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Witness: Timothy J Gates
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: Charter Fiberlink-Missouri, LLC
Case No.: TO-2009-0037
Date Testimony Prepared: October 21, 2008

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Petition of Charter)	
Fiberlink-Missouri, LLC for Arbitration of)	
An Interconnection Agreement Between)	Case No. TO-2009-0037
CenturyTel of Missouri, LLC and Charter)	
Fiberlink-Missouri, LLC)	

REBUTTAL TESTIMONY

OF

TIMOTHY J GATES

ON BEHALF OF CHARTER FIBERLINK- MISSOURI, LLC

-- PUBLIC VERSION --

October 21, 2008

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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Timothy J Gates. My business address is QSI Consulting, 819
4 Huntington Drive, Highlands Ranch, Colorado 80126.

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

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

13 **Q. ARE YOU THE SAME TIMOTHY GATES WHO FILED DIRECT**
14 **TESTIMONY IN THIS PROCEEDING?**

15 A. Yes, I am.

16 **Q. ON WHOSE BEHALF ARE YOU FILING THIS REBUTTAL**
17 **TESTIMONY?**

18 A. I am filing this testimony on behalf of Charter Fiberlink TX-CCO, LLC
19 (“Charter”).

20 **II. SUMMARY OF ISSUES TO BE ADDRESSED BY WITNESS**

21

1 **Q. PLEASE IDENTIFY THE ISSUES YOU WILL ADDRESS IN YOUR**
2 **REBUTTAL TESTIMONY.**

3 A. My testimony addresses the following issues: Issue 1 (IP-Enabled Traffic), Issues
4 2 and 24 (Network Interface Device Issues), Issue 9 (Penalties Related to
5 Forecasts), Issue 11 (Incorporation of the Service Guide), Issue 16 (Technology
6 Upgrades), Issues 27 and 40 (Porting Charges) and Issue 32 (Directory Assistance
7 Obligations). I also address the various interconnection and traffic exchange
8 issues that are presented in Issues 18 through 23.

9 **III. ISSUES**

10 **Issue 1 -- Should the proposed Agreement cover all IP-Enabled Traffic?**

11 **Q. WHICH CENTURYTEL WITNESS ADDRESSES THIS ISSUE?**

12
13 A. Mr. Watkins addresses this issue on behalf of CenturyTel at pages 3 through 10 of
14 his direct testimony.
15

16 **Q. HAVE YOU READ MR. WATKINS' TESTIMONY ON ISSUE NUMBER 1,**
17 **CONCERNING THE DEFINITION OF TRAFFIC TO BE EXCHANGED**
18 **BETWEEN THE PARTIES?**

19 A. Yes.
20

21 **Q. DO YOU HAVE AN OPINION ON MR. WATKINS' DISCUSSION**
22 **RELATED TO HIS DISCUSSION OF THE CONCEPTS OF "TRAFFIC**
23 **PROTOCOL" AND "TRAFFIC SCOPE"?**

24 A. Yes. The Parties disagree as to the definition that should be used to describe the
25 voice over Internet protocol ("VoIP") traffic that they will exchange. Charter
26 believes the definition should relate to the traffic that the Parties will actually

1 exchange during the term of the Agreement. CenturyTel apparently believes the
2 Agreement should contain a much broader definition that attempts to capture any
3 and all types of IP-based traffic that the Parties might exchange. I believe
4 CenturyTel has overreached with respect to “Traffic Scope,” as I explain just
5 below.

6 **Q. WHAT DOES “TRAFFIC SCOPE” HAVE TO DO WITH ISSUE NO. 1?**

7
8 A. To my mind, very little. At pages 4-5 of his direct testimony Mr. Watkins states
9 that, “if Charter’s language were to be adopted, the ambiguity arising from the
10 scope of traffic could be exploited beyond the narrow definition used by Charter,
11 as a means to avoid access charge treatment of non-local traffic.” In sum, Mr.
12 Watkins appears to be concerned that Charter will attempt to pass VoIP traffic as
13 local traffic, thereby avoiding access charges. There is an underlying discussion
14 that could be had regarding what intercarrier compensation is due for IP-enabled
15 VoIP traffic, as Mr. Watkins has referred to several FCC orders addressing
16 different “types” of IP-enabled services, but that is not necessary here. As we
17 know, the FCC intends to issue a decision on intercarrier compensation in the near
18 future. If and when such a decision is released, the parties may invoke the change
19 of law provisions in the agreement and adjust the terms and conditions as
20 necessary. Given this ability, Mr. Watkins’ concerns are unwarranted. Moreover
21 as explained more fully below, the parties have already agreed upon language for
22 determining how each will be compensated for the exchange of traffic under the
23 agreement.

24 **Q. PLEASE EXPLAIN.**
25

1 A. Mr. Watkins admits that fact on page 5 of his direct testimony. That language is
2 set forth in Section 4.2.1.1 of Article V, which defines Local Traffic for purposes
3 of each party's reciprocal compensation obligations. Specifically, that agreed
4 upon language provides:

5 "Local Traffic," for purposes of intercarrier compensation, is
6 Telecommunications traffic originated by a[n] End User Customer
7 of one Party in an exchange on that Party's network and
8 ***terminated to a[n] End User Customer of the other Party on that***
9 ***other Party's network located within the same exchange*** or other
10 non-optional extended local calling area associated with the
11 originating customer's exchange as defined by CenturyTel's
12 applicable local exchange tariff. ***Local Traffic does not include:***
13 ***(1) any ISP-Bound Traffic; (2) traffic that does not originate and***
14 ***terminate within the same CenturyTel local calling area*** as such
15 local calling area is defined by CenturyTel's applicable local
16 exchange tariff; ***(3) Toll Traffic***, including, but not limited to, calls
17 originated on a 1+ presubscription basis, or on a casual dialed
18 (10XXX/101XXXX) basis; ***(4) optional extended local calling area***
19 ***traffic; (5) special access, private line, Frame Relay, ATM, or any***
20 ***other traffic that is not switched by the terminating Party; or, (6)***
21 ***Tandem Transit Traffic.***

22
23 § 4.2.1.1, Art. V (emphasis added).

24
25 As you can see, this provision clearly establishes that the parties have agreed to
26 treat traffic that begins and ends in the same calling area as "Local Traffic" which
27 is subject to reciprocal compensation. However, traffic that does not meet that
28 basic test (which includes toll traffic) will not be treated as Local Traffic, and will
29 not be subject to reciprocal compensation. Given that the parties have already
30 agreed upon the appropriate definition of "Local Traffic" (which does not
31 distinguish the protocol of the traffic being exchanged), CenturyTel's concerns
32 appear to be unfounded as it relates to traffic that will be exchanged with Charter.

1 **Q. IS THERE ANY OTHER LANGUAGE THAT SHOULD BE**
2 **CONSIDERED WHEN RESOLVING THIS ISSUE?**

3 A. Yes. In that same section of Article V, Section 4.2.1.3, the parties' disagreement
4 over the appropriate term is overshadowed by what the parties agree upon. The
5 agreed upon language in that section is as follows:

6 IP-Enabled Voice Traffic **Interconnected VoIP Service Traffic**
7 originated by a End User Customer of one Party in an exchange on
8 that Party's network and terminated to a End User Customer of the
9 other Party on that other Party's network located within the same
10 exchange or other non-optional extended local calling area
11 associated with the originating customer's exchange as defined by
12 CenturyTel's applicable local exchange tariff shall be included in
13 Local Traffic. IP-Enabled Voice Traffic directed to a terminating
14 End User physically located outside the originating End User's
15 local calling area will be considered toll traffic and subject to
16 access charges.

17
18 § 4.2.1.3, Art. V.¹

19
20 As you can see, and consistent with the language in Section 4.2.1.1 that I just
21 quoted above, the parties have already agreed that whatever label is assigned to
22 this traffic, the question of compensation will be governed by whether or not the
23 traffic begins and ends in the same local calling area (i.e., if it is Local Traffic,
24 under the agreement). Therefore, Mr. Watkins' suggestion that adopting
25 Charter's term could expose CenturyTel is simply not accurate. The scope of
26 traffic subject to reciprocal compensation is well defined, and not in dispute.

27 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

¹ CenturyTel's proposed language is indicated by double underlined text and Charter's proposed language is indicated by bolded text throughout my rebuttal testimony. Bold and italicized text is for emphasis only.

1 A. The Commission should adopt Charter's language as it is the most efficient
2 proposal regarding any traffic that will be exchanged by Charter and CenturyTel.
3 Mr. Watkins has raised numerous issues and orders that have been addressed over
4 the last six or eight years. That history of the debate over IP-Enabled services –
5 which is not necessarily correct – is not helpful or relevant here since the parties
6 have agreed to language that avoids those disputes. Further, given the potential
7 impending order from the FCC on intercarrier compensation, the parties may need
8 to revise this agreement at some point before this arbitrated agreement terminates.

1 **Issue 2** – How should the Agreement define the term Network Interface Device or
2 “NID”?

3
4 **Issue 24** – Should Charter have access to the customer side of the Network Interface
5 Device (“NID”) without having to compensate CenturyTel for such access?
6

7 **Q. PLEASE BRIEFLY INTRODUCE THIS ISSUE AND THE DISPUTE**
8 **BETWEEN THE PARTIES.**

9 A. In short, Charter proposes to utilize the FCC’s definition of the NID in the
10 agreement. In addition, Charter maintains that FCC orders and rules establish
11 Charter’s right to access the customer side of the NID, for purposes of
12 interconnection, without any attendant obligation to compensate CenturyTel.
13 Conversely, CenturyTel offers language that is not consistent with the FCC
14 definition, and attempts to control Charter’s access to the customer’s inside wiring
15 on the customer’s side of the NID. More specifically, CenturyTel proposes to
16 charge Charter for accessing the NID, even though CenturyTel admits that its
17 alleged costs are already recovered by other charges.

18 **Q. PLEASE EXPLAIN HOW CENTURYTEL IS ALREADY RECOVERING**
19 **ITS NID COSTS THROUGH REGULATED RATES.**

20 A. CenturyTel’s Mr. Miller goes to great lengths in his direct testimony to argue that
21 the NID is part of CenturyTel’s network. *See* Miller Direct Testimony at 6-18.
22 Indeed, Mr. Miller’s testimony reads more like a legal brief than testimony. So,
23 for the sake of argument, let us accept Mr. Miller’s statement as fact. Let us
24 assume that the NID is part of CenturyTel’s network. *Id.* at 18. Let us also
25 assume that, as Mr. Miller mentions, CenturyTel customers can access the NID
26 only for specific purposes. *Id.* at 13. During discovery Charter asked a basic

question: Since CenturyTel does not appear to have a separate tariff charge for access to the NID, how much does CenturyTel charge its customers through regulated rates for their access to the NID? Specifically, Charter Request No. 10 asked CenturyTel to identify the specific monetary portion of CenturyTel's regulated rates that constitute compensation to CenturyTel for its end user customers' access to, and use of, CenturyTel's NIDs. Here is CenturyTel's response:

Some of the loop costs, including the NID, are recovered from the intrastate jurisdiction based on the rate design method (i.e., residually derived local rates) used to establish local rates. Thus, no absolute dollar amount is known or is necessary to support the statement that CenturyTel provided in Issue No. 24 of the Joint DPL.

See Attachment TJG-2 (CenturyTel Response to Charter RFI No. 10; emphasis added). CenturyTel's response demonstrates that all of CenturyTel's alleged NID costs – including any alleged costs associated with customer access to the NID – are already recovered through local rates (i.e. local service charges on end users). Moreover, CenturyTel cannot identify any costs that are specific to the NIDs, or for a customer's access to the NIDs, because the local rates are established after all other revenues, and costs have been considered and used in the ratemaking process.

Q. WHY IS CENTURYTEL'S ADMISSION IN THIS DISCOVERY RESPONSE SIGNIFICANT?

A. This discovery response, coupled with Mr. Miller's testimony, proves that CenturyTel is recovering 100% of its NID costs through current regulated local rates, including any purported costs associated with customer access to the NID:

1 “... the customer pays for the NID through CenturyTel’s regulated rates, the cost
2 basis of which includes a return on and the capital cost of the NID as well as the
3 operation and maintenance expense associated with the NID.” Miller Direct
4 Testimony at 13. Thus, according to Mr. Miller’s testimony and CenturyTel’s
5 admissions in discovery, were CenturyTel to assess Charter a separate charge for
6 accessing the customer side of the NID, CenturyTel would be engaging in double
7 recovery with regard to the costs of the NID.

8 **Q. PLEASE EXPLAIN WHAT YOU MEAN WHEN YOU SAY THAT**
9 **CENTURYTEL COULD BE ENGAGING IN “DOUBLE RECOVERY.”**

10 A. For ease of reference, let us presume that CenturyTel’s residential basic local
11 exchange service is priced at \$13.71 per month. According to CenturyTel, its
12 local rates were established taking into account all its NID costs, *including*
13 customer access to the NID. A part of its \$13.71 residential rate offsets
14 CenturyTel’s NID investment, and return on that investment. If CenturyTel
15 assesses a separate charge upon Charter, for Charter’s access to the customer side
16 of the NID, CenturyTel would collect additional money (revenue) than necessary
17 to offset any investment, and return on that investment, in the NID itself. Because
18 rates set at the \$13.71 level already recover CenturyTel’s costs, the additional
19 charge to Charter flows directly “below the line” as pure profit for CenturyTel.

20 **Q. WHY CAN’T CENTURYTEL JUST CREDIT RATEPAYERS THE**
21 **DIFFERENCE?**

22 A. First of all there would be no need to provide credits. The costs are already being
23 recovered so there is no need to charge both classes of customers and then provide

1 a credit to one class. Second, there has been no showing that Charter's proposal
2 would result in any additional costs to CenturyTel. The NID is a fixed piece of
3 low cost equipment which is not usage sensitive. In other words, Charter's access
4 to the NID will not increase or change CenturyTel's costs. Finally, any
5 adjustment to local rates would have to be approved by the Commission and such
6 a review would be time consuming and expensive for all involved. This is
7 especially true since the local rates are residually developed, which means that all
8 of CenturyTel's revenues and costs would need to be reviewed. Essentially,
9 adjusting CenturyTel's local rates would require a rate case.

10 **Q. IF CENTURYTEL DOES NOT KNOW THE PRECISE DOLLAR**
11 **AMOUNT ASSOCIATED WITH ITS COSTS OF PROVIDING ACCESS**
12 **TO THE CUSTOMER SIDE OF THE NID, HOW IS IT POSSIBLE TO**
13 **DEVELOP A RATE FOR SUCH ACCESS?**

14 A. In Article XI: Pricing, Section XI of the Agreement CenturyTel proposes a
15 monthly rate of \$1.91 for NID access. If, as CenturyTel has stated in response to
16 Charter Request No. 9, the company does not know the "absolute dollar amount"
17 built into local rates to recover the company's NID investment and return on that
18 investment associated with NID access, then the \$1.91 monthly recurring charge
19 ("MRC") is clearly not based on CenturyTel's cost. More than likely, CenturyTel
20 has picked a small enough nominal amount hoping that it wouldn't be challenged
21 by Charter or reviewed by the Commission.

22 **Q. DOES \$1.91 SEEM LIKE A REASONABLE ESTIMATE FOR THE**
23 **ACTUAL MONTHLY COST OF PROVIDING NID ACCESS?**

1 A. No, it does not, for two reasons. First, let us recall what is really at issue here. As
2 I understand the activity, if Charter accesses the customer side of the NID, it
3 simply opens the protective cover, detaches a cross-connect and attaches its own
4 line to a terminal or jack on the customer side of the NID. There is simply no
5 activity undertaken by CenturyTel in response to Charter's activity. For example,
6 CenturyTel need not do anything at its central office, within its network, or onsite
7 at the customer's premise. Thus, there is no additional or incremental cost to
8 CenturyTel. Further, and perhaps most obvious, is the fact that if there are costs,
9 they are not "monthly recurring costs," they are instead a one-time cost.

10 **Q. IF THERE IS A ONE-TIME COST, SHOULDN'T CENTURYTEL BE**
11 **COMPENSATED FOR THOSE COSTS?**

12 A. In my view, there is no cost to CenturyTel, so there wouldn't be any need or
13 justification for further compensation. As noted above, CenturyTel does nothing.
14 It is Charter that is disconnecting the cross-connect, and attaching its own line to
15 the customer side of the NID.

16 **Q. IF WE ASSUME, FOR DISCUSSION PURPOSES, THAT A RATE IS**
17 **APPROPRIATE, WOULD CENTURYTEL'S PROPOSED RATE BE**
18 **ACCEPTABLE?**

19 A. No. First of all, as noted above, if any rate is appropriate, it would not be a
20 monthly recurring charge, it would be instead a nonrecurring charge. But even a
21 casual approximation of the monthly recurring cost for the *entire* NID suggests
22 that CenturyTel's proposed charge is wildly inflated. For example, as shown in
23 Attachment TJG -3, the typical price of a NID is approximately \$70.00 for a

1 single residential unit (*i.e.*, not accounting for discounts associated with bulk
2 purchases). *See*, Attachment TJG-3. If we assume, conservatively, that a
3 CenturyTel NID has a useful life of 15 years, then the stand-alone monthly cost
4 for that NID is 39¢.² It is critical to remember that this 39¢ is CenturyTel's
5 approximate monthly cost *for the entire NID*. Since access to the NID is
6 necessarily *less than* the full cost of the NID, we must next calculate what portion
7 of the NID cost is attributable to customer access. If we assume that the customer
8 side of the NID accounts for half the NID cost (which I believe is conservatively
9 high), then we see that CenturyTel has inflated its NID access charge by a factor
10 of more than 10.

11 **Q. ARE YOU PROPOSING THAT CENTURYTEL CHARGE 18¢ PER**
12 **MONTH FOR NID ACCESS?**

13 A. Absolutely not. As I stated above, because CenturyTel is presently recovering *all*
14 its NID costs through regulated rates at present, and because CenturyTel
15 experiences no additional or incremental costs when Charter accesses a NID, I
16 believe that *no* NID access charge is necessary or justified. Further, if any rate
17 were appropriate, it would be a nonrecurring rate to reflect the costs incurred in
18 moving the cross connect. But, as shown above, CenturyTel does not incur those
19 costs, Charter does. So CenturyTel already recovers its NID costs, and Charter's
20 proposal does not change or increase those costs. My point in sharing a casual
21 calculation of CenturyTel's monthly recurring NID cost is to demonstrate that

² While CenturyTel claims it experiences "operation and maintenance expenses" associated with NIDs, the company did not quantify these expenses. I do not believe they would be material in any event.

1 CenturyTel's proposed NID access charge – even if it were appropriate, which it's
2 not – is vastly overstated.

3 **Q. DO YOU HAVE ANY OTHER CONCERNS WITH THEIR PROPOSED**
4 **NID CHARGES?**

5 A. Yes, CenturyTel admitted in its discovery responses that it can not identify any
6 actual amount of the regulated rates that its customers currently pay for access
7 and use of the NID (as CenturyTel defines such terms). In CenturyTel's words
8 "no absolute dollar amount is known..." *See* CenturyTel Response to Charter
9 RFI No. 10, included in Attachment TJG-4. CenturyTel therefore has no
10 foundation for the NID charges it asks the Commission to approve. Indeed,
11 CenturyTel admitted that there is "no cost study or other support information" for
12 its proposed NID charges. *See* CenturyTel Response to Charter RFI No. 12,
13 included in Attachment TJG-4.

