

# **EXHIBIT C**

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No. | Issues(s)  | ICA Section(s)  | Charter's Language  | Charter's Position  | Qwest's Language   | Qwest's Position   |
|-----------|--|-----------------|---|---|--|--|
| 1.        | Should Qwest be required to seek the Commission's authorization prior to taking any action to "disconnect services" which Charter may utilize under the agreement? | 5.4.3, & 5.13.1 | <p><b>5.4.3 With the Commission's authorization, the Billing Party may disconnect services for failure by the billed Party to make full payment within sixty (60) Days following the payment due date, less any good faith disputed amount as provided for in Section 5.4.4 of this Agreement, for such services provided under this Agreement. The billed Party will pay the applicable reconnect charge set forth in Exhibit A required to reconnect each service disconnected pursuant to this paragraph. The Billing Party will notify the billed Party in writing and the Commission on a confidential basis at least ten (10) business days prior to disconnection of the service(s). In case of such disconnection, including termination charges, shall become due. If the Billing Party does not disconnect the billed Party's service(s) on the date specified in the ten (10) business days' notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the Billing Party's right to disconnect services of the non-complying Party without further notice. For Commission's authorization. For reconconnection of the services to occur, the billed Party will be required to make full payment of all past and current undisputed</b></p> | <p>Termination of the agreement should be subject to either Party's right to invoke dispute resolution procedures of the agreement, and only after this Commission specifically authorizes such action. Because termination of the agreement could have severe potential ramifications to end user subscribers of both parties, such action should only occur under the direct supervision and oversight of this Commission.</p> <p>For that reason, Charter's proposed language would establish that any potential action deemed to constitute a default of the Agreement would be defined as both the action constituting the failure to perform, and the resolution of a dispute proceeding arising out of such alleged failure to perform. This approach will ensure that neither Party could use these provisions to threaten termination of the Agreement on mere <i>allegations</i> of default. Where the Commission finds that a Party has in fact failed to perform, following an adjudicative proceeding, it can deem such Party in default of the Agreement and approve the other Party's right to terminate the Agreement. That approach provides sufficient contractual protections for both Parties, while at the same time</p> | <p>5.4.3 The Billing Party may disconnect services for failure by the billed Party to make full payment, less any good faith disputed amount as provided for in Section 5.4.4 of this Agreement, for the services provided under this Agreement within sixty (60) Days following the payment due date. The billed Party will pay the applicable reconnect charge set forth in Exhibit A required to reconnect each service disconnected pursuant to this paragraph. The Billing Party will notify the billed Party in writing and the Commission on a confidential basis at least ten (10) business days prior to disconnection of the service(s). In case of such disconnection, all applicable undisputed charges, including termination charges, shall become due. If the Billing Party does not disconnect the billed Party's service(s) on the date specified in the ten (10) business days' notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the Billing Party's right to disconnect services of the non-complying Party without further notice. For reconconnection of the services to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the services. Additionally, the Billing Party will request a deposit (or recalculate the deposit)</p> | <p>Either party should be authorized to terminate the agreement, upon the other party's failure or refusal to make full payments, following the billed party's notice of intent to terminate. It is unnecessary for the Commission to be involved in the contract termination process.</p> |

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|-----------|-----------|----------------|---|--|--|-------------------------|
|           |           |                | <p>charges under this Agreement for the services. Additionally, the Billing Party will request a deposit (or recalculate the deposit) as specified in Section 5.4.5 and 5.4.7 from the billed Party, pursuant to this Section. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance.</p>  | <p>ensuring that neither Party will be able to improperly use the default/termination provisions of the Agreement to gain an improper advantage. Furthermore, Commission oversight and involvement will ensure that subscribers' interests are properly protected in the event that the Agreement is terminated.</p> | <p>as specified in Section 5.4.5 and 5.4.7 from the billed Party, pursuant to this Section. If the billed Party is a new CLEC customer of Qwest, the application of this provision will be suspended for the initial three (3) Billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance.</p>  |                         |
|           |           |                | <p>5.13.1 If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other material provision of this Agreement, and such default or violation shall continue for thirty (30) Days after written notice thereof, the other Party may seek relief in accordance with the Dispute Resolution provision of this Agreement. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect. <b>Neither Party shall disconnect service to the other Party without first obtaining Commission authorization.</b></p> |  | <p>5.13.1 If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other material provision of this Agreement, and such default or violation shall continue for thirty (30) Days after written notice thereof, the other Party may seek relief in accordance with the Dispute Resolution provision of this Agreement. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect.</p> |                         |

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| 2.        | Should the parties agree to a reasonable limitation as to the period of time by which either party can initiate backbilling, or disputes of previously billed amounts? | 5.4.4.3 & 5.4.10 | <p>5.4.4.3 Failure by a Billed Party to dispute a rate, rate element, or charge within the period applicable to an invoice on which such rate, rate element or charge appears shall not constitute nor be construed as a waiver by the Billed Party of its right to dispute the same or similar rates, rate elements, or charges that may appear on subsequent invoices. If any portion of an amount paid to a Party under this Agreement is subject to a bona fide dispute between the Parties ("Disputed Paid Amount"), the Billed Party may provide written notice to the Billing Party of the Disputed Paid Amount, and seek a refund of such amount already paid, at any time prior to the date that is one (1) year after the date of the invoice containing the disputed amount that has been paid by the Billed Party ("Notice Period"). If the Billed Party fails to provide written notice of a Disputed Paid Amount within the Notice Period, the Billed Party waives its rights to dispute its obligation to pay such amount, and to seek refund of such amount.</p> <p>5.4.10 The Parties shall bill each other for all services and arrangements under this Agreement promptly and in any event shall use commercially reasonable efforts to render such bills. In the event that prompt billing is not possible, backbilling for</p> | <p>The parties should agree to limit the time period by which either Party can initiate a bill dispute, or attempt to backbill, for services invoiced, or provided, pursuant to the terms of the Agreement. Charter proposes that period of time be established as one year from the date of the invoice.</p> <p>This proposal benefits both Parties to the contract because it provides a specific time frame by which either Party can raise billing disputes and claims. Upon the expiration of that time period, all potential claims that arose prior to that time would be waived. One benefit of this approach is that it provides both Parties certainty as to when, or if, claims will be brought. That, in turn, provides the business and operations units of each company greater assurance in the resolution of intercompany disputes.</p> <p>Charter's approach is consistent with previous FCC decisions addressing backbilling practices of carriers. In such decisions the FCC stated that a delay of "much less than 24 months between the rendering of service and the receipt of an initial bill for such service may be an unjust and unreasonable practice" and consequently violative of Section 201(b) of the Act. See, e.g., <i>The People's Network, Inc. v. American Telephone &amp; Telegraph Co.</i>, Memorandum Opinion and</p> | <p>5.4.4.3 Failure by a Billed Party to dispute a rate, rate element, or charge within the period applicable to an invoice on which such rate, rate element or charge appears shall not constitute nor be construed as a waiver by the Billed Party of its right to dispute the same or similar rates, rate elements, or charges that may appear on subsequent invoices. If any portion of an amount paid to a Party under this Agreement is subject to a bona fide dispute between the Parties ("Disputed Paid Amount"), the Billed Party may provide written notice to the Billing Party of the Disputed Paid Amount, and seek a refund of such amount already paid, at any time prior to the date that is two (2) years after the date of the invoice containing the disputed amount that has been paid by the Billed Party ("Notice Period"). If the Billed Party fails to provide written notice of a Disputed Paid Amount within the Notice Period, the Billed Party waives its rights to dispute its obligation to pay such amount, and to seek refund of such amount.</p> <p>5.4.10 The Parties shall bill each other for all services and arrangements under this Agreement promptly and in any event shall use commercially reasonable efforts to render such bills. In the event that prompt billing is not possible, backbilling for</p> | <p>Charter's proposed limits on claims is overly broad. However, Qwest believes that the "billed Party" (which is more often the CLEC) should bear the burden of having to escalate and litigate bill disputes submitted to Qwest, or risk losing its rights to submit such disputes after two years.</p> |

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|           |   |                | <p>unbilled charges shall be permitted for a period of up to <b>twelve (12)</b> months following the provision of service. Backbilling for services provided more than <b>twelve (12)</b> months following the provision of service is not permitted, and each Party hereby waives any right to collect any fees or charges otherwise due under this Agreement (including charges for services under this Agreement that are provided via its tariffs) that are not billed to the other Party within such <b>twelve (12)</b> month period.</p>  | <p>Order, 12 FCC Rcd 21081, 21090 at para. 14 (1997); and <i>Brooten v. AT&amp;T Corp.</i>, Memorandum Opinion and Order, 12 FCC Rcd 13343 (Comm. Carr. Bur. 1997); <i>American Network, Inc.: Petition for Declaratory Ruling Concerning Backbilling of Access Charges</i>, Memorandum Opinion and Order, 4 FCC Rcd 550, 551-52, ¶ 20 (Comm. Carr. Bur. 1989).</p>   | <p>unbilled charges shall be permitted for a period of up to <b>twenty-four (24)</b> months following the provision of service. Backbilling for services provided more than <b>twenty-four (24)</b> months following the provision of service is not permitted, and each Party hereby waives any right to collect any fees or charges otherwise due under this Agreement (including charges for services under this Agreement that are provided via its tariffs) that are not billed to the other Party within such <b>twenty-four (24)</b> month period.</p>   |  |
| 3.        | Should the security deposit provisions of the agreement apply mutually, to both parties, or only unilaterally to Qwest's benefit? | 5.4.5 - 7      | <p>5.4.5 In the event of a material adverse change in a Party's financial condition subsequent to the Effective Date of this Agreement, <b>the other Party</b> may request a security deposit. A "material adverse change in financial condition" means the Party is repeatedly delinquent in making its payments, or is being reconnected after a disconnection of Service or discontinuance of the processing of orders by <b>the other Party</b> due to a previous failure to pay undisputed charges in a timely manner. <b>The other Party</b> may require a deposit to be held as security for the payment of charges before the Party will be provisioned and completed or before reconnection of Service. "Repeatedly delinquent" means any payment of a material, <b>undisputed</b> amount of total monthly Billing under the</p> | <p>The deposit provisions of the agreement should apply mutually, such that both parties are obligated to provide a security deposit to the other party upon the occurrence of a "material adverse change in financial condition." Although the billings between the parties should be limited, it is possible that both parties for certain acts taken by the first party. In the event that such circumstances come to pass there is no valid reason for the deposit provisions of the agreement to apply unilaterally, to the benefit of only one party. Instead, such provisions should apply mutually, to both parties' benefit.</p> | <p>5.4.5 In the event of a material adverse change in CLEC's financial condition subsequent to the Effective Date of this Agreement, <b>Qwest</b> may request a security deposit. A "material adverse change in financial condition" means the Party is repeatedly delinquent in making its payments, or is being reconnected after a disconnection of Service or discontinuance of the processing of orders by <b>Qwest</b> due to a previous failure to pay undisputed charges in a timely manner. <b>Qwest</b> may require a deposit to be held as security for the payment of charges before the orders from CLEC will be provisioned and completed or before reconnection of Service. "Repeatedly delinquent" means any payment of a material amount of total monthly Billing under the Agreement received after the Payment Due Date, three (3) or more times</p> | <p>The security deposit provisions of the agreement should only apply unilaterally, to Qwest's benefit. Therefore, Charter should be held with respect to deposits, but Qwest should not be required to provide any security deposit to Charter.</p> |

