

Exhibit No.: \_\_\_\_\_  
Issue: 28, 30 and 32  
Witness: Amy Hankins  
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**

<b>In the Matter of the Petition of Charter Fiberlink-</b>	)	
<b>Missouri, LLC for Arbitration of an Interconnection</b>	)	<b><u>Case No. TO-2009-0037</u></b>
<b>Agreement Between CenturyTel of Missouri, LLC</b>	)	
<b>And Charter Fiberlink-Missouri, LLC.</b>	)	

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**REBUTTAL TESTIMONY OF AMY HANKINS  
ON BEHALF OF CHARTER FIBERLINK-MISSOURI, LLC**

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**October 21, 2008**

## **TABLE OF CONTENTS**

	<u>Page</u>
I. Introduction.....	1
II. Purpose and Summary of Testimony .....	1
III. Issues	
<b>Issue 28:</b> Does CenturyTel have the right to monitor and audit Charter’s access to its (CenturyTel’s) OSS?.....	1
<b>Issue 30:</b> What information regarding directory close dates is CenturyTel required to provide Charter, and in what manner?.....	7
<b>Issue 32:</b> How should the Agreement define each Party’s respective directory assistance obligations under Section 251(b)(3)? .....	10
IV. Conclusion .....	12

## **ATTACHMENT**

**Schedule AH-1:** Excerpts of OSS language from interconnection agreements between Charter Fiberlink and other ILECs

**I. INTRODUCTION**

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

A. My name is Amy Hankins. My business address is 12405 Powerscourt Drive, St. Louis, Missouri 63131.

**Q. ARE YOU THE SAME AMY HANKINS WHO FILED DIRECT TESTIMONY ON SEPTEMBER 30, 2008 IN THIS MATTER?**

A. Yes, I am.

**II. PURPOSE AND SUMMARY OF TESTIMONY**

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

A. This testimony responds to the direct testimony of CenturyTel witness Mr. Guy Miller of CenturyTel on Issue Nos. 28 and 32, and the direct testimony of Ms. Pam Hankins of CenturyTel on Issue No. 30 in this proceeding.

**III. ISSUES**

**ISSUE 28:**

**DOES CENTURYTEL HAVE THE RIGHT TO MONITOR AND AUDIT CHARTER'S ACCESS TO ITS (CENTURYTEL'S) OSS?**

**Q. WHAT ARE YOUR GENERAL THOUGHTS ABOUT MR. MILLER'S TESTIMONY ON THAT ISSUE?**

A. I am concerned that Mr. Miller has mischaracterized Charter's position on this issue. Mr. Miller suggests that Charter is fundamentally opposed to CenturyTel's right to monitor and audit Charter's access to CenturyTel's OSS system. This is not an accurate statement of Charter's position, or the dispute between the parties.

1 **Q. MR. MILLER SUGGESTS THAT CHARTER HAS REFUSED TO AGREE**  
2 **TO ANY AUDIT AND MONITORING (PAGE 54, LINES 11-12). IS THAT**  
3 **CORRECT?**

4  
5 A. No. As I explained in my direct testimony, Charter does not object, in principle,  
6 to CenturyTel's limited right to monitor Charter's use of CenturyTel's OSS  
7 system. Rather, Charter's position is that CenturyTel should explain, or define,  
8 the scope of the actions that it would take to monitor and audit Charter's use of  
9 the OSS. So Mr. Miller is not correct when he suggests that Charter has refused  
10 to agree to any audit and monitoring language. If CenturyTel will not provide an  
11 explanation of the scope, or limits, of its audit activities (which has been the case  
12 to date) then Charter should have the right to consent to the initiation of an audit  
13 by CenturyTel.

