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Witness: Mark Barber
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Sponsoring Party: Charter Fiberlink-Missouri, LLC
Case No.: TO-2005-0336
Date Testimony Prepared: May 9, 2005

**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

**DIRECT TESTIMONY OF MARK BARBER
ON BEHALF OF CHARTER FIBERLINK-MISSOURI, LLC**

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AFFIDAVIT OF MARK BARBER


STATE OF MISSOURI)
) ss
COUNTY OF ST. LOUIS)

Mark Barber, appearing before me, affirms and states:

1. My name is Mark Barber. I work in 12405 Powerscourt Drive, St. Louis, MO 63131, and I am employed by Charter Communications, Inc. and its affiliate Charter Fiberlink-Missouri, LLC as Vice President of Telephony.

2. Attach hereto and made a part hereof for all purposes is my Direct Testimony in behalf of Charter Fiberlink-Missouri, LLC consisting of multiple pages, having been prepared in written form for introduction into evidence in the above-captioned docket.

3. I have knowledge of the matters set forth therein. I hereby affirm that my answers contained in the attached testimony to the questions therein propounded, including any attachments thereto, are true and accurate to the best of my knowledge, information and belief.


Mark Barber

Dated: May 6, 2005

Sworn to and subscribed before me on this the 6th day of May, 2005.


Notary Public

My Commission Expires

June 2007

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JOAN OATIS
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
ST. LOUIS CITY

EXECUTIVE SUMMARY

This document contains the testimony of Mark Barber on behalf of Charter Fiberlink, Missouri- LLC (“Charter”). Mr. Barber testifies on the disputed issues between Charter and SBC-Missouri (“SBC”) concerning the general business issues surrounding how the parties will interconnect their respective networks and exchange traffic.

Specifically, Mr. Barber testifies on the single disputed intercarrier compensation issue between SBC and Charter. Also, Mr. Barber offers testimony on a range of general business issues, including but not limited to, general definitions, insurance coverage requirements, contract assignment issues and other miscellaneous contract terms.

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I. INTRODUCTION

**Q. PLEASE STATE YOUR NAME, POSITION, EMPLOYER, AND
BUSINESS ADDRESS.**

1 A. My name is Mark Barber. I am the Corporate Vice President of Telephony for
2 Charter Communications, Inc. and its affiliate Charter Fiberlink-Missouri, LLC
3 (“Charter”). My business address is 12405 Powerscourt Dr., St. Louis, Missouri,
4 63131. I am filing this testimony on behalf of Charter.

5 **Q. PLEASE REVIEW YOUR EDUCATION AND RELEVANT WORK**
6 **EXPERIENCE.**

7 A. I have been the Corporate Vice President of Telephony at Charter since February
8 2000, where I have total product line responsibility for residential and business
9 voice services and direct responsible for the following areas: (1) Strategy, Policy,
10 Life Cycle Management; (2) Legal/Regulatory, Budget and Operational
11 Oversight; and (3) Back-Office Operations. Further, I have launched the first
12 primary line voice over internet protocol (“VOIP”) system in North America and
13 have managed the program launch of all Charter’s telephony deployments
14 nationwide.

15

16 Prior to assuming the role of Corporate Vice President, I was the Regional Vice
17 President of Advanced Services for approximately two years. Prior to my
18 positions with Charter, I have had almost thirty years work experience in
19 communications industries including telephone, cable, cellular, PCS, MMDS.

20 Specifically, for a period of approximately five years I was employed by CFW
21 Communications, Inc. as the General Manager of Cable Operations. My

responsibilities at that time included oversight of one wireline and four wireless cable and HSD operations covering approximately 650,000 homes.

In addition, for a period of three years prior to that I was employed by Comcast Corporation and was involved in implementing joint ventures and other business initiatives which include the development of business plans for a four city build and initiation of services to one million home markets.

Prior to that I also held similar positions with Chase International – Poland, Hauser Communications, and Comsonics, Inc. In addition, I have approximately four years of experience in communications issues through my service in the United States Marine Corps.

II. STATEMENT OF SCOPE AND SUMMARY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I have been asked by Charter to testify regarding interconnection agreement terms and conditions between Charter and SBC-Missouri that have arisen as unresolved issues during good faith negotiations. I will address various business and compensation issues which have arisen over negotiations concerning the General Terms and Conditions provisions of the agreement, and the portion of the agreement which addresses intercarrier compensation issues, the Appendix Intercarrier Compensation.

Q. PLEASE SUMMARIZE YOUR TESTIMONY, INCLUDING YOUR CONCLUSIONS AND RECOMMENDATIONS.

1 A. As my colleague Mike Cornelius has testified, Charter is a facilities-based
2 competitive LEC that provides competitive telecommunications services to
3 primarily residential customers utilizing the existing network facilities of its
4 affiliated cable company. Charter must be allowed to interconnect with SBC on
5 reasonable terms, rates and conditions in order to provide competitive, cost
6 effective services to its customers. Charter's experience with providing
7 competing services to residential customer over its own network facilities puts
8 Charter in a unique position to propose terms that are both commercially
9 reasonable and technically sound.

10 SBC's proposals reflect an unwillingness to acknowledge developments in the
11 industry, technology and competition. As a consequence, SBC has resisted
12 Charter's efforts to establish fair and reasonable contract terms which reflect
13 current law, while at the same time allow both parties the flexibility to compete
14 with each other on rates, services and bundled packages. For these reasons I
15 believe that adherence to SBC's proposed contract terms will hinder, rather than
16 enable, competitive choices for subscribers in Missouri.

17 **III. INTERCARRIER COMPENSATION ISSUES**

18 In this section I discuss the single disputed issue between the two parties
19 concerning the question of intercarrier compensation. This issue is reflected in
20 each party's proposed contract language for Section 16.1 of the Appendix
21 Intercarrier Compensation.

22 **III.A. APPENDIX INTERCARRIER COMPENSATION ISSUE (1): WHERE**
23 **CAN CHARTER INTERCONNECT WITH SBC?**

1 ➤ For compensation purposes, should the definition of a mandatory local calling
2 area be governed by SBC 13-STATE's local exchange tariffs?¹
3

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

5 A. Charter's position is that, as a general matter, the definition of a mandatory local
6 calling area should be governed by the *originating party's* tariff definition, rather
7 than in all instances by SBC's tariff. What this means, in practical terms, is that
8 for all calls that originate on SBC's network, i.e. calls from SBC's subscribers to
9 Charter's subscribers, SBC's tariff definition of a mandatory local calling area
10 would apply. However, for all calls that originate on Charter's network, i.e. calls
11 from Charter's subscribers to SBC's subscribers (or an IXC), then Charter's tariff
12 definition of a mandatory local calling area would apply. In other words, if the
13 traffic is Charter's traffic, and is generated by Charter's subscribers, then Charter
14 should be able to define the local calling area boundaries for the purposes of those
15 calls.

