BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of **Southwestern Bell Telephone, L.P., d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues for A Successor Agreement to the Missouri 271 Agreement ("M2A")**	Case No. TO-2005-0336

RESPONSE OF CHARTER FIBERLINK-MISSOURI, LLC TO THE PETITION FOR ARBITRATION OF SOUTHWESTERN BELL TELEPHONE, L.P. d/b/a SBC MISSOURI

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April 25, 2005

EXECUTIVE SUMMARY

Charter Fiberlink-Missouri, LLC, ("Charter") hereby presents its formal Response to the Petition for Arbitration filed by Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC") on March 30, 2005.

As described herein, Charter is a facilities-based CLEC in Missouri that utilizes its own network and facilities to provide competitive local exchange services to the residents of Missouri. Charter has been operating in the State of Missouri since early 2002, focusing primarily on the residential services market rather than the enterprise, or business, services market that many other CLECs focus upon. Currently Charter serves approximately forty-five thousand (45,000) primarily residential customers in the State of Missouri, and continues to expand its subscriber base by offering service on competitive rates, terms and conditions to the residents of Missouri.

Charter and SBC have been negotiating the terms of a successor agreement for their operations in Missouri since 2004. Those negotiations have been very productive, resulting in the resolution of a significant number of disputed issues. However, several issues remain unresolved and therefore must be arbitrated by this Commission. Each of those disputed issues, and Charter's preliminary position with respect to those issues, are set forth below. In addition, Charter provides in Exhibit B and its six subsections documentation showing contract language that the Parties have agreed upon; SBC's proposed language (bolded); and Charter's proposed contract language (underscored).

Charter requests that the Commission arbitrate the disputed issues described herein, rule in favor of Charter with respect to such issues, and adopt the proposed language proffered by Charter as shown in Exhibit B.

TABLE OF CONTENTS

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RESPONSE OF
CHARTER FIBERLINK-MISSOURI, LLC
TO THE PETITION FOR ARBITRATION OF
SOUTHWESTERN BELL TELEPHONE, L.P. d/b/a SBC MISSOURI

Pursuant to Section 252(b)(3) of the Telecommunications Act of 1996[1] (the "Act"), 4 CSR 240-36.040, and the Missouri Public Service Commission's ("PSC" or "Commission") Order Directing Notice of the filing of a Petition for Arbitration[2] in the above referenced docket, Charter Fiberlink-Missouri, LLC ("Charter") hereby submits this Response to the arbitration issues raised by Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC") in its Petition for Arbitration dated March 30, 2005.

I. INTRODUCTION AND OVERVIEW.

THE PARTIES

1. Respondent Charter Fiberlink-Missouri, LLC is a Delaware Limited Liability Company, duly authorized to conduct business in Missouri, with its principal offices in St. Louis, Missouri at 12405 Powerscourt Drive, St. Louis, Missouri, 63131.

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[1] 47 U.S.C. § 252(b)(1).

[2] *Order Directing Notice of Petition for Arbitration, Appointment of Arbitrator, Appointment of Arbitrator Advisory Staff, Adding Parties, Setting Initial Arbitration Meeting, Directing Filing, and Adopting Protective Order*, Case No. TO-2005-0336 (rel. April 6, 2005).

Charter is a "local exchange telecommunications company" and a "public utility" and is duly authorized to provide "telecommunications service" within the State of Missouri as each of these phrases is defined in Section 386.020 RsMo. 2000.

2. Charter is a facilities-based competitive LEC ("CLEC") that has been operating in the state of Missouri since early 2002. Charter currently serves approximately forty-five thousand (45,000) primarily residential customers in the State of Missouri, and continues to expand its subscriber base in Missouri by offering service on competitive rates, terms and conditions to the residents of Missouri.

3. Relying upon the established network and facilities of affiliated companies, Charter provides telephone and voice services to Missouri residents as a fully integrated facilities-based CLEC. As such — and unlike many other CLECs — Charter does not rely upon unbundled network elements ("UNEs") from SBC or any other incumbent LEC. And, Charter does not resell SBC services. Instead, Charter utilizes its own transport, local access ("loops") and switching facilities to provide its competing services. For this reason, Charter's primary concern in this arbitration is with terms of interconnection between the parties' respective networks and associated business terms and conditions.

4. Charter is also unique in another important way: it serves primarily residential end users who often have few competitive choices for alternative telephone service. Given that many of the largest CLECs have all but abandoned attempts to compete with SBC and other incumbent LECs for residential voice services, Charter is often the only CLEC left to compete with SBC in residential markets in Missouri. For these reasons, Charter's position in Missouri as a truly facilities-based CLEC competing

with SBC in residential markets is largely unique.

5. All correspondence, pleadings, orders, decisions and communications regarding this proceeding should be sent to:

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6. Charter does not have any pending or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates, which action, judgment, or decision has occurred within three (3) years of the date of this pleading.

7. Charter does not have any annual report or assessment fees that are overdue in Missouri.

BACKGROUND ON NEGOTIATIONS AND TIMELINE FOR PETITION OF ARBITRATION

8. Charter has interconnected and exchanged traffic with SBC under the so-called M2A interconnection agreement since 2001. As described in SBC's Petition for Arbitration, the M2A established terms for the interconnection and exchange of traffic between Charter and SBC for the State of Missouri.

9. Charter and SBC have been discussing the terms of interconnection agreements between them in general terms, and covering a number of SBC states, since early 2004. See Exhibit A (parties' correspondence concerning Charter's request for interconnection with SBC). In the course of those discussions, on September 3, 2004, Charter received a notice of termination and request for negotiations from SBC stating that the M2A agreement would be expiring in March 2005, and requesting that Charter engage in specific negotiations with SBC for a successor agreement in Missouri. Thereafter, SBC specifically added the negotiation of a replacement to the existing M2A contract in Missouri to the ongoing discussions in October 2004.

10. Those negotiations have been very productive, resulting in the resolution of a significant number of disputed issues. However, several issues remain unresolved and therefore must be arbitrated by this Commission.

II. CHARTER'S RESPONSE TO THE SPECIFIC ARBITRATION ISSUES RAISED BY SBC.

11. As required under 4 CSR 240-36.040(7), in the following paragraphs Charter sets out its preliminary position on each of the issues raised in SBC's petition for arbitration. Charter's statement of the issue sometimes varies from SBC's, but in such circumstances Charter also includes SBC's statement of the issue in brackets following Charter's statement of the issue.

12. With the exception of issues relating to the "General Terms and Conditions" portion of the agreement, Charter and SBC were able to coordinate sufficiently in advance of SBC's filing that SBC could include in its Decision Point Lists ("DPLs") not only Charter's suggested language, but also Charter's preliminary

discussion of why its proposal was justified.

13. To further clarify the status of its discussions with SBC, Charter has included, attached as Exhibit B, a document containing language upon which the Parties agree and, which the Parties disagree, and provides both SBC's proposed language (bolded) and Charter's proposed language (underscored). Furthermore, pursuant to the Scheduling Order issued by Judge Thompson, Charter expects to file a Joint DPL with SBC on Monday, May 2, 2005.

II.A. WHITE PAGES ISSUES (4) - See Exhibit B-1

WHITE PAGES ISSUE (1) White Pages / Directory Listing Issues

WHITE PAGES ISSUE (1)(A) Whether white page and directory listing provisions of the Agreement should include standards of commercial reasonableness. [SBC: Should the reasonable and commercial reasonable modifiers be added to this Appendix?]

Charter's Preliminary Position:

Charter believes that the general rule for business issues between Charter and SBC should be governed by the standard of commercial reasonableness. Such a standard does not call on either party to make concessions or take actions that are unreasonable in any particular situation. But at the same time, a commercial reasonableness standard means that neither party may refuse to cooperate with the other party to resolve disputes that might arise, in good faith and considering the legitimate concerns of both parties.