14 **Q. MR. MILLER TESTIFIES THAT THE PERMISSIBLE SCOPE OF THE**  
15 **AUDIT IS CLEARLY SET FORTH IN CENTURYTEL'S PROPOSED**  
16 **LANGUAGE (PAGE 55, LINES 9-10). DO YOU AGREE?**

17  
18 A. CenturyTel's language does not address the concerns that Charter has raised with  
19 regard to this issue. CenturyTel's proposed language fails to explain what it  
20 means to monitor or audit Charter's use. Indeed, CenturyTel's language merely  
21 establishes that CenturyTel has a right to monitor Charter's use of the OSS  
22 system, it has the right to do so electronically, and that the information obtained  
23 by CenturyTel shall be treated as confidential information. This language does  
24 not answer the question of what information is being monitored; the frequency of  
25 the monitoring; nor does it indicate whether certain Charter-specific data, files,  
26 statistics, or network addresses are being monitored.

1 **Q. MR. MILLER CLAIMS THAT THE PURPOSE OF AN AUDIT IS TO**  
2 **ENSURE THAT CHARTER AND CENTURYTEL ARE IN COMPLIANCE**  
3 **WITH THE FCC'S CONFIDENTIALITY REGULATIONS (PAGE 54,**  
4 **LINES 19-21). HOW DO YOU RESPOND TO THAT ASSERTION?**

5  
6 A. I was surprised to see Mr. Miller raise this argument in his testimony. It is  
7 unclear to me how auditing Charter's records helps CenturyTel to ensure that  
8 CenturyTel remains in compliance with federal regulations.

9 **Q. MR. MILLER ARGUES THAT CENTURYTEL HAS AN OBLIGATION**  
10 **TO PROACTIVELY ASSESS AND ENSURE ITS COMPLIANCE WITH**  
11 **SECTION 222 (PAGE 55, LINES 3-4). HOW DO YOU RESPOND?**

12  
13 A. Placing emphasis on this point seems to confuse the issue here. Charter has never  
14 claimed that it would use CenturyTel's OSS system in a manner that is not in  
15 compliance with the law. Mr. Miller mischaracterizes the parties' dispute on this  
16 issue. In fact, in Section 12, of Article X, of the draft interconnection agreement  
17 the parties have already agreed upon language that clearly states that both parties  
18 will comply with all applicable laws. That section specifically identifies 47  
19 U.S.C. 222, which appears to be the same statute that Mr. Miller refers to in his  
20 testimony as "Section 222." Specifically, the language is as follows:

21 The provisions of this Article shall be in addition to and not in  
22 derogation of any provisions of Applicable Law, including, but not  
23 limited to, 47 U.S.C. § 222, and are not intended to constitute a  
24 waiver by CenturyTel of any right with regard to protection of the  
25 confidentiality of the information of CenturyTel or CenturyTel  
26 customers provided by Applicable Law.  
27

28 So, it seems clear that Charter does not dispute the fact that Section 222 is  
29 operative, and applicable, under the agreement. I am not sure why Mr. Miller is  
30 suggesting anything to the contrary, and why he has made some of the other  
31 statements in his testimony.

1   **Q.     PLEASE EXPLAIN.**

2   **A.**   Mr. Miller's states on page 54, lines 21-22, of his direct testimony that Charter  
3       will not agree to state that it will not "deliberately use its OSS access in non-  
4       compliance with the law." That is simply false. The agreed-upon language of the  
5       agreement, that I have just identified, already establishes that Charter will comply  
6       with the law. Further, the agreement contains very comprehensive language  
7       setting forth how Charter may, and may not, use CenturyTel's OSS system.  
8       Specifically, Section 8.4 of Article X of the agreement sets forth specific rules  
9       limiting Charter's access to CPNI, which Charter's attorneys tell me is the data  
10      that is protected by Section 222. So it seems that existing, agreed-upon, language  
11      clearly limits Charter's access to the OSS, and protects information that is subject  
12      to Section 222. As such, Mr. Miller's statements that Charter will use its access  
13      to the OSS improperly is simply not true.