16
17 **Q. WHAT IS SBC'S POSITION ON THIS ISSUE?**

18 A. SBC believes that the definition of a mandatory local calling area should be set by
19 SBC's tariff definition, whether or not this traffic is SBC or Charter's traffic.

20
21 **Q. WHY IS THIS AN IMPORTANT ISSUE?**

22 A. In practical terms, at least in the short run, it may not matter much at all, because
23 the Commission itself is very involved in what mandatory local calling areas each

¹ The following paragraphs in the agreement are covered by this issue: Appendix Intercarrier

1 party will have in effect. So, SBC's proposal sounds innocuous enough. But
2 SBC's proposal has much broader implications. If SBC's proposal is adopted
3 SBC would be able to define, in economic terms, what constitutes a local call, and
4 what constitutes a toll (long distance) call, as between Charter and Charter's own
5 customers.

6
7 **Q. WHAT IS CHARTER'S JUSTIFICATION FOR ITS PROPOSED**
8 **LANGUAGE?**

9 A. Although I am not an attorney, I can say that Charter's language on this point is
10 directly tied to and consistent with the applicable definitions in Section 153 of the
11 Communications Act, 47 C.F.R. § 153.

12 I know that Charter's attorneys will address this in greater detail in the briefs, but
13 let me just point out that Switched Access Traffic as normally understood is a
14 form of "exchange access," which is defined in 47 U.S.C. § 153(16). "Exchange
15 Access" is defined as the use of local facilities to originate or terminate toll calls,
16 or, in statutory terms, calls which constitute "telephone toll service." "Telephone
17 toll service" is defined as a call between telephones ("stations" in the statute) in
18 different exchange areas for which there is a separate charge to the end users
19 beyond the normal local service charge. 47 U.S.C. § 153(48).

20
21 **Q. WHAT IS THE RELEVANCE OF THESE DEFINITIONS IN THIS**
22 **PROCEEDING?**

1 A. This proceeding is, of course, a proceeding to establish terms of an agreement
2 between SBC and Charter that will govern the exchange of telecommunications
3 traffic between the two parties' networks. When you apply these definitions to
4 the traffic exchanged between SBC and Charter it becomes clear that if the end
5 user making a call is not charged a toll for it, then the function of originating or
6 terminating that call is not "access."

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

13

14 **Q. WHAT OTHER JUSTIFICATION DOES CHARTER HAVE FOR ITS**
15 **PROPOSED LANGUAGE?**

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

1

2 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
3 **THIS ISSUE?**

4 A. Charter is asking this Commission to adopt Charter's proposed contract language²
5 and rule that Charter may, with respect to calls generated by its own customers,
6 define what is a mandatory local calling area. And in turn, SBC may define, with
7 respect to calls generated by its own customers, what is a mandatory local calling
8 area.

9

10 **IV. GENERAL BUSINESS AND CONTRACTUAL ISSUES (GENERAL**
11 **TERMS AND CONDITIONS)**

12 In this section I address disputed provisions concerning general business and
13 contractual issues that arose within the General Terms and Conditions ("GTC")
14 portion of the Agreement.

15 **IV.A. GTC ISSUE (8): DEFINITION OF EXCHANGE AREA**

16 ➤ Which Party's definition of "Exchange Area" should be included?³

17

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

19 A. This issue is closely related to the intercarrier compensation issue I discussed in
20 Section III of my testimony (above). As I explained there, Charter's position is
21 that the agreement should make clear that each Party should be able to define their
22 own local service area boundaries, for purposes of providing service to their own

² Charter has specifically identified Section 16.1 of the Appendix Intercarrier Compensation as relevant to this question. However, 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.

1 end users. Charter's language accomplishes that purpose. Charter's proposal
2 refers to Exchange Areas established "in accordance with Applicable Law." In
3 the normal situation that would, of course, entail the establishment of local calling
4 areas in accordance with this Commission's requirements.

5

6 **Q. WHAT IS SBC'S POSITION ON THIS ISSUE?**

7 A. I don't know. SBC has said nothing more than: "SBC's definition most
8 accurately defines 'Exchange Area.'"

9

10 **Q. WHY IS THIS AN IMPORTANT ISSUE FOR CHARTER?**

11 A. For the same reasons I explained in Section III of my testimony (above). Rather
12 than repeat that testimony I will simply incorporate by reference here. I would
13 only emphasize that over time the Commission should be encouraging facilities-
14 based LECs to compete with each other on the basis, among other things, of
15 different "local" calling scope. By trying to tie local calling (here, the definition
16 of an "exchange") to what SBC does, SBC is in effect trying to suppress that
17 competition.

18

19 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
20 **THIS ISSUE?**

³ The following paragraph(s) in the agreement are covered by this issue: GTC § 1.1.50.

1 A. Charter is asking this Commission to adopt Charter's proposed contract language
2 and rule that Charter may, with respect to calls generated by its own customers,
3 define what is an exchange area, or mandatory local calling area.

4 **IV.B. GTC ISSUE (11): DEFINITION OF FOREIGN EXCHANGE TRAFFIC**

5 ➤ Which Party's definition of "Foreign Exchange" should be included?⁴
6
7

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

9 A. SBC's definition goes well beyond what I would consider a standard definition of
10 foreign exchange traffic. SBC is apparently trying to characterize certain traffic
11 as falling within the definition of telephone toll, or interexchange, traffic subject
12 to access charges.

13 Charter's definition rejects that approach and simply states the standard industry-
14 accepted definition of such traffic.
15

16 **Q. WHAT IS SBC'S POSITION ON THIS ISSUE?**

17 A. I don't know. SBC has said nothing more than: "SBC's definition most
18 accurately defines 'FX.'"
19

20 **Q. WHY IS THIS AN IMPORTANT ISSUE FOR CHARTER?**

21 A. Characterizing certain calls as toll, or interexchange, means that access charges
22 apply. Having to pay one's competitor access charges can frustrate the ability of
23 competing carriers to offer competitive service packages. SBC's definition seems
24 to effectively force carriers to charge subscribers onerous toll or long-distance

charges (in order to pay the access charges that SBC would assess upon such calls) and generally limits Charter's ability to offer such competitive packages.

Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON THIS ISSUE?

A. Charter is asking this Commission to adopt Charter's proposed contract language and rule that Foreign Exchange (or "FX") calls should be defined in the manner described in Charter's proposed contract language.

IV.C. GTC ISSUE (13): DEFINITION OF IntraLATA TOLL TRAFFIC

➤ Which Party's definition of "IntraLATA Toll Traffic" should be included?⁵

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

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

Because this is largely a legal dispute, I expect Charter's attorneys will address this issue more fully at briefing.

Q. WHAT IS SBC'S POSITION ON THIS ISSUE?

A. I don't know. SBC has said nothing more than: "SBC's definition most accurately defines IntraLATA Toll traffic."

⁴ The following paragraph(s) in the agreement are covered by this issue: GTC § 1.1.57.