14 **Q. CENTURYTEL ARGUES THAT CHARTER WANTS THE USE OF THE**
15 **NID FOR FREE. MILLER DIRECT TESTIMONY AT 8. IS THIS A**
16 **CORRECT CHARACTERIZATION OF THE DISPUTE BETWEEN THE**
17 **PARTIES?**

18 A. No. Charter is not imposing any costs on CenturyTel for which CenturyTel
19 should be compensated. Indeed, CenturyTel admits that all the costs for the NID
20 are already being recovered. Charter's proposal results in the efficient use of
21 facilities and CenturyTel's proposal would result in double recovery of its costs.
22 CenturyTel's proposal should be rejected because it results in additional revenues

1 for which there is no cost support and because it harms the efficient operation of
2 the market.

3 **Q. MR. MILLER TAKES ISSUE WITH THE BASIC PREMISE THAT**
4 **CHARTER IS ENTITLED TO ACCESS THE CUSTOMER SIDE OF THE**
5 **NID. MILLER DIRECT TESTIMONY AT 7-13. HOW DO YOU**
6 **RESPOND?**

7 A. I want to correct several points in his testimony that I believe are inaccurate. If
8 left unanswered, they could leave this Commission with the impression that
9 Charter's actions are not consistent with federal law. In fact, I think just the
10 opposite is true: CenturyTel's proposals are contrary to Section 251, and the
11 FCC's regulations governing customer, and competitors', access to NIDs, and
12 inside wiring.

13 **Q. PLEASE EXPLAIN.**

14 A. I will address these in order, to the extent possible. My first concern is that Mr.
15 Miller asserts on page 7, lines 15-16 of his Direct Testimony (in response to our
16 issue statement), that "there is no such thing as a 'customer side of the NID.'" I
17 find that statement surprising, especially given how much Mr. Miller quotes the
18 FCC. Because even a cursory review of applicable FCC orders reveals that the
19 FCC (the expert agency) clearly recognizes a "network side" and a "customer
20 side" of a NID. As the FCC has explained, NIDs have both a "network side" and
21 a "customer side":

22 A network interface device (NID) is the hardware at the end point
23 of the network connection to an end-user customer. While the
24 carrier is responsible for maintaining the network on its side of the
25 NID, the customer is responsible for maintaining any inside wiring

1 *on the customer side* of the NID, as well as the customer premises
2 equipment (CPE), such as the telephone itself.

3
4 *Federal-State Joint Board on Universal Service*, Memorandum Opinion and
5 Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252 (1998) at
6 ¶ 49 n. 102 (emphasis added).³

7
8 Exactly why Mr. Miller disagrees with the FCC's description of the NID is not
9 apparent.

10 **Q. DO YOU HAVE OTHER CONCERNS WITH MR. MILLER'S LEGAL**
11 **ARGUMENTS CONCERNING THE NID?**

12 A. Yes, the second point I would like to rebut is Mr. Miller's blatant disregard for the
13 FCC's clear distinction between rights to access the customer side of the NID, and
14 rights to access the network side of the NID. Specifically, Mr. Miller incorrectly
15 asserts that its customers do not have "unfettered" or free rights to access the
16 customer side of the NID. Miller Direct Testimony at 13, lines 3-4. In fact, Mr.
17 Miller tells us, the customer's access is "restricted by documented rules..." *Id.*,
18 line 4.

19 As I just explained, the FCC clearly distinguishes between a "network" side, and
20 a "customer" side, of every NID. As Charter witness Mr. Saconna Blair
21 explained in his direct testimony the network side is described as follows:

22 A traditional telephone carrier such as CenturyTel brings a copper
23 loop serving the residence into the "network side" (also known as
24 the Telco side) of the NID, which typically contains important
25 electrical grounding capability (called the "protector") and often
26 contains loop testing circuitry as well. These parts of the NID are
27 sealed off from customer access.⁴

³ Note that this is precisely what my colleague, Charter witness Mr. Saconna Blair, stated in his direct testimony when he described the basic components of the NID. *See* Blair Direct Testimony at 5-6.

⁴ *Id.* at 6, lines 11-15.

1
2 In contrast, the customer side is described as follows:

3 The NID also contains a compartment, the “customer side,” that is
4 fully accessible to the customer/premises owner. In that
5 compartment, the typical NID contains a standard telephone jack
6 for each line serving the home. The customer side of the NID also
7 has copper posts to which wiring from inside the house is
8 connected. A short telephone cord, with a standard telephone plug
9 at the end, runs from the copper posts serving a line in the home
10 and plugs into the jack.⁵

11
12 The distinction is significant because the FCC has deregulated what is known as
13 “inside wiring”, which is the “customer owned or controlled wire on the
14 subscriber’s side of the demarcation point.” 47 C.F.R. § 68.3. In addition,
15 Section 68.105(a) of the FCC’s rules, 47 C.F.R. 68.105(a), defines the
16 demarcation point as follows:

17 **§ 68.105 Minimum point of entry (MPOE) and demarcation**
18 **point.** (a) *Facilities at the demarcation point.* Carrier-installed
19 facilities ***at, or constituting, the demarcation point*** shall consist of
20 wire ***or a jack*** conforming to the technical criteria published by the
21 Administrative Council for Terminal Attachments.

22
23 47 C.F.R. § 68.105(a) (emphasis added).

24
25 In other words, the FCC’s rules contemplate that there will typically be a “jack”
26 conforming to applicable technical standards that “constitut[es]” the demarcation
27 point. The testimony of Charter witness Mr. Blair demonstrates that the jack is
28 normally housed within the NID itself. *See* Blair Direct at 8. Therefore, wiring
29 on the customer’s side of the demarcation point, is wiring on the “customer” side
30 of the NID.

⁵ *Id.* at 6.

1 **Q. BUT HOW DOES THAT RELATE TO MR. MILLER’S STATEMENTS**
2 **THAT CUSTOMERS DO NOT HAVE “UNFETTERED” ACCESS ON**
3 **THE CUSTOMER SIDE OF THE NID?**

4 A. Customers have access to inside wiring, on the customer side of the NID (and
5 demarcation point) because the FCC has affirmatively deregulated inside wiring.
6 In so doing, the FCC has made it very clear that the customer certainly does have
7 access to the inside wiring on the customer side of the NID. Indeed, for more
8 than two decades, the FCC’s rules have been crystal clear: customers and
9 premises owners, and their agents and designees, have the right to connect,
10 disconnect, rearrange, remove, and modify wiring on the customer side of the
11 “demarcation point” on a premises. Under FCC rules, the “demarcation point” is
12 “the point of demarcation and/or interconnection between the communications
13 facilities of a provider of wireline telecommunications, and terminal equipment,
14 protective apparatus, or wiring at a subscriber’s premises.” 47 C.F.R. § 68.3. The
15 FCC Wireline Competition Bureau explained in 2002 that “[t]he landlord or
16 customer *always* owns the wire on the customer side of the demarcation point;
17 that is what ‘demarcation point’ means.”⁶ In fact, the FCC’s rules state:

18 The provider of wireline telecommunications is not responsible ...
19 for installation and maintenance of wiring on the subscriber’s side
20 of the demarcation point, including any wire or jacks that may
21 have been installed by the carrier. The subscriber and/or premises
22 owner *may install wiring on the subscriber’s side of the*
23 *demarcation point, and may remove, reconfigure, and rearrange*

⁶ *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al., Memorandum Opinion and Order, 17 FCC Rcd 27039 (Wireline Competition Bureau 2002) at ¶ 420 n. 1384 (emphasis in original).*

1 **wiring on that side of the demarcation point including wiring ...**
2 **that may have been installed by the carrier.** The customer or
3 premises owner may not access carrier wiring and facilities on the
4 carrier's side of the demarcation point.

5
6 47 C.F.R. § 68.213(b) (emphasis added).

7
8 Note that it does not matter, for purposes of this rule, that the NID may have been
9 installed by, and may be owned by, the carrier. The rule specifically states that the
10 customer may "remove, reconfigure, and rearrange wiring" on the customer side
11 of the NID "that may have been installed by the carrier" – as long as that point is
12 also on the customer side of the demarcation point. Of course, the customer side
13 of the NID *is* on the customer side of the demarcation point, as this same FCC
14 rule shows. That rule expressly forbids the customer or premises owner from
15 accessing "carrier wiring and facilities on the *carrier's* side of the demarcation
16 point." It follows that any facilities that the customer/premises owner *is* permitted
17 to access are, always and necessarily, on the *customer* side of the demarcation
18 point.

19 In the case of the residential customers served by Charter, not only is the
20 customer given free access to the customer side of the NID – meaning that the
21 customer side of the NID *must be* on the customer side of the demarcation point –
22 that access is actually encouraged by CenturyTel (and other LECs) as a means to
23 test whether a customer service problem is located in the customer's own
24 premises wiring, or in the LEC's network. Examples from CenturyTel's
25 discovery responses regarding how customers should investigate service problems
26 by accessing the NID are included in CenturyTel Response to Charter RFI
27 Number 35, included in Attachment TJG-4. Moreover, CenturyTel has admitted

1 in its discovery responses that its end user customers have the right to access the
2 customer side of the NID without incurring any obligation to pay CenturyTel, or
3 any third party, for that access. *See* CenturyTel Response to Charter RFI No. 16,
4 included in Attachment TJG-4. For these reasons, I believe that Mr. Miller's
5 testimony inaccurately portrays the access rights of customers, and competitors,
6 under Section 251 and FCC regulations.

7 **Q. WHAT OTHER CONCERNS WITH MR. MILLER'S LEGAL**
8 **ARGUMENTS DO YOU HAVE?**

9 A. The third, and final, point that I would like to address is Mr. Miller's assertion
10 that Charter's proposed NID definition fails to include all "relevant" information.
11 That is not the case, and as you can see from the parties competing proposed
12 language, there is little difference between the two.

13 Charter proposes:

14 A means of interconnecting Inside Wiring to CenturyTel's distribution
15 plant, such as a cross-connect device used for that purpose. The NID
16 houses the protector.

17
18 CenturyTel proposes:

19 A means of interconnecting Inside Wiring to CenturyTel's distribution
20 plant, such as a cross-connect device used for that purpose. The NID
21 houses the protector, the point from which the Point of Demarcation is
22 determined between the loop (inclusive of the NID) and the End User
23 Customer's Inside Wire pursuant to 47 C.F.R. 68.105.
24

25 CenturyTel proposes an additional clause, which attempts to impose the rule as to
26 where the demarcation point is established. But inclusion of this clause is
27 improper because it attempts to establish the demarcation point outside the NID.
28 The problem with that approach is that FCC regulations set the demarcation point,

1 by law, and CenturyTel's proposal is not consistent with that definition. In fact,
2 Section 68.105(a) of the FCC's rules, 47 C.F.R. 68.105(a), states as follows:

3 **§ 68.105 Minimum point of entry (MPOE) and demarcation**
4 **point.** (a) *Facilities at the demarcation point.* Carrier-installed
5 facilities *at, or constituting, the demarcation point* shall consist of
6 wire *or a jack* conforming to the technical criteria published by the
7 Administrative Council for Terminal Attachments.

8
9 47 C.F.R. § 68.105(a) (emphasis added).

10
11 In other words, the FCC's rules contemplate that there will typically be a "jack"
12 conforming to applicable technical standards that "constitut[es]" the demarcation
13 point. Although it is true that the "protector" is referenced in subsection (b) of
14 that rule, a close reading of the rule shows that the protector is not always part of
15 a NID ("or, where there is no protector, ...) 47 C.F.R. § 68.105(b). Therefore,
16 CenturyTel's definition is not consistent with federal law.

17 In contrast, Charter's position clearly is consistent with federal law because it
18 does not conflict with FCC Rule 68.105. More importantly, Charter's proposed
19 definition is technically accurate. Mr. Miller did not offer any testimony to rebut
20 that point.

21 **Q. MR. MILLER ALSO CLAIMS THAT THE RULING OF AN**
22 **ARBITRATOR ON A RELATED QUESTION IS INSTRUCTIVE HERE.**
23 **MILLER DIRECT TESTIMONY AT 9. DO YOU AGREE?**

24 A. No, I do not agree. Although Mr. Miller quotes from the Arbitrator's ruling, he
25 does not explain the context of the dispute, and the basis for that decision. There
26 are several important facts that counsel against reliance upon that decision.

1 **Q. HOW IS A DECISION BASED UPON THE PARTIES' EXISTING**
2 **AGREEMENTS DIFFERENT FROM THIS SECTION 252**
3 **ARBITRATION PROCEEDING?**

4 A. First, that was a decision by an appointed arbitrator in a commercial ("AAA")
5 arbitration proceeding. That was not a Section 252 arbitration proceeding
6 conducted before the Wisconsin PSC. I am told by counsel that the ruling is
7 neither binding nor instructive precedent. Second, the decision was based upon
8 existing contract language between the parties. That is apparently why the
9 arbitrator declined to cite to any federal or state precedent on the issue of NID
10 access. Instead, the decision was rendered solely on the question of what existing
11 contracts required in the opinion of the AAA arbitrator.

12 In contrast, in this case, the Commission must establish terms and conditions for
13 the parties' new agreement. Of course, the legal standard governing the
14 Commission's actions for such terms is not what a private arbitrator has
15 previously decided, but is instead what Section 251 and FCC regulations require.

16 **Q. AFTER REVIEWING CENTURYTEL'S DIRECT TESTIMONY HAS**
17 **YOUR RECOMMENDATION ON THIS ISSUE CHANGED?**

18 A. No, I continue to recommend that the Commission adopt Charter's language for
19 this issue.

1 **Issue 9** – Should Charter be required to pay a penalty charge for facilities that it
2 forecasts, but which CenturyTel determines that Charter has not fully utilized?
3

4 **Q. WHICH CENTURYTEL WITNESS ADDRESSES THIS ISSUE?**

5 A. Mr. Steven Watkins addresses this issue on behalf of CenturyTel in his direct
6 testimony at pages 14 through 19.

7 **Q. PLEASE SUMMARIZE MR. WATKIN'S POSITION ON THIS ISSUE.**

8 A. It appears that Mr. Watkins believes that additional incentives – in the form of
9 penalties – are required to ensure that Charter does not order facilities that go
10 unused.

11 **Q. BASED ON INFORMATION IN THIS PROCEEDING, IS THERE ANY**
12 **REASON TO BELIEVE THAT SUCH ADDITIONAL INCENTIVES ARE**
13 **REQUIRED?**

14 A. No. Mr. Robert Gyori testified that "...to the best of my knowledge and belief,
15 Charter has never ordered facilities from CenturyTel, or any ILEC, that Charter
16 did not use within six months." Gyori Direct Testimony at 7. While Mr. Watkins
17 theoretical concerns about stranded plant are interesting, they do not reflect the
18 reality of these parties' interactions over a number of years. Indeed, CenturyTel's
19 response to a discovery request from Charter confirms Mr. Gyori's conclusions.
20 See CenturyTel Response to Charter RFI No. 7. Attachment TJG- 2. Mr.
21 Watkins is attempting to create a problem where none exists.

22 **Q. ARE THERE OTHER REASONS WHY THE CENTURYTEL PROPOSAL**
23 **SHOULD BE REJECTED?**

1 A. Yes. Charter has every incentive to engineer its network in the most efficient
2 manner so as to minimize costs and still provide high quality services to its
3 customers.

4 **Q. THIS DISPUTE CONCERNS CHARTER'S OBLIGATIONS TO**
5 **FORECAST FACILITIES THAT MAY BE USED IN THE FUTURE.**
6 **HOW IS THAT RELATED TO CHARTER'S INCENTIVES TO**
7 **MINIMIZE ITS COSTS?**

8 A. Recall that the facilities on both sides of the interconnection point must match in
9 order to exchange traffic without either party experiencing call degradation, or
10 other similar problems. Therefore, Charter has the same incentives to ensure that
11 facilities are not forecasted, and ordered, unless absolutely necessary. When
12 Charter asks CenturyTel to provide facilities, it is to match the facilities that
13 Charter has in place.

14 **Q. MR. WATKINS SAYS THAT CHARTER IS ATTEMPTING TO "IMPOSE**
15 **UNNECESSARY COSTS ON CENTURYTEL...." WATKINS DIRECT**
16 **TESTIMONY AT 14. DO YOU AGREE?**

17 A. No. Mr. Watkins goes so far as to suggest that Charter is attempting to act in an
18 "anti-competitive manner" which is completely unsupported and ridiculous on its
19 face. Watkins Direct Testimony at 19. As I just stated, the facilities on both
20 sides of the interconnection point must match so when Charter engineers work
21 with CenturyTel engineers, they ensure that facilities are sufficient on both sides.
22 As such, Mr. Watkins' suggestion that Charter can just order whatever facilities it
23 wants on the CenturyTel side of the point of interconnection ("POI") is just not

1 true. This would result in additional expense and facilities for Charter as well on
2 its side of the POI. Again, Charter has every incentive to keep costs low so this
3 far-fetched suggestion of Mr. Watkins should be disregarded.

4 **Q. ARE THERE PROCESSES ALREADY AGREED TO WHICH ENSURE**
5 **THAT THE INTERCONNECTION FACILITIES ARE PROPERLY**
6 **SIZED?**

7 A. Yes. Mr. Watkins cites to these requirements and discusses them in his
8 testimony. Watkins Direct Testimony at 17-18. The parties have agreed to work
9 cooperatively to ensure that facilities are utilized based on standard engineering
10 guidelines. This type of joint planning occurs prior to establishing
11 interconnection and is an ongoing activity while the interconnection facilities are
12 in place. The engineers work closely monitoring traffic levels and grooming the
13 network to ensure the efficient use of facilities based on traffic levels.

14 **Q. MR. WATKINS STATES THAT THESE TYPES OF CONDITIONS “ARE**
15 **STANDARD IN OTHER INDUSTRIES.” WATKINS DIRECT**
16 **TESTIMONY AT 17. IS THAT RELEVANT TO THIS DISPUTE?**

17 A. No. What may be “standard” in another unidentified industry does not mean it is
18 necessary or appropriate in this industry. We have the Telecommunications Act,
19 state commission oversight, and the mutual need to efficiently provide service that
20 guide the relationship between the ILEC and CLECs. As noted by Mr. Gyori in
21 his direct testimony, Charter has never ordered facilities from CenturyTel or any
22 other ILEC that Charter did not utilize within six months.

1 **Q. MR. WATKINS ATTEMPTS TO JUSTIFY CENTURYTEL’S POSITION**
2 **AS “SOUND PUBLIC POLICY.” WATKINS DIRECT TESTIMONY AT**
3 **18-19. HOW DO YOU RESPOND?**

4 A. Mr. Watkins statements rely on two facts that just don’t exist. First he talks about
5 Charter ordering facilities that were not justified and are not used. As we have
6 shown, that has never been the case for Charter and CenturyTel. The second
7 point he makes is that absent the CenturyTel language, Charter has no incentive to
8 accurately determine its facility needs. As discussed previously, that is also not
9 true. Charter has every incentive to only order the facilities it needs for the traffic
10 it anticipates from its customers. So the “negative consequences” that Mr.
11 Watkins suggests, don’t exist today and will not occur in the future. There is no
12 need for CenturyTel’s language.

13 **Q. ONE FINAL QUESTION ON THIS ISSUE. IF CHARTER’S FACILITY**
14 **OR TRAFFIC FORECASTS TURN OUT TO BE INCORRECT (EITHER**
15 **OVER ESTIMATES OR UNDER ESTIMATES), DOESN’T THAT**
16 **JUSTIFY CENTURYTEL’S PROPOSAL ON THIS ISSUE?**

17 A. No. In my direct testimony, I explained the nature of forecasts. Forecasts are
18 made under imperfect conditions with the best available information, and, as such,
19 they are never 100 percent accurate. Further, CenturyTel’s proposal is one-sided.
20 CenturyTel proposes to penalize Charter if it overestimates demand resulting in
21 unused facilities, but the proposed language does not provide Charter with a
22 “bonus” if they underestimate demand and have to order even more facilities. In
23 any case, the inherent nature of forecasting is that they are never 100 percent

1 accurate. This fact is demonstrated by language in the agreement which the
2 parties have already agreed upon. Specifically, in Section 11.5 of Article III of
3 the draft agreement, the parties have agreed that: “Capacity forecasts are not
4 binding on either Party.” Given that the parties recognize that these forecasts are
5 not, and can not, be binding, CenturyTel’s proposal is unfounded.