14   **Q.     BUT MR. MILLER CLAIMS THAT CENTURYTEL HAS EXPERIENCED**  
15   **SITUATIONS WHERE CABLE VOIP PROVIDERS HAVE IGNORED**  
16   **SECTION 222 (PAGE 56, LINES 19-21). IS THAT A VALID CONCERN?**  
17

18   **A.**   I am not aware of any problems that CenturyTel may have had with other cable  
19       VoIP providers, but Mr. Miller does not suggest that it has ever had any similar  
20       problems with Charter. In fact, there is no evidence of such problems. As I  
21       understand his concern, he seems to suggest that other cable companies may not  
22       comply with Section 222. But as I just explained, the parties have already agreed  
23       in Section 12, of Article X, of the draft agreement that both parties will comply  
24       with all applicable laws, including Section 222. So there should be no question  
25       that compliance with Section 222 is required of both parties.

1 **Q. MR. MILLER ASSERTS THAT THERE IS EXISTING “PRECEDENT” IN**  
2 **TEXAS THAT THE COMMISSION SHOULD CONSIDER (PAGE 56,**  
3 **LINES 24-26). HOW DO YOU RESPOND?**  
4

5 A. Yes, Mr. Miller suggests that contract language in the current agreement between  
6 Charter and SBC is “precedent,” and should be binding upon Charter in other  
7 agreements. However, it is not clear why Mr. Miller thinks contract terms that  
8 Charter has with another carrier can be considered “precedent.” I am not a  
9 lawyer, but it is my understanding that precedent is established from a rule that a  
10 court, or some other judicial body with decision making authority, adopts when  
11 deciding later cases with similar issues or facts.

12 **Q. ARE YOU SUGGESTING THAT IT IS NOT PROPER TO REVIEW**  
13 **LANGUAGE FROM ANOTHER INTERCONNECTION AGREEMENT?**  
14

15 A. No. My point is simply that other contract language is not “precedent,” at least as  
16 I understand the term. That said, it is not improper to look to the language in  
17 other interconnection agreements to inform the decision maker. In fact, I would  
18 note that many of the provisions in the Charter/AT&T Agreement that Mr. Miller  
19 points to are not the sections that deal with OSS audits.

20 **Q. PLEASE EXPLAIN.**  
21

22 A. The only analogous provision in the interconnection agreement between AT&T  
23 and Charter in Missouri is Section 3.7, of Attachment 27 (OSS), which provides  
24 as follows:

25 In order to determine whether CLEC has engaged in the alleged  
26 misuse described in the Notice of Misuse, and for good cause  
27 shown, SBC-13STATE shall have the right to conduct an audit of  
28 CLEC's use of the SBC-13STATE OSS. *Such audit shall be*  
29 *limited to auditing those aspects of CLEC's use of the SBC-*  
30 *13STATE OSS that relate to the allegation of misuse as set forth*  
31 *in the Notice of Misuse. SBC-13STATE shall give ten (10)*

1           *calendar days advance written notice of its intent to audit CLEC*  
2           ("Audit Notice") under this Section 3.7, and *shall identify the type*  
3           *of information needed for the audit.* Such Audit Notice may not  
4           precede the Notice of Misuse. Within a reasonable time following  
5           the Audit Notice, but no less than fourteen (14) calendar days after  
6           the date of the notice (unless otherwise agreed by the Parties),  
7           CLEC shall provide SBC-13STATE with access to the requested  
8           information in any reasonably requested format, at an appropriate  
9           CLEC location, unless otherwise agreed to by the Parties. The  
10          audit shall be at SBC-13STATE's expense. *All information*  
11          *obtained through such an audit shall be deemed proprietary*  
12          *and/or confidential and subject to confidential treatment* without  
13          necessity for marking such information confidential. SBC-  
14          13STATE agrees that it shall only use employees or outside parties  
15          to conduct the audit who do not have marketing, strategic analysis,  
16          competitive assessment or similar responsibilities within SBC-  
17          13STATE.