⁵ The following paragraph(s) in the agreement are covered by this issue: GTC § 1.1.71.

1 **Q. WHY IS THIS AN IMPORTANT ISSUE FOR CHARTER?**

2 A. Generally, Charter has proposed that the agreement employ terms used in, and
3 defined by, the Communications Act. Of particular relevance to this issue are the
4 terms “Telephone Exchange Service” and “Telephone Toll Service.” “Local”
5 service is not a formally defined term in the law, as I understand it, although
6 “Telephone Exchange Service.” is. And, when people speak of “long distance”
7 service they generally mean Telephone Toll Service. Although the colloquial
8 terms “local” and “long distance” are sufficient for most purposes, I do not think
9 they should be used to define key terms and obligations in a legal contract (i.e.
10 this agreement).

11 Because the agreement is a legal contract, arising under the federal
12 Telecommunications Act of 1996, I believe that the parties and this Commission
13 should use terms that have a precise meaning. Indeed, when it is possible to use
14 terms that are specifically used and defined in the very statute that governs this
15 agreement (the Communications Act, of course) then the agreement should
16 employ such terms wherever possible, as opposed to colloquial terms that may
17 have a common meaning, but lack a precise legal definition. That is why Charter
18 has proposed to use the terms that are embodied in the Communications Act
19 within the agreement’s definitions.

20 There are at least two immediate benefits to Charter’s proposed approach. First, it
21 enables both parties to understand, precisely, their respective obligations and
22 benefits under the agreement. Second, to the extent that a dispute about any of
23 those obligations and benefits arises in the future the decision make in that dispute

(quite possibly this Commission or an ALJ) will be better able to resolve that dispute if the terms employed in the agreement are identical to those which are used in the Communications Act.

Because this is largely a legal dispute, I expect Charter's attorneys will address this issue more fully at briefing.

Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON THIS ISSUE?

A. Charter is asking this Commission to adopt Charter's proposed contract language as identified in the DPLs filed by Charter.

IV.D. GTC ISSUE (14): DEFINITION OF LOCAL TRAFFIC

➤ Which Party's definition of "Local Traffic" should be included?⁶

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

A. Charter's position is that its definition conforms to the statutory definition of telephone exchange service, and as such is more likely to be interpreted in conformance with governing law. This is so because Charter's definition employs the terms used by, and defined in, the Communications Act that describe the type of traffic at issue here.

Q. WHAT IS SBC'S POSITION ON THIS ISSUE?

A. I don't know. SBC has said nothing more than: "SBC's definition most accurately defines Local traffic."

⁶ The following paragraph(s) in the agreement are covered by this issue: GTC § 1.1.81.

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Q. WHY IS THIS AN IMPORTANT ISSUE FOR CHARTER?

A. For the same reasons I described in response to the same question under Issue IV(C) above. My response to that question is incorporated here.

Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON THIS ISSUE?

A. Charter is asking this Commission to adopt Charter’s proposed contract language as identified in the DPLs filed by Charter.

IV.E. GTC ISSUE (15): DEFINITION OF LOCAL NUMBER PORTABILITY

➤ Which Party’s definition of “Local Number Portability” should be included?⁷

Q. WHAT IS CHARTER’S POSITION ON THIS ISSUE?

A. Similar to those issues discussed above, Charter proposes to define this term by 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.

Q. WHAT IS SBC’S POSITION ON THIS ISSUE?

A. I don’t know. SBC has said nothing more than: “SBC’s definition most accurately defines Local Number Portability.”

⁷ The following paragraph(s) in the agreement are covered by this issue: GTC § 1.1.84.

1 **Q. WHY IS THIS AN IMPORTANT ISSUE FOR CHARTER?**

2 A. For the same reasons I described in response to the same question under Issue
3 IV(C) above. My response to that question is incorporated here.

4 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
5 **THIS ISSUE?**

6 A. Charter is asking this Commission to adopt Charter's proposed contract language
7 as identified in the DPLs filed by Charter.

8 **IV.F. GTC ISSUE (18)(A): SHOULD TRANSIT TRAFFIC BE DEFINED IN THE**
9 **ICA?**

10 ➤ Which Party's definition of "Transit Traffic" should be included?⁸

11
12 **Q. WHAT IS CHARTER'S POSITION ON THIS ISSUE?**

13 A. Charter's position is that transit traffic — a form of traffic which involves a third
14 party LEC — occurs very regularly in the industry. This type of traffic occurs
15 where either of the parties to the agreement is sitting "between" the other party
16 and a 3rd party carrier. In other words, an independent LEC may be connected to
17 an SBC tandem and need to send traffic to Charter. Rather than establishing a
18 direct connection with Charter, that independent LEC may simply sent it to SBC,
19 who would then send it to Charter (because it already has the direct connection in
20 place with Charter).

21 Given that this form of traffic exchange is routine Charter believes that the
22 agreement should identify and define this type of traffic.

23

⁸ The following paragraph(s) in the agreement are covered by this issue: GTC § 1.1.158.

1 **Q. WHAT IS SBC'S POSITION ON THIS ISSUE?**

2 A. The only statement SBC has made on this issue is that transit traffic is not
3 addressed in the agreement, and therefore the definition of transit traffic should
4 not be included in the agreement.

5 It is not clear to why SBC believes that there will be no transit traffic exchanged
6 in this situation.

7

8 **Q. WHY IS THIS AN IMPORTANT ISSUE FOR CHARTER?**

9 A. If left undefined and unresolved there may well be disputes in the future
10 concerning each party's obligations with respect to transit traffic. In order to
11 avoid that outcome the parties should recognize that this traffic exists and define
12 it appropriately.

13

14 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
15 **THIS ISSUE?**

16 A. Charter is asking this Commission to adopt Charter's proposed contract language
17 as identified in the DPLs filed by Charter and rule that because transit traffic is a
18 form of traffic which the parties will exchange it is appropriately addressed in the
19 agreement.

20 **IV.G. GTC ISSUE (18)(B): DEFINITION OF OUT OF EXCHANGE TRAFFIC**

21 ➤ Which Party's definition of "Out of Exchange Traffic" should be included?⁹
22

⁹ The following paragraph(s) in the agreement are covered by this issue: GTC § 1.1.103.

1 **Q. WHAT IS CHARTER’S POSITION ON THIS ISSUE?**

2 A. Charter’s proposed definition most accurately reflects the type of traffic
3 implicated by this issue. Notably, Charter and SBC were able to negotiate a
4 specific appendix to their agreement that addresses this issue. Charter is
5 concerned that the language in the “General Terms and Conditions” part of the
6 contract not contradict or confuse the parties’ specifically negotiated language.

7

8 **Q. WHAT IS SBC’S POSITION ON THIS ISSUE?**

9 A. I don’t know. SBC has said nothing more than: “SBC’s definition of Out of
10 Exchange Traffic most accurately defines the term.”

