an
4 independent audit on the party and force them to pay for it. Qwest proposes that
5 the party requesting the audit have the choice to use and pay for an independent
6 auditor or to choose to use its own employees to conduct the audit. Qwest's
7 proposal also allows the party who is not requesting the audit to request an
8 independent auditor but with both parties splitting the costs.

9 **Q. SHOULD THE PARTY WHO IS BEING AUDITED BE ABLE TO**
10 **REQUEST AN INDEPENDENT AUDIT?**

11 A. Yes. However, the audited party should not be able to use unwarranted expense
12 of an independent auditor to thwart rights of the requesting party by forcing an
13 independent auditor at no cost to itself. The requesting party should have the
14 choice and Qwest's proposed language encompasses this logic. Charter's
15 language would allow the non requesting party to force the use of an independent
16 auditor in all situations, forcing a party to incur the cost no matter what. The only
17 purpose served by this would be to discourage a party from requesting an audit,
18 which is not a valid reason. Although an independent auditor is not needed in all
19 circumstances, Qwest or Charter should be able to determine whether they wish to
20 engage one and pay the extra expense that goes with the use of an independent
21 auditor. In the same sense, if the non-requesting party wants an independent
22 auditor, it would have to pay half the cost.

1 **Q. UNDER QWEST'S PROPOSED LANGUAGE, IF THE NON**
2 **REQUESTING PARTY WANTS AN INDEPENDENT AUDITOR, IT**
3 **MUST PAY HALF THE COSTS. IS THIS FAIR?**

4 A. Yes. This again provides a choice rather than a requirement that each party can
5 evaluate. The language proposed by Qwest equitably balances the cost of the
6 independent auditor between the two requests - the request for an audit and the
7 request for an independent auditor with each party paying half. A party can still
8 have an independent audit if it so chooses and the basic premise of Section
9 18.2.8.2 still applies:

10 ... the non-requesting Party shall pay all of the requesting Party's
11 commercially reasonable expenses in the event an Audit or Examination
12 identifies a difference between the amount billed and the amount determined
13 by the Audit that exceeds five percent (5%) of the amount billed and results in
14 a refund and/or reduction in the Billing to the requesting Party.
15

16 In essence, Charter receives the benefit of its proposed language without
17 obligating Qwest to incur the costs if it does not believe an independent audit is
18 necessary.

19 **Q. IS THE AUDIT PROCESS PROPOSED BY QWEST APPROVED BY**
20 **OTHER CLECS?**

21 A. Yes. Qwest's proposed language is the standard audit process contained in
22 Qwest's interconnection agreements with most other CLECs and is substantially
23 identical to the process contained in Qwest's negotiation template and the Qwest
24 SGAT. Charter should not be treated differently.

1 **Q. IS CHARTER'S PROPOSED PROCESS MORE EFFICIENT THAN**
2 **QWEST'S?**

3 A. No. Charter's proposal will increase the cost of audits.

4 **Q. HOW SHOULD THE COMMISSION RULE ON ISSUE 24?**

5 A. The Commission should adopt Qwest's proposed audit language on Issue No. 24.

6 **X. CONCLUSION**

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

8 A. Yes.