6 **Q. AFTER REVIEWING CENTURYTEL’S TESTIMONY ON THIS ISSUE,**
7 **WHAT IS YOUR RECOMMENDATION TO THE COMMISSION?**

8 A. I recommend that the Commission reject CenturyTel’s proposal for unspecified
9 penalties. There is no need for such penalties as all carriers have sufficient
10 incentives to maximize efficiencies which include the deployment of facilities for
11 the exchange of traffic. CenturyTel has provided no support for this type of
12 penalty because there is none. Finally, CenturyTel should not be allowed to
13 impose some unspecified penalty for some unspecified error in forecasting as that
14 would not be good public policy given CenturyTel’s position as the incumbent.

1 **Issue 11** – Should CenturyTel be allowed to incorporate its Service Guide as a means of
2 imposing certain process requirements upon Charter, even though Charter has no
3 role in developing the process and procedural terms in the Service Guide?
4

5 **Q. PLEASE IDENTIFY THE CENTURYTEL WITNESS THAT ADDRESSES**
6 **THE DISPUTE BETWEEN THE PARTIES ON THIS ISSUE.**

7 A. Mr. Miller provides CenturyTel's positions on this issue at pages 39 through 47 of
8 his direct testimony.

9 **Q. DID ANYTHING IN MR. MILLER'S DIRECT TESTIMONY CHANGE**
10 **YOUR MIND AS TO WHETHER IT IS APPROPRIATE TO SIMPLY**
11 **REFERENCE THE SERVICE GUIDE IN THE ICA?**

12 A. No. CenturyTel still proposes to reference the Service Guide as a controlling
13 document in numerous places within the ICA. Charter opposes any reference to
14 the Service Guide because it is subject to change by CenturyTel without any
15 oversight by the Commission or meaningful input from Charter. Charter's
16 business demands the certainty of a specific ICA that is not subject to unilateral
17 changes by one of the parties. The CenturyTel Service Guide should be used as a
18 reference only, and should not be contractually binding upon Charter.

19 **Q. MR. MILLER STATES THAT "THE ROLE OF THE CENTURYTEL**
20 **SERVICE GUIDE IS TO ASSIST CLECS, LIKE CHARTER, BY**
21 **DESCRIBING COMMON OPERATIONAL PROCEDURES FOR**
22 **INTERACTING WITH CENTURYTEL." MILLER DIRECT AT 40.**
23 **HOW IS THAT PROBLEMATIC?**

1 A. In my opinion, Mr. Miller's altruistic sounding testimony – "the service guide is
2 meant to assist CLECs" – does not accurately reflect the true motives of
3 CenturyTel.

4 **Q. CAN YOU ELABORATE?**

5 A. Yes. The Service Guide is intended by CenturyTel to be a binding document on
6 the CLECs that sets forth myriad operational procedures but that can be changed
7 unilaterally by CenturyTel without any consent from Charter or any other CLEC.
8 In essence, it allows CenturyTel to amend the interconnection agreement and
9 impose increased operational burdens and costs on the CLECs without
10 CenturyTel having to go through the hassle of amending the interconnection
11 agreement. Unfortunately, that "hassle" is required by Section 252 of the Act in
12 that all interconnection agreements, and amendments, must be approved by a state
13 commission. Consequently, allowing CenturyTel to essentially amend the
14 interconnection agreement without the consent of Charter or the approval of this
15 Commission is not in harmony with the principles of competitive fairness and
16 regulatory approval demanded by the Act.

17 **Q. WITH THAT SAID, MIGHT THERE BE TIMES WHEN THE**
18 **OPERATIONAL PROCEDURES IN THE CENTURYTEL SERVICE**
19 **GUIDE ARE APPROPRIATE?**

20 A. Yes. In fact, I suspect a number of the procedures in the Service Guide would not
21 be objectionable to Charter. Indeed, as I understand the situation, Charter's
22 negotiators have made it clear that Charter does not object to using certain
23 processes that CenturyTel may publish in its Service Guide. However, Charter

1 can not agree to be contractually bound by the processes that CenturyTel may
2 publish in its Service Guide.

3 **Q. WHY DOES CHARTER TAKE THE POSITION THAT IT SHOULD NOT**
4 **BE CONTRACTUALLY BOUND BY PROCEDURES PUBLISHED IN**
5 **THE SERVICE GUIDE?**

6 A. Because, as mentioned, that creates a process that is inherently unfair, and
7 inequitable. Moreover, if there were a dispute about what particular process was
8 binding, CenturyTel could improperly assert that because the process is published
9 in the Service Guide, it must be binding on Charter. But, in that case, any dispute
10 concerning obligations of either party, as they relate to the interconnection
11 agreement, must be resolved by the Commission and specifically incorporated
12 into the interconnection agreement. Otherwise, if CenturyTel were to lose on a
13 particular issue, it could circumvent the ruling by simply making changes to its
14 Service Guide to meet its needs. Notably, we know that CenturyTel frequently
15 does make changes to its Service Guide, as CenturyTel told us just that in its
16 discovery responses. *See* CenturyTel Response to Charter RFI No. 8, included in
17 Attachment TJG-5. That type of unilateral ability to change the terms of the ICA
18 is not in the public interest because it results in an unlevel playing field.

19 **Q. AT PAGE 45 OF HIS DIRECT TESTIMONY, MR. MILLER STATES**
20 **“LIKE CENTURYTEL, I KNOW THAT AT&T, EMBARQ, QWEST AND**
21 **VERIZON, TO NAME A FEW WELL KNOWN EXAMPLES, HAVE**
22 **DOCUMENTS THAT ARE THE EQUIVALENT OF THE CENTURYTEL**

**SERVICE GUIDE. THESE GUIDES ARE COMMONLY REFERENCED
IN THOSE LECS' AGREEMENTS." IS HE CORRECT?**

A. Mr. Miller is correct that other ILECs have documents similar to the CenturyTel Service Guide. He is wrong to suggest that they are commonly binding upon CLECs, through the interconnection agreements of these other ILECs. Let me provide a few examples. Mr. Miller referred to Qwest. There have been several orders recently that specifically rejected the use of Qwest's Change Management Process Document (which is similar to CenturyTel's Service Guide) to override the interconnection agreement. In Minnesota, the Arbitrator stated, "Eschelon has provided convincing evidence that the CMP process does not always provide CLECs with adequate protection from Qwest making important unilateral changes in the terms and conditions of interconnection."⁷ In a similar proceeding in Oregon, the Arbitrator there stated the following:

At the same time, Eschelon is correct that the CMP is not the exclusive mechanism for dealing with process-related issues. The structure and purpose of the Act contemplate that [interconnection agreements] will be tailored to accommodate specific CLEC needs in order to provide those carriers a meaningful opportunity to compete. The FCC has affirmed the individualized nature of [interconnection agreements], as well as the fact that process and procedure issues are appropriately included in such agreements. As Eschelon points out:

Had Congress intended that the interconnection agreement be a 'one size fits all' documents (sic), it would have provided the SGAT as the sole means by which terms and conditions of interconnection would be made available by ILECs. That it did not do so shows that Congress recognized the need for individual

⁷ State of Minnesota, Office of Administrative Hearings, Minnesota Public Utilities Commission, MPUC No. P-5340, 421/IC-06-768, **ARBITRATOR'S REPORT**; dated January 16, 2007; at page 7. The Minnesota Commission issued its ORDER RESOLVING ARBITRATION ISSUES, REQUIRING FILED INTERCONNECTION AGREEMENT, OPENING INVESTIGATIONS AND REFERRING ISSUE TO CONTESTED CASE PROCEEDING, on March 30, 2007.

CLECs to be able to enter into agreements that are specific to their particular competitive needs.

Consistent with this construction of the Act, Section 1 of the CMP Document recognizes that the terms and conditions of [interconnection agreements] may differ from changes implemented through CMP:

In cases of conflict between the changes implemented through this CMP and any CLEC interconnection agreement (whether based on the Qwest SGAT or not), the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such interconnection agreement. In addition, if changes implemented through this CMP do not necessarily present a direct conflict with a CLEC interconnection agreement, but would abridge or expand the rights of a party to such agreement, the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such agreement.

This section of the CMP Document was examined in the recently decided Eschelon/Qwest arbitration proceeding in Minnesota. I concur with the Minnesota Arbitrator's finding that the CMP Document "permit[s] the provisions of an [interconnection agreement] and the CMP to coexist, conflict or potentially overlap." I also agree with their conclusion that "any negotiated issue that relates to a term and condition of interconnection may properly be included in an [interconnection agreement], subject to a balancing of the parties' interests and a determination of what is reasonable, nondiscriminatory and in the public interest.

For these reasons, the disputed process-related issues should not necessarily be confined to the CMP as proposed by Qwest. Instead, each issue must be evaluated on its merits to determine if it is more appropriately included in the parties' [interconnection agreement].⁸

Finally, in an even more recent decision in a similar case in Arizona, the Arizona Corporation Commission also determined that the Qwest CMP Document cannot be used to override the ICA.⁹

⁸ Before the Public Utility Commission of Oregon, ARB 775, **ARBITRATOR'S DECISION**; ISSUED: March 26, 2008; at 6-7. (footnotes omitted)

⁹ Before the Arizona Corporation Commission, Docket No. T-03406A-06-0572, Docket No. T-01051B-06-0572; Decision No. 70356; **OPINION AND ORDER**; Issued: May 16, 2008.

1 As one can see by the examples above, it is not common for the Commission's to
2 allow reliance on a Service Guide type of document that provides unilateral
3 decision making by the ILEC.

4 **Q. FOLLOWING ON THAT POINT, DO YOU KNOW WHETHER THIS**
5 **COMMISSION, OR ANY OTHER, HAS EVER FORMALLY APPROVED**
6 **THE SERVICE GUIDE?**

7 A. No, and that is a view that CenturyTel holds as well. I know that because
8 CenturyTel told us the same thing in their discovery responses. *See* CenturyTel
9 Response to Charter RFI No. 15, included in Attachment TJG-5. Indeed,
10 CenturyTel admits that it does not submit its Service Guide to commissions for
11 approval. That creates further concerns in my view, given that CenturyTel
12 proposes to bind Charter to processes that are provided for under a Section 251
13 interconnection agreement, through the use of a document that has not been
14 approved (or even reviewed) by this Commission.

15 **Q. AT PAGE 41 OF HIS DIRECT TESTIMONY MR. MILLER STATES**
16 **THAT “ADDITIONALLY, CHARTER IS PROVIDED WITH**
17 **ELECTRONIC NOTIFICATION OF ALL SERVICE GUIDE CHANGES**
18 **AND A 60-DAY PERIOD DURING WHICH ALL CHANGES ARE**
19 **SUSPENDED IF SUCH CHANGE ADVERSELY IMPACTS CHARTER.**
20 **THIS SUSPENSION PERIOD AFFORDS THE PARTIES AN**
21 **OPPORTUNITY TO RESOLVE ANY POTENTIAL CONFLICTS.” DOES**
22 **THAT ASSUAGE YOUR CONCERNS?**

1 A. No. Given CenturyTel's position that it wants to treat all CLECs the same,
2 regardless of the requirements in the Act, it is very unlikely that CenturyTel
3 would ever agree with a CLEC that needs something different from what the
4 Service Guide provides. Given those facts, having 60 days to negotiate Charter's
5 concerns provides little solace, especially since CenturyTel has no incentive to
6 ever agree with the CLEC. And, at the end of the 60-day period, the change goes
7 into effect regardless of the cost or additional operational burdens to Charter.

8 I would also note that Charter has already agreed to include certain provisions of
9 the Service Guide in the parties' agreement. For example, Charter proposed to
10 use the bill dispute process that is set forth in the CenturyTel Service Guide as the
11 bill dispute language for the parties' interconnection agreement. That language
12 was included in Attachment 1 of the Charter Arbitration Petition, and is
13 reproduced in Attachment TJG-7 to this Testimony. This demonstrates that
14 Charter is willing to follow processes that CenturyTel has developed for use in the
15 industry, *as long as* they are mutually agreeable to Charter and formally
16 incorporated into the agreement. That approach ensures that any changes to the
17 bill dispute process (or other similar processes) cannot be made unilaterally, and
18 forced upon Charter. Instead, under Charter's approach, if CenturyTel wished to
19 modify the bill dispute process, the parties would need to amend the agreement to
20 include the new bill dispute processes. That is not an unreasonable expectation,
21 and is consistent with industry practice and the requirements of the Act.

1 **Issue 16** – Should both Parties be allowed to modify, and upgrade, their networks; and
2 should the other Party be responsible for assuming the costs of such network upgrades or
3 modifications?
4

5 **Q. WHICH CENTURYTEL WITNESS ADDRESSES THIS ISSUE?**

6 A. Mr. Watkins addresses this issue on behalf of CenturyTel at pages 19 through 25
7 of his direct testimony.

8 **Q. HOW DOES CENTURYTEL ADDRESS THIS ISSUE IN ITS DIRECT**
9 **TESTIMONY?**

10 A. Mr. Watkins generally argues that CenturyTel is the incumbent local exchange
11 carrier (“ILEC”) and that, as such, it (and only it) has obligations pursuant to the
12 Act that require the company to: (1) negotiate (Section 252(a)(1)) with
13 competitive local exchange carriers (“CLECs”) regarding – among other things -
14 interconnection; (2) to interconnect its network with CLECs like Charter (Section
15 251 (c)); and, (3) to provide notice of network changes that may affect
16 interconnecting carriers’ telecommunications. Watkins Direct Testimony at 21-
17 24. Mr. Watkins argues that the focus of the Act is on ILECs such as CenturyTel
18 and that these obligations do not apply to CLECs like Charter. He further argues
19 that because the ILECs have obligations – particularly those in 251(c)(5)
20 requiring notice of network changes – the Act must contemplate that
21 interconnecting carriers (i.e., CLECs) will take heed of such notices, update their
22 networks and bear the costs while the ILECs are not required to bear costs on
23 their side of the network. Specifically, he states:

24 However, just as with the FCC regulations, the Section
25 251(c)(5) requirements address only the ILEC’s obligations
26 about such changes, just as reflected in CenturyTel’s
27 proposed language. As a result, there are no provisions in

1 the Act for the reverse situation as Charter's approach
2 suggests.

3
4 Watkins Direct Testimony at 22.

5
6 Further, Charter's proposed language could be an attempt to
7 include language within the Agreement that it could later
8 argue allows it to make changes in its network and then foist
9 new and additional costs upon CenturyTel.

10
11 *Id.* at 25.

12 Hence, Mr. Watkins generally concludes that CenturyTel is not obligated to
13 accommodate changes in Charter's network and that it most certainly is not
14 obligated to incur costs for accommodating such changes because "CenturyTel is
15 not obtaining interconnection with Charter's network." Watkins Direct
16 Testimony at 23. Without the same 251(c) obligation of Charter to interconnect
17 or to provide notice of network change, Mr. Watkins concludes CenturyTel has no
18 obligations as to costs on its side of the network if and when Charter makes a
19 change on its side.

20 **Q. DOESN'T SECTION 251 OF THE ACT REQUIRE ALL CARRIERS (1)**
21 **TO INTERCONNECT AND (2) TO ESTABLISH RECIPROCAL**
22 **COMPENSATION ARRANGEMENTS FOR THE TRANSPORT AND**
23 **TERMINATION OF TELECOMMUNICATION?**

24 A. Yes. 251(a)(1) requires that all carriers interconnect while 251(a)(5) requires that
25 all carriers establish reciprocal compensation arrangements. Indeed, both carriers
26 have an obligation to exchange traffic and that exchange requires some joint
27 planning of the interconnection facilities. After all, there must be sufficient
28 capacity on both sides of the POI, so that blocking or other technical problems do

1 not occur. It is in both carriers' interests to ensure that traffic is exchanged in an
2 efficient manner. But, as the Act and the FCC rules point out, each carrier is
3 responsible for the costs on its side of the POI. In other words, each carrier is
4 responsible for the costs of delivering its traffic to other carriers for termination.
5 Rule 51.703(b) specifically states that "a LEC may not assess charges on any
6 other telecommunications carrier for local telecommunications traffic that
7 originates on the LEC's network." 47 C.F.R. § 703(b). So regardless of the type
8 of network facilities that CenturyTel deploys on its side of the POI, those costs
9 are the responsibility of CenturyTel. Likewise, Charter is responsible for the
10 technology, and the cost of that technology, on its side of the POI. The parties
11 have agreed to this concept in the context of interconnection facilities.

12 **Q. AT PAGE 23 OF HIS DIRECT TESTIMONY, MR. WATKINS STATES**
13 **THAT SECTION 256 OF THE ACT PROVIDES FOR COORDINATION**
14 **OF NETWORKS TO ENSURE MAXIMUM INTERCONNECTIVITY**
15 **BETWEEN AND AMONG PUBLIC TELEPHONE PROVIDERS. DOES**
16 **THAT STATUTE SUPPORT MR. WATKINS' FUNDAMENTAL**
17 **POSITION THAT CHARTER SHOULD PAY AND CENTURYTEL**
18 **SHOULD NOT?**

19 **A.** No, quite the opposite. It makes clear that all carriers have a responsibility to keep
20 up their portion of the network. The Act and governing FCC rules make clear that
21 each carrier should incur the costs of maintaining and upgrading the network on
22 their side of the POI. Clearly, one carrier shouldn't pay costs for upgrades on

1 both sides of the POI while the other pays nothing as CenturyTel has proposed in
2 this arbitration.

3 **Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION ON**
4 **THIS ISSUE?**

5 A. To be equitable and consistent with the Act, the Commission should adopt
6 Charter's language which makes the technology upgrade language applicable to
7 both CenturyTel and Charter. Charter's proposed language is as follows:

8
9 **47. TECHNOLOGY UPGRADES**

10 Notwithstanding any other provision of this Agreement, **each Party** shall
11 have the right to deploy, upgrade, migrate and maintain its network at its
12 discretion. Nothing in this Agreement shall limit CenturyTel's ability to
13 modify its network through the incorporation of new equipment or
14 software or otherwise. ****CLEC shall be solely responsible for the cost**
15 **and activities associated with accommodating such changes in its own**
16 **network. Nothing in this Agreement shall limit **CLEC's ability to**
17 **modify its network through the incorporation of new equipment or**
18 **software or otherwise. CenturyTel shall be solely responsible for the**
19 **cost and activities associated with accommodating such changes in**
20 **its own network.** Notwithstanding the foregoing, both Parties have the
21 duty not to install network features, functions, or capabilities that do not
22 comply with the guidelines and standards established pursuant to Section
23 255 or 256 of the Act.
24
25

1 **Issue 18** – Should Charter be entitled to interconnect with CenturyTel at a single point of
2 interconnection (POI) within a LATA?

3
4 **Q. WHICH CENTURYTEL WITNESS ADDRESSES THE SINGLE POI**
5 **ISSUE?**

6 A. Mr. Watkins addressed this issue at pages 26 through 42 of his Direct Testimony
7 on behalf of CenturyTel.

8 **Q. PLEASE SUMMARIZE YOUR GENERAL UNDERSTANDING OF**
9 **CENTURYTEL’S APPARENT POSITION ON THIS ISSUE.**

10 A. Mr. Watkins spends considerable time trying to distinguish CenturyTel from the
11 Bell Operating Companies or “BOCs.” Evidently he considers this distinction as
12 justification for not permitting efficient interconnection between the parties. He
13 also seems to suggest that the interconnection requirements applicable to “BOCs”,
14 including the concepts of “LATA” and “single POI,” do not also apply to non-
15 BOC ILECs, like CenturyTel.¹⁰ I will address each of these points.