11

12 **Q. PLEASE EXPLAIN THE SIGNIFICANCE OF THIS ISSUE.**

13 A. This issue matters to Charter because in a number of cases, Charter’s own service
14 territory straddles the border between SBC and another ILEC. This means that
15 the traffic SBC and Charter will exchange might well originate or terminate
16 outside of SBC’s own territory, even though the call is still treated as a “local”
17 call due to the local calling scope established by the parties’ tariffs and approved
18 by the Commission. Charter and SBC have had a number of disputes about how
19 to handle this type of traffic, prior to negotiating the new language in the “OE-
20 LEC” appendix. Again, Charter wants to be sure that its contract with SBC is
21 clear and unambiguous on this point.

22

1 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
2 **THIS ISSUE?**

3 A. Charter is asking this Commission to adopt Charter's proposed contract language
4 as identified in the DPLs filed by Charter.

5 **IV.H. GTC ISSUE (21): USE OF OUTSIDE DOCUMENTS TO MATERIALLY**
6 **CHANGE TERMS OF THE AGREEMENT**

7 ➤ Should either party be able to modify or update their reference documents
8 without seeking approval from the other party?¹⁰

9
10 **Q. WHAT IS CHARTER'S POSITION ON THIS ISSUE?**

11 A. SBC utilizes a number of industry guides, or other similar documents, which
12 purport to establish SBC's practice concerning various matters that affect the
13 parties interconnection. For example, one such guide sets forth the procedures
14 that SBC will utilize when an interconnected CLEC requests information from
15 SBC. Charter has no objection to SBC providing those guides. Indeed, given the
16 complexity of SBC's requirements, Charter appreciates the availability of these
17 materials. And, to the extent that these guides deal with relatively minor, internal
18 SBC procedures — what form to use, for example — Charter has no objection to
19 SBC modifying its procedures with reasonable advance notice to the affected
20 parties.

21 The problem with SBC's language is that it is so broad as to be unlimited.
22 Charter's proposal is to include language that makes clear that no material
23 contractual obligations of Charter can be increased, or of SBC can be reduced, by
24 means of a unilateral change by SBC in one of these standard "procedures"
25 documents. Basically, the language SBC has proffered looks to me like a

1 loophole that SBC could use to impose costs or other burdens on Charter, or avoid
2 its own responsibilities under the contract.

3 Of course, Charter recognizes that over the life of this agreement, Charter and
4 SBC may indeed need to amend the contract in one or more significant ways. But
5 for that to occur, each party should agree to the change in writing.

6
7 **Q. WHAT IS SBC'S POSITION ON THIS ISSUE?**

8 A. SBC asserts that Charter's proposed contract language would put an undue burden
9 on SBC by requiring SBC to seek approval from Charter for changes SBC wants
10 to make to its publications. SBC says that it deals with hundreds of CLECs and
11 this requirement is unrealistic and impractical.

12
13 **Q. DO YOU AGREE THAT CHARTER'S PROPOSAL WOULD IMPAIR**
14 **SBC IN THE MANNER SUGGESTED?**

15 A. No. Charter's proposal is not that SBC be required to provide notice to Charter in
16 every instance when SBC modifies its own reference documents. Instead, Charter
17 limits its proposal that SBC provide notice only to those situations when the
18 reference document will *materially* change either party's obligations under the
19 agreement. SBC never explains why it should be able to materially change either
20 party's obligations without telling Charter and getting Charter's written approval.

21
22 **Q. WHY IS CHARTER'S PROPOSAL NECESSARY?**

¹⁰ The following paragraph(s) in the agreement are covered by this issue: GTC § 2.3.1.

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

9

10 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
11 **THIS ISSUE?**

12 A. Charter is asking this Commission to adopt Charter's proposed contract language
13 on this issue and rule that SBC may not modify reference documents that are
14 incorporated in the agreement in a manner that results in a material change to
15 either party's obligations, without first providing notice and consent from Charter.

16 **IV.I. GTC ISSUE (22): USE OF TARIFFS TO MATERIALLY CHANGE**
17 **TERMS OF THE AGREEMENT**

18 ➤ Should additional language be included in the tariff language? When a CLEC
19 voluntarily agrees to language relating to a SBC Missouri tariff, does it thereby
20 gain the right to (a) prevent SBC Missouri from modifying its tariffs or (b) require
21 SBC Missouri to negotiate its tariffs with the CLEC?¹¹

22

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

24 A. This issue parallels Issue No. 21 above. SBC mischaracterizes the issue. Charter
25 is not trying to interfere with SBC's ability to modify its tariffs or to negotiate any
26 particular tariff changes with Charter. What Charter is trying to do is close a

possible loophole. Specifically, Charter wants to make clear that SBC may not use a tariff filing to do an end run around its obligations in this agreement. So, with respect to the matters addressed by the agreement being arbitrated, Charter's position is that it must be 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.

Q. WHAT IS SBC'S POSITION ON THIS ISSUE?

A. SBC makes several points on this issue. First, SBC asserts that its proposal should be adopted because it will ensure that SBC can continue to modify its tariff during the life of the agreement and that any such changes will be **automatically** incorporated into the Agreement.

Second, SBC makes the point that SBC's tariff revision language ensures that the Agreement will continue to encompass the full suite of "resale services" available to CLECs during the term of the Agreement.

Third, SBC also argues that Charter should not be able to "lock in" a tariff rate, term, or condition via its contract language where the tariff rates, terms, and conditions frequently change.

¹¹ The following paragraph(s) in the agreement are covered by this issue: GTC § 2.5.1.

1 Fourth, and finally, SBC asserts that Charter's proposed language is unnecessary
2 because SBC's tariff revisions are always subject to public comment prior to their
3 approval by the PSC.

4
5 **Q. DOES CHARTER HAVE A RESPONSE TO THESE POINTS?**

6 A. Yes, taking them in the order presented, Charter responds as follows.

7 First, SBC's arguments fail to acknowledge that Charter is not proposing that *all*
8 tariff revisions be subject to a notice obligation, only those tariff revisions which
9 result in a *material* change to either party's obligations under the agreement. I do
10 not know how frequently SBC modifies its tariffs, but it would surprise me if
11 more than a few of them would have any material affect on our interconnection
12 agreement at all. If that is the case (as Charter expects) then the language that
13 Charter has proposed will not be implicated and SBC will have *no* obligation to
14 provide notice to Charter.

15 Second, because Charter is a facilities-based CLEC that utilizes its own network
16 and equipment it does not, and will not, purchase resale services from SBC. So
17 SBC's justification on those grounds is inapplicable here. I think this is an
18 example of SBC's generic contract language failing to recognize that competitors
19 like Charter are in a different position than resale- or UNE-based CLECs.

20 Third, again SBC mischaracterizes Charter's position. Charter is not trying to
21 "lock in" any particular tariff term or provision, and its proposed language does
22 not give it any right to do so. Instead, Charter's proposed language makes clear
23 that if SBC attempts to revise its tariff in a manner that modifies the terms and

1 conditions of this agreement (which Charter is admittedly trying to “lock in”
2 place) then SBC should provide notice to Charter.