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|           |           |                | <p>Agreement received after the Payment Due Date, three (3) or more times during the last twelve (12) month period. The initial deposit may not exceed the estimated total net monthly charges (that is, the amounts the Party owes, less amounts owed to the other Party) for a two (2) month period based upon recent Billing. The deposit may be adjusted by the Party's actual monthly average charges, payment history under this Agreement, or other relevant factors. The deposit may be an irrevocable bank letter of credit, a letter of credit with terms and conditions reasonably acceptable to the other Party, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within thirty (30) Days after demand and non-payment is subject to Sections 5.4.2 and 5.4.3 of this Agreement</p> <p>5.4.6 Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission regulations. Cash deposits and accrued interest will be credited to the depositing Party's account or refunded, as appropriate, upon the earlier of the expiration of the term of the Agreement or the establishment of satisfactory credit with the other Party, which will generally be one full year of timely payments of undisputed amounts in full by the depositing Party. Upon a material change in financial standing,</p> |                    | <p>during the last twelve (12) month period. The initial deposit may not exceed the estimated total monthly charges for a two (2) month period based upon recent Billing. The deposit may be adjusted by CLEC's actual monthly average charges, payment history under this Agreement, or other relevant factors. The deposit may be an irrevocable bank letter of credit, a letter of credit with terms and conditions acceptable to Qwest, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within thirty (30) Days after demand and non-payment is subject to Sections 5.4.2 and 5.4.3 of this Agreement.</p> <p>5.4.6 Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission regulations. Cash deposits and accrued interest will be credited to CLEC's account or refunded, as appropriate, upon the earlier of the expiration of the term of the Agreement or the establishment of satisfactory credit with Qwest, which will generally be one full year of timely payments of undisputed amounts in full by CLEC. Upon a material change in financial standing, including factors referenced in Section 5.4.5 above, CLEC may request and Qwest will consider a</p> |                  |

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|-----------|---|----------------|---|---|--|--|
| 4.        | Should Qwest be able to dictate the insurers that Charter must utilize, in part by requiring that such insurer maintain a specific "ratings" or standard? | 5.6.1          | <p>including factors referenced in Section 5.4.5 above, the <b>depositing Party</b> may request and the <b>other Party</b> will consider a recalculation of the deposit. The fact that a deposit has been made does not relieve the <b>depositing Party</b> from any requirements of this Agreement</p> <p>5.4.7 A <b>Party</b> may review the <b>other Party's</b> credit standing and modify the amount of deposit required but in no event will the maximum amount exceed the amount stated in 5.4.5 or another amount, if approved by the Commission.</p> | <p>Where the parties have established terms that require both parties to establish and maintain insurance coverage, the provisions should not establish arbitrary standards for the selection of such insurers by imposing arbitrary standards relating to ratings of such insurers. There is no reason for Qwest to insist upon such standards because it is Charter's interests to retain insurers that are financially sound, and capable of covering any potential claims made by Charter. Therefore, there is no reason for Qwest to impose arbitrary standards about the level of insurance carrier that Charter must utilize pursuant to this agreement. Moreover, given that Qwest will avail itself of the self-insurance provisions of the agreement, the same standards will not apply to Qwest. In this way the insurance</p> | <p>recalculation of the deposit. The fact that a deposit has been made does not relieve CLEC from any requirements of this Agreement.</p> <p>5.4.7 <u>Qwest</u> may review <u>CLEC's</u> credit standing and modify the amount of deposit required but in no event will the maximum amount exceed the amount stated in 5.4.5 or another amount, if approved by the Commission.</p> | <p>Charter must carry and maintain insurance coverage prescribed in this agreement by insurers that have a "Best's" rating of A-VII.</p> |

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| 5.        | How should the parties agree to limit liability, and damages, arising from either party's actions? | 5.8            | <p>5.8 Limitation of Liability</p> <p>5.8.1 Each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance under this Agreement, warranty, strict liability, or tort, including (without limitation) negligence of any kind, shall be limited to actual, direct damages. Each Party's liability to the other Party for any other losses shall be limited to actual, direct damages. Payments pursuant to the QPAP shall not be counted against the limit provided for in this Section.</p> <p>5.8.2 Except as provided in Section 5.8.4, neither Party shall be liable to the other for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including</p> | <p>The Parties should not limit their damages in a way that would preclude one Party from obtaining meaningful relief. Although Charter agrees that damages should be limited to "actual, direct" damages, it does not agree with Qwest's proposal that damages be further limited to the total amount that is or would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed. Because this Agreement contemplates primarily the exchange of traffic, without significant liabilities for leasing, resale or other services, the amount of monthly charges that the Parties are subject to is relatively small. For that reason, Qwest's proposal to limit direct damages to no more than an amount equal to such monthly charges could effectively preclude recovery of the amount of direct damages that arise from a significant harm or error that occurred to one Party's network, employees, or other assets.</p> | <p>5.8 Limitation of Liability</p> <p>5.8.1 Each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance under this Agreement, whether in contract, warranty, strict liability, or tort, including (without limitation) negligence of any kind, shall be limited to the total amount that is or would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed. Each Party's liability to the other Party for any other losses shall be limited to the total amounts charged to CLEC under this Agreement during the contract year in which the cause accrues or arises. Payments pursuant to the QPAP shall not be counted against the limit provided for in this Section.</p> <p>5.8.2 Neither Party shall be liable to the other for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of</p> | <p>Each Party's liability to the other should be limited to direct damages. Such damages shall be defined as the total amount that is or would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed.</p> |



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|           |           |                | <p>(without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result. If the Parties enter into a Performance Assurance Plan under this Agreement, nothing in this Section 5.8.2 shall limit amounts due and owing under any Performance Assurance Plan or any penalties associated with Docket No. UT 991358.</p>   |   | <p>whether the Parties know the possibility that such damages could result. If the Parties enter into a Performance Assurance Plan under this Agreement, nothing in this Section 5.8.2 shall limit amounts due and owing under any Performance Assurance Plan or any penalties associated with Docket No. UT 991358.</p>                  |   |
|           |           |                | <p>5.8.3 Intentionally Left Blank.</p>   |   | <p>5.8.3 Intentionally Left Blank.</p>  |   |
|           |           |                | <p>5.8.4 Nothing contained in this Section 5.8 shall limit either Party's liability to the other for (i) acts of gross negligence, willful or intentional misconduct or (ii) damage to tangible real or personal property proximately caused solely by such Party's negligent act or omission or that of their respective agents, subcontractors, or employees. For purposes of this Section 5.8, "solely," shall mean not contributed to by the negligent act or omission of the other Party, or its respective agents, subcontractors, or employees.</p> |   | <p>5.8.4 Nothing contained in this Section 5.8 shall limit either Party's liability to the other for (i) willful or intentional misconduct or (ii) damage to tangible real or personal property proximately caused solely by such Party's negligent act or omission or that of their respective agents, subcontractors, or employees.</p> |   |
|           |           |                | <p>10.4.2.6 Intentionally left blank.</p>  | <p>The Parties agree that for some types of claims their potential liability should not be limited. Charter's position is that neither Party should limit their liability for claims arising out of either Party's acts</p> | <p>10.4.2.6 To the extent that state Tariff(s) limit Qwest's liability with regard to Listings, the applicable state Tariff(s) is incorporated herein and supersedes the Limitation of Liability section of this</p>  | <p>Qwest's position is that liability limits should only exclude acts of willful or intentional misconduct, but that gross negligence should not be included in such exclusion.</p> |

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| 6.        | Indemnity Provisions   |                |  |   |  |   |
| 6(a)      | How should the parties' respective indemnity obligations be established? | 5.9            | <p>5.9.1 The Parties agree that unless otherwise specifically set forth in this Agreement the following constitute the sole indemnification obligations between and among the Parties:</p> <p>5.9.1.1 Each of the Parties agrees to indemnify, defend and hold harmless ("Indemnifying Party") the other Party and each of its officers, directors, employees and agents ("Indemnified Party") from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees) made, instituted, or asserted by any third party, for invasion of privacy, bodily injury or death of any such third party, or for loss, damage to, or destruction of tangible property, whether or not owned by others, (collectively, "Losses") resulting from the Indemnifying Party's negligence, gross</p> | <p>which are deemed to be grossly negligent, or which constitute intentional or willful misconduct. In such circumstances, the Party engaging in such acts should be liable, and responsible for, the entire cost of any damages which arise.</p> <p>Each Party's obligations to indemnify the other Party should be limited where the indemnified Party bears some responsibility for the alleged harms which are the basis for the action for relief. Put simply, where one Party has caused the harm, whether due to negligent actions or intentional misconduct, then that Party should not be indemnified against any losses arising from an action against that Party. Charter's proposal with respect to Section 5.9, and related provisions, introduces a concept of contributory negligence in to the indemnity obligations, such that indemnity obligations are limited where the indemnified Party has contributed to the alleged harm. The Commission should recognize that reasonable limitation and order the Parties to incorporate the principle in to the Agreement.</p> | <p>Agreement with respect to Listings only.</p> <p>5.9.1 The Parties agree that unless otherwise specifically set forth in this Agreement the following constitute the sole indemnification obligations between and among the Parties:</p> <p>5.9.1.1 Each of the Parties agrees to <u>release</u> indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (<u>each an Indemnitee</u>) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees), whether suffered, made, instituted, or asserted by any <u>Person or entity</u>, for invasion of privacy, bodily injury or death of any <u>Person or Persons</u>, or for loss, damage to, or destruction of tangible property, whether or not owned by others, resulting from the Indemnifying Party's breach of or failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict</p> | <p>Each Party should indemnify the other against all losses arising from any claims against the indemnified Party, regardless of whether the indemnified Party contributes to the harm by its own negligence or intentional misconduct.</p> |

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|           |           |                | <p>negligence or willful misconduct, or breach of or failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without limitation) negligence of any kind, except to the extent that such Claims or Losses arise from the Indemnified Party's negligence, gross negligence, or willful misconduct.</p> <p>5.9.1.2 In the case of Claims or Losses alleged or incurred by an End User Customer of either Party, arising out of or in connection with services provided to the End User Customer by the Party, the Party whose End User Customer alleged or incurred such Claims or Losses (the "Indemnifying Party") shall defend and indemnify the other Party and each of its officers, directors, employees and agents (Indemnified Party) against any and all such Claims or Losses by the Indemnifying Party's End User Customers regardless of whether the underlying service was provided or Unbundled Network Element was provisioned by the Indemnified Party, except to the extent that the Claims or Losses were caused by the negligence, gross negligence or willful misconduct of the Indemnified Party, including the employees, contractors, agents, or other representatives of the Indemnified Party.</p> |                    | <p>liability, or tort including (without limitation) negligence of any kind. The obligation to indemnify with respect to claims of the Indemnifying Party's End User Customers shall not extend to any claims for physical bodily injury or death of any Person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, alleged to have resulted directly from the negligence or intentional conduct of the employees, contractors, agents, or other representatives of the Indemnified Party.</p> <p>5.9.1.2 In the case of claims or loss alleged or incurred by an End User Customer of either Party, arising out of or in connection with services provided to the End User Customer by the Party, the Party whose End User Customer alleged or incurred such claims or loss (the Indemnifying Party) shall defend and indemnify the other Party and each of its officers, directors, employees and agents (collectively the Indemnified Party) against any and all such claims or loss by the Indemnifying Party's End User Customers regardless of whether the underlying service was provided or Unbundled Network Element was provisioned by the Indemnified Party, unless the loss was caused by the willful misconduct of the Indemnified Party.</p> | <p>If the Indemnifying Party wishes to defend</p> |

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**Charter -- Qwest Disputed Issues / Decision Point List**