18  
19          Note that, unlike CenturyTel's proposal, the OSS language in the AT&T Missouri  
20          agreement sets specific parameters around SBC's ability to audit Charter's use of  
21          the OSS, requires that the audit be preceded by written notice to Charter, requires  
22          that all information remain confidential, and specifically limits the type of  
23          information that may be obtained and reviewed during the audit. Those are the  
24          types of limitations and controls that we believe are appropriate for the OSS  
25          auditing language of the Charter and CenturyTel agreement.

26          **Q. DO ANY OTHER CHARTER INTERCONNECTION AGREEMENTS**  
27          **INCLUDE SIMILAR LANGUAGE?**

28  
29          A. Yes. In Schedule AH-1, I have provided excerpts from OSS language that  
30          Charter has agreed to, or opted into, in interconnection agreements with other  
31          ILECs such as Verizon and AT&T in a number of different states. Although  
32          Charter disagrees with Mr. Miller's assertion that language entered into with other  
33          carriers is somehow binding upon the Commission, Charter does believe that this  
34          language can be instructive to demonstrate what is current practice in the industry.



1 **Q. DO YOU THINK CHARTER'S STATED CONCERNS WITH**  
2 **CENTURYTEL'S OPEN-ENDED OSS AUDIT PROVISION WOULD BE**  
3 **LESSENED IF THE COMMISSION WERE TO ADOPT THE TYPE OF**  
4 **LIMITATIONS IN THE CHARTER-AT&T MISSOURI AGREEMENT**  
5 **THAT YOU QUOTED?**

6  
7 A. Yes.

8 **ISSUE 30:**

9 **WHAT INFORMATION REGARDING DIRECTORY CLOSE DATES IS**  
10 **CENTURYTEL REQUIRED TO PROVIDE CHARTER, AND IN WHAT**  
11 **MANNER?**

12  
13 **Q. HAVE YOU REVIEWED THE DIRECT TESTIMONY OF MS. PAM**  
14 **HANKINS ON ISSUE 30?**

15  
16 A. Yes.

17 **Q. IN THAT TESTIMONY MS. HANKINS SUGGESTS THAT CHARTER IS**  
18 **SEEKING "SPECIAL TREATMENT" (PAGE 22, LINES 29-30), DO YOU**  
19 **AGREE?**

20  
21 A. No. Charter is simply proposing an alternative approach to the question of how  
22 directory close date information is conveyed by CenturyTel to Charter. To the  
23 extent that this approach is more efficient, or more beneficial, to competitive  
24 providers like Charter, there is no reason that CenturyTel should not adopt the  
25 same approach for all other competitive providers as well. Therefore, we are  
26 simply seeking to establish a rational process concerning directory close date  
27 information, not gain a competitive advantage against other providers.

28 **Q. DID YOU KNOW THAT CENTURYTEL PROVIDES AN ELECTRONIC**  
29 **NOTIFICATION SERVICE, INCLUDING INFORMATION ABOUT**  
30 **DIRECTORY CLOSE DATES?**

31  
32 A. Yes. I am aware that CenturyTel distributes electronic notices, as Ms. Hankins  
33 testifies at page 24 of her direct testimony. In fact, the Charter LNP managers  
34 and supervisors receive the electronic notifications. However, those notices do

1 not provide the level of detail that Charter believes is appropriate for this  
2 directory close process.

3 **Q. WHY THEN SHOULD THE COMMISSION REQUIRE CENTURYTEL**  
4 **TO DO SOMETHING MORE?**

5  
6 A. In order to properly manage the process of including its subscribers in the  
7 published directories in each service area, Charter seeks specific information  
8 concerning the directory publication and close dates for each directory publisher.  
9 Specifically, Charter must be apprised of when the close date has changed, both  
10 the original and new close dates. This level of detail will ensure that Charter can  
11 submit its subscriber information for publication in all of the directories published  
12 in CenturyTel's service areas.