3 Fourth, although a public comment period is useful, it is not an appropriate
4 substitute if SBC wants to materially change the terms of this agreement. The
5 proper means for making material changes to the terms of the agreement is via the
6 amendment process. SBC should be required to adhere to that process, and
7 should not be allowed to utilize tariff revisions in order to alter (materially) either
8 party’s obligations under the agreement.
9

10 **Q. WHY IS CHARTER’S PROPOSAL NECESSARY?**

11 A. My attorneys tell me that litigation over the relative precedence of interconnection
12 agreement terms and seemingly contrary tariff terms is not unknown in the
13 industry. Charter’s language is intended to avoid such problems as between
14 Charter and SBC.
15

16 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
17 **THIS ISSUE?**

18 A. Charter is asking this Commission to adopt Charter’s proposed contract language
19 on this issue and rule that SBC may not revise its tariff in a manner that results in
20 material changes to either party’s obligations under the agreement, without first
21 providing notice and consent from Charter.

22 **IV.J. GTC ISSUE (23): IDENTIFICATION OF TERMS THAT SBC CLAIMS**
23 **HAVE NOT BEEN “VOLUNTARILY NEGOTIATED”**

➤ Should SBC's additional language concerning terms that are not voluntarily negotiated be included in the agreement?¹²

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

A. The parties are, I believe, close to settling this issue if they have not done so already. If we can resolve this issue, we will of course advise the Commission in the next appropriate filing. In the event that it is not settled, however, I would provide the following testimony.

SBC seeks the right to state in the agreement that it includes some rates, terms and conditions that were "not voluntarily negotiated." am not sure why SBC believes that language is necessary, although it is not hard to imagine that they would try to rely upon it in an attempt to avoid (at a later date) some of its obligations under the agreement.

Generally, Charter does not object to that concept, but simply requests that SBC identify such provisions before the agreement is finalized. Charter does not know, and cannot know unless SBC provides a list, is *which* terms those are. It seems to me 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.

Q. WHAT IS SBC'S POSITION ON THIS ISSUE?

A. SBC tries to downplay the significance of this issue and says that they have tried to identify those issues they believe fall within this category. However, they

¹² The following paragraph(s) in the agreement are covered by this issue: GTC § 2.12.1.

1 assert that they may not have identified all such provisions and that is therefore
2 appropriate to include general language in the agreement that leaves open the
3 possibility that SBC may identify other such provisions at a later date.

4
5 **Q. WHY IS CHARTER’S PROPOSAL NECESSARY?**

6 A. By including this language in the agreement SBC is leaving itself an “escape
7 clause” (or loophole) under this general category of provisions which constitute
8 “non-Voluntary” terms. Exactly why SBC wants to include this language is
9 unclear, but I expect it is because they want to preserve the opportunity to argue --
10 at a later date-- whether these terms should apply to SBC. That should not be
11 allowed to happen and the Commission should not allow SBC to include this
12 possible escape clause in the agreement.

13
14 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
15 **THIS ISSUE?**

16 A. Charter is asking this Commission to adopt Charter’s proposed contract language
17 on this issue and rule that only those terms which SBC has already identified as
18 “non-voluntary” terms be included in that category.

19 **IV.K. GTC ISSUE (24): SCOPE OF OBLIGATIONS**

20 ➤ Which party’s scope of obligation language should be included in this
21 agreement?¹³
22

¹³ The following paragraph(s) in the agreement are covered by this issue: GTC § 2.10.1.

1 **Q. WHAT IS CHARTER’S POSITION ON THIS ISSUE?**

2 A. This issue is tied up with the matter of “out-of-exchange” traffic that I discussed
3 earlier. As an abstract proposition, Charter accepts that SBC’s duties as an ILEC
4 do not come into play in areas where SBC is not, in fact, the ILEC. If SBC does
5 not offer local service in a particular town, it would make no sense to suggest that
6 it should nonetheless be required to provide unbundled loops in that town. It isn’t
7 the ILEC there, and has no loops there to unbundle.

8 Unfortunately, SBC has used the notion that its duties as an ILEC are limited to
9 its ILEC territory to resist exchanging traffic with Charter where Charter’s
10 customer is located outside SBC’s territory, even though Charter is handing the
11 traffic off within that territory, and has resisted opening up Charter’s NXX codes
12 for such areas, even though traffic to and from those NXX codes would be
13 physically exchanged at a meet point within SBC’s territory. Obviously, the
14 location of the end users will normally affect whether particular traffic is properly
15 rated as local or toll, but Charter can see no basis for SBC *ever* refusing to
16 exchange traffic or to open a Charter code within the appropriate LATA.

17 As noted above, I believe that the negotiated version of the “OE-LEC” appendix
18 solves this issue for both Charter and SBC. Charter’s position is simply to keep
19 that negotiated solution in effect, without complicating and potentially confusing
20 language in the General Terms and Conditions.

21

22 **Q. WHAT IS SBC’S POSITION ON THIS ISSUE?**

1 A. As far as I can tell, SBC is simply trying to preserve some generic language,
2 inapplicable to Charter, in this portion of the agreement.

3
4 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
5 **THIS ISSUE?**

6 A. The Commission should adopt Charter's proposed language, in light of the fact
7 that the parties have negotiated a resolution to this matter in the OE-LEC
8 appendix.

9 **IV.L. GTC ISSUE (26): INSURANCE COVERAGE**

10 ➤ What are the appropriate provisions relating to insurance coverage to be
11 maintained by the Parties under this agreement?¹⁴

12
13 **Q. WHAT IS CHARTER'S POSITION ON THIS ISSUE?**

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

22

23 **Q. WHAT IS SBC'S POSITION ON THIS ISSUE?**

24 A. SBC states that it has based its insurance requirements on the fact that if Charter
25 interconnects and/or collocates with SBC then SBC has far more risk of damage

1 to its equipment and Central Office structure. SBC also assert that the insurance
2 requirements requested by SBC are the minimum amount required to protect SBC
3 and its property.

4
5 **Q. DO YOU AGREE WITH SBC ON THIS POINT?**

6 A. No. First, SBC and Charter will be interconnecting by means of a fiber meet
7 arrangement. There is no reason to think that such an arrangement creates
8 substantial risk for either party, or that any risk is disproportionately borne by
9 SBC. Second, while there may be situations where Charter collocates in SBC's
10 offices, this is much less likely to occur under our arrangement than SBC's
11 arrangement with a typical CLEC. Third, given the various controls that SBC
12 places on collocation, I expect that SBC's worries about damage are overblown.
13 Fourth, note again that Charter does not suggest that it have no insurance at all;
14 merely that SBC not be permitted to restrict Charter's choice of insurance carrier.