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|           |   |                | <p>If the Indemnifying Party wishes to defend against such action, it shall give written notice to the Indemnified Party of acceptance of the defense of such action. In such event, the Indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, <b>to the extent such action is based solely on the Indemnifying Party's network and/or services</b>, and the Indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event that the Indemnifying Party does not accept the defense of the Indemnified Party, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnified Party. Each Party agrees to cooperate with the other Party in the defense of any such action and the relevant records of each Party shall be available to the other Party with respect to any such defense.</p> |  | <p>against such action, it shall give written notice to the Indemnified Party of acceptance of the defense of such action. In such event, the Indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the Indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event that the Indemnifying Party does not accept the defense of the action, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnified Party. Each Party agrees to cooperate with the other Party in the defense of any such action and the relevant records of each Party shall be available to the other Party with respect to any such defense.</p> |  |
| 6(b)      | <p>In indemnity situations, where the indemnified party unreasonably withholds consent to settle claims, must the</p> | 5.9.2.3        | <p>In no event shall the Indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the Indemnified Party. In the event the Indemnified Party withholds consent, the Indemnified Party must, at its cost, take over such defense, provided that, in such event, the Indemnifying Party shall</p>  | <p>Where indemnity obligations arise, and one party is indemnifying the other against claims, the indemnified party should consider and accept reasonable settlement proposals. Where the indemnified party unreasonably withholds consent from entering into such a settlement, it should be required to assume the cost of the</p> | <p>In no event shall the Indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the Indemnified Party. In the event the Indemnified Party withholds consent, the Indemnified Party <u>may</u>, at its cost, take over such defense, provided that, in such event, the Indemnifying Party shall</p>  | <p>The indemnified party, may at its option, agree to take over the defense of an action following a settlement offer. However, the indemnified party need not assume the defense of the action.</p> |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No. | Issues(s)   | ICA Section(s) | Charter's Language   | Charter's Position  | Qwest's Language   | Qwest's Position   |
|-----------|---|----------------|--|---|--|--|
|           | Indemnified Party then take over the action?  |                | not be responsible for, nor shall it be obligated to indemnify the relevant Indemnified Party against, any cost or liability in excess of such refused compromise or settlement.   | defense of the action. Put simply, the indemnifying party should not be required to continue to defend an action after a reasonable settlement offer has been made by the adverse party. Instead, there should be some mechanism that allows the indemnifying party to shift the defense of such actions to the indemnified party to ensure that the proper incentives exist for the indemnified party not withhold consent from a reasonable settlement offer.         | not be responsible for, nor shall it be obligated to indemnify the relevant Indemnified Party against, any cost or liability in excess of such refused compromise or settlement.   |  |
| 7.        | How should the parties' respective indemnity obligations, as they relate to intellectual property rights, be established? | 5.10           | Subject to Section 5.9.2, each Party (the Indemnifying Party) shall indemnify and hold the other Party (the Indemnified Party) harmless from and against any Claim that the use of facilities of the Indemnifying Party or services provided by the Indemnifying Party provided or used pursuant to the terms of this Agreement misappropriates or otherwise violates the intellectual property rights of any third party. In addition to being subject to the provisions of Section 5.9.2, the obligation for indemnification recited in this paragraph shall not extend to infringement of the facilities or services of the Indemnifying Party with facilities or services of the Indemnified Party, which combination is not made by, or at the direction, or with knowledge of the Indemnifying Party or (b) any modification made to the facilities or services of the | The indemnity provisions related to intellectual property rights of both parties should not apply to the combination of facilities or services between the Indemnified Party, and the Indemnifying Party (rather than with "any other Person"), including where such combination is made with knowledge of the Indemnifying Party. Further, the Indemnifying Party should be permitted to request that the Indemnified Party take reasonable steps to mitigate damages. | Subject to Section 5.9.2, each Party (the Indemnifying Party) shall indemnify and hold the other Party (the Indemnified Party) harmless from and against any <u>loss, cost, expense or liability arising out of a claim</u> that the use of facilities of the Indemnifying Party or services provided by the Indemnifying Party provided or used pursuant to the terms of this Agreement misappropriates or otherwise violates the intellectual property rights of any third party. In addition to being subject to the provisions of Section 5.9.2, the obligation for indemnification recited in this paragraph shall not extend to infringement which results from (a) any combination of the facilities or services of the Indemnifying Party with facilities or services of any other Person (including the Indemnified Party but excluding the Indemnifying Party and any of its Affiliates), which combination is not made by, or at the direction of the | The indemnity provisions related to intellectual property rights of both parties should not apply to the combination of facilities or services between the Indemnified Party and "any other Person." |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No. | Issues(s) | ICA Section(s) | Charter's Language   | Charter's Position | Qwest's Language  | Qwest's Position |
|-----------|-----------|----------------|--|--------------------|---|------------------|
|           |           |                | <p>Indemnifying Party by, on behalf of or at the request of the Indemnified Party and not required by the Indemnifying Party. In the event of any claim, the Indemnifying Party may, at its sole option (a) obtain the right for the Indemnified Party to continue to use the facility or service; or (b) replace or modify the facility or service to make such facility or service non-infringing. If the Indemnifying Party is not reasonably able to obtain the right for continued use or to replace or modify the facility or service as provided in the preceding sentence and either (a) the facility or service is held to be infringing by a court of competent jurisdiction or (b) the Indemnifying Party reasonably believes that the facility or service will be held to infringe, the Indemnifying Party shall notify the Indemnified Party and the Parties shall negotiate in good faith regarding reasonable modifications to this Agreement necessary to (1) mitigate damage or comply with an injunction which may result from such infringement or (2) allow cessation of further infringement. The Indemnifying Party may request that the Indemnified Party take <b>reasonable</b> steps to mitigate damages resulting from the infringement or alleged infringement including, but not limited to, accepting modifications to the facilities or services, and such request shall not be unreasonably denied.</p> |                    | <p>Indemnifying Party or (b) any modification made to the facilities or services of the Indemnifying Party by, on behalf of or at the request of the Indemnified Party and not required by the Indemnifying Party. In the event of any claim, the Indemnifying Party may, at its sole option (a) obtain the right for the Indemnified Party to continue to use the facility or service; or (b) replace or modify the facility or service to make such facility or service non-infringing. If the Indemnifying Party is not reasonably able to obtain the right for continued use or to replace or modify the facility or service as provided in the preceding sentence and either (a) the facility or service is held to be infringing by a court of competent jurisdiction or (b) the Indemnifying Party reasonably believes that the facility or service will be held to infringe, the Indemnifying Party shall notify the Indemnified Party and the Parties shall negotiate in good faith regarding reasonable modifications to this Agreement necessary to (1) mitigate damage or comply with an injunction which may result from such infringement or (2) allow cessation of further infringement. The Indemnifying Party may request that the Indemnified Party take steps to mitigate damages resulting from the infringement or alleged infringement including, but not limited to, accepting modifications to the facilities or services, and such request shall not be unreasonably</p> |                  |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No. | Issues(s) | ICA Section(s) | Charter's Language  | Charter's Position  | Qwest's Language   | Qwest's Position  |
|-----------|-----------|----------------|---|---|--|---|
|           |           |                | <p>5.10.4 Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, trade name, trade secret or any other intellectual property right now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyright, logo, trademark, trade name, trade secret or other intellectual property rights of the other Party or its Affiliates without execution of a separate written agreement between the Parties.</p> | <p>This portion of the agreement should also include the limitation that neither party may use the other party's intellectual property, or trade secrets, without first executing a separate "written" agreement.</p> | <p>denied.</p> <p>5.10.4 Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, trade name, trade secret or any other intellectual property right now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyright, logo, trademark, trade name, trade secret or other intellectual property rights of the other Party or its Affiliates without execution of a separate agreement between the Parties.</p> <p>5.10.5 Neither Party shall without the express written permission of the other Party, state or imply that: 1) it is connected, or in any way affiliated with the other or its Affiliates; 2) it is part of a joint business association or any similar arrangement with the other or its Affiliates; 3) the other Party and its Affiliates are in any way sponsoring, endorsing or certifying it and its goods and services; or 4) with respect to its marketing, advertising or promotional activities or materials in connection with resold goods and/or services, that such resold goods and services are in any way associated with or originated from the other or any of its Affiliates. Nothing in this paragraph shall prevent either Party from truthfully</p> | <p>This portion of the agreement should also include the limitation that neither party may use the other party's intellectual property, or trade secrets, without first executing a separate agreement.</p> |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No. | Issues(s)   | ICA Section(s) | <u>Charter's Language</u>   | <u>Charter's Position</u>   | <u>Qwest's Language</u>  | <u>Qwest's Position</u>   |
|-----------|---|----------------|---|---|--|---|
| 8.        | How should the parties' state their disclaimer of warranties? | 5.11           | <p>its Affiliates. Nothing in this paragraph shall prevent either Party from truthfully describing the Network Elements it uses to provide service to its End User Customers, provided it does not represent the Network Elements as originating from the other Party or its Affiliates in any marketing, advertising or promotional activities or materials.</p> <p>5.11 Warranties</p> <p>5.11.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS PROVISION SHALL NOT SERVE TO ELIMINATE, OR OTHERWISE LIMIT, THE PARTIES' QUALITY OF SERVICE OBLIGATIONS PURSUANT TO APPLICABLE WASHINGTON LAW, INCLUDING WUTC RULES AT W.A.C. 480-120, ET. SEQ.</p> | <p>Disclaimers of warranties should not excuse either party from fulfilling their respective service obligations under state, or federal, law. This provision should clearly include that clarification, for the avoidance of doubt.</p> <p>Further, this language should not include the proviso that products and services are provided as is, with all faults, because such language could be construed as limiting each party's obligations under federal law to provide access to facilities and services that are just, reasonable, and non-discriminatory.</p> | <p>describing the Network Elements it uses to provide service to its End User Customers, provided it does not represent the Network Elements as originating from the other Party or its Affiliates in any marketing, advertising or promotional activities or materials.</p> <p>5.11 Warranties</p> <p>5.11.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND <u>THAT ALL PRODUCTS AND SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS," WITH ALL FAULTS.</u></p> | <p>There is no need to include a statement of each party's service quality obligations. [WASHINGTON ONLY]</p> <p>This language should include the proviso that products and services are provided as is, with all faults.</p> |