13 **Q. WHY IS IT NECESSARY TO MOVE BEYOND THE EXISTING**  
14 **PROCESS IF, AS MS. HANKINS TESTIFIES (PAGE 26, LINES 1-2),**  
15 **OTHER CLECS HAVE NOT SUGGESTED THIS IS A PROBLEM?**

16  
17 A. As I explained in my direct testimony, because CenturyTel is the incumbent  
18 provider, and works closely with the publisher in each area, it probably has a  
19 long-standing relationship with the publisher. If so, it is safe to assume that  
20 CenturyTel and the publisher have established processes for exchanging  
21 information and data concerning the directory publication process, and the  
22 inclusion of subscriber listings in that directory. Charter's proposal will simply  
23 enhance the existing process that CenturyTel currently employs. And because it  
24 is a process which all CLECs could benefit from, Charter is not asking for any  
25 favoritism from the Commission. I suspect that this is likely the same type of  
26 information that CenturyTel itself receives from the publisher. To that extent that

1 is true, it is only equitable to provide the same information to other carriers, like  
2 Charter.

3 **Q. MS. HANKINS TESTIFIES (PAGE 28, LINES 8-21) THAT THERE IS A**  
4 **SECOND ASPECT TO THIS ISSUE. DO YOU AGREE?**

5  
6 A. No. Issue 30 only raises the question of directory close dates. Ms. Hankins  
7 testifies on what she calls the “second area of dispute,” but I believe that is  
8 actually her direct testimony on a **separate** issue, Issue 31 (“How should each  
9 Party’s liability be limited with respect to information included, or not included,  
10 in Directories?”). Ms. Hankins offers testimony on this issue even though  
11 CenturyTel’s attorney, Mr. Gavin Hill, filed a letter with this Commission stating  
12 that CenturyTel and Charter had agreed to address Issue 31, and other purely legal  
13 issues, only in their briefs. That agreement was filed with the Commission on  
14 October 16, 2008, and docketed as Item number 41.

15 **Q. GIVEN THAT MS. HANKINS HAS OFFERED DIRECT TESTIMONY ON**  
16 **THIS ISSUE, DO YOU BELIEVE CHARTER SHOULD OFFER**  
17 **REBUTTAL TESTIMONY?**

18  
19 A. Yes. It appears that CenturyTel has decided to ignore the terms of the agreement  
20 it reached with Charter to address that issue only in briefing. I presume that is  
21 why they offered Ms. Hankins testimony on this issue. I presume they would not  
22 object to Charter’s desire to respond to that testimony.

23 **Q. WHAT IS YOUR RESPONSE TO THAT TESTIMONY?**

24  
25 A. My response is that CenturyTel is mischaracterizing Charter’s position. Ms.  
26 Hankins suggests that Charter proposes that it should “only be responsible to send  
27 its flat files to CenturyTel and not directly to the CenturyTel Directory publisher  
28 vendor.” (Page 28, lines 12-13). That is simply not what we have proposed, and

1 Ms. Hankins does not actually identify any specific language in her testimony to  
2 support her assertion. So that characterization of Charter's proposal on Issue 31 is  
3 simply not accurate. Nor is Ms. Hankins suggestion that CenturyTel should be  
4 "required to be inserted into the delivery process" (page 28, lines 18-19) of  
5 delivering files to the publisher.

6 Although I am not an attorney, I understand that the intent of Charter's proposed  
7 language for Issue 31 is to simply make clear that CenturyTel should not be able  
8 to limit their liability to Charter, or an end user subscriber, when CenturyTel acts  
9 in a manner that causes the harm (the contract language says "negligence, gross  
10 negligence, or intentional or willful misconduct."). This does not mean that  
11 CenturyTel should be inserted into the process of submitting flat files to the  
12 publisher. It simply means that if CenturyTel does take some action that causes  
13 damage to Charter, or an end user subscriber, then it should not be allowed to  
14 avoid liability for the harm that it causes.