In the specific context of White Pages, clearly an accurate white pages directory is an important part of basic telephone service. It is also extremely inefficient to produce on a competitive basis, at least in circumstances like today's where the overwhelming

majority of customers receive service from the ILEC. As a result, in practical terms producing the white pages directory is and will remain the responsibility of the ILEC.

Charter fully agrees that, in general, it has to conform to the practices, rules and regulations of the ILEC with respect to directory production. Indeed, those practices, rules and regulations are almost certainly, on the whole, "commercially reasonable." Charter's concern, however, is that in certain limited instances those practices, rules and regulations might be unreasonable and work to Charter's detriment Charter's proposed language is intended to create a contractual standard for resolving any questions about how to implement such practices.

SBC's response seems to be that its directory practices cannot, under any circumstances, be questioned. Instead, Charter must simply accept those practices and abide by them. This would not be totally unreasonable if Charter had meaningful commercial or competitive alternatives for the inclusion of its telephone numbers in white pages directories. But, of course, Charter has no such alternatives and is therefore entirely at SBC's mercy in this regard.

Nothing in Charter's language gives Charter any right to enjoin or interfere with the production of directories. But, by requiring SBC's directory practices to be reasonable, Charter's language: (i) provides Charter a contractual basis to both discuss problems that might arise with SBC, and (ii) establishes a standard by which the PSC or other adjudicator can resolve any disputes that the parties cannot themselves resolve.

WHITE PAGES ISSUE (1)(B) Should language restricting CLEC End User identification be added to this Appendix?

Charter's Preliminary Position:

Yes. Charter is concerned that the provision of its directory listing information to SBC for purposes of including those listings in the white pages might provide a source of information for SBC to target its marketing efforts on Charter's end users. Charter believes that it is appropriate for the agreement to ban that practice. SBC does not seem to have a response to this issue.

WHITE PAGES ISSUE (2) Whether SBC decisions to deny Charter's request to include certain material in White Pages should be subject to standards of commercial reasonableness. [SBC: Should SBC be required to print whatever "camera ready" logo is provided to it for the CLEC's information page?]

Charter's Preliminary Position:

Yes, such provisions should be subject to standards of commercial reasonableness. Charter is not asking that it have totally unfettered discretion to print "whatever 'camera ready' logo" it chooses to provide to SBC. It is merely asking that any SBC decision to object to the material Charter provides be reasonable. SBC's objection to this sensible request is hard to fathom. Charter cannot understand why SBC is frightened of the possibility that its decisions or practices might be subject to any objective standard of reasonableness.

Again, Charter is not proposing that SBC be required to print "whatever" information Charter provides for the information page. Charter's proposed language simply requires that ***if*** SBC were to take the position that Charter-provided copy is not to be printed, that decision must be made on a "reasonable" basis. Due to the time-sensitive nature of this situation (material being provided for inclusion in a directory with a publishing deadline), Charter proposes that SBC's consent to include Charter's material must not be "unreasonably delayed" — such as sitting on it until after the deadline passes — or "unreasonably withheld" — such as vetoing a perfectly acceptable set of materials

simply in order to interfere with Charter's ability to get its name included in directories. SBC may claim that it would not make such unreasonable determinations. If that is true, then it should have no objection to this language.

WHITE PAGES ISSUE (3) Should SBC be held liable for damages due to errors or omissions?

Charter's Preliminary Position:

Yes. SBC and Charter do not appear to disagree as to the substance of this point. If the information that Charter provides to SBC for purposes of inclusion in a directory contains errors or omissions, Charter is responsible for the resulting damages. Charter believes that its language referring to problems that exist "to the extent that such errors or omissions are included in the information CLEC provides to SBC" is a more precise and correct way to state this point than SBC's. Charter also proposes to add language at the end of Section 5.1 of the White Pages Appendix that makes clear that Charter is ***not*** responsible for problems that arise from ***SBC's*** errors, omissions, or intentional misconduct.

In addition, Charter proposes to include language (in Sections 5.1 and 5.2) that obliges SBC to provide assistance and cooperation to deal with a situation in which an erroneous directory as been published. While Charter has not experienced substantial problems with SBC in this regard, Charter has encountered significant problems with another ILEC's directory publishing operation in Missouri. That experience strongly counsels that reasonable language requiring such cooperation should be included in this Appendix.

Finally, Charter proposes to make mutual the obligation to cover the other party's costs that arise from failure to comply with the terms and conditions of this Appendix.

Since it is possible that either party could commit errors that impose costs on the other, there is no reason for this to be a one-sided provision, as SBC's language suggests.

WHITE PAGES ISSUE (4) Should Charter's right to terminate the White Pages Appendix be the sole remedy in the event that SBC materially breaches its obligations under the White Pages Appendix? [SBC: Which Parties' language should be included in this Appendix?]

Charter's Preliminary Position:

No. Charter's experience with another ILEC directory publisher in Missouri has made clear that it is possible for significant harm to be imposed on Charter by erroneous directory publication arising from ILEC errors. That harm can be both monetary in nature, calling for damages payments, and reputational in nature, calling for injunctive relief. It is important that Charter's right to terminate the directory appendix in the case of material breaches not be misconstrued as the sole or even primary remedy in the case of such a breach.

SBC states that Charter's proposed language does not appear in other appendices in the contract; but as far as Charter is aware, a provision akin to SBC's Section 6.1, permitting termination of the applicable appendix in the case of a breach, also does not appear. It would be ludicrous to suggest, for example, that if SBC breaches its obligations with respect to interconnection or number portability, that Charter's remedy is to terminate the appendices obliging SBC to interconnect and to port numbers. Had SBC included such language in other appendices, Charter would have included similar language in response.

II.B. E911 ISSUES (3) - See Exhibit B-2

E911 ISSUE (1) [SBC: Should Charter's access to the E911 selective router and DMBS be limited to those areas in which Charter is authorized to provide telephone service?]

Charter's Preliminary Position:

No. Charter does not expect there to be any situations in which it is (a) providing local telephone service but (b) is not "authorized" to do so. As technology and regulatory rules evolve, however, it is easy to imagine situations in which there might be a ***dispute*** about the scope of its authorization. Charter believes that the provision of 911 services is too fundamentally important to the public interest to be held hostage to possible SBC-initiated or other disputes about Charter's "authorization" to offer its services. For that reason, Charter believes that this provision should oblige SBC to provide the requisite 911-related functions wherever Charter is providing service.

Nothing in Charter's proposed language will affect SBC's ability to raise any concerns it may have about the status of Charter's authorization that might develop over time. But under no circumstances should SBC be permitted to refuse to provide 911-related functions with respect to areas where Charter is actually providing service, either out of bureaucratic stubbornness or as a conscious strategy to use withholding those services as leverage, in the event that such a dispute arise.

E911 ISSUE (2) E911 Trunking Issues

E911 ISSUE (2)(A) [SBC: Should Charter use the terms "facilities" and "trunking" as if they were synonymous?]

Charter's Preliminary Position:

Charter does not intend to treat "facilities" and "trunking" synonymously and fully appreciates the differences between the terms. Any confusion on that point arose

from a drafting error. Charter's proposed language, as provided in the Attachment A (identifying both parties' proposed language, and agreed upon language), clearly establishes that Charter will use either its own facilities and/or trunking, or facilities and/or trunking obtained from SBC or a third party to transport 911 calls from each POI to the SBC selective routing office of the 911 system.

E911 ISSUE (2)(B) [SBC: Is Charter responsible for providing adequate 911 trunking from its POI to the SBC E911 Selective Router?]

Charter's Preliminary Position:

Yes. Charter accepts its general responsibility for providing adequate 911 trunking. Nothing in Charter's proposed language suggests otherwise; rather, that language recognizes that Charter might ***obtain*** the requisite trunking from SBC. In that case, Charter's language simply directs the parties to establish such trunking as provided in the Appendix that deals directly with trunking issues, Appendix ITR.

II.C. INTERCONNECTION TRUNKING REQUIREMENT ISSUES (8) - See Exhibit B-3

ITR ISSUE (1) [SBC: Should Charter be required to establish local interconnection trunks to every local calling area in which Charter offers service?]