**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| <b>Issue No.</b>                  | <b>Issues(s)</b>  | <b>ICA Section(s)</b> | <b>Charter's Language</b>   | <b>Charter's Position</b>   | <b>Qwest's Language</b>   | <b>Qwest's Position</b>   |
|-----------------------------------|---|-----------------------|---|---|---|---|
| 9.                                | Should the Agreement include terms that allow one party to terminate the Agreement as to a "specific operating area" without any assurance to the other party that the terms of the Agreement will continue uninterrupted with the new LEC that acquires the operating area?<br><br>[NOTE: Issue resolved (included only as placeholder). Agreed upon language at right.] | 5.12.2                | [Intentionally left blank.]   |   | [Intentionally left blank.]   |   |
| <b>INTERCONNECTION, SECTION 7</b> |   |                       |   |   |   |   |
| 10.                               | What standard should be used to excuse Qwest from the   | 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 Service (EAS/Local traffic), IntraLATA | Where Qwest seeks to deny Charter's right to interconnect at a particular tandem switch location based upon a claim of potential switch exhaustion, it must first | 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 | Qwest should be entitled to deny interconnection at a tandem switch where it believes that such switch is at risk of exhaust. |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No. | Issues(s)  | ICA Section(s) | Charter's Language   | Charter's Position   | Qwest's Language   | Qwest's Position |
|-----------|--|----------------|--|--|--|------------------|
|           | <p>obligation to allow Charter to interconnect at certain points on the Qwest network?</p> |                | <p>LEC Toll and Jointly Provided Switched Access traffic. Intercarrier traffic exchange will be mutual and reciprocal and all traffic exchanged between the Parties must be provisioned pursuant to this Agreement. A Party that has interconnected or gained access under sections 251 (a) (1), 251 (c)(2), or 251 (c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering Telecommunications Services through the same arrangement(s) as well. Enhanced or information service providers (providers or "Information Services" as that term is defined in 47 U.S.C. § 153 (20)) that do not also provide domestic or international telecommunications are not Telecommunications Carriers as defined by the Act and thus may not interconnect under this Agreement. Qwest will provide Interconnection at any Technically Feasible point within its network, including but not limited to; (i) the Line Side of a local Switch, (ii) the Trunk Side of a local Switch, (iii) the trunk connection points for a Tandem Switch, (iv) Central Office Cross Connection points, (v) out-of-band Signaling Transfer Points necessary to exchange traffic at these points and access call-related databases, and (vi) points of access to Unbundled Network Elements. "Interconnection" is as described in the Act and refers, in this Section of the Agreement, to the connection between</p> | <p>prove to the state commission that the switch exhaust is imminent and renders interconnection at that location technically infeasible. Qwest is obligated to provide interconnection at any technically feasible point on its network, and pursuant to 47 C.F.R 51.305 where Qwest seeks to deny interconnection at such point it must prove to the state commission that interconnection is technically infeasible. Therefore, the agreement should incorporate the same standard established by the FCC's regulations, and federal law.</p> | <p>and Jointly Provided Switched Access traffic. Intercarrier traffic exchange will be mutual and reciprocal and all traffic exchanged between the Parties must be provisioned pursuant to this Agreement. A Party that has interconnected or gained access under sections 251 (a) (1), 251 (c)(2), or 251 (c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering Telecommunications Services through the same arrangement(s) as well. Enhanced or information service providers (providers or "Information Services" as that term is defined in 47 U.S.C. § 153 (20)) that do not also provide domestic or international telecommunications are not Telecommunications Carriers as defined by the Act and thus may not interconnect under this Agreement. Qwest will provide Interconnection at any Technically Feasible point within its network, including but not limited to; (i) the Line Side of a local Switch, (ii) the Trunk Side of a local Switch, (iii) the trunk connection points for a Tandem Switch, (iv) Central Office Cross Connection points, (v) out-of-band Signaling Transfer Points necessary to exchange traffic at these points and access call-related databases, and (vi) points of access to Unbundled Network Elements. "Interconnection" is as described in the Act and refers, in this Section of the Agreement, to the connection between networks for the</p> |                  |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No. | Issues(s) | ICA Section(s) | Charter's Language   | Charter's Position | Qwest's Language  | Qwest's Position |
|-----------|-----------|----------------|--|--------------------|---|------------------|
|           |           |                | <p>networks for the purpose of transmission and routing of Telephone Exchange Service traffic and IntraLATA LEC Toll traffic at points (ii) and (iii) described above. Interconnection, which Qwest currently names "Local Interconnection Service" (LIS), is provided for the purpose of connecting End Office Switches to End Office Switches or End Office Switches to local or Access Tandem Switches for the exchange of Exchange Service (EAS/Local traffic); or End Office Switches to Access Tandem Switches for the exchange of IntraLATA LEC Toll or Jointly Provided Switched Access traffic. Qwest Tandem Switch to CLEC Tandem Switch connections will be provided where Technically Feasible. New or continued Qwest local Tandem Switch to Qwest Access Tandem Switch and Qwest Access Tandem Switch to Qwest Access Tandem Switch connections are not required where Qwest has demonstrated to the Commission, and the Commission has determined in accordance with 47 CFR 51.305(e), that such connections present an imminent risk of Switch exhaust, and that Qwest does not make similar use of its network to transport the local calls of its own, or any Affiliate's, or any other LEC's End User Customers. Disputes arising under this Section 7 shall be raised, and resolved, pursuant to the Dispute Resolution provisions of this</p> |                    | <p>purpose of transmission and routing of Telephone Exchange Service traffic and IntraLATA LEC Toll traffic at points (ii) and (iii) described above. Interconnection, which Qwest currently names "Local Interconnection Service" (LIS), is provided for the purpose of connecting End Office Switches to End Office Switches or End Office Switches to local or Access Tandem Switches for the exchange of Exchange Service (EAS/Local traffic); or End Office Switches to Access Tandem Switches for the exchange of IntraLATA LEC Toll or Jointly Provided Switched Access traffic. Qwest Tandem Switch to CLEC Tandem Switch connections will be provided where Technically Feasible. New or continued Qwest local Tandem Switch to Qwest Access Tandem Switch and Qwest Access Tandem Switch to Qwest Access Tandem Switch connections are not required where Qwest 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.</p> |                  |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No. | Issues(s)  | ICA Section(s)  | Charter's Language  | Charter's Position   | Qwest's Language   | Qwest's Position   |
|-----------|--|-----------------|---|--|--|--|
| 11.       | Should the agreement limit the methods by which Charter can establish interconnection with Qwest when using leased interconnection facilities? | 7.1.2 & 7.1.2.4 | <p><b>Agreement.</b></p> <p>7.1.2 The Parties will negotiate the specific arrangements used to interconnect their respective networks. CLEC shall have the right to establish one (1) single physical Point of Interconnection ("POI") in Qwest territory in each LATA. CLEC has local End User Customers. At CLEC's option, CLEC may establish additional Points of Interconnection in each LATA in which CLEC has local End User Customers. The Parties agree that this Section 7.1.2 shall not be construed as imposing any obligation upon Qwest to establish a physical Point of Interconnection with CLEC at a point that is outside of Qwest's geographic service area or territory. CLEC shall serve End User Customers physically located within the areas associated with the NPA-NXX codes assigned to those End User Customers. The Parties shall establish, at least one (1) of the following Interconnection arrangements, at 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</p> | <p>No. The agreement should not limit the methods Charter may employ to establish interconnection arrangements with Qwest. Under FCC rule 51.305 incumbent LECs, like Qwest, must allow competitive LECs to interconnect via any technically feasible method. A common practice in the industry is to interconnect via the use of interconnection (or entrance) facilities. Such facilities are dedicated network facilities connecting each party's respective networks, and may be provided by Qwest, the CLEC, or a third party provider. Qwest proposes to limit the means by which Charter can deploy its own facilities, or use those of a third party provider. Those limitations unreasonably limit Charter's rights with respect to the use of interconnection facilities, when such facilities are deployed by Charter, or a third party provider.</p> | <p>7.1.2 The Parties will negotiate the specific arrangements used to interconnect their respective networks. CLEC shall establish at least one (1) physical Point of Interconnection in Qwest territory in each LATA. CLEC has local End User Customers. 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.</p> | <p>Yes. The agreement must specifically proscribe the methods by which Charter can interconnect with CLEC in the means proposed by Qwest. No other form of leased facility interconnection, when that facility is not provided by Qwest, is permissible.</p> |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

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|-----------|-----------|----------------|--|--------------------|--|------------------|
|           |           |                | <p>Fide Request (BFR) process unless a particular arrangement has been previously provided to a third party, or is offered by Qwest as a product.</p> <p>7.1.2.4 Interconnection Facility provided a Third-Party. For purposes of this Section 7.1.2, CLEC may also interconnect with Qwest by leasing an Interconnection Facility from a third-party provider.</p> <p>7.1.2.4 (a) Interconnection via an Interconnection Facility provided by a Third Party without a Mid-Span Meet Arrangement with Qwest. This arrangement may consist of the use of a private line facility supplied to CLEC by a third party that has leased private line transport service from Qwest with LOA supplied by CLEC.</p> <p>7.1.2.4(b) Interconnection Facility provided a Third-Party provider on the CLEC side of the Collocation POI. CLEC may use, as an Interconnection facility, third party- provided transport terminated in a collocation space supplied to CLEC by a third party that has leased collocation space from Qwest with LOA supplied by CLEC.</p> |                    | <p>7.1.2.4 Intentionally left blank.</p> |                  |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No. | Issues(s)   | ICA Section(s) | Charter's Language   | Charter's Position  | Qwest's Language  | Qwest's Position  |
|-----------|---|----------------|--|---|---|---|
| 12.       | Should the agreement limit Qwest's obligations with respect to facilities it will establish when the parties establish a mid-span meet POI? | 7.1.2.3        | <p>[NOTE: Charter proposed alternative definition to Qwest proposed defined "LIS Entrance Facility" term: "Interconnection Facility" is a facility used for the transmission and routing of telephone exchange service and exchange access service between CLEC's Switch location, or equivalent facility, and the Qwest Switch location or Serving Wire Center.</p> | <p>No. The agreement should not limit Qwest's obligations with respect to the facilities it will establish when the parties establish a mid-span meet POI. A mid-span meet is an arrangement where both parties interconnect their network via the interconnection of fiber optic facilities that each party deploys from its switch, or other network point. By definition, the mid-span meet contemplates that the parties will connect their respective fiber facilities at a location that is generally at the mid-point between each party's respective switch or network point. Therefore, Qwest should not be allowed to artificially limit its obligations with respect to the amount of fiber facilities it must deploy when building such mid-span meets. Furthermore, the FCC has ruled that incumbent LECs have the obligation to make all "reasonable accommodations of interconnection" when establishing</p> | <p>[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.</p> | <p>Yes. Qwest should not be required to extend any Mid-Span Meet facilities beyond the boundaries of Qwest's Serving Wire Center.</p> |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No. | Issues(s) | ICA Section(s) | Charter's Language   | Charter's Position   | Qwest's Language  | Qwest's Position |
|-----------|-----------|----------------|--|--|---|------------------|
|           |           |                | <p>POI shall only be used for the exchange of traffic between the Parties and joint provisioning of telecommunications services, and may not be used to gain access to Unbundled Network Elements.</p> | <p>these arrangements. <i>See In the Matter of Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order</i>, 11 FCC Red 15499 at para. 553 (1996). Therefore, arbitrary limits on the length of such facilities is not consistent with Qwest's duty to accommodate interconnection in this manner.</p> <p>In addition, state commissions have ruled that Qwest should not be allowed to arbitrarily limit its obligations with respect to the length of spans deployed in a mid-span meet point arrangement.</p> <p><i>In the Matter of the Petition of AT&amp;T Wireless Services, Inc. for Arbitration of an Interconnection Agreement with U S WEST Communications, Inc., Pursuant to 47 U.S.C. § 252(b)</i>, DOCKET NO. P-421/EM-97-371, 1997 Minn. PUC LEXIS 118, at 21 (MN PUC 1997). <i>See also In the Matter of the Investigation Into US West Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996</i>, 26<sup>th</sup> Supplemental Order; Order Denying Qwest's Petition for Reconsideration of the 15<sup>th</sup> Supplemental Order, Docket No. UT-003022 at pg. 33 (WUTC Feb. 2001).</p> | <p>desired by one of the Parties, the Dispute Resolution provisions of the Agreement shall apply. A Mid-Span Meet POI shall only be used for the exchange of traffic between the Parties and joint provisioning of telecommunications services, and may not be used to gain access to Unbundled Network Elements.</p> |                  |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No. | Issues(s)  | ICA Section(s)  | Charter's Language  | Charter's Position   | Qwest's Language  | Qwest's Position   |
|-----------|--|---|---|--|---|--|
| 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 provisions of the agreement (via bill and keep arrangements)? | 7.2.2.1.2.2, 7.2.2.1.4, 7.3.2.1, 7.3.2.1.1, 7.3.2.1.2, 7.3.2.1.3, 7.3.2.1.4, 7.3.2.2, 7.3.2.3 | 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 | The parties have agreed that the traffic exchanged under this agreement will be subject to section 251(b)(5) of the Act. For such traffic FCC regulations permit a terminating carrier to recover from the originating carrier the cost of the transport and termination of traffic from an "interconnection point" (or POI) to the called party. See, e.g., <i>In the Matter of Developing a Unified Intercarrier Compensation Regime</i> , Notice of Proposed Rulemaking, 20 FCC Rcd 4685 at para. 87 (2000). Specifically, FCC rules permit each party to recover of the costs of transport and termination of telecommunications traffic that the other party originates, and delivers to the POI for delivery to the called party by the terminating carrier. 47 C.F.R. § 51.701. The rules define "transport" as the "transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC." <i>Id.</i> § 51.701(c). The rules define "termination" as the "switching of telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's | 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. | Charter should pay Qwest recurring and non-recurring charges for Qwest's provision of "direct trunked transport" which constitutes transport facilities from the parties' POI to the Qwest tandem offices or end office switches to which traffic that originates on Charters' network is delivered. |
|           |  |   |   |  | 7.2.2.1.4 LIS ordered to a Tandem Switch will be provided as direct trunked transport   |  |