16 **Q. IS THERE A DISTINCTION BETWEEN BOCS AND OTHER ILECS?**

17 A. Yes. There is a historical distinction between the BOCs and ILECs. But the
18 distinction is meaningless in this proceeding because the applicable
19 interconnection standards and rules under Section 251, and FCC regulations,
20 apply to all incumbent LECs, including CenturyTel. The goal of the Act was to
21 open local markets to competition for all ILECs, not just the BOCs. For instance,
22 in the *Local Competition Order* it states:

¹⁰ See, for example, Watkins Direct Testimony at 27-28. This is an obvious reference to the 1982 divestiture of the Bell System. The Act, however, relates to opening the local markets to competition and does not rely on the history that led to the breakup of the Bell System.

1 Competition in local exchange and exchange access markets is
2 desirable, not only because of the social and economic benefits
3 competition will bring to consumers of local services, but also
4 because competition eventually will eliminate the ability of an
5 incumbent local exchange carrier to use its control of bottleneck
6 local facilities to impede free market competition. Under section
7 251, *incumbent local exchange carriers (LECs)*, including the
8 Bell Operating Companies (BOCs), are mandated to take several
9 steps to open their networks to competition, including providing
10 interconnection, offering access to unbundled elements of their
11 networks, and making their retail services available at wholesale
12 rates so that they can be resold.¹¹

13
14 Any fair reading of this language indicates that all ILECs are mandated to open
15 their networks, not just the BOCs.

16 **Q. WERE THE 251(C) REQUIREMENTS IMPOSED ON BOCS BECAUSE**
17 **OF THE SETTLEMENT OF THE ANTITRUST ACTION IN 1982?**

18 A. No. This is a curious statement by Mr. Watkins. The various antitrust actions
19 against AT&T that ultimately resulted in the Modification of Final Judgment¹² or
20 “MFJ” transpired in the 70s and 80s, long before the 1996 Act. The MFJ did
21 impose constraints on the BOCs and the new AT&T long-distance company, but
22 those line-of-business restrictions were not related to the interconnection
23 provisions of the 1996 Act. Mr. Watkins is wrong to suggest that the
24 interconnection requirements for ILECs are related to the pre-divestiture antitrust
25 actions. The MFJ was entered to allow competition in the long-distance market

¹¹ *In The Matter Of Implementation Of The Local Competition Provisions In The Telecommunications Act Of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd. 15,499, ¶ 4 (rel. Aug 8, 1996). (“*Local Competition Order*”) (Emphasis added.)

¹² Modification of Final Judgment (“MFJ”) entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192. *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982), *aff’d mem. sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

1 and focused primarily on line of ,business restrictions and on “equal access”
2 requirements. The 1996 Act was enacted to foster competition in the local market
3 and to specifically identify interconnection responsibilities of ILECs in order to
4 affirmatively promote efficient competition.

5 **Q. DID THE NON-BOC ILECS HAVE SOME ADVANTAGES OVER THE**
6 **BOCS AFTER THE BELL SYSTEM DIVESTITURE?**

7 A. Yes. In the Telecom Act of 1996, the non-BOC ILECs were never constrained by
8 the BOC line-of-business restrictions. They could enter into any lines of business
9 they desired – including long-distance, equipment manufacturing, publishing, etc.
10 They were also not constrained by the LATA boundaries. Watkins Direct at 37-
11 39. The non-BOC ILECs could engineer and deploy their networks based on their
12 business plans and not based on an artificial geographic boundary. The result is
13 that non-BOC ILECs are well established companies that actually had a head-start
14 on the BOCs in many ways.

15 **Q. DO YOU AGREE WITH MR. WATKINS THAT LATAs WERE**
16 **DESIGNED BASED ON THE BOC’S NETWORK?**

17 A. No. Mr. Watkins’ suggestion that LATAs were designed based on the BOCs’
18 networks is wrong. Mr. Watkins makes the following statement at page 36 of his
19 direct testimony:

20 Each LATA was specifically chosen to reflect the BOC’s network
21 design, including recognition of the existing end office and tandem
22 hierarchy and the existence of ubiquitous network interconnection
23 between the exchanges within the chosen LATA structure. The
24 LATA choice fit the BOC’s network operations. As a result, each
25 BOC had (and has further developed) a ubiquitous network
26 throughout the LATA with switching and trunking that was
27 designed for that LATA.

1
2 In the “LATAs Decision,” Judge Greene specifically explained how LATAs were
3 determined, and they were not “specifically chosen to reflect the BOC’s
4 network.” Instead, the LATAs were drawn based on community of interest and
5 generally defined by Standard Metropolitan Statistical Areas or SMSAs. The
6 Decree itself defined “LATA” at Section IV(G)(1) as follows:

7 Any [LATA] shall encompass one or more contiguous local
8 exchange areas serving common social, economic, and other
9 purposes, even where such configuration transcends municipal or
10 other local government boundaries.¹³

11
12 Mr. Watkins’ is wrong to suggest that the LATAs were drawn “specifically” to
13 reflect the BOCs’ network design. Instead, they were drawn primarily to reflect
14 the concept of a community of interest.

15 **Q. REGARDLESS OF THE BASIS FOR THE LATA BOUNDARIES, ABOVE**
16 **YOU AGREED THAT LATA BOUNDARIES DO NOT PROHIBIT**
17 **CENTURYTEL FROM ENTERING THE LONG DISTANCE MARKET,**
18 **FOR EXAMPLE. DOES THAT SOMEHOW MEAN THAT YOU AGREE**
19 **THAT THE SINGLE POI PER LATA REQUIREMENT IS ALSO NOT**
20 **RELEVANT?**

21 A. Absolutely not. The reasoning the FCC, courts, and commissions have used in
22 requiring only a single POI per LATA applies with equal force with non-BOC
23 ILECs. The single POI is necessary to allow carriers other than the ILEC to
24 operate efficiently. Forcing Charter to have multiple POIs only increases its costs
25 unnecessarily.

¹³ *Id* at 1003.

1 **Q. ARE YOU SUGGESTING THAT EVEN THOUGH CENTURYTEL IS**
2 **NOT A BOC THAT THE SINGLE POI RULING APPLIES TO IT AS**
3 **WELL?**

4 A. Yes. Charter is entitled to establish a single POI per LATA with CenturyTel as
5 the point at which the companies will exchange all traffic in that LATA, because
6 CenturyTel is an ILEC. Section 251(c)(2) of the Act is clear. For example, the
7 FCC has stated: “*an ILEC* must allow a requesting telecommunications carrier to
8 interconnect at any technically feasible point, including the option to interconnect
9 at a single POI per LATA.”¹⁴ In addition, 47 C.F.R. §51.321(a) states in relevant
10 part: “...an incumbent LEC shall provide, on terms and conditions that are just,
11 reasonable, and nondiscriminatory in accordance with the requirements of this
12 part, any technically feasible method of obtaining interconnection or access to
13 unbundled network elements at a particular point upon a request by a
14 telecommunications carrier.” A single POI is a technically feasible method of
15 obtaining interconnection “at a particular point” in the ILEC’s network, and
16 therefore, CenturyTel is required to provide a single POI per LATA to Charter
17 upon Charter’s request, in accordance with the FCC’s rules. Furthermore, the
18 FCC has stated: “Section 251, and our implementing rules, require *an incumbent*
19 *LEC* to allow a competitive LEC to interconnect at any technically feasible point.
20 This means that a competitive LEC has the option to interconnect at only one
21 technically feasible point in each LATA. *The incumbent LEC* is relieved of its

¹⁴ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, FCC 01-132, CC Docket No. 01-92, released April 27, 2001, ¶ 112. (footnotes, omitted, emphasis added). See also, *Id.* at ¶ 72 (“Under our current rules, interconnecting CLECs are obligated to provide one POI per LATA.”)(footnote omitted, emphasis added).

1 obligation to provide interconnection at a particular point in its network only if it
2 proves to the state public utility commission that interconnection at that point is
3 technically infeasible.”¹⁵

4 **Q. IS THERE ANY DISPUTE OVER THE FACT THAT CENTURYTEL IS**
5 **AN INCUMBENT LEC?**

6 A. No.

7 **Q. AT PAGE 37 OF MR. WATKINS’ DIRECT TESTIMONY, HE SAYS**
8 **THAT LATAs HAVE NO RELEVANCE TO THE CONCEPT OF A POI.**
9 **BASED UPON YOUR DISCUSSION ABOVE, DO YOU DISAGREE?**

10 A. Yes. Mr. Watkins’ testimony misses the point. The reason that the FCC, courts,
11 and other commissions have ordered a single POI per LATA is because it
12 prevents the ILEC from forcing inefficiencies on the CLEC. Having multiple
13 POIs inappropriately shifts the responsibility of the ILEC – for transporting its
14 traffic to the POI – to the CLEC. The FCC recognized, when it codified Rule
15 703(b),¹⁶ that the financial responsibilities for interconnection for the exchange of
16 traffic should be borne solely by each carrier on its side of the POI. This rule
17 prohibits carriers from shifting costs of transporting traffic to the POI to other
18 carriers. In other words, each carrier is responsible for the costs of delivering its

¹⁵ *In the Matter of Application of SBC Communications Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, FCC 00-238, CC Docket No. 00-65, Released June 30, 2000, ¶ 78 (“Texas 271 Order”) (footnotes omitted, emphasis added).

¹⁶ 47 C.F.R. 51.703(b).

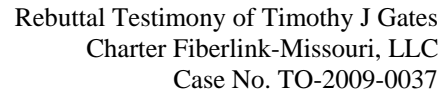
1 traffic to other carriers for termination. I discussed this concept at length in my
2 direct testimony. Gates Direct at 31 through 35. I will not repeat those points
3 here.

4 **Q. AT PAGE 28 OF MR. WATKINS' DIRECT TESTIMONY, HE SUGGESTS**
5 **THAT THE SINGLE POI APPLICATION MIGHT RESULT IN A**
6 **TECHNICALLY "INFEASIBLE" INTERCONNECTION. PLEASE**
7 **RESPOND.**

8 A. Mr. Watkins suggests that Charter may interconnect in one area of a LATA on
9 CenturyTel's network but that there may be no CenturyTel facilities between that
10 area and another area in the State. This is not a plausible scenario. ILECs with
11 multiple serving areas in a state routinely build or lease facilities between those
12 areas. This is especially true given the low incremental cost of transport via
13 fiber. If they did not connect the different serving areas, the ILEC would be
14 forced to develop and deploy separate OSS systems, including billing systems,
15 SS7 signaling networks and other key systems on a stand-alone basis. Rather than
16 duplicate these expensive systems and pieces of the network, is it more efficient
17 to just interconnect their different serving areas.

18 **Q. IS THERE EVIDENCE IN THIS PROCEEDING THAT CENTURYTEL**
19 **DOES HAVE FACILITIES BETWEEN ITS SERVING TERRITORIES?**

20 A. Yes. In response to Charter Request 49, CenturyTel provided a confidential
21 response (CTL-DM-49-001 PROPRIETARY) ("**P**") that indicates that there are



P * PROPRIETARY INFORMATION REMOVED

“P” Given this fact, Mr. Watkins’ suggestion regarding an infeasible interconnection or a higher-cost interconnection should be ignored.

Q. PLEASE EXPLAIN.

A. During discovery Charter posed the following request to CenturyTel: “[i]dentify, and describe, all facilities that CenturyTel owns, deploys, or leases from a third party which are used for the purpose of connecting, or linking, CenturyTel ILEC end offices in LATAs 520 and 521.” In response to this request, CenturyTel produced a network diagram, labeled CTL-DM-49-001 (PROPRIETARY), which very clearly shows that CenturyTel has deployed “P” * PROPRIETARY INFORMATION REMOVED. * “P”

Note that these are the same service territories where Charter currently provides service. Moreover, the network diagram also shows that CenturyTel has already deployed “**P**” * PROPRIETARY INFORMATION REMOVED * “**P**” between several of these end offices, as well as other end offices.

Q. WHAT IS THE SIGNIFICANCE OF THESE FACTS?

A. These facts demonstrate to me that CenturyTel already has the capacity to send traffic between, and among, the CenturyTel end offices in the areas served by Charter. Therefore, if required to establish a single POI with Charter, CenturyTel would appear to be technically capable of sending all of its traffic in these five

1 service areas to, and from, that single POI arrangement with Charter. For
2 example, if Charter chose to establish a single POI with CenturyTel at the
3 Wentzville tandem, and deliver all of its traffic to that point, CenturyTel would be
4 able to accept traffic at that point, and transport it to the appropriate end office for
5 delivery to the called party.

6 **Q. HOW DO THOSE FACTS SQUARE WITH MR. WATKINS'**
7 **ASSERTIONS REGARDING THE LIMITATIONS OF CENTURYTEL'S**
8 **INTERCONNECTION OBLIGATIONS?**

9 A. Mr. Watkins makes a number of assertions that purport to limit Charter's right to
10 establish a single POI. In particular, Mr. Watkins seems to suggest that the non-
11 discrimination principles of Section 251(c)(2) limit Charter's right to request a
12 single POI. For example, Mr. Watkins states that:

- 13 ▪ an ILEC is "not required to provision interconnection arrangements for
14 the benefit of its competitors that are more than what the incumbent
15 does for itself..." (Page 30, lines 24-27); and
- 16 ▪ "under Section 251(c)(2) of the Act, [ILECs] are not required to
17 provision superior arrangements at the request of the competing
18 carriers" (Page 31, lines 15-16)

19
20 But the facts set forth in CenturyTel's network diagram establish that Charter's
21 request would simply seek interconnection arrangements that are equal to what
22 CenturyTel already provides itself; and, Charter is not seeking any "superior"
23 arrangement. Nor is Mr. Watkins correct to suggest that Charter's proposal would
24 require CenturyTel to build new facilities. For example, he states that:

- “competitive carriers requesting interconnection should have access ‘only to an incumbent LEC’s existing network –not to yet unbuilt superior one.’” (Page 32, lines 6-7) (citing the IUB I decision)
- “incumbents are not required ‘to alter substantially their networks in order to provide superior quality interconnection...’” (Page 32, lines 20-21)

Again, as the CenturyTel network diagram establishes, CenturyTel already has an existing “P” * PROPRIETARY INFORMATION REMOVED * “P” which means that Charter’s request would not require CenturyTel to “alter substantially” its network in order to accommodate Charter’s single POI request.

Q. WHAT THEN ARE YOUR CONCLUSIONS REGARDING MR. WATKINS ATTEMPTS TO LIMIT CHARTER’S INTERCONNECTION RIGHTS?

A. These facts demonstrate that Charter’s single POI request: (1) is not technically infeasible; (2) does not present a “superior” form of interconnection; and, (3) should not present any appreciable additional costs upon CenturyTel. Therefore, I disagree with Mr. Watkins’ characterizations of the effect of Charter’s single POI proposal. Also, remember that under CenturyTel’s proposal, Charter would be required to interconnect with CenturyTel to each of the CenturyTel end offices serving these areas, when certain traffic thresholds are met. But given the facts we now have concerning CenturyTel’s existing network facilities, that result would simply create inefficient network arrangements and impose greater costs upon Charter. That result is impermissible under federal law, and clearly unnecessary given CenturyTel’s existing network arrangements in the areas

1 served by Charter. In short, the facts would indicate that Mr. Watkins arguments
2 appear to be a red herring.

3 **Q. DO YOU HAVE ANY OTHER CONCERNS WITH MR. WATKINS**
4 **TESTIMONY ON THIS POINT?**

5 A. Yes. Mr. Watkins testimony is internally inconsistent. Early in his discussion of
6 this issue he leaves the impression that there are no existing interoffice facilities
7 when he states that “there may be no existing CenturyTel network for the
8 transport of [] local interconnection traffic between two areas.” (Page 28, lines 6-
9 8). CenturyTel also makes that statement in the Joint DPL filed with the
10 Commission. *See* Parties’ Joint Statement of Unresolved Issues, at p. 70.
11 However, later, on page 40 Mr. Watkins then states that Charter’s single POI
12 proposal would require the inclusion of “intraexchange traffic over CenturyTel’s
13 interoffice trunking.” Indeed, Mr. Watkins’ seems to concede, then, that there is
14 an existing interoffice network that CenturyTel maintains for its own use (to send
15 traffic to and from its various end offices in Missouri).

16 **Q. BUT MR. WATKINS ON PAGE 40 TESTIFIES THAT CENTURYTEL’S**
17 **INTEROFFICE TRUNKING WAS NOT DESIGNED TO CARRY ANY**
18 **ADDITIONAL TRAFFIC. ISN’T THAT A VALID CONCERN?**

19 A. No. I find Mr. Watkins suggestion that Charter’s single POI proposal, if
20 implemented, could “throw into disarray” and “overload” CenturyTel’s existing
21 trunking and switching architecture. Remember, the facilities connecting

1 CenturyTel's various end office facilities are "P" * PROPRIETARY
2 INFORMATION REMOVED * "P", and therefore should have significant
3 capacity on such facilities.

4 **Q. SHOULD CHARTER BE REQUIRED TO PAY FOR "ANY NEW FORM**
5 **OF TRANSPORT" AS MR. WATKINS SUGGESTS ON PAGE 40?**

6 A. No. Under existing federal law, CenturyTel has the obligation to interconnect
7 with Charter at a single POI, and each of the parties are required to bear their
8 respective costs of transport of traffic to, and from, the POI. The parties have
9 already agreed to such language. *See* Article V, § 2.2.2.

10 **Q. WHAT DID MR. WATKINS SAY ABOUT THAT PRINCIPLE?**

11 A. Mr. Watkins agrees with that principle. In fact, on the issue of one-way trunks
12 (Issue 21) he testified that "[t]he framework for interconnection is that once the
13 POI is established, each Party is responsible for facilities on its side of the POI,
14 and each Party is responsible for the delivery of its originating local traffic to the
15 other Party at the POI." (Watkins Direct at 71, lines 19-22) Surely Mr. Watkins
16 does not expect this Commission to apply that cost responsibility principle on the
17 one-way trunk issue, but apply a *different* principle on this single POI issue. The
18 fact is, the POI establishes the demarcation point for cost responsibility. The
19 parties have agreed to that concept, and Mr. Watkins has affirmed that the
20 principle should be applied to this agreement. Finally, I would note that
21 CenturyTel has not offered any proposed language concerning transport costs on

1 its side of the POI. Therefore, it is precluded from advocating such charges in
2 this proceeding.

3 **Q. AT PAGES 38 AND 39 OF HIS DIRECT TESTIMONY, MR. WATKINS**
4 **SUGGESTS THAT 2001 FCC NPRM ON INTERCARRIER**
5 **COMPENSATION IS NOT CONTROLLING. HOW DO YOU RESPOND?**

6 A. The single POI rule referenced in the 2001 NPRM is an established rule that the
7 FCC has imposed on all ILECs. When construing the FCC's statements in that
8 NPRM the reader must remember that the FCC stated the single POI rule in the
9 context of raising questions about whether reform of the *existing* rules was
10 necessary. For instance, at paragraph 72 of that NPRM the FCC states, "Under
11 our *current rules*, interconnecting CLECs are obligated to provide one POI per
12 LATA." (emphasis added). Then, in the section entitled "Single Point of
13 Interconnection Issues" at paragraph 112, the FCC starts by noting, "[a]s
14 previously mentioned, an ILEC must allow a requesting telecommunications
15 carrier to interconnect at any technically feasible point, *including the option to*
16 *interconnect at a single POI per LATA.*" (emphasis added). So there is no
17 question that the NPRM was referring to the FCC's *current* rules, and that those
18 rules require an ILEC to allow a CLEC to interconnect at a single POI per LATA.