15
16 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
17 **THIS ISSUE?**

18 A. Charter is asking the Commission to accept its proposed language on this topic,
19 which would allow Charter to select its preferred insurance carrier.

20 **IV.M. GTC ISSUE (27)(A): ASSIGNMENT**

21 ➤ What are the appropriate terms and conditions regarding restrictions on the
22 assignment of the agreement?¹⁵
23

¹⁴ The following paragraph(s) in the agreement are covered by this issue: GTC § 4.7.5.

¹⁵ The following paragraph(s) in the agreement are covered by this issue: GTC § 4.9.1.1.

1 **Q. WHAT IS CHARTER’S POSITION ON THIS ISSUE?**

2 A. Charter believes that restrictions on assignment should be mutual, and that in each
3 case there should be provisions for assignment without advance consent for intra-
4 corporate-family rearrangements.

5
6 **Q. WHAT IS SBC’S POSITION ON THIS ISSUE?**

7 A. SBC proposes to restrict only Charter’s right to assign the contract. SBC also
8 proposes that additional “assurances of payment” may be required of Charter if
9 the contract is assigned to an affiliate.

10
11 **Q. WHY IS CHARTER’S POSITION MORE REASONABLE?**

12 A. It is not unknown in the telecommunications industry for an ILEC like SBC to sell
13 off some portions of its operating territory to a third party. If SBC does so with
14 respect to the territory where it interconnects with Charter, Charter is at risk of
15 having the benefits of its interconnection agreement degraded by virtue of such an
16 assignment. Just as Charter cannot, under the agreement, simply assign its
17 contractual rights or duties to some third party with whom SBC has no
18 relationship, neither should Charter be expected to automatically start dealing
19 with someone other than SBC.

20
21 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
22 **THIS ISSUE?**

1 A. Charter is asking the Commission to adopt Charter's proposed language, which
2 makes the assignment process fair and mutual.

3 **IV.N. GTC ISSUE (27)(B): NAME CHANGES**

4 ➤ Should SBC Missouri be allowed to recover reasonable costs from Charter in
5 the event that Charter requests changes in its corporate name, its OCN or ACNA,
6 or makes any other disposition of its assets, or its End Users and/or makes any
7 other changes in its corporate operations?¹⁶
8

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

10 A. Charter believes that corporate re-naming and similar type activities are fairly
11 routine within the telecommunications industry and that there should be no
12 special fee imposed on Charter when that occurs. These are the kinds of normal
13 contract administration costs that each party has to bear in order to accommodate
14 normal business developments on the part of the other party.
15

16 **Q. WHAT IS SBC'S POSITION ON THIS ISSUE?**

17 A. I am not sure why SBC takes the position it takes, other than to impose its own
18 administrative costs onto Charter or other CLECs.
19

20 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
21 **THIS ISSUE?**

22 A. Charter is asking the Commission to adopt Charter's proposed reasonable
23 language, under which SBC would bear its own administrative costs in the event
24 of a name change or other corporate activity of the sort identified in the affected
25 contract provision.

¹⁶ The following paragraph(s) in the agreement are covered by this issue: GTC § 4.9.1.1.

1 **IV.O. GTC ISSUE (27)(C): NAME CHANGES**

2 ➤ What are the appropriate terms and conditions related to the types of changes
3 identified above?¹⁷

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

6 A. The appropriate terms and conditions associated with these types of activities are
7 those proposed by Charter. This issue is not really distinct from the one just
8 discussed, and I incorporate my testimony above by reference.

9
10 **Q. WHAT IS SBC'S POSITION ON THIS ISSUE?**

11 A. I do not know for sure. Please see my discussion above.

12
13 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
14 **THIS ISSUE?**

15 A. The Commission should adopt Charter's proposed language, under which SBC
16 would bear its own administrative costs.

17 **IV.P. GTC ISSUE (28): OSS OBLIGATIONS**

18 ➤ Should Charter be required to utilize the standard and nondiscriminatory OSS'
19 provide by SBC Missouri, reviewed by the Commission and utilized by the
20 Missouri CLEC Community?¹⁸

21
22 **Q. WHAT IS CHARTER'S POSITION ON THIS ISSUE?**

23 A. SBC has mischaracterized the issue. Charter is not suggesting that it have some
24 special or unique OSS from SBC. Charter's proposed language in this section is
25 designed to ensure that SBC cannot send Charter bills for SBC administrative
26 activity (which will likely occur in connection with ordering or arranging for

¹⁷ The following paragraph(s) in the agreement are covered by this issue: GTC § 4.9.1.1.

¹⁸ The following paragraph(s) in the agreement are covered by this issue: GTC § 4.1.3.

interconnection) except to the extent that charges are laid out specifically in the agreement. For example, if it is necessary for the parties to have a meeting to discuss how to establish a new fiber meet point, or to agree on which SBC end offices have sufficient traffic volume to warrant some particular trunking arrangement, SBC should not send Charter a bill for the time its employees take to prepare for and attend such a meeting.

Q. WHAT IS SBC'S POSITION ON THIS ISSUE?

A. SBC has not stated its position with respect to the real dispute. I do not know why or whether SBC expects to be able to bill Charter for SBC's own internal administrative costs of fulfilling its obligations under this contract.

Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON THIS ISSUE?

A. Charter is asking the Commission to adopt language that makes clear that SBC may not charge Charter for SBC's internal administrative costs in meeting its obligations under the agreement.

IV.Q. GTC ISSUE (29): SUCCESSOR AGREEMENTS

➤ Should successor language be added to Section 5.6, even though it is stated in Section 5.7?¹⁹

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

A. SBC mischaracterizes this issue as well. The issue is not that Charter's language is in Section 5.6 instead of Section 5.7. The issue is what happens, substantively,

¹⁹ The following paragraph(s) in the agreement are covered by this issue: GTC § 5.6.

1 at the end of this agreement's initial term. Charter wants the agreement to make
2 clear that it will remain in effect until replaced by a successor agreement.
3 Otherwise, Charter is at risk of a situation in which this agreement has expired
4 and no successor has been established. On the other hand, if Charter's proposed
5 language is adopted, it will be clear that this agreement will remain in effect even
6 if for some reason there is a delay in negotiating or arbitrating a replacement.
7

8 **Q. WHAT IS SBC'S POSITION ON THIS ISSUE?**

9 A. I do not know for sure. SBC has not addressed the real matter in dispute.
10

11 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
12 **THIS ISSUE?**

13 A. Charter is asking the Commission to adopt Charter's reasonable proposal, which
14 will allow for a certain and orderly transition to a new interconnection agreement
15 when this one expires.
16

17 **IV.R. GTC ISSUE (30): ASSURANCE OF PAYMENT**

18 ➤ Should CLEC be required to give SBC an Assurance of Payment?²⁰
19

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

21 A. Charter does not believe that it is at all appropriate for SBC to have the ability to
22 demand any sort of special "assurances of payment" from Charter. SBC and
23 Charter will both be sending each other local traffic on a bill and keep basis. SBC

²⁰ The following paragraph(s) in the agreement are covered by this issue: GTC § 5.6.