**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No. | Issues(s)  | ICA Section(s) | Charter's Language   | Charter's Position  | Qwest's Language  | Qwest's Position |
|-----------|--|----------------|--|---|---|------------------|
|           | <p>their reciprocal compensation obligations under 47 U.S.C. § 251(b)(5), then LIS ordered from Qwest to a Tandem Switch will be provided as direct trunked transport between the Serving Wire Center of CLEC's POI and the Tandem Switch. Tandem transmission rates, as specified in Exhibit A of this Agreement, will apply to the transport provided from the Tandem Switch to Qwest's End Office Switch. For Qwest-originated traffic, Qwest will pay CLEC's applicable trunking and tandem switching rates from the POI at which the traffic is exchanged to CLEC's End Office Switch or equivalent device.</p> |                | <p>Based upon these governing principles Charter has proposed that the parties adopt a bill and keep compensation mechanism which will apply to both parties costs associated with the transport and termination of traffic originated by the other party. In other words, Charter will transport and terminate all traffic that Qwest originates on its network, and in return, Qwest should be obligated to transport and terminate all traffic that originates on Charter's network. Because the parties expect that the volume of traffic will be roughly balanced, their respective costs of transporting and terminating the other party's traffic should also be roughly balanced. Therefore, the parties can provide in-kind compensation to one another by performing these transport and termination functions without charge to</p> | <p>premises." <i>Id.</i> § 51.701(d). Furthermore, in addition, section 252(d)(2) states that, for the purpose of an incumbent LEC's compliance with section 251(b)(5), the terms and conditions for reciprocal compensation must provide for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the carrier"... 47 U.S.C. § 252(d)(2).</p> | <p>between the Serving Wire Center of CLEC's POI and the Tandem Switch. Tandem transmission rates, as specified in Exhibit A of this Agreement, will apply to the transport provided from the Tandem Switch to Qwest's End Office Switch.</p>   |                  |
|           | <p>7.3.2.1 Either Party may elect to 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.</p>   |                | <p>7.3.2.1.1 Direct trunked transport (DTT) is available between the terminating Party's Serving Wire Center for the POI and that Party's Tandem Switch or End Office Switches. DTT facilities are provided as dedicated DS3, DS1 or DS0 facilities.</p>   | <p>7.3.2.1 Either Party may elect to purchase direct trunked transport from the other Party.</p>  | <p>7.3.2.1.1 Direct trunked transport (DTT) is available between the Serving Wire Center of the POI and the terminating Party's Tandem Switch or End Office Switches. The applicable rates are described in Exhibit A. DTT facilities are provided as dedicated DS3, DS1 or DS0 facilities.</p> |                  |
|           | <p>7.3.2.1.2 [INTENTIONALLY LEFT</p>   |                |  | <p>7.3.2.1.2 When DTT is provided to a local or Access Tandem Switch for</p>  |   |                  |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

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|-----------|-----------|----------------|--|---|--|------------------|
|           |           |                | BLANK.]  | <p>the other party (i.e. a bill and keep arrangement). That arrangement is consistent with governing law, mutually beneficial, and cost effective because it eliminates the need for the parties to invoice the other party for transport and termination costs that each party incurs (and which will generally be equal, and offsetting).</p>   | <p><u>Exchange Service (EAS/Local) traffic, or to an Access Tandem Switch for IntraLATA LEC Toll or Jointly Provided Switched Access traffic, the applicable DTT rate elements apply between the Serving Wire Center and the Tandem Switch. Additional rate elements for delivery of traffic to the terminating End Office Switch are tandem switching and tandem transmission. These rates are described below.</u></p> |                  |
|           |           | 7.3.2.1.3      | <p>Where relevant, mileage shall be measured for DTT based on V&amp;H coordinates between the Serving Wire Center and the local/Access Tandem Switch or End Office Switch.</p> | <p>In contrast, Qwest proposes that the parties adopt bill and keep compensation <i>only for</i> the costs associated with the termination of traffic. Specifically, for the costs associated with the delivery of traffic from each party's respective end office switch to the called party. With respect to transport costs, Qwest proposes a compensation arrangement which would apply unilaterally to its benefit. Specifically, Qwest proposes that Charter pay Qwest for transporting traffic from the POI to its tandem and end office switches, by purchasing so-called direct trunked transport circuits. However, it is not at all clear that Qwest will in fact compensate Charter for its costs of transporting traffic from the POI to its tandem and end office switch equivalents.</p> | <p>7.3.2.1.3 Mileage shall be measured for DTT based on V&amp;H coordinates between the Serving Wire Center and the local/Access Tandem Switch or End Office Switch.</p>   |                  |
|           |           | 7.3.2.1.4      | [INTENTIONALLY LEFT BLANK.]  |   | <p>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.</p>  |                  |
|           |           | 7.3.2.2        | [INTENTIONALLY LEFT BLANK.]  |   | <p>7.3.2.2 If the Parties elect to establish LJS two-way DTT trunks, for reciprocal exchange of Exchange Service (EAS/Local) traffic, the cost of the LJS two-way DTT facilities shall be shared among the Parties by reducing the LJS two-way DTT rate element charges as follows:</p>  |                  |
|           |           |                |  | <p>Qwest's proposal therefore imposes cost burdens on Charter which are not consistent with the Section 252(d)(2) of the Act, and FCC regulations.</p>  | <p>7.3.2.2.1 The provider of the LJS two-way DTT facility will initially share the</p>   |                  |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

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|-----------|-----------|----------------|--------------------|--|--|------------------|
|           |           |                |                    | <p>Specifically, Qwest's proposal does not allow Charter to recover its transport costs, and therefore does NOT allow for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the carrier" as is required by Section 252(d)(2).</p> | <p><u>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</u></p> |                  |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

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|-----------|---|----------------|--|---|--|--|
|           |   |                | <p>7.3.2.3 Multiplexing arrangements (DS1/DS3 MUX or DS0/DS1 MUX) shall be established by each Party in connection with the Transport of traffic delivered by the other Party in accordance with standard industry practices. Multiplexing is part of the Transport function and is provided by the Parties to each other on a bill-and-keep basis.</p>  |   | <p>has never agreed to exchange VNXX traffic with CLEC.</p> <p>7.3.2.3 Multiplexing options (DS1/DS3 MUX or DS0/DS1 MUX) are available at rates described in Exhibit A.</p>  |  |
| 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? | 7.3.3.1 – 2    | <p>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.</p> <p>7.3.3.2 Nonrecurring charges for rearrangement requested by one Party for its own convenience may be assessed by the provider for each trunk rearrangement ordered, at one-half (1/2) the rates specified</p> | <p>For the reasons described immediately above, both parties should recover their respective trunk installation costs through a bill and keep mechanism, rather than by assessing charges on the other party. That mechanism is consistent with Section 252(d)(2) and FCC regulations which provide for both parties' right to mutually recover the costs of transporting and terminating traffic originating on the other party's network.</p> | <p>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.</p> <p>7.3.3.2 Nonrecurring charges for rearrangement may be assessed by the provider for each LIS trunk rearrangement ordered, at one-half (1/2) the rates specified in Exhibit A.</p> | <p>Qwest should be entitled to assess recurring and non-recurring charges upon Charter for establishing trunks used to exchange traffic between the parties' networks.</p> |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

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|-----------|--|----------------|--|---|---|--|
| 15.       | Should the parties' agreed upon bill and keep compensation arrangement apply to both the transport, and termination, of Section 251(b)(5) traffic exchanged between the parties? | 7.3.4          | <p>7.3.4.1.1.2 47 C.F.R. § 51.713 defines bill-and-keep arrangements for reciprocal compensation as arrangements in which neither of two interconnecting carriers charges the other for the <b>Transport and Termination of Exchange Service (EAS/Local)</b> telecommunications traffic that originates on the other carrier's network.</p> <p>7.3.4.1.2 The Parties agree that, based upon the fact that the traffic exchanged between the Parties historically has been roughly balanced, compensation for the <b>Transport and Termination of Exchange Service (EAS/Local)</b> Traffic shall be based upon the bill and keep compensation mechanism, whereby neither Party charges the other Party reciprocal compensation for the <b>Transport and Termination of Exchange Service (EAS/Local)</b> 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 <b>Transport and Termination</b> costs associated with delivery</p> | <p>Yes. Section 251(b)(5) provides that each LEC has the duty to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."<sup>1</sup> In addition, section 252(d)(2) states that, for the purpose of ILEC compliance with section 251(b)(5), the terms and conditions for reciprocal compensation must provide for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the carrier." Section 252(d)(2)(B)(i) further provides that the foregoing language shall not be construed "to preclude arrangements that afford the <b>mutual recovery</b> of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep)."<sup>2</sup> Therefore, any bill and keep arrangement must ensure that there is a <b>mutual recovery</b> of costs, such that both Parties can recover their respective costs of transporting and terminating the other party's traffic.</p> | <p>7.3.4.1.1.2 47 C.F.R. § 51.713 defines bill-and-keep arrangements for reciprocal compensation as arrangements in which neither of two interconnecting carriers charges the other for the Termination of Exchange Service (EAS/Local) telecommunications traffic that originates on the other carrier's network.</p> <p>7.3.4.1.2 The Parties agree that, based upon the fact that the traffic exchanged between the Parties historically has been roughly balanced, compensation for the Termination of Exchange Service (EAS/Local) Traffic shall be based upon the bill and keep compensation mechanism, whereby neither Party charges the other 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.</p> | <p>The bill and keep arrangements established between Qwest and Charter should only apply to the termination charges each party would otherwise assess upon the other party. Charges for the transport of traffic between the parties network, should not be covered by bill and keep arrangements. Instead, Charter should be required to compensate Qwest for the transport of traffic from the POI to Qwest tandem and end office switches.</p> |

<sup>1</sup> 47 U.S.C. § 251(b)(5).  
<sup>2</sup> 47 U.S.C. § 252(d)(2)(B)(i).

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No. | Issues(s)   | ICA Section(s) | Charter's Language   | Charter's Position   | Qwest's Language   | Qwest's Position   |
|-----------|---|----------------|--|--|--|--|
| 16.       | Should either party have the right to utilize indirect interconnection as a means of exchanging traffic with the other party? | 7.1.2.6 - 9    | <p>of the Exchange Service (EAS/Local) call to the terminating carrier's end-user.</p> <p>7.3.4.1.3 Pursuant to Section 7.3.4.1.2 above, when CLEC chooses to interconnect and exchange traffic with Qwest utilizing a single POI within the LATA, neither party will bill the other Party any usage sensitive charges (including trunks and/or facilities and switch related charges) for Transport or Termination costs that the terminating party may incur when delivering the originating Party's EAS/Local Traffic to end users within the same LATA.</p>                          | <p>Qwest's proposal to remove transport functions (what Qwest calls "direct transport" service) from this arrangement precludes the mutual recovery of costs because it would require Charter to compensate Qwest for direct trunk transport, without providing the same opportunity for Charter to recover its own transport costs from Qwest. Note that for purposes of dispute, the parties agree that "transport" shall have the same meaning as that term is defined under FCC regulations: the transmission and any necessary tandem switching of traffic from the interconnection point to the terminating carrier's end office switch that directly serves the called party.</p> | <p>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.</p> | <p>Qwest opposes the inclusion of indirect interconnection language in this agreement.</p> |
|           |   |                | <p>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.</p> <p>7.1.2.7 Unless otherwise agreed, the Parties shall exchange all Local Traffic and ISP-bound Traffic indirectly through one or more transiting carriers until the total volume of Local Traffic</p> | <p>Charter has the right to avail itself of indirect interconnection pursuant to Section 251(a). There are no limitations on such right, and Charter should be entitled to utilize indirect interconnection as a means of exchanging EAS, and other traffic, with Qwest's network.</p> <p>To break down barriers to competition in the local phone market, the Act requires all carriers to "interconnect, directly or indirectly" with other carriers. See 47 U.S.C. § 251(a)(1). The FCC and the courts have both reaffirmed that a competing carrier has the right to choose to avail itself of either the right of indirect</p>  | <p>[INTENTIONALLY LEFT BLANK]</p>  |  |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