Charter's Preliminary Position:

No. A trunk is a transmission path between two switching systems. It follows that SBC's proposal to establish trunks to "local calling areas" is wrong, because the switch ***serving*** a local calling area will not necessarily be physically ***located*** within that local calling area, particularly for Charter, which serves multiple calling areas from a single switch. The implication of SBC's language is that the parties will or should establish and maintain switching systems in each "local calling area" that they serve.

Charter suspects that SBC's phrasing of its proposed language here reflects an unthinking assumption that CLECs will have network configurations similar to SBC's own network. This is obviously wrong. As an alternative, Charter proposes that the parties agree to establish trunks between switching systems. So, the appropriate contract language would refer to trunking between Charter and "the SBC [entity] switch that serves the applicable Local Exchange Area."

ITR ISSUE (2) Use Of One-Way Or Two-Way Trunks; The Use Of Access Service Requests "ASRs" Do Not Create Binding Financial Obligations On Either Party

ITR ISSUE (2)(A) Should Charter have the right, consistent with federal law, to choose to whether to use one-way or two-way trunks for the purposes of interconnection and traffic exchange with SBC? [SBC: Should the parties utilize two-way trunking or should CLEC have the right to unilaterally decide whether to use one-way or two-way trunking?]

Charter's Preliminary Position:

Yes. FCC rules indicate that the selection of one-way versus two-way trunks is in the hands of the connecting CLEC, subject to issues of technical feasibility. Charter expects that it will routinely order two-way trunks, which is an appropriate architecture for this type of interconnection. Charter, however, does not wish to lose its federal-law right to select one-way trunks if in some particular situation this is appropriate.

ITR ISSUE (2)(B) Should the Agreement clearly establish that either party's use of the Access Service Request ("ASR") form does not, in and of itself, constitute an "order" or request for services or facilities? [SBC: Should this appendix ITR contain terms and conditions for Reciprocal Compensation?]

Charter's Preliminary Position:

Yes. SBC calls for the use of "access service request" or "ASR" forms in order to handle the administration of the trunking arrangements called for under this agreement.

Charter has no opposition to using that form for that purpose. However, the ASR is the same form that is used to request the purchase of tariffed access services. Unlike tariffed access services, however, there is no charge to Charter for "ordering" the trunks to be used to exchange traffic under this agreement, except as noted in Appendix Intercarrier Compensation.

Given this, the purpose and effect of Charter's language in Section 3.1 is to make clear that — while Charter is willing to use the ASR for purposes of administration of the trunking called for under the Agreement — the fact that the form is an "access service request" cannot be construed as an actual order for, or request for, tariffed access services. (The language change proposed for Section 8.1 simply refers to Section 3.1.) Charter's understanding is that SBC does not substantively disagree with the points just noted, which suggests that Charter's language should be acceptable.

ITR ISSUE (3) Inclusion of Compensation and POI Language in Appendix ITR.

ITR ISSUE (3)(A) [SBC: Should this appendix ITR contain terms and conditions regarding the establishment of additional POIs?]

Charter's Preliminary Position:

No. However, Charter agrees that the establishment of physical POIs is fully addressed in Appendix NIM. Charter's proposed language for Section 4.2 is withdrawn, subject to inclusion of appropriate language in this section that reflects Charter's Preliminary Position stated in ITR Issue 1, *supra*, such that Section 4.2 of Appendix ITR would include the following revisions:

- In the first sentence, the phrase "in the local exchange area" should be changed to "serving the local exchange area."

- In the second sentence, the phrase "in the local exchange area" should be changed to "serving the local exchange area", both times the phrase appears.

ITR ISSUE (3)(B) [SBC: Should this appendix ITR contain terms and conditions for Reciprocal Compensation?]

Charter's Preliminary Position:

No. However, Charter's substantive position with respect to financial obligations regarding trunking is as set forth in response to ITR Issue 2(B), *supra*. The language regarding financial responsibility, however, need not be included in Section 4.2.

ITR ISSUE (4) [SBC: Should Charter Fiberlink's term "network" or SBC's term "switch" be used in this appendix?]

Charter's Preliminary Position:

Charter accepts SBC's use of the term "switch" as opposed to Charter's initially proposed term "network." However, note that, in conformity with Charter's Preliminary Position stated in ITR Issue 1, *supra*, that the phrase "present in the local exchange area" should be "serves the local exchange area."

ITR ISSUE (5) ASRs for Meet Point Trunk Groups / SS7 Signaling Requirements

ITR ISSUE (5)(A) [SBC: Should CLEC be responsible to issue ASRs for Meet Point Trunk Groups?]

Charter's Preliminary Position:

Subject to the acceptance of Charter's language with respect to Section 3.1 (ITR Issue No. 2(A), *supra*, Charter will accept SBC's language in Sections 5.4.1, 5.4.2, 5.4.3, 5.4.4, and 5.4.7.

ITR ISSUE (5)(B) Should both Parties be obligated to provide SS7 signaling information?

Charter's Preliminary Position:

Yes. SBC does not address Charter's proposed change to Section 5.4.8 regarding SS7 signaling. Charter calls on both Charter and SBC to exchange traffic using SS7 signaling. Charter believes that the obligation to provide such signaling should be mutual. It is highly unlikely at this late date that SBC has any substantial number of switches in Missouri that do not use SS7 signaling. In the absence of a specific explanation as to why it would not have such signaling in all cases — which as not been provided — Charter's language should be used.

ITR ISSUE (6) [SBC: Should Charter Fiberlink be required to trunk to every 911 Tandem in each Local Exchange Area in which it Offers Service?]

Charter's Preliminary Position:

Charter and SBC do not disagree that Charter will need to provide its end users with E911 service. Charter and SBC do not disagree that to do this, trunk groups must be established to each PSAP that provides service to the areas where Charter provides service. That said, SBC's language seems technically wrong. Charter would like to combine as much traffic on any particular trunk group as is technically feasible in light of the obligation to provide reliable E911 service. To the extent that SBC is referring to situations in which an NPA overlay has resulted in customers in the same area being served by numbers with different NPAs, Charter will certainly establish trunking as needed to meet the limitations of the E911 system with which it is connecting.

NOTE: Charter's position on this issue reflects Charter's response to contract language in SBC's DPL with respect to ITR Issue 6. That language (in SBC's ITR DPL at p. 11) is different from the language that SBC identifies as its own in Section SBC's ITR Appendix. See SBC Petition, Exhibit 22 .

ITR ISSUE (7) [SBC: When a Joint Planning Discussion is necessary, should SBC be required to process ASRs prior to such discussion?]

Charter's Preliminary Position:

Charter expects most trunk service requests to be handled as routine matters. Charter, however, does not believe that SBC should have the authority to unilaterally determine whether Charter's orders are "reasonable" and hold up processing those orders on that basis. This is particularly the case because "major projects" are already subject to a special procedure.

It is conceivable that a clerical-type error could result in an erroneously large order (hypothetically, ordering 1,000 DS0 trunks between two switches when in fact the need is for 100). Charter's proposed language provides for catching these kind of errors, and requires only that any applicable "review or inquiry" not "result in a commercially unreasonable delay."

Note also that Charter's language calls on the parties to "promptly consult with each other to resolve any concerns" about Charter's trunking request. Without language such as Charter's — and, specifically, if SBC's language is adopted — Charter could be subject to repeated unreasonable delays in expanding the capacity of the parties' interconnection, based entirely on SBC's "judgment" of what Charter "needs."

ITR ISSUE (8) [SBC: For compensation purposes, should the definition of a mandatory local calling area be governed by SBC 13-STATE's local exchange tariffs?]

Charter's Preliminary Position:

Charter incorporates by reference its position on Intercarrier Compensation DPL Issue #1 because that issue is identical to the one raised by SBC here. See Intercarrier Compensation Issue No. 1, *infra*.