1 will also be sending Charter incoming intraLATA toll traffic from SBC's
2 customers outside the affected local calling area, with the result that SBC will
3 owe Charter terminating access charges on those calls. But other than these
4 traffic flows, which will either be generally balanced or perhaps even favoring
5 Charter (in economic terms) to some degree, there will not likely be large billings
6 from SBC to Charter. Given this, a simple and straightforward system under
7 which a cash deposit is required if for some reason Charter misses its payment
8 obligations is sufficient.

9 I recognize that there may be other CLECs where SBC's situation is different.
10 For example, a pure reseller would never bill SBC anything; all of the payments
11 would be flowing from the reseller to SBC, and I can understand why SBC might
12 feel the need to have contractual rights to protect itself from such a reseller. But
13 Charter should not be required to submit to onerous contract terms that do not
14 really have any application to Charter's actual business relationship with SBC.

15
16 **Q. WHAT IS SBC'S POSITION ON THIS ISSUE?**

17 A. SBC claims that its language amounts to a reasonable "deposit" requirement, but
18 it does not. It is a much broader right to demand cash, letters of credit, etc., not
19 on the basis of any actual problem with payment by the CLEC, but rather on the
20 basis of SBC's concerns about a CLEC's financial status.

21
22 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
23 **THIS ISSUE?**

1 A. Charter is asking the Commission to adopt Charter's proposed, reasonable
2 language under which SBC may require a reasonable deposit if for some reason
3 Charter fails to make payments in a timely fashion, as provided in the contract.

4 **IV.S. GTC ISSUE (32): ESCROW**

5 ➤ Is it appropriate to require Party's to escrow disputed amounts?²¹

6
7 **Q. WHAT IS CHARTER'S POSITION ON THIS ISSUE?**

8 A. Charter does not believe that escrow requirements are appropriate given the
9 nature of the interconnection relationship between Charter and SBC. Again,
10 Charter is not reselling SBC's services, or using UNEs, or even collocating at
11 SBC's central offices. The parties are, essentially, simply exchanging traffic.
12 While it is of course reasonable to assume that there will be disputes between the
13 parties about billing matters, there is no reason to assume that they will be of such
14 a nature that the expense and burden of escrow accounts is worth it.

15
16 **Q. WHAT IS SBC'S POSITION ON THIS ISSUE?**

17 A. SBC basically claims that because escrow accounts are standard practice, they
18 should be required in this case as well.

19
20 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
21 **THIS ISSUE?**

22 A. Charter is asking the Commission to adopt its reasonable proposal, in light of the
23 nature of the interconnection and traffic exchange relationship between Charter
24 and SBC.

1 **IV.T. GTC ISSUE (33): CREDITS OR REFUNDS**

2 ➤ Should CLEC expect to receive monetary credits for resolved disputes (in their
3 favor) if CLEC has outstanding and or other past due balances due to SBC?²²
4

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

6 A. Charter believes that if a billing dispute has been resolved in its favor — that is, if
7 it has been determined that SBC owes Charter money — that SBC should be
8 required to actually pay what it owes. Charter's concern is that if there are a
9 number of disputes pending between the parties, SBC could simply decide that
10 rather than pay on the dispute where it has lost, it could say that it will treat the
11 money it owes as an "offset" to some other dispute, not yet resolved, where it says
12 that Charter owes SBC even more money. This creates an incentive for SBC to
13 be sure to have one or more large disputes pending where it claims that Charter
14 owes SBC a lot of money. That way, SBC will always be in a position to avoid
15 actually paying even for disputes where it is not found to have been correct.
16

17 **Q. WHAT IS SBC'S POSITION ON THIS ISSUE?**

18 A. SBC wants to be able to set off any amounts where it loses a billing dispute
19 against other accounts where the CLEC supposedly has an "amount due." The
20 problem with this position, of course, is that it completely ignores the distinction
21 between SBC's *claims* about what Charter might owe SBC, and the actual
22 resolution of disputes between the parties about who owes who how much. If a
23 matter is in dispute, there is no reason to give SBC the right to withhold actual
24 payment of amounts not in dispute.

²¹ The following paragraph(s) in the agreement are covered by this issue: GTC § 8.6.

1 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
2 **THIS ISSUE?**

3 A. Charter is asking the Commission to require SBC to pay its bills, once a dispute
4 has been resolved in Charter's favor.

5 **IV.U. GTC ISSUE (34): BILLING DISPUTES**

6 ➤ Which party's language regarding billing disputes should be included in the
7 ICA?²³

8
9 **Q. WHAT IS CHARTER'S POSITION ON THIS ISSUE?**

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

15

16 **Q. WHAT IS SBC'S POSITION ON THIS ISSUE?**

17 A. SBC asserts that its language is adequate. As to escrow accounts, see above.

18

19 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
20 **THIS ISSUE?**

21 A. Charter is asking the Commission to adopt its proposal, which requires a
22 reasonable explanation of the basis for any disputes.

23 **IV.V. GTC ISSUE (36): DISPUTE RESOLUTION**

24 ➤ Should SBC's language for Dispute Resolution that has been established for all
25 CLECs be included in the Agreement?²⁴

²² The following paragraph(s) in the agreement are covered by this issue: GTC § 7.1, 7.2.

²³ The following paragraph(s) in the agreement are covered by this issue: GTC § 9.3.1.

1 **Q. WHAT IS CHARTER’S POSITION ON THIS ISSUE?**

2 A. There is a key problem with SBC’s proposed “dispute resolution” language: it
3 does not actually say when a dispute has been “resolved.” Instead, it implies that
4 the only party who gets to declare a billing dispute “resolved” one way or another
5 is SBC. This is obviously unfair. If there is a dispute, either it has been resolved
6 to the satisfaction of both parties — in which case that resolution can easily be
7 noted in a written document — or the dispute remains open, whether or not either
8 party declares unilaterally that the dispute is over. Charter’s language reflects the
9 fact that the actual resolution of a dispute requires that both parties acknowledge
10 that it has been resolved.

11
12 **Q. WHAT IS SBC’S POSITION ON THIS ISSUE?**

13 A. SBC seems concerned that it should not be required to deviate from its standard
14 practice for resolving disputes. This seems to be a misunderstanding. Charter is
15 not proposing that SBC do anything different internally when a dispute arises.
16 Charter is simply trying to make sure that the contract does not give SBC the right
17 to deem a dispute “resolved” when it is still open.

18
19 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
20 **THIS ISSUE?**

21 A. Charter is asking the Commission to adopt language which clearly states that
22 disputes are not “resolved” until both parties have so agreed in writing.

²⁴ The following paragraph(s) in the agreement are covered by this issue: GTC § 10.3.1.