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|-----------|-----------|----------------|--|--|------------------|------------------|
|           |           |                | <p>and ISP-bound Traffic being exchanged between the Parties' networks exceeds 240,000 minutes per month for three (3) consecutive months, at which time either Party may request the establishment of Direct Interconnection. Notwithstanding the foregoing, if either Party is unable to arrange for or maintain transit service for its originated Local Traffic upon commercially reasonable terms before the volume of Local Traffic and ISP-bound Traffic being exchanged between the Parties' networks exceeds 240,000 minutes per month, that Party may unilaterally, and at its sole expense, utilize one-way trunk(s) for the delivery of its originated Local Traffic to the other Party.</p> | <p>interconnection under Section 251(c), or the right of indirect interconnection under Section 251(a). Further, the use of direct interconnection in one instance does not preclude the use of indirect interconnection in another instance. See <i>Atlas Tel. v. Okla. Corp. Comm'n</i>, 400 F.3d 1256, 1268 (10<sup>th</sup> Cir. 2005).</p> <p>Further, if Charter desires to exchange local traffic with Qwest from an existing point of interconnection, and the indirect traffic exchange threshold for the switch serving that POI has been satisfied, Charter will establish a direct interconnection arrangement between such switch and Qwest's network or to interconnect its switch to another Charter switch in order to utilize an existing direct interconnection arrangement already established between Charter and Qwest.</p> |                  |                  |
|           |           |                | <p>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.</p> <p>7.1.2.9 Local Traffic and ISP-bound Traffic exchanged by the Parties indirectly through a transiting carrier shall be subject to the same Reciprocal Compensation, if any, as Local Traffic and ISP-bound Traffic exchanged</p>  |  |                  |                  |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No.       | Issues(s)  | ICA Section(s) | Charter's Language  | Charter's Position   | Qwest's Language   | Qwest's Position   |
|-----------------|--|----------------|---|--|--|--|
|                 |  |                | through Direct Interconnection.   |  |  |  |
| UNEs, SECTION 9 | 17. Should Charter be liable for miscellaneous charges assessed by Qwest, even where Charter does not request that Qwest perform any work? | 9.1.12         | Miscellaneous Charges apply for miscellaneous services listed below in this Section, if such miscellaneous services are available with Unbundled Network Elements as provided under "Rate Elements" subsections of this Section 9. Miscellaneous services are provided at CLEC's request, and CLEC must affirmatively agree to the charges for such services in advance. Miscellaneous Charges are in addition to recurring and nonrecurring charges that apply under this Agreement. When more than one miscellaneous service is requested for the same Unbundled Network Element(s), Miscellaneous Charges for each miscellaneous service apply. Basic rates apply for miscellaneous services during Qwest's regular business hours, 8 a.m. to 5 p.m., local time, Monday through Friday, excluding holidays; overtime Miscellaneous Charges apply for such services provided between 5 p.m. and 8 a.m., local time, Monday through Friday, or any time Saturday, excluding holidays; and premium Miscellaneous Charges apply for such services provided any time on Sundays or holidays. Depending on the specific circumstances, the items below are Miscellaneous Charges that may apply if requested by CLEC: | Where one party performs work at the request of the other party, then the party performing such work should be compensated. However, neither party should be liable for charges to the other party where the first party has not requested that the other party perform work. Qwest's proposed language would establish a process that gives Qwest the right to determine when it would assess charges upon Charter. There is no reason for the parties to incorporate language that provides a unilateral right to assess charges upon the other party. If Qwest performs work on Charter's behalf, and at Charter's request, it should be compensated for such work. However, Qwest should not have the right to unilaterally assess charges when Charter does not request that work be performed. | Miscellaneous Charges apply for miscellaneous services listed below in this Section, if such miscellaneous services are available with Unbundled Network Elements as provided under "Rate Elements" subsections of this Section 9. Miscellaneous services are provided at CLEC's request, or result in miscellaneous services being provided by Qwest. Miscellaneous Charges are in addition to recurring and nonrecurring charges that apply under this Agreement. When more than one miscellaneous service is requested for the same Unbundled Network Element(s), Miscellaneous Charges for each miscellaneous service apply. Basic rates apply for miscellaneous services provided during Qwest's regular business hours, 8 a.m. to 5 p.m., local time, Monday through Friday, excluding holidays; overtime Miscellaneous Charges apply for such services provided between 5 p.m. and 8 a.m., local time, Monday through Friday, or any time Saturday, excluding holidays; and premium Miscellaneous Charges apply for such services provided any time on Sundays or holidays. | Qwest should be permitted to assess charges upon Charter based upon Charter's actions that result in "miscellaneous services" provided by Qwest. |



**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No. | Issue(s) | ICA Section(s) | Charter's Language   | Charter's Position | Qwest's Language   | Qwest's Position |
|-----------|----------|----------------|--|--------------------|--|------------------|
|           |          |                | <p>a) Additional engineering – engineering work including: 1) additional technical information after Qwest has already provided the technical information normally on the design layout record; 2) customized service; or 3) review of Qwest outside plant records. Basic or overtime rates apply.</p> <p>b) Additional labor – installation – installation work scheduled to be performed outside of Qwest's regular business hours. Overtime or premium rates apply.</p> <p>c) Additional labor - other - work not included in "additional labor – installation" above that involves labor only, including testing and maintenance that are not part of initially requested installation or maintenance, or, for example, for Optional Testing when CLEC reports trouble and provides no test results and authorizes Qwest to perform tests on CLEC's behalf. Basic, overtime, or premium rates apply.</p> <p>d) Additional cooperative acceptance testing – performing specific tests requested by CLEC. Qwest's participation in such testing is subject to the availability of necessary qualified Qwest personnel and test equipment at test locations, which normally include the Qwest Central Office and may include CLEC's specified location.</p> |                    | <p>already provided the technical information normally on the design layout record; 2) customized service; or 3) review of Qwest outside plant records. Basic or overtime rates apply.</p> <p>b) Additional labor – installation – installation work scheduled to be performed outside of Qwest's regular business hours. Overtime or premium rates apply.</p> <p>c) Additional labor - other - work not included in "additional labor – installation" above that involves labor only, including testing and maintenance that are not part of initially requested installation or maintenance, or, for example, for Optional Testing when CLEC reports trouble and provides no test results and authorizes Qwest to perform tests on CLEC's behalf. Basic, overtime, or premium rates apply.</p> <p>d) Additional cooperative acceptance testing – performing specific tests requested by CLEC. Qwest's participation in such testing is subject to the availability of necessary qualified Qwest personnel and test equipment at test locations, which normally include the Qwest Central Office and may include CLEC's specified location. Tests include, but are not limited to, loop back, attenuation, intermodulation, phase jitter, noise, delay, echo, and frequency shift tests. Basic,</p> |                  |

**Exhibit C  
to Charter Arbitration Petition (WASHINGTON)  
Charter – Qwest Disputed Issues / Decision Point List**

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|-----------|-----------|----------------|---|--------------------|--|------------------|
|           |           |                | <p>Tests include, but are not limited to, loop back, attenuation, intermodulation, phase jitter, noise, delay, echo, and frequency shift tests. Basic, overtime, or premium rates apply.</p> <p>e) Non-scheduled testing - performing specific tests requested by CLEC as described above under "cooperative testing" or "manual testing" on a non-scheduled basis. Tests include, but are not limited to, loss, noise, slope, delay, and echo. Such tests are performed as the result of a repair request and are in addition to tests required to isolate and repair trouble. Basic, overtime, or premium rates apply.</p> <p>f) Cancellation - cancellation of a pending order for the installation of services at any time prior to notification by Qwest that service is available for use. The cancellation date is the date Qwest receives notice from CLEC that the order is cancelled. If CLEC or CLEC's End User Customer is unable to accept service within thirty (30) Days after the original Due Date, the order will be cancelled by Qwest. Prices for this miscellaneous service are set forth in section [INSERT] of Qwest's [IDENTIFY APPLICABLE] Tariff. Additional information concerning the application of prices for cancellations can be found in Qwest's Tariff FCC No. 1,</p> |                    | <p>overtime, or premium rates apply.</p> <p>e) Non-scheduled testing - performing specific tests requested by CLEC as described above under "cooperative testing" or "manual testing" on a non-scheduled basis. Tests include, but are not limited to, loss, noise, slope, delay, and echo. Such tests are performed as the result of a repair request and are in addition to tests required to isolate and repair trouble. Basic, overtime, or premium rates apply.</p> <p>f) Cancellation - cancellation of a pending order for the installation of services at any time prior to notification by Qwest that service is available for use. The cancellation date is the date Qwest receives notice from CLEC that the order is cancelled. If CLEC or CLEC's End User Customer is unable to accept service within thirty (30) Days after the original Due Date, the order will be cancelled by Qwest. Prices for this miscellaneous service are market-based, using Qwest's Tariffed, cataloged, price listed, or other similarly documented prices, and are subject to change. Additional information concerning the application of prices for cancellations can be found in Qwest's Tariff FCC No. 1, Section 5.</p> <p>g) Design change - information provided by CLEC or a request from CLEC that results in an engineering</p> |                  |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No. | Issues(s) | ICA Section(s) | Charter's Language  | Charter's Position | Qwest's Language  | Qwest's Position |
|-----------|-----------|----------------|---|--------------------|---|------------------|
|           |           |                | <p>Section 5.</p> <p>g) Design change – information provided by CLEC or a request from CLEC that results in an engineering review and/or a design change to service on a pending service order, per order, per occurrence. Design changes include, but are not limited to: 1) changes to the address on a pending service order when the new address is in the same Qwest Wire Center as the original address; or 2) conversions from an Unbundled Network Element to a private line/Special Access circuit. In addition to a design change Miscellaneous Charge, an address change may result in the application of an expedite Miscellaneous Charge in order to retain the original Due Date. Prices for this miscellaneous service are market-based, using Qwest's Tariffed, cataloged, price listed, or other similarly documented prices, and are subject to change.</p> <p>h) Dispatch – 1) information provided by CLEC, or a request from CLEC, in relation to installation of services, resulting in dispatch of a Qwest technician(s) when dispatch is not required for Qwest to complete its installation work; 2) information provided by CLEC resulting in dispatch, or a request from CLEC for dispatch, of a Qwest technician(s) in relation to a repair request where no trouble is found in Qwest's facilities; and 3) a Qwest technician(s) is dispatched and CLEC or CLEC's End User Customer is not available or ready. Prices for this miscellaneous service are market-based, using Qwest's Tariffed, cataloged, price listed, or other</p> |                    | <p>review and/or a design change to service on a pending service order, per order, per occurrence. Design changes include, but are not limited to: 1) changes to the address on a pending service order when the new address is in the same Qwest Wire Center as the original address; or 2) conversions from an Unbundled Network Element to a private line/Special Access circuit. In addition to a design change Miscellaneous Charge, an address change may result in the application of an expedite Miscellaneous Charge in order to retain the original Due Date. Prices for this miscellaneous service are market-based, using Qwest's Tariffed, cataloged, price listed, or other similarly documented prices, and are subject to change.</p> <p>h) Dispatch – 1) information provided by CLEC, or a request from CLEC, in relation to installation of services, resulting in dispatch of a Qwest technician(s) when dispatch is not required for Qwest to complete its installation work; 2) information provided by CLEC resulting in dispatch, or a request from CLEC for dispatch, of a Qwest technician(s) in relation to a repair request where no trouble is found in Qwest's facilities; and 3) a Qwest technician(s) is dispatched and CLEC or CLEC's End User Customer is not available or ready. Prices for this miscellaneous service are market-based, using Qwest's Tariffed, cataloged, price listed, or other</p> |                  |