19 **Q. MR. WATKINS ARGUES THAT CENTURYTEL SHOULD NOT HAVE**
20 **TO DEPLOY NEW OR ADDITIONAL TRUNKING TO**
21 **ACCOMMODATE THE EXCHANGE OF TRAFFIC WITH CHARTER.**
22 **WATKINS DIRECT TESTIMONY AT 34. DO YOU AGREE?**

1 A. No. This is the same argument that other ILECs have made in an attempt to avoid
2 their responsibility to transport their originated traffic to the POI. I have already
3 explained that the parties have agreed, and Mr. Watkins has testified, that the POI
4 should be the demarcation point for cost responsibility. But apart from that fact,
5 FCC rule 703(b) addresses this principle, and it treats both interconnected carriers
6 in the same manner. Each carrier is responsible for the costs of delivering its
7 traffic to other carriers for termination.

8 **Q. MR. WATKINS SUGGESTS THAT CHARTER MAY BE SEEKING**
9 **“SUPERIOR QUALITY” INTERCONNECTION. WATKINS DIRECT**
10 **TESTIMONY AT 30 THROUGH 33. IS THAT TRUE?**

11 A. No. Further, I am not aware of any commission finding that a single POI
12 requirement resulted in a “superior quality” interconnection request. We have
13 established that CenturyTel has facilities between its serving territory and that it
14 uses those facilities to transport its own traffic. As such, Charter is asking only
15 that CenturyTel provide what it is already providing to itself – transport of traffic
16 on its side of POI. Charter will do likewise on its side of the POI. There is
17 nothing unique, unusual, or expensive about this activity. CenturyTel is wrong to
18 suggest that routing traffic over existing facilities to the POI is somehow
19 “superior quality.” Moreover, the fact that CenturyTel provides this form of
20 traffic exchange to itself is evidence that the arrangement that Charter seeks is
21 technically feasible. CenturyTel is, of course, required to by law to permit
22 Charter to interconnect at any technically feasible point on CenturyTel’s network.

1 **Q. WAS THERE ANYTHING NEW IN MR. WATKINS' TESTIMONY THAT**
2 **WOULD CAUSE YOU TO MODIFY THE POSITION YOU SET FORTH**
3 **IN YOUR DIRECT TESTIMONY?**

4 A. No. I recommend that the Commission adopt Charter's position on the single POI
5 issue. Charter's position is consistent with economic efficiency, FCC rules and
6 the goals of the Act. Further, Charter's position is equitable since it requires both
7 parties to bear their costs on their side of the POI. CenturyTel's position is
8 contrary to the FCC rules and would result in bad public policy. Specifically,
9 CenturyTel's position would inappropriately shift costs to Charter and harm the
10 development of competition to the detriment of consumers and the public interest.

1 **Issue 19** - Should Charter's right to utilize indirect interconnection as a means of
2 exchanging traffic with CenturyTel be limited to only those instances where
3 Charter is entering a new service area, or market?

4
5 **Q. WHICH CENTURYTEL WITNESS ADDRESSES THIS ISSUE IN**
6 **DIRECT?**

7 A. Mr. Watkins addresses this issue at pages 43 through 66 of his direct testimony.
8
9 The dispute here revolves around the question of indirect interconnection, and the
10 circumstances surrounding when Charter may use indirect interconnection to
11 exchange traffic with CenturyTel.

12 **Q. DO YOU HAVE A GENERAL COMMENT ABOUT MR. WATKINS'**
13 **TESTIMONY ON THIS ISSUE?**

14 A. At page 44 of his direct testimony, Mr. Watkins refers to Charter's "critical
15 mistakes of fact" but he fails to actually identify any facts that he believes are in
16 error. Instead, Mr. Watkins offers approximately twenty-three pages of
17 unsupported assertions and legal theories in an attempt to support CenturyTel's
18 positions. And in all of those pages, Mr. Watkins fails to note that this
19 Commission, most recently in TO-2006-0039, has clearly affirmed that CLECs
20 like Charter have the right to establish indirect interconnection arrangements with
21 ILECs like CenturyTel. In that case the Commission rejected CenturyTel's
22 "attempts to place conditions on Socket's choice of indirect interconnection"
23 because they were "not conducive to Section 251(a)(1) and this Commission's
 previous interpretation of that section."¹⁷ Why Mr. Watkins excludes that point is

¹⁷ Petition of Socket Telecom, LLC for Compulsory Arbitration of Interconnection Agreements with CenturyTel of Missouri, LLC and Spectra Communications, LLC, pursuant to Section

1 not clear. For that reason, though, the Commission would be well served to move
2 beyond these theories and focus on the competing language of the parties. A
3 comparison of that language shows Charter's positions to be consistent with the
4 Act, the FCC rules, this Commission's prior rulings, and the development of
5 competition.

6 **Q. PLEASE PROVIDE CHARTER'S PROPOSED LANGUAGE FOR ISSUE**

7 **19.**

8 A. Charter's proposed language for Issue 19 is as follows:

9 3.3.1.1 Either Party may deliver Local Traffic and ISP-bound Traffic indirectly to the
10 other for termination through any carrier to which both Parties' networks are
11 interconnected directly or indirectly. The Originating Party shall bear all charges payable
12 to the transiting carrier(s) for such transit service with respect to Local Traffic and ISP-
13 bound Traffic.

14 3.3.1.2 Unless otherwise agreed, the Parties shall exchange all Local Traffic and ISP-
15 bound Traffic indirectly through one or more transiting carriers until the total volume of
16 Local Traffic and ISP-bound Traffic being exchanged between the Parties' networks
17 exceeds 240,000 minutes per month for three (3) consecutive months, at which time
18 either Party may request the establishment of Direct Interconnection. Notwithstanding the
19 foregoing, if either Party is unable to arrange for or maintain transit service for its
20 originated Local Traffic upon commercially reasonable terms before the volume of Local
21 Traffic and ISP-bound Traffic being exchanged between the Parties' networks exceeds
22 240,000 minutes per month, that Party may unilaterally, and at its sole expense, utilize
23 one-way trunk(s) for the delivery of its originated Local Traffic to the other Party.
24

25 3.3.1.3 After the Parties have established Direct Interconnection between their networks,
26 neither Party may continue to transmit its originated Local Traffic and ISP-bound Traffic
27 indirectly except on an overflow basis to mitigate traffic blockage, equipment failure or
28 emergency situations.
29

30 3.3.1.4 Local Traffic and ISP-bound Traffic exchanged by the Parties indirectly through a
31 transiting carrier shall be subject to the same Reciprocal Compensation, if any, as Local
32 Traffic and ISP-bound Traffic exchanged through Direct Interconnection.
33
34

251(b)(1) of the Telecommunications Act of 1996, Case No. TO-2006-0299, 2006 Mo. PSC
LEXIS 1380, at * 33 (Mo. PSC 2006).

1 **Q. PLEASE PROVIDE CENTURYTEL’S PROPOSED LANGUAGE FOR**
2 **ISSUE 19.**

3 A. CenturyTel’s proposed language for Issue 19 is as follows:

4 3.3.1.1 Indirect Network Connection is intended only for de minimis traffic associated
5 with **CLEC “start-up” market entry into a CenturyTel local exchange. Therefore
6 Indirect Network Interconnection will be allowed only on routes between CenturyTel end
7 offices and a **CLEC switch in instances where, and only so long as, none of the triggers
8 set forth in Section 3.3.2.4 of this Article have been reached.

9
10 3.3.1.2 Indirect Network Connection shall be accomplished by CenturyTel and **CLEC
11 each being responsible for delivering Local Traffic to and receiving Local Traffic at the
12 Tandem Switch serving the CenturyTel end office. Each Party is responsible for the
13 facilities to its side of the tandem. Each Party is responsible for the appropriate sizing,
14 operation, and maintenance of the transport facility to the tandem.

15
16 3.3.1.3 The Parties agree to enter into their own agreements with third-party providers.
17 In the event that **CLEC sends traffic through CenturyTel’s network to a third-party
18 provider with whom **CLEC does not have a traffic interexchange agreement, then
19 **CLEC agrees to indemnify CenturyTel for any termination charges rendered by a third-
20 party provider for such traffic.

21
22 3.3.1.4 To the extent a Party combines Local Traffic and Jointly-Provided Switched
23 Access Traffic on a single trunk group for indirect delivery through a tandem, the
24 originating Party, at the terminating Party’s request, will declare quarterly Percentages of
25 Local Use (PLUs). Such PLUs will be verifiable with either call summary records
26 utilizing Calling Party Number (CPN) information for jurisdictionalization of traffic or
27 call detail samples. Call detail or direct jurisdictionalization using CPN information may
28 be exchanged in lieu of PLU, if it is available. The terminating Party should apportion
29 per minute of use (MOU) charges appropriately.

30
31 **Q. WHAT IS CHARTER’S POSITION ON THIS QUESTION?**

32 A. Charter’s position is that it has a statutory right, under Section 251(a), to utilize
33 indirect interconnection as a means of exchanging traffic with CenturyTel. There
34 are no statutory, or regulatory, limitations on the use of indirect interconnection.
35 As such, Charter should be able to utilize indirect interconnection as a means of
36 exchanging local, extended area service (“EAS”), and other traffic with
37 CenturyTel’s network, where appropriate.

1 **Q. DOES MR. WATKINS RECOMMEND LIMITING THE USE OF**
2 **INDIRECT INTERCONNECTION?**

3 A. Yes. In his first Q&A on this issue at page 43 of his direct testimony, he states in
4 pertinent part, "...this issue addresses whether it is reasonable for the Parties to
5 agree to CenturyTel's more than reasonable offer to utilize a "transit
6 arrangement" under specifically limited circumstances, and only under those
7 circumstances. And, as to this issue, the answer is 'yes'."

8 **Q. HOW DOES CENTURYTEL'S PROPOSAL LIMIT CHARTER'S USE OF**
9 **TRANSIT?**

10 A. CenturyTel has proposed language that would limit indirect interconnection "only
11 for de minimis traffic associated with **CLEC 'start-up' market entry into a
12 CenturyTel local exchange." *See* § 3.3.1.1, Article V, and Joint Statement of
13 Unresolved Issues, p. 73 (CenturyTel proposed language). In addition,
14 CenturyTel will only "allow" indirect interconnection on those routes where none
15 of the triggers set forth in CenturyTel's proposed section 3.3.2.4 have been met.
16 The triggers in Section 3.3.2.4 are very similar to those that this Commission
17 rejected in the 2006 arbitration between CenturyTel and Socket Telecom in Case
18 No. TO-2006-0029. Essentially, CenturyTel would force Charter to move off of
19 an indirect interconnection arrangement where traffic volume between the
20 companies for any single exchange reaches a "DS-1 trunk equivalency," or where
21 transit costs by a third party exceed \$200.

22 **Q. ARE THERE OTHER WAYS IN WHICH CENTURYTEL'S PROPOSAL**
23 **IS LIMITING?**

1 A. Yes, CenturyTel's proposal to use "start up" market entry as a factor for
2 determining when indirect interconnection may, or may not, be used is
3 problematic. It is clear that Charter is already established in Missouri and is
4 clearly not a start-up telephone company. However, as I explained in my direct
5 testimony, Gates Direct at Page 54, Lines 11-23, Page 55, Lines 1-8, there may be
6 certain circumstances where it is more efficient for the parties to exchange traffic
7 indirectly, via transit arrangements, rather than establish direct interconnection.
8 One example is if the parties are serving two separate service areas that are
9 contiguous to one another, and exchanging "extended local" or "EAS" traffic.
10 That has nothing to do with start up market entry, but is nevertheless a valid basis
11 to exchange traffic indirectly.

12 **Q. AT PAGE 44 OF HIS DIRECT TESTIMONY, MR. WATKINS REFERS**
13 **TO TRANSIT ARRANGEMENTS AS "OPERATIONALLY INFERIOR."**
14 **DO YOU AGREE?**

15 A. No. As I showed in my direct testimony, transit is a very efficient way for
16 carriers to exchange traffic until there are sufficient volumes to justify a direct
17 interconnection. It would be very inefficient to force all carriers to directly
18 interconnect regardless of the amount of traffic exchanged. Transit may not be
19 ideally suited to exchange large volumes of traffic between two service providers
20 given the transit costs to a third-party transit provider. I suspect that is what Mr.
21 Watkins means but it is important to remember that is not what Charter is
22 proposing here.

23 **Q. PLEASE EXPLAIN.**

1 A. This is why it is important for the Commission to focus on the parties' competing
2 language, rather than trying to interpret Mr. Watkins characterizations on this
3 issue. As I just noted above, the use of indirect interconnection (via transit
4 arrangements) may be appropriate under certain circumstances where there is a
5 relatively low call volume between the parties. Note that Charter's proposal
6 permits the use of indirect interconnection between the parties, only until a
7 specific traffic threshold is met, over a period of time. Then, once that criteria is
8 satisfied, Charter proposes that indirect interconnection would no longer be
9 available, and that the parties would transition to direct interconnection
10 arrangements.

11 **Q. WHY IS TRANSITING IMPORTANT TO CLECS, ILECS, AND LOCAL**
12 **COMPETITION AS A WHOLE?**

13 A. In the absence of transiting, each carrier (CLEC/CMRS¹⁸/small LECs) would be
14 forced to establish direct interconnection trunks with every other
15 CLEC/CMRS/small LEC carrier with which it exchanges local traffic in order for
16 all of its customers' calls to be completed. Duplicating the incumbent's network
17 has never been viewed as an economic way to enter the market, as it is simply not
18 cost effective or efficient to establish these multiple, duplicative direct trunks
19 between each of these carriers (especially for carriers who exchange small

¹⁸ CMRS stands for Commercial Mobile Radio Service and is an FCC designation for any carrier or licensee whose wireless network is connected to the public switched telephone network and/or is operated for profit. Newton's Telecom Dictionary, 20th. Ed. The FCC defines CMRS as: A mobile service that is: (a)(1) provided for profit, *i.e.*, with the intent of receiving compensation or monetary gain; (2) An interconnected service; and (3) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (b) The functional equivalent of such a mobile service described in paragraph (a) of this section. 47 CFR § 20.3.

1 amounts of traffic). As a result, it is likely that, in the absence of transiting, not
2 all carriers would be interconnected and calls between customers of these carriers
3 would therefore not be completed. Simply put, transiting is the one of the most
4 efficient means of interconnection between carriers and is critical to the
5 development of local competition. The FCC summarized the importance of
6 transiting as follows:

7 125. The record suggests that the availability of transit service is
8 increasingly critical to establishing indirect interconnection -- a
9 form of interconnection explicitly recognized and supported by the
10 Act. It is evident that competitive LECs, CMRS carriers, and rural
11 LECs often rely upon transit service from the incumbent LECs to
12 facilitate indirect interconnection with each other. *Without the*
13 *continued availability of transit service, carriers that are*
14 *indirectly interconnected may have no efficient means by which*
15 *to route traffic between their respective networks.* (emphasis
16 added)

17
18 126. Moreover, it appears that indirect interconnection via a transit
19 service provider is an efficient way to interconnect when carriers
20 do not exchange significant amounts of traffic. Competitive LECs
21 and CMRS carriers claim that indirect interconnection via the
22 incumbent LEC is an efficient form of interconnection where
23 traffic levels do not justify establishing costly direct connections.
24 As AT&T explains, "transiting lowers barriers to entry because
25 two carriers avoid having to incur the costs of constructing the
26 dedicated facilities necessary to link their networks directly." This
27 conclusion appears to be supported by the widespread use of
28 transiting arrangements.¹⁹
29

30 **Q. AT PAGE 46 OF HIS DIRECT TESTIMONY, MR. WATKINS STATES**
31 **THAT TRANSIT IS POTENTIALLY ANTICOMPETITIVE. IS THAT A**
32 **CORRECT STATEMENT?**

¹⁹ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 at ¶¶ 125 – 126 (2005).

1 A. No. As noted above, transit is a very important service that allows the efficient
2 exchange of traffic between and among providers. Given the low triggers agreed
3 to in this proceeding, I cannot conceive of a reason anyone would consider transit
4 as anticompetitive. Indeed, transit allows competition where none would exist
5 otherwise.

6 **Q. MR. WATKINS SPENDS MANY PAGES OF HIS DIRECT TESTIMONY**
7 **INTERPRETING LAW AND PROVIDING HIS INTERPRETATION OF**
8 **THE ACT'S REQUIREMENTS. I UNDERSTAND YOU ARE NOT A**
9 **LAWYER, BUT DOES HIS SUGGESTION AT PAGE 50 THAT**
10 **"SECTION 251(A) IS SEPARATE AND DISTINCT FROM**
11 **INTERCONNECTION REQUIREMENTS RELATED TO THE**
12 **EXCHANGE OF TRAFFIC" MAKE SENSE?**

13 A. No. This statement makes no sense. Section 251(a) is found directly under the
14 Section title "Sec. 251. Interconnection." The language also makes specific
15 reference to interconnecting with the facilities and equipment of other
16 telecommunications carriers. Why would the Act require such interconnection if
17 it were not for the exchange of traffic?

18 **Q. MR. WATKINS SPENDS TIME DISCUSSING THE DIFFERENCES**
19 **BETWEEN SECTION 251(A) INTERCONNECTION AND 251(C)**
20 **INTERCONNECTION. SINCE CHARTER IS REQUESTING**
21 **INTERCONNECTION WITH CENTURYTEL UNDER SECTION 251(C)**
22 **DOES THAT MEAN THAT INDIRECT EXCHANGE OF TRAFFIC**
23 **THROUGH TRANSIT IS NOT AVAILABLE TO CHARTER?**

1 A. No. The interconnection requirements in the Act are escalating. Simply because
2 a carrier seeks interconnection pursuant to Section 251(c) does not mean that
3 indirect exchange of traffic as contemplated by Section 251(a) is now somehow
4 unavailable to the carrier. As I have explained, Charter is proposing the use of
5 transit to establish indirect interconnection in limited circumstances. There is no
6 reason that Charter and CenturyTel cannot be interconnected, directly, under the
7 standards of Section 251(c)(2), for the exchange of traffic in one area. And, at the
8 same time, interconnected indirectly pursuant to Section 251(a) for the exchange
9 of relatively small amounts of traffic in another area. Further, as found in *Atlas*
10 *Telephone v Oklahoma Corporation Commission*,²⁰ the use of direct
11 interconnection in one instance does not preclude the use of indirect
12 interconnection in another instance. The court stated: "...the affirmative duty
13 established in § 251(c) runs solely to the ILEC, and is only triggered on request
14 for direct connection. The physical interconnection contemplated by § 251(c) in
15 no way undermines telecommunications carriers' obligation under § 251(a) to
16 interconnect "directly or indirectly."²¹ Accordingly, Charter has the right to
17 avail itself of indirect interconnection pursuant to the Act.

18 **Q. AT PAGES 58 THROUGH 61 OF HIS DIRECT TESTIMONY, MR.**
19 **WATKINS DISCUSSES OPERATIONAL REASONS TO AVOID THE**
20 **USE OF TRANSIT. AT PAGE 65, HE STATES THAT CENTURYTEL'S**
21 **DS1 TRIGGER ADDRESSES THESE PRACTICAL AND OPERATIONAL**

²⁰ *Atlas Telephone Company, et al. v Oklahoma Corporation Commission, et al.*, 400 F.3d 1256 (10th Cir. 2005).

²¹ *Id.* at p. 1268.

1 **CONCERNS. DOES CHARTER'S DS1 TRIGGER ALSO ADDRESS**
2 **THESE SAME CONCERNS?**

3 A. Yes, it does. For instance, while I don't necessarily agree with Mr. Watkins that
4 using indirect interconnection will throw the network into "disarray"²² it is
5 obvious that using the DS1 trigger will eliminate that problem. Mr. Watkins'
6 concern regarding a large number of carriers using this method is put into the
7 proper perspective when it is recognized that there will be less than a DS1's worth
8 of traffic for each carrier.