II.D. NETWORK INTERCONNECTION METHODS ISSUES (6) - See Exhibit B-4

NIM ISSUE (1) Network Interconnection Issues

NIM ISSUE (1)(A) Should CLEC be required to interconnect with SBC-MISSOURI within SBC-Missouri's network?

Charter's Preliminary Position:

Charter agrees that interconnection under Section 251(c)(2) must occur "within" SBC's "network." SBC's "network," however, is not limited to its end offices and tandem switches. That network includes the facilities connecting those switches and the facilities extending to other locations that might or might not also have switches in them. If it is technically feasible to establish interconnection at some location other than an SBC end office or tandem switch location that should be permissible under the agreement.

For this reason, where SBC says that the technically feasible points "***are***" its switches, Charter believes the agreement should state that the technically feasible points "***include***" SBC's switches. Charter's preferred method of interconnection will be a fiber meet. It is quite conceivable that the best place to establish such a fiber meet might be some location where it is convenient to splice fibers that might be distant from any particular switch.

With respect to this issue, Charter agrees that the language referring to the physical architecture plan may include the reference to Charter's points of presence "and/or switch(es)" so that language is not in dispute. Since interconnection is established on a LATA-by-LATA basis, the reference in the last sentence of Section 2.1 should be to implementation in a "given LATA," not a "given local exchange area."

NIM ISSUE (1)(B) Should each party be financially responsible for the facilities on its side of the POI?

Charter's Preliminary Position:

Charter agrees that it is responsible for the facilities on its side of the POI. Charter therefore accepts SBC's language in Section 2.5. Charter will accept SBC's proposed Section 2.2 if the words "point on the SBC-13STATE network (End Office or Tandem building)" were replaced with "point within the SBC-13STATE network" (*i.e.*, change "on" to "within" to conform to the statute, then delete the specific references to switch buildings, for the reason stated above in connection with NIM ISSUE (1)(A)). Charter also accepts SBC's proposed Section 2.5.

NIM ISSUE (1)(C) When CLEC selects a single POI, should this appendix contain language detailing the need for CLEC to establish additional POIs when CLEC reaches the appropriate threshold of traffic?

Charter's Preliminary Position:

Charter agrees that there is some appropriate traffic threshold where it makes sense to establish additional POIs. For this reason Charter agrees to the deletion of the phrase "(or, at CLEC's sole option, more)" from Section 2.1 and also accepts SBC's proposed change to Section 2.6.

Charter disagrees with SBC regarding what that threshold should be and how it should be implemented. Charter will be interconnecting with SBC solely by means of fiber meet points. There is no reason to require the establishment of additional physical fiber POIs until the level of traffic to be exchanged at the new POI is reasonably high in relation to the capacity of fiber transmission. For this reason, in Sections 2.4.1.3(i) and (ii), the references to "twenty-four (24) DS1s" — less than a single DS3, a tiny fraction of fiber transmission capacity — should be replaced with "an OC-12."

NIM ISSUE (2) [SBC: Should this appendix NIM contain terms and conditions for Reciprocal Compensation?]

Charter's Preliminary Position:

Charter agrees that terms and conditions for payment for facilities and services should be dealt with in Appendix: Reciprocal Compensation. That is why Charter proposes to make clear, by explicit cross reference that any payment obligations that might exist for the specified activities is to be found in that Appendix. Charter does not understand the nature of SBC's disagreement here.

NIM ISSUE (3) [SBC: Should CLEC be solely responsible for the facilities that carry OS/DA, E911, Mass Calling and Meet Point trunk groups?]

Charter's Preliminary Position:

Charter does not necessarily agree that in all cases it should be responsible for facilities that carry OS/DS, 911, mass calling and Meet-Point trunk groups. Specifically with respect to Meet-Point trunk groups, for example, normal MECOD/MECAB meet point billing arrangements permit two carriers jointly providing access to separately charge the affected IXC for the use of whatever facilities the individual carrier provides. But Charter's point here is simply that whatever the rule is regarding financial responsibility for these types of facilities that responsibility should be laid out in Appendix ITR.

NIM ISSUE (4) Appropriate Trunks for Fiber Meet Points / Obligation To Interconnect On SBC's Network

NIM ISSUE (4)(A) [SBC: What type of trunk groups should be allowed over the Fiber Meet Point?]

Charter's Preliminary Position:

Charter does not see any reason — and SBC has never presented any cogent reason — to limit the types of traffic that the parties can carry over fiber meet point facilities. Charter agrees that local and intraLATA toll traffic (the main kinds of traffic carried on Local Interconnection Trunk Groups) can and should be carried over a fiber meet point facility. But SBC wants to say that this high-capacity and reliable physical facility cannot be used, under any terms, for other types of traffic.

It appears that SBC is confusing the question of financial responsibility with the question of physical routing. Suppose (for example) that Charter is deemed responsible for the costs of getting its E911 traffic from its network to the appropriate E911 selective router (or all the way to the PSAP). That does not mean that an established fiber meet point facility should not be used to carry that traffic; it just means that Charter would (contrary to the normal rule) be called on to pay SBC something for that use of that portion of the fiber facility's capacity, even on SBC's side of the POI. For this reason, Charter's proposed language for Sections 3.4.2, 3.4.5 and 3.4.10 should be used.

NIM ISSUE (4)(B) [SBC: Should CLEC be required to interconnect with SBC-Missouri within SBC-Missouri's network?]

Charter's Preliminary Position:

As discussed above in connection with NIM ISSUE (1)(A), *supra*, Charter ***agrees*** that interconnection must occur "within" SBC's network. Charter strongly ***disagrees,*** however, that SBC's proposal to limit interconnection to SBC's end office and tandem

switch locations accurately reflects what it means to interconnect "within" SBC's network. See discussion of NIM ISSUE (1)(A) above, incorporated here by reference.

NIM ISSUE (5) Obligation to Trunk to Every Local Exchange Areas In Which Charter Provides Service / Information Needed to Establish Interconnection

NIM ISSUE (5)(A) Should CLEC be required to trunk to every local exchange area in which it offers Service?

Charter's Preliminary Position:

SBC appears here to be confusing several issues. The first is the distinction between physical interconnection facilities and trunking. SBC has posed the issue as "trunking," when trunking is dealt with in Appendix ITR, not Appendix NIM. SBC's disputed language in Section 4.1 addresses (physical) "Interconnection," not trunking.

Second, physical interconnection may occur at any technically feasible point within SBC's network. Charter agrees that at an appropriate (but large) traffic threshold, Charter would be required to establish physical interconnection to a particular SBC end office. While in most cases the end office serving a particular "local exchange area" will be within that area, it is not uncommon in the industry for the end office providing dial tone to a particular exchange area to be located outside that area. Were that situation to arise under this agreement, it is important that the physical interconnection obligations properly refer to the physical location where the connection would occur.

NIM ISSUE (5)(B) Should CLEC provide information needed to establish interconnection for the mutual exchange of traffic?

Charter's Preliminary Position:

Charter agrees that it should provide all the information about its network that SBC reasonably needs to establish interconnection. Charter is concerned with two situations that go beyond that requirement, and its proposed sentence (that SBC objects

to) addresses those situations. First, in filling out forms and providing data to SBC, ***Charter*** cannot be held responsible for providing information about ***SBC's*** network. To the extent that an SBC form — or any aspect of interconnection planning — calls for information about SBC's network, then SBC must supply that information. This is nothing more than reasonable business cooperation.

Second, Charter views its own network architecture and facilities to be competitively sensitive information. Charter's proposed sentence makes clear that while Charter will provide information about its network necessary to establish interconnection, it shall not be required to provide information that is not necessary for that purpose.

NIM ISSUE (6) [SBC: Should a non-section 251/252 service such as Leased Facilities be arbitrated in this section 251/252 proceeding?]

Charter's Preliminary Position:

Charter's proposed language accomplishes several useful purposes. First, it clarifies that the agreement permits the use of SBC tariffed facilities (most likely special access circuits) to connect from Charter's location to SBC's location if Charter chooses to use such facilities. Note that Charter does not propose to require SBC to offer such facilities under tariff; it merely clarifies that ***if*** SBC does so, then it is permissible for Charter to buy them and use them for interconnection.