**Exhibit C  
to Charter Arbitration Petition (WASHINGTON)  
Charter – Qwest Disputed Issues / Decision Point List**

| Issue No. | Issues(s) | ICA Section(s) | Charter's Language   | Charter's Position | Qwest's Language  | Qwest's Position |
|-----------|-----------|----------------|--|--------------------|---|------------------|
|           |           |                | <p>Qwest technician(s) is dispatched and CLEC or CLEC's End User Customer is not available or ready. Prices for this miscellaneous service are set forth in section [INSERT] of Qwest's [IDENTIFY APPLICABLE] Tariff.</p> <p>i) Expedite – a Due Date that reflects a shorter service interval than is available in Qwest's Service Interval Guide; or that is a request for an earlier Due Date than has been established on a pending order; or that is required to meet a Due Date on a pending order due to design or other changes submitted by CLEC. Qwest will accommodate CLEC's request for an expedited installation if it can do so without delaying Due Dates or orders of other CLECs or End User Customers. Charges for expedited installations are in addition to nonrecurring charges for the service ordered. Prices for this miscellaneous service are set forth in section [INSERT] of Qwest's [IDENTIFY APPLICABLE] Tariff.</p> <p>j) Maintenance of Service/Trouble Isolation – work performed by Qwest when CLEC reports trouble to Qwest and no trouble is found in Qwest's facilities. CLEC is responsible for payment of charges when the trouble is in equipment or systems provided by a party(ies) other than Qwest. Additionally, when CLEC</p> |                    | <p>similarly documented prices, and are subject to change.</p> <p>i) Expedite – a Due Date that reflects a shorter service interval than is available in Qwest's Service Interval Guide; or that is a request for an earlier Due Date than has been established on a pending order; or that is required to meet a Due Date on a pending order due to design or other changes submitted by CLEC. Qwest will accommodate CLEC's request for an expedited installation if it can do so without delaying Due Dates or orders of other CLECs or End User Customers. Charges for expedited installations are in addition to nonrecurring charges for the service ordered. Prices for this miscellaneous service are market-based, using Qwest's Tariffed, cataloged, price listed, or other similarly documented prices, and are subject to change.</p> <p>j) Maintenance of Service/Trouble Isolation – work performed by Qwest when CLEC reports trouble to Qwest and no trouble is found in Qwest's facilities. CLEC is responsible for payment of charges when the trouble is in equipment or systems provided by a party(ies) other than Qwest. Additionally, when CLEC reports trouble within a quantity of services and circuits, but fails to identify the specific service and circuit experiencing trouble,</p> |                  |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No.                             | Issues(s)  | ICA Section(s) | Charter's Language  | Charter's Position   | Qwest's Language   | Qwest's Position  |
|---------------------------------------|--|----------------|---|--|--|---|
|                                       |  |                | <p>reports trouble within a quantity of services and circuits, but fails to identify the specific service and circuit experiencing trouble, charges apply for the time spent by Qwest to isolate the trouble. A call-out of Qwest technician at a time not consecutive with that technician's scheduled work period is subject to a minimum charge of four (4) hours. Failure of Qwest personnel to find trouble in Qwest facilities will result in no charge if the trouble is subsequently found in those facilities. Charges apply per Qwest technician, from the time of dispatch until the work is complete. Trouble Isolation Charges (TIC) apply for trouble isolation work on POTS and Maintenance of Service other services. Dispatch Miscellaneous charges apply for trouble isolation work on other services. Dispatch Miscellaneous Charges may apply in addition to Maintenance of Service charges or TIC. Basic, overtime, or premium rates apply. Prices for this miscellaneous service are set forth in section [INSERT] of Qwest's [IDENTIFY APPLICABLE] Tariff.</p> |  | <p>charges apply for the time spent by Qwest to isolate the trouble. A call-out of Qwest technician at a time not consecutive with that technician's scheduled work period is subject to a minimum charge of four (4) hours. Failure of Qwest personnel to find trouble in Qwest facilities will result in no charge if the trouble is subsequently found in those facilities. Charges apply per Qwest technician, from the time of dispatch until the work is complete. Trouble Isolation Charges (TIC) apply for trouble isolation work on POTS and Maintenance of Service other services. Dispatch Miscellaneous Charges may apply in addition to Maintenance of Service charges or TIC. Basic, overtime, or premium rates apply. Prices for this miscellaneous service are market-based, using Qwest's Tariffed, cataloged, price listed, or other similarly documented prices, and are subject to change.</p> |   |
| <b>ANCILLARY SERVICES, SECTION 10</b> |  |                |   |  |  |   |
| 18.                                   | Should Qwest be required to make 911 facilities available to Charter at cost-based rates | 10.3.7.1.1     | <p>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</p>   | <p>Qwest is required to provide to Charter interconnection trunks and facilities for the provision of 911 services at TELRIC rates, at Charter's requests. In a recent order concerning the provision of facilities for 911 services, the FCC has definitively ruled on this question: "We note that the</p> | <p>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</p>   | <p>Qwest will provide access to facilities necessary to interconnect to its 911 network (selective routers and related equipment), at rates set forth in Qwest's access tariffs. Such rates are generally not established pursuant to the standard of Section</p> |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No. | Issues(s)  | ICA Section(s) | Charter's Language   | Charter's Position  | Qwest's Language  | Qwest's Position   |
|-----------|--|----------------|--|---|---|--|
|           | pursuant to Section 251(c)?  |                | <p>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 routing is ordered by the State/PSAP, CLEC will not be subject to Qwest transport charges. <b>Otherwise, rates for 911/E911 facilities shall be the same as rates for LIS facilities.</b></p> | <p>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 will include all the elements necessary for telecommunications carriers to provide 911/E911 solutions that are consistent with the requirements of this Order..." WC Docket No. 04-36, WC Docket No. 05-196, <i>In the Matters of IP-Enabled Services 911 Requirements for IP-Enabled Service Providers</i>, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 para. 38 (2005) (footnote omitted). Qwest's obligation to provide interconnection trunks and facilities for 911 services is thus unambiguous. Moreover, because Qwest's obligations arise under sections 251(a) and (c), Qwest is required to provide these facilities at TELRIC rates.</p> | <p>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.</p> | 251(c) of the Act.   |
| 19.       | Should Qwest be permitted to undertake marketing of its own activities based upon the identity of Charter's subscriber listings? | 10.4.2.4       | <p>If CLEC provides its End User Customer's Listings to Qwest, CLEC grants Qwest access to CLEC's End User Customer Listings information for use in its Directory Assistance Service as described in Section 10.5, and in its Directory Assistance List Service as described in Section 10.6. <b>CLEC's Listings supplied to Qwest by CLEC shall not be used by Qwest for marketing purposes.</b> Qwest will</p>   | <p>Qwest should not be permitted to market to Charter subscribers by segregating, or otherwise identifying, Charter's subscribers included in Qwest's database of subscriber listings that is used for publishing white pages directories. Qwest's obligations to provide nondiscriminatory access to directory listing, pursuant to 47 U.S.C. § 251(b)(3),</p>   | <p>If CLEC provides its End User Customer's Listings to Qwest, CLEC grants Qwest access to CLEC's End User Customer Listings information for use in its Directory Assistance Service as described in Section 10.5, and in its Directory Assistance List Service as described in Section 10.6, and for other lawful purposes, except that CLEC's Listings supplied to Qwest by CLEC and marked as nonpublished or nonlisted</p>  | <p>Qwest will not market to Charter's subscribers listings based on segregation of Charter's Listings.</p> |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No. | Issues(s)   | ICA Section(s) | Charter's Language   | Charter's Position  | Qwest's Language   | Qwest's Position   |
|-----------|---|----------------|--|---|--|--|
| 20.       | Whether prior written authorization to release, sell, or make available, Charter listing information should be obtained by Qwest? | 10.4.2.5       | <p>incorporate CLEC End User Customer Listings in the Directory Assistance Database. Qwest will incorporate CLEC's End User Customer Listings information in all existing and future Directory Assistance applications developed by Qwest. Should Qwest cease to be a Telecommunications Carrier, by virtue of a divestiture, merger or other transaction, this access grant automatically terminates.</p> | <p>requires Qwest to accept a customer's listing information in a directory assistance database or in a directory compilation for external use (such as the white pages). <i>In Re Implementation of the Telecommunications Act of 1996</i>, Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273, 14 FCC Red 15550, ¶ 160 (1999) ("Directories Order"). Where Qwest is obligated to provide such access pursuant to its duties under federal law, it should not be allowed to use such information to engage in improper, or unlawful, retention or win-back marketing activities by identifying Charter's subscribers through the listing information submitted to Qwest.</p> | <p><u>Listings shall not be used for marketing purposes subject to the terms and conditions of this Agreement.</u> Qwest will incorporate CLEC End User Customer Listings in the Directory Assistance Database. Qwest will incorporate CLEC's End User Customer Listings information in all existing and future Directory Assistance applications developed by Qwest. <u>Qwest will not market to CLEC's End User Customer's Listings based on segregation of CLEC's Listings.</u> Should Qwest cease to be a Telecommunications Carrier, by virtue of a divestiture, merger or other transaction, this access grant automatically terminates.</p> | <p>There should not be any obligation for Qwest to seek prior written authorization from Charter prior to Qwest's decision to release, make available, or sell CLEC's End User Customer Listings to directory publishers, or to other third parties.</p> |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| Issue No. | Issues(s)  | ICA Section(s) | Charter's Language   | Charter's Position  | Qwest's Language   | Qwest's Position   |
|-----------|--|----------------|--|---|--|--|
| 21.       | Given that the parties have agreed that there should be no charges for directory listings, it is appropriate to include language reflecting the parties' understanding in the agreement? | 10.4.3.3       | <p>accordance with Applicable Law. Listings shall not be provided or sold in such a manner as to segregate End User Customers by Carrier and shall not be provided by Qwest for marketing purposes to third parties. Qwest will not charge CLEC for updating and maintaining Qwest's Listings databases. CLEC will not receive compensation from Qwest for any sale of Listings by Qwest as provided for under this Agreement</p> <p><b>There shall be no charge (recurring or non-recurring) to CLEC for the inclusion of a Primary Listing for CLEC's End Users.</b></p> | <p>The FCC has concluded that the 47 U.S.C. § 251(b)(3) requirement of nondiscriminatory access to directory listing refers to the act of placing a customer's listing information in a directory assistance database or in a directory compilation for external use (such as the white pages). <i>In Re Implementation of the Telecommunications Act of 1996</i>, Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273, 14 FCC Red 15550, ¶ 160 (1999) ("Directories Order"). The FCC affirmed its requirement "that LECs offer access to telephone numbers, operator services, directory assistance, and directory listings that is equal to the access that the LEC provides to itself and that the providing LEC shall continue to bear the burden of</p> | <p>Directory Assistance Listings to Directory Assistance providers. Listings shall not be provided or sold in such a manner as to segregate End User Customers by Carrier. Qwest will not charge CLEC for updating and maintaining Qwest's Listings databases. CLEC will not receive compensation from Qwest for any sale of Listings by Qwest as provided for under this Agreement</p> <p>[INTENTIONALLY LEFT BLANK.]</p> | <p>Qwest acknowledges that there should be no charges for primary listings. However, Qwest believes that the agreement should not include specific language stating that there will be no charges for including CLEC's primary listings in the agreement. Instead, the agreement should simply refer to the price list, which currently establishes a rate of \$0.00 for primary listings.</p> |



Exhibit C  
to Charter Arbitration Petition (WASHINGTON)  
Charter – Qwest Disputed Issues / Decision Point List