9 **Q. MR. WATKINS SUGGESTS THAT THE USE OF A THIRD PARTY**
10 **PROVIDER IS A "NEW NETWORK DESIGN." WATKINS DIRECT**
11 **TESTIMONY AT 59. IS THAT A CORRECT STATEMENT?**

12 A. No. There is nothing new or novel about using other providers to transport traffic.
13 Perhaps more importantly, even if it were new – which it is not – it doesn't
14 increase CenturyTel's costs or responsibilities.

15 **Q. MR. WATKINS ALSO SUGGESTS THAT A THIRD PARTY INVOLVED**
16 **IN HANDLING TRAFFIC MIGHT IMPAIR THE EQUIPMENT SUCH**
17 **THAT TRAFFIC IS NOT IDENTIFIABLE OR MEASURABLE. IS THAT**
18 **A VALID CONCERN?**

19 A. Having a third party involved does not impact existing equipment or its ability to
20 identify or measure traffic. If the originating carrier sends the appropriate
21 information with the call that information should pass through the transit
22 arrangement to the terminating carrier. This is another example of hypotheticals

²² I am not aware of an ILEC claiming that indirect interconnection, in and of itself, caused the disarray or overloading of its network.

1 and misstatements by Mr. Watkins that only serve to confuse the record.
2 Nevertheless, as stated above, since Charter has agreed to the DS1 trigger, even if
3 these problems were relevant, the solution has been agreed to by both Parties.

4 **Q. ON PAGE 64, LINES 1-13, OF HIS DIRECT TESTIMONY, MR.**
5 **WATKINS ARGUES THAT THE CENTURYTEL PROPOSED ARTICLE**
6 **V, SECTION 3.3.1.4 ADDRESSES THE CENTURYTEL CONCERN THAT**
7 **TRANSIT TRAFFIC CREATES REGARDING TRAFFIC**
8 **IDENTIFICATION AND MEASUREMENT. WHAT IS YOUR**
9 **RESPONSE?**

10 A. Mr. Watkins associates “transit traffic” with “Jointly Provided Switched Access
11 Traffic” and appears to assert that Section 3.3.1.4 somehow addresses
12 CenturyTel’s concern regarding the ability to adequately identify and bill traffic.
13 This concern, however, is misplaced. CenturyTel’s proposed Article V, Section
14 3.3.1.4 is not required because the Parties have already agreed to language that
15 provides the ability to accurately identify and measure the traffic exchanged
16 between the Parties. Article V, Section 3.4.4 contains the following language:

17 3.4.4 ** CLEC shall provide all SS7 signaling information including,
18 without limitation, charge number and originating line information (OLI).
19 For terminating FGD, CenturyTel will pass all SS7 signaling information
20 including, without limitation, CPN if it receives CPN from FGD carriers.
21 All privacy indicators will be honored. Where available, network
22 signaling information such as transit network selection (TNS) parameter,
23 carrier identification codes (CIC) (CCS platform) and CIC/OZZ
24 information (non-SS7 environment) will be provided by ** CLEC
25 wherever such information is needed for call routing or billing. The
26 Parties will follow all OBF adopted standards pertaining to TNS and
27 CIC/OZZ codes.

28 The parties’ exchange of the signaling information identified in this agreed upon
29 language eliminate the CenturyTel concerns being put forward by Mr. Watkins.

1 **Q. ON PAGE 64, LINES 15-18 OF HIS DIRECT TESTIMONY MR.**
2 **WATKINS FURTHER STATES “IF THERE WERE NOT EXPLICIT**
3 **TERMS AND CONDITIONS BETWEEN CHARTER AND**
4 **CENTURYTEL, THE PARTIES MAY NOT HAVE ANY ACCEPTED**
5 **METHOD TO IDENTIFY, MEASURE AND BILL FOR COMPONENTS**
6 **OF TRAFFIC BETWEEN THEM, INCLUDING TRAFFIC THAT MAY**
7 **BE SUBJECT TO INTERCARRIER COMPENSATION**
8 **REQUIREMENTS.” WHAT IS YOUR RESPONSE?**

9 **A.** As stated in the answer to the question immediately preceding this one, the parties
10 are required to provide to each other with information that is needed to identify
11 measure and bill for the exchanged traffic as provided for in the agreed upon
12 language in Article V, Section 3.4.4. By agreement, the parties have established
13 an “accepted method” that will be utilized to measure and bill for the traffic that is
14 exchanged between the parties. The additional requirements that CenturyTel
15 wishes to impose upon Charter in Section 3.3.1.4 are superfluous and add no real
16 value to the agreement.

17 **Q. THE CENTURYTEL PROPOSED ARTICLE V, SECTION 3.3.1.4**
18 **LANGUAGE DISCUSSES A HYPOTHETICAL SCENARIO WHERE**
19 **LOCAL TRAFFIC AND JOINTLY PROVIDED SWITCHED ACCESS**
20 **TRAFFIC ARE COMBINED ON A SINGLE TRUNK GROUP FOR**
21 **INDIRECT DELIVERY THROUGH A TANDEM. IN MISSOURI, DOES**
22 **CHARTER COMBINE ITS LOCAL TRAFFIC WITH JOINTLY**

PROVIDED SWITCHED ACCESS TRAFFIC ONTO A SINGLE TRUNK GROUP?

A. No. In Missouri Charter and CenturyTel have established interconnection arrangements that provide for separate trunk groups for the exchange of local traffic and Jointly Provided Switched Access Traffic. Because the parties have established separate trunk groups for local and Jointly Provided Switched Access Traffic, and because the parties have agreed to language regarding the signaling information that they will exchange with each other, the additional PLU requirements proposed in CenturyTel's 3.3.1.4 language are not required and should not become a part of the interconnection agreement.

Q. FINALLY, MR. WATKINS SUGGESTS THAT THERE MAY ALSO BE "OPERATIONAL REASONS" TO AVOID USING TRANSIT ARRANGEMENTS. IS THAT A VALID CONCERN?

A. As explained, this Commission has already found that transit is an acceptable form of traffic exchange, and clearly would not have done so if there were any actual operational concerns with the use of that type of arrangement.

Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION ON THIS ISSUE?

A. I recommend that the Commission adopt Charter's proposed language on this issue as it is consistent with the Commission's prior decisions, and Section 251(a) of the Act. CenturyTel's position is inconsistent with the Commission's prior decisions on this issue, and impedes competition by imposing impermissibly restrictive limitations on the use of indirect interconnection arrangements.

1 **Issue 20** - Should Charter be entitled to lease interconnection facilities from CenturyTel
2 at cost-based rates pursuant to Section 251(c)(2) of the Act?

3
4 **Q. WHICH CENTURYTEL WITNESS ADDRESSES THIS ISSUE?**

5 A. Mr. Watkins addresses this issue at page 67-68 of his direct testimony.

6 **Q. MR. WATKINS STATES AT PAGE 67 OF HIS DIRECT TESTIMONY**
7 **THAT “THE PARTIES HAVE ALREADY AGREED THAT CHARTER**
8 **MAY LEASE INTERCONNECTION FACILITIES FROM CENTURYTEL**
9 **AT COST-BASED RATES PURSUANT TO SECTION 251(C)(2) OF THE**
10 **ACT.” IS THERE STILL A DISPUTE?**

11 A. Yes, I think there are several disputed issues that need to be resolved. First, Mr.
12 Watkins testifies that “[t]he only unresolved issue is how long the Parties should
13 be afforded the opportunity to arrive at a conclusion about what those rates should
14 be and what specific dispute resolution terms should be followed in the event that
15 they cannot arrive at negotiated rates.” But that is not the only unresolved
16 question under this issue.

17 There are three unresolved questions that the Commission must address: (1) what
18 is the proper pricing standard for these cost-based rates?; (2) what period of time
19 should the parties use to attempt to negotiate mutually acceptable rates; and, (3)
20 how should the interim rates, which will apply during the negotiations period, be
21 set?

22 **Q. PLEASE EXPLAIN.**

23 A. As to the first issue, it appears that there is a difference of opinion as to whether
24 the rates should be TELRIC rates, or some other “cost-based” standard.
25 CenturyTel’s unwillingness to agree to use the TELRIC standard here, indicates

1 that the Commission must affirmatively reiterate that the rates established under
2 this section must be TELRIC rates. Without a Commission confirmation that the
3 rates should be TELRIC rates, there is a strong probability that CenturyTel will
4 argue for a different standard during negotiations.

5 **Q. IS THERE ANY SUPPORT FOR YOUR CONCERN AS TO**
6 **CENTURYTEL'S POSITION ON TELRIC PRICING?**

7 A. Yes. In the Parties' Joint DPL at page 78, CenturyTel identifies one of the
8 subjects to be discussed during its proposed six month negotiation period as the
9 cost standard to be applied to the rates. Specifically, CenturyTel seems to contest
10 that TELRIC is the proper rate for these facilities:

11 The need for the full 6-month period will permit the Parties an appropriate
12 amount of time to try to amicably resolve any pricing issue. In that
13 discussion, and based on Charter's reference to *Illinois Bell Telephone*
14 *Company v. Charles Box et al.*, Nos. 07-3557 and 07-3683 (*slip opinion*)
15 (7th Cir. May 23, 2008) ("*Illinois Bell*"), one of the subjects of discussion
16 will be the determination of the standard referenced by the FCC in
17 paragraph 140 of *In the Matter of Unbundled Access to Network Elements,*
18 *Order on Remand*, WC Docket No. 04-313, FCC 04-290, 20 FCC Rcd
19 2533 (2005) with respect to what is "cost-based." Because, as the *Illinois*
20 *Bell* Court noted, "[w]hat the FCC said in ¶140 is that ILECs must allow
21 use of entrance facilities for interconnection at 'cost-based rates.'
22 TELRIC is a cost-based rate, *though not the only one.*" (emphasis added).
23

24 CenturyTel Statement of Position, Joint Statement of Unresolved Issues, at p. 78.
25

26 A reading of CenturyTel's language at pages 78 through 80 of the Joint DPL
27 indicates that CenturyTel does not agree that TELRIC is the correct pricing
28 standard. If that is true, then there is no agreement today between the Parties on
29 the appropriate cost standard.

1 **Q. HAS CENTURYTEL ARGUED IN THE PAST THAT IT SHOULD NOT**
2 **HAVE TO PRICE AT TELRIC RATES?**

3 A. Yes. As I noted in my direct testimony, I understand that during negotiations,
4 originally CenturyTel took the position that it did not have the obligation to lease
5 such facilities to Charter at TELRIC rates pursuant to Section 251(c)(2), arguing
6 instead that Charter would have to lease such facilities from CenturyTel pursuant
7 to tariffed rates. Assuming that CenturyTel does concede that it has this
8 obligation, then the question is how will that rate be established? Each party's
9 proposed contract language on that question illustrates the differences between the
10 parties. I provided the Parties' language in my direct testimony. Charter's
11 language will lead to a more efficient resolution of the dispute.

12 **Q. MR. WATKINS CLAIMS THAT SIX MONTHS IS A PRUDENT**
13 **AMOUNT OF TIME TO ALLOW THE PARTIES TO RESOLVE THE**
14 **ISSUE OF RATES. WATKINS DIRECT TESTIMONY AT 67. PLEASE**
15 **EXPLAIN WHY YOU BELIEVE THAT THREE MONTHS IS**
16 **SUFFICIENT.**

17 A. CenturyTel proposes a negotiations period of six months, after which either party
18 can escalate an unresolved dispute to this Commission. Charter, on the other
19 hand, proposes a negotiation period of three months, after which either party can
20 escalate an unresolved dispute to this Commission for determination of the
21 appropriate rate under Section 251(c)(2). Given the likelihood of disagreement on
22 the pricing issue, a longer negotiation period just delays resolution of this issue.
23 In other words, Charter is concerned that the six month negotiation period, to be

1 followed by a complaint proceeding before the Commission will just delay
2 implementation of an appropriate rate. This is especially troublesome given the
3 precedent I discussed in my Direct for setting rates for interconnection facilities at
4 TELRIC. Gates direct testimony at 56 - 60.

5 **Q. AT PAGE 67 OF HIS DIRECT TESTIMONY, MR. WATKINS STATES**
6 **“BOTH PARTIES HAVE AGREED TO INTERIM RATES TO BE USED**
7 **DURING THE PENDENCY OF THE DETERMINATION OF FINAL**
8 **RATES.” IS THAT ACCURATE?**

9 A. No. The Parties have agreed that there will be interim rates, but they have not
10 agreed on *how* the interim rates will be established. As noted in my direct
11 testimony, Charter proposes a rate that is likely to closer to a 251(c)(2) TELRIC
12 rate, in that it proposes the use of CenturyTel’s tariffed rate, subject to the
13 originating local traffic factor (sometimes referred to as an relative use factor, or
14 “RUF”) of fifty percent (50%). In other words, the parties would use half the
15 tariffed rate until a final 251(c)(2) TELRIC rate is established. CenturyTel, in
16 contrast, simply proposes to use the current tariffed rates, which are, of course,
17 significantly higher than what one would expect of a 251(c)(2) rate. In addition,
18 Charter proposes to include a “true-up” clause to ensure that payments made prior
19 to the establishment of the final rate can be trued up. CenturyTel does not
20 propose a true-up clause.

21 Charter’s proposal is more reasonable in that it includes a true-up clause and the
22 process starts with a rate that is closer to a TELRIC rate.

1 **Q. CENTURYTEL OPPOSES TAKING A DISPUTE OVER RATES TO THE**
2 **COMMISSION FOR RESOLUTION. WATKINS DIRECT TESTIMONY**
3 **AT 68. HOW DO YOU RESPOND?**

4 A. Mr. Watkins suggests using the dispute resolution processes in the Agreement.
5 Normally, one would think that would be a reasonable approach. Given the
6 importance of this issue, however, and CenturyTel's refusal to adopt TELRIC
7 pricing, it is clear that the dispute resolution process in the Agreement will not be
8 sufficient. The purpose of these arbitrations is to resolve disputes between the
9 parties and this is one that is not likely to be resolved based on my reading of Mr.
10 Watkins' direct testimony.

11 Another reason this dispute should be resolved by the Commission is because of
12 expertise. The Commission has the legal and regulatory resources necessary to
13 review and resolve this dispute efficiently. The Commission is also aware of the
14 strong precedent on this issue which should also expedite any dispute.

15 In addition, CenturyTel's proposal would likely simply lead to unreasonable
16 delay. If the parties can not agree upon the rate, they should be able to file a
17 complaint without first being required to go through an additional period of
18 informal resolution given that they will just have negotiated the rates for (under
19 Charter's proposal) three months after the effective date of the agreement. It
20 seems that adding another 30 days of informal dispute resolution if the parties
21 don't agree at the end of the three month period would simply require Charter to
22 pay artificially inflated prices for a longer period of time. A proposal, I might
23 add, that only benefits CenturyTel in contravention of clear FCC precedent.

1 **Q. WHAT IS YOUR RECOMMENDATION ON THIS ISSUE?**

2 A. I recommend that the Commission adopt Charter's proposed language because it
3 is consistent with applicable law, and provides a reasonable and equitable process
4 for CenturyTel to determine an appropriate cost-based rate for interconnection
5 facilities that it must make available to competitors like Charter. Charter also
6 recommends that the Commission specifically state that the rate for
7 interconnection facilities should be TELRIC rates. Such a statement will make
8 the negotiation process more efficient.

1 **Issue 21** - Should Charter be allowed to deploy one-way trunks at its discretion; and
2 without having to assume the entire cost of interconnection facilities used to carry traffic
3 between the Parties' respective networks?
4

5
6 **Q. WHICH CENTURYTEL WITNESS PROVIDES TESTIMONY ON THIS**
7 **TOPIC?**

8 A. Mr. Watkins provides testimony on this issue at pages 69 through 76 of his direct
9 testimony.

10 **Q. AT PAGE 69 OF HIS DIRECT TESTIMONY, MR. WATKINS STATES**
11 **THAT TWO-WAY TRUNKS WILL LIKELY BE MORE EFFICIENT FOR**
12 **BOTH PARTIES. DO YOU AGREE?**

13 A. It depends. As discussed in my direct testimony, the need for one-way versus
14 two-way trunks depends on the traffic being exchanged. So there will likely be
15 situations in which two-way trunks are more efficient than one-way trunks. But
16 that does not mean that the opportunity to use one-way trunks should be taken
17 away from Charter. Charter is entitled to use one-way trunks, and has offered
18 proposed language to that effect. CenturyTel disagrees and attempts to undermine
19 Charter's right to establish one-way trunks by forcing interconnection costs upon
20 Charter that would normally be borne by CenturyTel.

21 **Q. MR. WATKINS CLAIMS THAT FCC RULE 51.305(F) DOES NOT**
22 **SUPPORT CHARTER'S POSITION. WATKINS DIRECT TESTIMONY**
23 **AT 70. HOW DO YOU RESPOND?**

24 A. Mr. Watkins takes the language out of context. If traffic was more efficient
25 exchanged over two-way trunks, then establishing two one-way trunks in lieu of a
26 two-way trunk would obviously increase the costs of exchanging that traffic. This

1 assumes of course that two one-way trunks would be more expensive than one
2 two-way trunk. That does not support CenturyTel's position that Charter should
3 not be able to use one-way trunks when circumstances warrant their use.
4 Charter expects that it will routinely utilize two-way trunks. However, as I
5 understand it, FCC rules place the selection of one-way versus two-way trunks in
6 the hands of the connecting CLEC, subject to issues of technical feasibility.
7 Further, this Commission has affirmed that interpretation, most recently in Case
8 No. TO-2006-0039. Charter therefore proposes to include language in the
9 agreement that maintains its federal-law right, under 47 C.F.R. § 51.305(f) to
10 select one-way trunks if in particular instances this is appropriate.

11 **Q. MR. WATKINS ALSO ARGUES THAT CHARTER'S ONE-WAY TRUNK**
12 **PROPOSAL IS A REQUEST FOR A SUPERIOR FORM OF**
13 **INTERCONNECTION. WATKINS DIRECT TESTIMONY AT 72. IS**
14 **THAT CORRECT?**

15 A. No. There is nothing about the use of one-way trunks as opposed to two-way
16 trunks that would make this a "superior form of interconnection" as Mr. Watkins
17 suggests.

18 **Q. DID MR. WATKINS TESTIMONY CHANGE YOUR OPINION ON THE**
19 **APPROPRIATE OUTCOME OF THIS DISPUTE?**

20 A. No. Mr. Watkins and I agree that in most instances a two-way trunk will be the
21 most efficient way to exchange traffic. Nevertheless, I recommend that the
22 Commission adopt Charter's proposed contract language and reaffirm that Charter



1 may, consistent with federal law, elect to deploy either one-way or two-way
2 trunks when interconnecting with CenturyTel.

1 **Issue 22** – What threshold test should be used to determine when the Parties will
2 establish Direct End Office Trunks?
3

4 **Q. WHICH CENTURYTEL WITNESS ADDRESSES THIS ISSUE?**

5 A. Mr. Watkins addresses Issue 22 on behalf of CenturyTel at pages 76 and 77 of his
6 direct testimony.

7 **Q. MR. WATKINS ARGUES FOR TRAFFIC PROJECTIONS AS OPPOSED**
8 **TO ACTUAL TRAFFIC FOR DETERMINING WHEN TO ESTABLISH A**
9 **DIRECT END OFFICE TRUNK (“DEOT”). WATKINS DIRECT**
10 **TESTIMONY AT 76. WHY IS CHARTER’S POSITION PREFERABLE?**

11 A. Establishing DEOTs is time consuming and expensive. While Charter agrees to
12 establish them at a particular traffic threshold, it is reasonable to determine
13 whether the threshold is met based on actual traffic as opposed to forecasts of
14 traffic.