15 **Q. ARE THERE OTHER POINTS THAT YOU WOULD LIKE TO MAKE ON**  
16 **THIS ISSUE 31 CONCERNING LIABILITY FOR DIRECTORY**  
17 **ERRORS?**

18  
19 A. No. Charter's attorneys have instructed me that this issue will be addressed in the  
20 briefs, and that Charter intends to honor its prior agreement with CenturyTel to  
21 address the issue in that manner.

22

23 **ISSUE 32:**

24 **HOW SHOULD THE AGREEMENT DEFINE EACH PARTY'S**  
25 **DIRECTORY ASSISTANCE OBLIGATIONS UNDER SECTION**  
26 **251(B)(3)?**

27

1 **Q. WHAT ARE YOUR GENERAL THOUGHTS ABOUT MR. MILLER'S**  
2 **TESTIMONY ON THAT ISSUE?**

3  
4 A. I am concerned that Mr. Miller characterizes Charter's position on this issue by  
5 asserting that Charter would require CenturyTel to act as a "middleman" so that  
6 Charter could submit directory assistance listings to CenturyTel for relay to  
7 CenturyTel's directory assistance provider. This is not an accurate  
8 characterization of Charter's position because Charter does not expect CenturyTel  
9 to play a middleman role.

10 **Q. PLEASE EXPLAIN.**

11 A. Charter recognizes that the practice followed by some other carriers is to sub-  
12 contract directory assistance services, and use third-party vendors to provide the  
13 function for directory assistance services. However, contrary to Mr. Miller's  
14 testimony, (Page 58, Lines 29-30, Page 59, Lines 1-11) Charter is simply seeking  
15 a clear statement from CenturyTel that it has an obligation to provide directory  
16 assistance to Charter pursuant to Section 251(b)(3).

17 **Q. IN CONTRAST TO MR. MILLER'S CLAIMS, IS CHARTER'S**  
18 **PROPOSAL INTENDED TO AVOID FUTURE PROBLEMS BETWEEN**  
19 **THE PARTIES?**

20  
21 A. Yes, adopting Charter's proposal on this issue will enable Charter to avoid the  
22 problems that Charter has faced in the past with CenturyTel. As I explained in  
23 my direct testimony, Charter wants to make sure that CenturyTel is ultimately  
24 held responsible for ensuring that CenturyTel subscribers can dial directory  
25 assistance and obtain the phone number of a Charter subscriber. Because that has  
26 not always happened in the past, it is appropriate to include a statement in the  
27 agreement. Specifically, in the event that CenturyTel's third party vendor is

1 acting in a way that is contrary to the basic principles of Section 251(b)(3),  
2 Charter believes that CenturyTel should be the entity that must step in to resolve  
3 the problem with the vendor that it sub-contracted its directory assistance services  
4 to. In other words, Charter seeks a basic statement of legal obligations under  
5 Section 251(b)(3) to make unmistakable that CenturyTel cannot back out of future  
6 directory assistance problems if they arise with CenturyTel's vendor.

7 **Q. MR. MILLER ASSERTS THAT CHARTER'S PROPOSAL WOULD**  
8 **HAVE CENTURYTEL PERFORM WORK FOR CHARTER (PAGE 59,**  
9 **LINES 1-2), SUCH THAT CENTURYTEL SHOULD BE ABLE TO**  
10 **ASSESS A CHARGE UPON CHARTER. HOW DO YOU RESPOND?**

11  
12 **A.** I was surprised by Mr. Miller's testimony on this point. CenturyTel's proposed  
13 contract language does not contain any charges related to the transfer of Charter's  
14 directory assistance listings to its vendor. Nor does CenturyTel's position  
15 statement in the Joint DPL that the parties filed say anything about CenturyTel's  
16 intention to assess charges on Charter for complying with its directory assistance  
17 obligations. So it is not clear to me that CenturyTel has any basis to suggest that  
18 it is entitled to impose a charge upon Charter under **either** party's proposed  
19 language. Further, I do not see how CenturyTel could assess a charge for simply  
20 complying with its obligations under federal law.

21

22 **IV. CONCLUSION**

23 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

24 **A.** Yes.

25