Second, putting aside tariffed offerings, the language makes clear that ***if*** the parties can agree on terms under which SBC will provide non-tariffed "leased" facilities to Charter, then such facilities can be used for purposes of Interconnection. Nothing in the proposed language purports to impose on SBC an obligation to reach agreement with respect to such facilities or to impose any particular pricing regime with respect to them.

In both cases, the point of Charter's proposed language is to clarify that in either

situation — a tariffed SBC offering or an independent agreement for SBC to provide non-tariffed facilities — it shall be acceptable to use such facilities for purposes of Interconnection. This explains why this issue is arbitrable: it is a proposed "term" or "condition" of "interconnection" under Section 251(c)(2).

II.E. INTERCARRIER COMPENSATION ISSUE (1) - See Exhibit B-5

INTERCARRIER COMP ISSUE (1) [SBC: For compensation purposes, should the definition of a mandatory local calling area be governed by SBC 13-STATE's local exchange tariffs?]

Charter's Preliminary Position:

Charter's language on this point is directly tied to and consistent with the applicable definitions in Section 153 of the Communications Act, 47 C.F.R. § 153.

Switched Access Traffic as normally understood is a form of "exchange access," which is defined in 47 U.S.C. § 153(16). "Exchange Access" is defined as the use of local facilities to originate or terminate toll calls, or, in statutory terms, calls which constitute "telephone toll service." "Telephone toll service" is defined as a call between telephones ("stations" in the statute) in different exchange areas for which there is a separate charge to the end users beyond the normal local service charge. 47 U.S.C. § 153(48). As a result, if the end user making a call is not charged a toll for it, then the function of originating or terminating that call is not "access."

In practical terms this means that if two interconnected carriers choose to compete with each other by establishing different local calling areas (e.g., by establishing a large area, perhaps at a higher price, or by establishing smaller areas, but at a lower price), whether the function of originating and terminating a call meets the statutory definition of "access" depends on the local calling areas established by the originating party.

This definition makes economic as well as legal sense. In cases where the originating caller is being charged a toll, the carrier handling the toll call (which may be the originating LEC or may be a third party) will receive a toll payment which will provide the wherewithal to pay an "access" charge. However, where the originating caller is not being charged a toll, the only money available to pay the terminating carrier is the caller's normal local service charge. In that case, payment of reciprocal compensation (or treatment as a bill-and-keep call) is appropriate.

To the extent that other sections of this or other Appendices need to be modified to properly reflect the legal and economic logic noted above, those changes should be made as well.

II.F. GENERAL TERMS AND CONDITIONS ISSUES (46) - See Exhibit B-6

GTC ISSUE (1) [SBC: Should SBC Missouri's proposed recitals be adopted as an accurate reflection of the Parties' intent in entering into this agreement, and as an accurate reflection of the current state of the law and as an aid to the interpretation of the agreement?]

Charter's Preliminary Position:

Charter's proposed recital, which concerns Charter's operations under the terms of this Agreement, more accurately reflects the type of traffic that the Parties will exchange (both Telephone Exchange Service traffic, and Telephone Toll Service traffic), and the facilities which such services will be offered over.

GTC ISSUE (2) Which definition of the "Act" should be included?

Charter's Preliminary Position:

Charter accepts SBC's proposal with respect to this definition.

GTC ISSUE (3) "Access Compensation" - Which Party's definition should be included?

Charter's Preliminary Position:

Charter's proposed definition incorporates, and conforms, to terms that are defined by the Act. In addition, Charter believes that it is prudent to expressly distinguish between situations in which access rates apply to traffic exchanged directly between the parties (which is how Charter would limit the term "access compensation") and situations in which the parties jointly provide access to a third party IXC. This agreement defines the terms and conditions under which these two parties will interconnect. Use of Charter's approach, tied to statutory definitions, instead of SBC's ambiguous terms, lends itself to uniform interpretation this agreement.

GTC ISSUE (4) "Advanced Services" - Which Party's definition should be included?

Charter's Preliminary Position:

Charter's proposed definition of advanced services references transmission speeds (200 kbps) that are consistent with normally accepted views of what constitutes an "advanced" service (including, specifically, the FCC's working definition of such services). SBC's proposal would define advanced services so broadly to include those facilities that support transmission speeds that are used for dial-up narrowband services (56 kbps).

GTC ISSUE (5) "Automated Message Accounting" - Which Party's definition should be included?

Charter's Preliminary Position:

This is function is not always "inherent" in switch technology, as SBC's position suggests. For example, certain billing systems record information needed for billing at SS7 "Signal Transfer Points" ("STPs"), rather than at individual switches. Charter's

proposal more accurately defines technical developments regarding this recording functionality.

GTC ISSUE (6) "End Office Switch" and "Local Service Provider"

GTC ISSUE (6)(A) Should this definition extend beyond Local 251 services?

Charter's Preliminary Position:

Charter's proposed definition incorporates the term that is used, and defined, in the Communications Act: "Telephone Exchange Service." Use of the statutorily-defined term will ensure that the term is interpreted consistent with its meaning under federal law. Charter's language fully conforms to the usage in Section 251(c) defining the types of services for which interconnection must occur. Charter does not, therefore, understand why SBC thinks its language, which does not conform to the statute, more effectively meets the objective of addressing "section 251 type services," as SBC states in its DPL.

GTC ISSUE (6)(B): Include a definition of "Telephone Exchange Service?"

Charter's Preliminary Position:

Charter's proposed definition incorporates the term that is used, and defined, in the Communications Act: "Telephone Exchange Service." Use of the statutorily-defined term will ensure that the term is interpreted consistent with its meaning under federal law.

GTC ISSUE (6)(C): Include "Telephone Exchange Service" instead of "Local Exchange Service?"

Charter's Preliminary Position:

Charter's proposed definition incorporates the term that is used, and defined, in the Communications Act: "Telephone Exchange Service." Use of the statutorily-defined term will ensure that the term is interpreted consistent with its meaning under federal law.

GTC ISSUE (7) "Delaying Event" – [SBC: Should the provision include language regarding providing information to the other Party?]

Charter's Preliminary Position:

Charter accepts the SBC proposal included with its DPL. This issue is now settled.

GTC ISSUE (8) "Exchange Area" - Which Party's definition should be included?

Charter's Preliminary Position:

The agreement should make clear that each Party should be able to define their own local service area boundaries, for purposes of providing service to their own end users. Charter's language accomplishes that purpose. Charter's proposal refers to Exchange Areas established "in accordance with Applicable Law." In the normal situation that would, of course, entail the establishment of local calling areas in accordance with this Commission's requirements.

GTC ISSUE (9) "Feature Group A" - Which Party's definition should be included?

Charter's Preliminary Position:

Charter proposes to define this term by reference to the FCC's definition of the same. Given that the FCC is the expert agency in this field use of the agency's definitions will ensure uniform and accurate interpretation of this term.

GTC ISSUE (10) "Feature Group D" - Which Party's definition should be included?

Charter's Preliminary Position:

Charter's proposed definition makes clear that this is one form of Exchange Access, but that other forms of the service exist as well.

GTC ISSUE (11) "Foreign Exchange Traffic" - Which Party's definition should be included?

Charter's Preliminary Position:

SBC's definition goes well beyond the standard definition of foreign exchange traffic in an apparent effort to characterize certain traffic as falling within the definition of telephone toll, or interexchange, traffic subject to access charges. Charter's definition rejects that approach and simply states the standard industry-accepted definition of such traffic.

GTC ISSUE (12) "Interconnection" - Which Party's definition should be included?

Charter's Preliminary Position:

In light of SBC's willingness to expand the definition of "the Act" to include the rulings, regulations, and orders of the FCC and associated court rulings, SBC's proposal to define "Interconnection" with reference to "the Act" is acceptable to Charter. This acceptance, however, is expressly conditioned on the newly agreed-to definition of the "Act" noted above in GTC ISSUE (2).