15 **Q. DOES MR. WATKINS OPPOSE THE THRESHOLD ITSELF?**

16 A. No. The Parties agree on a DS1 (24 trunks) threshold. Watkins direct testimony
17 at 76.

18 **Q. MR. WATKINS SUGGESTS THAT SERVICE DEGRADATION AND**
19 **NETWORK OVERBURDENING WILL OCCUR WHILE CHARTER**
20 **CONFIRMS THE THRESHOLD OVER A PERIOD OF TIME. WATKINS**
21 **DIRECT TESTIMONY AT 77. IS THAT A CORRECT STATEMENT?**

22 A. No. There is nothing in the record, nor could there be, that would support Mr.
23 Watkins’ suggestions of harm to service and/or the network. Absent a DEOT,
24 traffic will flow over existing interconnection facilities that have been properly

1 planned and engineered. When a DEOT is established to a particular end office, it
2 does reduce some of the traffic from other facilities, but that does not mean that
3 those facilities were blocking or degraded prior to the DEOT. This type of “the
4 sky is falling” rhetoric is not helpful to resolving disputes, especially simple
5 disputes such as this one.

6 **Q. PLEASE DESCRIBE THE POSITIONS OF THE PARTIES.**

7 A. Charter’s proposal calls for a DEOT to be established when *actual* traffic volumes
8 meet the DS1 level for three consecutive months. CenturyTel proposes to require
9 a DEOT when actual *or projected* traffic volumes meet the DS1 level for either
10 three consecutive months or three months of any five consecutive month period.
11 CenturyTel’s language is vague and subject to traffic projections that may or may
12 not materialize.

13 **Q. MR. WATKINS AT PAGE 76 ASSERTS THAT CENTURYTEL’S**
14 **LANGUAGE WOULD REQUIRE THE PARTIES TO USE “THE BEST**
15 **INFORMATION AVAILABLE” TO ENSURE THAT FACILITIES ARE**
16 **DEPLOYED AND SIZED PROPERLY. WHY IS THAT A PROBLEM?**

17 A. The problem with CenturyTel’s language is that, by referring to “projected”
18 traffic, it could require DEOTs to be established when traffic does not actually
19 meet the agreed-upon DS1 threshold. Obviously, if the projection is incorrect and
20 traffic volumes do not reach the threshold level, DEOTs would be unnecessary –
21 yet the potential for this outcome exists under CenturyTel’s language. For that
22 reason I don’t believe that CenturyTel’s proposal will ensure that the parties use
23 the “best information available.”

1 In my view, the best available information is actual data, taken from recent traffic
2 volume studies. That is why Charter proposes to use a threshold test for
3 determining when Parties will establish DEOTs based on actual traffic volumes.
4 That approach ensures that DEOTs are not established based on speculative
5 volumes or volumes that may or may not exist in the future.

6 In addition, basing the threshold on projected demand as CenturyTel proposes
7 could lead to disputes between the parties as to which party's projected traffic
8 volumes are accurate and should be used to determining whether the threshold has
9 been met. In effect, CenturyTel's language would provide incentives for
10 CenturyTel to attempt to argue that traffic volumes "will be" a DS1 level in the
11 future so that Charter must establish DEOTs, which would increase Charter's
12 costs unnecessarily. Basing the threshold on actual traffic volumes as Charter
13 proposes would avoid these potential disputes and incentives by using data that is
14 objective and verifiable.

15 **Q. AT PAGE 77 MR. WATKINS ASSERTS THAT CHARTER'S APPROACH**
16 **COULD ALLOW SERVICE QUALITY ISSUES TO "LINGER." DO YOU**
17 **AGREE?**

18 A. No, I think this is another red herring raised by Mr. Watkins. It is not in Charter's
19 interests to allow a service quality problem to arise, and remain unaddressed. As I
20 have already testified, Charter has the same interests as CenturyTel in ensuring
21 that the facilities between their respective networks are properly sized,
22 established, and managed, to ensure call quality and completion for its customers.

23 **Q. WHAT IS YOUR RECOMMENDATION FOR ISSUE 22?**

- 1 A. Charter's proposed language for Section 3.4.2.1.1 of Article V: Interconnection &
2 Transport & Termination should be adopted.

1 **Issue 23** - Should Charter pay CenturyTel a tariffed access charge for transiting traffic
2 where CenturyTel end office switches perform a transit functionality for unqueried calls
3 that have been ported to another carrier?
4

5
6 **Q. WHICH CENTURYTEL WITNESS ADDRESSES THIS DISPUTE?**

7 A. Mr. Watkins addresses this issue at pages 78 to 87 of his direct testimony on
8 behalf of CenturyTel.

9 **Q. DOES MR. WATKINS TESTIMONY ADDRESS THE KEY ISSUES IN**
10 **DISPUTE?**

11 A. Mr. Watkins addresses many things in his testimony and goes far afield from the
12 actual dispute. The dispute revolves around a situation that does not arise very
13 often: when Charter sends an “unqueried” call to CenturyTel’s network, what are
14 the parties’ respective obligations concerning routing the call? Charter simply
15 wants to ensure that in those circumstances CenturyTel does *in fact* route the call
16 to the called party’s service provider. CenturyTel wants to be compensated for
17 the functionality associated with routing that call, and transporting it across its
18 network.

19 **Q. HAS CHARTER REFUSED TO COMPENSATE CENTURYTEL FOR**
20 **ROUTING THESE “UNQUERIED” CALLS?**

21 A. No, and Charter is willing to compensate CenturyTel at that transit rate that
22 CenturyTel has set forth in its position statement in the Joint DPL, i.e., the
23 combined tandem switching and tandem transport and termination rates.
24 Although Charter’s position statement references a rate of \$.005, Charter is not
25 advocating the use of that rate, and as I have explained, will agree to use
26 CenturyTel’s rates provided they are not more than that amount.

1 **Q. AT PAGE 86 OF HIS DIRECT TESTIMONY, MR. WATKINS CLAIMS**
2 **THAT CHARTER WANTS TO PAY THE \$.005 RATES. SHOULD THAT**
3 **ISSUE BE RESOLVED?**

4 A. Yes. As noted above, Charter is willing to pay the CenturyTel transit rate that is
5 set forth in CenturyTel's position statement in the Joint DPL, i.e., the combined
6 tandem switching and tandem transport and termination rates. As I understand it,
7 the transit rate isn't in dispute in this proceeding given that CenturyTel has
8 offered to transit this type of unqueried traffic at the combined tandem switching
9 and tandem transport and termination rates set forth in the pricing appendix.

10 **Q. AT THAT SAME PAGE MR. WATKINS AGAIN ARGUES THAT**
11 **TRANSIT IS NOT AN INTERCONNECTIN OBLIGATION UNDER THE**
12 **ACT. IS HE CORRECT?**

13 A. To date, the FCC has not created a well-defined federal policy framework for
14 transiting. When addressing Verizon's transiting obligations in the *Cavalier*
15 *Order*,²³ the FCC Wireline Competition Bureau made note of this lack of
16 precedent as follows:

17 We note that, as with the *Virginia Arbitration Order*, the
18 Commission has not yet had occasion to determine whether
19 incumbent LECs have a duty to provide transit service under the
20 Act or whether incumbent LECs must serve as billing
21 intermediaries for other carriers, nor do we find clear Commission
22 precedent or rules declaring such duties. In the absence of such a
23 precedent or rule, we decline, on delegated authority, to determine

²³ *In the Matter of Petition of Cavalier Telephone LLC Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Arbitration*, WC Docket No. 02-359, Memorandum Opinion and Order, Federal Communications Commission, 18 FCC Rcd 25887; 2003 FCC LEXIS 6879, DA 03-3947, December 12, 2003 ("*Cavalier Order*").

1 for the first time that Verizon has such duties under the Act.
2 Where a Party undertakes to voluntarily provide transit service,
3 however, and proposes to incorporate the terms of such service
4 into a provision of an interconnection agreement which is subject
5 to arbitration by the Bureau, we have determined whether such
6 provisions are reasonable.
7

8 Indeed, the FCC has sought comment on a host of transiting issues in the pending
9 ICF FNPRM proceeding and, as such, is still in the process of setting its federal
10 policy regarding transiting. For instance, in ¶ 127 of the ICF FNPRM, the FCC
11 seeks comment on its legal authority to impose transiting obligations pursuant to §
12 251 of the Act, and the FCC seeks comment on the appropriate pricing
13 methodology for transiting in ¶ 132. This shows that the FCC is still pondering
14 the two most basic aspects of transiting policy – (1) the obligations of ILECs to
15 provide transiting and (2) the appropriate transiting rates.

16 **Q. DOES THE ACT ESTABLISH AN AFFIRMATIVE OBLIGATION FOR**
17 **ILECS TO PROVIDE TRANSITING PURSUANT TO § 251?**

18 A. Yes. First, § 251(a)(1) states that telecommunications carriers are required “to
19 interconnect directly or indirectly with the facilities and equipment of other
20 telecommunications carriers.” Accordingly, CenturyTel is obligated to provide
21 indirect interconnection between Charter and other carriers. As explained in my
22 direct testimony, transiting is an efficient form of indirect interconnection.
23 Second, Section 251(c)(2)(a) requires *ILECs* to interconnect with carriers for “the
24 transmission and routing of telephone exchange service and exchange access.”

1 **Q. DOES THIS REQUIREMENT FOR INTERCONNECTION UNDER §**
2 **251(C)(2)(A) INCLUDE BOTH DIRECT AND INDIRECT**
3 **INTERCONNECTION?**

4 A. Yes. There is no restriction in the Act limiting this obligation to direct
5 interconnection only. Further, since CenturyTel's transit obligation springs from
6 § 251 – and more specifically 251(c) – transit rates must, according to the FCC's
7 rules, be developed consistent with TELRIC principles.²⁴ Those principles can be
8 summarized as follows:

- 9 • Principle # 1: The firm should be assumed to operate in the long run.
- 10 • Principle # 2: The relevant increment of output should be total company
11 demand for the unbundled network element in question.
- 12 • Principle # 3: Technology choices should reflect least-cost, most efficient
13 technologies.
- 14 • Principle # 4: Costs should be forward-looking.
- 15 • Principle # 5: Cost identification should follow cost causation.

16 **Q. HAVE THERE BEEN STATE COMMISSION ORDERS REQUIRING AN**
17 **ILEC TO PROVIDE TRANSITING PURSUANT TO § 251 OF THE ACT?**

18 A. Yes. The Missouri Commission has ruled on several occasions that transit is a
19 Section 251 obligation, in the SBC Missouri post-271 arbitration proceeding
20 docketed as Case No. TO-2005-0336. In addition, the North Carolina Public
21 Utilities Commission issued an order that made a very specific statement on this
22 issue: “[t]he tandem transit function is a § 251 obligation, and BellSouth must

²⁴ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; First Report and Order, CC Docket Nos. 96-98 and 95-185; Released August 8, 1996; at ¶ 672 (“*Local Competition Order*”).

1 charge TELRIC rates for it.”²⁵ Likewise, the Michigan Public Service
2 Commission required SBC to provide transiting.²⁶

3 **Q. HAS BELLSOUTH CONCEDED THAT TRANSITING MUST BE**
4 **PROVIDED PURSUANT TO § 251 OF THE ACT?**

5 A. Yes. BellSouth has apparently conceded that it does indeed have a § 251
6 obligation to provide transiting. This admission is memorialized in the *Joint*
7 *CLEC/BellSouth Arbitration Order* as follows:

8 The Public Staff stated in its Proposed Order that there appears to
9 be no dispute that BellSouth is obligated to provide transit service.
10 Witness Blake acknowledged that the Commission has previously
11 found ILECs have an obligation to provide transit service and that
12 the FCC has found the tandem transit function is a Section 251
13 obligation...***Although BellSouth has conceded that the tandem***
14 ***transit function is a Section 251 obligation, it is unclear why***
15 ***BellSouth still maintains that this function is not subject to the***
16 ***pricing requirements set forth in Section 252.*** The Public Staff
17 noted that the FCC has implemented specific rules to which the
18 Commission must adhere in determining the appropriate rates for
19 providing a tandem transit function.²⁷

20
21 This concession from BellSouth is important because if BellSouth’s transiting
22 obligations are grounded in § 251, as BellSouth has conceded, this is consistent
23 with Charter’s position that transiting must be provided on a nondiscriminatory
24 basis at any technically feasible point, and TELRIC pricing principles must apply
25 when developing the rates.

²⁵ *In the Matter of Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Telecommunications, Inc.*, North Carolina Docket No. P-772, Sub 8, Docket No. P-913, sub 5; docket no. P-989, sub 3; docket no. P-824, sub 6; docket no. P-1202, sub 4, North Carolina Utilities Commission, 2005 N.C. PUC LEXIS 888, July 26, 2005 (“*Joint CLEC/BellSouth Arbitration Order*”).

²⁶ *Michigan Bell Telephone Co, d/b/a Ameritech Michigan v Laura Chappelle, et al.*, Case No. 01-CV-71517, United States District Court for the Eastern District of Michigan, Southern Division, 222 F. Supp. 2d 905; 2002 U.S. Dist. LEXIS 15269, August 12, 2002.

²⁷ See *Joint CLEC/BellSouth Arbitration Order* (emphasis added).

1 **Q. WHAT WOULD BE THE IMPACT IF CENTURYTEL REFUSED TO**
2 **PROVIDE TRANSIT SERVICES?**

3 A. Absent the incumbent's transiting services, Charter and other CLECs could be
4 required to establish, monitor and maintain interconnection arrangements with
5 every other local carrier to handle this traffic. There is no operational or
6 economic justification for forcing CLECs to duplicate facilities which are already
7 in place and available – indeed, they are being used today for this purpose.
8 Further, given the lack of commercially reasonable alternatives for CLECs,
9 CenturyTel would have no incentive in a “commercial negotiation” to provide
10 Charter with reasonable rates, terms and conditions for transit.

11 **Q. WHAT IS YOUR RECOMMENDATION ON THIS ISSUE?**

12 A. I recommend that the Commission adopt Charter's proposed language on this
13 issue given that Charter has already agreed to compensate CenturyTel for routing
14 these types of calls. The Commission should also confirm that the appropriate
15 standard for pricing transit is the FCC-approved TELRIC standard.

1 **Issue 27** – Should CenturyTel be allowed to assess a charge for administrative costs for
2 porting telephone numbers from its network to Charter’s network?
3

4 **Issue 40** -- Should the Pricing Article include Service Order rates and terms?
5

6 **Q. WHICH CENTURYTEL WITNESS ADDRESSES THESE TWO ISSUES?**

7 **A.** Two CenturyTel witnesses address these issues. Mr. Watkins addresses these
8 issues at pages 88 through 95 of his direct testimony on behalf of CenturyTel.
9 Mr. Reynolds also addresses these issues at pages 3 through 13 of his direct
10 testimony.

11 **Q. WHAT ARE ISSUES 21 AND 29?**

12 **A.** This dispute relates to charges for implementing customer port requests. More
13 specifically, CenturyTel proposes to bill Charter when a CenturyTel customer
14 wants his or her telephone number ported to Charter.²⁸ Consistent with FCC
15 rules, Charter does not charge CenturyTel for outward LNP activities (i.e. when
16 customers seek to move their service and telephone number from Charter to
17 CenturyTel), and CenturyTel should not assess charges when customers seek to
18 move their service and telephone number from CenturyTel to Charter.

19 **Q. AT PAGE 89 OF HIS DIRECT TESTIMONY, MR. WATKINS SUGGESTS**
20 **THAT CHARTER’S DESCRIPTION OF THESE ISSUES IS**
21 **“POTENTIALLY MISLEADING.” PLEASE COMMENT.**

22 **A.** Mr. Watkins takes issue with the fact that Charter sees this issue for what it is.
23 Specifically, when a customer of CenturyTel seeks to switch service to Charter
24 and decides to port his or her telephone number to Charter for that purpose,

²⁸ CenturyTel seeks to impose initial service order charges for simple or complex orders.

CenturyTel proposes to assess a charge upon Charter. CenturyTel likes to describe that charge as a service order charge. Whatever the name, it's coincident with Charter having won a customer and that customer porting its number to Charter. Indeed, CenturyTel has admitted, in a series of discovery responses, that these charges would not arise but for the fact that Charter is competing with CenturyTel, and actively porting numbers (and more importantly, subscribers) away from CenturyTel's network. *See* CenturyTel Response to Charter RFI Nos. 19-21, and 24-27, included in Attachment TJG-6. Thus, despite Mr. Watkins' attempt to re-brand the issue, it's a charge that Charter does not assess on porting orders that occur when Charter customers move to CenturyTel – or when Charter customers move to any other carrier – and the charge is tantamount to a tax or penalty against Charter for having won the customer in the first instance. Moreover, as discussed in my direct testimony and in this rebuttal testimony, this charge is inconsistent with the FCC's rules and is anticompetitive.

Q. AT PAGES 90 AND 91 OF HIS DIRECT TESTIMONY, MR. WATKINS DISCUSSES AT LENGTH HIS VIEW THAT THE “COST OF PROCESSING LSRs” FOR NUMBER PORTABILITY IS NOT INCLUDED IN THE FCC’S LNP CATEGORY OF COSTS. DO YOU AGREE?

A. No. The suggestion that these costs are not related to LNP requests is based upon a narrow reading of the relevant FCC decisions and his conclusion that costs associated with responding to porting requests are not carrier-specific costs directly related to LNP is in error. Indeed, costs associated with responding to

1 LNP requests from Charter *are* directly related to providing long term number
2 portability.

3 In its Third Report and Order the FCC concluded that Section 251(e)(2) requires
4 incumbent LECs to bear the costs that LECs incur to meet the obligations
5 imposed by Section 251(b)(2) on a competitively-neutral basis. In so holding, the
6 FCC determined that the costs of establishing number portability include: (1)
7 costs associated with the creation of the regional databases to support number
8 portability; (2) costs associated with the initial upgrading of the public switched
9 telephone network; and (3) “ongoing costs of providing number portability, such
10 as the costs involved in transferring a telephone number to another carrier....”²⁹

11 In explaining the basis for its decision, the FCC has made several statements
12 concerning the proper way to distinguish carrier-specific costs directly related to
13 providing number portability (which must be recovered through end user
14 charges), from those carrier-specific costs that are not directly related to providing
15 number portability (which can be recovered via other means). For example, the
16 FCC has defined costs directly related to providing number portability in the
17 following manner: “we conclude that the costs of establishing number portability
18 include not just the costs associated with the creation of the regional databases
19 and initial physical upgrading of the public switched telephone network for the
20 provision of number portability, but also the continuing costs necessary to provide
21 number portability.”³⁰ The FCC also explained that the costs of number

²⁹ Third Report and Order, 13 FCC Rcd 11701, at ¶ 38.

³⁰ *Id.* at ¶ 8.

1 portability include “the costs that a carrier incurs to make it possible to transfer a
2 telephone number to another carrier.”³¹ Based upon this, and other statements,
3 the FCC concluded that “carrier-specific costs directly related to providing
4 number portability are limited to costs carriers incur specifically in the provision
5 of number portability services, such as ... the porting of telephone numbers from
6 one carrier to another.”³²

7 **Q. SO WHEN THE FCC USES THE TERM “PORTING TELEPHONE**
8 **NUMBERS FROM ONE CARRIER TO ANOTHER,” IT SPECIFICALLY**
9 **INCLUDES THE COSTS ASSOCIATED WITH TRANSMITTING AND**
10 **RECEIVING PORT REQUESTS (VIA THE LSR FORM)?**

11 A. Yes. In paragraph 14 of the Cost Classification Order, the FCC specifically
12 explained that when it used the phrase “porting telephone numbers from one
13 carrier to another” in the definition of carrier-specific costs directly related to
14 number porting, it intended to refer to certain systems used to transmit local
15 routing number information, and to the act of “transmitting porting orders
16 between carriers.”³³ This statement tells us that the FCC expected that carriers
17 would incur “ongoing costs” associated with porting telephone numbers to other
18 carriers, and that such costs included the costs associated with “transmitting
19 porting orders” between carriers.