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|-----------|-----------|----------------|--------------------|--|------------------|------------------|
|           |           |                |                    | <p>proof that it is offering nondiscriminatory access." <i>Directories Order</i> at ¶ 9. Further, an ILEC must "place the listing information in its directories in a nondiscriminatory manner, meaning that [the ILEC] must place this information on terms and conditions that are equal to those provided to [it's] own customers." <i>US West Communications, Inc. v. Hix</i>, 93 F. Supp. 2d 1115, 1132 (D.Colo. 2000). Further, the act of placing a customer's listing does not have to be performed by the incumbent carrier itself. <i>MCI Telecommunications Corp. and MCI Metro Access Transmission Services, Inc. v. Michigan Bell Telephone Company d/b/a Ameritech Michigan, Inc.</i>, 79 F. Supp 2d 768, 802 (E.D. Mich. 1999). 47 C.F.R. § 51.5 defines directory listings as "information identifying the listed names of subscribers of a telecommunications carrier and such subscriber's telephone numbers, addresses, or primary advertising classifications ... that the telecommunications carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format." A LEC that chooses to cause its customer listings to be published by a third party does not relieve itself of its § 251(b)(3) obligation to place a competing LEC's customer's listing information in its</p> |                  |                  |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

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|-----------|--|----------------|--|--|---|---|
|           |  |                |  | <p>directory assistance database or in its directory compilation which is made available for external use. Therefore, Qwest must place Charter's listings in its directory on the same terms that it provides such service to its own customers.</p> <p>Furthermore, Qwest has acknowledged that there should be no charges for the inclusion of Charter subscriber listings in its directories. However, Qwest will not agree to so state in the agreement itself. Instead, Qwest proposes to simply designate a rate of \$0.00 in the price list for the act of including Charter listings in the Qwest directories. But this approach does not account for the parties' mutual understanding, and agreement, not to assess charges. Moreover, including a rate (even if \$0) in the price list implies that there may be some charges for this action in the future. Should that eventuality occur, the parties can amend the agreement to account for the additional charge.</p> |   |   |
| 22.       | Should the agreement include language establishing that Qwest is prohibited from assessing | 10.4.3.4       | 10.4.2.1.2 CLEC will be charged for its facilities-based premium Listings (e.g., additional, foreign, cross-reference) at prices contained in Exhibit A. Primary Listings and other types of Listings are defined in the Qwest General Exchange Tariffs. | Where Charter subscribers choose not to include their listing information in the directories, there should be no charge assessed upon Charter for not publishing that listing information. Where one party undertakes certain actions on behalf of the other party, charges may be appropriate. However, the agreement should establish  | 10.4.2.1.2 CLEC will be charged for its facilities-based premium Listings (e.g., additional, foreign, cross-reference) and privacy Listings (i.e., nonlisted and nonpublished) at market-based prices contained in Exhibit A. Primary Listings and other types of Listings are defined in the | The agreement should not include any language stating that Qwest will not charge Charter for not publishing Charter subscribers in its directories. |

**Exhibit C  
to Charter Arbitration Petition (WASHINGTON)  
Charter – Qwest Disputed Issues / Decision Point List**

| <b>Issue No.</b> | <b>Issues(s)</b>   | <b>ICA Section(s)</b> | <b>Charter's Language</b>  | <b>Charter's Position</b>   | <b>Qwest's Language</b>  | <b>Qwest's Position</b>   |
|------------------|--|-----------------------|--|---|--|---|
|                  | charges upon Charter when Charter submits or non-publish or non-list information to Qwest?     |                       | <p>10.4.3 The following rate elements apply to white pages directory Listings and are contained in Exhibit A of this Agreement.</p> <p>10.4.3.1 Primary Listings; and</p> <p>10.4.3.2 Premium Listings.</p> <p>10.4.3.4 CLEC shall have no obligation to provide Qwest directory listing information related to CLEC End User Customers that have requested non-list or non-publish status within the directory. Qwest will not assess a charge upon CLEC for providing, maintaining, storing, or otherwise processing information related to End User Customers Listings, that have requested non-list or non-publish status, or for any other act associated with such End User Customers.</p> | <p>fair and equitable principles surrounding the obligation to compensate the other party. Where one party takes no action, it should not be entitled to assess charges upon the other party. Accordingly, when Charter subscribers are not published in a Qwest directory, there should be no charge assessed against Charter.</p> | <p>Qwest General Exchange Tariffs.</p> <p>10.4.3 The following rate elements apply to white pages directory Listings and are contained in Exhibit A of this Agreement.</p> <p>10.4.3.1 Primary Listings; and</p> <p>10.4.3.2 Premium and Privacy Listings.</p> <p>10.4.3.4 [Intentionally left blank.]</p> |   |
| 23.              | Should the agreement reflect the fact that Qwest has the obligation under Section 251(b)(3) to | 10.4.5 & 15           | 10.4.5 The same provisions and requirements that apply to white pages directory treatment of CLEC Listings also apply to the provision of a classified listing in any classified (Yellow Pages) directory published by or on behalf of, or under contract to, Qwest. Arrangements  | As noted above, Qwest's obligation under Section 251(b)(3) includes the obligation to provide non-discriminatory access to directory listings, which refers to the act of listing a customer in a directory.  | 10.4.5 [INTENTIONALLY LEFT BLANK.]   | Qwest should not be required to accept any obligation with respect to the publishing of information in the Yellow Pages book published by Qwest's former affiliate DEX. |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

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|-----------|--|----------------|--|--|---|---|--|
|           | provide directory listings for both white pages and yellow pages listings? |                | <p>for listings in a classified directory other than primary listings, including bold-faced listings, multiple listings, and advertisements, shall be arranged between any affected End User and Qwest's contractor.</p> | <p>listings" broadly as any information "that the telecommunications carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format." 47 C.F.R. § 51.5. Thus, the duty to publish competitors' business customers in a yellow pages directory on a nondiscriminatory basis extends to incumbent carriers, like Qwest, who have caused their own customers listings to be published in a yellow pages directory. Moreover, the issue of whether Ameritech Publishing is an affiliate of Qwest is not relevant because the regulation is drafted more broadly. "Directory listings" include those that an incumbent carrier has "caused to be published." <i>Id.</i> Qwest causes its own customers to be published in the Yellow Pages book published by Qwest's former affiliate, DEX Publishing. Therefore, Qwest has the duty to provide nondiscriminatory access to such yellow pages publication to MCI's customers. See <i>MCI Telecommunications Corp. and MCI Metro Access Transmission Services, Inc. v. Michigan Bell Telephone Company d/b/a Ameritech Michigan, Inc.</i>, 79 F. Supp 2d 768, 802 (E.D. Mich. 1999) (reconsideration order reversing earlier decision after FCC order resolved issue) and <i>US West Communications, Inc. v. Hix</i>, 93 F. Supp. 2d 1115, 1132 (D. Colo. 2000).</p> | <p>15. Qwest shall provide CLEC with directory listing functions (that is, inclusion of CLEC numbers in printed white and yellow pages directories) to the same extent that Qwest provides its own End Users with such listing functions, irrespective of whether Qwest provides such functions itself or relies on a third party to do so. Qwest shall promptly cause any contracts or agreements it has with any third party with respect to the provision of these services and functions to be amended, to the extent necessary, so that CLEC may provide its own End Users' information for inclusion in such printed directories on the same terms and conditions that Qwest End User information is included. Notwithstanding the foregoing, CLEC acknowledges that yellow pages advertising arrangements will be established directly between Qwest's Official Directory Publisher and any End Users seeking to place such advertising.</p> | <p>15. Qwest and CLEC agree that certain issues outside the provision of basic white page Directory Listings, such as yellow pages advertising, yellow pages Listings, directory coverage, access to call guide pages (phone service pages), applicable Listings criteria, white page enhancements and publication schedules will be the subject of negotiations between CLEC and directory publishers, including Qwest's Official Directory Publisher. Qwest acknowledges that CLEC may request Qwest to facilitate discussions between CLEC and Qwest's Official Directory Publisher.</p> |  |

Exhibit C  
to Charter Arbitration Petition (WASHINGTON)  
Charter – Qwest Disputed Issues / Decision Point List

| Issue No. | Issues(s)   | ICA Section(s) | <u>Charter's Language</u>   | <u>Charter's Position</u>   | <u>Qwest's Language</u>   | <u>Qwest's Position</u>   |
|-----------|---|----------------|---|---|---|---|
| 24.       | Should the party that initiates an audit assume cost responsibility for where such audit: (a) the audit reveals minimal differences in amount billed and amounts owed; and, (b) an independent auditor is selected by both parties? | 18.2.8 - 10    | <p>18.2.8.2 Notwithstanding the foregoing, the non-requesting Party shall pay all of the expenses in the event an Audit or Examination identifies a difference between the amount billed and the amount determined by the Audit to be owed that exceeds ten percent (10%) of the amount billed and results in a refund and reduction of at least ten percent (10%) in the Billing to the requesting Party.</p> <p>18.2.9 The Audited Party may require that an Audit be conducted by a mutually agreed-to independent auditor, which agreement will not be unreasonably withheld or delayed by either Party. Under this circumstance, the costs of the independent auditor shall be paid for by the Party requesting the Audit subject to Section 18.2.8.2.</p> <p>18.2.10 In the event that the non-requesting Party requests that the Audit be performed by an independent auditor, the Parties shall mutually agree to the selection of the independent auditor. Under this circumstance, the costs of the independent auditor shall be established pursuant to the terms set forth in Section 18.2.9, above. However, the portion of this</p> | <p>The party initiating an audit of the other party must assume some responsibility for the costs of the audit. Where the audit reveals significant differences in the amounts owed and the amounts billed (or should have been billed) then it may be appropriate for the audited party to assume the costs of the audit. However, that threshold should be set at 10% of the difference between the amounts billed, and the amounts determined by the audit. The 10% threshold is an appropriate differential level considering the fact that the amounts billed to Charter will generally be relatively small (as compared to other competitive LECs that rely upon unbundled network elements or resale). Where the amounts billed are relatively small, the 5% threshold proposed by Qwest may be more easily triggered, even though the total amounts in question are still relatively limited.</p> <p>Furthermore, if the audited party requests that the audit be performed by an independent auditor, the cost obligations should be established in the same way. Specifically, the party that requests the audit should assume responsibility for the costs of the independent auditor, unless the audit reveals a significant differential in amounts billed and amounts that should</p> | <p>18.2.8.2 Notwithstanding the foregoing, the non-requesting Party shall pay all of the expenses in the event an Audit or Examination identifies a difference between the amount billed and the amount determined by the Audit that exceeds five percent (5%) of the amount billed and results in a refund and/or reduction in the Billing to the requesting Party.</p> <p>18.2.9 The Party requesting the Audit may request that an Audit be conducted by a mutually agreed-to independent auditor, which agreement will not be unreasonably withheld or delayed by the non-requesting Party. Under this circumstance, the costs of the independent auditor shall be paid for by the Party requesting the Audit subject to Section 18.2.8.2.</p> <p>18.2.10 In the event that the non-requesting Party requests that the Audit be performed by an independent auditor, the Parties shall mutually agree to the selection of the independent auditor. Under this circumstance, the costs of the independent auditor shall be shared equally by the Parties. The portion of this expense borne by the requesting Party shall be borne by the non-requesting Party if the terms of Section</p> | <p>The threshold for shifting the audit costs should be set at 5% of the amounts billed, and that which the audit determines should have been billed.</p> <p>Furthermore, where an independent auditor is used to conduct the audit, the costs of the audit should be borne equally by the parties.</p> |

**Exhibit C**  
**to Charter Arbitration Petition (WASHINGTON)**  
**Charter – Qwest Disputed Issues / Decision Point List**

| <b>Issue No.</b> | <b>Issues(s)</b> | <b>ICA Section(s)</b> | <b>Charter's Language</b>  | <b>Charter's Position</b> | <b>Qwest's Language</b> | <b>Qwest's Position</b> |
|------------------|------------------|-----------------------|--|---------------------------|-------------------------|-------------------------|
|                  |                  |                       | expense borne by the requesting Party shall be borne by the non-requesting Party if the terms of Section 18.2.8.2 are satisfied. | have been billed.         | 18.2.8.2 are satisfied. |                         |