GTC ISSUE (13) "IntraLATA Toll Traffic" - Which Party's definition should be included?

Charter's Preliminary Position:

Charter's definition conforms to the statutory definition of telephone toll service, and as such is more likely to be interpreted in conformance with governing law.

GTC ISSUE (14) "Local Calls" or "Local Traffic" - Which Party's definition should be included?

Charter's Preliminary Position:

Charter's definition conforms to the statutory definition of telephone toll service, and as such is more likely to be interpreted in conformance with governing law.

GTC ISSUE (15) "Local Number Portability" - Which Party's definition should be included?

Charter's Preliminary Position:

Charter proposes to define this term with specific reference to the definition used by the FCC, as formally codified in the Code of Federal Regulations. As such, Charter's definition is more likely to be interpreted in conformance with governing law.

GTC ISSUE (16) [SBC Issue: SBC's Proposed Use of the OELEC Definition]

GTC ISSUE (16)(a) Should the OELEC definition utilize the term "local exchange area" instead of "Exchange Area"?

Charter's Preliminary Position:

SBC's proposed addition to this provision (the term "local") is unnecessary in light of the governing statutory definitions. Deviations from the specific defined terms used in federal law has the potential to add confusion between the parties. Reliance on such specific defined terms adds an objective source of reference in the event of disputes regarding the interpretation of the contract.

GTC ISSUE (16)(B) Should the definition for OELEC include the term "in the same LATA"?

Charter's Preliminary Position:

Yes. Charter's proposed definition includes references to LATA boundaries; well accepted geographic boundaries that define service obligations and other legal rights and obligations.

GTC ISSUE (17) "Plain Old Telephone Service" (POTS) means telephone service for the transmission of human speech. [SBC: Should this definition be included in the ICA?]

Charter's Preliminary Position:

Charter does not believe that this term should be included. It is an anachronistic term that has no value for purposes of defining the types of service and traffic that are at issue under this Agreement. Furthermore, because the Agreement already includes defined terms for such services (*see, e.g.* definitions of Telephone Exchange Service, Telephone Toll Traffic, etc.) there is no reason to add superfluous terms such as this one.

GTC ISSUE (18) Definitions of Transit Traffic / Out of Exchange Traffic

(18)(A) [SBC: Should "Transit Traffic" be defined in the ICA?]

Charter's Preliminary Position:

Yes. Transit traffic is a form of traffic which involves a third party LEC, and occurs very regularly in the industry. It basically entails either of the parties to the agreement sitting "between" the other party and a 3rd party carrier. It is reasonable to define such traffic in the agreement. Moreover, such traffic may from time to time also be involved in an "OELEC" situation (where Charter's territory overlaps SBC's but not exactly coextensive with it). Therefore, including "Transit Traffic" as a type of traffic that might be involved in an OELEC situation is simply prudent drafting, to ensure that all possible cases are covered.

GTC ISSUE (18)(B) Which Party's definition of "Out of Exchange Traffic" should be included?

Charter's Preliminary Position:

Charter's definition most accurately defines the term.

GTC ISSUE (19) "Trunk Side" - Which Party's definition should be included?

Charter's Preliminary Position:

Charter will accept SBC's proposed language on this issue.

GTC ISSUE (20) "Line Side" - Which Party's definition should be included?

Charter's Preliminary Position:

Charter will accept SBC's proposed language on this issue.

GTC ISSUE (21) [SBC Issue: Should either party be able to modify or update their reference documents without seeking approval from the other party?]

Charter's Preliminary Position:

SBC's language provides what is colloquially known as a loophole. It is of course reasonable that in the normal course, when a document is referenced by the contract, that the reference should include the most current version of the document. The problem is that SBC in particular has a number of documents in which it embodies its "practices" that are entirely under its own control. Charter's proposed modification to this provision simply ensures that SBC cannot materially avoid its own obligations under the contract, or materially increase Charter's, simply by modifying such an SBC-controlled document.

GTC ISSUE (22) [SBC Issue: Should additional language be included in the tariff language? When a CLEC voluntarily agrees to language relating to an SBC Missouri tariff, does it thereby gain the right to (a) prevent SBC Missouri from modifying its tariffs or (b) require SBC Missouri to negotiate its tariffs with the CLEC?]

Charter's Preliminary Position:

As with Issue 21, Charter's proposed modification is designed to close a loophole. Of course SBC and Charter both have tariffs, and Charter does not propose to require either party to seek consent of the other before filing or modifying such tariffs. However, with respect to the matters addressed by the agreement being arbitrated, it is the ***agreement,*** not unilaterally-filed tariffs, that controls the parties' obligations. For example, Charter and SBC have agreed on many aspects of how they will handle physical interconnection arrangements. It would be inappropriate for SBC to try to modify or supersede those agreements by filing a tariff purporting to cover the same subject matter. SBC's language might permit such a result. Litigation over the relative precedence of interconnection agreement terms and seemingly contrary tariff terms is not unknown in the industry. Charter's language is intended to avoid such problems as between Charter and SBC.

GTC ISSUE (23) SBC Issue: Should SBC's additional language be included in ICA?]

Charter's Preliminary Position:

Charter recognizes that in some respects the terms of this agreement represent SBC accepting what it is legally obliged to accept, as opposed to what it would do if it were legally unconstrained. What Charter does not know, and cannot know unless SBC provides a list, is ***which*** terms those are. SBC is proposing a special "escape clause" associated with the "non-Voluntary" terms. It is totally unreasonable for SBC to simultaneously (a) demand a special right to be relieved of the obligations associated with certain contractual terms in some cases, but at the same time (b) refuse to identify specifically which contractual terms are subject to that special right.

GTC ISSUE (24) [SBC Issue: Which Party's scope of obligation language should be included in this agreement?]

Charter's Preliminary Position:

The underlying dispute here relates to SBC's obligations to interconnect with respect to, and exchange traffic, that originates or terminates with Charter, but where the Charter customer is located in another ILEC's territory (normally adjacent to SBC's territory). Charter and SBC agree that SBC is not obliged to establish facilities or physical interconnection arrangements outside the geographic area within which it is an ILEC. Moreover, after extensive discussions, SBC and Charter have agreed on the specific language to appear in the "OE-LEC" Appendix to handle such traffic.

That agreed-to language, however, is intended to elide an underlying conceptual disagreement between the two parties. Charter believes that as long as Charter and SBC physically exchange traffic within SBC's territory ("within" SBC's network, in the words of Section 251(c)(2)), then the only question is whether the traffic exchanged is properly classified (Telephone Exchange Service or Exchange Access, in the words of Section 251(d)(2)). This question will be resolved for purposes of intercarrier compensation based on other definitions in the agreement. SBC, however, apparently believes that it is not obliged to interconnect under Section 251(c)(2) with respect to traffic that originates or terminates on Charter's network, outside of SBC's territory, even though the physical interconnection occurs "within" SBC's network.

Charter's proposed language in ***this*** part of the agreement (the General Terms and Conditions) is designed to make it unnecessary for the Commission to actually rule on the parties' underlying conceptual disagreement. Charter believes it is obvious that SBC cannot limit its obligation to interconnect for the exchange of "Telephone Exchange

Service" or "Exchange Access" based on the origination or termination point of the traffic; rather, the origination and termination points of the traffic will likely be relevant to its classification as "Telephone Exchange Service" (local) or "Exchange Access" (toll). Charter has no understanding whatsoever of why SBC appears to have a different view of its interconnection obligation.

GTC ISSUE (25) [SBC Issue: Should CLEC and its affiliates be required to enter into ICAs with SBC Missouri that contain like terms and conditions that CLEC has with SBC in this ICA?]

Charter's Preliminary Position:

Charter does not understand SBC's language on this point. Charter understands that SBC wants to ensure that if Charter has other, affiliated CLECs in Missouri, that those other CLECs would be bound by the same terms. Charter believes that to be reasonable and its language accomplishes that purpose. SBC's language is complex and uncertain in operation, and may have implications beyond the simple point noted above. Charter's language is superior on this point.