1 **IV.W. GTC ISSUE (38)(A): AUDITS**

2 ➤ Which Party's audit requirements should be included in the Agreement?²⁵

3
4 **Q. WHAT IS CHARTER'S POSITION ON THIS ISSUE?**

5 A. Charter has two problems with SBC's audit provision. First, SBC proposes that
6 its own employees should be permitted to "audit" Charter's books and records.
7 Second, SBC proposes that the audited party bear the costs of the audit if the audit
8 shows an overbilling or underpaying by the audited party of 5% or more.
9 With respect to the first point, Charter believes it is completely inappropriate to
10 allow one party's employees to "audit" the other party. If the parties have some
11 dispute as to which an audit is relevant, it is important for the results to be
12 credible. Otherwise the "audit" will simply be an intrusive (and potentially
13 abusive) waste of time. The only way that an "audit" can be credible to both
14 parties is if it is conducted by a neutral entity that is obliged to follow independent
15 standards of accuracy and fairness. Charter's language accomplishes this.
16 As to the issue of the percentage at which the audited party is required to pay,
17 Charter is pleased that it has agreed with SBC to exchange local traffic on a bill-
18 and-keep basis. At the same time, however, this creates a situation in which a
19 large amount of the actual business relationship between the parties — the
20 exchange of local traffic — will be conducted on, essentially, a barter basis. That
21 means that the amounts of the bills the parties send each other will actually only
22 relate to a relatively small fraction of that total business. (This would not be true
23 in the case, for example, of a reseller.) So, it is possible that a relatively large
24 "error" in billing over some period of time will not really be that significant in

terms of the overall business relationship between the parties. A higher threshold for shifting costs from the auditing to the audited party is therefore reasonable.

Q. WHAT IS SBC'S POSITION ON THIS ISSUE?

A. With respect to the 5% versus 10% threshold, SBC states its preference for its 5% threshold but does not provide any substantive explanation as to why it is appropriate. With respect to using its own employees to conduct the audit, SBC claims that otherwise it would have to pay for the training of an outside auditor in telecommunications matters in order to provide the required services. This seems to me to be clearly wrong. We are almost 10 years since the passage of the 1996 Act. I believe that there are a number of auditing firms that have personnel already trained with respect to billing disputes between carriers.

Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON THIS ISSUE?

A. The Commission should adopt Charter's reasonable proposal to use a 10% threshold for shifting the costs of the audit to the audited party, and forbid an "audit" from being conducted by employees of the auditing party.

IV.X. GTC ISSUE (38)(B): AUDITS

➤ Which Party's aggregate value should be included in the agreement?²⁶

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

A. I have discussed this above.

²⁵ The following paragraph(s) in the agreement are covered by this issue: GTC § 11.1.

²⁶ The following paragraph(s) in the agreement are covered by this issue: GTC § 11.1.

1 **Q. WHAT IS SBC'S POSITION ON THIS ISSUE?**

2 A. This is also discussed above.

3
4 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
5 **THIS ISSUE?**

6 A. The Commission should adopt Charter's reasonable proposal to use a 10%
7 threshold for shifting the costs of the audit to the audited party.

8 **IV.Y. GTC ISSUE (38)(C): AUDITS**

9 ➤ Should either Party's employees be able to perform the audit?²⁷

10
11 **Q. WHAT IS CHARTER'S POSITION ON THIS ISSUE?**

12 A. This issue has been discussed above.

13

14 **Q. WHAT IS SBC'S POSITION ON THIS ISSUE?**

15 A. This issue has been discussed above.

16

17 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
18 **THIS ISSUE?**

19 A. As noted above, the Commission should adopt Charter's proposals on this issue.

20 **IV.Z. GTC ISSUE (40): INDEMNIFICATION**

21 ➤ Is it appropriate to replace a commercially reasonable capped indemnification
22 exposure with non-capped damages?²⁸

23

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

25 A. As I understand it, the parties have resolved this issue. If I am mistaken I will
26 address it in my rebuttal testimony.

27 **IV.AA .GTC ISSUE (41): ADVERTISEMENTS**

²⁷ The following paragraph(s) in the agreement are covered by this issue: GTC § 11.1.

²⁸ The following paragraph(s) in the agreement are covered by this issue: GTC § 14.2.

➤ Should the Parties be allowed to use the Party's name in advertisements?²⁹

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

A. Charter certainly understands that neither party has a general right to use the other party's name or trademarks in its own advertising. Charter, however, believes that the agreement should expressly permit truthful comparative advertising. When Charter has service that costs less and/or has more features than SBC's Charter should be able to state that fact expressly in advertisements. There is no legitimate reason that Charter can see to prevent such use.

Q. WHAT IS SBC'S POSITION ON THIS ISSUE?

A. SBC basically says that it does not intend to use Charter's name in its advertisements.

Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON THIS ISSUE?

A. Charter is asking the Commission to rule that the contract will not prevent Charter from truthfully advertising ways in which its service is superior to SBC's.

IV.BB.GTC ISSUE (42): CHALLENGES TO CARRIER SELECTION CHANGES

➤ Is it appropriate that only and End User have the ability to initiate a challenge to a change in its LEC?³⁰

²⁹ The following paragraph(s) in the agreement are covered by this issue: GTC § 18.3.

³⁰ The following paragraph(s) in the agreement are covered by this issue: GTC § 24.1.2.

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

2 A. While normally end users will be the ones to object to changes in local carrier, it
3 is conceivable that some more generic problem might arise (such as a large-scale
4 set of requests to the number porting database to port a customer's number to, or
5 back to, SBC) that are more appropriately dealt with on a carrier-to-carrier basis.
6 SBC's language that only end users can raise such issues could, in those
7 circumstances, be an impediment to carrier-to-carrier resolution of a larger-scale
8 dispute.

9

10 **Q. WHAT IS SBC'S POSITION ON THIS ISSUE?**

11 A. SBC says that the end user has to challenge a change in carrier because only the
12 end user can initiate such a change.
13 The problem with this language is that it ignores the possibility of a more generic
14 problem involving multiple end users at the same time, as suggested above.

15

16 **Q. WHAT IS CHARTER ASKING THIS COMMISSION TO DECIDE ON**
17 **THIS ISSUE?**

18 A. Charter is asking the Commission to adopt Charter's language, which will be
19 more appropriate in the case of some generic system problem that affects multiple
20 end users at the same time.

21 **VII. CONCLUSIONS.**

22

23 **Q. HAVE YOU REVIEWED THE CONTRACT LANGUAGE PROPOSED BY**
24 **CHARTER AND SBC IN THIS CASE?**

1 A. Yes, I have.

2

3 **Q. FOR THE ISSUES YOU HAVE ADDRESSED, WHICH LANGUAGE IS**
4 **MORE CONSISTENT WITH THE POINTS YOU HAVE MADE IN THIS**
5 **TESTIMONY?**

6 A. Charter's language is reasonable and balanced from a technical and engineering
7 standpoint and is consistent with the FCC's orders from an engineering point of
8 view.

9

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

11 A. Yes.