20 **Q. DID THE FCC CONTEMPLATE THAT CARRIERS MAY INCUR**
21 **ADDITIONAL COSTS IN FULFILLING THEIR LNP OBLIGATIONS?**

³¹ *Id.* at ¶ 36.

³² *Id.* at ¶ 72.

³³ Cost Classification Order, 13 FCC Rcd 24995 at ¶ 14.

1 A. Yes. The FCC specifically contemplated that its cost classification decisions
2 would “cause some carriers, including small and rural LECs, to incur costs that
3 they would not ordinarily have incurred in providing telecommunications
4 service.”³⁴ The FCC made this decision because it is required, by Section
5 252(e)(2), to establish cost distribution and recovery rules in a manner that is
6 “competitively neutral.”

7 **Q. HAS THE FCC EXPLAINED WHETHER RECOVERING COSTS FROM**
8 **OTHER CARRIERS IS CONSISTENT WITH THE COMPETITIVE**
9 **NEUTRALITY PRINCIPLE?**

10 A. Yes, the FCC has made it clear that recovery of costs through other carriers
11 would **not** be consistent with the principles of competitive neutrality. For
12 example, the FCC explained that if the Commission did not use a competitive
13 neutrality standard, or only used that standard for the distribution (but not
14 recovery) of costs, then “carriers could effectively undo this competitively neutral
15 distribution by recovering from other carriers.”³⁵ That is why the FCC reaffirmed
16 this finding in its 2002 Reconsideration Order, when it ruled that carriers “may
17 not recover number portability costs from other carriers through interconnection
18 charges.”³⁶

19 **Q. CENTURYTEL WITNESS MR. REYNOLDS ASSERTS THAT THE**
20 **COSTS AT ISSUE IN THIS PROCEEDING ARE “CARRIER SPECIFIC**
21 **COSTS THAT ARE NOT DIRECTLY RELATED TO PROVIDING**

³⁴ Third Report and Order, 13 FCC Rcd 11701 at ¶ 73.

³⁵ *Id.* at ¶ 39.

³⁶ 2002 Reconsideration Order at ¶ 7.

1 **NUMBER PORTABILITY.” REYNOLDS DIRECT TESTIMONY AT 9.**

2 **DO YOU AGREE?**

3 A. No, I do not. When the FCC defined carrier-specific costs that are not directly
4 related to providing number portability it explained that carrier-specific costs not
5 directly related to providing number porting are “the costs of network upgrades
6 necessary to implement a database method.” Examples of such costs include “the
7 costs of upgrading SS7 capabilities or adding intelligent network (IN) or
8 advanced intelligent network (AIN) capabilities.” Third Report and Order, 13
9 FCC Rcd 11701 at ¶¶ 62, 68. It is clear that a charge for service orders submitted
10 to request the porting of a number is not in the category of network upgrade costs.

11 **Q. WHAT IS THE SIGNIFICANCE OF THE DISTINCTION BETWEEN**
12 **CARRIER SPECIFIC COSTS THAT ARE DIRECTLY RELATED, AND**
13 **THOSE THAT ARE NOT DIRECTLY RELATED TO NUMBER**
14 **PORTING?**

15 A. The distinction tells us which costs must be recovered solely through the end user
16 charges (carrier specific costs directly related to number porting), and those that
17 may be recovered through “price caps and rate-of-return recovery mechanisms”
18 (carrier specific costs **not** directly related to number porting). As noted above,
19 examples of this latter category of costs are the costs associated with upgrading
20 SS7 capabilities or adding intelligent network (IN) or advanced intelligent
21 network (AIN) capabilities. That is clearly very different from the administrative
22 service order costs that CenturyTel attempts to include in this category of costs.

1 **Q. PLEASE ASSUME, FOR ARGUMENT’S SAKE, THAT CENTURYTEL’S**
2 **COSTS ARE NOT DIRECTLY RELATED TO NUMBER PORTING, AND**
3 **THAT CENTURYTEL’S CHARGES WERE NOT PROHIBITED BY FCC**
4 **RULE 52.33. WHAT WOULD BE THE PROPER WAY TO RECOVER**
5 **THOSE CHARGES?**

6 A. As the quoted language on page 9 of Mr. Reynolds’ direct testimony indicates, the
7 FCC said that recovery of those types of costs is permissible only through “price
8 caps and rate-of-return recovery mechanisms.”

9 **Q. WOULD YOU CHARACTERIZE CENTURYTEL’S**
10 **INTERCONNECTION SERVICE ORDER CHARGES AS “PRICE CAPS”**
11 **OR A “RATE OF RETURN” RECOVERY MECHANISM?**

12 A. No, not at all. Those types of cost recovery mechanisms are used to establish
13 rates for services provided to end user customers (typically residential and
14 business customers), with detailed regulatory controls and oversight. In contrast,
15 CenturyTel’s charges are simply interconnection-based charges that serve as a
16 “tax” or “penalty” on competitors like Charter.

17 **Q. WHAT HAS THE FCC SAID ABOUT INTERCONNECTION-BASED**
18 **CHARGES FOR PORTING ASSESSED ON CO-CARRIERS LIKE**
19 **CHARTER?**

20 A. As I explained in my direct testimony and above, the FCC has prohibited ILECs
21 from assessing any other type of charge upon other carriers. Indeed, the FCC
22 specifically ruled in the Cost Recovery Reconsideration Order, at Paragraph 62,
23 that ILECs, like CenturyTel, may **not** recover any number portability costs

1 through “interconnection charges or add-ons to interconnection charges” to other
2 carriers. Specifically, in the 2002 Cost Reconsideration Order the FCC explained:
3 “incumbent LECs may not recover any number portability costs through
4 interconnection charges or add-ons to interconnection charges to their carrier
5 “customers,” nor may they recover carrier-specific costs through interconnection
6 charges to other carriers where no number portability functionality is provided.”³⁷

7 **Q. HOW DID CENTURYTEL RESPOND TO YOUR POINT THAT THE FCC**
8 **HAS SPECIFICALLY PROHIBITED THESE TYPES OF CHARGES?**

9 A. Interestingly, they did not respond. I did not see any statement by CenturyTel’s
10 witnesses explaining how their proposed charges are permissible, given this
11 specific prohibition by the FCC.

12 **Q. BUT CENTURYTEL WITNESS MR. WATKINS TESTIFIED THAT IN A**
13 **2004 PROCEEDING THE FCC SPECIFICALLY APPROVED THESE**
14 **TYPES OF CHARGES. WATKINS DIRECT TESTIMONY AT 92-93. IS**
15 **THAT CORRECT?**

16 A. No, I think Mr. Watkins mischaracterizes the scope of that decision. Mr. Watkins
17 suggests that in this decision the FCC approved the recovery of number porting
18 administration costs via interconnection charges on co-carriers. Although Mr.
19 Watkins cites to footnote 49 of that order, he fails to explain to this Commission
20 that the FCC, in that very footnote, stated that: “[b]ecause this Order only
21 concerns end-user charges, this is not the appropriate proceeding to evaluate

³⁷ *In the Matter of Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578, at ¶ 62 (2002) (“2002 Cost Reconsideration Order”).

1 charges assessed against other carriers.”³⁸ So, Mr. Watkins is clearly wrong,
2 because the FCC expressly stated that its decision did **not** address the question of
3 charges assessed against other carriers. Given that the FCC had clearly prohibited
4 such charges in the 2002 Cost Reconsideration Order, their decision not to revisit
5 that question in the 2004 order that Mr. Watkins relies upon is instructive. It tells
6 me that the FCC continues to prohibit interconnection-based charges for number
7 porting service costs.

8 **Q. AT PAGE 7 OF HIS DIRECT TESTIMONY, MR. REYNOLDS**
9 **INDICATES THAT CENTURYTEL INCURS COSTS WHEN PORTING**
10 **END-USER NUMBERS TO CHARTER AND THAT CHARTER IS THE**
11 **COST CAUSER. IS THAT ACCURATE?**

12 A. As described in my direct testimony,³⁹ any costs that may exist as a result of
13 porting end-user telephone numbers to Charter are not caused by Charter, as
14 CenturyTel would have the Commission believe. Clearly, those costs are caused
15 by the end-users who request that their telephone numbers be ported to Charter.
16 Indeed, the FCC recognized this fact when it established the competitively neutral
17 LNP cost recovery mechanisms discussed by CenturyTel’s witness, Mr. Watkins.

18 **Q. AT PAGE 13 OF HIS DIRECT TESTIMONY, MR. REYNOLDS ALLEGES**
19 **CENTURYTEL HAS UTILIZED A FORWARD-LOOKING**
20 **METHODOLOGY TO DEVELOP COSTS AND PROPOSED RATES**
21 **RELATED TO LNP REQUESTS. HAS THAT STUDY BEEN REVIEWED**

³⁸ *In the Matter of Telephone Number Portability, BellSouth Corp. Petition for Declaratory Ruling*, Order, 19 FCC Rcd 6800 at fn. 49 (2004).

³⁹ See, for example, my direct testimony at 79.

1 **AND DETERMINED BY THE COMMISSION TO BE CONSISTENT**
2 **WITH THE FCC'S RULES?**

3 A. No, it has not. In fact, the exhibit to which Mr. Reynolds refers comprises a two
4 page summary document without any indication of prior Commission review or
5 approval.⁴⁰ As the proponent of these charges, CenturyTel has the burden to
6 demonstrate that its proposed charges are cost-based. The company has not
7 *demonstrated* the extent to which such costs are consistent with the FCC's LNP
8 cost recovery rules or the FCC's TELRIC rules, or the extent to which such costs
9 were specifically excluded in the LNP cost recovery charges described by Mr.
10 Watkins. Hence, without Commission review and approval of these alleged costs,
11 both in terms of their applicability and their level, CenturyTel's proposed
12 application of local service request or initial service order charges to recover such
13 costs would be inappropriate.

14 **Q. HAVE YOU BEEN PROVIDED ANY SUPPORTING DOCUMENTATION**
15 **REGARDING THIS ALLEGED TELRIC STUDY?**

16 A. Yes, I have recently been provided documents that purport to support the
17 summary pages comprising confidential exhibit JWR-1. These documents raise
18 more questions than they provide answers. To the extent the Commission
19 determines that any charges are applicable for the activities related to porting end-
20 user customer numbers between CenturyTel and Charter, I recommend the
21 Commission fully investigate CenturyTel's alleged costs in a cost proceeding to

⁴⁰ See JWR-1 PROPRIETARY.

1 ensure their compliance with the FCC's rules and this Commission's rules, can be
2 determined prior to implementing any specific rate element.

3 **Q. SETTING ASIDE YOUR CONCERN THAT SUCH CHARGES SHOULD**
4 **NOT BE IMPLEMENTED FOR A MOMENT, DO YOU SEE ANY**
5 **IMMEDIATE AREAS OF CONCERN AS TO THE DEVELOPMENT OF**
6 **THESE ALLEGED COSTS?**

7 A. Yes, I do. Three things leap out at me immediately. First, nearly 8% of
8 CenturyTel's purported costs of an LNP request relate to systems and electronic
9 interfaces associated with carriers keying in their porting requests. The extent to
10 which these costs are or should have been included in the LNP cost recovery
11 mechanisms described by Mr. Watkins should be fully explored prior to the
12 Commission considering their inclusion in any proposed CenturyTel rate. Second,
13 the CenturyTel time estimates associated with each function are not well
14 documented, and the methodology used to determine those times has neither been
15 described in any meaningful way nor has it been tested and approved by the
16 Commission. Finally, supervision and support; department overhead; and,
17 indirect overheads equate to approximately 50% of the total "cost" associated
18 with an LNP request. The first and third issues when taken together seriously call
19 into question almost 60% of the total cost of these proposed charges. Moreover,
20 as previously stated, the Commission has not reviewed or approved these studies
21 or confirmed that the cost recovery proposed by Century Tel is permissible.
22 Again, to the extent the Commission determines that any charges are applicable
23 for the activities related to porting end-user customer numbers between

CenturyTel and Charter, I recommend the Commission fully investigate CenturyTel's alleged costs in a cost proceeding to ensure their compliance with the FCC's rules and this Commission's rules can be determined prior to implementing any specific rate element. With that said, I want to reaffirm my earlier testimony that these types of LNP charges are *prohibited* by the Act and the FCC orders implementing it.

Q. WHAT LANGUAGE DO YOU RECOMMEND THE COMMISSION ADOPT ON THESE TWO ISSUES?

A. I recommend the Commission adopt Charter's proposed language for Issue 21 as follows:

1.2.3 Notwithstanding any other provision of this Agreement, the Pricing Appendices, and any attachment or appendix incorporated herein, the Parties shall not assess charges on one another for porting telephone numbers, or for processing service orders associated with requests for porting numbers. Neither Party will bill the other Party any service order charge for a LSR, regardless of whether that LSR is later supplemented, clarified or cancelled. Notwithstanding the foregoing, neither Party will bill an additional service order charge for supplements to any LSR submitted to clarify, correct, change or cancel a previously submitted LSR.

1 **Issue 32** – How should the Agreement define each Party’s obligations with respect to
2 fulfilling directory assistance obligations consistent with Section 251(b)(3) of the Act?
3

4 **Q. WHICH CENTURYTEL WITNESS ADDRESSES THIS ISSUE?**

5 A. Mr. Miller addresses Issue 32 on behalf of CenturyTel at pages 58 through 64 of
6 his direct testimony.

7 **Q. WHAT ARE THE PRIMARY DIFFERENCES IN THE POSITIONS OF**
8 **CHARTER AND CENTURYTEL?**

9 A. Charter’s language is consistent with the Act and the FCC orders implementing
10 the Act with respect to directory publishing/directory assistance (“DP/DA”)
11 providers. CenturyTel’s language is an attempt to avoid or abrogate its very
12 specific requirements under the Act. More specifically, CenturyTel is attempting
13 to shift its responsibilities under Section 251(b)(3) of the Act to a third party
14 vendor. Further, CenturyTel is attempting to charge Charter for its listings, even
15 though CenturyTel is compensated by the DP/DA providers for those very
16 listings.

17 **Q. HOW IS CENTURYTEL ATTEMPTING TO CHARGE CHARTER?**

18 A. Mr. Miller discusses CenturyTel’s proposal that Charter pay CenturyTel for its
19 “administrative processing cost” for submitting listings into the database. Miller
20 direct testimony at 59. This is inappropriate since CenturyTel is paid for the
21 listings and for the activities associated with storing the listings.

22 **Q. PLEASE EXPLAIN.**

23 A. When a CLEC like Charter obtains a new customer, it submits an electronic
24 “Directory Listing Service Request” (“DSR”) to CenturyTel, which includes the
25 relevant customer information – name, address, and telephone number.

1 CenturyTel uses this information to populate its directory databases, which
2 include both CLEC and CenturyTel customer listings, which are then sold to
3 directory publishers pursuant to the Act. It is undisputed that CenturyTel
4 currently sells Charter's subscriber list information to DP/DAs that request it at
5 the FCC-approved "Section 222(e) rate" of \$0.04 per listing / \$0.06 per update.

6 **Q. WHAT IS THE BASIS OF THE FCC'S PRESUMPTIVELY**
7 **REASONABLE RATES PAID BY THE DP/DA PROVIDERS?**

8 A. FCC regulations set the rate that DP/DA providers pay LECs for DL information
9 at \$0.04 per listing for base subscriber list information and \$0.06 per listing for
10 updates.⁴¹ As the FCC explained, the \$0.04 per record charge was set so as to
11 allow ILECs, "to recover the cost of installing, maintaining, and programming the
12 computers that store subscriber list information databases, and the costs of
13 ensuring that those databases are up-to-date and accurate,"⁴² as well as the "other
14 costs, such as personnel costs, maintenance and administrative costs"⁴³

15 **Q. AT PAGE 59 OF HIS DIRECT TESTIMONY, MR. MILLER REFERS TO**
16 **CENTURYTEL'S "ADMINISTRATIVE PROCESSING COSTS" FOR**
17 **SUBMITTING LISTINGS INTO THE DATABASE. DO THE FCC**

⁴¹ 47 CFR § 64.2325(a).

⁴² *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934 [sic], As Amended*, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd. 15550 Order ¶ 78 (recounting ILECs' descriptions of their costs), ¶ 92 (accepting ILEC arguments). (1999) ("SLI/DA Order").

⁴³ *Id.* ¶ 78.

**APPROVED RATES THAT CENTURYTEL CHARGES THE DP/DA
PROVIDERS COVER THOSE COSTS?**

A. Yes. These are the same activities and costs which CenturyTel apparently seeks to recover from Charter. Allowing CenturyTel to assess a new charge on Charter for the very same expenses recovered by the FCC-approved rate would allow it to recover its costs many times over. Such multiple recovery is not in the public interest, is fundamentally unfair and, therefore, CenturyTel's proposed rate is not "just and reasonable."

**Q. ABOVE YOU REFERRED TO THE FCC "PER LISTING" RATES AS
"PRESUMPTIVELY REASONABLE." ARE YOU SUGGESTING THAT
THE RATES ARE REASONABLE FOR CENTURYTEL AS WELL?**

A. Yes. The FCC specifically found that the \$0.04-per-listing / \$0.06-per-update rates were "presumptively reasonable" and would, "enable carriers to recover the incremental costs of providing subscriber list information to directory publishers and provide reasonable contributions to the carriers' common costs and overheads"⁴⁴ associated with performing the activities that include, among other things, taking orders for subscriber list information, processing such orders, and the installation, maintenance and programming of computers to store subscriber list information.⁴⁵ The same rates apply when ILECs sell listings to directory assistance providers.

⁴⁴ *SLI/DA Order* ¶ 103.

⁴⁵ *Id.* ¶¶ 77-78.

1 **Q. MR. MILLER STATES AT PAGE 59 OF HIS DIRECT TESTIMONY**
2 **THAT “CENTURYTEL IS NOT A DA PROVIDER.” IS THAT**
3 **RELEVANT TO CENTURYTEL’S OBLIGATIONS UNDER THE ACT?**

4 A. No. Many ILECs are also no longer publishing directories, but that does not
5 change their responsibilities under the Act to accept the subscriber list
6 information from other LECs.

7 **Q. ON THAT SAME PAGE OF HIS DIRECT TESTTIMONY, MR. MILLER**
8 **NOTES THAT THE DA OBLIGATION UNDER THE ACT IS A**
9 **RECIPROCAL OBLIGATION. DO YOU AGREE?**

10 A. Yes. But some background will put this reciprocal obligation in perspective. The
11 standard industry practice is for the ILEC to maintain all listing information for
12 subscribers in its serving territory. In other words, the CLECs provide their
13 listings to the ILEC so that there is one repository with all of the listings for that
14 area. This standard industry arrangement remains in place for a variety of
15 reasons. First, it is economically and operationally efficient because it provides
16 publishers and directory assistance providers with “one-stop shopping” for the DL
17 information they need to assemble their DA databases or their electronic, paper,
18 and on-line directories.

19 There are more than 200 different providers purchasing listing information from
20 ILECs. Having ILECs provide publishers and DA providers with all subscriber
21 list information in the service area, including that of CLEC customers, lowers
22 transaction costs for all carriers and the DP/DA providers, which leads to lower

1 prices for end users, and improves the accuracy of the DL information available to
2 the public.

3 **Q WAS THERE ANYTHING IN CENTURYTEL'S DIRECT TESTIMONY**
4 **THAT WOULD CAUSE YOU TO CHANGE YOUR POSITION ON THIS**
5 **ISSUE?**

6 A. No. I recommend that the Commission adopt the Charter proposed language on
7 this issue.

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

9 A. Yes, it does.

10
11