GTC ISSUE (26) [SBC Issue: What are the appropriate provisions relating to insurance coverage to be maintained by the Parties under this agreement?]

Charter's Preliminary Position:

The Parties should be prepared to provide the other Party proof of adequate insurance coverage. However, there is no need to specify insurance requirements in the detail which SBC proposes, including the commercial "ratings" of each Party's insurance carrier. Charter has every incentive to maintain adequate insurance, and its freedom to choose among different insurance providers should not be constrained unreasonably by SBC. SBC's detailed requirements are not needed as a predicate to establishing appropriate insurance coverage requirements.

GTC ISSUE (27) Assignment Issues

GTC ISSUE (27)(A) [SBC Issue: What are the appropriate terms and conditions regarding restrictions on the assignment of the agreement?]

Charter's Preliminary Position:

The restrictions on assignment of the contract should apply reciprocally, rather than only as to Charter, as SBC proposes. Furthermore, the agreement should make clear that neither Party may unreasonably withhold or delay consent to an assignment. Also, the agreement should include an exception to the assignment clause that allows both Parties to accomplish intra-company transfers and assignments without the need to seek the consent of the other Party. Corporate reorganizations are not uncommon in the telecommunications industry and neither party's ability to engage in such transactions should be constrained by this agreement.

GTC ISSUE (27)(B) [SBC Issue: Should SBC Missouri be allowed to recover reasonable costs from Charter in the event that Charter requests changes in its corporate name, its OCN or ACNA, or makes any other disposition of its assets or its End Users, and/or makes any other changes in its corporate operations?]

Charter's Preliminary Position:

No. SBC should not be allowed to recover "costs" from Charter in association with any actions under the assignment provision. Any costs that SBC incurred would be incidental to its general obligations under the agreement. Neither party should be permitted to "nickel and dime" the other party with charges to recover the costs of normal and predictable activity in the industry. SBC's proposal is an unjustified "tax" on such normal activity.

GTC ISSUE (27)(C) [SBC Issue: What are the appropriate terms and conditions related to the types of changes identified above?]

Charter's Preliminary Position:

See Charter explanation above and Charter's proposed language in the General Terms & Conditions Decision Point List.

GTC ISSUE (28) [SBC Issue: Should Charter be required to utilize the standard and nondiscriminatory OSS' provide by SBC Missouri, reviewed by the Commission and utilized by the Missouri CLEC Community?] [Charter Issue: Should either party be subject to unannounced charges for the other party's internal administrative activity relating to fulfilling obligations under the contract?]

Charter's Preliminary Position:

Charter and SBC seem to be talking past each other here. The only change Charter suggested regarding OSS was to make clear that whatever OSS functionality SBC might have regarding Interconnection activities (as opposed to resale or UNEs) would be available to Charter. The key language Charter included, in Section 4.14 of the contract, makes clear that nether party may impose charges on the other party for any activity or item for which a price is not specified. In other words, Charter believes that the contract should contain language that allows parties to charge prices stated in the contract, but forbids either party demanding payment for activities for which no price is set. As far as Charter can see, SBC has no response to this proposal.

GTC ISSUE (29) [SBC Issue: Should successor language be added to Section 5.6, even though it is stated in Section 5.7.]

Charter's Preliminary Position:

The agreement should include specific language which establishes that the agreement will continue to be operative and remain in force until replaced by a successor agreement. SBC claims that this same language is included in its proposed language. This is misleading. SBC's proposed language places an outside limit on the term of 10 months following the nominal termination date of the contract. Any number of factors

may cause that 10 month "term" to be unreasonably short. Charter's language, therefore, is superior. It will guarantee continued interconnection and service to both parties' customers while a successor agreement is negotiated or arbitrated, however long that process might take.

GTC ISSUE (30) [SBC Issue: Should CLEC be required to give SBC an Assurance of Payment?]

Charter's Preliminary Position:

No. SBC's entire "assurance of payment" provision is basically abusive. Charter and SBC will both be purchasing call termination services from each other. Local traffic will be exchanged on a bill and keep basis. Toll traffic will result in the payment of access charges as between the carriers. If for some unforeseen reason Charter fails to pay its bills, then it would be reasonable to require a cash deposit equal to two months' average charges. The remainder of this provision is simply unnecessary.

GTC ISSUE (31) [SBC Issue: Should the terms of payment be reciprocal?]

Charter's Preliminary Position:

Yes. Both Parties agree that these terms should be reciprocal. Charter will accept SBC's proposed language with respect to reciprocity of payment terms. However, Charter's proposed language also includes a clause that establishes that neither Party is liable for any delays in receipt of funds or errors in entries caused by the other Party when payments are made under the agreement. This simply makes clear that if the funds are properly delivered to the billing party, no liability accrues to the paying party if the billing party's systems do not properly process the payment. This provision, therefore, should remain in the contract.

GTC ISSUE (32) [SBC: Is it appropriate to require the Parties to escrow disputed amounts?]

Charter's Preliminary Position:

No. Both Parties are sophisticated commercial enterprises with sufficient funds to satisfy outstanding debts which may arise out of a billing dispute. While escrow requirements are not uncommon in interconnection agreements, Charter submits that in practical terms, between these parties, they can be burdensome and costly. There are adequate procedures in the agreement to promptly resolve disputes, making escrow even less necessary. Charter's language requires what is actually pertinent to resolving such disputes, which is a reasonably detailed explanation of the basis of the dispute. SBC has no cogent objection to this language but does not appear to accept it.

GTC ISSUE (33) [SBC Issue: Should CLEC expect to receive monetary credits for resolved disputes in its favor if CLEC has outstanding and or other past due balances due to SBC?]

Charter's Preliminary Position:

If the Parties have a billing dispute and the dispute is resolved in favor of the non-paying Party such that there were some overpayments made to the billing party, the non-paying Party should have the option of receiving refunds either as a credit to future payments or as direct reimbursement for the overpayments. Over time there may be a number of disputes pending at the same time. There is no reason to give either party an implicit or explicit right to offset amounts owed by a party in accordance with the resolution of one dispute against amounts that party claims it is owed in the context of other, pending disputes.

GTC ISSUE (34) [SBC: Notice of Billing Disputes – Which Party's language should be included in the ICA?]

Charter's Preliminary Position:

Charter's proposed language provides sufficient procedures for either Party to dispute the other Party's bills, including a requirement that the disputing Party provide an explanation of the basis for its dispute. SBC's proposed language, on the other hand, is excessively burdensome and unnecessarily requires the disputing Party to pay all disputed amounts into an escrow account.

GTC ISSUE (35) [SBC: Should the Parties' agreement require the Parties to exhaust the dispute resolution process before initiating litigation even in circumstances where one of the Parties is seeking equitable relief?]

Charter's Preliminary Position:

No. Equitable relief will not normally be available for disputes involving, e.g., the payment of money. But other disputes under the agreement can arise that might allow SBC to materially interfere with Charter's ability to conduct its business. These might include a failure to expand interconnection facilities to accommodate traffic growth, failure to load newly opened Charter NXX codes into SBC's switches, and other operational matters. Given these possible problems, each Party should expressly have the right to at any time seek injunctive or other equitable relief in any appropriate forum. Just as equitable relief is available from courts (in appropriate circumstances) prior to the final resolution of a lawsuit, so too should equitable relief be available under this agreement (in appropriate circumstances) even if the underlying dispute has not been fully resolved.

GTC ISSUE (36) [SBC: Should SBC's language for Dispute Resolution that has been established for all CLECs be included in the Agreement?]

Charter's Preliminary Position:

No. It is irrelevant whether SBC's proposed language has, or has not, been somehow "established for all CLECs." The problem with SBC's proposed language is

that SBC arrogates to itself the unilateral right to deem a dispute to be "resolved" or not. That is inappropriate. The language should require that a dispute cannot be deemed "resolved" (in the absence of an adjudication by an appropriate body such as the Commission or a court) until both parties have agreed that it is resolved. This ensures that neither Party can unilaterally deem that a dispute is resolved in the event that disputed issues remain.

GTC ISSUE (37) Issues Relating to Commercial Arbitration

GTC ISSUE (37)(A) Which location should be used for arbitrations?

Charter's Preliminary Position:

The arbitration should be in a mutually agreed upon location, convenient for both Parties and the Arbitrator(s).

GTC ISSUE (37)(B) Should Consequential Damages be included for which the arbitrator has no authority to award punitive damages.

Charter's Preliminary Position:

The Arbitrator should have the authority to award Consequential Damages. When two telecommunications carriers are interconnected, the consequential damages associated with unreasonable failures to perform by one party can be much more than (e.g.) the charges for any interconnection-related activities that were not properly performed. Permitting the award of consequential damages will encourage both parties to perform their obligations with care.

GTC ISSUE (38) Issues Related to Audits

GTC ISSUE (38)(A) Which Party's audit requirements should be included in the Agreement?

Charter's Preliminary Position:

Charter agrees that the agreement should include language to ensure that either party may audit each other's bills, and, in particular, the records upon which such bills are based. The current audit language (which the Parties largely agree upon) allows either party to ensure that Charter is properly recording calls, properly routing calls, etc…

GTC ISSUE (38)(B) Which Party's aggregate value should be included in the agreement?

Charter's Preliminary Position:

Charter agrees that if an audit reveals an error, the parties should be allowed to conduct a subsequent audit to insure compliance with the agreement. However, one subsequent audit is sufficient. Charter's language provides for an initial audit once a year with a follow-up audit if there is an error with an aggregate value of at least ***ten percent (10%)*** of the amounts payable by the auditing party for the audit time frame. This percentage ensures that subsequent audits are not caused simply due to accounting or billing errors. Thus, Charter's language (like SBC's) contemplates the possibility that up to two audits a year can occur, but includes a more reasonable trigger for such events.

GTC ISSUE (38)(C) Should either Party's employees be able to perform the audit?

Charter's Preliminary Position:

No. If an audit occurs it should be conducted by an independent third-party auditor rather than either Party's employees. Using either Party's employees for an audit is inappropriate because such employees will not be objective. To the contrary, they will be expected to find "problems" that might not actually exist and to interpret ambiguous or unclear information in favor of their employer. Moreover, using employees of the auditing party will be unduly intrusive. These employees would almost certainly have

access to competitive or confidential information of the audited party. No degree of contractual restriction on the use of such information can prevent the other party's employees from actually knowing it. There is no reason to permit that situation to come to pass unless absolutely necessary.

GTC ISSUE (39) Which Party's Limitations of Liability language should be incorporated into this Agreement?

Charter's Preliminary Position:

Charter's language is superior. Neither Party's liability should be limited if it is established that such Party (or its employees) acted in a willful or intentionally wrongful acts or grossly negligent acts. In addition, SBC's liability should not be limited for errors and omissions in White Pages listings when it received accurate information from Charter.

GTC ISSUE (40) SBC Issue: Is it appropriate to replace a commercially reasonable capped indemnification exposure with non-capped damages.

Charter's Preliminary Position:

The parties seem to be talking past each other at this time on this issue. Charter's modifications to SBC's proposed indemnity language is intended to accomplish the following. First, in Section 14.3, Charter seeks to make clear that even if one party is required to defend and indemnify the other against claims by an outsider to the contract, that does not affect any liability that the indemnified party might have to the indemnifying party. This might arise in cases where both parties were in some manner at fault as to the 3rd party, but where one of the parties owed a contractual obligation to the other to handle the situation in a certain way and did not do so.

Second, in Section 14.6, Charter believes that a more stringent standard of "fault" is appropriate before Charter can be held liable for damages to SBC's facilities.

GTC ISSUE (41) SBC Issue: Should the Parties be allowed to use a Party's name in advertisements?

Charter's Preliminary Position:

Yes. Absent any other limitation in the Agreement, each Party should be able to use the other Party's name in truthful comparative advertisements. This provision will ensure that the Parties can use the other Party's name in support of truthful advertising that supports either Party's competitive services or prices. Thus, this provision enhances competition by allowing either Party to refer to the other in appropriate advertisements.

GTC ISSUE (42) SBC Issue: Is it appropriate that only an End User have the ability to initate a challenge to a change in its LEC?

Charter's Preliminary Position:

No. While end users certainly have the right to challenge being (in effect) slammed by either party, there is no reason to preclude either Party from initiating a challenge to a change in an end user's choice of LEC. This would be particularly appropriate where either (a) the end user is not fully informed — or might even be misinformed by the slamming carrier — of the reasons for the change, or (b) the slamming carrier changes the service of a number of end users due to some systemic error or problem.

GTC ISSUE (43) SBC Issue: Should a party seeking indemnification under the ICA have a contractual obligation to formally request it from the other party?

Charter's Preliminary Position:

SBC's language is acceptable to Charter.

GTC ISSUE (44) SBC Issue: Is the additional language regarding connections to End Users necessary?

Charter's Preliminary Position:

This issue is now ***resolved***. On April 20 SBC informed Charter that SBC would accept Charter's proposed language on this issue.

GTC ISSUE (45) SBC Issue: Is the reference to Appendix NIM and ITR appropriate regarding interswitch calls originating from a ULS port?

Charter's Preliminary Position:

Yes. The last sentence of SBC's unamended language is ambiguous. Charter has no interest in using SBC's "ULS", which it understands to be unbundled local switching. But Charter will be interconnected (indeed, already ***is*** interconnected) with SBC via SS7 signaling for the purpose of traffic exchange. That SS7 interconnection is not "pursuant to the access tariff" of SBC, as the language of SBC's provision could be read to suggest; it is pursuant to SBC's obligation under Section 251(c)(2) to "exchange" and "route" traffic to and from Charter. Rather than try to re-write SBC's language regarding its tariff (which may properly reflect additional uses of SS7 by CLECs that purchase ULS), Charter proposes simply that the use of SS7 for interconnection purposes, described in Appendix NIM (and ITR) be noted as well.

SBC's discussion in its DPL misses the point. The point is not that ULS is not mentioned in NIM or ITR. The point is that, while SBC apparently intends the language at issue here to apply only to CLECs that purchase ULS, Charter is concerned that the language as actually written is not so limited.

GTC ISSUE (46) Provision of Service to Other Party's End Users [SBC: Is it appropriate for the language to be reciprocal?]

Charter's Preliminary Position:

Yes. This provision should be reciprocal. Charter suspects that SBC intends for it to relate mainly to situations of resale. In that context, it is of course appropriate that SBC be permitted to sell to end users even if those end users also purchase services from a CLEC that the CLEC obtains, for resale, from SBC. Charter does not intend to resell any SBC services and so is not concerned about that situation. The language as written, however, does not contain any limitations to resale situations. To the extent that it is unclear, it should probably be entirely deleted. But if it is to remain, there is no reason it should not be reciprocal.

III. CONCLUSION.

WHEREFORE, for the foregoing reasons, Charter requests that the Commission arbitrate the unresolved issues described above and resolve each issue in Charter's favor. Furthermore, Charter requests that the Commission find that Charter's proposed contract language as shown in Exhibit B is reasonable and consistent with the law. Accordingly, Charter requests that the Commission approve its language identified in Exhibit B, as described above, and grant such other and further relief as the Commission deems appropriate.

Respectfully submitted,
Charter Fiberlink-Missouri, LLC

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April 25, 2005

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I hereby certify that a true and correct copy of the above and foregoing was served via electronic transmission, this ___ day of April, 2005, to:

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EXHIBIT LIST

EXHIBIT A: **Charter Request for Negotiations of an Interconnection Agreement with SBC**

EXHIBIT B: **Charter Proposed Interconnection Agreement Language (Identifying Charter's Proposed Language, SBC's Proposed Language, and Agreed Upon Language)**